

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1797



METRO

MEETING: METRO COUNCIL REGULAR MEETING
DATE: August 10, 1995
DAY: Thursday
TIME: 2:00 p.m.
PLACE: Council Chamber

<u>Approx. Time *</u>		<u>Presenter</u>
2:00 PM	CALL TO ORDER AND ROLL CALL	
(5 min.)	1. INTRODUCTIONS	
(5 min.)	2. CITIZEN COMMUNICATIONS	
(5 min.)	3. EXECUTIVE OFFICER COMMUNICATIONS	
	4. CONSENT AGENDA	
2:15 PM (5 min.)	4.1 Consideration of Minutes for the August 3, 1995 Metro Council Meeting.	
2:20 PM (15 min.)	5. EXECUTIVE SESSION Held pursuant to ORS 192.660(1)(e). Deliberations with persons designated to negotiate real property transactions.	
2:35 PM (5 min.)	5.1 Resolution No. 95-2185 , For the Purpose of Authorizing the Executive Officer to purchase Property Within the (Sandy River Regional Target Area.)	Chase
2:40 PM (5 min.)	5.2 Resolution No. 95-2191 , For the Purpose of Authorizing the Executive Officer to Purchase Property in the Forest Park Target Area.	Chase
2:45 PM (5 min.)	5.3 Resolution No. 95-2192 , For the Purpose of Authorizing the Executive Officer to Purchase Property in the (Tryon Creek Watershed.	Chase
	6. ORDINANCES - SECOND READINGS	
2:50 PM (5 min.)	6.1 Ordinance No. 95-610 , Relating to the Office of the Metro Auditor, Amending the Metro Code, and Declaring an Emergency.	Morissette
	7. CONTRACT REVIEW BOARD	

For assistance/Services per the Americans with Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office)

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

<u>Approx. Time *</u>		<u>Presenter</u>
2:55 PM (5 min.)	7.1 Resolution No. 95-2188A, For the Purpose of Authorizing an Exemption From the Competitive Bid Process and Authorizing Issuance of RFP #95-21-SW for Disposal and/or Transport of Waste from the Forest Grove Transfer Station.	Kvistad
	8. RESOLUTIONS	
3:00 PM (5 min.)	8.2 Resolution No. 95-2189, For the Purpose of Confirming Alternates for Citizen Representatives to the Transportation Policy Alternatives Committee (TPAC)	Kvistad
3:05 PM (5 min.)	8.3 Resolution No. 95-2190, Supplementing Resolution No. 95-2169 pertaining to the issuance of General Obligation Bonds (Open Spaces Program) in the Principal Amount of Not to Exceed \$135,600,000 for the Purpose of Financing the Acquisition and Improvement of Various Parcels of Land as Part of Metro's Open Spaces Program.	McCaig
	9. INFORMATIONAL ITEM	
3:10 PM (5 min.)	9.1 Openspaces Priority Update	McCaig
3:15 PM (10 min.)	10. COUNCILOR COMMUNICATIONS	
3:25 PM	ADJOURN	

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AGENDA ITEM 4.1
Meeting Date: August 10, 1995

Consent Agenda

Minutes of the August 3, 1995 Metro Council meeting are attached.

Minutes of the Metro Council
August 3, 1995
Metro Regional Center, Council Chamber

Councilors Present: Ruth McFarland (Presiding Officer), Patricia McCaig, Don Morissette, Ed Washington, Susan McLain, Jon Kvistad

Councilors Absent: Rod Monroe (Deputy Presiding Officer)

Presiding Officer McFarland called the regular meeting to order at 2:00 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

4.1 Consideration of Minutes of the July 27, 1995 Council Meeting

Motion: Councilor Washington moved, seconded by Councilor McLain to approve the minutes.

Vote: All those present voted aye. The vote was 6/0 and the motion passed.

5. ORDINANCES - SECOND READINGS

5.1 Ordinance No. 95-612, Amending the Urban Growth Boundary for the Subject Property of Urban Growth Boundary Contested Case 95-1: Harvey/Washington County, Located Along the Tualatin Valley Highway.

The clerk read the ordinance by title only for the second time.

Motion: Councilor Washington moved, seconded by Councilor Kvistad to adopt the Ordinance.

Presiding Officer McFarland opened the public hearing. With no citizens appearing to testify, Chair McFarland closed the public hearing.

Vote: All those present voted aye. The vote was unanimous and the motion passed.

5.2 Ordinance No. 95-613, Amending the Urban Growth Boundary for Contested Case 95-3: Jenkins Estate, to Include 68 Acres of Park Property, Located in Washington County

The clerk read the ordinance by title only for the second time.

Motion: Councilor Kvistad moved, seconded by Councilor Washington to adopt the Ordinance.

Presiding Officer McFarland opened the public hearing. With no citizens appearing to testify, Chair McFarland closed the public hearing.

Vote: All those present voted aye. The vote was unanimous and the motion passed.

6. RESOLUTIONS

- 6.1 Resolution No. 95-2184, Confirming the Appointment of John Fregonese as the Director of the Department of Growth Management and Development**

The clerk read the resolution by title only.

Motion: Councilor McLain moved, seconded by Councilor Kvistad to adopt the resolution.

Councilors expressed their support of Mr. Fregonese.

Vote: All those present voted aye. The vote was unanimous and the motion passed.

Presiding Officer McFarland recessed the Metro Council and convened the Contract Review Board.

7. CONTRACT REVIEW BOARD

- 7.1 Resolution No. 2179, For the Purpose of Authorizing an Exemption From Competitive Bidding and Authorizing Sole-Source and Multi-Year Contracts to Agra Earth and Environmental, and Antech Analysis Technology for Sampling and Testing of Yard Debris Compost**

The clerk read the resolution by title only.

Motion: Councilor McLain moved, seconded by Councilor Kvistad to adopt the resolution.

Councilor McLain presented the staff report, a copy of which is included in the record of this meeting. She noted Councilor Morissette had corrected an error in the contract.

Vote: All those present voted aye. The vote was unanimous and the motion passed.

Presiding Officer McFarland adjourned the Contract Review Board and reconvened the Metro Council.

8. INFORMATIONAL ITEM

- 8.1 Openspaces Priority Update**

Councilor McCaig postponed discussion due to pending changes in the program. Councilor McLain noted she made a commitment to having discussions to consider public concerns about the process. Councilor McFarland agreed to schedule the item for further discussion.

9. COUNCILOR COMMUNICATIONS

Councilor McCaig clarified that her concerns about the MCCI appointment process were alleviated because the position was a County vacancy, not a Council vacancy.

The Council discussed the use of the terms excused and absent. Dan Cooper, General Counsel, noted previous discussions had determined that Council would consider any absences in excess of the Charter on a case by case basis.

Councilor Washington reported on the MERC consolidation negotiations. Presiding Officer McFarland stated she would schedule the item for future discussion. Councilor Kvistad stated he supported regional ownership of regional facilities.

Metro Council Meeting Minutes

August 3, 1995

Page 3

Councilor Kvistad noted a Solid Waste issue would be before the Council next week that was important. Councilor McLain noted the Land Use Planning Committee would be discussing water issues at the August 8, 1995 meeting.

With no further business before the Council, Presiding Officer McFarland adjourned the meeting at 2:40 p.m.

Submitted by,

**Susan Lee, CMC
Council Assistant**

080395M.DOC

AGENDA ITEM 5.1
Meeting Date: August 10, 1995

Resolution No. 95-2185

Resolution No. 95-2185, For the Purpose of Authorizing the Executive Officer to purchase Property Within the Sandy River Regional Target Area.

Note: Staff report will will distributed during Executive Session.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 95 -2185
THE EXECUTIVE OFFICER TO PURCHASE) Introduced by Mike Burton
PROPERTY WITHIN THE SANDY RIVER) Executive Officer
REGIONAL TARGET AREA)

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, The Sandy River was designated as a Greenspace of regional significance in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, The J.J. & Associates property has been identified as an important natural area within the Sandy River Project Area, and

WHEREAS, A Process for Considering and Executing Options to Purchase Lands was adopted by Council Resolution No. 94-1919; and

WHEREAS, Resolution 95-2069 authorized the Executive Officer to enter into an agreement with J.J. & Associates to option their property based on the terms outlined in Exhibit A, now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to purchase the property, identified in Exhibit A, for \$330,000 plus closing costs and taxes, subject to certain conditions being fulfilled.

ADOPTED by Metro Council this _____ day of _____, 1995.

J. Ruth Mc Farland , Presiding Officer

AGENDA ITEM 5.2
Meeting Date: August 10, 1995

Resolution No. 95-2191

**Resolution No. 95-2191, For the Purpose of Authorizing the Executive Officer to
Purchase Property in the Forest Park Target Area.**

Note: Staff report will will distributed during Executive Session.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 95 -2191
THE EXECUTIVE OFFICER TO PURCHASE)	Introduced by Mike Burton
PROPERTY WITHIN THE FOREST PARK)	Executive Officer
REGIONAL TARGET AREA)	

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, Forest Park was designated as a Greenspace of regional significance in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, The J.J. & Associates property has been identified as an important natural area within the Forest Park Project Area; and

WHEREAS, A Process for Considering and Executing Options to Purchase Lands was adopted by Council Resolution No. 94-1919; and

WHEREAS, Resolution 95-2069 authorized the Executive Officer to enter into an agreement with J.J. & Associates to option their property based on the terms outlined in Exhibit A; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to purchase the property, identified in Exhibit A, for \$225,000 plus closing costs and taxes, subject to certain conditions being fulfilled.

ADOPTED by Metro Council this _____ day of _____, 1995.

J. Ruth Mc Farland , Presiding Officer

AGENDA ITEM 5.3
Meeting Date: August 10, 1995

Resolution No. 95-2192

**Resolution No. 95-2192, For the Purpose of Authorizing the Executive Officer to
Purchase Property in the Tryon Creek Watershed.**

Note: Staff report will will distributed during Executive Session.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 95 - 2192
THE EXECUTIVE OFFICER TO PURCHASE)
PROPERTY IN THE TRYON CREEK) Introduced by Mike Burton,
WATERSHED) Executive Officer

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, The Tryon Creek Watershed has been designated as a greenspace of regional significance in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, A Process for Considering and Executing Options to Purchase Lands was adopted by Council Resolution No. 94 - 1919; and

WHEREAS, The Lindstrom property has been identified as an important natural area in the Tryon Creek watershed; and

WHEREAS, Resolution No.95 -2107 authorized the Executive Officer to enter into an agreement Larry and Nina Lindstrom for their property; now, therefore,

BE IT RESOLVED,

That Metro Council authorizes the Executive Officer to purchase the property as identified in Exhibit A, for \$580,000 plus closing costs and taxes; subject to certain conditions being fulfilled.

ADOPTED by Metro Council this _____ day of _____, 1995.

J. Ruth Mc Farland , Presiding Officer

AGENDA ITEM 6.1
Meeting Date: August 10, 1995

Ordinance No. 95-610

Second Reading

**Ordinance No. 95-610, Relating to the Office of the Metro Auditor, Amending
the Metro Code, and Declaring an Emergency.**

BEFORE THE METRO COUNCIL

RELATING TO THE OFFICE OF THE METRO)	ORDINANCE NO. 95-610
AUDITOR, AMENDING THE METRO CODE,)	
AND DECLARING AN EMERGENCY)	Introduced by
)	Councilor Don Morissette

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Chapter 2.14, Metro Auditor, is hereby added to the Metro Code.

2.14.010 Independence

The office of auditor is an elected position defined by the 1992 Metro Charter with specific duties including the requirement to make continuous investigations of the operations of Metro. These investigations include financial and performance audits. The auditor is required to make reports to the Metro council and executive officer with recommendations for action.

The office of auditor consists of the Metro auditor and such subordinate employees as the council may provide. The auditor has neither a management nor a policy role, rather the auditor provides independent and objective information about Metro programs and services. The functions of the auditor include financial as well as performance audits of all departments, offices, commissions, activities and operations of Metro and reports regarding compliance with adopted laws, policies and sound fiscal practices.

The office of auditor will adhere to government auditing standards in conducting its work and will be considered independent as defined by those standards. The auditor will strive to assure maximum coordination between its function and the audit needs of Metro including the council and executive officer.

2.14.020 Funding

In each annual budget sufficient funds and personnel shall be provided by the Metro council to carry out the responsibilities specified herein.

2.14.030 Audit Schedule

Each year the auditor shall submit an annual plan to the Metro council for review and comment. The plan shall include the departments, commissions, activities, functions and offices scheduled for audit during the year. This plan may be amended during the year as deemed necessary by the auditor. However, additional resources not authorized in the annual budget may not be utilized without council approval. Additionally, the auditor may spontaneously initiate and conduct any other audit deemed necessary to undertake with notification to the council prior to conducting the audit.

In the selection of audit areas, the determination of audit scope and timing of audit work, the auditor should consult with federal, state, local jurisdiction auditors, and independent auditors so the desirable audit coverage is provided and audit effort may be properly coordinated.

The Metro council and executive officer may request that the auditor perform special audits that are not included in the annual audit schedule. Such audits will be considered by the auditor taking into account available resources and audit priorities. The final decision regarding the audit schedule shall remain with the auditor.

Special audit reports will be handled the same as regular audit reports, except that in personnel matters of a confidential nature, reporting on results may be limited to the executive officer and the presiding officer of Metro.

2.14.040 Scope of Audits

(a) The auditor shall conduct financial and performance audits to independently determine whether:

- (1) Activities and programs being implemented have been authorized by Metro Charter or Code, state law or applicable federal law regulations;
- (2) Activities and programs are being conducted as prescribed by the council and executive officer to accomplish the objectives intended by the Metro Charter or Code, state law or applicable federal law or regulations;
- (3) Activities or programs efficiently and effectively serve the purpose intended by the Metro Charter, Code, state law or applicable federal law or regulations;
- (4) Activities and programs are being conducted and funds expended in compliance with applicable laws;
- (5) Revenues are being properly collected, deposited and accounted for;
- (6) Resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;
- (7) Financial and other reports are being provided that disclose fairly and fully all information that is required by law, that is necessary to ascertain the nature and scope of programs and activities and that is necessary to establish a proper basis for evaluating the programs and activities;

- (8) There are adequate operating and administrative procedures and practices, systems or accounting internal control systems and internal management controls which have been established by management; or
- (9) There are indications of fraud, abuse or illegal acts which need further investigation.

(b) Audits shall be conducted in accordance with government auditing standards applicable to financial and performance audits.

2.14.050 Access to Records and Property

All officers and employees of Metro shall furnish the auditor with requested information and records within their custody regarding powers, duties, activities, organization, property, financial transactions and method of business required to conduct an audit or otherwise perform audit duties. In addition, they shall provide access for the auditor to inspect all property, equipment and facilities within their custody. If such officers or employees fail to produce the aforementioned information, then the auditor may cause a search to be made and exhibits to be taken from any book, paper or record of any such official or employee, excepting personal information, and every office having the custody of such records shall make a search and forward such requested exhibits to the auditor.

2.14.060 Audit Reports

Each audit conducted by the auditor shall result in a written report. These final audit reports shall be made available to the public. The final audit report will include the written comments of the reviewed entity (for fact verification only) before it is released to the public. The auditor shall provide the final report to the presiding officer and the executive officer prior to releasing the report to the public.

2.14.070 Responses to Audit Reports

The auditor shall furnish a final draft of each audit report to the audited entity for review and comment before it is released. The responsible official may respond in writing to the auditor's recommendations within 10 working days, or at the auditor's discretion, a longer time frame may be specified. If a timely response is not received the auditor shall so note at the time the report is released.

2.14.080 External Audits

Subject to the requirements of the Metro Code pertaining to contracts, the auditor shall appoint external Certified Public Accountants to conduct certified financial statement audits, as specified by state or local law. The auditor shall coordinate and monitor the conduct of and the responses to external financial statement audits. The auditor shall work toward the elimination of duplicative audit work through cooperation with state, federal and external auditors. The auditor may also, within budgeted appropriations, contract with other professionals to assist in the performance of the audit function. The auditor will coordinate and monitor audit related assistance provided by such professionals.

2.14.090 Report of Irregularities

If the auditor detects apparent violations of law or apparent instances of malfeasance or nonfeasance by an officer or employee or information that indicates derelictions may be reasonably anticipated, the auditor shall report the irregularities to the presiding officer of the Metro council and the executive officer. If the irregularity is potentially criminal in nature, the auditor shall notify the District Attorney, when appropriate, in addition to those previously cited.

Section 2. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that it is needed to immediately define the office of auditor so that the auditor may function with the full authority provided by this Ordinance, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council this ____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

rpj
1238

AGENDA ITEM 7.1
Meeting Date: August 10, 1995

Resolution No. 95-2188A

Resolution No. 95-2188, For the Purpose of Authorizing an Exemption From the Competitive Bid Process and Authorizing Issuance of RFP #95-21-SW for Disposal and/or Transport of Waste from the Forest Grove Transfer Station.

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION 95-2188, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM THE COMPETITIVE BID PROCESS AND AUTHORIZING ISSUANCE OF RFP 395R-21-SW FOR THE DISPOSAL AND/OR TRANSPORT OF WASTE FROM THE FOREST GROVE TRANSFER STATION

Date: August 2, 1995

Presented by: Councilor McLain

Committee Recommendation: At the August 1 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 95-2188. Voting in favor: Councilors Kvistad, McFarland and McLain.

Committee Issues/Discussion: Bern Shanks, Regional Environmental Management Director, and Jim Watkins, Regional Environmental Management Engineering and Analysis Manager, presented the staff report. Watkins noted the the purpose of the resolution is to authorize the release of an RFP to solicit proposals for the disposal and/or transportation of waste from the Forest Grove Transfer Station (FGTS). The proposed RFP has been developed in response to Council adoption of Resolution 95-2118, which prescribed the use of an RFP process to procure a vendor for the transportation and disposal of waste from FGTS.

Watkins explained that the RFP had been crafted to solicit the broadest range of proposals possible while establishing evaluation criteria that would facilitate comparing the different types of proposals that could be received. He noted that if the RFP were not released, or if all proposals were rejected, the status quo under which the waste is transported by A.C. Trucking to the Riverbend Landfill would remain in place.

Watkins reviewed the provisions of the proposed RFP. The length of the contract to be issued under the RFP is five years, with the potential for an extension of up to four years. Prospective vendors could submit proposals on any of the four alternatives provided in the RFP. The alternatives would include:

Alternative #1 - proposers would submit a single per ton price for transportation and disposal of the FGTS waste assuming the station did not have a compactor.

Alternative #2 - proposers would submit a single per load price assuming that waste would be compacted prior to transport and disposal.

Alternative #3 - proposers would submit a per load price for transport and a separate per ton disposal price.

Alternative #4 - proposers would submit a single price for transport to the Columbia Ridge Landfill (The disposal cost is

assumed to be the price based on the provisions of OWS Contract Amendment #4, approximately \$14.80/ton. A combined disposal/transport cost would then be compared to other proposals.)

Proposers under all alternatives also would be required to include an annual inflation factor as a percentage of the annual increase in the CPI.

Watkins explained that prices from proposers using Alternatives #2 or 3, under which compaction would be required, would be adjusted to reflect the cost of the installation and operation of a compactor at FGTS. Staff estimates that cost would be about \$2/ton. This adjustment would be added to the per load price in Alternative #2 and to the transport load price in Alternative #3.

Councilor McFarland asked why it was necessary to make the \$2 adjustment. Watkins commented that if Metro required the transfer station to install a compactor, the operator would seek a rate adjustment to cover his installation and operating costs. Such an adjustment would reduce Metro revenue from the station. Watkins contended that it was appropriate to include this potential lost revenue when evaluating proposals that would require compacted loads. McFarland noted that Metro could require the station operator to install the compactor without a rate adjustment. She expressed concern the the \$2 adjustment could unfairly penalize bidders under Alternatives 2 and 3.

Councilor McLain responded that the RFP attempted to balance bidding requirements so as to encourage the largest number of responses, without placing anyone at a disadvantage. She noted that there may be many aspects of the each proposal that are unique to the particular circumstances of the proposer.

Watkins explained that the evaluation criteria would be weighted as follows:

- 75 points (maximum) - cost of the proposal
- 15 points (maximum) - management experience of the proposer
- 10 points (maximum) - environmental issues related to the method of transport and the disposal site

Watkins noted that the calculation of points under the cost criteria would be divided between two potential tonnage scenarios. Scenario 1, which staff believes in the most likely tonnage estimate, assumes that tonnage will grow from 70,894 tons to 80,596 tons during the life of the proposed contract. Scenario 2 assumes a very aggressive waste reduction and recycling that would result in a decline of 2,000 tons over the life of the contract. Watkins indicated that the total cost of each proposal for each scenario would be calculated. The lowest proposer under Scenario 1 would receive 40 points and the lowest bidder under Scenario 2 would receive 35 points. Higher bidders would receive a lower number of points based on how close their bid was to the lowest bid. The

combined score for both scenarios would represent the total number of points to be received by the proposer under the cost evaluation criteria.

Councilor McLain asked how the environmental and management points would be allocated between the disposal and transportation components of a proposal. Watkins replied that the breakdown between the two had not been finalized.

Watkins noted that different types of transport trailers would be permitted, depending on the location of the final disposal site. Under agreements that Metro has with several parties, trucks cannot move through the Columbia Gorge unless they are fully enclosed with solid doors. The trucks that currently transport waste from FGTS to Riverbend Landfill have screen tops but are required to be leakproof. Either type of trailer would be permitted under the RFP.

Councilor McFarland expressed concern that all proposers be required to meet the same type of trailer standard. She commented that clearly the requirements for trailers using the gorge were more environmentally sound. She also noted that there is evidence that the trucks transporting to Riverbend are not leakproof and that material does escape through the screen roofs. Councilor McLain responded that it was not necessary to have the same standards for all proposers and that any proposer that provides a satisfactory method of transport should be considered. She noted that she did not have the same level of concern as Councilor McFarland about the trucks currently transporting waste to Riverbend.

Mr. Shanks noted that the decision on the types of transport trailers that would be permitted was a Council policy decision which the staff would include in the RFP.

Councilor McFarland asked a series of questions. She asked if Riverbend Landfill was now authorized to charge a lower rate to out-of-county waste. Council Analyst Houser responded that they were so authorized. Councilor McFarland expressed concern about the potential of rebating between vendors and whether the RFP gave Metro access to financial records. Todd Sadlo, Assistant Legal Counsel, answered that Metro would have access to such documents.

Councilor McFarland asked whether material from FGTS could go to a non-designated facilities. Sadlo responded that it could go to such a facility under Metro's non-system licensing program. He noted that that is how Riverbend Landfill currently receives wastes from FGTS. Watkins noted that if a non-designated facility were to be the successful proposer for the FGTS waste, staff would seek Council approval to grant designated facility status to the facility.

Councilor McFarland expressed concern that Metro would be unable to meet its obligation to send 90% of the region's waste to Columbia

Ridge, if another facility were to receive the FGTS waste. She noted that the proliferation of MRF's and illegal leakage from the system would significantly reduce the amount of waste going to Columbia Ridge. Councilor McLain noted that in the past, Metro's legal staff had indicated that the agency could successfully defend against any challenge that we were not meeting our commitment to Columbia Ridge.

Councilor McFarland also questioned specific language in Exhibit D which addressed the need for a exemption from competitive bidding to allow the consideration of proposals. The language provided that "if the resulting contract does not result in savings, Metro can choose not to award the contract and simply continue the current arrangements." She expressed concern that this language was more limiting than the language in the RFP that would allow Metro to reject all proposals for any reason. Mr. Sadlo advised that while the language was not part of the actual RFP, he would try to develop language that would eliminate any potential confusion.

Bob Martin, former Metro Solid Waste Director, offered written testimony concerning several elements of the RFP. He noted that he was representing only himself. He expressed concern about the potential for a four year extension of the proposed contract. He noted that there is healthy competition for waste in the Northwest and that a competitive process after five years would continue to guarantee Metro the lowest possible price.

Martin also suggested that the weighting of the evaluation criteria be changed to give greater emphasis to environmental issues. He noted that Metro's potential liability for environmental problems at a landfill could be significant and should be factored into the evaluation process. He recommended that the environmental criteria be increased from 10 to 25 points and that the cost criteria be reduced from 75 to 60 points.

Martin also felt that the RFP should not permit top-loaded trailers with screen doors. He noted that such doors do not keep material from escaping from the trailers and that during rainy weather added moisture could create environmental problems and also increase the weight of the load, causing a higher fee to be paid at the disposal site.

Lastly, Martin recommended that the RFP require retainage, rather than a letter of credit to insure compliance with the terms of the contract. He noted that, while such a requirement might result in a small increase in bids from some proposers, a cash retainage would provide a greater level of protection for Metro. He said that use of a retainage system would require the contractor to initiate proceedings in the event of a dispute, while a letter of credit would require Metro to initiate recovery proceedings.

Several residents of Yamhill County testified about their concerns about the environmental safety of the Riverbend Landfill and the

trucking of waste from Forest Grove to Riverbend.

Erin Rainey, who resides near the Landfill, expressed concern about the effect of the landfill on the water quality of the aquifer immediately below it. She noted that all of the nearby residents use wells as their water source and that any type of contamination could render their water supply unusable.

Cleo Westphal, noted that she had been researching the history of the Riverbend Landfill since 1981. She expressed concern that leachate was now moving off of the landfill site and under adjacent properties. She noted that many Yamhill County residents oppose the landfill and that initiatives have been passed to limit the importation of waste from outside of the county. She also complained that Riverbend could now charge Yamhill County residents a tip fee that could be up to \$6/ton higher than it charges waste coming from outside the county.

Lee Frease, requested that the Council consider increasing the weighting given to environmental factors in the evaluation criteria. She contended that there are not only significant environmental issues at the Riverbend Landfill, but that the trucks currently coming from FGTS must travel over narrow roads and through several small communities. She indicated that there is evidence that the trucks are not leakproof and that material does escape through the top screen covers. She also questioned whether Metro could continue to meet its 90% commitment to Columbia Ridge if the FGTS waste were sent to Riverbend.

Frease noted that an initiative has been filed to prohibit Yamhill County residents from being charged a higher tip fee than out-of-county waste. She closed by questioning the adequacy of the \$5 million environmental impairment fund to address closure and other potential environmental needs at the landfill.

Ramsey McPhillips testified that his family has operated a farm near the Riverbend facility for 133 years. He expressed concern that existing and potential environmental problems at the landfill could make his farmland unusable. He also noted that if significant environmental problems do result from the landfill, Metro might be subject to significant liability if it continues to be a major user of the facility.

Scott Bradley, Riverbend Landfill Manager, noted that the landfill is fully permitted by DEQ and that the new cells being installed at the landfill far exceed federal requirements. He recognized that the location of the landfill did present environmental and operational issues not found at sites in drier climates, but that this simply meant that the operator needed to more carefully operate the facility to insure that no problems occur.

Following the completion of public testimony, the committee discussed the proposed resolution.

Councilor McLain urged the committee to proceed with the issuance of the RFP. She contended that the RFP release would allow Metro to receive a variety of proposals and give us the opportunity to consider many different options for dealing with the FGTS waste. With regard to the specifics of the RFP proposal, she expressed interest in including Mr. Martin's proposal to shorten the extension period from up to 4 years to 120 days and a requirement of a cash retainage versus a letter of credit.

McLain recognized the need to consider the issues raised by the Yamhill County residents who testified. But, she contended that little new information had been presented. She argued that it would be more appropriate for their concerns to be addressed during the proposal evaluation process. She noted that Metro can have little impact on the operation of the Riverbend Landfill. Yamhill issues the facility's license and the DEQ issues the required operating permits. She contended that, even if Metro sent no waste to the facility, it would continue to operate and that its lifespan would probably be longer.

Councilor McFarland expressed support for all of Mr. Martin's suggestions. She expressed particular interest in his recommendation that there be a uniform standard for the truck trailers to be used to transport the FGTS waste. She also supported changing language in Exhibit D related to the rejection of proposals. Mr. Sadlo presented language to address Councilor McFarland's concern. It would add language to clarify Metro's authorize to reject any or all proposals for any reason.

Councilor McLain responded that the RFP should be flexible in allowing differing types of truck trailers to reflect the different travel conditions and length of trips that the various potential proposers may face. She indicated support for Mr. Sadlo's language to amend Exhibit D.

Councilor Kvistad noted that the the RFP process must be fair and provide the same opportunities for all potential proposers.

The committee approved amendments to reduce the possible extension period from 4 years to 120 days and to modify the language in Exhibit D relating to the rejection of proposals. The committee also requested staff to prepare language to require a cash retainage from the successful proposer with an analysis of the impact that such a requirement could have on the number of potential proposers.

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION) RESOLUTION NO. 95 - 2188A
FROM THE COMPETITIVE BID PROCESS AND)
AUTHORIZING ISSUANCE OF RFP #95R-21-SW FOR) INTRODUCED BY MIKE BURTON
THE DISPOSAL AND/OR TRANSPORT OF WASTE) EXECUTIVE OFFICER
FROM THE FOREST GROVE TRANSFER STATION)

WHEREAS, The Metro Council adopted Resolution No. 95-2118, attached as EXHIBIT "A," endorsing the use of a request for proposal process to determine the disposition of waste from the Forest Grove Transfer Station for the reasons stated in EXHIBIT "B"; and

WHEREAS, Staff has prepared the request for proposals attached as EXHIBIT "C";
and

WHEREAS, The use of this procurement process requires an exemption from the competitive bid process; and

WHEREAS, Metro Code Section 2.04.041 (c) and ORS 279.015 (2) authorize the Metro Contract Review Board to exempt a public contract from competitive bidding if it finds that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such an exemption will result in substantial cost savings; and

WHEREAS, EXHIBIT "D" to this resolution contains findings which satisfy the requirements for such an exemption; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Contract Review Board for approval; now therefore,

BE IT RESOLVED,

1. That the Metro Contract Review Board adopts as findings the information and reasoning contained in EXHIBIT "D," made part of this resolution by reference, and concludes that:
 - a) It is unlikely that exempting the disposal and/or transport of waste from the Forest Grove Transfer Station from the competitive bid

process will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

b) The exemption will result in substantial cost savings to Metro; and

Therefore, exempts the contract to be solicited through RFP #95R-21-SW from competitive bidding requirements.

