



METRO

DATE: January 13, 1994
 MEETING: Metro Council
 DAY: Thursday
 TIME: 4:00 p.m.
 PLACE: Metro Council Chamber

Approx.
Time*

Presented
 By

4:00 CALL TO ORDER/ROLL CALL

1. INTRODUCTIONS
2. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS
3. EXECUTIVE OFFICER COMMUNICATIONS

4:05 (5 min.) 4. CONSENT AGENDA (Action Requested: Motion to Approve the Consent Agenda)

4.1 Minutes of December 17 and December 23, 1993

4:10 (5 min.) 5. ORDINANCES, FIRST READINGS

- 5.1 **Ordinance No. 94-528**, An Ordinance Amending Ordinance No. 93-487A Revising the FY 1993-94 Budget and Appropriations Schedule For the Purpose of Funding a Compost Bin Program and the Remainder of the Project to Replace the Roof and Ventilation System at Metro South Transfer Station; and Declaring an Emergency (Action Requested: Refer to the Solid Waste Committee and the Finance Committee)

6. ORDINANCES SECOND READINGS

REFERRED FROM THE SOLID WASTE COMMITTEE

4:15 (10 min.) 6.1 **Ordinance No. 94-527**, For the Purpose of Granting a Franchise Renewal to Ambrose Calcagno, Jr., DBA A.C. Trucking For the Purpose of Operating a Solid Waste Transfer Station and Declaring an Emergency (Action Requested: Motion to Adopt the Ordinance Dependent upon Solid Waste Committee Recommendation January 11, 1994)

REFERRED FROM THE GOVERNMENTAL AFFAIRS COMMITTEE

4:25 (10 min.) 6.2 **Ordinance No. 94-521A**, An Ordinance Amending Ordinance No. 93-487A Revising the FY 1993-94 Budget and Appropriations Schedule For the Purpose of Funding an Intergovernmental Agreement with the City of Portland for a Predicate Study; and Declaring an Emergency Public Hearing (Action Requested: Motion to Adopt the Ordinance)

Hansen

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*All times listed on the agenda are approximate; items may not be considered in the exact order listed.

METRO COUNCIL AGENDA

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7. RESOLUTIONS

REFERRED FROM THE GOVERNMENTAL AFFAIRS COMMITTEE

- 4:35
(10 min.)
- 7.1 **Resolution No. 94-1860A**, For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with the City of Portland for a Predicate Study (Action Requested: Motion to Adopt the Resolution)
- Hansen

REFERRED FROM THE PLANNING COMMITTEE

- 4:45
(10 min.)
- 7.2 **Resolution No. 94-1868**, For the Purpose of Adopting an Intergovernmental Agreement for Management of the Willamette Shore Line Right-of-Way (Action Requested: Motion to Adopt the Resolution)
- Devlin

BEFORE THE CONTRACT REVIEW BOARD

- 4:55
(10 min.)
- 7.3 **Resolution No. 94-1891**, For the Purpose of Adopting an Extension to Metro Contract No. 903389 and to Exempt This Work from Competitive Bidding, Pursuant to Metro Code Section 2.04.054(a)(2) (Action Requested: Motion to Adopt the Resolution)
- Gates

REFERRED FROM THE SOLID WASTE COMMITTEE AND ALSO BEFORE THE CONTRACT REVIEW BOARD (7.4)

- 5:05
(10 min.)
- 7.4 **Resolution No. 94-1897**, For the Purpose of Rejecting an Appeal by James Luzier of the Award of a Contract to Portland State University for Groundwater Modeling at the St. Johns Landfill and Authorizing the Executive Officer to Execute the Agreement (Action Requested: Motion to Adopt the Resolution) (Note: This resolution was previously assigned No. 93-1890 in error)
- Washington

- 5:15
(10 min.)
- 7.5 **Resolution No. 94-1892**, For the Purpose of Revising Chapter 5 of the Regional Solid Waste Management Plan and Adjusting Tonnages at Metro Facilities (Action Requested: Motion to Adopt the Resolution Dependent upon Solid Waste Committee consideration January 11, 1994)

- 5:25
(1 hr.)
- 7.6 **Resolution No. 94-1848**, 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 (Action Requested: Motion to Adopt the Resolution Dependent upon Solid Waste Committee Recommendation January 11, 1994)

REFERRED FROM THE FINANCE COMMITTEE

- 6:25
(10 min.)
- 7.7 **Resolution No. 94-1870**, For the Purpose of Approving a Lease/Purchase Agreement Whereby United States National Bank of Oregon Leases and Sells Certain Equipment to Metro; and Authorizing the Execution and Delivery of the Lease/Purchase Agreement and Other Matters Pertaining Thereto (Action Requested: Motion to Adopt the Resolution Dependent Upon Finance Committee Recommendation January 12, 1994)

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8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

6:35
(10 min.)

**8.1 Presentation of Request of MCCI to Hold a Council Meeting in Another
Part of the Metro Region (No Action Requested: Discussion Only)**

Devlin

6:45

ADJOURN

Meeting Date: January 13, 1994
Agenda Item No. 4.1

MINUTES



METRO

DATE: January 7, 1994

TO: Metro Council
Executive Officer
Agenda Recipients

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 4.1; MINUTES

The minutes of December 17 and December 23, 1993, will be provided to Councilors on or before Wednesday, January 13, 1994, and available at the Council meeting at that time.

Meeting Date: January 13, 1994
Agenda Item No. 5.1

ORDINANCE NO. 94-528

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO.94-528 AMENDING ORDINANCE NO. 93-487A REVISING THE FY 93-94 BUDGET AND APPROPRIATIONS SCHEDULE WITHIN THE SOLID WASTE REVENUE FUND FOR THE PURPOSE OF FUNDING INCREASES FOR IMPLEMENTING A YARD DEBRIS COMPOST BIN PROGRAM TO TARGETED NEIGHBORHOODS IN THE METRO REGION AND TO COMPLETE THE REPLACEMENT OF THE ROOF AND VENTILATION SYSTEM AT METRO SOUTH TRANSFER STATION AND DECLARING AN EMERGENCY.

Date: December 29, 1993

Presented by: Roosevelt Carter

FACTUAL BACKGROUND AND ANALYSIS

This action requests adjustments to the Solid Waste Revenue Fund for the following purposes:

1. Transfer \$50,000 within the Solid Waste Revenue Fund from the Operating Account, Contingency Category to the Operating Account, Materials and Services Category, Waste Reduction Division to implement a yard debris compost bin program.
2. Transfer \$60,000 within the Solid Waste Revenue Fund from the Renewal & Replacement Account, Contingency Category to the Renewal and Replacement Account, Capital Outlay Category to complete the replacement of the roof and ventilation system at the Metro South Transfer Station.

Each action will be explained separately.

Compost Bin Program

In the proposed budget for FY 93-94 the Waste Reduction Division requested \$40,000 to distribute home composting bins within targeted neighborhoods. During the budget process funds were not made available to implement this program. As a result, the adopted FY 93-94 Budget does not include an appropriation for this program.

The actual unappropriated ending fund balance for FY 92-93 for the Operating Account, which represents the beginning fund balance for FY 93-94, is about \$2.3 million higher than was estimated in the FY 93-94 budget. This includes \$30,000 from a Metro Washington Park Zoo/Portland Parks Bureau compost project for FY 92-93 that could not be implemented. Councilors Judy Wyers and Susan McLain requested that the Solid Waste Department utilize \$20,000 from this increased fund balance to implement a discount compost bin program as initially proposed in the FY 93-94 budget.

STAFF REPORT
Ordinance No. 94-528

Waste reduction staff has drafted a preliminary plan to purchase about 1,000 home composting bins. Half of the bins will be distributed to targeted neighborhoods during the spring of 1994, the remaining half in the fall composting season. The objectives of the program are to provide bins, train participants on their use, obtain information on total cost of a bin distribution program, and begin measuring the impact on waste diversion. The pilot project will be implemented jointly with local governments.

To implement this program and receive the advantage of a wholesale discount offered by manufacturers for orders of 1,000 or more bins, the Solid Waste Department requires an additional \$30,000. Since the wholesale price range for the bins that meet Metro's performance criteria is \$41-49 per bin, an expenditure of approximately \$50,000 would be necessary to receive the discounted rate. An average cost savings of \$4.00 per bin can be realized with this minimum purchase.

The compost bins will be sold in targeted neighborhoods to homeowners interested in purchasing a bin at a 50 percent discount. Metro is expecting to receive \$25,000 from this cost-sharing arrangement. This revenue will partially offset program costs. Metro and local governments will share the other costs of implementing the program. Although not recognized in this action, revenues identified from sales of bins will be part of the unappropriated FY 93-94 ending fund balance.

Roof and Ventilation System Replacement at Metro South Transfer Station

The Solid Waste Department issued an RFP in FY 92-93 to replace the roof and ventilation system at Metro South Transfer Station. The construction contract amount is about \$650,000. An expenditure allocation of \$540,000 was budgeted in the Renewal and Replacement Account for FY 92-93 for design and construction, and \$510,000 was budgeted in FY 93-94 with \$10,000 of the amount designated for design. The above amounts reflect the uncertainty of which fiscal year the project would incur expenses. Since the contract was not signed until the end of May 1993 only \$100,000 of the FY 92-93 appropriation was spent on construction. As a result of the late start a majority of the work to be performed during FY 92-93 has been carried forward into FY 93-94 which causes the FY 93-94 allocation to be insufficient to cover the construction contract amount. It is therefore necessary to appropriate \$60,000 from the Contingency account to complete this project and to cover any potential change orders.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 94-528.

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING ORDINANCE)
NO. 93-487A REVISING THE FY 1993-94)
BUDGET AND APPROPRIATIONS)
SCHEDULE FOR THE PURPOSE OF)
FUNDING A COMPOST BIN PROGRAM AND)
THE REMAINDER OF THE PROJECT TO)
REPLACE THE ROOF AND VENTILATION)
SYSTEM AT METRO SOUTH TRANSFER)
STATION; AND DECLARING AN)
EMERGENCY)

ORDINANCE NO. 94-528

Introduced by Rena Cusma,
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1993-94 Budget; and

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

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. That Ordinance No. 93-487A, Exhibit B, FY 1993-94 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose transferring \$50,000 from the Solid Waste Fund Contingency to Materials and Services in the Waste Reduction Division to fund a compost bin program, and \$60,000 from the Solid Waste Fund Contingency to Capital in the Renewal and Replacement Account to complete funding for the roof and ventilation system replacement at Metro South Transfer Station.

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 1994.

Judy Wyers, Presiding Officer

ATTEST:

Clerk of the Council

**Exhibit A
Ordinance No. 94-528**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		ORD. NO.94-528 1/5/94	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Operating Account (Waste Reduction)							
Total Personal Services		9.00	627,976	0	0	9.00	627,976
<u>Materials & Services</u>							
521100	Office Supplies		0		0		0
521110	Computer Software		0		0		0
521210	Landscape Supplies		0		0		0
521240	Graphics/Reprographic Supplies		1,900		0		1,900
521260	Printing Supplies		0		0		0
521290	Other Supplies		9,700		0		9,700
521291	Packaging Materials		250		0		250
521293	Promotion Supplies		3,600		0		3,600
521310	Subscriptions		1,682		0		1,682
521320	Dues		625		0		625
521400	Fuels & Lubricants		0		0		0
521540	Maintenance & Repairs Supplies-Equipment		0		0		0
524130	Promotion/Public Relations		0		0		0
524190	Misc. Professional Services		292,000		50,000		342,000
524210	Data Processing Services		0		0		0
525630	Maintenance & Repairs Services-Vehicles		0		0		0
525640	Maintenance & Repairs Services-Equipment		0		0		0
525710	Equipment Rental		0		0		0
525720	Rentals - Land & Building		0		0		0
525740	Capital Lease Payments-Furniture & Equipment		0		0		0
526200	Ads & Legal Notices		3,250		0		3,250
526310	Printing Services		44,975		0		44,975
526320	Typesetting & Reprographics Services		2,450		0		2,450
526410	Telephone		0		0		0
526420	Postage		0		0		0
526440	Delivery Service		300		0		300
526500	Travel		6,950		0		6,950
526700	Temporary Help Services		0		0		0
526800	Training, Tuition, Conferences		5,200		0		5,200
526900	Miscellaneous Purchased Services		0		0		0
528100	License, Permits, Payments to Other Agencies		0		0		0
528410	Grants		533,000		0		533,000
529500	Meetings		27,280		0		27,280
529800	Miscellaneous		0		0		0
Total Materials & Services			933,162		60,000		983,162
TOTAL EXPENDITURES		9.00	1,461,137	0.00	60,000	9.00	1,511,137

**Exhibit A
Ordinance No. 94-528**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		ORD. NO.94-528 1/5/94	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
Renewal & Replacement Account							
<u>Requirements</u>							
574520	Const. Work/Materials-Bldg., Exhibits & Rel.		510,000		60,000		570,000
Total Requirements			510,000		60,000		570,000
General Expenses							
Total Interfund Transfers			4,167,887		0		4,167,887
<u>Contingency and Unappropriated Balance</u>							
	OPERATING ACCOUNT-unrestricted		2,233,000		(50,000)		2,183,000
	OPERATING ACCOUNT-restricted		0		0		0
	DEBT SERVICE ACCOUNT		0		0		0
	LANDFILL CLOSURE ACCOUNT		2,000,000		0		2,000,000
	CONSTRUCTION ACCOUNT		0		0		0
	RENEWAL & REPLACEMENT ACCOUNT		1,794,571		(60,000)		1,734,571
	GENERAL ACCOUNT		0		0		0
	RESERVE ACCOUNT		0		0		0
599999	Contingency		6,027,571		(110,000)		5,917,571
599990	Unappropriated Fund Balance		11,978,552		0		11,978,552
Total Contingency and Unappropriated Balance			18,006,123		(110,000)		17,896,123
TOTAL REVENUE FUND EXPENDITURES		104.30	85,657,487	0.00	0	104.30	85,657,487

Exhibit B
FY 1993-94 SCHEDULE OF APPROPRIATIONS
ORDINANCE NO. 94-528

	Current Appropriation	Revision	Proposed Appropriation
SOLID WASTE REVENUE FUND			
Administration			
Personal Services	515,867	0	515,867
Materials & Services	90,671	0	90,671
Subtotal	606,538	0	606,538
Budget and Finance			
Personal Services	461,629	0	461,629
Materials & Services	983,548	0	983,548
Subtotal	1,445,177	0	1,445,177
Operations			
Personal Services	2,087,430	0	2,087,430
Materials & Services	38,667,222	0	38,667,222
Subtotal	40,754,652	0	40,754,652
Engineering & Analysis			
Personal Services	692,155	0	692,155
Materials & Services	183,458	0	183,458
Subtotal	875,613	0	875,613
Waste Reduction			
Personal Services	527,975	0	527,975
Materials & Services	933,162	50,000	983,162
Subtotal	1,461,137	50,000	1,511,137
Planning and Technical Services			
Personal Services	516,622	0	516,622
Materials & Services	344,816	0	344,816
Subtotal	861,438	0	861,438
Recycling Information and Education			
Personal Services	332,036	0	332,036
Materials & Services	245,240	0	245,240
Subtotal	577,276	0	577,276
Debt Service Account			
Debt Service	2,890,523	0	2,890,523
Subtotal	2,890,523	0	2,890,523
Landfill Closure Account			
Materials & Services	10,347,500	0	10,347,500
Subtotal	10,347,500	0	10,347,500
Construction Account			
Capital Outlay	1,780,000	0	1,780,000
Subtotal	1,780,000	0	1,780,000

Exhibit B
FY 1993-94 SCHEDULE OF APPROPRIATIONS
ORDINANCE NO. 94-528

	Current Appropriation	Revision	Proposed Appropriation
Renewal and Replacement Account			
Capital Outlay	510,000	60,000	570,000
Subtotal	510,000	60,000	570,000
General Account			
Capital Outlay	440,610	0	440,610
Subtotal	440,610	0	440,610
Master Project Account			
Debt Service	933,013	0	933,013
Subtotal	933,013	0	933,013
General Expenses			
Interfund Transfers	4,167,887	0	4,167,887
Contingency	6,027,571	(110,000)	6,027,571
Subtotal	10,195,458	(110,000)	10,195,458
Unappropriated Balance	11,978,552	0	11,978,552
Total Fund Requirements	85,657,487	0	85,657,487

Meeting Date: January 13, 1994
Agenda Item No. 6.1

ORDINANCE NO. 94-527



METRO

DATE: January 7, 1994.

TO: Metro Council
Executive Officer
Agenda Recipients

FROM: Paulette Allen, Clerk of the Council *AA*

RE: AGENDA ITEM NO. 6.1; ORDINANCE NO. 93-527

The Solid Waste Committee will consider this ordinance at its special meeting Tuesday, January 11. The Committee report will be distributed in advance to Councilors and available at the Council meeting January 13.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING	)	ORDINANCE NO. 94-527
A FRANCHISE RENEWAL TO AMBROSE)	
CALCAGNO, JR., D/B/A A. C. TRUCKING	)	INTRODUCED BY
FOR THE PURPOSE OF OPERATING A	)	RENA CUSMA,
SOLID WASTE TRANSFER STATION AND	)	EXECUTIVE OFFICER
DECLARING AN EMERGENCY)	

WHEREAS, Section 5.01.030 of the Metro Code requires a Metro franchise for any person to own or operate a transfer station for transfer of solid waste; and,

WHEREAS, Ambrose Calcagno, Jr., d/b/a A. C. Trucking has applied for renewal of a non-exclusive franchise to operate a transfer station (Forest Grove Transfer Station) for mixed solid waste at Forest Grove, Oregon; and,

WHEREAS, A. C. Trucking has submitted evidence of compliance with Metro Code Section 5.01.060 requirements for franchise applications and operational plans; and

WHEREAS, A. C. Trucking will provide disposal services to its own haulers and to other commercial haulers and the public at the Forest Grove Transfer Station; and,

WHEREAS, The appropriate amount of a surety bond or conditional lien to be provided by the franchisee is determined to be \$100,000; and,

WHEREAS, Allowing this ordinance to take effect immediately is necessary for the public health, safety and welfare of the Metro area because:

1. The franchise continues to be an important component of the regional solid waste disposal system; and,
2. No system benefits would be derived by delaying the effective date of this ordinance, and such delay is likely to cause significant system disruption; and,

WHEREAS, The ordinance and attached Franchise was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the Metro Council authorizes the Metro Executive Officer to issue the attached Franchise (Exhibit A) to Ambrose Calcagno Jr., d/b/a A. C. Trucking within ten (10) days of the adoption of this Ordinance.
2. This Ordinance being necessary for the public health, safety, and welfare of the Metro area, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 1994.

Judy Wyers, Presiding Officer

ATTEST: _____
Clerk of the Council

PN:clk
S:\NORTH\FRANCHISE\SW94-527 ORD

EXHIBIT A

SOLID WASTE FRANCHISE

issued by

METRO

600 N.E. Grand Avenue

Portland, Oregon 97232-2736

(503) 797-1700

FRANCHISE NUMBER: _____
DATE ISSUED: _____
AMENDMENT DATE: N/A
EXPIRATION DATE: _____
ISSUED TO: AMBROSE CALCAGNO, JR., dba A. C. TRUCKING
NAME OF FACILITY: FOREST GROVE TRANSFER STATION
ADDRESS: 1525 "B" STREET, P.O. BOX 8
CITY, STATE, ZIP: FOREST GROVE, OREGON 97116
NAME OF OPERATOR: AMBROSE CALCAGNO, JR.
PERSON IN CHARGE: AMBROSE CALCAGNO, JR.
TELEPHONE NUMBER: (503) 357-9222

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FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under Oregon Law and the 1992 Metro Charter, referred to herein as "Metro," to Ambrose Calcagno, Jr., dba A. C. Trucking, referred to herein as "Franchisee."

In recognition of the promises made by Franchisee as specified herein, Metro issues this Franchise, subject to the following terms and conditions:

1. DEFINITIONS

As used in this Franchise:

"Acceptable Waste" means solid waste, as defined in ORS 459.005(24) except solid waste that is:

- (a) prohibited from disposal at a sanitary landfill by state, local or federal law;
- (b) Hazardous Waste;
- (c) Special Waste without a Metro approved special waste permit;
- (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.

"City of Forest Grove Community Enhancement Fee" means those fees payable to the City of Forest Grove under an agreement with Metro for community enhancement money related to the operation of the Forest Grove Transfer Station

"Code" means the Code of Metro.

"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.

"DEQ Fees" mean such fees assessed by the Oregon Department of Environmental Quality related to operation of a solid waste facility

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

"Disposal Fee" means those payments to be made to Metro by the Franchisee for disposal of solid waste at the Columbia Ridge Landfill (and as they may be amended from time to time)

"Excise Taxes" mean excise taxes due to Metro from the Franchisee as determined by using the formulas contained on Metro's User Fee and Excise Tax Form (and as it may be amended from time to time)

"Executive Officer" means the Executive Officer of Metro or the Executive Officer's designee.

"Facility" means the facility described in section 3 of this Franchise.

"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 the Resource Conservation and Recovery Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder;
- (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;
- (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 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.

"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.

"Metro Regional User Fee" means the Metro User Fee determined to be due to Metro by the Franchisee by using the formulas contained on Metro's User Fee and Excise Tax Form (and as it may be amended from time to time)

"Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

"Special Waste" shall have the meaning set forth for that term in Metro Code Section 5.02.015;

"Transfer Fee" means that amount of money determined by Metro as compensation for the owner/operator of the Facility for operation of the Facility and for associated compensation related to ownership of the Facility.

"Transport Fee" means that amount of money to be paid to Metro by the Franchisee for transport of solid waste from the Facility to a disposal site.

"Unacceptable Waste" means any waste that is not "Acceptable Waste."

2. TERM OF FRANCHISE

This Franchise is issued for a term of five years from the date signed by Metro and the Franchisee, following approval by the Metro Council.

3. LOCATION OF FACILITY

3.1 The franchised Facility is located at 1525 "B" Street, Forest Grove, Oregon. Attached as Exhibit 1 to this agreement is the legal description of the Facility property.

4. OPERATOR, AND OWNER OF FACILITY AND PROPERTY

4.1 The owner of the Facility is Ambrose Calcagno, Jr. dba A. C. Trucking. Franchisee shall submit to Metro any changes in ownership of the Facility in excess of five percent of ownership, or any change in partners if a partnership, within 10 days of the change.

4.2 The owner of the property underlying the Facility is Ambrose Calcagno, Jr. and Virginia Calcagno, husband and wife. If Franchisee is not the owner of the underlying property, Franchisee warrants that owner has consented to Franchisee's use of the property as described in this Franchise.

4.3 The operator of the Facility is Ambrose Calcagno, Jr. dba A. C. Trucking. Franchisee may contract with another person or entity to operate the Facility only upon ninety (90) days prior written notice to Metro and the written approval of the Executive Officer. Franchisee shall retain primary responsibility for compliance with this Franchise.

5. AUTHORIZED AND PROHIBITED SOLID WASTES

5.1 Franchisee is authorized to accept all materials authorized by its DEQ Solid Waste Disposal Permit, from the public and from commercial collection vehicles, for delivery to a Metro-designated disposal facility (or transport and disposal as may be directed by Metro, pursuant to section 7.4) and to separate out recyclable materials such as, but not limited to, wastepaper, cardboard and newspaper. Discarded vehicles, sewage sludge, septic tank and cesspool pumpings, or other sludge shall not be accepted at the Facility.

5.2 All Franchisee vehicles and devices transferring or transporting solid waste via public roads shall be constructed, maintained, and operated to prevent leaking, sifting, spilling, or blowing of solid waste while in transit.

5.3 Franchisee may accept no more than 300 tons of solid waste per operating day (a day in which the Facility accepts solid waste) on a monthly average, with the added condition

that Franchisee may not accept more than 70,000 tons of waste in any twelve consecutive months or as this amount may otherwise be limited by Metro's current agreement with Oregon Waste Systems, Inc. Upon assumption by Metro of responsibility for transport of solid waste from the Facility, Franchisee may accept an unlimited quantity of solid waste at the Facility. However, for each ton of waste transported from the Facility or disposed of by Metro in excess of 70,000 tons, from inside or outside of the District, Franchisee shall pay increased transport and disposal fees as specified in section 14 of this Franchise.

- 5.4 Nothing in this Franchise prohibits Franchisee from accepting waste from outside the Metro District so long as Franchisee keeps accurate records of the waste accepted from outside of the District.

6. MINIMUM MONITORING AND REPORTING REQUIREMENTS

- 6.1 Franchisee shall effectively monitor Facility operation and maintain accurate records of the following information for all transactions:
- (a) Ticket Number (should be the same as the ticket number on the weight slips)
 - (b) Incoming Hauler Account Number. On a semi-annual basis, provide Metro with a computer listing that cross-references this account number with the hauling company's name and address.
 - (c) Generator's Account Number or Name (if available). On a semi-annual basis, provide Metro with a computer listing that cross-references this number or name to the generator's full name and address.
 - (d) Code designating type of material (more detail, such as differentiating yard debris, is acceptable):
 - (1) Incoming source-separated recyclable
 - (2) Mixed waste
 - (3) Outgoing recyclables
 - (4) Outgoing mixed waste
 - (e) Code designating origin of material:
 - (1) Public from inside Metro boundaries
 - (2) Public from outside Metro boundaries
 - (3) Commercial from inside Metro boundaries
 - (4) Commercial from outside Metro

- (f) Date the load was received at or transmitted from your Facility.
- (g) Time the load was received at or transmitted from your Facility.
- (h) Indicate whether you accepted or rejected the load.
- (i) Net Weight of the Load.
- (j) Volume of the Load (if applicable).
- (k) The fee you charged for the load to the generator (excludes transportation charges).

- 6.2 Records required under section 6.1 shall be reported to Metro no later than fifteen (15) days following the end of each month, in the format prescribed by Metro. Transaction data shall be in electronic form compatible with Metro's data processing equipment. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee. The hard copy of the report shall be signed and certified as accurate by an authorized representative of Franchisee.
- 6.3 Franchisee shall maintain complete and accurate records of all costs, revenues, rates, if applicable, and other information on a form suitable to Metro. These records shall be made available to Metro on request.
- 6.4 The Franchisee shall file an Annual Calendar Year Operating Report detailing the previous year operation of the Facility as outlined in this Franchise, on or before March 30 of each year.
- 6.5 The Franchisee shall submit to Metro duplicate copies of any information submitted to the DEQ pertaining to the Facility, within 30 days of submittal to DEQ.
- 6.6 Authorized representatives of Metro shall be permitted to inspect information from which all required reports are derived during normal working hours or at other reasonable times with 24-hour notice. Metro's right to inspect shall include the right to review, at an office of Franchisee located in the Portland metropolitan area, all books, records, maps, plans, income tax returns, financial statements, and other like materials of the Franchisee that are directly related to the operation of the Franchisee.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

- 7.1.1 A copy of this Franchise shall be displayed where it can be readily referred to by Facility operating personnel.
- 7.1.2 If a breakdown of equipment, fire, or other occurrence results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
- (a) Take immediate action to correct the unauthorized condition or operation.
 - (b) Immediately notify Metro so that an investigation can be made to evaluate the impact and the corrective actions taken and determine additional action that must be taken.
 - (c) Prepare a report describing all operational irregularities, accidents, and incidents of non-compliance and provide a copy of such report to Metro within ten days of occurrence or sooner if circumstances warrant notification to Metro.
- 7.1.3 If the Processing Facility is to be closed permanently or for a protracted period of time during the term of this Franchise, Franchisee shall provide Metro with written notice, at least 90 days prior to closure, of the proposed time schedule and closure procedures.
- 7.1.4 The Facility shall be in strict compliance with the Metro Code requirements regarding storage, collection, transportation, recycling and disposal of solid waste.
- 7.1.5 The Franchisee shall provide an adequate operating staff which is duly qualified to carry out the reporting functions required to ensure compliance with the conditions of this Franchise.
- 7.1.6 Metro may reasonably regulate the hours of site operation as it finds necessary to ensure compliance with this Franchise. Metro will attempt to provide 90 days written notice prior to regulating hours of operation, and shall not unreasonably increase Franchisee's costs of operation. If Metro is transporting solid waste from the Facility, Franchisee shall not change its hours of operation in a manner that would increase Metro's transport costs.
- 7.1.7 The Franchisee shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three years for possible review by the District.

7.1.8 The Franchisee shall not, by act or omission, unlawfully discriminate against any person, treat unequally or prefer any user of the Facility through application of fees or the operation of the Facility.

7.1.9 At least one sign shall be erected at the entrance to the Facility. This sign shall be easily visible, legible, and shall contain at least the following:

- (a) Name of facility;
- (b) Emergency phone number;
- (c) Operational hours during which wastes will be received for disposal;
- (d) Disposal rates and fees;
- (e) Metro information phone number; and
- (f) Acceptable materials.

7.2 Litter, Odor, Dust, Noise and Vector Control

7.2.1 Control of Blowing Debris. The Franchisee shall police all areas within the site and along the road frontage of the site as indicated on the map attached as Exhibit 2 and shall:

- (a) patrol the Facility daily;
- (b) patrol Highway 47 ("B" Street) from its intersection with the relocated Tualatin Valley Highway to its intersection with Pacific Avenue on a weekly basis;
- (c) respond to citizen's complaints on an "on call" basis within 12 hours, or sooner as circumstances may require;
- (d) log all citizen complaints by name, date, time and nature of complaint;
- (e) Apply to the State for approval for signage to direct traffic to the Facility using Highway 47.

7.2.2 Odor, Dust and Noise Control. The Franchisee shall control odor and dust on the site by use of installed dust control and odor systems whenever excessive dust and odor occur or at the direction of Metro. Alternative dust and odor control measures may be performed by the Franchisee with the approval of Metro.

7.2.3 Vector Control. The Franchisee shall conduct the operation of the transfer station in such a manner so as to ensure unfavorable conditions for production of rodents and insects. If rodent and insect activity become apparent to Metro, supplemental vector control measures shall be initiated by the Franchisee at Franchisee's own cost, with the approval of DEQ and Metro.

- 7.3** Franchisee shall meet with representatives of Metro and the City of Forest Grove on a schedule to be determined by Metro and the City of Forest Grove to discuss operational impacts of the transfer station on the City of Forest Grove and any corrective measures that may be necessary to address such impacts. The meetings will be scheduled no more often than once every six months. The Metro Solid Waste Director may call a meeting on a shorter schedule if specific operational issues require immediate attention.
- 7.4** Metro Transport and Disposal Option.
- 7.4.1** Metro reserves the right, at any time during the term of this Franchise, to assume responsibility for transport from the Facility and/or disposal of all Acceptable Waste generated within the district that is to be disposed of in a general purpose landfill. Notice of Metro's intent to assume such responsibility shall be by written notice to Franchisee. The notice shall establish the date, not less than six months from the date of the notice, upon which Metro will begin transporting and/or disposing of solid waste from the Facility.
- 7.4.2** Prior to the date established for Metro to assume transport and/or disposal responsibilities, Franchisee shall install a compactor at the Facility meeting Metro specifications. Franchisee shall submit to Metro within 60 days from the date of notice specified in 7.4.1, its detailed plans for installation of a compactor, including installation and compactor specifications. Metro shall review such plans and notify Franchisee of any objections or proposed revisions within 10 business days of receipt. If Metro does not comment within the time specified, the plans shall be deemed approved, and Franchisee shall commence installation. If Metro objects or proposes revisions, the parties shall in good faith attempt to resolve all issues related to compactor installation such that deliveries to Metro's transport contractor can begin on the date specified in the notice provided under section 7.4.1.
- 7.4.3** As soon as practicable following the notice from Metro specified in section 7.4.1, Franchisee and Metro shall begin making arrangements for Metro assumption of transport and/or ultimate disposal responsibilities. Such arrangements may include planning and coordination meetings between Franchisee, Metro, and Metro's transport and/or disposal contractor.
- 7.4.4** Along with, or at any time following the notice specified in section 7.4.1, Metro may direct Franchisee to begin delivering all solid waste specified in section 7.4.1 to Metro Central Station. The notice shall specify a date, not less than 10 business days from the date of the notice, upon which Franchisee shall begin such deliveries. For each ton of waste generated within the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in sections 14.4.1(b) and 14.4.2(b), as applicable, as well as the Regional User Fee and Metro Excise Tax. For each ton of waste generated

outside of the district delivered by Franchisee to Metro Central Station, Franchisee shall pay the disposal fee specified in sections 14.4.1(b) and 14.4.2(b), as applicable, and Metro Excise Tax. The deliveries specified in this section 7.4.4 shall continue until the date upon which Metro assumes responsibility for transport of solid waste from the Facility.

7.4.5 If Franchisee fails to install a compactor as required by this section 7.4 by the date established under section 7.4.1, and the Executive Officer does not grant an extension, which extension shall not be unreasonably withheld, Franchisee shall deliver all solid waste specified in section 7.4.1 to Metro Central Station, and shall pay to Metro the current tip fee at Metro Central on all tons delivered.

7.5 Metro Transport and Disposal Requirements. The requirements of this section 7.5 shall be effective on the date Metro begins transporting Waste from the Facility:

7.5.1 General Metro Requirements

- (a) Franchisee shall weigh each commercial hauling vehicle as it enters 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.
- (b) Franchisee shall weigh all Recovered Materials, Source-Separated Recyclables, compacted waste and Unacceptable Waste prior to removing them from the Facility.

7.5.2 Compaction, Transport, and Loading of Waste.

- (a) Franchisee 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.
- (b) Franchisee 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.
- (c) Each seal shall be marked with three letters identifying the Facility, Franchisee, and a sequentially increasing set of at least four digits.

Example: FGS-CON-0000

- (d) Franchisee shall also record the transfer trailer I.D. number. The transfer trailer seal will be inspected by both Metro's waste transport contractor and Franchisee prior to removal of the trailer from the Facility.
- (e) 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. Metro's waste transport services contractor shall be responsible for inspecting the empty transfer trailers for damage before release to Franchisee, 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.
- (f) If Franchisee improperly installs the seal, Metro's waste transport services contractor is required to notify Franchisee prior to leaving the Facility Site and request a new seal. Franchisee 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 Franchisee 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, and its contents, and request and receive a new seal from Franchisee.
- (g) 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.
- (h) Metro reserves the right to contract with parties other than Metro's waste transport services contractor, for the transport of all waste specified in section 7.4.1. All such contracts shall include a requirement that the transport contractor carry insurance in commercially reasonable amounts.

7.5.3 Maximizing the Compacted Load.

- (a) Franchisee shall use best faith efforts to maximize the transporter's payload, without overloading the transfer trailer or the individual road-legal axle combinations. Maximum payload shall be no more than 32 tons

at a density of 900 lbs/cu. yd. The weights should be verified with axle scales available at the Facility.

- (b) Franchisee shall pay to Metro an additional per ton transport amount, for failing to maximize Metro's waste transport services contractor's payloads. The additional payment is to ensure that Franchisee is diligent in fully loading transport trailers at average densities of at least 29 tons or the combined yearly average at Metro owned transfer stations, whichever is less. The formula for determining additional transport payments to Metro is as follows:

- (1) Base Tonnage (BT) = (Loads/calendar year) x 29 tons (or combined yearly average)
- (2) Tons Transported (TT) = Tons transported/calendar year
- (3) Tons on which additional payment is due (APT)
(APT)=(TT-BT) + (Positive APTs from previous year)

If APT is less than zero, Franchisee shall make an additional per ton transport payment of \$6.75 for each APT for that year, unless (following the first calendar year) the cumulative APT's from the previous year is greater than zero. If the cumulative APT's from previous years is greater than zero, those positive APT's shall serve as a credit against APT's accumulated in a subsequent year. The cost of an APT shall be adjusted beginning in January, 1994, and each January thereafter at the same rate as the CPI adjustment to Metro's waste transport services contract for transporting waste from the Facility, and shall remain effective for the calendar year.

7.5.4 Load Check Program/Unacceptable Waste

- (a) Franchisee shall inspect all waste delivered to the Facility in a manner that is reasonably calculated to determine whether the waste is Unacceptable Waste. Franchisee shall establish procedures for inspecting loads of waste and for excluding Unacceptable Waste from compaction and extrusion into transfer trailers.
- (b) Franchisee's load check program shall, at a minimum, include screening of all incoming loads by personnel trained to spot Unacceptable Waste, and more thorough random load checks, occurring at least once each week.

- (c) Franchisee shall keep accurate records regarding all Unacceptable Waste received, including the following information regarding a known 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.
- (d) Franchisee shall be responsible for all costs associated with the cleanup and management of Unacceptable Waste that has been loaded into a transfer trailer, properly sealed and transported to a disposal site. If the seal is unbroken upon arrival at the disposal site, Franchisee shall reimburse Metro for any cost associated with the cleanup of the Unacceptable Waste or any material contaminated by it at the disposal site for which Metro is properly billed by its disposal site contractor. Upon billing Franchisee for such costs, Metro shall provide to Franchisee all documentation related to the incident for which Franchisee is being billed.

7.5.5 Materials Excluded from Compaction. It is the responsibility of Franchisee to utilize the compactor to develop loads that do not cause above normal wear and tear on the transfer trailers during the transfer of waste from the compactor to the transfer trailer. Franchisee shall be liable for damage to a transfer trailer caused by Franchisee.

7.6 Franchisee Transport/Metro Disposal Option

- 7.6.1** At any time during the term of this Franchise, Franchisee may submit to Metro a detailed proposal for Franchisee to deliver all waste specified in section 7.4.1 to a disposal facility specified by Metro.
- 7.6.2** By written acknowledgment delivered to Franchisee, the Executive Officer may grant to Franchisee permission to transport solid waste specified in section 7.4.1 to a disposal facility specified by Metro. The acknowledgment shall specify Metro's intent not to exercise its option to transport waste from the Facility, to cease transporting waste from the Facility, or to cease requiring Franchisee to deliver waste to Metro Central, whichever the case may be. The notice shall also acknowledge acceptance of Franchisee's proposal for delivery of such waste, as that proposal may have been amended following discussions with Metro. Upon countersignature by Franchisee, the acknowledgment shall serve as an amendment to this Franchise.
- 7.6.3** If Metro allows Franchisee to transport waste as specified in this section 7.6, Franchisee shall not be required to pay transport fees to Metro. Franchisee shall pay to Metro the disposal charge specified in section 14.4, as well as all fees specified in section 14.3, for each ton of waste generated within the district that is disposed of at Columbia Ridge Landfill.

8. ANNUAL FRANCHISE FEES

Franchisee shall pay an annual franchise fee, as established under Metro Code Section 5.03.030. The fee shall be delivered to Metro within 30 days of the effective date of this Franchise and each year thereafter.

9. SURETY BOND OR CONDITIONAL LIEN

Franchisee shall provide a surety bond in the amount of One Hundred Thousand Dollars (\$100,000), or at its option provide a conditional lien on the franchise property in a form satisfactory to Metro. Without limiting the use to which the proceeds from a bond or from lien foreclosure may be put, such proceeds may be used to clean up or otherwise mitigate damage to the Facility upon closure or resulting from the condition of the Facility upon closure.

10. INSURANCE

10.1 Franchisee shall purchase and maintain the following types of insurance, covering Franchisee, its employees, and agents:

(a) Broad form comprehensive general liability insurance covering personal injury, property damage, and personal injury with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and

(b) Automobile bodily injury and property damage liability insurance.

10.2 Insurance coverage shall be a minimum of \$500,000 per occurrence, \$100,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

10.3 Metro, its elected officials, departments, employees, and agents shall be named as **ADDITIONAL INSUREDS**. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

10.4 Franchisee, its contractors, if any, and all employers working under this Franchise are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Franchisee shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

11. INDEMNIFICATION

Franchisee shall indemnify and hold METRO, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with Franchisee's performance under this Franchise, including patent infringement and any claims or disputes involving subcontractors.

12. COMPLIANCE WITH LAW

Franchisee shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Franchise. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Franchise by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Franchise, as well as any existing at the time of issuance of this Franchise and not attached, and permits or conditions issued or modified during the term of this Franchise.

13. METRO ENFORCEMENT AUTHORITY

- 13.1 Metro's authority to direct the flow of solid waste away from the Facility and/or take enforcement action against the Facility shall be as specified in the Metro Code.
- 13.2 Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections or surveys; collecting samples; obtaining data; examining books, papers, records and equipment; performing any investigation as may be necessary to verify the accuracy of any return made, or if no return is made by the Franchisee, to ascertain and determine the amount required to be paid; and carrying out other necessary functions related to this Franchise and the Metro Code. Access to inspect is authorized:
- (a) during all working hours;
 - (b) at other reasonable times with notice;
 - (c) at any time without notice, at the discretion of the Metro Solid Waste Division Director, when such notice would defeat the purpose of the entry.
- 13.3 The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

14. DISPOSAL RATES AND FEES

- 14.1** Franchisee shall be responsible for collecting all fees for disposal at the Facility and remitting fees, charges and taxes to Metro as specified in this agreement. All waste specified in section 7.4.1 shall be charged the same rate. To the extent that Franchisee charges different rates for different categories of waste, such rates shall be included in a published rate schedule, which shall be made available to Metro when adopted or amended. Franchisee shall maintain accounts on wastes received and amounts billed to each commercial hauler as required by Metro Code Section 5.01.130.
- 14.2** All charges shall be calculated on an outbound tonnage basis using certified scale weights at the Facility. If an emergency or malfunction temporarily prevents the use of certified scale weights at the Facility and it is not feasible to use weights obtained at the disposal site, the yardage/tonnage conversion shall be based on the assumption that compacted waste has a density of 600 pounds per cubic yard and that non-compacted waste has a density of 250 pounds per cubic yard.
- 14.3** At all times during this Franchise, Franchisee shall be responsible for payment of the following fees, to the extent those fees are required by law:
- (a) Local enhancement fees, by remitting to Metro;
 - (b) DEQ fees for operation of the Facility, by remitting directly to DEQ;
 - (c) Metro regional user fee, as specified in the Metro Code; and
 - (d) Metro excise tax, as specified in the Metro Code.
- 14.4** Metro Transport and Disposal Charges
- 14.4.1** If transport of waste from the Facility and/or ultimate waste disposal is provided by Metro, Franchisee shall remit to Metro the following additional charges, for each ton of waste transported and disposed of by Metro up to 70,000 tons per year:
- (a) Per ton transport fee of \$7.50; and
 - (b) Per ton disposal fee of \$25.83.
- 14.4.2** For each ton of waste transported from the Facility and/or disposed of by Metro in excess of 70,000 tons per year, Franchisee shall remit to Metro:
- (a) Per ton transport fee of \$15.46; and
 - (b) Per ton disposal fee of \$28.57.

