

Meeting Date: September 9, 1993  
Agenda Item No. 8.5

RESOLUTION NO. 93-1848



## METRO

DATE: September 3, 1993

TO: Metro Council  
Executive Officer  
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 8.5; RESOLUTION NO. 93-1848

Supporting documentation for the resolution listed above will be printed separately from this agenda packet and made available to Councilors via delivery service on Tuesday, September 7. The supplemental packets will also be available at the Council meeting September 9. The documentation is as follows:

1. Resolution No. 93-1848.
2. Exhibit A, Franchise Agreement between Metro and Willamette Resources, Inc. for the Provision of Solid Waste Transfer and Materials Recovery Facilities and Services.
3. "Presentation to Metro Council Solid Waste Committee" by Willamette Resources, Inc. dated August 3, 1993.
4. Memorandums exchanged between Solid Waste Department and Council Department staff in reverse date order.
5. The Executive Officer's recommendation dated July 20, 1993.
6. Related correspondence from other parties in reverse date order.
7. Letter of Credit.

**BEFORE THE METRO COUNCIL**

**FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 93- 1848**  
**THE EXECUTIVE OFFICER TO ENTER )**  
**INTO A FRANCHISE AGREEMENT )**  
**WITH WILLAMETTE RESOURCES, INC. ) Introduced by Metro Council**  
**FOR CONSTRUCTION AND ) Solid Waste Committee**  
**OPERATION OF THE METRO )**  
**WEST STATION )**

**WHEREAS, In June 1990, the Council of Metro adopted Resolution No. 91-143B establishing policy for development of the "Metro West Transfer and Material Recovery System" as a chapter of the Regional Solid Waste Management Plan; and**

**WHEREAS, In October, 1991, the Metro Council adopted Ordinance No. 91-416 which amended the Regional Solid Waste Management Plan to include the chapter referenced above; and**

**WHEREAS, Ordinance No. 91-416 states that: "The primary method of facility procurement for transfer facilities in the west watershed will be through the issuance of a request for long-term franchises"; and,**

**WHEREAS, In May, 1992 the Metro Council adopted Resolution No. 92-1612 authorizing issuance of a "Request for the Provision of Transfer and Material Recovery Facilities and Services for Eastern Washington County" (RFF) to partially implement the adopted chapter referenced above; and**

**WHEREAS, In July, 1992, a franchise application was received in response to the RFF and found to be in compliance with the RFF; and**

WHEREAS, A franchise agreement, attached as Exhibit "A", has been negotiated between Metro and Willamette Resources, Inc. which is in compliance with the RFF and the Regional Solid Waste Management Plan; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute the Service Agreement, in a form substantially similar to Exhibit "A" attached to the original only hereof, and hereby incorporated by reference.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Judy Wyers, Presiding Officer



Council  
9/9/93  
8.5

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 93-1848, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO A FRANCHISE AGREEMENT WITH WILLAMETTE RESOURCES, INC. FOR CONSTRUCTION AND OPERATION OF THE METRO WEST STATION

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Date: September 8, 1993

Presented by: Councilor Buchanan

Committee Recommendation: At the August 17 meeting, the Committee voted 3-0 to submit Resolution 93-1848, without recommendation, for Council consideration. Voting in favor, Councilors Buchanan, McFarland, and McLain. Councilors Washington and Wyers were excused.

Committee Issues/Discussion: At its July 20 meeting, the Committee received the recommendation of the Executive Officer that Metro should not enter into a franchise agreement with Willamette Resources Inc. for the construction and operation of a transfer station in Wilsonville. At subsequent public hearings at the August 3 and August 17 meetings, the Committee received considerable additional testimony from Metro staff in support of the Executive Officer's recommendation and from the proposed vendor and the Washington County Steering Committee urging the committee to proceed with the construction of the station.

At the August 17 meeting, the Committee chose to adopt Resolution 93-1848, without recommendation. The resolution authorizes the Executive Officer to enter into an agreement with Willamette Resources for the construction and operation of the proposed transfer station. The resolution was passed without recommendation for the purpose of bringing the issue of the transfer station before the full Council for discussion.

STAFF REPORT RELATED TO THE PROPOSED  
WILSONVILLE TRANSFER STATION

A large amount of data and supportive testimony related to the proposed Wilsonville transfer station has been developed over a span of several years. It is the intent of this staff report to provide: 1) a brief history of the development of a proposed disposal system for Washington County, 2) a summary of the proposed franchise agreement, and 3) a summary of the pro and con arguments related to the facility.

HISTORICAL BACKGROUND

Following several years of formal and informal discussions between Metro and Washington County elected officials, a process for the development and implementation of a comprehensive disposal system for Washington County was initiated in 1988. The Council adopted Ordinance No. 88-266B which established the Regional Solid Waste Management Plan (RSWMP). The RSWMP included a policy that provided that priority be given to local solutions to address solid waste issues.

Plan Development

Upon the request of Washington County, the Council adopted Resolution No. 89-1156 which authorized a process under which Washington County would develop a conceptual plan to address solid waste disposal within the county. The development of the plan would be overseen by the fourteen-member Washington County Solid Waste Systems Design Steering Committee (the steering committee). The committee included a representative from each city, a county representative, and three hauler representatives.

During the next year, a series of resolutions were adopted that related to development of Washington County's "local solution" plan for the development of disposal facilities to serve the county's residents. These included:

\* Resolution No. 90-1263 -- acknowledging receipt of a "conceptual" plan from the Washington County Steering Committee, but specifically not endorsing the policy recommendations contained in the plan

\* Resolution No. 90-1250A -- authorizing a technical analysis of the conceptual plan, which would address a broad spectrum of issues related to the proposed disposal system including tonnage estimates, system configuration, transportation, financing, rates and flow control

\* Resolution No. 90-1358B -- establishing a policy preference for a local government solution, provided that the solution meets the requirements of the RSWMP

Following the completion of the "Policy and Technical Analysis for: The Washington County System Plan" (the technical analysis), the Council adopted Resolution No. 91-1437B in June 1991. The intent of the resolution was to set the policies for the preparation of an RSWMP Chapter related to the proposed Washington County disposal system. The resolution noted that "the Council of the Metropolitan Service District recognizes and gives priority to the Washington County Solid Waste Plan (local government solution) by establishing the following policies to ensure that the Washington County Plan is consistent with the Regional Solid Waste Management Plan:". The policies related to: 1) system configuration/tonnage projections, 2) the number of facilities, 3) material recovery, 4) high grade processing, 5) financing, 6) rates, 7) ownership, 8) vertical integration, 9) procurement, 10) land use siting, and 11) flow control.

During discussion of this resolution, several significant issues emerged. These included: 1) the role of Metro and Washington County in implementing the plan, 2) public vs. private facility ownership, 3) the size and location of the facilities, and 4) the nature and timing of the procurement process. The Council narrowly approved the resolution following the development and inclusion of language that required that the cost of any privately-owned facility would have to be less than a public-ownership alternative.

The Solid Waste Planning staff then prepared and the Council adopted an RSWMP chapter plan which outlined the basic components, conditions and policies that would drive the development of a disposal system in Washington County (Ordinance No. 92-416). Under the plan, the county would be divided into two wastesheds. The western wasteshed would include the area from Aloha to Forest Grove, while the eastern wasteshed would include Beaverton, Tigard, Tualatin, Sherwood and Wilsonville. There would be two transfer stations, one in each wasteshed. The facility serving the west wasteshed would have a capacity of 120,000 tons/yr. and the east wasteshed facility would have a capacity of 196,000 tons/yr.

#### Forest Grove Station Procurement

Following the adoption of the chapter plan, the Solid Waste staff initiated a procurement process for the transfer station for the western wasteshed. Potential vendors were asked to respond to a request for franchise (RFF) for the construction and operation of the station under a 20-year franchise agreement. The estimated

cost of the facility was \$10 million, to be financed through the issuance of Metro limited obligation revenue bonds.

Two vendors submitted proposals in response to the RFF, Waste Management of Oregon and A.C. Trucking, the operator of the existing Forest Grove Transfer Station. Both of the proposed facilities would have been located in Forest Grove.

During the evaluation of two proposals, the solid waste technical staff initiated several changes in the methodology used to make tonnage forecasts. These changes were made to create a forecasting model that could more accurately account for the significant drop in transfer station tonnage that began in mid-1991. Using this new model, tonnage forecasts for the region and for Washington County were revised significantly downward.

Though the comparative evaluation of the two proposals was completed, the staff recommended that the station not be built at this time. They noted that earlier forecasts and the technical analysis had indicated that the facility could reach capacity prior to the year 2000, but that the new forecast indicated that capacity would not be reached during the first twenty years of operation. Staff contended that the small forecasted increases in tonnage did not justify the expenditure of \$10 million to build the facility. The council accepted the staff's rationale and chose not to proceed with the facility.

#### Wilsonville Procurement

In May 1992, the procurement process for the eastern wasteshed transfer station was initiated throughout the issuance of another RFF (Resolution No. 92-1612). A single vendor, Willamette Resources, Inc. (WRI) responded. WRI proposed to construct and operate a facility in North Wilsonville and henceforth the proposed facility has been referred to as "the Wilsonville Transfer Station."

The proposal was evaluated and, in December 1992, the staff brought forward a request that it be permitted to enter into negotiations with WRI for the purpose of preparing a final design for the proposed facility and developing a 20-year franchise agreement. It was estimated that this work would cost about \$100,000 to complete. The Solid Waste Committee authorized staff to enter into these negotiations.

At the same time that the proposal was being evaluated, the Solid Waste Committee Chair and Council staff prepared a memo asking several questions related system capacity, flow control, tonnage estimates, and use of Metro Central by Washington County haulers.

The staff response provided data and other estimates related to system capacity, the potential use of flow control, and tonnage estimates and facility usage (with or without the Wilsonville station).

Negotiations with WRI culminated with the development of a proposed franchise agreement dated June 28, 1992. It is this agreement, along with other cost and financial impact data, upon which the Executive Officer based her decision not to proceed with the construction of the facility.

#### SUMMARY OF PROPOSED FACILITY AND FRANCHISE AGREEMENT

##### Original Proposal

The proposed facility would be built on a 26 acre site located on Ridder Road, about 1/2 mile southwest of the Stafford/North Wilsonville interchange on Interstate (Exit 286). A total of about 9 acres of the site would be used for the transfer station, with a 7.5 acre buffer zone on the north side of the property. The remainder of the site would be reserved by WRI for its central offices. The site is zoned for industrial use and WRI has obtained the necessary conditional land use permit from the city of Wilsonville.

The original proposal included an approximately 93,200 square foot main building. The building included a 10-space main tipping floor, an auxilliary tipping area, material recovery lines, separate storage areas for recovered materials and unacceptable materials, truck wash, a compactor and loadout area and office and maintenance areas. The scalehouse and queuing line area were located to the east of the main building. A public recycling drop-off area, a transfer truck staging and parking area, and public parking also were provided.

The total estimated cost of the original proposal was \$10,037,600.

##### Revised Proposal

The size and layout of the main building were significantly downsized as a result of the negotiation and final design process. The reduction, to about 76,800 square feet, was primarily due to the elimination of the proposed material recovery lines. The original proposal included about \$1.3 million for material recovery equipment designed to produce a 7-10 percent recovery rate. The principal recoverables would have been wood, cardboard and metals. Metro staff analysis concluded that the proposed recovery lines would not be cost-effective. Staff estimated that a 4-5 percent recovery rate could be achieved through floor sorting of material as it arrived at the

station. A large open area was maintained in the building to allow for the future installation of material recovery equipment should it become cost-effective.

The estimated cost of the revised facility is \$9,096,010.

#### Agreement Summary

Length. The franchise agreement with WRI would be for 20 years. The agreement could be extended for up to 20 additional years in five-year increments. Metro can purchase the facility at the end of the initial agreement period and would have first right of refusal during the term of the agreement.

Financing. The facility would be financed through Metro's issuance of about \$10.3 million in project bonds. About \$1 million of the bonds would be taxable because it would be used for purchase of the land. Bond proceeds would be loaned to WRI who would be responsible for payment of bond principal and interest from revenues from the facility. The agreement also requires that WRI provide a letter of credit insuring that the bonds will be paid off in the event of a default.

Following the completion of negotiations, WRI provided the required letter of credit from West One Bank. The letter is for \$11 million with a term of five years. WRI must pay initially pay an issuance fee in an amount equal to 1% of the face value to obtain the letter. In addition, it must make semi-annual payment of a "facility fee" equal to 2% per annum of the remaining bond principal. Originally this fee was to be 1% per annum, but was increased by the bank prior to final issuance of the letter. The facility fee is more than double the fee paid to obtain credit enhancement for the composter facility.

Metro's staff has reviewed the letter and it has been requested that they make a presentation at the Council hearing on the transfer station. This presentation would address the financial impact of the increase in the facility fee and any other issues that they may wish to raise concerning the letter.

Operations. Under the terms of the agreement, the facility would be open 363 days a year. During weekdays only commercial loads would be accepted and on weekends both self-haul and commercial loads would be received. Metro will operate the scalehouse at the facility.

It is estimated that the facility would initially receive about 132,000 tons per year. Tonnage would gradually increase to about 163,000 tons by the year 2013. If tonnage were to drop below 95,000 tons, Metro would be obligated to discuss the financial

viability of the facility with WRI but would not be required to take any specific action.

Cost Impact. WRI will be paid a monthly sum that consists of an operations and maintenance (O&M) and debt service. During the first year of full debt service payments (FY 95-96), staff estimates that the average per ton cost will be \$24.18 (\$16.44 for O&M, \$7.74 for debt service). By comparison, based on the existing contracts, similar per ton costs at Metro Central would be \$25.22/ton and \$10.60/ton at Metro South. (Note: Both the Metro Central and Metro South contracts will be rebid during the next 18 months. It is anticipated that the cost will decrease at Metro Central and increase at Metro South).

Because per ton costs at Metro Central and Metro South tend to decrease as larger volumes are processed, the effect of transferring wastes from these facilities to a new Wilsonville facility will be to increase per ton costs at each of these facilities. For example, cost at Metro South would be \$9.23/ton without the Wilsonville facility versus \$10.60/ton if Wilsonville is built. At Metro Central, the cost would be \$23.13/ton without the Wilsonville facility versus \$25.22 if Wilsonville is built.

WRI would receive an annual escalator equal to 100% of the consumer price index increase up to 5%, and 85% of the increase over 5%. WRI also would receive "avoided cost" payments for recovered materials.

Rate Impact. The estimated disposal rate impact during the first full year of debt service payments (FY 95-96) would be \$4.15/ton. Staff estimates that the rate with the Wilsonville station would be \$85.73/ton versus \$81.58/ton if the facility is not built. The following is a summary of the various components of the rate impact of the facility:

\$1.99/ton	-- Station Operations
1.51	-- Debt Service
.43	-- Scalehouse Operations
.18	-- Avoided Costs
.27	-- 7% Excise Tax
(.21)	-- Reduced Transportation/Disposal Costs
(.03)	-- Other Related Revenue
\$4.15	-- Total Impact (rounded to the nearest penny)

## PRO AND CON ARGUMENTS

The following discussion outlines those arguments that have been put forth in favor and in opposition to the construction of the Wilsonville transfer station. In addition, arguments for and against the option of delaying a final decision on the facility until a later date also are addressed.

### Pro Arguments

Those testifying in favor of constructing the transfer station have included the Washington County Steering Committee, various Washington County elected officials, Clackamas County, representatives of WRI, and the Tri-County Council (haulers). Correspondence in favor of the facility has been received from the cities of Wilsonville, Tigard and Oregon City.

The arguments in favor of the facility can be summarized as follows:

Operating Agreement with Oregon City. Metro currently has an intergovernmental agreement with the city of Oregon City relating to the operation of Metro South. Under the agreement, Metro may process up to 400,000 tons/year at the facility. However, the agreement further provides that Metro agrees to "take every measure feasible to reduce tonnage at the facility to 700 tons per day (approximately 255,000 tons per year) on a monthly average by January 1, 1992." This agreement expires in December 1995.

The staff report that recommends not proceeding with the Wilsonville facility identifies the "maximum" capacity of Metro South as 400,000 tons/year as provided in the current Oregon City agreement. The report indicates that if the Wilsonville station is not built, Metro would not redirect waste from the station until the tonnage reached the 400,000 ton capacity.

In a response directed to the Presiding Officer, the mayor of Oregon City notes that "we are disturbed that Metro's waste flow projections indicate Metro will continue to exceed this limitation (255,000 tons/year). In our view, approval of the Wilsonville facility is a "feasible measure" to reduce tonnage at Metro South. The agreement with Metro expires on January 1, 1996. At this time we anticipate reviewing all of the terms of the agreement including the tonnage limits."

Staff and those that use the facility agree that some operational problems occur at the facility as a result of the higher than optimum tonnage volume. These generally involve long queuing lines and delays in processing customers. During weekdays, such



delays are limited and of relatively short duration. But on weekends, particularly during the spring and summer, the large number of self-haulers generates causes queuing lines to extend out onto adjacent city streets. Delays of more than one hour have occurred. The mayor of Oregon City noted that these traffic problems may be compounded when nearby Oregon Trail-related facilities are opened in 1994.

Metro staff indicates that several operational changes have been made to address these problems. These include: 1) increased operating hours, 2) improved on-site traffic control, 3) assistance in the tipping area, 4) more effective use of existing scales, and 5) limiting recovery activities to off-peak periods. Staff has indicated that, other than possibly adding an additional scale, no large scale physical improvements are anticipated during the next five years at Metro South.

Proponents contend that the current Metro South operating agreement with Oregon City represents a commitment from Metro to reduce the tonnage levels at Metro South to about 255,000 tons/year. They argue that the recommendation not to build the Wilsonville station clearly implies that it is Metro's intent to operate Metro South at up to 400,000 tons/year for the remaining 2 1/2 years of the operating agreement. They note that the RSWMP requires a commitment from each county to accept a transfer station and that Washington County is honoring its commitment through its support for construction of the Wilsonville station.

Completion of a Long and Complex Planning and Siting Process. Proponents contend that the construction of the station is the culmination of a five-year planning process that resulted in the development of the Washington County Plan and an RSWMP Chapter addressing the Washington portion of the regional disposal system, both of which were approved by the Metro Council. They contend that the Executive Officer is asking the Council to radically depart from these established policies without having a comprehensive vision of the future of the disposal system if the station is not built.

Flow Control. Proponents express concern about Metro's continuing ability to use flow control to direct the waste of certain haulers to a particular facility. They cite several recent court decisions that have limited the right to exercise flow control in other jurisdictions. They argue that a decision not to build the Wilsonville station will result in Metro having to exercise flow control to direct waste from Metro South to Metro Central. They note that if Metro were unable to direct waste from Metro South to Metro Central, population growth in Washington and Clackamas Counties could result in the need to build a transfer station to reduce waste flows at Metro South by as early as 1996.

They also contend that the exercising of flow control will increase hauler collection costs and system disposal costs. For example, they argue that haulers have made their decision to use one of the existing stations based on economic considerations. Forcing them to use a different station could result in longer travel times, delays at the station and other factors that would increase their costs. They also note that disposal costs at Metro Central are currently, and are expected to remain, higher than disposal costs at Metro South. Thus, using flow control to send waste from Metro South to Metro Central would increase system disposal costs.

**Collection Cost Savings.** There are significant differences in the estimates of collection cost savings prepared by the proponents of the station and those prepared by Metro staff. Proponents contend that the savings will be about \$700,000 a year and will exceed the tip fee impact of the station. Metro staff's estimate of between \$350,000 and \$600,000 per year indicate that at best there will not be any net savings.

Proponents also contend that construction of the station will eliminate the historic disposal cost subsidy paid by Washington County residents. They argue that longer travel times to Metro South have cost Washington County residents and that the construction of the Wilsonville station will eliminate this cost differential.

**Uniform Service and Costs.** Washington County contends that the lack of a transfer station in the eastern portion of the county has created a disposal system in which residents of this area do not receive the uniform level of service at a uniform cost that is mandated under the RSWMP. They argue that a decision not to build the station will continue this inequity. They contend that prior to making any decision not to build, Metro should address this issue, including the consideration of a differential rate for those in the affected area (note: Proponents contend that residents in east Multnomah County also may have similar service and cost inequities.).

**An Integral Part of the System.** Proponents note that the RSWMP has always envisioned a disposal system in which each county in the region contribute disposal facilities capable of addressing the needs of that county. They contend that Metro Central and Metro South were constructed to meet the needs of Multnomah County and Clackamas Counties. The planning work of the Washington County Steering Committee was viewed as a means of developing a local solution for the Washington County segment of the disposal system.

Proponents contend that the Wilsonville station complies with the intent of the local solution that has been developed and that the

station represents the last link in the development of an integrated, tri-county-wide disposal system.

Necessary Tonnage is Available. Proponents and opponents of the station strongly disagree as to whether enough transfer station-type waste is available to justify the construction of the station. Proponents contend that, while tonnages have declined in recent years, the executive officer's recommendation is based on data that overestimate the scope and impact of this decline. They note that in the past, Metro staff has prepared two tonnage estimates, one on which capital construction needs would be based and a more conservative estimate upon which budgetary forecasts would be based. Proponents contend that the executive officer based her decision on budgetary-based tonnage estimates instead of capacity-need estimates.

Proponents further argue that data for the first seven months of 1993 indicate a reversal in the trend of declining tonnages. They note that tonnages are nearly three percent higher than projections. They contend that if this trend continues there will be a more than adequate flow of tonnage for the Wilsonville station.

In addition, proponents have contended that Metro has underestimated the effect of rapid growth in Washington County on tonnages. They argue that such growth will generate significant tonnages for processing at the Wilsonville station and that if the station is not built, this additional tonnage will cause severe operational problems at Metro South.

Future Site Availability. The Wilsonville station site currently has the necessary conditional land use permit to build and operate the station. The permit provides will expire in early 1995 unless substantial construction on the proposed station has begun. Proponents contend that, in the past, great difficulties have been encountered when the siting of transfer station has been proposed. They argue that Metro should not allow a properly permitted site to slip through its hands. They contend that there are no guarantees that a site can be obtained in the future that will offer the locational benefits of the proposed site.

Some have suggested that Metro should explore "land-banking" the site to preserve its future availability. This approach has a number of problems associated with it. These include: 1) the willingness of the city of Wilsonville to allow the site to be used for a transfer station at some future date and 2) purchase and maintenance-related costs estimated by Metro staff to be up to \$2 million for the first five years.

Ongoing Regional Cooperative Efforts. The Washington County Steering Committee has expressed concern over the effect of not building the station on other ongoing regional cooperative efforts. They contend that such a decision would be in conflict with the adopted Washington County Plan and the RSWMP. They contend that the RSWMP should be reexamined prior to any such decision. They note that "we do not want to be told, after nearly a decade of work for some of us, that a unilateral decision has been made to change the policies and asked after the fact what we think of it."

Environmental, Land Use, Transportation Issues. Proponents contend that a decision not to build the station will have pollution, transportation and land use implications. Proponents argue that the longer travel times to either Metro Central or South currently incurred by Washington County haulers contributes to increased air pollution. They estimate that building the station will reduce travel times for Washington County haulers by 450,000 miles in the first year alone. They contend that this reduction will reduce air pollutants from the affected trucks by 20 to 40 tons per year.

They further note that if the station is not built, Metro will eventually attempt to exercise its flow control authority. This will lengthen travel times for many haulers and add to traffic congestion in the industrial area near Metro Central and result in more vehicle-related air pollutants. Proponents also have expressed concern about safety issues from potential increased use of Highway 26 by Washington County haulers that may be required to use Metro Central.

#### Con Arguments

The Executive Officer, Metro Solid Waste Staff, representatives from A.C. Trucking and several private citizens offered testimony in opposition to building the Wilsonville station. These arguments included:

Lack of Transfer Station-Type Waste. Tonnage estimates prepared by Metro staff have focused on the recent decline in transfer station waste and are now forecasting limited tonnage growth for the next twenty years. Staff notes that the recent declines have been by many factors, many of which will remain into the future. For example, they note that the recent significant increases in tipping fees have caused major waste generators to begin to look at alternative disposal and recycling options to reduce their costs. In addition, local governments have implemented many new recycling programs that have removed large amounts of waste from the residential wastestream.

Staff contends that these trends will continue into the future. For example, several new recycling programs will be initiated shortly, including yard debris collection in many areas of Washington County and mixed scrap paper collection in the city of Portland. In addition, new recycling facilities such as a proposed construction-demolition recycling operation may become operational.

As a result, staff estimates that there will be little or no tonnage growth in Multnomah and Clackamas Counties during the next twenty years. Growth in Washington County tonnage is estimated to be only 30,000 tons during the next twenty years. The capacity of Metro Central and Metro South exceed these projected tonnages by about 70,000 to 210,000 tons, depending on the whether the optimum or maximum capacity estimate is used for Metro South. Therefore, staff contends that a new facility is not needed at this time.

Rate Impact. Staff estimates that the tip fee impact of the Wilsonville station will be \$4.15/ton during the first full year of debt service payments. Staff contends that this impact is too great when the capacity to be provided by the station may never be needed. The Executive Officer noted that, with the passage of Ballot Measure 5, Metro must join other governments in reducing government costs and insuring that significant expenditures are fully justified. She noted that tip fees have increased significantly in recent years which has penalized those who recycle. In addition, staff noted that such higher tip fees may drive additional garbage from the system, causing further tonnage declines and increases in the tip fee.

As noted earlier, the operating costs at Wilsonville will be significantly higher than those at Metro South where most of the tonnage destined for the Wilsonville Station now goes. In addition, because tonnage at Metro Central and South would be reduced, the per ton operating costs at these facilities will go up.

Current System Financial Status. Metro staff has expressed concern about the current and future financial viability of the solid waste disposal system and related recycling, planning, and operational programs. They note that several factors are combining to create this uncertainty. These include:

- \* recent declines in tonnage that have forced over \$2 million in program cuts during the past two years,

- \* potential diversion of waste flows from major waste generators upon which Metro fees are collected from both Metro and non-Metro facilities,

- \* potential state legislative action that may grant fee exemption to certain generators,
- \* court challenges to flow control that may diminish Metro's authority to send specific wastes to specific facilities,
- \* continued reliance on a fee structure based on tonnage, revenue from which is adversely affected by increased recycling, and
- \* the potential impact of the tip fee increase resulting from the Wilsonville Station

Metro staff and Executive Officer concluded that these financial uncertainties make it unwise for Metro to issue over \$10 million in new bonded indebtedness and make a 20-year financial commitment to the operator of the new station.

Effect on the Forest Grove Transfer Station. The operators of the existing Forest Grove Transfer Station have expressed concern over the effect of the new station on their wastestream. Metro staff noted that several haulers that presently use the Forest Grove Station would be directed to use the new Wilsonville Station. But, they contend that any tonnage from these haulers would be made up through projected growth in tonnage from the remaining haulers that use the Forest Grove Station. Station representatives contend that they will experience a real loss in tonnage and revenue that could affect the viability of the station.

Future Site Availability. Metro staff and the Executive Officer contend that the future siting of a transfer station will not be as difficult as it has been in the past. They note that the existence of Metro's enhancement fee program rewards those communities that agree to accept a station with a significant revenue source. They also cite siting efforts in other jurisdictions that have proceeded relatively smoothly. They conclude that, at whatever future time Metro concludes that a new transfer station is needed, it will not be difficult to find an appropriate location.

Implementing the Washington County Plan. In response to those who contend that Metro has made a commitment to implementing the existing plan for disposal facilities in Washington County, Metro staff and the Executive Officer contend that a number of factors affecting the plan have changed dramatically since the plan's adoption. They cite: 1) the significant decline in forecasted Washington County tonnage since the preparation of the technical analysis, 2) the financial uncertainties noted above, and 3) the financial impact of the rate increase caused by the station.

They argue that these changing realities dictate that the station should not be built. They recognize that it may be necessary to review and revise the RSWMP and the Washington County plan, but contend that a decision not to build the station can be made prior to the completion of such a review.

### Delaying a Final Decision

It has been suggested that the Council should delay its final decision on the Wilsonville until the spring or early summer of 1994. It is contended that such a delay could allow a number of issues and questions relating to the decision on the station to be more fully answered. These would include:

\* Tonnage Estimates. An additional nine to twelve months of tonnage data may, or may not, tend to validate the differing viewpoints of the proponents and opponents concerning future tonnage growth, particularly in the area to be served by the Wilsonville station.

\* Flow Control. There are several pending federal court cases related to the flow control of local jurisdictions. Many of the decisions in these cases will be made within the next year. In addition, pending federal legislation which would allow states to delegate flow control authority to local jurisdictions also may be acted on during the next few months.

\* Rate Structure Study. Metro is currently engaged in a study of existing disposal rate structure and examination of possible alternatives. This study will be completed by December 1993, in time for the Council to act on any changes for possible implementation in FY 94-95. Significant changes in the rate structure could affect transfer station tonnages and impact any decision on the Wilsonville Station.

\* Organic Wastestream Study. Metro is also studying potential methods of recycling or reusing portions of the organic wastestream. The completion date for this work is somewhat uncertain. Potential diversion of transfer station organic wastes to other facilities or processes could impact the need for the Wilsonville station.

\* Increased System Enforcement Programs. Metro has entered into an agreement with the Multnomah County Sheriff's Office for increased flow control and illegal dumping enforcement. For budget purposes, staff estimated that 15,000 tons of additional tonnage would be identified through this program. By next year, some data will be available indicating the impact of the program on tonnages.

\* System Issues Raised By Station Proponents. Proponents of the station have argued that any decision not to build should not be made until issues related to the future of the disposal system are addressed. These would include: 1) revising the RSWMP, 2) developing a system for how flow control would be implemented, 3) potential modification of Metro South Station, and 4) the potential of a differential rate structure in Washington County. A delay in the decision on the station might allow time for some or all of these issues to be addressed.

Potential Negative Effects of Delaying a Decision

There are several potential negative effects to delaying a final decision on the station. These would include:

\* Willingness of WRI to Incur Additional Costs. WRI would certainly incur additional costs in holding on to the proposed site for an additional without any guarantee that the project will be approved.

\* Potential Additional Construction and Operating Costs. Delaying the construction and opening of the facility will likely add to construction and operating based on the normal impacts of inflation labor and material costs.

\* Potential Additional Financing Costs. Interest rates are currently at historic lows. Waiting an additional year to finance the proposed facility could result in higher bond interest rates which would increase the initial and long-term costs of the project.



**METRO**

DATE: September 3, 1993

TO: Metro Council  
Executive Officer  
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 8.5; RESOLUTION NO. 93-1848

Supporting documentation for the resolution listed above will be printed separately from this agenda packet and made available to Councilors via delivery service on Tuesday, September 7. The supplemental packets will also be available at the Council meeting September 9. The documentation is as follows:

1. Resolution No. 93-1848.
2. Exhibit A, Franchise Agreement between Metro and Willamette Resources, Inc. for the Provision of Solid Waste Transfer and Materials Recovery Facilities and Services.
3. "Presentation to Metro Council Solid Waste Committee" by Willamette Resources, Inc. dated August 3, 1993.
4. Memorandums exchanged between Solid Waste Department and Council Department staff in reverse date order.
5. The Executive Officer's recommendation dated July 20, 1993.
6. Related correspondence from other parties in reverse date order.
7. Letter of Credit.

NO. 1

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 93- 1848  
THE EXECUTIVE OFFICER TO ENTER )  
INTO A FRANCHISE AGREEMENT )  
WITH WILLAMETTE RESOURCES, INC. ) Introduced by Metro Council  
FOR CONSTRUCTION AND ) Solid Waste Committee  
OPERATION OF THE METRO )  
WEST STATION )

WHEREAS, In June 1990; the Council of Metro adopted Resolution No. 91-143B establishing policy for development of the "Metro West Transfer and Material Recovery System" as a chapter of the Regional Solid Waste Management Plan; and

WHEREAS, In October, 1991, the Metro Council adopted Ordinance No. 91-416 which amended the Regional Solid Waste Management Plan to include the chapter referenced above; and

WHEREAS, Ordinance No. 91-416 states that: "The primary method of facility procurement for transfer facilities in the west watershed will be through the issuance of a request for long-term franchises"; and,

WHEREAS, In May, 1992 the Metro Council adopted Resolution No. 92-1612 authorizing issuance of a "Request for the Provision of Transfer and Material Recovery Facilities and Services for Eastern Washington County" (RFF) to partially implement the adopted chapter referenced above; and

WHEREAS, In July, 1992, a franchise application was received in response to the RFF and found to be in compliance with the RFF; and

WHEREAS, A franchise agreement, attached as Exhibit "A", has been negotiated between Metro and Willamette Resources, Inc. which is in compliance with the RFF and the Regional Solid Waste Management Plan; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute the Service Agreement, in a form substantially similar to Exhibit "A" attached to the original only hereof, and hereby incorporated by reference.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1993.

---

Judy Wyers, Presiding Officer

NO. 2

**EXHIBIT A**  
**FRANCHISE AGREEMENT**  
**BETWEEN METRO AND WILLAMETTE RESOURCES, INC.,**  
**FOR THE PROVISION OF SOLID WASTE TRANSFER**  
**AND MATERIALS RECOVERY FACILITIES AND SERVICES**

**June 28, 1993**

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## **Recitals**

Whereas, Metro has selected Willamette Resources, Inc. as Contractor to design, construct, own and operate a solid waste transfer and materials recovery facility in Wilsonville, Oregon; and

Whereas, Contractor agrees to receive, process, and prepare for transport Municipal Solid Waste delivered to the Facility, and transport and market Recovered Materials in accordance with the terms of this Agreement; now, therefore,

In exchange for the promises and other consideration set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **Section 1. DEFINITIONS**

As used in this Agreement, including the Exhibits hereto, the following terms shall have the respective meanings set forth in this Section 1 unless another meaning is expressly provided for a particular term elsewhere in this Agreement.

**"Acceptable Waste"** means any and all solid waste, as defined in ORS 459.005(27) except Unacceptable Waste, as defined below.

**"Additional Bonds"** means any one or more series of bonds issued by Metro as part of Additional Financing required in connection with financing a Capital Improvement pursuant to and in accordance with the provisions of Section 6.15 hereof which are secured by any of the pledges, mortgages, properties, assets or revenues which are security for the Bonds pursuant to Section 4.1(c).

**"Additional Equity Contribution"** means the equity contribution required or permitted to be made by Contractor as part of the Additional Financing necessary to finance a Capital Improvement, all as contemplated by Section 6.15 hereof.

**"Additional Financing"** means any combination of Additional Bonds, Additional Interim Debt, and Additional Equity Contribution provided pursuant to and in accordance with the provisions of Section 6.15 hereof for the purpose of financing the costs of acquiring, constructing and installing a Capital Improvement.

**"Additional Interim Debt"** means such interim debt issued as part of Additional Financing required in connection with financing a Capital Improvement pursuant to and in accordance with the provisions of Section 6.15 hereof.

**"Applicable Law"** means all statutes, rules or regulations of the United States, State of Oregon, City of Wilsonville, Washington County or Metro that apply to or govern the Facility.

**"Authorized Representative"** means: (i) when used with respect to Metro, the Executive Officer, or any person or persons designated from time to time by the Executive Officer by means of a writing signed by the Executive Officer and delivered to Contractor; and (ii) when used with respect to Contractor, any person or persons designated from time to time by a resolution of the Governing Body of Contractor, a certified copy of which resolution is delivered to the Metro Authorized Representative. Metro and Contractor shall each have at least one and not more than three Authorized Representatives at any given time.

**"Bond Counsel"** means: Stoel Rives Boley Jones & Grey, attorneys of Portland, Oregon or any other qualified law firm selected by Metro.

**"Bond Documents"** means the bond ordinance, the Loan Agreement, the bond purchase agreement and any other document, instrument or agreement (other than this Agreement) executed and delivered in connection with the issuance and sale of the Bonds or as security therefor.

**"Bonds"** means the limited obligation revenue bonds to be issued by Metro, at the request of Contractor, for the purpose of providing part of the funds necessary to design, acquire, construct and install the Facility, which bonds may be issued in one or more series and which, to the full extent permissible under applicable law, shall be issued such that the interest thereon shall be excludable for federal income tax purposes from the gross incomes of the owners thereof and, to the extent not so permissible under applicable law, shall be issued such that the interest thereon shall be subject to federal income taxation.

**"Capital Improvement"** means any repair, replacement, improvement, alteration, or addition to the Facility or any part thereof that has an estimated useful life in excess of one year.

**"Certificate of Completion"** means a certificate of Contractor's Authorized Representative in the form attached hereto as Exhibit A to be executed and delivered to Metro upon the completion of the acquisition, construction, installation and Performance Test of the Facility.

**"Change in Law"** means the occurrence of any event or change in law specifically set forth below:

(a) the adoption, promulgation, modification, or change in administrative interpretation occurring after the date of this Agreement, which adoption, promulgation, modification, or change in administrative interpretation relates to:

- (1) any federal statute, regulation, ruling or executive order, including without limitation, any modification of existing occupational safety and health rules and regulations whether or not promulgated by OSHA;

- (2) any state, city, county, special district, Metro, or other local government statute, ordinance, regulation or executive order; or
- (3) any judicial interpretation of such laws entered as a matter of record by a court of competent jurisdiction; or

(b) any order or judgment of any federal, state or local court, administrative agency or governmental body issued after the date of this Agreement:

- (1) to the extent such order or judgment does not result directly from the intentionally wrongful or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and
- (2) the Party relying thereon, unless excused in writing from so doing by the other Party, shall take or have taken, or shall cause or have caused to be taken, all reasonable actions in good faith to contest such order or judgment prior to its issuance (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as an intentionally wrongful or negligent action of such Party); or

(c) the imposition by a governmental authority or agency of any new or different conditions or increase in fees or costs in connection with the issuance, renewal, or modification of any official permit, license, or approval after the date of this Agreement, including without limitation, imposition or increases in fees imposed by the DEQ.

(d) However, if any matter described in (a), (b) or (c) of this definition establishes requirements increasing the cost to Contractor of preparing the Facility Site, or designing, constructing, starting-up, owning, operating or maintaining the Facility during the term of this Agreement, or conducting the Performance Test or the Facility Price, then such matter shall only constitute a "Change in Law" for purposes of this Agreement if such increase is in an amount greater than one percent of the Facility Price. No matter described in (a), (b) or (c) of this definition shall constitute a "Change in Law" for purposes of this Agreement unless the changes resulting therefrom exceed the most stringent final, written, published legal requirements applicable to Contractor or the Facility which were:

- (1) in effect as of the date of this Agreement;
- (2) agreed to by Contractor in any applications of Contractor for official permits, licenses or approvals pending as of the date of this Agreement;  
or

- (3) contained in any official permits, licenses, or approvals provided to Contractor with respect to the Facility which are obtained by Contractor as of the date of this Agreement.

(e) In addition, the adoption of or change, amendment or modification to any federal tax, state tax, local tax, or any other tax law including, without limitation, any sales tax and any increase in marginal taxes shall not be considered a "Change in Law" for purposes of this Agreement, and an increase in Contractor's cost shall not include any impairment of the tax position of Contractor or any lessor of the Facility under federal, state or local tax law or any other tax law.

**"Change Order"** means any change in the Facility made during the course of construction of the Facility in the Facility Specifications, including any change requiring a Capital Improvement, which change is made pursuant to the provisions of Sections 6.11, 6.12, 6.13 or 6.14 hereof, or any substantial change made to the operation of the Facility. No Change Order shall be effective unless it is in writing and signed by both Parties.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

**"Commencement Date"** means the day next succeeding the date the Notice to Proceed is received by Contractor.

**"Commercial Operation Date"** means the date specified as such by Metro and Contractor pursuant to Section 7.8 hereof.

**"Conditionally Exempt Generator Waste"** means waste as defined in 40 CFR 261.5, as amended or replaced, such waste to be handled by Contractor as if it were a fully regulated Hazardous Waste.

**"Construction Period"** means the period beginning on the Commencement Date and ending on the Commercial Operation Date.

**"Construction Schedule"** means the overall schedule for the acquisition, design, construction, installation and Performance Testing of the Facility required to be developed by Contractor, submitted to Metro and periodically updated as provided in Section 6.3 hereof.

**"Contractor"** means the Franchisee under this Franchise, which is Willamette Resources, Inc., (a subsidiary of Waste Control Systems, Inc.), an Oregon corporation, and, to the extent permitted by the express terms of this Agreement, its successors and assigns.

**"Contractor Fault"** means any occurrence or event of any nature whatsoever other than an Uncontrollable Circumstance or Metro Fault.

**"Cost Substantiation" means:**

(a) With respect to any cost incurred by Contractor for which Cost Substantiation is required by this Agreement for the purpose of the Financing or any increases in the Tip Fee, delivery to Metro of a certificate signed by the principal engineering officer and the principal financial officer of Contractor setting forth the amount of such cost and the reason why such cost is properly chargeable to Metro, and stating that such cost is an arm's length and competitive price for the service or materials supplied; and

(b) With respect to any cost incurred by Metro for which Cost Substantiation is required by this Agreement (other than any cost described solely in (a) of this definition), delivery to Contractor of a certificate signed by the Executive Officer of Metro or his/her designee, setting forth the amount of such cost and the reason why such cost is properly chargeable to Contractor, and stating that such cost is an arm's length and competitive price for the service or materials supplied.

(c) However, with respect to either (a) or (b) above, any cost or expense of overhead or administration need not be substantiated by inclusion in the required certificate but a written statement that such cost or expense is to be allocated in accordance with the standard practice of the Party submitting the Cost Substantiation, pursuant to standard accounting principles, shall be included without exception; and

(d) In addition, if the Party receiving Cost Substantiation requests, the Party providing Cost Substantiation will provide copies of such additional back-up documentation as may reasonably be available to reasonably demonstrate the incurrence of the cost as to which Cost Substantiation is required, including itemization of tasks or functions included in overhead or administration, for the purposes of the Cost Substantiation described in (a) or (b) above.

**"Credit Enhancement"** means one or more letters of credit, lines of credit, municipal bond insurance policies, surety bonds or other similar credit enhancement devices issued to or in favor of the Trustee as security for the payment when due of the principal of and interest on the Bonds of a particular series, which credit enhancement device: (1) shall be in form and substance, and shall be obtained for such price, as shall be reasonably satisfactory to Metro; (2) shall have an initial term of not less than five years from the date of issuance thereof; (3) shall be either renewable or replaceable such that credit enhancement remains in place for the life of the Bonds; and (4) shall be issued by such Credit Provider and have such other terms and conditions as will result in the Bonds secured thereby being assigned a long-term investment grade rating by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

**"Credit Provider"** means West One Bank of Idaho, an Idaho corporation, as issuer of the Credit Enhancement, and any assignees thereof or participants therewith under the Credit Enhancement or any other issuer or issuers of the Credit Enhancement.

**"Debt Service"** means all amounts of: (1) interest due on the outstanding Bonds (including Additional Bonds if any); and (2) the principal on all outstanding Bonds coming due on a principal payment date (whether by maturity, mandatory redemption or otherwise).

**"DEQ"** means the State of Oregon Department of Environmental Quality.

**"Detailed Plans"** means working drawings and specifications required for the construction of the Facility.

**"Direct Costs"** means, in connection with any Pass-Through cost or expense incurred by either Party pursuant to the terms of this Agreement, 1.10 multiplied by the sum of (1) the costs of the Party's payroll directly related to the performance or supervision of any obligation of a Party pursuant to the terms of this Agreement, consisting of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Workers' Compensation Insurance, federal and state unemployment taxes and all medical and health insurance benefits, plus (2) the reasonable costs of materials, services, direct rental costs and supplies purchased by such Party, plus (3) the reasonable costs of travel and subsistence as authorized by State law, plus (4) the costs of any arms-length and competitive payments to subcontractors necessary to and in connection with the performance of such obligation, plus (5) any other cost or expense incurred by Contractor which is directly or normally associated with the task performed by Contractor. Metro reserves the right to require Cost Substantiation prior to reimbursement for any Direct Costs.

**"Dispute Notice"** means a written notice given by one Party to the other pursuant to the provisions of Section 13.1(b) hereof or pursuant to any other provision of this Agreement which sets forth procedures for initiating the resolution of any Dispute, which notice shall: (1) state that the Party giving such notice desires to initiate the dispute resolution process provided for in Section 13 hereof; and (2) briefly describe the matter to be submitted to such dispute resolution.

**"Drawdown Schedule"** means the schedule for payment of funds to Contractor set forth in Exhibit B hereto.

**"Executive Officer"** means the Executive Officer of Metro.

**"Facility"** means the improvements constructed at the Facility Site by Contractor designed to accept and Process solid waste. For the purpose of Section 3 and Section 15.3 Facility includes the Facility Site.

**"Facility Price"** means the sum of nine million four hundred sixty-nine thousand seven hundred dollars (\$9,469,700), of which \$183,000 shall be reserved for use in Metro Change Orders as specified in Section 6.15(b)(1).

**"Facility Site"** means the real property and all appurtenances thereto described in Exhibit C hereto.

**"Facility Specifications"** means those work products for Phase II of the Design Cost Reimbursement Agreement between WRI and Metro as set forth in Exhibit D hereto.

**"Fair Market Value"** means the highest price that a willing buyer would pay to a willing seller of the Facility in an arm's-length transaction wherein neither the buyer nor the seller is acting under duress or compulsion, taking into account all factors relevant to the market value of the property.

**"Franchise" or "Agreement"** means this Franchise for Transfer and Material Recovery Facilities and Services as the same may be amended, modified and supplemented from time to time in accordance with the provisions of Section 16.6 hereof.

**"Governing Body"** means: (1) when used with respect to Metro, the Metro Council; and (2) when used with respect to Contractor or any other private corporation, the board of directors thereof.

**"Hazardous Waste"** means any waste (even though it may be part of a delivered load of waste) which:

(a) is required to be accompanied by a written manifest or shipping document describing the waste as 'hazardous waste,' pursuant to any state or federal law, including, but not limited to, Resource Conservation and Recovery Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder; or

(b) contains polychlorinated biphenyls or any other substance whose storage, treatment or disposal is subject to regulation under the Toxic Substance Control Act, 15 USC 2601, et seq. as amended and the regulations promulgated thereunder; or

(c) contains a 'reportable quantity' of one or more 'hazardous Substances' (typically identified by the nine hazard classes labeled as explosives, non-flammable gas, flammable, flammable solid, oxidizer, poison, corrosive, radioactive, or dangerous), as identified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder (as of December 1990) and as defined under Oregon Law, ORS 466.605 et seq. and the regulations promulgated thereunder;



(d) contains a radioactive material the storage or disposal of which is subject to state or federal regulation; or

(e) is otherwise classified as hazardous pursuant to federal or Oregon law, rule or regulation.

**"Hazcat"** means a Metro employee trained by Metro and responsible for identification and handling of Unacceptable Waste.

**"Household Hazardous Waste"** means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

**"Independent Auditors"** means a firm of nationally or locally recognized independent certified public accountants selected mutually by Metro and Contractor.

**"Independent Engineer"** means one of the independent engineers or firms listed on Exhibit E and selected mutually by Metro and Contractor.

**"Infectious Medical Waste"** means waste resulting from medical procedures which may cause or is capable of causing disease such as:

(a) biological waste, including blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that can not be directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonably contaminated with blood or body fluids;

(b) cultures and stocks of etiological agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures; wastes from production of biologicals; and serums and discarded live and attenuated vaccines (cultures under this subsection do not include throat and urine cultures);

(c) pathological waste, including biopsy materials and all human tissues and anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures; animal carcasses exposed to pathogens in research; and the bedding of the animals and other waste from such animals (pathological waste does not include formaldehyde and other such preservative agents); or

(d) sharps, (which are otherwise regulated as "Special Waste") including needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes.

**"Initial Term"** means the term commencing on the date hereof and, unless sooner terminated as provided herein, expiring on the twentieth anniversary of the Commercial Operation Date.

**"Liquid Waste"** means any waste (including latex paint) in containers that have more than one percent free liquid, by weight, of the total capacity of the container still present in the container, or loads of waste containing more than 25 gallons of free liquid per 20 yard box.

**"Loan Agreement"** means the loan agreement or loan agreements to be entered into between Contractor and Metro pursuant to which Metro agrees to loan the proceeds of a particular series of Bonds to Contractor for the purpose of providing funds to finance the agreed upon portion of the costs of acquiring, designing, constructing, owning and installing the Facility and conducting the Performance Test.

**"Manufacturer's Warranties"** means any and all warranties, express or implied, given or made by a manufacturer and/or seller of any component of the Facility, or by a licensor of any technology or process used in the operation or maintenance of the Facility, relating to the performance, merchantability, fitness for a particular purpose, useful life, mean time between failure or otherwise relating to the usefulness or efficacy of such component or technology.

**"Material Recovery Equipment"** means equipment designed to remove or facilitate the removal of materials from mixed solid waste for reuse, recycling, composting or energy production.

**"Maximum Annual Throughput"** means 196,000 Tons of Municipal Solid Waste per year.

**"Metro"** means the metropolitan service district located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, or such other location as may be designated by Metro in writing to Contractor, a municipal corporation, political subdivision and public body, corporate and politic; organized and existing under the laws of the State of Oregon and the 1992 Metro Charter, and its successors and, to the extent expressly permitted by the terms of this Agreement or otherwise required by law (whether now existing or hereinafter enacted), its assigns.

**"Metro Event of Default"** means the occurrence of any one or more of the events described in Section 14.2 hereof.

**"Metro Fault"** means: (1) any act or omission by Metro, including a modification or improvement to the Facility initiated, requested or caused by Metro, that results in or

significantly contributes to a cost increase, delay, failure to meet Performance Standards or other adverse event, and (2) any Metro Event of Default.

**"Monthly Work Schedule"** means the updated work schedules to be provided by Contractor to Metro on a monthly basis during the Construction Period pursuant to and meeting the requirements of Section 6.3 hereof.

**"Municipal Solid Waste"** means a heterogeneous mixture of residential, commercial waste and industrial waste.

**"Notice to Proceed"** means the written notice given by Metro to Contractor pursuant to and in accordance with the provisions of Section 6.1 hereof authorizing Contractor to commence the acquisition, design, construction, installation and Performance Test of the Facility.

**"Pass Through Costs"** means the amount of certain costs and extraordinary expenses incurred during operation of the Facility, calculated in accordance with Direct Cost procedures as specified in Exhibit K.

**"Payment/Performance Bond"** means the payment and performance bonds required to be provided by Contractor during and in connection with the acquisition, construction and installation of the Facility pursuant to and in accordance with the requirements of Section 6.10.

**"Performance Standards"** means those Facility performance specifications set forth in Section 8.

**"Process" and "Processing"** means the treatment of Municipal Solid Waste at the Facility commencing with the acceptance of deliveries of such waste, procedures for separation of Recovered Materials and removal of Hazardous Wastes, and the compaction of such waste into Transport Vehicles.

**"Processing Capacity"** means the capacity of the Facility to process 825 tons per day of Municipal Solid Waste (whether such capacity is measured in tons per day, tons per week, tons per month or tons per year, as appropriate).

**"Project Manager"** means the person selected by Contractor to oversee the construction of the Facility.

**"Recoverable Materials"** means materials in the Acceptable Waste stream potentially available for recycling or resale.

**"Recovered Materials"** means materials in the Acceptable Waste stream actually recovered for recycling or resale.

**"Recovered Materials Revenues"** means the gross revenues derived from the sale of Recovered Materials.

**"Related Entity"** means an entity in which the shareholders of WCSI collectively own a majority of the voting stock, if a corporation, or a majority of the capital interest, if a partnership.

**"Required Insurance"** means the various types of insurance coverage described in Exhibit F hereto which Contractor is required to obtain and maintain pursuant to and in accordance with Section 11 hereof, with each such type of insurance being in form reasonably satisfactory to Metro.

**"Required Permits"** means all permits, orders, licenses and approvals of any governmental unit or agency which, under Applicable Law, are required to be obtained in connection with the acquisition, construction, installation and operation of the Facility and the sale or other distribution of Recovered Materials.

**"Requisition Certificate"** means a certificate prepared by Contractor requesting and directing the Trustee to disburse moneys on deposit in the construction fund for the purpose of paying the costs of acquiring, designing, constructing and installing the Facility.

**"Reserve"** means any reserve fund required to be established under any Bond Document for the purpose of paying when due Debt Service on the related financing in the event other moneys are not available for such purpose.

**"Scheduled Completion Date"** means the later of (1) the date occurring \_\_\_ days following the Commencement Date, or (2) the date occurring after the date set forth in clause (1) as the same may be extended from time to time as provided in this Agreement.

**"Service Area"** means the area described in the map attached as Exhibit G.

**"Source-Separated Recyclables"** means materials that have been separated from other solid waste for recycling by the person who last used them.

**"Special Waste"** means any waste (even though it may be part of a delivered load of waste) which is:

(a) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in (c)-(i) and (k) of this definition below; or

- (b) Waste transported in a bulk tanker; or
- (c) Liquid waste including outdated, off-spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or is 25 gallons of free liquid per load, whichever is more restrictive;
- (d) Containers (or drums) which once held commercial products or chemicals unless the container is empty. A container is empty when:
  - (1) All wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating; and
  - (2) The ends have been removed (for containers in excess of 25 gallons); and
  - (3) No more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
  - (4) No more than 1 percent by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or
  - (5) No more than 0.3 percent by weight of the total capacity of the container remains in the container (for containers larger than 110 gallons).

Containers which once held acutely hazardous wastes must be triple rinsed by the generator with an appropriate solvent or cleaned by an equivalent method. Containers which once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed by the generator with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five gallons that held any regulated waste must be cut in half or punctured, dry and free of contamination to be accepted by Contractor as refuse; or

- (e) Sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
- (f) Waste from an industrial process; or
- (g) Waste from a pollution control process; or
- (h) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in (a)-(g) or (i) of this definition; or

- (i) Soil, water, residue, debris or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in (a)-(h) of this definition; or
- (j) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks or any other chemical containing equipment); or
- (k) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4 but not empty containers so marked; or
- (l) Any waste that requires extraordinary management.

Examples of special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.

**"Technical Dispute"** means a dispute between the Parties regarding the conformity of the Facility to the Facility Specifications, which is capable of prompt resolution by the Independent Engineer within ten days of submission to him or her based on an examination or inspection of the Facility, the relevant standards and specifications.

**"Tip Fee"** means the payments required to be made by Metro to Contractor as specified in Section 9.1 hereof.

**"Unacceptable Waste"** means any waste that is:

- (a) prohibited from disposal at a sanitary landfill by state, local or federal law, regulation, rule, code, permit or permit condition;
- (b) Hazardous Waste;
- (c) Special Waste without a Metro approved special waste permit; or
- (d) Infectious Medical Waste; or
- (e) Conditionally Exempt Generator Waste.

Latex paints are an Acceptable Waste if they are completely dried out and solidified with lids off. Caulk, construction putty, and other construction adhesives must be dry to be Acceptable Waste.

**"Unacceptable Waste Storage and Handling Area" or "UWSHA"** means an area in the Facility operated by Metro for storing, testing, processing, preparing for shipment and shipping Unacceptable Waste from the Facility.

**"Uncontrollable Circumstance"** means a Change in Law or any act, event or condition described in clauses (a) through (h) of this definition which has a material adverse effect on the ability of any Party to obtain the benefits of its rights or to perform its obligations under this Agreement, or that materially increases the cost to such Party to obtain the benefits of such right or to perform such obligations, but only if such act, event or condition and its effect: (1) are beyond the reasonable control of the Party relying thereon (or any third party for whom the Party relying thereon is directly responsible) as justification for not performing any obligation or complying with any condition required of such Party under this Agreement; and (2) could not have been reasonably anticipated and avoided by the Party relying thereon:

(a) A grave natural disaster or other natural phenomenon, the effects of which could not reasonably have been prevented by the Party claiming excuse of performance or relief from performance of the obligations of such Party under this Agreement or avoided by the exercise of commercially reasonable due care by such Party;

(b) Any of the following, whether or not specified in subsection (a) of this Section: landslide, lightning, fire, explosion, hurricane, tornado, very high wind, blizzard, earthquake, ice storm, volcanic eruption, drought, flood;

(c) Acts of a public enemy, war (whether or not declared) or governmental intervention resulting therefrom, blockade, embargo, insurrection, riot, terrorism or civil disturbance;

(d) The failure to issue or renew, or the suspension, termination, interruption or denial of, any permit, license, consent, authorization or approval essential to the design, construction, startup, conduct of Performance Tests or operation of the Facility, provided that any such event or circumstance shall not be the result of the intentionally wrongful or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible, and on the condition that the Party relying thereon, unless excused from so doing by the other Party, shall be taking or have taken or shall cause to be taken, all reasonable actions at the administrative level in good faith to contest such action (it being understood that the contesting in good faith of any such action shall not constitute or be construed as an intentionally wrongful or negligent action of such Party);

(e) The failure of any federal, state, municipal, county or other public agency or authority or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Facility Site, which are required for and necessary to the construction, startup, shakedown, conducting of Performance Tests, maintenance, or operation of the Facility;

(f) Contamination of the Facility by Hazardous Waste but only if such contamination occurs as the result of the delivery of Hazardous Waste by others not under Contractor's direct control and provided that Section 8 hereof shall govern the respective obligations of Metro and Contractor if such an event occurs; or

(g) Strikes, work stoppages or other labor disputes or disturbances (except any such occurrence caused by the failure of the affected Party to bargain or attempt to comply in good faith with a collective bargaining agreement or applicable labor laws).

"WCSI" means Waste Control Systems, Inc., an Oregon Corporation and, to the extent expressly permitted by this Agreement, its successors and assigns.

"White Goods" means discarded kitchen and other large, enameled appliances.

"Yard Waste" or "Yard Debris" means plant clippings, prunings, grass clippings, leaves and other discarded materials from yards and gardens.

## **Section 2. REPRESENTATIONS AND WARRANTIES**

### **Section 2.1 Representations and Warranties of Contractor**

Contractor hereby makes the following representations and warranties to and for the benefit of Metro:

(a) Contractor is duly organized and validly existing as a corporation in good standing under the laws of the state of Oregon, and it is duly qualified to do business in the State of Oregon.

(b) Contractor has full legal right, power and authority to execute and deliver, and perform its obligations under, this Agreement, and has duly authorized the execution and delivery of this Agreement by proper corporate action of its Governing Body. This Agreement has been duly executed and delivered by Contractor in accordance with the authorization of its Governing Body and constitutes a legal, valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms.

(c) Neither the execution or delivery by Contractor of this Agreement, the performance by Contractor of its obligations hereunder, nor the fulfillment by Contractor of the terms and conditions hereof: (1) to the knowledge of Contractor conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument, to which Contractor is a party or



by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (3) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor, except as expressly contemplated by the Bond Documents.

(d) No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with, any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by Contractor, except such as have been duly obtained or made.

(e) There is no action, suit, proceeding or, to the best of Contractor's knowledge, investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of Contractor's knowledge, threatened, against Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect either the performance by Contractor of its obligations hereunder or the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby.

(f) Contractor holds, or is expressly licensed to use, all patent rights, licenses and franchises necessary or appropriate to construct, operate and maintain the Facility pursuant to and in accordance with the terms of this Agreement.

(g) There has been no material adverse change in Contractor's financial condition as of the date of execution of this Agreement.

## **Section 2.2 Representations and Warranties of Metro**

Metro hereby makes the following representations and warranties to and for the benefit of Contractor:

(a) Metro is a municipal corporation, political subdivision and public body, corporate and politic, of the State of Oregon duly organized and validly existing under the Constitution and laws of the State of Oregon, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) Metro has duly authorized the execution and delivery of this Agreement by proper action of its Governing Body and this Agreement has been duly executed and delivered by Metro in accordance with the authorization of its Governing Body, and this Agreement constitutes a legal, valid and binding obligation of Metro, enforceable against Metro in accordance with its terms.

(c) Neither the execution and delivery by Metro of this Agreement, Metro's performance of its obligations hereunder nor its fulfillment of the terms or conditions hereof: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) to the knowledge of Metro conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument, to which Metro is a party or by which Metro or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with, any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery by Metro of this Agreement, except those that have been duly obtained or made.

(e) There is no action, suit, proceeding or, to the best of Metro's knowledge, investigation, at law or in equity, before or by any court or governmental or administrative authority, commission, board, agency or instrumentality pending or, to the best of Metro's knowledge, threatened, against Metro, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect either the performance of Metro's obligations hereunder or the transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Metro in connection with the transactions contemplated hereby.

### **Section 3. TERM; OPTION TO RENEW; SALE OF FACILITY; SUBCONTRACTS**

#### **Section 3.1 Term of the Agreement**

The Term of this Agreement shall commence on the date hereof and, unless sooner terminated as provided herein, shall expire on the twentieth (20th) anniversary of the Commercial Operation Date.

#### **Section 3.2 Option to Renew**

(a) This Agreement may be extended for a maximum of four (4) five-year extended terms, subject to the terms of this Section 3.2. During the final year of the initial term or any extended term, the Parties shall determine whether or not to extend the Agreement for an extended term, as set forth below.

(b) Metro's Option to Renew. If Metro determines to renew the Agreement after the expiration of the initial term (or after the expiration of the first, second or third extended term, as the case may be), Metro, at least 270 days prior to the expiration of the term then in effect,

shall provide Contractor with an extension offer. Contractor shall accept or reject the extension offer within 30 days of Contractor's receipt thereof, by delivering to Metro a written notice of acceptance or rejection. Contractor's failure to respond timely to the extension offer shall be deemed an acceptance thereof.