2. That the Metro Council authorizes issuance of RFP #95R-21-SW attached as EXHIBIT "D".

ADOPTED this _____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

CG:ay

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 95 - 2188 FOR THE PURPOSE OF
AUTHORIZING AN EXEMPTION FROM THE COMPETITIVE BID PROCESS AND
AUTHORIZING ISSUANCE OF RFP #95R-21-SW FOR THE DISPOSAL AND/OR
TRANSPORT OF WASTE FROM THE FOREST GROVE TRANSFER STATION

Date: July 20, 1995

Presented by: Jim Watkins

PROPOSED ACTION

Adopt Resolution No. 95 - 2188.

FACTUAL BACKGROUND AND ANALYSIS

On March 23, 1995, the Metro Council adopted Resolution No. 95 - 2118 (attached as EXHIBIT "A" to Resolution No. 95 - 2188) which endorsed the use of a request for proposal process to determine the disposition of waste from the Forest Grove Transfer Station. Staff has completed drafting the procurement document (attached to the resolution as EXHIBIT "C"), incorporating vendor comments (Attachment No. 1) as appropriate.

Staff has received a number of letters from citizens of Yamhill County objecting to waste from the Metro region going to the Riverbend Landfill. These are included in Attachment No. 2.

Notable features of the Request for Proposals for the Disposal and/or Transport of Waste from the Forest Grove Transfer Station are presented below.

Schedule of Proposal Prices

There are four alternates for which proposals may be submitted. Alternate #1 is for transport and disposal of the waste on a combined per ton price for both activities with no compaction at the Forest Grove Transfer Station. Alternate #2 is for transport and disposal of the waste on a combined per load price for both activities with compaction at the FGTS. Alternate #3 is also for both transport and disposal with compaction, but solicits prices for transport on a per load basis and disposal on a per ton basis. Alternate #4 is to be used for submitting "transport only" prices to the Columbia Ridge Landfill disposal site.

If the successful proposal is for an alternate which requires compaction, Metro will require the Forest Grove Transfer Station owner to install a compactor. The additional capital and operating costs associated with compaction are included in the evaluation of the total cost of each alternate. The Forest Grove Transfer Station would recover any increase costs through the rate review process of its franchise agreement with Metro

Evaluation Criteria

There are three evaluation criteria- cost, performance and environmental quality of the disposal site. 75 points are assigned to the cost criterion and awarded based on total cost. The lowest cost proposal will receive all 75 points while the remaining proposals receive points based on how close they are to the lowest cost proposal.

15 points are assigned to the performance criterion. Points will be assigned based on the proposer's experience and the quality and performance history of the personnel and equipment proposed.

10 points are assigned to the environmental quality of the disposal site criterion. Points will be assigned based on the site's history of regulatory compliance and its current status. For alternate #4 information for the Columbia Ridge Landfill will be used.

Trailer Requirements

If waste is transported through the Columbia River National Scenic Area, the transporter is required to comply with Metro's settlement agreement with AAA et. al., which includes the requirement that solid doors be used. Otherwise the trailers may use screen doors over the top of the trailer. Both types must be leak proof.

Contract Length/Extensions

The contract length is five years. The contract may be extended at Metro's option for up to an additional four years in no less than two year increments.

Metro's Right to Purchase Fuel

Metro reserves the right to purchase the fuel used in transporting the waste to the disposal site. It may be in Metro's interest to do so since Metro does not have to pay the federal excise tax. Metro will exercise this right depending on transport logistics and the primary transport mode.

The procurement process will consist of a 5 week period for vendors to prepare proposals. Proposals will then be evaluated and negotiations on a contract will proceed with the top ranked firm. If negotiations are successful, a contract will be brought before the Metro Council for award.

BUDGET IMPACT

The budget impact of this procurement will depend on the resulting contract.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 95-2188.

CG:ay

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ATTACHMENT NO. 1

Questions and Comments Received from Potential Vendors in Response to Metro's Draft RFP for Disposal and/or Transport of Waste from the Forest Grove Transfer Stations

In late May the Solid Waste Department sent to potential vendors a draft of RFP # 95R-21-SW. The purpose of this action was to solicit vendors' concerns and comments regarding the approach proposed by staff, and to modify the draft as appropriate. Below are the comments and questions received from vendors as summarized by staff, and staff's proposed modifications to the final RFP. These are listed by the firm from which they were received.

Gresham Transfer Inc.

1. Please explain how alternate #3 relates to the other two alternates.

R: In alternate #3, a disposal cost is calculated based on disposal at the Columbia Ridge Landfill, and a proposal under this alternate is for transporting waste to this site. The proposer does not have to arrangement for disposal, Metro has done this already through prior agreements. Under alternates #1 and #2, proposers must arrange for both transport and disposal. (Note: Metro will be adding another alternate to the RFP as described below. The responses referencing alternates herein refer to those in the original draft.)

2. Can an alternate disposal site [to the Columbia Ridge Landfill] be used if the disposal site meets or has addressed all environmental regulations covered in Oregon Department of Environmental Quality solid waste regulations?

R: Yes, however the site must be proposed together with transport under alternates #1 and #2. Alternate #3 can only be used if the disposal site is the Columbia Ridge Landfill.

3. Will the current bonding stay the same under the amendment or will additional bonding be necessary for the amendment change? (Fairness for those who are submitting proposals to Metro that currently do not have existing contracts with Metro.)

R: All proposals and prices submitted must assume that the bonding requirements in the RFP will be those required in the final contract.

4. Can you please clarify Article 13. It sounds to me like this article is double bonding. Please explain.

R: As retainage accrues, the amount of the bonds or letter of credit required under Article 17 decreases. Metro, however, has decided to eliminate the retainage requirement and will require only bonds or a letter of credit.

4a. Article 22, Title of Waste. Should all shipments coming out of Forest Grove transfer station shall comply with all applicable statutes covered in Uniform Commercial Code and the Uniform Code of Bill of Ladings?

R: Yes, as stated in Article 1 (F)- "Contractor... shall comply with all applicable laws, regulations, ordinances, orders and all other requirements of federal, state, regional, county and local government authorities..."

5. Can you please explain and clarify what role the Forest Grove franchise agreement plays for the solid waste transporter or is this franchise agreement directed towards the solid waste transfer facility only?

R: The franchise agreement is between Metro and the transfer station owner. The franchise agreement sets out the responsibilities of the transfer station operator towards the transporter.

Riverbend Landfill Co., Inc.

1. Page 3, Section 3, top of page: It would appear to be in Metro's best interest not to limit itself to the option of a one year extension, but rather to allow itself the right to extend the agreement for an additional five years. This would eliminate the need to undertake another bid process by Metro if the contract in place continues to be to Metro's benefit.

R: Metro agrees that a longer extension period may be in its interest and will modify the RFP to allow a contract extension of up to four years in no less than two year increments, at Metro's sole discretion.

2. Page 5, Section 5.A.: In view of the publicity and controversy that occurred with respect to this waste stream, we believe it would be best for all bidders if the evaluation committee included the Metro Executive Officer and a member or members of the Council's Solid Waste Committee.

R: The Solid Waste Director will consider this advice when selecting the evaluation team.

3. Page 5, Section 5.B.1.: Assuming the bidders are all permitted and qualified, the most important criteria for selection should be total cost. To this end, we have several comments with respect to the proposed point allocation system.

a. First, can FGTS charge an additional tip fee to recover its costs of installing the compactor?

R: Increases in reimbursement to the Forest Grove Transfer Station are subject to the rate review process of the Metro Code. The Metro Code allows the Franchisee to request rate review not more than once every six months.

b. Second, why are points allocated to each alternate?

R: Points are not allocated to each alternate. 75 points are available under the cost criteria. 40 of these points are allocated under tonnage scenario #1, and 35 points under tonnage scenario #2. A proposer submits a price to perform the work under one or more of three alternates. Each alternate represents a different way to perform the work. A total cost for the contract period is calculated for an alternate using each tonnage scenario. The lowest total cost from any alternate under tonnage scenario #1 receives 40 points, the lowest total cost from any alternate under tonnage scenario #2 receives 35 points. Proposals that are not the lowest total cost receive points based on their percentage of the lowest cost for each tonnage scenario as described in the evaluation section of the RFP.

c. Since Metro should be seeking the lowest per ton cost for disposal and transport, why is it necessary to evaluate each alternative separately?

R: Metro is evaluating proposals not alternates. Since Metro is allowing price proposals based on different combinations, it is necessary to have alternatives to convert these different configurations to a common cost basis (i.e., total cost to Metro) in order to compare them. Each proposal received will receive a score for the cost criteria. See the above explanation and the RFP on how the evaluation will take place.

d. Even if FGTS is allowed to add an additional tip fee at the transfer station to recover the cost of the compactor, we can not understand why these alternates should be allocated different points?

R: As explained above, alternates are not allocated different points.

e. Third, the proposed system allows for too little emphasis to be given to the lowest overall bid and too much opportunity for a subjective award of points under the performance and environmental criteria. As drafted, the proposed system could result in an allocation of points that does not properly reflect the magnitude of the savings that could be achieved from the lowest bid. For example, if the lowest transport and disposal bid under tonnage scenario #1 was \$40 per ton and the next lowest bid was \$42 per ton, the formula would allocate 40 points to the lowest bidder and 38 points to the next lowest bidder. There would only be a 2 point difference in the bids despite a total savings in nominal dollars, assuming no inflation of the tip fee, of approximately \$757,446. This leaves open the opportunity for subjective awards under the criteria for performance or environmental quality, shifting the award to a higher bidder with no opportunity for review of the rationale for such a decision. As an alternative to the proposed formula, we would recommend that the points allocated to the other bidders be based on a sliding scale, such as 1 point deduction for each difference in the total contract price (NPV to date of bid) of \$1.00 to \$50,000. For example, if the difference between the lowest and the next lowest bidder was \$45,000, the bidder would receive 74 as opposed to 75 points. If the difference was \$550,000, the bidder would be awarded 64 points.

R: Your analysis is incorrect. Points are awarded based on total cost not price per ton which should alleviate your concerns. An electronic spreadsheet is available to aid in the analysis.

4. Page 6, Section 5.B.2.: As we have indicated above, we believe a greater emphasis should be made on lowest price. As unqualified bidders will not be considered, and in view of the experience of those facilities most likely to bid, we believe 10 points should be allocated to performance.

R: No change. The qualifications of the transporter, as well as the disposal facility operator, will be considered. Therefore, 15 points have been allocated to this criterion.

5. Page 6, Section 5.b.3.: The environmental quality of each disposal facility is a relevant criteria; however, in view of the uniform standards for location, design, performance and financial assurance, there is no substantial difference between the environmental quality of most regional facilities. As we (and Metro) are quite familiar with all of the facilities likely to bid on this RFP, it is hard for us to conceive of any of these facilities not meeting the performance and environmental criteria necessary for an award of this bid. In other words, it would be hard to imagine a low bid from any of the permitted and complying regional facilities being overturned on this criteria. Since a facility must be permitted to be considered, we are not sure this criteria is even necessary.

If criterion is to be applied, it should focus on the design of the disposal cell(s) into which Metro's waste is to be disposed. Of equal if not more importance than facility design, is the training and experience of the operating entity.

Finally, we are unclear as to what is meant by the sentence "...Metro will also consider the site's history of regulatory compliance and its current status." This language seems superfluous.

Based on our comments above, if this criteria is included, we would recommend the following language:

The disposal site must have all applicable regulatory permits in order to be considered for this project. Metro will also consider each site's record of regulatory compliance and design and performance criteria for all waste disposal cells proposed for the disposal of Metro waste. For alternate #3, the same regulatory and design information shall be used in order to evaluate Columbia Ridge Landfill.

In conclusion, we believe that a much higher burden should be required in the evaluation criteria in order to overturn a lowest bid from a qualified facility, perhaps an award of 80 points, with 10 points being awarded to each performance and environmental criteria.

R: Experience is more important in ensuring safety and proper environmental safeguards since it includes both transportation and disposal. Therefore, we have allocated 15 points for "Performance" as compared to 10 for environmental quality (which you appear to agree

with). Metro also believes that an emphasis should be placed on those cells that will be used for the waste under this RFP. Metro cannot in good conscience disregard the environmental performance of the disposal site as a whole and the site's track record in conforming to regulatory requirements. Finally, the environmental criteria will be applied to the CRL under alternate #3. Therefore, no change.

6. Page 1, Price Schedule For Disposal and/or Transport: While Alternates #1 and #2 request combined transport and disposal bids, the pricing schedules ask for a break out of such bids. This is inconsistent with the request for combined bids except to the extent a proposer includes different CPI inflation rates.

R: Metro will add an additional alternate to allow a combined price for compaction on a price per load basis.

7. Page 2, Proposal Questionnaire, Question 2: Delete "five" in the first sentence. Qualified applicants should not have to have had 5 projects in the last 5 years to qualify.

R: It was Metro's intent to limit the response to no more than 5 for each category. We will modify the item to reflect this.

8. Page 7, Proposal Questionnaire, Question 13: Delete "annual" inspection report. Inspections in Oregon are periodic with no specific schedule.

R: We will consult with DEQ on this matter and adjust as appropriate.

9. Page 10, Scope of Work, Section 9.3: The prohibition of screen doors on the top of open top containers is unwarranted. FGTS has for many years used screen tops on their containers with no litter problems. Perhaps this was meant only to apply to rear container doors.

R: No, this was meant to apply to the top doors. Metro has consulted with the local jurisdictions who have verified that no complaints have been received. Metro will change the specifications to permit the use of screens. However, trailers are required to be leakproof.

10. Page 8, General Conditions, B.2.: Could you please clarify what documentation is required with respect to the availability of a "back-up" disposal or transport system? Are you requesting signed agreements?

R: Signed agreements are not being requested. The successful proposer must describe the backup system in its contingency plans such that Metro is satisfied that the system will work.

11. Spread Sheet, Alternate #3 - Transport Only: The calculations of Annual Disposal costs for Alternate #3 appear inaccurate. Please review and verify these numbers, including some rationale for how they were calculated.

R: As previously offered to the firm, these calculations are available for your review. We have reviewed the calculations and have verified their accuracy. We will be adjusting downward the 1995 inflation calculation since that data is now available. The rationale, or basis for the calculations is Amendment #4 to the Waste Disposal Services Contract. A copy of the amendment is included in the appendix of the draft RFP provided to your firm for review.

Charles Marshall on behalf of A.C. Trucking

1. **COMPACTED WASTE (THROUGHOUT)** Some proposals will entail loading methods that will increase the capital and operating costs at FGTS. Inasmuch as these costs will ultimately be passed on to rate-payers, for purposes of evaluation, they should be identified and charged against those proposals.

R: Metro agrees that additional costs for compaction should be identified and charged against proposals.

2. **CONTRACT EXTENSION (PARAGRAPH 3., PAGE 3):** The Contract should provide for an extension of up to five years beyond the base period. If operations are running smoothly and to Metro's satisfaction, METRO should not be compelled to undertake another bid process at the end of five or six years. Furthermore, the anticipation of a ten year amortization period might encourage the operator(s) to undertake capital improvements that would not be justified over five or six years.

R: A longer extension will be included as described on Page 2, Question #1 above.

3. **EVALUATION TEAM (PARAGRAPH 5.A., PAGE 5):** METRO might consider expanding the evaluation team to include members of its Solid Waste Advisory Committee or Washington County officials.

R: The Solid Waste Director will consider this advice when selecting the evaluation team.

4. **EVALUATION CRITERIA (PARAGRAPH 5.B.3., PAGE 6):** It seems inappropriate to award points for environmental quality of the disposal site. Certainly a site must be approved for this purpose by DEQ. Otherwise, it should not be considered. There should be no middle ground, especially since METRO staff is neither qualified nor authorized to assess the nuances of the environmental quality of landfills. The ten points should be assigned to "Cost."

R: Metro can be financially responsible for costs associated with releases by disposal sites that accept waste under this project. We therefore believe it is appropriate to assess the environmental quality of a proposed disposal site. In addition, Metro has contacted DEQ staff who have given advice in the development of the criteria. Metro staff have conducted or participated in the siting and evaluation of disposal sites for the Metro region for the last 15 years and are currently in charge of the largest landfill closure project in the state's

history. In addition to internal resources, Metro will utilize or consult with others as appropriate. Staff is authorized to assess the "nuances" of a proposed site through the Metro Council's authorization to release the RFP that includes this environmental criterion. No Change.

5. FIVE MAJOR PROJECTS ("PROJECTS QUESTIONNAIRE," QUESTION 2., PAGE 2): Insert the words "up to" after "list " and before "five." There should be no implication that, in order to qualify, a prospective operator must have undertaken five similar projects in the last five years.

R. Agreed.

6. CONTAINER/TRAILER REQUIREMENTS ("SCOPE OF WORK," PARAGRAPH 9.1, PAGE 9 AND PARAGRAPH 9.3, PAGE 10): For more than ten years AC Trucking has used trailers equipped with "flip-top screens" to haul solid waste from FGTS. During this time, no spillage has occurred as a result of using this cover. In view of this exemplary performance record, it seems gratuitous to impose a change to either "solid doors" or "tarps." The Contract should allow for exceptions that have proven track records in similar circumstances.

R: Agreed.

7. RETAINAGE ("GENERAL CONDITIONS " ARTICLE 13, PAGE 17): We suggest a letter of credit as an acceptable alternative to five percent retainage. It would protect METRO'S interests at less cost to the operator.

R. Agreed. Metro will delete retainage requirement.

8. COST CALCULATIONS ("COST CALCULATION SPREADSHEET," ALTERNATE #3): Please provide details of the calculation of disposal costs for Alternate #3.

R. A copy of the calculations has been sent.

Oregon Waste Systems

1. Scope of Work, Section 11: It appears that Metro may request CRL to stay open 363 days per year for a transporter other than Jack Gray. This was not contemplated in the original Metro/OWS contract or Amendment #4. Also, this section contemplates landfill hours of 7:00 AM to 7:00 PM, which are also not provided by existing contract provisions. We are willing to develop workable scheduling arrangements with prospective transporters, but recommend that the RFP indicate that transporters must develop these arrangements with OWS in developing their proposals.

R: Metro's contract with OWS states that "Contractor shall maintain such hours of operation as are reasonably necessary to allow transfer vehicles to properly unload waste at the disposal site." and further "The Contractor shall be responsible for maintaining access to the

unloading area at all times." Metro will modify Section 11 to reflect this language and direct proposers to OWS in making unloading arrangements. However, it is the responsibility of OWS to provide reasonable access and to coordinate with transporters. Metro will act as arbitrator of disputes regarding reasonable access.

3. In several instances, the draft RFP package addresses the possibility that Metro may have to suspend operations if the Forest Grove volume exceeds 10% of Metro's total volume. This cumbersome scenario is prevented from occurring under the Amendment #4 arrangements. How will Metro evaluate the cost (or reduced savings) that would be associated with this possibility?

R: Our current tonnage projections suggest that it is highly unlikely the Forest Grove tonnage will exceed the 10% criteria in Metro's contract with Oregon Waste System. If tonnage exceeds the 10% limitation the Franchisee must reimburse Metro for any increased transport or disposal costs.

4. While Metro addresses the "greater than 10% flow" scenario, the RFP does not in any way address the possibility that Forest Grove flow will be less than 10%. If and as Forest Grove flow slips below 10%, the comparative savings to Metro under Amendment #4 grow. How will Metro account for this in selecting a preferred option?

R: Metro will use two tonnage flows in evaluating the cost of proposals. These flows are based on historical quantities and the implementation of new programs contained in the Regional Solid Waste Management Plan update. Metro does not plan to utilize additional tonnage projections. By evaluation the two flow scenarios staff believes we have fairly assessed the impact of tonnage fluctuations on the project.

5. **RFP, top of page 3:** We suggest that the term of the contract be extendible, perhaps in 5 year increments, by Metro through the end of the year 2009 (the end of the OWS and JGT contracts) in order to most closely mimic the comparable terms and potential benefits to Metro of Amendment #4.

R: See above reply to requests for extensions.

6. **RFP, top of page 5, 5th line:** We recommend that "will" be changed to "may".

R: Agreed.

7. **Price Schedule:** Should the disposal costs on the price schedule include or not include some or all DEQ fees? In general, we recommend that this be set up in a manner similar to the OWS/Metro disposal contract so the different options can be more easily compared.

R: The disposal costs on the price schedule submitted as part of the proposal should not include DEQ fees. These fees will be treated as a pass through.

8. **Price Schedule:** For Alternate #2, we recommend that the transport and disposal price be combined (like they are for Alternate #1). This will allow for much better pricing flexibility and lower costs to Metro. In any case, the formats for Alternates #1 and #2 should be the same.

R: Agreed. Another alternate will be added.

9. The attached landfill entrance policy was developed under agreement with and for use by Jack Gray Transport and does not necessarily apply to other transporters without OWS' approval. Again, we are willing to develop reasonable and workable agreements.

R: Agreed Metro will remove this policy. OWS' contract with Metro stresses coordination between the parties and Metro will alter the RFP to reflect this. However, Metro will arbitrate any disputes, particularly as they relate to OWS' responsibility to "minimize unloading time."

10. **Scope of Work, Section 10.0:** We recommend that the following phrase be added to the first sentence: "or arranging for unloading with the disposal site operator."

R: Agreed.

11. **Scope of Work, Section 11.1:** The first paragraph may have been extracted from the Metro/Jack Gray contract, but may not make sense for another transporter. Again, we recommend that it be made clear that the transporters alternatively have the option of developing such arrangements with OWS in developing their proposals.

R: Agreed.

12. **RFP, Section B.3:** Under "Environmental Quality of the Disposal Site," Metro only specifies "the site's history of regulatory compliance and its current status." While there is no question that compliance is important, there is far more to the overall environmental quality of a landfill as it ultimately relates to Metro's security. Additional site characteristics that can be easily assessed and should be evaluated include:

Whether or not there are known releases to groundwater from the site;
Whether or not the site includes previous unlined or inferior (to Subtitle D) fill areas;
Depth to groundwater; Annual precipitation;
Number and characteristics of nearby (say, within 2 miles) environmentally sensitive receptors such as surface water bodies, residents, wells, etc.

These could be added as "factors which will be considered" in a manner similar to the "Performance" section (B.2).

R: While Metro has considered such factors in our past activities during landfill siting and closure, an existing site should comply with existing safeguards required by law that mitigate the risk embodied by the suggested factors. The criteria contained in the RFP is

intended to assess the proposer and site's ability to comply with required safeguards. No change.

13. General Conditions, Page 1, Article 1, Paragraph F: This paragraph in general requires the Contractor to comply with all applicable laws and regulations. In addition, it requires the Contractor to provide Metro with copies of all correspondence between regulatory agencies and to retain such correspondence for a period of two years. However, the paragraph then ends with a requirement that the paragraph shall survive the expiration of the Contract for a period of two years. It does not seem necessary to have an independent contract obligation for the contractor to comply with the law after the contract had terminated.

R: The obligation refers to the correspondence requirements of the paragraph and Metro will modify the paragraph to clarify. We assume all firms will comply with the law indefinitely.

14. Scope of Work, Page 2, Definition of Contract and Contract Documents: Item 1 in the Definition of Contract Documents refers performance and labor/material bonds. The letter of credit as an apparent alternative to the letter of credit is not referred to the paragraph 1 of the Agreement entitled "Contract Documents." Is the letter of credit allowed?

R: Yes, Metro will modify Agreement.

Further, Item no. 5 under "Contract" definition indicates that "appendices and attachments to Contractor's proposal shall not be considered part of the Contract Documents unless specifically agreed to by Metro." However, page 1 of the Agreement provides that Contractor's proposal is incorporated into the Contract Documents by reference. We recommend that inconsistency be clarified in some way. It is not clear what comprises the "appendices" or "attachments," but if any part of the Contractor's proposal is to be incorporated, the entire proposal should probably be incorporated to ensure completeness.

The definitions define the terms "Contract," and "Contract Documents" to also mean "any and all services, matters and things which the above-described documents require to be done, kept, performed or furnished." This seems to confuse the more standard concept of Contract versus Contract Documents. The term "Contract" should refer to those services and things, etc. which are required to be done, kept, performed and furnished as described in the "Contract Documents." We recommend that these two definitions be separated and made distinct.

R: Metro will modify the Agreement to clarify the role of the proposal. Metro does not believe there is confusion regarding the terms contract and contract documents- no change.

15. Scope of Work, Page 3, "Force Majeure": The definition of Force Majeure is narrower than that in the Metro/OWS contract in that it excludes landslides, volcanic eruptions, earthquakes, lightning, floods, wash outs explosions and fires. We recommend that this definition be made consistent. Particularly, in the event that a transportation-only proposal

is accepted such that the Contractor would have an obligation to perform but OWS would not be required to dispose. Metro should not be adverse adding additional events of Force Majeure because the Contractor must establish a Metro-approved backup system under Article 8 of the General Conditions.

R: No change. There is no compelling reason for the two contracts to be consistent on this item since different services are provided at different locations.

16. Scope of Work, Page 4, Definition of sharps: The definition of sharps includes a parenthetical "which are otherwise regulated as 'Special Waste.'" Sharps are not listed within the definition of Special Waste under Metro Code 5.02.015. We suggest that this reference be clarified.

R: Agreed. Metro will delete the parenthetical reference.

17. Scope of Work, Page 5, "Unit Price": This definition refers to the unit costs associated with the disposal and/or transport of a load of waste. Some of the unit prices in the Price Schedule are per ton of waste. We recommend that the definition should say "of a load of waste or a ton of waste."

R: Agreed.

18. Scope of Work, Page 6, Paragraph 4.0: In the first paragraph, first line, the word "stations" should be "station."

R: Agreed.

19. Scope of Work, Page 17, Closure: We recommend that the reference to "lump sum amounts" be deleted and that the reference to OAR 340, Division 61 be corrected to the current citation.

R: Agreed.

20. Scope of Work, Page 18, Paragraph 17.0: This section refers to contingency plans to be submitted to Metro by the successful Contractor after the grant of the Contract. The Scope of Work should clarify when the Contractor must submit to Metro the various plans. We recommend within 30 days of execution of the Contract.

R: See Item 3.0 of the Scope of Work.

21. Scope of Work, Page 20, Section 21, Metro's Right to Purchase Fuel:

a. This section provides that Metro may request all records relating to fuel purchases. We suggest that this be narrowed to require that the records to be provided to Metro be limited to only those records related to the fuel and fuel tax, and that the phrase "and any other documentation requested by Metro" be deleted.

R: It is Metro's intent to require documentation related to fuel consumption, whatever that may be. We will insert the word "relevant".

b. If Metro provides the fuel, this paragraph provides that the Contractors payment shall be "reduced proportionate to the reduction in fuel expenses and any related additional expenses or profits in accordance with Article 15 of the General Conditions." It is unclear how the payment should be "reduced proportionate to the reduction" versus reduction by the actual amount of such expenses and profits. Note, that Article 15, relating to for the adjustments for deleted work, assumes Contractor profit margin of 10% on all costs unless the Contractor demonstrates otherwise. We recommend that the price reduction methodology be clarified.

R: No change.

22. **General Conditions, Page 3, Article 1, Paragraph Q:** This section provides that the Contractor shall not discriminate against various classes of persons. We recommend that this provision be limited to only those Contractor activities undertaken in the performance of the Contract.

R: No change.

23. **General Conditions, Page 4, Article 2, Paragraph A:** After the words "such services shall be executed by Contractor without extra compensation," we recommend that the phrase "except as provided pursuant to Article 15" be added.

R: No change.

24. **General Conditions, Page 4, Article 2, Paragraph D:** It would seem that this provision respecting Contract Documents should conform with the others. We suggest that "Specifications" should be replaced with "Scope of Work." Again, it is not clear whether the Contractor's proposal is or is not intended to be part of the Contract Documents. Metro apparently intends certain portions of the Contract proposal to be included but not the appendices. It is not clear what the "Appendices" to the proposal include.

R: References to the Specifications will be changed to Scope of Work.

25. **General Conditions, Page 6, Article 6, Paragraph A:** Again, we suggest the word "Specifications" be replaced with "Scope of Work."

R: Agreed.

26. **General Conditions, Page 7, Article 7, Paragraph A:** This section states "Metro reserves the right to let separate contracts in connection with the transportation or the disposal of waste within and beyond Metro's boundaries..." It is not clear to us why this provision is being included or what it means, so we recommend that it be reevaluated. We

also recommend that the contract should also make clear that this (or any other) provision would not allow Metro to select one contractor's transportation bid and another contractor's landfill bid under either alternative one or two.

R: It is Metro's intent that this paragraph apply only to work other than that connected with this Contract. Metro will clarify in the final RFP. We believe the RFP is already clear as to the way transportation and disposal will be selected. It should be noted that the process being used herein is a proposal rather than a bid process and that exceptions to the requirements are permitted in the proposal submitted.

27. General Conditions, Page 8, Article 8, Paragraph B.2: This section provides that the Contractor is required to propose a backup system which is to be accepted by Metro, but it is not clear how and when this is to occur. The backup system is not required to be provided in the proposal questionnaire. It could be made part of the contingency plans under Section 17 of the Scope of Work.

This section also requires that the back-up system be available within 24 hours of a force majeure failure. This is a relatively fast track that may not be necessary. We recommend that Metro reevaluate this timeframe and extend this period to the maximum time available.

R: No change. The backup system is required to be submitted as a part of the contingency plan under Section 17 of the Scope of Work,. No change is contemplated regarding the availability of the back-up system at this time.