- 14.4.3 The transport and disposal charges specified in section 14.4.1 shall be annually adjusted on each anniversary of the Franchise renewal date for use during the forthcoming year, based on 100 per cent 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" or by the actual increase in the transport or disposal fee charged by Metro's contractor, whichever is greater. The transport and disposal charges specified in section 14.4.2 shall be automatically adjusted to reflect, at all times, the per ton fixed and variable transport and disposal fees being remitted by Metro to its transport and disposal contractors, without offset or credit to Franchisee of any kind.
- 14.4.4 All charges specified in this section 14.4 shall be remitted as specified in Metro Code Section 5.02.055, and subject to the credit terms of that section.
- 14.5 Franchisee is authorized to charge no more than \$75 per ton for each ton of solid waste disposed of at the Facility, until such time as Franchisee obtains a different rate through the rate review process of the Metro Code. Franchisee may automatically pass through any increase in Metro fees or DEQ fees without rate review, subject to the \$75 per ton cap. Beginning in 1995, Franchisee shall submit to rate review annually, following or at the time of Metro's adoption of disposal rates for Metro owned facilities.
- 14.6 The Franchisee is authorized to charge a minimum fee of \$15.00 per load for public self-haulers, provided however that if a self-hauler shall bring in one-half (1/2) cubic yard of recyclable material (as defined in ORS 459.005) they shall receive a \$3.00 credit toward their disposal charge.
- 14.7 A surcharge shall be levied against a person who disposes of waste at the transfer station, if when entering the Facility any portion of the waste is visible to Facility scalehouse personnel, unless the waste is only visible through a secure covering. The surcharge shall be \$100.00 for a load delivered by a vehicle greater than three-quarter ton capacity, and \$25.00 for a load delivered by a vehicle of three-quarter ton capacity or less, and shall be collected in the same manner as other disposal fees are collected at the Facility. Franchisee may retain all such surcharges collected.
- 15. REVOCATION**
- 15.1 This Franchise may be revoked at any time for any violation of the conditions of this Franchise or the Metro Code, as specified in the Metro Code. This Franchise does not relieve Franchisee from responsibility for compliance with ORS chapter 459, or other applicable federal, state or local statutes, rules, regulations, codes, ordinances, or standards.

- 15.2 This Franchise is subject to suspension, modification, revocation, or nonrenew upon Metro finding that:
- (a) The Franchisee has violated the terms of this Franchise, the Metro Code, ORS chapter 459, or the rules promulgated thereunder or any other applicable law or regulation and has failed to cure in a timely manner;
 - (b) The Franchisee has misrepresented material facts or information in the Franchise Application, Annual Operating Report, or other information required to be submitted to Metro;
 - (c) The Franchisee has refused to provide adequate service at the Facility, after written notification and reasonable opportunity to do so; or
 - (d) There has been a significant change in the quantity or character of solid waste received at the Facility, the method of processing solid waste at the Facility, or available methods of processing such waste.

16. GENERAL CONDITIONS

- 16.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 16.2 The granting of this Franchise shall not vest any right or privilege in the Franchisee to receive specific quantities of solid waste during the term of the Franchise.
- 16.3 This Franchise may not be transferred or assigned without the prior written approval of Metro.
- 16.4 To be effective, a waiver of any term or condition of this Franchise must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Franchise shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- 16.5 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- 16.6 If any provision of the Franchise shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

17. NOTICES

17.1 All notices required to be given to the Franchisee under this Franchise shall be delivered to:

Ambrose Calcagno, Jr.
Forest Grove Transfer Station
1525 "B" Street, P.O. Box 8
Forest Grove, Oregon 97116

with a copy to:

Thompson, Adams, DeBast & Helzer
Attorneys at Law
4500 SW Hall Boulevard
Beaverton, OR 97005

17.2 All notices required to be given to Metro under this Franchise shall be delivered to:

Solid Waste Director
Solid Waste Department
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

17.3 Notices shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed, postage prepaid, to the address for the party stated in this Franchise, or to such other address as a party may specify by notice to the other.

Ambrose Calcagno, Jr.,
dba A. C. Trucking

Date: _____

Rena Cusma, Executive Officer
Metro

Date: _____

1187a

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 94-527 FOR THE PURPOSE OF GRANTING A FRANCHISE RENEWAL TO AMBROSE CALCAGNO, JR., D/B/A A. C. TRUCKING FOR THE PURPOSE OF OPERATING A SOLID WASTE TRANSFER STATION AND DECLARING AN EMERGENCY

Date: December 29, 1993

Presented by: Bob Martin

FACTUAL BACKGROUND AND ANALYSIS

The purpose of this report is to introduce and provide analysis regarding the application filed by Ambrose Calcagno, d/b/a A. C. Trucking for renewal of his franchise to own and operate the Forest Grove Transfer Station (FGTS) located in the City of Forest Grove, Oregon. The application was accepted as complete on November 1, 1993. Metro, pursuant to Code Section 5.01.020 has the authority to grant franchises for private facilities accepting mixed solid waste. As previously approved by the Metro Council, the facility is to transfer mixed solid waste delivered to the facility by commercial haulers and the public.

A key element of the proposed franchise renewal for the Forest Grove Transfer Station is a contemplated shift for the ultimate disposal of waste from the Riverbend Landfill to the Columbia Ridge Landfill. This proposed transition is contingent on a number of factors including, most particularly, the successful implementation of a contract amendment between Metro and Oregon Waste Systems. The franchise is designed to allow Metro the option of transporting and/or disposing of waste delivered to the facility.

In summary, the proposed franchise includes the following:

1. Transitional language accommodates an arrangement between Metro and Oregon Waste Systems providing for the Forest Grove Transfer Station tonnage to be disposed of at Columbia Ridge Landfill.
2. Franchisee will continue to operate the scalehouse at the Forest Grove facility.
3. Franchisee will continue to pay Metro User Fees and Excise Taxes as required by the Metro Code.
4. Franchisee will pay Metro for transport and disposal (as applicable) if Metro assumes transport or disposal responsibilities.
5. Franchisee will continue to remit community enhancement money to Metro for disbursement to the City of Forest Grove.
6. Franchisee will pay its own DEQ fees associated with operation of the Transfer Station and other associated fees (other DEQ fees are paid as part of the disposal fee).

7. Franchisee will retain compensation for transfer station operations.
8. A compactor will be installed at the Forest Grove facility by the franchisee to accommodate transfer of materials to the Columbia Ridge Facility, if Metro assumes disposal responsibility.
9. Franchisee has not requested any increase in rates as approved by the Metro Council in 1992. The franchise provides for rate review for the facility in 1995, or earlier if the franchisee requests a new rate.

LOCATION OF FACILITY

1525 "B" Street, Forest Grove, Oregon

SITE DESCRIPTION

All or portions of tax lots 9500, 9501, and 9700; assessor's map 1S-36-BC located in the City of Forest Grove, Oregon.

MATERIALS TO BE ACCEPTED

Franchisee is authorized to accept all materials authorized by its DEQ Solid Waste Disposal Permit; from the public and from commercial collection vehicles, for delivery to a Metro-designated disposal facility (or transport and disposal as may be directed by Metro, pursuant to section 7.4 of the franchise) and to separate out recyclable materials such as, but not limited to, wastepaper, cardboard and newspaper. Discarded vehicles, sewage sludge septic tank and cesspool pumpings, or other sludge shall not be accepted at the facility.

Franchisee may accept no more than 300 tons of solid waste per operating day (a day in which the facility accepts solid waste) on a monthly average, with the added condition that franchisee may not accept more than 70,000 tons of waste in any twelve consecutive months or as this amount may otherwise be limited by Metro's agreement with Oregon Waste Systems, Inc. Upon assumption by Metro of responsibility for transport of solid waste from the facility, franchisee may accept an unlimited quantity of solid waste at the facility. However, for each ton of waste transported from the facility or disposed of by Metro in excess of 70,000 tons, from inside or outside of the District, franchisee shall pay increased transport and disposal fees as specified in section 14 of the franchise.

PERMITS REQUIRED

The applicant requires:

1. City of Forest Grove Business License
2. Oregon Department of Environmental Quality Solid Waste Disposal Permit
3. Metro Franchise

Status:

1. Has current City of Forest Grove Business License
2. Department of Environmental Quality Solid Waste Permit No. 368 received April 10, 1990.
3. Metro franchise pending.

MISCELLANEOUS OPERATING DATA

Metro may reasonably regulate the hours of site operation as it finds necessary to ensure compliance with the franchise. Metro will attempt to provide 90 days written notice prior to regulating hours of operation, and shall not unreasonably increase franchisee's costs of operation. If Metro is transporting solid waste from the facility, franchisee shall not change its hours of operation in a manner that would increase Metro's transport costs.

ISSUANCE OF A FRANCHISE

Staff has prepared a proposed franchise to be issued to the applicant following Council approval of the franchise application. Metro Code Section 5.01.070 states in part "The Executive Officer shall formulate recommendations regarding whether the applicant is qualified; whether the proposed franchise complies with the district's solid waste management plan; whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities, and resource recovery facilities and their remaining capacities and whether or not the applicant has complied or can comply with all other applicable regulatory requirements."

Metro Code Section 5.02.070 (e) (2) provides that a corporate surety bond is required for this type of franchise. This however, is guided by Metro Resolution No. 86-672. The pertinent portions of the Resolution, Section 1 b. and c. read as follows:

"b. If continued operation of the processing or transfer facility is not considered necessary to the solid waste disposal system because of alternative disposal sites which may be available and potential clean-up and site maintenance costs* for the facility are estimated to be less than or equal to \$10,000, then the amount of the required surety bond is \$0."

*[Footnote 4 from the resolution stated: Clean-up and Site Maintenance Cost is dependent on the size and design of the facility.]

"c. If continued operation of the processing or transfer facility is not necessary to the solid waste disposal system because of alternative disposal sites which may be available and potential clean-up and site maintenance cost for the facility are estimated to be greater than \$10,000, then the amount of the required surety bond is to be equal to the amount of the estimated clean-up and site maintenance costs for the facility. If these conditions exist and the franchisee owns the site on which the facility operates, and the value of the site exceeds the amount required for the bond, the franchisee may elect to issue a conditional lien on the property to Metro guaranteeing performance by the operator in cleaning up the site in lieu of the required bond. The lien shall be in a form satisfactory to Metro."

Using the criteria outlined in Metro Resolution No. 86-672 for determining the amount of a surety bond that may be required pursuant to a facility franchise, it is recommended that the franchisee be required to provide a surety bond in the amount of \$100,000, or in the alternative provide a conditional lien if preferred by the franchisee. This recommendation is based on the availability of disposal facilities (Metro transfer stations), that would not make it necessary to continue operation of the facility. Clean up and site maintenance costs are estimated to be approximately One Hundred Thousand Dollars (\$100,000). This estimate is based on:

- Disposal of one weeks' waste (1,350 tons) will cost about \$100,000 for loading, hauling and disposal.

The following staff analysis is submitted to the Council for its review as required.

QUALIFICATIONS OF THE APPLICANT

Metro Solid Waste Franchise No. 4 was originally issued to Ambrose Calcagno Jr. on March 22, 1984 to operate the Forest Grove Transfer Station. Operation of the facility began in October 1985 and it was used at that time solely to transfer waste from compactor trucks to transfer trailers, the trucks and trailers all of which were owned by Mr. Calcagno. Final destination of waste from the FGTS was the Riverbend Landfill in Yamhill County.

On August 14, 1986 the Metro Council approved variances requested by Mr. Calcagno and also renewed the franchise for the FGTS to a new expiration date of August 14, 1991. The variances approved by the Council authorized the transfer station to accept wastes from collection companies other than from companies owned by Mr. Calcagno and further relieved Mr. Calcagno from payment of the Regional Transfer Charge. A further Council renewal of the Franchise in September 1988 extended the Franchise to September 22, 1993 and authorized provision of service to public self-haulers. The applicant has successfully operated the facility since its original approval by Metro in 1984.

COMPLIANCE WITH THE SOLID WASTE MANAGEMENT PLAN

Given the conditions imposed by this franchise, this facility will comply with the goals, objectives and policies of the Regional Solid Waste Management Plan. The Regional Solid Waste Management Plan (RSWMP) states in part:

IMPLEMENTATION

9.0 Franchising, contracting, licensing policy for solid waste facilities.

The Solid Waste Management Plan shall include methods for regulatory control of solid waste facilities. Such regulatory methods may include a system of franchising, contracting

and/or licensing to ensure that needed disposal facilities are provided and are operated in an acceptable manner.

NEED AND COMPATIBILITY

As this is a continuation of an existing franchise, no other system facilities are expected to be impacted by the proposed franchise. This facility has been in continuous operation since 1985 and has demonstrated its utility and compatibility with the system.

REGULATORY COMPLIANCE

As noted on page 2 of this report, the applicant possesses a Department of Environmental Quality solid waste permit and a City of Forest Grove Business License. The transfer station is a permitted use under City of Forest Grove zoning regulations for the facility property.

BUDGET IMPACT

No direct budget impact is anticipated by renewal of this franchise. If Metro assumes responsibility for transport and disposal of waste delivered to the facility, a budget amendment may be required. It is unlikely that Metro would assume such responsibility until the 1994-95 fiscal year. For information related to Metro exercise of its option to dispose of waste delivered to the facility please refer to fiscal analysis provided by staff related to proposed Amendment No. 4 to Metro's agreement with Oregon Waste Systems.

SUMMARY

It is the conclusion of staff that:

- The applicant possesses sufficient qualifications to establish, operate and maintain the proposed facility in a manner consistent with the provisions of the Metro Code.
- That the facility complies with Metro's Regional Solid Waste Management Plan.

STAFF RECOMMENDATION

Based on the foregoing analysis it is the opinion of staff that Ambrose Calcagno, d/b/a A. C. Trucking should be granted a non-exclusive franchise in accord with the provisions of the franchise agreement shown as Exhibit A of Ordinance No. 94-527.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 94-527.

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Meeting Date: January 13, 1994
Agenda Item No. 6.2

ORDINANCE NO. 94-521A

GOVERNMENTAL AFFAIRS AND FINANCE COMMITTEE REPORT

ORDINANCE NO. 93-521A, REVISING THE FY 1993-94 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR A PREDICATE STUDY; AND DECLARING AN EMERGENCY.

Date: December 20, 1993

Presented by: Councilor Hansen

COMMITTEE RECOMMENDATIONS: The Finance Committee and Governmental Affairs Committee held a joint meeting on December 16, 1993 to consider Ordinance No. 93-521. Governmental Affairs voted 4-1 to recommend Council adoption of the ordinance. Councilors Gates, Gardner, Hansen, and Wyers voted in favor. Councilor Moore voted in opposition. The Finance Committee voted 2-1 to recommend Council adoption of the ordinance. Councilors Monroe and Devlin voted in favor, and Councilor Kvistad voted in opposition. Councilors Buchanan and Van Bergen were absent.

COMMITTEE DISCUSSION/ISSUES: Procurement Officer Rich Wiley presented the staff report. He noted that Governmental Affairs had considered Ordinance No. 93-521 at its November 18 meeting, and submitted two memoranda with questions for the Regional Facilities Department to address (one from Councilor Wyers and one from Council Analyst Casey Short and Council Administrator Don Carlson). Mr. Wiley reviewed the written responses to those questions. Councilor Moore asked for clarification of how Metro's participation would broaden the scope of the study. The answer was that the study would be able to include information on the construction industry throughout the Metro area.

Councilor Moore asked whether broadening the scope of work to include businesses outside the construction industry would increase the cost of the study. Mr. Wiley said he didn't expect the scope would be so broadened because the City of Portland and Multnomah County have isolated the construction industry as the target of the study, and because legal precedent requires focus on specific industries in order to qualify for implementation of "narrowly tailored" remedies.

Councilor Monroe said he was concerned that only Portland and Multnomah County had agreed to participate in the study, while other cities and counties, and other districts such as Tri-Met and the Port of Portland, have chosen not to participate. He said his concern included the perception among many jurisdictions that Metro is too closely aligned with Portland. He also was concerned about the cost of the study at a time of expected fiscal constraint.

Jack Nelson and Kim Mingo of Associated General Contractors testified in public hearing. They said the study might not produce the intended benefits. They suggested assistance in technical and bonding matters might be more beneficial, and

proposed improving apprenticeship programs. They suggested that jurisdictions set aside certain classes of work for minority and women-owned firms, and cited sidewalk repair. They also proposed Metro participate in the Port's mentor program. They said a disparity study, and results that might come out of the study, would not address the training, bonding, and financing issues that need to be addressed.

Madelyn Wessel, Deputy City Attorney at the City of Portland, testified to address questions related to the scope of the study. She said Metro's participation would allow the study to look at the construction industry throughout the region. Without Metro's participation, it would be limited to Portland and Multnomah County. Other jurisdictions could use the information gathered in the study, but would not be able to use it to design remedies for past discrimination in the industry. She said the scope of the study could include issues such as supplies and professional services within the construction industry, but it could not go beyond a specific industry due to constraints of case law. In response to a question from Councilor Moore, Ms. Wessel said the study would include review of companies performing work for public agencies, even if the company was not located within the jurisdiction's boundaries.

Councilor Monroe asked Ms. Wessel why other jurisdictions have chosen not to participate; he cited Tri-Met and the Port of Portland. Ms. Wessel said she understood that Tri-Met is already governed by federal guidelines, because of their reliance on federal funds. The issues to be examined in the study concern state and local contracts, which have separate legal issues. She said the Port has decided to invest its efforts into its mentor program. She added that the City is also investing in other programs, including mentor, training, and clearinghouse programs.

Jeff Rogers, Portland City Attorney, testified. He said the purpose of the study is not to assign guilt or look backwards, but to give governments a tool that the Supreme Court has taken away. That tool was to help achieve the goal that minorities and women participate fully in the economic life of the region. He stressed that this is one of several tools, all of which need to be pursued to achieve the goal. He said it is important for Metro to participate, not only to extend the geographical scope of the study, but also to send a message that this is a regional issue and to show that government is willing to take steps to resolve the issue. He said that the lack of participation by other governments should not be a reason for Metro not to participate, but Metro's participation would distinguish this government from the others and would send a message to those other governments about partnerships.

Councilor Moore asked if other jurisdictions, such as Washington County, could use the results of the study to institute mandatory set-aside programs. Mr. Rogers said such results would be of assistance, but would not be sufficient to allow the institution

of programs that Metro or the City could enact. Councilor Devlin asked Mr. Rogers the range of remedies that could result from the study. Mr. Rogers said remedies could include declining to award a contract to an apparent low bidder who failed to meet required set-aside percentages of minorities or women. Other more voluntary measures could also be applied, but without this tool, there is no way for governments to compel participation that reflects the percentages of women and minorities in the community. He said it was up to each jurisdiction to implement its own remedies.

Robert Phillips testified as a member of the Oregon Commission on Black Affairs. He encouraged support of the disparity study, and cited recommendations of the Commission's report, which is included in the record.

Henry Pelfrey, President of Dirt & Aggregate Interchange, testified. He participated in the committee that advised the Council on the creation of the current MBE/WBE program, and said he advised the Council then that a study would be required to implement a set-aside program. He sits on the advisory committee for the Port's mentor program, and he said it's not working. He urged the Council to support the ordinance.

Margaret Garza of Impact Business Consultants testified. She said she sits on a number of advisory committees, and said it is very important to have a mandatory program to assist the businesses the program is designed to assist. She said prime contractors will comply with a program's requirements if they have to, but won't if they don't have to. She agreed with Mr. Rogers in saying that there are other elements needed to improve minority and women firms' participation, but this study is needed to have the mandatory compliance tool.

Chip Lazenby of the Multnomah County Counsel's office spoke to technical aspect of the issue. He referred to Councilor Moore's questions about the scope of the study, saying that Metro's participation as the regional government was critical to the study's success. He cited King County's experience, in which a study done there was invalidated because it used evidence gathered in Pierce County. He said the issue was not finding a tool to solve the problem, but in using all the tools at our disposal to address the problem of under-representation by women and minorities in the construction industry. He said Multnomah County's experience was that such participation was high when the County had a set-aside program, but fell off after it was invalidated. He asked to leave the record open to allow inclusion of an anticipated letter from Commissioner Beverly Stein.

Councilor Moore said she was convinced that Metro should participate in the study, but wanted other jurisdictions to participate. She suggested delaying final consideration of the matter to allow time to invite others to participate.

Councilor Gardner said Metro's program in the past had worked. That program called for set-asides or documented aggressive good-faith efforts. After that program was determined to be invalid, he believed there was a commitment to return to a program that was similar. A program based on the disparity study would do that, and keep that commitment. He said he was troubled by other jurisdictions' not participating in the study, but that was a policy decision for each jurisdiction; he said Metro should participate because it is good public policy. Councilor Moore asked if the other jurisdictions had been asked to participate. Councilor Gardner said he understood they had been formally invited, and Ms. Wessel confirmed that.

Councilor Hansen said she did not want to wait for other jurisdictions to be invited again to participate. She said this is a policy decision for the Metro Council to make for Metro.

Councilor Wyers agreed with Councilor Hansen and Councilor Gardner. She said she had a concern initially with whether this would be of benefit to Metro and its citizens, and she is now convinced there is a direct benefit. She supported moving ahead immediately.

Councilor Devlin said he believed there was a commitment from the Council to return to a more aggressive program at the time the good faith program was adopted. While he is concerned that others who should be participating are not, and he is concerned about budgetary issues, he believes the Council made a commitment to pursue this study when it came up and he supports honoring that commitment. He suggested the ordinance be amended to provide all the funding from the Support Service Fund, rather than have a split between Support Service and the General Fund.

Councilor McLain said this is the next step in implementing the program the Council indicated it supported when its earlier program was replaced with the good faith program, and said she supports the ordinance.

Councilor Gates asked for clarification on Councilor Devlin's suggestion regarding the source of funding, and asked whether there was interest in drafting a scope of work before committing to fund the study. Councilor Gardner said the issue of funding source was principally a question for the Finance Committee. To the issue of scope of work, he said the ordinance would make the funds available and not necessarily commit to spend the money. However, we won't know how much the study will cost until the scope of work is developed.

Councilor Washington said it is important for two or three agencies to do this work, even if others choose not to.

Council Analyst Casey Short distributed a memo from him and Council Administrator Don Carlson, which recommended the study be funded solely from the Support Service Fund.

Councilor Moore said she would vote in opposition to the motion to recommend Council adoption of the ordinance, because she wanted to invite other jurisdictions in the region to take part in the study, and have time for them to respond before Council considers the ordinance.

Councilor Kvistad said he would vote no, for the reasons Councilor Moore stated.

Councilor Wyers moved to amend the ordinance to have the study funded solely from the Support Service Fund, and to stipulate that it authorize "up to" \$50,000 in each of the two fiscal years. Councilor Hansen accepted that as a friendly amendment.

Councilor Devlin said he supported the ordinance, and also supported Councilor Moore's letter to other jurisdictions. He said he would be willing to sign the letter if she wanted other Councilors' signatures, but said his support for the ordinance is not dependent on whether other jurisdictions join in the effort.

Councilor Gardner said he also supports Councilor Moore's idea of formally inviting and strongly encouraging other jurisdictions to participate, and suggested the letter be from the entire Council or from all Councilors who are interested in supporting it.

[Note: The amendments incorporated into the motion to recommend Council approval separately affect the ordinance and its companion resolution, No. 93-1860. The amendment on funding source is reflected in Ordinance 93-521A, but the ordinance does not stipulate Metro's commitment to "up to" \$50,000 per year in 1993-94 and 1994-95. That reference is included as an amendment to the Intergovernmental Agreement, contained in Resolution 93-1860A. Please see the committee report for the resolution for discussion of this change.]

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING ORDINANCE)
NO. 93-487A REVISING THE FY 1993-94)
BUDGET AND APPROPRIATIONS)
SCHEDULE FOR THE PURPOSE OF)
FUNDING AN INTERGOVERNMENTAL)
AGREEMENT WITH THE CITY OF)
PORTLAND FOR A PREDICATE STUDY;)
AND DECLARING AN EMERGENCY)

ORDINANCE NO. 93-521A

Introduced by Rena Cusma,
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1993-94 Budget; and

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

~~WHEREAS, Oregon Budget Law, ORS 294.450(3), allows for the transfer of appropriation from the General Fund to any other fund during the fiscal year; and~~

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. That Ordinance No. 93-487A, Exhibit B, FY 1993-94 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring ~~[\$25,000 from the General Fund to the Support Service Fund and transferring \$25,000]~~ \$50,000 from the Support Service Fund contingency to the Procurement division of the Regional Facilities Department to fund an intergovernmental agreement with the City of Portland for a predicate study.

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 1993.

Judy Wyers, Presiding Officer

ATTEST:

Clerk of the Council

**Exhibit A
Ordinance No. 93-521A**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
SUPPORT SERVICE FUND:Regional Facilities Department							
Total Personal Services		10.40	587,328	0.00	0	10.40	587,328
Materials & Services							
521100	Office Supplies		11,369		0		11,369
521110	Computer Software		2,030		0		2,030
521260	Printing Supplies		2,900		0		2,900
521310	Subscriptions		1,049		0		1,049
521320	Dues		2,050		0		2,050
521400	Fuels & Lubricants		9,252		0		9,252
524190	Misc. Professional Services		20,100		0		20,100
525630	Maintenance & Repairs Services-Vehicles		2,773		0		2,773
525640	Maintenance & Repairs Services-Equipment		6,750		0		6,750
525732	Operating Lease Payments-Vehicles		28,800		0		28,800
526200	Ads & Legal Notices		15,850		0		15,850
526310	Printing Services		200		0		200
526410	Telephone		61,982		0		61,982
526420	Postage		2,688		0		2,688
526440	Delivery Services		500		0		500
526500	Travel		5,825		0		5,825
526700	Temporary Help Services		2,400		0		2,400
526800	Training, Tuition, Conferences		7,745		0		7,745
528100	License, Permits, Payments to Other Agencies		121,253		50,000		171,253
529500	Meetings		4,920		0		4,920
529800	Miscellaneous		2,000		0		2,000
Total Materials & Services			312,436		50,000		362,436
Total Capital Outlay			5,000		0		5,000
TOTAL EXPENDITURES		10.40	904,764	0.00	50,000	10.40	954,764

SUPPORT SERVICE FUND:General Expenses

Interfund Transfers							
581513	Trans. Indirect Costs to Bldg. Fund-Regional Center		507,283		0		507,283
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Gen'l		30,791		0		30,791
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Workers' Comp		41,597		0		41,597
Total Interfund Transfers			579,671		0		579,671
Contingency and Unappropriated Balance							
599999	Contingency						
	* General		206,294		(50,000)		156,294
	* Builders License		23,165		0		23,165
599990	Unappropriated Fund Balance-Contractors License		151,566		0		151,566
Total Contingency and Unappropriated Balance			381,025		(50,000)		331,025
TOTAL EXPENDITURES		85.12	6,802,525	0.00	0	85.12	6,802,525

**Exhibit A
Ordinance No. 93-521A**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
FOR INFORMATION ONLY							
Regional Facilities (Procurement)							
Total Personal Services		4.25	241,836	0.00	0	4.25	241,836
Materials & Services							
521100	Office Supplies		7,552		0		7,552
521110	Computer Software		1,480		0		1,480
521310	Subscriptions		624		0		624
521320	Dues		625		0		625
524190	Misc. Professional Services		10,100		0		10,100
526200	Ads & Legal Notices		14,800		0		14,800
526440	Delivery Services		500		0		500
526500	Travel		2,400		0		2,400
526700	Temporary Help Services		2,400		0		2,400
526800	Training, Tuition, Conferences		2,735		0		2,735
528100	License, Permits, Payments to Other Agencies		0		50,000		50,000
529500	Meetings		3,000		0		3,000
Total Materials & Services			46,216		50,000		96,216
TOTAL EXPENDITURES		4.25	288,052	0.00	50,000	4.25	338,052

**Exhibit B
Schedule of Appropriations
Ordinance No. 93-521A**

	Current Appropriation	Revision	Proposed Appropriation
SUPPORT SERVICES FUND			
Finance and Management Information			
Personal Services	2,238,932	0	2,238,932
Materials & Services	794,941	0	794,941
Capital Outlay	77,891	0	77,891
Subtotal	3,111,764	0	3,111,764
Regional Facilities			
Personal Services	587,328	0	587,328
Materials & Services	312,436	50,000	362,436
Capital Outlay	5,000	0	5,000
Subtotal	904,764	50,000	954,764
Personnel			
Personal Services	534,856	0	534,856
Materials & Services	59,646	0	59,646
Capital Outlay	6,675	0	6,675
Subtotal	601,177	0	601,177
Office of General Counsel			
Personal Services	434,876	0	434,876
Materials & Services	23,715	0	23,715
Capital Outlay	1,500	0	1,500
Subtotal	460,091	0	460,091
Public Affairs			
Personal Services	669,686	0	669,686
Materials & Services	91,247	0	91,247
Capital Outlay	3,100	0	3,100
Subtotal	764,033	0	764,033
General Expenses			
Interfund Transfers	579,671	0	579,671
Contingency	229,459	(50,000)	179,459
Subtotal	809,130	(50,000)	759,130
Unappropriated Balance	151,566	0	151,566
Total Fund Requirements	6,802,525	0	6,802,525

Note: This action assumes adoption of Ordinance No. 93-514, funding the Construction Manager position; Ordinance No. 93-518, funding personal computer replacements in the Office of General Counsel; and Ordinance No. 93-516 funding a Greenspaces RFP

All Other Appropriations Remain As Previously Adopted

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 93-521 AMENDING ORDINANCE NO. 93-487A REVISING THE FY 1993-94 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR A PREDICATE STUDY; AND DECLARING AN EMERGENCY

Date: October 26, 1993

Presented by: Neil Saling

BACKGROUND AND ANALYSIS

Resolution No. 93-1860 for the purpose of authorizing the Executive Officer to execute an intergovernmental agreement with the City of Portland for a predicate study will be presented to the Council for consideration during the month of November. In September, 1992, the Metro Council authorized a Multi-Jurisdictional Statement of Mutual Understanding supporting and permitting a feasibility study to be pursued by Multnomah County as a precursor to a major predicate study. The intergovernmental agreement with the City of Portland for the predicate study is an outgrowth of the feasibility study. Participants in the IGA include the City of Portland, Multnomah County and Metro. A copy of Resolution No. 93-1860 and the accompanying staff report explaining the predicate study are attached.

This action amends the budget to allow for the cost of the intergovernmental agreement. The predicate study will be performed over two fiscal years. The total cost of Metro's contribution to the study is \$100,000, funded equally in each of FY 1993-94 and FY 1994-95. The study is necessary to respond to a Supreme Court decision which applies to government operations in general. It addresses a broad based social benefit for the long term social good and extends far beyond the contracting issues. As such, the study is proposed to be funded equally by the General Fund and the Support Service Fund. This action transfers \$25,000 from the General Fund to the Procurement division of the Regional Facilities Department in the Support Services Fund, and transfers \$25,000 from the Support Service Fund contingency to the Procurement division of the Regional Facilities Department.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 93-521.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 93-1860
THE EXECUTIVE OFFICER TO)
EXECUTE AN INTERGOVERNMENTAL)
AGREEMENT WITH THE CITY OF) Introduced by Rena Cusma,
PORTLAND FOR A PREDICATE STUDY) Executive Officer

WHEREAS, a group of procurement professionals from various governmental agencies have met since October, 1991 to discuss and share information on their past and present minority and women-owned business enterprise (MBE/WBE) programs; and

WHEREAS, the group determined that, if MBE/WBEs were to receive preferential procurement treatment to remedy the present effects of past discrimination, a predicate study documenting past discrimination would be necessary; and

WHEREAS, the Metro Council in September, 1992 authorized a Multi-Jurisdictional Statement of Mutual Understanding supporting and permitting a feasibility study to be pursued by Multnomah County as a precursor to a major predicate study; and

WHEREAS, that study by Sara Glasgow Cogan & Associates outlined the requirements for and projected costs of such a multi-jurisdictional predicate study; and

WHEREAS, the City of Portland has endorsed a regional approach to such a predicate study, authorized \$175,000 in funding and directed the Mayor to seek funding partners to complete such a regional study; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute an intergovernmental agreement with the City of Portland in substantial conformance with Exhibit A attached, so as to support and promote a regional predicate study.

ADOPTED by the Metro Council this _____ day of _____, 1993.

Judy Wyers, Presiding Officer

HISTORICAL DATA, SUPPORTING DOCUMENTATION FOR LEGISLATION



METRO

DATE: November 16, 1993

TO: Governmental Affairs Committee
Finance Committee

FROM: Casey Short^{CS} Council Analyst *CS*
Donald E. Carlson, Council Administrator

RE: Disparity/Predicate Study

Ordinance No. 93-521 and Resolution No. 93-1560 have been referred to the Governmental Affairs and Finance Committees. These two companion pieces of legislation would authorize the Executive Officer to execute an intergovernmental agreement with the City of Portland for a predicate/disparity study to determine the extent of past discrimination in contracting practices, and would make available the funds for Metro's participation in such a study. Multnomah County will also participate, and has committed funds for the study. Relevant background information and justification is included in the materials accompanying the legislation.

In addition to the basic issue of the justification and need for Metro's participation in this study as it relates to remedying any past discrimination, there are some other issues we would like to raise for committee and Council consideration.

1. What will be the benefit to Metro of taking part in the study?

The policy decision of whether to participate in the study should be viewed in the context both of Metro within the broader local government community and of Metro as an independent jurisdiction. Participation through the proposed intergovernmental agreement would clearly establish this agency as a partner with other jurisdictions in the region in taking steps to identify, and remedy to the applicable extent, past discrimination in certain sectors of the community.

In addition, however, the specific benefit for this agency should also be identified. How will Metro's participation in the study directly benefit this agency? To what extent will Metro's participation be reflected in the structure of the study, with results that are directly tied to the interests of this agency?

2. What results can the study be expected to produce, and is the expenditure justified regardless of the outcome?

The purpose of the study is to determine whether there is evidence of past discriminatory practices in which governments actively or passively participated, through the awarding of public contracts. If such evidence is found, "narrowly tailored" remedies may be implemented to correct the effects of such past discrimination. These remedies must address the specific relevant sectors of the business community which the study finds to have practiced discrimination.

The purpose of this study - and the expenditure of hundreds of thousands of dollars of public funds - should be considered to be broader than just to document past discrimination. Croson requires such a study be performed in order to establish a basis for remedy, but the study may not produce results which justify any remedies. It may conclude that there was wholesale racial and gender discrimination in the building trades, or that there is no documentable history of any such discrimination, or that certain segments of the industry practiced some forms of racism or sexism in the past. Participating jurisdictions, including Metro, must be prepared to accept the study's results regardless of its conclusions. This implies that a result which documents no discrimination is to be deemed worthy of the expenditure. Is the expenditure of Metro funds justified on the basis of the project itself, even if the result is one that does not produce data that could justify remedies?

3. What is the basis for the total study cost, Metro's share of the cost, and how will the study be conducted?

The documents in the agenda packet do not contain a scope of work for the study. Has a scope of work been developed, or does that await determination of the amount of funds available? What will the total \$375,000 buy, and what will Metro receive for its \$100,000? How was the split of funds among the participating jurisdictions determined, and should Metro's share be 27% of the total?

4. What is the status of other jurisdictions' participation in the study?

Portland and Multnomah County are cited as pledging funds for this project. Have other jurisdictions in the region, including the Port of Portland, the State of Oregon, and Washington and Clackamas Counties, agreed or declined to participate?

5. What is the justification for splitting the cost of the study between the General and Support Service Funds?

Disparity/Predicate Study

November 16, 1993

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6. Who should be Metro's liaison to the City on this project?

It is our understanding that this project is being managed by the Portland City Attorney's office, with Multnomah County Counsel serving as the County's liaison. This implies that the project's focus will be on legal issues, to determine whether the standards set in Croson can be achieved through the study.

If so, should Metro's participation correspondingly be handled through the Office of General Counsel rather than the Procurement Office in the Regional Facilities Department, and should the legislation be amended to appropriately reflect the management responsibility?

cc: Metro Councilors
Neil Saling
Dan Cooper
Dick Engstrom

MEMORANDUM

TO: Rena Cusma and METRO Council

FROM: Margaret R. Garza, *MRG*
IMPACT Business Consultants, Inc.

DATE: November 18, 1993

Subject: DISPARITY STUDY

This memorandum is written in support of Metro's efforts to fund the disparity study of racial discrimination in public contracting.

IMPACT Business Consultants, Inc. is a privately owned management consulting firm providing technical business services to minority/women owned businesses throughout the states of Oregon, Washington, Utah, and Arizona. We are under contract with several local, state and federal agencies to provide such services to these businesses. As such, we strongly support the efforts of Metro council and Metro staff to ensure significant participation of Minority and Women businesses on locally funded projects. Again, we at IMPACT Business Consultants, Inc. applaud the commitment of Metro staff and council in this endeavor.

This disparity study is greatly needed and long overdue. This study would allow the public contracting entities such as Metro to implement contracting goals and return to a more strict contracting program. A vehicle that has worked in the past in assisting the public contracting entities to contract with its local constituents of minority and women businesses.

Thank you for your continued interest in Minority/Women business development. Should you have any inquiries in reference to this memo, please do not hesitate to call or write.

Respectfully submitted.



METRO

DATE: November 18, 1993
TO: Metro Councilors
FROM: *JW* Councilor Judy Wyers
RE: Predicate Study

I am attaching a copy of a letter from Governor Roberts to Portland Mayor Katz which raises a number of concerns regarding the predicate study the City of Portland proposes to undertake. Metro is being asked to participate in and help fund this study.

I share those concerns raised in the Governor's letter, and want to express some additional ones of my own. These include:

- How much will the study cost Metro and how will Metro be obligated if there are additional costs beyond an original amount? Can we opt to spend fewer dollars?
- Will Metro's financial participation ensure that Metro's interests in this issue will be fully reflected throughout the region, or will it serve merely to broaden the scope of the study?
- If the study is to concentrate on construction contractors (such as plumbers), what will be the benefit to Metro, given our anticipated reduction in construction activity?
- What authority will Metro have to ensure that any remedial measures can be effectively implemented, or would Metro be obligated to other jurisdictions for remedial costs?
- Will Metro be able to participate in the preparation of the study's scope of work and the selection of the contractor to perform the study?
- What legal liabilities might we assume by participating in the study if it finds that discrimination had occurred? Might a study show that public sector contracting in this community is actually high in proportion to the numbers of minority population and minority businesses in the region?
- What has been the experience of jurisdictions that have performed similar studies, in terms of cost and results?

Disparity Study
November 18, 1993
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- Who will participate in the study from the City of Portland?
- Might Metro offer to provide staff support to the study effort, rather than commit dollars?

These questions need to be answered, in addition to those submitted earlier by Council staff, before the Council can consider the substantive question of whether to authorize Metro's participation in this study.

cc: Executive Officer Rena Cusma
Neil Saling
Dan Cooper



OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310-0370
TELEPHONE: (503) 378-3111
TDD (503) 378-4859

October 21, 1993

The Honorable Vera Katz
Mayor of Portland
1220 S.W. Fifth Avenue
Portland, OR 97204

Dear Mayor Katz:

I am committed to making sure disadvantaged businesses receive a fair share of government contracts. The State of Oregon shares City of Portland's concern that the Croson decision will hurt efforts to improve Disadvantaged Business Enterprises' participation in regional construction contracts. As one of the largest users of goods and services, we realize the importance of establishing a policy that includes all Oregonians in a fair and equitable way.

Because of my personal commitment, the state has begun programs to increase participation of disadvantaged businesses through mentorships and training in general business practices. We are also restructuring our policy for procurement and contracting. In addition, the Multi-Jurisdictional Feasibility Study (with the state as a participant) pointed out the need to standardize data collection. We have developed a reporting system that will provide subcontracting information that could be used in a future disparity study.

It is important to move forward in this area, and I appreciate your willingness to tackle this most difficult issue. The State is interested in working with the City on the proposed disparity study, but I have several concerns and cannot commit state funds at this stage in the process.

These are my concerns:

1. That the study will only cover construction contractors, when there are other areas where disadvantaged business are grossly impacted by the Croson decision.
2. That the disparity study may not give us the legal authority to reject bids that do not have DBE subcontractors named.

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Mayor Katz
October 21, 1993

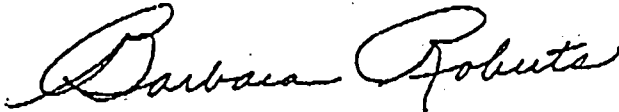
3. That the State have input into the legality of the study, the contractor that conducts the study and the study's geographic scope. As you are aware, in order for a jurisdiction to set numerical goals, the data must be collected from the same geographical area in which the goals apply. The region and types of contractors covered are important issues to the State.

4. That the State can't evaluate the estimated cost of \$700,000 until the City has defined the type of study it will conduct.

I hope we can resolve some of these concerns. Faye Burch, of my staff, and Wendy Robison, of the Justice Department, are available to work with you and your staff on these issues. Faye may be reached at (503) 378-5651, ext. 223, and Wendy Robinson at (503) 378-6986.

We share a commitment to fairness and to improving opportunities for disadvantaged businesses; I hope we can find a way to be partners in meeting that commitment.

Sincerely,



Barbara Roberts
Governor

CC: Tom Bartlett
Don Forbes
Cam Birnie
Faye Burch ✓
Wendy Robinson



City of Portland
Vera Katz
Mayor

November 17, 1993

THE HONORABLE BARBARA ROBERTS
GOVERNOR, STATE OF OREGON
STATE CAPITOL
SALEM OR 97310-0370

Re: Regional Disparity Study

Dear Governor Roberts:

Thank you for your letter dated October 21, 1993 regarding my request that the state consider participation in a regional disparity study. As you know, many regional governments and the State of Oregon have been discussing the feasibility of such a study for some time. You have noted a number of concerns regarding the state's participation in such a study.

1) "That the study will only cover construction contractors, when there are other areas where disadvantaged business are grossly impacted by the Croson decision."

Comments: A legal opinion issued to the state's Minority, Women & Emerging Small Business Office by Assistant Attorney General Wendy Robinson a year ago confirms that any disparity study must focus specifically on individual industry sectors, such as construction. The opinion states that: "The jurisdiction must prove particular discrimination suffered by minorities in the particular industry to be benefitted by the remedial program." The Multi-Jurisdictional Disparity/Predicate Feasibility Study (hereinafter "'Predicate" study) in which some fourteen regional governments and the State of Oregon participated, also concluded that: "The jurisdiction must demonstrate a statistical disparity between the participation of minorities and/or women-owned businesses in purchasing and contracting and their availability in a given industry in that jurisdiction." (See page 19).