(c) **Terms and Conditions Upon Election to Renew.** If the parties mutually agree to renew the Agreement, all terms and conditions of this Agreement shall remain in effect, except that the parties shall engage in good faith negotiations to determine the Tip Fee during the extended term. In the event the parties are not able to reach an agreement within 180 days prior to the expiration of the term then in effect regarding the Tip Fee, the matter shall be submitted to arbitration pursuant to Section 13 of this Agreement. In the event the Tip Fee is referred to arbitration the decision of the arbitrator shall be rendered no later than 60 days prior to the end of the term then in effect. After the decision of the arbitrator is made each party may reject the determination by giving written notice thereof no later than 30 days prior to the end of the term then in effect. If either party rejects the determination of the Arbitrators then the provisions of Section 3.2(d) shall apply. If the arbitrators fail to render a decision within the time provided then the term then in effect will be extended by an amount of time equal to the delay in rendering the decision but such extension shall not exceed ninety (90) days.

(d) **Election by Metro or Contractor to Terminate Agreement.** If Metro does not timely deliver an extension offer at least two hundred seventy (270) days prior to the expiration of the initial term or the first through third extended terms, or either Party rejects the arbitrator's decision made under Section 3.2(c), then the following shall apply:

- (1) Metro shall forfeit (A) all rights to extend this Agreement for additional terms pursuant to this Section 3.2 and (B) all rights of first refusal under Section 3.4 and 3.5; and
- (2) This Agreement shall terminate at the end of the then-current term.

(e) **No Implied Agreement to Extend.** The giving or acceptance of any extension offer by either Party shall impose no obligation on either Party to give or accept any future extension offer.

### **Section 3.3 Metro's Option to Purchase the Facility at the End of A Term**

(a) Metro is hereby granted an option to purchase the Facility at the end of the initial term or at the end of any extended term, which purchase option shall be exercised in the manner and at the price provided for in this Section 3.3.

(b) In order to exercise the purchase option provided for in this Section 3.3, Metro must give written notice thereof to Contractor not less than 270 days prior to the expiration of the initial term or the then current extended term, as the case may be. Metro may not

**[Sec 3.3(b)]**

deliver both an extension offer under Section 3.2(b) and an option to purchase under this section, but must elect to deliver an extension offer or exercise its option to purchase prior to the 270 day deadline. In the event Metro elects to exercise the purchase option granted under this Section 3.3, Contractor shall sell the Facility to Metro, and Metro shall purchase the Facility from Contractor, at the Fair Market Value thereof at the time of exercise of such option, and Contractor and Metro shall in good faith negotiate and enter into a contract providing for such sale and purchase on such other terms as are mutually but reasonably acceptable to the Parties, which sale and purchase shall be consummated not later than the last day of the initial term or the then current extended term, as the case may be. However, if the appraisers fail to determine the Fair Market Value of the Facility within the time provided, the term then in effect will be extended by an amount of time equal to the delay in determining the Fair Market Value, but such extension shall not exceed 90 days.

(c) If, within 30 days after Metro gives to Contractor written notice of the exercise of such purchase option, Metro and Contractor cannot mutually agree on the Fair Market Value of the Facility, either Party shall thereafter have the right to have such Fair Market Value determined pursuant to an independent appraisal by giving written notice thereof to the other Party.

(d) The independent appraisal shall be determined according to the following process:

- (1) Upon either Party electing to have the Fair Market Value of the Facility determined pursuant to an independent appraisal, the Parties shall attempt in good faith to agree upon a single independent appraiser to make a written determination thereof. If the Parties so agree upon a single appraiser, such appraiser shall determine the Fair Market Value of the Facility.
- (2) If, within 15 days after notice from one Party to the other electing to have the Fair Market Value of the Facility determined pursuant to an independent appraisal, the Parties cannot agree upon a single independent appraiser to determine such Fair Market Value, either Party may at any time thereafter give the other Party a written notice calling for the appointment of an appraisal panel. The notice shall designate a disinterested independent appraiser to serve on the appraisal panel. Upon receipt of such notice, the recipient shall have 10 days in which to designate a disinterested independent appraiser selected by the recipient to serve on the appraisal panel.
- (3) Upon the designation of the two appraisers, they shall designate a third appraiser within seven days. If the two appraisers cannot agree upon a

third appraiser, each of them shall submit the name of two candidates to serve in such capacity and, in the presence of an Authorized Representative of the Parties, the third appraiser shall be selected by lot from among the four candidates so submitted.

- (4) Upon the selection of the third appraiser, each of the appraisers shall make a written determination of the Fair Market Value of the Facility within 60 days of the selection of the third appraiser and shall submit such written determinations to the Parties.
- (5) The Fair Market Value of the Facility shall be the average of the two closest determinations of Fair Market Value of the three appraisers.

(e) If the Fair Market Value of the Facility is determined pursuant to an independent appraisal as provided above, the Fair Market Value of the Facility shall be final, conclusive and binding upon the Parties.

(f) Notwithstanding any failure of Metro to exercise such purchase option at the end of the initial term or any extended term or any sale of the Facility to a third party as contemplated by Section 3.5 hereof, such purchase option shall be a continuing right of Metro as against all subsequent Contractors during the term of this Agreement, it being the intent of this Section 3.3 that the purchase option granted to Metro herein shall be a valid, binding and continuing right of Metro at all times during the term regardless of who Contractor may be and regardless of how many times during the term the Facility may be sold from one Contractor to another or how many times Metro may have failed to exercise such purchase option granted under Section 3.3 hereof. In connection with any failure of Metro to exercise the right of first refusal granted under Section 3.5 hereof and the subsequent sale of the Facility from one Contractor to another, the selling Contractor shall cause to be included in all operative sale documents, instruments and agreements, Metro's purchase option as set forth in this Section 3.3.

(g) The right to purchase granted to Metro under this Section 3.3 shall be specifically enforceable.

#### **Section 3.4 Sale of Property; Right of First Refusal**

(a) Except as otherwise provided in this Section 3.4, neither Contractor nor WCSI shall directly or indirectly sell the Facility or a controlling interest in Contractor without first obtaining the written consent of Metro thereto and without first offering to sell the Facility to Metro on the terms and conditions hereafter set forth. For purposes of this section, a controlling interest in Contractor shall constitute the right to vote, directly or derivatively, 50 percent or more of the voting rights held by stockholders of Contractor.

**[Sec 3.4]**

(b) If at any time following the execution of this Agreement, Contractor desires to sell, transfer or convey, directly or indirectly, the Facility or a controlling interest in Contractor, Contractor shall provide Metro with written notice of such desired conveyance and the terms and conditions Contractor is prepared to accept in connection with such conveyance ("Contractor's Sale Notice"). For a period of 90 days from and after receipt of Contractor's Sale Notice, Metro shall have the right to acquire the Facility on the same terms and conditions as are contained in Contractor's Sale Notice.

(c) Should Metro provide Contractor with written notice within such 90 day period of Metro's decision to acquire the Facility ("Metro's Exercise Notice"), Metro and Contractor, during the 30 day period following receipt by Contractor of Metro's Exercise Notice, shall negotiate and enter into a contract for the sale of the Facility to Metro on terms consistent with Contractor's Sale Notice. Closing of such sale shall occur no later than 45 days following expiration of such 30 day period.

(d) Should Metro not provide Contractor with Metro's Exercise Notice within such 90 day period, Metro shall be deemed to have declined to purchase the Facility proposed to be sold. In such event, for a period of one year following expiration of such 90 day period, and subject to Metro's approval of such purchaser as provided in subsection 3.4(f) below, Contractor may sell the Facility or a controlling interest in Contractor to any purchaser provided and on the condition that (i) the purchase price for the Facility shall be no less than 90 percent of the price stated in Contractor's Sale Notice, and (ii) the terms and conditions of such sale are substantially the same as those stated in Contractor's Sale Notice. If at any time during such one year period, Contractor intends to sell the Facility or a controlling interest in Contractor at a price that is less than 90 percent of the price stated in Contractor's Sale Notice or on terms not substantially the same as those stated by Contractor therein, Contractor shall not be allowed to complete such sale without again first offering to sell the Facility to Metro in accordance with subsection 3.4(b) above at such reduced price or on such modified terms, except that, in such event, Metro shall have 45 (not 90) days within which to provide Metro's Exercise Notice on such modified terms.

- (1) The Parties hereto acknowledge that WCSI has and Contractor may have other assets and that a sale of the Facility or of a controlling interest in Contractor may occur as part of a sale of other assets now or in the future held by WCSI, Contractor or other Related Entities. In order to determine whether Contractor is about to convey the Facility or a controlling interest in Contractor at a price that is less than 90 percent of the price stated in Contractor's Sale Notice where the Facility is only part of the property being conveyed, Contractor shall provide Metro with written notice (the "Allocation Notice") of the portion of the purchase price allocated by Contractor and its purchaser to the Facility or the controlling interest in Contractor being sold.

**[Sec 3.4(d)] (2)** Should Metro dispute the valuation ascribed by Contractor to the Facility, Metro shall provide written notice thereof to Contractor within 15 business days following receipt of the Allocation Notice from Contractor, and in such event the value of the interest in the Facility to be conveyed shall be appraised in accordance with the procedures described in Section 3.3 above, except that such appraisal shall determine the value of the Facility in conjunction with and as a part of the total value of all of the assets then being sold by WCSI or Contractor.

**(3)** If the appraised value of the Facility is less than 90 percent of the price stated in Contractor's Sale Notice, then Metro shall have the right to acquire the Facility at the appraised value by providing written notice thereof to Contractor within 30 days following receipt of the appraised value, and the Parties thereafter shall enter into a purchase contract and close the sale of the Facility within the time periods specified in subsection 3.4(c) above.

**(e)** The provisions of this Section 3.4 shall not apply, and Metro shall have no right to consent to a transfer of or to acquire the Facility or a controlling interest in Contractor in connection with the following transfers: (i) transfers arising from the death of stockholders or transfers to spouses or lineal descendants of stockholders; (ii) transfers to management or key personnel of Contractor or WCSI who are employees as of the date of this Agreement; (iii) transfers among existing shareholders; (iv) transfers to Related Entities; or (v) transfers to or by the Credit Provider.

**(f)** Except as provided in subsection 3.4(e) above, and subject to the nonexercise by Metro of the right of first refusal granted to Metro herein, neither Contractor nor WCSI shall sell the Facility or a controlling interest in Contractor without first obtaining the prior written approval of Metro to the proposed purchaser, which approval shall not be unreasonably withheld. In determining whether reasonably to approve a purchaser, Metro may take the following criteria into consideration:

- (1)** whether the proposed purchaser is of sufficient size to perform the obligations required of Contractor in this Agreement;
- (2)** whether the proposed purchaser has sufficient financial resources to fulfill the operational and financial guarantees required by Contractor in the Agreement;
- (3)** whether the proposed purchaser has sufficient favorable experience providing services similar to those required of Contractor in this Agreement;

- (4) the nature of any other commitments which the proposed purchaser may have in related solid waste disposal services either nationally or within the Metro service area.

Metro shall provide written notice to Contractor of its approval or disapproval of the proposed purchaser within 20 days of request from Contractor therefor, which decision shall be subject to arbitration if disputed by Contractor. If the requested purchaser is approved, the Parties, including such purchaser, shall execute a novation of this Agreement whereby Contractor is removed as a Party to this Agreement upon closing of the sale to such purchaser.

(g) Notwithstanding any failure of Metro to exercise the right of first refusal herein provided, such right of first refusal shall be a continuing right of Metro as against all subsequent Contractors during the term or any extended term of this Agreement, it being the intent of this Section 3.4 that the right of first refusal granted to Metro herein shall be a valid, binding and continuing right of Metro at all times during the term or any extended term regardless of who Contractor may be and regardless of how many times during the term or any extended term the Facility or a controlling interest in Contractor, may be sold or how many times Metro may have failed to exercise such right of first refusal.

(h) In connection with any failure by Metro to exercise the right of first refusal herein provided, and the subsequent sale by Contractor of the Facility or a controlling interest in Contractor, the selling Contractor shall cause to be included in all operative sale documents, instruments and agreements, Metro's right of first refusal as set forth in this Section 3.4.

(i) The right of first refusal granted to Metro under this Section 3.4 shall be specifically enforceable.

### **Section 3.5 Subcontracts for Facility Operation**

(a) During the Term of this Agreement, Contractor shall have the right to request approval from Metro to subcontract to an unrelated third party all or part of Contractor's obligation hereunder to operate the Facility. Contractor's written request for approval of a proposed subcontract (the "Contractor's Request") shall be forwarded to Metro no later than ninety (90) days prior to the date on which the proposed subcontract is to take effect. For a period of thirty (30) days following receipt of Contractor's Request, Metro shall have the right to approve or deny Contractor's Request, provided such approval shall not be unreasonably withheld or delayed. The provisions of this Section 3.5 shall not apply to, and no Metro approval shall be required for, subcontracting any of Contractor's rights or obligations to operate the Facility to a Related Entity.

(b) In no event shall Contractor's subcontracting, or Metro's approval of Contractor's subcontracting of its obligations to operate the Facility, in any way relieve Contractor of its responsibilities under this Agreement.



**Section 4. FINANCING OF FACILITY**

**Section 4.1 Financing Structure**

(a) Issuance of Bonds. Subject to fulfillment of the conditions precedent set forth in Section 4.1(b) hereof, Metro will issue the Bonds in one or more series in an aggregate principal amount which, together with the Equity Contribution, will be equal to:

- (1) the Facility Price; and
- (2) the costs incurred in connection with the issuance and sale of the Bonds including but not limited to Credit Enhancement fees; and
- (3) interest due and payable on the Bonds during the Construction Period and for such additional period of time as may be mutually agreed upon between the Parties; and
- (4) any reserves necessary or appropriate to be funded out of Bond proceeds; less
- (5) estimated investment earnings on the unexpended Bond proceeds during the Construction Period (but only to the extent such estimated investment earnings are not required to be rebated to the United States of America pursuant to Section 148 of the Code).

(b) Conditions Precedent to Issuance of Bonds. Notwithstanding anything expressed or implied herein to the contrary, Metro shall be under no obligation to issue the Bonds or any series thereof unless each of the following conditions shall have been satisfied:

- (1) Contractor shall have provided Metro with a Credit Enhancement for each series of Bonds required to be issued in connection with the financing of the Facility, which Credit Enhancement shall be issued and delivered to the Trustee on the closing date for such series;
- (2) Contractor shall have duly authorized, executed and delivered all Bond Documents required to be executed and delivered thereby in connection with such series of Bonds and has provided or caused to be provided to Metro and Bond Counsel the following:

**[Sec 4.1(b)(2)]**

- (A) all instruments, certificates, opinions of counsel and other materials as shall reasonably be required by such persons in connection with the issuance and sale of the Bonds; and
  - (B) information concerning the Facility and the costs thereof necessary or appropriate in connection with the opinions required to be rendered by Bond Counsel in connection with the issuance and sale of the Bonds, information concerning Contractor, WCSI, the Credit Provider, the Facility and Contractor's licenses, patents and/or technology or with respect to the Facility necessary or appropriate for inclusion in the official statement or official statements pertaining to the Bonds; and
  - (C) agreed to hold Metro harmless and indemnify Metro against any and all liability, actions, damages, claims, demands, judgment, losses, cost expenses and suits including, but not limited to, any IRS fines or penalties as required by the Bond Documents.
- (3) no Change in Law shall have occurred after the date of this Agreement and on or before the Commencement Date that would make the execution or delivery by Metro or Contractor of this Agreement, compliance by Metro or Contractor with the terms and conditions of this Agreement or the consummation of the transactions contemplated hereby, invalid, unenforceable or a violation of Applicable Law;
  - (4) all applicable environmental and other governmental permits, licenses, approvals, determinations, authorizations and requirements that are necessary for the acquisition, construction and installation of the Facility (other than construction and building permits obtainable as construction of the Facility progresses) shall have been obtained by Contractor and Contractor shall have certified in writing to Metro that the same have been duly obtained, which certification shall be accompanied by copies of all such permits, licenses, approvals, determinations, authorizations and requirements;
  - (5) Metro shall have received certified copies of all policies or certificates of all Required Insurance necessary in connection with the acquisition, construction and installation of the Facility hereto and as required by the Bond Documents;
  - (6) Contractor shall have furnished Metro the Performance/Payment Bond in the form and amount set forth in Exhibit H hereto;

- [Sec 4.(1)(b)] (7) Contractor shall have completed the design pursuant to and in accordance with the provisions of Section 5.1 hereof;**
- (8) Contractor shall have delivered to Metro a certificate of an Authorized Representative of Contractor, dated as of a date no earlier than the date the last of the foregoing conditions precedent have been fulfilled, to the effect that each of the representations of Contractor set forth in Section 2.1 hereof are true and correct as if made on such date;**
- (9) Metro shall have delivered to Contractor a certificate of an Authorized Representative of Metro, dated as of a date no earlier than the date the last of the foregoing conditions precedent have been fulfilled, to the effect that each of the representations of Metro set forth in Section 2.2 hereof are true and correct as if made on such date;**
- (10) all other parties licensing technology or other rights necessary to operate the Facility to Contractor have given reasonable assurance that Metro can enforce the requirements of Section 14.3 providing for a limited license to Metro to utilize the technology and other rights necessary to operate the Facility in the event of a default by Contractor;**
- (11) Contractor shall have delivered to Metro the guarantee by WCSI in the form set forth in Exhibit I.**

Contractor shall exercise good faith and due diligence in fulfilling the foregoing conditions precedent which are the obligation of Contractor to fulfill. Metro shall exercise good faith and due diligence in fulfilling the foregoing conditions precedent which are the obligation of Metro to fulfill. Each Party shall cooperate with the other Party in fulfilling the foregoing conditions precedent. Notwithstanding anything expressed or implied herein to the contrary, neither Party shall be relieved of its obligations hereunder by the failure to fulfill any of the foregoing conditions precedent to the extent that the fulfillment of such condition is within such Party's control.

**(c) Nature and Term of Bonds. Each series of Bonds shall be issued as revenue bonds. The Bonds shall be secured by the following:**

- (1) the Credit Enhancement;**
- (2) by a pledge of the loan repayments required to be made by Contractor under the Loan Agreement;**
- (3) a pledge and assignment by Contractor of its right to receive the Tip Fee payable by Metro under this Agreement;**

- (4) a pledge and assignment by Contractor of any revenues generated by the operation of the Facility including, but not limited to, any reimbursement due to Contractor from any source for the costs of any improvements made in conjunction with or as part of this Facility and financed with Bond Proceeds, or sale of any such equipment, property or improvements and by a security interest in other assets of Contractor; provided however, that such pledge shall not include revenue obtained by Contractor as the salvage value of replaced equipment;
- (5) such other properties, assets and revenues of Contractor as shall be required by the Credit Provider as set forth in the Credit Enhancement or mutually agreed upon by the Parties and which, under Applicable Law, may be pledged as security for the payment of the Bonds.

#### **Section 4.2 Additional Financing**

(a) Metro may obtain Additional Financing, to finance capital improvements under Section 6.15, through the issuance and sale of Additional Bonds or from other sources as deemed appropriate by Metro. Additional Bonds shall be subject to substantially the same conditions as identified in Section 4.1(b) and secured as provided in Section 4.1(c).

(b) Any Additional Financing, Additional Bonds or Additional Interim Debt, issued or otherwise assumed by Metro or Contractor as the case may be shall be subordinate in right of payment and with respect to common collateral to the Bonds provided that this section shall not restrict Metro's ability to issue debt to finance other facilities as long as such debt is not secured by any of the collateral for the Bonds.

(c) If Metro issues Additional Bonds, the additional Debt Service will be paid through an increase in the Debt Service Component of the Tip Fee or some other method, as deemed appropriate by Metro.

#### **Section 4.3 Loss of Tax Benefits**

Contractor shall not be entitled to reimbursement by Metro for the unavailability, loss (whether in whole or in part) or diminution in value of any anticipated tax benefits (whether federal, state or local) and/or tax planning contemplated by Contractor (whether federal, state or local) in connection with the acquisition, construction, installation, ownership or operation of the Facility or the financing thereof.

## **Section 5. DESIGN OF FACILITY**

### **Section 5.1 Facility Design**

(a) Contractor shall have responsibility for the design of the Facility such that it conforms with all Performance Standards and Facility Specifications. Contractor shall perform all design work in accordance with established engineering principles and practices and all applicable Code requirements.

(b) Contractor shall be fully responsible for any and all costs related to design modifications made pursuant to this section unless caused by Uncontrollable Circumstances, a Change Order or Metro Fault, in which event Metro shall bear the costs of such changes as provided in Section 6.15(b) and 6.15(c).

(c) Upon issuance of the Certificate of Completion or at an earlier date as agreed between the Parties, Contractor may utilize funds remaining for construction of the Facility that are not necessary for completion, to purchase and install Material Recovery Equipment, except those funds remaining in the Metro contingency, which may be used at Metro's discretion. Such remaining funds shall be applied first to the purchase of a cardboard and waste paper baler, and then to other equipment as agreed between the Parties and specified in a Change Order.

### **Section 5.2 Metro Review of Facility Design Plans**

(a) Contractor, at reasonably appropriate intervals during construction of the Facility, shall make available for review by Metro, all plans, drawings, specifications, schedules and other materials related to the design and construction of the Facility. Contractor shall provide to Metro a set of Detailed Plans prior to commencing construction of the Facility.

(b) It is mutually understood by the Parties that Metro's review of the materials referenced in section (a) above shall not constitute a determination as to the sufficiency or adequacy of the design plans, specifications, or engineering or construction judgments made by Contractor, nor shall the review act as a waiver of liability or relieve Contractor of its obligations to design, construct, and operate the Facility in a manner which conforms to the provisions of this Agreement.

**Section 6.**

**CONSTRUCTION OF FACILITY; FACILITY PRICE; METHOD OF PAYMENT**

**Section 6.1 Notice to Proceed; Scheduled Completion Date; Commencement Date**

**(a) Conditions Precedent to Issuance of Notice to Proceed.**

- (1) On the date upon which each of the following conditions precedent have been fulfilled, Metro shall issue the Notice to Proceed:
  - (A) There shall have been issued by Metro pursuant to the Bond Documents one or more series of Bonds in the aggregate principal amount determined in accordance with Section 4.1(a) hereof.
  - (B) Contractor shall have obtained the Credit Enhancement.
- (2) Contractor shall exercise good faith and due diligence in fulfilling the foregoing conditions precedent which are the obligation of Contractor to fulfill. Metro shall exercise good faith and due diligence in fulfilling the foregoing conditions precedent which are the obligation of Metro to fulfill. Each Party shall cooperate with the other Party in fulfilling the foregoing conditions precedent.
- (3) Notwithstanding anything expressed or implied herein to the contrary, neither Party shall be relieved of its obligations hereunder by the failure to fulfill any of the foregoing conditions precedent to the extent that the fulfillment of such condition is within such Party's control.

**(b) Termination of Agreement before Issuance of Bonds.**

- (1) Either Party may terminate this Agreement by giving thirty (30) days written notice if the date of issuance of the Bonds shall not have occurred by one (1) year from the effective date of this Agreement.
- (2) If this Agreement is terminated pursuant to this Section 6.1(b) and a Party has proceeded in good faith and with due diligence to fulfill the conditions precedent set forth in this Agreement to the issuance of the Bonds, such Party shall not be liable to the other Party for any costs, expenses, charges or fees incurred by such other Party in connection with or in any way related to this Agreement, the Facility or the Facility Site.

**(c) Commencement. On the Commencement Date, Contractor shall promptly and diligently commence the acquisition, construction and installation of the Facility.**

**[Sec 6.1]**

**(d) Contractor Responsible for Acquisition, Construction, Installation and Performance Test of Facility.**

- (1) Contractor shall complete the acquisition, construction, installation and Performance Test of the Facility in accordance with the terms of this Agreement.**
- (2) Except as to latent defects which Metro reasonably could not have discovered upon an inspection of the Facility, for a period of one (1) year following issuance of the Certificate of Completion, any approval by Metro of any disbursement, the failure to object to the Certificate of Completion, any payment by Metro to Contractor under this Agreement, any use or occupancy of the Facility or any part thereof by Metro, any failure to do so, or any correction by Metro of defective work performed by Contractor, shall not constitute an acceptance of any work which is not completed or accomplished in accordance with the Agreement nor a waiver by Metro of any of the obligations or liabilities of Contractor under this Agreement.**

**(e) Construction and Performance Test to be Completed on or before Scheduled Completion Date:**

- (1) Subject to delays caused by Metro, Change Orders and Uncontrollable Circumstances, Contractor hereby covenants and agrees to complete the acquisition, construction, installation and Performance Test of the Facility on or before the Scheduled Completion Date.**
- (2) If, at any time after the Commencement Date, Contractor, for any reason, determines that it will not be possible to complete the acquisition, construction, installation and Performance Test of the Facility on or before the Scheduled Completion Date, Contractor shall provide Metro with written notice specifying the reason or reasons therefor. In the event that Contractor believes that the reason that the acquisition, construction, installation and Performance Test will not be completed on or before the Scheduled Completion Date is due to Metro Fault or Uncontrollable Circumstances, the notice required by this Section 6.1(e)(2) may include a request for a time extension. In the event that the notice required by this Section 6.1(e)(2) does not include a request for a time extension, Contractor shall be deemed to have waived any right to additional time for**

**[Sec 6.1(e)(2)]**

the event of Metro Fault or Uncontrollable Circumstance leading to the notice. The notice required by this Section 6.1(e)(2) shall be served on Metro within ten (10) days of the start of the latter of either (A) the event of Metro Fault or Uncontrollable Circumstance, or (B) the date Contractor knew or reasonably should have known of the event of Metro Fault or Uncontrollable Circumstance which is the basis of the notice.

- (3) Within ten (10) days of receipt of a request from Contractor for a time extension pursuant to Section 6.1(e)(2), Metro shall provide Contractor with a written approval or disapproval of the request for a time extension. In the event that Metro disapproves the request on the grounds the delay was not caused by a Metro Fault or an Uncontrollable Circumstance, or Contractor disagrees with the amount of time extension approved by Metro, the Parties shall make a good faith effort to negotiate a mutually acceptable time extension. If the Parties are not able to reach a mutually acceptable agreement regarding a requested time extension, the matter shall be submitted for resolution pursuant to Section 13.
- (4) If prior to the Scheduled Completion Date, Metro approves a request for a time extension or, pursuant to Section 13, a determination is made that Contractor is entitled to a time extension, the Scheduled Completion Date shall be extended by the length of the time extension and Metro shall be responsible to pay Debt Service due during the period that the time extension extends the Scheduled Completion Date.

**Section 6.2 Facility Price**

Subject to cost increases resulting from Change Orders or caused by or arising from Metro fault or Uncontrollable Circumstances, Contractor agrees to acquire, construct and install the Facility and perform the Performance Test for the Facility Price. Once Metro has issued Bonds as provided in Section 4 and issued the loan proceeds to the Trustee for distribution to Contractor, Metro shall have no further obligation to provide Additional Financing to Contractor, other than as specified in Section 6.15.

**Section 6.3 Provision of Construction Schedule; Construction Progress Reports**

(a) No later than ten (10) days after issuance of the Notice to Proceed, Contractor shall provide Metro with:

- (1) A detailed Construction Schedule based on the critical path method (CPM) or comparable scheduling methodology. At a minimum, the Construction Schedule shall identify the major work elements required to complete construction of the Facility and show the order of work, the anticipated



start dates for all major work elements as well as the anticipated number of days required to complete each major work element. The Construction Schedule shall provide for the completion of all work and Performance Testing by the Scheduled Completion Date.

- (2) A list of all recycled products to be used in the construction of the Facility.
- (3) A detailed estimate of the construction cost of the Facility in a form to be approved by Metro.

(b) No later than the 25th day of each calendar month, Contractor shall provide Metro with written Progress Reports describing:

- (1) the percentages of each major work element completed up to and including the 15th day of the calendar month in which the report is being issued; and
- (2) any significant problems encountered in the scheduled work.

(c) In connection with the delivery of each Progress Report, Contractor shall provide Metro with an updated Construction Schedule which reflects actual work progress and any adjustments to scheduled work activities identified in the original Work Schedule, and any adjustments to scheduled work activities due to any time extensions approved pursuant to Section 6.1(e).

(d) It is hereby understood and agreed to by the Parties that Metro, at its sole cost and expense, may subcontract for professional services to do and perform, for and on behalf of Metro, any and all functions and review such matters and render such advice to Metro as Metro may from time to time request. Contractor agrees to cooperate with all reasonable requests made by such subcontractors in connection with the performance of such duties on behalf of Metro.

#### **Section 6.4 Monitoring of Construction**

- (a) During the course of the construction of the Facility, Contractor shall:
- (1) maintain at the Facility Site for inspection by Metro a copy of the Facility Specifications and all Detailed Plans in good order and marked to show all changes made during construction; and

- (2) review the design and construction of the Facility with Metro so that Metro may verify that the construction does not materially deviate from the Facility Specifications.

(b) Contractor will not be obligated by this Section to delay any Work (including, but not limited to, procurement and construction activities) it has undertaken or plans to undertake pursuant to the terms and provisions of this Agreement; provided, however, that if Contractor proceeds with any Work under this Agreement not identified in the most recent Construction Schedule without allowing Metro at least ten (10) prior Days notice consistent with the provisions of Section 5.1(a) for Metro to perform monitoring activities, then Contractor proceeds with any such Work solely at its own risk and expense.

### **Section 6.5 Labor, Material and Equipment; Subcontractors**

(a) Contractor shall furnish directly, or through subcontractors, all work, labor, materials, testing, supervision and equipment required for the performance of its obligations set forth in this Section 6.

(b) In selecting subcontractors and in otherwise acquiring goods, materials and services for use in the construction of the Facility, Contractor shall give preference to goods, materials or services that have been manufactured or produced in the state of Oregon, if the price, fitness, availability and quality are otherwise equal, in the opinion of Contractor, to the goods, materials and services that have been manufactured or produced outside the state of Oregon.

(c) In selecting materials and supplies for use in the construction and operation of the Facility, Contractor shall give preference to materials and supplies manufactured from recycled materials, if the price, fitness, availability and quality are otherwise equal, in the opinion of Contractor, to the materials and supplies that have been manufactured from virgin materials. In addition, subject to the price preference limitations below, Contractor shall use its best efforts to incorporate at least 8 recycled content materials into the construction process with at least one each of glass and plastic, and allocate to the purchase of recycled content materials at least one (1) percent of the costs of constructing improvements on the Facility Site, exclusive however of the costs of acquiring the Facility Site and any costs of financing such construction, including debt service and debt service reserves made in connection therewith. In attempting to achieve this goal. Contractor shall allow up to a five (5) percent price preference for all recycled content construction materials to achieve the one (1) percent goal. Under no circumstances shall Contractor, in aggregate, be required to pay during the term of this Agreement a price preference in excess of \$15,000.

(d) During construction, Contractor shall use best faith efforts to recycle 100 percent of the following materials from construction waste: wood, cardboard, metal, concrete,

landclearing debris and drywall. Metro shall provide technical assistance to Contractor in achieving this goal.

#### **Section 6.6 The Facility Site**

- (a) Contractor shall be solely responsible for the preparation of the Facility Site for the acquisition, construction and installation of the Facility.
- (b) Contractor acknowledges and agrees that with respect to subsurface conditions at the Facility Site encountered during construction of the Facility, no such condition shall be deemed to be an Uncontrollable Circumstance pursuant to this Agreement.
- (c) During the term of this Agreement, Contractor shall be responsible for the construction and maintenance of all roads within the Facility Site necessary to connect it to existing roads. Contractor shall also be responsible for extending, expanding or renovating any existing utility lines within the Facility Site in order to meet the utility requirements for the performance by Contractor of its obligations under this Agreement.
- (d) Contractor shall be responsible for all security at the Facility Site during the term of this Agreement and shall maintain such protective measures at the Facility Site during the construction period and thereafter as shall meet appropriate safety standards in light of conditions at the Facility Site.
- (e) Contractor shall erect on the Facility Site a sign reasonably satisfactory to Metro and in conformance with local codes, identifying the Facility.

#### **Section 6.7 Construction Staff**

Contractor shall obtain the services of a Project Manager who shall be present at the Facility Site during the construction of the Facility. Contractor shall keep Metro informed of the identity of each person serving from time to time as the Project Manager, and the telephone number and other means by which such person may be contacted at the Facility Site, until Contractor provides written notice to Metro, Contractor's Project Manager shall be an employee of EMCON Northwest, Inc.

#### **Section 6.8 Prevailing Wages**

Contractor and Metro agree that ORS 279.348 to 279.363 are not applicable to this Agreement. However, if a determination is made that this Agreement is subject to the provisions of ORS 279.348 to 279.363:

- (a) Such determination shall not constitute a change of law,

(b) Contractor shall pay the existing prevailing rate of wage as so required, and as set forth in Exhibit J,

(c) This paragraph shall be construed as meeting the requirements of ORS 279.352, and

(d) Contractor shall take all necessary steps to prevent Metro from incurring liability under ORS 279.356, and shall hold Metro harmless from such liability.

#### **Section 6.9 Liens and Encumbrances**

Provided that Bond proceeds are timely disbursed to Contractor in accordance with the provisions of this Agreement, Contractor shall, from such proceeds or, if insufficient, at its expense:

(a) Discharge any valid liens of any sort that attach to the Facility or the Facility Site arising out of the activities of Contractor or approved subcontractors in constructing the Facility under this Agreement;

(b) Discharge of record by bond or otherwise, any lien or encumbrance that may be filed against the Facility or the Facility Site by any subcontractor; and

(c) Indemnify Metro for any injury or expense, including reasonable attorneys' fees, reasonably incurred by Metro due to the filing of any such lien or Contractor's failure to have such lien discharged.

#### **Section 6.10 Performance/Payment Bonds**

Prior to the commencement of the acquisition, construction and installation of the Facility, Contractor shall supply Metro with Payment and Performance Bonds between Contractor and its construction contractor(s) in the forms set forth in Exhibit H and in the amount of 100 percent of the costs of constructing the improvements on the Facility Site, exclusive, however, of the cost of acquiring the Facility Site and Contractor's overhead and project management fee, and otherwise in accordance with Oregon law. Metro may require additional Payment/Performance Bonds from time to time during construction as circumstances, including Uncontrollable Circumstances, may dictate.

#### **Section 6.11 Notice of Required Capital Improvements**

Prior to initiating a Capital Improvement, Contractor shall provide Metro with a minimum of at least ten (10) days' written notice of the proposed Capital Improvement. The notice shall specify:

- (a) The reasons which necessitate implementation of the Capital Improvement;
- (b) The nature and extent of the required Capital Improvement;
- (c) The impact of implementation of the Capital Improvement on the Scheduled Completion Date if the Capital Improvement is required prior to the Commercial Operation Date, and the impact on continued operations if the Capital Improvement is required subsequent to the Commercial Operation Date;
- (d) A description and estimated cost of the required Capital Improvement;
- (e) The effect, if any, the Capital Improvement will have on the ability of the Facility to meet the Performance Standards.

**Section 6.12 Review of Capital Improvements Proposed For Reasons Other Than Uncontrollable Circumstances or Metro Fault**

- (a) Contractor, at any time, at no additional cost to Metro, may propose Capital Improvements for reasons other than Uncontrollable Circumstances or Metro Fault. Capital Improvements proposed by Contractor pursuant to this section shall be deemed effective unless Metro, within fifteen (15) Business Days after receipt of written notice of the proposed Capital Improvement, gives written notice of an objection to the proposed Capital Improvement. Metro may object to the proposed Capital Improvement if:
- (1) Metro reasonably and in good faith determines that the proposed Capital Improvement will adversely affect the ability of Contractor to comply with the Performance Standards; or
  - (2) Metro reasonably and in good faith determines that the proposed Capital Improvement will adversely affect the ability of Contractor to complete the acquisition, construction, equipment installation and Performance Test of the Facility on or before the Scheduled Completion Date; or
  - (3) in the written opinion of Bond Counsel, the proposed Capital Improvement will adversely affect the federal tax-exempt status of the interest on any Bonds which were intended to be excludable for Federal income tax purposes from the gross incomes of the owners thereof.
- (b) If Metro, for reasons other than those specified in Section 6.12(a)(3), objects to the proposed Capital Improvement pursuant to (a) above, either Party may, within fifteen (15) Business Days after receipt of the objection, refer the matter to binding resolution pursuant to Section 13.

(c) In addition, if the proposed Capital Improvement is the installation of Material Recovery Equipment, Contractor may request Additional Financing, by giving the notice required by Section 6.11. Metro shall have 45 days to review Contractor's request and to inform Contractor whether Metro is willing, at its sole discretion, to fund all or any part of such Capital Improvement with Additional Financing. The terms of such Additional Financing shall be specified in a Change Order negotiated between the Parties.

(d) Nothing in this section shall prevent or delay Contractor from, at its own risk and at no additional cost to Metro, implementing a proposed Capital Improvement as described in this section. However, under no circumstance shall Contractor proceed with a Capital Improvement if Contractor has received notice that Bond Counsel has advised that the Capital Improvement should not be made for the reasons stated in 6.13(a)(3) above.

### **Section 6.13 Review of Proposed Capital Improvements Due to Uncontrollable Circumstances or Metro Fault**

(a) If an Uncontrollable Circumstance or Metro Fault requires implementation of a Capital Improvement either before or after the Scheduled Completion Date, Contractor, as soon as practicable after the occurrence of the Uncontrollable Circumstance event or Metro Fault, shall provide Metro with written notice as specified in Section 6.11. In addition, Contractor shall separately request a time extension pursuant to Section 6.1(e) if appropriate.

(b) Upon receipt of notice from Contractor that a Capital Improvement is required due to an Uncontrollable Circumstance or Metro Fault, Metro shall have thirty (30) days to review Contractor's proposed Capital Improvement. Metro, within the 30-day review period, may object in writing to Contractor's proposed Capital Improvement if:

- (1) Metro determines that the proposed Capital Improvement is not the result of or necessitated by an Uncontrollable Circumstance or Metro Fault; or
- (2) Metro determines that the proposed Capital Improvement will, in the opinion of Metro, not be the least-costly or most effective method of resolving the problem which requires the Capital Improvement, in which case Metro shall propose a more cost-effective method; or
- (3) in the written opinion of Bond Counsel, the proposed Capital Improvement will adversely affect the Federal tax-exempt status of the interest on any Bonds which were intended to be excludable for Federal income tax purposes from the gross incomes of the owners thereof.

(c) If Metro, for reasons specified in (b)(1) above, objects to Contractor's proposed Capital Improvement, either Party may refer the matter to binding resolution pursuant to Section 13. If Metro, for reasons specified in (b)(2) above, objects to the Contractor's proposed Capital

Improvement, either Party may refer the matter to the Independent Engineer for binding resolution.

(d) In addition, Metro may object to Contractor's proposed Capital Improvement for the reasons stated in Section 6.12(a)(1) and (2). In such event either Party may, within fifteen (15) days of receipt of the objection refer the matter to binding resolution pursuant to Section 13.

#### **Section 6.14 Review of Capital Improvement Change Orders Proposed By Metro**

(a) All Metro proposed Capital Improvements shall be initiated by written Change Order designated as such by Metro. No comment by Metro, either in writing or orally, regarding Contractor's design, construction or operation of the Facility shall, in any way, constitute an authorization or directive to implement a Capital Improvement or other change to the Facility or its operations, unless submitted to Contractor in the form of a Change Order.

(b) Upon receipt of a written Change Order from Metro, Contractor shall have thirty (30) days to review the proposed Capital Improvement and prepare a detailed proposal for implementation of the Change Order. However, if the Change Order involves a Capital Improvement or other change to the Facility that has a cost impact in excess of \$100,000, Contractor, at its option, shall have an additional forty-five (45) days to prepare such detailed proposal. The detailed proposal shall describe:

- (1) the necessary design revisions to the Facility Plans and Specifications;
- (2) the estimated effect of the proposed Change Order on the Facility, including any increase or decrease in the operation and maintenance charge, Pass Through Costs, Facility Price, the Scheduled Completion Date, the Performance Standards, or any other modification to any obligation of either Party under this Agreement; and
- (3) a revised Drawdown Schedule which reflects the costs and timing of implementing the proposed Change Order.

(c) If Metro disagrees with any aspect of Contractor's detailed proposal, it shall notify Contractor in writing as soon as possible, but not later than fifteen (15) Business Days, after receipt of the proposal. The Parties shall make a good faith effort to negotiate any disagreements regarding the impact of the proposed Change Order. If Metro and Contractor cannot agree to the cost of implementing a proposed Change Order, Metro shall have the right to issue a Notice to Proceed requiring Contractor to implement the proposed change for an amount equal to Contractor's Direct Costs, as that term is defined in this Agreement, to the extent of Cost Substantiation. If Metro and Contractor cannot agree to the impact of a Change Order, if any, on the Pass Through Cost, the Scheduled Completion Date, the Performance

Standards, such dispute shall be resolved in accordance with Section 13. Any increases or decreases in the operation and maintenance charge due to a Metro Change Order shall be limited to an amount equal to the increase or decrease in Contractor's Direct Costs to the extent of Cost Substantiation.

(d) Contractor, within the thirty (30) days review period set out in (b) above, shall have the right to object in writing to the issuance of any Change Orders initiated by Metro if Contractor determines that the proposed change will:

- (1) have an adverse effect on the ability of the Facility to comply with the Performance Standards or any legal requirements which govern construction or operation of the Facility; or
- (2) render the Facility less efficient operationally; or
- (3) render the Facility less commercially viable; or
- (4) adversely impact the Scheduled Completion Date or the ability of Contractor to achieve the Commercial Operation Date.

(e) In the event Metro does not agree with the objection, the matter shall be submitted to the Independent Engineer for binding resolution pursuant to Section 13.

(f) If in the opinion of Bond Counsel approval of the Change Order will adversely affect the Federal tax-exempt status of the interest on any Bonds which were intended to be excludable for Federal income tax purposes from the gross incomes of the owners thereof, then the Change Order shall be withdrawn immediately by Metro. Metro shall be responsible for obtaining, at its sole expense, any opinions of Bond Counsel that it believes are appropriate in connection with its Change Order.

### **Section 6.15 Financing Capital Improvements**

(a) Capital Improvements Due to Uncontrollable Circumstances.

- (1) If a Capital Improvement is required due to an Uncontrollable Circumstance, Contractor may request a time extension subject to the provisions of Section 6.1 and the cost of said improvement shall be paid for from the following sources of funds in the following order of priority:
  - (A) first, all applicable insurance or condemnation proceeds; and



**[Sec 6.15(a)(1)]**

- (B) second, funds available in any reserves that are required or expressly permitted by the terms of the Bond Documents to be used for Capital Improvements to the Facility.
- (2) If the sources of funds specified in (a)(1) above are not available or are insufficient to cover the cost of the required Capital Improvement, Metro shall be responsible for funding the cost of the Capital Improvement subject to its right to require Contractor to contribute an Additional Equity Contribution equal to fifteen percent (15%) of the costs of the required Capital Improvement.
- (3) If the Uncontrollable Circumstance that requires a Capital Improvement is an insured event, Contractor shall take all reasonable actions reasonably necessary to obtain recovery from the appropriate insurer. Contractor shall provide Metro with copies of all correspondence between Contractor and any insurers from whom recovery is sought. As soon as practicable after the occurrence of an insured event, Contractor shall notify Metro, in writing, of the estimated time period for recovery of insurance proceeds. If, in the opinion of Metro and Contractor, the time period for recovery of insurance proceeds will unduly jeopardize completion of the Facility, or constitute an unreasonable disruption to the region's overall waste disposal system, Metro may finance required Capital Improvement and all insurance proceeds recovered due to an Insured Event shall be first used to pay the debt service for any Additional Bonds which were issued to finance the required Capital Improvement or to repay any sums otherwise advanced by Metro.
- (4) If the Capital Improvement results in an increase in the cost of operations and maintenance of the Facility, the operations and maintenance fee shall be increased by an amount equal to the Direct Costs attributable to the increased costs resulting from the Capital Improvement subject to Cost Substantiation. Metro may object to any increase requested by Contractor and if the Parties cannot resolve any dispute after good faith negotiations the matter shall be referred to Dispute Resolution pursuant to Section 13.
- (5) If Metro fails or is unable to finance any required Capital Improvement, Contractor, at its option, may finance the entire Capital Improvement with an Additional Equity Contribution. If Contractor so finances any required Capital Improvement, there shall be no Metro Default as a result of the failure of Metro to finance the Capital Improvement and Contractor shall be entitled to receive an increase in the Tip Fee in an amount equal to a reasonable return on Contractor's equity taking into account any tax benefits received by Contractor as well as other reasonable factors. Metro

may object to any increase requested by Contractor and if the Parties cannot resolve any dispute after good faith negotiations, the matter shall be referred to Dispute Resolution pursuant to Section 13.

- (6) If as a result of an Uncontrollable Circumstance, the Tip Fee payable by Metro shall be required to increase by an amount greater than the amount provided for in Section 14.4, then Metro may terminate this Agreement pursuant to Section 14.4 unless Contractor agrees to forgo that amount of the Tip Fee increase that is greater than the amount provided for in Section 14.4 and to pay any increase in Debt Service caused by the issuance of Additional Bonds if such is necessary to prevent the Tip Fee increase to Metro from exceeding the amount provided for in Section 14.4.

(b) Capital Improvements Due To Metro Fault or Metro Change Order. If a Capital Improvement is required due to Metro Fault or a written Change Order by Metro as described in Section 6.14 above, the Capital Improvement shall be financed from:

- (1) first, funds available in any reserves that are required or expressly permitted by the terms of this Agreement or of the Bond Documents to be used for Capital Improvements to the Facility;
- (2) other sources as determined appropriate by Metro;
- (3) the proceeds from the issuance of Additional Bonds; or,
- (4) at Contractor's option and sole discretion, from an Additional Equity Contribution.

(c) Financing of Capital Improvements Due to Reasons Other Than Uncontrollable Circumstances, Metro Change Orders or Metro Fault. Contractor shall be solely responsible for any and all financing of Capital Improvements due to reasons other than as specified in Section 6.12(c), Uncontrollable Circumstances, Metro Change Orders, or Metro Fault, including but not limited to any cost overruns, the insufficiency of any equity contribution intended to be provided by Contractor, or any other contingency.

#### **Section 6.16 Disbursements to Pay Construction Costs**

(a) Disbursements Prior to Completion. Subject to the applicable provisions of the Bond Documents and compliance with the provisions of this Section 6.16, monies shall be disbursed to Contractor from time to time so as to enable Contractor timely to pay the costs of acquiring, constructing, installing and performance testing of the Facility in accordance with the Bond Documents and the Drawdown Schedule.

(b) On or before the twenty-fifth day of each month during the Construction Period, Contractor shall submit to Metro, in duplicate, a copy of a completed Requisition Certificate relating to the costs incurred in connection with the acquisition, construction and installation of the Facility during the preceding month.

(c) Each Requisition Certificate shall contain an itemized and sworn application for payment supported by such data substantiating Contractor's right to the requested disbursement as the Trustee may reasonably require and shall be accompanied by a certificate from Contractor's Authorized Representative which shall certify, represent and warrant the following:

The amount of the disbursement requested pursuant to the attached Requisition Certificate, when added to the amounts previously disbursed and any payments made from the proceeds of the Equity Contribution does not exceed the total amount expended by Contractor for Work, materials, overhead, profit and other qualified costs and expenses under this Agreement and the Bond Documents to the date of such Requisition Certificate.

(d) Final Inspection and Application for Final Disbursement. Notwithstanding anything expressed or implied herein to the contrary, the final disbursement following completion of the Facility and the Performance Test shall be made only after Metro has accepted the Facility as provided in Section 7.5 hereof.

## **Section 7. PERFORMANCE TESTING**

### **Section 7.1 Payment for Waste Processing Prior to Commercial Operation Date**

Contractor shall conduct a performance test to demonstrate that the Facility can continuously process Municipal Solid Waste. Payment for Processing of Municipal Solid Waste prior to the Commercial Operation Date will be made to Contractor as follows:

- (a) unit price of \$3.50 per ton;
- (b) bonus ton payments shall not be applicable; and
- (c) all other services and payments shall be as provided in this Agreement.

### **Section 7.2 Performance Test Plan**

(a) The following shall be submitted to Metro for review and comment at least 90 days prior to start-up of the Facility:

- (1) Notice of the proposed start-up date;
  - (2) A draft performance test plan, addressing all elements specified in subsection (b) of this section; and
  - (3) Draft contingency plans and materials necessary for implementation of the Safety and Emergency Response Training Program, as specified in Section 8.1(e).
- (b) The performance test plan shall have the following general components:
- (1) A description of the sequence of operations and performance test to be performed;
  - (2) Method of measurement of Municipal Solid Waste Throughput (daily), process flow, and Processing Capacity;
  - (3) Method to determine compaction efficiency (density, length, and load time/container);
  - (4) Detailed description of performance test;
  - (5) Method to determine Unacceptable Waste quantity and type;
  - (6) A proposed schedule for Municipal Solid Waste deliveries.

(c) Metro will have 30 days to review and comment on the performance test plan and other submittals required by this Section 7.2 prepared by Contractor. Metro will provide written comments indicating recommended changes in the required submittals or approval. If the required submittals are not approved, Contractor shall revise them and promptly resubmit them to Metro. Any part of the submittals that Metro refuses to approve within 60 days of Metro receipt of the original draft shall be submitted to the Independent Engineer for binding resolution. If Metro fails to respond within 30 days, the plan shall be deemed approved.

(d) If Material Recovery Equipment is installed at the Facility through Metro financing or at Metro expense (in part or whole), Contractor shall submit a performance test plan and subject the equipment to performance testing and start-up in a manner, to the extent reasonably possible, consistent with the procedures in this Section 7. In addition to other required components, the performance test plan shall include a method for determining the amount of Recovered Material.

### **Section 7.3 Start-up Requirements**

(a) Contractor shall provide the personnel, services, utilities, supplies, and the like, other than the Municipal Solid Waste, to accomplish start-up. All operations during start-up shall be conducted in conformance with applicable law.

(b) Metro shall have access to the Facility to observe all operations. Start-up shall commence when all equipment in the Facility is physically installed and all utility installations are complete.

(c) Start-up shall include the following functions:

- (1) training of all personnel required for commercial operation;
- (2) checking the equipment to determine that it mechanically functions according to the guaranteed equipment specifications;
- (3) modifying the process or individual equipment to attain specified product quality and/or quantity; and
- (4) refining the entire operation to meet the Facility Specifications and system objectives, including the Performance Standards.

(d) Contractor shall notify Metro of quantities of Municipal Solid Waste necessary for start-up requirements no less than 72 hours in advance of need. Metro will arrange for the delivery of an appropriate quantity of Municipal Solid Waste and for the necessary transfer trailers or containers.

### **Section 7.4 Conditions Precedent to Performance Test**

(a) The performance test may start when Contractor has demonstrated to Metro that the conditions specified below have been met:

- (1) An approved performance test plan and plans and programs required by Section 8.1(e) are in place;
- (2) All permits required for full-scale operation of the Facility have been obtained and any other requirements of applicable law have been met; and
- (3) Start-up requirements of Section 7.3 have been met.

(b) Contractor shall provide all personnel, services, utilities, supplies and the like, other than the Municipal Solid Waste and transfer trailers, required to operate the Facility in

accordance with the approved performance test plan. The performance test shall be performed by Contractor at Contractor's expense, subject to payment for processing of Municipal Solid Waste as set forth in Section 7.1.

#### **Section 7.5 Notification of Performance Test**

Contractor shall notify Metro in writing that the Facility is ready for performance testing. Such notification shall include documentation that the conditions in Section 7.4 have been satisfied. Within five working days of receipt of the notification, Metro shall inform Contractor as to whether additional documentation is required or whether acceptable documentation has been supplied. If Metro accepts the notification, Metro and Contractor shall mutually agree on the dates of the performance test which shall be within five working days of Metro's acceptance of the notification. Metro will arrange for the delivery of the requested Municipal Solid Waste and for the necessary transfer trailers or containers according to the performance test plan.

#### **Section 7.6 Performance Test**

The performance test shall include at a minimum:

- (a) Verification that the Facility has been constructed and that all equipment has been installed, in accordance with local code requirements, the Facility Specifications, Detailed Plans and any subsequent Change Orders.
- (b) A demonstration that Municipal Solid Waste can be processed and Acceptable Waste loaded into transfer trailers at a rate of 825 tons of Municipal Solid Waste per day. At least 300 tons of waste shall be utilized for the demonstration on a single day. The test period shall not exceed five days.

#### **Section 7.7 Rejection of Performance Test**

- (a) If Metro concludes that the conditions contained in Section 7.6 have not been met to Metro's reasonable satisfaction, Metro shall notify Contractor in writing and specify in detail the reasons why the test did not satisfy the test criteria of Section 7.6. Metro shall provide such notice within two working days of the test.
- (b) Within 10 days of receiving such notification, Contractor shall inform Metro:
  - (1) of the steps Contractor will take to correct the Facility and the time extension needed before another test can be conducted; or
  - (2) that Contractor disagrees with Metro's interpretation of the test results and the specific reasons why.

(c) Metro shall grant a time extension in the event of 7.7(b)(1), not to exceed 60 days, at the conclusion of which the Performance Tests will be repeated. If the Facility fails the Performance Test at this time, Metro may, at its option, either grant another extension or deny any further testing of the Facility and treat Contractor as being in default of its obligations hereunder.

(d) If Contractor disagrees with the interpretation of the test results, Metro and Contractor shall meet and discuss the areas of disagreement. The Parties may either agree to test interpretations, agree to reconduct the test on a full or limited basis, or submit their disagreement for binding resolution under Section 13 of this Agreement.

### **Section 7.8 Compliance with Performance Test Criteria**

If Metro concludes that the conditions contained in Section 7.6 have been met to Metro's reasonable satisfaction, Metro shall notify Contractor in writing within two working days of the test. Such notice shall constitute completion of the Performance Test. Within 30 working days from the completion of the performance test, on a date agreed to by the Parties, Contractor shall issue the Certificate of Completion, and Metro shall assume responsibility for full delivery of waste in conformance with Section 10 unless an extension is mutually agreed to by the Parties. The date upon which the Facility begins operation as specified herein shall be deemed the Commercial Operation Date.

## **Section 8. FACILITY OPERATION**

### **Section 8.1 Facility Management**

(a) General Facility operations and maintenance shall be outlined and described by Contractor in an operations and maintenance manual, a copy and updates of which shall be provided to Metro. General Facility operations and maintenance shall include, but not be limited to, the following:

- (1) Mobilization of equipment and personnel onto the site;
- (2) Receiving Municipal Solid Waste on-site from the public, commercial haulers, and industrial accounts up to a maximum Processing Capacity of 825 tons per day;
- (3) Traffic control;
- (4) The removal of recyclables from public loads by assisting customers;

- [Sec 8.1(a)]**
- (5) **Materials Recovery processing of a portion of the Acceptable Waste;**
  - (6) **Locating markets for recyclables and providing vehicles and personnel to transport the Source-Separated and Recovered Materials;**
  - (7) **Handling, compacting, and loading waste on-site;**
  - (8) **Initial separation of Unacceptable Waste from Municipal Solid Waste and delivery of such waste to the Unacceptable Waste Storage Area;**
  - (9) **Operating the Source-Separated recycling area;**
  - (10) **Operation and maintenance of equipment, except weighing system, in conformance with manufacturer specifications;**
  - (11) **Provision and training of personnel;**
  - (12) **Furnishing of all supplies, materials, equipment, and services for performance of the Contract;**
  - (13) **Grounds and landscape maintenance;**
  - (14) **Litter control on-site, and in Metro designated surrounding areas;**
  - (15) **24-hour site security which, at Contractor's option, may be performed by personnel, an alarm system or a combination of both;**
  - (16) **Insect, vermin, dust, and odor control;**
  - (17) **At least monthly meetings with Metro to report on progress achieved and any special problems encountered;**
  - (18) **Coordination with other contractors;**
  - (19) **Maintenance of safe operating conditions at all times for all personnel and customers;**
  - (20) **Equipment operator training;**
  - (21) **Demobilization of equipment and personnel from the site upon completion or termination of this Agreement; and**



**[Sec 8.1(a)] (22) Maintenance of all permits and approvals necessary for operation of the Facility other than those required of Metro.**

**(b) On-Site Personnel.**

- (1) Contractor shall provide and train sufficient on-site personnel to ensure efficient operation, maintenance and management of the Facility. During periods of sickness and vacation, additional personnel must be available to provide the staff necessary for the continued and uninterrupted operation and maintenance of the Facility in the most efficient manner.**
- (2) Contractor shall meet the following minimum personnel requirements during normal hours (6:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 6:00 p.m. on Saturday and Sunday):**
  - (A) One superintendent or foreman who shall be considered the representative of Contractor in charge of work;**
  - (B) Equipment operators in sufficient number to provide the necessary Facility work, Materials Recovery, refuse compaction and loading, and all other operating or maintenance work requiring the use of equipment, all in accordance with the Contract documents;**
  - (C) At least one inspector whose primary duty is to monitor the tipping of waste and conducting random load checks to detect unacceptable waste (the load-checking program). At least one other employee hired to perform some other primary task shall also be trained and available to monitor the tipping of waste and conduct random load checks as necessary;**
  - (D) Laborers in sufficient number to operate the Facility as described in this Agreement; and**
  - (E) Additional personnel as may be required due to seasonal fluctuations and weekend as opposed to weekday operations. Contractor is responsible for identifying such trends and adjusting the number of personnel as required, at no additional cost to Metro.**

**(c) Operations Reporting Requirements.**

- (1) Contractor shall establish and maintain an information system to provide storage and ready retrieval of Facility operating data.**

- [Sec 8.1(c)]** (2) Contractor shall prepare and maintain proper, accurate, and complete records and accounts of all transactions related to the Facility (except for Scalehouse functions and operation of the UWSHA). These shall include, but not be limited to (as applicable): maintenance records, equipment replacement records and schedules, and safety and accident reports, quantity of Source-Separated recyclable materials received and sold, quantity of Recovered Materials produced and sold, and quantity of compacted waste loaded for transport to disposal. Metro shall have complete access to all such records.
- (3) Contractor shall provide Metro with monthly reports within ten (10) calendar days of the end of each month, including, but not limited to, the following operating data (as applicable):
- (A) Complaint forms and recommended actions;
  - (B) Any extraordinary occurrences significantly affecting Metro's rights or obligations under this Agreement;
  - (C) Status of operating equipment;
  - (D) Any correspondence between Contractor and governmental bodies relevant to this Agreement;
  - (E) Reports on accidents and their status;
  - (F) Separate Monthly sales totals of Recovered and Source-Separated Materials (by material and price);
  - (G) Monthly quantity of waste compacted and loaded for transport to disposal by Facility;
  - (H) Quantity and type of Unacceptable Waste delivered to the UWSHA; and
- (4) Contractor shall prepare an annual report subject to independent audit that incorporates a summary of the monthly operations reports for the preceding 12-month period summarizing all required data and records. This report shall be submitted to Metro within 90 days after the end of Contractor's fiscal year.

(d) Facility Performance Review and Inspection. In conjunction with the review of Contractor's annual report, Metro, at its own expense, will review records of Facility

**[Sec 8.1(d)]**

performance over Contractor's previous fiscal year and inspect the Facility. The primary objective of this annual review and inspection will be to verify that the Facility is operating at its design level.

- (1) The annual performance review will consist of an audit of all Facility operating records for Contractor's previous fiscal year. The annual inspection will consist of:
  - (A) an inspection of the physical plant with emphasis on safety and hazard mitigation;
  - (B) a test of all instrumentation used for determining Facility performance;
  - (C) a review of plant and equipment maintenance and replacement records; and
  - (D) determination of continued efficiency and optimal operation of the Facility based on evaluation of the Facility materials recovery rate.
- (2) The Facility materials recovery rate will be based on post-collection Recovered Materials and Source-Separated drop-off materials (including Yard Debris).
- (3) Within 30 days following the annual performance review and inspection period, Metro will issue to Contractor a summary of all findings.
- (4) Notwithstanding the annual review and inspection, Contractor shall permit inspection of the Facility and its operation by Metro, its representatives, and governmental authorities having jurisdiction over the Facility and its operation, at all times.
- (5) Metro will inform Contractor which of Metro's employees will be responsible for routine inspections, and what authority such inspectors will have.

(e) Contingency Plans/Safety and Emergency Response Training. Contractor shall submit contingency plans to Metro for approval prior to Facility operation, and update such plans as necessary, including the following:

**[Sec 8.1(e)] (1) Contingency Plans, General. The general contingency Plan will comprehensively provide for:**

- (A) Emergency operating procedures in the event of a work stoppage by any of Contractor's or Metro's employees;**
- (B) Emergency bad weather operating procedures; and**
- (C) Contingency in the event of equipment failure. Plans must include a time frame for the implementation of the plan, and the sources for, and description of replacement equipment. Contingency plans must be approved by Metro.**

**(2) Contingency Plans, Emergency.**

- (A) Contractor shall provide to Metro a comprehensive plan for the Facility and transfer trailers (while at the site) designed to minimize hazards to human health and the environment, damage to buildings and the site, and the interruption of normal transfer station operations, due to:**
  - (i) Fires;**
  - (ii) Explosions;**
  - (iii) Release of hazardous substances; and**
  - (iv) Discovery of Unacceptable Waste.**
- (B) The contingency plan must include:**
  - (i) A description of actions Facility must take in response to the items listed above;**
  - (ii) Evidence of arrangements with local emergency response agencies setting forth what services will be rendered by each agency in the event of an emergency;**
  - (iii) Names and telephone numbers of all persons who are designated as emergency coordinators by Contractor. Emergency coordinators must be at the Facility and easily communicated with by telephone or radio within five (5)**

**[Sec 8.1(e)(2)(B)(iii)]**

minutes of an emergency. Emergency coordinators must be thoroughly familiar with all parts of the contingency plan and must direct emergency response drills at least twice per year; and

- (iv) A diagram of the location and intended use of all emergency equipment.