28. General Conditions, Page 10, Article 10, Paragraphs A.2 and A.3: These paragraphs would allow Metro to receive both liquidated damages and actual damages. We recommend that liquidated damages be limited to the first 24 hours of default and then pursuant to paragraph A.3 actual damages would apply for an event of default which lasts more than 24 hours.

R: Agreed.

29. General Conditions, Page 12, Article 10, Paragraph E: If Force Majeure prevents the Contractor from using both the primary and backup system, Metro can terminate the Contract. We recommend that this be deleted because it is inconsistent with the concept of Force Majeure. The Contractor should not suffer termination of the Contract because of reasons beyond the Contractor's control. It also appears to be inconsistent with paragraphs 10(A) through (C) which provide notice and opportunity to cure other defaults unrelated to Force Majeure. (This termination provision may have come from the Metro/OWS Contract provision which cross references, and allows termination for, events that are not events of Force Majeure.)

R: No change.

Further, if an event of Force Majeure continues for 90 days, Metro can terminate the Contract. Again, this seems inconsistent with the concept of force Majeure.

R: No change.

30. **General Conditions, Page 13, Article 11:** We recommend that this provision be modified in the following, or similar manner:

"Should Contractor be ~~unable to perform~~ prevented from performing its obligations under this Contract ~~by using either its primary or back-up system~~ for a period of sixty (60) days or more by 1) a public authority other than Metro; or 2) by Metro (if Metro is acting violation of Contractor's rights under the Contract) and ~~either inability~~ such failure to perform is through no fault of Contractor,....."

R: No change.

31. **General Conditions, Page 15, Article 12, Paragraph C.2:** As drafted, the change in law provision would not allow for any increases in federal, state or local taxes, fees or surcharges, most notably, the DEQ disposal fees. It is unclear to us why Metro would force the proposing contractors to attempt to forecast changes in DEQ fees. We recommend that DEQ fee changes be treated as a simple pass-through.

R: Agreed.

32. **General Conditions, Page 17, Article 13:** We suggest the reference to "lump sum payments" be deleted.

R: This article has been deleted.

33. **General Conditions, Page 18, Article 14, Paragraph A, Last Sentence:** The last sentence provides for dispute resolution "as provided in these Contract Documents" for disputes in respect to Metro withholding payments or withdrawal of funds from the retainage. The only dispute resolution appears by arbitration pursuant to Article 24. That being the case, we recommend that this sentence specifically reference Article 24 so there is no question that all disputes are subject to arbitration.

R: No change.

34. **General Conditions, Page 21, Article 15, Paragraph F, Last Line:** The reference to arbitration should be corrected to Article 24.

R: Agreed.

35. **General Conditions, Page 23, Article 17:** This section includes a reference to the bond and letter of credit "forms bound herewith," but there is no form of letter of credit included. If it is not intended to refer to a letter of credit, then we would recommend that the reference to the letter of credit be moved to follow the reference to "form bound herewith..."

R: There is no form for the letter of credit. Metro will modify the language.

36. General Conditions, Page 24, Article 18, Insurance coverage: Paragraph A requires the Contractor to increase the amount of insurance to reflect any change in law. As written, it is unclear whether or not the Contractor would be entitled to an increase in payment as a result of this change in law relating to insurance coverage. The Metro/OWS disposal contract has an express provision granting such reimbursements. (See Article 12, Paragraph F). We recommend that at a minimum this provision be clarified to avoid potential disputes, and would further suggest that it expressly provide for such reimbursement.

R: We will modify the article to include change in law reimbursement.

37. General Conditions, Page 27, Article 19, Paragraph A: This provision provides that the Contractor is to obtain all licenses and permits. The second sentence suggests that increases in permit fees can be passed on as a change in law under Article 12((c) However, Article 12(C)(2) appears to exclude reimbursement for any change in law "due to increase in the rates of federal, state or local taxes, fees or surcharges of whatever nature." Whether or not this is intended to allow or exclude, for example, DEQ fee increases it should be clarified to avoid potential disputes. Again, we suggest DEQ fee changes be dealt with as a "pass-through".

Article 21 also refers to taxes and fees, making each the obligation of the Contractor. This section does not cross reference the change in law provision, suggesting again that Metro does not intend to allow any increased payment due to change in law related to taxes. We recommend that this be clarified as well. (The analogous provision regarding taxes and fees in the Metro/OWS disposal contract does cross reference the change in law provision.)

R: It is Metro's intent not to allow reimbursement for increases in the rates of taxes, fees or surcharges. Metro will treat DEQ fees as a pass through.

38. General Conditions, Page 28, Article 22: Article 22 provides that title to a load of waste will pass to the Contractor at any time that the seal is broken after being affixed at the Forest Grove Transfer Station prior to unloading. To the extent the Contractor does not control the staging area, we suggest this be modified to reference the time after the Contractor removes the container from the FGTS premises.

R: Agreed.

This section allows for 30 minutes after a load is dumped to indicate on the invoice that the load contains suspicious or unacceptable waste. We suggest that the current Metro/OWS disposal contract standard of 60 minutes be allowed for this determination.

R: Agreed

39. General Conditions, page 28, Article 24: The second paragraph of Article 24 provides that the Contractor must agree to consolidate any arbitration proceeding between Metro and the Contractor with any other arbitration "involving the transfer, transport, collection or disposal of waste by Metro." This provision seems unnecessarily broad and we suggest that it be limited to any arbitration arising out of the performance of, or related to, this Contract.

R: No change.

40. General Conditions, Page 29, Attorneys' Fees: This section provides for attorneys' fee to the prevailing party in any suit, action or arbitration instituted "to enforce any right, granted herein." We suggest that this language be changed to "regarding the interpretation, performance or breach of this Contract, the prevailing party..."

R: No change.

41. Scope of Work, Section 8.1, 5th line: The phrase "depending on the preference of the successful proposer" implies that the proposers may in some way be responsible for provision of a compactor at the Forest Grove Transfer Station. We recommend that this phrase be replaced by "depending on whether or not Metro chooses to arrange for the use of a compactor at the FGTS."

R: Metro will delete this reference.

42. Scope of Work, Page 8, Section 8. 1: We suggest that the phrase "unless otherwise agreed to by the FGTS operator" be added to the end of the last sentence.

R: We will add the phrase "unless otherwise agreed to by Metro."

43. Scope of Work, Section 4.0, 3rd Paragraph: We recommend that the phrase "unless otherwise agreed to by the FGTS operator" be added to the end of the last sentence.

R: We will add the phrase "unless otherwise agreed to by Metro."

44. Scope of Work, Section 9.3: In the 2nd paragraph, Metro requires "solid doors" rather than tarps for distances of over 50 miles. This implies that Metro may believe or suspect that tarps may be inadequate for waste and odor containment. If this were true, why would Metro allow tarp use for any distance; i.e., why would it be acceptable to have litter and odor problems over a haul route that is less than 50 miles? We believe that the same "wind and water tight" standard should be applied to any haul distance, so as to not prejudice longer haul options. As stated in the 3rd sentence, tarp system, must be "approved by Metro"; this (along with the spillage prohibition of the first sentence) gives Metro clear authority and sufficient control over this issue. Therefore, we recommend that the last three sentences of the 2nd paragraph be deleted.

R: The purpose of the 50 mile prohibition was to ensure that trips through the Columbia River Gorge National Scenic Area complied with Metro/AAA, Friends of the Columbia River Gorge, et al settlement agreement. Metro will be modifying the RFP to more clearly reflect this concern. See above response to question 9 on page 5 regarding other container requirements.

Jack Gray Transport, Inc.

1. Why is there no prebid conference?

R: Two reasons. Since this is not a bid, conditions or modifications can be submitted with the bid or during negotiations, therefore the need for a prebid is reduced. Secondly, comments or questions will also be permitted before proposals are submitted.

2. What are the requirements of the Minority and Women-Owned Business Program?

R: The details concerning this program can be obtained from Metro's Risk and Contract Services Division at 797-1714.

3. Include in the force majeure clause provision for the disabling of transport routes similar to that in the Waste Transport Contract, Article 8 (B)(2) 5th paragraph.

R: No change.

4. Provide specific language on when transporter can access the FGTS to pickup containers. Would prefer 24 hour access.

R: Access beyond normal working hours will have to be coordinated with the station operator, however Metro will ensure reasonable access is available.

5. Is it at the discretion of the FGTS operator to utilize the Contractor for non-Metro waste and must the Contractor provide the equipment and personnel to accommodate?

R: Yes.

6. There is no upper limit on liquidated damages as in the Waste Transport Services contract. Please provide limits similar to those in the Waste Transport Contract.

R: Agreed.

7. Add clause to deal with large fluctuations in the price of fuel similar to that contained in Waste Transport Services Contract.

R: No change.

8. If the waste is transported to the Columbia Ridge Landfill is it subject to the road fee of \$0.20 per ton passed through to Metro by OWS?

R: Yes.

9. Can open top trailers be used to haul waste to the Columbia Ridge Landfill?

R: No.

10. Can a proposal include the shuttling operation at the FGTS?

R: Assumption of the shuttling operation is subject to agreement by the FGTS operator. Metro will accept a proposal that includes the shuttling operation, however Metro will require the proposer to submit a price without shuttling as well to be used on the evaluation.

11. In Article 25 of the General Conditions; add "or in the arbitration" after "trial court".

R: Agreed.

CG:ay

S:\SHARE\GEYE\STATIONS\FORST\FORST\COMMENT.UND

ATTACHMENT NO. 2

915 Cedar Street
McMinnville, Oregon 97128

June 28, 1995

RECEIVED

JUN 30 1995

FILE CODE

METRO SOLID WASTE DEPT

Re: Riverbend Dump

Mr. Chuck Geyer
Senior Planner
METRO
600 N. E. Grand Avenue
Portland, Oregon 97232-2736

Dear Mr. Geyer:

Last June, after many hearings and much controversy, METRO directed the Forest Grove transfer station garbage to Arlington rather than the Riverbend dump in McMinnville. Now, we are again seeing the red and gold garbage trucks dumping at Riverbend. It is my understanding that you are again accepting public input as to where Forest Grove's garbage should go.

Yamhill County commissioners issued Riverbend a license which charges higher dumping fees to Yamhill County residents than to out-of-county users, which gives Riverbend an advantage in bidding on out-of-county garbage. Yamhill County residents are, in fact, subsidizing METRO's garbage dumping fees.

I have studied the Riverbend dump in depth and have attended and testified at numerous METRO hearings, Yamhill County hearings and DEQ hearings. The concerns of Yamhill County citizens are not being heard.

This dump is located on the floodplain and floodway of the South Yamhill River about 1 mile SW of McMinnville. It is directly over the Tualatin aquifer which supplies area wells. This is not a remote area - it is surrounded by very productive farms dedicated to putting food on your tables.

METRO should not just consider the attractive dumping fees in determining where its garbage should go. Should wells become contaminated or diversion of water on the floodplain result in lawsuits being filed against Riverbend, plaintiffs would no doubt sue METRO along with others, since approximately 1/3 of the garbage dumped there comes from METRO. Please also consider the long-term cost and potential liability. This is no place for a small local dump, and certainly not for one of this magnitude.

Our ultimate hope is that without METRO's garbage, Riverbend would find it financially prohibitive to continue dumping at this site. Please give careful consideration to the concerns of Yamhill County citizens and to METRO's potential liability in determining where the Forest Grove garbage should go.

Respectfully submitted,


Cleo Westphal

W

915 Cedar Street
McMinnville, Oregon 97128

June 28, 1995

RECEIVED

JUN 30 1995

ALL CODE

METRO SOLID WASTE DEPT

Mr. Chuck Geyer
Senior Planner
METRO
600 N. E. Grand Avenue
Portland, Oregon 97232-2736

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Respectfully submitted,


Cleo Westphal

W

RECEIVED

JUL 3 1995

FILE CODE:
METRO SOLID WASTE DEPT.

724 W. 21st
McMinnville, OR 97128
June 30, 1995

Mr. Chuck Geyer
Metro
600 N. E. Grand Ave.
Portland, OR 97232

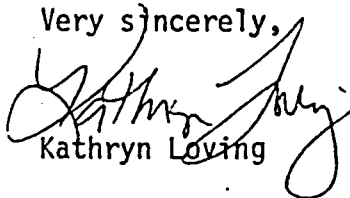
Re: Proposal for Desposition and Transportation of Waste
from Forest Grove Transfer Station

Dear Mr. Geyer:

Even after the citizens of Yamhill County voted against garbage being brought to Riverbend from outside the area, Metro is once again considering sending their garbage here. It is most disheartening to hear that Metro is contemplating such an action. Doesn't it matter to Metro that people in this beautiful area face an ugly, gross mountain of garbage which is adjacent to Oregon's scenic highway to the Oregon Coast? Does Metro wish to contribute even more to this unsightly huge mound and add to the stench of Riverbend?

Please reconsider and send all your refuse to Eastern Oregon which is the logical place for it.

Very sincerely,


Kathryn Loving

RECEIVED

JUN 30 1995

FILE CODE:
METRO SOLID WASTE DEPT.

1540 Friendly Court,
McMinnville, OR 97128
June 28, 1995

Mr. Charles Geyer, Senior Planner,
Metro,
600 N.E. Grand Avenue,
Portland, OR 97232

Dear Mr. Geyer:

I am writing you because I understand that you play an important role in determining which landfills Metro uses.

As you know, when a landfill which has polluted adjacent areas has to be cleaned up the organizations which have used the landfill are assessed a share of the cost.

The DEQ has found that defects in the leachate system of the landfill near McMinnville potentially will permit fluid to enter the ground water. If leachate does enter the ground water, and if Metro uses this landfill, Metro can be stuck with heavy cleanup expense.

So I believe Metro will be wise not to use this landfill.

I am frank to state I hope it will not. I deplore having material from outside the county come to this landfill.

With best wishes,


Vincent Lowe

FRIEDA SCHREIBER
13430 SW MCCABE CHAPEL RD
MC MINNVILLE OR 97128-8516



July 5, 1995
RECEIVED

JUL 6 1995

FILE CODE:
METRO SOLID WASTE DEPT.

Mr. Chuck Geppert,
Metro - Portland,
OR

Please don't send Portland
waste to the Mc Minnville dump,
due to the pollution that threatens
the river, the S. Yamhill, and our
neighborhood along highway 18.

I live across the fields west of
the dump and am obligated to watch
that mountain of garbage growing
higher every day.

Sincerely,
Frieda Schreiber
13430 SW McCabe Chapel Road
Mc Minnville OR 97128

Mr & Mrs Stephen Cone
17300 SW Masonville Rd
McMinnville, OR 97128
Phone 472-5481



Richard Nixon



USA
32

7-5-95

Chuck Geyer
600 N.E. Grand Ave
Portland, OR. 97232

RECEIVED

JUL 7 1995

FILE CODE:
METRO SOLID WASTE DEPT.

Dear Mr. Geyer,

I understand Metro is again considering a contract for 10 years or more with Riverbend Landfill Co.

The fact that Yamhill County voted against out of county garbage needs to be considered. We voted against out of county garbage then and we still do NOT want out of county garbage.

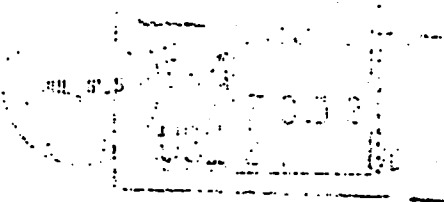
I'm ashamed of Yamhill County Commissioners; to weak to carry out the will of the people.

Hopefully your commission is strong enough to pay attention to Yamhill County.

Sincerely,
Diane Knott / 12160⁶² SW McCabe - McMinnville.



Ms. ~~Knott~~ Knott
 12160 SW McCabe Chapel Rd.
 McMinnville, OR 97128



McMinnville, Or
 July 6, 1995

Chuck Geyer
 Metro
 Portland, Or

RECEIVED

JUL 7 1995

FILE CODE:
 METRO SOLID WASTE DEPT.

Dear Mr. Geyer,

We understand that a contract with
 Yorkhill County and Metro is soon to be
 decided upon, we are very much opposed
 to have only County garbage hauled into
 our ever expanding garbage dump. We the
 citizens of Yorkhill voted this down and
 we think this is very unfair for
 our Commissioners to even be con-
 sidering doing this to us. We recycle
 almost everything in our home and feel
 it is futile when all this garbage
 from the city is hauled in. Please keep
 your own garbage in your own County
 or send it to Arlington. Please
Please do not sign this contract.

Steve & Helen Cole
 17300 S.W. Masonville Rd
 McMinnville, Or 97128

10950 N. St. Brentano Ln
Mc Minnville, OR 97128
June 30, 1995

Mr. Chuck Seyer

Metro

100 N.E. Grand Ave.
Portland, OR 97232

Re: Proposal for Deposition and
Transportation of Waste from Forest Grove
Transfer Station

Dear Mr. Seyer:

I have been a citizen of Yamhill City
for many years, but I grew up and lived most
of my adult life in Multnomah County. I have
been ashamed of Metro making a mountain
of garbage in the middle of an agricultural
valley virtually abutting a major scenic
highway to the Oregon Coast.

The residents of Metro are lead to be-
lieve their garbage is taken to Eastern Oregon.
The residents of Yamhill County were lead to

June 30, 1995

(2)

believe this dump was permitted to
accomodate a garbage dump for the
southern half of Yamhill County and not
to exceed ground level.

Livertend Landfill is an eyesore that is
a mountain of half dried grass and half black
plastic with no buffer of trees. The residents
along Highway 18 are preparing to mount a
sign campaign announcing to the bumper
to bumper beach traffic just whose garbage
(yours Metro) is making the mountain and
awful smell.

When Metro considers the price per
ton to dump at Livertend, I would hope
all of the time and money spent to cultivate a
positive image with its expensive public
relations firm is factored into these costs,
as Metro is sure to get a black eye if
it chooses to help build a bigger mountain!

Sincerely

Lorraine Loving

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION) RESOLUTION NO. 95 -
FROM THE COMPETITIVE BID PROCESS AND)
AUTHORIZING ISSUANCE OF RFP #95R-21-SW FOR) INTRODUCED BY MIKE BURTON
THE DISPOSAL AND/OR TRANSPORT OF WASTE) EXECUTIVE OFFICER
FROM THE FOREST GROVE TRANSFER STATION)

WHEREAS, The Metro Council adopted Resolution No. 95-2118, attached as EXHIBIT "A," endorsing the use of a request for proposal process to determine the disposition of waste from the Forest Grove Transfer Station for the reasons stated in EXHIBIT "B"; and

WHEREAS, Staff has prepared the request for proposals attached as EXHIBIT "C"; and

WHEREAS, The use of this procurement process requires an exemption from the competitive bid process; and

WHEREAS, Metro Code Section 2.04.041 (c) and ORS 279.015 (2) authorize the Metro Contract Review Board to exempt a public contract from competitive bidding if it finds that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such an exemption will result in substantial cost savings; and

WHEREAS, EXHIBIT "D" to this resolution contains findings which satisfy the requirements for such an exemption; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Contract Review Board for approval; now therefore,

BE IT RESOLVED,

1. That the Metro Contract Review Board adopts as findings the information and reasoning contained in EXHIBIT "D," made part of this resolution by reference, and concludes that:
 - a) It is unlikely that exempting the disposal and/or transport of waste from the Forest Grove Transfer Station from the competitive bid process will

encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

- b) The exemption will result in substantial cost savings to Metro; and

Therefore, exempts the contract to be solicited through RFP #95R-21-SW from competitive bidding requirements.

2. That the Metro Council authorizes issuance of RFP #95R-21-SW attached as EXHIBIT "D".

ADOPTED this _____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

CG:ay

S:\SHARE\GEYE\STATIONS\FOREST\FORESTEXEMPT.RES

I HEREBY CERTIFY THAT THE FOREGOING IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF

BEFORE THE METRO COUNCIL

[Signature]
Clerk of the Metro Council

FOR THE PURPOSE OF SELECTING THE)
USE OF A REQUEST FOR PROPOSALS)
AS THE PREFERRED APPROACH TO)
DETERMINE THE LONG TERM)
DISPOSITION OF WASTE RECEIVED AT)
THE FOREST GROVE TRANSFER STATION)

RESOLUTION NO. 95-2118

Introduced by Mike Burton
Executive Officer

WHEREAS, As described in the accompanying staff report, there are several long term options available to Metro regarding the transport and disposal of waste from the Forest Grove Transfer Station; and

WHEREAS, It is Metro policy to conduct competitive procurements whenever possible to maximize savings to Metro; and

WHEREAS, Of the long term options available, a request for proposals process appears to be the appropriate competitive procurement method available for the reasons described in the accompanying staff report; and

WHEREAS, In the short term transport and disposal of waste from the Forest Grove Transfer station can be accomplished through the existing franchise agreement; and

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

BE IT RESOLVED, That the Metro Council endorses the use of a request for proposal process to determine the disposition of waste from the Forest Grove Transfer Station.

ADOPTED by the Metro Council this 23 day of March 1995.

[Signature]
J. Ruth McFarland, Presiding Officer

STAFF REPORT

IN CONSIDERATION OR RESOLUTION NO. 95-2118 FOR THE PURPOSE OF SELECTING THE USE OF A REQUEST FOR PROPOSALS AS THE PREFERRED APPROACH TO DETERMINE THE LONG TERM DISPOSITION OF WASTE RECEIVED AT THE FOREST GROVE TRANSFER STATION

Date: March 13, 1995

Presented by: Jim Watkins

PROPOSED ACTION

Adopt Resolution No. 95-2118

Background

The Forest Grove Transfer Station (FGTS) is a privately owned and operated transfer station. The facility operates in accordance with a Metro franchise which expires in 1999. Operating parameters of the facility such as the rate charged and the transport and disposal arrangements of the waste received are controlled by Metro in the franchise agreement, and through the use of a non-system license and designated facilities agreements.

Until June of 1994, waste received at the facility was transported and disposed at the Riverbend Landfill in Yamhill County. The authority to dispose of waste at this landfill was granted by Metro to the franchisee through a non-system license.

From June 1994 until March 1995, waste was transported by the franchisee to the Metro Central Station. The operator of this transfer station loaded the waste into trailers supplied by Metro's Waste Transport Services contractor who transported the waste to the Columbia Ridge Landfill (CRL) in Gilliam Co., Oregon which is operated by Metro's Waste Disposal Services contractor. This arrangement was executed through a series of amendments to the franchise agreement, the Waste Transport

Services and Waste Disposal Services contracts. These amendments expire on March 31, 1995.

Several options are available to Metro regarding the disposition of waste received at FGTS. It should be remembered when comparing these options discussed below, that except for when waste from FGTS is taken to the CRL by our current transporter (option #3), that an option will have to avoid conflicting with our existing contractual arrangements. Both the Waste Disposal and Waste Transport Contracts have clauses entitling the contractor to "90% of all acceptable waste which Metro delivers to any general purpose landfill." If transport or disposal is provided by a party other than our current contractors, methods will need to be developed to deal with these restrictions. Possible solutions include limiting the amount of waste handled at the FGTS or utilizing our existing contractors for any amount over 10% which goes to the facility.

Another complication is that except for options #1 and #2, the outcome of an option will probably require installation of a compactor at the FGTS. The franchise for the facility requires the franchisee to install a compactor at its own expense if directed to do so by Metro. This will involve considerable expense and facility modifications at FGTS.

#1 Franchisee Transports and Disposes of Waste

A.C. Trucking (the franchisee) is responsible for transport and disposal of the waste received at the Forest Grove Transfer Station under the current terms of the franchise unless Metro exercises its option to assume such responsibility. Since the Franchisee is permitted under a non-system license to deliver waste to the Riverbend Landfill, the waste could be delivered there for disposal. Metro would receive the Metro excise tax and the regional user fee. Any savings available from reduced tipping fees at the Riverbend Landfill are kept by the franchisee. No compactor needs to be installed at FGTS.

#2 Negotiate Savings as Part of Disposal at the Riverbend Landfill

When the current Forest Grove Transfer Station franchise was negotiated with Metro, the disposal rate at the Riverbend Landfill was \$25.83 per ton. Since that time Sanifill, the owner of the Riverbend Landfill, has negotiated a new franchise agreement with Yamhill County, the jurisdiction in which the landfill is located, effective October 1, 1994. The new franchise allows the Riverbend Landfill to charge different rates for different customers.

As a result, A.C. Trucking may be able to negotiate a reduction in their past disposal rate at the Riverbend Landfill. Metro could attempt to negotiate a franchise amendment with A.C. Trucking to receive all or a portion of these savings. Alternatively, or if negotiations were unsuccessful, the rate charged at the station could be reduced through the rate review process. Under this scenario Metro or the firms using the facility will save money. No compactor needs to be installed.

There are two concerns over sending waste to the Riverbend Landfill. In the past, citizens of Yamhill County have opposed Metro sending waste to this landfill. This opposition has taken the form of direct communications to the Executive Officer and Metro Council, as well as the passage of two referendums directed toward limiting out-of-county waste. It is likely that such opposition will resurface if waste is once again delivered from the Forest Grove Transfer Station.

The second concern is over the environmental quality of the Riverbend Landfill in comparison to the Columbia Ridge Landfill (or other more recently constructed landfills) and Metro's responsibility in choosing the most environmentally sound methods of disposal. While both landfills are permitted by DEQ, the Columbia Ridge Landfill offers superior environmental protection due to its location. The rainfall in Eastern Oregon where the landfill is located, is only a fraction of that for the area

where the Riverbend Landfill is located. In addition, since the Columbia Ridge Landfill is new, the entire landfill is lined and has a leachate collection and disposal system, while only a portion of the Riverbend landfill is so equipped. Lastly, the Riverbend Landfill is located next to a river while the Columbia Ridge Landfill is located in a more arid part of the State, a considerable distance from both surface and groundwater. In choosing a disposition for this waste, consideration should be given to these political and environmental aspects.

#3. Transport and Disposal Under Existing Agreements

One of Metro's options is to arrange for the transport of solid waste directly from the Forest Grove Transfer Station (FGTS) to the Columbia Ridge Landfill (CRL). Metro negotiated with the Waste Disposal Contractor a reduction in disposal costs of approximately \$1.00 per ton for all waste from the region (Amendment No. 4), if the waste from the Forest Grove Transfer Station was sent to the Columbia Ridge Landfill. What is unknown is the associated per ton transport cost. It is probable that the \$7.50 per ton transport fee that A.C. Trucking must remit to Metro from the tip fee it collects at the FGTS will be insufficient to cover the transport cost to the Columbia Ridge Landfill. The current variable transport cost is \$12.89 per ton, which is from Metro transfer stations that are closer to CRL than the Forest Grove facility.

The existing Waste Transport Services Contract calls for negotiations between the Contractor and Metro for transport from new locations. Staff believes such negotiations would result in an increase of between \$1 and \$3 per ton for the Forest Grove tons over current transport costs. Past estimates of savings from Amendment #4 due to transporting waste from FGTS to CRL were up to \$6.5 million over the next 15 years. Such savings can only be achieved if the transport cost increase for waste from FGTS to CRL are in the \$1 per ton range.

If Metro chooses to pursue this option, two actions would be necessary. First, Metro would need to negotiate an amendment to the Waste Transport Contract and exercise its option to assume responsibility for the transport and disposal of waste under the FGTS franchise. The latter action would include directing the Franchisee to install a compactor at the Franchisee's expense, and to remit to Metro a portion of fees collected to offset Metro's expense for transport and disposal costs.

#4 Transport and Disposal Through a Request for Proposals Process

As an alternative to the above approaches which involve existing agreements, Metro could solicit proposals for transport and disposal of the waste from FGTS. As currently envisioned, the RFP would solicit two basic proposals. One for only the transport of waste, and the other for both transport and disposal.

The transport only option assumes disposal at CRL for the reduced disposal price previously negotiated with the Waste Disposal Contractor under Amendment #4. This option, which provides competition, could result in a lower transport price than that obtained from the current transport contractor through the negotiation approach discussed above. It may also result in an additional transporter of waste through the Columbia Gorge and renew political debate over the appropriateness of trucking in this manner.

In addition, the RFP would solicit proposals for transport and disposal to any qualifying location. Since transport and disposal of waste is a sensitive community issue, as evidenced by our past experiences, the criteria used to evaluate such proposals should include more than just cost. Suggested additional criteria include the environmental quality of the facility, history of regulatory compliance and other factors that Metro has traditionally used in the review of franchised and other designated facilities. Since either of these options require nonmonetary evaluation in choosing the preferred supplier, a proposal process is more appropriate than the use of a bid process

which only considers cost. Not considering these additional factors could result in an unsuccessful procurement or eventual increased costs as problems occur.

Proposals received for the transport only option would be evaluated in conjunction with the reduced disposal rate available under Amendment No. 4, for price comparison to proposals received for both transport and disposal. Numerous complications will need to be overcome in comparing proposals to the arrangement contemplated under Amendment #4, and in making sure that an arrangement that does not utilize existing contractors doesn't conflict with existing contract arrangements. This option does however offer the most competitive process for determining prices and in establishing a basis for comparison to Amendment #4.

It should be noted that under option #4, it is possible that the outcomes described under the previous three options could occur- option #1 or #2 where waste goes to the Riverbend Landfill, or option #3 where waste goes to the CRL by our current Waste Transport contractor.

Recommendation

The Executive Officer recommends that Council adopt Resolution No. 95-2118 and that the Request for Proposals be developed and forwarded to the Metro Council prior to release.

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EXHIBIT "C"

**REQUEST FOR PROPOSALS FOR THE
DISPOSAL AND/OR TRANSPORT OF WASTE
FROM THE FOREST GROVE TRANSFER STATION**

RFP #95R-21-SW

1995

METRO
Solid Waste Department
600 NE Grand Avenue
Portland, OR 97232
(503) 797-1650

74

Summary of Amendments to RFP #95R-21-SW
at the CSWC Meeting of 8-2-95

1. RFP, Item 3, top of Page 3:

DELETE "four years in no less than two year increments." and INSERT "one hundred twenty days."