Over the past several years, minority community advocates as well as administrators and others involved in-house with purchasing and contracting issues, have been overwhelmingly concerned with

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of pages ▶

To <i>Madelyn W.</i>	From <i>Vera Katz</i>
Co.	Co.
Dept.	Phone #
Fax # <i>797-1796</i>	Fax #

The Honorable Barbara Roberts
November 17, 1993
Page 2

the impact of the Croson decision on our public works contracting programs. The Oregon Commission on Black Affairs which held hearings concerning the impact of Croson on African American businesses and contractors in May of 1992, also concluded that discrimination against minority contractors continues to adversely affect opportunities for minority businesses and recommended that a disparity study be initiated by the State of Oregon. Because the weight of the concerns and complaints we have heard have centered on this particular industry, we have decided that the construction industry, broadly defined, ought to be the focus of the disparity study we are currently designing. To broaden the study to include other industries or sectors would undoubtedly involve an even greater investment of public funds and does not appear to be warranted based on the evidence before us at this time. If the state believes that there "are other areas where disadvantaged business[sic] are grossly impacted" by Croson as well, the state could design a supplemental study aimed at those areas in order to comply with the Croson decision. I would be happy to review such a proposal at any time and seek funding from our City Council should the facts support the need for such supplemental studies.

2) "That the disparity study may not give us the legal authority to reject bids that do not have DBE subcontractors named."

Comments: It is clear that we cannot prejudge the specific outcome of the proposed study. Since we do not and indeed, cannot know what the study will establish factually, we cannot say for sure what types of remedial measures will be viewed as legally appropriate. I believe that set-asides are one tool among many which can and will assist our government in ensuring that minority and women owned businesses have an equal opportunity to participate in the public contracting opportunities which their tax dollars help to fund. However, we plan on designing the study such that it is capable of establishing the predicate for other types of programs or methodologies, as well. Thus, other types of assistance, such as percentage advantages in bidding, rewarding mentorships of MBE's and WBE's, focussing on employment and training of minorities and women in the construction trades, are some of the other areas in which I believe the disparity study will give us invaluable information and enhanced legal tools.

3) "That the State have input into the legality of the study, the contractor that conducts the study and the study's scope."

Comments: Fourteen governments and state agencies cooperated in the earlier "Predicate" study. It goes without saying that any multi-jurisdictional effort will involve a substantial amount of

The Honorable Barbara Roberts
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coordination on many fronts. At this time, an Intergovernmental Agreement is being prepared for the City, Multnomah County, and Metro to coordinate disposition of some of the key issues. Deputy City Attorney Madelyn Wessel who is staffing the disparity study from the City end is happy to work with your staff and has told Faye Burch and others of her willingness to do so many times. We will, however, soon be at a planning stage where the study and bid specifications have been contoured to fit the needs of those governments which have made a commitment to participate.

4) "That the State can't evaluate the estimated cost of \$700,000 until the City has defined the type of study it will conduct."

Comments: The "Predicate" analysis prepared by Sara Glasgow Cogan & Associates last year provided a "ballpark" estimate of approximately \$700,000 for a study meeting the needs of the fourteen study participants. Her study was submitted almost a year ago after the state and others had an extensive opportunity to comment and react to earlier drafts. We do not believe that any precise figure can be guaranteed of course, as the Cogan "Predicate" study and our own in-house estimates have necessarily been based on comparative figures from other jurisdictions which can only roughly be said to resemble the Portland region, or the state as a whole.

At this time we estimate our study costs to be roughly in the \$400,000 range, because we anticipate a focus on the tri-county "metropolitan" region. Should the state decide to participate, the scope of the study and its costs would undoubtedly increase. In assessing the potential cost of full or partial participation by the state, it seems obvious that you and your staff will need to determine what the state would like to address both geographically and in terms of industry "scope."

The Oregon Commission on Black Affairs made its recommendation for a disparity study in November of 1992. The intergovernmental "Predicate" study was completed in December of 1992. I wrote asking for your support for such a study in May of this year. The Portland City Council unanimously voted to support and fund a disparity study in June of this year. We continue to be interested in working with the state on a disparity study, but we are moving forward. Please let me know if any of my staff can be of assistance at any time. Deputy City Attorney Madelyn Wessel can be reached at (503) 823-4047. My Executive Assistant Sam Adams can be reached at (503) 823-4125.

The Honorable Barbara Roberts
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Thank you for your consideration of the proposed study.

With warm regards,



Vera Katz
Mayor

BARBARA ROBERTS
GOVERNOR



OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310-0370
TELEPHONE: (503) 378-3111

November 22, 1993

Judy Wyers
President
METRO
600 NE Grand
Portland, Oregon 97232

Dear President Wyers:

I would like to reinforce the State of Oregon's position on the regional disparity study. We are supportive, however, in any major decision involving state agencies we need to carefully evaluate the ramifications of the study with our legal counsel. I expect the City of Portland counsel, Maddelyn Wessel and State of Oregon counsel, Wendy Robinson will be meeting about our concerns this week. I'm sure your counsel would be welcome at this meeting.

As I said during our earlier conversation, I would recommend that METRO also consider being a partner in this regional study. Partnership can be in the form of dollars, staff assistance or legal counsel. I expect our participation to include a combination of all three.

Metro has a very good program thanks to the efforts of Rich Wiley and Amha Hazen, but all of our jurisdictions can and should do more to make contracting opportunities more equitable.

Sincerely

Faye Burch
Governor's Advocate for Minority, Women & Emerging Small Business

cc: Casey Short
Ed Washington
Maddelyn Wessel
Wendy Robinson
Rich Wiley
Amha Hazen



METRO

Date: November 30, 1993

To: Judy Wyers, Metro Council Presiding Officer

From: Neil Salinger, Director of Regional Facilities

Re: Questions Regarding Proposed Disparity/Predicate Study

The following responds to questions raised by you, Don Carlson and Casey Short in separate memorandums dated November 16 and 17, 1993.

General

The majority of the background for the proposed Disparity/Predicate (D/P) Study is contained in the Staff Report which accompanies proposed Resolution No. 93-1560. As you may recall, the Council-appointed committee which drafted Metro's present MBE/WBE program recommended the D/P study be undertaken. That same group testified before the Government Affairs Committee on November 18, 1993, making a strong argument for a study which would again require Metro to effectively set aside a portion of its contracts for minority enterprises.

There appears to be an implicit assumption on the part of the more vocal proponents for the D/P study that disparity resulting from discrimination will be found. Further, it is assumed that some form of set-asides will be at least one of the remedial measures. This may not be the case. It is also possible that a narrowly tailored remedial response would provide preferential opportunities only to firms who can document economic hardship due to Metro action or inaction. An important phase of the study is the determination of appropriate remedial measures given the extent of the disparity and the nature of its causes. Thus, in many respects, a complete answer to many of the questions posed would require the study be undertaken.

The Council should also be aware that Croson requires that remedial measures be taken in concert with a race and gender neutral program. This suggests that an Emerging Small Business (ESB) program, emphatically rejected by the Council-appointed committee, may need to be crafted and implemented at Metro.

Q1. What will be the benefit to Metro of taking part in the study?

A1. Mr. Short's response which follows succinctly states the qualitative response to this question:

"The policy decision of whether to participate in the study should be viewed in the context of Metro within the broader local government community and of Metro as an independent jurisdiction. Participation through the proposed intergovernmental agreement would clearly establish this agency as a partner with other jurisdictions in the region in taking steps to identify, and remedy to the applicable extent, past discrimination in certain sectors of the community."

Recognition by the minority community that Metro is willing to carefully examine the potential for discriminatory impacts and take appropriate corrective action is the only direct benefit to the agency. The study will cost the agency \$100,000 but, until the study is completed, any added costs for remedial programs are difficult to impossible to forecast. If set-asides and/or quotas are the extent of the remedial measures, our program costs would be only those accruing from a lack of competitive bidding. Other remedial programs, such as training or bond underwriting, could cost more.

Based on Metro's regional nature, it must be an active study participant to gain the broader study coverage. Similarly, the restriction of the study in the construction industry is not in Metro's best interest and Metro must make its desires known to preclude a narrow scope which provides only a portion of Metro's needs.

- Q2. What results can the study be expected to produce, and is the expenditure justified regardless of the outcome?
- A2. The study can be expected to produce statistical and anecdotal evidence of discrimination, probably not on the part of Metro. Here the question of discrimination against a firm or enterprise can be blurred by testimony of discrimination against an individual. The statistical analysis of minority firms may show that the use of those firms by Metro and other public agencies is proportionate to their availability. Such a result is not anticipated by the minority community, but Metro must be prepared to accept such a result. Metro would have no basis for preferential program absent the D/P study.
- Q3. What is the basis for the total study cost, Metro's share of the cost, and how will the study be conducted?
- A3. Metro's participation level of \$100,000 is patterned after Multnomah County. The overall study funds of \$375,000 are somewhat lower than those provided in other similar studies. A final scope of work has not yet been developed. (The Feasibility Study suggested a consultant be hired just to draft the Scope of Work.) The City of Portland is envisioned as the study leader.
- Q4. What is the status of other jurisdictions' participation in the study?
- A4. To date only the City of Portland and Multnomah County have expressed a strong interest in participating in the D/P study.
- Q5. What is the justification for splitting the cost of the study between the General and Support Service Funds?
- A5. The primary beneficiary of the study is the agency in general. A secondary "beneficiary" is the procurement system funded by the Support Service Fund. There is no formal paradigm for the division of the study costs.
- Q6. Who should be Metro's liaison to the City on this project?

- A6. Berit Stevenson will be the lead analyst for Metro. This reflects her familiarity with both procurement and construction practices. General Counsel will play a supporting role providing legal analysis and guidance. This mix will continue Metro's present practice of using legal staff as advisors/litigators, keeping project management in the department/administrative category.
- Q7. How much will the study cost Metro and how will Metro be obligated if there are additional costs beyond an original amount? Can we opt to spend fewer dollars?
- A7. Metro's recommended share in the D/P study cost is \$100,000 over two fiscal years. Metro Council can reserve to itself decisions on any added expenditures or choose to provide a lesser level of initial funding.
- Q8. Will Metro's financial participation ensure that Metro's interests in this issue will be fully reflected throughout the region, or will it serve merely to broaden the scope of the study?
- A8. Metro's participation in the study will require examination of the entire region. Thus, Metro's participation would broaden the scope of the study. Similarly, Metro may see a need to address industry sectors beyond those of interest to the City and the County.
- Q9. If the study is to concentrate on construction contractors (such as plumbers), what will be the benefit to Metro, given our anticipated reduction in construction activity?
- A9. A study addressing only construction firms and related specialty contractors would be of lesser utility to Metro than a study addressing multiple industry sectors.
- Q10. What authority will Metro have to ensure that any remedial measures can be effectively implemented, or would Metro be obligated to other jurisdictions for remedial costs?
- A10. Any remedial measures must be tailored to the agency. Thus, Metro would control its own remedial activities. Metro would not be obligated to another agency for remedial costs without some form of implementing agreement.
- Q11. Will Metro be able to participate in the preparation of the study's scope of work and the selection of the contractor to perform the study?
- A11. Yes. Participation in formulating the Scope of Work and in selection of the study contractor is a basis tenet of the Intergovernmental Agreement with the City.
- Q12. What legal liabilities might we assume by participating in the study if it finds that discrimination has occurred? Might a study show that public sector contracting in this community is actually high in proportion to the numbers of minority population and minority businesses in the region?

A12. The question of legal liability has been referred to the Metro General Counsel and will be addressed under separate cover. There is a distinct possibility that a careful statistical analysis might show that no disparity exists in Metro contracting with minorities when compared to the demographics of the minority population or to the available minority enterprises.

Q13. What has been the experience of jurisdictions that have performed similar studies, in terms of cost and results?

A13. Similar studies in King County and San Francisco have been more expensive, both in terms of consultant cost and staff time. The costs, as estimated in the Feasibility Study, were \$577,750 and \$1,522,000 respectively. The Feasibility Study estimate for a comparable study in the Portland area was \$700,000.

Major studies to date have found discrimination, but not in all industry sectors. The corrective action in most cases involved project goals and/or set-asides. Much of what is being done can be categorized as increased information flow, oversight and outreach. Metro now has many of these measures in place but without specific quotas or set-asides.

Q14. Who will participate in the study aside from the City of Portland?

A14. The study manager from the City is Madeline Wessel, an attorney. It is understood that she is directly responsible to Mayor Katz. No other City staff have been specifically identified.

Q15. Might Metro offer to provide staff support to the study effort, rather than commit dollars?

A15. Significant Metro staff effort is anticipated to support the study in addition to the commitment of funds. The level of staff support required of all participants may be better defined after a Scope of Work is crafted.

A summary of MBE/WBE participation in Metro contracting since the implementation of its present MBE/WBE/DBE program is attached.

Enclosure

cc: Don Carlson
Dick Engstrom
Dan Cooper
Berit Stevenson
Rich Wiley

METRO

MBE/WBE PARTICIPATION

JANUARY 1, 1993 - NOVEMBER 30, 1993

CATEGORY	TOTAL	MBE	%	WBE	%
PERSONAL SERVICES	2,762,743.00	335,279.00	12.14	154,688.00	5.60
LABOR & MATERIALS	3,874,176.00	31,582.00	0.82	122,284.00	3.16
CONSTRUCTION	9,556,603.00	483,651.00	5.06	285,290.00	2.99
PROCUREMENT	5,635,458.00	132,409.00	2.35	114,126.00	2.03
TOTAL	21,828,980.00	982,921.00		676,388.00	



METRO

Daniel B. Cooper
Tele: (503) 797-1528
FAX (503) 797-1792

December 9, 1993

The Honorable Judy Wyers
Metro Council Presiding Officer
600 N.E. Grand Avenue
Portland, OR 97232-2736

Re: Disparity Study

Dear Presiding Officer:

Neil Saling has referred to me a question that has been asked regarding the potential legal liability for Metro if it participates in the disparity study that has been proposed by the City of Portland.

Metro has two possible exposures to claims based on federal and state laws prohibiting discrimination based on race, ethnic status or gender. The first exposure is for claims based on allegations that Metro is an actor or active participant in discriminatory activity. The second area of exposure is to claims that Metro has policies or programs that unlawfully create preferences based on race, ethnic status or gender.

The purpose of the disparity study is to determine if there is a factual basis for Metro to adopt narrowly tailored programs to remedy past practices of discrimination by specific industries against specific racial, ethnic or gender based groups. This requirement for a study is based on federal court decisions City of Richmond v. J.A. Croson Company, 488 U.S. 469 (1989); Coral Construction Company and Columbia Chapter of the Associated General Contractors of American v. King County, 1991 U.S. App. (9th Cir. Aug 8, 1991). This Office has previously advised the Metro Council and Executive Officer that the Metro DBE/WBE program in effect at the time the Coral decision was rendered was in violation of the legal requirements established there. In order to avoid potential legal liability, the Council and Executive Officer took action to discontinue the previous program and adopted the current program which we believe is valid.

The Honorable Judy Wyers
December 9, 1993
Page 2

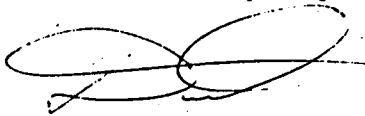
In order to find that past acts of discrimination have occurred that justify legislating further in this area Metro need not conclude or admit that it as an entity has engaged in prohibited conduct. Rather, it must establish that evidence exists that others have engaged in such conduct. However, Croson and Coral do not require that Metro determine which specific individuals have actually engaged in such practices or determine beyond a reasonable doubt that unlawful acts have occurred.

Neither Croson nor Coral require that a municipality "admit liability" before adopting a remedial program. Based on our general knowledge and experience, as well as due inquiry into Metro's affairs, this Office believes that Metro itself as an entity has not engaged in any prohibited acts of discrimination. Metro officials have certified to the federal government on an annual basis the absence of such discrimination, and we believe there is currently no basis for finding that Metro has any legal liability for past acts of discrimination.

The context in which the disparity study will be conducted is based on an assumption that Metro has no duty to remedy past discrimination. Such a finding of a duty could only arise out of a prosecution or investigation by a federal or state authority and would be in the form of a court order or other remedy. That is not the case in the disparity study. Rather, the proposed study and the court opinions in Croson and Coral reflect that such a study is a requirement if a local government decides as a policy matter to initiate a remedial program to correct the affect of discrimination on the part of others.

In this context, the study is not necessarily a sword that will result in potential liability for its sponsors. However, if the study does reveal that Metro has in fact actively engaged in prohibited activity, Metro officials may have a duty to report this matter to the appropriate authorities.

Yours very truly,



Daniel B. Cooper,
General Counsel

gl
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Meeting Date: January 13, 1994
Agenda Item No. 7.1

RESOLUTION NO. 94-1860A

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

RESOLUTION NO. 93-1860A, AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN IGA WITH THE CITY OF PORTLAND FOR A PREDICATE STUDY

Date: December 21, 1993

Presented by: Councilor Hansen

COMMITTEE RECOMMENDATION: At its December 16, 1993 meeting the Governmental Affairs Committee voted 4-1 to recommend Council adoption of Resolution No. 93-1860A. Voting in favor were Councilors Gates, Gardner, Hansen, and Wyers. Councilor Moore voted in opposition.

COMMITTEE DISCUSSION/ISSUES: Discussion of this resolution is addressed in the committee report on Ordinance No. 93-521A. There were only two issues discussed that were specific to the resolution. The first was Councilor Gardner's point in moving Council adoption of the resolution that his motion included amending the Intergovernmental Agreement to stipulate that Metro's commitment was "up to" \$50,000 for 1993-94 and 1994-95. This had been discussed in deliberations on the ordinance.

The second issue concerned who is to be Metro's Project Manager for the disparity study. Council Analyst Casey Short said the IGA stipulates Amha Hazen as project manager, but Mr. Short's discussions with former Regional Facilities Director Neil Saling indicated Mr. Saling intended to name Berit Stevenson as project manager. Mr. Short said he wanted to raise this issue with the committee so they would know the question of who is to manage the project for Metro might be raised when Council considers the resolution. Councilor Wyers asked why General Counsel was not designated as project manager. Mr. Short suggested he work with General Counsel Dan Cooper and Deputy Executive Officer Dick Engstrom to determine whom to recommend as project manager. Councilor Wyers agreed to let staff work this out, but supported naming a representative from General Counsel as project manager because that office is responsible to both Council and the Executive Officer.

[Note: The version of the resolution before Council will contain the amendment approved by the committee, which states, "That Metro intends to contribute up to \$50,000 in both the 1993-94 and 1994-95 fiscal years. . ." (page 2, Section 2). As of this writing, the name of the Metro project manager has been deleted, pending assignment of that responsibility. The IGA also deletes reference to Neil Saling, Regional Facilities Director, as the recipient of legal notices pertaining to the agreement.]

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 93-1860A
THE EXECUTIVE OFFICER TO)	
EXECUTE AN INTERGOVERNMENTAL)	
AGREEMENT WITH THE CITY OF)	Introduced by Rena Cusma,
PORTLAND FOR A PREDICATE STUDY)	Executive Officer

WHEREAS, a group of procurement professionals from various governmental agencies have met since October, 1991 to discuss and share information on their past and present minority and women-owned business enterprise (MBE/WBE) programs; and

WHEREAS, the group determined that, if MBE/WBEs were to receive preferential procurement treatment to remedy the present effects of past discrimination, a predicate study documenting past discrimination would be necessary; and

WHEREAS, the Metro Council in September, 1992 authorized a Multi-Jurisdictional Statement of Mutual Understanding supporting and permitting a feasibility study to be pursued by Multnomah County as a precursor to a major predicate study; and

WHEREAS, that study by Sara Glasgow Cogan & Associates outlined the requirements for and projected costs of such a multi-jurisdictional predicate study; and

WHEREAS, the City of Portland has endorsed a regional approach to such a predicate study, authorized \$175,000 in funding and directed the Mayor to seek funding partners to complete such a regional study; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute an intergovernmental agreement with the City of Portland in substantial conformance with Exhibit A attached, so as to support and promote a regional predicate study.

ADOPTED by the Metro Council this _____ day of _____, 1993.

Judy Wyers, Presiding Officer

Exhibit 1

INTERGOVERNMENTAL AGREEMENT
FOR THE PURSUIT OF A
REGIONAL MBE/WBE DISPARITY STUDY

THIS Agreement is entered into between METRO, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the City of Portland, hereinafter referred to as CITY, located at 1120 S.W. Fifth Avenue, Portland, Oregon 97204.

W I T N E S E T H

WHEREAS, CITY has generated a "Fair Contracting and Employment Initiative " wherein it proposes to initiate the start-up funding for a Regional Disparity Study which would provide the "statistical underpinnings" for enforceable Minority and Women-Owned Business Enterprise (MBE/WBE) Opportunity Goals as outlined in Section Five of the draft attached hereto as Exhibit A (and hereinafter referred to as the Study); and

WHEREAS, METRO acting by a through its Executive Officer and Council concurs that those negatively impacted by past discrimination deserve immediate, preferential and remedial action, and the findings of a Regional MBE/WBE Disparity Study are essential to the establishment of such programs; and

WHEREAS, METRO supports a cooperative regional approach among governments to accomplish such a Study and seeks to contribute to the initial start-up funding as proposed by City; and

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the parties hereto as follows:

CITY AGREES:

1. To act as lead agency in the solicitation of funding partners to complete a regional disparity study including the Metropolitan Exposition Recreation Commission and Multnomah, Clackamas and Washington Counties; and
2. To act as a competent and professional independent contractor for all aspects of the Study and for all Study purposes without specific compensation save the Study contribution referenced herein; and
3. To secure all services, document all work products, and complete all tasks required for completion of a regional disparity study within METRO boundaries and in accordance with METRO Study Requirements attached hereto as Exhibit B; and

4. To ensure that the CITY's Project Manager provides periodic written progress summaries and meets with the METRO Project Manager each month during the course of this Agreement to discuss all developments and outline the progress of all tasks related to the Study; and
5. To provide METRO with all documentation generated by the Study without further solicitation and at no additional cost; and
6. To document and acknowledge on all final documents arising from this Study that partial funding was provided by METRO; and
7. To hold harmless, indemnify, protect and defend upon request METRO and its officers, employees and agents from any and all claims, suits or actions of any nature, including, but not limited to all costs and attorney fees arising out of or related to CITY's study activities or those of its officers, subcontractors, agents or employees.

If CITY fails to defend or indemnify METRO, METRO may, at its option, bring an action to compel same or undertake its own defense.

In either event, CITY shall be responsible for all of METRO's costs, expenses and attorney fees including the reasonable market value of any services provided by METRO employees.

METRO agrees:

1. That it supports CITY's intent to pursue a Regional MBE/WBE Disparity Study as outlined hereinabove and seeks to facilitate the Study's immediate commencement; and
2. That METRO intends to contribute up to \$50,000 in both the 1993-94 and 1994-95 fiscal years for a total commitment to the Study cost of up to ONE HUNDRED THOUSAND AND NO/100THS (\$100,000.00) DOLLARS; and
3. That METRO's contribution will be strictly limited to the above amount and there are no further obligations expressed or implied by such action; and
4. That METRO neither intends or seeks any direct involvement, sponsorship privileges or supervisory responsibilities for this project except at the behest of CITY; and
5. That it will, from whatever records currently exist, provide information on its past competitive bidding, contracting and MBE/WBE activities; and
6. That METRO may withhold funding and terminate this Agreement in whole, or in part, at any time prior to Study completion, if METRO, in its sole discretion, determines that CITY has failed to comply with the terms and conditions of this agreement.

In the event of such action, METRO shall promptly notify CITY in writing as to the circumstances and the reasonable means, if any, for resolution.

BOTH PARTIES AGREE:

1. That METRO's Project Manager shall be ~~Amha Hazen, MBE/WBE Advocate, acting appointed by and act~~ on behalf of METRO's Liaison Officer, ~~Neil E. Saling~~, who is specifically authorized to review and approve all activities and work products; and
2. That CITY's Project Manager shall be Madelyn Wessel, Deputy City Attorney or other person designated in writing by the Mayor, and she is specifically authorized to execute all project tasks and render all project services; and
3. That all legal notices provided under this Agreement shall be delivered personally or by certified mail to the individuals and addresses listed herein below and that they may only be changed by written notice delivered in accordance with this provision:

CITY:

Madelyn Wessel
Deputy City Attorney
City of Portland
1120 S.W. Fifth Avenue
Portland, Oregon 97204

METRO:

~~Neil E. Saling~~
Director, Regional Facilities
Metro
600 N.E. Grand Avenue
Portland, Oregon 97232

4. That both parties shall hold harmless, indemnify, protect and defend the other and its officers, employees and agents from any and all claims, suits or actions of any nature, including, but not limited to all costs and attorney fees arising out of or related to these Study activities or those of its officers and employees; and
5. That execution of this Agreement does not bind either party to the findings and recommendations of the Study; and
6. That this Agreement may be terminated in whole, or in part, whenever both parties agree that the continuation of the Study will not produce the beneficial results anticipated or results commensurate with the proposed level of funding; and

That if termination is required, the parties shall agree upon the terms, conditions and effective date(s) for such action, or in the case of partial termination, the specific Study aspects or activities to be abandoned; and

7. That this is the entire Agreement between the parties. There are no understandings, agreements or representations, oral or written, not specified herein.

No waiver, consent, modification or change of terms shall bind either party unless committed to writing and signed by both parties, and if such action is taken, it shall be effective only in the specific instance and for the specific purpose given; and

8. That if any portion of this Agreement is found to be illegal or unenforceable, this Agreement shall nevertheless remain in full force and effect and the offending provision shall be stricken; and
9. That this Agreement is binding on each party, its successors, assigns and legal representative and may not, under any circumstances or conditions, be assigned or transferred by either party; and
10. That the situs of this Agreement is Portland, Oregon. Any litigation over this Agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

CITY, by signature of its duly authorized representative, hereby acknowledges that it has read, understands and agrees to be bound by the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth below.

CITY OF PORTLAND

METRO

By: _____

By: _____

Vera Katz, Mayor

Rena Cusma, Executive Officer

By: _____

Barbara Clark, Auditor

APPROVED AS TO FORM

By: _____

By: _____

Madelyn Wessel
Deputy City Attorney

Daniel B. Cooper
General Counsel

Meeting Date: January 13, 1994
Agenda Item No. 7.2

RESOLUTION NO. 94-1868



METRO

DATE: December 7, 1994

TO: Metro Council
Executive Officer
Agenda Recipients

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 7.2; RESOLUTION NO. 94-1868

The Planning Committee considered this item on Thursday, January 6. The Committee report will be distributed in advance to Councilors and available at the Council meeting January 13.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING AN) RESOLUTION NO. 93-1868
INTERGOVERNMENTAL AGREEMENT FOR)
MANAGEMENT OF THE WILLAMETTE) Introduced by
SHORE LINE RIGHT-OF-WAY) Councilor Van Bergen

WHEREAS, In 1988, a Consortium of local jurisdictions (consisting of Metro, ODOT, Tri-Met, Multnomah County, Clackamas County, the City of Portland and the City of Lake Oswego) purchased the Jefferson Street branch rail line from the Southern Pacific Railroad in order to preserve it for possible use in the future as a high capacity transit corridor; and

WHEREAS, The legal name for the right-of-way is the "City of Portland Shore Line Right-of Way" and it is commonly referred to as the Willamette Shore Line Right-of-Way; and

WHEREAS, The right-of-way is approximately seven miles long and varies in width from 17 feet to 80 feet, and is owned primarily in fee title, but contains areas conveyed through easements; and

WHEREAS, The Consortium wishes to preserve the rail line right-of-way until such time as the region may decide to use it for High-Capacity Transit Purposes; and

WHEREAS, Encroachments into the right-of-way are occurring as a result of new development and expansion of existing development adjacent to the right-of-way; and

WHEREAS, The seven-mile right-of-way has numerous public and private at-grade roadway and pedestrian crossings which present significant problems for the safe operation of the trolley; and

WHEREAS, Requests for additional at-grade crossings are being made and new at-grade crossings are being created without permits or Consortium approval; and

WHEREAS, Access to some private property in the vicinity of the right-of-way requires crossing the right-of-way and, in some cases, requires direct private access to Highway 43; and

WHEREAS, A policy needs to be established to guide permitting jurisdictions in advising the public and reviewing new crossing requests; and

WHEREAS, Members of the Consortium have consulted in the development of a policy for management of the right-of-way; and

WHEREAS, A public meeting was held on September 14, 1993 to review the draft policy and receive public comments on the draft policy; and

WHEREAS, Notice of the public meeting was sent to approximately 600 property owners in the vicinity of the corridor; and

WHEREAS, Approximately 100 persons attended the public meeting and provided comments and suggestions; and

WHEREAS, The draft policy has been revised in response to many of the public comments received at the public meeting; and

WHEREAS, The revised policy provides for safer operation of the trolley line, limits encroachments into the right-of-way and provides for revocable permits for crossing of the right-of-way; now, therefore

BE IT RESOLVED,

1. That Metro Council authorizes the Executive Officer to execute an Intergovernmental Agreement for the management of the Willamette Shore Line Right-of-Way, (see Exhibit A).

2. That staff be directed to continue working with Consortium members to implement the provisions of the Intergovernmental Agreement and the Willamette Shore Line Right-of-Way Management Policy (see Exhibit B).

ADOPTED by the Metro Council this ____ day of _____, 1993.

Judy Wyers, Presiding Officer

Exhibit A - Intergovernmental Agreement

Exhibit B - Willamette Shore Line Right-of-Way Management Policy

INTERGOVERNMENTAL AGREEMENT FOR THE MANAGEMENT
OF THE
WILLAMETTE SHORE LINE RIGHT-OF-WAY

THIS AGREEMENT is entered into by and between the CITY OF PORTLAND, OREGON (Portland), METRO (Metro), the CITY OF LAKE OSWEGO, OREGON (Oswego), MULTNOMAH COUNTY, OREGON (Multnomah), CLACKAMAS COUNTY, OREGON (Clackamas), TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (Tri-Met), and the STATE OF OREGON DEPARTMENT OF TRANSPORTATION (ODOT). The parties shall collectively be referred to as the "Consortium."

RECITALS:

- A. Portland and Oswego are municipal corporations of the State of Oregon organized and existing under the laws of the state of Oregon. Multnomah is a home rule political subdivision, and Clackamas is a general law county of the State of Oregon organized and existing under the laws and constitution of the State of Oregon. Metro is a municipal corporation of the State of Oregon with its own home rule charter. Tri-Met is a mass transit district of the State of Oregon established under Chapter 267 of Oregon Revised Statutes. ODOT is an administrative agency of the State of Oregon.
- B. This Agreement is entered into pursuant to Chapter 190 of Oregon revised Statutes.
- C. In December 1986, the Consortium entered into an Intergovernmental Agreement to Option and lease the Jefferson Street Rail Line (the "Line"). That intergovernmental agreement was amended to include Tri-Met.
- D. In August 1987, the Consortium entered into an Intergovernmental Operations Agreement.
- E. In June 1988, the Consortium entered into an Intergovernmental Agreement for the Purchase of the Jefferson Street Rail Line. That agreement stated that it was the Consortium's desire to preserve the line for possible future mass transit use.
- F. Since the purchase of the line, the Consortium has recognized the need to address a variety of issues which affect its ability to so preserve the line. Those include: encroachments into the right of way; unpermitted crossings of the right of way; requests from developers and property owners to cross the right of way; and the development of abutting property. In addition, the Consortium has become aware of federal funding opportunities, which require the development of a long term plan for the use of the line.
- G. The Consortium members desire to enter into an intergovernmental agreement which provides a structure for the long term governance of the line during this period of its preservation for possible future uses.

TERMS:

1. **Consortium Established.** The participating jurisdictions formally constitute themselves as the Willamette Shore Line Consortium for the overall management of the Line. Each jurisdiction will appoint as its representative to the Consortium either its director of planning or its director of transportation or someone of similar position who is authorized to speak on a policy level for the jurisdiction.

2. Consortium Chair and Staff. Metro's representative will be the initial Chairperson of the Consortium. Tri-Met and Metro will provide technical and administrative staff for the Consortium.

3. Regular Meetings. The Consortium will meet at least annually. The Consortium will be convened at the request of any of its members. A majority of the Consortium members shall constitute a quorum for the transaction of business at any meeting. The act of the majority of the members present at any meeting at which a quorum exists shall be the act of the Consortium.

4. Right-of-Way Protection. The local general purpose government with geographic jurisdiction over a rail segment will be responsible for receiving applications and issuing right-of-way "incursion" permits relevant to that segment. As part of the permit application, an applicant will be required to obtain a Tri-Met technical review based on the "Shore Line Right-of-Way Management Policy" attached to the Agreement, as amended by the Consortium from time to time. Tri-Met will be responsible for making engineering judgments, where called for by the Policy. The permitting jurisdictions will be obligated to abide by Tri-Met's engineering recommendations, including the denial of permits where the Policy as applied indicates denial and the attachment of conditions where the Policy as applied so indicates; except that, should a permitting jurisdiction disagree with the engineering recommendations made by Tri-Met, it may appeal such decision to the Consortium. The decision of the Consortium shall be followed by the permitting jurisdiction. Copies of any such right-of-way permits shall be forwarded to the right-of-way title holder.

5. Right of Way Ownership. The City of Portland will continue to be the title holder for the right-of-way, for the benefit of the Consortium. As title holder, the City will receive notice of all "incursion" permits issued.

6. Current Operations and Maintenance. Current operation and maintenance of the right-of-way will continue as provided in the current Lake Oswego/Portland agreement, until that agreement is changed.

7. Defense of Claims. All Consortium members agree to consult as soon as possible upon any member receiving a notice of a claim arising out of any activity related to the preservation of the Line. Should the Consortium decide to defend against the claim, all members will participate as parties in a coordinated defense. Should the Consortium decide not to defend against the claim, those jurisdictions against which the claim has been filed may decide on their own how to respond to the claim. Should a claim result in either an award of damages or a settlement, the Consortium members will determine by agreement the appropriate allocation of those costs. Each member will bear the costs of its own legal counsel.

8. Changes in Use. Changes in use of the right-of-way will be subject to Consortium approval.

9. Interim Planning and Coordination. The Consortium will consider adoption of an Interim Plan for improvements to and use of the right-of-way. Any Consortium member may propose expenditures for capital improvements to the right-of-way or related to its use. To assure coordination of capital expenditures, any such expenditures will be subject to Consortium approval.

10. Land Use in Areas Abutting Right-of-Way. Metro will coordinate the development of a model land use regulation to assure that the development of land

immediately abutting the right-of-way is consistent with potential transit uses of the right-of-way. This model regulation will be proposed to Portland, Lake Oswego, and Clackamas and Multnomah Counties for their adoption.

11. Term of Agreement. The term of this Agreement shall be for ten years and may be renewed for a like term upon the approval of the individual members.

CITY OF PORTLAND, OREGON

APPROVED AS TO FORM

By: _____

By: _____

By: _____

CITY OF LAKE OSWEGO, OREGON

APPROVED AS TO FORM

By: _____

By: _____

By: _____

MULTNOMAH COUNTY, OREGON
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM

By: _____

By: _____

CLACKAMAS COUNTY, OREGON
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO FORM

By: _____

By: _____

METRO

APPROVED AS TO FORM

By: _____

By: _____

OREGON DEPARTMENT OF
TRANSPORTATION

APPROVED AS TO FORM

By: _____

By: _____

TRI-COUNTY METROPOLITAN TRANS-
PORTATION DISTRICT OF OREGON

APPROVED AS TO FORM

By: _____

By: _____

Willamette Shore Line Right-of-Way Management Policy

I. Need for a Policy

1. A Consortium of Local Governments (Metro, ODOT, Tri-Met, Multnomah County, Clackamas County, the City of Portland and the City of Lake Oswego) purchased the Willamette Shore Line Right-of-Way in 1988 from the Southern Pacific Railroad to preserve it for possible use as a future high capacity transit corridor.
2. The right-of-way extends for approximately 7 miles from the base of the Marquam Bridge, south along the old Southern Pacific rail line into the City of Lake Oswego. The right-of-way varies in width from 17 feet to 80 feet, and is generally held in fee title by the City of Portland for the Consortium. In some limited segments, ownership was conveyed by easement.
3. The Consortium had not established a policy for management of the right-of-way in the interim period. The interim period is the period before a regional decision is made to utilize the right-of-way for High Capacity Transit purposes.
4. The integrity of the right-of-way for use as a high capacity transit corridor has been incrementally diminished over the past few years due to new and existing development encroaching into the right-of-way. This includes new public and private vehicular and pedestrian at-grade crossings that are being built which threaten the safe and continued operation of the trolley.
5. The Consortium believes that continued use of the corridor for trolley purposes is an appropriate interim use.
6. Interim management of the right-of-way requires the establishment of a policy that defines when uses and crossings of the right-of-way are appropriate without diminishing the longer term goal of development of the right-of-way for High Capacity Transit purposes.
7. Additional regulation of new development on lands adjacent to the right-of-way may be necessary to adequately preserve the corridor for future development of high capacity transit and to minimize the impacts and costs of eventual development of the right-of-way on adjacent uses and neighborhoods.
8. Definition of interim development standards is necessary to facilitate development that will occur in areas adjacent to the right-of-way, before a regional decision is made as to the type of high capacity transit that will be developed within the Shore Line Right-

of-Way. Light Rail Transit (LRT) design standards have been developed by Tri-Met, because LRT has thus far been the high capacity transit mode of choice in the region.

9. There are two types of at-grade vehicular railroad crossings:
 - a. Public Crossings. These operate as public streets in that they are unrestricted with respect to who may use them. Depending on the location and type of crossing control, public rail line crossings in Oregon are regulated either by the state Public Utility Commission (PUC) or by the local traffic jurisdiction. In general, traffic signals are used for rail line crossings where trains operate within a street right-of-way and are controlled by the local traffic jurisdiction. The PUC generally requires railroad gates to be used at crossings where rail lines operate in exclusive right-of-way and are crossed at-grade by public streets, a condition that applies to many crossings of the Willamette Shore Line Right-of-Way.
 - b. Private Crossings. Private crossings are associated with private uses such as driveways, not public streets. They are established by agreement between the rail line owner and the private party desiring to cross the right-of-way, and generally would not be regulated by the PUC.
10. Conditions found at typical private at-grade crossings along the Willamette Shore Line Right-of-Way are significantly different from those at public street crossings. In general neither traffic signals, nor gates can offer a satisfactory level of safe crossing control. For instance:
 - a. Neither gates or traffic signals can provide adequate protection for children or pets in a driveway situation.
 - b. Private crossings allow access into the rail right of way which could otherwise be fenced from public access for safety purposes.
 - c. An at-grade crossing creates a break in any noise wall that might be provided, significantly reducing the noise wall's effectiveness. Also, crossing bells, mandated by the PUC, could create a significant noise impact.
 - d. The permittee (depending on the crossing permit provisions) is generally responsible for construction of the crossing, safety devices, insurance and maintenance costs. The financial and legal liabilities associated with a private crossing are a burden on the property's use and may be reflected in the property's value.

For these reasons, private at-grade crossings of rail lines are seldom justified.

11. Upgrading the Willamette Shore Line Corridor to high capacity transit standards would require major safety improvements at all private at-grade crossings. This could involve the replacement of most private at-grade crossings with pedestrian or vehicular grade separations, or by providing alternative access in order to close some private crossings.
12. There are some privately owned lands between the Willamette Shore Line Right-of-Way and the Willamette River that would not have access to a public road without crossing the right-of-way. However, in many cases access could be combined for more than one property, or achieved through crossing other private property such as through creation of access roads.

II. Right-of-way Management Goals

- 1. To manage the right-of-way in a manner that preserves it for possible future development of high capacity transit.**
- 2. To provide factual information to the public regarding possible future use of the right-of-way for high capacity transit.**
- 3. To provide a safe operating environment for continued operation of the Trolley and to enhance the safety of the right-of-way for eventual future use for high capacity transit purposes.**
- 4. To prohibit temporary or permanent uses within the right-of-way which will increase the cost of developing the right-of-way for transit or other purposes in the future.**
- 5. To prohibit new private at-grade crossings of the right-of-way, and work to phase out existing private at-grade crossings of the right-of-way.**
- 6. To coordinate crossings of the right-of-way with ODOT's access management goals, plans and policies for the Highway 43 Corridor.**
- 7. To develop and maintain access to the right-of-way for Operations and Maintenance, Emergency Repairs, and Capital Improvements.**
- 8. To ensure that private property owners are not prohibited from accessing their property, while ensuring conformance with these Management Goals and Policies.**

III. Right-of-way Management Policy

This policy is intended to apply only to the land within the right-of-way owned by the Consortium either by fee title or by easement. The policy does not apply to abutting privately owned property. All development within the right-of-way shall be in accordance with a revokable permit (and the conditions therein) issued by the appropriate local jurisdiction, in conformance with this "Willamette Shore Line Right-of-Way Management Policy".