(3) **Safety and Emergency Response Training Program.** Contractor shall implement an employee safety orientation and training program prior to start-up of the Facility, and continue such program throughout the Term of the Agreement. The Facility manager will designate a member of the staff to serve as the Facility safety coordinator. The coordinator shall be responsible for guiding and directing the Facility's safety program. Specifically, the coordinator shall be responsible for the implementation of the following program requirements:

- (A) Orientation for new employees on the Facility safety program and emergency contingency plan, as well as basic personal safety instruction;
- (B) Regularly scheduled safety meetings;
- (C) First aid instruction for all members of the staff;
- (D) Specific instruction for operators and maintenance personnel regarding the hazards associated with the chemicals utilized at the Facility and the location of information concerning each (in compliance with the Federal Hazard Communication Standards);
- (E) Fire prevention and fire fighting instruction;
- (F) Instruction to all personnel about how to detect Unacceptable Waste before and after it is unloaded onto the tipping floor, and identification and ability to prove responsibility in a court of law who disposed the waste;
- (G) Instruction concerning procedures for effective cleanup and management of Unacceptable Waste once it is detected in the collection vehicles, tipping area, or transfer trailers;

- (H) Instruction concerning detailed procedures to effectively respond to emergency situations and implement the emergency contingency plan;
- (I) Routine inspection and testing program for all safety and emergency-related equipment and protective devices, the results to be discussed at the monthly meeting;
- (J) Thorough investigation of all accidents to ascertain the cause and methods of preventing their reoccurrence;
- (K) Issuance of an employee safety manual to each member of the staff for use in training sessions and personal reference;
- (L) Posting of safety bulletins or posters concerning accidents, hazards, or hazardous conditions occurring elsewhere in the industry;
- (M) Routine walk-through inspections conducted by Contractor through all areas of the Facility seeking out potential or current safety hazards, including permanent equipment and building features; and
- (N) Observation of all applicable OSHA standards.

## **Section 8.2 Facility Operations**

(a) Operation of the Facility will be conducted in accordance with the technical specifications outlined in these documents, and any regulatory permits or requirements.

(b) General.

- (1) Contractor shall have the exclusive right and sole responsibility for the operation of the Facility (other than the scalehouse on Unacceptable Waste Storage and Handling Area) and for coordinating the Facility operations with the Recovered Materials market for the full term of this Agreement.
- (2) The services provided by Contractor shall be performed in accordance with all state, federal, and local regulations.
- (3) Contractor shall conduct its activities so as to maximize coordination with any Metro-designated Party, and to minimize loading and unloading time spent at the Facility, in a cost effective manner.

- [Sec 8.2(b)] (4) Contractor shall remove all Municipal Solid Waste from the receiving area within 24 hours of receipt, except in the case of emergency caused by equipment failure.
- (5) Other than as specified in Section 8.5, Contractor is responsible for all operation and maintenance costs associated with equipment except the weighing system. Other than as specified in Section 8.5, Contractor shall be responsible for all damage to the Facility and its equipment, and shall repair or replace any such damage in a timely manner at no additional charge to Metro.
- (6) All storage of equipment, materials, vehicles, and supplies shall be in designated storage areas only. Litter from the Facility's operations shall not be allowed off-site and shall be minimized and controlled on-site. The Facility Site shall be cleaned of litter on a daily basis.
- (7) To abate odors, Contractor shall establish and follow a comprehensive program of manual and machine cleaning of equipment, tipping areas, and platforms in the Facility, combined with disinfection and vector control. Results should comply with Metro's "Model Zoning Ordinance" standards and any applicable regulatory codes.

(c) Waste Flow and Hours of Operation.

- (1) The Facility will be open for commercial haulers and industrial accounts from 6:00 a.m. to 6:00 p.m., Monday through Friday, and for public self-haul from 8 a.m. to 6 p.m. on Saturday and Sunday, except for Christmas Day and New Year's Day. Commercial and industrial accounts will also be permitted to use the Facility on weekends. Metro reserves the right to establish and enforce credit policy at the Facility. Public self-haul accounts are those customers who pay cash for disposal of solid waste.
- (2) The Parties reserve the right to alter the hours for receipt of waste at the Facility by mutual agreement.

(d) Acceptance of Municipal Solid Waste.

- (1) Contractor shall operate the Facility to receive regular deliveries of Municipal Solid Waste on a seven-day per week basis from packer trucks, transfer vehicles, compactor-type vehicles, and large dump trucks, and from private citizen vehicles on weekends. Contractor shall accept all Municipal Solid Waste that is delivered to the Facility, except waste that is Unacceptable Waste.

- [Sec 8.2(d)]**
- (2) Metro employees operating the Scalehouse shall make all determinations regarding fees to be paid by haulers using the Facility.
  - (3) Each commercial hauling vehicle shall be weighed upon entering the Facility. The empty or tare weight of each commercial vehicle shall be established and recorded so that the vehicles will not be required to re-weigh each time after unloading. The tare weights must be determined at least twice each year without advance notice to the vehicle owners or drivers.
  - (4) All Recovered Materials, Source-Separated Recyclables compacted waste, and Unacceptable Waste shall be weighed prior to removal from the Facility. This data will provide checks on the Facility efficiency and known quantities for Materials Recovery and landfilling.
  - (5) Contractor shall be required to accept all Metro Acceptable Waste specified in the Agreement unless it is unable to operate because of planned downtime at the Facility, Uncontrollable Circumstances or Metro fault.

(e) Unloading of Refuse. Contractor shall be responsible for directing on-site traffic to the appropriate waste tipping area. Metro may direct the flow of traffic at any time to facilitate the flow of traffic, in cooperation with Contractor.

(f) Compaction, Transport, and Loading of Waste.

- (1) Contractor is responsible for extruding an untied bale of waste from the compactor into the transfer trailer, installing a seal on the transfer trailer door handle and returning the sealed transfer trailer to the staging area with applicable documentation.
- (2) Contractor is responsible for producing road legal weights, and for unloading and balancing loads which are found to be out of compliance with appropriate regulations. Certified scales will be used to make such a determination.
- (3) Each seal shall be marked with three letters identifying the Facility, Contractor, and a sequentially increasing set of at least four digits.

Example: FGS-CON-0000

- (4) The operator shall also record the transfer trailer I.D.number using a Metro furnished bar code reader located in the loading area. The transfer



**[Sec 8.2(f)(4)]**

trailer seal will be inspected by both Metro's waste transport contractor and Contractor prior to removal of the trailer from the Facility Site.

- (5) It is the responsibility of Metro's waste transport services contractor to ensure that the seal was properly installed before the transfer trailer leaves the Facility Site. Metro's waste transport services contractor shall be responsible for inspecting the empty transfer trailers for damage before release to Contractor, inspecting the loaded transfer trailers for damage and verifying that the seal was installed properly before removing the transfer trailer from the Facility, transporting the Load of Waste from the Facility to the disposal site, and then unloading it.
  - (6) If Contractor improperly installs the seal, Metro's waste transport services contractor is required to notify Contractor prior to leaving the Facility Site and request a new seal. Contractor shall comply with any such requests. Failure to request a new seal will preclude Metro's waste transport services contractor from any recovery for damages arising out of any improperly installed seal. Metro's waste transport services contractor and Contractor shall use an interchange agreement for inspection of transfer trailers, or a similar agreement as approved by Metro. In addition, Metro's waste transport services contractor can request removal of the seal to inspect the interior of the transfer trailer, its contents, and request and receive a new seal from Contractor.
  - (7) Once the transporter has verified that the seal is properly installed, the waste contained within the transfer trailer is the responsibility of the transporter until the seal is broken by Metro's disposal site operator. If the seal is broken by other than disposal site personnel, the transporter will be responsible for all associated costs and liabilities involved with managing any waste contained within the transfer trailer, above and beyond normal disposal costs.
  - (8) Metro reserves the right to contract with parties other than Metro's waste transport services contractor, for the transport of waste or other materials. Such contracts with other parties shall not entitle Contractor to additional payment. All such contracts shall include a requirement that the transport contractor carry insurance in commercially reasonable amounts.
- (g) Maximizing the Compacted Load.
- (1) Contractor shall use best faith efforts to maximize the transporter's payload, without overloading the transfer trailer. Contractor is responsible for removing waste as necessary to correct loads which exceed

**[Sec 8.2(g)(1)]**

the length and/or weight capabilities of the transporter. Maximum payload shall be no more than 32 tons at a density of 900 lbs/cu. yd. The weights should be verified with the axle scales available on the Facility Site.

- (2) Contractor shall be entitled to a bonus per the formula below, for maximizing Metro's waste transport services contractor's payloads. The bonus is an attempt to share Metro's transportation cost savings resulting from transporting loads at average densities greater than 28 tons (or 790 lb/cu. yd. in the compactor):

**COMPACTION MAXIMIZATION BONUS**

- (A) Base tonnage (BT) = (Loads/Mo.) x 28 tons  
(B) Tons transported (TT) = Tons transported per month  
(C) Bonus tons = (TT-BT) + (Bonus tons from previous month)

If "bonus tons" is greater than zero, Contractor receives a per ton bonus equal to \$6.75 for each "bonus ton" for that month, and "bonus tons from the previous month" is equal to zero for the following month. If "bonus tons" is less than zero, then it is carried forward in equation (c) as "Bonus tons from previous month" to reduce any "bonus tons" accrued during the following month. The value of "bonus tons" shall be adjusted at the same rate as the CPI adjustment to Metro's waste transport services contract with Jack Gray Transport, Inc. The adjustment shall be effective on each anniversary of the Commercial Operations Date.

(h) **Load Check Program/Unacceptable Waste.**

- (1) **General Load Screening.** Contractor shall inspect all waste delivered to the Facility in a manner that is reasonably calculated to determine whether or not such waste is Unacceptable Waste. Contractor shall implement inspection procedures which at a minimum should include the following:
- (A) All incoming loads must be screened in the initial processing area. Contractor shall make a substantial effort to maintain the load checking program and to prevent to the greatest extent any cross-contamination of wastes.
- (B) Every incoming load shall be inspected visually for dripping liquids or suspicious odors.

[Sec 8.2(h)(1)]

- (C) Contractor load check program employees shall assure that every load of material that is dumped during the course of a working day is at least visually inspected. Four times per working day, Contractor shall conduct a load check on an incoming vehicle selected at random. When a spotter suspects that an incoming load contains Unacceptable Waste at any time during the course of the working day, the same procedures as those for the random load check will apply.
- (D) Through general load screening and random load checks, Contractor shall make a reasonable effort to identify and remove Household Hazardous Waste from loads of delivered waste. The reasonableness of this effort shall be a function of the time and expense necessary to remove and dispose of the waste, as determined by Metro in consultation with Contractor.

(2) Random Load Check Procedures.

- (A) To initiate a load check, Contractor shall direct the load to a designated area that does not interfere with regular operations, and place cones around the perimeter of the load so that it will not be disturbed until it has been properly inspected.
- (B) To inspect the load, Contractor shall:
  - (i) Using the claw tool, pull bags or material from all four sides of the load to expose the waste.
  - (ii) Go through at least 20 bags or 4 yards of material.
- (C) If the load contains Unacceptable Waste, Contractor shall:
  - (i) Use reasonable good faith efforts to identify the person or persons who dumped the Unacceptable Waste Contractor's efforts shall be reasonably calculated to prove responsibility for disposal of the waste by a preponderance of the evidence;
  - (ii) Make demand upon the person or persons who dumped the Unacceptable Waste to perform the cleanup of the Unacceptable Waste immediately, and in a manner which minimizes contamination of the Facility and of other waste,

**[Sec 8.2(h)(2)(C)(ii)]**

minimizes risk of damage to persons or the environment and is in accordance with state and federal regulations;

- (iii) If the responsible person(s) is unknown or, in Contractor's judgment, incapable of complying with the requirements as specified above, then Contractor shall, if reasonably possible, deliver the Unacceptable Waste to the Unacceptable Waste Storage and Handling Area immediately, and, if reasonably possible, deliver in a manner which minimizes contamination of the Facility and Acceptable Waste, minimizes risk of damage to persons or the environment and is in accordance with state and federal regulations;
  - (iv) Notify Metro as soon as reasonably possible, document the load on an Unacceptable Waste Report form, and provide Metro with a copy;
  - (v) To the extent reasonably practicable, Contractor shall preserve and protect any evidence in its possession that may reasonably assist Metro in proving ownership of, or responsibility for the Unacceptable Waste; and
  - (vi) If the cleanup or delivery of the waste to the Unacceptable Waste Storage and Handling Area is not carried out by Contractor, as specified above, within a reasonable time, Metro may, following written notice to Contractor, cause the cleanup to be performed at Contractor's expense, or take other reasonable steps.
- (D) If the load contains Unacceptable Waste, Metro shall determine amount and type of contamination; document the waste contained in the load, with photographs if necessary; contact any known generator and make arrangements for proper disposition of waste. A Metro Hazcat shall be on duty at the Facility during all hours when load checks are being performed.
- (E) To the extent that Contractor has reasonably determined that Infectious Medical Waste from hospital loads is safe to handle, such waste shall be set aside to await hospital response regarding proper cleanup.

**[Sec 8.2(h)(2)]**

- (F) If unable to determine the generator of household medical waste, Contractor shall place the medical waste in a puncture proof container or container/bag exhibiting the bio-hazard symbol and dispose of the container and waste in the bio-medical box located on-site.
- (G) If Contractor is able to determine the generator of Unacceptable Waste, such waste shall be taken to the generator pickup storage area.
- (H) If unable to determine the generator of Unacceptable Waste, Contractor shall take the Unacceptable Waste to the Unacceptable Waste Storage and Handling Area for processing by Metro Hazcats.
- (I) Identified Household Hazardous Waste shall be removed by Contractor to the Unacceptable Waste Storage and Handling Area.
- (J) All personnel working on load checking inspections will be required to wear personal protective clothing and equipment to include, at a minimum:
  - (i) "tyvec" type coverall clothing
  - (ii) leather gloves
  - (iii) respirator
  - (iv) hard hat
  - (v) eye protection
  - (vi) steel toed/insoled rubber boots or steel toed leather boots with boot covers
- (K) All personnel working on load checking inspections will be required to use the following tools during load inspections:
  - (i) claw tools
  - (ii) box knife

**[Sec 8.2(h)(2)(K)]**

- (iii) puncture proof containers and containers/bags exhibiting the bio-hazard symbol
  
- (L) Contractor shall keep records for each load physically inspected, and for any instances when Unacceptable Waste has been delivered to or found on the Facility Site. These records shall include, at a minimum, time, date, name of hauling firm, name of driver, source of waste, vehicle identification numbers, type and quantity of Unacceptable Waste found, and any other material observations made by the inspector. A Metro employee and Contractor's inspector will both sign the record form to verify that the waste inspected or found was delivered by the named hauler. Metro shall maintain responsibility for calling generators of Unacceptable Waste. Any disputes over any matters in the load check program shall be resolved by the senior Metro hazardous waste technician on the floor. Contractor may arbitrate any dispute thereon pursuant to Section 13.
  
- (M) Inspectors shall be trained to spot Unacceptable Waste. Contractor's inspectors must be knowledgeable of the identifiable characteristics of Unacceptable Waste, the distinctive markings on containers of Unacceptable Waste, and available field and laboratory tests to detect Unacceptable Waste. Inspectors shall also be trained in documenting the person or persons who disposed of the Unacceptable Waste by methods reasonably calculated to prove responsibility in a court of law. Contractor's employees dedicated to the load-checking program shall receive the equivalent of Occupational Safety and Health Administration (OSHA) 40-hour hazardous waste and emergency response training. Load checking program employees shall receive an additional 40 hours of site-specific training provided by Metro. Contractor shall submit documentation certifying that all load-check program employees have met all training and/or medical monitoring requirements for Emergency Response, Hazard Communication, Blood borne Pathogens, or any other training required by OSHA.
  
- (3) Management and Reimbursement for Unacceptable Waste.

  - (A) If any inspection or testing performed or caused to be performed by Contractor (or any governmental authority or agency having jurisdiction over Unacceptable Waste) reveals that any waste which is delivered to the Facility is Unacceptable Waste, Contractor shall either perform the cleanup of such Unacceptable Waste in

[Sec 8.2(h)(3)(A)]

accordance with all requirements of law or deliver such waste to the Unacceptable Waste Storage and Handling Area. Unacceptable Waste that can reasonably be delivered by Contractor to the UWSHA shall be delivered there for disposal by Metro. Metro will reimburse Contractor for one hundred percent (100%) of the Direct Costs that Contractor reasonably incurs under this section, except as provided in subsection 8.2(h)(2)(C)(vi) of this section. Metro shall pay the cost of Contractor's load check employees only when engaged in the load check program work specified in Section 8.2(h)(1) and (2). Contractor shall maintain and submit to Metro a daily log that includes time sheets for employees indicating time spent on load checking or responding to Unacceptable Waste incidents.

- (B) When Contractor detects that Unacceptable Waste has been unloaded at the Facility, Contractor shall follow the procedures for handling Unacceptable Waste contained in Section 8.2(h)(2)(C), and Metro shall respond as specified in Section 8.2(h)(D).
- (4) Conditions and Limitations on Reimbursement. The following conditions shall apply to Contractor's right to any reimbursement under subsection (h) of this section:
- (A) Contractor shall demonstrate compliance with the procedures required by Section 8.2(h)(2)(C) and 8.2(h)(3);
  - (B) Contractor shall fully document Contractor's Direct Costs and the reasonableness of Contractor's Direct Costs for testing and managing cleanup of Unacceptable Waste in accordance with state and federal regulations and rules;
  - (C) To the extent that Contractor is requesting reimbursement for cleanup of Unacceptable Waste that was not delivered to the Unacceptable Waste Storage and Handling Area, Contractor shall demonstrate why such waste could not reasonably be delivered to the UWSHA.
- (5) Refusal of Waste by Contractor. Contractor may refuse to accept any waste at the Facility if Contractor can reasonably demonstrate that acceptance of the waste is prohibited by current state or federal regulations, the solid waste permit, or is an Unacceptable Waste. Contractor shall immediately notify Metro's Scalehouse personnel in writing of this refusal, including the justification therefor. For any

**[Sec 8.2(h)(5)]**

portion of the waste which has been unloaded, Contractor shall follow the procedures in this Section 8(h). Records shall be kept by Contractor which contain the following information regarding the party that unloaded the waste: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste, and approximate volume.

**(6) Materials Excluded from Compaction.**

- (A)** It is the responsibility of Contractor to load the compactor so it will function properly without jamming, puncturing the compactor or container walls, causing fire, explosion, or any other damage. In general, materials of concern such as those listed below should either make up a minimal portion and be placed in the middle of the load or be excluded/removed, to avoid problems.
- (B)** Items that shall be excluded from the compactor include, but are not limited to, construction debris (large structural timber or steel), engine blocks, car axles, and other materials that may puncture the walls of the transfer trailer, container, or compactor; concrete or rock (greater than 3 feet in diameter) or large stumps; tires; flammables such as aerosol cans, thinners, and paints; explosives, semi-explosives, metal fencing, and electrical wire. So long as Contractor has used good faith efforts to identify the generator, Contractor shall be compensated for the cost of disposal of these items if they cannot be recycled, in accordance with the Pass Through provisions of this Agreement.
- (C)** Items that shall be accepted and managed with caution during the loading procedure include, but are not limited to: sheetrock, loads of mattresses, construction residue (i.e., sawdust, floor sweepings, mill ends, carpet), large plastic sheeting from agricultural applications, and cement in large quantities, which may cause jamming.

- (7) Contractor's Responsibility for Shipped Waste.** Contractor shall become responsible for all costs associated with the cleanup and management of Unacceptable Waste that has been loaded into a transfer trailer or container, properly sealed and transported to a disposal site. If the seal is unbroken upon arrival at the Disposal Site, Contractor shall not be reimbursed by Metro for any cost associated with the cleanup of the Unacceptable Waste or any material contaminated by it at the disposal site.



**[Sec 8.2]**

**(i) Safety and Emergency.**

- (1) Contractor shall make available to Metro's employees, upon request, all information regarding the safety and emergency program and a copy of the training material.**
- (2) If death, or serious injuries or serious damages are caused by an accident, the accident shall be reported immediately by telephone or messenger to Metro. This immediate notice shall be followed by a prompt and full written report to Metro of all accidents whatsoever that Contractor has knowledge of, arising out of, or in connection with the performance of the work whether on or adjacent to the Facility Site giving full details and statements of witnesses as are available at the time. If additional information becomes available at a later date, Contractor shall file a supplemental report with Metro.**
- (3) If a claim is made by anyone against Contractor or any subcontractor on account of any accident, Contractor shall promptly report such claim in writing to Metro, and the details of such claim.**

**(j) Traffic Control.**

- (1) Contractor shall have responsibility for controlling the movement of traffic on-site and off-site as needed. This shall include the optimal use of queuing lanes and unloading spaces, and the provision of personnel to direct traffic. Contractor shall minimize traffic-related noise on the Facility Site by enforcement of on-site speed limits.**
- (2) Contractor shall assist all disabled vehicles and cause the removal of such vehicles from the traffic ways if necessary.**

**(k) Security. Contractor is responsible for 24-hour site security, 365 days a year, to prevent unauthorized entry and/or Facility misuse. Contractor shall repair or replace all damage to Metro property at the Facility Site resulting from Contractor's negligent or intentionally wrongful failure to provide security to the extent such damage is not covered by Required Insurance. Notwithstanding the foregoing, Metro shall obtain full replacement value comprehensive coverage insurance on its property at the Facility Site, which insurance shall contain a waiver of subrogation in favor of Contractor. Metro shall not be required to waive subrogation to the extent of any deductible ultimately paid by Metro.**

**[Sec 8.2]**

**(1) Source-Separated Public Recycling Station.**

- (1) Contractor shall be required to maintain, clean and operate the recycling station on a daily basis. The recycling station shall act as a receiving area for recyclable materials that are separated prior to entering the Facility. At a minimum, the recycling station shall accept and handle: green, clear and brown glass, tin cans, mixed ferrous metals, mixed non-ferrous metals, aluminum, newspaper, used motor oil, corrugated cardboard and kraft paper, and high-grade office paper, white goods and car batteries. Separate provisions shall be made for Source-Separated tires and Yard Debris for which customers are charged.**
- (2) All Source-Separated materials will be stored in containers. Contractor shall provide sufficient labor and equipment to:**

  - (A) Recover recyclables from public loads that are not Source-Separated, by informing the customer of the materials' recyclability and asking them to set the materials next to their vehicle;**
  - (B) Remove Source-Separated recyclables from public loads in the Facility unloading area, to containers in the recycling station;**
  - (C) High-Grade White Goods;**
  - (D) Assure that all recyclable materials are properly prepared for market;**
  - (E) Assure sufficient containers are available for use;**
  - (F) Transfer materials in filled containers to market and/or a processing center;**
  - (G) Maintain all Facility equipment;**
  - (H) Keep the recycling station free from litter and contaminated material at all times.**
- (3) Metro wishes to encourage the maximum recovery of recyclables possible, and therefore, Contractor shall be entitled to retain all revenue from the sale of Source-Separated materials. Contractor shall report monthly the volume of materials recovered, by type.**

- [Sec 8.2(1)] (4) Contractor shall select markets/brokers for recovered materials. Contractor shall be fully responsible, at its own expense, for transportation of Source-Separated materials to market. No Source-Separated recyclables brought to the Facility will be placed in the tipping area for disposal at the Disposal Site.
- (5) As a principal recyclable, Yard Debris must be accepted at the Facility. Contractor is responsible for providing an area for unloading and storage of the material, and the loading of the transporter's equipment. Metro, at its discretion, may require Contractor to transport and dispose of the Source-Separated Yard Debris at a Yard Debris facility. If Metro elects to have Contractor transport and dispose of the material, the costs associated with these services shall be considered Pass Through Costs.
- (6) Metro will arrange for and be responsible for all costs associated with removing Yard Debris and tires from the site.
- (7) Contractor shall not be entitled to additional compensation for the loss of or fluctuations in recycling revenues due to actions taken by Metro, state or local government.

(m) Materials Recovery Compensation. Metro will compensate Contractor for Recycled Materials recovered from the mixed waste stream in the amount of the avoided costs of transportation and disposal as determined by Metro. Materials Recovery compensation will be adjusted annually as a part of Metro's annual performance review and inspection summary.

Contractor is responsible for finding markets and transporting the Recovered Materials, at his/her own expense, to the markets.

(n) Preferential Treatment. Contractor shall not, by act or omission, discriminate against, treat unequally, or prefer any user of the Facility in the operation of the Facility. Preferential treatment within the site will be considered a default by Contractor and a breach of the Agreement.

(o) Fire Control. The site shall be provided with fire control equipment. Any additional or replacement equipment required for fire protection, and any maintenance shall be the responsibility of Contractor. The equipment shall be tested in accordance with manufacturer's guidelines and any applicable local requirements. Contractor shall provide 24-hour monitored alarm service for the system in place.

(p) Vector Control. Contractor shall conduct the operation of the Facility in a manner considered unfavorable for attracting or breeding rodents and insects.

**[Sec 8.2(p)]**

Strict adherence to these specifications and operation procedures will reduce the potential problems to a minimum. In the event that rodent and insect activity become apparent to Metro, supplemental vector control measures will be initiated by Contractor at Contractor's expense, with the approval of the Department of Environmental Quality. Semi-annual inspections by a certified exterminator shall be conducted at Contractor's expense and a copy of the findings will be forwarded to Metro. Metro may direct Contractor to undertake any recommended actions by the exterminator, at Contractor's expense.

(q) Odor, Dust, and Noise Control. Contractor shall control odor and dust on the site by use of the installed dust control system whenever excessive dust and odor occur, or at the direction of Metro. Alternative dust and odor control measures may be performed by Contractor with the approval of Metro. Contractor's equipment will be operated within limits of noise regulations.

(r) Weighing and Billing System.

- (1) The weighing and billing system located at the Scalehouse will be the responsibility of Metro. Maintenance of the Scalehouse and Metro administration building and the provision of janitorial services will be the responsibility of Contractor. Contractor shall coordinate its activities with Metro personnel. Contractor shall provide and maintain an alternative radio communication link between Metro's personnel and Contractor's spotters in the Facility.
- (2) Metro will be responsible for the operation of the weighing and billing system, and for admitting public, commercial haulers, and industrial accounts into the Facility. Contractor shall not be allowed to operate the weighing and billing system, and shall not be responsible for maintenance of the system's equipment, except for cleaning of the scale pit semi-annually.

(s) Litter Control. Contractor shall conduct a daily litter cleanup covering the entire Facility Site before 10:00 a.m. each day. In addition, Contractor shall collect litter on Tuesdays and Saturdays on all streets used to access the Facility within a reasonable distance of the Facility and in conformance with all local zoning codes and land use permit requirements to ensure:

- (1) All visible, unconcealed litter greater than one square inch in size shall be collected and bagged;
- (2) Bulky items may be separately set along the roadside for collection by Contractor that same day;

- [Sec 8.2(s)]
- (3) Work crews are properly supervised to reduce chances of accidents;
  - (4) Full litter bags are to be transported from the roadside to the Facility, there shall be no disposal charge for this litter;
  - (5) That all required permits are secured and coordination made with local jurisdictions and agencies;
  - (6) Workers will not obstruct traffic; and
  - (7) Contractor may elect, with the approval of Metro, to contract with a community group for local litter collection. However, Contractor is ultimately responsible for all litter collection. Contractor shall also respond and collect any litter reported, the same day the report is received.
  - (8) Metro may, at its option, direct Contractor to perform additional litter control activities for which Contractor will be compensated in accordance with pass through procedures.

(t) Transfer Station Equipment.

- (1) Contractor shall ensure that adequate equipment suitable for arduous, heavy-duty service in connection with a solid waste Facility is utilized by Contractor. The equipment utilized must be specifically designed for the use intended. Modified or "built-up" equipment will not be acceptable. Contractor shall properly protect the equipment and place it in the charge of competent operators.
- (2) Contractor shall make its own determination of the number and type of equipment needed to achieve compliance with the Contract document.

(u) Permits.

- (1) Contractor shall be responsible for obtaining all necessary approvals and permits, complying with all applicable regulations, for the services rendered under this Contract including, but not limited to, appropriate land use approvals and DEQ solid waste permit. Metro shall obtain a hazardous waste generator I.D. number as necessary for operation of the Unacceptable Waste Storage and Handling Area. Copies of all current permits and conditions shall be submitted as soon as they are obtained by Contractor, together with a timetable for obtaining necessary permits not yet approved.

- [Sec 8.2(u)] (2) Any penalties levied by the regulatory agencies for Permit noncompliance due to negligent operation or omission by Contractor, shall be paid by Contractor.
- (3) It is the responsibility of Contractor to implement any testing programs required by a permit. One such example is the Industrial Wastewater Discharge Permit, which requires:
- (A) Continuous recording of flow;
  - (B) Daily grab samples of pH and temperature; and
  - (C) Monthly composite samples of: BOD, oil and grease, total suspended solids, phenolic compounds, and metals of concern.
- (4) Lab costs for the analysis of the samples shall be the responsibility of Contractor. Contractor shall be responsible for cooperating with any changes in law and additional conditions, as required, to remain in compliance with any permits.

(v) Fuel Storage. Contractor may supply fuel storage on-site for Facility equipment at a location and design approved by Metro. Contractor must meet all code and regulatory requirements for installation, transfer, and storage.

(w) Utilities. All utility charges, including water/sewer, surface water, electricity, and the base monthly charge for three telephone lines, shall be the responsibility of Contractor; provided, however, that electricity for the Unacceptable Waste Storage and Handling Area, the monthly charges for additional phone lines utilized by Metro and all phone charges above the base charge for these telephones used by Metro shall be reimbursed or paid directly by Metro.

(x) Coordination. Contractor shall be responsible for coordinating its activities with Metro's waste transport services contractor. Coordination meetings will be held monthly to review the progress of the work, discuss operational problems and procedures, and complaints. It will be the responsibility of Contractor to prepare for and respond to complaints, charges, and allegations brought against it prior to this meeting. Contractor shall also be required to present a monthly report summarizing activities during the prior month and plans and schedules for future activities. The organization of and invitation to the meeting will be the responsibility of Metro.

### Section 8.3 Facility Maintenance

(a) Generally.

- (1) Except as otherwise specified in Section 8.5, Contractor shall have sole responsibility for maintaining the Facility in good working order and condition. Contractor shall be responsible for the maintenance and repair of all equipment and facilities, including the Scalehouse (except for the weighing system), and all plumbing, mechanical, and electrical systems and components, all landscaping, drainage structures, all fixtures and devices related thereto which form a part of, or are installed therein. All stationary equipment shall be suitably painted and/or finished so as to present an acceptable appearance in the opinion of Metro. Contractor shall plan, schedule, and control preventative maintenance to ensure minimum equipment downtime.
- (2) A reporting system shall be instituted to log all preventative maintenance activities and to confirm that the planned work has been performed. The maintenance log shall also record all corrective maintenance activities, including all equipment failures (identifying the failed unit), and recording the necessary action taken.
- (3) Contractor shall prepare and maintain a schedule for replacement of major equipment based on the best available data regarding useful life of the equipment. This replacement schedule shall be revised, updated, and submitted to Metro as Facility operating history becomes available.

(b) Buildings.

- (1) The buildings shall be maintained in good condition at all times. Painted surfaces on the interior and exterior shall be repainted by Contractor as needed.
- (2) Contractor shall be responsible for inspection, lubrication, adjustment, repair, and maintenance of all building systems (including the Scalehouse) to include, but not necessarily be limited to, plumbing, sumps, fixtures, heating, ventilating, and air conditioning systems, components, and devices, fire and dust suppression systems, and radio communications equipment. Any item, component, or device which is lost, damaged, destroyed, or which fails during the Contract period shall be replaced by Contractor at no cost to Metro with a new item, component, device, or fixture of the same type and quality.
- (3) Contractor will be required to test water quality in all sumps twice per year at the direction of Metro at no additional cost. This does not need to additionally be done if it is already required by permits.

**[Sec 8.3]**

(c) **Weighing System.** Maintenance and repair of weighing system scales and associated equipment will be performed by Metro at no expense to Contractor. Contractor shall be required to clean the scale pits semi-annually.

(d) **Commercial and Industrial Vehicles Truck Wash.** Contractor shall operate and maintain the truck wash for commercial and industrial users, including: the inspection of the truck wash sump; cleaning as needed or at least weekly; daily general cleanup of the area; and weekly removal of all accumulated solids from catch basins. Hoses must be maintained in operable condition and nozzles must be attached to hoses at all times. Contractor shall be responsible for maintaining the sewer lines from the truck wash, any required pre-treatment system and for all other parts of the truck wash as well, including their replacement.

(e) **Drives and Pavements.** Repair, replacement, patching, and remarking of drives and pavements inside and outside of structures, but within the Facility's boundaries, shall be the responsibility of Contractor, as needed or directed by Metro.

(f) **Street Cleaning and Maintenance.**

- (1) Contractor shall daily remove all ferrous metal and other debris from the roadway and from all roads used by customers, the truck wash, Facility Site area and the entrance.
- (2) The same area will be kept clean by high pressure washing with water, power broom, or other street cleaning equipment approved by Metro. These areas must be cleaned at least one time per week or as often as necessary, as determined by Metro.
- (3) Contractor shall be responsible for painting and maintaining traffic direction lines on the roadways from the Scalehouse.

(g) **Housekeeping.** Contractor shall:

- (1) Clean the interior and exterior of the main building at least annually from the time the operation commences, and at one month prior to the completion of the Contract;
- (2) Clean all surfaces of accumulated dust within the main building on a weekly basis; and
- (3) Sweep and hose work and vehicle maneuvering areas within the Facility daily, at a minimum, and wash with detergent if necessary. Volatile materials shall be properly stored in covered metal containers. Wastes



**[Sec 8.3(g)(3)]** shall be removed within 24 hours of receipt and shall not be buried or burned on the site or disposed of into storm drains or sanitary sewers.

(4) Contractor shall supply all equipment, supplies, and labor for cleaning.

(h) **Janitorial Services.** Janitorial services to maintain all offices, rest rooms, conference room(s), break room(s), and foyer of the main building, as well as the Scalehouse, will be regularly provided by Contractor. Such services may include vacuuming, dusting, sweeping, mopping, cleaning, buffing floors, stripping and waxing floors, emptying the trash, cleaning windows, scrubbing carpets, cleaning bathroom sinks, toilets, and counters, replacing toilet tissue and paper towels, replace and clean doormats, and provide all janitorial and cleaning supplies as needed.

(i) **Landscape Maintenance.** Landscape maintenance activities shall be regularly undertaken in the area immediately surrounding the Facility. Such activities may include, but not be limited to: planting, weed control, turf maintenance, mulching, mowing, irrigating, mechanical weed control, maintaining turf, pruning, tree staking, and clearance of drainage ways.

#### **Section 8.4 Changes to Operations and Maintenance**

Contractor agrees to provide all goods and services to operate and maintain the Facility in conformance with this Franchise. Any substantial changes to the operational requirements of this Franchise will be subject to the Change Order provisions of this Franchise. If changes are not substantial, Contractor shall provide the goods and services to accommodate the required changes at no additional cost to Metro.

#### **Section 8.5 Unacceptable Waste Storage and Handling**

(a) Contractor shall provide and at all times make accessible to Metro an area as specified in the Facility Specifications, identified in this Agreement as the "Unacceptable Waste Storage and Handling Area" (UWSHA).

(b) Notwithstanding any provisions in this Agreement to the contrary, the UWSHA, including but not limited to all equipment, training of Hazcats and other personnel, day-to-day maintenance and permits necessary for its operation shall be solely Metro's responsibility. Contractor shall nevertheless provide insurance coverage for the UWSHA as is required of Contractor for the remainder of the Facility, and shall be responsible for all Capital Improvements to the area as are reasonably necessary, other than Capital Improvements necessitated by Metro Change Orders, Uncontrollable Circumstances or Metro Fault, which shall be as specified in Section 6.

(c) Metro may establish reasonable rules for delivery of Unacceptable Waste by Contractor to the UWSHA. Contractor shall comply fully with all such rules of which it has actual notice, in writing, from Metro's Authorized Representative. Metro rules for delivery of Unacceptable Waste to the UWSHA shall be for the purpose of ensuring the safety and protection of the Facility and all workers at the Facility.

(d) Metro shall develop a draft performance test plan, rules, contingency test plans and programs for the UWSHA and employees who will operate the UWSHA, commensurate with the plans and programs required of Contractor under Section 8.1(e) of this Agreement. Metro and Contractor shall mutually coordinate to allow Contractor to comment regarding Metro's submittals and for disagreements to be resolved at approximately the same time, and in the same manner as is required of Contractor under Section 7.2(c) of this Agreement.

(e) When Contractor encounters Unacceptable Waste in Municipal Solid Waste delivered to the Facility in conformance with this Agreement, Contractor shall deliver such waste to the UWSHA for management and disposal by Metro personnel. Upon delivery of waste to the UWSHA by Contractor, such waste will become Metro's responsibility and Contractor shall have no further responsibility regarding such waste. If Contractor fails to properly deliver such waste in conformance with rules specified in subsection (c) of this section, such waste shall be handled in conformance with contingency plans established by Contractor for the Facility in general or by Metro for the UWSHA, as appropriate. Contractor shall be liable for damages caused by its failure to deliver Unacceptable Waste to the UWSHA in conformance with such rules.

(f) Metro shall at all times operate the UWSHA in conformance with all applicable law.

## **Section 9. PAYMENTS**

### **Section 9.1 Tip Fee**

For all work required under this Agreement, Metro will make monthly payments to Contractor. These payments shall consist of a payment for the "Debt Service Component," unit price payments for each ton of Municipal Solid Waste received, the Materials Recovery Incentive and "bonus tons" payments (described in Section 8), and any Pass Through Costs. Collectively, these payments shall be referred to as the Tip Fee. Tip Fee payments shall commence for that month, or part thereof, following the Commercial Operation Date of the Facility.

## **Section 9.2 Debt Service Component**

So long as Contractor is operating the Facility in accordance with the terms of the Franchise Agreement, Metro shall pay Contractor the monthly Debt Service component of the Tip Fee. The Debt Service component payment shall be in an amount equal to Debt Service on the Bonds, including fees associated with any credit enhancement, less any reimbursement received by Contractor related to off-site sewer improvements. Metro's obligation to pay the Debt Service Component shall be such that, so long as the Facility is available for the processing of waste in accordance with the terms of the Franchise Agreement and there is no default by Contractor under the terms of the Franchise Agreement, Metro shall pay the Debt Service Component regardless of the number of tons received at the Facility. The Debt Service Component of the Tip Fee shall not be subject to annual adjustment by the Consumer Price Index (CPI) as described below.

## **Section 9.3 Unit Price Payments**

(a) Unit price payments for each ton of waste received at the Facility shall be made by Metro to Contractor, in accordance with the schedule below. The amount of waste to which unit price payments apply will be determined by weighing incoming vehicles at the gate as they enter and then leave the Facility, or by comparison to established tare weights. The unit prices contained in the schedule below will be adjusted on each anniversary of the Commercial Operation Date for use during the forthcoming year, based on 100 percent of the change in the Consumer Price Index entitled "West-A" from the U.S. Department of Labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes, Pacific Cities and U.S. City Average/All Urban Consumers for the first five percent increase or decrease, and 85 percent of the remaining increase or decrease in such index." If the index is discontinued, Metro and Contractor shall negotiate a replacement index.

(b) The following formula will be used to calculate the price adjustment:

$$AI = ((CIx - CIb)/CIb)$$

AI = Percentage Price Adjustment

CIx = Consumer Price Index for the month of the anniversary date of the current year

CIb = Consumer Price Index for the month of the anniversary date of the previous year

(c) The current year shall be one year from the anniversary date of Commercial Operation in which the last adjustment took place. The previous year anniversary date shall be the preceding anniversary date of Commercial Operation on which the last adjustment took place, or the Commercial Operation Date, for the first year of the Agreement.

(d) The price adjustment shall take place as soon as data are available, retroactive to the anniversary month of the Commercial Operation date. The unit prices, as adjusted, shall replace the PER TON O&M PAYMENT schedule below.

(e) **Per Ton O&M Payment**

<u>Category</u>	<u>Tons Per Month</u>	<u>Cost Per Ton</u>
1	First 5,999 tons per month	\$ 13.47
2	Additional tonnage from 6,000 through 7,999	\$ 13.22
3	Additional tonnage from 8,000 through 9,999	\$ 12.72
4	Additional tonnage from 10,000 through 11,999	\$ 9.50
5	Additional tonnage from 12,000 through 13,999	\$ 6.00
6	Additional tonnage from 14,000 through 15,999	\$ 3.50
7	Additional tonnage from 16,000 through 17,999	\$ 3.50
8	Additional tonnage from 18,000 through 19,999	\$ 3.50
9	Additional tonnage from 20,000 through 21,999	\$ 3.00
10	Additional tonnage from 22,000 and greater	\$ 3.00

**Section 9.4 Materials Recovery Incentive**

(a) Contractor will receive a materials recovery incentive for each ton of recyclable material recovered from Municipal Solid Waste delivered to the Facility. Except with regard to materials recovered for use as fuel, the amount of the materials recovery incentive shall be equal to the current per ton disposal fee payment made to Metro's waste disposal contractor by Metro for hauling Municipal Solid Waste from Metro South Station, plus the current per ton fee made to Metro's waste transport services contractor (the current per ton fee equals the per load fee divided by 29.2 tons). The amount of the material recovery incentive for materials recovered for use as fuel in facilities whose primary fuel is not solid waste or refuse derived shall be reduced and otherwise determined by good faith negotiations between the Parties in an attempt to encourage the state solid waste hierarchy's priority of recycling over energy recovery. The payment shall be adjusted on the Commercial Operation anniversary date.

(b) The materials recovery incentive shall not apply to Source-Separated materials, including Source-Separated yard debris, delivered to the Facility, or to recovered materials that are sent to a landfill, mass compost, or a facility whose primary fuel is solid waste or refuse derived.

(c) If Material Recovery Equipment is funded in whole or in part by Metro as part of the Facility Price or under Section 6.12(c), the per ton material recovery incentive shall be adjusted as determined by good faith negotiations between the Parties.

#### **Section 9.5 Processing of Payments**

On or prior to the tenth day of each month, Contractor shall submit to Metro a statement indicating the Tip Fee due to Contractor for the previous month. After approval by Metro, Metro will pay the amount of the statement to Contractor by the tenth day of the following month.

#### **Section 9.6 Offset of Sums Due Metro from Contractor**

Metro may, upon prior written notice to Contractor, offset from any payment otherwise due Contractor other than the Debt Service Component, as much as may be necessary to protect and compensate Metro from any costs or expenses it may have incurred under the terms of this Agreement or may incur due to any breach of this Agreement by Contractor, including statutory liquidated damages, if any. Contractor shall retain the right to submit any dispute with Metro regarding offsets to binding arbitration under Section 13.

#### **Section 9.7 Impact of New State or Local Taxes**

If, following the date of this Agreement, there is an adoption of any new state or local tax which, when considering any corresponding decreases in Contractor's state or local taxes, results in a cumulative increase in Contractor's costs of over \$200,000, then both Parties shall with reasonable diligence and in good faith negotiate an adjustment to the Tip Fee. The adjustment shall be made on the anniversary of the Agreement following notification to Metro of the cumulative \$200,000 impact, and shall be to compensate the Contractor for the future impact of the new tax only. Contractor shall provide to Metro all information and analysis necessary to demonstrate to Metro's reasonable satisfaction that the impact specified in this section has and will continue to occur. If the Parties fail to negotiate a solution within a reasonable time, Contractor may refer the matter to binding resolution pursuant to Section 13.

#### **Section 9.8 Impact of Tonnage Declines**

If the amount of Municipal Solid Waste received at the Facility during any Contract year is less than 95,000 tons, the Parties shall meet to discuss and negotiate the financial viability of the Project. Such negotiations shall not be subject to court challenge or binding resolution pursuant to Section 13.

## **Section 10.**

### **SERVICE AREA**

(a) Metro shall by Required Use Order or other method, direct for disposal at the Facility all Acceptable Waste that is generated within the Service Area that is destined for disposal in a general purpose landfill, to the extent permitted by law, and subject to the following constraints:

- (1) that no more than nine percent of the Acceptable Waste that Metro delivers to a general purpose landfill may be allocated to the existing transfer station in Washington County; and
- (2) that the Facility will not receive more than a Maximum Annual Throughput of 196,000 tons of Municipal Solid Waste per year.

(b) Metro reserves the right to adjust the boundary of the Service Area and shall take other action as necessary during the term or any extended term of this Agreement to maintain these two constraints. Metro shall not change the boundaries in any manner likely to reduce the tons of Municipal Solid Waste to be directed to the Facility unless Metro has reasonably concluded that it is necessary to do so in order to prevent exceedance of the Maximum Annual Throughput. Metro also reserves the right to direct waste from within the Service Area to facilities to produce from the waste products suitable for end use, as an alternative to landfilling. Prior to directing waste from within the Service Area to a facility that will produce products suitable for end use, Metro shall provide written notice to Contractor of Metro's intent. If Contractor is willing and able to process such waste into the same or a comparable product at the same or less cost than Metro's proposed processor, Contractor shall have 120 days from the date of receipt of Metro's notice to begin such processing. If Contractor succeeds in processing such waste as specified in this paragraph, Metro shall not direct such waste for processing at an alternative site. Metro shall require that any residue from a processor of waste generated within the service area destined for disposal in a general purpose landfill be disposed of at the Facility.

(c) Projections for the Service Area are contained in Exhibit L.

## **Section 11.**

### **INSURANCE AND INDEMNIFICATION**

#### **Section 11.1 Required Insurance**

Contractor shall obtain and maintain, or cause to be obtained and maintained, to the extent reasonably commercially available, all Required Insurance and with such coverage and deductible limits as are, in light of the various risks to be insured against, customary and prudent and reasonably commercially available for operations similar to those to be conducted at and in connection with the Facility and reasonably acceptable to Contractor and Metro. Contractor may, as an alternative, engage in a program of self-insurance, with reasonable

reserves set aside by Contractor. In the event Metro and Contractor cannot agree on the types or amounts of coverage or the deductible limits of any Required Insurance, such dispute shall be resolved pursuant to the dispute resolution procedures set out in Section 13.

### **Section 11.2 Delivery of Policies; Certain Required Provisions; Separate Insurance; Claims**

(a) Delivery of Policies. Contractor shall deliver to Metro copies of all policies and certificates of insurance for Required Insurance and any policy amendments and policy renewals. Each policy must provide for thirty (30) days' prior written notice of termination or cancellation or of any change in coverage or deductibles to be given by the insurer to Metro.

(b) Required Provisions. Except as may otherwise be provided in Section 11.1, all Required Insurance shall be carried with responsible insurance companies of recognized standing which are authorized to do business in Oregon and whose claims paying ability is rated not less than "A" by A.M. Best Company, Inc. Required Insurance may be effected by endorsement of blanket insurance and umbrella policies, if requested by Contractor.

### **Section 11.3 Indemnification**

(a) Contractor's Indemnification of Metro. Subject only to the limitations hereinafter set forth in this Section 11.3 hereof, Contractor covenants and agrees that, to the maximum extent permitted by law, it will indemnify Metro against, hold Metro harmless, and defend Metro from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from:

- (1) any injury to or death of any person or persons, or loss of or damage to property caused by Contractor or any of its officers, agents, employees, Subcontractors (or any officer, agent or employee of any Subcontractor), or any person under the control of or acting at the direction of Contractor or any Subcontractor, arising in connection with or as a result of:
  - (A) this Agreement;
  - (B) the performance by Contractor of its obligations hereunder;
  - (C) the use or operation of the Facility by Contractor; or
  - (D) the marketing, sale, distribution, storage, transportation or use of Recovered Materials by Contractor;

- [Sec 11.3(a)]**
- (2) any breach of any expressed or implied warranty arising in connection with any sale of the Facility to a third party;**
  - (3) any condition of the Facility Site, now existing or arising during the term of this Agreement, relating to hazardous or toxic substances (except to the extent such condition is caused by Unacceptable Waste delivered to the Facility Site by waste haulers) or any other condition of the Facility Site, now existing or arising during the term of this Agreement (except to the extent such condition is caused by Unacceptable Waste delivered to the Facility Site by waste haulers) to the extent of damages caused because such waste is not delivered by Contractor to the Unacceptable Waste Storage and Handling Area or is delivered by Contractor in a negligent or intentionally wrongful manner or in violation of Metro rules for delivery of such waste of which Contractor has proper notice;**
  - (4) any infringement, violation or conversion of any patent, license, proprietary right or other similar interest, in connection with the operation of the Facility by Contractor or the design, technology, processes, machinery or equipment used at the Facility by Contractor; or**
  - (5) any loss of the federal tax-exempt status of the interest on any Bonds which were issued with the intent that the interest thereon be and remain excludable for federal income tax purposes from the gross incomes of the owners thereof.**

Notwithstanding anything expressed or implied herein to the contrary and in addition to the indemnity and hold harmless agreements of Contractor set forth above but without regard to any expressed or implied limits on Contractor's indemnity and hold harmless agreement as set forth above, Contractor will indemnify Metro against, defend and hold Metro harmless from (i) any and all penalties, fines and charges of any federal, state or local government having jurisdiction over the Facility, the operations at the Facility or the sale, distribution, storage or other disposition of Recovered Materials to the extent such penalties, fines and charges are attributable to the actions or inactions of Contractor and are not attributable to Metro Fault or Uncontrollable Circumstances and (ii) any and all liabilities, actions, damages, claims, demands, judgement, losses, costs, expenses, suits and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, arising from any violation of Applicable Law by Contractor in connection with or as a result of Contractor's operations at the Facility or Contractor's sale, distribution, storage or other disposition of Recovered Materials or otherwise relating to this Agreement or the performance of its obligations hereunder except to the extent such is attributable to Metro Fault or Uncontrollable Circumstances.

**(b) Metro's Indemnification of Contractor. Subject only to the limitations set forth in this Section 11.3, Metro covenants and agrees that, to the maximum extent permitted by law,**



**[Sec 11.3(b)]**

Metro will indemnify Contractor against, hold Contractor harmless from and will defend Contractor from and against any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any injury to or death of any person or persons, or loss of or damage to property caused by Metro or any of its officers, agents, employees, or any person under the control of or acting at the direction of Metro, arising in connection with or as a result of:

- (1) this Agreement;
- (2) the performance by Metro of its obligations hereunder;
- (3) the use or operation by Metro of the Unacceptable Waste Storage and Handling Area at the Facility, or any liability arising therefrom, except to the extent of Contractor Fault, or except to the extent of damages caused by delivery of Unacceptable Waste to the UWSHA by Contractor in a negligent or intentionally wrongful manner or in violation of Metro rules for delivery of such waste of which Contractor has proper notice; or
- (4) the processing, storage, removal, transport, treatment, remediation or disposal of Unacceptable Waste delivered to the UWSHA by Contractor in conformance with Metro rules except to the extent of damages caused by Contractor's failure to deliver such Unacceptable Waste.

(c) No Indemnification for Negligent or Wrongful Acts. Notwithstanding anything in this Agreement to the contrary, no Party shall be required to indemnify the other Party or hold the other Party harmless from and against or with respect to any loss, damage, claim, cost or expense (including attorneys' fees at trial and on appeal) to the extent attributable to the negligence or intentionally wrongful act of such other Party, its officers, agents or employees. The claims for indemnification by either Party hereunder shall, to the maximum extent possible, be satisfied by and from insurance proceeds payable under any applicable policies of Required Insurance.

(d) Contribution in Case of Joint or Concurrent Negligence. In case of joint or concurring negligence of the Parties giving rise to a loss or claim against either or both of them, each Party shall have full rights of contribution against the other.

(e) Notice of Claims; Defense and Settlement.

- (1) Any Party entitled to indemnification hereunder (the "Notifying Party") shall notify the indemnifying Party (the "Responding Party") within thirty

**[Sec 11.3(e)(1)]**

(30) days of the Notifying Party's receipt of written notice from any third party of any act, omission or occurrence with respect to which the Notifying Party intends to seek indemnification in accordance with this Agreement and, if requested by the Responding Party, shall also supply to the Responding Party all records, data, contracts and documents then in the notifying Party's possession and reasonably believed to be related to such third party claim so as to enable the Responding Party to evaluate such claim for purposes hereof. If the Responding Party replies in writing to the Notifying Party within twenty (20) days from the date it receives such notice that it will undertake the defense of the Notifying Party and will hold the Notifying Party completely harmless with respect to such claims, then no additional attorneys' fees incurred by the Notifying Party in its own defense shall be compensable as a claim entitled to indemnity, unless (1) the Responding Party has agreed to pay such fees and expenses, (2) the Responding Party shall have failed to assume and diligently prosecute the defense of such claim or has failed to employ counsel reasonably satisfactory to the Notifying Party, or (3) the named Parties in any action or proceeding relating to such claim (including any impleaded parties) include both the Responding Party and the Notifying Party, and such Notifying Party has been advised by its counsel that the Notifying Party has a conflicting interest from the Responding Party or that there may be one or more legal defenses available to the Notifying Party which are different from or additional to those available to the Responding Party, in which case, such attorneys' fees shall be a compensable claim by the Responding Party. The Notifying Party will reasonably cooperate in providing information and testimony to assist in the defense of the matter, but all out-of-pocket costs thereof shall be a part of the indemnified amounts for which the Responding Party shall hold the Notifying Party harmless. Control of the defense of the claims shall be the right and responsibility in this case of the Responding Party, which shall have authority to contest, compromise or settle the matter in its reasonable discretion and on the condition that the Responding Party shall have the wherewithal to promptly pay and fully discharge any such compromise or settlement.

- (2) In the event the Responding Party replies in writing within the said twenty (20) days that it accepts responsibility for the indemnified claim regarding the matter in question but does not desire to take an active role in the defense of said matter, then alternatively, the Responding Party may consent to the Notifying Party's selecting an attorney to defend the matter who is reasonably satisfactory to the Responding Party, such consent and such satisfaction with the selection of such attorney to be evidenced in writing. In such case, however, no matter will be settled or compromised

**[Sec 11.3(e)(2)]**

without the written consent of the Responding Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, at any time the Responding Party may elect to assume the active control of the matter, including, if a reasonable basis shall exist therefore, the replacement of the selected counsel by other counsel reasonably satisfactory to it, and thereafter may consent, settle or compromise the case in its reasonable discretion on the condition that the Responding Party shall have the wherewithal to promptly pay and fully discharge any such compromise or settlement.

- (3) If, on the other hand, the Responding Party replies to the Notifying Party within twenty (20) days from the receipt of such notice, but denies its responsibility to indemnify and hold the Notifying Party harmless with respect to such claim, both Parties (to the extent no actual or potential conflict then exists or may in the future exist between them) shall attempt to agree upon a mutually satisfactory attorney to represent them and agree upon who shall control the defense of the claim and who has the authority reasonably to approve any proposal, settlement or compromise. If no such agreement can be reached, or if the Responding Party does not reply to the Notifying Party within twenty (20) days from the date of such notice, each Party may designate its own attorney, whose reasonable fees shall be compensable as an indemnified claim to the Notifying Party. Whether or not any such agreement can be reached or the Responding Party does or does not reply, each Party shall reasonably cooperate in providing information and testimony to assist in the defense of the matter, and the costs thereof (including out-of-pocket expenses) shall be a part of the claims which shall be paid by the Party who is later determined to be responsible therefor under this Agreement. Any indemnification in this Agreement shall include an indemnification of the respective officers, directors, employees, agents, shareholders and successors and assigns of the Notifying Party.

(f) Beneficiaries of Indemnification Provisions. The foregoing indemnification and hold harmless provisions are for the sole and exclusive benefit and protection of Metro, Contractor, Contractor's Related Entities, and their respective officers, directors, officials, agents and employees, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than Metro, Contractor, its Related Entities and their respective officers, directors, officials, agents and employees.

**Section 12.**

**CONTRACT ADMINISTRATION**

**Section 12.1 Books and Records; Reports**

For the purpose of enabling Metro to determine Contractor's compliance with the provisions of the Agreement:

(a) Books and Records.

- (1) Contractor shall maintain all books, records and accounts necessary to record all matters affecting the Tip Fee or other amounts payable by or to Metro under this Agreement, including all materials, machinery, equipment, labor and other additional matters for which adjustments to the Tip Fee are made pursuant to this Agreement, and all records pertaining to the marketing, sale, distribution, storage or disposal of Recovered Materials.
- (2) All such books, records and accounts shall be maintained in accord with generally accepted accounting principles, shall accurately, fairly and in reasonable detail reflect all Contractor's dealings and transactions under this Agreement and shall be sufficient to enable those dealings and transactions to be audited in accord with generally accepted auditing standards.
- (3) For purposes of enabling Metro to verify the computation of the Tip Fee and other amounts payable by or to Metro hereunder, Metro and any agent or agents of Metro selected by it for such purpose shall have the right, from time to time upon five days prior written notice to Contractor, and subject only to such agreements concerning the continued confidentiality of such information as Contractor reasonably shall require, to examine, inspect, audit and copy all such books, records and accounts that are reasonably related to the purpose of the inquiry. Contractor shall fully cooperate with Metro and its agent or agents in the conduct of any and all such examinations, inspections, audits and copying of such books, records and accounts by promptly:
  - (A) making such books, records and accounts available to Metro and its agent or agents;
  - (B) supplying Metro and its agent or agents with such supporting documentation as they shall request in connection therewith, including without limitation any audits, auditor's notes and audit letters whether in the possession of Contractor or any auditor or

accountant retained by or on behalf of Contractor that are not subject to a claim of privilege and are otherwise discoverable; and

- (C) instructing and making good faith efforts to ensure that all officers, agents (including without limitation any outside accountants or auditors retained by or on behalf of Contractor) and employees of Contractor are available to answer any questions concerning or to discuss any information contained or referred to in or omitted from such books, records and accounts.
- (4) All financial audits of transactions related to the issuance and payment of the bonds and records of matters subject to certification by Contractor as a condition of the issuance of the bonds shall be kept by Contractor for the life of the Bonds plus seven years. All other books, records and accounts specified in Section 12.1(a)(1) shall be kept for seven years, except for drawings, plans and records relating to the physical plant of the Facility or the operation thereof, which Contractor shall keep for at least three years following the expiration of the Term (or any longer period required under Applicable Law).

(b) Contractor Reports to Metro. In addition to any reports or other documents, materials or information required to be provided from time to time by Contractor to Metro pursuant to any other provisions of this Agreement, Contractor shall provide Metro with such reports and information at the times required by this Agreement or as otherwise agreed to by the Parties.

## **Section 12.2 Metro Access**

Metro and its agents, licensees or invitees, and representatives of governmental regulatory agencies may, upon proper identification, visit or inspect the Facility or Facility Site at any reasonable time during the period of acquisition, construction and installation and Performance Test of the Facility and during the Term of this Agreement after giving Contractor reasonable advance notice; provided, however, that a Metro Authorized Representative may inspect the Facility and the Facility Site during regular business hours without notice. Any such visits shall be conducted in a manner that does not cause unreasonable interference with Contractor's operations. Contractor shall have reasonably available "as built" plans for the Facility for inspection by Metro and its Authorized Representative. Any Person on the Facility Site, whether pursuant to this Section 12.2, or in connection with the Performance Test or otherwise, shall comply with all of Contractor's reasonable safety rules and regulations.

### **Section 12.3 Representatives and Notices**

(a) **Change of Authorized Representatives.** Metro or Contractor may change their respective Authorized Representative upon five (5) Business Days' prior written notice to the other Party.

(b) **Manner of Giving Notices.** Except as may otherwise be expressly provided hereunder, all approvals, requests, reports, notices, communications or other materials or information required or permitted to be made or given by a Party to the other Party hereunder shall be deemed to have been given or made only if the same is reduced to writing and delivered, either personally or by means of the United States Postal Service (registered or certified mail, postage prepaid), to the Metro Authorized Representative or Contractor Authorized Representative, as the case may be, at their respective addresses as set forth herein.

(c) **When Notices Deemed Given.** For all purposes of this Agreement, any such approval, request, report, notice, communication or other material or information which is delivered by means of the United States Postal Service as aforesaid shall be deemed to have been delivered as of the third Business Day next following the date of the postmark thereof (if mailed from and for delivery within Oregon), and otherwise as of the fifth Business Day following the date of the postmark thereof.