2. SCOPE OF WORK, Item 1.0, Page 1, 3rd paragraph:

DELETE "an additional four years" and INSERT "one hundred twenty days"

3. GENERAL CONDITIONS, Article 28, page 31, last paragraph:

DELETE "year" and INSERT "hundred and twenty days"

**REQUEST FOR PROPOSALS FOR THE
DISPOSAL AND/OR TRANSPORT OF WASTE
FROM THE FOREST GROVE TRANSFER STATION**

RFP #95R-21-SW

AUGUST 1995

METRO
Solid Waste Department
600 NE Grand Avenue
Portland, OR 97232
(503) 797-1650

76

TABLE OF CONTENTS

1. INTRODUCTION.....	1
2. BACKGROUND.....	1
3. PROJECT SUMMARY.....	1
4. PROPOSAL INSTRUCTIONS / CONTENTS.....	3
5. EVALUATION OF PROPOSALS.....	5
6. GENERAL PROPOSAL/CONTRACT CONDITIONS.....	7

PROPOSAL/CONTRACT FORMS

Consisting of:

*PRICE SCHEDULE FOR DISPOSAL AND/OR TRANSPORT
PROPOSAL QUESTIONNAIRE
AGREEMENT
PERFORMANCE BOND
LABOR AND MATERIALS PAYMENT BOND
SCOPE OF WORK*

APPENDIX

consisting of:

Scope of Work
General Conditions
Cost Calculation Spreadsheet
Map of Metro Boundary
Location Map for the FGTS
Forest Grove Transfer Station Franchise Agreement
Tonnage Projections
Location Map for the Columbia Ridge Landfill
Amendment No. 4 to the Waste Disposal Services Contract
Solid Waste Transport Invoice
Load Manifest Example
Inspection and Damage Claim Form (Accident Report) Example
DEQ Fees
Metro/AAA Mitigation Agreement

REQUEST FOR PROPOSALS FOR THE DISPOSAL AND/OR TRANSPORT OF WASTE FROM THE FOREST GROVE TRANSFER STATION

1. INTRODUCTION

The Solid Waste Department of Metro is requesting proposals for the Disposal and/or Transport of Waste from the Forest Grove Transfer Station (RFP #95R-21-SW). Metro is a regional government serving the Portland metropolitan area, organized under the laws of the State of Oregon and the 1992 Metro Charter. Proposals will be received at the offices of the Metro Solid Waste Department, attention Chuck Geyer, 600 NE Grand Ave, Portland, OR 97232, until 4:00 p.m., on _____, _____, 1995. Details concerning the project and proposal requirements are contained in this document.

2. BACKGROUND

Metro is responsible for the disposal of solid waste generated within the jurisdictional boundaries of Metro as shown on the map in the Appendix. A system of three transfer stations currently receives mixed solid waste prior to transport and disposal at general purpose landfills. Two of the transfer stations (Metro South and Metro Central) are owned by Metro and the waste is disposed at the Columbia Ridge Landfill in Gilliam County, Oregon. The third station is the Forest Grove Transfer Station (FGTS) which is privately owned and operated in conformance with a franchise agreement (see Appendix) with Metro. The waste received at this facility is currently transported by the FGTS operator to the Riverbend Landfill located in Yamhill County, Oregon.

Under the terms of the franchise agreement between Metro and the FGTS, Metro may elect to assume responsibility for the transport and disposal of waste received at the facility which is generated within the Metro boundary. In addition, the FGTS may elect to include waste received from outside the Metro boundary in the transport and disposal system to be provided as a result of this procurement, should Metro assume this responsibility. Projections of these amounts of waste are contained in the Appendix.

3. PROJECT SUMMARY

The purpose of this RFP is to solicit proposals to provide services for the disposal and/or transport of waste from the FGTS pursuant to Metro's franchise agreement with FGTS. Details concerning the services to be provided by the successful proposer are contained in the Scope of Work (See Appendix). The information provided in this section is intended as a summary only.

Two service options are being requested in this request for proposals (RFP). First, Metro is requesting proposals for both transport and disposal of waste from the FGTS to a disposal site provided by the proposer. The second service option being solicited is only for the transport of

waste from the facility to the Columbia Ridge Landfill (a map detailing the location is contained in the Appendix). Proposals for the latter approach will be evaluated in conjunction with an amendment to Metro's Waste Disposal Contract which contains disposal prices for waste delivered from the FGTS. A copy of this amendment is contained in the Appendix. Proposals for either service option may request compaction of the waste in preparation for transport. Proposals may be submitted for one or more of the four alternates described below.

Generally, the work contemplated consists of the disposal and/or transport of approximately 390,000 tons of mixed (residential, commercial and industrial) solid waste projected to be received at the Forest Grove Transfer Station during the five year contract period. The successful proposer will be required to supply all the equipment, personnel and facilities necessary to dispose and/or transport the waste in conformance with the Scope of Work contained herein. The amount of waste available to be handled could depend on two factors. First, whether the FGTS wishes to utilize this system for waste generated outside the boundary (currently projected to be 30,000 tons over the life of the contract) and second, whether the amount of waste from inside the boundary would exceed the amounts permitted under Metro's existing Waste Transport and Waste Disposal Contracts.

As part of Metro's Waste Transport and Waste Disposal Contracts, Metro has guaranteed that its contractors will receive "(90%) of the total tons of acceptable waste which Metro delivers to any general purpose landfill during that calendar year." If the successful proposal is not one which utilizes Metro's existing transport and disposal contractors, once the amount of waste available under these guarantees has been transported and disposed from the FGTS on an annual basis, the contractor may be directed to suspend operations until such time as additional waste is available outside these guarantees. Metro will retain sole discretion in making determinations as to the waste available outside these guarantees.

As detailed in the Scope of Work, the successful Bidder will be responsible for providing empty containers to a staging area at the FGTS. The FGTS operator will be responsible for moving the empty containers from the staging area to the loading area. The FGTS operator will then load the containers using either top loading or a compactor located at the transfer station, depending on the successful proposal. The FGTS operator will then move the loaded containers back to the staging area. The successful Proposer will be responsible for removing the loaded containers from the staging area in a timely manner, and for providing adequate empty replacement containers.

The successful proposer will then transport the container to the disposal site and unload the waste. If the proposal is for transport only, the unloading of waste will conform with the appropriate specifications contained in the Scope of Work for the Columbia Ridge Landfill (CRL). The transportation of waste will be in conformance with all applicable laws and regulations. Additional requirements concerning the mode of transport and the quality of the equipment are contained in the Scope of Work.

Services shall commence in early 1996 and continue for a period of five years. Metro may, at its sole option, elect to extend the Contract for up to an additional ~~four years in no less than two year increments~~ one hundred twenty days. The start of operations will largely depend on whether the successful proposal requires the compaction of waste prior to transport. The FGTS franchise requires the operator to install a compactor within six months of notification by Metro.

4. PROPOSAL INSTRUCTIONS / CONTENTS

- A. Transmittal Letter: As part of the proposal, submit a transmittal letter. The letter should provide an overview of the approach which will be used to accomplish the work including which alternate(s) the proposal is for. If the proposal is for more than one alternate, describe how information contained in the proposal applies to each alternate.

Include in the overview who is to be the contact for the project, who in the firm has authority to sign the agreement with Metro if a contract is awarded to the firm, and that the proposal is valid for 120 days. Also detail which other firms will be involved in the project and their roles, whether compaction is required, the method of unloading the containers, and the name and location of the disposal site (if appropriate).

- B. Proposal Forms: Two sets of forms- "Schedule of Proposal Prices" and "Proposer's Questionnaire" are to be filled out and submitted as part of the proposal. Failure to complete the forms may result in the rejection of a proposal. Instructions for completing the forms follow.

1. Schedule of Proposal Prices: There are four alternates for which proposals may be submitted. Alternate #1 is for transport and disposal of the waste on a combined per ton price for both activities with no compaction at the FGTS. Alternate #2 is for transport and disposal of the waste on a combined per load price for both activities with compaction at the FGTS. Alternate #3 is also for both transport and disposal with compaction, but solicits prices for transport on a per load basis and disposal on a per ton basis. Alternate #4 is to be used for submitting "transport only" prices to the CRL disposal site.

Prices submitted should include all costs necessary to perform the work, except for the payment of DEQ fees which will be treated as a pass through. A list of the DEQ fees which will be treated as pass through is contained in the Appendix.

Alternate #1 - Transport and Disposal Price Per Ton (No Compaction) Alternate #1 consists of the following two items.

Item #1 calls for a single per ton unit price for both transport and disposal of waste, without the waste being compacted.

81

Item #2 calls for the percent of the change in the consumer price index (as described in the General Conditions) the proposer will accept as the annual adjustment in the unit price for Item #1.

Alternate #2 - Transport and Disposal Price Per Load (With Compaction) Alternate #2 consists of the following two items.

Item #1 calls for a single per load unit price for both transport and disposal of waste, assuming a compacted load of 28 tons.

Item #2 calls for the percent of the change in the consumer price index (as described in the General Conditions) the proposer will accept as the annual adjustment in the unit price for Item #1.

Alternate #3 - Transport and Disposal (With Compaction) Alternate #3 consists of the following four items:

Item #1 calls for a transport price per load, assuming a compacted load of 28 tons.

Item #2 calls for a per ton unit price for the disposal of waste.

Item #3 calls for the percent of the change in the consumer price index (as described in the General Conditions) the proposer will accept as the annual adjustment in the transport price per load for Item #1.

Item #4 calls for the percent of the change in the consumer price index (as described in the General Conditions) the proposer will accept as the annual adjustment in the disposal unit price for Item #2.

Alternate #4 - Transport Only Alternate #4 solicits unit prices for transport only to the CRL and consists of the following three items:

Item #1 calls for a price per load, assuming a compacted load of 28 tons.

Item #2 calls for a price per ton, assuming an uncompacted load.

Item #3 calls for the percent of the change in the consumer price index (as described in the General Conditions) the proposer will accept as the annual adjustment in the price for Item #1 or Item #2, depending on which item is being proposed.

2. **Proposer's Questionnaire:** The questionnaire requests information about both the transport and disposal of waste. If the proposal is for transport only, disposal site questions need not be addressed. If the proposal is for more than one alternate, indicate in your responses how the information applies to each alternate proposed.

- C. Exceptions and Comments: Firms wishing to take exception to, or comment on, any specified requirements within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized. Please include any exceptions you wish to take with the proposed standard contract and general conditions.
- D. Confidentiality: This paragraph shall apply to information Proposer is submitting to Metro which Proposer considers to be confidential and proprietary and which Proposer does not want Metro to disclose to third parties. Such confidential information shall be separately contained in a sealed envelope, clearly and prominently marked "confidential information" and bearing the title and number of this RFP, and the sealed envelope shall be attached to the rest of the RFP. To the extent permitted by law, Metro will not disclose such properly identified confidential information to any person outside of Metro. However, Proposers should be aware that Oregon Law (ORS chapter 192) requires public disclosure of most records deemed to be "public records." Metro cannot, therefore, guarantee to protect the confidentiality of any records submitted to Metro, even if the Proposer believes them to be exempt from disclosure.

5. EVALUATION OF PROPOSALS

- A. Evaluation Process: An evaluation team will conduct the evaluation process. Metro will only evaluate proposals that, in the evaluation team's sole opinion, conform to the proposal instructions. The team will rank proposals based on the evaluation criteria and points described below. Interviews with the top ranked firm or firms may be conducted.

Based on the evaluation of proposals, Metro will enter into negotiations with the highest ranked firm to finalize a contract. If Metro is unsuccessful in negotiating a contract, Metro will select the next highest ranked firm and attempt to negotiate a contract. This process will continue until a contract is recommended to the Metro Council for award or Metro terminates the procurement.

- B. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of proposals submitted to accomplish the work defined in this RFP.
1. Cost - The cost of a proposal will be evaluated utilizing the spreadsheet contained in the Appendix (a computerized version is available to aid Proposers in preparing their prices). Prices submitted for an alternate will be used with each of two tonnage scenarios to compute a total cost. For alternates #1, #2 and #3, proposals must include prices for both transport and disposal as well as a percentage of the CPI or they will be rejected. For alternate #4, a transport price and percentage of the CPI must be included. The disposal price for alternate #4 has been computed utilizing the tonnage scenarios in conjunction with the disposal price and savings available to Metro under Amendment No. 4 to Metro's Waste Disposal Contract. Both the amendment and the computation are contained in the Appendix.

For prices submitted which require compaction, a \$2 per ton surcharge is included in computing the total cost. This is to reflect the additional capital and operating costs incurred under this method.

Seventy Five (75) points are available for the cost criterion. Forty points will be given to the lowest cost proposal under tonnage scenario #1, and thirty five points will be given to the lowest cost proposal under tonnage scenario #2.

Proposals which are not the lowest cost for a tonnage scenario will be allocated points based on a percentage of the lowest cost proposal for the tonnage scenario. The formula to allocate points to proposals other than the lowest cost is as follows:

"Other" total cost \$ _____ minus "Lowest" total cost \$ _____ = Difference

Percentage = 1 - (Difference divided by "Lowest" total cost)

Percentage times points available = points for other than lowest cost proposal

75 Points

2. Performance - This criterion examines the ability of the proposer to perform the work as stated in this RFP. Proposals which do not demonstrate sufficient resources to accomplish the work, in the sole opinion of the evaluation team, will not be considered.

Factors which will be considered in the allocation of points include: a proposer's experience in providing a similar level of service under similar conditions; ability of the proposer to provide the necessary equipment and personnel, and the quality and performance history of the personnel and equipment proposed; the ability of the proposer to obtain the necessary permits or other regulatory approvals in a timely manner; and the nature of exceptions to the proposed contract conditions.

15 Points

3. Environmental Quality of the Disposal Site - The disposal site must be fully permitted in order to be considered for this project. Metro will also consider the site's history of regulatory compliance and its current status. For alternate #4, regulatory information for the Columbia Ridge Landfill will be used to allocate points.

10 Points

6. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. General Conditions/Contract: The attached general conditions, bond forms and agreement are included for your review prior to submitting a proposal. Any changes in these contract provisions should be requested and documented as an "exception" in the appropriate portion of the proposal. Consider the requested exceptions carefully, as they will be considered in the evaluation of proposals, and requested exceptions which cannot be resolved will result in rejection of the proposal.

In addition please note that if the successful proposer is currently a contractor to Metro, Metro may choose to accomplish the work described in this RFP through an amendment to that existing contract.

C. RFP as Basis for Proposals:

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any additional verbal information which is not presented in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be submitted in writing to Chuck Geyer. Any questions which, in the opinion of Metro, warrant a written interpretation or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received after _____, 1995.

D. Information Release

All proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all proposers agree to such activity and release Metro from all claims arising from such activity.

E. Minority and Women-Owned Business Program

Metro and its contractors will not discriminate against any person or firm based on race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

Metro extends equal opportunity to all persons and specifically encourages disadvantaged, minority and women-owned businesses to access and participate in this and all Metro projects, programs and services.

If any subcontracting is intended, Proposers are directed to Metro Code 2.04.100 and 2.04.200 governing utilization of minority and women-owned businesses.

Metro's Minority and Women-Owned Business Program is administered by the Contract Services Division. They may be reached at (503) 797-1714 during regular business hours should you have questions about the program.

86

PROPOSAL/CONTRACT FORMS

Consisting of:

Schedule of Proposal Prices

Proposer's Questionnaire

Agreement

Performance and Labor and Materials Bond Forms

(Agreement and Bonds are not to be submitted with Proposal)

PRICE SCHEDULE FOR DISPOSAL AND/OR TRANSPORT

Alternate #1 - Transport and Disposal (No Compaction)

ITEM

1. Transport & Disposal Price Per Ton \$ _____ (WORDS)

2. Percent Adjustment of CPI = ____% _____ (WORDS)

Alternate #2- Transport and Disposal (With Compaction- One Price)

ITEM

1. Transport & Disposal Price Per Load \$ _____ (WORDS)

2. Percent Adjustment of CPI = ____% _____ (WORDS)

Alternate #3 - Transport and Disposal (With Compaction)

ITEM

1. Transport Price Per Load \$ _____ (WORDS)

2. Disposal Price Per Ton \$ _____ (WORDS)

3. Percent Adjustment of CPI for Item #1 = _____ (WORDS)

4. Percent Adjustment of CPI for Item #2 = _____ (WORDS)

89

Alternate #4 - Transport Only

1. Transport Price Per Compacted Load \$ _____
(WORDS)

2. Transport Price Per Ton (No Compaction) \$ _____
(WORDS)

3. Percent Adjustment of CPI _____
(WORDS)

PROPOSAL QUESTIONNAIRE

The following Questionnaire asks for information concerning the Proposer's organization, experience in projects similar to those described in the Contract Documents, information relating to the equipment and operating plan the Proposer proposes to use during the Contract and the disposal site to be used (if appropriate). If a partnership, firm, joint venture, corporation or other entity owns a controlling interest in the Proposer, responses to each question in the Questionnaire must be submitted for both the Proposer and the parent entity. For purposes of this project, "controlling interest" shall mean ownership of ten percent (10%) or more of the beneficial ownership of Proposer. Information submitted in response to this Questionnaire will be considered binding on the successful Proposer, and any substitutions or deviations shall be allowed only if approved by Metro.

Generally, the Proposer shall include information for the specific single business organization or entity which is submitting a Proposal for the work described in the RFP and which would be the signatory on the Contract. However, if a major portion of the work, including but not limited to transport, disposal or unloading are being subcontracted, information for that subcontractor should be submitted and specifically referenced.

All answers and entries shall be specific and complete in detail. Metro reserves the right to make independent inquiries concerning the information submitted herein, to conduct any additional investigation necessary to determine the Proposer's qualifications, and to require the Proposer to supply additional information.

Use of Attachments

Schedules, resumes, reports, diagrams, and other forms of information may be used as attachments to the questionnaire, as long as the information required by this form is provided and the Proposer clearly references the attachments to the questionnaire. The purpose of this questionnaire and any attachments is to supply information about the Proposer and Proposal to Metro, so that Metro may evaluate the proposals.

Project Owner, Contact and phone #	Name of Project	Contract Amount	Enter "a or b"

3. For each project listed in Items No. 2, provide a brief description of the project and your firm's responsibilities.

4. Please describe the organizational structure under which you will manage this Contract. This should include, but not be limited to, the persons who are responsible for the following areas of expertise: direct supervision, personnel, equipment maintenance and acquisition, training, safety. Attach resumes for supervisory personnel.

5. List the major transport and unloading equipment you plan to use for the Project. The information provided must demonstrate that the equipment will meet the requirements as described in the Scope of Work. Include such information as the model, age, whether leased or owned, and maximum payloads. Indicate whether the proposed equipment type has been used in similar applications and whether the transport equipment has been approved by regulatory agencies.

6. Estimate the type and number of gallons of fuel which will be consumed per round trip to the disposal site and the assumed price per gallon used in your pricing proposal.

7. List all permits, licenses and associated fees which will be required for the transport portion of the work, including Public Utility Commission of Oregon requirements and the status of the permits/licenses.

8. Describe the route to be used from the Forest Grove Transfer Station to the disposal site and attach a map indicating the route. Include estimated mileage and travel time.

9. Provide the name, address and owner of the proposed disposal site if proposing on alternates 1-3.

10. Describe your agreement(s) with the disposal site owner listed above and attach signed agreements.

11. List the permits granted to the disposal site and attach a copy of the solid waste permit.

96

12. List the local and state jurisdictions having solid waste and land use authority over the disposal site and provide a contact name, title and phone number.

13. List any and all regulatory actions which have occurred at the disposal site over the last five years and their current status. Such actions should include, but not be limited to any enforcement actions, notices of noncompliance, required remedial investigations or actions, and compliance orders. Attach a summary of the latest DEQ (or DOE and local health department if site is in Washington state) inspection report.

14. If the disposal site is located outside the state of Oregon, please list regulatory fees proposed to be treated as a pass through in lieu of DEQ fees.

98

AGREEMENT

This Agreement is made by and between _____, hereinafter called Contractor and Metro, a regional government organized under the laws of the State of Oregon and the 1992 Metro Charter.

Contractor and Metro agree as follows:

1. Contract Documents

The Contract Documents are defined in the Scope of Work to this Agreement. Where applicable, reference to this Agreement herein shall be deemed to refer to all of the Contract Documents.

These documents form the Contract and are, by this reference, expressly incorporated herein. All are as fully a part of the Contract as if attached to this Agreement and repeated fully herein. No amendment made to this Contract nor Change Order issued shall be construed to release either party from any obligation contained in the Contract Documents except as specifically provided in any such amendment or Change Order.

2. Scope of Work

Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, disposal, permits, and every other item and service necessary to perform the Work described in the Contract Documents. Contractor agrees to fully comply with each and every term, condition and provision of the Contract Documents.

3. Contract Amount

As consideration for Contractor's performance hereunder, Metro agrees to pay contractor the amount and in the manner pursuant to the Contract Documents. In consideration of the above payments, Contractor agrees to perform the work pursuant to the Contract Documents.

4. Additional or Deleted Work

Contractor shall, when so instructed by Metro under the procedures of the Contract Documents, perform additional Work or delete Work in accordance with the Contract Documents. Any increase or decrease in the Contract Amount shall be determined pursuant to the applicable provisions of the Contract Documents.

5. Term

This Agreement shall take effect on _____, 199_ and remain in full force and effect through and including _____, _____, as more fully described in the Contract Documents. The initial term of this Agreement may be extended by Metro, in its sole discretion, for additional periods of time as further described in the Contract Documents.

6. Remedies for Default

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

7. Laws of Oregon Apply

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

8. Entire Agreement

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

CONTRACTOR

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

PERFORMANCE BOND

(NOTE: CONTRACTORS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW BY ALL MEN BY THESE PRESENTS:

We the undersigned _____ as PRINCIPAL (hereinafter called CONTRACTOR), and _____, a corporation organized and existing under and by virtue of the laws of the state of _____, duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to the Metropolitan Service District as OBLIGEE (hereinafter called Metro), the amount of Five Hundred Thousand Dollars (\$500,000), in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with Metro dated _____, 19____, which contract is hereunto annexed and made a part hereof, for accomplishment of the Work described as follows: Disposal and/or Transport of Waste from the Forest Grove Transfer Station.

NOW, THEREFORE, the condition of this obligation is such that if the CONTRACTOR shall promptly, truly and faithfully perform all the undertakings, covenants, terms, conditions, and agreements of the Work, Metro having performed its obligations thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by Metro to be in default under the Contract Documents for the project described herein, the SURETY may promptly remedy the default, or shall promptly complete the Work in accordance with the Contract Documents and the project Scope of Work. SURETY, for value received, further stipulates and agrees that all changes, extensions of time, alterations, or additions to the terms of the Contract or Scope of Work for the Work are within the scope of the SURETY's undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Work or to the Scope of Work. Any such change, extension of time, alteration or addition to the terms of the Work or to the Scope of Work shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the SURETY.

This initial bond shall be in effect for the period beginning _____, 19____, through and including _____, 19____, and shall be subject to and governed by each and every term and condition of the contract, as defined herein. Thereafter, CONTRACTOR shall obtain and provide to Metro a renewal or replacement of this bond, in like form and in an amount as specified by the Contract, with a qualified SURETY acceptable to Metro; no later than

sixty (60) days prior to the expiration of the term of the preceding bond, for the next contract year; in order that a performance bond shall be continuously in effect. This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Metro or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 19__.

SURETY

By: _____

Title: _____

CONTRACTOR

By: _____

Title: _____

LABOR AND MATERIALS PAYMENT BOND

(NOTE: CONTRACTOR MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENTS:

We the Undersigned _____ as PRINCIPAL and _____, a corporation organized and existing under and by virtue of the laws of the state of _____, and duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and which carries an "A" rating and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, unto Metro, as OBLIGEE, in the sum of Five Hundred Thousand Dollars (\$500,000) in lawful money of the United States of America, for the payment of that sum for the use and benefit of claimants as defined below.

The condition of this obligation is such that whereas the PRINCIPAL entered into a contract with Metro dated _____, 19____, which contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: Disposal and/or Transport of Waste from the Forest Grove Transfer Station.

NOW THEREFORE, if the PRINCIPAL shall promptly make payments to all persons, firms, subcontractors, corporations and/or others furnishing materials for or performing labor in the prosecution of the Work provided for in the aforesaid project, and any authorized extension or modification thereof, including all amounts due for materials, equipment, mechanical repairs, transportation, tools and services consumed or used in connection with the performance of such Work, and for all labor performed in connection with such Work whether by subcontractor or otherwise, and all other requirements imposed by law, then this obligation shall become null and void; otherwise this obligation shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is as specified in ORS 279.526.
2. The above-named PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE and its assigns that every claimant as above-specified, who has not been paid in full, may sue on this bond for the use of such claimant, prosecute the suit to final judgment in accordance with ORS 279.536 for such sum or sums as may be justly due claimant, and have execution thereon. The OBLIGEE shall not be liable for the payment of any judgment, costs, expenses or attorneys' fees of any such suit.

PROVIDED, FURTHER, that SURETY for the value received, hereby stipulates and agrees that all changes, extensions of time, alterations to the terms of the project or to Work to be performed thereunder or the Contract and Request for Proposals accompanying the same shall be within the scope of the SURETY's undertaking on this bond, and SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the project or to the Work or to the Contract and Request for Proposals. Any such change, extension of time, alteration or addition to the terms of the contract or to the Work shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that the total of such increases shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the SURETY.

This initial bond shall be in effect for the period beginning _____, 19__, through and including _____, 19__, and shall be subject to and governed by each and every term and condition of the contract, as defined herein. Thereafter, CONTRACTOR shall obtain and provide to Metro a renewal or replacement of this bond, in like form and in an amount specified by the Contract, with a qualified SURETY acceptable to Metro, no later than sixty (60) days prior to the expiration of the term of the preceding bond, for the next contract year, in order that a performance bond shall be continuously in effect.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted, or if the full amount of the obligation is not exhausted and no claim is pending resolution, until such time as no further claims can be made pursuant to law with regard to the above-described project, by any claimant specified in ORS 279.526.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for all obligations of this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 19__.

SURETY

By: _____

Print name and title

CG:ay

S:\SHARE\GEYE\STATIONS\FORREST\FORREST\FGTS#3.RFP
07/19/95 11:11 AM

CONTRACTOR

By: _____

Print name and title

104

APPENDIX

consisting of:

- Scope of Work
- General Conditions
- Cost Calculation Spreadsheet
- Map of Metro Boundary
- Location Map for the FGTS
- Forest Grove Transfer Station Franchise Agreement
- Tonnage Projections
- Location Map for the Columbia Ridge Landfill
- Amendment No. 4 to the Waste Disposal Services Contract
- Solid Waste Transport Invoice
- Load Manifest Example
- Inspection and Damage Claim Form (Accident Report) Example
- DEQ Fees
- Metro/AAA Mitigation Agreement

**SCOPE OF WORK
TABLE OF CONTENTS**

	PAGE
1.0 GENERAL.....	1
2.0 DEFINITIONS.....	1
3.0 SEQUENCE OF EVENTS FOLLOWING AWARD	6
4.0 WASTE FLOW AND HOURS OF OPERATION	6
5.0 TYPES OF WASTES ACCEPTED	7
6.0 OPERATING RECORDS.....	7
7.0 PAYMENT	8
8.0 OPERATING PLAN - GENERAL.....	8
9.0 CONTAINER REQUIREMENTS / HANDLING PROCEDURES.....	9
9.1 <u>STAGING AND SHUTTLING</u>	9
9.2 <u>COORDINATION PROCEDURES</u>	10
9.3 <u>TRAILER PERFORMANCE REQUIREMENTS/PROCEDURES - UNCOMPACTED WASTE</u>	10
9.4 <u>CONTAINER PERFORMANCE REQUIREMENTS/PROCEDURES - COMPACTED WASTE</u>	11
9.5 <u>PACKAGING DENSITIES -- COMPACTED WASTE</u>	12
9.6 <u>CONTAINER SEALS</u>	12
9.7 <u>CONTAINER CLEANING</u>	12
10.0 UNLOADING WASTE AT CONTRACTOR-PROVIDED DISPOSAL SITE	12
10.1 <u>CONTRACTOR'S DUTY TO INSPECT WASTE AND SIGN INVOICE</u>	13
10.2 <u>CONTRACTOR'S DUTY TO TEST SUSPICIOUS WASTE</u>	13
10.3 <u>CONTRACTOR'S DUTY TO MANAGE UNACCEPTABLE WASTE AND METRO'S REIMBURSEMENT THEREFOR</u>	13
10.4 <u>CONDITIONS AND LIMITATIONS ON REIMBURSEMENT</u>	14
10.5 <u>SCHEDULE FOR REIMBURSEMENT PAYMENTS</u>	14
10.6 <u>GENERAL LIMITATION ON METRO'S LIABILITY</u>	15
11.0 UNLOADING WASTE AT COLUMBIA RIDGE LANDFILL.....	15
11.1 <u>TIPPER UNLOADING</u>	15
11.2 <u>NON-TIPPER UNLOADING</u>	16
12.0 <u>REGULATORY APPROVAL</u>	16
13.0 <u>FEES</u>	17
14.0 CLOSURE	17

**SCOPE OF WORK
TABLE OF CONTENTS**
continued

	PAGE
15.0 INSPECTION	17
16.0 REGULATIONS	17
16.1 <u>GENERAL</u>	17
16.2 <u>TRUCKING</u>	17
17.0 CONTINGENCY PLANS	18
17.1 <u>GENERAL</u>	18
17.2 <u>BACK-UP SYSTEM</u>	18
17.3 <u>EMERGENCY</u>	18
18.0 SAFETY AND EMERGENCY RESPONSE TRAINING PROGRAM	19
19.0 CONTRACTOR LIABILITY	19
20.0 ADDITIONAL WORK	20
21.0 METRO'S RIGHT TO PURCHASE FUEL	20

SCOPE OF WORK

1.0 GENERAL

This Scope of Work describes the services required to dispose and/or transport loads of mixed solid waste from the Forest Grove Transfer Station (FGTS), as well as the operating conditions in which the services are to be performed. This Scope of Work is not intended to be comprehensive in nature, and the Contractor agrees to provide the labor, equipment and materials necessary to meet the performance requirements contained in the Contract Documents.