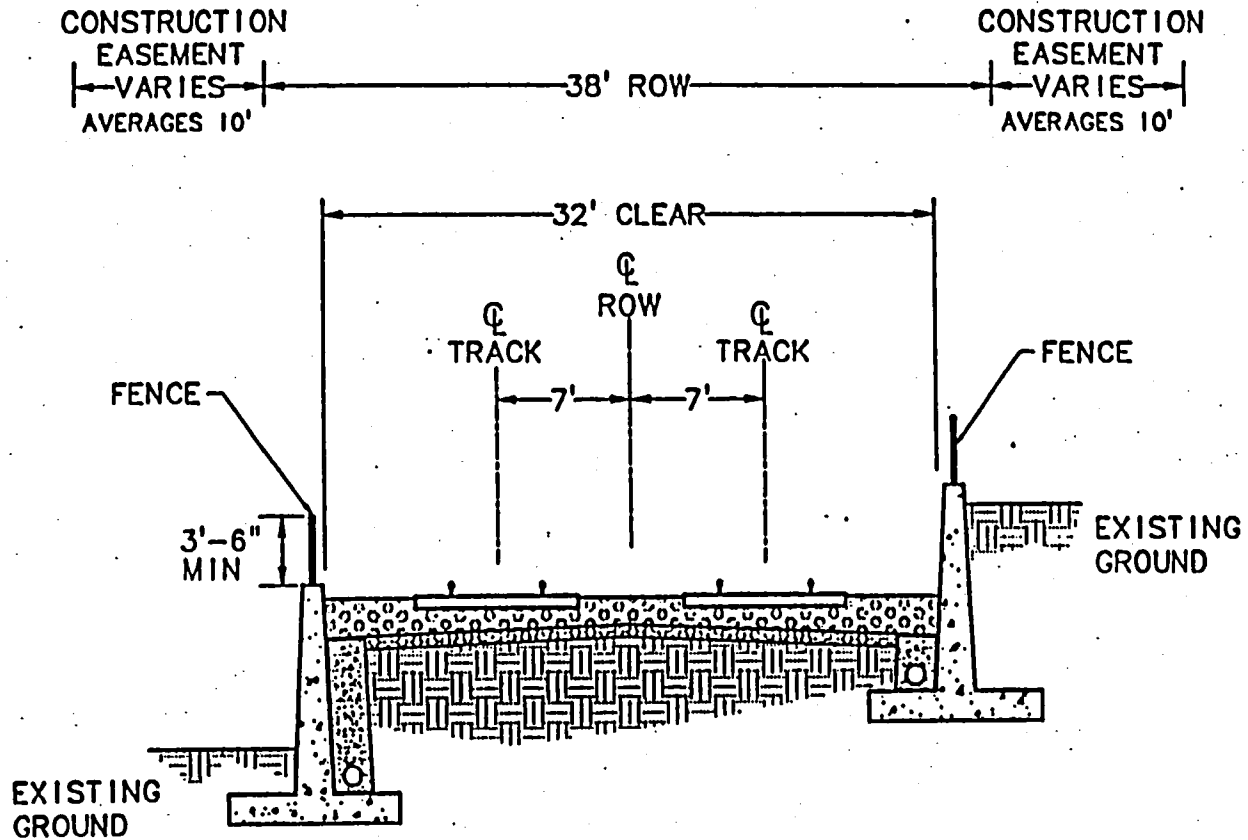
Light Rail Transit (LRT) design standards have been developed by Tri-Met, because LRT has thus far been the high capacity transit mode of choice in the region. Therefore, Tri-Met's existing LRT design standards will be used as interim standards, until such time as the region makes a decision regarding development of the Willamette Shore Line Right-of-Way. These standards are briefly illustrated in figures 1 and 2. These illustrations are not intended to represent the full standards, but to illustrate the more common issues related to the management of the Willamette Shore Line Right-of-Way. For additional details related to the standards, contact Tri-Met.

In addition to the LRT design standards, the following policies and standards shall apply to all development within the right-of-way.

Uses Permitted Within the Right-of-Way

1. Only uses that are consistent with eventual use of the right-of-way for a future high capacity transit corridor will be permitted within the right-of-way.
2. No grading shall be permitted within the right-of-way except where required for an approved crossing, or to improve drainage of the right-of-way. All grading or drainage changes within the right-of-way must be in accordance with a permit approved by the Rail Representative.
3. No vehicle backup or other maneuvers will be allowed within the right-of-way, and all vehicular turn arounds shall occur on abutting private property.
4. No fixed improvements (including, but not limited to; landscaping, fountains, benches, rockeries, fences, irrigation facilities, parking pads, sidewalks or paths, gates, driveways or steps) shall be permitted within the right-of-way that would mean a loss of significant investment, upon removal. Notwithstanding the above, facilities for the safe function of existing crossings may be allowed through a permit.

WHERE EXISTING ROW IS LESS THAN 60' ELEMENTS OF THE
MINIMUM SECTION DESIGN MAY BE REQUIRED



NOTES:

- 1 SOUND WALLS, IF REQUIRED, NOT SHOWN
- 2 STANDARD VERTICAL CLEARANCE 18' ABOVE TOP OF RAILS
- 3 C = CENTERLINE
- 4 REFERENCE WESTSIDE CORRIDOR PROJECT DESIGN CRITERIA, JULY 1993

LRT DESIGN
STANDARDS



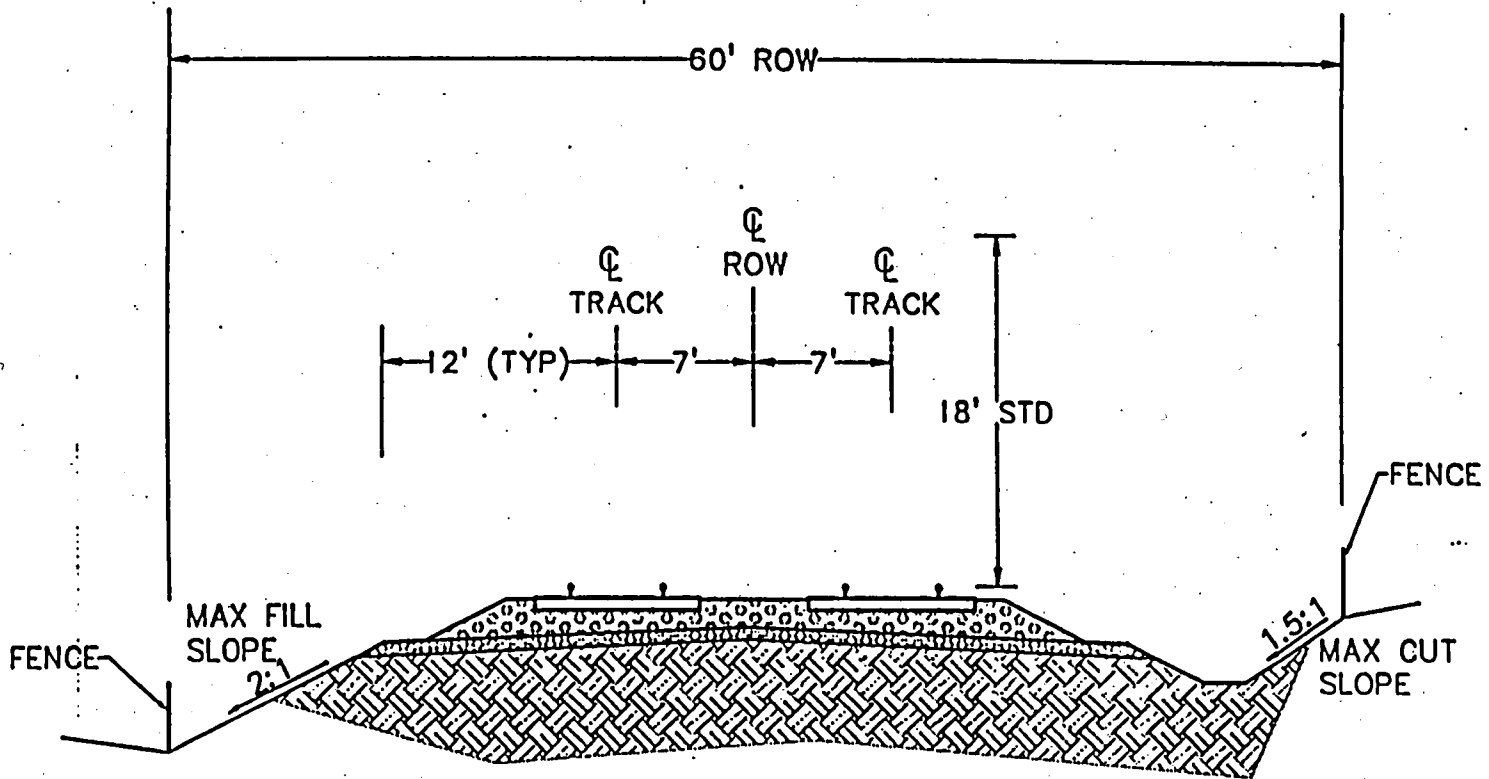
LRT CROSS SECTION

MINIMUM

Figure 1

OCT 93

UB/LRTX2



NOTES:

- 1 SOUND WALLS, IF REQUIRED, NOT SHOWN
- 2 STANDARD VERTICAL CLEARANCE 18' ABOVE TOP OF RAILS
- 3 CL = CENTERLINE
- 4 REFERENCE WESTSIDE CORRIDOR PROJECT DESIGN CRITERIA, JULY 1993

Figure 2

5. Private landscaping is not allowed in the right-of-way, except as provided for in a revokable permit. A revokable permit may be issued for temporary landscaping for areas not currently required for rail operation or maintenance purposes when in conformance with the landscaping standards below.

Landscaping standards for use within the right-of-way:

1. The private landscaping shall not interfere with the current or future operations, maintenance or safety (including sight lines) as determined by the rail representative responsible for operation and/or maintenance.
2. Landscaping that could increase the cost of development of the right-of-way for high capacity transit purposes will not be permitted.
3. Landscaping within the right-of-way will not be designed or developed as an integral part of a total landscaping design for the abutting private property.
4. The landscaping shall not include any improvements of uses (fixed or not) that would, on removal, mean a loss of significant investment to either the public owners or the abutting private property owners. This includes but is not limited to plantings, shrubs, trees, buffers or irrigation systems.
5. Maintenance of the landscaping shall not require irrigation or watering of the right-of-way or the installation of irrigation systems within the right-of-way. This provision does not apply to public agencies or utilities.
6. All landscaping shall be maintained by the permittee. The public owners retain the right to bill the permittee for costs incurred for maintenance or removal of any of the landscaping improvements made by an adjacent property owner, or other uses within the right-of-way that create an operational hazard.
7. Permits will be revoked for non-compliance with any conditions of the permit, and may be revoked at any time the permitting jurisdiction or the consortium determines that it is in the interest of the owners of the right-of-way.

Permitted Crossings of the Right-of-Way

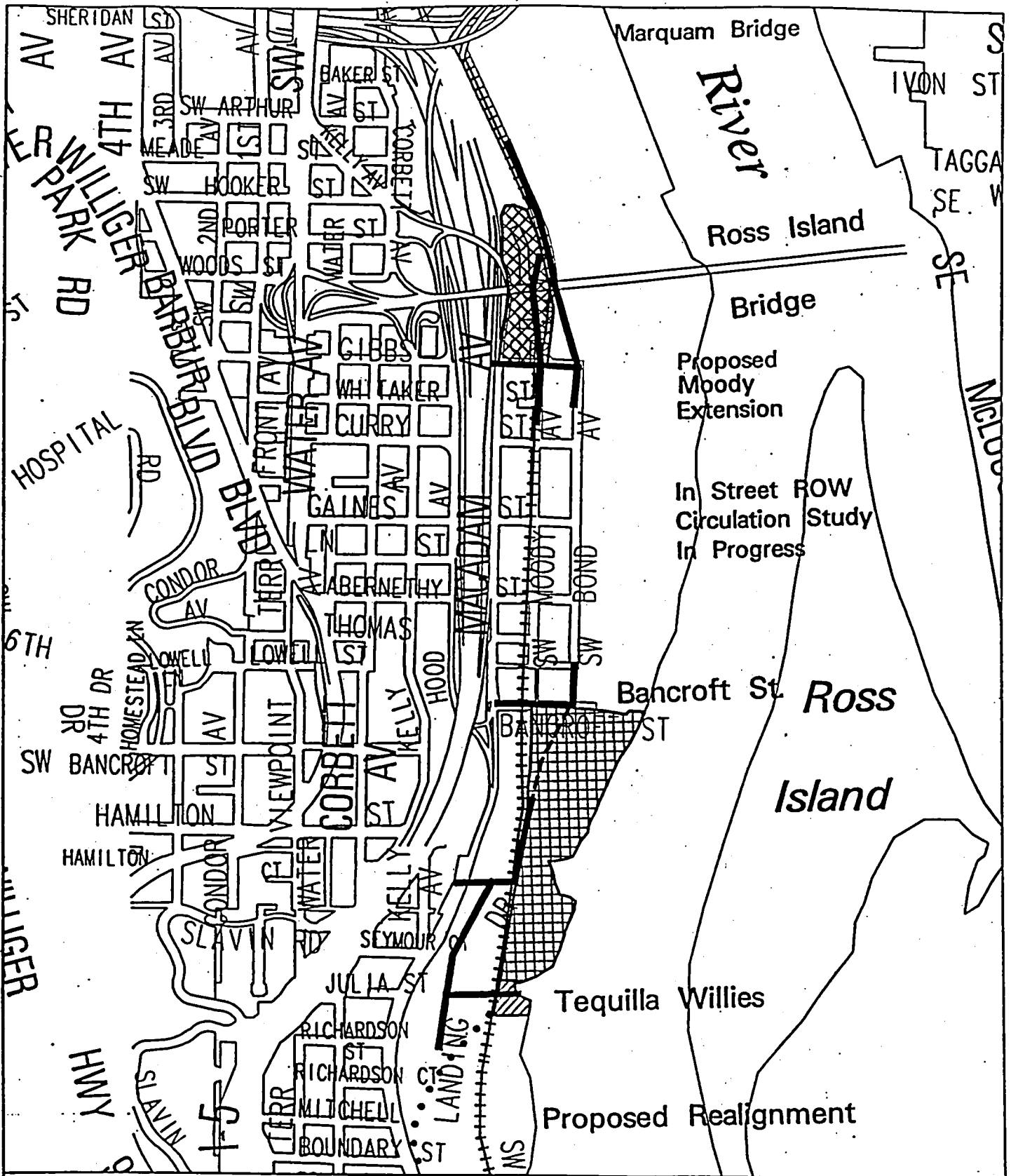
1. No new private at-grade crossings of the right-of-way shall be permitted. No new crossings of the right-of-way shall be permitted if an alternative access to the subject property is available. New crossings of the right-of-way may be permitted for access to properties between the right-of-way and the Willamette River only when no

alternative access exists, and then only when in conformance with the LRT design standards.

2. The "Conceptual Crossing Plan" (Figures 3, 4, 5, and 6) are intended to illustrate the possible public access routes for areas between the right-of-way and the Willamette River.
3. Requests for new right-of-way crossings shall be coordinated with ODOT for conformance with ODOT's access management goals, plans and policies applicable to the Highway 43 Corridor.
4. All crossings shall provide for Consortium access to the right-of-way for operations and maintenance, emergency repairs, and capital improvements of the right-of-way.
5. The Consortium will work with adjacent private property owners to phase out existing at-grade private crossings as properties are altered or redeveloped, and as applications are made for land use or building permits. Methods for phasing out private at-grade crossings include; consolidating crossings, replacing crossings with alternative access, and creating grade separated crossings by replacing an at-grade crossing with a bridge over the right-of-way or an underpass.
6. Utility crossings, including drainage crossings shall require a permit and shall be constructed in conformance with Tri-Met's LRT Standards.
7. Construction and maintenance of all private crossings shall be the responsibility of the permittee. The Consortium or local jurisdiction may bill the permittee for any costs incurred by the Consortium or local jurisdiction for maintenance or repairs associated with a private uses or crossings of the right-of-way.
8. All crossings shall be consistent with the need to ensure the long-term public safety and avoidance of nuisance throughout the corridor. This includes improving the operational characteristics of the interim Trolley use and for a future high capacity transit use, through minimizing and improving the crossings of the right-of-way.

IV. Process regarding issuance of right-of-way crossing or use permits

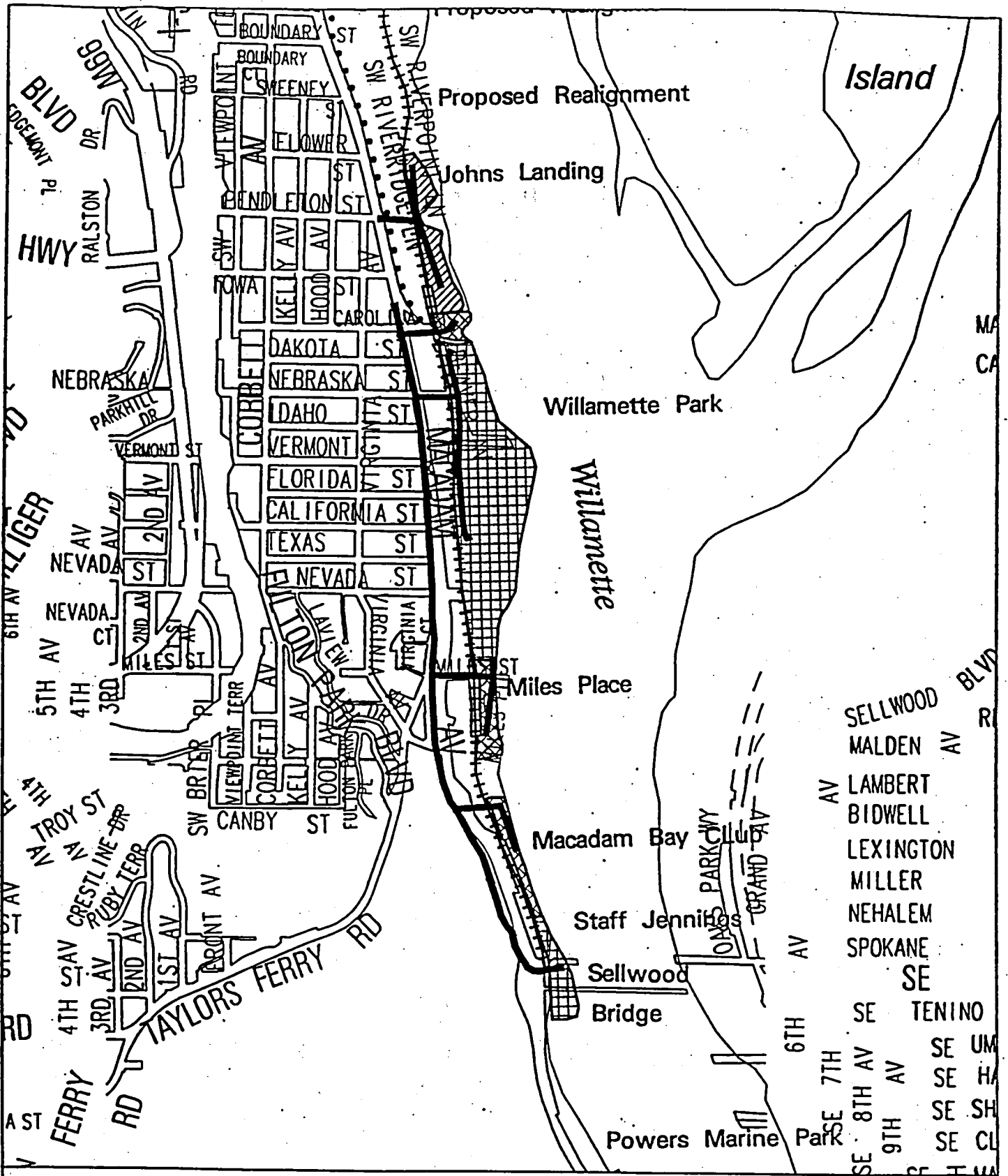
Permits for crossing or modifying the right-of-way will be issued by the appropriate local jurisdiction as specified in the Inter-Governmental Agreement.



**Willamette Shore Line
Conceptual Crossing Plan**

Figure 3

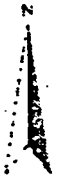
- +++++ Shore Line Rail ROW
- Street Crossing Shore Line ROW
- ▣ Access from street within hatched area

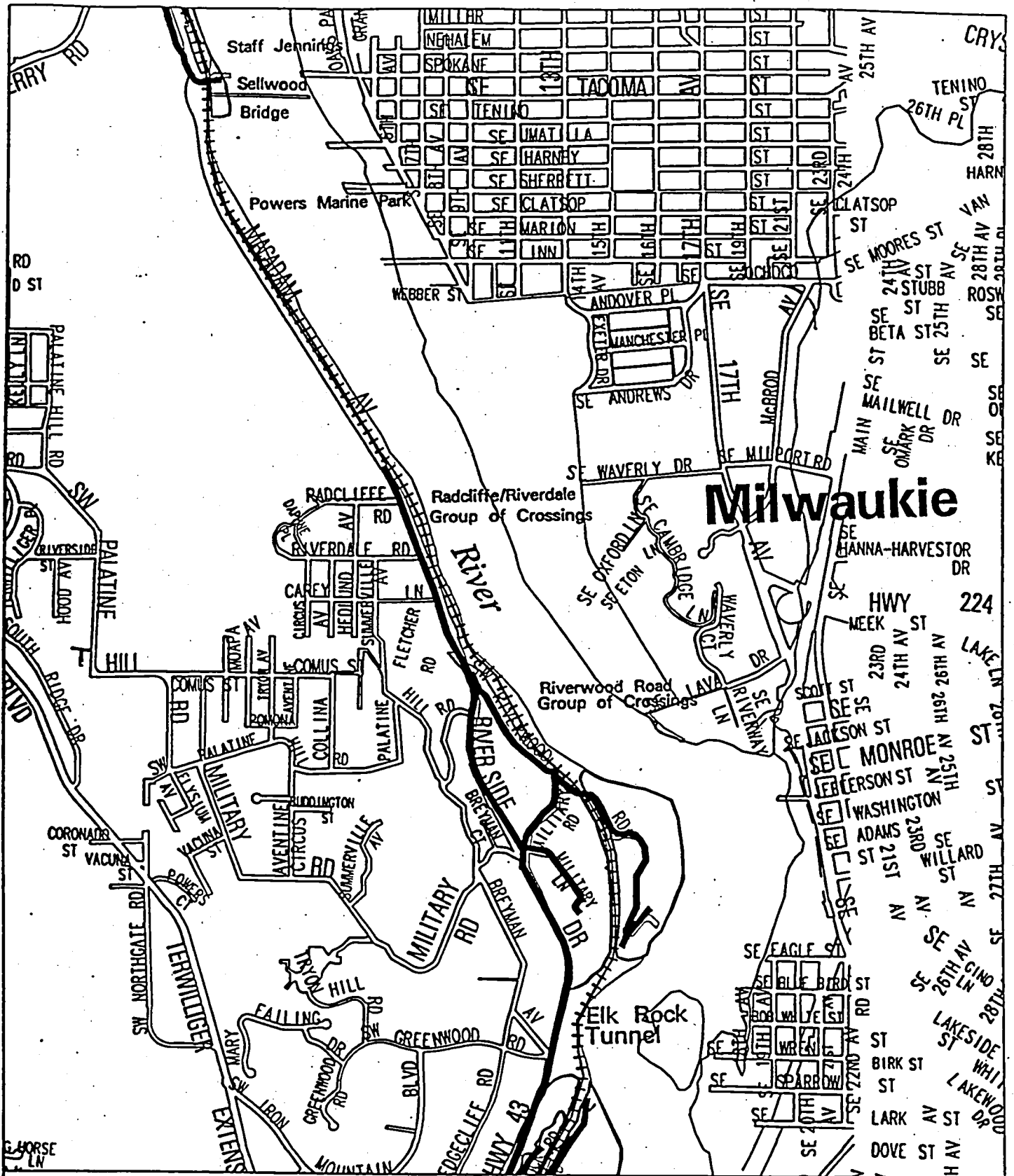


**Willamette Shore Line
Conceptual Crossing Plan**

Figure 4

- +++++ Shore Line Rail ROW
- Street Crossing Shore Line ROW
- ▣ Access from street within hatched area





Willamette Shore Line
Conceptual Crossing Plan

Figure 5

- +++++ Shore Line Rail ROW
- Street Crossing Shore Line ROW
- ▣ Access from street within hatched area



STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 93-1868 FOR THE PURPOSE OF ADOPTING AN INTERGOVERNMENTAL AGREEMENT FOR MANAGEMENT OF THE WILLAMETTE SHORE LINE RIGHT-OF-WAY

Date: October 21, 1993

Presented by: Andrew Cotugno

PROPOSED ACTION

This resolution would adopt an Intergovernmental Agreement between Metro and the other jurisdictional members of the Consortium (ODOT, Tri-Met, Multnomah County, Clackamas County, the City of Portland and the City of Lake Oswego) that would:

1. Formalize the structure of the Consortium of local governments that purchased the right-of-way;
2. Designate Metro's representative to the Consortium as the initial chairperson of the Consortium;
3. Establish, at a minimum, an annual meeting of the Consortium;
4. Establish a system for issuing revocable permits for use of, or crossings of, the right-of-way, and a process for resolution of right-of-way issues;
5. Establish a system where the members of the Consortium work together to resolve legal issues should they arise;
6. Provide for the development of an interim plan for improvements to the right-of-way, as necessary; and
7. Provide for Metro to coordinate the development of a model land use regulation that would ensure appropriate development adjacent to the right-of-way.

A copy of the draft Intergovernmental Agreement is attached to the resolution as Exhibit A.

TPAC has reviewed this Intergovernmental Agreement and recommends approval of Resolution No. 93-1868.

FACTUAL BACKGROUND AND ANALYSIS

The Willamette Shore Line right-of-way (previously known as the Jefferson Street branch line) is an historic rail corridor that runs from the base of the Marquam Bridge along the western bank of the Willamette River to the City of Lake Oswego. Rail operation through this corridor began in 1887 with passenger service operating until the late 1920's. At its

peak, the Southern Pacific Railroad was running 64 passenger trains a day to and from Portland. Freight operations continued in the Macadam Corridor until 1983.

In 1988, a consortium of local jurisdictions purchased the Jefferson Street branch rail line from the Southern Pacific Railroad in order to preserve it for possible use in the future as a high-capacity transit corridor.

The line is now called the "Willamette Shore Line Right-of-Way." The title to the right-of-way is held by the City of Portland for the Consortium. The City of Lake Oswego manages the maintenance of the right-of-way for the Consortium through a contract with the City of Portland. The City of Lake Oswego contracts with a private operator for the operation of the trolley.

The Shore Line Right-of-Way corridor is identified in the Regional Transportation Plan as a future high-capacity transit corridor. The segment of the right-of-way between the Marquam Bridge and the Sellwood Bridge is one of several alternatives being considered for development in the South/North Alternatives Analysis High-Capacity Transit Study.

Recent development adjacent to the right-of-way, and within the right-of-way, has caused concern on the part of the Consortium. Expansion of existing uses and development of new uses, primarily large single-family houses, is occurring in many areas in the corridor. In some areas, this development is compromising the safe operation of the existing trolley and encroaching into the right-of-way. The development is incrementally degrading the integrity of the right-of-way for its intended use as a future high-capacity transit corridor.

In response to the concern about development in the corridor, in the spring of 1993, Consortium members agreed to adopt a moratorium, halting approval of new crossings of the right-of-way and uses in the right-of-way, to allow for development of a policy for interim management of the corridor.

Representatives of the Consortium have been meeting regularly since the beginning of the moratorium, and have developed a draft policy for management of the right-of-way. This policy is attached as Exhibit B to the draft resolution.

The policy addresses two major issues: use of the right-of-way and crossings of the right-of-way. The purpose of the "uses permitted within the right-of-way" section is: 1) to provide for safe operation of the line, both now and in the future; and 2) to assist property owners in avoiding costly encroachments into the right-of-way, which would later have to be removed. The policy prohibits abutting property owners from installing either fixed improvements or significant landscaping in the right-of-way. Revocable permits for limited temporary landscaping can be granted under certain conditions. For safety purposes, the policy proposes that there be no vehicular movements or parking in the right-of-way.

The section on "permitted crossings of the right-of-way" establishes criteria for crossing of the right-of-way. It identifies two different types of crossings: public and private. The policy limits new at-grade crossings. It proposes that existing private at-grade crossings be phased out over time through a variety of methods, including consolidation of crossings, replacement of at-grade crossings with grade-separated crossings, and development of alternative access.

In order to provide for public review of the draft policy, a public meeting was held on September 14, 1993. Notice of the meeting was sent to approximately 600 property owners in the vicinity of the right-of-way. Approximately 100 people attended the meeting. A copy of the meeting summary is attached to this staff report as Attachment A.

There is strong support within the region for preserving the right-of-way for future high-capacity transit use. However, many property owners in the vicinity of the right-of-way are opposed to the Consortium's ownership of the right-of-way and to plans for managing the right-of-way in such a way as to preserve it for future high-capacity transit use. Some of these property owners attempted to stop the purchase of the right-of-way by the Consortium through legal means, but were unsuccessful.

TPAC reviewed the draft Intergovernmental Agreement and proposed policy at its November 24 meeting. ODOT has indicated that the agency is reconsidering its continued participation in the Shore Line Consortium. TPAC members encouraged ODOT's continued involvement.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 93-1868.

MEETING SUMMARY

DATE OF MEETING: September 14, 1993, 7:00 p.m.

GROUP/SUBJECT: Willamette Shore Line Right-of-Way Public Meeting

ATTENDEES: See Attached List

Welcome and Introduction

Gina Whitehill-Baziuk, representing Metro, welcomed the public to the meeting and explained the agenda and format for the evening. She explained that there was a sign up sheet near the door, and that anyone who signed up would receive a copy of the meeting summary that would be prepared following the meeting.

The Consortium is made up of a group of local jurisdictions and public agencies that purchased the Jefferson Street Branch Rail Line from Southern Pacific. Those agencies include: Metro, ODOT, Tri-Met, City of Portland, City of Lake Oswego, Multnomah County and Clackamas County.

Staff representing the Consortium member agencies were present at the meeting and introduced. Meeting participants were provided a list of names and phone numbers of jurisdictional representatives to contact with future questions regarding the right-of-way.

Background and Purpose of Meeting

Sharon Kelly Meyer, also representing Metro, explained that the intent of the meeting was to review the *Draft Right-of-Way Uses and Crossings Policy* for the "City of Portland Shore Line Right-of-Way." She described an overview of the history of the corridor and the purpose for the meeting.

In 1988, a Consortium of local jurisdictions purchased the Jefferson Street line from the Southern Pacific Railroad in order to preserve it for possible use in the future as a high capacity transit corridor. The line is now called the "City of Portland Shore Line." The title to the right-of-way is held by the city of Portland for the Consortium. The City of Lake Oswego manages the maintenance of the right-of-way for the Consortium and contracts with a private operator for the operation of the trolley.

The portion of the right-of-way north of the Sellwood Bridge is one of several alternatives under consideration as a possible route for a north/south transit corridor in the region. The study known as the "South/North Transit Corridor Study" is evaluating a number of alternatives, including Light Rail Transit for possible development in this corridor. The portion of the right-of-way

south of the Sellwood Bridge is not currently being studied for development as a high capacity transit corridor. However, the entire right-of-way from the Marquon Bridge to the Lake Oswego central business district is identified in the Regional Transportation Plan as a future high capacity transit corridor.

The purpose of the meeting is to review the draft policy developed by Consortium staff to protect the right-of-way, and to aid abutting property owners in the development of their property. Comments from the public will be evaluated, and where reasonable, changes could be incorporated into a revised draft of the policy. The revised draft policy would be adopted and implemented by each of the local jurisdictions in the Consortium. Permits to be issued under the policy would be reviewed, in addition to by the appropriate local jurisdiction, by Tri-Met for compliance with engineering standards.

Overview of Proposed Policy

Jennifer Ryan, representing Tri-Met, provided an overview of the draft policy.

The draft policy consists of two sections. The first addresses uses permitted within the right-of-way. The purpose of this section is to provide for safe operation on the line, both now and in the future, and to assist property owners in avoiding costly encroachments into the right-of-way, which would later have to be removed. The draft policy proposes that abutting property owners not install either fixed improvements or landscaping in the right-of-way. Revocable permits for temporary landscaping might be granted under certain conditions. For safety purposes, the policy proposes that there be no vehicle backups into the right-of-way.

The second section addresses how to access property across the right-of-way. It identifies two different types of crossings, public and private. The draft policy proposes that there be no new at-grade crossings and that existing at-grade crossings be phased out through a variety of methods, including consolidation of crossings, replacement of at-grade crossings with grade-separated crossings, and development of alternative access.

Citizen Comments and Questions

Question: *When will the draft policy be considered and voted on?*

Answer: Staff will consider comments and suggestions made at this public meeting and will revise the draft policy over the next several weeks. It will then be forwarded to the elected or appointed officials of the various jurisdictions within the next couple of months. You may want to contact the representative from your jurisdiction listed on the handout in order to keep informed.

Question: *Once the Policy has been approved, would safety changes then be implemented on the trolley line?*

Answer: Once the policy has been adopted, development proposals received would first go through a safety review. At this point, there is no plan for the broad implementation of safety improvements, such as grade-separating private crossings. The goal would be to make improvements incremental over time as funds are available.

Question: *If safety problems are so severe, why not shut the trolley down? There are several stop signs for the trolley - it seems that those would meet safety requirements.*

Answer: The reason the right-of-way was purchased by the consortium was to preserve it as a rail corridor. The trolley operation is intended as an interim use, until such time as the region decides to develop the corridor for some other use. The existing stop signs along the right-of-way are very unusual for a rail line. Under normal operation of a rail line, the stop signs would be directed toward the traffic crossing the rail line.

Question: *Are there plans to electrify the line within the next five years?*

Answer: There are no plans at this time to electrify the corridor. However, if, as a result of the South/North Study, a decision were made to select Light Rail Transit, and if the Westbank alternative were selected, electrification would occur, but probably not within 5 years. As part of project analysis and development, utility issues would be addressed.

Question: *The east side of the river has been destroyed with rail - the west side is the most valuable property - why are we destroying it? Why not move the rail line back?*

Answer: The rail right-of-way was purchased to preserve it as a possible future transit corridor. In conjunction with the South/North Study, the area north of the Sellwood Bridge is currently being considered as a possible transit corridor. A corridor along Macadam Avenue is also being studied. The area within the right-of-way south of the Sellwood Bridge is not currently being evaluated for development, but will remain in the regional transportation plan as a possible future corridor.

Question: *Why are LRT standards being imposed south of the Sellwood Bridge if that area is not included in the South/North Study?*

Answer: The entire corridor is included in the regional transportation plan which identifies future transit corridors. The LRT standards are being used because they are a well

developed existing set of standards which are readily available for use in preserving this corridor, without requiring the costly development of a new set of standards.

Question: *If you want to develop your property that is adjacent to the Right-of-Way, what procedure do you follow?*

Answer: First, you should contact your local jurisdiction. Local jurisdictions will be responsible for implementing the policy. The jurisdiction will talk with you about how the policy relates to your specific property, and the local jurisdiction will review all applications with Tri-Met who will work with the jurisdiction and the property owners to develop a solution, consistent with the policy and the needs of the property owner.

Question: *How does the Policy treat the land adjacent to the Right-of-Way when the Right-of-Way is not wide enough?*

Answer: The draft policy does not address management of lands outside of the land owned by the Consortium. Lands in private ownership, adjacent to the right-of-way, will not be directly impacted by the draft policy.

Question: *Some segments of the Right-of-Way have been conveyed by easement instead of by deed. Regarding easement rights, is there documentation? Also, How does the draft policy relate to these lands?*

Answer: There are two sets of documents which relate to the status of the right-of-way. One is the set of documents housed within the County Assessors records at the applicable county courthouse, the other is the set of conveyance documents held by the Consortium and conveyed from the railroad at the time of purchase. These documents can be used to identify the legal status of the consortiums' interest in the right-of-way. The policy is intended to apply to all land for which the consortium has an ownership interest, whether by deed or easement.

Question: *Assuming light rail will be chosen, what other studies have been done to run the line in a location other than along the current rails?*

Answer: There is not a current assumption that light rail will go down this specific right-of-way. Until a decision is made in the South/North Study on the mode of transit and the location of the corridor, no decisions to build along the current rails will be made. The only portion of the corridor that is currently being studied is the

north portion of the right-of-way. The focus of this meeting is how we plan to manage the right-of-way in the interim period, until such time as a decision is made to utilize it differently.

Question: *If you are uncertain as to whether or not you have a public or private crossing, what do you do?*

Answer: Generally, if your property is the only property utilizing an access at a particular point, you would likely have a private crossing. However there are exceptions. The best way to determine the status of your crossing is to contact either your local jurisdiction representative or Jennifer Ryan at Tri-Met.

Question: *I am concerned about the scenic value to the trees in some segments of the corridor. Would safety be used as a reason to cutdown the trees?*

Answer: If any particular tree became diseased or obviously hazardous to the safe operation of the trolley or adjacent property owners, a tree may need to be removed. There is not a plan at this time to remove any trees within the corridor. Also, in the future, if or when the region evaluates this corridor for development as a transit corridor, one of the many areas that would be evaluated in an Environmental Impact Statement is visual impacts.

Question: *Could a provision be added to the Policy to preserve the scenic elements of the ROW?*

Answer: Staff agreed that it could be considered in the revision of the draft policy.

Question: *Has the decision already been made to go through Johns Landing Condominiums?*

Answer: There is an alternative that goes through the Johns Landing area that is being considered in the South/North Study. It is one of several options associated with the "Westbank Alternative." The Westbank Alternative would provide for a transit improvement on the Westbank of the Willamette River. There are also several alternatives that would provide for a transit alternative on the Eastbank of the Willamette River. Decisions on the South/North Study will not be made for at least a year, and probably longer.

Question: *Referring to the previous question, who makes the decision?*

Answer: The decision is a regional decision that is developed through building a consensus with the local jurisdictions. It is an extensive process. There are 14 jurisdictions involved in the decision-making process. Recommendations will be made by all the local jurisdictions included in the study area to the Joint Policy Advisory Committee on Transportation (JPACT) and then to the Metro Council for a final decision. Metro staff can provide a more in-depth description of the decision-making process.

Question: *Is the Trolley a private or public enterprise?*

Answer: The City of Portland is the holder of the deed to the right-of-way. The city of Lake Oswego is responsible for maintenance and operation of the service in the right-of-way. Lake Oswego, through a contract with a private operator, manages the operation of the trolley (the equipment on the line is privately owned).

Question: *If the Trolley weren't running, would public money still be used for the line?*

Answer: Yes, some public money would still be used to preserve/maintain the right-of-way.

Question: *Could a provision be added to the Policy that states that there will be no improvements south of the Sellwood Bridge?*

Answer: No, because the entire right-of-way is designated in the regional transportation plan as a future transit corridor. It is possible, however, that clarification could be added as to which portion of the right-of-way is being studied in the South/North Transit Corridor Study.

Question: *Why not develop the transit facilities on public roads rather than imposing on private properties?*

Answer: Within the South/North Study, there are several alternatives identified for possible development. This right-of-way is only one of the alternatives being considered. However, it is important to remember that the Jefferson Street Rail Line has been operating as a rail line since before the turn of the century. There is a long historical precedent of this corridor being operated as a rail line, and as a passenger rail for a good portion of the historic period. The rail line existed long before any of the residences along the line were built.

Question: *On Page 8, #4 , it states that the Consortium will phase out existing private crossings when properties are altered or redeveloped, or when applications are made for land use or building permits. This should be reworded - it appears that all private crossing will be phased out.*

Answer: It is the goal of the policy to eventually phase out private crossings. However, the draft policy should be reviewed to more clearly state that it is the goal, and there is no current plan to implement the goal on a corridor wide basis.

Question: *If property owners were required to have an alternative route into their homes, who would pick up the cost for that?*

Answer: It would be the responsibility of the property owner. If the past or current owner of the right-of-way has given permission for individual property owners to temporarily cross the right-of-way (unless there is a specific agreement between the property owners to the contrary), permission to cross the right-of-way may be revoked, and there is no obligation on the part of the right-of-way owner to provide an alternative access.

Comment: *The Mayor of Lake Oswego addressed the issue of traffic/transportation problems in the Portland metropolitan area. She submitted a letter for the record.*

A copy of the letter is attached.

Question: *When will there be more time to address questions on the policy?*

Answer: Due to the late hour, the meeting was formally adjourned, however, the Metro and jurisdictional staff remained to answer additional questions. Those who still had questions on the policy were encouraged to stay and staff remained available to answer more questions.

Question: *Has anyone addressed the impact of this proposed policy on adjacent property owners? How can a property owner market property? Should you disclose that you have a rail right-of-way adjacent to your property?*

Answer: There are a variety of perceived impacts of the draft policy on adjacent property owners. The right-of-way has been in existence since long before any of the homes adjacent to the right-of-way. Most if not all current property owners were aware of the right-of-way when they purchased their property, and we feel that it is important to accurately inform the public about the status of the right-of-way. If you have questions about disclosure during a land sales transaction, you should

contact your real estate agent, your attorney or the local board of realtors for advice.

Question: *Has it been considered whether or not double tracks should go through the tunnel?*

Answer: No, that has not been considered at this time. That question would be considered in the future, if and when the southern segment of the corridor were to be formally evaluated for a transit improvement.

The group was informed that additional questions regarding the policy could be answered by contacting their local jurisdiction, Metro or Tri-Met.

Closing

The meeting was adjourned at approximately 9:00 pm. Those interested in having specific site-related questions answered, remained (staff was available).

bc/sm

Attachment: Letter submitted by Mayor of City of Lake Oswego



September 14, 1993

380 "A" AVENUE
POST OFFICE BOX 369
LAKE OSWEGO,
OREGON 97034
(503) 635-0213
FAX (503) 635-0269

ALICE L. SCHLENKER,
MAYOR

Lake Oswego Corridor TAG
C/O Sharon Kelly-Meyer
Metro
600 NE Grand Avenue
Portland 97206-2936

CHARLES C. (MIKE) ANDERSON,
COUNCILOR

HEATHER CHRISMAN,
COUNCILOR

Dear Members of the Lake Oswego Corridor TAG:

WILLIAM HOLSTEIN,
COUNCILOR

The City of Lake Oswego, a strong supporter and partner in the consortium which purchased the Jefferson Street line in 1987, is pleased to have the opportunity to support a policy regarding crossings of the rail right-of-way along the line.

BOB JUNE,
COUNCILOR

The formalization of a policy regarding crossings will provide all parties -- property owners, consortium members, members of the public, neighbors -- with an understanding of specified ground rules for this right-of-way, as well as protecting the public's investment.

BILL KLAMMER,
COUNCILOR

MARY PUSKAS,
COUNCILOR

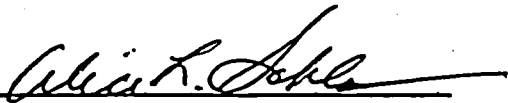
In addition to the original capital acquisition of \$2,000,000, the City of Lake Oswego completed, in 1992, a track extension into the downtown. We look forward to the extension from the current northern terminus to the Riverplace neighborhood in the future.

The saving of the rail line and the rights-of-way was a visionary effort by the members of the consortium, supported by scores of citizen constituents, in anticipation of the need for alternative transportation systems as the metropolitan population increases in the decades ahead.

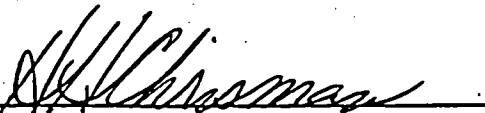
The proposed policy will provide an understanding and a process for both those interested in the preservation for future use of the corridor and the right-of-way, as well as those interested in developing along the route to be aware of what can be permitted and what will not be allowed on this unique Oregon transportation corridor.

Thank you for your interest in, and consideration of, preserving this rail corridor and right-of-way now and for future generations.