(d) **Notice Addresses.** All notices, requests and other communications to either Party hereunder shall be in writing and shall be given to such Party at the following address, or such other address as such Party may hereafter specify for the purpose by appropriate notice to the other Party:

If to Metro, at:

Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736  
Attention: Director of Solid Waste

with copies of any notice, request or other communication regarding any (1) Dispute, (2) Technical Dispute, (3) request for any necessary consent or waiver, (4) exercise of an option under this Agreement, (5) exercise of a right of first refusal under this Agreement, (6) occurrence or alleged occurrence of a Contractor Event of Default, or any event which with the passage of time or the giving of notice would give rise to a Contractor Event of Default, or (7) occurrence or alleged occurrence of a Metro Event of Default, or any event which with the passage of time or the giving of notice would give rise to a Metro Event of Default, to:

Metro  
600 N.E. Grand Avenue  
Portland, OR 97232-2736  
Attention: General Counsel

If to Contractor, at:

Willamette Resources, Inc.  
2215 N. Front Street  
Woodburn, OR 97071  
Attention: Corporate Secretary

with copies of any notice, request or other communication regarding any (1) Dispute, (2) Technical Dispute, (3) request for any necessary consent or waiver, (4) exercise of an option under this Agreement, (5) exercise of a right of first refusal under this Agreement, (6) occurrence or alleged occurrence of a Contractor Event of Default, or any event which with the passage of time or the giving of notice would give rise to a Contractor Event of Default, or (7) occurrence or alleged occurrence of a Metro Event of Default, or any event which with the passage of time or the giving of notice would give rise to a Metro Event of Default, to:

Ball, Janik & Novack  
#1100 One Main Place  
101 SW Main Street  
Portland, OR 97204

## **Section 13. DISPUTE RESOLUTION**

### **Section 13.1 Dispute Resolution**

(a) Good Faith Efforts to Resolve Disputes. The Parties shall attempt to resolve any Dispute by good faith negotiations to resolve the same to the mutual satisfaction of both Parties.

(b) Procedure for Initiating Dispute Resolution Processes. Whenever a Party is entitled to and desires to initiate the dispute resolution process set forth in this Section 13, it shall do so by giving a Dispute Notice to the other Party. Within five (5) days after the delivery of a Dispute Notice, the Parties shall meet for the purpose of negotiating a resolution of the related Dispute.

(c) Technical Disputes During Design and Construction.

- (1) If, within twenty (20) days after the delivery of a Dispute Notice, the Parties are unable to negotiate a mutually satisfactory resolution of the related Dispute and such Dispute:
  - (A) is a Technical Dispute arising during the course of design, acquisition, construction and installation of the Facility;
  - (B) such Technical Dispute would result in an increase in the Facility Price of less than \$50,000; and
  - (C) the effect of such a change, when aggregated with all other changes made under this subsection (c), does not total more than \$50,000 in the aggregate, then Contractor shall make such change; provided that should such change, when aggregated with all other changes made under this subsection (c), total less than \$50,000 in the aggregate, Contractor shall be solely liable to pay such amount and shall not be entitled to directly or indirectly recover from Metro any such excess either through an increase in the Facility Price, the Tip Fee or otherwise.
- (2) If any change that is the subject of any Technical Dispute, when added to other changes made to the Facility Price pursuant to this subsection (c) (including for this purpose changes that but for subsection (c)(1) would have been made to the Facility Price), would result in an aggregate total change in the Facility Price of more than \$50,000 but less than \$150,000, such Technical Dispute shall be submitted for resolution by a technical opinion of an Independent Engineer, selected randomly from the predesignated list of engineers set forth in Exhibit E to this Agreement, or selected from time to time by the Parties in writing signed by the Authorized Representatives of both Parties. If the Independent Engineer is called upon to settle a Dispute under this section, the Independent Engineer shall, as part of its decision, certify that the amounts in dispute more likely than not qualify the Dispute for resolution by the Independent Engineer under this section. The decision of the Independent Engineer shall be conclusive and binding on the Parties and specifically enforceable in any court of competent jurisdiction.
- (3) If any change that is the subject of any Technical Dispute, when added to other changes made to the Facility Price pursuant to this subsection (c) (including for this purpose changes that but for subsection (c)(1) would have been made to the Facility Price), would result in an aggregate total change in the Facility Price of more than \$150,000, such Technical



Dispute shall be submitted for dispute resolution in accordance with the provisions set forth in Section 13.2 hereof.

### **Section 13.2 Arbitration**

(a) If any Dispute (other than a Technical Dispute subject to the dispute resolution provisions of Section 13.1(c)) is not resolved by negotiations of the Parties within sixty (60) days after the date of delivery of the Dispute Notice, either Party shall have the option to submit such Dispute for resolution pursuant to arbitration as provided in this Section 13.2 by delivering a request for final and binding arbitration to the other Party (an "Arbitration Request").

(b) Each arbitration proceeding pursuant to this Section 13.2 shall be governed by and conducted in accordance with the following provisions:

- (1) The arbitration shall take place in Portland, Oregon, and shall be conducted in accordance with the Rules of Arbitration of the American Arbitration Association (AAA). The appointing authority shall be such group as the Parties may mutually agree upon within five (5) days of the date of the Arbitration Request or, in the absence of such mutual agreement, the Arbitration Service of Portland (ASP), or if the ASP is not available, the appointing authority of the AAA.
- (2) The Parties shall agree on one arbitrator from a panel of persons qualified with ASP or AAA and knowledgeable in the area which is the subject of the dispute in question, such selection to be made within fifteen (15) days of the Arbitration Request. If the issue involves a question regarding insurance then the Parties agree that the Arbitrator shall be chosen from those particularly experienced in such matters. If the Parties are unable to agree on an arbitrator within fifteen (15) days following the Arbitration Request, an arbitrator shall be appointed forthwith by the ASP or the AAA, as applicable.
- (3) In arriving at a decision, the arbitrator shall consider the pertinent facts and circumstances and be guided by the terms and conditions of this Agreement, as applicable. If a resolution of the Dispute is not found in the terms and conditions of this Agreement, the arbitrator shall apply the principles of the laws of the State of Oregon. The arbitration award shall be considered an Oregon award. The decision and award of the arbitrator shall be final and binding.
- (4) In making any award, the arbitrator shall, if possible, designate the Party which is the prevailing Party (the "Prevailing Party") and the Party which

is the non-prevailing Party (the "Non-prevailing Party") with respect to the Dispute in question. The arbitration fees and costs, including reasonable attorneys' fees for the Prevailing Party, shall be borne by the Non-prevailing Party; provided that if the arbitrator does not or is unable to designate a single Prevailing Party with respect to the Dispute in question, then and in such event the arbitrator, in making the award, shall determine the proportion of the costs, expenses and attorneys' fees incurred in connection with such arbitration which are to be borne by each Party.

- (5) Any award involving the payment of any sums by one Party to the other (other than any payments relating to the costs, expenses and attorneys' fees incurred in connection with such arbitration or any payments to be made in the future by one Party to the other pursuant to the terms of this Agreement) shall include interest from the date of any breach or other violation of this Agreement or, if the award does not specify the date of such breach or other violation, from the date of the award. The arbitrators shall also fix an appropriate rate of interest from the date of the breach or other violation to the date when the award is paid in full which rate shall be the prime commercial lending rate published from time to time by the United States National Bank of Oregon at its principal office in Portland, Oregon, for ninety (90) day loans for responsible and substantial commercial borrowers.
- (6) In the course of arbitration, the terms and provisions of this Agreement which are then in effect shall remain in effect between the Parties, except to the extent that any such terms and provisions are the subject matter of the pending arbitration.
- (7) All notices to be given in connection with the arbitration shall be in writing. All notices shall be sent by registered or certified mail, return receipt requested to the addresses of the Parties as stated in the notice provisions of the Agreement as amended from time to time.

## **Section 14.           DEFAULT AND TERMINATION**

### **Section 14.1 Events of Default by Contractor**

Each of the following shall constitute a Contractor Event of Default for purposes of this Agreement:

(a) Due to reasons other than Metro Fault or Uncontrollable Circumstances, Contractor fails to cause the Facility to pass the Performance Test and achieve the Commercial Operation Date by the last day of the period therefor permitted under this Agreement;

(b) Due to reasons other than Metro Fault or Uncontrollable Circumstances, Contractor after receiving sixty (60) days prior notice of deficiency fails to meet any Performance Standard as set forth in Section 8 of the Franchise after the Commercial Operation Date; provided, however, that if such deficiency is of a nature such that cure or correction reasonably cannot be completed within such sixty (60) day period, if Contractor begins such cure or correction within such sixty (60) day period and thereafter diligently pursues to completion such cure or correction, Contractor shall have such additional time as is reasonably necessary to complete such cure;

(c) The exercise by the Trustee of its rights to accelerate the maturity of the Bonds or to foreclose upon to enter into possession of the Facility in accordance with the Bond Documents as a result of any act or failure to act by Contractor;

(d) The repeated or persistent failure or refusal by Contractor to fulfill any of its other material obligations under the Agreement, provided that Metro shall have given Contractor sixty (60) days prior written notice with reasonable detail giving notice of the failure to meet a specific obligation and Contractor shall have failed to remedy the deficiency within said sixty (60) days unless such failure or refusal shall result from Metro Fault or Uncontrollable Circumstances; provided, however, that if such deficiency is of a nature such that cure or correction reasonably cannot be completed within such sixty (60) day period, if Contractor begins such cure or correction within such sixty (60) day period and thereafter diligently pursues to completion such cure or correction, Contractor shall have such additional time as is reasonably necessary to complete such cure;

(e) There shall be entered, without the consent of Contractor, a decree or order under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or similar law, or appointing a receiver, liquidator, trustee or similar official of Contractor or any substantial part of its properties, and such decree or order shall remain unstayed and in effect for sixty (60) consecutive days;

(f) Contractor shall file a petition or answer or consent seeking relief under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or other similar law, or shall consent to the institution of proceedings thereunder or to the filing of any such petition or to the appointment or taking possession of a receiver, liquidator, trustee, or other similar official of Contractor or of any substantial part of the properties of Contractor, or shall make a general assignment for the benefit of creditors;

(g) Delinquency in the payment of any taxes or assessments owed by Contractor under this Agreement; or

(h) Except to the extent Metro does not pay Contractor the Tip Fee required under Section 9 above, or except upon the occurrence of other Metro Fault hereunder, the failure of Contractor to renew any Credit Enhancement device prior to its expiration date, such that Credit Enhancement remains in place for the life of the Bonds.

#### **Section 14.2 Events of Default by Metro**

Each of the following shall constitute a Metro Event of Default for purposes of this Agreement:

(a) Due to reasons other than Contractor Fault, Metro shall fail to perform obligations under Section 9.2 hereof and such failure shall continue for a period of ninety (90) days;

(b) The repeated or persistent failure or refusal by Metro to fulfill any of its other material obligations under this Agreement, provided that Contractor shall have given Metro sixty (60) days prior written notice with reasonable detail giving notice of the failure to meet a specific obligation unless such failure or refusal shall result from Contractor Fault or Uncontrollable Circumstances; provided, however, that if such deficiency is of a nature such that cure or correction reasonably cannot be completed within such sixty (60) day period, if Metro begins such cure or correction within such sixty (60) day period and thereafter diligently pursues to completion such cure or correction, Metro shall have such additional time as is reasonably necessary to complete such cure;

(c) The exercise by the Trustee of its rights to accelerate the maturity of the Bonds or to foreclose upon or enter into possession of the Facility in accordance with the Bond Documents as a result of any act or failure to act of Metro;

(d) There shall be entered, without the consent of Metro, a decree or order under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or similar law, or appointing a receiver, liquidator, trustee or similar official of Metro or any substantial part of its properties, and such decree or order shall remain unstayed and in effect for sixty (60) consecutive days; or

(e) Metro shall file a petition or answer or consent seeking relief under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or other similar law, or shall consent to the institution of proceedings thereunder or to the filing of any such petition or to the appointment or taking possession of a receiver, liquidator, trustee, or other similar official of Metro or of any substantial part of the properties of Metro, or shall make a general assignment for the benefit of creditors.

### **Section 14.3 Remedies for Default**

(a) Metro Remedies.

- (1) Upon the occurrence of any of the events described in 14.1 above and expiration of the cure periods provided therein, Metro shall provide Contractor with a written notice (a "Default Notice") specifying Contractor Event of Default that has occurred.

In addition to its monetary damages, specific performance (if applicable) and other remedies provided by this Agreement or available under applicable law upon the occurrence of a Contractor Event of Default, Metro shall have the right to terminate this Agreement:

- (A) if any of Contractor Events of Default referred to in Section 14.1(b) or (d) or (g) above shall occur and be continuing for ninety (90) days beyond the date that Contractor receives the Default Notice;
- (B) if any Contractor Event of Default referred to in Section 14.1(a), (c), (e), (f) or (g) shall occur.
- (2) If this Agreement is terminated by Metro due to a Contractor Event of Default:
- (A) Contractor shall pay Metro an amount sufficient to defease the Bonds, which amount shall take into account funds from Bond proceeds which are available for the redemption of the Bonds;
- (B) Contractor shall, in a timely manner to permit the continued operation of the Facility:
- (i) grant to Metro a nonexclusive sublicense to any patents, trademarks, copyrights and trade secrets and "shop rights" as necessary for, and limited to, the operation of the Facility;
- (ii) supply at their fair market price any proprietary components needed for continuing the operation of the Facility;
- (iii) assign for the benefit of Metro all maintenance and supply contracts and all contracts relating to the sale or other distribution of Recovered Materials from the Facility and supply Metro with the names, addresses and other records

**[Sec 14.3(a)(2)(B)(iii)]**

of Contractor relating to the sale or other distribution of such Recovered Materials;

- (iv) assist Metro by providing initial training of personnel as may be reasonably necessary to enable Metro to continue with operation of the Facility and Metro shall pay the Contractor for its Direct Costs, to the extent of Cost Substantiation, incurred by Contractor in the performance of such services;
  - (v) provide non-technical and technical design, construction and operational information, whether or not proprietary, including technical specifications and as-built reproducible plans of the Facility and assign or provide any other license, permit or consent which is necessary for the operation, maintenance and repair of the Facility;
  - (vi) subject only to the rights of the Trustee under the Bond Documents, at Metro's request and sole option sell the Facility to Metro. Metro may acquire the Facility pursuant to the provisions of Section 3.5 except that if Metro shall exercise its right to purchase as a consequence of this Agreement being terminated for Contractor Default the Fair Market Value of the Facility shall be determined by excluding any value attributed to the Facility by reason of the Facility being capable of being used as a solid waste disposal or transfer facility. Metro may offset against the purchase price as so determined any sums due and owing to Metro from Contractor.
- (3) In the event of any such termination, Contractor shall be entitled to payment of any Tip Fee payments due prior to the effective date of Metro's notice of termination of this Agreement, but only to the extent the amount such Tip Fee payments exceeds amounts owed to Metro. Metro shall retain the right to pursue any cause of action or assert any claim or remedy it may have against Contractor.

**(b) Contractor Remedies.**

- (1) Upon the occurrence of any of the events described in Section 14.2 above and expiration of the cure periods provided therein, Contractor shall provide Metro with a written notice (a "Default Notice") specifying the Metro Event of Default that has occurred.

- (2) In addition to its monetary damages, specific performance (if applicable) and other remedies provided by this Agreement or available under applicable law upon the occurrence of a Metro Event of Default, Contractor shall have the right to terminate this Agreement:
- (A) if a Metro Event of Default referred to in Section 14.2(a), (c), (d) or (e) shall occur; or
  - (B) if any Event of Default referred to in Section 14.2(b) shall occur and be continuing beyond the cure period provided in Section 14.2(b).
- (3) If this Agreement is terminated by Contractor due to a Metro Event of Default, Metro shall pay Contractor an amount equal to:
- (A) the Tip Fee payable up to the effective date of termination; plus
  - (B) all Direct Costs incurred by Contractor in connection with such termination, including cancellation charges, if any, from contractors, subcontractors, or suppliers, for which Contractor shall provide Cost Substantiation; plus
  - (C) amounts expended by Contractor in connection with Capital Improvements, if any, to the extent not otherwise recovered by Contractor under this Agreement; plus
  - (D) amounts that Contractor is required to expend to retire the Bonds, the Additional Bonds and the Additional Interim Debt; provided that the full amount of such amounts shall be paid directly by Metro to the Trustee; minus
  - (E) the amount of any adjustments favorable to Metro.
- (4) Upon termination by Contractor for Metro Default, Contractor shall retain the Facility.

#### **Section 14.4 Termination Due to Uncontrollable Circumstances**

(a) Upon the occurrence of an Uncontrollable Circumstance, Metro shall calculate any increase in the Facility Tip Fee as a result of such event. Metro shall compare the Tip Fee as increased by a result of such event to the tipping Fee which would have been if such event had not occurred. Such comparison shall be computed on a Tip Fee per ton basis after adjustment for other increases provided for in this Agreement. For purposes of this Section

14.4 Metro shall take into account the aggregate of any such increases in the Tip Fee attributable to Uncontrollable Circumstances occurring since the Commencement Date.

- (b) Upon the occurrence of any Uncontrollable Circumstance which:
- (1) prevents the Facility from Processing any Acceptable Waste for a period of one hundred twenty (120) consecutive days or one hundred twenty (120) days (whether or not consecutive) out of any one hundred eighty (180) day period; or
  - (2) If the cumulative increase in the Tip Fee as a result of any and all Uncontrollable Circumstances is greater than twenty percent (20%), excluding all adjustments to the Tip Fee otherwise authorized by this Agreement, (including without limitation inflationary adjustments and adjustments due to Metro Change Orders or Metro Fault);

Metro shall have the right to terminate this Agreement, any such termination to be effective upon ninety (90) days' prior written notice of such termination provided by Metro to Contractor and provided that such notice is given by Metro within ninety (90) days of Metro receiving notice of specific Uncontrollable Circumstances which causes an increase in the Tip Fee in excess of the amount provided in 14.4(b) above. If Metro fails to terminate within said time period Metro may terminate pursuant to this Section only if a separate Uncontrollable Circumstance causes a further increase in the Tip Fee. Upon such termination, Metro shall pay Contractor the amount provided for in Section 14.3(b).

(c) The foregoing to the contrary notwithstanding, if Metro provides Contractor with written notice of its intention to terminate this Agreement pursuant to Section 14.4(b)(2), then, if Contractor elects to pay for any increase in the Tip Fee in excess of twenty percent (20%) Metro's right of termination may not be exercised.

## **Section 15. MISCELLANEOUS**

### **Section 15.1 Entire and Complete Agreement**

This Agreement and the exhibits hereto constitutes the entire and complete agreement of the Parties with respect to the subject matter it contains, and supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments and representations, whether oral or written, between the Parties; provided however, that in the event of any conflict between the language set forth in this Agreement and any of the Exhibits hereto, the language in this Agreement shall prevail over any such conflicting language in the Exhibits and this



Agreement shall be interpreted as if such conflicting language in the Exhibit were not a part of the agreement between the Parties hereto.

### **Section 15.2 Binding Effect**

Subject to Section 15.12, this Agreement shall bind and inure to the benefit of the Parties to this Agreement and any successors thereto, whether by merger, consolidation, or transfer of the assets relating to the Facility.

### **Section 15.3 Applicable Law**

This Agreement shall be governed and construed by, under and in accordance with the laws of the state of Oregon.

### **Section 15.4 Compliance with Law, Required Permits and Royalties, Fees**

(a) Contractor shall keep itself fully informed of and shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, and orders pertaining in any manner to this Franchise, and those rules, regulations, and orders of any agency or authority having jurisdiction over the work of those persons employed or engaged therein.

(b) Contractor shall obtain, maintain and renew all Required Permits necessary to fulfill its obligations under this Agreement and shall pay all taxes, local government assessment costs, royalties, fees, license payments, and similar expenses required with respect to Contractor's performance under this Agreement. To the extent permitted by Applicable Law, Metro shall provide Contractor with any information or documents in its control that Contractor reasonably requests in order to obtain or maintain the Required Permits. Metro agrees to use its reasonable efforts to assist Contractor in obtaining and maintaining all Required Permits.

### **Section 15.5 Headings**

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

### **Section 15.6 Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

### **Section 15.7 Amendment or Waiver**

Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by a written instrument signed by the Parties.

### **Section 15.8 Severability**

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement, that to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein whether or not such amendments, modifications or supplements are agreed to, the other provisions of this Agreement, to the extent not determined to be invalid, illegal or unenforceable, shall remain in full force and effect.

### **Section 15.9 Contracts or Approvals**

Except as otherwise expressly provided herein, in any instance where the consent or approval of Metro or Contractor is required hereunder or under any agreements in connection with any transaction contemplated hereby, such consent or approval shall not be unreasonably withheld or delayed.

### **Section 15.10 Estoppel Certificates**

(a) Each Party, upon not less than thirty (30) days' prior written notice from the other but not more than twice each Fiscal Year, shall execute, acknowledge and deliver a statement in writing:

- (1) certifying that this Agreement is unmodified (or if there have been modifications, stating the modifications); and
- (2) stating whether or not to the knowledge of the Party signing such certificate, the requesting Party is, or with the passage of time or the giving of notice will be, in default in performance of any covenant, agreement or condition contained in this Agreement and, if so, specifying each such default of the other Party which the Party signing has knowledge.

(b) Each Party acknowledges and agrees that any such statement delivered under this Agreement may be relied upon by third parties not a party to this Agreement.

## **Section 15.11            Limitation of Liability of Metro**

(a)    The obligations of Metro under this Agreement are limited obligations payable solely from such amounts as may lawfully be paid by Metro for services of the type required to be rendered by Contractor under this Agreement. The obligations of Metro hereunder shall not be payable from the general funds of Metro and the incurrence or non-performance of such obligations shall not constitute or create a legal or equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of Metro or upon any of its income, receipts, or revenues other than upon its income receipts and revenues derived from its regulation and operation of a system for the disposal of solid waste within its boundaries. Metro shall in establishing rates for solid waste disposal comply with all material requirements of the Bond Documents.

(b)    The execution and delivery of this Agreement by Metro shall not impose any personal liability on the members, officers, employees or agents of Metro. No recourse shall be had by Contractor for any claims based on this Agreement against any member, officer, employee or other agent of Metro in his individual capacity, all such liability, if any, being expressly waived by Contractor by the execution of this Agreement.

## **Section 15.12            Assignment; Release**

This Agreement may not be assigned or encumbered by either Party without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed), except that, without such consent:

- (a)    either Party (or any permitted assignee thereof) may make such assignments for security purposes as may be required in connection with any financing or refinancing in respect of all or part of the Facility or any modification thereof or addition thereto,
- (b)    Contractor (or any permitted assignee thereof) may assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any other entity with which or into which Contractor (or such permitted assignee) shall merge or consolidate or to which Contractor (or such permitted assignee) shall transfer all or substantially all of the assets related to the Facility, and
- (c)    Contractor (or such permitted assignee) may assign its rights and obligations hereunder to any Related Entity without obtaining Metro's consent, provided that no such assignment may be accomplished unless Contractor (or such permitted assignee) shall simultaneously assign or otherwise transfer to all of Contractor's (or such assignee's) rights and obligations under the Agreement. After the effective date of the assignment of the rights and obligations of Contractor under

the terms of this provision, Contractor shall have no continuing rights or obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date set forth below.

METRO

WILLAMETTE RESOURCES, INC.

By: \_\_\_\_\_  
Rena Cusma

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

Title: Executive Officer

Title: Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

1147b

NO. 3

Councilor Judy Wyers

**PRESENTATION TO METRO COUNCIL  
SOLID WASTE COMMITTEE**

by

Willamette Resources, Inc.

August 3, 1993

Below is a summary of the major provisions of the negotiated franchise agreement between Metro and Willamette Resources, Inc (WRI) as well as a discussion of some of the systemic reasons for the project.

1. The term of the agreement is 20 years (the same term as the bond issuance). The agreement can be extended up to 20 additional years in five year increments, or the franchise can be allowed to expire. Metro may purchase the facility at the end of the term at Fair Market value. During the agreement Metro has the right of first refusal.
2. The facility will be financed through the issuance of approximately 10 million dollars of project bonds, of which approximately 1 million is taxable for the land. Of the remaining 9 million, the money is spent for the following: 10% for offsite improvements (realignment of the road, extension of sewer and water) 70% for the building and equipment, 20% for indirect costs such as contingencies, engineering fees and bond reserves.

The proceeds from the bonds are loaned to WRI who must provide credit enhancement. The enhancement will be in the form of a letter of credit. WRI is responsible for repayment of the bonds and will receive a monthly lump sum payment from Metro for this amount as long as they are not in default of the agreement.

3. The facility design consists of a flat tipping floor and waste sorting area, offices, truck wash, unacceptable waste building, scalehouse and public recycling area. The interior space will be over twice as large as Metro South. No material recovery equipment will be installed initially, however the infrastructure for such equipment will be in place. The contractor will receive the full avoided cost for recovered materials and may negotiate with Metro for future financing of material recovery equipment. If Metro participates in financing additional equipment, the amount of avoided cost is up for negotiation. Staff does not believe it is prudent to install material recovery equipment until the waste received at the facility is examined. Initial recovery is expected to be 4-5%.

4. Metro will process requests for payments during construction, ensuring that the conceptual design agreed upon is built. If funds are available at the end of construction, the Contractor may apply such funds to the acquisition of materials recovery equipment, except that a baler must be the first equipment acquired.

5. Once constructed, the facility will be performance tested to determine its ability to receive, process and compact up to its design capacity of 825 tons per day.

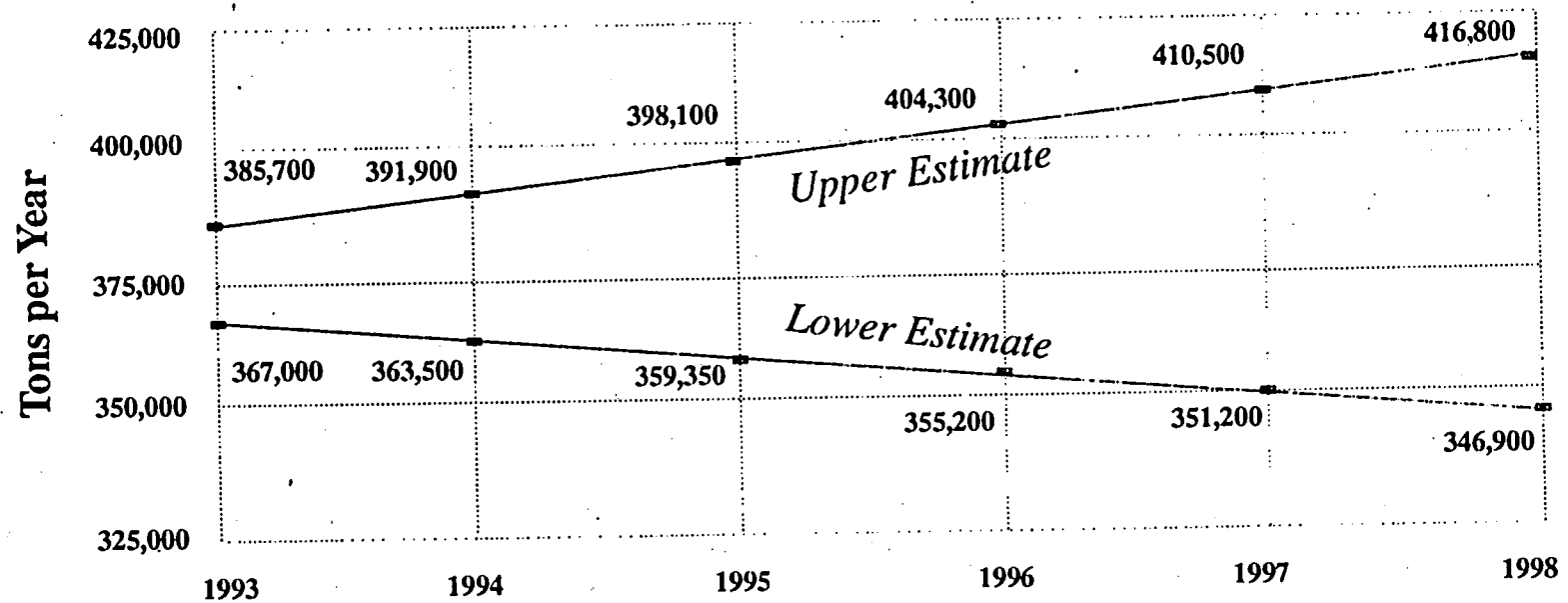
6. The facility will be open 363 days a year. Weekday hours are 6 am to 6 pm Monday through Friday for commercial only and 8 am to 6 pm weekends for both public and commercial. Metro will operate the scalehouse and unacceptable waste storage area.

7. WRI will be paid a monthly tip fee which consists of mainly an O&M fee and debt service payment. In FY95-96 (the first full year of debt service), the average per ton cost will be \$24.18 (\$16.44 O&M and \$7.74 debt), as compared to \$25.22 at Central and \$10.60 at South. The impact on the rate is \$3.44 in FY 94-95, \$4.15 in 95-96 and 4.32 in 96-97. If the facility is not built, the cost at South would be \$9.23 and at Central \$23.13. The O&M payment is escalated by 100% of the CPI up to 5%, and 85% of the CPI for over 5%. If new taxes are implemented which increase costs more than \$200,000 (considering offsets), Metro agrees to negotiate tip fee increases for the future impact of the tax. Additional financial information is attached.

8. All waste within a designated service area is to be directed to the facility by use of Metro's flow control authority. In FY94-95, this will be about 130,000 tons, escalating to 163,000 tons in 2013. Capacity is 196,000 tons per year. Forest Grove station will continue to operate at about 9% of the regional tonnage or 66,000 tons. Metro reserves the right to direct waste to other facilities which can produce products from the waste, such as compost, energy or tennis shoes. If tonnage drops below 95,000 tons, Metro is obligated to meet with WRI to discuss the financial viability of the project, however Metro is under no obligation to take any action.


# Tonnage to Metro South

*(Assumes no additional transfer stations)*



*Source: May 11, 1993 Memorandum From Terry Petersen to John Hauser*



**DATE:** May 11, 1993  
**TO:** John Houser, Council Analyst  
**FROM:**  Terry Peterson, Planning and Technical Services Manager  
**RE:** Metro South Tonnage Forecasts

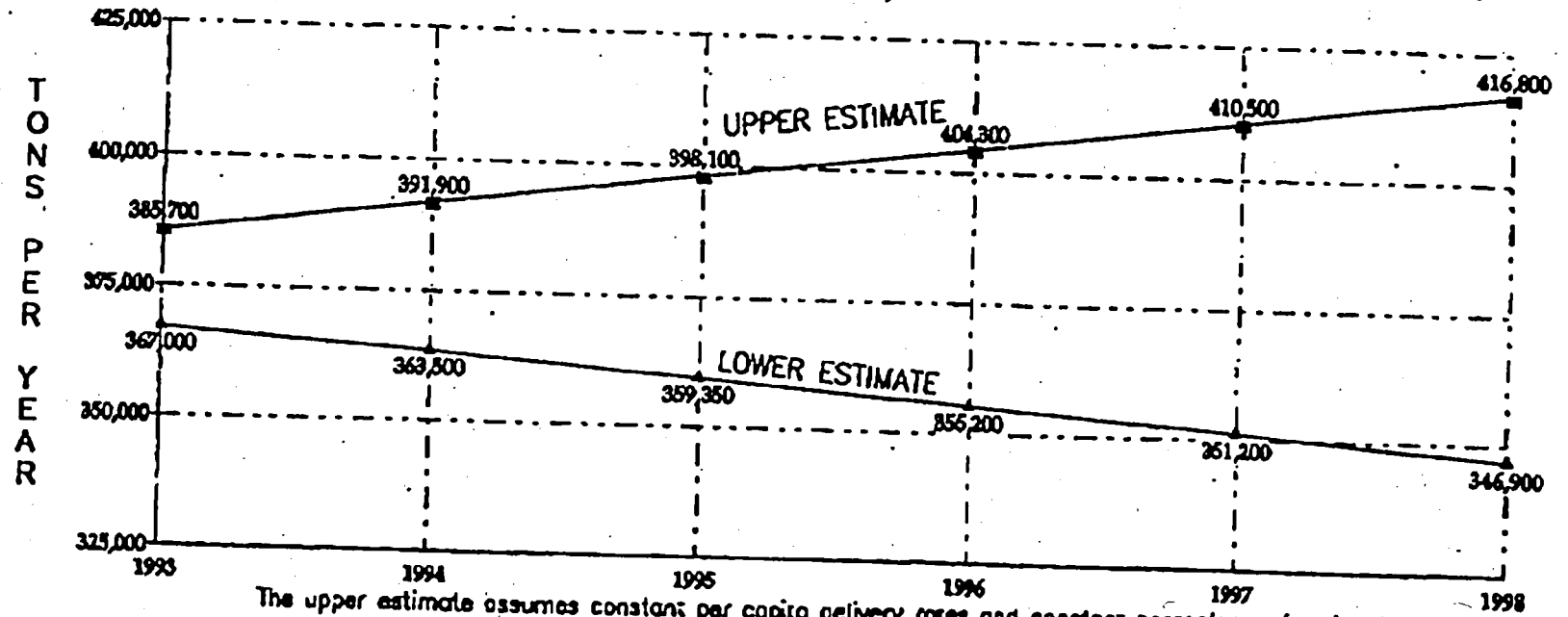
On the back of this memo are the Metro South tonnage forecasts you requested. As you know, future deliveries to transfer stations can only be approximated. Therefore, we have provided you with upper and lower estimates that should be used according to the particular issue being addressed.

We believe the upper estimate, which is based on current per-capita disposal rates, is most appropriate for facility design and operational planning at Metro South. If the tonnage continues to increase at Metro South because of population growth, as depicted by the upper estimate operational problems (e.g., material recovery and traffic) will worsen. These problems could be relieved by the transfer station at Wilsonville.

In contrast to the facility design issues, a lower forecast is appropriate for budgeting in order to avoid overestimating future revenues. The lower estimate, which assumes a decreasing per-capita disposal rate, corresponds to the methodology used in the most recent 5-year budgeting forecast.

Please let me know if we can answer any additional questions regarding the tonnage forecasts.

### TONNAGE TO METRO SOUTH (Assumes no additional transfer stations.)



The upper estimate assumes constant per capita delivery rates and constant percentage of regional waste to transfer stations. The lower estimate assumes continuation of FY 89-90 - FY 92-93 decreasing trend in per capita delivery rates and percentages of regional waste to transfer stations.

### HISTORICAL TONNAGES TO METRO SOUTH TRANSFER STATION

Year	Tons To Metro South	Status Of Other Facilities Receiving MSW		
		St. Johns	Metro Control	Composter
1988	304,400	Open	Not Open	Not Open
1989	341,000	Open	Not Open	Not Open
1990	368,400	Open	Not Open	Not Open
1991	313,900	Open 1 Mo.	Open	Open 8 Months
1992	357,300	Not Open	Open	Closed Feb.

**WILSONVILLE TRANSFER STATION**  
**Executive Officer Recommendation**  
**July 20, 1993**

Over the past several months, I have spent considerable time analyzing and evaluating issues regarding the Wilsonville Transfer Station in preparation for delivering my recommendation to you. I've reviewed staff work regarding waste flow needs and trends, I've looked at tipping fee analyses with and without the facility, I've studied the proposed franchise agreement that has been negotiated, I've considered the long (and sometimes contentious) history of this issue, and I've consulted with public officials and interested parties on both sides of the issue.

If all the facts and logic completely supported one side or the other, our decision would be easy and made long ago. As with many important policy questions however, there are valid arguments on both sides. There are good reasons to build the transfer station and good reasons not to.

The more one examines the issues however, certain inescapable facts emerge:

1. The amount of waste from which Metro derives revenue has been declining, and at best is projected to level off. During the 1980's waste disposed at Metro facilities had exhibited a mild, upward trend. In 1990, Metro handled 838,000 tons of waste -- over 70 percent of the 1,173,000 tons disposed regionally that year. In 1993, Metro expects to handle 689,000 tons -- less than two-thirds of the 1,043,000 regional tonnage. In a region which has experienced an overall decline in disposal of 3.8 percent per year, Metro's decline has been 6.3 percent per year -- indicating an erosion of "market share" in excess of the regional trend

Because of these facts, I have concluded that proceeding with a \$10 million facility not absolutely necessary, during a time of such deep revenue uncertainty, is poor public policy. I therefore recommend to the Metro Council that we not proceed with the project. Yes, the facility would benefit the system, certainly hauling distances for some Washington County haulers would be shortened, and crowding at Metro South would be relieved. It is also true that the site is zoned appropriately and available now. Nevertheless, when asked directly whether this additional transfer station is absolutely necessary at this time, I cannot honestly say yes. Proceeding now would be analogous to a hauler buying additional trucks while his number of customers decreases, or a school district building more classrooms when attendance is decreasing. Such decisions are not good business or good public policy.

Nevertheless, if the Council supports my recommendation not to proceed with the Wilsonville Transfer Station, it is my belief that a plan to maximize efficiency at existing facilities is needed. This plan should include keeping tonnage at Metro South below permitted maximum, adjusting scalehouse procedures to reduce waiting times, and diverting flow to Metro Central where cost effective. I also recommend that we re-examine the facilities chapter of our Solid Waste Plan to establish our long-range facilities needs for the region. Finally, we should prepare now to re-bid the operating contracts for both Metro South and Metro Central. In updating these contracts we should investigate possible changes that would streamline operations and reduce costs.

I thank the committee for this opportunity to present my thoughts and either I or Bob Martin will be glad to address questions you may have.

## ACTUAL TONNAGE AT METRO TRANSFER STATIONS

FACILITY	1990	1991	1992	1993(1)
Metro Central Station/ St. Johns Landfill(2)	437.2	381.8	327.5	174.9
Metro South Station	368.4	371.0	357.3	181.3
Forest Grove Transfer Station	65.2	68.1	68.5	34.0
<b>TOTALS</b>	<b>870.8</b>	<b>820.9</b>	<b>753.3</b>	<b>390.2</b>

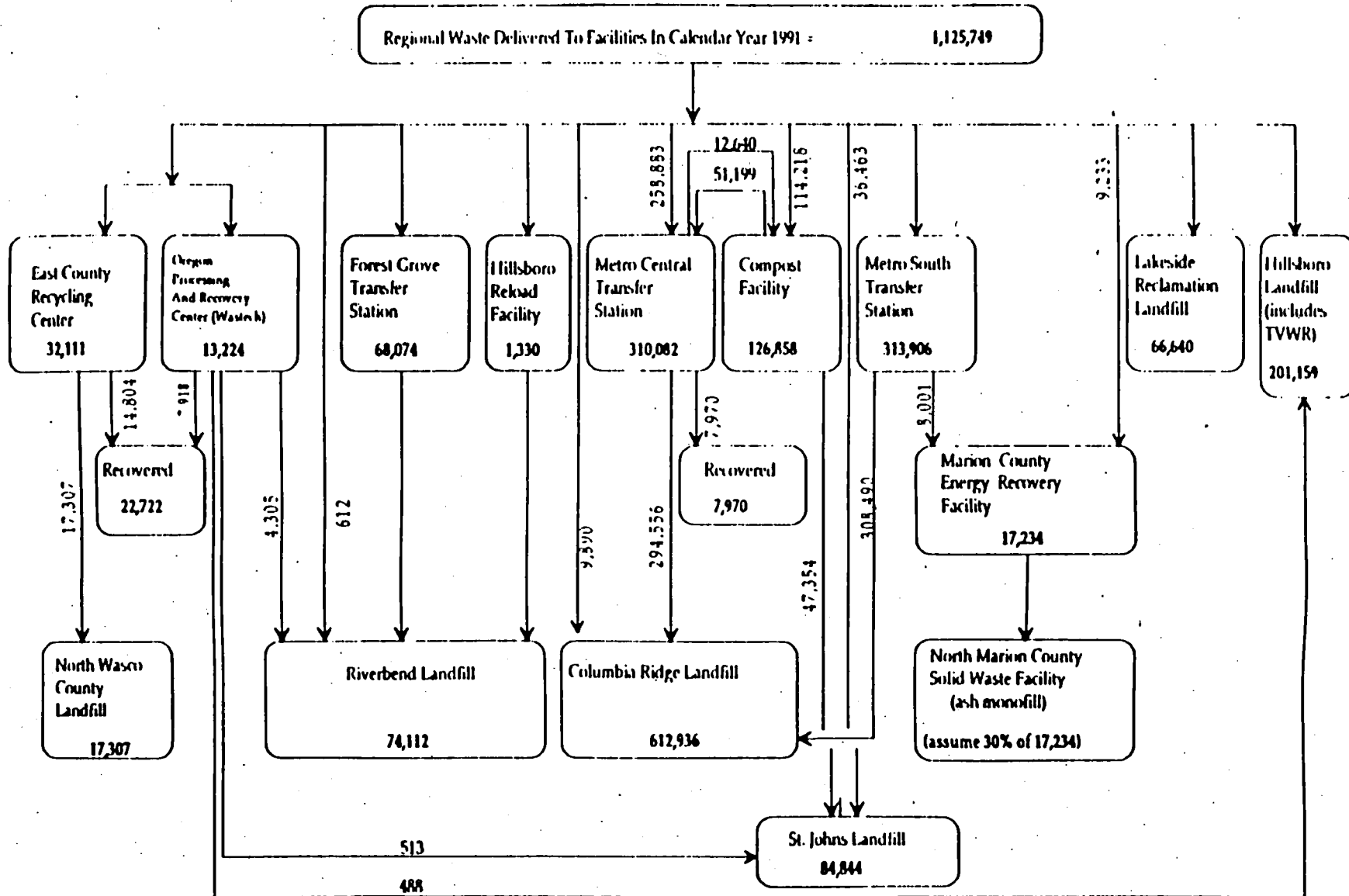
**NOTES:**

(1) Through June 1993

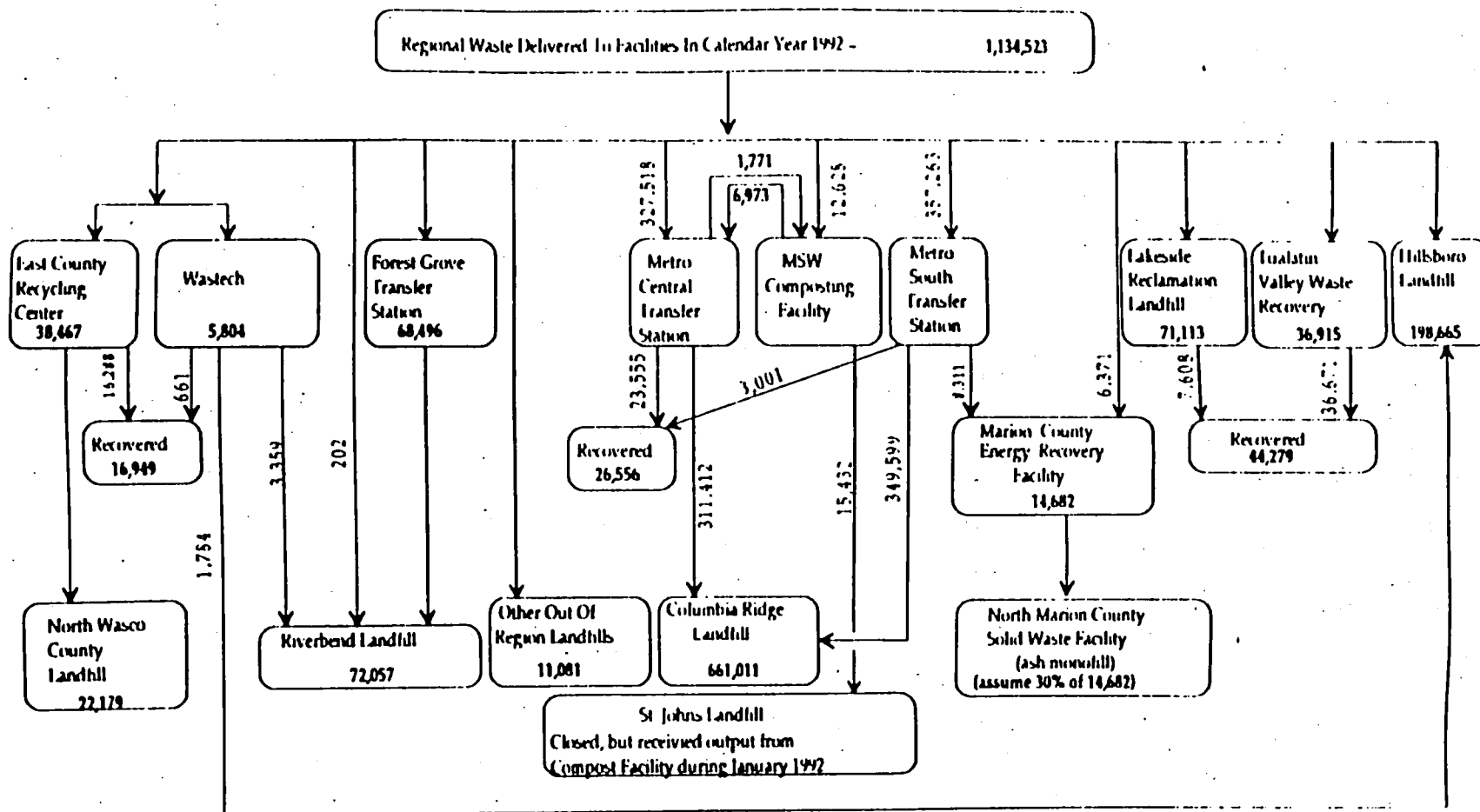
(2) St. Johns Landfill closed January 14, 1991.

(3) Adjusted to include compost tonnage.

# 1991 Facility Waste Flow Diagram



# 1992 Facility Waste Flow Diagram



Note: Tonnage into Metro Central and Metro South does not exactly equal tonnage out of these facilities. This is primarily due to the addition of water for dust abatement purposes.

## Delivery Tonnages (forecast is shaded)

EAST HAVEN RECYCLING CENTER												
Year >	1990		1991		1992		1993		1994		1995	
Origin >	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer
January	2,185	0	2,626	0	2,610	0	3,100	0	3,200	0	3,400	0
February	1,422	0	2,625	0	2,735	0	2,700	0	2,800	0	2,900	0
March	2,529	0	2,719	0	3,732	0	3,100	0	3,200	0	3,400	0
April	2,965	0	2,281	0	3,046	0	3,300	0	3,400	0	3,500	0
May	3,629	0	2,288	0	3,449	0	3,400	0	3,500	0	3,700	0
June	3,170	0	2,387	0	3,591	0	3,400	0	3,500	0	3,700	0
July	3,413	0	3,014	0	3,711	0	3,600	0	3,700	0	3,800	0
August	3,484	0	2,845	0	3,670	0	3,600	0	3,800	0	3,900	0
September	2,868	0	2,748	0	3,478	0	3,300	0	3,500	0	3,500	0
October	3,508	0	3,482	0	3,447	0	3,600	0	3,700	0	3,800	0
November	2,574	0	2,566	0	2,616	0	3,200	0	3,300	0	3,400	0
December	1,937	0	2,528	0	2,422	0	3,100	0	3,200	0	3,200	0
Total Tons	33,684	0	32,111	0	38,467	0	39,300	0	41,000	0	42,400	0

HIGROVE TRANSFER STATION												
Year >	1990		1991		1992		1993		1994		1995	
Origin >	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Transfer	Direct Haul	Transfer	Direct Haul
January	5,422	0	5,673	0	5,707	0	5,500	0	5,500	0	5,500	0
February	4,546	0	5,025	0	4,907	0	4,800	0	4,800	0	4,800	0
March	4,975	0	5,292	0	5,706	0	5,600	0	5,500	0	5,500	0
April	5,043	0	5,901	0	5,908	0	5,800	0	5,800	0	5,800	0
May	5,799	0	6,356	0	5,684	0	6,100	0	6,000	0	6,000	0
June	5,757	0	5,591	0	6,031	0	6,100	0	6,000	0	6,000	0
July	5,525	0	6,093	0	6,104	0	6,100	0	6,100	0	6,100	0
August	6,026	0	5,832	0	5,395	0	6,200	0	6,200	0	6,200	0
September	5,375	0	5,455	0	5,713	0	5,700	0	5,600	0	5,600	0
October	5,766	0	5,693	0	5,661	0	6,100	0	6,100	0	6,000	0
November	5,857	0	5,563	0	5,663	0	5,400	0	5,400	0	5,400	0
December	5,155	0	5,599	0	6,017	0	5,200	0	5,200	0	5,200	0
Total Tons	65,246	0	68,074	0	68,496	0	68,600	0	68,100	0	68,000	0



Delivery Tonnages (forecast is shaded)

METRO CENTRAL TRANSFER STATION												
Year	1990		1991		1992		1993		1994		1995	
	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer
January	0	0	14,711	0	21,848	0	27,100	0	27,100	0	24,900	0
February	0	0	22,884	0	24,641	0	23,800	0	23,700	0	21,700	0
March	0	0	24,956	0	28,303	0	27,500	0	27,500	0	25,100	0
April	0	0	22,245	2,494	27,330	0	26,600	0	26,500	0	26,100	0
May	0	0	21,781	5,361	27,768	0	29,900	0	29,800	0	27,200	0
June	0	0	21,494	4,981	28,314	0	29,700	0	29,600	0	27,000	0
July	0	0	22,080	6,002	29,622	0	30,100	0	27,500	0	27,400	0
August	0	0	21,781	7,342	28,194	0	30,700	0	28,000	0	27,900	0
September	0	0	20,283	5,722	28,380	0	28,000	0	25,500	0	25,400	0
October	0	0	22,582	6,655	28,649	0	30,000	0	27,500	0	27,400	0
November	0	0	22,232	6,094	27,370	0	26,900	0	24,600	0	24,500	0
December	0	0	21,852	6,548	27,099	0	23,900	0	23,700	0	23,600	0
Total Tons	0	0	258,883	51,199	327,518	0	335,200	0	323,000	0	306,200	0

METRO SOUTH TRANSFER STATION												
Year	1990		1991		1992		1993		1994		1995	
	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer
January	29,862	0	30,789	0	22,760	0	29,400	0	29,300	0	20,500	0
February	25,221	0	27,345	0	25,753	0	25,700	0	25,700	0	17,700	0
March	31,184	0	29,824	0	31,684	0	29,800	0	29,700	0	20,400	0
April	32,296	0	28,642	0	31,052	0	31,000	0	30,900	0	21,100	0
May	31,257	0	26,270	0	30,330	0	32,300	0	32,200	0	21,900	0
June	32,732	0	26,132	0	32,433	0	32,100	0	32,100	0	21,700	0
July	32,892	0	26,699	0	33,228	0	32,600	0	22,200	0	22,000	0
August	34,455	0	25,868	0	31,357	0	33,200	0	22,500	0	22,300	0
September	30,830	0	24,401	0	31,032	0	30,300	0	20,400	0	20,300	0
October	32,065	0	24,237	0	29,917	0	32,500	0	22,300	0	22,200	0
November	29,038	0	21,867	0	28,921	0	29,100	0	20,800	0	19,900	0
December	24,562	0	21,833	0	28,796	0	26,100	0	19,200	0	19,100	0
Total Tons	368,394	0	313,906	0	357,243	0	366,100	0	306,500	0	249,100	0

# Delivery Tonnages (forecast is shaded)

MSW COMPOSTING FACILITY (COMPOST FACILITY)												
Year-->	1990		1991		1992		1993		1994		1995	
Origin-->	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer	Direct Haul	Transfer
January	0	0	0	0	12,628	1,771	0	0	0	0	0	0
February	0	0	0	0	0	0	0	0	0	0	0	0
March	0	0	0	0	0	0	0	0	0	0	0	0
April	0	0	7,543	0	0	0	0	0	0	0	0	0
May	0	0	14,271	0	0	0	0	0	0	0	0	0
June	0	0	11,837	0	0	0	0	0	0	0	0	0
July	0	0	13,887	1,758	0	0	0	0	0	0	0	0
August	0	0	14,119	1,752	0	0	0	0	0	0	0	0
September	0	0	12,745	1,506	0	0	0	0	0	0	0	0
October	0	0	13,688	2,664	0	0	0	0	0	0	0	0
November	0	0	12,845	2,489	0	0	0	0	0	0	0	0
December	0	0	13,283	2,471	0	0	0	0	0	0	0	0
Total Tons	0	0	114,218	12,640	12,628	1,771	0	0	0	0	0	0

OTHER DELIVERIES TO LANDFILLS (including Columbia, Franklin D. Roosevelt and Roosevelt Landfills)						
Year-->	1990	1991	1992	1993	1994	1995
Origin-->	Direct Haul	Direct Haul	Direct Haul	Direct Haul	Direct Haul	Direct Haul
January	0	0	2,227	1,700	1,500	1,500
February	0	0	0	1,500	1,300	1,300
March	0	0	52	1,700	1,500	1,500
April	0	0	314	1,900	1,600	1,600
May	0	249	1,046	1,900	1,600	1,600
June	0	83	1,896	1,800	1,600	1,600
July	0	165	928	1,600	1,600	1,600
August	0	474	953	1,700	1,700	1,700
September	0	1,543	898	1,500	1,500	1,500
October	0	2,889	927	1,600	1,600	1,600
November	0	1,771	982	1,500	1,500	1,500
December	0	2,716	857	1,400	1,400	1,400
Total Tons	0	9,800	11,081	18,900	18,100	18,100



# Transfer Station Waste 1993 Actual and Projected

	Jan	Feb	March	April	May	June	Total	% Increase
Projected	62,000	54,300	62,900	65,400	68,300	67,900	380,800	2.2 2.7
Actual-1993	57,026	53,482	67,185	67,998	70,068	73,323	389,082	
Actual-1992	62,943	55,301	65,693	64,290	63,782	66,778	378,787	

1993 Projected Tonnage (SWIS): **772,900**  
 1993 estimate assuming 2.2% increase continues = **789,903**

1992 Actual Delivered: **765,545**  
 1992 estimate assuming 2.7% increase continues = **786,215**

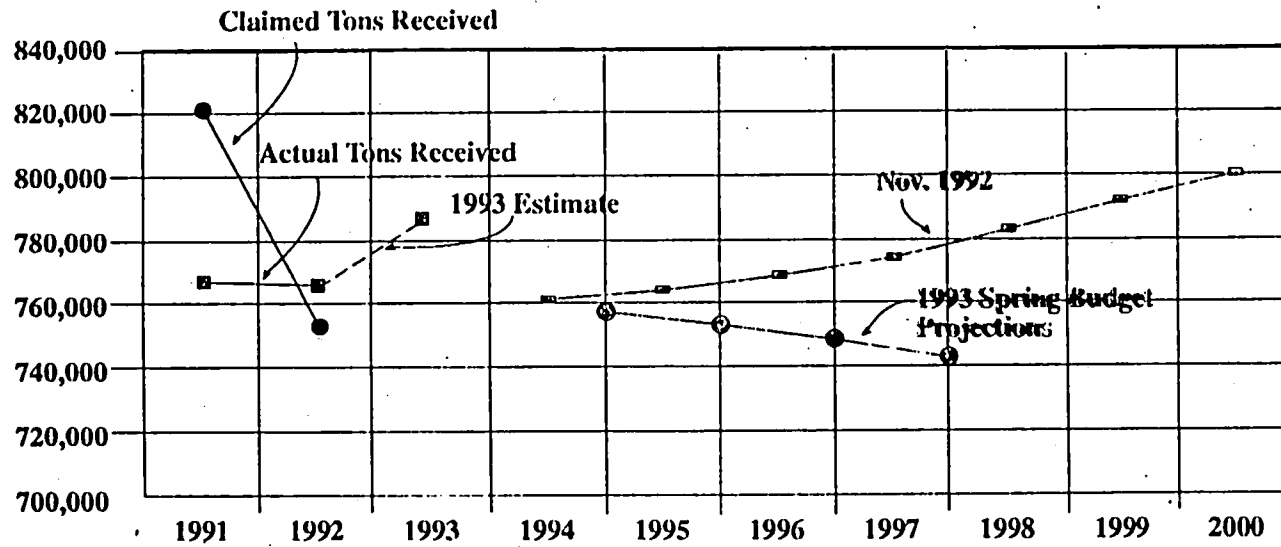
**COMPARISON OF METRO PROJECTIONS TO ACTUAL TONNAGE  
RECEIVED AT METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS  
FROM JANUARY THROUGH JUNE 1992 AND 1993**

	JAN	FEB	MARCH	APRIL	MAY	JUNE	TOTAL	% INCREASE
<u>METRO SOUTH</u>								
PROJECTED	29,400	25,700	29,800	31,000	32,300	32,100	180,300	} 0.6
ACTUAL-1993	26,600	24,500	30,400	31,900	33,100	34,800	181,300	
ACTUAL-1992	22,760	25,753	31,684	31,052	30,330	32,433	174,012	} 4.2
<u>METRO CENTRAL</u>								
PROJECTED	27,100	23,800	27,500	28,600	29,900	29,700	166,600	} 5.0
ACTUAL-1993	25,700	24,400	31,100	30,300	31,100	32,400	175,000	
ACTUAL-1992	34,476 <sup>1</sup>	24,641	28,303	27,330	27,768	28,314	170,832	} 2.4
<u>FOREST GROVE</u>								
PROJECTED	5,500	4,800	5,600	5,800	6,100	6,100	33,900	} -3.3
ACTUAL-1993	4,726	4,582	5,685	5,798	5,868	6,123	32,782	
ACTUAL-1992	5,707	4,907	5,706	5,908	5,684	6,031	33,943	} -3.4
<u>TOTAL</u>								
PROJECTED	62,000	54,300	62,900	65,400	68,300	67,900	380,800	} 2.2
ACTUAL-1993	57,026	53,482	67,185	67,998	70,068	73,323	389,082	
ACTUAL-1992	62,943	55,301	65,693	64,290	63,782	66,778	378,787	} 2.7

SOURCE: Metro Solid Waste Information System Report, Feb. 15, 1993  
Metro Staff

<sup>1</sup> Includes 12,628 tons from compost facility which was open only in January during 1992.

# Actual and Projected Tonnage at Transfer Stations



**1993 SPRING BUDGET PROJECTIONS**

<b>TONNAGE ESTIMATE</b>					
	<b>FY 1992-93</b>	<b>FY 1993-94</b>	<b>FY 1994-95</b>	<b>FY 1995-96</b>	<b>FY 1996-97</b>
<b>TONNAGE</b>					
South	327,752	356,736	250,334	246,044	242,034
Central	319,082	332,449	304,275	301,491	298,955
Composter	77,083	0	0	0	0
Wilsonville	0	0	130,119	132,344	134,545
<b>TOTAL METRO</b>	<b>723,921</b>	<b>689,185</b>	<b>684,728</b>	<b>679,879</b>	<b>675,534</b>
Non-Metro	314,233	339,343	353,108	355,816	358,840
Direct Haul to Columbia Ridge	30,000	15,319	21,353	21,353	21,353
<b>GRAND TOTAL</b>	<b>1,068,154</b>	<b>1,043,847</b>	<b>1,059,189</b>	<b>1,057,048</b>	<b>1,055,727</b>
Tonnage to Columbia Ridge	649,174	633,184	625,889	621,158	616,913
Tonnage to Marion County	9,565	7,821	8,311	8,311	8,311
<b>RECYCLE</b>					
South (1%)	2,886	2,997	2,103	2,067	2,033
Central (7% for 94-97)	17,968	23,910	21,883	21,683	21,501
Wilsonville (5%)	0	0	6,506	6,617	6,727

**NOTE:** Forest Grove included in Non-Metro  
**SOURCE:** Metro Staff



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

DATE: November 30, 1992

TO: Councilor Judy Wyers, Council Solid Waste Committee Chair

FROM: *BM* Bob Martin, Director of Solid Waste

RE: Issues and Questions Related to the Eastern Washington County Transfer and Materials Recovery Facility

Below are responses to the memorandum from Committee staff dated November 9, 1992.

## System Capacity

1. The first question in the memo concerns the capacity of individual facilities and the solid waste system. The capacity of facilities must be viewed relative to operational goals for each facility and events occurring in the system.
  - a. **Metro South Station:** Metro South Station is currently operating at over 350,000 tons annually. Operation at this level creates occasional traffic problems both onsite and offsite, and prevents any attempt to recover materials for recycling. We therefore would characterize the facility as operating at over its optimal capacity, which is a capacity level at which there are no traffic problems and where materials recovery becomes possible. As stated in the Evaluation Report, the minimum capacity of the facility is the pit capacity (190,000 tons on an annual basis). Optimal capacity would be an annual tonnage level between these two operating levels, where onsite operations encounter few problems and the facility has some excess capacity to deal with equipment failure or absorb waste from other facilities should they encounter operational problems. The Washington County Plan, adopted by the Metro Council, suggested an optimum operating tonnage of 270,000 and that tonnage is used here.
  - b. **Metro Central Station:** This station was designed for a capacity of 548,000 tons per year.
  - c. **Composter:** The composter agreement targeted an annual operating level of 185,000 tons. This would have been comparable to an optimal level.
  - d. **Forest Grove:** The Forest Grove station general purpose tonnage is fixed at 60,000 tons by its franchise agreement with Metro.



- e. **Eastern Washington Co. Facility:** This facility is designed to perform its design functions at up to 196,000 tons annually.