Loads of waste will be prepared by the FGTS operator in one of two ways depending on the successful proposal. Waste will either be top loaded into the Contractor's trailers or compacted and extruded into the back of the Contractor's trailers. It is the responsibility of the Contractor to become familiar with the method to be utilized and to provide appropriate equipment and to coordinate with the station operator. Regardless of the loading method utilized, the Contractor is responsible for providing empty and removing full containers to and from the staging area so as not to impede transfer station operations.

Services shall commence in early 1996 and continue for a period of five years. Metro may, at its sole option, elect to extend the Contract for up to ~~an additional four years~~ one hundred twenty days. The start of operations will largely depend on whether the successful proposal requires the compaction of waste prior to transport. The FGTS franchise requires the operator to install a compactor within six months of notification by Metro.

2.0 DEFINITIONS

For the purposes of this Contract, and each and every one of the Contract Documents, the following terms shall have the meanings hereinafter set forth:

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

1. prohibited from disposal at a sanitary landfill by state, local or federal law;
2. Hazardous Waste;
3. Special Waste without a Metro approved special waste permit;
4. Infectious Medical Waste; or
5. 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.

"Code" means the Code of Metro, including any amendments thereto.

"Columbia Ridge Landfill or CRL" means that landfill located in Gilliam County, OR which Metro has contracted with for disposal.

"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.

"Container or Trailer" means the receptacle used to transport waste from the transfer station to a disposal site. The receptacle shall include intermodal containers and transfer trailers. Performance specifications are included within this document.

"Contract" and "Contract Documents" include the following:

1. The Contract Forms, including the Agreement, signed by both parties thereto, the Performance and Labor and Materials Bond, or Letter of Credit,
2. The Scope of Work,
3. The General Conditions,
4. Any and all Addenda to the Contract,
5. Any and all Appendices, Amendments, Change Orders, or extensions of the foregoing documents which the parties have agreed to or which Metro has approved in the manner prescribed by the Contract,
6. The Request for Proposals,
7. The Contractor's proposal; provided, however, that appendices and attachments to Contractor's proposal shall not be considered part of the Contract Documents unless specifically agreed to by Metro.

The terms "Contract," "Contract Documents" and "Documents shall also mean any and all services, matters and things which the above-described documents require to be done, kept, performed or furnished.

"Contract Change Order" or "Change Order" means a document prepared pursuant to applicable provisions of the Metro Code and Article 13 of these General Conditions as a change to the Contract, incorporating approved Contractor's proposals for changes in the Contract. Change orders shall be numbered consecutively in chronological order.

"Contract Manager" means Metro's representative for all purposes of this Contract, designated as such by Metro. The Contract Manager is also the liaison between Contractor and Metro's consultants. The Contract Manager has no authority to approve increases in the cost of the Contract; all such changes must be approved under the procedures in this Contract and by Metro pursuant to applicable provisions of the Metro Code.

"Contractor" means the person, firm, corporation or other entity which executes the Contract with Metro.

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

"DEQ Fees" mean such fees assessed by the Oregon Department of Environmental Quality related to operation of a solid waste facility but does not include fees which are in any way attributable to Contractor's operations or to Contractor provided sites or to conditions, operations, or activities at Contractor-provided site(s), or conditions, operations or activities which are caused by Contractor or his/her subcontractors, employees, agents, or servants, or which are otherwise within Contractor's control.

"Disposal Site" means the landfill which is provided by the Contractor, or the Columbia Ridge Landfill (depending on the alternate awarded), to which "acceptable waste" is transported and disposed.

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

"Force Majeure" means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, and federal or state government orders, any of which is beyond the reasonable anticipation of the applicable party and which prevents performance of the Contract, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time. Both parties agree that no other events, however catastrophic or uncontrollable, including, but not limited to, changes in laws or regulations, strikes, lockouts, other labor disturbances, breakage or accidents to machinery, equipment or plants, scheduled lock closures, or government orders due to inclement weather, shall be considered forces majeure.

"Forest Grove Transfer Station or FGTS" means the transfer station from which waste will be picked up for disposal.

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

1. 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;
2. contains polychlorinated biphenyl 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;

3. 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;
4. contains a radioactive material the storage or disposal of which is subject to state or federal regulation; or
5. 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:

1. 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;
2. 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);
3. 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
4. sharps including needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes.

"Load of Waste" means the quantity of waste transported by a container during each trip from a transfer station.

"Metro" means its officers, employees, contractors, or authorized agents or servants: the term Metro does not include Contractor, Contractor's officers, employees, subcontractors, agents or servants; or the officers, employees, subcontractors, agents or servants of the Forest Grove Transfer Station.

"or approved equal" is used to indicate that the material or product to be supplied or installed must be equal to that specified and approved as such by Metro.

"Request for Proposal" or "RFP" means a request by Metro for a proposal on contemplated changes in the Contract. Such Request(s) for Proposals shall be numbered consecutively in chronological order.

"Scalehouse" means those facilities the purpose of which is to determine and collect charges from public, commercial and industrial users of Forest Grove Transfer Station. The term "scalehouse" shall include both the buildings used for this purpose and the weighing system.

"Separate Contract" means a contract between Metro and a party other than the Contractor.

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

"Solid Waste Transport Invoice" is the invoice on which payment is based which is generated at the FGTS and accompanies the load of waste to the disposal site.

"Staging Area" is the area located at the FGTS on which containers are staged prior to and after loading.

"Suspicious Waste" is waste which the Contractor reasonably suspects or should suspect may be "unacceptable waste."

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

"Unit Prices" refers to the unit costs associated with the disposal and/or transport of a load of waste or a ton of waste.

"Waste" means "Acceptable Waste," as the latter term is defined in the Scope of Work, unless indicated otherwise.

"Work" shall mean, unless the context requires otherwise, all labor, materials, equipment and services required or necessarily implied by the Contract Documents to be provided by Contractor.

3.0 SEQUENCE OF EVENTS FOLLOWING AWARD

Within 15 days of Contract award, the Contractor shall submit a report indicating the status of permits, major equipment and the disposal site to be provided if applicable. Thereafter, Contractor shall submit written updates on a monthly basis or at other intervals as requested by Metro. At any point in time Metro determines the Contractor is not making adequate and timely progress toward developing an acceptable transportation and/or disposal system or securing regulatory approvals, Metro may declare Contractor in default of the Contract and proceed to terminate according to the General Conditions.

Additionally, the Contractor will supply the following in writing within 20 days of execution of the Contract:

- > Mobilization plans and schedule for equipment and personnel.
- > Final list of supervisory personnel.
- > Final list of equipment.
- > Contingency plans.
- > Safety and emergency response program including equipment operator training and standard operating procedures.
- > Operations plan, including specific operating procedure for all unloading, storage, disposal and/or transport of the containerized waste.
- > List of subcontractors for each major subcontract.

4.0 WASTE FLOW AND HOURS OF OPERATION

Contractor shall be responsible for transporting waste from the transfer station as often as necessary to avoid impeding normal transfer station operations and shall maintain such hours as are necessary to achieve this purpose, regardless of the hours of operation at the FGTS. FGTS is open between the hours of 5:00 a.m. to 5:00 p.m., Monday through Friday; and 9:00 a.m. to 5:00 p.m. on Saturday. The station is closed Sundays.

Waste volumes at the facility will fluctuate daily, weekly and monthly. Hourly and daily waste deliveries, as well as waste projections for the life of the Contract are contained in the Appendix. These projections are for both waste generated within the Metro boundary, as well as waste generated outside the Metro boundary. The FGTS operator is not required to transport and dispose of the waste from outside the Metro boundary utilizing the Contractor's system, however the FGTS operator may do so at his/her option. The Contractor must be capable of handling these variations such that the operations of the transfer stations are not impeded. These projections are estimates only and shall not be regarded as guaranteed flows.

The Contractor shall have access to the site as needed but must comply with the operational and security requirement of the FGTS operator. No loaded containers shall remain on the site for more than 24 hours unless otherwise agreed to by Metro.

Metro has committed in its Waste Transport and Waste Disposal contracts that these contractors will receive "(90%) of the total tons of acceptable waste which Metro delivers to any general purpose landfill during that calendar year." In the event Metro determines, at its sole option, that Metro will be in violation of these commitments, Metro reserves the right to suspend the work under this Contract for the balance of the calendar year or portion thereof, as deemed necessary by Metro to comply with these commitments. Metro will provide at least 30 days written notice of the date on which work is to be suspended. Metro will provide at least 30 days written notice of the date on which work is to be resumed. Contractor shall not be entitled to any payments during the period during which work is suspended. Metro may, however, require Contractor to continue the transport and disposal of waste from outside the Metro boundary for which the Contractor shall receive payments.

5.0 TYPES OF WASTES ACCEPTED

The Contractor shall accept, dispose and/or transport all waste which is sealed into Contractor's trailers at FGTS. Contractor is prohibited from adding any material to the load once the seal has been installed. It will be the transfer station operator's responsibility to provide loads of acceptable solid waste for disposal and/or transport by the Contractor.

6.0 OPERATING RECORDS

The Contractor shall keep accurate records of all transactions in connection with this Contract. This includes, but is not limited to the load manifests, inspection and damage claim forms and Solid Waste Transport Invoices received at FGTS (see appendix for examples of these forms), as well as any correspondence or communications from public agencies. Copies of such records shall be forwarded to Metro as requested. Metro shall be informed of the existence of all such communications or correspondence through the monthly report.

The Contractor, FGTS operator, disposal site operator and Metro all receive a copy of the completed Solid Waste Transport Invoice. The invoice will include the time, date, seal number, and tare weight of the vehicle components and the weight of the load as measured by the onsite scales. The FGTS operator will generate and sign the invoice after loading the trailer and weighing it. The FGTS operator will retain one copy and leave the three remaining copies with the loaded trailer in the staging area. After transporting the load of waste to the disposal site, a disposal site attendant completes and signs the Solid Waste Transport Invoice indicating the time and date received, verifying the seal number of the trailer, and verifying that the seal is intact. If the Contractor is transporting the waste to the Columbia Ridge Landfill (CRL), the Contractor shall follow the procedures developed in conjunction with the landfill operator. Any disputes between the Contractor and the CRL operator will be arbitrated by Metro. The Contractor shall retain and forward Metro's copy of the invoice with the monthly billing, unless the waste is being transported to CRL.

In addition to the invoice, the FGTS operator will complete a load manifest with each load. The purpose of the manifest is to note the condition of the trailer prior to and after loading. Any damage to a trailer shall be noted on the manifest, and an inspection and damage claim form shall be completed if the container has been damaged. Any claims for damage resulting from receiving a load shall be made against the FGTS operator. Metro will act as the arbitrator of any disputes between the Contractor and the FGTS operator.

7.0 PAYMENT

Payment for the disposal and/or transport of solid waste will be made based on the Contractor's per ton and/or per load bid price multiplied by the number of tons and/or loads (if applicable and regardless of the number of tons in a load) disposed and/or transported per month. Detailed payment procedures are contained in the General Conditions.

In addition, the Contractor shall be compensated for expenses associated with any overloaded trailers. Allowable expenses for overloads are limited to documented labor costs associated with waiting for overloads to be corrected by the FGTS. Metro will not be responsible for any costs associated with overloaded trailers which leave the facility.

8.0 OPERATING PLAN - GENERAL

- 8.1 The Contractor is responsible for providing empty containers (intermodal containers and chassis, or transfer trailers) to a staging area at the FGTS. The FGTS operator shuttles the empty containers from the staging area to the loading area and then loads the containers using either the top loading method or a compactor located at the transfer station. The FGTS operator then weighs the loaded containers, generates the Solid Waste Transport Invoice and returns the loaded container to staging area. If the container is overloaded, the FGTS operator should correct the overload prior to returning it to the staging area. The Contractor will then transport the container to the disposal site and unload the waste. If the proposal is for transport only, the unloading of waste will be coordinated with the Columbia Ridge Landfill (CRL) operator (see item 11.0). The Contractor must provide empty containers and remove loaded ones in a timely manner, so that an empty container is available for loading and no more than five containers are present on the site at any one time, unless otherwise agreed to by Metro.
- 8.2 The Contractor is responsible for inspecting the loaded trailers for damage and verifying that the seal was installed properly before transporting the load of waste from the transfer station. If Contractor's inspection of the seal indicates that the seal has been improperly installed, the Contractor shall immediately notify the transfer station operator and request a new seal. Failure to do so will preclude Contractor from any recovery for damages arising out of any improperly installed seal.

- 8.3 The FGTS operator is responsible for providing a road legal load to the Contractor. Contractor is responsible for ensuring the load is road legal prior to leaving the site. Scales will be available onsite to determine if the load is road legal. If Contractor determines the load is not road legal, the FGTS operator shall be notified. The FGTS operator is responsible for achieving a road legal weight or in unloading an overloaded trailer if necessary. Contractor shall cooperate with the FGTS in achieving road legal weights, and will be compensated for overloads as provided above.
- 8.4 Contractor is also responsible for any storage, maintenance, cleaning and replacement of trailers. Storage for up to five trailers will be provided at FGTS. No loaded trailers shall remain onsite for more than 24 hours. No cleaning of trailers or maintenance of equipment will be allowed at FGTS without the prior approval of FGTS operator.
- 8.5 The Contractor is not allowed to utilize their transport equipment for purposes other than those connected with this Contract. Metro reserves the right to purchase all fuel used by the Contractor for the over the road portion of the work at any time during the life of the Contract in accordance with the specifications below.
- 8.6 The services provided by the Contractor shall be performed in accordance with all state, federal and local regulations. Any changes in operating procedures as described by these documents, or submitted by the Contractor as part of their proposal, must be approved by Metro.
- 8.7 The Contractor will conduct activities so as to maximize coordination with any Metro-designated party, and to minimize loading and unloading time spent in a cost effective manner.

9.0 CONTAINER REQUIREMENTS / HANDLING PROCEDURES

9.1 Staging and Shuttling

Contractor will be provided an area at the FGTS for the storage of up to five containers. Contractor must provide empty containers, remove loaded ones and transport them to the disposal site, with sufficient frequency that an empty container is always available for loading and so that no more than five containers are on the site at any one time. Failure of the Contractor to provide a minimum of one empty container in the staging area at all times shall be considered impeding the transfer station operations. If no empty containers are available in the staging area the Contractor has one hour to remedy the situation or liquidated damages will be imposed. Likewise, if more than a total of five containers (empty or loaded, in any combination) are left in the staging area, the Contractor has one hour to remedy the situation or liquidated damages will be imposed. See Article 9 of the General Conditions.

The FGTS operator shall provide all equipment, labor, supplies and other items necessary to shuttle trailers from the staging area to the loading area, receive a load of waste, and return the loaded containers to the staging area. The containers shall be loaded in a manner such that the containers will be road legal and undamaged, and a seal installed.

9.2 Coordination Procedures

- A. The FGTS operator shall also provide a monthly schedule of planned maintenance activities which will shutdown operations. The Contractor and FGTS operator will also agree on a procedure, to be approved by Metro, to notify one another as to the status of containers and the projected demand during the day.
- B. A load manifest shall be provided by the FGTS operator on which is recorded the trailer identification number and the seal code. The manifest shall accompany the loaded trailer to the staging area. The manifest shall be countersigned and retained by the Contractor.
- C. The load manifest shall contain provisions in which the FGTS operator acknowledges receipt of a trailer for shuttling and loading and whether it was damaged or undamaged, and also procedures in which the Contractor acknowledges receipt of a trailer after loading and whether it was damaged or undamaged.
- D. If either party has observed damage, an inspection and damage claim form shall be completed. The inspection and damage claim form shall also contain provisions requiring independent repair estimating procedures. The inspection and damage claim form shall be reviewed and approved by Metro.
- E. All loaded containers must be removed from the FGTS and disposed within 24 hours of receiving a load.
- F. Metro will act as the arbitrator of any disputes between Contractor and the FGTS operator.

9.3 Trailer Performance Requirements/Procedures - Uncompacted Waste

If the successful proposal is for uncompacted waste, the current method of top loading at the FGTS will be utilized. Under this method waste is directly unloaded from vehicles into the top of transfer trailers. The load is leveled and maximized through the use of a clamshell. Current operations achieve maximum payloads of approximately 22 tons for walking floor type trailers with allowed gross vehicle weights of 80,000 pounds.

Containers shall be of a leak-proof design considered "wind and water tight" as spillage of either waste or liquids from the container while in transit or storage is prohibited. Solid

doors, screens or tarps must be utilized to cover the top of the container. If screens or tarps are utilized, they must be fastened in such a manner (approved by Metro) as to prevent waste leaving the container and be leak-proof. If the transport route includes travel through the Columbia River Gorge National Scenic Area, then only solid doors shall be used and the Contractor shall comply with the terms of the "Settlement Agreement" between Metro and AAA contained in the Appendix.

It is the intent of this Scope of Work to ensure that Contractor equipment is suitable for the arduous, heavy-duty service connected with solid waste transport. Containers shall be of a construction capable of withstanding the extreme abuse expected from receiving solid waste. Consideration in the design should also be given to minimizing odor. Contractor shall be fully responsible for replacing any container equipment which does not meet these standards.

All contractor-furnished equipment shall be properly maintained in a safe working condition at all times. Transfer tractors and containers shall be suitably painted and/or furnished so that they present an acceptable appearance subject to the review and approval of Metro.

9.4 Container Performance Requirements/Procedures - Compacted Waste

If the successful proposal is for compacted waste, the following requirements and procedures apply.

Waste will be compacted at transfer stations by compacting equipment such as an AMFAB Transpak Model 500, or equal, designed to produce efficient payloads. Containers shall be of the rear-load design capable of receiving an extruded load from the compactor. Roof, sides and the rear doors of the containers shall be solid.

Containers shall be of a leak-proof design considered "wind and water tight" as spillage of either waste or liquids from the container while in transit or storage is prohibited. Consideration in the design should also be given to minimizing odor. If the transport route includes travel through the Columbia River Gorge National Scenic area, the Contractor shall comply with the terms of the "Settlement Agreement" between Metro and AAA.

It is the intent of this Scope of Work to ensure that Contractor equipment is suitable for the arduous, heavy-duty service connected with solid waste transport. Containers shall be of standard construction with smooth interior walls and floor capable of withstanding the extreme abuse expected from receiving compacted solid waste. Contractor shall be fully responsible for replacing any container equipment which does not meet these standards.

All contractor-furnished equipment shall be properly maintained in a safe working condition at all times. Transfer tractors and containers shall be suitably painted and/or furnished so that they present an acceptable appearance in the opinion of Metro.

9.5 Packaging Densities -- Compacted Waste

The transfer station operator is responsible for the compaction and extrusion, into the Contractor's container, of an untied bale of waste that, when extruded, measures seven feet by seven feet up to 39 feet. Typically the compactor produces average loads of 28 tons, however, the Contractor's transportation system shall be capable of transporting loads up to 32 tons at a density of 900 lbs./Cu yd.

9.6 Container Seals

At the completion of extruding or top loading the waste into the container, the transfer station operator shall install a lock seal on the container such as a flat metal seal that prohibits removal by hand. Each seal shall be marked with three letters (e.g., FGS) identifying the facility, Contractor and a sequentially increasing set of at least four digits.

Example: FGS-CON-0000

It is the responsibility of Contractor to ensure that the seal was properly installed before the container leaves the transfer station. Once the Contractor has verified that the seal is properly installed the waste contained within the container is the responsibility of the Contractor until the seal is broken at the disposal site. If the seal is broken before arrival at the disposal site, the Contractor will be responsible for all associated costs and liabilities involved with managing any waste from the container, above and beyond normal disposal costs.

9.7 Container Cleaning

The Contractor shall clean containers as often as necessary to prevent malodor, unsightliness, or attraction of vectors.

10.0 UNLOADING WASTE AT CONTRACTOR-PROVIDED DISPOSAL SITE

Contractor is responsible for unloading all waste transported pursuant to this Contract at the Contractor provided disposal site, or arranging for unloading with the disposal site operator. Upon arrival at the disposal site, Contractor and the disposal site attendant will mutually inspect the trailer seal. The attendant will indicate on all copies of the Solid Waste Transport Invoice whether the seal is intact and then sign for receipt of the load. If the seal is not intact Contractor

shall notify Metro immediately, and indicate that the seal is not intact on the invoice. Contractor shall then unload the waste.

Contractor shall inspect all waste delivered to the disposal site in a manner which is reasonably necessary to determine whether or not such waste is Unacceptable Waste as that term is defined in this Scope of Work.

10.1 Contractor's Duty to Inspect Waste and Sign Invoice

- A. Within 30 minutes after each load of waste is dumped at the disposal site, Contractor shall inspect the load dumped and specify in writing on the Solid Waste Transport Invoice accompanying the delivery whether:
 - 1. the waste delivered, or any portion thereof is Suspicious Waste, as defined in this Scope of Work; or
 - 2. the waste delivered, or any portion thereof, is Unacceptable Waste, as defined in this Scope of Work.
- B. A copy of any invoice which indicates that any waste is Unacceptable or Suspicious shall be sent to Metro by certified or registered mail.

10.2 Contractor's Duty to Test Suspicious Waste

Contractor shall manage any Suspicious Waste delivered to the Disposal Site in accordance with all requirements of the law, and shall cause to be performed any testing of the "Suspicious waste" which is reasonably necessary to determine whether or not the waste is unacceptable waste. All testing of suspicious waste shall be done as soon as possible after delivery of such waste to the Disposal Site. Metro will reimburse Contractor for fifty percent (50%) of any testing and management costs which Contractor reasonably incurs under this section, except as provided below.

10.3 Contractor's Duty to Manage Unacceptable Waste and Metro's Reimbursement Therefor

If any inspection or testing performed or caused to be performed by Contractor (or any governmental authority or agency having jurisdiction over Unacceptable Waste) reveals that any waste which Metro's contractor delivered to the Disposal Site is Unacceptable Waste, Contractor shall manage and dispose of such unacceptable waste in accordance with all requirements of law. Metro shall reimburse Contractor for one hundred percent (100%) of

the Contractor's actual reasonable costs of managing and disposing of the Unacceptable Waste and of testing done to determine that the waste is unacceptable.

10.4 Conditions and Limitations on Reimbursement

The following conditions precedent shall apply to Contractor's right to any reimbursement:

- A. Contractor shall prove by clear and convincing evidence that the FGTS is the source of the unacceptable waste for which Contractor seeks reimbursement for testing or management or disposal of such waste:
- B. Contractor shall in cooperation with Metro, preserve and protect any and all evidence which may assist Metro in proving ownership of or responsibility for the unacceptable waste; and
- C. Contractor shall fully document Contractor's actual costs and the reasonableness of Contractor's actual costs for testing and managing suspicious waste and for managing and disposing of unacceptable waste.
- D. Metro's reimbursement to Contractor for any waste testing or management done pursuant to this section is limited to the costs of doing such testing or management in the least costly method available.
- E. Contractor shall comply with Section 10 of this Scope of Work.
- F. Contractor must prove by clear and convincing evidence that (i) that the seal was intact upon arrival at the site, (ii) that the FGTS was the source of the unacceptable waste and (iii) Contractor used reasonable care in its inspections and other measures to prevent such hazardous waste from being accepted and disposed of at the Disposal Site;
- G. Any costs incurred by Contractor for managing and disposing of any hazardous waste under this paragraph shall be the least costly method of managing and disposing of such waste in accordance with all requirements of law.
- H. Any other conditions precedent or limitations upon reimbursement established by the Contract remain valid.

10.5 Schedule for Reimbursement Payments

Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) under this section, which may include installment payments

over any extended period of time which may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

10.6 General Limitation on Metro's Liability

Except as otherwise provided in Section 10 of this Scope of Work, Metro shall have no duty to reimburse Contractor for nor to hold harmless, indemnify, nor defend Contractor against any claims, demands, suits, damages, penalties, charges, judgments, liabilities, or losses of whatsoever character or kind which may arise directly or indirectly from or are in any way connected with any negligent acts or omissions of contractor which relate to the management or disposal of unacceptable waste.

11.0 UNLOADING WASTE AT COLUMBIA RIDGE LANDFILL

If the successful proposal is for transport only, Contractor is responsible for unloading all waste transported pursuant to this Contract at the Columbia Ridge Landfill. The disposal site operator must indicate on the Solid Waste Transport Invoice receipt of the load. If the seal is not intact Contractor shall notify the disposal site operator immediately and the load shall be unloaded per instructions from the disposal site operator.

The CRL operator will provide all weather access to an unloading area during such hours of operation as are reasonably necessary. The unloading area will be constructed by the landfill operator such that the area will reasonably support and provide maneuverability for the Contractor's transfer vehicles, and be of sufficient size to locate the Contractor's tipper or allow for efficient unloading by self-unloading vehicles if this type of unloading system is used. Contractor shall establish detailed procedures with the CRL operator. The CRL operator is responsible to minimize unloading time at the site. Metro will act as the arbitrator of any disputes between the parties.

11.1 Tipper Unloading

The Contractor shall locate the tipper in the unloading area and expect to move the tipper to a new location in the unloading area approximately once per week in order to minimize the distance from the tipper to the working face of the landfill. In the event of thirty (30) days' notice from the landfill operator the Contractor will be required to relocate the tipper to a new unloading area. It is anticipated that the unloading area will change approximately once per month.

The Contractor shall bear all costs associated with the operation, maintenance and movement of the tipper, and any modifications to the unloading area that the Contractor

requires in order to operate a tipper, above and beyond the unloading area provided by the landfill operator.

Tipper operation shall be by suitably trained personnel, follow proper safety procedures, with equipment that meets applicable local/state and federal requirements, taking particular care to minimize exposure to crosswinds and to reduce windblown litter to the greatest extent practical. All equipment liquids shall be contained at all times and the Contractor shall notify the landfill operator as soon as possible of any significant spills of equipment liquids.

The tipper foundation shall not place a pressure greater than 50 pounds per square inch on the underlying material in the unloading area. The tipper (if used) shall be located so as to provide sufficient clearance for efficient removal of unloaded waste to the working face. The tipper shall be equipped with an automatic fire suppression system.

Alternatively, Contractor may develop arrangements with the CRL operator for unloading by this method.

11.2 Non-Tipper Unloading

The Contractor may utilize an unloading system other than tippers. Any such system shall be entitled to the access outlined above and must follow proper safety procedures, using trained personnel, with equipment that meets applicable local/state and federal requirements, taking particular care to minimize exposure to crosswinds and to reduce windblown litter to the greatest extent practical.

Contingent upon Metro approval the Contractor may change the unloading system at any time during the life of the contract.

The Contractor must develop an acceptable, detailed unloading operations plan to be submitted within 20 days of contract execution. Such plan shall be developed, consistent with the above general provisions, in coordination with Metro and the CRL operator.

12.0 REGULATORY APPROVAL

The Contractor shall be responsible for obtaining all necessary approvals for the services rendered under this Contract.

124

13.0 FEES

The Contractor shall be responsible for payment of all applicable taxes and fees. The Contractor shall include these costs in the unit prices to be received as payment for the Work, except for DEQ fees or similar applicable state regulatory fees (as determined by Metro) if outside Oregon, will be reimbursed by Metro to Contractor as a pass through.

14.0 CLOSURE

The Contractor is responsible for all costs associated with landfill closure, post closure maintenance, gas recovery and preparation for final use in a manner that is consistent with all federal, state and local permits, laws and regulations. Unit price and/or lump sum amounts proposed by the Contractor shall include all costs of whatsoever nature associated with landfill closure and Metro shall not be obligated financially to Contractor for any such costs even though they may be incurred after termination of the Contract. Upon request, Contractor shall submit a closure and post closure maintenance plan including cost estimate to Metro. This plan and cost estimate shall be detailed enough to meet the requirements of Oregon Administrative Rules, and any other applicable laws or regulations.

15.0 INSPECTION

The Contractor shall permit inspection of all facets of the Work by Metro, its representatives and governments authorities having jurisdiction over any parts of the Work, at all times. Metro shall have no duty to supervise or control any acts or omissions of any persons or parties, which acts or omissions are in any way connected with the Contract.

16.0 REGULATIONS

16.1 General

The Contractor shall be responsible for obtaining all necessary approvals and permits for the services rendered under this Contract including, but not limited to, complying with all applicable State, Federal and Local regulations.

16.2 Trucking

Each tractor shall be equipped with a two-way radio capable of communicating with the Contractor's office. All tractors shall be equipped with a 10-pound ABC fire extinguisher with a 4A 60BC UL rating. The use of "Jake" brakes is prohibited.

17.0 CONTINGENCY PLANS

17.1 General

The Contractor will submit to Metro comprehensive plans for dealing with the following:

- A. Emergency operating procedures in the event of a work stoppage by any of the Contractor's employees or subcontractors
- B. Emergency procedures in the event of breakdown or accident of any of the major equipment components directly involved in the transport and disposal of waste controlled by the Contractor.
- C. Emergency procedures in the event of a breakdown in the unloading operation.
- D. Emergency inclement weather operating procedures to avoid any interruption of service.
- E. Plans must include time frame, sources for the implementation of the plan, and a description of replacement equipment. Contingency plans must be approved by Metro but such approval shall not be construed as a limitation on Contractor's obligation to transport and dispose waste in a timely manner as described elsewhere in this contract.

17.2 Back-Up System

The Contractor shall provide a back-up disposal and/or transport system in the event of failure of the primary system, within 24 hours of such failure. The backup system shall be described in plans submitted to Metro. Metro must be satisfied that the back-up system will work or the Contractor will be required to alter the proposed system.