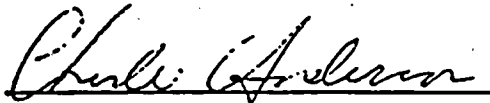
Sincerely,



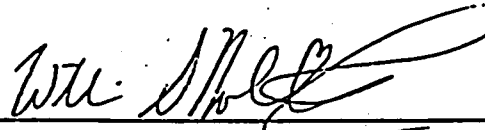
Alice L. Schlenker, Mayor



Heather Chrisman, Council President



Charles C. Anderson, City Councilor



William Holstein, City Councilor



Robert June, City Councilor



Bill Klammer, City Councilor



Mary Puskas, City Councilor

Meeting Date: January 13, 1994
Agenda Item No. 7.3

RESOLUTION NO. 94-1891



METRO

DATE: January 7, 1994

TO: Metro Council
Executive Officer
Agenda Recipients

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 7.3; RESOLUTION NO. 94-1891

The Planning Committee considered this item on Thursday, January 6. The Committee report will be distributed in advance to Councilors and available at the Council meeting January 13.

BEFORE THE METRO CONTRACT REVIEW BOARD

**FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 94-1891
AN EXTENSION TO METRO CONTRACT)
NO. 903389 AND TO EXEMPT THIS WORK) Introduced by Rena Cusma,
FROM COMPETITIVE BIDDING, PURSUANT) Executive Officer
TO METRO CODE SECTION 2.04.054(a)(2))**

WHEREAS, The Westside Station Area Planning Program requires consulting services to undertake an economic analysis (examination of the current and projected economic drivers as well as the projected demand for business activity and housing: of the Westside Light Rail Corridor; and

WHEREAS, Metro currently has contracted with the consulting firm ECO Northwest to provide related personal services for a study of "Descriptive Indicators," that is part of the 2040 Program; and

WHEREAS, The two contracts call for the same expertise so that ECO Northwest is the best qualified to complete the second study; and

WHEREAS, The two contracts call for similar analytic approaches as well as use of the same modeling techniques; and

WHEREAS, There is a need for consistency between the two contracts. The underlying assumptions and methodologies used for the two studies should be compatible so that the data generated from each will be comparable; and

WHEREAS, It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; now, therefore,

BE IT RESOLVED,

The contract Review Board hereby exempts ECO Northwest's economic/projection analysis of the Westside Light Rail Corridor (see Exhibit "B," Metro Contract No. 903389 Amendment No. 1, attached) from the competitive bidding requirement pursuant to Metro Code

Section 2.04.054(a)(2), and authorizes the Executive Officer to execute a contract amendment with ECO Northwest.

ADOPTED by the Metro Council this ____ day of _____, 1994.

_____, Presiding Officer

TJU/erb
e:\pd\res&ord\94-1891
12/28/93

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and Eco Northwest, referred to herein as "Contractor," located at 99 West Tenth, #400, Eugene, Oregon 97401.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This Personal Services Agreement shall be effective October 11, 1993, and shall remain in effect until and including June 30, 1994, unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$100,000.00).
4. **Insurance.**
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurances, covering the Contractor, its employees and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
 - c. *Metro, its elected officials, departments, employees and agents shall be named as **ADDITIONAL INSURED**.* Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to the change or cancellation.

- d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as "Exhibit B," in lieu of the certificate showing current Workers' Compensation.
 - e. If required by the Scope of Work, Contractor shall maintain, for the duration of this Agreement, professional liability insurance covering personal injury and property damage arising from errors, omissions or malpractice. coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance and thirty (30) days advance notice of material change or cancellation.
5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.
6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.
7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers and grants to Metro all rights of reproduction and the copyright to all such documents.
8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.
9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work.

Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS Form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provision of ORS Chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the State of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns and legal representatives, and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor ten (10) days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

ECO NORTHWEST

METRO

By: W. S. Stulman

By: [Signature]

Title: President

Title: Director, LF

Date: 11/24/93

Date: 2 Dec 93

e:\p\cont\903389
10/20/93

Exhibit A

Scope of Work

1. Contractor shall perform all duties in the attached Proposed Work Plan.
2. Contractor and any or all sub-contractors shall adhere to all applicable federal, state, and local laws, regulations and policies including, but not limited to those included in "Exhibit A, Federal Requirements", and those related to Workers' Compensation, those in OMB Circular A-102 and its attachments, those of the Contract Work Hours and Safety Standards Act, and those relating to equal employment opportunity, nondiscrimination, and affirmative action including, but not limited to, those regulations implementing Executive Order No. 11246 of the President of the United States and Section 402 of the Vietnam Readjustment Act of 1973. Contractor and any or all sub-contractors shall adhere to all safety standards and regulations established by Metro for work performed on its premises or under its auspices.
3. For work completed, contractor shall send Metro an invoice. These invoices shall document services and products provided by Contractor as specified in the Scope of Work and supported by copies of all invoices for reimbursable costs. Metro shall pay approved invoices within thirty (30) days.

Proposed Work Plan

PURPOSE OF THE PROJECT

ECO, CH2M Hill, and Pacific Rim Resources worked with Metro on Phase I of *Region 2040* to define concepts for regional growth. The intention of Metro staff was to *develop* the concepts in Phase I, and *evaluate* the concepts in Phase II. As part of Phase I we helped Metro with some initial efforts to describe potential evaluation criteria, but that worked stopped short of defining specific measures for evaluating the concepts. Council Resolution 92-1712 in December 1992 reconfirmed the purpose of Phase II: to evaluate the performance of the concepts using measurements of "livability; density; economic, governmental and social costs and benefits;... [and] public infrastructure and services."

In 1993 Metro staff worked to articulate a set of measurements (indicators) for evaluating the growth concepts. Metro staff will conduct the bulk of the work related to the measurement of those indicators (as is evident from the number of indicators listed in the appendix of the RFP that Metro staff will have responsibility for). This project, therefore, is about assisting Metro staff with the measurement of a subset of indicators in an evaluation process that Metro staff will manage. Those indicators are the subject of Work Elements 1 through 4. Work Elements 1 through 3 are specific about the indicators that need measurement (e.g., infrastructure cost, housing demand and cost, demand for commercial and industrial space). For Work Element 4, the task is a little more open-ended: though the categories of indicators are defined, the consultant must make some judgments about the specific indicators to be measured.

Metro's use of the term *indicators* rather than *evaluation criteria* is purposeful. For this project, Metro wants only the first step on a evaluation of growth concepts: a compilation of the facts available about certain types of impacts the different concepts might or are likely to have (a *descriptive analysis*). It does not want a further step as part of this RFP: a weighting and summation of the multiple measurements leading to a recommendation about a preferred alternative (a *normative analysis*). Metro will provide the descriptive indicators to policymakers and the public and will document the opinions people express about them (for example, which indicators are most important, whether they adequately capture the concerns of interest, and whether they are adequately measured). Metro staff, during the first half of 1994, will evaluate all the indicators (both the ones in the Work Elements of this RFP and the ones in the appendix that Metro will measure), develop a method for synthesizing public opinion about weights and preferences, and prepare a recommendation about a preferred concept (A, B, C, or a hybrid) for another round of public review.

OVERVIEW OF THE TEAM

Because Metro has already specified many of the measurements it wants to use to evaluate the growth concepts, it is not absolutely necessary that the consultant on this project have a background with the methods of program evaluation in general, or the use of criteria in evaluating planning concepts in particular. We believe, however, that such a background will substantially improve the way the measurements get specified, collected, and reported. Moreover, particularly for Work Element 4, the consultant must still exercise some judgment about the best indicators for addressing some issues of concern.

We have assembled a team that not only has the technical expertise to work in the four categories described in the RFP, but also has the ability to integrate across those categories.¹

- *ECO Northwest* would manage the project and have primary responsibility for Work Elements 2 (Housing) and 3 (Employment). Terry Moore has taught classes on program evaluation at the University of Oregon for ten years. His recent research on Phase I of *Region 2040* included a review of evaluation criteria and measures of performance from regional planning efforts in North America. Randy Pozdena is a frequent speaker on economics and land development in the Portland metropolitan area, and author of *The Modern Economics of Housing*, a recent text that summarizes theory and policy for finance and real estate professionals. ECO, together with Data Resources Inc., maintains the only econometric model of the entire Portland metropolitan economy. We have provided forecasts of the Portland metropolitan region's economy to Tri-Met since 1982.
- *CH2M Hill* would manage Work Element 1 (Water and Sewer Costs). CH2M Hill has developed comprehensive water system master plans for communities and service districts in Metro's service area. Bill Blosser, a senior project manager, would manage this work element. He has 20 years experience on planning issues in Oregon. Phil Butterfield will conduct most of the research: he has been responsible for several water system master plans. Mark Lasswell, as senior engineer for public utilities will advise and review.
- *Pacific Rim Resources* would manage Work Element 4 (Non-Quantifiable Issues). PRR has participated in the design and implementation of public involvement services for growth-management planning in cities throughout the Pacific Northwest. Pacific Rim Resources (PRR) will be responsible for Work Element 4 (Assessment of Non-Quantifiable Issues). Sumner

¹Details of the qualifications of the team members are in Part 2, Project Staffing, and in an Appendix.

Sharpe, a Senior Associate at PRR, will take the lead in this effort; he will be supported by Margaret Strachan, PRR Associate. Pacific Rim Resources specializes in issue and opinion research and has extensive experience in the use of focus groups as well as executive interviews and surveys. PRR conducted, and Sharpe participated in, the focus groups during Phase 1 of *Region 2040*. Strachan and Sharpe conducted a series of focus groups for a project assessing ways to increase citizen involvement through the City of Portland's system of neighborhood associations.

THE APPROACH

The work plan that follows focuses on the technical aspects of the four Work Elements described in the RFP. Before going to those details, we will describe briefly the procedures we propose to manage the project and integrate the results of Work Elements.

The four Work Elements break into three independent categories: Infrastructure Costs (Work Element 1, Sewer and Water); Impacts on Land Development (Work Elements 2 and 3, Residential and Industrial/Commercial Land Use); and Quality of Life (Work Element 4, Non-Quantifiable Issues). To a large extent, the research for these three categories can be conducted and reported independently. It does not seem necessary to spend resources trying to integrate the results into a single document since there are about a dozen other categories of indicators that Metro staff will be working on. Thus we expect, as the RFP requests, to provide separate reports for the different Work Elements.

This independence does not mean, however, that the consultants can work without consultation with each other or Metro staff. Metro will be better served if the staff and consultants working on the different indicators have a common understanding of the purposes, format, and level of detail for the final products. For the consultant team, Terry Moore of ECO will be responsible for coordinating consultant efforts between consultants and with Metro staff. Bill Blosser of CH2M Hill and Sumner Sharpe of PRR will be the primary contacts on Work Elements 1 and 4 respectively, while Moore will be assisting on those tasks with the definition of indicators as required.²

²We noted that while most of this project is about data collection for predefined indicators, some work on defining the indicators will be required. ECO staff have worked from the beginning with the Oregon Progress Board on the definition of the *Oregon Benchmarks*. Staff at the Progress Board maintain an extensive library of studies from cities and regions around the nation that have tried to define performance measures for evaluating progress toward goals for better quality of life. We can get immediate access to these studies to describe a range of possible indicators for (Work Element 4 in particular) if this proves necessary.

WORK ELEMENT 1: TECHNICAL REVIEW OF WATER/SEWER/DRAINAGE DATA

Purpose

The different concepts may—by changing the density and location of development—have different effects on the cost of providing water and sewer service to new development. The purpose of this work element is to assist Metro in determining what information to collect to best measure these future costs, and to provide a technical review of data collected and organized by Metro staff.

The usefulness of the indicators depends in part on the quality of data that can be made available by service providers. Our approach is to ask the service providers for information our experience tells us they can provide within a reasonable time period (considering in some instances, their limited staff availabilities or capabilities). For example, if service providers were asked to estimate the total cost for servicing a new basin, some may have staff who could make these estimates but who are committed to other projects. Others may have staff available but without the technical training to make the estimates. In short, not all service providers will be able to supply all the data Metro wants to meet its objectives and schedule.

The approach we propose relies on the service providers developing typical unit costs for the various types of development rather than total costs on a per-basin or total-area basis. A key step in the process is describing the data format likely to be most useful to Metro in future assessments. Metro's GIS data base will be key to that decision. It may be possible to develop cost data on a per-unit basis for geographic regions, use the GIS data base to develop total areas per specific use type, and then apply the unit-cost data to come up with estimates of total cost for a given time period.

Tasks

Task 1: Clarify Methods

We will conduct initial research to clarify the data available for the task, and will then discuss our findings with Metro staff to decide on a final work plan. We will address data collection for both capital costs and operation and maintenance costs.

- *Data Available from Metro.* We will meet with Metro staff to develop an understanding of the available data, how the data can be supplied by Metro to service providers as part of the data collection procedure, how to frame the questions based on the type of data that would be useful to this project, how to ensure consistency between existing data and new data, how those data can be incorporated into the GIS data base, and how the data might be used and updated by Metro or service providers in the future.

- *Data Available from Service Providers.* The service providers in the Water Resources Policy Advisory Committee fall into two groups: water suppliers, and wastewater/water quality service providers. Information on service providers is available for each drainage basin impacted by planned growth. To obtain meaningful data from the service providers we must discuss the data needs with the providers, inform them of how we intend to request the data, and ask for their input into how the data request can best be made. At a minimum, we must gather data from certain strategic service providers: those of sufficient size and staffing to be able to assist in the project. We propose to meet with these strategic providers in a workshop with Metro staff for the purpose of refining the data request.

Task 2: Develop Data Request Form

The data request form will describe the data being provided by Metro for the service providers' use and the guidelines for developing and reporting cost data. We anticipate Metro will develop the necessary maps and planning data that will be provided to the service providers with the data request form. A basis for both capital and operation and maintenance costs would be presented in the appendix to the data request form. We have assumed the data input form and subsequent analysis will involve up to six different types of general land use for which unit costs will be requested for the following water related components:

- Water supply and treatment
- Water transmission, distribution and storage
- Wastewater collection and conveyance
- Wastewater treatment
- Stormwater conveyance
- Stormwater treatment/surface water quality protection

Task 3: Review and Analyze Data

We will review the data request forms returned to Metro and organize the data into cost matrices that can then be applied to Metro's planning data. We anticipate some service providers will not be able to provide data as requested within the time frame for the project. Using engineering judgment, we will use the data that has been received to fill data gaps and develop cost matrices applicable to each of the three growth concepts and two general geographic regions (generally defined as the City of Portland and areas east, and the Washington County area). We have assumed Metro will print, distribute, and collect the forms.

Task 4: Prepare Draft Report

A draft report will describe the methodology used to collect data and develop the unit cost matrices. Our scope of work includes development of a method for estimating the total future costs for each concept. The method will use as the basis the cost matrices developed from the data collected. The method for determining future total costs will be based on an assumption of

growth rate using either a straight-line growth or in increments of time such as every ten years. The method will define salvage value and replacement cost assumptions so that an analysis of future total cost can be made. Engineering judgment will be used to estimate parameters, such as useful life of facilities, required for developing methods. We have assumed Metro will then use the cost matrices and total-cost method to determine total water-related costs for each of the three growth concepts and base case.

Task 5: Review and Revise Draft Report

We will meet with Metro staff to discuss the draft report. We anticipate this meeting will allow Metro to provide possible enhancements to the unit costs, but will not require a significant re-evaluation of the data that was originally provided or the method for determining total cost. We assume that maps used in the report will be those developed by Metro and supplied to the service providers as part of the data request process.

Metro will consolidate comments from this meeting and staff review in writing. Based on those comments we will prepare a final report. We will provide a camera-ready copy of the final report to Metro for printing and distribution.

Products

- Data Request Form for service providers
- Summary of data from Data Request Form
- Report summarizing cost matrices and methods for calculating the water-related costs of the growth concepts and base case

WORK ELEMENT 2: HOUSING DEMOGRAPHIC/MARKET ANALYSIS

Purpose

The different growth concepts may—by changing the supply of vacant land, allowing or requiring higher density in some areas, and other policies—have different effects on the choices of builders and consumers about housing type. The purpose of this work element is to analyze likely future demographic changes and market forces as they relate to the demand for and supply of housing by product type for each regional growth alternative.

One objective of regional planning is to manage the supply side of the housing market in a way that minimizes the cost of supplying the equilibrium quantity of housing. Other objectives, such as minimizing the costs imposed by congestion or pollution, may conflict with the objective of minimizing housing costs. This work element will provide information useful in evaluating those trade-offs.

Tasks

Task 1: Preliminary Forecast

We will make a preliminary forecast of the demand for and supply of housing by product type for each regional growth alternative. The demand for a housing product is the relationship between the quantity of housing of a particular type that can be sold into a market and the market price for housing of that type. Likewise, the supply of a housing product is the relationship between the quantity of housing of a particular type that will be offered in a market and the market price for housing of that type. Housing is not a homogeneous product: different types and locations of housing offer different bundles of services to buyers and renters. The housing market in this project will be disaggregated into at least the following types: single-family attached, single-family detached, townhouses or rowhouses, and higher-density multi-family residential.

Through out this task, we will use 1993 dollars to measure prices and incomes. This serves two purposes. It eliminates the potential for errors in forecasts stemming from incorrect forecasts of inflation rates, and it will make the results more intelligible to the public, who know what a dollar is worth today.

To forecast future demand for and supply of housing, by type, we will:

- a. Describe the economic and demographic forces that determine and constrain demand for housing within a region (*e.g.*, forces that determine employment, forces that determine incomes, household sizes, ages of householders, etc.). These forces are, for the most part, exogenous to the region and beyond the reach of regional planning efforts.
- b. Forecast the quantity of housing by product type that would be demanded in various price ranges. This forecast probably will be quite similar for each regional growth alternative, but may be constrained in one or more alternatives by the results of Work Element 3 (Commercial/Industrial Market Analysis).
 - (1) Forecast regional employment (number of employees) by sector through the year 2040. The employment forecast will be consistent with Metro's population forecasts.
 - (2) Combine information on the distribution of incomes by sector, which ECO Northwest has already developed, with information and trends related to the number of employees per household to develop a forecast of the number of households by income group.
 - (3) Combine the forecast of the number of households by income group, demographic forecasts of household size, and information and trends related to demand for various product types by income group and household size to forecast the

quantity of housing by product type that would be demanded in various price ranges.

- c. Forecast the quantity of housing by product type that could be supplied in various price ranges under the base case and each regional growth alternative.
- d. Combine the forecasts of supply and demand for various product types to forecast prices and quantities of housing by product types under the base case and each regional growth alternative.

Task 2: Conduct Sensitivity and Risk Analysis

We will analyze the sensitivity of the housing forecast to the assumptions and the other forecasts of the variables upon which that forecast is based. Using the results of the sensitivity analysis, we will complete a risk analysis, which will incorporate our judgments and Metro's concerns about the likelihood that actual conditions will diverge from those assumed in our forecast. We will identify reasonable ranges for prices and quantities for different housing products and will describe how these ranges could change if the underlying forecasts or assumptions were to be changed.

Task 3: Analyze Differences Between Alternatives

We will analyze the differences in forecasted prices and quantities of housing types between the base case and each of the regional growth alternatives. We will assess and describe any apparent disequilibrium conditions (instances of the regional growth alternative constraining or distorting the market to the point where housing prices are greatly out of line with those of other regions and where large numbers of households are forced to live in housing types that they would not otherwise choose).

Task 4: Estimate Relative Housing Costs

We will complete an estimate of relative housing costs of the base case and each regional growth alternative. "Housing costs" can mean two different things. In one sense, housing costs are the prices of the various housing product types. In another sense, housing costs are the amount people actually spend on housing given both prices and the mix of product types people choose. Both are important indicators.

We will describe the relative prices for each product type under the base case and each regional growth alternative. This will address the relative effects of the regional growth alternatives on the costs faced by households who choose each product type. We also will describe relative expenditures on housing by all households in the region under the base case and each regional alternative given their expected choices of product type. We expect that both prices and the mix of product types will differ between regional growth alternatives.

Products

Draft and final reports describing:

- Forecasting methods and results. The details of our forecasting methods, data, and assumptions may be contained in a technical appendix.
- Analysis of sensitivity and forecast risk.
- Differences in forecasted prices and quantities of housing product types between the base case and each of the regional growth alternatives. The report will address and describe any apparent disequilibrium conditions.
- Forecasted relative prices for each housing type under the base case and each regional growth alternative, and the forecasted relative total and per-household expenditures on housing for the base case and each regional growth alternative.

WORK ELEMENT 3: COMMERCIAL AND INDUSTRIAL MARKET ANALYSIS

Purpose

The different growth concepts may—by changing the supply of vacant land, allowing or requiring higher-density development in some areas, and other policies—have different effects on the choices of developers and employers about commercial and industrial product types. The purpose of this work element is to analyze likely future market forces as they relate to the demand for and supply of commercial and industrial facilities by product type for each regional growth alternative.

It is important to understand that buildings do not create employment, although lack of appropriate space may lead employers to locate outside, rather than inside, the region's boundaries. Demand for commercial and industrial facilities originates from the same source as demand for labor: demand from both inside and outside the region for goods and services produced within the region.

Tasks

Task 1: Preliminary Forecast

We will make a preliminary forecast of the demand for and supply of commercial and industrial facilities by product type for each regional growth alternative. The demand for any particular commercial or industrial product type is the relationship between the quantity of facilities of that particular type that can be sold into a market and the market price for facilities of that type. Likewise, the supply of a commercial or industrial product type is the relationship between the quantity of facilities of that particular type that will

be offered in a market and the market price for facilities of that type. As with housing, different types and locations of facilities offer different bundles of services to buyers and lessees. The commercial and industrial market will, for this project, be disaggregated into at least the following product types: retail commercial, office commercial, high technology industrial, distribution industrial, and manufacturing industrial.

For the reasons described under Work Element 2, we will use 1993 dollars to measure prices throughout this task.

To forecast demand for and supply of commercial and industrial facilities, by type, we will:

- a. Describe the economic forces that determine the growth of the various economic sectors within a region. These forces are, for the most part, exogenous to the region and beyond the reach of regional planning efforts. We also will describe trends that affect the relationship between sectoral output and demand for particular product types or locations (e.g., suburban office parks and telecommuting taking demand away from downtown office space).
- b. Forecast the quantity of commercial and industrial facilities (including, in some cases, land) by product type that would be demanded in various price ranges. This forecast will not differ between regional growth alternatives.
 - (1) Forecast regional employment (number of employees) by sector through the year 2040. The employment forecast will be consistent with Metro's forecasts.
 - (2) Combine information on the use of space per employee by sector, some of which Metro has already developed, with the forecast of the number of employees by sector, to estimate the number of square feet of each product type that would be used if current price conditions prevailed into the future.
 - (3) Combine the forecast of the number of square feet of each product type that would be demanded at current prevailing prices with information on the price sensitivity of demand for the various product types (from other studies) to estimate the quantities of each product type that would be demanded in various price ranges.
- c. Forecast the quantity of commercial and industrial facilities by product type that could be supplied in various price ranges under the base case and each regional growth alternative.
- d. Combine the forecasts of supply and demand for various product types to forecast prices and quantities of commercial and industrial facilities by product types under the base case and each regional growth alternative.

Task 2: Sensitivity and Risk Analysis

We will analyze the sensitivity of the forecast to the assumptions and the other forecasts of the variables upon which that forecast is based. Using the results of the sensitivity analysis, we will complete a risk analysis, which will incorporate our judgments and Metro's concerns about the likelihood that actual conditions will diverge from those assumed in our forecast. We will identify reasonable ranges for prices and quantities for different commercial and industrial product types and will describe how these ranges could change if the underlying forecasts or assumptions were to be changed.

Task 3: Analyze Differences Between Alternatives

We will analyze the differences in forecasted prices and quantities of commercial and industrial product types between the base case and each of the regional growth alternatives. We will assess and describe any apparent disequilibrium conditions (instances of the regional growth alternative constraining or distorting the market to the point where rents for commercial or industrial space are greatly out of line with those of other regions and where large numbers of employers are forced to locate in facility types that they would not otherwise choose).

Task 4: Prepare Strategies

We will prepare strategies for commercial and industrial development consistent with regional growth alternatives A, B, and C, analyzing the strengths and weaknesses of each. For each alternative, we will describe opportunities for preventing or overcoming disequilibrium conditions in the regional markets for commercial and industrial land and facilities. We then will lay out strategies for taking advantage of these opportunities through the planning process and through other means at the disposal of the public sector.

Products

Draft and final reports describing:

- Forecasting methods and results. The details of our forecasting methods, data, and assumptions may be contained in a technical appendix.
- Analysis of sensitivity and forecast risk.
- Differences in forecasted prices and quantities of commercial and industrial product types between the base case and each of the regional growth alternatives. The report will address and describe any apparent disequilibrium conditions.
- Strategies and opportunities for balancing supply of and demand for commercial and industrial product types for each regional growth alternative.

WORK ELEMENT 4: ASSESSMENT OF NON-QUANTIFIABLE ISSUES

Purpose

The different growth concepts may—by changing density, design, and other neighborhood characteristics—have different effects social, cultural, and governmental variables that are important to quality of life. The purpose of this work element is to provide information about issues that may be difficult to measure numerically, but are nonetheless important in evaluating regional growth alternatives.

The focus of this work element is on the identification of security, human service, and choice/liberty issues related to regional growth and specific regional growth alternatives. Therefore, this element will focus on perceptions of changes in community character related to the regional growth concepts, as identified and described by focus group participants.³ In addition to overall regional perceptions, participants also will be given an opportunity to comment on local issues and goals that relate to the regional growth alternatives.

Tasks

Task 1: Agree on Meeting Agendas

The consultants with Metro staff agree on the focus group schedule, agendas, participants and expected outcomes.

As outlined in the RFP, Work Element 4 provides for four meetings, and four focus groups are recommended: one with law enforcement personnel, one with representatives of human service agencies, and two focus groups of citizens randomly selected to assure a geographic balance. These meetings provide two opportunities for meeting participants to help identify and evaluate non-quantifiable indicators.

Following is a preliminary list of participants for the security and human service focus groups, selected to provide a cross-section of interests and communities:

Security Focus Group

- Multnomah County Sheriff, Portland and Troutdale Police
- Clackamas County Sheriff, Oregon City and Wilsonville Police
- Washington County Sheriff, Beaverton and Forest grove Police

³Work Element 4 is explicit about identifying *non-quantifiable* indicators using focus groups. It is also possible to find *quantifiable* indicators associated with security and human services will be addressed elsewhere, e.g., emergency police or ambulance response times or distance from home or work place to services, such as child care. In this proposal, we assume that the task is limited to the focus groups specified. We could, however, rearrange the scope to address these other measures of livability.

- Tri-Met Security
- Portland School District Security
- A private security company

Human Service Focus Group

- Multnomah County Human Services, community action agency, Mental Health Services West, Urban League
- Clackamas County Human services, community action agency, Association for Retarded Citizens, agency serving children
- Washington County Health Department, Centro Cultural, community action agency, and Area Agency on Aging

The group discussions should focus on outcomes related to regional growth and alternative growth patterns. For example:

- Security issues might be evaluated using indicators such as increasing or decreasing fear of walking in residential neighborhoods after dark or fear of going downtown or using transit; changes in police response, access, or visibility, or perceived relationship between density of development and crime.
- Human service issues might be evaluated using indicators such as access to services; ability to serve special needs populations; or siting of human services facilities, including NIMBY-type centers or facilities.
- Quality of life choice and liberty issues might be evaluated using indicators such as sense of place related to geographic differentiation of communities by open space, provision of centers, different relationships between work and living places; opportunities and choices related to property ownership or housing; or regulations associated with regional growth alternatives and personal choices/freedoms.

In short, the focus groups should address the question: Given the alternative growth concepts, what non-quantifiable issues are likely to be important, and, from the perspective of the focus group participants, will things improve or get worse regionally and locally?

Task 2: Set up Focus Groups

During this task, meeting locations will be established and participants invited.

Task 1 identifies potential security and human service participants. To assure a random geographic selection of citizens with such a small number of participants (8 to 12 per focus group), we will divide the region into subareas, e.g., by telephone prefix. In addition to geographic spread, the only other consideration should be that participants be at least 18 years old. Given the small number of citizens to be selected for the two focus groups, we do not

recommend that other factors such as age spread and minority representation be used in selection of participants.

It was difficult to get a good geographic spread for the focus groups of Phase I of *Region 2040* because people from the outlying areas did not want to come downtown. Therefore, we recommend that these two focus groups be held outside the downtown area, with one on the east side and one on the west side. The security and human service focus groups can be held at a central location such as at Metro.

With agreement on schedule, participants and locations, we will make phone calls to invite participants. If there are rejections, others will be called, always maintaining the balance of participants agreed upon. Follow-up letters will be sent providing information about time and place and agenda. Experience suggests that a small stipend to cover expenses, say \$15 per person, improves the chances of getting citizens to agree to participate and to show up. The follow-up letter will confirm this.

Task 3: Facilitate Focus Groups

We expect the agenda for the four sessions will follow a similar track. A draft agenda follows:

1. Presentation of *Region 2040* growth concepts, describing both regional growth and local impact characteristics. (The text and materials for this presentation would be prepared by Metro, either in the form of slide show, video, handouts or other written and visual information.)
2. Identification of regional issues associated with future regional growth and perceived impacts described in terms, such as "better or worse", "more or less", "increase or decrease."
3. Discussion of regional and local issues associated with each of the regional growth alternatives. Facilitators will probe for terms or indicators that describe the participants' concerns related to the issues.
4. Discussion of community and personal choices and tradeoffs associated with each regional growth alternative. The citizen focus groups also will be asked to respond to concepts of slow or no growth and the implications these have with respect to the identified issues and choices and tradeoffs.
5. Discussion of priorities among the issues and which indicators are more important and why.

We expect each focus group will last about 2 1/2 hours. Pacific Rim Resources will facilitate the focus groups and assure that the proceedings are recorded, in writing and on tape. We expect Metro staff and other members of the consultant team will observe or participate in some way, to be discussed during Task 1.

Task 4: Prepare Summaries and Report

We will prepare a summary of each focus group session and an overall report summarizing our conclusions from the four focus groups. Metro staff will review and comment on the report. The focus group summaries will highlight significant viewpoints and comments and the overall report will summarize these highlights and provide an overall analysis. Following review, a camera-ready final report will be prepared with the focus group summaries in an appendix.

Products

- Memorandum describing the meeting schedule, format, participants, and expected outcomes.
- Facilitated meetings and recorded proceedings.
- Meeting summaries and a final report on non-quantitative issues and indicators related to security, human services and liberty/choice issues related to the regional growth alternatives.

SCHEDULE

Figure 1 outlines a generic schedule for all four work elements:

Figure 1: Schedule

Name	Oct '93	Nov '93	Dec '93	Jan '94
Refine Scope and Responsibilities	→ 10/15			
Conduct Research	→ 11/26			
Review/Revise Draft Reports	→ 12/10			
Prepare Final Reports	→ 12/31 Fnl Tech Rprts			

PACIFIC RIM RESOURCES

October 20, 1993

Memorandum

To: Mark Turpel

From: Sumner Sharpe *SS*

Subject: Amendments to Descriptive Indicators: Work Element 4: Assessment of Non-Quantifiable Indicators

Based on our discussion on October 18 and subsequent conversations between Terry and me on October 19 and 20, the following is a description of tasks to be added to Work Element 4, and a cost estimate for those added tasks.

It is my understanding that you will, based on this memo, send a memo to Terry authorizing these added tasks and the budget to be shifted to our portion of the work program. He, in turn, will amend our agreement with ECO Northwest.

Added Tasks

Research: Undertake a search for written information through library and other bibliographic sources, (e.g. key word and Social Science Citation Index searches), and through discussions with local area contacts, including contact with the Oregon Progress Board staff and urban designers to identify current research and information available which is pertinent to the non-quantitative indicators.

This effort will attempt to identify information available on both the measurable and perceptual relationships between 1) regional form/space and community or neighborhood and site-related design concepts that might occur within the region and 2) the non-quantitative indicators that will be the subjects of the focus groups (security and safety, human services, and sense of community and choices/freedom issues.).

This information will be summarized in a brief (two or four page) summary with information keyed to the kinds of questions that could be asked during the focus group sessions. Printouts or other annotated bibliographic materials will be appended to the summary memo.

Third Citizen Focus Group. A third/south Clackamas County focus group will be held with a randomly selected sample of Clackamas County-citizens. This will be in addition to the east side and west side focus groups identified in our proposal.

795 WED 14:00 PACIFIC RIM RESOURCE P.03

Added Cost

The estimated added costs of \$4,384 are identified below. I have discussed these with Terry Moore, and it is understood that this will be in addition to the \$12,008 allocated for Pacific Rim Resources in the ECO NW proposal.

	Sharpe	Strachan	Armstrong
Research	2	-	40
3rd Focus Group	<u>7</u>	<u>14</u>	<u>15</u>
Total Hours	9	14	55

Personnel:

Sharpe	\$ 909	
Strachan	1,050	
Armstrong	<u>1,925</u>	\$3,884
Direct Expenses: Estimate		<u>500</u>
Total Cost Estimate		\$4,384

If you have any questions, please do not hesitate to call.

cc: Terry Moore

EXHIBIT A

FEDERAL REQUIREMENTS

1. Disadvantaged Business Enterprises (DBE)

The DBE goal for this contract is zero percent (0%). If the DBE goal is zero percent (0%), only subparagraph (a) below applies. If the DBE goal exceeds zero percent (0%), subparagraphs (a) and (b) below apply.

Pursuant to 49 CFR 23.43(a), the following provisions are made a part of this contract:

- A. Policy. It is policy of the U.S. Department of Transportation (DOT) and Metro that DBEs as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 23 apply to this contract.
- B. DBE Obligation. Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.
- C. Contractor's failure to carry out the requirements set forth herein shall constitute a breach of contract, and may result in termination of the contract by Metro or such other remedy as Metro deems appropriate.

2. Equal Employment Opportunity

In connection with the execution of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontract for standard commercial supplies or raw materials.

3. Title VI Compliance

During the performance of this contract, Contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as "Contractor"), agrees as follows:

- A. Compliance with Regulations: Contractor shall comply with Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation

(hereinafter referred to as "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- B. Nondiscrimination:** Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.
- D. Information and Reports:** Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Metro or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Metro, or the FTA, as appropriate, and shall set forth what effort it has made to obtain the information.
- E. Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, Metro shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - (1) Withholding of payments to Contractor under the contract until Contractor complies, and/or,
 - (2) Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions:** Contractor shall include the provisions of subparagraphs a through e of this Paragraph in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Metro or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Metro to enter into such litigation to protect the interests of Metro, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Cargo Preference

Contractor agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 30 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in subparagraph A of this Paragraph to Metro (through Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20550, marked with appropriate identification of the Project.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

5. Conservation

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

6. Buy America

This procurement is subject to the Federal Transit Buy America Requirements in 49 CFR Part 661.

Section 165a of the Surface Transportation Assistance Act of 1982, as amended, permits FTA participation in this contract only if steel and manufactured products used in the contract are produced in the United States. By signing this contract, Contractor certifies that it will comply with requirements of section 165a of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR Part 661.

7. Interest of Members of, or Delegates to Congress

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

8. Prohibited Interest

Metro's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements.

9. Debarred Bidders

Neither Contractor, nor any officer or controlling interest holders of Contractor, is currently, or has been previously, on any debarred bidders list maintained by the United States Government or by the State of Oregon.

10. Maintenance and Inspection of Records

- A. Contractor shall maintain comprehensive records and documentation relating to this contract, and shall permit the authorized representatives of Metro, the U.S. Comptroller General, or the U.S. Department of Transportation to inspect and audit all records and documentation for a period of three (3) years after Metro has made final payment to Contractor.
- B. Contractor shall include in all of its subcontracts hereunder a provision to the effect that the subcontractor agrees that Metro, the U.S. Comptroller General or the U.S. Department of Transportation shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000.00, and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- C. The period of access and examination for records that relate to (1) litigation of the settlement of claims arising out of the performance of this Contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until such litigation, claims or expectations have been disposed of.

11. Lobbying Prohibition/Certifications/Disclosures

This contract is subject to Section 319, Public Law 101-121 (31 U.S.C. 1352) and regulations promulgated thereto by the Office of Management and Budget, pursuant to which Metro may not expend funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. By signing this contract, Contractor agrees to comply with these laws and regulations.

A. Definitions. As used in this clause,

"Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;**
- (2) The making of any Federal grant;**
- (3) The making of any Federal loan;**
- (4) The entering into of any cooperative agreement; and,**
- (5) The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.**

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established or otherwise recognized by a State for the performance of a government duty including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;**
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;**
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,**
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.**

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organizations or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation

for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional or interstate entity having governmental duties and powers.

B. Prohibition.

(1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph B(2)(i)(a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

- (c) For purpose of paragraph B(2)(i)(a) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:
 - (1.) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale and service capabilities; and,
 - (2.) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (d) For purposes of paragraph B(2)(i)(a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (1.) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2.) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,
 - (3.) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
 - (e) Only those activities expressly authorized by paragraph B(2)(i) of this section are allowable under paragraph B(2)(i).
- (ii) Professional and technical services by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
 - (b) For purposes of paragraph B(2)(ii)(a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a

licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspect of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award document.
- (d) Only those services expressly authorized by paragraph B(2)(ii) of this section are allowable under paragraph B(2)(ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

- (a) The prohibition on the use of appropriated funds, in paragraph B(1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
- (b) For purposes of paragraph B(2)(iv)(a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not all allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in

the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (e) Only those services expressly authorized by paragraph B(2)(iv) of this section are allowable under paragraph B(2)(iv).

C. Disclosure.

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal Contract shall file with that agency disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities", if such a person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph c(2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or,
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(c) A change in the officer(s), employee(s) or member(s) contacted to influence or attempt to influence a covered Federal action.

(4) Any person who requests or receives from a person referred to in paragraph (C)(1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C(1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement.

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties.

(1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subjected to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability.

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

e:\pdf\forms\vegs
08/30/93

EXHIBIT "B"

AMENDMENT NO. 1

CONTRACT EXTENSION

That Contract No. 903389 between Metro and ECO Northwest, hereinafter referred to as "CONTRACTOR," effective October 11, 1993, for a maximum amount of \$100,000.00, is hereby amended to add the following addition to the Scope of Work:

The Westside Station Area Program's (TSAP) adopted Detailed Work Program includes a task to perform economic analysis and projections (Task 8). The analysis is intended to serve as a starting basis for preparing and evaluating impacts of alternative station area development/design concepts.

Described in the following pages is a Scope of Work for the completion of Task 8. The work scope has been developed in recognition of other planning efforts presently underway. In particular, selected tasks have been designed to be completed in conjunction with the Metro 2040 project.

The results of the work effort will be a comprehensive analysis of the short- and long-term employment and housing markets. The forecasts will be based on analysis performed at the regional and county levels as well as more detailed analysis conducted for the LRT corridor. However, the analysis will not result in site specific forecasts within station areas. The determination of site specific forecasts will require the performance of detailed short-term market analysis which will be conducted at the discretion of individual jurisdictions.

Task 8 -- Economic Analysis/Projection

Task 1 Structural Composition of the Economy

The Contractor will perform an analysis of the structural composition of the economy which includes a portrayal of the current and projected economic drivers. The analysis will begin with a depiction of the Northwest economy, proceed to examine the Portland Metropolitan Area (PMA) economy in relation to the Northwest, review and contrast the unique characteristics of the Washington County economy, and finally evaluate the westside LRT corridor. The analysis will examine several time periods including 1995, 2005, 2015 and 2040. The most detailed analysis will be for the years 2005 and 2015.

The Contractor will primarily rely on existing economic models, other national and regional studies, and site specific market analyses that have been completed for several westside LRT station sites. The analysis will utilize the Metro 2040 Project's population and employment projections as control totals for the years 2015 and 2040. Sub-regional (county level) allocations will also be utilized.

The outcome of this effort will be a technical memorandum that describes the results of the analysis. The technical memorandum should be completed in February 1994.

Task 2 Projected Demand for Business Activity and Housing

The Contractor will utilize the results of Task 1 and other economic analyses being performed as part of the Metro 2040 Project to provide forecasts of the projected levels of activities in various business and housing markets. The forecasts will be presented for the Portland metropolitan area for the commercial retail, office, light industrial, heavy industrial, health and institutional business sectors. A forecast of single family and multi-family housing units will also be provided. The forecasts will be prepared for several time periods including 1995, 2005, 2015 and 2040. The most detailed analysis will be performed for 2005 and 2015. In consideration of the high level of uncertainty regarding this type of forecasting, the forecasts will be presented as a low to high range.

The outcome of this effort will be a technical memorandum that describes the results of the analysis. The technical memorandum should be completed in February 1994.

Task 3 Identification of Alternative Land Development Opportunity Areas

The Contractor, working in conjunction with Metro and Washington County, will identify other areas in the Portland metropolitan area that offer significant land development opportunities. This examination will provide an indication of the potential under or over supply of vacant or redevelopable land required to accommodate the projected levels of economic and residential activity as quantified in Task 2. While the work will be performed for the Portland metropolitan area, the analysis will provide more indepth review of opportunities in Washington County. Similar to other tasks, the analysis will be performed for the time periods 1995, 2005, 2015 and 2040 with primary focus to be placed on 2005 and 2015.

The outcome of this effort will be a technical memorandum that describes the results of the analysis. The technical memorandum should be completed in February 1994.

Task 4 Comparative Analysis of the Competitive Advantage of Westside LRT Station Sites to Other Regional Opportunities

The Contractor will perform an economic analysis which identifies the potential competitive advantages, if any, of station areas in relation to other development opportunities in the Portland metropolitan area and within Washington County. The analysis will not be performed on a station by station basis, but rather will review factors relating to LRT accessibility, access to other transportation modes, levels of vacant land; redevelopment opportunities and other such factors for various like segments within the LRT corridor. The analysis should be performed for 1995, 2005, 2015 and 2040 with emphasis to be placed on the 2005 and 2015 time periods.

As part of the analysis the Contractor will also identify factors, that if not present could also influence the success of the station areas. Examples of such factors might be adequacy of infrastructure, potential financing opportunities, etc.

The outcome of this effort will be a technical memorandum that describes the results of the analysis. The technical memorandum should be completed in March 1994.

Task 5 Preliminary Examination of Unique Market Advantages of Individual Station Areas within the Westside LRT Corridor

The Contractor will perform a cursory review of the station areas to identify any unique market opportunities that may be present. This examination will seek to identify any prevailing or projected economic trends that could be maximized by unique characteristics of individual station sites. This review should be conducted in both the short- and long-term time periods.