The following table summarizes system capacity:

Annual Operating level	Capacity
Metro South	270,000
Metro Central	548,000
Composter	185,000
Forest Grove	60,000
Eastern Wa. Co	196,000
Total	1,259,000

2. The 11/9 memo then asks when the capacity of the system would be reached under a number of scenarios. The scenarios and capacity points are presented below together with the latest forecast of waste expected to be delivered to transfer stations. See explanation of tonnage forecasts below for more information on the latest forecast.

Transfer Station Tonnage Forecast							
1994	1995	1996	1997	1998	2003	2008	2013
761,017	764,573	768,506	774,681	783,034	827,534	874,564	924,154

- a. **Scenario-** Composter operates at full capacity and the Eastern Washington Co. facility is built (1,259,000 tons of system capacity)

**Reply-** System capacity is not reached within our 20 year forecast.

- b. **Scenario-** Composter operates at 50%, Eastern Washington Co. facility built (1,166,500 tons of system capacity)

**Reply-** System capacity is not reached within our 20 year forecast. It should be noted, however that the compost plant could not financially operate at 50% capacity, so this is not a practical scenario.

- c. **Scenario-** Composter operates at full capacity and Eastern Washington Co. facility is not built (1,063,000 tons of system capacity)

**Reply-** System capacity is not reached within our 20 year forecast.

- d. **Scenario-** Composter operates at 50% capacity and Washington Co. station is not built (970,000 tons of system capacity)

Reply- System capacity is not reached within our 20 year forecast. Again, not a real option due financial requirements of the composter.

- e. **Scenario-** Composter does not operate, Washington Co. station is not built (878,000 tons of system capacity)

Reply- System capacity is reached in 2009.

### Flow Control

#### Redirecting Waste

- 1) **What are the general pro and con arguments to Metro utilizing its flow control authority to more equitably distribute material between Metro Central and Metro South?**

#### Pro:

##### **System Benefits**

The basic "pro" argument is that there are substantial short term contractual cost savings and transfer station capacity utilization that could be achieved if waste were shifted from Metro South to Metro Central. This advantage would likely exist only as long as the current "fixed-price" arrangement at Metro Central exists. If the operation of this facility is put on a "per ton" basis, the advantage of shifting waste from South to Central would disappear, or in fact be a disadvantage. (See responses to Operating Costs questions.) In addition, an increase in recycling could be achieved as Metro South does not have the material recovery capability that Metro Central possesses.

##### **Imposed Cost Would be Minimal**

Historical delivery patterns indicate that a hauler's choice of facility is primarily based on time and distance (see maps). For those haulers where there is a minimal difference in time and distance between facilities, additional factors determine the choice. These include familiarity with traffic routes and patterns, resistance to changing a pickup route (ending at Metro South) established before Metro Central was built, or a preference for tipping in Metro South's pit rather than on Metro Central's floor. The pro argument is that many of these factors are not associated with major expenses and the haulers can adopt changes with minimal cost impacts.

### **Precedent**

Metro has generally allowed full freedom of choice for haulers in deciding what facility to use. However, Metro has twice shown a willingness to depart from this principle: a) Required Use orders for the Composter were issued to ensure delivery of an appropriate type and amount of waste dictated by the Service Agreement for the Composter (the location of the composter and the appeal procedures appear to have mitigated economic impacts to haulers); b) The proposed Eastern Washington County project will require all franchised haulers within a designated service area to use the facility. The public interest rationale is that the regional interest is best served by allowing Washington Co. to have its own transfer system.

The exercise of flow control to direct materials from South to Central in order to better utilize system capacity could be justified as sound public policy consistent with earlier Metro decisions.

### **Improved System Management Ability**

Metro's ability to track and analyze waste flows by type and facility has been increasing rapidly. Improved analysis of facility transaction data, together with the RLIS geographic information system, has provided an ability to estimate real costs to haulers of Metro flow control decisions. Very specific flow control orders which minimize impacts, yet achieve desired system efficiency results, could be issued. This type of flow direction could also be utilized to implement specific management objectives, such as recycling, by directing specific types of vehicles to facilities (e.g., drop boxes to Metro Central)

### **Con:**

There are two basic "con" arguments:

#### **Use Flow Control Only to Structure Basic System**

Because of potential disruption and inconvenience to haulers, it can be argued that the use of flow control to direct waste to specific facilities is appropriate only to address long term goals related to the structure of the system, and not simply as a management tool to achieve short term objectives. Using flow control to achieve less substantial objectives could undermine its legitimacy, leading to complaints and contested case proceedings.

#### **Flow Control Imposes Real Costs**

The freedom of choice for haulers ensures that efficient choices will be made. Exercising flow control to distribute material between specific facilities (see also response to next question on other uses of flow control) generally would mean additional costs to haulers in either travel time or distance. Haulers also make long term equipment decisions on the basis

of haul distances. There are probably only a small minority of cases where hauler facility choice is determined by habit or non economic personal preferences. Even in those cases, requiring a hauler to change habits is an imposed cost.

**Other Con arguments:**

Metro's management of the solid waste system requires the cooperation of the hauling community. Exercising flow control from South to Central could strain those relationships and increase the amount of materials illegally leaving the system.

- 2) **Has Metro ever used its flow control authority to direct specific haulers to Metro Central or Metro South? When the composter closed were the haulers using that facility free to use either Metro Central or Metro South?**

Flow control can be exercised in two ways: (1) To ensure that any wastes generated in the Metro region flows only to a facility properly designated by Metro. This is enforced through fines, administrative orders, or, if necessary, court orders against an offending hauler (2) To direct flow to a specific facility. Implementation is through issuance of a "required use order." (Compliance is enforced as in (1).) Metro has not used these methods to direct haulers to Metro Central or Metro South.

Metro has used its flow control authority to control the flow of waste in and out of the region. These efforts appear to work reasonably well with regard to mixed municipal solid waste, but controlling industrial and other "special" wastes has proven to be more problematic. To date, enforcement and investigation has operated somewhat as a deterrent, but economics continue to drive those who are not under close Metro scrutiny to seek the cheapest disposal option, regardless of Metro authorization.

The second flow control method, issuance of "required use orders," has only been used with the Compost Facility. When the facility was closed, haulers were notified that the required use orders were terminated and they were free to choose any appropriate Metro designated facility.

- 3) **It is our understanding that you have the ability to prepare maps that would show which haulers are using which facilities. If so, could you please provide the following:**
- a) a map showing which haulers used Metro Central, Metro South and the Composter (prior to its closure);
  - b) a map showing which haulers are using Metro Central and Metro South since the closure of the Composter;

- c) a map showing a breakdown of projected facility usage by hauler if the Wilsonville facility is built and the composter is operating at capacity, based on haul patterns as used in "a";

Reply: These maps are attached to this report, as well as a fourth map requested by Council Staff which shows facility usage based on travel times, if Wilsonville is built and the Composter is operating at capacity. At the request of Council staff, Metro South Station is limited to 190,000 tons annually.

**Washington County Haulers/Metro Central**

Questions 1 During the operation of both the St. Johns Landfill and Metro South prior to 1990, did any Washington County haulers use the landfill? Reply: Yes.

And, if so, approximately how much Washington County waste was deposited at the landfill on an annual basis?

Reply: Data prior to 1990 is sketchy. However, the table below shows that 23,000 tons were hauled to St. Johns by haulers who only serve Washington County and an additional 7,000 tons were hauled to St. Johns by haulers who serve Washington and Multnomah counties (the origin of the latter waste cannot be established).

**Tonnage Hauled to St. Johns Landfill During 1990 by Washington County Haulers**

	Acct	Origin of Waste (Cty.)	1990												Total
			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Beaverton Sanitary	5009	Wash	300	237	279	235	299	297	318	280	250	322	311	197	3,326
RD Sevier & Son	5079	Wash	754	639	760	729	803	786	804	789	686	734	663	470	8,617
West Beaverton Sanitary	5103	Wash	879	613	864	963	1,065	1,137	1,039	1,115	1,010	988	1,126	551	11,349
Subtotal: Only From Washington County			1,933	1,489	1,903	1,927	2,167	2,220	2,161	2,185	1,946	2,044	2,100	1,218	23,292
Miller's Sanitary	5058	Wash & Mult	204	164	203	209	208	221	178	196	167	183	200	102	2,236
Walker Garbage Service	5097	Wash & Mult	596	448	530	386	311	260	267	248	185	229	160	70	3,691
West Slope Garbage	5105	Wash & Mult	105	84	97	95	104	99	100	99	90	97	101	74	1,146
Subtotal: From Washington and Other Counties			905	697	830	691	623	580	545	543	442	509	461	247	7,072

**Question 2.** Are any Washington County haulers currently using Metro Central?

**Reply:** Yes. From the table shown below, about 34,000 tons are projected to be taken to Metro Central from haulers that operate exclusively in Washington County. An additional 16,000 tons are projected to be taken to Metro Central from 6 haulers which operate in Washington and other counties, however the origin of the waste cannot be established.

Acct	Account Name	Origin of Tonnage Waste ( Cty. )	Origin of Tonnage				Percentage Of Total		
			Central	Composter	South	Total	Central	Composter	South
5009	Beaverton Sanitary	Wash	734	0	0	734	100%	0%	0%
6229	Hillsboro Garbage Disposal	Wash	1,423	0	0	1,423	100%	0%	0%
5538	Pride Disposal	Wash	190	0	1,111	1,301	15%	0%	85%
5079	RD Sevier & Son	Wash	394	0	0	394	100%	0%	0%
5405	Schmidt's Sanitary	Wash	0	0	293	293	0%	0%	100%
5089	Valley Garbage	Wash	14	0	388	402	3%	0%	97%
5105	West Beaverton Sanitary	Wash	90	0	0	90	100%	0%	0%
Total For April		Only From Wash. County	2,845	0	1,792	4,636	61%	0%	39%
Annualized Total			33,815	0	21,299	55,114			
5626	United Disposal Service	Wash & Clack	0	0	1,108	1,108	0%	0%	100%
5017	Cedar Mill Disposal	Wash & Mult	13	0	0	13	100%	0%	0%
5058	Miller's Sanitary	Wash & Mult	51	0	1,009	1,060	5%	0%	95%
5097	Walker Garbage Service	Wash & Mult	72	0	0	72	100%	0%	0%
5103	West Slope Garbage	Wash & Mult	1,227	0	0	1,227	100%	0%	0%
5050	Keller Drop Box	All Counties	4	0	2,224	2,228	0%	0%	108%
Total For April		From Wash. & Other Ctys	1,367	0	4,340	5,708	29%	0%	94%
Annualized Total			16,254	0	51,598	67,852			

**Question 3:** During the development of the Washington County Technical Analysis was any consideration given to using more southerly routes from the county to Metro Central (e.g., Beaverton-Hillsdale Highway, 99W/Barbur Blvd. or I-5)? **Reply:** No.

Are there any immediate problems concerning the use of these routes to Metro Central?

**Reply:** The City of Portland has an adopted Arterial Street Classification Policy (ASCP). The ASCP identifies existing or planned through truck routes within the City for trucks over 8,000 lbs. gross weight. Neither the Beaverton/Hillsdale Hwy. nor Barbur Blvd. transportation alternatives are identified as through truck routes in the ASCP. Lack of such designation does not prohibit their use by trucks. However, reliance on these routes as access routes for solid waste collection vehicles is contrary to adopted City Policy.

Use of I-5 as a transportation corridor was not considered as a possible route to Metro Central from Washington County because access to I-5 from the County is via Hwy. 99W.

or Hwy. 217. From these points of egress, the trip to Metro South is approximately a minute shorter than the trip to Metro Central.

### Flexible Rate System

Question 1 Has Metro ever considered using a flexible rate system as a flow control mechanism?

**Reply:** In a legal sense- no. In a broader, non legal use of the term flow control, Metro has used, and continues to use "flexible rates" so that material goes to one facility rather than another. For equivalent service at Metro facilities however, the current Metro Plan has an established policy of uniform rates.

While the St. Johns Landfill was open, a convenience charge for Metro South of \$3 per ton was charged "to reflect the value of the extra convenience to customers provided by transfer and recycling centers versus landfills" (Resolution No. 84-483). Existing processing facilities presently pay fees only on tons disposed. This can enable such facilities to have a lower tip fee than they otherwise would, and help them to draw in more materials. A lower fee for certain materials was considered during development of the Metro Central operations contract. A lower fee is charged for yard debris at Metro transfer facilities.

Question 2 What are the pro and con arguments to using such a system?

**Reply:** To the degree that any Metro facility is either under or over-used, Metro could gain from a shift of flows between facilities. The issue is whether the net benefit to Metro would outweigh the costs imposed on haulers. Theoretically, a flexible rate could achieve that end. For example, Metro could afford to pay (i.e., through discounts to haulers by a lower tip fee) up to an amount equal to what it was "losing" every month if the payments brought in the "put or pay" tonnage at Metro Central. The difficulty is in determining what discount would bring in enough tons to offset the lost revenues due to the discounts.

An argument against flexible rates is that it would violate the regional "uniform rate" policy of the RSWMP. However, it might be argued that a flexible rate could be designed to provide a more uniform "level of service" (also required by the plan) for haulers by minimizing the impacts of hauling costs.

#### Con. Arguments

The primary con argument against an "incentive" system is the administrative and technical difficulty in setting the discounts. Metro does not have the price setting flexibility that an ordinary business has in raising and lowering prices and setting them at a level that optimizes revenues.

**Question 3** Are any other municipalities using such a system for the purpose of flow control, and how effective has it been?

**Reply:** King County, Washington uses an established rate differential. The County has established separate tip-fees for MSW and Construction/Demolition (CDL). However, the tip-fee for CDL is significantly higher than the tip-fee for-MSW. Reference to such rates was made in a 1991 article in "MSW Management," but staff has not had time to research the approach in greater detail.

**An Analysis of Operating Costs Requested:**

1. The total operating and debt service costs (both per ton and total dollar cost) in 1994-95 for each Metro facility and the entire system of Metro facilities for the following scenarios:

- (a) the scenario outlined in the evaluation of the proposed Wilsonville facility, which would include the Composter and Metro South operating at approximately their capacity, Metro Central operating at about 270,000 tons/year and the Wilsonville facility operating at about 144,000 tons/year.

**Reply:** See table below labeled "Composter Open"- Case 1. There are insufficient system tons (about 90,000) to operate Metro Central at the 270,000 ton level while operating . Metro South at the council staff optimal level of 196,000 tons. Case 1 therefore reduces flow to Metro Central.

- (b) a scenario in which the Wilsonville facility is not built, the Composter and Metro South operate at capacity and the amount of material destined for the Wilsonville facility is, instead, processed at Metro Central. Note: Council staff revised the scenario to allocate sufficient tonnage to Metro Central to achieve the "put or pay" level.

**Reply:** See table following labeled "Composter Open"- Case 2. To operate Metro Central at the "put or pay" level, tonnage is decreased at Metro South below 100,000 tons per year.



	COMPOSTER OPEN		
	FY 1994-95		
			Central = 420,000 tons
			Wilsonville
	Wilsonville		Does Not
Description	Open		Open
	Case 1		Case 2
<b>TONNAGE</b>			
South	196,000		95,097
Central	177,653		420,000
Composter	185,000		185,000
Wilsonville	141,444		0
<b>Total Metro</b>	<b>700,097</b>		<b>700,097</b>
Non-Metro	367,778		367,778
Direct Haul to Columbia Ridge	600		600
<b>Grand Total</b>	<b>1,068,475</b>		<b>1,068,475</b>
<b>EXPENDITURES (Cost/Ton)</b>			
<b>Station Operation ( O &amp; M )</b>			
<b>Metro South (Based on Outgoing Tonnage)</b>			
Total O & M	\$917,480		\$824,074
Total O & M/ per ton	4.68		8.67
Total Debt Service	431,511		431,511
Total Debt Service/ per ton	2.20		4.54
<b>Metro Central (Based on Incoming Tonnage)</b>			
Total O & M	\$3,967,042		3,967,042
Total O & M/ per ton	22.33		9.45
Total Debt Service	2,324,599		2,324,599
Total Debt Service/ per ton	13.09		5.53
<b>Composter ( Existing Contract)</b>			
Total O & M	\$4,047,497		\$4,047,497
Total O & M/ per ton	21.88		21.88
Total Debt Service	1,863,843		1,863,843
Total Debt Service/ per ton	10.07		10.07
<b>Wilsonville</b>			
Total O & M	\$1,829,043		0
Total O & M/ per ton	12.93		0
Total Debt Service	986,485		0
Total Debt Service/ per ton	6.97		0

- 2) **Question:** When will Metro be able to rebid the operating contract for Metro Central under the terms of the existing contract? **Reply:** October, 1994 at the earliest.

**Question:** What effect does staff believe rebidding the contract will have on operating and debt services costs at Metro Central? **Reply:** Staff believes operating costs will decline but not by the entire "extra" amount described below if operational requirements remain the same; debt service costs remain constant due to bond repayment obligations.

**Question:** During FY 91-92 how much "extra" did Metro pay Trans-Industries as a result of the "put or pay" provision in the existing contract? **Reply:** From July through September of 1991, Trans-Industries (TI) was paid on a per ton basis so no "extra" is considered paid. From October of 1991 through June of 1992, \$2,567,250 was paid to TI under the put or pay agreement. If one assumes that the minimum per ton payment of \$8.15 had been made instead of the put or pay amount, TI would have received \$1,759,201. The "extra" amount can be considered the difference of \$808,048 or \$89,783.12 per month or \$3.74 per ton ( $\$808,048/215,853 = \text{tonnage @ Metro Central from 10/91-6/92}$ ).

- 3) **Question:** Could you provide copies of sliding scale tonnage payments for Metro Central, Metro South, Composter and proposed Wilsonville facility? **Reply:** The current scales, for Metro Central and South are attached. The scale for the staff recommended Alternate I for the proposed Wilsonville facility is attached. Payment for the composter is based on a formula which is attached.

### Tonnage Forecasts

#### General Comments

The SW Department's forecast of total regional tonnage is an aggregate number that includes both Metro facilities (transfer station or "wet" wastes) and non Metro facilities (mostly "dry" wastes but including some special wastes). An enhanced version of the PSU time series model is used to generate this regional total.

For longer term forecasts, the regional total is adjusted to account for expected increases in recycling: factors cannot be "predicted" by the model and thus must be added in. At the present time, this is being done by holding the per capita amounts of waste "delivered" to facilities constant. An allocation of the adjusted regional total to Metro and non Metro (or "wet" and "dry") facilities is then made.

Previous long term Solid Waste Department forecasts were made specifically for estimating tonnages within Washington Co. and adjusted for recycling after a tonnage amount had been allocated to the county. Staff believes the new procedure is preferable for several reasons: it provides for a much easier method to consider the sensitivity of a given forecast to assumptions

about generation and recycling rates; it addresses recycling goals at the regional level at which they were set; and it provides consistency between long term and short term forecasts.

### Waste Generation and Recycling Assumptions

Long term forecasts are sensitive to assumptions about both future "generation" and "recycling" rates. Metro forecasts predict that increases in per capita generation rates will be directly offset by increases in the recycling rate. As a result, the per capita rate of waste "delivered" to solid waste facilities remains constant. However, since population is forecast to increase over time, delivered tonnage will also increase. Material recovered after delivery is not reflected in this analysis.

### Facility Allocation Assumptions

The allocation of the total regional waste to individual facilities is also sensitive to some basic assumptions. Generally, allocations are based on historical patterns. However, when a new facility like that proposed for Eastern Washington Co. is added, the allocation requires that two variables be estimated. The first is the percentage of the total regional waste generated within the service area of the facility. The second variable is the percent of the service area total tons that are transfer station type waste that would go to that particular type of facility. Under current procedures, the first percentage, the "available" waste, equals the ratio of the subarea's population to the regional population. The second percentage, the "allocated" waste, is a "fixed" rate based on existing delivery patterns to similar facilities.

### Rationale for Waste Generation and Recycling Assumptions

Per capita delivery of waste has appeared to stabilize in recent years at about 5 pounds per person per day. This compares with the unadjusted time series model that implied an increase of about 20% over the next twenty years (to approximately 6 pounds per person per day). While making long term estimates of generation and recycling rates are very difficult, staff believes that the constant per capita delivery rate is defensible given that the rate has actually decreased during each of the last three fiscal years.

Growth in waste generation rates is not likely to outstrip recycling efforts. While historical estimates of generation rates are difficult to make, increases on the order of 2% to 3% per year for the 1980's are commonly employed nationally. A rough estimate for Metro for the years 1986 to 1991 also shows about 3% per year increase in generation. At the same time, however, recycling efforts were increasing at three to four times that rate enabling the total regional recycling rate to grow from 22% to 38%. (Note: These are total recovery rates and include a small percentage due to "post-collection" recycling.)

However, both past Metro documents (e.g., the 1988 Metro East Transfer and Recycling Center White Paper) and other sources (e.g., EPA's 1992 Update to their Characterization of Municipal Solid Waste in the United States, Clark Co. Washington's 1992 Preliminary Draft Comprehensive

Solid Waste Management Plan), foresee a significant decline in the rate of increase of generation rates. If the generation rate increase drops to only 1.5% per year, it is difficult to assume that recycling efforts could not keep pace.

Metro staff is continuously working on better estimates of generation and recycling rates. Until better analysis is available, the methodology appears to be a reasonable starting point for generating long term forecasts. Any policy or facility procurement decisions relating to long term tonnages should of course consider the sensitivity of such decisions to variations in the assumed value of this crucial variable.

#### Rationale for Allocation Assumptions

The amount of the total regional waste allocated to Washington Co. under present procedures is directly proportional to its population. While staff is working to develop more advanced disaggregation procedures that take an area's employment into account, the straight population ratio procedure appears to agree reasonably well with other actual data ( e.g., scalehouse data) about the amount of waste coming from each of the region's counties. Metro Data Resource Center's projections regarding Washington Co.'s share of population and employment in the next twenty years show both increasing at about the same rate.

The assumption regarding how much of the allocated waste is "transfer station" waste is more questionable. The fixed rate assumes that the recent historical trend of waste shifting away from Metro to non Metro facilities will not continue. This assumption could result in a slightly higher forecast of tonnage than what, in reality, we will receive. However, we are projecting that most of the waste that can be diverted from transfer stations to other facilities or methods of processing has already been diverted thus halting the downward trend. Staff work, currently being conducted, indicates that designated facilities could reduce the available transfer station waste. Estimates of the potential movement depend on assumptions made regarding prices and how much waste is potentially available within the existing "transfer waste" substream.

- 1) **You have requested the Solid Waste Department's reaction to conclusions in the Cross report related to the potential lack of growth in "wet" solid waste in the region, including what indicators we have to indicate projected growth patterns for this portion of the waste stream.**

A decline in delivered "wet" wastes ( i.e. transfer station wastes) could be a function of changes in three different variables: (1) generation rates, (2) recycling rates, and/or (3) shifts in the delivery of materials from Metro transfer facilities to non Metro facilities.

The Cross analysis does not attempt to differentiate between these factors. The Solid Waste Department has been researching these factors and has made some preliminary conclusions. Both the recently issued RFP regarding the forecasting model and the waste characterization study will be addressing these issues in more detail.

As described above, an assumption has been made that increases in generation rates are in the longer term being offset by increases in recycling. The Cross analysis does raise an important issue in this regard. The current forecast assumes that changes in generation and recycling rates will be the same across all waste streams (e.g., commercial, residential, and industrial). The issue is that "residential" (i.e., mostly "wet" wastes) generation rates could actually be changing (i.e. declining) at a markedly different rate than the waste stream as a "whole". This is an issue requiring further examination. However, as the commercial fraction of the waste stream also contains "wet" portions with few recycling programs yet in place, it seems premature to project an actual decline in the size of the "wet" waste stream.

Shifts in the delivery of materials from Metro to non Metro facilities can result for several reasons. These include:

- Some waste loads (e.g., drop boxes with dry materials) can be delivered to either a "wet" or "dry" facility with haul distance and tip fee being the determining factor. Changes in price differentials or opening of new facilities (e.g., "dump and pick" operations) could move materials from the "wet" to "dry" system.
  - Some waste loads are only partly contaminated with "wet" wastes and given adequate price incentives could be "cleaned up" through minor changing of collection routes or providing generators the means and incentives to segregate their materials.
  - Entire new "dry" collection routes could be established.
- 2) **You have requested the Department's latest estimates for the amount of tonnage to be processed at each Metro facility for each of the next ten years: a) if the Wilsonville facility is built, or b) if the Wilsonville facility is not built.**

See table following. The allocations to each facility in the tables are based on geographic allocation rules and capacity limits as determined in conversations between Council staff and the Solid Waste Department.

**Tonnage by facility- with and without Wilsonville, and holding Metro South to 190,000 tons/year**

Calendar Year	Forest Grove	Wilsonville	Metro South	MSW Composter	Metro Central	Total
1994	68,500	140,300	190,000	185,000	177,300	761,100
1995	68,800	142,700	190,000	185,000	178,100	764,600
1996	69,200	145,200	190,000	185,000	179,200	768,600
1997	69,700	148,000	190,000	185,000	181,900	774,600
1998	70,500	151,300	190,000	185,000	186,300	783,100
1999	71,300	154,700	190,000	185,000	190,800	791,800
2000	72,000	158,000	190,000	185,000	195,500	800,500
2001	72,800	161,400	190,000	185,000	200,200	809,400
2002	73,700	164,800	190,000	185,000	204,900	818,400
2003	74,500	168,300	190,000	185,000	209,800	827,600
2004	75,300	171,700	190,000	185,000	214,700	836,700

Calendar Year	Forest Grove	Wilsonville	Metro South	MSW Composter	Metro Central	Total
1994	68,500	0	190,000	185,000	317,600	761,100
1995	68,800	0	190,000	185,000	320,800	764,600
1996	69,200	0	190,000	185,000	324,400	768,600
1997	69,700	0	190,000	185,000	329,900	774,600
1998	70,500	0	190,000	185,000	337,600	783,100
1999	71,300	0	190,000	185,000	345,500	791,800
2000	72,000	0	190,000	185,000	353,500	800,500
2001	72,800	0	190,000	185,000	361,600	809,400
2002	73,700	0	190,000	185,000	369,700	818,400
2003	74,500	0	190,000	185,000	378,100	827,600
2004	75,300	0	190,000	185,000	386,400	836,700

- 3) **The latest tonnage forecasts provided to the Council appear to indicate relatively slow growth in tonnage through about 1996 as additional recycling and waste reduction programs are implemented, but that the growth rate will begin to increase from that point forward. What are the economic or other assumption that indicate this more rapid growth pattern in the future?**

The present forecast assumes that increases in recycling and a decrease in the rate of growth of generation rates keeps per capita delivery rates constant. The forecast presented herein replaces previous forecasts.

- 4) **What evidence does Metro have to indicate growth patterns in solid waste tonnage for Washington County? Does current evidence continue to indicate a growth (or lack of growth) pattern similar to the remainder of the region? Are future solid waste tonnages for Washington County anticipated to grow at a higher rate than the remainder of the region?**

Until such times as a regional disaggregation model can be developed, the same assumptions regarding waste generation and recycling rates applied to the region are assumed to apply to subareas of the region.

The population forecasts for Washington County indicate it will grow at a faster rate than the region as a whole. Washington County's share of the Metro regional population will grow from 27.4% in 1994 to 31% in 2013 for an overall population increase of 37.8%. Even assuming that per capita delivery remains constant, total waste delivered originating in the County would, therefore, continue to grow from 307,000 tons in 1994 to 423,000 in 2013 -- a 37.8% increase.

- 5) **What is your reaction to the conclusion in the Cross report that 80,000 tons of capacity could be added to the Forest Grove Transfer Station without additional capital costs?**

The Forest Grove Transfer station cannot receive an additional 80,000 tons of MSW without additional capital costs for the following reasons:

If an additional 80,000 tons were delivered to the Forest Grove Transfer station, which is currently owned and operated by A.C. Trucking, the additional tonnage would primarily come from franchise areas independent of A.C. Trucking. To mitigate the potential for vertical integration, Metro would operate the scalehouse. Since adequate scalehouse facilities do not currently exist, they would have to be constructed.

The Franchise Agreement currently limits Forest Grove to 70,000 tons of which not more than 60,000 tons can be general purpose waste with the remaining allotted to limited purpose waste. Forest Grove disposes of the general purpose waste at the Riverbend landfill and has the option of disposing of the limited purpose waste at the Hillsboro Landfill. To attract an additional 80,000 tons to the Forest Grove Transfer Station would require franchise haulers east of Beaverton and as far south as Tigard to shift from Metro South. This would mean hauling the 80,000 tons west to the transfer station, compacting the loads, and then having Jack Gray Transport (JGT) haul the tonnage east to the Columbia Ridge landfill, essentially double hauling the waste.

The impact of transporting waste to Columbia Ridge would mean increasing our current transport costs as JGT would require additional compensation to haul from Forest Grove and a compactor would have to be installed to load JGT trucks. In addition, a trailer storage area would be required.

Finally, it would appear improbable that the Forest Grove Transfer Station could increase from 65,000 tons/yr to approximately 145,000 tons with no capital improvements to transfer the waste. In a previous procurement process Forest Grove submitted a proposal to Metro for the West wasteshed that required a facility expansion from 4,800 sq. ft. to 19,000 sq. ft. which excludes a proposed 8,400 sq. ft. maneuvering area and a 12,000 sq. ft. material processing area. The above expansion was requested in order to transfer an additional 55,000 tons for a total facility tonnage of 120,000. If A.C. Trucking's facility needed to be expanded to approximately six times the current footprint to handle 120,000 tons, it does not seem feasible that it would be able to transfer 145,000 tons without any capital expansion.

CG:ay  
cc: Council Solid Waste Committee  
Metro Council  
MARTMEMOSWYER130.MMO



**TRANS. INDUSTRIES  
METRO CENTRAL STATION  
COSTS SUBJECT TO CPI INCREASES**

DESCRIPTION			ADJUSTMENTS		
Current Rate			Last Change	Next Change	Consumer Price Index
<b>UNIT PRICE</b>					
Category	Tons/Month	price/ton			
	< = 35,000	\$8.15			
	< = 38,000	7.49			
	< = 43,500	6.29			
	47,000 +	5.53			
		Flat rate for all tonnage 35,000 or less			
		Straight Line Sliding Scale			
		Straight Line Sliding Scale			
		Flat rate for all tonnage above 47,000			
			----	Oct 92	West-A Base 1982-84 = 100
					Methodology: 12 month average for the current year minus twelve month average for the previous year divided by the previous year's average
					CPI Percent Adjustment: 100%
<b>BONUS TON</b>					
		\$6.37 per bonus ton			
		Monthly Bonus Ton=			
		Ton Transported- Base Ton + Bonus Ton From			
		Previous Month			
		Base Ton= (Loads/Ton) x 28			
			----	Oct 92	Same
<b>OVERLOADS</b>					
		(\$15.50) per overload			
		Overloads:			
		Defined as containers which require load redistribution			
		or partial unloading in order to produce a road legal			
		weight. This is a deduction from bonus ton payments.			
			Jan 92	Jan 93	CPI Adjustments are made based on Jack Gray CPI increases
<b>SHUTTLE OPERATION</b>					
		(\$8,971.61) Monthly			
		Shuttle Operation:			
		Metro reduces its monthly payment to Trans Industries			
		by the amount Metro pays Jack Gray for the shuttle			
		operations.			
			Jan 92	Jan 93	CPI adjustments are made based on Jack Gray CPI increases.
<b>AVOIDED COSTS</b>					
		\$38.89			
		Avoided Costs:			
		Metro pays Trans Industries the transport and disposal			
		costs saved due to recovered materials.			
		Avoided Costs are made up of 3 components:			
		1. The Oregon Waste System (OWS) disposal unit price			
		Current price: \$23.47 per ton			
			April 92	April 93	CPI adjustments are made based on OWS CPI increases.
		2. The Gilliam County Tax ( HWY 19 )			
		Current price: \$0.20 per ton			
				NA	This component is not subject to CPI adjustments
		3. The Jack Gray transportation unit price			
		Current price: \$13.22 per ton			
		The current transportation unit			
		is \$370.23 per load. In order to convert			
		the per load price into a per ton price,			
		the unit price per load is divided by the			
		load average of 28 tons. Effective			
		Jan 1, 1993 Metro will use an average			
		load of 29.2 tons.	Jan 92	Jan 93	CPI adjustments are made based on Jack Gray CPI increases.

Proposed Wilsonville Facility

ALTERNATE 1

PROPOSED PER TON O&M PAYMENT

<u>Category</u>	<u>Tons Per Month</u>	<u>Cost Per Ton</u>
1	First 5,999 tons per month.	\$ <u>12.07</u>
2	Additional tonnage from 6,000 through 7,999	\$ <u>12.07</u>
3	Additional tonnage from 8,000 through 9,999	\$ <u>12.07</u>
4	Additional tonnage from 10,000 through 11,999	\$ <u>9.02</u>
5	Additional tonnage from 12,000 through 13,999	\$ <u>3.12</u>
6	Additional tonnage from 14,000 through 15,999	\$ <u>3.12</u>
7	Additional tonnage from 16,000 through 17,999	\$ <u>3.12</u>
8	Additional tonnage from 18,000 through 19,999	\$ <u>3.12</u>
9	Additional tonnage from 20,000 through 21,999	\$ <u>3.12</u>
10	Additional tonnage from 22,000 and greater	\$ <u>.3.12</u>

PROPOSED PERCENT OF THE CPI\* ADJUSTMENT 100%

NOTE: ATTACHMENT C REFLECTS AN EQUIPMENT RESERVE WITH SALVAGE VALUE APPLIED TO EQUIPMENT.

\* The Consumer Price Index will be based on the index entitled "West-A" from the U.S. Department of Labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes, Pacific Cities and U.S. City Average/ All Urban Consumers."

$$\text{MTF} = \text{DS} + \text{OM} + \text{PT} - \text{RMC} - \text{CRC}$$

Where:

MTF = Monthly Tip Fee  
DS = Monthly Debt Service  
OM = Monthly Operation and Maintenance Expense  
PT = Monthly Pass Through Costs  
RMC = Recovered Materials Credit for the month  
CRC = Compost Product Revenues Credit for the month

Formula for Composter payment from Exhibit "K" of Agreement

RECEIVED

JUL 13 1993

Davis Wright Tremaine

# COMPARISON OF METRO STAFF REPORTS ON WILSONVILLE TRANSFER STATION

## DRAFT STAFF REPORT

DATE: June 22, 1993

### PROPOSED ACTION

Approve Resolution No. 93-1819 for the Purpose of Authorizing the Executive Office to enter into a Franchise Agreement with Willamette Resources, Inc. for the construction and operation of the Metro West Station.

### SYSTEM CAPACITY

The existing capacity of the solid waste system is a function of the **optimum** design capacity of Metro South and Metro Central Stations, and the amount of waste which can be transferred to the landfill in Yamhill County utilizing the transfer station in Forest Grove, Oregon. The optimum design capacity is that level at which serious operational problems do not occur.

The **optimum** capacity at the Metro South Station is estimated to be approximately **255,000** tons per year.

The facility will receive approximately 360,000 tons in 1993 and will increase at roughly the rate as projected for the service area proposed in the franchise with WRI presented below.

However, at this higher tonnage level the facility is currently experiencing severe operational problems such as long queuing lines which reach the I-205 interchange as well as causing overtime payments for shuttle operations by our transport contractor. **In addition, the high tonnage levels prohibit any future plans to increase materials recovery efforts at the facility. Staff believes that reducing the tonnage will alleviate such problems and may allow the operator to recover more than the current 1% recovery rate.**

NOTE: Certain words have been printed in bold for emphasis. The bold type was not a part of the original staff reports.

## FINAL STAFF REPORT

DATE: July 13, 1993

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### SYSTEM CAPACITY

The existing capacity of the solid waste system is a function of the **maximum** capacity of Metro South and Metro Central Stations, and the amount of waste which can be transferred to the landfill in Yamhill County utilizing the transfer station in Forest Grove, Oregon. The maximum capacity is that level above which serious unavoidable operational problems occur.

The **maximum** capacity at the Metro South Station is estimated to be approximately **400,000** tons per year.

The facility will receive approximately 360,000 tons in 1993 and may increase at roughly the rate as projected for the service area proposed in the franchise with WRI presented below.

However, at this higher tonnage level the facility is currently experiencing some operational problems such as long queuing lines which reach the I-205 interchange as well as causing overtime payments for shuttle operations by our transport contractor. **These problems are being resolved through operational changes until the flow exceeds 400,000 tons.**

## DRAFT STAFF REPORT

Optimum system capacity is approximately 871,000 tons per year without the proposed station in Wilsonville, and approximately 1,000,000 with the proposed station.

### TONNAGE FORECAST

It should be noted that forecasting is more of an art than a science. **Staff believes that our current forecasts are conservative in nature and that any deviation from the forecast is likely to occur in the upward direction.**

Two methods have been used in the past to redirect waste and are the methods which will be considered by Metro should Metro West not be constructed. The two methods are price differentials and flow control.

While the St. Johns Landfill was open, a convenience charge for Metro South of \$3 per ton was charged "to reflect the value of the extra convenience to customers provided by transfer and recycling centers versus landfills" (Resolution No. 84-483). Existing processing facilities presently pay fees only on tons disposed. This can enable such facilities to have a lower tip fee than they otherwise would, and help them to draw in more materials. A lower fee is charged for yard debris at Metro transfer facilities.

While price differentials have proven to be effective, they have inherent drawbacks. First, they violate Metro policy of uniform rates. They also tend to discriminate against the haulers who must shift their travel patterns, increasing their travel/time costs. **Haulers and their customers most distant from transfer stations have, in effect, provided a subsidy to those haulers and customers closer to existing transfer stations since they pay the same tip fee but incur higher costs.**

## FINAL STAFF REPORT

System capacity is approximately 1,016,000 tons per year without the proposed station in Wilsonville, and approximately 1,212,000 with the proposed station.

### TONNAGE FORECAST

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## DRAFT STAFF REPORT

Staff analyzed current hauler travel distances to determine if any counties' haulers were disproportionately effected. The following table shows that, on the average, Washington County haulers travel longer distances to the existing transfer stations. **An added charge at Metro South continues and adds to this subsidy.** Again, it is assumed such costs would be passed on to customers during the hauler's franchise rate review.

Metro could use its flows control authority to redirect waste and avoid some of the problems associated with price differentials. Metro has used this authority through the issuance of "required use orders" to specific haulers for directing waste to the composter. **Use of flow control would again increase the costs to haulers in terms of time/distance and preference, which would be passed on to the affected customers.** Staff recommends the use of flow control over price differentials to redirect flow should the Metro West Station not be constructed. This would require a change in existing Metro policy which calls for construction of the station.

The benefits are primarily a reduction in operational and pollution costs to the residents of Washington County. An analysis of hauler travel times and pollution costs indicated that if Metro West is constructed, haulers using the facility would incur an average cost reduction (in 1993 dollars) of approximately \$350,000 to \$600,000 per year, depending on the amount of tonnage hauled to the facility. **The reduction in miles traveled and pollution is consistent with current Metro and State policies.**

It should be noted that the use of HWY 26 by Washington County haulers accessing the Metro Central Station was not considered in the above analysis although it is approved for truck use. Haulers have indicated that the steep grades cause major safety problems. This perception, together with the construction of the high rail line, is assumed to prohibit its use for purposes of redirecting waste.

## FINAL STAFF REPORT

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The benefits are primarily a reduction in operational and pollution costs to the residents of Washington County. An analysis of hauler travel times and pollution costs indicates that if Metro West is constructed, haulers using the facility would incur an average costs reduction (in 1993 dollars) of approximately \$350,000 to \$600,000 per year, depending on the amount of tonnage hauled to the facility.

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## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 93-1819 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO A FRANCHISE AGREEMENT WITH WILLAMETTE RESOURCES, INC. FOR THE CONSTRUCTION AND OPERATION OF THE METRO WEST STATION.

Date: June 22, 1993

Presented by: Jim Watkins  
Bob Martin

### PROPOSED ACTION

Approve Resolution No. 93-1819 for the Purpose of Authorizing the Executive Officer to enter into a Franchise Agreement with Willamette Resources, Inc for the construction and operation of the Metro West Station.

### FACTUAL BACKGROUND AND ANALYSIS

#### **Policy/Procurement Background**

In FY74-75, Metro adopted the CORMET plan which envisioned a system of two transfer/processing facilities to be located in Multnomah and Clackamas counties, and a transfer station located in Washington county. Two sites were subsequently identified but rejected due to public opposition.

In FY80-81, this system was revised to delete the processing of waste, but to retain the three transfer stations to be located in each county. Implementation of the plan began with the construction of Metro South Station in 1983.

In 1984, Metro adopted Resolution 84-506 which formally updated the Solid Waste Management Plan to include three publicly owned stations in each county. The station for Washington county was to open by 1986 and the third station was to open upon the closure of the St. Johns Landfill. A site was purchased for the Washington Co. station, however the project was abandoned in 1987. The Metro Central Station, located in Portland, opened in 1991.

In 1988, Metro began a joint planning process with representatives of Washington County to develop a solid waste transfer and materials recovery plan. The process culminated in the Metro West Transfer and Materials Recovery Plan which was adopted by the Metro Council as a chapter of the Regional Solid Waste Management Plan in October, 1991. The plan called for a system of two transfer and materials recovery facilities for Washington County which were to be privately owned and operated.

In late 1991, staff issued a request for franchise applications for the western part of the county. Two applications were received and evaluated. Metro decided to not pursue the project in February, 1992, upon a recommendation from the Executive Officer, due to concerns regarding cost and tonnage availability. Staff was then directed to conduct a similar procurement in the eastern part of the county where greater population growth was expected.

Staff issued a request for franchise applications in June, 1992, and received one application from Willamette Resources, Inc. Evaluation was completed in September, at which time the Solid Waste Committee requested an analysis of transfer station capacity. Staff presented the analysis, the committee reviewed the analysis, at which time staff then proceeded to negotiate a franchise with WRI.

The first step in the negotiations was to enter into a design agreement with WRI. The design agreement required that Metro be permitted to participate in the conceptual design of the facility and that Metro reimburse WRI for design expenses incurred by outside consultants should a franchise not be awarded. Metro is responsible for approximately \$130,000 in design reimbursements. The design phase of the project was concluded in April, 1993, and is an attachment to the negotiated franchise agreement. Metro and WRI then began negotiation of the franchise agreement. Negotiations were concluded in June, 1993, and final agreement is attached. Specific aspects of the agreement are discussed under the Franchise Agreement Summary below.

### **System Capacity**

The existing capacity of the solid waste system is a function of the optimum design capacity of Metro South and Metro Central Stations, and the amount of waste which can be transferred to the landfill in Yamhill County utilizing the transfer station in Forest Grove, Oregon. The optimum design capacity is that level at which serious operational problems do not occur. The amount of waste which can be transferred to the landfill in Yamhill County is a function of the conditions of our disposal contract with Oregon Waste Systems which limits waste sent to other landfills to 10% of the waste disposed of in a general purpose landfill.

The optimum capacity at the Metro South Station is estimated to be approximately 255,000 tons per year. The facility will receive approximately 360,000 tons in 1993 and will increase at roughly the rate as projected for the service area proposed in the franchise with WRI presented below. However, at this higher tonnage level the facility is currently experiencing severe operational problems such as long queuing lines which reach the I-205 interchange as well as causing overtime payments for shuttle operations by our transport contractor. In addition, the high tonnage levels prohibit any future plans to increase materials recovery efforts at the facility. Staff believes that reducing the tonnage will alleviate such problems and may allow the operator to recover more than the current 1% recovery rate.



Such problems were also identified by the City of Oregon City in its 1991 agreement with Metro. The agreement permits up to approximately 400,000 tons per year. It further states, however, that Metro will take every step possible to reduce the annual tonnage level to 255,000 tons (700 tons per day). The condition allowing the higher tonnage level expires in 1996.

The Metro Central Station was designed for an optimum capacity of 548,000 per year. It will receive approximately 345,000 tons in 1993 and should continue at that rate for the foreseeable future.

The transfer station located in Forest Grove was originally constructed as a reload facility for hauling firms owned by the station owner. Waste was to be top loaded into transfer trucks for shipment to the Riverbend Landfill in Yamhill County. In 1986, the facility received permission from Metro to receive waste from other haulers utilizing the Riverbend Landfill, pending construction of a Metro owned transfer station in Washington County. The amount of waste which Metro may transfer to Riverbend is limited to 10% of the regions waste going to a general purpose landfill, or approximately 68,000 tons per year. The facility is not currently equipped to compact waste for long haul transport should Metro decide to discontinue waste transfer to Riverbend. The facility did submit an application during the franchise procurement for the western portion of Washington County which was canceled. Like the Metro South Station, the Forest Grove facility has no materials recovery capabilities.

The proposed Metro West Station to be located in Wilsonville, would have an optimum capacity of 196,000 tons. Projections for the facility are presented below. The area to be served by the facility is the only waste shed in the region projected to grow in waste generation, due to its high population growth.

1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
129032	131270	133481	135672	137803	139882	141900	143862	145766	147607

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
149392	151118	152785	154392	155939	157429	158856	160226	161536	162798

Optimum system capacity is approximately 871,000 tons per year without the proposed station in Wilsonville, and approximately 1,000,000 with the proposed station.

### Tonnage Forecast

It is estimated that the Metro region will require approximately 770,000 tons of transfer capacity in 1994. For purposes of planning the transfer system for the future, staff assumed that increasing tonnage from population increases will be offset by increases in recycling and other waste reduction activities, except in Washington County which will experience the most rapid rate of population growth. Even with such growth, it is

estimated that annual tonnage requiring disposal will only increase to approximately 790,000 by the year 2003. Of that amount, Washington County will generate approximately 220,000 in the year 2003, from its current level of about 200,000. During the planning process for Washington County which was completed in 1991, it was forecast that Washington County would require over 300,000 tons of capacity by the year 2003.

It should be noted that forecasting is more of an art than a science. Staff believes that our current forecasts are conservative in nature and that any deviation from the forecast is likely to occur in the upward direction.

### **Analysis**

As can be seen above, the current system of transfer stations contains enough capacity for the foreseeable future. The excess capacity is the result of sizing the Metro Central Station assuming an increasing waste generation rate which was the trend in 1988 when the long range tonnage projection was developed for the Metro Central RFP. The problem with this system is that the excess capacity is not in a convenient location to provide efficient transfer capabilities for Washington and Clackamas county haulers.

### **Redirecting Waste**

If a facility is not constructed at Wilsonville, then Metro would have to reallocate approximately 100,000 tons of waste from Metro South to alleviate operational problems and to comply with the spirit of the Oregon City agreement. It is assumed that waste would be redirected to Metro Central to take advantage of excess capacity and its materials recovery capabilities. Redirecting waste to the Forest Grove facility is of limited value due to the current tonnage limitation, lack of materials recovery capabilities, distance from the majority of Washington County waste and the increased cost of transporting waste from Forest Grove to the Columbia Ridge Landfill above the 10% limitation.

The current system of facility use is based on hauler preferences. Even with substantial operating problems, haulers generally prefer to use Metro South over Metro Central. Redirecting waste to Metro Central would presumably impose costs on the haulers. Such costs would be in terms of increases in distance/times traveled, ease of facility use (pit vs. flat floor) and disruption of historical patterns. It is assumed such costs would be passed on to customers during the hauler's franchise rate review.

Two methods have been used in the past to redirect waste and are the methods which will be considered by Metro should Metro West not be constructed. The two methods are price differentials and flow control.

While the St. Johns Landfill was open, a convenience charge for Metro South of \$3 per ton was charged "to reflect the value of the extra convenience to customers provided by

transfer and recycling centers versus landfills" (Resolution No. 84-483). Existing processing facilities presently pay fees only on tons disposed. This can enable such facilities to have a lower tip fee than they otherwise would, and help them to draw in more materials. A lower fee is charged for yard debris at Metro transfer facilities.

While price differentials have proven to be effective, they have inherent drawbacks. First, they violate Metro policy of uniform rates. They also tend to discriminate against the haulers who must shift their travel patterns, increasing their travel/time costs. Haulers and their customers most distant from transfer stations have, in effect, provided a subsidy to those haulers and customers closer to existing transfer stations since they pay the same tip fee but incur higher costs. Staff analyzed current hauler travel distances to determine if any counties' haulers were disproportionately effected. The following table shows that, on the average, Washington County haulers travel longer distances to the existing transfer stations. An added charge at Metro South continues and adds to this subsidy. Again, it is assumed such costs would be passed on to customers during the hauler's franchise rate review

**Average Distance From Each Counties' Franchise Area to Transfer Station Currently Used in Miles**

	Washington	Multnomah	Clackamas	Region
Average	22.6	18.7	16.9	19.2
High	35.9	39.2	31.3	39.2
Low	9.5	7.3	5.7	5.7

Metro could use its flow control authority to redirect waste and avoid some of the problems associated with price differentials. Metro has used this authority through the issuance of "required use orders" to specific haulers for directing waste to the composter. Use of flow control would again increase the costs to haulers in terms of time/distance and preference, which would be passed on to the affected customers. Staff recommends the use of flow control over price differentials to redirect flow should the Metro West Station not be constructed. This would require a change in existing Metro policy which calls for construction of the station.

If the Metro West Station is constructed, waste would be redirected to this facility from primarily the Metro South Station. The costs associated with this course of action are reflected in the increase in the regional rates described below. The benefits are primarily a reduction in operational and pollution costs to the residents of Washington County. An analysis of hauler travel times and pollution costs indicates that if Metro West is constructed, haulers using the facility would incur an average cost reduction (in 1993 dollars) of approximately \$350,000 to \$600,000 per year, depending on the amount of tonnage hauled to the facility. The reduction in miles traveled and pollution is consistent with current Metro and state policies.

It should be noted that the use of HWY 26 by Washington County haulers accessing the Metro Central Station was not considered in the above analysis although it is approved for truck use. Haulers have indicated that the steep grades cause major safety problems. This perception, together with the construction of the light rail line, is assumed to prohibit its use for purposes of redirecting waste.

### **Cost Impacts**

The costs associated with the Metro West Station consist of capital costs, operational costs and Metro costs. These costs are presented below, together with the impact on the regional tip fee.

The capital cost of constructing the Metro West Station is approximately \$10.3 million. The money would be raised through the issuance of project bonds by Metro which are in turn loaned to WRI. WRI is responsible for providing credit enhancement as part of its loan agreement with Metro. The credit enhancement will be in the form of a letter of credit with a private bank. WRI is responsible for repayment of the bonds and will receive a monthly lump sum payment from Metro for this amount as long as they are not in default of the agreement.

Of the \$10.3 million, approximately \$9 million will be tax exempt bonds and the remainder taxable. The taxable portion of the bond issuance is for the land costs of the project, per IRS requirements. Of the \$9 million tax exempt issuance, approximately 10% will be used for offsite improvements such as extension of the sewer and water, as well as realignment of the Ridder Road which borders the site. A portion of the offsite costs will be repaid as other firms hookup to the sewer and water extensions. The offsite improvements are a requirement of the City of Wilsonville. About 70% of the \$9 million tax exempt issuance will be used to construct the building and onsite improvements, as well as to acquire and install equipment and rolling stock. The remaining 20% is for indirect costs of the project such as contingencies, bond issuance costs and reserve requirements. The total debt service costs are presented below on a per ton basis.

Operating costs for the project consist of Metro costs which are primarily for operation of the scalehouse and unacceptable waste storage area and the disposal costs for the unacceptable waste, and costs to WRI for operation of the facility. WRI is reimbursed based on the amount of waste coming into the facility. WRI and Metro have agreed to a reimbursement tonnage schedule consisting of 10 tonnage categories. The schedule is contained in the franchise agreement and effectively reduces the amount charged per ton as flows increase. For FY95-96, the rate per ton due WRI is estimated to be \$16.44 per ton. Below is a summary of the per ton costs, together with similar costs at Metro Central and Metro South, should Metro West be constructed. This is followed by a similar comparison should Metro West not be constructed. It should be noted that since the Metro West Station would be privately owned, it will be required to pay property taxes, income taxes (on both O&M payments and principal payments not offset by depreciation)

and letter of credit costs which are not required for a publicly owned facility. Such costs will add approximately \$2 per ton to the facility's annual costs. These are in addition to the enhancement fee (\$.50 per ton) which is currently paid at Metro owned facilities.

**TRANSFER STATION COSTS  
1995-96**

<i>Item</i>	<i>South</i>	<i>Central</i>	<i>Wilsonville</i>
Metro Costs	\$3.89	\$4.29	\$3.04
Shuttle Operations	\$0.13	\$0.71	\$0.00
O&M Contractor	\$4.83	\$12.52	\$13.40
<b>Total Operating Costs</b>	<b>\$8.85</b>	<b>\$17.51</b>	<b>\$16.44</b>
Debt Service	\$1.75	\$7.71	\$7.74
<b>Total Cost</b>	<b>\$10.60</b>	<b>\$25.22</b>	<b>\$24.18</b>
<i>Tonnage</i>	<i>246,000</i>	<i>301,500</i>	<i>132,300</i>

**TRANSFER STATION COSTS  
Without Wilsonville  
1995-96**

	<i>South</i>	<i>Central</i>
Metro Cost	\$2.79	\$3.87
Shuttle Operations	\$0.67	\$0.65
O&M Payments	\$4.55	\$11.53
<b>Total Operating Cost</b>	<b>\$8.00</b>	<b>\$16.05</b>
Debt Service	\$1.23	\$7.09
<b>Total Cost</b>	<b>\$9.23</b>	<b>\$23.13</b>
<i>Tonnage</i>	<i>351,900</i>	<i>328,000</i>

The per ton impact on rates if Metro West is constructed is presented below. It should be noted that FY94-95 rates do not contain a full year's worth of debt service.

FY94-95	FY95-96	FY96-97
\$3.44	\$4.15	\$4.32

## **Franchise Agreement Summary**

The agreement provides that WRI is responsible for the design, construction and maintenance of the facility, and operation of the facility except for the scalehouse and unacceptable waste storage area which will be operated by Metro. Construction of the facility will be in accordance with the conceptual plans jointly developed with Metro. The facility would open in 1994.

The term of the agreement is 20 years (the same term as the bond issuance). The agreement can be extended up to 20 additional years in five year increments, or the franchise can be allowed to expire. Metro may purchase the facility at the end of the term at Fair Market value. During the agreement Metro has the right of first refusal should Willamette Resources, Inc. decide to sell the facility.

The facility design consists of a flat tipping floor and waste sorting area, offices, truck wash, unacceptable waste building, scalehouse and public recycling area. The interior space will be over twice as large as Metro South. No material recovery equipment will be installed initially; however the infrastructure for such equipment will be in place. The contractor will receive the full avoided cost for recovered materials and may negotiate with Metro for future financing of material recovery equipment. If Metro participates in financing additional equipment, the amount of avoided cost is up for negotiation. Staff does not believe it is prudent to install material recovery equipment until the waste received at the facility is examined. Initial recovery is expected to be 4-5%.

Metro will process requests for payments during construction, ensuring that the conceptual design agreed upon is built. If funds are available at the end of construction, the Contractor may apply such funds to the acquisition of materials recovery equipment, except that a baler must be the first equipment acquired.

Once constructed, the facility will be performance tested to determine its ability to receive, process and compact up to its design capacity of 825 tons per day.

The facility will be open 363 days a year. Weekday hours are 6 am to 6 pm Monday through Friday for commercial only and 8 am to 6 pm weekends for both public and commercial.

All waste within a designated service area is to be directed to the facility by use of Metro's flow control authority. In FY94-95, this will be about 130,000 tons, escalating to 163,000 tons in 2013. Capacity is 196,000 tons per year. Forest Grove station will continue to operate at about 9% of the regional tonnage or 66,000 tons. Metro reserves the right to direct waste to other facilities which can produce products from the waste, such as compost, energy or tennis shoes. If tonnage drops below 95,000 tons, Metro is obligated to meet with WRI to discuss the financial viability of the project, however Metro is under no obligation to take any action.

## Site Availability

The question has been raised as to whether the Wilsonville site can be secured in some fashion which allows construction to merely be deferred? The site is zoned appropriately for construction of a transfer station and should remain so into the future, unless specific action is taken by the City of Wilsonville to change its designation. Design review approval for the site will expire on February 22, 1995. It is possible to "bank" the land on which the transfer station would be built. The land could be obtained through a negotiated purchase, or through condemnation if Metro made a determination that the land is necessary for a public use. However, the City of Wilsonville, and not Metro, has jurisdiction over land use at the site. In order to "bank" land use approvals at the site Metro would need to obtain a commitment to do so (through intergovernmental agreement) from the City of Wilsonville. Since circumstances surrounding the appropriateness of land use decisions is subject to change over time, a decision by Wilsonville to agree to maintain the land use designation for any significant length of time is likely to be viewed as a land use decision. As such, it would be subject to the requirements of the Wilsonville zoning code relating to other land use decisions which would include, at a minimum, notice and opportunity for a public hearing.

The costs to Metro of "banking" the site consist of lost investment revenue to Metro assuming the land costs were invested instead of tied up in the land, and of increased construction costs due to inflation. If the site were purchased by Metro and "banked" for five years, staff estimates the above costs to be 2 million dollars.

## EXECUTIVE OFFICER'S RECOMMENDATION

Revised  
10-93

IMPACT ON RATES  
IF WILSONVILLE OPENS IN JUL 1994

At what Rank will Effect of Increase on Disposal Rate  
1 - Highest Increase  
4 - Lowest Increase

Rank	ALTERNATIVES	METRO DISPOSAL RATE		
		1994-95	1995-96	1996-97
1	OPEN (80% OPERATING RATIO) Project Bond			
	NOT OPEN	82.47	86.43	89.57
	RATE INCREASE	78.98 3.49	81.95 4.48	84.92 4.65
2	OPEN (90% OPERATING RATIO) Private Activity Bond			
	NOT OPEN	82.15	86.27	89.38
	RATE INCREASE	78.98 3.17	81.95 4.32	84.92 4.46
3	OPEN (90% OPERATING RATIO)- Project Bond			
	NOT OPEN	82.21	86.15	89.28
	RATE INCREASE	78.98 3.23	81.95 4.20	84.92 4.36
4	OPEN (90% OPERATING RATIO)- System Bond			
	NOT OPEN	81.82	85.81	88.92
	RATE INCREASE	78.98 2.94	81.95 3.86	84.92 4.00

Revised  
June 3, 1993

OPEN (Willamette Revised O & M schedule per Memo dated May 20, 1993) - Project Bond  
O & M rates reflect 100% of CPI up to annual CPI increase of 5%  
Capital Project Costs reduced by \$800,000  
Added Letter of Credit Costs  
Revised Renewal & Replacement Account Based on URS Report  
Revised Annual Debt Service Based on memo from Budget Division Dated May 27, 1993

NOT OPEN	82.09	85.73	88.83
RATE INCREASE	78.65 3.44	81.58 4.15	84.51 4.32

• Includes 6 months of Debt Service only

Note: This analysis assumes an annual CPI increase of 4%



**IMPACT ON RATES**  
**IF WILSONVILLE OPENS IN JUL 1994**

3 Jun 93

1. Williams Revised O & M schedule  
based on Memo dated May 20, 1993
2. O&M adjusted to reflect 100% of CPI  
up to an annual CPI increase of 5%
3. Financing: Project Bonds (Revised)  
based on Memo dated May 27, 1993  
Capital Project cost reduced by \$800,000
4. Added Letter of Credit Costs
5. Revised Renewal & Repl Acct

	1994-95	1995-96	1996-97
<b>METRO OPERATIONS (Scale House)</b>			
OPEN	\$1,394,521	\$1,469,623	\$1,591,606
NOT OPEN	1,117,976	1,194,124	1,275,951
SYSTEM COST INCREASE	276,545	295,499	315,855
RATE INCREASE	0.40	0.43	0.47
<b>STATION OPERATIONS</b>			
OPEN	\$6,477,574	\$6,734,706	\$7,000,575
NOT OPEN	5,194,830	5,380,129	5,572,480
SYSTEM COST INCREASE	1,282,744	1,354,577	1,428,095
RATE INCREASE	1.87	1.89	2.11
<b>TRANSPORTATION/DISPOSAL</b>			
OPEN	\$25,273,509	\$25,894,320	\$26,743,358
NOT OPEN	25,411,571	26,140,059	26,897,169
SYSTEM COST INCREASE	(138,062)	(145,739)	(153,811)
RATE INCREASE	(0.20)	(0.21)	(0.23)
<b>HAZARDOUS WASTE DISPOSAL</b>			
OPEN	\$1,651,520	\$1,717,581	\$1,788,284
NOT OPEN	1,651,520	1,717,581	1,788,284
SYSTEM COST INCREASE	0	0	0
RATE INCREASE	0.00	0.00	0.00
<b>AVOIDED COSTS</b>			
OPEN	\$2,084,107	\$2,165,994	\$2,251,499
NOT OPEN	1,901,037	1,973,028	2,048,188
SYSTEM COST INCREASE	183,070	192,966	203,311
RATE INCREASE	0.17	0.18	0.19
<b>DEBT SERVICE</b>			
OPEN	\$3,700,759	\$4,048,817	\$4,045,527
NOT OPEN	3,025,529	3,024,457	3,021,387
SYSTEM COST INCREASE	675,230	1,024,160	1,024,160
RATE INCREASE	0.99	1.51	1.52
<b>TOTAL COSTS</b>			
OPEN	\$39,806,760	\$41,126,681	\$42,394,889
NOT OPEN	35,952,164	37,429,081	38,604,232
SYSTEM COST INCREASE	1,604,298	1,697,305	1,783,452
RATE INCREASE	\$3.23	\$3.90	\$4.06
<b>LESS REVENUE</b>			
OPEN	2,483,368	2,451,912	2,488,940
NOT OPEN	2,470,587	2,435,810	2,470,500
SYSTEM COST DECREASE	(\$12,781)	(\$16,002)	(\$18,440)
RATE INCREASE/DECREASE	(\$0.02)	(\$0.03)	(\$0.02)
RATE INCREASE	\$3.22	\$3.88	\$4.04
RATE INCREASE AFTER EXCISE TAX (7.0%)	\$3.44	\$4.15	\$4.32

USED THIS SET OF NUMBERS

WILSONVILLE COST

	94-95	95-96	96-97
Personal Services (5.35 FTE)	189,718	205,199	221,943
Materials & Services	151,154	157,200	163,488
Allocated from Existing Costs	64,327	66,900	69,576
New Costs	86,827	90,300	93,912
Haz Waste Disposal (Allocated from Existing Costs)	38,462	40,000	41,600
Total FTE for Wilsonville	5.35	5.35	5.35
Debt Service Payments ( From Rate)	457,696	915,393	915,393
Letter of Credit- Annual Fee ( 1% Bond Size)	108,767	108,767	108,767
Letter of Credit- Origination Fee (1% Bond Size)	108,767		
Transfer Station	1,683,899	1,773,776	1,866,552
Recycling Avoided Costs	257,004	270,898	285,419
Transportation ( Jack Gray)			
New Cost	123,613	125,727	127,818
Savings from Shuttle Operations at Metro South	(195,449)	(201,312)	(207,352)

## TONNAGE ESTIMATE

TONNAGE	FY 1992-93	FY 1993-94	FY 1994-95	FY 1995-96	FY 1996-97
South	327,752	356,736	250,334	246,044	242,034
Central	319,086	332,449	304,275	301,491	298,955
Composter	77,083	0	0	0	0
Wilsonville	0	0	130,119	132,344	134,545
Total Metro	723,921	689,185	684,728	679,879	675,534
Non-Metro	314,233	339,343	353,108	355,816	358,840
Direct Haul to Columbia Ridge	30,000	15,319	21,353	21,353	21,353
Grand Total	1,068,154	1,043,847	1,059,189	1,057,048	1,055,727
Tonnage to Columbia Ridge Lar	649,174	633,184	625,889	621,158	616,913
Tonnage to Marion County	9565	7,821	8,311	8,311	8,311
RECYCLE					
South ( 1%)	2,886	2,997	2,103	2,067	2,033
Central ( 7% for 94-97)	17,968	23,910	21,883	21,683	21,501
Wilsonville( 5%)	0	0	6,506	6,617	6,727

Willamette Resources, Inc.