17.3 Emergency

Contractor will provide to Metro a comprehensive plan designed to minimize hazards (during storage and transit) to human health and the environment; damage to property; the interruption of waste transfer and/or traffic along transportation routes and at the disposal site due to:

- A. Fires and explosions
- B. Release of hazardous/unacceptable waste constituents

C. Release of any solid waste constituents

The contingency plan must include:

1. A description of actions which transport and disposal personnel must take in response to A, B, and C above.
2. Evidence of arrangements with local emergency response agencies setting forth what services will be rendered by each agency in the event of an emergency.

The Emergency Contingency Plan in no way lessens the Contractor's full responsibility to comply with all applicable regulatory provisions for transporting and disposing solid waste.

18.0 SAFETY AND EMERGENCY RESPONSE TRAINING PROGRAM

Contractor is responsible for the safety of their employees. At a minimum an employee safety orientation and training program will be implemented prior to start of operations and will continue throughout the Contract term. The Contractor will designate a staff member to serve as the transportation and disposal system safety coordinator. The coordinator will be responsible for the implementation of the following program requirements:

- A. Newly hired employees will be provided with an orientation of the safety program, instructions regarding personal safety and the emergency and general contingency plan.
- B. A thorough investigation of all accidents to ascertain the cause and methods of preventing a reoccurrence of similar accidents.

If death or serious injuries or serious damages are caused by an accident related to this Contract the accident shall be reported immediately by telephone or messenger to the Metro Solid Waste Department. In addition, the Contractor must promptly report in writing to Metro all accidents whatsoever arising out of, or in connection with the performance of the work, giving full details and statements of witnesses.

If a claim is made by anyone against the Contractor or any subcontractor as a result of any accident related to this Contract, the Contractor shall promptly report the facts in writing to Metro, giving details of the claim.

19.0 CONTRACTOR LIABILITY

The Contractor will be held responsible for any damage attributed to their operations including, but not limited to, equipment used in the loading the trailer. The Contractor shall repair or replace any such damage at no additional charge to Metro in a timely manner.

The Contractor will be responsible for all costs incurred from any release of solid waste or liquids during transport and storage. Contractor is responsible for any costs associated with unacceptable waste if the seal on the trailer is broken prior to arrival at the Disposal Site .

20.0 ADDITIONAL WORK

Metro reserves the right to negotiate with the Contractor for the disposal and/or transport of waste from or to any additional sites.

21.0 METRO'S RIGHT TO PURCHASE FUEL

Metro reserves the right at any time during the life of this Contract to purchase the fuel used in performance of the work, for which the Contractor must pay the Federal Excise Tax. Upon request from Metro, Contractor will supply to Metro all records requested in order to verify the amount of fuel for which the tax has been paid, the tax paid and any other relevant documentation requested by Metro. Metro may, at its option, begin the purchase of fuel and the supplying of such fuel to the Contractor, upon 30 days written notice. The Contractor's payment shall be reduced proportionate to the reduction in fuel expenses and any related additional expenses or profits, in accordance with the Article 13 of the General Conditions. Metro reserves the right to discontinue the purchase of fuel upon 60 days written notice to the Contractor. Contractor shall resume the purchase of fuel within 60 days notice from Metro. Contractor shall receive an increase in the unit prices commensurate with the above reduction upon resumption of their purchasing the fuel.

GENERAL CONDITIONS
TABLE OF CONTENTS

ARTICLE 1	<u>General Provisions</u>	1
ARTICLE 2	<u>Intent of the Contract Documents</u>	4
ARTICLE 3	<u>Metro's Responsibility</u>	5
ARTICLE 4	<u>Contractor's Representative</u>	5
ARTICLE 5	<u>Independent Contractor</u>	5
ARTICLE 6	<u>Subcontractors</u>	6
ARTICLE 7	<u>Separate Contract</u>	7
ARTICLE 8	<u>Allocation of Risk/Force Majeure</u>	7
ARTICLE 9	<u>Liquidated Damages</u>	9
ARTICLE 10	<u>Metro's Rights and Remedies for Defaults in Performance of the Contract</u> ...	10
ARTICLE 11	<u>Contractor's Right to Terminate</u>	13
ARTICLE 12	<u>Basis and Method of Payment</u>	13
ARTICLE 13	<u>Additional or Deleted Work</u>	17
ARTICLE 14	<u>Indemnification</u>	21
ARTICLE 15	<u>Performance and Labor and Materials Bonds</u>	22
ARTICLE 16	<u>Contractor's and Metro's Liability Insurance</u>	23
ARTICLE 17	<u>Permits and Regulations</u>	25
ARTICLE 18	<u>Royalties and Patents</u>	26
ARTICLE 19	<u>Taxes and Fees</u>	26
ARTICLE 20	<u>Title to Waste</u>	26
ARTICLE 21	<u>Materials, Employees and Workmanship</u>	27
ARTICLE 22	<u>Arbitration</u>	27
ARTICLE 23	<u>Attorney's Fees</u>	28
ARTICLE 24	<u>Assignment</u>	28
ARTICLE 25	<u>Change of Ownership</u>	28
ARTICLE 26	<u>Public Contracts</u>	29
ARTICLE 27	<u>Assignment of Antitrust Rights</u>	30
ARTICLE 28	<u>Start of Contract, Contract Completion and Contract Extensions</u>	31

GENERAL CONDITIONS

ARTICLE 1

General Provisions

- A. Contractor shall comply with each and every provision of the Contract Documents.
- B. The Contract shall be deemed to have been made in and shall be construed under the laws of the state of Oregon. Any and all disputes arising under this Contract shall be decided under Oregon law.
- C. Contractor shall address all correspondence for Metro to Metro's designated Contract Manager.
- D. Contractor and its officers, employees, agents and subcontractors shall perform each and every service to be performed under this Contract in a skillful and competent manner in accordance with the highest standards of the solid waste and transportation industries. Contractor shall be responsible to Metro for any and all errors or omissions in the performance of this Contract and for any and all failures to perform this Contract.
- E. Contractor warrants that the personnel and equipment used in the performance of this Contract shall conform with the representations made in Contractor's statement of qualifications and shall otherwise be of the highest quality.
- F. In performing each and every service to be performed under this Contract, Contractor, its officers, employees, agents and subcontractors shall comply with all applicable laws, regulations, ordinances, orders and all other requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities, and Contractor shall accordingly give all notices and obtain all licenses and permits so required by law. The latter requirements of law include, but are not limited to, all applicable statutes, regulations and orders concerning minimum wage rates, non-discrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees and similar subjects. Copies of all correspondence or any other documents sent from, or received by, the Contractor, its officers, employees, agents or subcontractors to any federal, state, regional, county or local government agency, relative to any and all of the requirements of law referred to by this paragraph shall be retained by the Contractor for a period of two years, and be available for inspection by Metro. Metro shall be informed of such correspondence at the monthly meetings. Examples of such correspondence include, but are not limited to, citations received from the State Highway Division. All agreements between Contractor and persons, firms, and corporations employed for this Contract shall contain this paragraph's requirements. The document retainage requirements of this paragraph shall survive the expiration of the Contract for a period of two years.

- G. Except as provided in Article 8, Contractor shall use its primary transport and disposal system in performing this Contract unless Contractor has received prior written (or verbal in the event of an emergency) approval from Metro to use an alternate system. Metro is under no obligation whatsoever to grant such approval. In the event that Metro approves Contractor's use of an alternate system and except as provided in Article 8, Contractor shall not be entitled to any additional compensation or consideration but shall continue to faithfully perform every provision of this Contract.
- H. Any written notice required or allowed under the Contract shall be deemed to have been duly served if delivered in person to the individual, member of the firm, entity or an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address of the relevant person or party known to him/her who gives the notice. The date or time of service for purposes of all notices required or allowed under the Contract shall be the time or date the relevant document was sent by mail or personally delivered to the proper address.
- I. Time limits stated in this Contract are of the essence. No waiver of the Contract time limits or schedule dates is to be construed by Metro's failure to object to untimely performance under the Contract. In any event, any waiver of such time limits or schedules shall not be construed as a waiver of any future time limits or schedules.
- J. Metro shall have the right to inspect and copy all records and documents, to interview any persons, and to review any evidence in Contractor's possession or control which may assist Metro in determining whether and by what amount:
1. Contractor is entitled to reimbursement or increased payment under any applicable provision of this Contract; or
 2. Metro is entitled to credits or to make reduced payments to Contractor under any provision of this Contract.

Metro shall also have the right to reasonably request any information it deems necessary to determine Contractor's ability to perform or to continue to perform this Contract. Contractor shall comply with all such requests by Metro within ten (10) days of receipt of such requests.

- K. Contractor shall at all times maintain an accounting system which utilizes generally accepted accounting principles for all services rendered and materials supplied, including additional and deleted work, in connection with this Contract. Contractor's accounts and records covering these charges and all invoices and payments on account of the Contract, as adjusted for additional and deleted work, shall at all reasonable times during the term of this Contract, and for two (2) years thereafter, be open to inspection by Metro or its authorized representatives.

- L. Contractor agrees to promptly pay all subcontractors, material persons, suppliers, or laborers engaged for purposes of this Contract in accordance with any and all contracts between any such persons (or entities) and Contractor. Contractor agrees to immediately remove any liens or encumbrances which, because of any act or default of Contractor, its officers, employees, or agents, or of Contractor's subcontractors or material suppliers of any tier, are filed against any property, real or personal, which Contractor, its officers, employees, subcontractors and other agents, interferes with the performance of this Contract; and to defend, indemnify, and hold Metro harmless as required by Article 4, infra.
- M. No provision or provisions of this Contract nor any authority granted by the Contract is intended to create or result in any personal liability for any public official or employee or agent of Metro, nor shall any provision or provisions of the Contract be construed to create any such liability. No approval given by Metro pursuant to this Contract shall be construed to relieve Contractor of any of its obligations to perform this Contract.
- N. In the event any provision(s) or clause(s) of this Contract is/are void, invalid, or unenforceable under any federal, state, regional or local laws, regulations or ordinances, the balance of the Contract shall remain in effect and binding on the parties hereto.
- O. A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

Where the condition to be waived is a material part of the Contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of a Contract modification as provided for elsewhere in this section.

- P. The parties agree that proper and exclusive venue for any and all actions under this Contract or any subcontracts of any tier made pursuant to this Contract shall be in the county of Multnomah, the state of Oregon, or if in federal court, the Federal District Court of Oregon.
- Q. Contractor shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

ARTICLE 2

Intent of the Contract Documents

- A. All services which are necessary to complete the Contract within the limits and in the manner established by these Contract Documents, shall be considered as a part of the Contract and such services shall be executed by Contractor without extra compensation in the same manner and with the same quality of material and services as required by other portions of the Contract.
- B. Unless expressly stipulated otherwise, Contractor shall provide and pay for all services, labor, overtime labor, standby labor, methods, materials, equipment, transportation, necessary maintenance, power, fuel, water, taxes and all other facilities and services, including operating costs of checking out equipment, and all other items and facilities of every kind necessary for performance of this Contract.
- C. Words describing material or work which have a well-known technical or trade meaning, unless otherwise specifically defined in this Contract, shall be construed in accordance with such well-known meaning, recognized by solid waste and transportation professionals, engineers and trades.
- D. The Contract and each of the Contract Documents are complementary, and they shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should Contractor observe any conflicts between or duplications of any provisions of the Contract, he/she shall bring them to Metro's attention for decision and revision immediately after originally observed. In the event of duplications of or conflicts between any provisions of the Contract after the Contract has been executed, the following priority of documents shall be used to resolve such duplications or conflicts:
- 1) Scope of Work,
 - 2) General Conditions,
 - 3) Contract Forms,
 - 4) Request for Proposals.
 - 5) Contractor's Proposal

For purposes of the above priority list, any appendices, addenda, amendments or changes to the above documents which are agreed to by the parties hereto shall be given the same priority as the documents to which they apply; however, only those portions of appendices to Contractor's Proposal which have been specifically approved by Metro shall be considered part of the Contract Documents.

A duplication of services or items to be performed is not intended by any provision or provisions of the Contract, and any such duplications specified by the Contract shall not become a basis for extra cost to Metro.

Detailed information takes precedence over general information and words take precedence over numbers unless obviously incorrect.

- E. Contractor shall secure written instructions from Metro's Contract Manager before proceeding with services affected by omissions, discrepancies, conflicts or duplications in the provisions of the Contract.
- F. It is understood and agreed that, by execution of this Contract, Metro does not waive or surrender any of its governmental powers.

ARTICLE 3

Metro's Responsibility

It is not incumbent upon Metro to notify Contractor when to begin, cease or resume services under this Contract, nor to give early notice of rejection of faulty services, nor in any way to superintend so as to relieve Contractor of any liability, any responsibility or any consequences for neglect, negligence or carelessness or for substandard or defective services or for use of substandard or defective materials or equipment by Contractor, his/her officers, employees, subcontractors or agents.

ARTICLE 4

Contractor's Representative

- A. Contractor shall provide the services of a competent Representative for the term of this Contract. Prior to performing services under this Contract, Contractor shall notify Metro in writing of the name, title, address and telephone number of Contractor's Representative.
- B. The Representative shall be readily available, shall have authority to furnish estimates on behalf of the Contractor and shall otherwise have full authority to bind the Contractor.
- C. The Representative shall represent Contractor for all purposes of this Contract, and all directions, instructions, or notices given to the Representative by Metro shall be as binding upon Contractor as if delivered personally to Contractor.

ARTICLE 5

Independent Contractor

Contractor shall perform all work under this Contract as an independent Contractor. Contractor is not and shall not be considered an employee, agent or servant of Metro for any purposes, under this Contract or otherwise; neither shall any of Contractor's subcontractors, employees or agents be, nor shall they be considered employees, agents, subagents or servants of Metro for any purposes under this Contract, or otherwise. Contractor shall have exclusive control of and the

exclusive right to control the details of the services and work performed hereunder and all persons performing the same. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Contract shall be construed as creating a partnership or joint venture between Metro and Contractor. Nothing in the Contract shall be construed as giving Metro any duty to supervise or control any acts or omissions of any person, entity or party, which acts or omissions are in any way connected with the performance of services under the Contract.

ARTICLE 6

Subcontractors

- A. Contractor shall submit to Metro the names and addresses of proposed subcontractors and suppliers for each of the major subcontracts (over \$50,000 per year) of the Contract in accordance with the Scope of Work.
- B. All subcontracts in connection with the Contract entered into by Contractor with its subcontractors, officers, employees and agents, and any and all related facilities, all leases of equipment or other materials and all purchase or finance agreements for equipment or other materials shall be subject to applicable state, federal and local laws, and the applicable conditions of this Contract. All subcontracts of whatever nature including, but not limited to, leases, purchase and finance agreements, shall contain a clause which provides that if Contractor, in Metro's opinion, defaults in performance of this Contract and Metro accepts assignment of the subcontract, then subcontractor shall enter into a novation of the subcontract with Metro and shall recognize Metro or its assignee as Contractor and that Metro or its assignee shall have all the rights, remedies and responsibilities of the Contractor under the relevant subcontract. Upon written notice from Metro, Contractor agrees to assign all of its rights in all such subcontracts to Metro upon Metro's determination that Contractor has defaulted under the terms of this Contract.

Contractor shall be as fully responsible to Metro for the acts and omissions of his/her subcontractors and suppliers, and of the subcontractors, suppliers, employees, firms, agents or servants of each subcontractor as he/she is for the acts or omissions of his/her own employees or agents. No provisions of this Contract nor of any contract between the Contractor and his/her subcontractors shall be construed as creating any contractual relation between those subcontractors and Metro.

ARTICLE 7

Separate Contract

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

ARTICLE 8

Allocation of Risk/Force Majeure

- A. Representations of Parties -- Prior to submitting any Bids, Contractor is required to acquaint himself/herself with all transfer and disposal sites and all other conditions relevant to the performance of this Contract, and make all investigations essential to a full understanding of the difficulties which may be encountered in performing the Contract.

Contractor represents that prior to submitting his/her Bid for the Contract, he/she has examined carefully the Scope of Work, acquainted himself/herself with all other conditions and regulations relevant to the Contract, and made all investigations essential to a full understanding of any and all difficulties which may be encountered in performing the Contract.

By awarding the Contract to Contractor, Metro does not warrant or admit the correctness of any investigation, interpretation, deduction or conclusion relative to any condition or conditions of the Forest Grove Transfer Station or any other condition related to this Contract. Contractor has made and shall make his/her own deductions and conclusions as to any and all problems which may arise from such site conditions as they relate to this Contract and any other condition or requirement of this Contract, and shall accept solely for himself/herself full legal responsibility and liability.

B. Effect of Force Majeure on Obligations

1. Metro's Obligations -- In the event that Metro is rendered unable, wholly or in part, by the occurrence of a force majeure to carry out any of its obligations under this Contract, then Metro's obligations, to the extent affected by such occurrence, shall be suspended during the continuance of such inability.
2. Contractor's Obligations -- Contractor shall ensure that a back-up disposal and/or transport system is available for use in performing this Contract should a failure of its primary system occur due to the occurrence of a force majeure. The back-up system shall be that system proposed by Contractor and accepted by Metro.

In the event that a force majeure precludes the use by Contractor of its primary disposal and/or transport system in carrying out this Contract, Contractor shall put into active use its back-up disposal and/or transport system not more than 24 hours from the point in time that waste ceases to be transported and/or disposed by Contractor's primary system. In the event of any question as to precisely when waste ceases to be disposed and/or transported by Contractor's primary system, Metro's decision shall be final.

As consideration for putting its back-up system into active use in performing this Contract, Metro shall pay Contractor pursuant to Article 13(C); however, the amount of any reduced cost in not operating the primary system shall be calculated pursuant to Article 13(F) and shall be subtracted from the amount due Contractor.

For purposes of this Article, "active use" shall mean the extent of operation of the back-up system necessary to comply completely with these Contract Documents including, but not limited to, the disposal and/or transport of all waste required pursuant to this Contract.

Contractor's active use of the back-up system shall be for the period during which such force(s) majeure continues and shall then cease and be replaced by the primary system. In the event that a force majeure or forces majeure preclude the use by Contractor of both its primary and back-up systems, Contractor shall, at Metro's request, use its best efforts to make available to Metro alternative arrangements which would allow full performance of this Contract. In the event that Metro requests an alternate system and Contractor makes available such a system, Contractor shall be paid in the same manner as it would be paid for the active use of the back-up system as described above.

3. Notice of Force Majeure -- In the event that either party intends to rely upon the occurrence of a force majeure to suspend or to modify its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible, setting forth the particulars of the circumstances. Notices shall likewise be given after the effect of such occurrence has ceased.

ARTICLE 9

Liquidated Damages

- A. In the event of any default of this Contract by Contractor which default, in the sole opinion of Metro, substantially impedes the normal operations of the Forest Grove Transfer Station, Contractor shall have one hour to remedy the situation such that, in Metro's sole opinion, operations at the Forest Grove Transfer Station have returned to normal. If Contractor fails, in Metro's sole opinion, to do so, Contractor shall pay Metro at the rate of \$400 per hour or portion thereof until Contractor has, in Metro's sole opinion, returned Forest Grove Transfer Station operations to normal. For purposes of this Contract, the phrase "substantially impedes the normal operations of any transfer station" shall mean the failure of Contractor to supply at least one empty container or transfer trailer to the transfer station operator or to remove loaded containers or transfer trailers from the staging area, so that at no time are there more than a total of five (loaded or empty or any combination thereof) containers in the staging area.
- B. In the event of any default of this Contract by Contractor which default, in the sole opinion of Metro, results in the filling of the holding area for waste at the Forest Grove Transfer Station to maximum capacity, the Contractor shall pay liquidated damages to Metro in the sum of \$6,000 per hour, or any portion thereof, until such time as Contractor remedies the default.

In addition, if such a default continues for a period in excess of 24 hours, Metro shall recover no more liquidated damages for periods beyond such 24 hour period, or beyond the period the liquidated damages situation exists, whichever is less. Metro shall, however, be entitled to all other remedies for Contractor's continued default which this Contract or the law provides.

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

ARTICLE 10

Metro's Rights and Remedies for Defaults in Performance of the Contract

Nothing in this Article, and no actions taken pursuant to this Article shall constitute a waiver or surrender of any rights, remedies, claims or causes of action Metro may have against Contractor or its Surety under any other provision of this Contract or any provision(s) of law.

A. Metro's Rights and Remedies for Contractor's Default which result in Liquidated Damages -

- For each and every event of default by Contractor which default, in Metro's sole opinion, results in liquidated damages and if neither Contractor nor Surety, within twenty-four (24) hours after written notice of such default has been served upon both Contractor and Surety, cures such default or gives Metro reasonable assurances that the default will be promptly cured, Metro shall have the unconditional right to all of the following remedies to the extent permitted by law.

1. Equitable Remedies -- For each and every default under Article 10 A., Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or materials covered by Article 6 B.
2. Liquidated Damages -- As an additional remedy for each and every default under Article 10 A., Metro is entitled to liquidated damages, as provided in Article 9.
3. Actual Damages -- For each and every event of default under Article 10 A. which lasts more than 24 hours, Metro shall be entitled to recover its actual damages for the period of default beyond the 24 hour period. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 23.
4. Termination or Suspension of Contractor's Contract -- For each and every event of default under Article 10 A. which lasts longer than twenty-four (24) hours after written notice of such default has been served upon both Contractor and Surety, Metro shall be entitled to terminate or suspend the contract in accordance with Section C. of this Article. Alternatively, for each and every event of default under Article 10 A. which lasts longer than 10 days, Metro shall be entitled to terminate or suspend the Contract immediately and without the necessity of notice to Contractor.

- B. Metro's Remedies for Defaults Other than Defaults in Article 10 A. -- For each and every event of default other than a default under Article 10 A., if neither Contractor nor Surety, within thirty (30) days after written notice of such default has been served upon both Contractor and Surety, cures such default or gives Metro reasonable assurances that the default will be promptly cured, Metro shall have the unconditional right to one or more of the following remedies to the extent permitted by law:

1. Equitable Remedies -- For each and every default under Article 10 A., Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or materials covered by Article 6 B.
2. Actual Damages -- As an additional remedy, for each and every default under Article 10 B., Metro shall be entitled to recover its actual damages during all periods of default. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 22. No liquidated damages remedy shall apply to defaults under this section.
3. Termination or Suspension of Contractor's Performance of the Contract -- For each and every event of default under Article 10 B. which lasts longer than thirty (30) days, Metro shall be entitled to terminate or suspend Contractor's performance of the Contract in accordance with Section C of this Article.

- C. Procedure for Termination or Suspension of the Contract by Metro -- To terminate or suspend the Contract, Metro must notify in writing both Contractor and Contractor's Surety of Metro's intent to terminate or suspend the Contract.

Within ten (10) days of service upon Contractor of Metro's notice of intent to terminate or suspend the Contract, Contractor shall either:

1. cure any defaults in performance; or
2. discontinue his/her work on the Contract or such part thereof as Metro shall designate.

If Contractor does not cure any defaults within ten (10) days after service of the notice of intent to terminate or suspend the Contract, Surety may, at its option, take over and assume full and complete performance of the Contract or that portion thereof which Metro has ordered Contractor to discontinue, and may perform the same or may sublet the work or that portion of the work taken over by a contractor or contractors acting on behalf of Surety; provided, however, that the Surety shall exercise its option and begin performance of the work, if at all, within ten (10) days after Surety is served with a copy of the written notice of termination or suspension. The Surety shall be paid by Metro for all work performed by Surety in accordance with and subject to each and every term of the Contract.

Surety shall be subject to each and every term and condition of the Contract.

- D. Metro's Remedies if Contractor Becomes Insolvent, Dissolved, Bankrupt, Files for Bankruptcy, Makes a General Assignment for Creditors -- The parties agree that if Contractor becomes insolvent, is dissolved, files for Bankruptcy, is adjudged bankrupt, or

makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Metro shall be entitled to request of Contractor or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor and Surety to comply with such request within ten (10) calendar days of service upon both Contractor and Surety of a written request from Metro for such assurances shall entitle Metro to terminate or suspend Contractor's performance of the Contract under Section C. of this Article. Metro shall not be bound to the Contract by an insolvent Contractor's trustee or receiver.

- E. Procedures and Remedies for Termination Under Force Majeure -- If an event or events of force majeure preclude the use of both Contractor's primary and back-up systems as described in Article 8 and Contractor is unable, after exerting its best efforts, to make available an alternate arrangement, then Metro shall have the right, in its sole discretion, to terminate this Contract. Additionally, in the event that any single event of force majeure lasts longer than ninety (90) days, Metro shall have the right, in its sole discretion, to immediately terminate this Contract. In the event that Metro chooses to terminate the Contract under this section, Metro shall serve Contractor with written notice of such intent and shall reimburse Contractor for all actual costs which Metro determines Contractor has incurred in performing the Contract prior to service upon Contractor of the notice to terminate plus an amount equal to ten percent (10%) of such costs less the total payments which Metro has paid Contractor prior to service of the notice of termination upon Contractor. It shall also be a condition precedent to any payments under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the notice of termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.
- F. Procedures and Remedies for Metro Termination for the Convenience of the Government -- In the event the agreement between Metro and A.C. Trucking, Inc. for operation of the Forest Grove Transfer Station is terminated, Metro shall have the right, in its sole discretion, to terminate this Contract. Metro shall provide the Contractor written Notice of Termination under this section. In the event Metro exercises its right to terminate the Contract under this section, Metro shall reimburse the Contractor for all actual costs which Metro determines Contractor has incurred in performing the Contract prior to issuance of the Notice of Termination, plus an amount equal to ten percent (10%) of such costs less the total payments which Metro has paid Contractor prior to service of the Notice of Termination. It shall also be a condition precedent to any payment under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the Notice of Termination. Metro shall

determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

ARTICLE 11

Contractor's Right to Terminate

Should Contractor be unable to perform this Contract by using either its primary or back-up system for a period of sixty (60) days or more by 1) a public authority other than Metro; or 2) by Metro (if Metro is acting in violation of Contractor's rights under the Contract) and either inability is through no fault of Contractor, then Contractor, upon seven (7) days' written notice to Metro may stop the work or terminate the Contract and recover from Metro that portion of the Contract payments, less the aggregate of previous payments, allowable to the Contract completed as of the date of termination, plus his/her demonstrated actual damages; however, in such event, Metro will make no payments to Contractor for any work done on the Contract after the date of termination.

ARTICLE 12

Basis and Method of Payment

- A. Rates -- For all work required under this Contract, Metro will make monthly payments to Contractor based on the rates set forth in the Contractor's Bid. Monthly payments shall include as pass through costs and any DEQ Solid Waste fees paid by Contractor and which are attributable to Contractor's handling of waste pursuant to this Contract.

On or prior to the eighth day of each month, Contractor will submit to Metro a billing which indicates the quantity of waste transported and disposed from the Forest Grove Transfer Station pursuant to the Contract. The value of unit price work shall be based upon the number of loads or tons of waste actually transported and disposed according to the Contract Documents for the calendar month just completed.

The Contractor shall furnish to Metro such detailed information as set forth in these Contract Documents (including records from the Forest Grove Transfer Stations) and as Metro may request to aid in the preparation of monthly payments. After approval by Metro, Metro will pay to the Contractor by the 25th day of the following the value of the work less any previous payments.

- B. Price Adjustment -- Unit prices shall be adjusted up or down each year of this Contract, beginning with the first anniversary of the Contract, to reflect changes in the cost of doing business as measured by the percentage price adjustment.

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

$$AI = ((CI_x - CI_B) / CI_B) \times \%$$

AI = Percentage price adjustment

CI_x = Consumer Price Index average for the current year

CI_B = Consumer Price Index average for the previous year

% = Percent adjustment bid by the Contractor in the Proposal

The Consumer Price Index will be based on the index entitled "West-A" from the U. S. Department of Labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes, Pacific Cities and U.S. City Average, All Urban Consumers." The index will be a twelve (12) month average for the current year minus a twelve (12) month average for the previous year divided by the previous year's average.

Example

If the Contract began in January of 1995, then the current year index would be calculated by adding the West-A indices for January 1995 through December 1995 and dividing the result by 12 (round to one decimal place). The previous year index would be the sum of the West-A indices for January 1994 through December 1994 and dividing the result by 12 (round to one decimal place). Subtract the previous year index from the current year index and divide by the previous year index. Multiply the result by the percent bid in the Proposal. Round the result to the third decimal place.

Percent changes in the index shall be calculated using 1982-84 as the base year until the Bureau of Labor Statistics publishes data on a new base period. Calculations shall be made from data on the new base from that time forward.

If the BLS series specified above is discontinued, the contracting parties shall agree upon a substitute series by November 1 of any calendar year. If BLS designates an index with a new title and/or code number or table number as being the continuation of the index cited above, the new index will be used. If the specific index "West-A" is discontinued but the "U.S. City Average" remains, this latter index will be used. Otherwise, a substitute shall be agreed upon by the parties.

The price adjustment shall take place as soon as written data are available from BLS.

- C. Petition for Increased Costs Due to Change in Law -- For purposes of this section, and Section D of this Article, the term "change in law" means any new or revised laws, statutes, rules, regulations, ordinances, or a final judicial determination thereof rendered by a court of competent jurisdiction in the state of Oregon. Upon petition of Contractor and subject to approval of Metro as described in this section, Metro shall pay, subject to the limitations, conditions and procedures stated below, one hundred percent (100%) of Contractor's

reasonable, actual increased costs of performing the Contract if such increased costs are directly attributable to changes in law which increase the cost of Contractor's performance of the Contract, and if such changes in law become effective at any time after the deadline for submission of Proposals.