The outcome of this effort will be a technical memorandum that describes the results of the analysis. The technical memorandum should be completed in March 1994.

Task 6 Summary, Findings and Recommendations

The Contractor will prepare a final report which relies on the results of the previous tasks. The Final Report will summarize the results of the previous work and present a series of findings with regard to the Westside LRT corridor's market potential within the near and far terms. The Final Report should also include a series of recommendations on considerations to be carried forward in the formulation of alternative station area development/design concepts.

The result of this task will be the preparation of a Final Report. A first draft of the Final Report should be completed in April 1994. A final version of the report should be completed within four weeks of the receipt of review comments.

Compensation for this additional work will be a maximum sum not to exceed FIFTY THOUSAND AND NO/100THS DOLLARS (\$50,000.00), with the total contract amount not to exceed ONE HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$150,000.00).

For work completed, Contractor shall send Metro a separate invoice for 2040-related work covered under the original contract and station area planning work covered under this amendment. These invoices shall document services and products provided by Contractor as specified in this Scope of Work and supported by copies of all invoices for reimbursable costs. Metro shall pay approved invoices within thirty (30) days of approval.

All other terms of the Contract, including all applicable federal, state, and local laws, regulations and policies as referenced in Metro Contract No. 903389, remain in full force and effect.

Dated this ____ day of _____ 1994.

ECO NORTHWEST

METRO

By _____

By _____

Date _____

Date _____

erh
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STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-1891 FOR THE PURPOSE OF AUTHORIZING AN EXTENSION TO METRO CONTRACT NO. 903389 AND TO EXEMPT THIS WORK FROM COMPETITIVE BIDDING, PURSUANT TO METRO CODE SECTION 2.04.054(a)(2)

Date: December 20, 1993

Presented by: Terry J. Lassar

FACTUAL BACKGROUND AND ANALYSIS

In October 1993, ECO Northwest was selected through an RFP process to conduct a "Descriptive Indicators" analysis of the different growth concepts being considered under the 2040 Program. Metro Contract No. 903389, attached here as Exhibit "A," was awarded in the amount of \$100,000. As part of Work Element 3 of the contract -- Commercial and Industrial Market Analysis -- ECO Northwest will forecast the demand for and supply of commercial and industrial facilities in the year 2040. As part of Work Element 2 -- Housing Demographic/Market Analysis -- ECO Northwest will analyze future demographic changes and market forces as they relate to the demand for and supply of housing by product type.

The information generated under these two work elements will provide the groundwork for related economic studies for the Westside Station Area Planning Program. The adopted "Detailed Work Plan" calls for an economic analysis/projection of the Westside Light Rail Corridor. This analysis will serve as the starting point for preparing and evaluating the impacts of alternative station area development/design concepts. The work will provide a comprehensive analysis of both the short- and long-term employment and housing markets. The work consists of the following six tasks:

- Task 1 -- Structural Composition of the Economy
- Task 2 -- Projected Demand for Business Activity and Housing
- Task 3 -- Identification of Alternative Land Development Opportunity Areas
- Task 4 -- Comparative Analysis of the Competitive Advantage of Westside LRT Station Sites to Other Regional Opportunities
- Task 5 -- Preliminary Examination of Unique Market Advantages of Individual Station Areas within the Westside LRT Corridor
- Task 6 -- Summary, Findings and Recommendations

Refer to Contract No. 903389 Amendment 1, attached here as Exhibit "B."

Tasks 1 and 2 are logical extensions of the descriptive indicators work under the 2040 Program. The primary differences in the analyses for the two projects are the timeframes and the geographic areas. ECO Northwest's work for the 2040 Program will focus on the entire region as it will exist in the year 2040. By contrast, the westside station area analysis involves a shorter timeframe and concentrates mainly on the years 2005 and 2015. Likewise, the geographic areas under the station area analysis will be less expansive and will focus mainly on Washington County, with detailed analysis of the Westside Light Rail Corridor.

The two contracts call for similar analytic approaches. ECO Northwest's solid track record as well as the impressive credentials of the ECO Northwest staff, helped the firm win the initial RFP for the 2040 work. Two of the firm's senior members -- Terry Moore and Randy Pozdena -- who are directing the 2040 contract, would also be the principal staff involved in the station area project. Therefore, for the same reasons that ECO Northwest was deemed the most qualified to perform the descriptive indicators contract, it would appear that they also would provide the quality and type of services called for under the station area program. Thus, it would be unnecessary to solicit additional proposals from other consultants. Moreover, it would be inefficient. In undertaking the work for the Westside Station Area Program, ECO Northwest would use, with some modifications, some of the same models it developed specifically for the earlier 2040 contract.

An additional reason for retaining the same consulting firm for the two contracts is the need for consistency. It is important that the underlying assumptions and methodologies used for the two economic contracts be compatible so that the resulting data generated from two studies will be comparable. This level of consistency will be more difficult to achieve if different firms are employed for the two contracts.

For all the reasons stated above, the most practical course of action is to treat the westside station area work (which is not to exceed the amount of \$50,000) as a logical extension of the descriptive indicators contract. The 2040 work will be completed in February 1994 and the economic projections for the Westside Light Rail Corridor is to be completed in April 1994.

RFP Competition occurred in July, 1993 and a contract was executed on December 2, 1993. This five month process allowed the project to be publicly advertised, 135 potential consultants contacted, and resulted in the personal interview of only two finalists. Of the two finalists, ECO Northwest was judged by the Planning Committee to have the most advantageous proposal by a clear margin of 57 points.

Based upon the results of that competition, it is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and inclusion of this work as an amendment to contract no. 903389 without a further time-consuming and costly competitive process will result in substantial cost savings to Metro.

PROPOSED ACTION

Now, therefore, the facts as set forth clearly satisfy the findings required by ORS 279.015 and Metro Code Section 2.04.054 (a)(2) allows the Contract Review Board, under certain circumstances, to exempt personal services contracts from the general requirement for competitive bidding. These circumstances include the situation where there are fewer than three potential contractors "qualified to provide the quality and type of services required" and where "the quality and type of services required make it unnecessary or impractical to solicit proposals."

EXECUTIVE OFFICER'S RECOMMENDATION

The situation, as presented, provides ample justification for the Contract Review Board to waive competitive bidding of the economic analysis/projection work for the Westside Light Rail Corridor and to treat the project as an extension of the existing 2040 Metro Contract No. 903389.

TJL/erb
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12/28/93

Meeting Date: January 13, 1994
Agenda Item No. 7.4

RESOLUTION NO. 94-1897
(Previously numbered 1890 in error)

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 94-1897, FOR THE PURPOSE OF REJECTING AN APPEAL BY JAMES LUZIER OF THE AWARD OF A CONTRACT TO PORTLAND STATE UNIVERSITY FOR GROUNDWATER MODELING AT THE ST. JOHNS LANDFILL AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT

Date: January 6, 1993

Presented by: Councilor Washington

Committee Recommendation: At the January 4 meeting, the Committee voted unanimously to recommend Council adoption of Resolution 94-1890. Voting in favor: Councilors Buchanan, McFarland, McLain, Washington and Wyers.

Committee Issues/Discussion: The Solid Waste Department conducted an RFP process to award a contract for groundwater modeling services at the St. Johns Landfill. This work is necessary to meet closure-related environmental requirements that have been imposed by DEQ. Following a preliminary review, the evaluation committee interviewed the two highest ranked candidates, Portland State University (PSU) and Luzier Hydrosciences. The committee then conditionally awarded the contract to PSU. Following receipt of notification of the awarding of the contract, Mr. Luzier formally appealed to the Executive Officer. This appeal was rejected. Mr. Luzier then exercised his rights under the Metro Code to appeal the award decision to the Council, acting as the Contract Review Board.

Mr. Luzier presented written testimony (see attached) and made an oral argument of his case before the committee. His oral comments focused on the qualifications of his firm and his concern about publically funded agencies competing with the private sector for public contract work. He offered to work with Portland State in some type of joint venture to complete the work of the contract, arguing that PSU and his firm would complement each other.

Joanna Karl, Project Manager for the contract, noted that PSU had indicated that they carefully select those public contracts upon which they bid and that they bid on only those projects that can offer an educational experience for some of their students.

Todd Sadlo, Assistant Legal Counsel, noted that the Council was free to tailor any solution, but that he was concerned that an unsuccessful bidder could use the appeal process to delay final award in an effort to have themselves included in the proposed work. He further noted that PSU won the contract in a fair and competitive process and that there might be a perception problem if PSU is forced to give an unsuccessful bidder a portion of the work.

Bob Martin indicated that it is not clear that PSU would welcome a joint venture with Luzier. He noted that the modelling work was critical to complete a required monitoring program that is already behind schedule.

PLEASE NOTE: At the time the resolution was considered by the committee, it had been incorrectly numbered 1890. This number had already been given to another resolution. The resolution was renumbered 1897 and the error has been corrected on all documents related to the resolution.

BEFORE THE CONTRACT REVIEW BOARD

FOR THE PURPOSE OF REJECTING	)	RESOLUTION NO. 94-1897
AN APPEAL BY JAMES LUZIER OF THE)	
AWARD OF A CONTRACT TO PORTLAND	)	Introduced by Rena Cusma,
STATE UNIVERSITY FOR GROUNDWATER	)	Executive Officer
MODELING AT THE ST. JOHNS LANDFILL)	
AND AUTHORIZING THE EXECUTIVE)	
OFFICER TO EXECUTE THE AGREEMENT)	

WHEREAS, In September of 1993, the Metro Solid Waste Department (Department) issued a request for proposals for groundwater modeling services for St. Johns Landfill; and

WHEREAS, Five proposals were received, and were evaluated by the Department; and

WHEREAS, Following evaluation of all proposals, the Department determined that a proposal from Portland State University (PSU) was the best proposal received; and

WHEREAS, James Luzier, of Luzier Hydrosciences, objected to the award of the contract to PSU and filed an appeal to the Executive Officer within the timeframe specified in the Metro Code; and

WHEREAS, The Executive Officer, by letter to Mr. Luzier dated December 15, 1993, rejected Mr. Luzier's appeal; and

WHEREAS, Mr. Luzier appealed the Executive Officer's decision to the Metro Contract Review Board (Board) in the timeframe specified in the Metro Code; and

WHEREAS, After reviewing all relevant material and providing Mr. Luzier an opportunity to be heard, the Board has concluded that the appeal should be rejected and the contract awarded to PSU as requested by the Solid Waste Department; now, therefore,

BE IT RESOLVED,

That the Metro Contract Review Board hereby rejects the appeal of James Luzier of the award to Portland State University of the contract for groundwater modeling at the St. Johns Landfill, and authorizes the Executive Officer to execute the agreement.

ADOPTED by the Metro Contract Review Board this _____ day of January, 1994.

Judy Wyers, Presiding Officer

ds
1147

Meeting Date: January 13, 1994
Agenda Item No. 7.5

RESOLUTION NO. 94-1892



METRO

DATE: January 7, 1994

TO: Metro Council
Executive Officer
Agenda Recipients

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 7.5; RESOLUTION NO. 94-1892

The Solid Waste Committee will consider this resolution at its special meeting Tuesday, January 11. The Committee report will be distributed after that date and available at the Council meeting January 13.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REVISING	)	RESOLUTION NO. 93-1892
CHAPTER 5 OF THE REGIONAL SOLID)	
WASTE MANAGEMENT PLAN AND	)	INTRODUCED BY SOLID WASTE
ADJUSTING TONNAGES AT METRO	)	COMMITTEE
FACILITIES		

WHEREAS, The Composter facility is no longer operational;

WHEREAS, The Council has determined that new transfer facilities will not be built or franchised in the near future;

WHEREAS, A number of new processing and recycling facilities addressing specific wastestreams will likely be sited;

WHEREAS, The organic wastestream study may produce recommendations affecting facility configuration and development;

WHEREAS, Major industrial waste generators may develop new non-Metro-related disposal options;

WHEREAS, Review of the solid waste revenue system may produce recommendations affecting facility financing; and

WHEREAS, Tonnage adjustments between existing facilities are needed to maximize their efficient and cost-effective operation; now, therefore,

BE IT RESOLVED,

1. That the Metro Council authorizes the revision of Chapter 5 and such other elements of the Regional Solid Waste Management Plan and Metro Code as may be necessary to prepare a new facility plan. This revision shall address Metro's regulatory relationship with existing and potential new types of disposal and processing facilities and the nature and configuration of the Metro region's solid waste disposal and processing system.

2. That the Metro Council authorizes the development of a plan

to adjust tonnage levels between Metro Central and Metro South Stations, for the purpose of reducing projected annual tonnage levels at Metro South Station by a minimum of 60,000 tons.

3. The revised chapter shall be presented for Council consideration prior to December 31, 1994. The tonnage adjustment plan shall be implemented by July 1, 1994.

4. That it is the Metro Council's intent that no new transfer stations, as defined in Metro Code Section 5.01.010 (u), with a capacity of over 75,000 tons per year shall be franchised for a period of five years from the date of approval of this resolution.

ADOPTED by the Metro Council this _____ day of

_____, 1993.

Judy Wyers, Presiding Officer

Meeting Date: January 13, 1994
Agenda Item No. 7.6

RESOLUTION NO. 94-1848



METRO

DATE: January 7, 1994

TO: Metro Council
Executive Officer
Agenda Recipients

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 7.6; RESOLUTION NO. 94-1848

The Solid Waste Committee will consider this resolution at its special meeting Tuesday, January 11. The Committee report will be distributed after that date and available at the Council meeting January 13.

REITER NORTHWEST



January 2, 1994

Merle Irvine
Willamette Resources, Inc.
2215 N. Front Street
Woodburn, OR 97971

Dear Merle:

In the attachment, I have posed and answered a series of questions related to Metro's March 1993 forecast and the outlook for tonnage through 2000. As I indicated early in this project, the deficiencies in Metro's March 1993 forecasting methodology and forecast were such that there appeared to be no way to "repair" the March 1993 forecast by passing more appropriate assumptions through the model used to produce this forecast. Instead, I developed an independent outlook for Metro's tonnages through the end of the decade, described appropriate approaches to waste forecasting, and then used this information as a framework for illustrating the deficiencies in Metro's approach and forecast.

In the attached materials, I have repeatedly made the point that developing accurate forecasts of receipts/disposal in the 1990's really translates to developing accurate forecasts of recycling. This principle applies to my work as well. For this reason, the outlook that I have presented here should be regarded as a sketch of the future rather than a detailed picture. And this is as it should be. Developing such forecasts is not your responsibility but rather Metro's.

This outlook is built around the following key assumptions: that employment will grow at the rate specified in the forecast produced for Tri-Met by ECO Northwest, which is very reasonable by historical standards; that population and household grow in accordance with the historical relationships between population and employment in the Portland area; and, that the relationship of Metro's current prices to the competition remain relatively constant.

That said, the following seems clear -- tonnages will start climbing once again and will continue to do so through the end of the decade, barring a significant recession. The exact growth rate depends on the efficacy of recycling and on the actual rate of growth in the economy. Metro's share of this tonnage depends on their pricing and location vis-a-vis Hillsboro and other competitors. The system will probably hit capacity in the next three-five years. In the meantime, TST tonnages originating in the south end will be (and already are) beyond the rated capacity of the system.

Metro's March 1993 forecast misses the elements of this outlook completely, for the many reasons I have described in the document. The realization of a no TST-growth scenario (as suggested by Metro's forecast) would require the adoption of a number of additional policy measures, most of which are regarded as draconian (e.g., mandatory food waste recycling, cardboard bans, etc.).

Merle Irvine
Metro 1993 Forecast Review
January 2, 1994

Please call me if you have any questions.

Sincerely yours.

A handwritten signature in cursive script, appearing to read "Paul D. Reiter".

Paul D. Reiter
Reiter Northwest

cc: Carl Batten, ECO Northwest (with attachments)

1. What Factors Led to the Recent Declines in Metro Tonnages? Should We Expect More Declines in the Near Term?

Synopsis

As Figure 1-A illustrates, the recent slowdown in the receipts of system-wide and transfer station waste can be attributed to three primary factors:

- o the slowdown/recession in the Portland economy;
- o the ramp-up of residential curbside and hauler-based commercial recycling;
- o the substitution of lower priced non-Metro facilities and services for Metro operated facilities.

In combination, these factors produced declines in Metro's receipts and the region's overall disposal volumes over the 1991 to mid-1993 period. Beginning in 1993, tonnage began to grow sufficiently to overcome the effects of recycling. This growth in disposal volumes will accelerate in 1994-95 as the economy recovers, the growth in curbside volumes slows, and the relative price of Metro disposal stabilizes.

Over the 1994-2000 period, Metro's receipts of solid wastes should grow between 1.4 and 1.7 percent per year, once the affects of hauler-based and market-based recycling have been accounted for. This compares with a 3 percent rate of growth in receipts prior to the downturn in 1991.

How the Slowdown Affected Waste Generation

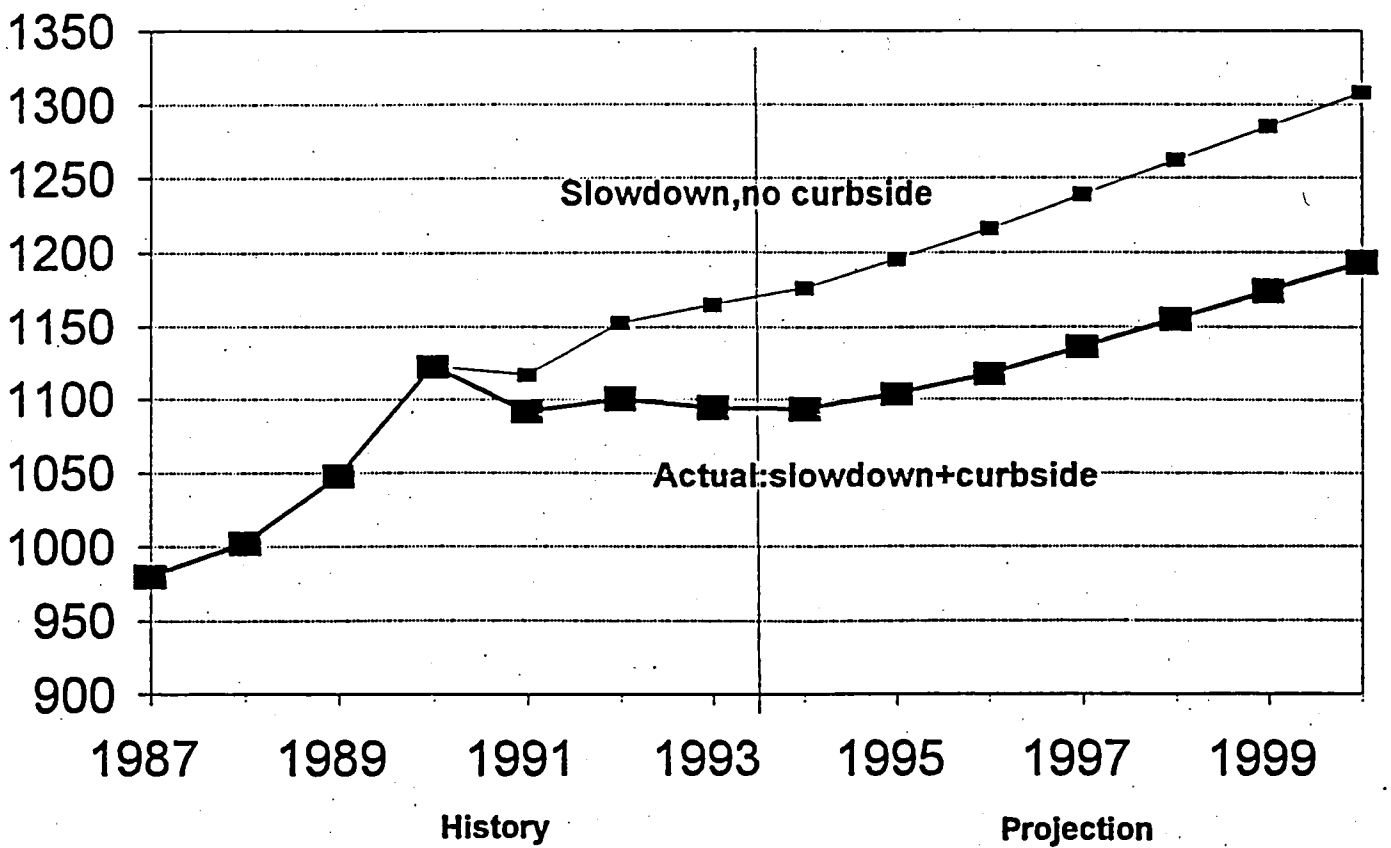
Metro's wastes are produced as a by-product of the activities of three broad classes of generators: residences, business/government/industry, and construction. Fluctuations in the activity level of any of these generators produces fluctuations in waste volumes.

By relating historical measures of the activity variables (e.g., restaurant employment) to waste generation factors (e.g., waste per restaurant employee), one can estimate how the downturn affected Metro receipts independent of recycling and the effects of rate differences between Metro and non-Metro facilities.

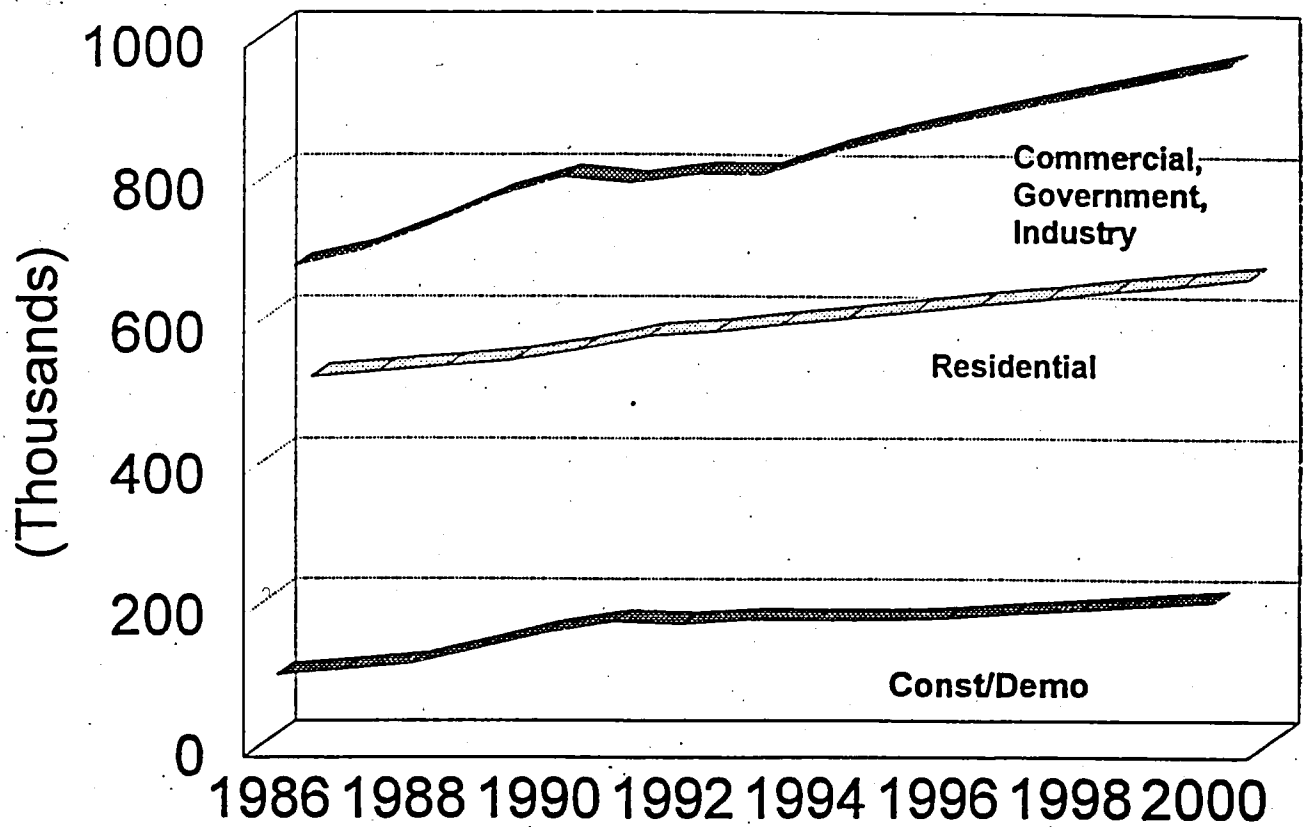
Using these concepts, it is clear that the economic slowdown in the Portland area resulted in a significant slowing of the patterns of rapid growth evident in the late 1980's. Of the three waste producing classes, the commercial/industrial class appears to have been the largest contributor to the slowdown in waste generation growth, as shown in Figure 1-B. The manufacturing sub-sector was actually in a recession during this period.

Overall, total waste generation grew less by only 1% per year between 1990 and 1993, after growing by more than 4% per year between 1986 and 1990.

Figure 1-A - Metro System-Wide Disposal Tonnage Under Two Scenarios



**Figure 1-B - Metro System-Wide
Waste Generation by Class**



The Impact of Curbside Recycling

Many of the hauler-based recycling activities were coincidentally introduced and at their period of maximum increase at precisely the same time (1990-92) as the Portland area economy was slowing. Curbside programs typically display a logarithmic pattern of growth in tonnage following their introduction. Examples from Seattle and Snohomish County in Washington State are illustrated in Figure 1-C.

Accordingly, during the period 1991-92, the growth in recycling volumes actually exceeded the growth in generated wastes. Not surprisingly then, Metro system-level receipts slowed to a trickle over this period, as the affects of "upstream" recycling began to drive a wedge between generation and disposal, as shown in Figure 1-A. In 1993, the growth in generation appears to have exceeded recycling-related decline in disposal, as the economy began to recover and as the recycling program tonnages began to level out.

The Role of Rising Relative Prices

Coincident with the slowdown in the growth of waste generation and the loss of tonnage to curbside recycling was a 63% increase in the Metro's nominal tip fee prices between January, 1990 and January, 1993. The significance of these price increases were a result of Metro's relative price position vis-a-vis competitive non-Metro suppliers of recycling and disposal services.

Figure 1-D compares disposal prices at Metro's facilities with prices for comparable services at the Hillsboro landfill over the 1988-93 time period. As Figure 1-D illustrates, following the 1991 rate increase, Metro's prices *exceeded* the price of its major competitor, the Hillsboro landfill. Thereafter, Metro's share of system wide receipts fell. Unfortunately, these price changes coincided with the closure of St. John's landfill, making it difficult to disentangle the effects of the price changes.

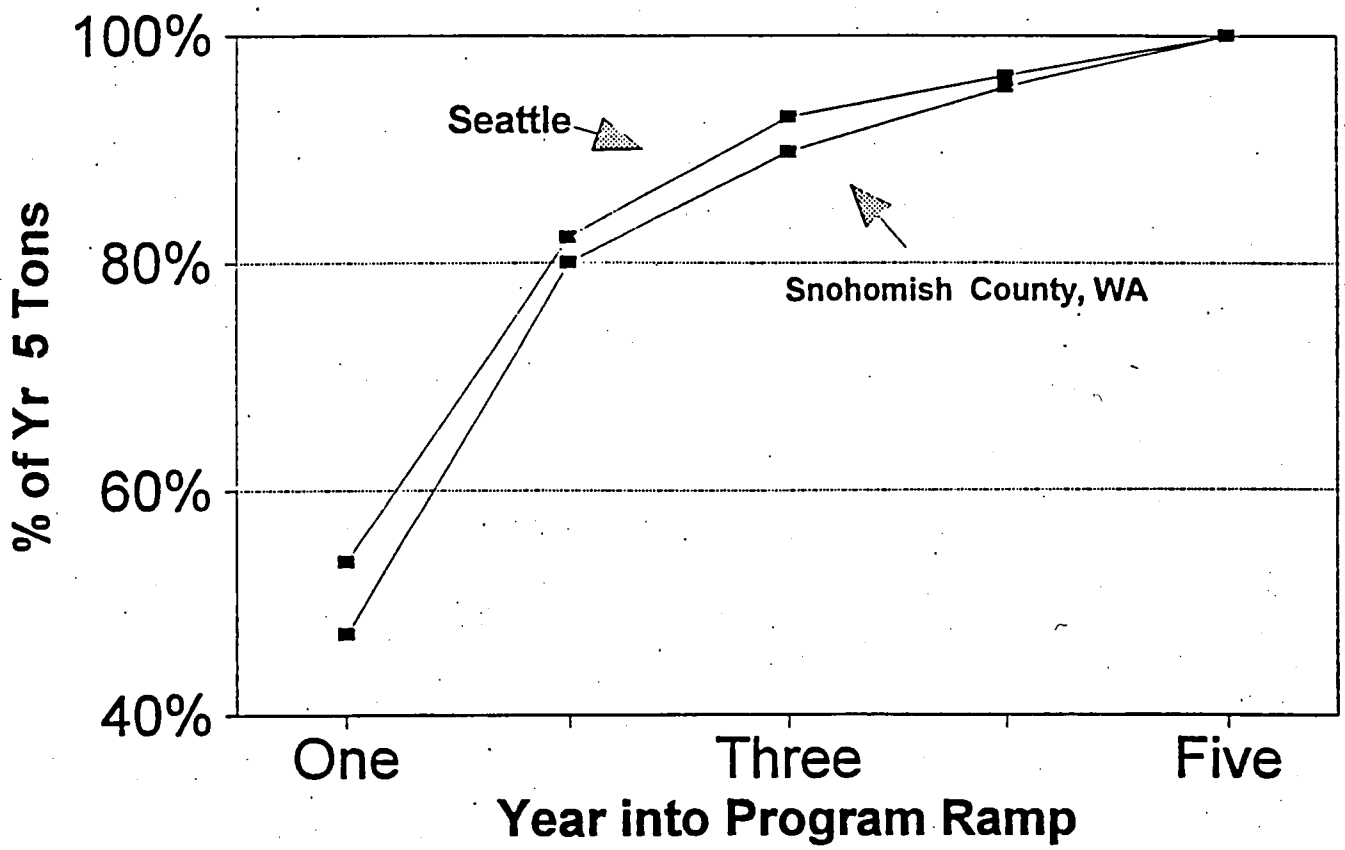
The gap between Metro's prices and Hillsboro prices narrowed in mid-1992., and stabilized in 1993. Subsequently, Metro's share of regional receipts stabilized and appears to have grown in 1993.

The Comparable Experience of Snohomish County, Washington

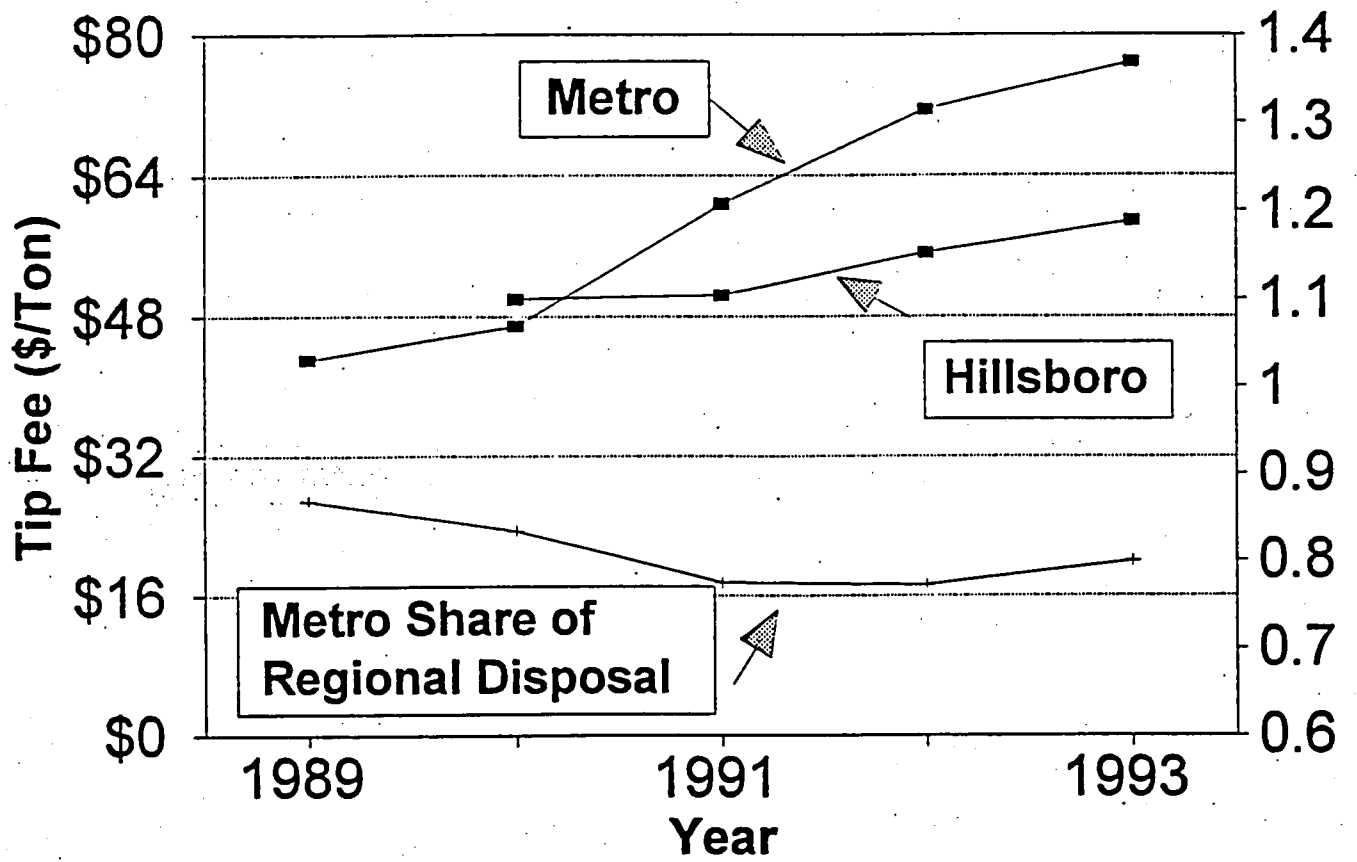
These oscillations in tonnage are not unique to Metro. Snohomish County, Washington had a very similar experience to Metro, as illustrated in Figure 1-E -- rapid growth in disposal volumes followed by declining tonnages that were the consequence of steep relative price increases, the introduction of curbside recycling, and policies that discouraged CD-type wastes.

Tonnages bottomed out in 1992/93 as the curbside programs matured and a new supply/demand equilibrium was realized in the market. Disposal tonnages are projected to grow over the 1994-2000 period, but at a slower rate than in the pre-curbside recycling era, both due to continuing growth in market recycling and due to slower economic growth.

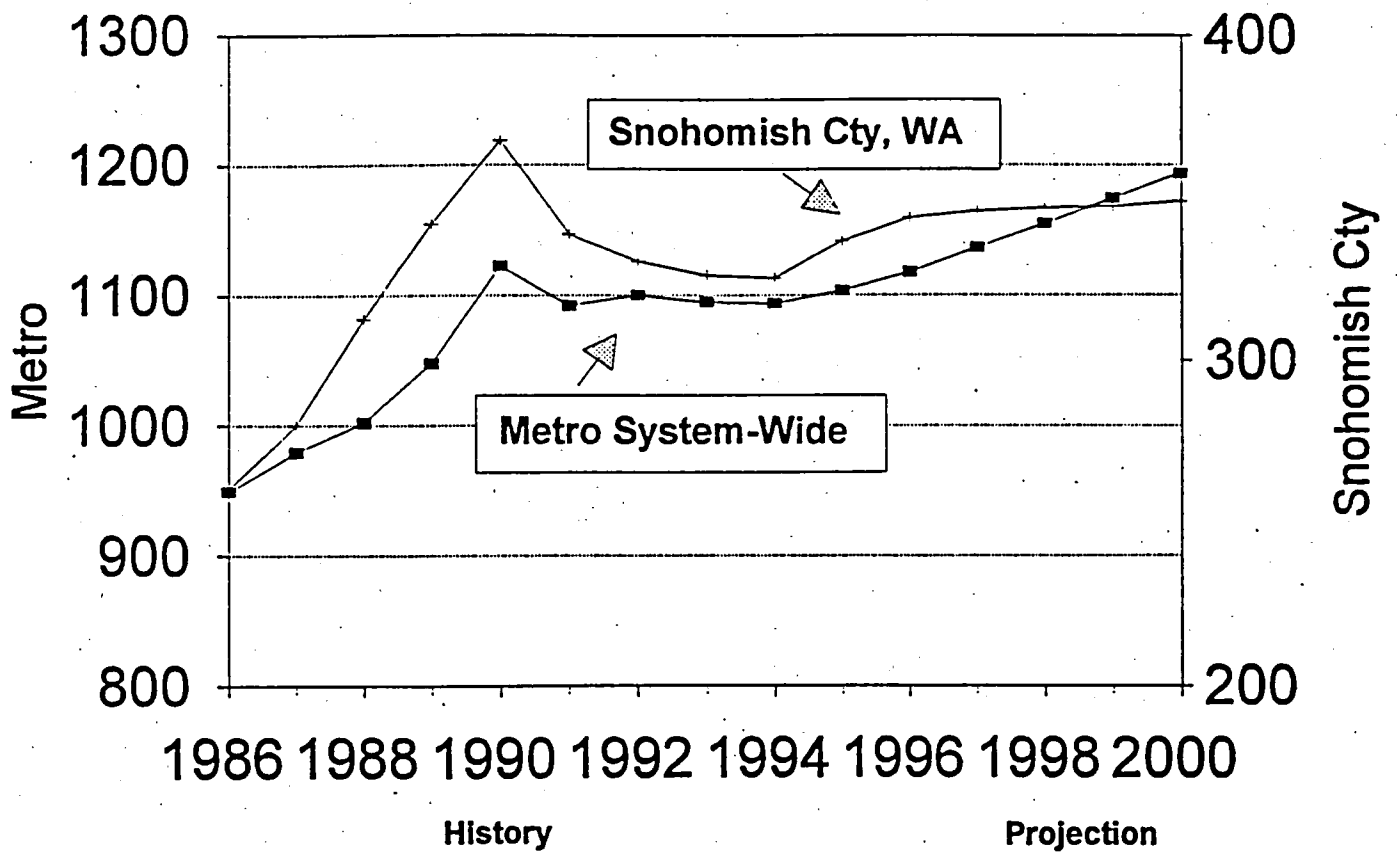
**Figure 1-C - Residential
Curbside Program Ramp Rates**



**Figure 1-D - Relative Prices
and Metro Facility Share of Disposal**



**Figure 1-E - Metro and Snoho Cty, WA
Historic/Projected Disposal Patterns**



2. What is the Outlook for Regional and TST Tonnage through 2000? When will Metro Reach Capacity for Handling TST wastes?

Synopsis

Regional deliveries should grow between 1.4 and 1.7% per year between 1994 and 2000. The range in growth rates is dependent primarily on two factors: the success of curbside/hauler based recycling, and the performance of the economy over this period.

Transfer Station type tonnage (TST) levels should exceed system capacity between 1996 and 1998, as illustrated in Figure 2-A. This assuming that the capacity for Transfer Station type tonnage (TST) is 871,000 tons through the year 2000, and that Metro's prices maintain their current relationship with alternative suppliers of recycling and disposal services.

Projections based on the new forecasting model produced for Metro by Synergic Resources Corporation also suggests that Metro will reach TST capacity in the next five years, perhaps as early as 1996. However, the impacts of curbside recycling are not fully incorporated into this model.

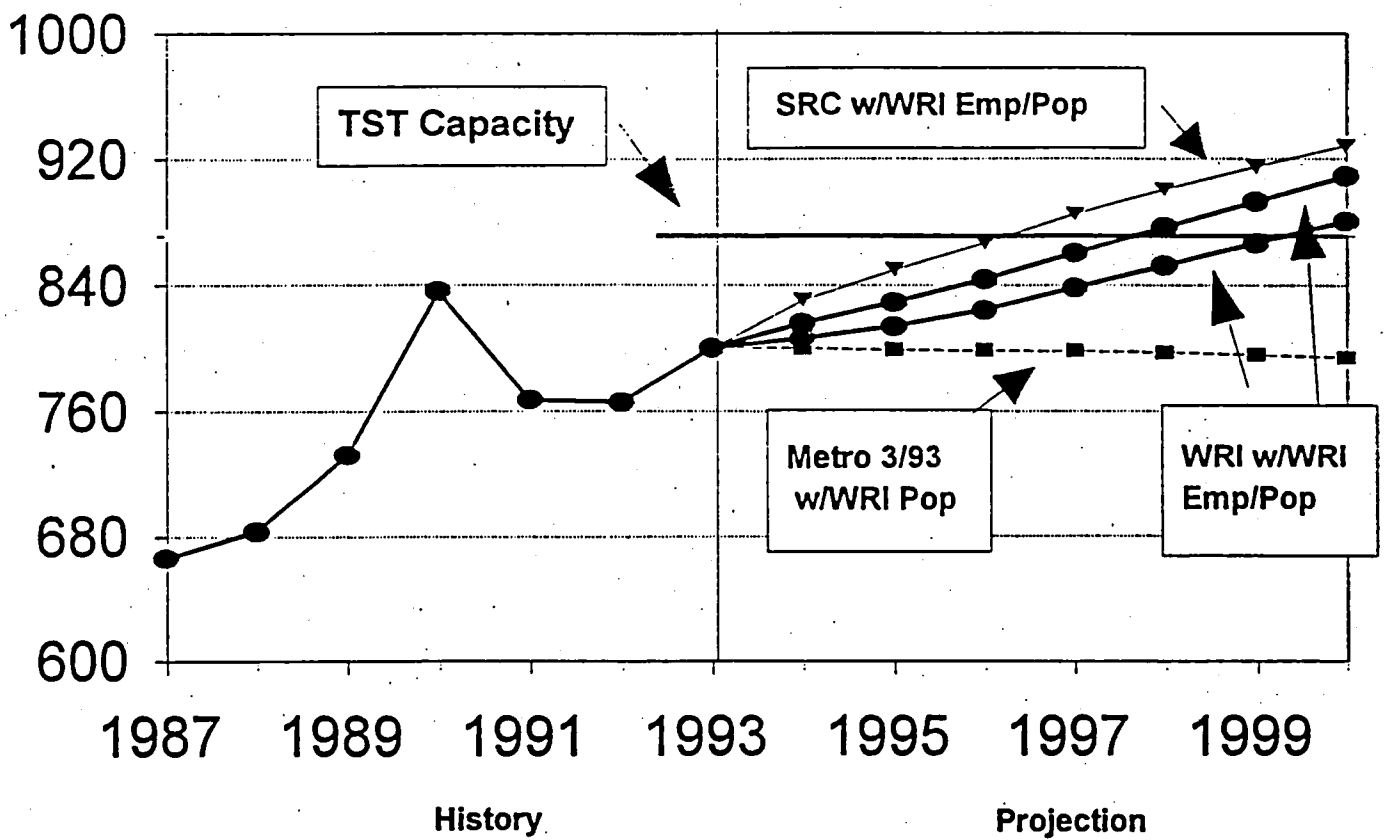
Expectations for Regional Deliveries

Regional deliveries are projected to grow between 1.4 and 1.7% per year between 1994 and 2000. During this same period, waste generation is projected to grow at approximately 2% per annum. The lower rate of growth in deliveries is attributable to growth in curbside/hauler based recycling and other market-driven recycling activities, particularly through 1994/95.