Bond Sizing (a)

5/27/93

6

Amendment #5 - Project Bond

Revision of Project Costs - Amendment #1 minus \$800,000

Adjustment of Tax Exempt rate from 5.7% to 5.3%

Adjustment of Taxable rate from 9.0% to 8.3%.

	Tax-Exempt Financing	Taxable Financing	Total Debt Service
<b>SOURCES</b>			
Bond size	9,837,658	1,238,184	
Interest income			
Construction	182,997	0	
Reserve Account	35,550	5,780	
Capitalized interest	19,812	3,812	
Total Interest Income	238,180	9,592	
Total sources	9,875,718	1,248,757	
<b>USES</b>			
Project costs (b)	8,110,535	978,475	
Deposit to Reserve Account	787,371	128,023	
Deposit for capitalized interest	583,357	119,478	
Issuance costs	192,751	24,783	
Contingency (b)	182,704	0	
Total uses	9,875,718	1,248,757	
Annual debt service	787,371	128,023	915,393
Monthly debt service	65,614	10,669	76,283
<b>Interest rate</b>			
Bond (Blended Rate)	Rate1	5.30%	8.30%
Short term investments	Rate2	4%	
Long term investments N/A	Rate3	6%	
Term	mpor	20 years	
Issuance costs	ic	2%	
Issue Date	5/15/93		
Start date	8/1/93		
Completion date	7/30/94		

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING )	RESOLUTION NO. 93-1819
THE EXECUTIVE OFFICER TO ENTER )	
INTO A FRANCHISE AGREEMENT )	
WITH WILLAMETTE RESOURCES, INC.)	Introduced by Rena Cusma,
FOR CONSTRUCTION AND )	Executive Officer
OPERATION OF THE METRO )	
WEST STATION )	

WHEREAS, In June 1990, the Council of Metro adopted Resolution No. 91-143B establishing policy for development of the "Metro West Transfer and Material Recovery System" as a chapter of the Regional Solid Waste Management Plan; and

WHEREAS, In October, 1991, the Metro Council adopted Ordinance No. 91-416 which amended the Regional Solid Waste Management Plan to include the chapter referenced above; and

WHEREAS, Ordinance No. 91-416 states that: "The primary method of facility procurement for transfer facilities in the west watershed will be through the issuance of a request for long-term franchises"; and,

WHEREAS, In May, 1992 the Metro Council adopted Resolution No. 92-1612 authorizing issuance of a "Request for the Provision of Transfer and Material Recovery Facilities and Services for Eastern Washington County" (RFF) to partially implement the adopted chapter referenced above; and

WHEREAS, In July, 1992, a franchise application was received in response to the RFF and found to be in compliance with the RFF; and

WHEREAS, A franchise agreement, attached as Exhibit "A", has been negotiated between Metro and Willamette Resources, Inc. which is in compliance with the RFF and the Regional Solid Waste Management Plan; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute the Service Agreement, in a form substantially similar to Exhibit "A" attached to the original only hereof, and hereby incorporated by reference.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Judy Wyers, Presiding Officer



July 26, 1993  
Project 0704-001.03

Mr. Merle Irvine  
Willamette Resources, Inc.  
2215 N. Front Street  
Woodburn, Oregon 97071

Re: Transfer Station Design Capacity

Dear Merle:

Recently I attended two public hearings regarding the proposed Wilsonville transfer station. On both occasions the topic of transfer station capacity was frequently discussed. The Metro South Station, in particular, was the subject of considerable conversation regarding its historical waste flow, optimum capacity, and ultimate capacity.

Even though there was much discussion at these meetings about transfer station and transfer system capacity, I departed each with an uneasy feeling that some decision makers and interested parties may have a misconception as to the meaning of the phrase "transfer station capacity"

I believe it is important for those involved in discussions regarding the Wilsonville facility to understand that the capacity of a solid waste facility is difficult to define in absolute terms. The capacity of a transfer station is unlike the capacity of say, the Memorial Coliseum. Rather, capacity is best considered as a function of one or more of several variables including

- Level of service as defined by the maximum allowable waiting time at either the gatehouse or tipping area
- Available queuing area prior to the gatehouse and tipping area
- Effectiveness of efforts to accomplish material recovery
- Hours of operation

Key factors affecting transfer station capacity as defined by these criteria include

- Distribution of vehicles and waste flow during operating hours



Mr. Merle Irvine  
July 26, 1993  
Page 2

Project 0704-001.03

- Ratio of private vehicles to commercial collection vehicles
- Materials handling and interim storage capabilities

While there is certainly a physical limit to the quantity of material that can be processed through a given transfer station over a specified period time, its "capacity" is frequently defined by a conscious decision to operate within established ranges for one or more of the criteria cited above.

For example, due to the inefficiencies and costs incurred by commercial collection companies resulting from prolonged driver and vehicle standby time, the capacity of a particular transfer station may be dictated by establishing 15 minutes as the maximum waiting time for commercial collection vehicles at a transfer station gatehouse. Alternatively, the particular site characteristics of a transfer station may result in capacity being limited by the ability to queue fewer than 10 vehicles before creating a traffic hazard at the facility entrance.

The above examples are just two illustrations of how transfer station capacity is often linked to operating performance rather than physical capacity. It occurs to me that establishing the concept of transfer station capacity in the minds of decision makers is essential to resolving the question of whether or not to proceed with the Wilsonville facility.

For your information, I've attached an excerpt from the *Washington County Technical Analysis*, published by Metro in April 1991. The attachment addresses the issue of capacity at the Metro South Station and serves as a further illustration of the relationship between facility operational performance and "capacity".

I trust the information presented above will be of some benefit in this regard. If you have questions or comments regarding this correspondence, please call.

Sincerely,

EMCON Northwest, Inc.



Buff Winn, P.E.  
Supervising Engineer

Attachment



Appendix Q  
Technical Paper No. 25

Metro South Capacity Analysis

The Metro South Transfer Station was first added to the regional solid waste system by Metro in 1983. The facility is located in Oregon City and has a large service territory, which includes the Clackamas County waste-shed as well as portions of the Multnomah and Washington County waste-sheds. As a result, the facility receives large volumes of material (368,000 tons in 1990) that greatly exceed its present design capacity of 270,000 tons. Its design capacity is dependent upon a number of factors including; site size, size of tipping area, compactor capacity and overall facility function. Currently, the facility performs only minimal post-collection material recovery processing functions. Therefore, most all of the tonnage that enters the facility is destined for land disposal. In order to expand Metro South's ability to perform this essential function, recovery equipment, work space and short-term storage space would have to be built into the facility. As a result, the design capacity of the facility would likely to be reduced because there is no additional room on the site for expansion.

These two factors; over-capacity and the lack of adequate material recovery capabilities have made reducing the volume of waste that flows to the Metro South facility a priority.

The opening of the regional mass compost facility scheduled for the spring of 1991 is expected to immediately reduce waste volumes at the transfer station by up to 68,000 tons per year. However, since the compost facility will open at its operational capacity, its ability to relieve over-capacity pressures at Metro South is limited. Improved transfer and material recovery capabilities in Washington County (the subject of this planning project) will also significantly reduce the amount of waste being sent to Metro South. The improved Washington County system is planned to be operational by 1993. It is anticipated that the new County system will reduce the amount of waste flowing to the Metro South Station to approximately 200,000 tons in 1993 in order to provide room for improved material recovery processing capabilities and accommodate future growth within the wasteshed it serves. As a result, the over-capacity problems at Metro South appear solvable.

The lack of material recovery capabilities at the Metro South station remains as a chief concern. Metro's stated waste reduction goal of 56% makes it necessary to provide opportunities to recover materials throughout the system. The materials that flow through Metro South represent a lost opportunity for waste recovery. In order to assist the region to meet its waste reduction goal, the proposed Washington County system will have post collection material recovery capability. Therefore, consideration should be given to allowing wastes from the Clackamas County waste-shed to flow to the Washington County system in order to increase the system's ability to recover materials disposed of within that waste-shed. In order to avoid burdening the Washington County system or Clackamas County haulers, waste flows should not be dictated but rather natural waste flows should be accommodated for.

Natural waste flows may likely occur because southwestern Clackamas County and southeastern Washington County abut. It is probable that the transfer facility serving the eastern Washington County service area (Appendix E, Technical Paper No.9) will be closer than Metro South, which is the facility currently used by haulers serving southwestern Clackamas County. The natural waste flow would occur as a result of Clackamas County haulers seeking to reduce operational costs by disposing of their waste at the closer facility.

In order to establish that there could be a natural flow of waste into the Washington County system, a survey of Clackamas County haulers that serve the southwestern portion of the County was conducted. For the survey, it was necessary to assume that the Washington County facility would be located in the Wilsonville area. The assumption was necessary in order to provide waste haulers in Clackamas County with a basis for responding to the survey.

The survey identified those hauler franchises that would use a facility located in Washington County in order to reduce their own operational costs. In order to determine waste volumes, the methodologies used to forecast waste disposal tonnages for franchises in Washington County were utilized to forecast disposal tonnages for the Clackamas County franchises. The results of the survey and the accompanying waste projection are contained in Appendix Q, Technical Paper Nos. 26 and 27.

*Verified A True Copy of the Original Thereof*  
*Pauline Allen*  
Clerk of the Council

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING AN )  
INTERGOVERNMENTAL AGREEMENT WITH )  
THE CITY OF OREGON CITY PROVIDING )  
FOR THE PAYMENT OF A FIFTY CENT PER )  
TON MITIGATION AND ENHANCEMENT FEE )

RESOLUTION NO. 90-1355

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metropolitan Service District (Metro), pursuant to Metro Resolution No. 88-938, entered into an Intergovernmental Agreement with the City of Oregon City on June 9, 1988, providing for the payment of a \$0.50 per ton mitigation and enhancement fee, and revising the tonnage limitation at the Metro South Transfer Station; and

WHEREAS, the Intergovernmental Agreement between Metro and the City of Oregon City expires December 31, 1990; and

WHEREAS, Metro and the City of Oregon City desire to enter into another Intergovernmental Agreement providing for the payment of a mitigation and enhancement fee; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District authorizes the Executive Officer to enter into an Intergovernmental

Agreement with the City of Oregon City, attached hereto as Exhibit A, providing for the payment of a mitigation and enhancement fee.

ADOPTED by the Council of the Metropolitan Service District this 29th day of November, 1990.

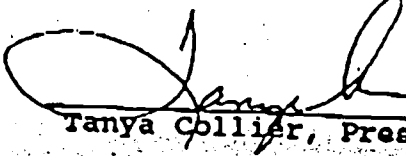
  
Tanya Collier, Presiding Officer

EXHIBIT A  
AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF OREGON CITY, OREGON, ("OREGON CITY"), and the METROPOLITAN SERVICE DISTRICT ("METRO"). The parties agree as follows:

A. METRO agrees to:

1. Subject to the limitations expressed elsewhere in this Agreement, pay to OREGON CITY an amount equal to 50¢ per ton for all solid waste received at the facility known as the Metro South Station (hereinafter "the FACILITY") except for source separated recyclable materials. This amount shall be referred to as the "total amount." Payments to OREGON CITY shall be made according to the following provisions and shall be made on a quarterly basis:

a. As part of the total amount paid to OREGON CITY by METRO, an amount equal to the current millage rate assessed by OREGON CITY against all property located within the boundaries of OREGON CITY times the true cash value of the FACILITY, shall be paid by METRO directly to the OREGON CITY General Fund and be subject to expenditure at the discretion of the Oregon City Commission for general governmental purposes. Such amount shall be credited against the total amount payable by METRO. The true cash value of the FACILITY shall be determined by mutual agreement of the parties. If the parties fail to agree on what the true cash value is the question of true cash value shall be determined by binding arbitration pursuant to the rules of the American Arbitration Association. For the purpose of this section "FACILITY" shall include the entire real property and all improvements thereon.

b. The balance of the total amount payable by METRO shall be deposited in a separate, dedicated fund for the purpose of rehabilitation and enhancement of the area around the transfer station within the city limits of Oregon City as determined by OREGON CITY pursuant to the terms of this Agreement.

2. Deliver to OREGON CITY monthly reports of activity at the FACILITY including data on the gross weight of solid waste received in vehicles that are weighed as they enter the FACILITY, the number of other vehicles assessed fees on an estimated volume basis, and the tonnage of solid waste transferred from the FACILITY.

3. Not exceed the volume limitation provided for in section B(5) hereof and to take every measure feasible to reduce tonnage at the FACILITY to 700 tons per day on a monthly average by January 1, 1992.

**B. OREGON CITY will:**

1. Appoint a citizens' advisory committee to recommend to the City Commission plans, programs and projects for the rehabilitation and enhancement of the area around the FACILITY. The committee shall include as members a member of the HOPP community, a member of the Oregon City Planning Commission, a member of the Oregon City Commission, and the Metro Council member representing the district which includes Oregon City.
2. The City Commission after receiving a recommendation from the citizens' committee shall determine the boundary of the area eligible for rehabilitation and enhancement.
3. Create a special fund and ensure that only plans, projects and programs determined by the City Commission to be suitable for the rehabilitation and enhancement are authorized for funding from such special fund.
4. Report annually to METRO on the expenditures of the special fund and fund balance no later than September 1 of each year.
5. Acting in its role as a quasi-judicial body, continue in effect the following tonnage limitation on use of the FACILITY:

The current tonnage limitation at the FACILITY shall be a monthly average of 1,200 tons per day for the months of July, August, September, October, May and June of each year, and 1,000 tons per day for the months of November, December, January, February, March and April. The tonnage limitations for each month shall be cumulative so that any amounts by which METRO does not meet or exceed the monthly tonnage allowance in any given month may be carried over and credited to the tonnage limitation in any future month at METRO's discretion during the term of this Agreement. Further, METRO shall not be in violation of the tonnage limitation if the total tonnage by which METRO may have exceeded the allowed tonnage during any one month (taking into account METRO's allowance for previous underutilized monthly tonnage as described above) does not exceed one-half the total monthly tonnage allowed for the month in which the excess has occurred; provided, however, that such excess tonnage shall not cumulatively exceed 18,600 tons over the life of this Agreement.

OREGON CITY may review the conditions contained in the Conditional Use permit other than the tonnage limitations on an annual basis.

6. OREGON CITY agrees if during the term of this Agreement it adopts such a tax or charge that imposes a fee on

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haulers of commercial solid waste or other users of the FACILITY except as may be imposed by any tax duly adopted by OREGON CITY of general applicability to all persons doing business in Oregon City, then METRO shall have no further obligation to pay the sums provided for in paragraphs A 1. and 2. above and the tonnage limitations provided for in B. 5. shall be continued.

C. Term. The term of this Agreement is for the sixty (60) months commencing on January 1, 1991, except that the provision for payment of the 50¢ per ton fee to OREGON CITY shall only be in effect during such time as OREGON CITY shall continue to allow the tonnage levels at the limits provided for in section B. 5. above.

D. Notice. Any notice required pursuant to this Agreement shall be delivered as follows:

If to OREGON CITY:

City Manager  
City Hall  
320 Warner-Milne Road  
Oregon City, OR 97045

Copy to:

Edward J. Sullivan  
City Attorney  
c/o Mitchell, Lang & Smith  
101 S. W. Main Street  
Portland, OR 97204

If to METRO:

Executive Officer  
Metropolitan Service District  
2000 S. W. First Avenue  
Portland, OR 97201-5398

Copy to:

Daniel B. Cooper  
General Counsel  
Metropolitan Service District  
2000 S. W. First Avenue  
Portland, OR 97201-5398

Or as to such individuals as the parties may designate in writing in the future.

E. This Agreement sets forth the entire obligation of the parties to each other in connection with the FACILITY herein

described except for further conditions not inconsistent with this Agreement have previously been provided for in the Conditional Use approval entered by OREGON CITY in 1981 as has been amended from time to time.

F. This Agreement is subject to specific enforcement by the courts at the request of either party.

G. Remedies.

1. A default of this Agreement by METRO shall result in reinstatement of the 700 ton per day limitation on operation of the FACILITY contained in the Conditional Use permit conditions in effect on June 1, 1988. In addition, METRO shall continue to be liable for the payment of the fees provided for in section A. 1. and A. 2. above.

2. Default by OREGON CITY for failure to comply with its obligations in section B. above (excepting those quasi-judicial actions which METRO is requesting of OREGON CITY), shall be grounds for METRO to seek specific enforcement of the terms of this Agreement allowing utilization of the FACILITY subject to the tonnage limitation provided herein and further shall be grounds for METRO withholding any further payments due to OREGON CITY pursuant to the terms of paragraph A. above and OREGON CITY shall not be entitled to any payment from METRO for tonnage received during the period which the default exists. If at any time during the term of this Agreement, OREGON CITY, acting in a quasi-judicial or legislative capacity, changes any of the terms of the request by METRO contained in section B. 5. above, then for the duration of any such change METRO shall not be obligated to make any payments under section A. 1. of this Agreement.

3. Each party agrees to give thirty (30) days written notice to the other in the event that it determines a default exists specifying the nature of the default and giving the other party the opportunity during said 30-day period to cure the default before taking any further action.

H. This Agreement shall become effective upon execution by the parties after prior approval of the terms of this Agreement by the Metro Council and Oregon City Commission.

DATED this 4 day of February, 1993.

CITY OF OREGON CITY

METROPOLITAN SERVICE DISTRICT

By: Daniel W. Fowler  
DAVID A. SPEAR DANIEL W. FOWLER

By: Rena Cusma  
Rena Cusma

Title: Mayor

Title: Executive Officer

////



APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Oregon City City Attorney

  
\_\_\_\_\_  
Metro General Counsel

DBC/gl  
1040

NO. 4



M E T R O  
M E T R O

DATE: August 31, 1993

TO: John Houser, Council Analyst

FROM: *BM* Bob Martin, Director of Solid Waste

RE: Reply to Additional Questions from Councilors Related to the Wilsonville Transfer Station

Question #2 from Houser memo of August 11th

The initial rate impact of the Wilsonville Transfer Station is estimated at \$4.15/ton. This is in part based on an initial tonnage at the station of about 132,000 tons/yr. If these tonnage estimates are low, what would the rate impact be if the initial tonnage were 140,000, 150,000 or 160,000 tons/yr.

Response:

	ANNUAL TONNAGE			
	<u>132,000</u>	<u>140,000</u>	<u>150,000</u>	<u>160,000</u>
Rate increase if Wilsonville opens	\$4.15	\$4.24	\$4.32	\$4.39
Projected rate if Wilsonville opens	\$85.73	\$85.49	\$85.15	\$84.81
Projected rate if Wilsonville does <u>not</u> open	\$81.58	\$81.25	\$80.83	\$80.42

As you can see from the above, the rate impact of Wilsonville increases slightly with increased system tonnage, if the increased tonnage is allocated to the Wilsonville facility. This is because it is less expensive to handle the increased tonnage at existing facilities which cost less to operate.

Questions from Councilor Devlin

Q. 1) Some contend that Metro should have anticipated at least a portion of the recent drop in tonnage. They argue that we should have factored into our projections that at least some of

the waste that formerly was sent to the St. Johns Landfill was not transfer station waste and that when the landfill closed this waste did not come to our transfer stations. Would you care to comment on the assertion?

**Response:** Metro was aware that a portion of deliveries to St. Johns was not transfer station waste, and did factor this fact into projections. Projections of transfer station tonnage were allocated principally among Central, South, and the Composter. Non-transfer station tonnage was allocated among Metro facilities, and non-Metro facilities such as Hillsboro Landfill. Certain types of special wastes were assumed to leave the solid waste system (e.g., liquid wastes). It appears that staff may have underestimated the *combined* impact of St. Johns closure *and* rising tip fees on Metro's revenue tonnage base (e.g., non-transfer station tonnage which now goes to processors rather than into the disposal system).

**Q. 2)** The Wilsonville staff report contends that tonnage growth in the region will be limited to the portion of Washington County served by the proposed Wilsonville station. What is the basis for this assumption? Why would projected growth in Clackamas County not result in tonnage growth?

**Response:** Because of the need to consider factors such as peaking, an analysis of capacity may not be numerically the same as a projection of expected deliveries. Staff's conclusions ("Tonnage Forecast," p.3, Wilsonville Staff Report of 7-13-93) are drawn for *capacity* requirements, not delivery projections. Capacity requirements are estimated as an average of high and low tonnage projections. These projections were obtained as the product of per capita delivery rates and population projections.

All population projections were taken from *The Regional Forecast* (Metro 1989; 1990 update). The high tonnage projection is based on a constant per capita delivery rate. The low tonnage projection is based on a declining per capita trend which is consistent with the estimates for the FY 1993-94 budget. The declining trend in per capita delivery rates is Solid Waste staff's current working hypothesis for tonnage projections for a variety of work. Washington County is the only county in the region in which the population growth rate is greater than the rate of decline in per capita delivery rates. Population growth in each of the counties will result in increases in generation. However, growth rates are such that in Multnomah and Clackamas Counties, activities such as recycling, separation of wet and dry waste, and illegal disposal will offset the rise in generation.

**Q. 3)** In the preliminary Official Statement related to the sale of bonds for Metro Central, Exhibit C-5 outlines a low waste scenario that appears to be close to what we are experiencing. The exhibit indicated that under this scenario a tip fee of \$72.61 would be needed to operate the entire system in 1994. The exhibit provided for a system that included Metro Central, Metro South, the Composter, the Forest Grove Transfer Station and a new Washington County station. that could be successfully operated in 1994 with such a tip fee. Could you please evaluate this scenario and comment on the changes that have occurred in the system during the past two years?

**Response:** The final Official Statement for the Metro East Transfer Station Project dated March 1990 projects a tip fee of \$75.72 for 1994 in the sensitivity case for a lower waste flow scenario. The low waste scenario is close to our current tonnage projection for 1994 contained in the SWIS report. This tip fee estimate does not contain the excise tax which would increase the projected tip fee to \$81.02. The tip fee would increase further if the tonnage scenario contained in the Statement were corrected to reflect the allocation of projected tonnage to Metro facilities, since it overestimated that portion of the tonnage by 11%.

**Q. 4)** Under the existing agreement with Oregon City, Metro is obligated to attempt to reduce tonnage to 255,000 tons by 1996. If we were to comply and then redirect up to 145,000 tons of material to Metro Central, could you please provide two or three scenarios outlining how this could be accomplished (including maps showing the haulers that would be newly directed to Metro Central and the potential cost impacts on these haulers)?

**Response:** Compliance with the Oregon City agreement does not automatically mean that waste would have to be redirected, however if we did have to redirect flow, we would most likely follow the same process used when the compost plant was operating. This involved an evaluation of which haulers would be least impacted by shifting their destination, then considering individual factors, such as location of maintenance yards and route configurations. Because this would be a process involving considerable discussion with potentially affected haulers, it is not possible at this time to speculate which haulers or areas would be affected, other than to offer the general observation that every attempt would be made to redirect only those least disrupted.

**Q. 5)** If the Wilsonville station is not built, could you please address whether you believe Metro will need to examine issues related to rate and service uniformity in the system?

**Response:** Metro currently has uniform rates at its facilities. Service uniformity should be examined comprehensively through the planning process.

**Q. a)** How would you see these issues being addressed?

**Response:** By updating the Solid Waste Management Plan.

**Q. b)** For example, the draft staff report suggests that differential rates might be examined. Could you comment on the potential for using a differential rate system and how such a system could be implemented?

**Response:** Implementation of a differential rate system would be a policy decision and therefore subject to Council approval. The arguments in favor of such a system rest mainly on the assumption that differential rates would result in a shifting of facility use without the use of flow control.

Arguments against a system of differential rates include that it violates the "uniform rate" policy of the RSWMP. In addition, such a system increases costs for many haulers and jurisdictions while rewarding others, based solely on location and regardless of whether the particular hauler's travel times are increased. In other words- it is inequitable.

We envision that such a system would be implemented by raising rates at one facility and lowering them at another to keep the effect revenue neutral.

**Q. 6)** Do you anticipate any Metro-initiated facility proposals during the next five years that could impact transfer station tonnage?

**Response:** No. We do expect private sector initiated facility proposals such as construction/demolition and designated facilities which will at least mitigate any substantial growth in transfer station tonnage.

**Q. 7)** It would appear that, as late as February 1993, Metro was pursuing both the reopening of the Composter facility and construction of the Wilsonville transfer station. The combined capacity of these facilities would have been 381,000 tons/yr. What has occurred during the past six months that would indicate that we no longer need the capacity provided by either facility?

**Response:** See August 17, 1993, memorandum from Bob Martin to Council Solid Waste Committee regarding "Recent Events Influencing Wilsonville Transfer Station Recommendation" contained in tab H of the binder distributed to the committee entitled "Information Concerning the Wilsonville Transfer Station."

**Q. 8)** Could you please provide a copy of the present agreement with Oregon City relating to the operation of Metro South?

**Response:** Yes, it is attached.

**Q. a)** What specific efforts has Metro taken to comply with the language related to a tonnage reduction to 255,000 tons/yr.?

**Response:** See the program narratives of the Waste Reduction Division contained in the annual budget documents and the semi-annual reports to the Department of Environmental Quality since 1989 for specific efforts in this area. In addition we have franchised several facilities which perform post collection materials recovery and entered into designated facility agreements with five firms which dispose of special waste substreams, some of which also perform some post collection materials recovery.

**Q. 9)** If the Wilsonville station is not built, what capital improvements will be made at Metro South during the next five years?

**Response:** Minor capital improvements are anticipated at Metro South during the next five years to improve current operations, such as the addition of a scale (see response to question 1(c) of August 11, 1993 memorandum to John Houser from Bob Martin contained in the binder under tab A), and to increase worker safety.

**Q. 10)** What assumptions were made regarding operating costs at Metro Central and Metro South after the current operating contracts expire in 1994?

**Response:** It was assumed that the rates paid to our current operators would be in place but inflated at 4% per annum per the contract terms at each. It was also assumed that the put or pay situation at Metro Central would apply, even though we expect to eliminate put-or-pay provisions and should realize some savings in per ton charges when re-bid.

**Q. 11** The capacity of Metro Central is frequently cited as 548,000 tons/yr. Using the terminology that you have applied to Metro South is this the "optimum" or "maximum" capacity of the facility.

**Response:** Maximum

**Q. a)** At what tonnage level would operating problems similar to those now being experienced at Metro South begin to appear at Metro Central?

**Response:** Same problems as tonnage approaches, 548,000 tons.

**Q. b)** Some are currently critical of layout, traffic and other operational problems at Metro Central. Please comment on these assertions?

**Response:** We are continually evaluating and improving site conditions at Metro Central, within the physical constraints of the site and structure.

**Q. 12)** Could you please provide the maximum and minimum forecasted usage of Metro Central through the year 2000 that have appeared in the SWIS reports issued since Metro Central opened?

**Response:** No such forecast has appeared in the SWIS reports. The forecasts are short term.

**Q. 13)** Could you please provide a map showing the anticipated service area for Metro Central at the time that proposals for the facility were solicited?

**Response:** Attached

**Q. 14)** What would be the rate impact if tonnage at Metro South is reduced to 255,000 and the remaining waste is transferred to Metro Central?

**Response:** If Metro South tonnage is reduced by approximately 97,000 tons to 255,000 tons per year, the total O&M payments made by Metro to operators will decrease because most of the increased tonnage to Metro Central falls under the put or pay arrangement (i.e. the contractor at Metro Central must handle most of these additional tons for the current lump sum payment being received). Therefore the rate impact in 1995-96 of shifting tonnage from Metro South to Metro Central would be a rate reduction from \$81.58 per ton to \$80.67 per ton based on our current rate model, under current contract arrangements.

**Q. 15)** Are there any references in the Metro Central mitigation agreement with the city of Portland to tonnage limitations?

**Response:** Yes, 2,500 per day.

**Q. a)** Are we required to consult with Portland prior to any significant increases in tonnage at Metro Central?

**Response:** Not unless we exceed the tonnage limitation, which we would not if a 100,000 tons or even significantly more tonnage (up to approximately 220,000) were redirected to the facility.

Questions from Councilor Gates

**Q. 1.** What is the distance in mileage between the proposed site of Wilsonville and current locations of Metro Central and South transfer stations? It appears the Wilsonville location is not properly located in reference to Metro's two existing transfer stations for the economical utilization of these two transfer stations.

**Response:** The proposed Wilsonville site is 12.5 miles from Metro South and 19 miles from Metro Central.

**Q. 2.** If there is to be no self-haul disposal service planned for the Wilsonville location, where will these persons go to dispose of their waste?



**Response:** Self-haul disposal would be available on the weekends, when by far the most public self haul is done.

**Q. a)** It has been indicated that these persons can tip at the Hillsboro landfill. Has anyone verified the practicality of this decision such as, routing and mileage to Hillsboro landfill vs. routing and mileage to Metro Central and South? The self-haul person will typically travel to the closest and easiest to access location.

**Response:** Mixed residential waste cannot be taken to Hillsboro, however, an analysis of self haul was conducted as part of the "Policy and Technical Analysis for: The Washington County System Plan, Apr., 1991" which was incorporated into the "Metro West Transfer and Material Recovery System Plan" adopted by Council ordinance as part of the Regional Solid Waste Management Plan. The analysis did not examine routing and mileage considerations in recommending to limit self haul to weekends. Rather the analysis considered when self haul occurred and the capital costs necessary at a transfer station to accommodate these users during the weekdays.

**Q. b)** Will Metro Central and South be allowed to limit self-haul service in the same manner as the Wilsonville transfer station? Self-haul service has been described as disruptive and inefficient to the operation of the Wilsonville transfer station. These same conditions exist at Metro's two current transfer stations.

**Response:** No such plans are currently being considered, but could be in conjunction with re-bidding the operating contracts..

**Q. c)** How does Metro's action to direct disposal of self-haul solid waste at the Hillsboro landfill comply with the district's current contract to dispose of 90 percent of its solid waste at the Columbia Ridge landfill? Clearly it does present a contractual problem.

**Response:** Metro does not plan to direct disposal of self-haul to the Hillsboro Landfill. The landfill is however available to Washington Co. residents during the week for disposal of nonputrescible waste. Since the landfill would not receive general purpose waste, disposal at this site is not a contractual concern regarding the 90% limitation.

**Q. d)** An over-arching issue in this case will be flow control. How will uniformity for solid waste disposal work if self-haul persons can access any transfer station?

**Response:** Flow control is not being contemplated for self-haul.

Q. 3. It has been portrayed that a Wilsonville transfer station will enable haulers in Washington County to use smaller trucks for service. I understand the large trucks used for curb-side pickup can carry 12 to 15 tons of materials and that the next smaller sized truck used for this pickup service can carry 8 to 10 tons. What is the intended size of these trucks? If this is the case, has an environmental assessment been performed to determine the impact on the Portland air shed of the increased number of vehicle miles driven by additional equipment. The Portland air shed is now dangerously close to non-compliance status determined by the EPA. [Note: John Kowalczyk (229-6459) at DEQ can provide data to verify this concern.]

**Response:** Staff has not made such portrayals. We are not aware of an environmental assessment having been done. We suggest that those parties making such statements be contacted directly for further information.

Q. 4) Much has been said about rate equity and Washington County rate payer subsidizing tip fees in the region by not having a transfer station located in their county. A quick and unverified examination of 1993 rates for selected areas does not support this contention. Attached is a schedule showing this information, which should be verified for any recent changes.

For example: Based on 1-32 gallon can, the tip fee for Clackamas County is \$18.70, as compared to \$14.47 for Washington County. The tip fee for the City of Beaverton is \$12.23, as compared to \$15.80 for the City of West Linn. The tip fee for the City of Tigard is \$13.10 as compared to \$17.55 for the City of Gresham. See attached schedule for additional comparisons.

**Response:** N/A

Q. 5) Why is there no host fee for the City of Wilsonville as is the case for Metro Central and Metro South? Is it because the revenue from property taxes on the Wilsonville site is nearly 3 to 4 times greater (\$50,000/yr. vs. \$160,000/yr.) than the value of a host fee? [This needs to be verified.] This is a substantial subsidy from the rate payer in Multnomah and Clackamas County to the tax bases of the various Washington County governing bodies (county, city, school district, etc.) with the Wilsonville transfer station located in their jurisdiction.

**Response:** It is staff's understanding that current Metro policy requires that a host fee be paid in addition to property taxes.

Q. 6) Flow control cuts both ways and will be a central issue as Metro increases its need to balance the tipping of solid waste at existing transfer stations in order to achieve greater cost efficiency of these operations. This policy will be implemented as part of the rate making process to restrain the acceleration of tipping fee increases. There are concerns regarding recent adverse litigation related to this management technique. How can Metro add a new 20-year capital investment of \$10.3 million of the cost of the solid waste system before this

issue is resolved? Economic utilization of Metro's transfer stations will depend more and more on implementation of flow control, particularly in the case of avoiding contractual "put or pay" costs as is the case at Metro central.

**Response:** Flow control concerns are a major factor in the recommendation not to pursue the construction of this facility. See item #5 of my August 17, 1993 memo to John Houser and flow control articles contained under tab D of binder.

Q. 7) Senate Bill 66, enacted by the 1991 session of the Legislative Assembly, sets a goal of 50 percent recycling by year 2000. Metro's recycling rate now is stated at 39 percent. This percentage is probably low due to an inability to accurately calculate all recycling efforts, as seen in the reduction of solid waste tonnage while population in the region continues to increase. Several concerns related to increased transfer station capacity revolve around recycling

Q. a) Changes in packaging have occurred and will continue to occur to reduce the weight and/or need of these materials to be disposed in a landfill. Examples: plastic sacks at food markets; substantial increase in paper packaging of food items, both dry and frozen.

Q. b) City of Portland's plan to increase recycling to 60 percent by 2000 within the City of Portland. Other cities in the region may achieve this level of recycling, as techniques and markets improve.

Q. c) Additional fixed-site transfer stations involving long-term capital investment allow no flexibility for implementation of any new technology designed to avoid land filling and/or reduction in the bulk of the current solid waste stream. Examples:

Residential waste compactors are starting to be economically available for residences. These devices enable a person to reduce the need for curb-side disposal from once a week to once a month. Such reduction in the bulk of solid waste will enable disposal of more solid waste tonnage with less transfer station capacity. Another example is expansion of the hog-fuel process removing high tonnage materials, such as paper, from the wastestream.

**Response:** These seem to be valid considerations regarding waste generators trends.

Q. 8) Passage of Measure 5 in 1990 changed permanently voter awareness of the cost of doing the public's business. Increasing the cost of an existing service requires greater cost justification than ever before. [Do you agree?] Hence, if Metro has capacity to accommodate solid waste with its current transfer station operation (which it has), what possible justification can there be to increase operating costs for unneeded disposal capacity?

For your information, Metro Central has capacity now to receive all of the current tonnage tipped at Metro's two transfer stations. With flow control this offers a viable alternative.

**Response:** Certainly. It is not possible to handle all of Metro South and Metro Central tonnage at Metro Central. Measure 5 did influence the Executive Officer's recommendation to not pursue this project.

**Q. 9)** There is now the potential for a great deal of cost instability in the current solid waste system as related to transfer stations. It has been said that Wilsonville will add \$4.15 per ton to the tip fee. Maybe this amount is far too low when considering other unknowns.

**Q. a)** The franchise agreement for the Forest Grove facility is under active consideration for renewal. What will be the duration of this agreement?

**Response:** We are currently negotiating the duration of this agreement and do not wish to comment at this time. The agreement will be presented to the Council for approval.

**Q. b)** How much "true" capacity does this facility offer Metro?

**Response:** The facility is permitted by DEQ to receive up to 400 tons per day.

**Q. c)** How will the cost of operation at Forest Grove be impacted if there is flow control for "three" Metro transfer stations? Currently, disposal is limited for compliance with Metro's landfill agreement.

**Response:** See the response to item #5 of the August 11, 1993, memo from B. Martin to J. Houser in tab A of the binder.

**Q. d)** Operation contracts for Metro Central and South are due to expire within the next 12 to 15 months. [verify times.] What will be the duration of any new agreements?

**Response:** The Metro Central operations contract expires on September 30, 1996, with the Metro option to terminate on September 30, 1994. The Metro South contract expires December 31, 1994, with ability to extend the agreement up to an additional 2.5 years. The length of the next agreements is expected to be five years.

**Q. e)** What level of minimum tonnage will Metro be able to guarantee at each facility, with or without Wilsonville and/or Forest Grove?

**Response:** Metro does not intend to guarantee tonnage at facilities.

**Q. f)** What will be the process for obtaining new agreements -bids or proposals? Proposals offer greater opportunity for Metro to exercise flexibility in reconfiguring its transfer station operation.

**Response:** We would recommend a bid process which would likely give us lower rates.

**Q. g)** Has there been any consideration to selling the current transfer stations? With a long-term franchise agreement, the new revenue would go a long way to help Metro avoid rate increases. Industrial development bonds, (used for Metro Compost facility) is one possibility for conduit financing of these purchases or vendor's outright purchase of facility (used for landfill). In the past, Metro maintained that it needed to own its transfer stations in order to avoid becoming hostage to a vendor as well as to insure continued operation by avoiding closure of a transfer station. This was the attitude at the outset of developing the solid waste system. More recent actions have demonstrated that effective service is available at operations not owned by Metro.

**Response:** There has been no consideration of selling the transfer stations owned by Metro. It is our intent to continue to contract out operations at this time. Private facility ownership is not as cost effective as public ownership due to tax considerations and the inability to competitively bid operations periodically.

**Q. 10)** What is the recycling capability, if any, proposed for Wilsonville?

**Response:** As stated in my staff report of July 13, 1993, 4-5% recovery initially.

**Q. a)** Does this capability meet Metro's current recycling objectives for transfer stations?

**Response:** Based on our experience at Metro Central, it was decided to minimize risk by gaining operational history at the facility before investing in material recovery equipment. However, the facility was designed with adequate space for future processing equipment acquisitions.

**Q. b)** If not, why not?

**Response:** The regional Solid Waste Management Plan set a goal that post collection material recovery at all transfer stations would add 10.7% to the region overall recovery rate (estimated to be 153,000 tons per year). The technical analysis for Washington County indicated that a recovery rate of 15 percent was expected at recovery facilities in Washington County.



**METRO**

**To: Bob Martin, Director of Solid Waste**

**From: John Houser, Council Analyst**

**Date: August 13, 1993**

**Re: Questions From Councilor Devlin Related to the Wilsonville Transfer Station**

The following are questions that Councilor Devlin has related to the Wilsonville Transfer Station. He has asked that I refer them to you for a response.

- 1) Some contend that Metro should have anticipated at least a portion of the recent drop in tonnage. They argue that we should have factored into our projections that at least some of the waste that formerly was sent to the St. Johns Landfill was not transfer station waste and that when the landfill closed this waste did not come to our transfer stations. Would you care to comment on the assertion?
- 2) The Wilsonville staff report contends that tonnage growth in the region will be limited to the portion of Washington County served by the proposed Wilsonville station. What is the basis for this assumption? Why would projected growth in Clackamas County not result in tonnage growth?
- 3) In the preliminary Official Statement related to the sale of bonds for Metro Central, Exhibit C-5 outlines a low waste scenario that appears to be close to what we are experiencing. The exhibit indicated that under this scenario a tip fee of \$72.61 would be needed to operate the entire system in 1994. The exhibit provided for a system that included Metro Central, Metro South, the Composter, the Forest Grove Transfer Station and a new Washington County station. that could be successfully operated in 1994 with such a tip fee. Could you please evaluate this scenario and comment on the changes that have occurred in the system during the past two years?
- 4) Under the existing agreement with Oregon City, Metro is obligated to attempt to reduce tonnage to 255,000 tons by 1996. If we were to comply and then redirect up to 145,000 tons of material to Metro Central, could you please provide two or three scenarios outlining how this could be accomplished (including maps showing the haulers that would be newly directed to Metro Central and the potential cost impacts on these haulers)?

5) If the Wilsonville station is not built, could you please address whether you believe Metro will need to examine issues related to rate and service uniformity in the system? How would you see these issues being addressed? For example, the draft staff report suggests that differential rates might be examined. Could you comment on the potential for using a differential rate system and how such a system could be implemented?

6) Do you anticipate any Metro-initiated facility proposals during the next five years that could impact transfer station tonnage?

7) It would appear that, as late as February 1993, Metro was pursuing both the reopening of the Composter facility and construction of the Wilsonville transfer station. The combined capacity of these facilities would have been 381,000 tons/yr. What has occurred during the past six months that would indicate that we no longer need the capacity provided by either facility?

8) Could you please provide a copy of the present agreement with Oregon City relating to the operation of Metro South? What specific efforts has Metro taken to comply with the language related to a tonnage reduction to 255,000 tons/yr.?

9) If the Wilsonville station is not built, what capital improvements will be made at Metro South during the next five years?

10) What assumptions were made regarding operating costs at Metro Central and Metro South after the current operating contracts expire in 1994?

11) The capacity of Metro Central is frequently cited as 548,000 tons/yr. Using the terminology that you have applied to Metro South is this the "optimum" or "maximum" capacity of the facility. At what tonnage level would operating problems similar to those now being experienced at Metro South begin to appear at Metro Central? Some are currently critical of layout, traffic and other operational problems at Metro Central. Please comment on these assertions?

12) Could you please provide the maximum and minimum forecasted usage of Metro Central through the year 2000 that have appeared in the SWIS reports issued since Metro Central opened?

13) Could you please provide a map showing the anticipated service area for Metro Central at the time that proposals for the facility were solicited?


14) What would be the rate impact if tonnage at Metro South is reduced to 255,000 and the remaining waste is transferred to Metro Central?

15) Are there any references in the Metro Central mitigation agreement with the city of Portland to tonnage limitations? Are we required to consult with Portland prior to any significant increases in tonnage at Metro Central?

If you require any clarification of these questions, please contact myself or Councilor Devlin.



METRO

DATE: August 11, 1993  
TO: John Houser, Council Analyst  
FROM:  Bob Martin, Director of Solid Waste  
RE: Reply to Questions of July 28, 1993 Memo

Your memo of July 28, 1993 asks several questions related to the Wilsonville Transfer Station project. Listed below are the questions followed by staff's (edited) responses.

- 1) Historically there has been some debate over the "capacity" of the Metro South Station. The Policy and Technical Analysis For The Washington County System Plan prepared in 1991 indicated that the station capacity was 270,000 tons/year. In a memo to the Solid Waste Committee dated November 30, 1992, you appeared to accept this estimate as the "optimum" capacity for the facility. The staff report on the proposed Wilsonville facility indicated that the "maximum" capacity at Metro South is 400,000 tons/year, though at this level certain operational problems would exist.
  - a) Could you indicate why the department now appears willing to accept an operating capacity at Metro South that is nearly 50% higher than the "optimum" capacity identified in your earlier memo?

**Response:** The Department is "willing to accept" any operating level between 270,000 and 400,000 tons per year. The 270,000 ton number is the optimum level, since it would reduce congestion, and allow for some increase in recovery levels. The 400,000 ton number is the maximum level of service recommended, can be accommodated without any extensive facility modification, and avoids a rate increase of over \$4 per ton.

- b) Could you please identify the nature and frequency of the existing operational difficulties at Metro South and the steps that will be taken to address them?

**Response:** The operational problems have been occasional long lines of public vehicles out onto Washington Street and excessive waiting times for customers. The problems have occurred mainly during a three month period in the Spring. We have taken the following steps to mitigate these problems:



- increased hours of operation
- instituted better on-site traffic control
- encouraged customers to come earlier in the day
- utilized all scales for both inbound and outbound traffic as available
- assisted public vehicles with unloading
- provided a resource person in the tipping area to assist customers
- moved recovery activities to off-peak periods

These measures have decreased operational problems during the current year.

- c) Does Metro have the ability to change the physical layout of the facility to shorten queuing lines?

**Response:** Certainly we have the *ability* to change the physical layout; however we would most likely need agreement of the Oregon City Planning Commission. Except for the addition of another scale for outbound traffic, we think physical changes are unlikely to have much impact on queuing.

- d) Has Metro received complaints from haulers, the public or Oregon City concerning operational problems at the facility?

**Response:** We have from time to time received complaints from haulers and the general public, not from Oregon City.

- e) Will operating Metro South at significantly higher than optimum tonnage levels preclude any additional material recovery or recycling efforts at the station?

**Response:** Yes.

- 2) Metro currently has an agreement with the City of Oregon City under which up to 400,000 tons/year may be sent to Metro South. The agreement also provides that Metro will take every step possible to reduce the annual tonnage to 255,000 tons/year. This agreement expires in 1996.

- a) Does Metro have any indication that Oregon City will be willing to allow to Metro send larger than existing quantities of solid waste (up to 400,000 tons/year) to Metro South during the remainder of the existing agreement?

**Response:** Under the current agreement with Oregon City, Metro would be permitted to receive up to 400,000 tons per year at Metro South. Metro has no indication from Oregon City that this condition of the agreement might be altered.

- b) Do we have any indication that Oregon City will be willing to extend the existing tonnage cap beyond 1996?

**Response:** We have not discussed an extension of the agreement with Oregon City. Absent any adverse community impacts from an operating tonnage of 400,000, it would seem likely that extending the present agreement would be a reasonable request, causing Oregon City little difficulty.

- c) Should Oregon City attempt to require Metro to achieve the tonnage goal of 255,000 tons/year set in the current agreement, what effect would this have on the disposal system if the Wilsonville station is not built?

**Response:** If such an attempt to limit tonnage were successful, it would require the redirection of approximately 100,000 tons of waste to other facilities. The precipitous redirection of this amount of waste would be a significant disruption for many haulers. If this redirection of flow were phased in over a couple of years it might not be so difficult.

- 3) In a memo from Terry Petersen dated May 11, 1993, two future tonnage estimates are made concerning Metro South. It is stated that "we believe the upper estimate, which is based on current per-capita disposal rates, is most appropriate for facility design and operational planning at Metro South." The upper estimate indicates that tonnage could grow at Metro South by about 31,000 between 1993 and 1998, exceeding the 400,000 ton capacity in 1996.

In the July 13 Wilsonville staff report, it is stated that tonnage at Metro South "may increase at roughly the rate as projected for the service area proposed [for the Wilsonville facility]". This rate of growth is only about 9,000 tons between 1993 and 1998 and would indicate that the 400,000 ton capacity at Metro South would not be reached before the year 2013.

Thus, it appears that the department wished to use high-end estimates in addressing capacity and operational issues at Metro South but chose to accept much lower estimates of actual tonnage growth when examining the need for the Wilsonville station.

- a) Could you explain the apparent differences in rationale as expressed in the May memo and the Wilsonville staff report?

**Response:** There is in fact no "difference in rationale" in the May memo and the Wilsonville staff report. The premise of this question (that the growth rate at Wilsonville is less than for Metro South) is not correct:

Rate, 1994-1998 from Petersen memo regarding Metro South

$$\frac{416,800 - 391,900}{391,900} = 6.35\%$$

Rate, 1994-1998 from staff report regarding Wilsonville

$$\frac{137,803 - 129,032}{129,032} = 6.80\%$$

These two rates of growth are as suggested in the (final) staff report "roughly the same." The difference of 31,000 and 9,000 tons refer to absolute tonnage increases in different sized waste sheds, and are not comparable as rates of change.

- b) The May memo indicates that the upper estimate is based on the current per-capita disposal rate. Could you please indicate if a lower disposal rate was used to calculate the slower tonnage growth rate included in the Wilsonville staff report and, if so, what was the justification for using a lower rate?

**Response:** As shown in 3a, the rate of tonnage increase for Wilsonville is roughly the same as for Metro South, not slower as suggested by the question.

- c) What other factors or assumptions were used in developing the tonnage estimates used in the Wilsonville staff report?

**Response:** The following explicit assumptions were made for tonnage projections for the Wilsonville transfer station: (1) specification of boundaries or the geographic service area; (2) population growth within the service area; (3) per-capita disposal rates; and (4) proportion of waste delivered to transfer stations. The analysis assumes that (3) and (4) implicitly account for multiple factors that affect waste generation and delivery (e.g., tip fee impacts, recycling and other waste reduction activities). The projections in the staff report are averages of an upper bound (based on constant per capita delivery rates) and a lower bound (based on the recent historical trend in per capita delivery rates).

- 4) The Washington County Haulers Association estimates that the savings to consumers in the Wilsonville service area will be approximately \$700,000 annually. The Wilsonville staff report indicates that the savings will be between \$350,000-600,000 annually.

- a) Could you please indicate how the Metro estimate was calculated and why it is significantly less than the haulers' estimate?

**Response:** The primary difference between the analyses is that the Washington County Haulers used different tonnage than the staff to calculate the potential savings to consumers in the Washington County service area. The haulers based their calculation of savings on 130,000 tons. Basing the savings on this tonnage results in a considerable overstatement of residential rate-payer impact (*i.e.*, 35¢/can claimed by the hauler) since not all this tonnage is residential. Staff calculated the \$350,000 savings on the basis of actual franchised hauler tonnage from the service area in 1992 (94,550 tons). The \$600,000 savings was based upon total tonnage delivered to the facility during its highest year of operation under the contract (160,000). Thus staff believes this savings would be \$350,000 today, growing to perhaps \$600,000 by 2013 (in constant dollars).

A second difference is that staff evaluated increased travel distances by calculating the distance from each hauler's franchise centroid rather than from the Beaverton City Hall which was used by the haulers association. The estimated annual number of trips was determined by calculating an average tons per trip based on current scalehouse information for Washington County haulers. The total mileage difference was then calculated by dividing the franchised hauler tonnage for 1992 (94,550 tons) by the average tons per trip, and then multiplying that by the mileage difference for each franchise area. This results in approximately 240,500 round trip miles per year.

Staff also included a more accurate computation of travel time compared to the hauler analysis. The savings in travel time to Washington County haulers if the WRI facility is built was estimated to be 3,900 hours per year based on Metro Transportation Department's 456 polygon travel analysis zones. The times were an average for all vehicles and represent mid-day travel times.

Staff also assessed an environmental cost to the region if WRI's facility is not built of 7 cents per mile. This represents the air pollution costs associated with the reduction in miles traveled, as presented in two studies provided by Metro's transportation division. The studies covered all vehicles, not just solid waste vehicles, and presented pollution costs on a per mile basis.

Assuming a transportation cost of \$33.25 per hour and \$0.665 per mile, as did the haulers, and an environmental cost of \$0.07 per mile for 94,550 tons, equates to approximately \$350,000. To calculate the upper range for 160,000 tons a simple tonnage ratio was used to derive the \$600,000.

5) Testimony from a representative of A.C. Trucking expressed concern about the potential loss of tonnage at the Forest Grove Transfer Station (estimated at 6,000 tons).

- a) If the Wilsonville station is built, will any haulers presently using the Forest Grove station be directed to use the Wilsonville Station?

**Response:** Yes, but only a few.

b) Will any haulers using other facilities be directed to use the Forest Grove Station?

**Response:** Such an action does not seem necessary at this time.

c) Would there be a net negative or positive effect on tonnage levels at the Forest Grove Station?

**Response:** The effect should be neutral, since growth in tonnage delivered by the remaining haulers would balance that waste shifted to Wilsonville by the time it is on line.

6) Some believe that transfer station tonnage data from the most recent six months indicate that the tonnage decline has ended and that there is evidence that tonnage may actually be increasing.

a) Could you provide a monthly tonnage breakdown for each transfer station (inc. Forest Grove) and the composter since the opening of Metro Central? Please include the actual tonnage, projected tonnage and the percentage change in tonnage from the prior year?

**Response:** Monthly tonnage through December 1992 is shown in the February 1992 Solid Waste Information System (SWIS) Report in the tables beginning on page 17. Tonnage for the first six months of 1993 and projections are shown in "Summary Of Waste Delivered To Facilities Serving The Metro Region" (attached).

b) Could you comment on the contention that tonnage may be leveling off or beginning to increase?

**Response:** Certainly our tonnage forecasts show a leveling off from past declines in tonnage. Comparing the first six months of 1993 with the first six months of 1992, as WRI did, shows a slight increase. From a revenue standpoint we hope this is borne out in future months, from a waste reduction standpoint we hope it isn't. Projecting trends on the basis of six months data, as WRI does, is speculative and risky. This is exactly the projection technique that has resulted in serious revenue shortages in previous years. It is not possible to definitively conclude whether or not tonnage has "bottomed out," based on the past six months data, because of the following factors:

Business cycle activity. The decline from 1991 to 1992 is due in part to reduced business and consumption activities as the Portland region began to feel some of the effect of the national business recession. In isolation, this factor would tend to decrease waste delivery.

Tip fee impacts. As disposal costs rise, it becomes cost effective to source-separate some waste streams for alternative disposal destinations. An effect of this has been to reduce the types of waste which are delivered to transfer stations.

**Weather.** The year 1992 was an extraordinary drought year. Waste was quite dry and relatively little yard debris was generated. The year 1993 has been an extraordinarily rainy one. Waste has been quite wet, and more normal quantities of yard debris have been generated. It is likely that much of the increase in weight during the first half of 1993 is due to water content and yard debris.

7) It is noted in the staff report that "staff assumed that increasing tonnage from population increases will be offset by increases in recycling and other waste reduction activities, except in Washington County."

a) Could you please explain the basis for this conclusion?

**Response:** The intent of this statement was to state that staff assumed that increases in Washington County's population were greater than decreases in Washington County's rate of per capita delivery rates. This is reflected in the analysis shown on page 2 of the attached document titled "Tonnage To Wilsonville Transfer Station." Staff assumed that the effect of factors that reduce waste in Washington County would be the same as for the tri-County region as a whole.

b) Could you describe how the effect of population on tonnage estimates was calculated?

**Response:** As shown on page 2 of the attached document titled, "Tonnage To Wilsonville Transfer Station," population in Washington County was assumed to increase from 373,765 in 1992 to 536,599 in the year 2013, or about 2% per year.

c) What recycling levels (percentages) would need to be achieved to "offset" population growth?

**Response:** With the assumed population growth described above, Washington County's current recycling level would have to increase by about 50% by the year 2013. For example, if Washington County's current recycling rate is 40% then it would have to be 60% by the year 2013 in order to offset its population increase. This analysis of course assumes waste is not lost due to flow control violations or other factors that affect waste disposal.

d) What types of new recycling programs does staff believe will be implemented during the next five years to achieve significant increases in the recycling rate?

**Response:** As with the rest of the region, a number of waste reduction programs are expected to be expanded in Washington County in the near future. These include curbside yard debris collection and recycling of commercial waste. These programs would reduce waste delivered to transfer stations. Note, however, that no explicit assumptions were made regarding specific recycling programs when Wilsonville projections were made.

- 8) The Executive Officer's statement indicates that, if the Wilsonville station is not built, exercising Metro's flow control authority to move some waste from Metro South to Metro Central may be necessary as early as 1996. This would appear to indicate that it is Metro's intent to operate Metro South at near its maximum capacity until that time.
- a) If Metro South's optimal operating capacity is in the range 250,000-270,000 tons/year, why would Metro not consider utilizing flow control to direct flow away from Metro South at an earlier date?

**Response:** Currently it costs about \$4 per ton to transfer waste at Metro South as opposed to \$10 per ton at Metro Central. Additionally such a shift of tonnage would add to collection costs. Optimal operating tonnage at Metro South is 270,000 from the standpoint of operational convenience, not however from an economic standpoint.

- b) What is Metro's legal authority to exercise and enforce its flow control authority? Are there any recent or pending court or legislative actions that may affect this authority?

**Response:** The Oregon Legislature has expressly granted to Metro authority to regulate the flow of solid waste into, out of, and within Metro Boundaries. (ORS 268.317) Metro has established a system of solid waste "flow control" through the franchising and flow control chapters of its Code. (Ch. 5.01 and 5.05) A disposal or processing site or facility within the district must obtain a Metro franchise, and facilities located outside the district must be "designated" to receive waste generated within the district. Metro also has authority to require haulers or other persons to use a specified designated facility for disposal of solid waste.

The authority of state and local governments to control the flow of solid waste is under review in various parts of the country. The U.S. Constitution gives Congress authority to control commerce between the states, and state and local governments are "pre-empted" from exercising such control unless Congress delegates its authority.

Opponents argue that flow control regulations stifle healthy competition and burden interstate commerce to an unacceptable level. Proponents note the complexity and expense of modern waste planning and management systems, and argue that health, safety and welfare concerns justify what they view as incidental impacts on interstate commerce. Currently, two U.S. Circuit Courts have upheld flow control regulations, and two have struck them down, along with one U.S. District Court. State courts are similarly divided.

In 1987, the Ninth Circuit Court of Appeals, which issues decisions that are binding in Oregon, upheld a Metro Ordinance barring out-of-district waste from disposal in the St. Johns Landfill. (The Oregon Supreme Court also recently ruled that the Commerce Clause does not prevent the Oregon DEQ from assessing fees on waste generated out of state, and disposed of in Oregon.) Although the Ninth Circuit case preceded two U.S. Supreme Court cases that may have an impact on that decision, flow control is alive and well in Oregon, at least for the time being.

The U.S. Supreme Court recently agreed to review a case out of New York's high court that upheld flow control regulations. When rendered, the Supreme Court's decision should tell Metro and jurisdictions across the country whether their basic assumptions regarding flow control authority are correct.

It is also within Congress' power to settle the ongoing judicial flow control debate. A bill entitled "Municipal Solid Waste Flow Control Act" (H.R. 1357, introduced by Alex McMillan, R-North Carolina) would authorize states to manage the movement of municipal waste and to designate the waste management facilities to which municipal waste must be transported.

It is not clear whether the U.S. Supreme Court or Congress will settle the flow control debate in the near future. For the present, Metro has clear authority to operate an integrated solid waste system, and to collect the revenue necessary to run that system.

9) Questions have been raised concerning Metro's ability to buy or land bank the proposed transfer station site. These issues are briefly reviewed in the staff report.

a) Could you please more fully describe the nature of the various options for acquiring the property?

**Response:** As stated in the July 13, 1993 staff report, there are two options for Metro to acquire the proposed Wilsonville transfer station site currently owned by Willamette Resources, Inc. The first option is to negotiate a purchase price with the owner, and the second is to proceed in eminent domain. The first option is self-explanatory. To take the property through condemnation, Metro would adopt a resolution declaring that the property is necessary for a public use. Metro would then negotiate a purchase price with the owner, and if those negotiations are unsuccessful, Metro could deposit with the court what it considers to be the fair market value of the property, and take possession. Suit would be for the purpose of establishing the fair market value of the property.

b) If we attempted to acquire the site, would it be Metro's intent to purchase only that portion of the WRI property upon which the transfer station would be built, or would we attempt to purchase the entire site?

**Response:** Metro's "intent" would be established by Metro's elected officials, after considering Metro's needs. If Metro determines that only a portion of the property is necessary for a public use, Metro could purchase or condemn a portion of the property (subject to local partitioning regulations).

c) Does staff believe that it is possible to further reduce the physical or operating size of the facility?