1. Local and County Law -- Limitations: Metro shall reimburse Contractor, subject to the terms and conditions of this section, for reasonable, actual increased costs due to changes in local and county laws if and only if such changes are applicable to all businesses in the relevant county or local area. Metro shall not compensate Contractor for any increased costs due to changes in local or county laws to the extent that such laws are applicable only to Contractor, Contractor's activities in connection with this Contract, or to persons or entities engaged in the waste management or transportation industries.
2. Federal, State or Local Taxes, Fees or Surcharges: Metro shall not be obligated to reimburse Contractor for any cost increases or expenses Contractor may incur due to increase in the rates of federal, state or local taxes, fees or surcharges of whatever nature. Metro shall not reimburse Contractor for any increases in state weight and mile taxes or fees. In addition, state DEQ fees are to be passed through under Article 12A and therefore shall not be the subject of a petition under this paragraph.
3. General Conditions and Limitations on Reimbursement: Reimbursement shall be allowed under this section only for any costs incurred which are the least costly means of ensuring full compliance with and which are directly necessitated by the relevant change in law. No reimbursement for cost increases shall be allowed for any cost increases which are in any way attributable to Contractor's operations or to Contractor provided sites or to conditions, operations, or activities at Contractor-provided site(s), or conditions, operations or activities which are caused by Contractor or his/her subcontractors, employees, agents, or servants, or which are otherwise within Contractor's control.

Contractor must fully demonstrate and document the need for the requested reimbursement to Metro's satisfaction and approval as a condition precedent to Contractor's right to any payment under this section.

4. Cancellation of Reimbursement: Metro may at any time cancel any reimbursement made under this section which was made in error. Contractor shall at all times keep Metro informed as to whether any reimbursement remains necessary. Also, upon Metro's request, Contractor shall immediately provide Metro with all documents or information or other evidence in Contractor's possession or control which Metro requests to determine whether there is a continuing need for any and all reimbursements made under this section.

5. Schedule of Payment of Reimbursement: Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

D. Deductions from Payments for Reduced Costs due to Changes in Law -- Metro shall be entitled to reduce payments to Contractor subject to the conditions stated below, to reflect one hundred percent (100%) of the reduced costs of Contractor's performance under the Contract which reduced costs are attributable to any categories of changes in law for which Contractor is entitled to reimbursement of increased costs under the previous section. Metro may at any time serve Contractor with notice and explanation of Metro's intent to reduce payments under this paragraph. Within thirty (30) days of service of such notice, Contractor shall respond in writing to such notice and such written response shall state whether or not Contractor believes that any deductions from payments due Contractor are justified by the change in law and shall state any reductions in the costs of performing the Contract due to the relevant change in law. Contractor shall fully document and otherwise support its response to Metro's notice under this section.

Upon written petition of Contractor, Metro may at any time cancel reductions made under this section if Metro determines that the need for the reduction has expired or that a reduction was made in error. Contractor shall at all times keep Metro informed as to both when any reduction due to change in law is appropriate, and as to when any reduction is no longer appropriate.

E. Partial payments shall not constitute acceptance by Metro of Contractor's work nor be construed as a waiver or surrender of any right or claim by Metro in connection with the work.

F. Contractor shall submit his/her invoices with a detailed cost breakdown in accordance with the procedures approved by Metro.

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

Nothing in this section is meant to establish an exhaustive list of all the conditions precedent to payment in this Contract. Any and all conditions precedent to payment established by this Contract but not contained in this section remain valid.

- H. Final payment shall fall due only after Contractor shall:
1. Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales, and employee withholding taxes.
 2. Pay and obtain release of record, of all liens and all other encumbrances which relate to the services performed under this Contract.
 3. Deliver to Metro written releases of all rights to file liens against any sites, signed by each subcontractor and material provider who performed labor or furnished materials in connection with the work.
 4. Deliver to Metro his/her written undertaking, with sureties acceptable to Metro:
 - a. To promptly pay and obtain a release of record as to liens in connection with the work covered by this Contract which may in the future affect transport sites; and
 - b. To defend and indemnify and save Metro harmless from any liability or expense because of any such lien or the enforcement thereof.
- I. Final payment shall be deemed to occur when Contractor negotiates an instrument from Metro which instrument Metro has designated as final payment.
- J. When final payment occurs, Contractor warrants that he/she has received payment in full for his/her performance of the Contract and waives all further claims against Metro in connection with the Contract. Contractor's acceptance of final payment by Metro shall be conclusive proof of Metro's full and complete performance of the Contract.

ARTICLE 13

Additional or Deleted Work

- A. Payment or Credit for Additional Work -- All requests for payment for additional work shall be made only under the conditions and procedures of this Article. For purposes of this Article, the term "additional work" means work which is in addition to the work required to be performed under the original Contract or any amendments thereof, but does not include any work required to comply with any changes in law, statutes, rules, regulations, ordinances, permit(s) or permit conditions. Nothing in this Article is intended to negate or

lessen any other preconditions or procedures for such payment or reimbursement provided by any other provisions of the Contract.

- B. Request for Proposal for Additional Work -- Within fourteen (14) calendar days after receipt of an RFP for additional work from Metro, Contractor shall submit to Metro an itemized proposal stating the actual and reasonable costs to Contractor for performing such additional work, a schedule for performing such work, and the effect, if any, on Contractor's performance of the existing Contract work by reason of the additional work. Contractor's proposal shall be based on the least costly method for performing the additional work in accordance with all provisions of the Contract.

No request for proposals by Metro shall be construed as authorization for Contractor to perform the additional work covered by such RFP. To obtain authorization to perform any additional work, Contractor must be notified in writing by Metro that Contractor is ordered to proceed with the relevant additional work. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro rejects Contractor's proposal but orders the additional work to be performed, Contractor shall perform the additional work. If Metro does not order Contractor to perform the relevant work, Contractor shall not be entitled to any reimbursement for the work in Contractor's proposal.

- C. Force Account Work -- If the amount of payment cannot be agreed upon prior to the beginning of the work, and Metro directs that the work be done by written Change Order on a force account basis, then the Contractor shall furnish labor, equipment, and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

1. Labor, including forepersons who are directly assigned to the force account work (actual payroll cost, including wages, customary fringe benefits, labor insurance, and labor taxes as established by law). No other fixed labor burdens will be considered, unless approved in writing by Metro.
2. Material delivered and used on the designated work, including sales tax, if paid for by the Contractor or his/her subcontractor.
3. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of \$100.
4. Additional Bond, as required and approved by Metro.
5. Additional insurance (other than labor insurance, as required and approved by Metro).

To the costs above there shall be added a fixed fee of ten percent (10%) of the cost of Items 1, 2, and 3 and a fixed fee of five percent (5%) to the cost of Items 4 and 5.

An additional fixed fee of ten percent (10%) shall be allowed the Contractor for the administrative handling of portions of the work that are required to be performed by an approved subcontractor. No additional fixed fee will be allowed for the administrative handling of work performed by a subcontractor of a subcontractor, unless by written approval of Metro.

The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other general expense.

Metro reserves the right to furnish such materials and equipment as it deems expedient, and the Contractor shall have no claims for profit or added fees on the cost of such materials and equipment.

For equipment under Item 3 above, rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances will be made for those items, unless specific agreement to that effect is made.

The Contractor shall maintain his/her records in such a manner as to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations. The Contractor shall furnish Metro report sheets in duplicate of each day's force account work no later than the working day following the performance of said work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor, or other forces. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment and hours operated.

Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the Contractor or his/her authorized agent.

To receive partial payments and final payment for force account work, the Contractor shall submit in a manner approved by Metro, detailed and completed documented verification of the Contractor's and any of his/her subcontractors' actual current costs involved in the force account work pursuant to the issuance of an approved Change Order. Such costs shall be submitted within thirty (30) days after said work has been performed.

No payment will be made for work billed and submitted to Metro after the 30-day period has expired. No extra or additional work shall be performed by the Contractor, except in an emergency endangering life or property, unless in pursuance of a written Change Order.

- D. Deductions from Payments for Deleted Work -- All deductions from payment for deleted work shall be made under the conditions and procedures of this Article. For purposes of this Article, the term "deleted work" means work which is deleted from the work required to be performed under the original Contract, but does not include any work which need not be performed due to any changes in law, statutes, rules, regulations, ordinances, permit(s), permit conditions, or regulatory policies.
- E. Request for Proposal for Deleted Work -- Within fourteen (14) calendar days after receipt of an RFP for deleted work from Metro, Contractor shall submit an itemized proposal stating the actual and reasonable costs which would be avoided by deleting work called for in the Contract, a schedule for deleting the relevant work, and the effect, if any, on Contractor's performance of the remaining Contract work by reason of the deleted work. Contractor's proposal shall be based on all current and future avoided costs to Contractor for deleting the work and any profit margins or markups which Contractor's proposal includes for such work.

No Request for Proposals by Metro shall be construed as authorization for Contractor to delete the work covered by an RFP for deleted work. Contractor shall not delete any work unless and until an order from Metro authorizing such deletion is served upon Contractor. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro rejects Contractor's proposal but orders the work to be deleted, Contractor shall delete the work. However, Metro may make all appropriate deductions from payments, according to the formula below, if Metro has ordered Contractor to delete work, regardless of whether Contractor has complied with such order.

- F. Amount of Deductions for Deleted Work -- The amount of any deductions from payments for deleted work shall be equal to all current and future avoided costs resulting from the deleted work plus any profit margin or markups which Contractor's proposal includes for such work. If the latter profit margin or markup figures are unavailable, the parties hereby agree that Contractor's profit margin on all work shall be deemed to be ten percent (10%) of the actual cost of performing the work. Contractor shall submit complete records of materials and labor usage to Metro for review. If Contractor and Metro cannot agree on the amount of the deduction for the relevant deleted work, that matter shall be submitted to arbitration under Article 22.
- G. Schedule of Payments -- Metro shall make any payments due the Contractor under this Article as soon as possible after the work is performed.

ARTICLE 14

Indemnification

- A. Contractor agrees that for purposes of the Oregon Tort Claims Act (ORS 30.260 through 30.300) that neither Contractor, its officers, agents and employees nor any of Contractor's subcontractors of any tier or their officers, agents and employees are agents of Metro. Contractor for itself and its officers, agents, employees and its subcontractors of any tier and their officers, agents and employees will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300 and Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.

Contractor shall indemnify, and hold Metro harmless from and against any and all claims, causes of action, demands, suits, damages, penalties, charges, judgments, liabilities, losses, of whatsoever character or kind (all hereinafter referred to as "claims") and all expenses arising from such claims including, but not limited to, attorneys' fees upon trial and upon appeal and any and all costs, if such claims or expenses allegedly or actually arise or result from, directly or indirectly, or are in any way connected with: 1) the performance or nonperformance of any provision or requirement of this Contract by Contractor, its officers, employees, subcontractors, agents or servants; 2) any of the acts or omissions of Contractor, its officers, employees, subcontractors, agents or servants; or 3) the failure of Contractor, its officers, employees, subcontractors, agents, or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by Article 1. F. of the General Conditions; 4) any release(s) or emission(s), or threatened release(s) or emission(s) related to the waste occurring from the point in time that each load of waste is sealed through or from the disposal of such load of waste at the disposal site.

In addition, Contractor shall, upon demand of Metro, at Contractor's sole cost and expense, defend and provide qualified attorneys acceptable to Metro under service contracts acceptable to Metro to defend Metro, its officers, employees, agents and servants against any and all claims, causes of actions, suits, demands, damages, penalties, charges, liabilities, losses, awards of damages, or judgments, of whatsoever character or kind, arising or resulting from, directly or indirectly, or in any way connected with: 1) the performance or nonperformance of any provision or requirement of this Contract by Contractor, its officers, employees, subcontractors, agents or servants; 2) any of the acts or omissions of Contractor, its officers, employees, subcontractors, agents or servants at or in connection with the Work; or 3) the failure of Contractor, its officers, employees, subcontractors, agents, or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by Article 1.F. of the General Conditions; 4) any release(s) or emission(s), or threatened release(s) or

emission(s) by any person(s), entity or entities occurring from the point in time that each load of waste is sealed through or from the disposal of such load of waste at the disposal site.

- B. In any and all claims against Metro, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of insurance obtained by Contractor.

ARTICLE 15

Performance and Labor and Materials Bonds

Not later than sixty (60) days prior to each irrevocable Letter of Credit or Performance and Labor and Materials Bond expiration, Contractor shall execute and deliver to Metro Performance and Labor and Materials Bonds on the forms bound herewith, or an irrevocable Letter of Credit acceptable to Metro, which shall secure and be conditioned upon the full, faithful and complete performance of the Contract and prompt payment of all persons supplying labor and materials for the performance of the Contract and other protection to Metro, as provided in such Bonds or Letter of Credit. The initial term of the Performance and Labor and Materials Bonds or Letter of Credit shall be for the period beginning with the execution of the Contract and shall be in the amount of \$500,000.

To remedy such default, Metro shall have the right to retain one hundred percent (100%) of any and all payments due Contractor under this Contract until the total amount of retainage when added to the amounts of existing Bonds and Letter of Credit is restored to \$500,000. The latter remedy is in addition to any other remedies to which Metro is entitled for such default.

The Surety or Banking Institution furnishing these Bonds or Letter of Credit shall have a sound financial standing and a record of service satisfactory to Metro and shall have a rating of at least A and be of the appropriate class for the relevant bond amount under Best's Rating System and shall be authorized to do business in the state of Oregon. The Attorney-in-Fact (Resident Agent) who executes these Bonds on behalf of the Surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the Surety on the date of execution of each Bond.

Contractor shall from time to time take such additional actions and furnish to Metro such additional documents and instruments which Metro reasonably requests to secure performance of Contractor's obligations under this Agreement. None of the requirements contained in this Article are intended to, nor shall they in any manner, limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

ARTICLE 16

Contractor's and Metro's Liability Insurance

A. General -- The Contractor shall provide the insurance coverage designated hereinafter and pay all costs therefor.

Before commencing work under this Contract, Contractor shall furnish Metro with certificates of insurance specified herein naming Metro as an additional named insured and showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statements:

1. This/These policy(ies) shall be considered as primary insurance and exclusive of any insurance carried by Metro and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that Metro may have other valid and collectible insurance covering the same risk.
2. This/These policy(ies) shall not be canceled, reduced in coverage, nor materially altered until after sixty (60) days' written notice of such cancellation, reduction or alteration in coverage shall have been received by Metro.
3. No act on the part of the insured shall affect the coverage afforded to Metro under the insurance covered by this certificate.
4. This/These policy(ies) consist only of insurance on an occurrence basis, not on a claims made basis.

Contractor shall immediately increase the amounts of insurance required to reflect any changes in Oregon Law to ensure that the insurance provided shall cover, at a minimum and in addition to, the designated insurance requirements listed below, the maximum limits under the Oregon Tort Claims Act, or any other applicable tort claims act. In case of any breach of any provision of this Article, Metro, at its option, may take out and maintain, at the expense of the Contractor, such insurance as Metro may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract.

<u>Designated Insurance Requirements</u>	<u>Limits</u>
1. (a) Workers' Compensation covering all employees who are engaged in any work under the Contract (State/Federal) (including subcontractors' employees).	Statutory

The Contractor shall require its Workers' Compensation carrier to provide Metro with an endorsement for waiver of subrogation. Statutory

- (c) Federal Employees Liability Act (FELA) coverage, extended to include "Jones Act" -- i.e., captains and crews of vessels, covering all employees who are engaged in any applicable work under the Contract. Not less than \$5,000,000
 - (d) Employers' Liability including bodily injury caused by disease. Not less than \$500,000
2. Comprehensive General Liability, and Protection and Indemnity, if applicable:
- (a) Contractors' Public Liability:
 - (I) Bodily injury (inc. death) and Personal Injury
 - (ii) Broad Form Property Damage and Broad Form Property Damage including Completed Operations, and shall include coverage for Explosion, Collapse and Underground.

(i and ii coverage) \$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage

This insurance shall include contractual liability to cover the liability assumed by the Contractor under Article 8 of the General Conditions.
 - (b) Metro's and Contractors' Protective Liability:
 - (i) Bodily injury (inc. death)
 - (ii) Broad Form Property Damage and Broad Form Property Damage including Completed Operations, and shall include coverage for Explosion, Collapse and Underground.

(i and ii coverage) \$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage
3. Comprehensive Automobile Liability including Owned, Nonowned and Hired Vehicles and including MCS90, (if applicable) endorsement.

- (i) Bodily injury (inc. death)
- (ii) Property damage

(i and ii coverage)

\$1,000,000 per
occurrence/aggregate
combined single limit bodily
injury and property damage

4. Umbrella Coverage

to achieve a total coverage of
\$5 million

- B. When activities of the Contractor are to be accomplished within a public or private right-of-way requiring special insurance coverage, Contractor shall conform to the particular requirements and provide the required insurance. Contractor shall include in his/her liability policy all endorsements that the said authority may require for the protection of the authority, its officers, agents, and employees. Insurance coverage for special conditions, when required, shall be provided by Contractor.
- C. Contractor shall maintain the above insurance at all times until completion of the Contract or until the termination date of the Contract, whichever is later.
- D. Maintenance of insurance by Contractor as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of Contractor under this Contract and Contractor may carry, at his/her own expense, such additional insurance as he/she deems necessary.
- E. Pursuant to Article 12 (C) and to the extent allowed by that section, Metro shall only reimburse Contractor for the actual increased cost of premiums which Contractor must pay to comply with insurance requirements not specified above which become effective after the deadline for submission of bids. No other reimbursement for costs associated with increased insurance requirements will be allowed under Article 12(C).

ARTICLE 17

Permits and Regulations

- A. Contractor shall obtain, maintain, and pay for all permits, licenses, certificates, inspection fees and surcharges and other approvals required by law, both temporary and permanent. Any such fees shall be included in the prices proposed in Contractor's Proposal except as provided by Article 12 C. of these General Conditions. The Contractor shall obtain any necessary business license required by law.
- B. Contractor shall be liable for all fines or civil penalties which may be imposed by any regulatory agency for Contractor-caused or allowed violations of permits, laws or

regulations. Metro shall not be liable for and shall not reimburse Contractor for payment of any such fines or civil penalties.

ARTICLE 18

Royalties and Patents

Contractor shall pay all royalties and license fees related to the performance of this Contract. Contractor shall defend all suits or claims for any and all infringements of any patents which may occur in the performance of this Contract and shall save Metro harmless from loss on account thereof; provided, however, that Metro shall be responsible for all such loss when a particular process or product is specified by it unless Contractor shall have information that such particular process or product infringes a patent, in which event, he/she shall be responsible for loss on account thereof unless he/she promptly and immediately provides such information to Metro.

ARTICLE 19

Taxes and Fees

As between Metro and Contractor, Contractor shall be responsible and liable for payment of all federal, state, regional, county and local taxes and fees, and surcharges of every form, which apply to any and all persons, entities, property, income, equipment, materials, supplies, structures, or activities which are involved in the performance of the Contract including, but not limited to, any and all income taxes, real property taxes, excise taxes, sales and use taxes and highway reconstruction fees which arise in connection with the Contract. Any such taxes and fees shall be included in the prices bid in Contractor's Bid:

ARTICLE 20

Title to Waste

If the seal affixed to any load of waste in Contractor's possession shall be broken leaving the FGTS or before unloading at the disposal site destination, title to that load of waste shall immediately pass to the Contractor. Additionally, if this Contract is for both transport and disposal (Alternates #2 or #3), title shall pass to the Contractor after unloading the waste, whether or not such waste is acceptable waste or the seal was intact prior to unloading, if Contractor fails to indicate in writing on the invoice accompanying the load of waste that Contractor has deemed the waste contained in the load to be suspicious waste or unacceptable waste within 60 minutes after the load of waste is dumped at the disposal site. After any testing is performed on suspicious waste, title to such waste passes to Contractor unless the results of such testing indicated that the waste is unacceptable. Nothing contained in this paragraph shall be construed to limit Contractor's responsibilities or liabilities as described elsewhere in these Contract Documents.

ARTICLE 21

Materials, Employees and Workmanship

- A. All workmanship and materials provided by Contractor shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. Contractor shall furnish evidence of the skill of his/her employees, subcontractors and agents upon the request of Metro.
- B. Contractor shall at all times enforce strict discipline and good order among his/her employees and all subcontractors.

ARTICLE 22

Arbitration

Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Contract. Subject to the conditions and limitations of this paragraph, any controversy or claim arising out of or relating to this Contract which remains unresolved after such negotiations shall be exclusively settled by arbitration under the laws of the state of Oregon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All disputes shall be heard and decided by one arbitrator and all arbitration proceedings shall be held in Portland, Oregon. However, all disputes concerning Metro's right to the equitable remedy of specific performance shall not be subject to arbitration, but shall be decided exclusively by a court of competent jurisdiction in Multnomah County, Oregon, under the laws of the state of Oregon.

Contractor agrees to consolidation of any arbitration between Metro and Contractor with any other arbitration involving, arising from, or relating to this Contract or otherwise involving the transfer, transport, collection, or disposal of waste by Metro.

In the event that Metro determines, in its sole opinion, that the public interest requires a speedy resolution of any controversy or claim regardless of the amount, Metro shall have the option of electing resolution of the controversy or claim by the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association (Rules 54 through 58).

Each party hereto and the Contractor's Surety accepts jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing such arbitration proceedings and agrees to accept notice in writing sent by certified letter addressed to said party of intention to proceed with arbitration and of any other step in connection therewith or enforcement thereof, with the same effect as though personally served therewith in the state of Oregon. The decision of the arbitrator shall be final and binding upon both parties and the Contractor's Surety who hereby agree to comply therewith. The parties agree that proper venue for any judicial proceeding to enforce any decision or award made by an arbitrator under this section shall be exclusively in the county of Multnomah in the state of Oregon.

ARTICLE 23

Attorney's Fees

In the event suit or action or arbitration is instituted to enforce any right granted herein, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, a reasonable attorney's fee to be fixed by the trial court or in the arbitration; and on appeal, if any, similar fees in the appellate court to be fixed by the appellate court.

ARTICLE 24

Assignment

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

ARTICLE 25

Change of Ownership

Any change in control or the transfer of a controlling interest in the beneficial ownership of Contractor shall constitute a default under the terms of this Contract, unless Metro consents to such transfer. "The transfer of a controlling interest of Contractor" shall include, but is not limited to, the transfer of ten percent (10%) or more of the beneficial ownership of Contractor to or from a single entity, unless Metro, at Contractor's request, finds to the contrary. Intracompany transfers, such as transfers between different subsidiaries or branches of the parent corporation of Contractor, shall not be construed as transfers of a controlling interest in Contractor, nor shall transfers by operation of law. If, however, Metro determines that the new ownership can adequately and faithfully render the services called for in this Contract for the remaining term of the Contract, then Metro may elect to execute a novation, allowing the new ownership to assume the rights and duties of this Contract and releasing the previous ownership of all obligation and liability.

ARTICLE 26

Public Contracts

- A. The provisions set out in Oregon Revised Statutes, Chapters 187 and 279, as amended or superseded, including the latest additions and revisions, and all applicable provisions of the Metro Code, are incorporated by reference as part of these Contract Documents. In addition, the specific requirements of certain of these sections are set out below. These provisions are applicable to this Contract unless or until they are superseded by federal law.
- B. Pursuant to ORS 279.312, Contractor shall make payment promptly, as due, to all persons supplying such Contractor labor or material for the prosecution of the work as provided in this Contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund (IAF) from such Contractor or subcontractor incurred in the performance of the Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- C. Pursuant to ORS 279.314, if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of such Contract. Metro's payment of such a claim in the manner authorized by ORS 279.314 shall not relieve Contractor or Contractor's Surety from obligation with respect to any unpaid claims.
- D. Pursuant to ORS 279.316, except as permitted by federal law or other state statutes or regulations, no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and one-half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279.334.
- E. Pursuant to ORS 279.320, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying such service.

ARTICLE 27

Assignment of Antitrust Rights

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

Furthermore, it is understood and agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro hereunder.

ARTICLE 28

Start of Contract, Contract Completion and Contract Extensions

The Contractor agrees to begin waste disposal and/or transport services on _____, and to terminate such disposal services on _____, subject to the provisions set forth below.

Metro may, in its sole discretion, extend the initial term of the Contract by one amendment or a series of amendments to the Contract term as Metro shall determine, by serving Contractor with written notice of such extension at least one hundred and twenty (120) days prior to the end of the term then in force, for a period not to exceed one-year hundred and twenty days.

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Alternate # 1 - Transport and Disposal (No Compaction)

Price/ton= _____

% CPI = _____ (CPI Applied to 1997 thru 2000)

	1996	1997	1998	1999	2000	Total Cost	
Tonnage #1	70,894	73,319	75,745	78,169	80,596	378,723	\$/ton
Annual Cost	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00
Tonnage #2	70,547	70,678	70,228	69,662	68,896	350,011	\$/ton
Annual Cost	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00

	Ton #1	Ton #2
1996	70,894	70,547
1997	73,319	70,678
1998	75,745	70,228
1999	78,169	69,662
2000	80,596	68,896

	Price/ton
1996	\$0.00
1997	\$0.00
1998	\$0.00
1999	\$0.00
2000	\$0.00

Alternate # 2 - Transport and Disposal (One Price W/ Compaction)

Price/load= _____

% CPI= _____ (CPI Applied to 1997 thru 2000)

	1996	1997	1998	1999	2000	Total Cost	
Tonnage #1	70,894	73,319	75,745	78,169	80,596	378,723	\$/ton
Annual Cost	\$141,788	\$146,638	\$151,490	\$156,338	\$161,192	\$757,446	\$2.00
Tonnage #2	70,547	70,678	70,228	69,662	68,896	350,011	\$/ton
Annual Cost	\$141,094	\$141,356	\$140,456	\$139,324	\$137,792	\$700,022	\$2.00

	\$/load + \$2/ton
1996	\$56.00
1997	\$56.00
1998	\$56.00
1999	\$56.00
2000	\$56.00

Alternate #3- Transport and Disposal (With Compaction)

Transport Price/load= _____

% transport CPI = _____

Disposal Price/ton= _____

% disposal CPI= _____

(CPI Applied to 1997 thru 2000)

	1996	1997	1998	1999	2000	Total Cost	
Tonnage #1	70,894	73,319	75,745	78,169	80,596	378,723	\$/ton
Annual Transport	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00
Annual Disposal	\$141,788	\$146,638	\$151,490	\$156,338	\$161,192	\$757,446	\$2.00
Annual Total	\$141,788	\$146,638	\$151,490	\$156,338	\$161,192	\$757,446	\$2.00
Tonnage #2	70,547	70,678	70,228	69,662	68,896	350,011	\$/ton
Annual Transport	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00
Annual Disposal	\$141,094	\$141,356	\$140,456	\$139,324	\$137,792	\$700,022	\$2.00
Annual Total	\$141,094	\$141,356	\$140,456	\$139,324	\$137,792	\$700,022	\$2.00

	Trans. \$/load
1996	\$0.00
1997	\$0.00
1998	\$0.00
1999	\$0.00
2000	\$0.00
	Disp. \$/ton + \$2
1996	\$2.00
1997	\$2.00
1998	\$2.00
1999	\$2.00
2000	\$2.00

163

*INSTRUCTIONS: Fill in the blanks for the alternate.