Optimistically, the curbside/hauler based programs will achieve results comparable with Seattle, which has a municipally-based system and is therefore capable of aligning rate and collection policies. In this case, total recycling would grow approximately at a rate of approximately 4% per annum. Disposal would grow approximately 1.4% per annum. Conversely, if the curbside/hauler based programs achieve 60-70% of Seattle's recovery rates, the growth in disposal would obviously be higher -- in the range of 1.7% per annum.

The new model developed for Metro by SRC suggests higher growth rates for regional deliveries over the 1994-2000 period. Although Metro has not formally developed a forecast using this model, application of the equations documented in SRC's report to Metro suggests growth in regional deliveries in excess of 3% per annum between 1994 and 2000. This model does not fully incorporate the impacts of curbside recycling and thus overstates the likely growth in deliveries through 2000.

Figure 2-A - Alternative Outlooks for Metro TST Tonnage



Projected Tonnage and TST Capacity

The capacity for TST-type tonnage is assumed to be 871,000 tons through 2000. This capacity figure is comprised of the following elements:

Facility	Capacity
Metro Central	548,000 TPY
Metro South	255,000 TPY
Forest Grove	68,000 TPY
-----	-----
All Facilities	871,000 TPY

The Metro South capacity level conforms to the legal operating level for the facility, per agreement with the City of Oregon City.

Given these capacity assumptions, and assuming that waste could be shuttled throughout the region, Metro will likely reach its capacity for handling TST waste between 1996 and 1998, as illustrated in Figure 2-A.

It is important to note however, that it is not costless to move tonnage around the region, either by haulers, or in a consolidated form. Such movements will need to be an essential part of the Metro system well before 1996, because the majority of the growth in tonnage will originate in the southern crescent of Metro's service area. To illustrate this point, note that growth in the number of households throughout the 1980's was almost 5 times higher in Washington County than in Multnomah County.

3. What are the Key Factors to Consider in Forecasting Waste Volumes?

Synopsis

The two measures of waste that are of crucial importance to projecting revenues -- deliveries and disposal - are simply the residual of waste generation and recycling, as shown below:

$$\text{Generated Waste} - \text{Pre-Delivery Recycling} - \text{Out Migration} = \text{Deliveries}$$

$$\text{Deliveries} - \text{Post-Delivery Recycling} = \text{Disposal}$$

Accurate projections of waste deliveries and disposal are thus entirely dependent of well specified and detailed representations of the process by which waste is generated and recycled. The fact that recycling volumes are entirely dependent on the type and quantity of waste generated makes the waste generation modelling process crucial to the forecasting process.

From a causal standpoint, recycling activities are the product of both market and legislative/policy forces. Therefore, in projecting recycling activities and the waste diverted through this process, one must consider both market and non-market forces. Until recycling matures, the process of projecting recycling volumes will remain difficult.

A Conceptual Framework for Waste Forecasting

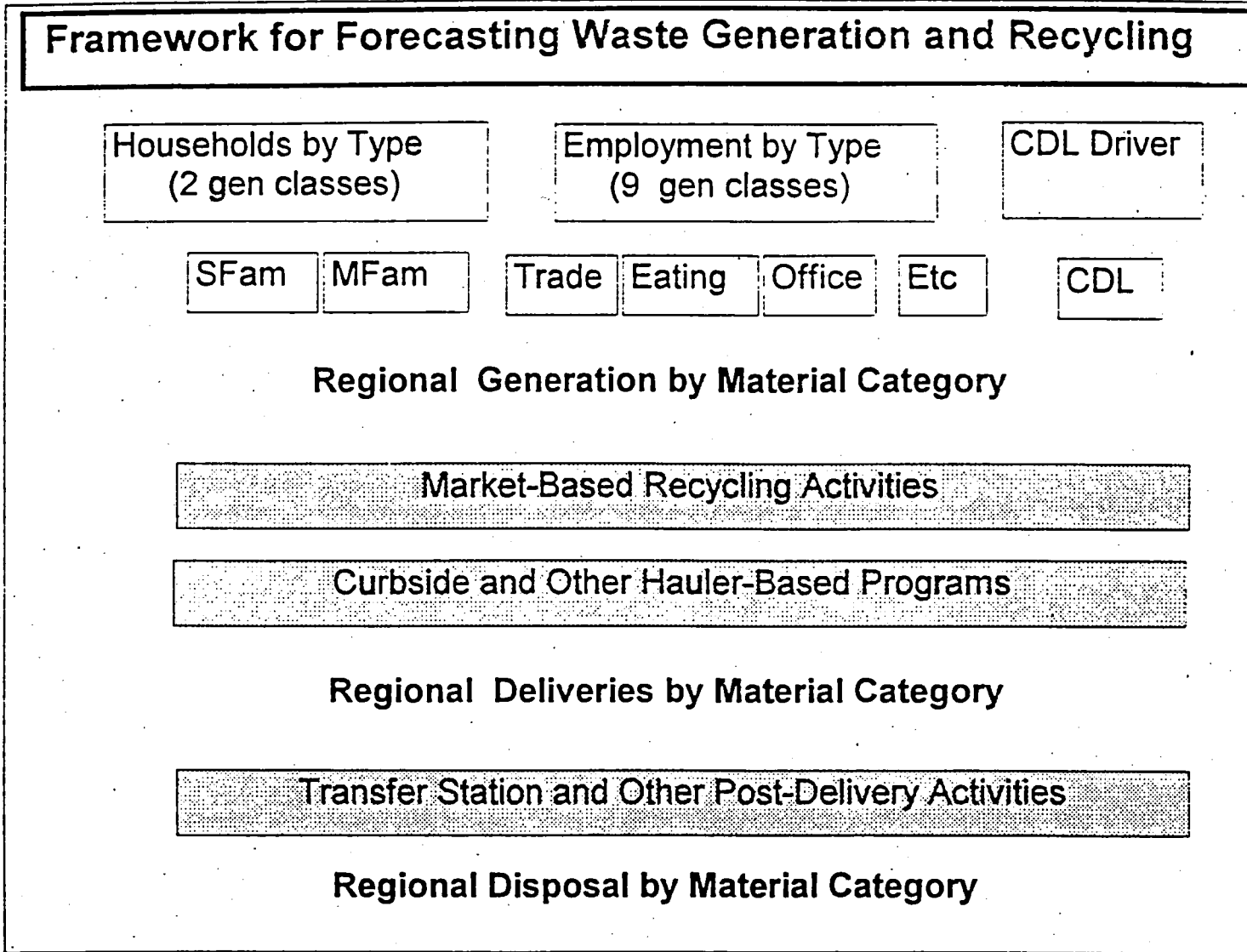
Figure 3-A illustrates a simplified conceptual framework for considering the flow of waste from cradle to grave. The basic waste concepts within this framework are generation, pre-delivery (curbside/hauler and market) recycling, waste deliveries, post-delivery recycling and finally, disposal. Each of these concepts is briefly described below.

Waste Generation

Waste is ultimately the by-product of residential, commercial, industrial and construction activities. In order to anticipate how changes in the level of residential, business and construction activities affect waste volumes, a model is used which relates a standard measure of activity for each class of waste generator to waste volumes.

The standard measure of residential activity is the number of households of the single and multi-family type. The standard measure of business/government/industry activities is employment, distinguishing between different types of businesses (e.g., restaurants, office, hospitals). The standard measures of construction activity are either construction employment or building permits.

FIGURE 3-A



In this process, distinguishing between different types of businesses and households is important. Both the material composition and per employee/household waste quantities are known to vary substantially between these sub-classes (e.g., restaurants vs. offices, single family vs. multi-family dwellings). Because these sub-classes grow at different rates over time, making the distinction allows overall unit waste volumes and material compositions to evolve. In addition, these distinctions are crucial to the assessment of recycling volumes.

Pre-Delivery Recycling

A variety of recycling activities are "positioned" to capture generated waste prior to disposal. The first tier of these activities are market-based recycling vendors (a.k.a. high graders). They handle traditionally recycled materials such as scrap metal, cardboard and newsprint and often pick up these materials. Both the vendor and recycler are motivated by economic forces.

The second tier of recycling, which represents the dominant force in the *growth of recycling* in the Metro area over the 1990-94 time period (Figure 3-B), is "curbside" and other hauler-based programs. These programs are often legislatively prescribed and from the consumers standpoint, provide convenient and costless options for recycling.

Projecting pre-delivery recycling volumes in general, requires a detailed picture of waste volumes by material, for each of the sub-classes described above. This is true because the type and quantity of materials that could be recycled and the feasibility/cost of recycling these materials vary enormously across different classes and sub-classes.

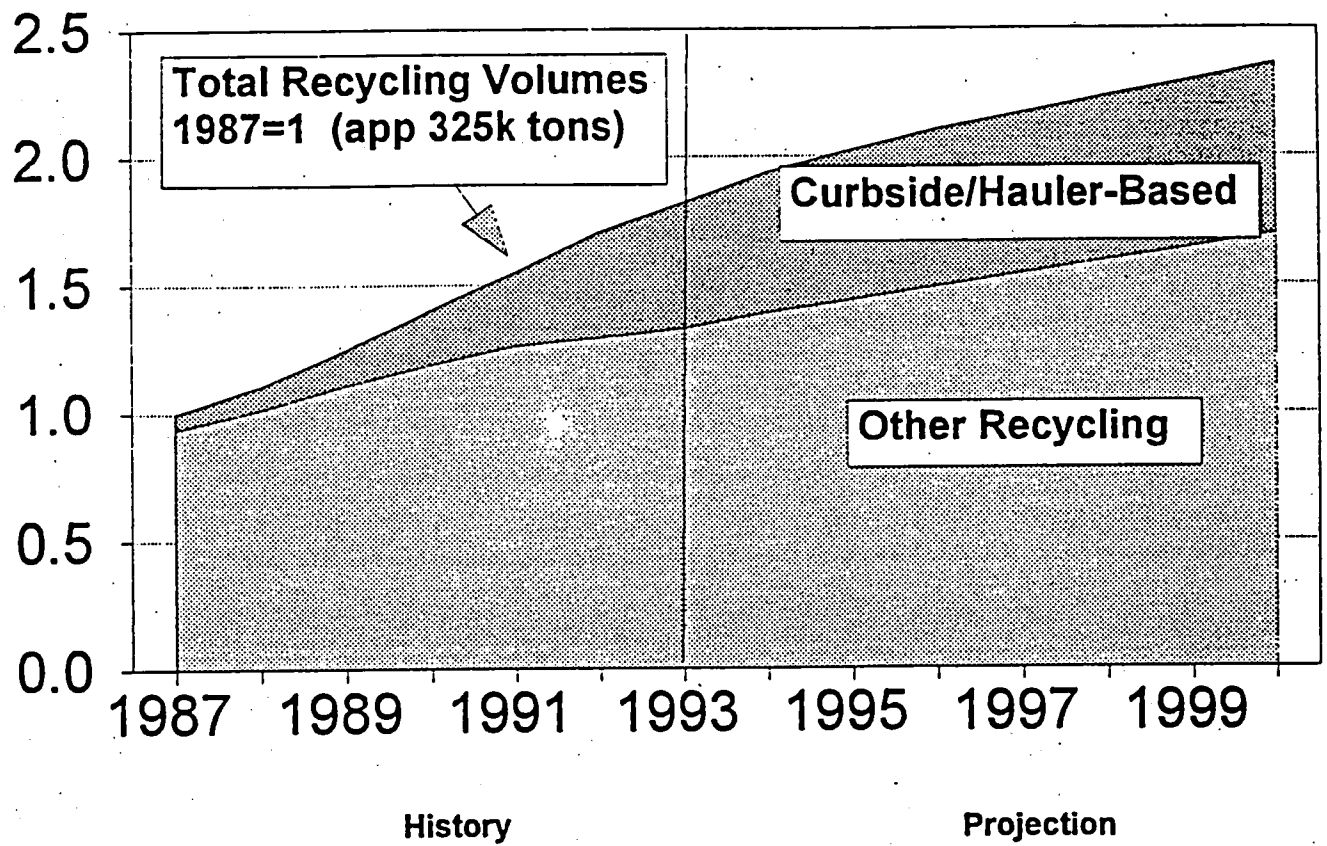
Estimating curbside/hauler based program impacts entails projecting the rate at which individuals will sign up for these programs, and the share of various materials that will be set out for recycling. Note that the curbside programs compete with, and often supplant some market-based activities (e.g., residential newspaper collection activities). The failure to recognize this interaction can lead to double counting of recycling tonnages for affected materials.

Deliveries

Absent the migration of waste to unauthorized disposal facilities, "deliveries" are simply what is left over after generated waste passes through the various pre-delivery recycling activities. The great majority of deliveries are made by haulers who have limited choices about where these wastes can be taken. Haulers carrying construction wastes, self-haulers, and producers of special wastes can choose amongst a variety of facilities, some of which provide recycling services in addition to disposal services.

For those that can choose between facilities, the choice appears to be based on two primary factors: the comparative price of one facility versus another facility, and travel cost. Thus modelling this choice process necessitates inclusion of both of these factors. Convenience, including queuing times, is also frequently cited as a variable in the facility choice decision process.

Figure 3-8 - Recycling Volumes by Source



The fact that one facility achieves it lower prices through recycling or through some other mechanism does not appear to be a significant factor in the decision process. Therefore, the facility choice process does not appear to be bound to the post-delivery recycling options outside of price.

Post-Delivery Recycling

Post-delivery recycling is conducted in the course of delivering/processing materials for disposal. Dump and pick lines and MRFs provide examples of post-delivery recycling activities.

Reliable projections of the types and quantity of materials that can be recovered as a percentage of receipts are dependent both on a careful accounting of the sources of waste delivered to the facility, and accurate assessments of pre-delivery recycling.

Disposal

Disposal is simply the residual or left-over of the process described above.

In an era of rapid advances in the practice of recycling, the disposal forecast is only as good as the generation and recycling forecast. Yet suprisingly, many still attempt to project disposal volumes using simplistic models which relate historical disposal volumes to tip fees, and to population or employment.

4. What Went Wrong with Metro's March 1993 Forecast?

Synopsis

In developing the March 1993 waste forecasts, Metro appears to have confused correlation with causality, and short-run changes with long run expectations. While this confusion may be understandable in the aftermath of the revenue shortfalls of the late 1980's and falling tonnages of the early 1990's, the forecasts and underlying methodology predict a highly improbable path for Metro waste volumes.

The methodology that was used to develop the March 1993 waste projections is flawed in two fundamental ways. First, the causal model underlying the projections is overly simplistic, omitting many *fundamental* determinants of waste generation, recycling, and facility choice. Second, the model was estimated using only four years of historical data (FY89/90-FY92/93)..a four year period which was characterized by an economic slowdown, the ramp-up of curbside recycling, and rapid increases in Metro's price via a vis competitors.

In combination, the misspecified model and the inadequate/inappropriate estimation period lead to projections that are theoretically indefensible and intuitively implausible. These projections are believed to underestimate future TST delivery quantities by approximately 60,000 tons 1996 and by 120,000 tons in 2000.

The Regional Deliveries (Step One) Forecast

The first step in Metro's waste forecasting process is to project deliveries to regional facilities that are either Metro-operated or Metro-franchised. To accomplish this objective, it is necessary to first describe the causal relationships which results in waste deliveries to regional facilities.

As we described above, waste is ultimately the by-product of residential, commercial, industrial and construction activities. These wastes are then subjected to a variety of recycling activities including curbside recycling, and commercial high grade recycling prior to delivery to a facility for further recycling and disposal.

Given this causal framework and the dramatic expansion of recycling mandates, experience has proven that the only reliable method for modelling waste deliveries is to:

- o estimate waste generation quantities for each class of generator;
- o estimate pre-delivery recycling quantities for each class;
- o compute deliveries as the difference between generation and recycling.

If Metro's model was of the nature described above, it would have led to a better understanding of how changes in the economy, recycling practice and Metro tip fees

were affecting regional delivery volumes between 1990 and 1993. Unfortunately, in the absence of this knowledge, Metro appears to have confused correlation with causality, and short-run changes with long run expectations.

In developing the regional delivery projections Metro appears to have greatly oversimplified the causal relationships described above and in so doing, developed a "reduced form" equation which will not provide reliable projections of regional deliveries, either in the short run or in the long run for the reason described below.

The equation used by Metro to project regional deliveries is as follows:

$$\text{Deliveries} = f(\text{Population, Const Emp, Metro Price})$$

The causal assumptions implied by this equation are that generation quantities can be predicted by population alone and that Metro's price, coupled with construction employment, acts as a surrogate for pre-delivery recycling quantities. Both of these premises are unfortunately inaccurate.

First, as Figure 4-A illustrates, population responds only very slowly to economic fluctuations, such as the recent slowdown in the Portland economy. For example, while trade, manufacturing and construction activities slowed between 1990 and 1993 (as did the waste generation associated with these activities), population continued to grow at a faster pace.

Thus if population is used to predict the overall quantity of waste generated, the short run predictions are likely to be too high going into a recession (as was the case in 1991/92 when Metro experienced budget shortfalls), and too low coming out of a recession (as will be the case in 1993/94). In the long run, this equation will under forecast tonnage growth because employment will grow in the Portland area even after the Metro service area begins to reach capacity in its ability to accommodate more population.

Second, the ramp-up of curbside recycling was obviously not "caused" by the fact that Metro increasing its rates from \$45 to \$75. As discussed above, the quantity of tons recycled through curbside and market activities is the product of a myriad of market, legislative and social forces, producing the growth pattern illustrated in Figure 4-B.

However, given the parameters used in Metro's specification, the equation produces forecasts of future tonnage as though future Metro price increases *are the sole determinant* of further increases in recycling tonnage. Thus, if Metro's prices fell next year, this equation would suggest that recycling would decrease immediately.

All other things being equal, this specification leads to an underestimate of recycling as curbside ramps up, and an overestimate of recycling after curbside is in place. In the long run, this specification will lead to substantial underestimates of delivery tonnages in the post-ramp period, beginning in 1995.

**Figure 4-A - Metro Area
Population and Employment Growth**

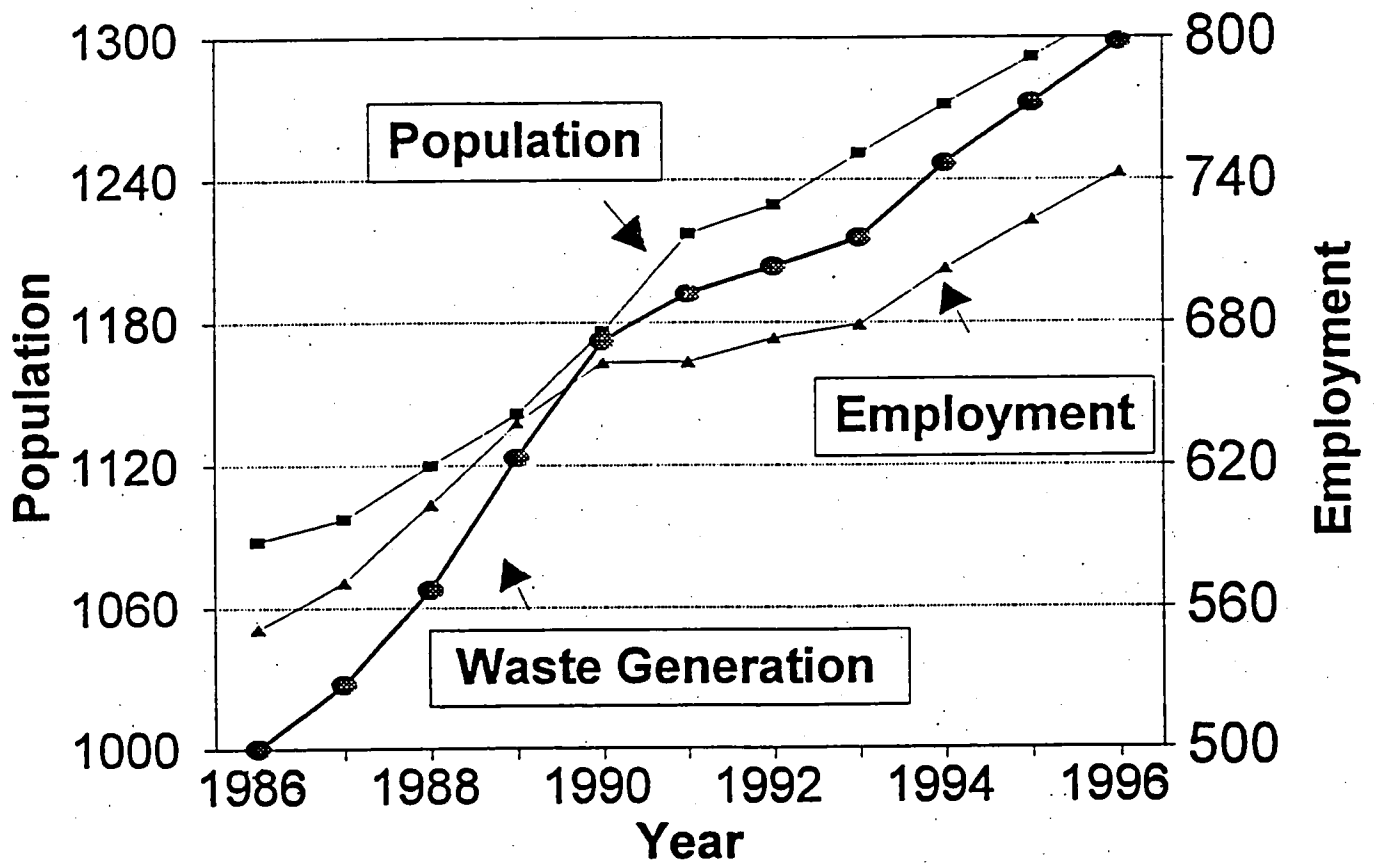
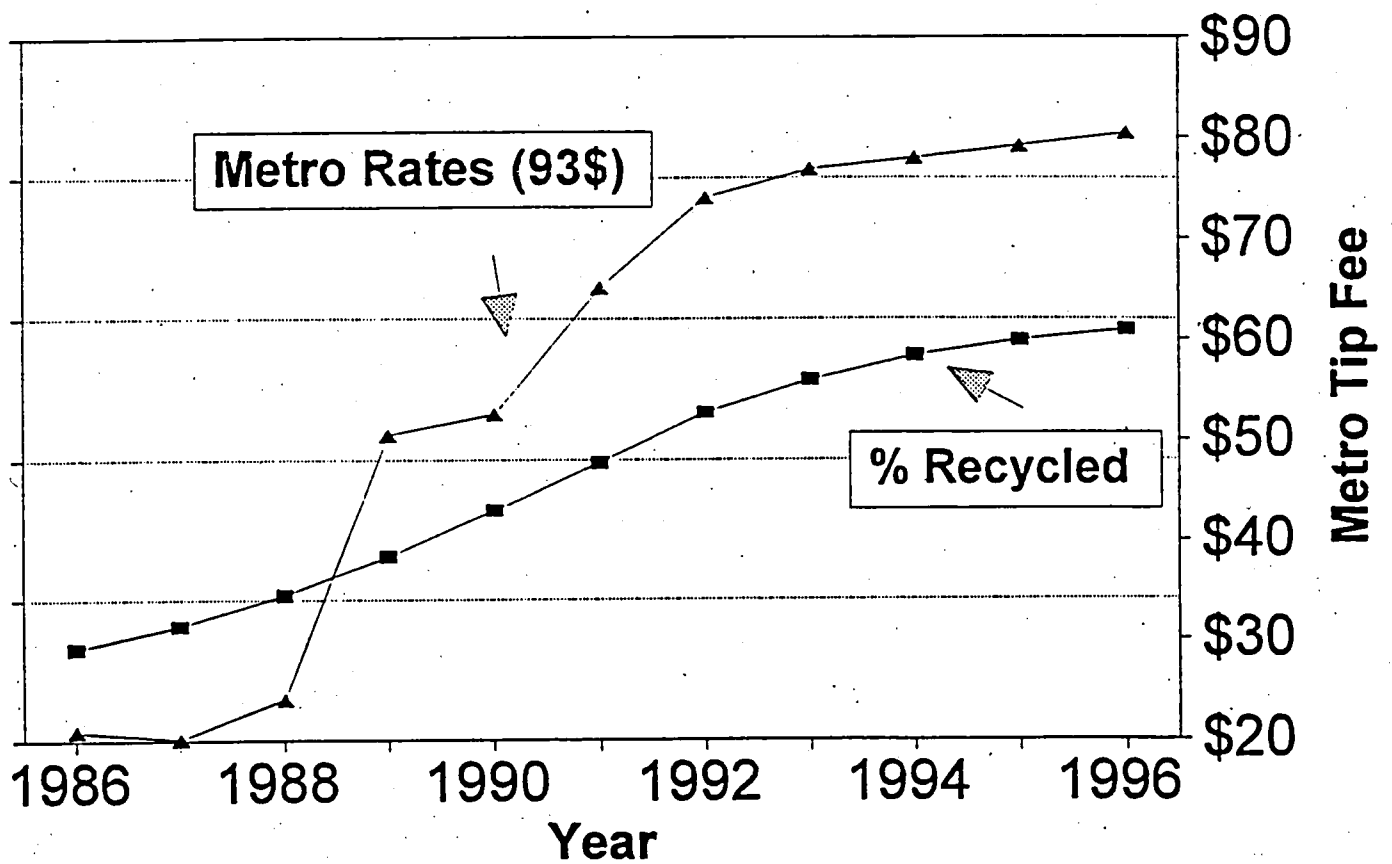


Figure 4-B - Historical Comparison of Recycling Rates and Metro Tip Fee



While it is laudable that construction employment was included as an explanatory variable in the equation (presumably to capture variations in waste associated with construction activity), it is equally unfortunate that this variable has a negatively-signed coefficient in the estimated form of the equation. Simply put, the delivery equation predicts that increases in construction employment/activity will produce *decreases* in waste volumes. And since construction employment slowly increases over the entire horizon of Metro's forecast, waste volumes keep decreasing as a result.

The wrong sign of the construction employment coefficient represents one symptom of the most troubling aspect of Metro's delivery forecast, and the source of many of the aberrant results noted above -- that is, the selection and length of the period used to estimate the first and second stage forecast equations.

Only 4 years of historical data (FY89/90 through FY92/93) were used to estimate an equation used to project regional deliveries for 25 years..four years in which the economy was in a slide and curbside recycling was being introduced through legislative mandate. During these years of declining or nearly declining deliveries, the omission of key predictor variables such as recycling volumes in the equation meant that those variables that *were* included had to "explain" the declines in tonnage. This accounts for aberrant results, such as rising construction activities leading to a decline in tonnages. If the estimation period had been expanded, these chance correlations would have disappeared.

The Transfer Station Tonnage Share (Step Two) Forecast

The second step in Metro's waste forecasting process is to project the share of regional deliveries that are in the category of transfer station tonnage (TST). Stated another way, the transfer station tonnage share forecast describes the share of regional deliveries ending up at Metro South, Metro Central and Forest Grove..

Many of the haulers are not free to select a facility other than a Metro operated facility or Forest Grove, because of the type of waste they carry. Others with certain types of special wastes cannot use Metro facilities or Forest Grove, at all. This leaves a pool of generator/haulers who *can* "shop" for disposal and recycling options amongst the regional alternatives. These generators/haulers include self-haulers, and firms hauling construction and demolition wastes.

Clearly, for those who are free to choose between recycling and disposal facilities, the decision process of where to go and whether to recycle or dispose involves many considerations. Travel time, the cost of sorting materials for recycling, and the cost of disposal and recycling are all important factors in this decision process.

Experience in Snohomish County, Washington has revealed the importance of two factors in this decision process. First, it appears that generator/haulers choose between equivalent services based on relative prices (i.e., Facility A's prices compared with Facility B's prices). The absolute price of either facility alone appears to be of tertiary importance. Second, that convenience, including factors such as travel time and queuing, is also an important consideration in this choice process.

While the Snohomish County experience is both intuitive and consistent with economic theory, these concepts are not included in Metro's specification for the TST share projection. Instead, Metro's TST equation includes only one predictor variable..Metro's own price, as shown below.

$$\text{TST Share} = f(\text{Metro Price})$$

While it is understandable that the specification does not include factors such as travel time, convenience, etc., it seems highly problematic that the independent variable is not expressed as a relative price. For example, the price of Metro versus the price of the Hillsboro landfill, expressed as a ratio.

As we discussed earlier in the context of the regional delivery model, the omission of important variables from an equation used to forecast can lead to non-sensical results. The direction and magnitude of the bias is dependent on the estimation period.

This equation, like the Step One Regional Delivery equation was estimated over a four year period between FY89/90 and FY92/93. During this period , Metro's prices were rising while the TST share was falling. Thus the equation dictates that whenever Metro increases its price in the future, the TST share will fall regardless of what prices the competition charges.

Year end evaluation of actual TST shares suggests that TST shares will increase in 1993 relative to 1992, not decrease. Future TST shares will depend on the relationship of Metro's prices to its competitors. For example, if Metro's prices fall relative to Hillsboro, the TST share will rise. Conversely, sharp relative increases in Metro's prices relative to recycling and disposal alternatives will cause the TST share to fall..

Willamette Resources, Inc.

2215 N. Front Street
Woodburn, Oregon 97071
(503) 981-1278
Fax: 982-7930

December 30, 1993

Ms. Rena Cusma
Executive Officer
Metro
600 N.E. Grand Avenue
Portland, Oregon 97232

Dear Ms. Cusma:

This is in response to your letter of October 19, 1993 pertaining to Willamette Resource, Inc.'s (WRI) credit enhancement for the Eastern Washington County Transfer Station.

As you know, West One Bank of Idaho issued a commitment letter on July 15, 1993 to provide credit enhancement for this project. West One Bank's offer expired on September 15th. Because the Metro Council had not made a final decision, the Bank extended the expiration date to October 15th. We requested an additional extension, however, West One Bank declined. While the Bank stated their continued interest in this project and their desire to participate, they felt that the delay may cause the financial forecast originally submitted by WRI to change and they needed an opportunity to review any changes. In addition, the Bank's policy is not to have outstanding commitment letters for an extended period of time since it commits funds and impacts their financial position.

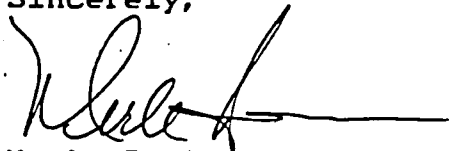
I am pleased to say that WRI has received today another commitment letter to provide credit enhancement for the Eastern Washington County Transfer Station. U.S. National Bank of Oregon will issue an irrevocable direct-pay letter of credit in the amount of \$10,500,000.00 for this project. Of special note, the annual fee charged by U.S. National Bank is 1%.

It is envisioned in the franchise agreement that the detail document between WRI and the credit enhancement provider will be negotiated subsequent to the franchise approval by Metro Council and subject to approval by Metro. In fact, Section 4 of the franchise agreement states that the credit enhancement document is a condition precedent of Metro issue of the bonds. I believe the U.S. National Bank's commitment addresses the major issues outlined in your letter of October 19th. Once the franchise is approved by Metro Council, we will be able to develop the detail legal document for credit enhancement.

Attached, please find a copy of the commitment letter from U.S. National Bank of Oregon dated December 30, 1993.

If you have any questions, please feel free to contact either Mr. Gary Barton, Controller, Waste Control Systems, Inc. at (503) 757-0011 or myself.

Sincerely,

A handwritten signature in black ink, appearing to read "Merle Irvine", with a long horizontal stroke extending to the right.

Merle Irvine
Vice President

Attachment

cc: Todd Sadlo, Senior Assistant Counsel, Metro
Bob Martin, Director Solid Waste, Metro
Jennifer Sims, Director Finance, Metro
John Houser, Council Analysis, Metro
Gary Barton, Controller, Waste Control Systems, Inc.



Mid-Willamette Business
Banking Center
302 State Street
Post Office Box 14430
Salem, OR 97309-5000

December 30, 1993

Richard Brentano, President
Willamette Resources, Inc.
2215 N. Front Street
Woodburn, Or. 97071

Subject: Metropolitan Service District Revenue Bonds
(Eastern Washington County Transfer and Material Recovery Facility Project)

Dear Mr. Brentano:

We are pleased to extend to Willamette Resources, Inc. ("WRI"), the commitment of the United States National Bank of Oregon, a national banking association (the "Bank"), to issue an irrevocable direct-pay letter of credit (the "Letter of Credit") in the maximum stated amount of \$10,500,000.00. The obligation of the Bank for payment of principal, interest, and premium, if any, on the Bonds shall not exceed \$10,500,000.00. The Letter of Credit will support an issue of bonds (the "Bonds") to be issued by the Metropolitan Service District (the "Issuer"). The proceeds of the bonds are to be loaned to WRI for the purchase of land, construction of the facility, and purchase of fixtures and equipment sufficient to operate the facility. The obligation of WRI to pay debt service on the bonds shall be backed by the full faith and credit of WRI, Waste Control Systems, Inc. (WCS), and the WCS majority shareholders. The terms of this commitment are:

1. The Bonds. The Bonds shall be issued on a date prior to the expiration of this commitment and shall be payable in accordance with a maturity or redemption schedule providing for substantially equal annual payments of principal and interest for a period of 20 years. The Bonds shall bear interest payable semi-annually, at a fixed or variable rate, calculated on a 360 day basis. There shall be two separate bond issues; one issue taxable under current federal income tax law to the bondholder financing the purchase of the land, and one issue exempt from taxation under federal income tax law to the bondholder, whose funds will be utilized for the purchase of equipment, fixtures, and the construction of improvements of the Facility.

2. Term of the Letter of Credit. The Letter of Credit will be issued for a five year term, subject to three renewals of five years each, at the sole discretion of the Bank. The Bank will provide written notice to WRI of its decision not to renew the Letter of Credit within 30 days after the Bank receives a request for renewal, together with WRI's annual financial statements and management reports for the fiscal year immediately preceding the year in which the termination date occurs.

3. Reimbursement Agreement. WRI shall be obligated to reimburse the Bank for draws on the Letter of Credit in accordance with the terms of a reimbursement agreement. The agreement, as yet undrawn, and subject to negotiation of terms between WRI and the Bank that are satisfactory to both parties.

The agreement shall also provide for the payment of fees to the Bank, and shall include covenants of WRI as required by the Bank. Any amounts not paid when due under the reimbursement agreement shall bear interest at the Bank's prime rate plus 2%.

4. Collateral. As security for WRI's obligations under the reimbursement agreement, WRI shall (i) grant to the Bank a first deed of trust on the real property and improvements owned by WRI (approximately 10 acres), (ii) assign to the Bank for security purposes the interests of WRI under a Franchise Agreement with the Metropolitan Service District, and (iii) the unlimited guarantees of Waste Control Systems, Inc. and its majority shareholders. The deed of trust and assignment shall be in form satisfactory to the Bank and its counsel. The Franchise Agreement assignment shall include provisions requiring that notice of default and the right to cure be given to the Bank. WRI shall provide to the Bank an environmental audit covering the entire property and shall resolve all environmental issues relating to such property to the satisfaction of the Bank prior to the issuance of the Bonds. WRI shall pay for and provide to the Bank an ALTA extended coverage mortgagee's title insurance policy covering the entirety of the property and improvements in the stated amount of the Letter of Credit, subject only to those exceptions approved by the Bank.

5. Fees and Expenses. WRI shall pay to the Bank an issuance fee of 1% of the stated amount of the Letter of Credit. In addition, WRI shall pay to the Bank an annual letter of credit fee of at least 1% of the stated amount of the letter of credit. The annual letter of credit fee is subject to increase if a higher rate is required of Bank, caused by changes in government regulation requiring Bank to maintain a higher level of capital than is currently required under applicable law. The annual fees for the first calendar year shall be paid at the time of issuance; thereafter, the annual fees shall be paid quarterly, in advance. WRI shall pay the Bank's usual and customary transaction fees for draws on the Letter of Credit. WRI shall pay the Bank's legal expenses in connection with the review of documents relating to the bond transaction and the preparation of the Letter of Credit, the loan agreement, the reimbursement agreement, security documents, legal opinions, and any related documents. In addition, WRI shall pay the Bank's reasonable current and ongoing out-of-pocket expenses (including legal fees) incurred in connection with the Letter of Credit and the administration of the reimbursement agreement and the fees of U.S. Bancorp Real Estate Services.

6. Documentation. All documentation respecting the issuance of the Bonds shall be prepared or reviewed by bond counsel acceptable to the Bank, and such documentation shall be in form acceptable to the Bank and its counsel. At the closing of the bond issue, there shall be delivered to the Bank, together with certified copies of the transcript of proceedings for the Bank and its counsel, an executed counterpart of the opinion of bond counsel satisfactory to the Bank in form and substance, which opinion shall provide, among other things, that the Bonds have been duly authorized, executed, and delivered, and that the interest on the issue funding the costs of improvements and equipment is excluded from gross income of the bondholder under federal income tax laws. The opinion shall be addressed to the Bank or the Bank shall receive a letter authorizing the Bank to rely on the opinion. The documentation shall conform to the terms of this commitment letter. The documents shall provide that so long as the Letter of Credit is in force, the documents shall not be amended without the consent of the Bank and all remedies on default shall be exercised on instructions of the Bank.

7. General Covenants. WRI shall not sell, transfer, assign, or otherwise encumber any of its real or personal property or make any capital expenditures during the term of the Letter of Credit without the prior written consent of the Bank. It is anticipated that i) WRI may desire to purchase and install material recovery equipment during the term of the Letter of Credit which is acknowledged by the Bank and whose purchase is subject to the prior written consent of the Bank and, ii) the Bank will approve a certain level of capital expenditures upon the request of WRI in compliance with the Willamette Resources, Inc. Washington County Transfer and Material Recovery Facility forecasted Statement of Cash Flows, 20 Year Summary, attached as Exhibit I, that allows for the sale and replacement of worn or obsolete equipment. Borrower will establish an Equipment Replacement Fund with the Bank funded monthly. All such capital item replacements shall be funded by the balance in the Equipment Replacement Fund. WRI shall not purchase for cash nor incur additional indebtedness or incur liability under conditional sales contracts and lease agreements for any capital items purchased during the term of the Letter of Credit except as provided for in this paragraph. WRI shall name the Bank as co-payee on all of its policies of insurance, including but not limited to, course of construction, comprehensive, liability, environmental protection, fire and other casualty, and business interruption insurance.

8. Financial Covenants.

a. WRI will maintain a Debt Service Coverage Ratio of not less than 1.20:1. Debt Service Coverage Ratio is calculated by dividing the sum of net profit and non-cash expenses by the sum of any dividends/withdrawals of capital, current portion of long term debt, and equipment replacement fund contributions.

b. A debt/worth ratio shall not exceed the following for the fiscal year end financial statement for the fiscal year then ending:

6-30-95	6.30:1
6-30-96	5.50:1
6-30-97	4.75:1
6-30-98	4.00:1
6-30-99	3.30:1

c. WRI shall provide the Bank copies of all necessary regulatory approvals and permits for the construction and operation of the proposed solid waste transfer facility prior to issuance of the Letter of Credit.

d. WRI shall provide to the Bank a signed copy of the Loan Agreement between WRI and Metropolitan Service District whose contents will govern the lending of bond proceeds to WRI. The Bank shall have the right to approve this agreement, currently undrawn, before being obligated to issue the Letter of Credit.

e. The Bank's Commercial Real Estate Department shall monitor and approve in writing all construction advances and change orders before the bond trustee shall disburse any requested funds during the course of construction.

f. Payment and Performance bonds are required of all contractors selected for the construction of all on and off site facility improvements.

g. A project real estate appraisal shall be ordered, obtained, and reviewed by the Bank before issuance of the Letter of Credit.

h. Unless expressly defined otherwise, all terms used in this Section 8 shall be interpreted in accordance with generally accepted accounting principals.

9. Reporting Requirements.

WRI shall provide the Bank:

a. Annual audit report received by the Bank within 120 days after the end of each fiscal year.

b. Quarterly internally prepared financial statements received within 45 days of the end of each fiscal quarter.

Waste Control Systems, Inc. shall provide the Bank:

- a. Annual audit report received by the Bank within 120 days after the end of each fiscal year.
- b. Quarterly internally prepared consolidated financial statements received within 45 days after the end of each fiscal quarter.

The majority shareholder of WCS shall provide:

- a. Internally prepared fiscal year end financial statements within 120 days after the close of the fiscal year end. Exhibits shall include a full copy of the IRS return as well as financial statements/IRS returns on related entities as required by the Bank.

10. Change in Management. WRI shall notify the Bank of a change in WRI's senior management. Senior management shall include all corporate officers and the general manager, if not a corporate officer.

11. Closing. The sale of the Bonds shall take place on a closing date mutually agreed upon, during the term of this commitment. The closing shall occur at the office of bond counsel in Portland, Oregon.

12. Term of Commitment. The commitment made herein shall expire July 1, 1994 unless extended by written agreement between the parties. Thereafter, neither WRI nor the Bank shall have any further obligation to the other; provided, however, that WRI shall pay the Bank's expenses as provided in Section 5 above, unless failure to issue the letter of credit results from any action or inaction attributable to the Bank.

Willamette Resources, Inc.
December 30, 1993

6

13. Statutory Statement. In compliance with Oregon law, the Bank makes the following statement regarding this commitment:

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES, AND COMMITMENTS MADE BY US 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.

To be effective, this commitment must be accepted by written acknowledgement of the terms and conditions hereof on the enclosed copy, with the same returned to us not more than 15 days from the date hereof.

Sincerely,

UNITED STATES NATIONAL BANK OF OREGON

By: _____



Title: _____

Vice President

Accepted:

WILLAMETTE RESOURCES, INC.

By: _____

Title: _____

Date: _____

Willamette Resources, Inc.
December 30, 1993

WASTE CONTROL SYSTEMS, INC.