**Response:** Yes. However, reducing the size changes the design concept regarding operations and materials recovery. The design concept was premised on providing enough room for future materials recovery configurations while permitting immediate recovery from floor sorting. Reducing the size further moves the design concept closer to a straight transfer. If the Council wishes to implement a straight transfer design, staff recommends a pit design similar to Metro South. Such a design should result in a significantly smaller facility, faster turnaround times for haulers, and lower operating costs. Materials recovery possibilities would be limited to the 1 to 2 percent range. Such a concept could reduce system rate impact by perhaps \$0.50 per ton, subject to negotiation with WRI. We would, of course, be interested in WRI's estimate of the potential savings from such a concept.

10) If the Wilsonville station is not built, does Metro have legal authority to establish some type of construction fund to finance the construction of a transfer station at some future date?

**Response:** Yes.

- a) Could staff please estimate how much money would need to be raised annually to finance building a facility identical to the proposed Wilsonville facility (including identical site acquisition and improvement costs) in 2003 (ten years), in 2013 (twenty years)?

**Response:** Assuming a 4% inflation rate and a 4.5% return on investment for funds deposited, the annual contribution for construction in the year 2003 would need to be approximately \$1.1 million; for construction in the year 2013 it would need to be approximately \$636,000.

11) Based on the Executive Officer's recommendation, does staff still believe that there is a need for two transfer stations in Washington County?

**Response:** Such a configuration would be nice, but not absolutely necessary.

What effect will not building the Wilsonville station have on the Forest Grove Station?

**Response:** We may wish to remove the current tonnage restrictions on this facility with the understanding that no more than ten percent of the total regional transfer station waste can go to general purpose landfills other than Columbia Ridge.

12) Has staff explored the possibility of accepting out-of-district waste at the Wilsonville facility to increase tonnage, reduce operating costs and reduce the rate impact?

**Response:** Yes, in fact tonnage calculations include tons from outside the District but within the three counties of Washington, Multnomah and Clackamas. At our present and certainly our projected future rate, we should not count on substantial out of Region business.

13) Material recovery rates at Metro South are about 1%. How much additional tonnage would be recovered if the Wilsonville station is built?

**Response:** As stated in the staff report, the Wilsonville station would recover about 5% or 6,500 tons of recyclable. Currently, Metro South receives about 360,000 tons and recycles about 1% or 3,600 tons and if it gets 250,000 tons at 1%, 2,500 plus 6,500 from Wilsonville or 9,000 tons total versus 3,600 currently, or a net increase of about 5,400 tons recovered if no additional materials recovery occurs at Metro South. If additional processing is added at Metro South, to increase recovery rates there to 5%. then 12,500 tons would be recovered. Added to the 6,500 from Wilsonville, results in 19,000 tons recovered, versus 3,600 at present.

Would this increase have any effect on the region's recycling rate?

**Response:** Yes, it would increase the region's recycling rate by 0.34% as currently measured and utilizing 1992 recycling levels, without Metro South modifications.

14) It is our understanding that a franchise proposal has been submitted for a "pick and sort" facility that would process about 35,000 tons/year.

a) If such a facility is franchised, what types of materials would it be processing?

**Response:** Construction and demolition debris, and possibly other dry loads. By the way, the "pick and sort" facility has increased its franchise request for tonnage to 47,000.

b) How much of this material is currently being processed at the transfer stations?

**Response:** Our guess is about 27,000 tons.

c) Was the effect of this facility included in the tonnage and projections made with regard to the Wilsonville transfer station?

**Response:** Not explicitly, but rather as a part of the general affects of recycling programs on per capita disposal rates.

cc: Rena Cusma, Executive Officer

CG:clk

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ATTACHMENT A

**SUMMARY OF WASTE TONNAGES  
DELIVERED TO FACILITIES SERVING  
THE METRO REGION**

**Historical 1988-June 1993  
Projections July 1993-2000**

July 1993

Metro  
Solid Waste Department  
600 NE Grand Avenue  
Portland, OR 97232

*Printed on Recycled Paper*

Table 1. Historical tonnage delivered to regional facilities from the tri-county region. Includes some tonnage from outside the Metro boundary that does not incur Metro fees.

CALENDAR YEAR	1988	1989	1990	1991	1992	1993 (Jan- June)
<b>Metro Facilities</b>						
Metro Central	0	0	0	258,883	327,518	174,920
Metro South	304,401	340,995	368,394	313,906	357,263	181,383
MSW Compost Facility	0	0	0	114,218	12,628	0
St. Johns Landfill	401,070	388,377	473,726	36,463	0	0
<b>TOTAL</b>	<b>705,471</b>	<b>729,372</b>	<b>842,120</b>	<b>723,470</b>	<b>697,409</b>	<b>356,303</b>
<b>Non-Metro Facilities</b>						
East County Recycling Center	5,696	20,904	33,684	32,111	38,467	17,961
Forest Grove Transfer Station	38,074	61,069	65,246	68,074	68,496	35,430
Hillsboro Landfill	66,438	101,622	153,477	201,159	198,665	87,847
Hillsboro Reload Facility	0	14,953	16,700	1,337	0	0
Killingsworth Fast Disposal	174,426	98,659	0	0	0	0
Lakeside Reclamation Landfill	49,919	67,622	69,194	66,640	71,113	30,618
Marion County Energy Recovery	0	4,904	7,989	9,233	6,371	3,178
Riverbend Landfill	14,080	285	201	612	202	0
Roosevelt, Columbia Ridge and Finley Buttes	0	0	0	9,840	11,081	7,400
Tualatin Valley Waste Recovery	0	0	0	0	36,951	9,025
Wastech	10,912	9,366	7,004	13,224	5,804	2,008
<b>TOTAL</b>	<b>359,545</b>	<b>379,384</b>	<b>353,495</b>	<b>402,230</b>	<b>437,150</b>	<b>193,467</b>
<b>TOTAL REGIONAL DISPOSAL</b>	<b>1,065,016</b>	<b>1,108,756</b>	<b>1,195,615</b>	<b>1,125,700</b>	<b>1,134,559</b>	<b>549,770</b>

All of the facilities shown in this table remit user fees to Metro on some of the waste they receive from the region. This summary excludes facilities such as Grimm's Fuel which do not remit any fees to Metro for waste received from the region.

Figure 1. Tonnage delivered to regional facilities from the tri-county region.

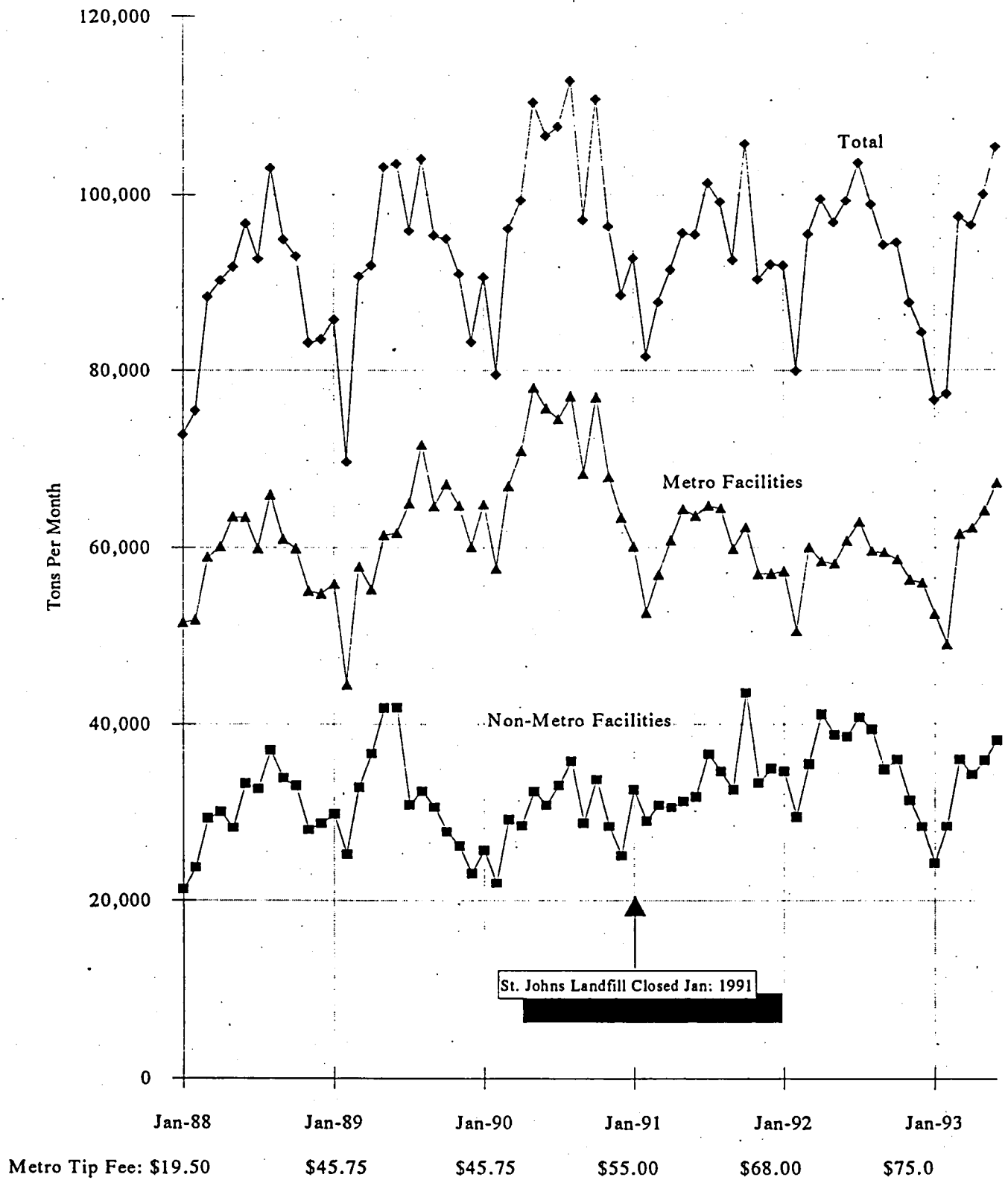


Table 2. Comparison of actual and forecast tonnages used for Metro budgets and rates.<sup>1</sup>

TONS	METRO FACILITIES	NON-METRO FACILITIES	TOTAL TONNAGE
<b>FY 1990-91</b>			
Forecast	789,645	344,196	1,133,841
Actual	747,642	263,583	1,011,225
Difference	-42,003	-80,613	-122,616
<b>FY 1991-92</b>			
Forecast	915,554	429,743	1,245,297
Actual	711,949	352,264	1,064,213
Difference	-203,605	-77,479	-181,084
<b>FY 1992-93</b>			
Forecast	723,921	340,233	1,064,154
Actual	708,868	336,517	1,045,385
Difference	-15,053	-3,716	-18,769

Table 3. Comparison of actual and forecast revenues used for Metro budget and rates includes tonnage that pays Metro Fees.

REVENUES <sup>2</sup>	METRO FACILITIES	NON-METRO FACILITIES	TOTAL TONNAGE
<b>FY 1990-91</b>			
Forecast	\$37,095,648	\$9,070,728	\$46,166,376
Actual	\$33,711,448	\$8,089,800	\$41,801,248
Difference	(\$3,384,200)	(\$980,928)	(\$4,365,128)
<b>FY 1991-92</b>			
Forecast	\$60,457,672	\$4,698,838	\$65,156,520
Actual	\$48,249,596	\$5,019,762	\$53,269,358
Difference	(\$12,208,076)	\$320,924	(\$11,887,162)
<b>FY 1992-93</b>			
Forecast	\$54,294,075	\$7,059,835	\$61,353,910
Actual	\$53,165,100	\$6,982,728	\$60,147,828
Difference	(\$1,128,975)	(\$77,107)	(\$1,206,082)

<sup>1</sup>All tons shown in Tables 2 and 3 are "revenue tons." Tables 1, 4, and 5 and Figures 1 and 2 address "Tri-County tons delivered to facilities." Revenue tons are less than delivery tons for Non-Metro facilities because revenues are not collected on tonnage which either (a) is from outside the Metro boundary, or (b) is recovered from the wastestream by the Non-Metro facility.

<sup>2</sup>All revenues include excise tax and pass through charges such as DEQ fees and Rehabilitation and Enhancement fees.

Table 4. Projection of future delivery tonnages by calendar year.

CALENDAR YEAR	METRO FACILITIES	NON-METRO FACILITIES	TOTAL TONNAGE
1994	682,000 to 699,000	439,000 to 450,000	1,121,000 to 1,149,000
1995	678,000 to 701,000	443,000 to 458,000	1,121,000 to 1,159,000
1996	673,000 to 704,000	446,000 to 467,000	1,119,000 to 1,171,000
1997	669,000 to 706,000	450,000 to 475,000	1,119,000 to 1,181,000
1998	664,000 to 708,000	454,000 to 484,000	1,118,000 to 1,192,000
1999	659,000 to 710,000	458,000 to 494,000	1,117,000 to 1,204,000

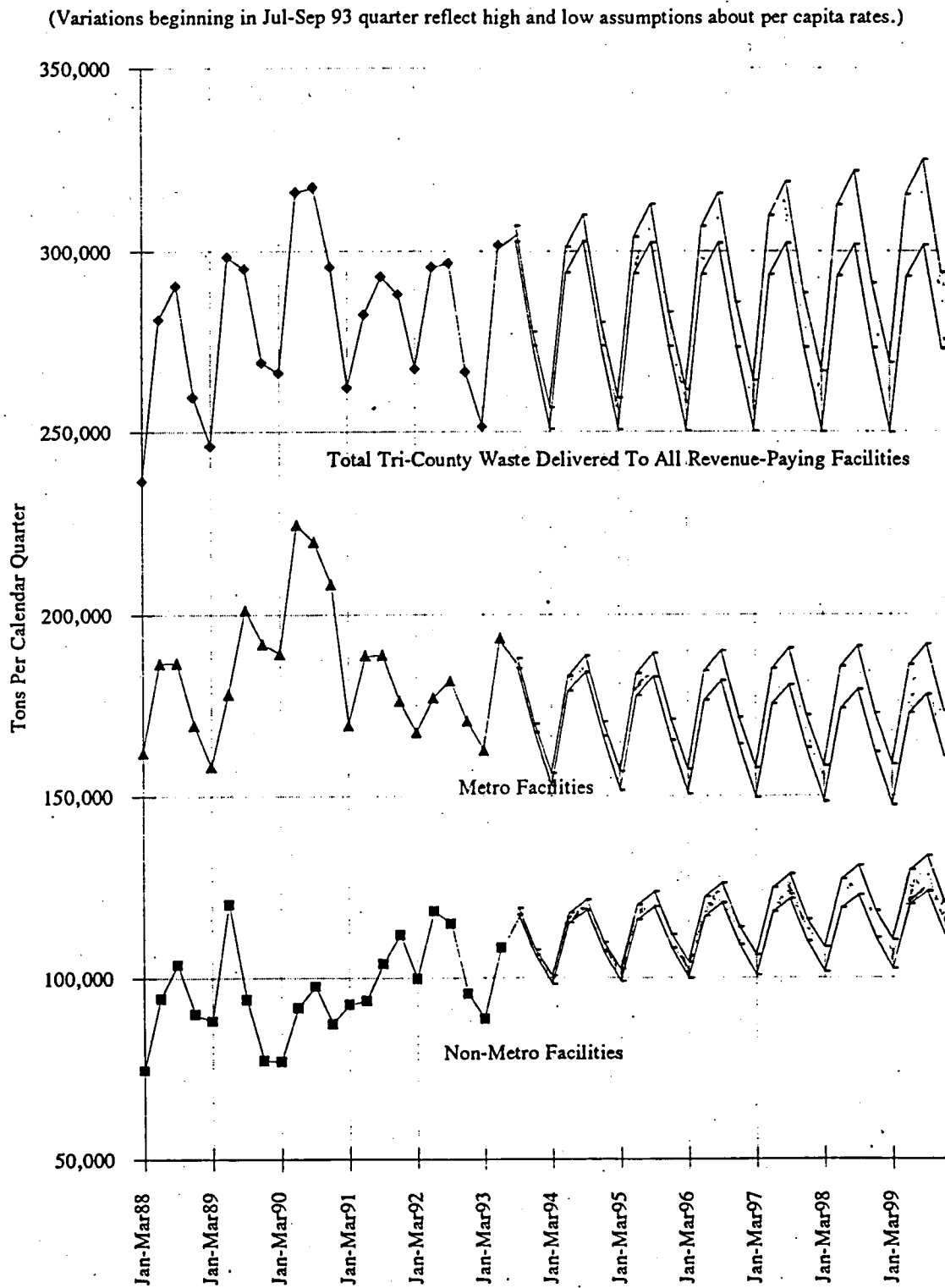
Table 5. Projection of future delivery tonnages by fiscal year.

FISCAL YEAR	METRO FACILITIES	NON-METRO FACILITIES	TOTAL TONNAGE
1993-94	684,000 to 697,000	437,000 to 445,000	1,121,000 to 1,142,000
1994-95	680,000 to 700,000	441,000 to 454,000	1,121,000 to 1,154,000
1995-96	676,000 to 702,000	444,000 to 462,000	1,120,000 to 1,164,000
1996-97	671,000 to 705,000	448,000 to 471,000	1,119,000 to 1,176,000
1997-98	666,000 to 707,000	452,000 to 480,000	1,118,000 to 1,187,000
1998-99	662,000 to 709,000	456,000 to 489,000	1,118,000 to 1,198,000

Upper boundary of each range is a projection based on a constant per capita rate of the actual 1992 rate of 5.02 pounds/person/day.

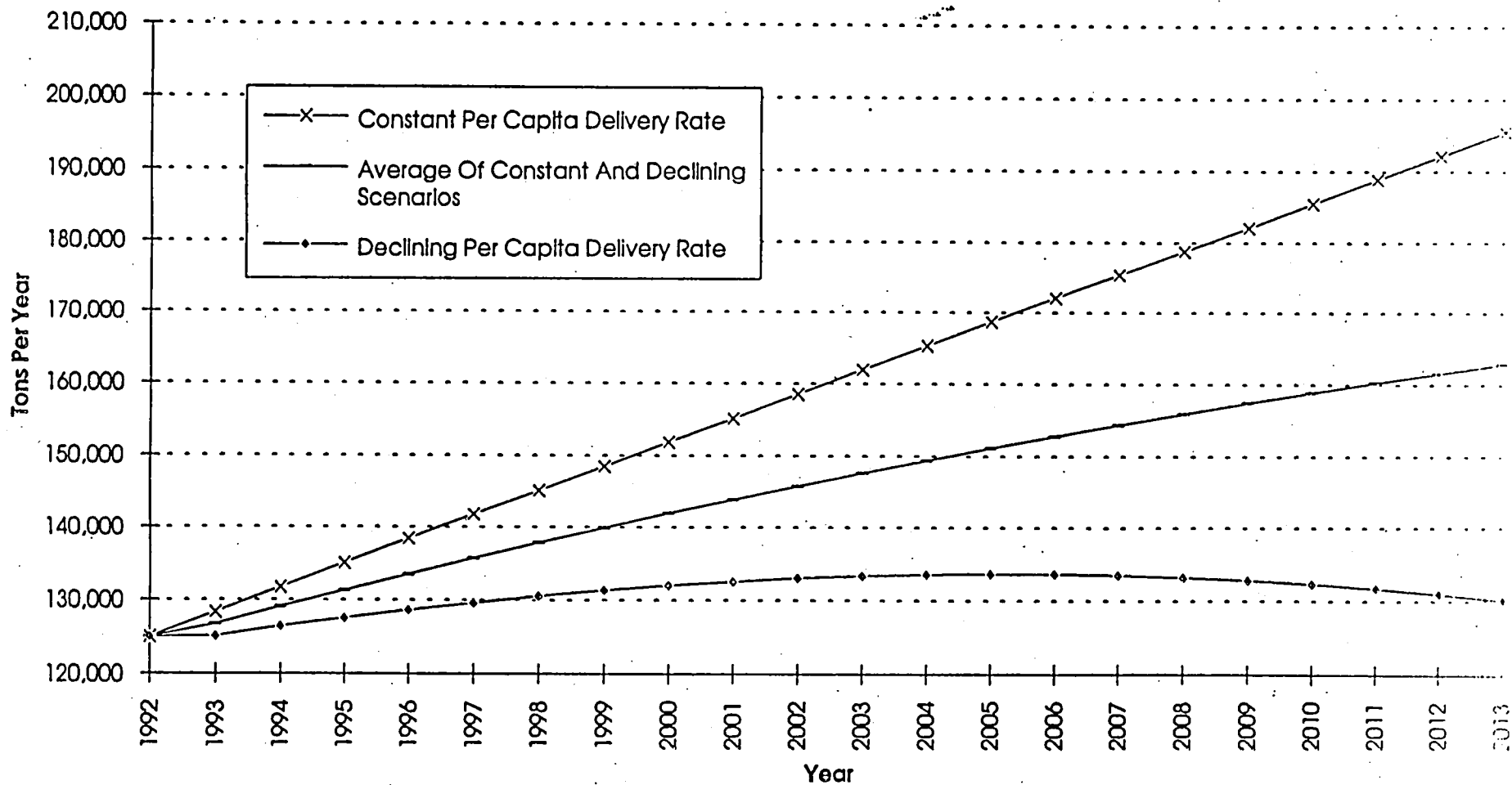
Lower boundary of each range is a projection of the 1989-1993 trend in decreasing per-capita disposal. This projection shows the actual 1992 rate of 5.02 pounds/person/day decreasing to 4.61 pounds/person/day during 1999.

Figure 2. Estimates of future delivery tonnage by calendar quarter. Historical data January to June 1993. Projection July 1993 to December 1999.





### Tonnage To Wilsonville Transfer Station



ESTIMATIONS OF TONNAGE DELIVERED TO THE WILSONVILLE TRANSFER STATION

Assume Constant Per Capita Delivery Rates

	"A"	"B" (See Page 3)	"C" = A*B*365/2000	"D" (See Page 5)	C minus D
	Population In Areas Potentially Serving Washington County Transfer Stations	Constant Per Capita Delivery Rate	Potential Delivery Tonnage To Washington County Transfer Stations	9% Of Regional Transfer Station Type Waste = Assumed Delivered To Forest Grove Transfer Station	Waste To Wilsonville Transfer Station
92	373,765	2.861	195,161	70,194	124,967
93	381,518	2.861	199,203	70,883	128,320
94	389,271	2.861	203,251	71,572	131,679
95	397,025	2.861	207,300	72,262	135,038
96	404,780	2.861	211,349	72,951	138,398
97	412,532	2.861	215,396	73,640	141,757
98	420,282	2.861	219,443	74,329	145,114
99	428,041	2.861	223,494	75,018	148,476
000	435,793	2.861	227,541	75,708	151,834
001	443,549	2.861	231,591	76,397	155,195
002	451,307	2.861	235,642	77,086	158,556
003	459,054	2.861	239,687	77,775	161,912
004	466,808	2.861	243,735	78,464	165,271
005	474,562	2.861	247,784	79,154	168,631
006	482,319	2.861	251,834	79,843	171,991
007	490,071	2.861	255,882	80,532	175,350
008	497,824	2.861	259,930	81,221	178,709
009	505,581	2.861	263,980	81,910	182,070
2010	513,333	2.861	268,028	82,600	185,428
2011	521,088	2.861	272,077	83,289	188,788
2012	528,844	2.861	276,126	83,978	192,148
2013	536,599	2.861	280,176	84,667	195,509

Average Of The Two Estimates

Year	Waste To Wilsonville Transfer Station
1992	124,967
1993	126,693
1994	129,032
1995	131,270
1996	133,481
1997	135,672
1998	137,803
1999	139,882
2000	141,900
2001	143,862
2002	145,766
2003	147,607
2004	149,392
2005	151,118
2006	152,785
2007	154,392
2008	155,939
2009	157,429
2010	158,856
2011	160,226
2012	161,536
2013	162,798

Assume Per Capita Delivery Rates Used In FY 1993-94 Budget/Rate Forecasts

	"A"	"B" (See Page 6)	"C" = A*B*365/2000	"D" (See Page 4)	C minus D
	Population In Areas Potentially Serving Washington County Transfer Stations	Decreasing Per Capita Delivery Rate	Potential Delivery Tonnage To Washington County Transfer Stations	9% Of Regional Transfer Station Type Waste = Assumed Delivered To Forest Grove Transfer Station	Waste To Wilsonville Transfer Station
1992	373,765	2.8611	195,161	70,194	124,967
1993	381,518	2.7845	193,875	68,808	125,067
1994	389,271	2.7421	194,807	68,421	126,386
1995	397,025	2.6976	195,459	67,957	127,502
1996	404,780	2.6541	196,064	67,499	128,565
1997	412,532	2.6119	196,639	67,053	129,587
1998	420,282	2.5693	197,071	66,578	130,493
1999	428,041	2.5265	197,364	66,076	131,289
2000	435,793	2.4834	197,511	65,545	131,966
2001	443,549	2.4400	197,516	64,987	132,529
2002	451,307	2.3964	197,377	64,400	132,976
2003	459,054	2.3525	197,088	63,786	133,302
2004	466,808	2.3084	196,656	63,144	133,512
2005	474,562	2.2640	196,078	62,474	133,604
2006	482,319	2.2194	195,355	61,775	133,579
2007	490,071	2.1745	194,483	61,049	133,434
2008	497,824	2.1294	193,465	60,296	133,169
2009	505,581	2.0842	192,302	59,514	132,788
2010	513,333	2.0387	190,990	58,706	132,284
2011	521,088	1.9930	189,533	57,870	131,663
2012	528,844	1.9472	187,930	57,006	130,923
2013	536,599	1.9015	186,213	56,126	130,087

## POTENTIAL AREAS SERVING THE WILSONVILLE AND FOREST GROVE TRANSFER STATIONS: 1992 TONNAGE, 1992 PER CAPITA DELIVERY RATE, AND 1992-2014 POPULATION

Hauler Name	Unique Geographic ID	County	Agency	Tonnage In 1992	POPULATION														
					1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Aloha Garbage	5518	WASH	WASH	12,000	29,621	30,469	31,317	32,165	33,013	33,861	34,709	35,557	36,405	37,253	38,101	38,948	39,796	40,644	41,492
Cedar Mill Disposal	5017.2	WASH	WASH	240	649	759	868	978	1,087	1,197	1,306	1,416	1,525	1,635	1,745	1,854	1,964	2,073	2,183
Cedar Mill Disposal	5017.2	WASH	WASH	1,520	3,497	3,591	3,685	3,779	3,873	3,967	4,061	4,155	4,249	4,343	4,437	4,531	4,625	4,719	4,813
Cornelius	103.1	WASH	WASH	1,667	6,000	6,017	6,034	6,051	6,068	6,085	6,102	6,119	6,136	6,153	6,170	6,187	6,204	6,221	6,238
Cornelius	103.1	WASH	WASH	938	3,413	3,461	3,509	3,557	3,605	3,653	3,701	3,749	3,797	3,845	3,893	3,941	3,989	4,037	4,085
Cornelius	103.2	WASH	WASH	501	1,575	1,719	1,863	2,007	2,151	2,295	2,439	2,583	2,727	2,871	3,015	3,159	3,303	3,447	3,591
Dees Sanitary	5023.2	WASH	WASH	242	731	738	745	752	759	763	770	777	784	791	798	805	812	819	826
Dees Sanitary	5023.3	WASH	WASH	57	191	191	191	191	191	191	191	191	191	191	191	191	191	191	191
Dees Sanitary	5023.4	WASH	WASH	1,294	3,779	3,891	4,003	4,115	4,227	4,339	4,451	4,562	4,674	4,786	4,898	5,010	5,122	5,234	5,345
Dons Garbage Service	5027	WASH	WASH	3,468	10,347	10,594	10,840	11,087	11,333	11,580	11,826	12,073	12,319	12,566	12,812	13,059	13,305	13,552	13,798
Eager Beaver Sanitary	107	WASH	WASH	10,928	7,598	7,887	8,175	8,463	8,752	9,040	9,328	9,617	9,905	10,194	10,482	10,770	11,059	11,347	11,636
Forest Grove Disposal	102	WASH	WASH	5,803	24,718	24,910	25,102	25,295	25,487	25,679	25,871	26,064	26,256	26,448	26,641	26,833	27,025	27,217	27,410
Garbarino Disposal	5186	WASH	WASH	6,911	15,945	16,835	17,725	18,615	19,505	20,395	21,285	22,175	23,065	23,955	24,845	25,735	26,625	27,515	28,405
Hillsboro Garbage Disposal	6229	WASH	WASH	14,353	36,232	36,859	37,485	38,112	38,739	39,365	39,992	40,619	41,245	41,872	42,499	43,125	43,752	44,378	45,005
Hillsboro Garbage Disposal	6229	WASH	WASH	1,920	4,879	4,995	5,111	5,227	5,343	5,459	5,575	5,691	5,807	5,923	6,039	6,155	6,271	6,387	6,503
Millers Sanitary	5058.2	WASH	WASH	8,383	19,026	19,324	19,622	19,920	20,218	20,516	20,814	21,112	21,410	21,708	22,007	22,305	22,603	22,901	23,199
Millers Sanitary	5058.2	WASH	WASH	558	1,301	1,364	1,427	1,490	1,553	1,616	1,679	1,743	1,806	1,869	1,932	1,995	2,058	2,121	2,185
Pacific Waste & Recycling	5065.2	WASH	WASH	1,290	2,843	2,850	2,857	2,864	2,871	2,878	2,885	2,893	2,900	2,907	2,914	2,921	2,928	2,935	2,943
Pride Disposal	5538.1	WASH	WASH	123	120	129	137	145	153	162	170	178	187	195	204	212	220	229	237
Pride Disposal	5538.3	WASH	WASH	1,552	2,921	3,018	3,114	3,210	3,307	3,403	3,499	3,596	3,692	3,789	3,885	3,981	4,078	4,174	4,271
Pride Disposal	5538.3	WASH	WASH	13,851	25,856	26,291	26,726	27,161	27,596	28,031	28,466	28,901	29,336	29,771	30,206	30,641	31,076	31,511	31,946
Public	108	WASH	WASH	4,401	6,533	6,590	6,647	6,703	6,760	6,817	6,873	6,930	6,987	7,043	7,100	7,157	7,213	7,270	7,327
Rossmann Sanitary Service	5422.3	WASH	WASH	471	1,435	1,488	1,540	1,592	1,645	1,697	1,749	1,802	1,854	1,907	1,959	2,011	2,064	2,116	2,169
Schmidt Sanitary	5405	WASH	WASH	3,512	8,289	8,520	8,751	8,983	9,214	9,445	9,677	9,908	10,139	10,371	10,602	10,833	11,065	11,296	11,527
Sevier & Son Inc.	5079.1	WASH	WASH	779	860	865	870	875	880	885	890	896	901	906	911	916	921	926	932
Sevier & Son Inc.	5079.2	WASH	WASH	3,804	4,119	4,122	4,125	4,128	4,131	4,134	4,137	4,140	4,143	4,146	4,149	4,152	4,155	4,158	4,161
Swatco	101	WASH	WASH	1,920	10,644	10,918	11,192	11,466	11,740	12,015	12,289	12,563	12,837	13,111	13,386	13,660	13,934	14,208	14,482
United Disposal	5626.2	WASH	WASH	1,527	4,007	4,349	4,691	5,033	5,376	5,718	6,060	6,402	6,745	7,087	7,429	7,771	8,113	8,456	8,798
United Disposal	5626.2	WASH	WASH	9,543	23,309	23,724	24,138	24,553	24,967	25,382	25,797	26,211	26,626	27,040	27,455	27,870	28,284	28,699	29,113
Valley Garbage Disposal	5089	WASH	WASH	6,000	7,131	7,151	7,170	7,190	7,210	7,229	7,249	7,269	7,288	7,308	7,328	7,347	7,367	7,386	7,406
Valley West Refuse	104	WASH	WASH	1,032	3,978	4,180	4,381	4,583	4,784	4,986	5,187	5,389	5,590	5,792	5,993	6,195	6,396	6,598	6,799
Valley West Refuse	104	WASH	WASH	1,368	5,171	5,336	5,501	5,666	5,831	5,996	6,161	6,325	6,490	6,655	6,820	6,985	7,150	7,315	7,479
Walker Garbage Service	5097.1	WASH	WASH	6,545	14,058	14,455	14,851	15,248	15,645	16,041	16,438	16,835	17,231	17,628	18,025	18,421	18,818	19,214	19,611
West Beaverton Sanitary	5103	WASH	WASH	22,289	47,634	48,175	48,716	49,257	49,798	50,339	50,880	51,422	51,963	52,504	53,045	53,586	54,127	54,668	55,210
West Slope Garbage Service	5105.1	WASH	WASH	1,010	2,182	2,185	2,188	2,191	2,195	2,198	2,201	2,204	2,208	2,211	2,214	2,217	2,220	2,224	2,227
Cedar Mill Disposal	5017.1	MULT	PORT	256	603	606	609	612	616	619	622	625	629	632	635	638	641	645	648
Dees Sanitary	5023.1	MULT	PORT	183	551	554	557	560	563	567	570	573	576	579	583	586	589	592	595
Millers Sanitary	5058.1	MULT	PORT	3,594	8,215	8,282	8,349	8,416	8,483	8,550	8,617	8,685	8,752	8,819	8,886	8,953	9,020	9,087	9,155
Pacific Waste & Recycling	5065.1	MULT	PORT	1,892	4,380	4,398	4,415	4,432	4,449	4,467	4,484	4,501	4,519	4,536	4,554	4,571	4,588	4,606	4,623
Pacific Waste & Recycling	5065.3	MULT	PORT	97	224	226	227	229	230	232	233	235	236	238	239	241	242	244	245
Walker Garbage Service	5097.2	MULT	PORT	552	1,193	1,276	1,359	1,442	1,525	1,608	1,691	1,774	1,856	1,939	2,022	2,105	2,188	2,271	2,353
Rossmann Sanitary Service	5422.4	CLACK	CLACK	4,389	11,786	12,001	12,217	12,432	12,648	12,863	13,079	13,294	13,509	13,725	13,940	14,156	14,371	14,587	14,802
Rossmann Sanitary Service	5422.4	CLACK	CLACK	94	258	268	278	288	298	308	318	328	338	348	359	369	379	389	399
United Disposal	5626.1	CLACK	CLACK	262	365	368	370	372	375	377	379	382	384	387	389	391	394	396	399
United Disposal	5626.3	CLACK	CLACK	199	405	393	381	369	356	344	332	320	307	295	283	271	259	246	234
United Disposal	5626.4	CLACK	CLACK	459	1,138	1,147	1,156	1,165	1,174	1,183	1,192	1,201	1,210	1,219	1,228	1,237	1,246	1,255	1,264
United Disposal	5626.4	CLACK	CLACK	1,106	2,725	2,726	2,727	2,728	2,729	2,730	2,731	2,732	2,733	2,734	2,735	2,736	2,737	2,738	2,738
United Disposal	5626.5	CLACK	CLACK	634	1,330	1,330	1,329	1,328	1,327	1,327	1,326	1,325	1,325	1,324	1,324	1,323	1,322	1,322	1,321
United Disposal	Unknown	Unknown	Unknown	6,371	The Population Serving The Addition 6,371 Tons From United Disposal Is Included In The Unique Areas (5626.1, 5626.3, 5626.4, and 5626.5) Identified Above														
Subtotal - Tonnage From Franchised Haulers				171,888															
Additional 13.54% For Transfer Station Waste From Other Haulers				23,274															
Total Transfer Station Waste From All Haulers				195,161															
Total Population Per Year					373,765	381,518	389,271	397,025	404,780	412,532	420,282	428,041	435,793	443,549	451,307	459,054	466,808	474,562	482,319

1992 per capita delivery = 195,161 tons divided by 373,765 people times 2000 pounds/ton divided by 365 days = 2.8611 pounds per person per day

POTENTIAL AREAS SERVING THE WILSONVILLE AND FOREST GROVE TRANSFER STATIONS: 1992 TONNAGE, 1992 PER CAPITA DELIVERY RATE, AND 1992-2014 POPULATION

Hauler Name	Unique Geographic ID	County	Agency	POPULATION							
				2007	2008	2009	2010	2011	2012	2013	2014
Aloha Garbage	5518	WASH	WASH	42,340	43,188	44,036	44,884	45,732	47,428	47,428	48,275
Cedar Mill Disposal	5017.2	WASH	WASH	2,292	2,402	2,511	2,621	2,730	2,950	2,950	3,059
Cedar Mill Disposal	5017.2	WASH	WASH	4,907	5,001	5,095	5,189	5,283	5,471	5,471	5,565
Cornelius	103.1	WASH	WASH	6,255	6,272	6,289	6,306	6,323	6,357	6,357	6,374
Cornelius	103.1	WASH	WASH	4,133	4,181	4,229	4,277	4,325	4,421	4,421	4,469
Cornelius	103.2	WASH	WASH	3,735	3,879	4,023	4,167	4,311	4,599	4,599	4,743
Dees Sanitary	5023.2	WASH	WASH	833	840	847	854	861	868	875	882
Dees Sanitary	5023.3	WASH	WASH	191	191	191	191	191	192	192	192
Dees Sanitary	5023.4	WASH	WASH	5,457	5,569	5,681	5,793	5,905	6,129	6,129	6,240
Dons Garbage Service	5027	WASH	WASH	14,045	14,291	14,538	14,784	15,031	15,524	15,524	15,770
Eager Beaver Sanitary	107	WASH	WASH	11,924	12,212	12,501	12,789	13,078	13,655	13,655	13,943
Forest Grove Disposal	102	WASH	WASH	27,602	27,794	27,986	28,179	28,371	28,756	28,756	28,948
Garbarino Disposal	5186	WASH	WASH	29,295	30,185	31,075	31,965	32,855	34,635	34,635	35,525
Hillsboro Garbage Disposal	6229	WASH	WASH	45,632	46,258	46,885	47,512	48,138	49,392	49,392	50,018
Hillsboro Garbage Disposal	6229	WASH	WASH	6,619	6,735	6,851	6,967	7,083	7,315	7,315	7,431
Millers Sanitary	5058.2	WASH	WASH	23,497	23,795	24,093	24,391	24,689	25,286	25,286	25,584
Millers Sanitary	5058.2	WASH	WASH	2,248	2,311	2,374	2,437	2,500	2,627	2,627	2,690
Pacific Waste & Recycling	5065.2	WASH	WASH	2,950	2,957	2,964	2,971	2,978	2,993	2,993	3,000
Pride Disposal	5538.1	WASH	WASH	245	254	262	270	279	296	296	304
Pride Disposal	5538.3	WASH	WASH	4,367	4,463	4,560	4,656	4,753	4,946	4,946	5,042
Pride Disposal	5538.3	WASH	WASH	32,381	32,816	33,251	33,686	34,121	34,991	34,991	35,425
Public	108	WASH	WASH	7,383	7,440	7,497	7,553	7,610	7,724	7,724	7,780
Rossman Sanitary Service	5422.3	WASH	WASH	2,221	2,273	2,326	2,378	2,431	2,536	2,536	2,588
Schmidt Sanitary	5405	WASH	WASH	11,759	11,990	12,221	12,453	12,684	13,147	13,147	13,378
Sevier & Son Inc.	5079.1	WASH	WASH	937	942	947	952	957	968	968	973
Sevier & Son Inc.	5079.2	WASH	WASH	4,164	4,167	4,170	4,173	4,176	4,182	4,182	4,185
Swatco	101	WASH	WASH	14,756	15,031	15,305	15,579	15,853	16,402	16,402	16,676
United Disposal	5626.2	WASH	WASH	9,140	9,482	9,825	10,167	10,509	11,194	11,194	11,536
United Disposal	5626.2	WASH	WASH	29,528	29,943	30,357	30,772	31,186	32,016	32,016	32,430
Valley Garbage Disposal	5089	WASH	WASH	7,426	7,445	7,465	7,485	7,504	7,544	7,544	7,563
Valley West Refuse	104	WASH	WASH	7,001	7,202	7,404	7,605	7,807	8,210	8,210	8,411
Valley West Refuse	104	WASH	WASH	7,644	7,809	7,974	8,139	8,304	8,634	8,634	8,798
Walker Garbage Service	5097.1	WASH	WASH	20,008	20,404	20,801	21,198	21,594	22,388	22,388	22,784
West Beaverton Sanitary	5103	WASH	WASH	55,751	56,292	56,833	57,374	57,915	58,998	58,998	59,539
West Slope Garbage Service	5105.1	WASH	WASH	2,230	2,233	2,237	2,240	2,243	2,250	2,250	2,253
Cedar Mill Disposal	5017.1	MULT	PORT	651	654	658	661	664	671	671	674
Dees Sanitary	5023.1	MULT	PORT	598	602	605	608	611	618	618	621
Millers Sanitary	5058.1	MULT	PORT	9,222	9,289	9,356	9,423	9,490	9,625	9,625	9,692
Pacific Waste & Recycling	5065.1	MULT	PORT	4,640	4,658	4,675	4,692	4,710	4,745	4,745	4,762
Pacific Waste & Recycling	5065.3	MULT	PORT	247	248	250	251	253	256	256	257
Walker Garbage Service	5097.2	MULT	PORT	2,436	2,519	2,602	2,685	2,768	2,934	2,934	3,016
Rossman Sanitary Service	5422.4	CLACK	CLACK	15,018	15,233	15,449	15,664	15,880	16,311	16,311	16,526
Rossman Sanitary Service	5422.4	CLACK	CLACK	409	419	429	439	449	469	469	479
United Disposal	5626.1	CLACK	CLACK	401	403	406	408	411	416	416	418
United Disposal	5626.3	CLACK	CLACK	222	210	197	185	173	149	149	136
United Disposal	5626.4	CLACK	CLACK	1,273	1,282	1,291	1,300	1,309	1,327	1,327	1,336
United Disposal	5626.4	CLACK	CLACK	2,739	2,740	2,741	2,742	2,743	2,745	2,745	2,745
United Disposal	5626.5	CLACK	CLACK	1,320	1,320	1,319	1,318	1,318	1,317	1,317	1,316
United Disposal	Unknown	Unknown	Unknown								
Subtotal - Tonnage From Franchised Haulers											
Additional 13.54% For Transfer Station Waste From Other Haulers											
Total Transfer Station Waste From All Haulers											
Total Population Per Year				490,071	497,824	505,581	513,333	521,088	536,606	636,613	544,351

1992 per capita delivery = 195,161 tons divided by 373,765 people times 2000 pounds/ton divided by 365 days = 2.8611 pounds per person per day  
 Only 25% of unique 5422.4 has been included.

Estimation Of 9% Of The Tri-County Region's Transfer Station Type Waste  
(Assume This Amount Goes To The Forest Grove Transfer Station)

Using Constant FY 1992-93 Tri-County Per Capita And Transfer Station Factors

Year	Pop On July 1 Of Year Total Tri-County	Regional Per Capita	Regional % TST	9% Of Regional Transfer Station Type Waste
1992	1,229,270	5.0214	69.23%	70,194
1993	1,241,339	5.0214	69.23%	70,883
1994	1,253,409	5.0214	69.23%	71,572
1995	1,265,479	5.0214	69.23%	72,262
1996	1,277,548	5.0214	69.23%	72,951
1997	1,289,618	5.0214	69.23%	73,640
1998	1,301,688	5.0214	69.23%	74,329
1999	1,313,757	5.0214	69.23%	75,018
2000	1,325,827	5.0214	69.23%	75,708
2001	1,337,897	5.0214	69.23%	76,397
2002	1,349,967	5.0214	69.23%	77,086
2003	1,362,036	5.0214	69.23%	77,775
2004	1,374,106	5.0214	69.23%	78,464
2005	1,386,176	5.0214	69.23%	79,154
2006	1,398,245	5.0214	69.23%	79,843
2007	1,410,315	5.0214	69.23%	80,532
2008	1,422,385	5.0214	69.23%	81,221
2009	1,434,454	5.0214	69.23%	81,910
2010	1,446,524	5.0214	69.23%	82,600
2011	1,458,594	5.0214	69.23%	83,289
2012	1,470,663	5.0214	69.23%	83,978
2013	1,482,733	5.0214	69.23%	84,667

Using Decreasing FY 1992-93 Tri-County Per Capita And Transfer Station Factors

Year	Pop On July 1 Of Year Total Tri-County	Regional Per Capita	Regional % TST	9% Of Regional Transfer Station Type Waste
1992	1,229,270	5.0214	69.23%	70,194
1993	1,241,339	4.9488	68.19%	68,808
1994	1,253,409	4.9020	67.80%	68,421
1995	1,265,479	4.8511	67.40%	67,957
1996	1,277,548	4.8020	66.99%	67,499
1997	1,289,618	4.7549	66.57%	67,053
1998	1,301,688	4.7071	66.16%	66,578
1999	1,313,757	4.6586	65.73%	66,076
2000	1,325,827	4.6094	65.30%	65,545
2001	1,337,897	4.5595	64.86%	64,987
2002	1,349,967	4.5089	64.42%	64,400
2003	1,362,036	4.4575	63.97%	63,786
2004	1,374,106	4.4053	63.51%	63,144
2005	1,386,176	4.3524	63.04%	62,474
2006	1,398,245	4.2987	62.57%	61,775
2007	1,410,315	4.2442	62.10%	61,049
2008	1,422,385	4.1889	61.61%	60,296
2009	1,434,454	4.1328	61.12%	59,514
2010	1,446,524	4.0759	60.62%	58,706
2011	1,458,594	4.0181	60.12%	57,870
2012	1,470,663	3.9595	59.60%	57,006
2013	1,482,733	3.9004	59.09%	56,126

INDEX OF THE AMOUNT OF REGIONAL WASTE DELIVERED TO TRANSFER STATIONS

Year	"A" Per Capita Delivery Of Entire Region's Waste	"B" Percent Of Per Capita Delivery Sent To Transfer Stations	"C" = A times B	C divided by 3.46763 = Index Relative To Year 1992	Index Times The Per Capita Delivery Of Transfer Station Type Waste Shown On Page 3
1992	5.01996	69.08%	3.46763	1.00000	2.8611
1993	4.94884	68.19%	3.37477	0.97322	2.7845
1994	4.90203	67.80%	3.32345	0.95842	2.7421
1995	4.85114	67.40%	3.26946	0.94285	2.6976
1996	4.80196	66.99%	3.21674	0.92765	2.6541
1997	4.75488	66.57%	3.16555	0.91288	2.6119
1998	4.70711	66.16%	3.11400	0.89802	2.5693
1999	4.65863	65.73%	3.06211	0.88305	2.5265
2000	4.60944	65.30%	3.00987	0.86799	2.4834
2001	4.55953	64.86%	2.95731	0.85283	2.4400
2002	4.50887	64.42%	2.90443	0.83758	2.3964
2003	4.45748	63.97%	2.85123	0.82224	2.3525
2004	4.40532	63.51%	2.79773	0.80681	2.3084
2005	4.35240	63.04%	2.74393	0.79130	2.2640
2006	4.29870	62.57%	2.68984	0.77570	2.2194
2007	4.24421	62.10%	2.63548	0.76002	2.1745
2008	4.18891	61.61%	2.58086	0.74427	2.1294
2009	4.13280	61.12%	2.52598	0.72845	2.0842
2010	4.07586	60.62%	2.47086	0.71255	2.0387
2011	4.01809	60.12%	2.41552	0.69659	1.9930
2012	3.95946	59.60%	2.35996	0.68057	1.9472
2013	3.90041	59.09%	2.30461	0.66461	1.9015

The above per capita values are from regression analysis of FY 1989-90 through FY 1992-93 data. The same regression analysis was used in support of the forecast for the FY 1992-93 budget and rate

Accounts and Tons Per Tonnage Class During August 1992 (excludes Account 5257, which is "self-haul")

Tonnage Class	Metro Central			Metro South			Assume that these classes represent non-franchised commercial haulers.	
	Tons	Accounts	% Tons	Tons	Accounts	% Tons		
0 to 100	1,709	341	6.93%	2,017	350	7.40%	Assume that these classes represent non-franchised commercial haulers.	
100 to 200	2,349	19	9.53%	1,795	13	6.58%		
0 to 200	4,058	360	16.46%	3,812	363	13.98%		
200 to 300	1,408	6	5.71%	738	3	2.71%		
300 to 400	2,266	7	9.19%	1,757	5	6.44%		
400 to 500	376	1	1.53%	376	1	1.38%		
500 to 600	1,016	2	4.12%	550	1	2.02%		
600 to 700	2,352	4	9.54%	1,266	2	4.64%		
700 to 800	0	0	0.00%	675	1	2.48%		Assume that these classes represent franchised commercial haulers.
800 to 900	0	0	0.00%	0	0	0.00%		
900 to 1000	836	1	3.39%	1,832	1	6.72%		
1000+	12,339	6	50.05%	16,268	9	59.65%		
<b>Total</b>	<b>24,651</b>	<b>387</b>	<b>100.00%</b>	<b>27,272</b>	<b>386</b>	<b>100.00%</b>		

Accounts and Tons Per Tonnage Class During December 1992 (excludes Account 5257, which is "self-haul")

Tonnage Class	Metro Central			Metro South			Assume that these classes represent non-franchised commercial haulers.	
	Tons	Accounts	% Tons	Tons	Accounts	% Tons		
0 to 100	153	61	0.62%	439	189	1.61%	Assume that these classes represent non-franchised commercial haulers.	
100 to 200	1,451	31	5.89%	1,187	31	4.35%		
0 to 200	1,604	92	6.51%	1,626	220	5.96%		
200 to 300	2,277	18	9.24%	1,691	13	6.20%		
300 to 400	1,257	5	5.10%	488	2	1.79%		
400 to 500	1,238	4	5.02%	1,667	5	6.11%		
500 to 600	1,533	4	6.22%	818	2	3.00%		
600 to 700	2,566	4	10.41%	1,077	2	3.95%		
700 to 800	1,108	2	4.49%	1,948	3	7.14%		Assume that these classes represent franchised commercial haulers.
800 to 900	0	0	0.00%	843	1	3.09%		
900 to 1000	842	1	3.42%	0	0	0.00%		
1000+	11,835	6	48.01%	16,478	10	60.42%		
<b>Total</b>	<b>24,259</b>	<b>136</b>	<b>100.00%</b>	<b>26,636</b>	<b>258</b>	<b>100.00%</b>		

Average of 13.98% and 5.96% = 9.97%

Estimation of Tonnage From Self-Haul (Account 5257)

Amount Of "Self-Haul" (Account 5257) Tonnage To Metro Central And Metro South

	Metro Central Direct Haul Tonnage				Metro South Direct Haul Tonnage			
	Not 5257	Acct 5257	Total	Pct 5257	Not 5257	Acct 5257	Total	Pct 5257
JAN 92	19,865	1,983	21,848	9.08%	20,287	2,473	22,760	10.87%
FEB 92	22,401	2,240	24,641	9.09%	23,030	2,723	25,753	10.57%
MAR 92	24,949	3,354	28,303	11.85%	27,754	3,930	31,684	12.40%
APR 92	24,501	2,829	27,330	10.35%	27,848	3,204	31,052	10.32%
MAY 92	24,025	3,743	27,768	13.48%	26,306	4,024	30,330	13.27%
JUN 92	25,091	3,223	28,314	11.38%	28,697	3,736	32,433	11.52%
JUL 92	25,798	3,824	29,622	12.91%	29,357	3,871	33,228	11.65%
AUG 92	24,651	3,543	28,194	12.57%	27,272	4,085	31,357	13.03%
SEP 92	24,631	3,749	28,380	13.21%	27,429	3,603	31,032	11.61%
OCT 92	25,117	3,532	28,649	12.33%	26,597	3,320	29,917	11.10%
NOV 92	24,181	3,189	27,370	11.65%	26,136	2,785	28,921	9.63%
DEC 92	24,259	2,840	27,099	10.48%	26,636	2,160	28,796	7.50%
<b>Total 1992</b>	<b>289,469</b>	<b>38,049</b>	<b>327,518</b>	<b>11.62%</b>	<b>317,349</b>	<b>39,914</b>	<b>357,263</b>	<b>11.17%</b>

Percent of self-haul traffic expected to be added to Wilsonville based on its only being open to self-haul on weekends:

11.17% times 31.94% = 3.57%

Amount Of "Self-Haul" (Account 5257) Tonnage To Metro South

Day of Week	August	Dec	Total	Percent
Monday	691	263	954	15.28%
Tuesday	611	383	994	15.92%
Wednesday	456	402	858	13.74%
Thursday	456	252	708	11.34%
Friday	486	250	736	11.79%
Subtotal	2,701	1,549	4,251	68.06%
Saturday	778	400	1,178	18.87%
Sunday	605	211	816	13.07%
Subtotal	1,384	611	1,994	31.94%
<b>Grand Total</b>	<b>4,085</b>	<b>2,160</b>	<b>6,245</b>	<b>100.00%</b>

TOTAL ADDITIONAL TONS TO WILSONVILLE TO ACCOUT FOR NON-FRANCHISED COMMERCIAL ACCOUNTS AND SELF-HAUL:

9.97% plus 3.57% = 13.54%

**METRO**

To: Bob Martin, Director of Solid Waste  
From: John Houser, Council Analyst  
Date: August 11, 1993  
Re: Additional Questions Related to the Wilsonville Transfer Station

Since the August 3 meeting, several additional questions have been submitted to me related to the Wilsonville Transfer Station. These questions are outlined below. In addition, I am enclosing a copy of a memorandum from Councilor Gates that contains several questions related to the proposed station. I have discussed the memo with Councilor Gates and he has indicated that he would like a response from you (see attached). Councilor Devlin also is developing a list of questions, but he has not provided them to me for submission to you and your staff.

Additional questions:

- 1) On page one of the Executive Officer's Recommendation, it is stated that "In a region which has experienced an overall decline in disposal of 3.8 percent per year, Metro's decline has been 6.3 percent per year". How were these numbers calculated and what are the comparable percentages for transfer station type waste?
- 2) The initial rate impact of the Wilsonville Transfer Station is estimated at \$4.15/ton. This is, in part, based on an initial tonnage at the station of about 132,000 tons/yr. If these tonnage estimates are low, what would the rate impact be if the initial tonnage were 140,000, 150,000 or 160,000 tons/yr?
- 3) In determining the allocation of waste between Wilsonville and Forest Grove Transfer Station, staff has appeared to use different per capita waste generation rates. Representatives from WRI contend that the rate used for Forest Grove was 3.476 lbs./day, while the rate used for Wilsonville was 2.8611 lbs./day. Could you please indicate if a different rate was used, and if so, why? If a lower rate was used for the Wilsonville facility, what is the effect on the tonnage estimates versus using the higher rate that was apparently used for the Forest Grove Station?
- 4) Some are contending that delaying construction of a new facility would increase the cost of construction and possibly the cost of issuing bonds to finance the facility? Based on current estimated



construction costs, could you estimate the impact on the total cost of the project if interest rates for the bonds issued to build the facility were 1 or 2% higher? Could you indicate the potential effect of inflation on constructing the facility under the following scenarios: building five, ten or fifteen years from now with inflation rates of 3 or 5%?

5) Some are contending that issues related to flow control, reconfiguration of Metro South, revision of the RSWMP, and design of the future disposal system must be fully addressed prior to any decision not to build the Wilsonville station. Could you please respond to the need for such work to be completed prior to a decision not to build? Has staff done any preliminary work to determine the process or timelines for completion of this work if the station is not to be built?

**METRO**

To: Bob Martin, Director of Solid Waste  
From: John Houser, Council Analyst  
Date: July 28, 1993  
Re: Questions Related to the Wilsonville Transfer Station

At the July 20 Solid Waste Committee meeting, you suggested that it would be helpful if the Council could submit questions related to Wilsonville Transfer Station to you in writing. The following questions result from discussion at the July 20 meeting and my review of existing documents related to the proposed transfer station. I also have circulated this memo among the Council to solicit any additional questions that they might have at this time.

As the debate over the transfer station continues, I am sure that additional issues and questions will emerge. I will attempt to consolidate these questions and submit them to you as soon as possible. In addition, I would hope that in the next few days to sit down with your technical staff to discuss how the various tonnage and other statistical estimates related to the transfer station were developed.

Could you and your staff please develop a written response to the following issues and questions:

1) Historically there has been some debate over the "capacity" of the Metro South Station. The Policy and Technical Analysis For The Washington County System Plan prepared in 1991 indicated that the station capacity was 270,000 tons/year. In a memo to the Solid Waste Committee dated November 30, 1992, you appeared to accept this estimate as the "optimum" capacity for the facility. The staff report on the proposed Wilsonville facility indicated that the "maximum" capacity at Metro South is 400,000 tons/year, though at this level certain operational problems would exist.

a) Could you indicate why the department now appears willing to accept an operating capacity at Metro South that is nearly 50% higher than the "optimum" capacity identified in your earlier memo?

b) Could you please identify the nature and frequency of the existing operational difficulties at Metro South and the steps that will be taken to address them?

c) Does Metro have the ability to change the physical layout of the facility to shorten queuing lines?

d) Has Metro received complaints from haulers, the public or Oregon City concerning operational problems at the facility?

e) Will operating Metro South at significantly higher than optimum tonnage levels preclude any additional material recovery or recycling efforts at the station?

2) Metro currently has an agreement with the City of Oregon City under which up to 400,000 tons/year may be sent to Metro South. The agreement also provides that Metro will take every step possible to reduce the annual tonnage to 255,000 tons/year. This agreement expires in 1996.

a) Does Metro have any indication that Oregon City will be willing to allow to Metro send larger than existing quantities of solid waste (up to 400,000 tons/year) to Metro South during the remainder of the existing agreement?

b) Do we have any indication that Oregon City will be willing to extend the existing tonnage cap beyond 1996?

c) Should Oregon City attempt to require Metro to achieve the tonnage goal of 255,000 tons/year set in the current agreement, what effect would this have on the disposal system if the Wilsonville station is not built?

3) In a memo from Terry Peterson, dated May 11, 1993, two future tonnage estimates are made concerning Metro South. It is stated that "we believe the upper estimate, which is based on current per-capita disposal rates, is most appropriate for facility design and operational planning at Metro South." The upper estimate indicates that tonnage could grow at Metro South by about 31,000 between 1993 and 1998, exceeding the 400,000 ton capacity in 1996.

In the July 13 Wilsonville staff report, it is stated that tonnage at Metro South "may increase at roughly the rate as projected for the service area proposed [for the Wilsonville facility]". This rate of growth is only about 9,000 tons between 1993 and 1998 and would indicate that the 400,000 ton capacity at Metro South would not be reached before the year 2013.

Thus, it appears that the department wished to use high-end estimates in addressing capacity and operational issues at Metro South but chose to accept much lower estimates of actual tonnage growth when examining the need for the Wilsonville station.

a) Could you explain the apparent differences in rationale as expressed in the May memo and the Wilsonville staff report?

b) The May memo indicates that the upper estimate is based on the current per-capita disposal rate. Could you please indicate if a lower disposal rate was used to calculate the slower tonnage growth rate included in the Wilsonville staff report and, if so, what was the justification for using a lower rate?

c) What other factors or assumptions were used in developing the tonnage estimates used in the Wilsonville staff report?

4) The Washington County Haulers Association estimates that the savings to consumers in the Wilsonville service area will be approximately \$700,000 annually. The Wilsonville staff report indicates that the savings will be between \$350,000-600,000 annually.

a) Could you please indicate how the Metro estimate was calculated and why it is significantly less than the haulers' estimate?

5) Testimony from a representative of A.C. Trucking expressed concern about the potential loss of tonnage at the Forest Grove Transfer Station (estimated at 6,000 tons).

a) If the Wilsonville station is built, will any haulers presently using the Forest Grove station be directed to use the Wilsonville Station? Will any haulers using other facilities be directed to use the Forest Grove Station? Would there be a net negative or positive effect on tonnage levels at the Forest Grove Station?

6) Some believe that transfer station tonnage data from the most recent six months indicate that the tonnage decline has ended and that there is evidence that tonnages may actually be increasing.

a) Could you provide a monthly tonnage breakdown for each transfer station (inc. Forest Grove) and the composter since the opening of Metro Central? Please include the actual tonnage, projected tonnage and the percentage change in tonnage from the prior year?

b) Could you comment on the contention that tonnages may be levelling off or beginning to increase?

7) It is noted in the staff report that "staff assumed that increasing tonnage from population increases will be offset by increases in recycling and other waste reduction activities, except in Washington County."

a) Could you please explain the basis for this conclusion?

b) Could you describe how the effect of population on tonnage estimates was calculated?

c) What recycling levels (percentages) would need to be achieved to "offset" population growth?

d) What types of new recycling programs does staff believe will be implemented during the next five years to achieve significant increases in the recycling rate?

8) The Executive Officer's statement indicates that, if the Wilsonville station is not built, exercising Metro's flow control authority to move some waste from Metro South to Metro Central may be necessary as early as 1996. This would appear to indicate that it is Metro's intent to operate Metro South at near its maximum capacity until that time.

a) If Metro South's optimal operating capacity is in the range 250,000-270,000 tons/year, why would Metro not consider utilizing flow control to direct flow away from Metro South at an earlier date?

b) What is Metro's legal authority to exercise and enforce its flow control authority? Are there any recent or pending court or legislative actions that may affect this authority?

9) Questions have been raised concerning Metro's ability to buy or land bank the proposed transfer station site. These issues are briefly reviewed in the staff report.

a) Could you please more fully describe the nature of the various options for acquiring the property?

b) If we attempted to acquire the site, would it be Metro's intent to purchase only that portion of the WRI property upon which the transfer station would be built, or would we attempt to purchase the entire site?

c) Does staff believe that it is possible to further reduce the physical or operating size of the facility?

10) If the Wilsonville station is not built, does Metro have legal authority to establish some type of construction fund to finance the construction of a transfer station at some future date?

a) Could staff please estimate how much money would need to be raised annually to finance building a facility identical to the proposed Wilsonville facility (including identical site acquisition and improvement costs) in 2003 (ten years), in 2013 (twenty years)?

11) Based on the Executive Officer's recommendation, does staff still believe that there is a need for two transfer stations in Washington County? What effect will not building the Wilsonville station have on the Forest Grove Station?

12) Has staff explored the possibility of accepting out-of-district waste at the Wilsonville facility to increase tonnages, reduce operating costs and reduce the rate impact?

13) Material recovery rates at Metro South are about 1%. How much additional tonnage would be recovered if the Wilsonville station is built? Would this increase have any effect on the region's recycling rate?

14) It is our understanding that a franchise proposal has been submitted for a "pick and sort" facility that would process about 35,000 tons/year.

a) If such a facility is franchised, what types of materials would it be processing?

b) How much of this material is currently being processed at the transfer stations?

c) Was the effect of this facility included in the tonnage and projections made with regard to the Wilsonville transfer station?

NO. 5

**WILSONVILLE TRANSFER STATION**  
**Executive Officer Recommendation**  
**July 20, 1993**

Over the past several months, I have spent considerable time analyzing and evaluating issues regarding the Wilsonville Transfer Station in preparation for delivering my recommendation to you. I've reviewed staff work regarding waste flow needs and trends, I've looked at tipping fee analyses with and without the facility, I've studied the proposed franchise agreement that has been negotiated, I've considered the long (and sometimes contentious) history of this issue, and I've consulted with public officials and interested parties on both sides of the issue.

If all the facts and logic completely supported one side or the other, our decision would be easy and made long ago. As with many important policy questions however, there are valid arguments on both sides. There are good reasons to build the transfer station and good reasons not to.

The more one examines the issues however, certain inescapable facts emerge:

1. The amount of waste from which Metro derives revenue has been declining, and at best is projected to level off. During the 1980's waste disposed at Metro facilities had exhibited a mild, upward trend. In 1990, Metro handled 838,000 tons of waste -- over 70 percent of the 1,173,000 tons disposed regionally that year. In 1993, Metro expects to handle 689,000 tons -- less than two-thirds of the 1,043,000 regional tonnage. In a region which has experienced an overall decline in disposal of 3.8 percent per year, Metro's decline has been 6.3 percent per year -- indicating an erosion of "market share" in excess of the regional trend



Because of these facts, I have concluded that proceeding with a \$10 million facility not absolutely necessary, during a time of such deep revenue uncertainty, is poor public policy. I therefore recommend to the Metro Council that we not proceed with the project. Yes, the facility would benefit the system, certainly hauling distances for some Washington County haulers would be shortened, and crowding at Metro South would be relieved. It is also true that the site is zoned appropriately and available now. Nevertheless, when asked directly whether this additional transfer station is absolutely necessary at this time, I cannot honestly say yes. Proceeding now would be analogous to a hauler buying additional trucks while his number of customers decreases, or a school district building more classrooms when attendance is decreasing. Such decisions are not good business or good public policy.

Nevertheless, if the Council supports my recommendation not to proceed with the Wilsonville Transfer Station, it is my belief that a plan to maximize efficiency at existing facilities is needed. This plan should include keeping tonnage at Metro South below permitted maximum, adjusting scalehouse procedures to reduce waiting times, and diverting flow to Metro Central where cost effective. I also recommend that we re-examine the facilities chapter of our Solid Waste Plan to establish our long-range facilities needs for the region. Finally, we should prepare now to re-bid the operating contracts for both Metro South and Metro Central. In updating these contracts we should investigate possible changes that would streamline operations and reduce costs.

I thank the committee for this opportunity to present my thoughts and either I or Bob Martin will be glad to address questions you may have.

## ACTUAL TONNAGE AT METRO TRANSFER STATIONS

FACILITY	1990	1991	1992	1993(1)
Metro Central Station/ St. Johns Landfill(2)	437.2	381.8	327.5	174.9
Metro South Station	368.4	371.0	357.3	181.3
Forest Grove Transfer Station	65.2	68.1	68.5	34.0
<b>TOTALS</b>	<b>870.8</b>	<b>820.9</b>	<b>753.3</b>	<b>390.2</b>

**NOTES:**

(1) Through June 1993

(2) St. Johns Landfill closed January 14, 1991.

(3) Adjusted to include compost tonnage.

## STAFF REPORT

### IN CONSIDERATION OF A FRANCHISE AGREEMENT WITH WILLAMETTE RESOURCES, INC. FOR THE CONSTRUCTION AND OPERATION OF THE METRO WEST STATION.

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Date: July 13, 1993

Presented by: Bob Martin

#### FACTUAL BACKGROUND AND ANALYSIS

##### **Policy/Procurement Background**

In FY74-75, Metro adopted the CORMET plan which envisioned a system of two transfer/processing facilities to be located in Multnomah and Clackamas counties, and a transfer station located in Washington county. Two sites were subsequently identified but rejected due to public opposition.

In FY80-81, this system was revised to delete the processing of waste, but to retain the three transfer stations to be located in each county. Implementation of the plan began with the construction of Metro South Station in 1983.

In 1984, Metro adopted Resolution 84-506 which formally updated the Solid Waste Management Plan to include three publicly owned stations in each county. The station for Washington county was to open by 1986 and the third station was to open upon the closure of the St. Johns Landfill. A site was purchased for the Washington Co. station, however the project was abandoned in 1987. The Metro Central Station, located in Portland, opened in 1991.

In 1988, Metro began a joint planning process with representatives of Washington County to develop a solid waste transfer and materials recovery plan. The process culminated in the Metro West Transfer and Materials Recovery Plan which was adopted by the Metro Council as a chapter of the Regional Solid Waste Management Plan in October, 1991. The plan called for a system of two transfer and materials recovery facilities for Washington County which were to be privately owned and operated.

In late 1991, staff issued a request for franchise applications for the western part of the county. Two applications were received and evaluated. Metro decided to not pursue the project in February, 1992, due to concerns regarding cost and tonnage availability. Staff was then directed to conduct a similar procurement in the eastern part of the county.

A request for franchise applications was issued in June, 1992, and one application was received from Willamette Resources, Inc. Evaluation was completed in September, at which time the Solid Waste Committee requested an analysis of transfer station capacity.

Staff presented the analysis, the committee reviewed the analysis, at which time staff then proceeded to negotiate a franchise with WRI.

The first step in the negotiations was to enter into a design agreement with WRI. The design agreement required that Metro be permitted to participate in the conceptual design of the facility and that Metro reimburse WRI for design expenses incurred by outside consultants should a franchise not be awarded. Metro is responsible for approximately \$130,000 in design reimbursements. The design phase of the project was concluded in April, 1993, and is an attachment to the negotiated franchise agreement. Metro and WRI then began negotiation of the franchise agreement. Negotiations were concluded in June, 1993. Specific aspects of the agreement are discussed under the Franchise Agreement Summary below.

### **System Capacity**

The existing capacity of the solid waste system is a function of the maximum capacity of Metro South and Metro Central Stations, and the amount of waste which can be transferred to the landfill in Yamhill County utilizing the transfer station in Forest Grove, Oregon. The maximum capacity is that level above which serious unavoidable operational problems occur. The amount of waste which can be transferred to the landfill in Yamhill County is a function of the conditions of our disposal contract with Oregon Waste Systems which limits waste sent to other landfills to 10% of the waste disposed of in a general purpose landfill.

The maximum capacity at the Metro South Station is estimated to be approximately 400,000 tons per year. The facility will receive approximately 360,000 tons in 1993 and may increase at roughly the rate as projected for the service area proposed in the franchise with WRI presented below. However, at this higher tonnage level the facility is currently experiencing some operational problems such as long queuing lines which reach the I-205 interchange as well as causing overtime payments for shuttle operations by our transport contractor. These problems are being resolved through operational changes until the flow exceeds 400,000 tons.

The City of Oregon City in its 1991 agreement with Metro permits up to approximately 400,000 tons per year. It further states that Metro will take every step possible to reduce the annual tonnage level to 255,000 tons (700 tons per day). The condition allowing the higher tonnage level expires in 1996.

The Metro Central Station was designed for a maximum capacity of 548,000 per year. It will receive approximately 345,000 tons in 1993 and should continue at that rate for the foreseeable future.

The transfer station located in Forest Grove was originally constructed as a reload facility for hauling firms owned by the station owner. Waste was to be top loaded into transfer trucks for shipment to the Riverbend Landfill in Yamhill County. In 1986, the facility

received permission from Metro to receive waste from other haulers utilizing the Riverbend Landfill, pending construction of a Metro owned transfer station in Washington County. The amount of waste which Metro may transfer to Riverbend is limited to 10% of the regions waste going to a general purpose landfill, or approximately 68,000 tons per year. The facility is not currently equipped to compact waste for long haul transport should Metro decide to discontinue waste transfer to Riverbend. The facility did submit an application during the franchise procurement for the western portion of Washington County which was canceled. Like the Metro South Station, the Forest Grove facility has no materials recovery capabilities.

The proposed Metro West Station to be located in Wilsonville, would have a maximum capacity of 196,000 tons. Projections for the facility are presented below. The area to be served by the facility is the only watershed in the region projected to grow in waste generation, due to its high population growth.

1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
129032	131270	133481	135672	137803	139882	141900	143862	145766	147607

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
149392	151118	152785	154392	155939	157429	158856	160226	161536	162798

System capacity is approximately 1,016,000 tons per year without the proposed station in Wilsonville, and approximately 1,212,000 with the proposed station.

### Tonnage Forecast

It is estimated that the Metro region will require approximately 770,000 tons of transfer capacity in 1994. For purposes of planning the transfer system for the future, staff assumed that increasing tonnage from population increases will be offset by increases in recycling and other waste reduction activities, except in Washington County which will experience the most rapid rate of population growth. Even with such growth, it is estimated that annual tonnage requiring disposal will only increase to approximately 790,000 by the year 2003. Of that amount, Washington County will generate approximately 220,000 in the year 2003, from its current level of about 200,000. During the planning process for Washington County which was completed in 1991, it was forecast that Washington County would require over 300,000 tons of capacity by the year 2003.

### Analysis

As can be seen above, the current system of transfer stations contains enough capacity for the foreseeable future. The excess capacity is the result of sizing the Metro Central Station assuming an increasing waste generation rate which was the trend in 1988 when the long range tonnage projection was developed for the Metro Central RFP. The

problem with this system is that the excess capacity is not in a convenient location to provide optimum transfer capabilities for Washington and Clackamas county haulers.

### **Redirecting Waste**

If a facility is not constructed at Wilsonville, then Metro may have to reallocate waste from Metro South to alleviate operational problems before the tonnage at Metro South exceeds 400,000. This could be necessary as soon as 1996, however, if current tonnage declines continue, it may not be necessary for some time. It is assumed that waste could be redirected to Metro Central to take advantage of excess capacity and its materials recovery capabilities. Redirecting waste to the Forest Grove facility is of limited value due to the current tonnage limitation, lack of materials recovery capabilities, distance from the majority of Washington County waste and the increased cost of transporting waste from Forest Grove to the Columbia Ridge Landfill above the 10% limitation.

The current system of facility use is based on hauler preferences. Even with substantial operating problems, haulers generally prefer to use Metro South over Metro Central. Redirecting waste to Metro Central would presumably impose costs on the haulers. Such costs would be in terms of increases in distance/times traveled, ease of facility use (pit vs. flat floor) and disruption of historical patterns. It is assumed such costs would be passed on to customers during the hauler's franchise rate review.

**Average Distance From Each Counties' Franchise Area to Transfer Station Currently Used in Miles**

	Washington	Multnomah	Clackamas	Region
Average	22.6	18.7	16.9	19.2
High	35.9	39.2	31.3	39.2
Low	9.5	7.3	5.7	5.7

The above table shows the current average haul distance from franchises in each County. As can be seen, haul distances in Washington County are on the average about 3.6 miles further than for the entire Region. If the Metro West Station is constructed, waste would be redirected to this facility from primarily the Metro South Station. The costs associated with this course of action are reflected in the increase in the regional rates described below. The benefits are primarily a reduction in operational and pollution costs to the residents of Washington County. An analysis of hauler travel times and pollution costs indicates that if Metro West is constructed, haulers using the facility would incur an average cost reduction (in 1993 dollars) of approximately \$350,000 to \$600,000 per year, depending on the amount of tonnage hauled to the facility.

## Cost Impacts

The costs associated with the Metro West Station consist of capital costs, operational costs and Metro costs. These costs are presented below, together with the impact on the regional tip fee.

The capital cost of constructing the Metro West Station is approximately \$10.3 million. The money would be raised through the issuance of project bonds by Metro which are in turn loaned to WRI. WRI is responsible for providing credit enhancement as part of its loan agreement with Metro. The credit enhancement will be in the form of a letter of credit with a private bank. WRI is responsible for repayment of the bonds and will receive a monthly lump sum payment from Metro for this amount as long as they are not in default of the agreement.

Of the \$10.3 million, approximately \$9 million will be tax exempt bonds and the remainder taxable. The taxable portion of the bond issuance is for the land costs of the project, per IRS requirements. Of the \$9 million tax exempt issuance, approximately 10% would be used for offsite improvements such as extension of the sewer and water, as well as realignment of the Ridder Road which borders the site. A portion of the offsite costs will be repaid as other firms hookup to the sewer and water extensions. The offsite improvements are a requirement of the City of Wilsonville. About 70% of the \$9 million tax exempt issuance will be used to construct the building and onsite improvements, as well as to acquire and install equipment and rolling stock. The remaining 20% is for indirect costs of the project such as contingencies, bond issuance costs and reserve requirements. The total debt service costs are presented below on a per ton basis.

Operating costs for the project consist of Metro costs which are primarily for operation of the scalehouse and unacceptable waste storage area and the disposal costs for the unacceptable waste, and costs to WRI for operation of the facility. WRI is reimbursed based on the amount of waste coming into the facility. WRI and Metro have agreed to a reimbursement tonnage schedule consisting of 10 tonnage categories. The schedule is contained in the franchise agreement and effectively reduces the amount charged per ton as flows increase. For FY95-96, the rate per ton due WRI is estimated to be \$16.44 per ton. Below is a summary of the per ton costs, together with similar costs at Metro Central and Metro South, should Metro West be constructed. This is followed by a similar comparison should Metro West not be constructed. It should be noted that since the Metro West Station would be privately owned, it will be required to pay property taxes, income taxes (on both O&M payments and principal payments not offset by depreciation) and letter of credit costs which are not required for a publicly owned facility. Such costs will add approximately \$2 per ton to the facility's annual costs. These are in addition to the enhancement fee (\$.50 per ton) which is currently paid at Metro owned facilities.

**TRANSFER STATION COSTS  
1995-96**

<i>Item</i>	<i>Forest Grove</i>	<i>South</i>	<i>Central</i>	<i>Wilsonville</i>
Metro Costs	0	\$3.89	\$4.29	\$3.04
Shuttle Operations	NA	\$0.13	\$0.71	\$0.00
O&M Contractor	\$21.50*	\$4.83	\$12.52	\$13.40
<b>Total Operating Costs</b>	<b>\$21.50</b>	<b>\$8.85</b>	<b>\$17.51</b>	<b>\$16.44</b>
Debt Service	* Included in O&M	\$1.75	\$7.71	\$7.74
<b>Total Cost</b>	<b>\$21.50</b>	<b>\$10.60</b>	<b>\$25.22</b>	<b>\$24.18</b>
<i>Tonnage</i>	<i>68,000</i>	<i>246,000</i>	<i>301,500</i>	<i>132,300</i>

**TRANSFER STATION COSTS  
Without Wilsonville  
1995-96**

	<i>Forest Grove</i>	<i>South</i>	<i>Central</i>
Metro Cost	0	\$2.79	\$3.87
Shuttle Operations	NA	\$0.67	\$0.65
O&M Payments	\$21.50*	\$4.55	\$11.53
<b>Total Operating Cost</b>	<b>\$21.50</b>	<b>\$8.00</b>	<b>\$16.05</b>
Debt Service	*Included in O&M	\$1.23	\$7.09
<b>Total Cost</b>	<b>\$21.50</b>	<b>\$9.23</b>	<b>\$23.13</b>
<i>Tonnage</i>	<i>68,000</i>	<i>351,900</i>	<i>328,000</i>

The per ton impact on rates if Metro West is constructed is presented below. It should be noted that FY94-95 rates do not contain a full year's worth of debt service.

FY94-95	FY95-96	FY96-97
\$3.44	\$4.15	\$4.32

Detailed costs associated with the rates are attached.

**Franchise Agreement Summary**

The agreement provides that WRI is responsible for the design, construction and maintenance of the facility, and operation of the facility except for the scalehouse and unacceptable waste storage area which will be operated by Metro. Construction of the



facility will be in accordance with the conceptual plans jointly developed with Metro. The facility would open in 1994.

The term of the agreement is 20 years (the same term as the bond issuance). The agreement can be extended up to 20 additional years in five year increments, or the franchise can be allowed to expire. Metro may purchase the facility at the end of the term at Fair Market value. During the agreement Metro has the right of first refusal should Willamette Resources, Inc. decide to sell the facility.

The facility design consists of a flat tipping floor and waste sorting area, offices, truck wash, unacceptable waste building, scalehouse and public recycling area. The interior space will be over twice as large as Metro South. No material recovery equipment will be installed initially, however the infrastructure for such equipment will be in place. The contractor will receive the full avoided cost for recovered materials and may negotiate with Metro for future financing of material recovery equipment. If Metro participates in financing additional equipment, the amount of avoided cost is up for negotiation. Staff does not believe it is prudent to install material recovery equipment until the waste received at the facility is examined. Initial recovery is expected to be 4-5%.

Metro will process requests for payments during construction, ensuring that the conceptual design agreed upon is built. If funds are available at the end of construction, the Contractor may apply such funds to the acquisition of materials recovery equipment, except that a baler must be the first equipment acquired.

Once constructed, the facility will be performance tested to determine its ability to receive, process and compact up to its design capacity of 825 tons per day.

The facility will be open 363 days a year. Weekday hours are 6 am to 6 pm Monday through Friday for commercial only and 8 am to 6 pm weekends for both public and commercial.

All waste within a designated service area is to be directed to the facility by use of Metro's flow control authority. In FY94-95, this will be about 130,000 tons, escalating to 163,000 tons in 2013. Capacity is 196,000 tons per year. Forest Grove station will continue to operate at about 9% of the regional tonnage or 66,000 tons. Metro reserves the right to direct waste to other facilities which can produce products from the waste. If tonnage drops below 95,000 tons, Metro is obligated to meet with WRI to discuss the financial viability of the project, however Metro is under no obligation to take any action.

## **Site Availability**

The question has been raised as to whether the Wilsonville site can be secured in some fashion which allows construction to merely be deferred? The site is zoned appropriately for construction of a transfer station and should remain so into the future, unless specific action is taken by the City of Wilsonville to change its designation. Design review approval for the site will expire on February 22, 1995. It is possible to "bank" the land on which the transfer station would be built. The land could be obtained through a negotiated purchase, or through condemnation if Metro made a determination that the land is necessary for a public use. However, the City of Wilsonville, and not Metro, has jurisdiction over land use at the site. In order to "bank" land use approvals at the site Metro would need to obtain a commitment to do so (through intergovernmental agreement) from the City of Wilsonville. Since circumstances surrounding the appropriateness of land use decisions is subject to change over time, a decision by Wilsonville to agree to maintain the land use designation for any significant length of time is likely to be viewed as a land use decision. As such, it would be subject to the requirements of the Wilsonville zoning code relating to other land use decisions which would include, at a minimum, notice and opportunity for a public hearing.

The costs to Metro of "banking" the site consist of lost investment revenue to Metro assuming the land costs were invested instead of tied up in the land, and of increased construction costs due to inflation. If the site were purchased by Metro and "banked" for five years, staff estimates the above costs to be 2 million dollars.

## **EXECUTIVE OFFICER'S RECOMMENDATION**

(To be available prior to meeting)

NO. 6

TO: Metro Councilors, Staff Analyst John Houser,  
Executive Director Rena Cusma and Solid Waste Director  
Bob Martin

From: Councilor Mike Gates

RE: Wilsonville Transfer Station and related issues

Recently, John Houser issued a draft memo to the Solid Waste Department about issues surrounding the need for another transfer station.

Attached are my thoughts and questions about the issue and its expanding considerations. Some of the comments are possibly redundant, but the crux of what I am trying to ask is for a fresh and coordinated review of the region's solid waste facilities, their abilities to perform on both contractual and operational levels, and a broader look at the external influences on solid waste generation and handling.

I would like to incorporate the attached questions to those already passed on to the Solid Waste Department.

Please accept my thanks for the effort given by all parties to pursue careful consideration of this crucial issue.

  
Mike Gates

## WILSONVILLE TRANSFER STATION

Following are issues which should be resolved before final Council action on whether to add to the current cost of Metro's solid waste system a transfer station in Wilsonville. The listing of issues is in no particular order of importance.

1. What is the distance in mileage between the proposed site of Wilsonville and current locations of Metro Central and South transfer stations? It appears the Wilsonville location is not properly located in reference to Metro's two existing transfer stations for the economical utilization of these two transfer stations.

2. If there is to be no self-haul disposal service planned for the Wilsonville location, where will these persons go to dispose of their waste?

a. It has been indicated these persons can tip at the Hillsboro landfill. Has anyone verified the practicality of this decision, such as, routing and mileage to Hillsboro landfill vs. routing and mileage to Metro Central and South? The self-haul person will typically travel to the closest and easiest to access location.

b. Will Metro Central and South be allowed to limit self-haul service in the same manner as the Wilsonville transfer station? Self-haul service has been described as disruptive and inefficient to the operation of the Wilsonville transfer station. These same conditions exist at Metro's two current transfer stations.

c. How does Metro's action to direct disposal of self-haul solid waste at the Hillsboro landfill comply with the district's current contract to dispose of 90 percent of its solid waste at the Columbia Ridge landfill? Clearly it does present a contractual problem.

d. An over-arching issue in this case will be flow control. How will uniformity for solid waste disposal work if self-haul persons can access any transfer station?

3. It has been portrayed that a Wilsonville transfer station will enable haulers in Washington County to use smaller trucks for service. I understand the large trucks used for curb-side pickup can carry 12 to 15 tons of materials and that the next smaller sized truck used for this pickup service can carry 8 to 10 tons. What is the intended size of these trucks? If this is the case, has an environmental assessment been performed to determine the impact on the Portland air shed of the increased number of vehicle miles driven by additional equipment. The Portland air shed is now dangerously close to non-compliance status determined by the EPA. [Note: John Kowalczyk (229-6459) at DEQ can provide data to verify this concern.]

4. Much has been said about rate equity and Washington County rate payer subsidizing tip fees in the region by not having a transfer station located in their county. A quick and unverified examination of 1993 rates for selected areas does not support this contention. Attached is a schedule showing this information, which should be verified for any recent changes.

For example: Based on 1-32 gallon can, the tip fee for Clackamas County is \$18.70, as

compared to \$14.47 for Washington County. The tip fee for the City of Beaverton is \$12.23, as compared to \$15.80 for the City of West Linn. The tip fee for the City of Tigard is \$13.10 as compared to \$17.55 for the City of Gresham. See attached schedule for additional comparisons.

5. Why is there no host fee for the City of Wilsonville as is the case for Metro Central and Metro South? Is it because the revenue from property taxes on the Wilsonville site is nearly 3 to 4 times greater (\$50,000/yr. vs. \$160,000/yr.) than the value of a host fee? [This needs to be verified.] This is a substantial subsidy from the rate payer in Multnomah and Clackamas County to the tax bases of the various Washington County governing bodies (county, city, school district, etc) with the Wilsonville transfer station located in their jurisdictions.

6. Flow control cuts both ways and will be a central issue as Metro increases its need to balance the tipping of solid waste at existing transfer stations in order to achieve greater cost efficiency of these operations. This policy will be implemented as part of the rate making process to restrain the acceleration of tipping fee increases. There are concerns regarding recent adverse litigation related to this management technique. How can Metro add a new 20-year capital investment of \$10.3 million to the cost of the solid waste system before this issue is resolved? Economic utilization of Metro's transfer stations will depend more and more on implementation of flow control, particularly in the case of avoiding contractual "put or pay" costs, as is the case at Metro Central.

7. Senate Bill 66, enacted by the 1991 session of the Legislative Assembly, sets a goal of 50 percent recycling by year 2000. Metro's recycling rate now is stated at 39 percent. This percentage is probably low due to an inability to accurately calculate all recycling efforts, as seen in the reduction of solid waste tonnage while population in the region continues to increase. Several concerns related to increased transfer station capacity revolve around recycling.

a. Changes in packaging have occurred and will continue to occur to reduce the weight and/or need of these materials to be disposed in a landfill. Examples: plastic sacks at food markets; substantial increase in paper packaging of food items, both dry and frozen.

b. City of Portland's plan to increase recycling to 60 percent by 2000 within the City of Portland. Other cities in the region may achieve this level of recycling as techniques and markets improve.

c. Additional fixed-site transfer stations involving long-term capital investment allow no flexibility for implementation of any new technology designed to avoid land filling and/or reduction in the bulk of the current solid waste stream. Examples:

Residential waste compactors are starting to be economically available for residences. These devices enable a person to reduce the need for curb-side disposal from once a week to once a month. Such reduction in the bulk of solid waste will enable disposal of more solid waste tonnage with less transfer station capacity. Another example is expansion of

the hog-fuel process removing high tonnage materials, such as paper, from the waste stream.

8. Passage of Measure 5 in 1990 changed permanently voter awareness of the cost of doing the public's business. Increasing the cost of an existing service requires greater cost justification than ever before. [Do you agree?] Hence, if Metro has capacity to accommodate solid waste with its current transfer station operation (which it has), what possible justification can there be to increase operating costs for unneeded disposal capacity?

For your information, Metro Central has capacity now to receive all of the current tonnage tipped at Metro's two transfer stations. With flow control, this offers a viable alternative.

9. There is now the potential for a great deal of cost instability in the current solid waste system as related to transfer stations. It has been said that Wilsonville will add \$4.15 per ton to the tip fee. Maybe this amount is far too low when considering other unknowns?

a. The franchise agreement for the Forest Grove facility is under active consideration for renewal. What will be the duration of this agreement? How much "true" capacity does this facility offer Metro? How will the cost of operation at Forest Grove be impacted if there is flow control for "three" Metro transfer stations? Currently, disposal is limited for compliance with Metro's landfill agreement.

b. Operation contracts for Metro Central and South are due to expire within the next 12 to 15 months. [Verify times.] What will be the duration of any new agreements? What level of minimum tonnage will Metro be able to guarantee at each facility, with or without Wilsonville and/or Forest Grove? What will be the process for obtaining new agreements - bids or proposals? Proposals offer greater opportunity for Metro to exercise flexibility in reconfiguring its transfer station operation.

c. Has there been any consideration to selling the current transfer stations? With long-term franchise agreements, the new revenue would go a long way to help Metro avoid rate increases. Industrial development bonds (used for Metro Compost facility) is one possibility for conduit financing of these purchases or vendor's outright purchase of facility (used for landfill).

In the past, Metro maintained that it needed to own its transfer stations in order to avoid becoming hostage to a vendor as well as to insure continued operation by avoiding closure of a transfer station. This was the attitude at the outset of developing the solid waste system. More recent actions have demonstrated that effective service is available at operations not owned by Metro.

10. What is the recycling capability, if any, proposed for Wilsonville? Does this capability meet Metro's current recycling objectives for transfer stations? In not, why not?

**SUMMARY OF COMPARATIVE RATES**

**1993 RATES**

SERVICE RATES	BEAVERTON	CAMBY	CLATSOP COUNTY	GLADSTONE	GRESHAM	MILWAUKEE	MOLALLA	ORSON CITY	FOULDAW	SPRIN	TIGARD	TUPACON	WASHINGTON COUNTY WEST Linn	
													35 Gal. Cart	17.05
<b>RESIDENTIAL ONLY.</b>														
yd.) 1 Can (32 gal)	12.23	14.40	18.70	13.55	17.55	17.25	15.90	17.95	17.60	15.35	13.10	-	14.47	15.80
yd.) 2 Cans (32 gal)	23.31	25.45	37.40	27.10	28.70	33.15	29.25	35.90	27.85	29.28	26.28	-	28.94	31.60
yd.) Ea. add. Can (32 gal)	10.58	11.25	18.70	13.55	10.50	14.70	12.50	17.95	14.50	14.65	13.10	-	14.47	15.80
yd.) 1 Can (20 gal)	-	-	14.80	-	15.50	13.70	-	14.25	16.60	11.55	10.85	13.93	13.30	13.25
curb) 60 Gal Cart	-	-	27.68	-	22.15	21.60	-	-	24.05	-	24.08	23.39	22.08	-
curb) 90 Gal Cart	-	-	29.28	-	22.15	23.30	-	-	27.18	-	30.19	-	26.82	-
<b>COMMERCIAL ONLY.</b>														
1 Can (32 gal)	12.75	14.90	16.20	13.55	17.55	15.45	17.10	16.00	not	16.15	13.10	23.13	14.47	17.00
2 Cans (32 gal)	24.30	29.70	30.20	27.10	28.70	29.35	30.80	32.00	requ-	29.28	26.20	25.15	28.94	34.00
60 Gallon Cart	-	-	25.10	-	22.15	22.40	-	-	lated	-	24.08	-	22.08	-
90 Gallon Cart	-	-	27.30	-	22.15	24.10	-	-	-	-	30.19	23.43	26.92	-
1-1/2 yd. Container	118.21	188.80	114.85	114.80	95.38	128.38	136.55	119.05	-	116.45	122.83	103.57	101.29	131.05
2 yd. Container	145.88	145.00	144.05	147.73	123.61	159.35	181.45	171.55	-	145.90	136.19	137.25	133.73	166.10
3 yd. Container	203.10	199.95	202.55	180.45	175.11	217.70	-	-	-	200.45	186.69	189.66	171.85	-
<b>DROP BOX (+Disp)</b>														
20 Yard	33.94	72.50	88.55	76.38	76.77	79.75	80.55	88.98	*	80.55	88.89	68.55	93.88	82.90
30 Yard	138.12	87.75	98.10	91.45	98.96	101.55	98.10	113.19	*	98.10	108.78	89.95	129.47	82.50
40 Yard	159.41	95.55	113.35	107.95	110.93	117.35	113.35	-	*	113.35	-	103.80	155.17	75.25
<b>(Plus Rental)</b>														

- \* No curbside collection of yard debris
- \*\* Weekly curbside collection of yard debris paid by City General Fund
- \*\*\* Bi-weekly (Not Weekly) curbside collection of yard debris. Garbage collection rates are curbside (93). surcharge for yard garbage collection)

**1 RATE ADJUSTMENT PENDING**



City of  
**WILSONVILLE**  
in OREGON

30000 SW Town Center Loop E  
Wilsonville, Oregon 97070  
FAX (503) 682-1015  
(503) 682-1011

August 4, 1993

Mr. Roger Buchanan, chair  
Metro Solid Waste Committee  
600 NE Grand Ave.  
Portland, OR 97232-2736

Dear Mr. Buchanan and members of the committee:

The City of Wilsonville wishes to add its voice to those who believe Metro should move forward with the proposed Metro West transfer station in Wilsonville.

Many of the reasons for moving forward with the project have already been covered by the testimony presented at your public hearing of August 3 and I don't want to be redundant. I would like to focus on the siting and land-use aspects of this issue.

I'm sure I don't need to remind you of how difficult it is to site a solid waste facility. Even those of you who were not here at the time must surely know of the Wildwood fiasco.

What you have now is an ideal location for a transfer station in a community that does not oppose the project. The community in fact welcomes it. How often in your lifetimes will that ever happen?

I want to assure you, however, that if you do not go forward with this project, the City of Wilsonville will not extend the land-use approvals on that site beyond their normal expiration. If ten years from now you find that there is a need for a Metro West transfer station, you will also find that Wilsonville has built out and that site is no longer available. In fact, you will probably find that there is no longer a suitable site anywhere in eastern Washington County. The costs ten years from now of siting and building a transfer station will be monumentally higher than they are now -- both monetarily and politically.

I'm aware that you could condemn the site and land-bank it. But you would do so without any guarantees that a future Planning Commission or City Council would approve that site for use as a transfer station. Bear in mind that the area around the site is largely undeveloped. If Metro West is built, future development in that area will have to accept and be compatible with a transfer station.

If Metro West is not built and over the next ten years the area develops anyway -- as it surely will -- a transfer station would then have to be compatible with and acceptable to the development that is already there -- a highly unlikely scenario.

Second, I would like to address your staff's increased-cost argument. Right now, Washington County haulers must drive longer distances to transfer stations than do haulers elsewhere in the region. These increased transportation costs are passed on to customers in their monthly bills.

I would submit to you, then, that the \$3.44 per ton increase in the tipping fee that your staff says would be necessary in the first year of operation if Metro West is built is in fact the amount of the subsidy that Washington County ratepayers provide to the rest of the region for not having a transfer station in eastern Washington County.

August 4, 1993  
Mr. Roger Buchanan  
Page 2

I further submit to you that you should not accept that increase in the tipping fee as a given. I submit to you that the money that would be raised by that fee increase in fiscal year 1995 -- approximately \$447,000 -- could be gained by making cuts elsewhere in your budget and transferring those savings to the Metro West station.

Is it possible to cut \$447,000 from a \$220 million budget? Having just presided over the process of cutting \$900,000 from an \$18 million budget in Wilsonville, let me assure you: It is.

I also ask you to consider the cost to Metro of the lost good will with Washington County. I ask you: What price would you put on that?

In 1991, when the Metro Council was preparing to vote on the adoption of the Washington County chapter of the Regional Solid Waste Management Plan, executive officer Cusma warned you of this same risk if you failed to adopt Washington County's recommendations.

Ms. Cusma warned that Washington County's good will and cooperation were necessary to advance a variety of agendas on which you are working. She talked about the commitment you had made to Washington County. She talked about the breach of faith involved in your failure to honor that commitment.

That commitment has not diminished.

That breach of faith is no less severe.

The subsidy provided by Washington County ratepayers to the rest of the region is no lower.

The City of Wilsonville urges you to move forward with the Metro West transfer station.

Sincerely,



Gerald A. Krummel  
Mayor

August 4, 1993

FROM: Robert Peterson, citizen  
8655 SW Parkview Lp. Beaverton, OR 97005 646-2204

RE: RESPONSE TO WASHINGTON COUNTIES TESTIMONY

I want to respond to the comments made in proposed Washington County Solid Waste Systems Design Steering Committee. The position of Washington County and its associates on this issue is one of the most blatant examples of SPECIAL INTEREST politics that I have ever seen on the local level. What we have here is a group of politicians working with people from the industry for their own benefit. They are telling the people one of those, "I'm from the government, I want to help you" stories. They are saying to the people of this region, "Let us raise your garbage rates. We don't need to, but it will help some of us a lot."

Before I present a point by point analysis of the WCAC paper and testimony, I wish to make some points that their paper did not address:

1. The WCAC is not a citizens committee in any way. It was made up of people from the industry, elected officials, and their employees. It was obvious that no one representing the bill-payers was on this committee.

2. There only is no urgency not to build this transfer station, there is urgency to kill the concept. In 1990, this region put approximately 925,000 tons of garbage into landfills. In 1993 it may total less than 735,000 tons: a 25% decline in volume.

3. The proposed station would only handle 17% of the waste in the region. Therefore only 17% of the rate payers could ever possible benefit. The rest including many in Washington County would pay much higher rates. Washington just allowed another increase of \$2.63 per month today???

4. There is no way to predict when Metro will need additional capacity accurately, if ever. If flow keeps going down at 25% every three years there will be less than 100,000 tons of garbage in 20 years. That's why long term forecasting isn't a science and can be very deceptive and dangerous.

Comments on the Washington County Committee(WCAC) testimony

Point 1-- Impacts.... on solid waste policy

The point is made over and over that the WCAC wants equitable service and equitable rates. It is a little late for that. WCAC claims to have been working toward this for ten years. Most of this time was spent trying to prevent a major station in their County. While they were discussing the rest of the Counties solved their problems.

Washington County Policy Adv Comm. talks about uniform levels of

service and uniform rates. If proximity to a transfer station is the only measure of uniformity, it will never be reached. Some collection routes will always be relatively close to a transfer station and others will not.

WCAC asks the rhetorical question, "Will the ...system operate better with the Wilsonville station?" and then answers, surprisingly, in the affirmative. But that is not entirely true. Pulling 100,000 tons a year from an \$8 cost per ton transfer station to process in a \$24 cost per ton transfer station hardly sounds like better operations. At least not from the standpoint of the rate payers.

## 2. Impacts on Other ... Policy Issues.

We agree with WCAC that actions are interrelated. There is no question. The fact is that increasing tipping fees and other services mandated by government have forced garbage rates to skyrocket. It is beginning to have an enormous effect on the economy of the region. More and more waste is leaving the system and the base of remaining rate payers is becoming smaller. This will not be the first jurisdiction to go through this experience. Nationally, the glut of competitive disposal sites has caused financial trauma for several municipal facilities.

The WCAC argument about the vehicle miles uses cooked numbers and they know it. It has been pointed out before. There is no allowance for extra miles that the even larger, higher fuel burning rigs of Jack Grey will have to travel in their calculations.

The WCAC also makes the point that government needs "to provide quality service at the least cost possible." This is certainly the truth. [The issue of haulers using smaller trucks is addressed below.]

## 3. Need for Station Cost/benefit Analysis.

The WCAC paper addresses the issue -- do the costs outweigh the benefits.

Location of stations. If Metro were looking only to location for a new transfer station, Wilsonville would not be that location. The east end of Multnomah County can make a claim to being much more under served than the most southerly portion of the Region. Any station in the Beaverton area would provide better service to Washington County than would a station in Wilsonville. It should also be noted that some Washington County haulers are using Metro Central now without hardship.

[In a separate paper, a WCAC member argues for the Wilsonville station on the basis that it would permit several companies to build reload facilities to hold down costs. That is not an argument for building more stations. It is a good argument for not building since running large rigs to Metro Central in the

off-peak hours would be neither costly nor dangerous.]

Location of Waste. It is appalling that this argument has gone unchallenged. Since Gresham is larger than Beaverton, Tigard, King City, Durham and Wilsonville combined, the argument can hardly be made that SE Washington County is the most under served area in the region. SE Washington County may be fast growing but it has a long way to go before it catches up with East Multnomah County. *Rafael*

Peak Capacity. The peak capacity argument is valid but it needs to be carried out to its logical conclusion. Most of the additional tonnage in the summer months, not surprisingly, comes as a result of increased construction activity and yard debris. These are the very materials that are leaving the system at the fastest rate. Peak loading capacity will be less of an issue in the future than it is now.

Beyond all of that, it isn't much of an argument. Sizing for peak loads can cause enormous problems of over capitalization.

Timing of Capacity. This is not a cutting issue, but it is interesting to note that in this case WCAC quotes Metro projections to make its case. These are the same projections that they decry in other portions of the paper. The WACA cannot have it both ways. As to the size of the proposed Wilsonville facility, it is hard for the WCAC to argue that building 90% of a foolish project is somehow still not foolish.

Proper use of Estimates. This portion of WCAC's argument takes the position that forecasts should be may on a dual track-- a low number track for budgeting and a high number track for facility planning. There is merit in the suggestion and this is, apparently, what Metro is in fact doing. The problems with Metro's past forecasts is that they originated in a Solid Waste Planning Group that was separate from Solid Waste. That group was out of touch. Its forecasts for ever increasing tonnages were not only self serving much like the Defense Department forecasting another weapons build up in Russia. They were terribly wrong.

#### Cost of Station.

The WCAC paper states that the tipping fee issue is the "singular reason" that policy makers oppose building Wilsonville. True, but it is not the tipping fee now. It is the tipping fee now and into the future. The current tipping fees are not funding the system now! There is a major concern about where the tipping fees must be next year and beyond.

The Wilsonville project is not the only factor waiting to push tipping fees upward. Several large generators of waste are chomping at the bit to get out of the system.

In the second paragraph, the WCAC paper goes back to its unsubstantiated analysis of a 34 cents to 38 cents per can savings in

transportation costs. In the first place, the 25 cents per can for the \$4.00 per ton cost must be subtracted from the 34 and 38 leaving a per can savings in part of Washington County at 9 to 13 cents per can.

Even if these numbers were true, and they are suspect, (Bob Martin, in his analysis of his own Wilsonville rates, didn't come out ahead.) the \$4.00 per ton does not include the total cost of adding the facility. It does not take into account the costs it will add per ton at other facilities, particularly Metro South. The reduced efficiency at Central would add substantially to the total cost of the system.

The WCAC paper also tries to make the argument that WC should not longer subsidize Portland and the rest of the Region. We should point out again that while Washington County vigorously and successfully fought a region transfer station, people in the rest of the region bit the bullet and solved a problem that had reached crisis proportions. If tonnages had continued to rise, as most people thought they would, then there would still be a need for another major transfer station today. However, as always, multiple solutions are applied to major problems. Recycling handles more than three times the waste that would go to Wilsonville if it were built. Washington County merely waited too long. By the time it found out that transfer stations could be desirable neighbors, this region has all it probably ever going to need.

Finally, under this Need for Benefit Analysis section, The WCAC again tries to take a swipe at Metro's \$130,000 expenditure aimed to finalize numbers for the Wilsonville project. It states that the number was \$4 per ton all along. This is strange behavior for a committee that is funded by Washington County consider how much money the County has spent in staff time and consultants fees trying to justify a project that, at best, will save part of their voters 13 cents a can in garbage bills. [Washington County paid McKeever/Morris \$110,000 in 1992-93 alone.]

Beyond that, at the point that the Metro Council authorized the engineering study, the estimates of Wilsonville costs were over \$5.00 per ton. The study was undertaken, in part, as a last ditch effort to reduce the projected costs. The other motivation was more sound. This is the equivalent of a \$40 to \$50 million project because building it immediately assures additional operating expenses. To spend an additional 3/10th of 1% to more accurately project costs of this magnitude is only prudent. The Metro Council did the right thing in authorizing this expenditure. The nefarious motives hinted at by some of the WCAC members smacks of juvenilities.

#### 4. Impacts of the decision on region etc.,.

The WCAC staff paper starts off sounding like a young man that has been dating but not offering to marry a young woman for ten years-- and then screams foul when she marries someone else. For

seven out of the last ten years Metro has been trying to site transfer stations and other solid waste facilities. Washington County made it clear it was going to call the tune in its territory. Well, the dance is over and now Washington County wants just one more facility. Washington County's coyness and truculence have been justly rewarded. Sometimes when people say, "No" they have to live with it. The system is in place.

In the second paragraph of this section, the WCAC paper makes an attempt at muscling in on the agreements between Oregon City and Metro. The working relationship between these two agencies over the past few years on the basis of mutual respect and does not need interference from the WCAC.

Next the WCAC paper challenges the idea that material could be diverted from Metro South to Central. The first argument the paper makes is flow control is under "increased [legal] challenge" neglecting, of course, that there is no way to channel 130,000 tons a year to Wilsonville without invoking flow control. The rest of the argument takes up issues that are not even under consideration. The fact is that Metro is unlikely to transfer material from South to Central until costs are lowered at Central and that will not be until the present contract expires.

At this point the WCAC paper makes a short plea that a decision should not be made on Wilsonville until all of the costs and benefits of building the station are compared. This exercise would not be favorable to the proponents of the project since it is the off-site costs that have not been carefully examined.

Next, there follows an argument against land banking the proposed Wilsonville site. Since no one, at this time, seriously thinks that additional capacity will be needed for at least 20 years, this is an option is not being seriously proposed.

In the next to the last paragraph, the WCAC pleads to have all of the costs of building the facility compared to all of the costs of not building the facility before a decision is made. Certainly, the WCAC has made every conceivable case for spending the money to build this facility. Washington County has spent Tens of Thousands of Dollars to make the case. It cannot conceive of one more thing to say in its favor. On the other hand, only the short run costs of building and operating Wilsonville have been added into the equation on the other side. Indirect costs and cycling impacts of increased costs attributable to Wilsonville have not be carefully examined. At this point, the only thing that could be accomplished by further examination more reason not to build the facility.

The last paragraph of the WCAC paper only makes one last attempt to ignore a reality that is becoming more clear on a daily basis; not just here in the Metro Region, but across the national---SOLID WASTE VOLUME IS SHRINKING.

NO. 7



# Willamette Resources, Inc.

2215 N. Front Street  
Woodburn, Oregon 97071  
(503) 981-1278  
Fax: 982-7930

COPY

RECEIVED

AUG 17 1993

TIME 1:10 PM  
METRO SERVICE DISTRICT  
OFFICE GENERAL COUNSEL

August 11, 1993

Mr. Chuck Geyer  
Project Manager  
Solid Waste Department  
Metro  
600 N.E. Grand Avenue  
Portland, Oregon 97232

RECEIVED  
AUG 17 1993

Dear Chuck:

Attached is a copy of the commitment by West One Bank, Idaho to provide credit enhancement for the Metro West Transfer Station to be constructed in Wilsonville. The enhancement will be in the form of a letter of credit in an amount not to exceed \$11 million with an initial term of five years.

The terms and conditions of this commitment are the same as the draft letter provided to you during the franchise negotiation with the exception that the Facility Fee has been increased from 1% to 2% per year on the remaining principal balance of the bonds. I can only assume that West One Bank is aware of Metro Executive Officer's position with respect to the need for the facility and the controversy over her decision. We are discussing with West One Bank the possibility of lowering the Facility Fee.

In estimating the impact to the regional rate as a result of the Wilsonville facility, Metro used 679,900 tons in fiscal year 1995-96. However, in 1993, approximately 721,000 tons or 42,000 tons more than projected in FY 95-96 will be received at Metro South and Metro Central. Using a more realistic tonnage projection, the impact to the regional rate of the higher Facility Fee will be minor if any.

Very truly yours,



Merle Irvine  
Vice President

Attachment

**COPY**

**WEST ONE**  
BANK

July 15, 1993

Willamette Resources, Inc.  
Attn: Gary Barton, Controller  
2215 N Front Street  
Woodburn, OR 97071

Re: Provision of Credit Enhancement

Dear Gary:

We are pleased to advise you that West One Bank, Idaho ("West One") hereby commits to provide a credit facility for the benefit of Willamette Resources, Inc. ("WRI") on the terms and subject to the conditions described in this letter.

A. BASIC CREDIT TERMS

Description of Facility. West One will issue a letter of credit in an amount not to exceed U.S.\$11 million (the "Letter of Credit") to the bond trustee to provide credit enhancement with respect to an issuance of METRO bonds, proceeds of which will be used to finance the construction of a Transfer and Materials Recovery Facility in Wilsonville, Oregon (the "Facility"), as more fully described in Proposed Franchise Agreement between METRO and Willamette Resources, Inc. for the Provision of Solid Waste Transfer and Material Recovery Facilities (the "Franchise Agreement"). The Letter of Credit will permit the bond trustee to make draws in the event WRI fails to make a required payment on the bonds. West One's obligation under the Letter of Credit will decrease as the outstanding principal balance of the bonds is reduced.

Term. The Letter of Credit will have a term of five years and will include no automatic renewal provisions.

B. COLLATERAL: GUARANTY

Collateral. All of WRI's obligations to West One, including but not limited to those arising out of or relating to the Letter of Credit, the Reimbursement Agreement to be executed by WRI, and all related documents, shall be secured by a first priority, fully perfected security interest in all of WRI's assets, including but not limited to the land, buildings, improvements,

machinery, equipment, fixtures, rolling stock, and other assets constituting or used in the operation of the Facility, and also including but not limited to the Franchise Agreement and all rights relating thereto.

Junior Encumbrances. No other liens, security interests, or other encumbrances will be permitted on any of WRI's assets, whether superior to, of equal priority with, or junior to West One's security interest, except only liens, security interests, and encumbrances in favor of the bond trustee, which shall be subject to an acceptable Intercreditor Agreement between the bond trustee and West One.

Guaranty. All obligations of WRI to West One will be fully and unconditionally guaranteed by Waste Control Systems, Inc. (the "Guarantor").

C. FEES

Issuance Fee. Upon issuance of the Letter of Credit, WRI shall pay to West One an Issuance Fee equal to one percent (1%) of the face amount of the Letter of Credit.

Facility Fee. In addition to the Issuance Fee, WRI shall pay West One a Facility Fee equal to two percent (2%) per annum of the remaining principal balance of the bonds. Payments will be semi-annual. In the event WRI fails to comply with any of the covenants in the Reimbursement Agreement, West One shall have the option immediately and without notice to increase the Facility Fee to two and one-half percent (2.5%) per annum, which increased rate shall remain in effect until such failure has been fully cured. With respect to financial covenants, the increased rate shall remain in effect until West One has received the next fiscal year-end audited financial statement evidencing WRI's compliance with all of its financial covenants.

Expenses. WRI will pay all costs and expenses arising out of or in connection with the issuance and maintenance of the Letter of Credit and the documentation, modification, administration, and enforcement of West One's documents and rights relating thereto, including but not limited to legal fees, recording fees, title insurance premiums, appraisal fees, and audit fees.

D. REPRESENTATIONS AND WARRANTIES; COVENANTS; EVENTS OF DEFAULT

Representations and Warranties. WRI will be required to make all customary representations and warranties and all additional representations and warranties which West One and its counsel determine appropriate to the transaction.

Covenants. WRI will be required to make all customary covenants and all additional covenants which West One and its counsel determine appropriate to the transaction. The covenants will include, but will not be limited to, those with respect to: (a) minimum debt service coverage; (b) maximum debt to tangible net worth; (c) minimum tangible net worth;

(d) limitation of capital expenditures made with funds other than bond proceeds (which West One currently expects to be limited to \$100,000 during each of the first four years the Letter of Credit is in effect and \$600,000 during the final year); (e) prohibition of dividends and distributions to shareholders (which prohibition West One will reconsider at such time as WRI's debt-to-tangible net worth ratio is less than 3.0-to-1); and (f) prohibition of additional acquisitions and investments without West One's prior written consent. The ratios which West One currently anticipates will be used in the WRI agreement are set forth in Schedule 1 attached hereto. Guarantor will also be subject to covenants required by West One, including but not limited to a maximum debt-to-tangible net worth covenant.

Maintenance of Reserve. WRI will be required at all times to maintain with the bond trustee a cash reserve in an amount equal to the debt service requirements on the bonds for the succeeding year.

Reporting. In addition to other covenants, WRI will be required to provide to West One:

(a) Within 120 days of the end of each of its fiscal years, a complete financial statement prepared in accordance with generally accepted accounting principles, audited by a CPA firm acceptable to West One and accompanied by an unqualified opinion of such CPA firm.

(b) Within 45 days of the end of each of WRI's fiscal quarters, company-prepared financial statements in form acceptable to West One.

(c) Within 120 days after the end of each fiscal year of Guarantor, Guarantor's complete financial statement prepared in accordance with generally accepted accounting principles, audited by a CPA firm acceptable to West One and accompanied by an unqualified opinion of such CPA firm.

(d) All such other information and documents as West One may request from time to time.

Inspections: Audits. West One shall have the right to inspect the Facility and to examine WRI's books and records and make extracts and copies thereof at such times as West One shall deem appropriate.

Default. The agreements between WRI and West One shall include customary events of default, including but not limited to any default by WRI under the Franchise Agreement.

E. CONSTRUCTION PROVISIONS

Cost Overruns. West One will not have any responsibility for cost overruns with respect to the Facility and shall not be required to increase the Letter of Credit or provide any loan funds to WRI on account of any such overruns.

Contractor/Bonding Requirements. The general contractor for construction of the Facility shall be experienced in commercial construction projects of similar size and nature, shall be approved in writing by West One, and shall furnish payment and performance bonds in amounts, on terms, and issued by sureties acceptable to West One. West One shall be named an additional payee of all such bonds.

Construction Funding. All advances of bond proceeds to WRI for payment of construction costs shall be approved in advance by West One. Prior to each such advance, WRI shall furnish to West One:

- (a) A progress certificate and request for payment form (on AIA forms G702 and G703) signed by the general contractor and the architect for the Facility.
- (b) The written authorization of a project engineer approved by West One.
- (c) Evidence satisfactory to West One that the percentage of funds requested do not exceed the percentage of work completed.
- (d) Evidence satisfactory to West One that all construction disbursements have been, and will be, properly applied.
- (e) Copies of lien waivers satisfactory to West One, the originals of which shall have been furnished to the bond trustee.
- (f) Any title insurance endorsement which may be necessary to ensure that West One's lien with respect to the requested advance shall be a first priority lien.
- (g) Evidence satisfactory to West One that WRI has not exceeded budgeted expenditures and that the requested advance shall not exceed budgeted expenditures (either by line item or in total), unless otherwise approved by West One in writing.
- (h) Evidence satisfactory to West One that WRI is in compliance with all covenants in the Reimbursement Agreement and its other agreements with West One.

F. CONDITIONS PRECEDENT

West One's commitment to provide the Letter of Credit is subject to the prior fulfillment of a number of conditions, including but not limited to the following:

(a) WRI, Guarantor, and each other appropriate person and entity, shall have executed and delivered to West One and its counsel a credit application, a Reimbursement Agreement, a Security Agreement, a Deed of Trust, an Environmental Indemnification Agreement, a Continuing Guaranty, and such additional agreements, documents, instruments, financing statements, consents, evidences of corporate authority, certificates, and other writings as West One and its counsel may require to confirm and effectuate the financing arrangement provided for in this commitment (collectively, the "Credit Documents"). All agreements and other documents will be in form and substance satisfactory to lender and its counsel in their sole discretion and may include provisions in addition to those specifically described in this commitment.

(b) West One shall have received an opinion from acceptable attorneys representing WRI with respect to the enforceability of the Franchise Agreement (including METRO's obligation to continue making payments under the Franchise Agreement so long as the Facility is available for use) and with respect to all such other matters as West One and its counsel may require, such opinion to be satisfactory to West One and its counsel in their sole discretion.

(c) West One shall have received from an engineering firm acceptable to West One a feasibility study with respect to the Facility and its compliance with the Franchise Agreement and the Credit Documents, such study to be satisfactory to West One in its sole discretion.

(d) West One shall have received a satisfactory Level I environmental assessment of the property upon which the Facility is to be located and the surrounding properties by an environmental engineering firm acceptable to West One. Such assessment must confirm that the Facility and the properties are not in violation of any applicable environmental laws, that there appears to be no contamination of such properties by any hazardous substance, and that it does not recommend any further investigation of the properties.

(e) West One shall have received certificates evidencing WRI's all-risk property damage insurance with respect to the Facility, workers' compensation insurance, public liability insurance, and all other coverages which West One requires, each policy to be issued in such amounts and by such insurers as shall be satisfactory to West One. West One shall have also received confirmation that it has been designated an additional insured or loss payee on each policy and that no coverage will be subject to termination or material modification without at least ten days' prior written notice to West One.

(f) West One shall have received an opinion of an MAI appraiser indicating that the Facility's fair market value will be not less than \$8,000,000. The appraiser must be acceptable to West One and the opinion must be in form and substance satisfactory to West One in its sole discretion.

(g) West One shall have received satisfactory evidence that the Facility is not located in a flood zone.

(h) West One shall have received evidence that WRI has obtained all necessary permits and approvals of governmental agencies, and has complied with all necessary zoning, development, design, and building requirements.

(i) West One shall have received satisfactory evidence of sufficient legal ingress and egress to and from the properties from public rights of way.

(j) West One shall have received a satisfactory commitment from an acceptable title insurance company or companies for an ALTA extended coverage lender's title insurance policy in the amount of the Letter of Credit, insuring West One's trust deed to be a first priority lien against the Facility, and including such additional endorsements as West One may require.

(k) West One shall have received a final line-itemized construction budget for the Facility.

(l) West One shall have received a complete copy of the executed construction contract between WRI and the general contractor for the Facility.

(m) The Franchise Agreement shall be in form and substance satisfactory to West One and its counsel in their sole discretion. All related documents, including the bonds and related agreements, shall be in form and substance satisfactory to West One and its counsel, and all proceedings relating to the bonds, including the resolutions approving the bonds and the provisions for payment, shall be satisfactory to West One and its counsel, all in their sole discretion. The bond trustee must be First Interstate Bank of Oregon, N.A. or another institution acceptable to West One. The term of the bonds must not exceed 20 years.

(n) West One shall have entered into a satisfactory intercreditor agreement with the bond trustee.

(o) There shall have occurred no material adverse change in WRI's or Guarantor's business, operations, profits, or prospects, or in the condition of their assets, and West One shall not have discovered any material inaccuracy in any information provided by or on behalf of WRI or Guarantor.

(p) West One will have a first priority perfected security interest in all of the collateral, and West One shall have received all such UCC searches and other reports as it deems necessary to confirm such security interest.

(q) All governmental and third-party consents and approvals necessary in West One's discretion will have been obtained.

(r) WRI and Guarantor shall have furnished to West One all such financial information, including financial statements and projections, as West One may request, and all such information shall be satisfactory to West One in its sole discretion. --

(s) All such other information will have been provided and all such other actions will have been taken as West One and its counsel shall deem appropriate in their sole discretion. The failure to list any specific information, action, or document in this commitment shall not affect West One's right to require that such information be furnished, such action be taken, or such document be delivered as a condition to issuing the Letter of Credit.

All of the foregoing conditions shall be satisfied at WRI's expense.

#### G. PARTICIPATION IN ASSIGNMENTS

West One shall have the right at any time to sell, assign, transfer, or grant participations in all or any portion of the Letter of Credit (including all reimbursement obligations of WRI, all loan documents, and all collateral and guaranties) to one or more other banks or lenders on such terms and conditions as West One deems acceptable. In connection therewith, West One shall have the right to disclose to such prospective participants or assignees all information regarding or relating to WRI, Guarantor, and the Letter of Credit which has now been, or may hereafter be, provided to or obtained by West One.

#### H. GOVERNING LAW

The Letter of Credit and related agreements will be governed in all respects, including interpretation and enforcement, by the substantive laws of the state of Oregon.

#### I. COMMITMENT LETTER FEE AND ACCEPTANCE

Whether or not the conditions described above are satisfied and the Letter of Credit is issued, WRI and Guarantor shall reimburse West One for all of its costs and expenses incurred in issuing this commitment and in preparation to consummate the transaction provided for herein. Such costs and expenses may include legal and other professional fees.

In consideration of West One's issuance of this commitment letter, WRI agrees to deliver to West One a Commitment Fee of U.S.\$20,000, which will be nonrefundable whether or not the transaction provided for in this commitment is consummated. West One is authorized to apply such fee (and the remaining balance of WRI's earlier \$5,000 deposit) to its expenses incurred in connection with this commitment and in consummating the transaction described herein. In the event the transaction is completed, any remaining balance of such fee and deposit after satisfaction of all of West One's expenses will be applied to the Issuance Fee for the Letter of Credit. In the event the transaction is not consummated, West One will be entitled to retain any remaining balance of the fee and deposit.



Willamette Resources, Inc.  
July 15, 1993  
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This commitment is solely for your benefit, may not be relied upon by any third party, and will expire at 5:00 p.m., Portland, Oregon time on September 15, 1993, unless accepted and returned to West One prior to such expiration deadline with the required fee.

West One's obligation to provide the Letter of Credit subject to the terms and conditions set forth in this letter will expire on November 30, 1993, unless the transaction has been completed or unless the commitment is extended by West One, in its sole discretion, by written notice to WRI.

If the foregoing is acceptable, please sign the enclosed copy of this commitment letter where indicated and return it to West One with the \$20,000 fee.

We look forward to working with you to complete the transaction.

Under Oregon law, most agreements, promises, and commitments made by us (West One Bank, Idaho) after October 3, 1989 concerning loans and other credit extensions which are not for personal, family, or household purposes or secured solely by the borrower's residence must be in writing, express consideration, and be signed by us to be enforceable.

Very truly yours, *Kristin Mohr*

Kristin Mohr, Assistant Vice President  
West One Bank, Idaho

ACCEPTED AND AGREED:

WILLAMETTE RESOURCES, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

f:\wri\wri-001-02\wri\commit.r  
07/15/93 (7:43am)

**SCHEDULE 1**

Anticipated Financial Covenant Levels

	Initial 7-1-94	Year 1 7-1-95	Year 2 7-1-96	Year 3 7-1-97	Year 4 7-1-98
Minimum DSC	N/A	1.30	1.40	1.40	1.40
Maximum D/TNW	24:1	14:1	11:1	8:1	6:1
Minimum TNW:					
Q1	\$400M	\$425M	\$700M	\$975M	\$1,325M
Q2	400M	500M	775M	1,075M	1,450M
Q3	400M	600M	850M	1,175M	1,575M
Q4	400M	675M	900M	1,250M	1,675M

DSC to be determined annually. Maximum D/TNW and Minimum TNW to be determined quarterly.