By: _____

Title: _____

GUARANTORS

By: _____

Title: _____

By: _____

Title: _____

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

Meeting Date: January 13, 1994
Agenda Item No. 7.7

RESOLUTION NO. 94-1870



METRO

DATE: January 7, 1994

TO: Metro Council
Executive Officer
Agenda Recipients

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 7.7; RESOLUTION NO. 94-1870

The Finance Committee will consider this resolution at its January 12 meeting and the Committee report will be distributed to Councilors in advance and available at the Council meeting January 13.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING)
A LEASE/PURCHASE AGREEMENT)
WHEREBY UNITED STATES NATIONAL)
BANK OF OREGON LEASES AND)
SELLS CERTAIN EQUIPMENT TO)
METRO; AND AUTHORIZING THE)
EXECUTION AND DELIVERY OF THE)
LEASE/PURCHASE AGREEMENT)
AND OTHER MATTERS PERTAINING)
THERETO.

RESOLUTION NO. 94-1870

Introduced by: Rena Cusma
Executive Officer

WHEREAS, The Metro Charter and Section 8.01.050 of the Metro Code authorize Metro to finance the acquisition or real and personal property by entering into lease/purchase agreements; and

WHEREAS, The Special Districts Association of Oregon (the "Association") has established its cooperative financing program called the FlexLease Program (the "Program"), which allows special districts in the State of Oregon, as defined by ORS 198.010 (the "Participating Districts"), to better participate in a pooling of the individual Participating Districts' lease/purchase agreements to achieve better interest rates and lower administrative and legal costs; and

WHEREAS, To accomplish this Program the Association has entered into that Master Financing Agreement, dated as of December 12, 1991, as amended by First Amendment to Master Financing Agreement, dated April 29, 1993 (the "Master Financing Agreement"), with United States National Bank of Oregon ("US Bank") pursuant to which lease/purchase financing and refinancing will be made available by US Bank to Participating Districts under the terms set forth in the Master Financing Agreement; and

WHEREAS, Metro desires to finance the property described in Exhibit A of the hereinafter defined Lease/Purchase Agreement (the "Equipment") by entering into such Lease/Purchase Agreement with US Bank pursuant to the Program; now, therefore,

BE IT RESOLVED,

1. Approval of Lease/Purchase Agreement. The form of Lease/Purchase Agreement with US Bank placed on file with the Clerk of the Council in connection with the adoption of this resolution (the "Lease/Purchase Agreement") is hereby approved in substantially the form submitted. Metro's Director of Finance and Management Information (the "Executing Official") is hereby authorized, empowered and directed to execute and deliver, for and on behalf of Metro, the Lease/Purchase Agreement in substantially the form approved but with such modified actions, additions, deletions and

other changes as, in the judgment of the Executing Official, are necessary or appropriate and not in a conflict with or in violation of the requirements of law or the terms of this resolution

2. Terms of Financing. Metro shall participate in the Program. The total principal component of the rental payments to become due under the Lease/Purchase Agreement shall not exceed \$239,000. The interest rate to be used in calculating the interest components of the rental payments to become due under the Lease/Purchase Agreement shall not exceed the lesser of: (i) interest rate under the Program for the term of the financing for the Equipment in the month of closing for the Lease/Purchase Agreement; or (ii) 5.25% per annum. The term of the Lease/Purchase Agreement shall not exceed 3.5 years. Subject to the foregoing limitations, the Executing Official shall approve the final Payment Schedule to the Lease/Purchase Agreement.

3. Further Authority. Metro shall, and the officers and agents of Metro are hereby authorized and directed to, take such action, expend such funds and execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this resolution and to carry out, comply with and perform the duties of Metro with respect to the Lease/Purchase Agreement.

4. Authorizing Action; Effective Date. This resolution shall constitute the Authorizing Action with respect to the Lease/Purchase Agreement and the financing contemplated thereby, all as provided in Title VIII of the Metro Code. This Resolution shall take effect immediately upon its adoption by the Metro Council.

ADOPTED by the Metro Council this ____ day of _____, 1994.

Judy Wyers, Presiding Officer

BR:rs
I:\Exchange\94-1870R.Doc

LEASE/PURCHASE AGREEMENT

Lease/Purchase Agreement (the "Agreement"), dated as of February 1, 1994, and entered into between United States National Bank of Oregon, a national banking association with its principal office in the State of Oregon ("Lessor"), and Metro, a body corporate and politic existing under the laws of the State of Oregon ("Lessee").

WITNESSETH:

WHEREAS, the Metro Charter and Section 8.01.050 of the Metro Code authorize Lessee to finance the acquisition of real and personal property by entering into lease/purchase agreements; and

WHEREAS, the Special Districts Association of Oregon (the "Association") has established its cooperative financing program called the FlexLease Program (the "Program"), which allows districts in the State of Oregon, as defined in ORS 198.010 (the "Participating Districts"), to participate in a pooling of the individual Participating Districts' lease/purchase agreements to achieve better interest rates and lower administrative and legal costs; and

WHEREAS, to accomplish the Program the Association has entered into that certain Master Financing Agreement, dated December 12, 1991, as amended by First Amendment to Master Financing Agreement, dated April 29, 1993 (the "Master Financing Agreement"), with Lessor pursuant to which lease/purchase financing will be made available by Lessor to Participating Districts under the terms set forth in the Master Financing Agreement; and

WHEREAS, Lessor desires to lease and sell the Equipment, as hereinafter described, to Lessee and Lessee desires to lease and purchase the Equipment from Lessor pursuant to the Program and subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the 1992 Metro Charter, the Metro Code and the Constitution and the laws of the State of Oregon to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises and covenants hereinafter contained, the parties hereby agree as follows:

ARTICLE I

Section 1.01. Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor and any Registered Owners (as hereinafter defined) as follows:

- (a) Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State of Oregon with full power and authority to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.
- (b) Lessee will do or cause to be done all things within its lawful powers and authority that are necessary to preserve and keep in full force and effect its existence as a body corporate

and politic. To the extent Lessee should merge with another political subdivision under the laws of the State of Oregon, Lessee agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Lessee's rights and shall assume Lessee's obligations hereunder.

- (c) Lessee has been duly authorized to execute and deliver this Agreement by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement (see District's Certificate attached hereto as Exhibit 4) and Lessee has complied with such public bidding requirements as may be applicable to the acquisition by Lessee of the Equipment hereunder.
- (d) During the Lease Term, the Equipment will perform and will be used by Lessee only for the purpose of performing essential governmental uses and public functions of Lessee consistent with the permissible scope of Lessee's authority.
- (e) Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing budget year and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor. (See District's Certificate attached hereto as Exhibit 4).
- (f) Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments.
- (g) Lessee covenants and agrees that it will use the proceeds of the Agreement as soon as practicable and with all reasonable dispatch for the purpose for which the Agreement has been entered into, and that no part of the proceeds of the Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Agreement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Agreement.
- (i) Lessee represents and warrants that (i) it is a governmental unit under the laws of the State of Oregon with general taxing powers, (ii) the Agreement is not a private activity bond as defined in Section 141 of the Code, (iii) 95% or more of the net proceeds of the Agreement will be used for local government activities of the Lessee and (iv) all gross proceeds received under the Agreement will be used for governmental purposes within six months after the Commencement Date of the Agreement.
- (j) The execution, delivery and performance of this Agreement and compliance with the provisions hereof by the Lessee does not conflict with or result in a violation or breach or constitute a default under, any resolution, bonds, agreement, indenture, mortgage, note,

lease or other instrument to which the Lessee is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over the Lessee or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of the Lessee or to which it is subject. (See District's Certificate attached hereto as Exhibit 4).

- (k) The information provided to Lessor, including financials and the application for the Program, does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

ARTICLE II

Section 2.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Lease/Purchase Agreement, including the Exhibits attached hereto.

"Commencement Date" is the date when the term of this Agreement and Lessee's obligation to pay rent commences, which date shall be the Commencement Date set forth in Exhibit 3.

"Equipment" means the property described in Exhibit 2 and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

"Lease Participation Certificates" means certificates of participation in the Agreement as provided in Section 12.01.

"Lease Term" means the term set forth in Section 4.01.

"Lessee" means the entity described as such in the first paragraph of this Agreement, its successors and assigns.

"Lessor" means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

"Registered Owners" means the registered owners of Lease Participation Certificates as shown on the registration books maintained by the Standby Trustee.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to Article VI.

"Standby Trustee" is defined in Section 12.01.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessee, as agent of Lessor, purchased or is purchasing the Equipment.

ARTICLE III

Section 3.01. Lease of Equipment. Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment in accordance with this Agreement, for the Lease Term.

ARTICLE IV

Section 4.01. Lease Term. The term of this Agreement shall commence on the Commencement Date and shall terminate upon payment of the final Rental Payment set forth in Exhibit 3 and the exercise of the Purchase Option set forth in Section 11.01, unless terminated sooner pursuant to this Agreement.

Section 4.02. Delivery, Installation and Acceptance of Equipment. Lessee shall order the Equipment, shall cause the Equipment to be delivered and installed at the location specified on Exhibit 2 to this Agreement and shall pay all delivery and installation costs, if any, in connection therewith. To the extent moneys are deposited with the Standby Trustee in escrow for the acquisition of the Equipment (an "Acquisition Account"), such moneys shall be disbursed from the Acquisition Account as provided in the Master Trust Agreement. All interest earnings on such moneys deposited in the Acquisition Account shall be paid to the Standby Trustee as compensation for services provided in disbursements from the Acquisition Account. When the Equipment is delivered, installed, inspected, tested and accepted as to Lessee's specifications, Lessee shall immediately accept the Equipment and evidence said acceptance by executing and delivering to Lessor the Acceptance Certificates substantially in the form attached hereto as Exhibit 1.

ARTICLE V

Section 5.01. Enjoyment of Equipment. Lessee shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Any Registered Owner shall not interfere with such quiet use and enjoyment during the Lease Term so long as Lessee is not in default under this Agreement.

Section 5.02. Location; Inspection. Once installed, the Equipment will not be moved from the location specified in Exhibit 2 to the Lease without Lessor's consent, which shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

ARTICLE VI

Section 6.01. Rental Payments to Constitute a Binding Contractual Obligation of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a binding contractual obligation of Lessee for the full Lease Term. Lessee covenants to include all such Rental Payments due hereunder in its annual budgets and to make the necessary annual appropriation for all such Rental Payments. This Agreement shall not be subject to termination by Lessee in the event Lessee fails to appropriate Rental Payments.

Section 6.02. Payment of Rental Payments. Lessee shall promptly pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor in such amounts and on such dates as described in Exhibit 3 hereto. Payment shall be such that the Lessor or its assigns shall be in receipt of the Rental Payment on the date such Rental Payment is due. In the event

the Lessee shall pay by check or draft, such check or draft must be mailed at least 3 business days prior to the date such Rental Payment is due. In the event Lessee shall pay by wired funds, such funds must be received on the business day on which such Rental Payment is due. Lessee shall pay Lessor a charge on any delinquent Rental Payment at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

Section 6.03. Interest Component. A portion of each Rental Payment is paid as, and represents payment of, interest, and Exhibit 3 hereto sets forth the interest component of each Rental Payment during the Lease Term.

Section 6.04 Defeasance of Rental Payments. Lessee may at any time irrevocably deposit in escrow with Lessor for the purpose of paying all of the principal component and interest component accruing under this Agreement, a sum of cash and securities of the types described in ORS 288.650 in such aggregate amount, bearing interest at such rates and maturing or callable at the holder's option on such dates as shall be required to provide funds sufficient for this purpose. Upon such defeasance, all right, title and interest of Lessor in the Equipment shall terminate. Such investment must comply with federal tax law so that the exclusion from gross income of the interest component of Rental Payments is not adversely effected.

Section 6.05. Rental Payments to be Unconditional. THE OBLIGATIONS OF LESSEE TO MAKE PAYMENT OF THE RENTAL PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE EQUIPMENT OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES.

ARTICLE VII

Section 7.01. Title to the Equipment. Upon acceptance of the Equipment by Lessee, title to the Equipment shall vest in Lessee subject to Lessor's rights under this Agreement; provided that title shall thereafter immediately and without any action by Lessee vest in Lessor and Lessee shall immediately surrender possession of the Equipment to Lessor upon (i) any termination of this Agreement without Lessee exercising its option to purchase pursuant to Section 11.01 or (ii) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sales, certificate of title or other instrument of conveyance. Nevertheless, Lessee shall execute and deliver any such instruments as Lessor may request to evidence such transfer.

Section 7.02. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions thereto, substitutions therefor and on any proceeds therefrom. Lessee agrees to execute such additional documents, certificates of title, financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest and, upon assignment, the security interest of the Registered Owners or any other assignee of Lessor in the Equipment.

Section 7.03. Personal Property. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

Section 7.04. Property Refinanced. Lessee agrees to cause any and all liens from prior financing with respect to the Equipment described in Exhibit 2, attached hereto, to be released.

Section 7.05 Substitution of Equipment. Lessee may substitute an item of the Equipment under this Agreement with personal property of approximately equal or greater market value and with an equal or greater useful life. Lessee shall be responsible for all costs and expenses, including counsel fees, of Lessor and Standby Trustee for any such substitution.

ARTICLE VIII

Section 8.01. Maintenance of Equipment by Lessee. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair and working order. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment.

Section 8.02. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, liens and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement have been established to reflect the savings resulting from this exemption from taxation. Lessee will take such actions necessary under ORS 307.112 to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term.

Section 8.03. Insurance. At its own expense, Lessee shall maintain "all-risk" property insurance in amounts sufficient to cover the Equipment. At Lessors' written request, Lessee shall provide evidence of such insurance. Lessee shall insure or self insure liability and workers' compensation coverage in accordance with ORS Chapters 30 and 656.

Section 8.04. Advances. In the event Lessee shall fail to either maintain the insurance required by this Agreement or keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof and maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term and shall be due and payable on the next rental payment date and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the

date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

ARTICLE IX

Section 9.01. Damage, Destruction and Condemnation. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Lessee shall have exercised its right to defease the Agreement as provided herein. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

Section 9.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI, or (b) defease Lessor's interest in the Equipment pursuant to Section 6.04. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such defeasance may be retained by Lessee.

ARTICLE X

Section 10.01. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

Section 10.02. Vendor's Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Lessor may have against the Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Lease, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor of the Equipment.

Section 10.03. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement.

ARTICLE XI

Section 11.01. Purchase Option. Lessee shall have the option to purchase Lessor's interest in the Equipment on the last day of the Lease Term, without prior notice to Lessor, if the Agreement is still in effect on such day, upon payment in full of the Rental Payments due hereunder. Notwithstanding anything expressed or implied herein to the contrary, upon payment in full of the Rental Payments due hereunder, Lessee shall be deemed to have exercised such purchase option unless Lessee notifies Lessor in writing that it has elected not to exercise such purchase option. Upon the exercise or deemed exercise of such purchase option by the Lessee, this Agreement shall cease, terminate and be discharged and Lessee shall hold title to the Equipment free and clear of any and all interests, claims, liens or security interest of Lessor and any assignee of Lessor (including but not limited to Standby Trustee). Upon request of Lessee, Lessor and Standby Trustee, and any assignee of either, shall execute and deliver such documents and instruments as Lessee shall reasonably deem necessary or appropriate in order to evidence such termination and discharge of this Agreement and the termination of all of Lessor's and Standby Trustee's right, title and interest in and to the Equipment.

ARTICLE XII

Section 12.01. Assignment by Lessor. As part of the Program, Lessor's right, title and interest in, to and under this Agreement and the Equipment will be assigned to on the Commencement Date to Seattle-First National Bank, as paying agent, registrar and standby trustee (the "Standby Trustee"), under that certain Master Trust Agreement, dated March 1, 1992, between the Standby Trustee and the Lessor. Pursuant to the Master Trust Agreement, lease/purchase agreements of other Participating Districts with the same Commencement Date as this Agreement shall be pooled and jointly marketed pursuant to the Association's Program, and the Standby Trustee shall at the Lessor's direction execute and deliver certificates of participation in the pooled lease/purchase agreements. The Standby Trustee shall maintain a register of the owners of all certificates of participation in the pooled lease/purchase agreements.

Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or the Standby Trustee to protect its interests in the Equipment and in this Agreement.

Lessor and Lessee agree to cooperate in the preparation of a mutually acceptable disclosure document relating to the offering of certificates of participation in this Agreement and lease/purchase agreements of other Participating Districts with the same Commencement Date. In the event that the aggregate principal amount of certificates of participation of which this Agreement is a part exceeds \$1,000,000, Lessee agrees to deem the disclosure document so prepared a final disclosure document (the near final official statement) under Securities and Exchange Commission Rule 15c2-12. Lessee shall not

be required to review or be responsible for any information in such disclosure document other than information relating specifically to Lessee.

Section 12.02. Assignment and Subleasing by Lessee. Except as provided in Section 1.01 (b), none of Lessee's right, title and interest in, to and under this Agreement and in the Equipment may be assigned or encumbered by Lessee for any reason; except that Lessee may sublease all or part of the Equipment if Lessee obtains the prior written consent of Lessor and an opinion of counsel satisfactory to Lessor that such subleasing will not adversely affect the exemption of the interest components of the Rental Payments from federal income taxation. Any such sublease of all or part of the Equipment shall be subject to this Agreement and the rights of the Lessor in, to and under this Agreement and the Equipment and Lessee shall remain liable under this Agreement.

Section 12.03. Release and Indemnification Covenants. To the extent permitted by the law, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor and Standby Trustee from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person; provided that Lessee shall not be deemed to be indemnifying Lessor or Standby Trustee for its own willful or negligent conduct. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

ARTICLE XIII

Section 13.01. Events of Default Defined. Any of the following shall constitute an "Event of Default" under this Agreement:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Lessee in or pursuant to this Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (d) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable,

fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

- (e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

Section 13.02. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) Without terminating this Agreement, and by written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current budget year of Lessee to be due, including without limitation delinquent rental payments from prior budget years;
- (b) With or without terminating this Agreement, Lessor may enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, continuing to hold Lessee liable for the difference between (i) a sum sufficient to exercise Lessee's option to defease this Agreement under Section 6.04 as well as any other sums due hereunder, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation all expenses of taking possession, removing, storing, reconditioning, selling, leasing, or subleasing the Equipment and all brokerage, auctioneer's or attorney's fees);
- (c) Terminating this Agreement, by written notice to Lessee, accelerate all outstanding Rental Payments, in which case Lessee agrees to pay to Lessor a sum sufficient to defease this Agreement under Section 6.04 as well as any other sums due hereunder, and upon such payment by Lessee, Lessor's right, title and interest in the Equipment shall terminate;
- (d) By written notice to the escrow agent, instruct the escrow agent to release to Lessor all sums held by the escrow agent in any accounts under the Escrow Agreement, such sums to be credited to Lessee's obligations under this Article XIII; and
- (e) Lessor may take whatever action at law or in equity necessary or desirable to enforce its rights in the Equipment and under this Agreement.

Section 13.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

ARTICLE XIV

Section 14.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee (other than a Registered Owner) at its address as it appears on the registration books maintained by Lessee and to any Registered Owner at its address as it appears on the registration books maintained by the Standby Trustee.

Section 14.02. Certification as to Arbitrage. Lessee hereby represents as follows:

- (a) The estimated total costs of the Equipment will not be less than the total principal amount of the Rental Payments.
- (b) The Equipment has been ordered or is expected to be ordered within six months and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within six months from the Commencement Date. Lessee shall diligently proceed with such acquisition.
- (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.
- (d) The Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.
- (e) To the best of Lessee's knowledge, information and belief, the above expectations are reasonable.

Section 14.03. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.04. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.05. Amendments, Changes and Modifications. This Agreement may be amended by Lessor and Lessee; provided that no amendment that affects the rights of the Registered Owners shall be effective unless it shall have been consented to by the Registered Owners of a majority, in principal amount, of the Lease Participation Certificates, if any, then outstanding.

Section 14.06. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

Section 14.08. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease/Purchase Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:

United States National Bank of Oregon

Debra Brusie, Municipal Finance Officer

Address: Public Finance Department T-10
P.O. Box 4412
Portland, Oregon 97208
Attn: SDAO Program

LESSEE:

Metro

By: _____
Jennifer Sims, Director of Finance and
Management Information

ATTEST:

Craig Prosser, Financial Planning Manager

Address: 600 NE Grand Avenue
Portland, Oregon 97232

COUNTERPART # _____ OF 3 COUNTERPARTS. ONLY
COUNTERPART #1 SHALL BE DEEMED TO BE THE ORIGINAL.
NO SECURITY INTEREST MAY BE CREATED IN THIS
AGREEMENT EXCEPT BY THE TRANSFER AND POSSESSION OF
THE ORIGINAL.

EXHIBIT 1

ACCEPTANCE CERTIFICATE

United States National Bank of Oregon
Public Finance Department T-10
Attn: SDAO Program
P.O. Box 4412
Portland, Oregon 97208

Seattle-First National Bank
1100 Second Avenue, 5th Floor
Seattle, Washington 98101-0720
Attn: Bond Trustee Services

Re: Lease/Purchase Agreement dated as of February 1, 1994, Series 1994A, between United States National Bank of Oregon, as Lessor, and Metro, as Lessee.

Ladies and Gentlemen:

In accordance with the above-referenced Lease/Purchase Agreement (the "Agreement"), the undersigned ("Lessee") hereby certifies and represents to, and agrees with, United States National Bank of Oregon ("Lessor") as follows:

- (1) The Equipment has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by Section 8.03 of the Agreement.
- (4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.
- (5) Attached is a completed Exhibit 2 of the Agreement containing all serial numbers or other applicable information.

(6) All items listed in Exhibit 2 are free and clear of all liens in connection with prior financing as required by Section 7.04 of the Agreement.

Date: _____

Metro,
as Lessee

By: _____
Title: _____

EXHIBIT 2

EQUIPMENT DESCRIPTION

Re: Lease/Purchase Agreement, dated as of February 1, 1994, between United States National Bank of Oregon, as Lessor and Metro, as Lessee.

The Equipment is as follows:

<u>QUANTITY</u>	<u>DESCRIPTION/SERIAL NUMBERS</u>	<u>LOCATION</u>
	DMC Computer System	600 NE Grand Avenue Portland, Oregon
1	Pitney Bowes Postage Meter	

EXHIBIT 3

PAYMENT SCHEDULE

Re: Lease/Purchase Agreement, dated as of February 1, 1994, between United States National Bank of Oregon, as Lessor and Metro, as Lessee.

All terms used herein have the meanings ascribed to them in the above-referenced Agreement.

- A. Rental Payments. The Rental Payments shall be in the amounts set forth in the "Period Total" column of the Payment Schedule contained in this Exhibit 3. These Rental Payments are calculated on the basis of 30-day months and a 360-day year.
- B. Payment Schedule. The Payment Schedule is as set forth below.

SEE ATTACHED SCHEDULE

EXHIBIT 4

DISTRICT'S CERTIFICATE

Re: Lease/Purchase Agreement, dated as of February 1, 1994, between United States National Bank of Oregon, as Lessor and the Metro, as Lessee.

I, the undersigned, the duly appointed, qualified and acting Financial Planning Manager of the above-captioned Lessee do hereby certify this February 7, 1994, as follows:

1. Lessee did, at a regular meeting of the governing body of the Lessee held January 13, 1994, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Lease/Purchase Agreement (the "Agreement") on its behalf by the following named representative of the Lessee, to wit:

<u>Jennifer Sims</u>	<u>Director of Finance and Management Information</u>	
Name	Title	Signature

2. The above-named representative of the Lessee held at the time of such authorization and holds at the present time the office set forth above.

3. The meeting of the governing body of the Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof and that the action approving the Agreement and authorizing the execution thereof has not been altered or rescinded. All meetings of the Council of Lessee (the "Council") relating to the authorization and delivery of the Agreement have been:

- (a) held within the geographic boundaries of the governing body;
- (b) open to the public, allowing all people to attend;
- (c) held at places that do not practice discrimination on the basis of race, creed, color, sex, age, national origin or disability;
- (d) announced by public notice reasonably calculated to give actual notice to interested persons, including the news media which have requested notice, such notice has included the time and place of the meeting and the principal subjects anticipated to be considered at such meeting;
- (e) in the case of special meetings, announced with at least 24 hours notice to members of the governing body, the news media which have requested notice and to the general public;
- (f) conducted in accordance with internal procedures of the governing body with a quorum of the governing body in attendance;
- (g) conducted in a place accessible to the disabled; and

(h) held with a good faith effort made to have an interpreter for hearing impaired persons, to the extent requested by such a person, at its regularly scheduled meetings and held with a reasonable effort made to have an interpreter for hearing impaired persons, to the extent requested by such a person, at its special meetings (as required and defined in ORS 192.630 (5), as amended).

4. Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Rental Payments scheduled to come due during the current budget year and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.

5. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

6. All insurance required in accordance with the Agreement is currently maintained by the Lessee.

7. To the best of my knowledge after reasonable inquiry, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened against or which affects Lessee wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Agreement, the security interest granted in the Property or the enforceability thereof.

8. The budget year of Lessee is from July 1 to June 30.

IN WITNESS WHEREOF, I hereunto set my hand the day and year first above written.

Metro

Craig Prosser, Financial Planning Manager

Subscribed to and sworn before me this _____ day of January, 1994.

Notary Public - State of Oregon
My Commission Expires: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION 94-1870 AUTHORIZING A MASTER LEASE FINANCING AGREEMENT WITH U.S. NATIONAL BANK FOR THE FINANCING OF COMPUTER EQUIPMENT FOR THE PLANNING DEPARTMENT AND A POSTAGE MACHINE NEEDED BY THE DEPARTMENT OF FINANCE AND MANAGEMENT INFORMATION.

December 13, 1993

Presented by: Craig Prosser

Factual Background and Analysis

Resolution 94-1870 authorizes a lease financing agreement with U.S. National Bank for the financing of computer equipment needed by the Planning Department (purchase price \$225,000) and a postage machine needed by the Department of Finance and Management Information (financed price \$14,000). This equipment acquisition was authorized in the FY 1993-94 budget to be obtained under a lease-purchase arrangement.

This lease financing agreement is initiated under an existing master lease agreement between the Special Districts Association of Oregon and US National Bank. This master lease gives special districts (including Metro) access to low interest lease financing through the bank.

Under this master lease arrangement, interest rates for purchases during a 30-day period are set on the 7th of each month. Once set, that interest rate remains fixed for the life of the financing (in this case, three years). The interest rate for these purchases will not exceed 5.25%. This rate is lower than other lease rates available at this time.

This lease financing agreement covers only the specified equipment. If Metro chooses to use this financing vehicle for future purchases, a new agreement will be required. Council approval will be required for any new agreements.

Executive Officer's Recommendation

The Executive Officer recommends approval of Resolution No. 94-1870.

RSR:rr

I:\Exchange\941870SR.Doc

EQUIPMENT DESCRIPTION

Re: Lease/Purchase Agreement, dated as of February 1, 1994, between United States National Bank of Oregon, as Lessor and Metro, as Lessee.

The Equipment is as follows:

<u>QUANTITY</u>	<u>DESCRIPTION/SERIAL NUMBERS</u>	<u>LOCATION</u>
1	DMC Computer System	600 NE Grand Avenue Portland, Oregon
1	Pitney Bowes Postage Meter	

PAYMENT SCHEDULE

Re: Lease/Purchase Agreement, dated as of February 1, 1994, between United States National Bank of Oregon, as Lessor and Metro, as Lessee.

All terms used herein have the meanings ascribed to them in the above-referenced Agreement.

- A. Rental Payments. The Rental Payments shall be in the amounts set forth in the "Period Total" column of the Payment Schedule contained in this Exhibit 3. These Rental Payments are calculated on the basis of 30-day months and a 360-day year.
- B. Payment Schedule. The Payment Schedule is as set forth below.

METRO SERVICE DISTRICT
FLEXLEASE FINANCING PROGRAM

DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	PERIOD TOTAL	FISCAL TOTAL
6/ 1/94			3,600.00	3,600.00	
12/ 1/94	74,000.00	4.500000	5,400.00	79,400.00	83,000.00
6/ 1/95			3,712.50	3,712.50	
12/ 1/95	80,000.00	4.500000	3,712.50	83,712.50	87,425.00
6/ 1/96			1,912.50	1,912.50	
12/ 1/98	85,000.00	4.500000	1,912.50	86,912.50	88,825.00
	239,000.00				
ACCRUED			20,250.00	259,250.00	
	239,000.00		20,250.00	259,250.00	

Dated 2/ 1/94 with Delivery of 2/ 1/94
 Bond Years 450.000
 Average Coupon 4.500000
 Average Life 1.879358
 N I C X 4.500000 % Using 100.0000000
 Weighted Bond Years 450.000
 Weighted Average Life 1.875000
 Weighted N I C X 4.500000 % Using 100.0000000
 T I C X 4.511731 % From Delivery Date

Prepared by: U.S. Bank of Oregon, Public Finance Department

Filename: Key:

MEMORANDUM

DATE: December 29, 1993
TO: Planning Committee
FROM: Dick Bolen, Data Resource Center Manager
RE: Computer Lease

The attached itemizes the upgrades to the RLIS computer system. These upgrades were approved as part of the FY 93-94 capital lease budget. This and other capital leases in the Planning Department are not included on the contracts list with personal service contracts. This upgrade is being handled in the same procedural manner as the recently completed upgrade to the travel forecasting computer system.

This lease is consistent with the long term RLIS computer procurement strategy. Rather than buy a large computer system during the initial development phase, it was planned that the system would be upgraded incrementally in response to user needs. This will be the third upgrade since purchase in 1988. The need for this upgrade is overdue. The amount and complexity of work being performed on the system has increased many fold. For example, one of the workstations is doubling as a network server while supporting several X terminals. The result is slow response time and lower worker productivity. Staff currently updating the base maps often are forced to wait one to two minutes after adding a property line before the next edit is possible.

The earthquake grant project is currently using a loaner workstation from Hewlett Packard which was scheduled to go back on December 31st. HP has offered this computer to us at a 50% discount. However, we have limited time to take advantage of this offer. The earthquake preparedness project is in high gear and the temporary loss of its computer due to procurement delays will be a serious set back.

This lease also includes a workstation upgrade for the Region 2040 staff which, in addition to more disk capacity for the large files created by this project, will enable an X terminal to be attached to it for a second staff member. The Greenspaces staff will also access RLIS through this workstation using an X terminal.

December 17, 1993

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Item Three - Upgrade one HP9000 model 735 computer by adding one, external, 650MB, Re-writable Magneto Optical Disk Drive.

Personal Workstations	Contract
10159 SE Sunnyside Road	
Suite 310	
Clackamas, OR 97015	

Note: This requirement will need a scope of work, and necessitates a contract.

Item Four - Upgrade one HP9000 model 755 computer by adding one external 2GB Fast Differential SCSI Hard Drive.

Personal Workstations	Contract
10159 SE Sunnyside Road	
Suite 310	
Clackamas, OR 97015	

Note: This requirement will need a scope of work, and necessitates a contract.

Item Five - Upgrade from an HP9000 model 370 computer, to an HP9000 model 735 computer with 19" color monitor, 1GB of internal storage, and 64MB of RAM, with HP-UX (8 user license) installed. Metro will receive a trade in credit for the model 370.

Hewlett Packard	Purchase Order
15115 SW Sequoia Parkway	
Suite 100	
Portland, OR 97224	

Note: HP was selected for its proposal of a demo computer that is currently on loan to the DRC. This computer has more memory, and greater capacity than the RFB specification and is being offered at a huge discount.

Item Six - Upgrade from an HP9000 model 370 Plotter Server, to a Sun Sparcstation 10 model 40 with 15-16 inch low cost color monitor, 1GB of internal storage, and 64MB of RAM, with Solaris 2.3 (2 user license) installed. Metro will receive a trade in credit for the model 370.

Stramond Corporation	Purchase Order
25780 SW Heaton Creek	
Newberg, OR 97132	

Note: This item (item 6) was changed by Addendum 1 to read as stated above. Strammond proposed a Sun "clone" computer for this item. While this would not ordinarily be acceptable for an enterprise computer, it was attractive because of its low cost.

Item Seven - One HP9000 model 715 computer with 19" color monitor, 1GB of internal storage, and 64MB of RAM, with HP-UX (2 user license) installed.

Oregon Digital
Computer Products, Inc.
15800 SW Upper Boones Ferry Road
Lake Oswego, OR 97035

Purchase Order

Item Eight - Two HP 9000 model 715 computers with 19" color monitors, 1GB of storage (each), and 32MB of RAM (each), with HP-UX (2 user license) installed (each).

Oregon Digital
Computer Products, Inc.
15800 SW Upper Boones Ferry Road
Lake Oswego, OR 97035

Purchase Order

Item Nine - One HP DesignJet, A-E Size, Color Plotter.

Oregon Digital
Computer Products, Inc.
15800 SW Upper Boones Ferry Road
Lake Oswego, OR 97035

Purchase Order

Item Ten - One NFS File Server.

Sun Microsystems, Inc.
8705 SW Nimbus Drive
Suite 300
Beaverton, OR 97005

Contract

Note: This item was written as a proposal rather than a hard bid for a specific item. Sun Microsystems was the only bidder that proposed the preferred solution. All other bidders proposed different computer systems with various liabilities that made them unattractive for this enterprise data server.

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Item Eleven - Two Macintosh Powerbook 180, 8/160, notebook computers, with internal fax/modem.

Apple Computer
2420 Ridgpoint Drive
Austin, TX 78754

Purchase Order

Item Twelve - One Intel based 486DX2-66 EISA 256k cache Pentium upgradeable PC.

Northwest Micro, Inc.
9610 SW Sunshine Court
Beaverton, OR 97005

Purchase Order

Item Thirteen - Three ESRI ARC/Info floating software licenses, including three Grid module licenses.

Environmental Systems Research Institute (ESRI)
606 Columbia Street NW
Suite 213
Olympia, WA 98501-1099

Purchase Order

Note: This item can only be purchased directly from the manufacturer.

Item Fourteen - Three Wingz floating licenses with documentation and media for HP-UX.

Personal Workstations
10159 SE Sunnyside Road
Suite 310
Clackamas, OR 97015

Contract

Note: This requirement will be bundled with other items that necessitate a contract.

Item Fifteen - Zeh Graphic Plotting Software.

ZEH Graphic Systems
1155 Dairy Ashford
Suite 105
Houston, TX 77079

Purchase Order

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Note: This item (item 15) can only be purchased directly from the manufacturer.

Item Sixteen - Three 16 Port, Synoptics 2813-04, Concentrators with two AUI/Fiber transceivers and two Fiber Patch Cords.

JRE Consulting Associates
4035 N. Vancouver Ave.
Portland, OR 97227

Purchase Order

Item Seventeen - One Bridge/Router.

Cisco Systems
4500 SW Kruse Way
Suite 100
Lake Oswego, OR 97035

Purchase Order

Bidders List

The following businesses, who were known to me as computer dealers or re-sellers, who were capable of responding to this RFB, and were sent unsolicited copies of the RFB:

- | | | | |
|-----|--|-----|-------------|
| (1) | Northwest Micro, Inc.
Attn: Jon Wilson
9610 SW Sunshine Court
Beaverton, OR 97005
626-2555 x214 | MBE | Responded |
| (2) | JRE Consulting Associates
Attn: Debbie Engle
4035 N. Vancouver Ave.
Portland, OR 97227
281-3291 | WBE | Responded |
| (3) | CTR Business Systems, Inc.
Attn.: Bill Bache
6420 SW Macadam Ave
Portland, OR 97201-3507
293-8650 | | Responded |
| (4) | Hewlett Packard
Attn: Jim Gianotti
15115 SW Sequoia Parkway
Suite 100
Portland, OR 97224
598-8137 | | Responded |
| (5) | KETIV Technology, Inc.
Attn.: Wayne Palioca
6601 NE 78th Court, A-8
Portland, OR 97218
252-3230 | | No Response |

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- | | | |
|------|---|-------------|
| (6) | Personal Workstations
Attn.: Dave Watkins
10159 SE Sunnyside Road
Suite 310
Clackamas, OR 97015
652-2758 | Responded |
| (7) | Precision Computers, Inc.
Attn: Rick Herbold
1111 SE Stephens
Portland, OR 97214
234-4553 | Responded |
| (8) | StateCraft Computing
Attn.: Koral Kilburn
24 Frank Lloyd Wright Drive
Ann Arbor, MI 48106
(800) 843-4688 | No Response |
| (9) | Stramond Corporation
Attn: Susan Grant
25780 SW Heaton Creek
Newberg, OR 97132
(503) 591-0428 | Responded |
| (10) | Sun Microsystems, Inc.
Attn.: John Hannam
8705 SW Nimbus Drive
Suite 300
Beaverton, OR 97005
626-5917 | Responded |

The following business provides direct sales to State and Local Governments and was asked for a telephone quote.

Apple Computer Attn: Kathy Kasper 2420 Ridgepoint Drive Austin, TX 78754 (512) 919-2515 (State and Local Govt. Sales)	Responded
--	-----------

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The following businesses are the sole sources for their software and were contacted for a formal quote.

- | | | |
|-----|---|-----------|
| (1) | Environmental Systems Research Institute (ESRI)
Attn: Tom Wallace
606 Columbia Street NW
Suite 213
Olympia, WA 98501-1099
(206) 943-6910 | Responded |
| (2) | ZEH Graphic Systems
Attn: Tim Callaghan
1155 Dairy Ashford
Suite 105
Houston, TX 77079
(713) 589-7757 | Responded |

The following businesses responded to the newspaper advertisement, and were sent solicited copies of the RFB:

- | | | |
|-----|--|-----------|
| (1) | Cisco Systems
Attn: Merril McAdams
4500 SW Kruse Way
Suite 100
Lake Oswego, OR 97035
636-5172 | Responded |
| (2) | Distributed Technologies, Inc.
Attn: Tom Moore
10220 SW Nimbus
Suite K9
Portland, OR 97223
620-5009 | Responded |
| (3) | Oregon Digital
Attn: David Mays
Computer Products, Inc.
15800 SW Upper Boones Ferry Road
Lake Oswego, OR 97035
620-1677 | Responded |

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(4) Wiley
Attn: Alan Hickenbottom
9640 Sunshine Court
Bldg G, Suite 200
Beaverton, OR 97005
643-7900

No Response

CC:
Dick Bolen
Keith Lawton
Karen Thackston

BID ANALYSIS FORM for the DRC Computer Upgrade. Bids in Italics did not meet or modified the specifications. Bids in Bold are the low bids.	Hewlett-Packard Company	Sun Microsystems, Inc	Oregon Digital Computer Products, Inc	Personal Workstations, Inc	CTR Business Systems, Inc
1. Upgrade HP9000 model 730	\$4,862.32		\$3,567.00	\$3,117.00	
2. Upgrade HP9000 model 735	\$1,712.88		\$1,647.00	\$1,275.00	
3. Upgrade Mag Optical Drive	\$4,126.76			\$2,934.00	
4. Upgrade HP9000 model 755	\$5,503.10		\$4,882.00	\$2,418.00	
5. Upgrade HP9000 model 370	\$33,294.70		\$27,554.00	\$39,018.00	
6. Upgrade Plotter Server	<i>\$7,567.49</i>	\$15,025.40	<i>\$6,782.00</i>	\$15,867.00	\$14,261.00
7. HP9000 model 715 64MB Ram	\$17,083.56		\$11,560.00	\$12,841.00	
8. HP9000 model 715 32MB Ram (2)	\$19,601.40		\$19,280.00	\$22,918.00	
9. HP DesignJet Plotter	\$11,519.74		\$7,996.00	\$8,905.00	
10. NFS File Server	<i>\$47806.80 + \$7072</i>	\$50,588.50	<i>\$43,864.00</i>		<i>\$42,188.00</i>
11. Macintosh Powerbook 180 (2)				\$9,810.00	
12. 486DX2-66 PC					
13. ARC-Info/Grid Licenses (3)					
14. Wingz Licenses (3)				\$1,677.00	\$1,755.00
15. Zeh Plotting License					
16. Concentrator package					\$5,616.00
17. Bridge/Router package					

<p>BID ANALYSIS FORM for the DRC Computer Upgrade. Bids in Italics did not meet or modified the specifications. Bids in Bold are the low bids.</p>	<p>Distributed Technologies, Inc</p>	<p>Stramond Corporation</p>	<p>Precision Computers, Inc.</p>	<p>JRE Consulting, Inc</p>	<p>Northwest Micro, Inc</p>
1. Upgrade HP9000 model 730	\$4,367.00				
2. Upgrade HP9000 model 735	\$1,977.00				
3. Upgrade Mag Optical Drive	\$4,161.00				
4. Upgrade HP9000 model 755	\$5,858.00				
5. Upgrade HP9000 model 370	\$34,561.00				
6. Upgrade Plotter Server		<i>\$10,375.00</i>			
7. HP9000 model 715 64MB Ram	\$13,871.00				
8. HP9000 model 715 32MB Ram (2)	\$23,136.00				
9. HP DesignJet Plotter	\$8,996.00				
10. NFS File Server		<i>\$38,385.00</i>			
11. Macintosh Powerbook 180 (2)					
12. 486DX2-66 PC	\$8,124.00	\$6,129.00	\$5,425.00	\$5,399.00	\$5,079.00
13. ARC-Info/Grid Licenses (3)					
14. Wingz Licenses (3)					
15. Zeh Plotting License					
16. Concentrator package				\$5,448.00	
17. Bridge/Router package				<i>\$8,099.00</i>	

<p>BID ANALYSIS FORM for the DRC Computer Upgrade. Bids in Italics did not meet or modified the specifications. Bids in Bold are the low bids.</p>	<p>Cisco Systems</p>	<p>ZEH Graphic Systems</p>	<p>Environmental Systems Research Institute (ESRI)</p>	<p>Apple Computer, Corporate and Government Sales</p>
1. Upgrade HP9000 model 730				
2. Upgrade HP9000 model 735				
3. Upgrade Mag Optical Drive				
4. Upgrade HP9000 model 755				
5. Upgrade HP9000 model 370				
6. Upgrade Plotter Server				
7. HP9000 model 715 64MB Ram				
8. HP9000 model 715 32MB Ram (2)				
9. HP DesignJet Plotter		\$8,425.00		
10. NFS File Server				
11. Macintosh Powerbook 180 (2)				\$5,202.00
12. 486DX2-66 PC				
13. ARC-Info/Grid Licenses (3)			\$33,968.36	
14. Wingz Licenses (3)				
15. Zeh Plotting License		\$11,750.00		
16. Concentrator package				
17. Bridge/Router package	\$11,200.00			