Alternate #4- Transport Only

Transport Price/Load= _____

Price/ton= _____

% transport CPI= _____

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	Total Cost	
Tonnage #1	70,894	73,319	75,745	78,169	80,596	378,723	\$/ton
Annual Disposal	\$1,049,231	\$1,134,978	\$1,224,797	\$1,319,493	\$1,419,296	\$6,147,794	\$16.23
Annual Transport/load	\$141,788	\$146,638	\$151,490	\$156,338	\$161,192	\$757,446	\$2.00
Annual Total	\$1,191,019	\$1,281,616	\$1,376,287	\$1,475,831	\$1,580,488	\$6,905,240	\$18.23

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	Total Cost	
Tonnage #1	70,894	73,319	75,745	78,169	80,596	378,723	\$/ton
Annual Disposal	\$1,049,231	\$1,134,978	\$1,224,797	\$1,319,493	\$1,419,296	\$6,147,794	\$16.23
Annual Transport/ton	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00
Annual Total	\$1,049,231	\$1,134,978	\$1,224,797	\$1,319,493	\$1,419,296	\$6,147,794	\$16.23

<u>Transport \$/ton</u>		<u>Disposal \$/ton @</u>	
		<u>CRL</u>	
1996	\$0.00	1996	\$14.80
1997	\$0.00	1997	\$15.48
1998	\$0.00	1998	\$16.17
1999	\$0.00	1999	\$16.88
2000	\$0.00	2000	\$17.61

<u>Tran. \$/load+\$21</u>		<u>Disposal \$/ton #2 @</u>	
		<u>CRL w/ RSWMP</u>	
1996	\$56.00	1996	\$15.26
1997	\$56.00	1997	\$15.90
1998	\$56.00	1998	\$16.53
1999	\$56.00	1999	\$17.19
2000	\$56.00	2000	\$17.85

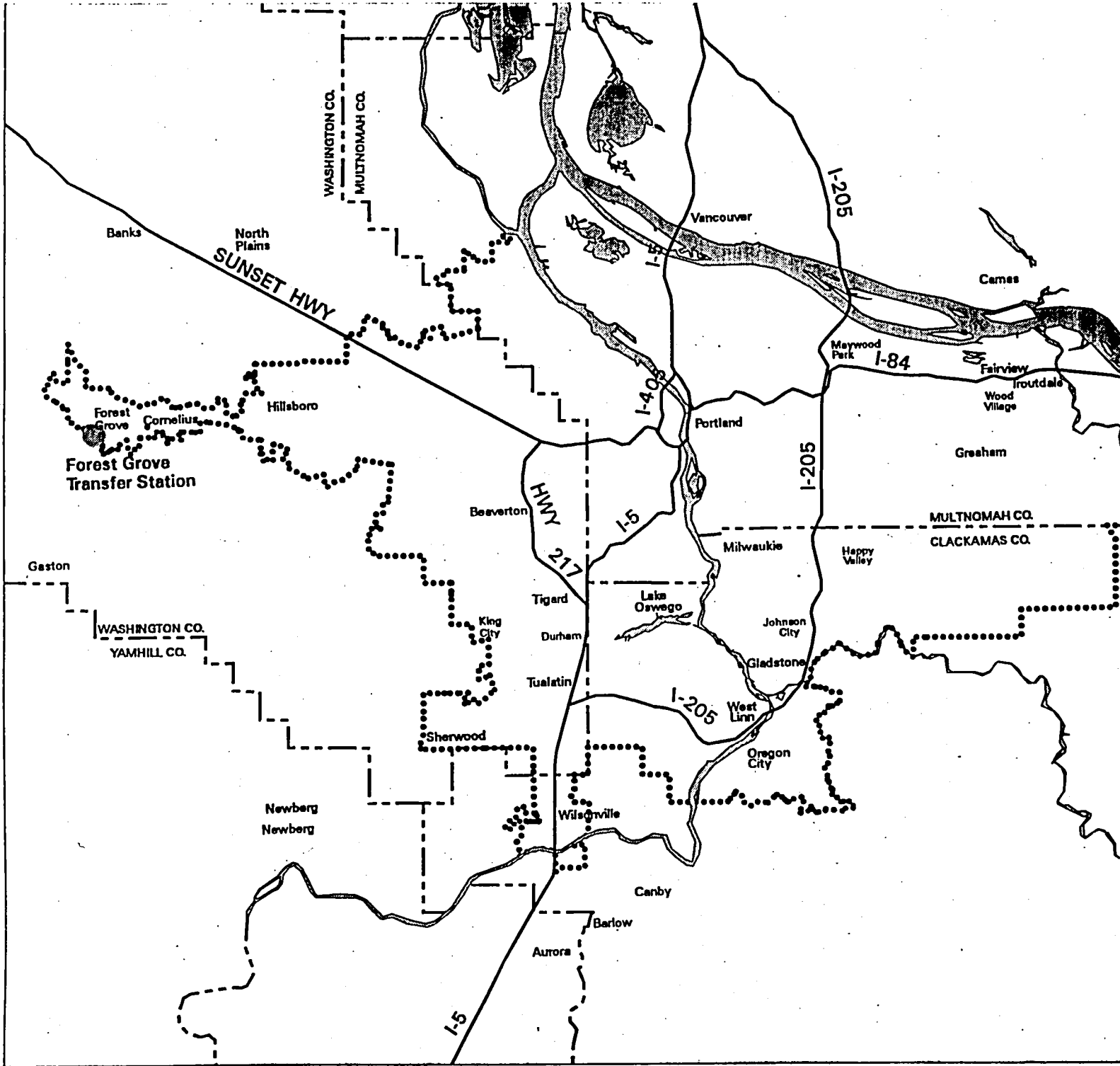
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	Total Cost	
Tonnage #2	70,547	70,678	70,228	69,662	68,896	350,011	\$/ton
Annual Disposal	\$1,076,547	\$1,123,780	\$1,160,869	\$1,197,490	\$1,229,794	\$5,788,480	\$16.54
Annual Transport/load	\$141,094	\$141,356	\$140,456	\$139,324	\$137,792	\$700,022	\$2.00
Annual Total	\$1,217,641	\$1,265,136	\$1,301,325	\$1,336,814	\$1,367,586	\$6,488,502	\$18.54

	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	Total Cost	
Tonnage #2	70,547	70,678	70,228	69,662	68,896	350,011	\$/ton
Annual Disposal	\$1,076,547	\$1,123,780	\$1,160,869	\$1,197,490	\$1,229,794	\$5,788,480	\$16.54
Annual Transport/ton	\$0	\$0	\$0	\$0	\$0	\$0	\$0.00
Annual Total	\$1,076,547	\$1,123,780	\$1,160,869	\$1,197,490	\$1,229,794	\$5,788,480	\$16.54

164

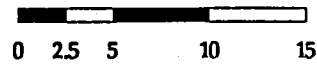
*INSTRUCTIONS: Fill in the blanks for the alternate.

Metro Region



..... Metro Boundary
 --- County Line

Scale: 1" = 5 Miles

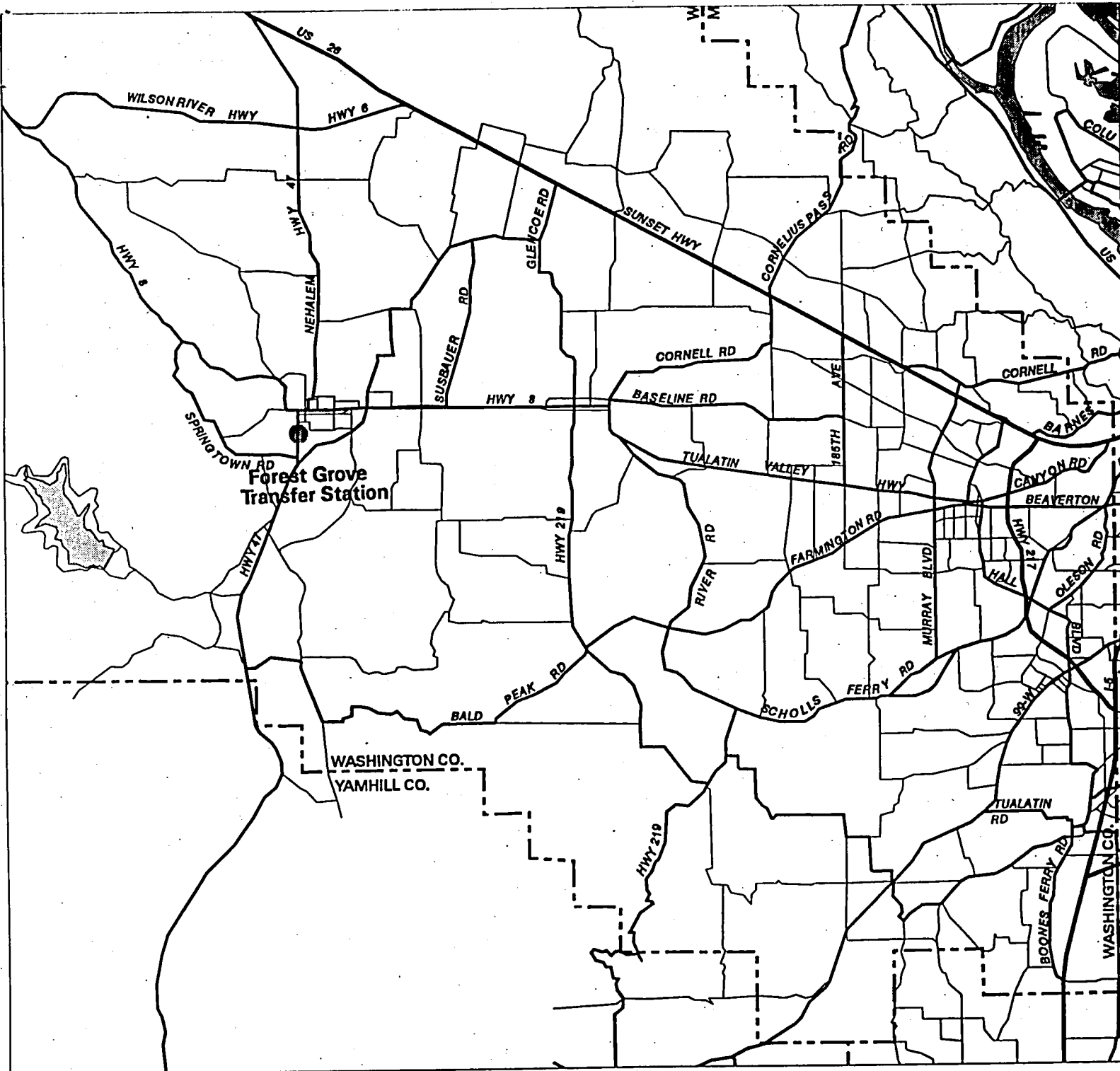


600 NE Grand Ave
 Portland, OR 97232-2736
 (503) 797-1700



METRO

691



Metro Region

Transportation Network Around
Forest Grove Transfer Station

Scale: 1" = 3 Miles



600 NE Grand Ave
Portland, OR 97232-2736
(503) 797-1700



METRO

166

SOLID WASTE FRANCHISE
issued by
METRO
600 N.E. Grand Avenue
Portland, Oregon 97232-2736
(503) 797-1700

FRANCHISE NUMBER: 4
DATE ISSUED: January 26, 1994
AMENDMENT DATE: N/A
EXPIRATION DATE: See Section 2
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

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. Definitions	1
2. Term of Franchise	4
3. Location of Facility	4
4. Operator, and Owner of Facility and Property	4
5. Authorized and Prohibited Solid Wastes	4
6. Minimum Monitoring and Reporting Requirements	5
7. Operational Requirements	6
8. Annual Franchise Fees	14
9. Surety Bond or Conditional Lien	14
10. Insurance	14
11. Indemnification	15
12. Compliance With Law	15
13. Metro Enforcement Authority	15
14. Disposal Rates and Fees	16
15. Revocation	17
16. General Conditions	18
17. Notices	19

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 up to 120,000 tons 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 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. Nothing herein prohibits Franchisee from disposing of waste received at the Facility that was generated outside of the District at any licensed processing or disposal facility.

7.4.2 Prior to the date established for Metro to assume transport and/or disposal responsibilities, Metro may direct Franchisee to install a compactor at the Facility meeting Metro specifications. If Metro so requires, 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. 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)
 $(APT) = (TT - BT) + (\text{Positive APTs from previous year})$

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 INSURED**S. 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 generated within the District 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 and all waste transported from the Facility and/or disposed of by Metro that was generated outside of the District, 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

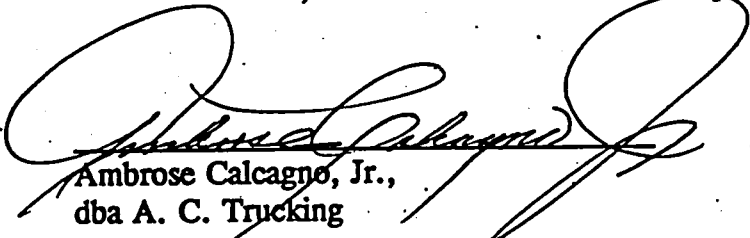
with a copy to:

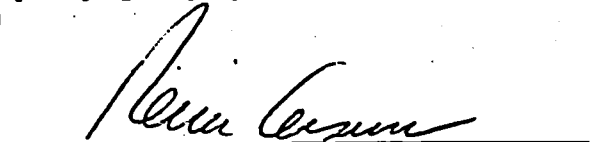
Thompson, Adams, DeBast & Helzer
Attorneys at Law
4500 SW Hall Boulevard
Beaverton, OR 97005

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


Rena Cusma, Executive Officer
Metro

Date: JANUARY 20, 1994

Date: 1/26/94

1187a

EXHIBIT 1

PARCEL III:

Beginning at a point on the line between the T.G. Naylor Donation Land Claim No. 37 and the Harvey Clarke Donation Land Claim, in the City of Forest Grove, County of Washington and State of Oregon, said point being 534.6 feet South of the original Southwest corner of the City of Forest Grove, Oregon; thence continuing South on said line 187.4 feet to a point which is the Southwest corner of that tract of land conveyed to G.O. Hilden, et al, as recorded in Deed Book 350, page 477; said point also being the true point of beginning; thence continuing South along said Donation Land Claim line 391.6 feet to the Northwest corner of that tract of land conveyed to Virgil Cornelius as recorded in Deed Book 215, page 91; thence North 89°42'00" East 395.0 feet along the North line of tract of land conveyed to Virgil Cornelius to the West line of the right-of-way of the O & C Railroad; thence North 00°33'00" East 438.5 feet along said right-of-way to an iron; thence North 89°41'00" West 278.2 feet to an iron on the East line of that tract of land conveyed to G.O. Hilden, et al, as recorded in said records; thence South 02°06'00" West 50.5 feet to an iron at the Southeast corner of said Hilden tract; thence North 87°54'00" West 114.6 feet, plus or minus, to the East line of the T.G. Naylor Donation Land Claim No. 37, and the true point of beginning.

EXCEPT that portion thereof described in Deed to the City of Forest Grove, Oregon, recorded August 2, 1934 as Fee No. 84030424.

PARCEL IV:

A tract of land in the Southwest one-quarter of Section 6, Township 1 South, Range 3 West and the Southeast one-quarter of Section 1, Township 1 South, Range 4 West of the Willamette Meridian, in the City of Forest Grove, County of Washington and State of Oregon, described as follows:

Beginning at a point in the West line of the Oregon and California Railroad South 00°30'00" East 381.5 feet from the North line of the Southwest one-quarter of Section 6, Township 1 South, Range 3 West; thence West 305 feet, more or less, to the East line of the Tualatin Valley Highway; thence Northerly along said East line 280 feet, more or less, to the South line of a tract of land conveyed to Ellerd L. Larkins, et ux, recorded in Book 418, page 598; thence East along the South line of said Larkins tract 395 feet, more or less, to the West line of the Oregon and California Railroad; thence South along said West line to the point of beginning.

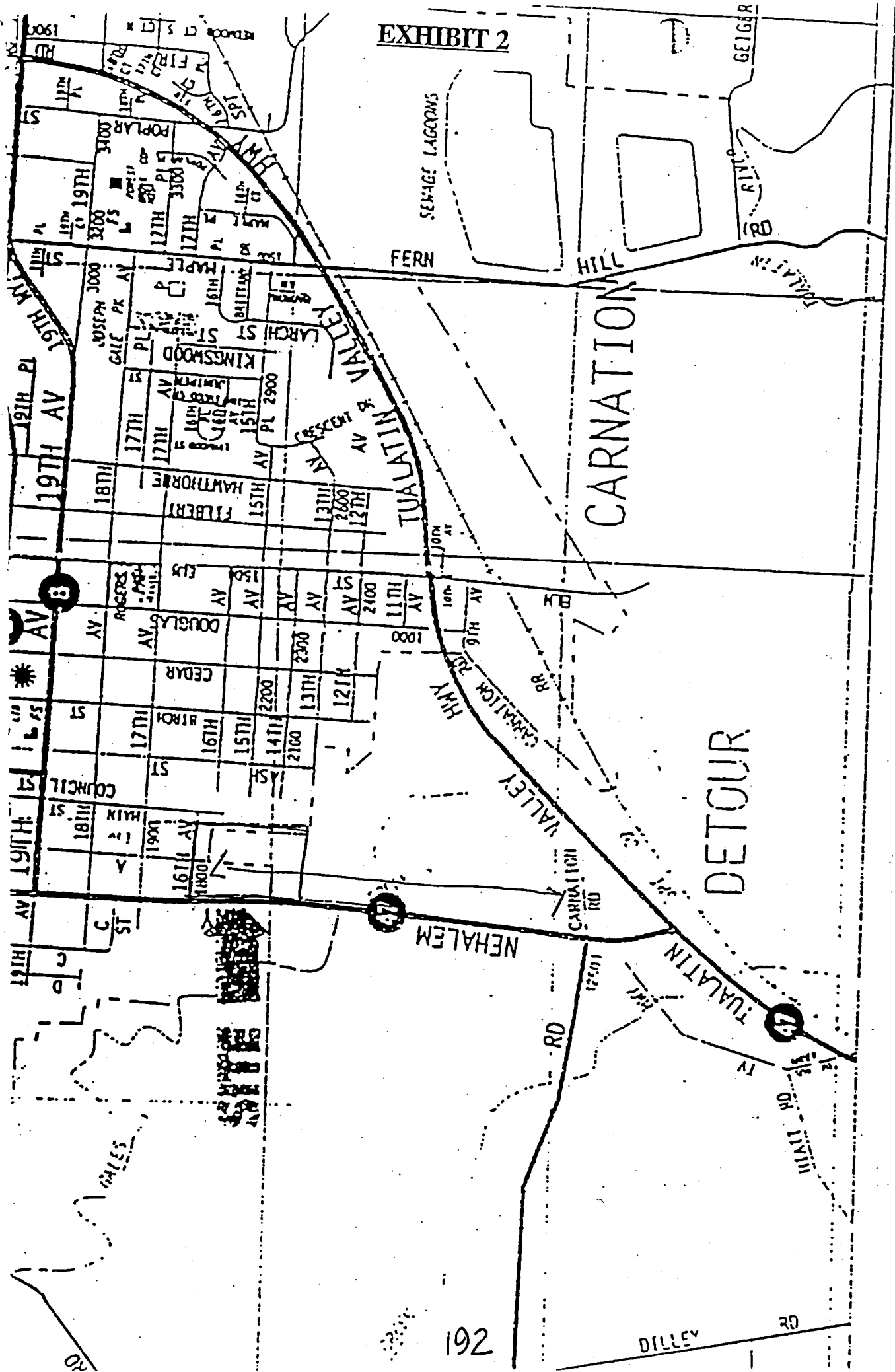
PARCEL V:

A strip of land (60.0 feet wide) situated in the City of Forest Grove, County of Washington and State of Oregon, being a portion of Harvey Clark Donation Land Claim in Section 6, Township 1 South, Range 3 West of the Willamette Meridian, lying equally 30 feet on each side of the following described center line:

Commencing at the point of intersection of the center line of 16th Avenue (66 feet wide), with the original located center line of Southern Pacific Transportation Company's main track's (West Side Branch - Forest Grove Loop, now abandoned); thence South 00°35'00" West along last said center line, being also the Southerly prolongation of the center line of "A" Street (66 feet wide), 513.3 feet to a point in the Southerly line of land described in Deed dated February 7, 1983 from Southern Pacific Transportation Company to John B. Lewis, et ux, recorded March 4, 1983 as Instrument No. 83007361, Deed Records of Washington County and the true point of beginning of the center line to be described; thence continuing South 00°35'00" West along said center line of main tract, being also said Southerly prolongation, 376.5 feet. The side lines of the above described 60-foot wide strip of land terminate in said Southerly line and in a line drawn at right angles to the above described center line and passing through the Southerly terminus thereof.

EXCEPT that portion lying below a depth of 500 feet measured vertically, from the contour of the surface of said property.

EXHIBIT 2



Tonnage as Disposed from Transfer Stations
Base Case Scenario

	Total			Forest Grove		Transfer Stations		FG as %TST	
	Central	South	Metro	In Metro	Total	FG in only	FG Total	FG in only	FG Total
1995	322,572	381,689	704,261	68,467	73,464	772,728	777,725	8.9%	9.4%
1996	327,383	390,151	717,534	70,894	76,067	788,428	793,601	9.0%	9.6%
1997	332,196	398,617	730,813	73,319	78,669	804,132	809,482	9.1%	9.7%
1998	337,012	407,089	744,101	75,745	81,272	819,846	825,373	9.2%	9.8%
1999	341,820	415,553	757,373	78,169	83,876	835,542	841,249	9.4%	10.0%
2000	346,631	424,020	770,651	80,596	86,478	851,247	857,129	9.5%	10.1%

	Total			Forest Grove		Transfer Stations		FG as %TST	
	Central	South	Metro	In Metro	Total	FG in only	FG Total	FG in only	FG Total
Jan-95	23,551	29,450	53,001	5,637	6,049	58,638	59,050	9.6%	10.2%
Feb-95	21,658	27,072	48,730	4,801	5,151	53,531	53,881	9.0%	9.6%
Mar-95	25,869	31,594	57,463	5,517	5,919	62,980	63,382	8.8%	9.3%
Apr-95	27,895	32,310	60,205	5,912	6,344	66,117	66,549	8.9%	9.5%
May-95	27,944	32,683	60,627	5,839	6,265	66,466	66,892	8.8%	9.4%
Jun-95	28,627	32,953	61,580	5,956	6,391	67,536	67,971	8.8%	9.4%
Jul-95	29,410	33,491	62,901	5,914	6,345	68,815	69,246	8.6%	9.2%
Aug-95	29,772	33,762	63,534	5,647	6,059	69,181	69,593	8.2%	8.7%
Sep-95	28,926	33,399	62,325	5,927	6,360	68,252	68,685	8.7%	9.3%
Oct-95	27,186	32,732	59,918	5,645	6,057	65,563	65,975	8.6%	9.2%
Nov-95	26,762	32,107	58,869	5,885	6,315	64,754	65,184	9.1%	9.7%
Dec-95	24,972	30,136	55,108	5,787	6,209	60,895	61,317	9.5%	10.1%
Jan-96	23,904	30,103	54,007	5,837	6,263	59,844	60,270	9.8%	10.4%
Feb-96	21,984	27,672	49,656	4,971	5,334	54,627	54,990	9.1%	9.7%
Mar-96	26,255	32,294	58,549	5,712	6,129	64,261	64,678	8.9%	9.5%
Apr-96	28,311	33,026	61,337	6,122	6,568	67,459	67,905	9.1%	9.7%
May-96	28,360	33,408	61,768	6,046	6,487	67,814	68,255	8.9%	9.5%
Jun-96	29,053	33,684	62,737	6,167	6,617	68,904	69,354	9.0%	9.5%
Jul-96	29,847	34,233	64,080	6,124	6,570	70,204	70,650	8.7%	9.3%
Aug-96	30,214	34,510	64,724	5,847	6,274	70,571	70,998	8.3%	8.8%
Sep-96	29,356	34,140	63,496	6,137	6,585	69,633	70,081	8.8%	9.4%
Oct-96	27,591	33,457	61,048	5,845	6,272	66,893	67,320	8.7%	9.3%
Nov-96	27,162	32,819	59,981	6,094	6,539	66,075	66,520	9.2%	9.8%
Dec-96	25,346	30,805	56,151	5,992	6,429	62,143	62,580	9.6%	10.3%
Jan-97	24,258	30,756	55,014	6,037	6,477	61,051	61,491	9.9%	10.5%
Feb-97	22,311	28,273	50,584	5,141	5,516	55,725	56,100	9.2%	9.8%
Mar-97	26,642	32,995	59,637	5,908	6,339	65,545	65,976	9.0%	9.6%
Apr-97	28,726	33,743	62,469	6,331	6,793	68,800	69,262	9.2%	9.8%
May-97	28,776	34,133	62,909	6,253	6,709	69,162	69,618	9.0%	9.6%
Jun-97	29,479	34,415	63,894	6,378	6,843	70,272	70,737	9.1%	9.7%
Jul-97	30,284	34,976	65,260	6,333	6,795	71,593	72,055	8.8%	9.4%
Aug-97	30,656	35,259	65,915	6,047	6,488	71,962	72,403	8.4%	9.0%
Sep-97	29,786	34,880	64,666	6,347	6,811	71,013	71,477	8.9%	9.5%
Oct-97	27,997	34,183	62,180	6,045	6,486	68,225	68,666	8.9%	9.4%
Nov-97	27,561	33,531	61,092	6,302	6,762	67,394	67,854	9.4%	10.0%
Dec-97	25,720	31,473	57,193	6,187	6,650	63,390	63,843	9.8%	10.4%
Jan-98	24,612	31,410	56,022	6,236	6,691	62,258	62,713	10.0%	10.7%
Feb-98	22,637	28,873	51,510	5,311	5,699	56,821	57,209	9.3%	10.0%
Mar-98	27,029	33,696	60,725	6,103	6,548	66,828	67,273	9.1%	9.7%
Apr-98	29,142	34,460	63,602	6,541	7,018	70,143	70,620	9.3%	9.9%
May-98	29,193	34,858	64,051	6,460	6,931	70,511	70,982	9.2%	9.8%
Jun-98	29,905	35,146	65,051	6,589	7,070	71,640	72,121	9.2%	9.8%
Jul-98	30,722	35,719	66,441	6,543	7,020	72,984	73,461	9.0%	9.6%
Aug-98	31,099	36,009	67,108	6,247	6,703	73,355	73,811	8.5%	9.1%
Sep-98	30,216	35,622	65,838	6,557	7,036	72,395	72,874	9.1%	9.7%
Oct-98	28,402	34,910	63,312	6,245	6,701	69,557	70,013	9.0%	9.6%
Nov-98	27,961	34,244	62,205	6,511	6,986	68,716	69,191	9.5%	10.1%
Dec-98	26,094	32,142	58,236	6,402	6,869	64,638	65,105	9.9%	10.6%
Jan-99	24,965	32,063	57,028	6,438	6,906	63,464	63,934	10.1%	10.8%
Feb-99	22,964	29,474	52,438	5,481	5,881	57,919	58,319	9.5%	10.1%
Mar-99	27,415	34,397	61,812	6,299	6,758	68,111	68,570	9.2%	9.9%
Apr-99	29,557	35,176	64,733	6,750	7,243	71,483	71,976	9.4%	10.1%
May-99	29,609	35,583	65,192	6,666	7,153	71,858	72,345	9.3%	9.9%
Jun-99	30,331	35,877	66,208	6,800	7,296	73,008	73,504	9.3%	9.9%
Jul-99	31,158	36,462	67,620	6,752	7,245	74,372	74,865	9.1%	9.7%
Aug-99	31,541	36,757	68,298	6,447	6,918	74,745	75,216	8.6%	9.2%
Sep-99	30,646	36,362	67,008	6,767	7,261	73,775	74,269	9.2%	9.8%
Oct-99	28,807	35,636	64,443	6,445	6,916	70,888	71,359	9.1%	9.7%
Nov-99	28,360	34,956	63,316	6,719	7,210	70,035	70,526	9.6%	10.2%
Dec-99	26,467	32,810	59,277	6,607	7,089	65,884	66,366	10.0%	10.7%
Jan-00	25,318	32,716	58,034	6,636	7,120	64,670	65,154	10.3%	10.9%
Feb-00	23,290	30,074	53,364	5,651	6,064	59,015	59,428	9.6%	10.2%
Mar-00	27,801	35,098	62,899	6,494	6,968	69,393	69,867	9.4%	10.0%
Apr-00	29,972	35,893	65,865	6,960	7,467	72,825	73,332	9.6%	10.2%
May-00	30,025	36,308	66,333	6,873	7,375	73,206	73,708	9.4%	10.0%
Jun-00	30,757	36,608	67,365	7,011	7,523	74,376	74,888	9.4%	10.0%
Jul-00	31,596	37,205	68,801	6,962	7,470	75,763	76,271	9.2%	9.8%
Aug-00	31,983	37,506	69,489	6,647	7,132	76,136	76,621	8.7%	9.3%
Sep-00	31,076	37,103	68,179	6,977	7,486	75,156	75,665	9.3%	9.9%
Oct-00	29,213	36,362	65,575	6,645	7,130	72,220	72,705	9.2%	9.8%
Nov-00	28,759	35,668	64,427	6,928	7,434	71,355	71,861	9.7%	10.3%
Dec-00	26,841	33,479	60,320	6,812	7,309	67,132	67,629	10.1%	10.8%

Tonnage as Disposed from Transfer Stations

"RSWMP" Scenario

	Total			Forest Grove		Transfer Stations		FG as %TST	
	Central	South	Metro	In Metro	Total	FG in only	FG Total	FG in only	FG Total
1995	323,334	381,788	705,122	68,467	73,464	773,589	778,586	8.9%	9.4%
1996	311,992	370,242	682,234	70,547	75,693	752,781	757,927	9.4%	10.0%
1997	306,925	369,631	676,556	70,678	75,834	747,234	752,390	9.5%	10.1%
1998	299,901	366,817	666,718	70,228	75,353	736,946	742,071	9.6%	10.2%
1999	292,692	363,712	656,404	69,662	74,747	726,066	731,151	9.7%	10.3%
2000	285,015	359,963	644,978	68,896	73,923	713,874	718,901		

	Total			Forest Grove		Transfer Stations		FG as %TST	
	Central	South	Metro	In Metro	Total	FG in only	FG Total	FG in only	FG Total
Jan-95	23,607	29,457	53,064	5,637	6,049	58,701	59,113	9.6%	10.2%
Feb-95	21,709	27,079	48,788	4,801	5,151	53,589	53,939	9.0%	9.5%
Mar-95	25,930	31,602	57,532	5,517	5,919	63,049	63,451	8.8%	9.3%
Apr-95	27,961	32,318	60,279	5,912	6,344	66,191	66,623	8.9%	9.5%
May-95	28,010	32,692	60,702	5,839	6,265	66,541	66,967	8.8%	9.4%
Jun-95	28,695	32,962	61,657	5,956	6,391	67,613	68,048	8.8%	9.4%
Jul-95	29,479	33,499	62,978	5,914	6,345	68,892	69,323	8.6%	9.2%
Aug-95	29,842	33,771	63,613	5,647	6,059	69,260	69,672	8.2%	8.7%
Sep-95	28,994	33,408	62,402	5,927	6,360	68,329	68,762	8.7%	9.2%
Oct-95	27,250	32,740	59,990	5,645	6,057	65,635	66,047	8.6%	9.2%
Nov-95	26,826	32,116	58,942	5,885	6,315	64,827	65,257	9.1%	9.7%
Dec-95	25,031	30,144	55,175	5,787	6,209	60,962	61,384	9.5%	10.1%
Jan-96	22,882	28,668	51,550	5,837	6,263	57,387	57,813	10.2%	10.8%
Feb-96	21,040	26,353	47,393	4,971	5,334	52,364	52,727	9.5%	10.1%
Mar-96	25,138	30,755	55,893	5,712	6,129	61,605	62,022	9.3%	9.9%
Apr-96	27,110	31,452	58,562	6,122	6,568	64,684	65,130	9.5%	10.1%
May-96	27,157	31,815	58,972	6,046	6,487	65,018	65,459	9.3%	9.9%
Jun-96	27,822	32,078	59,900	6,167	6,617	66,067	66,517	9.3%	9.9%
Jul-96	28,508	32,536	61,044	6,107	6,552	67,151	67,596	9.1%	9.7%
Aug-96	28,781	32,734	61,515	5,815	6,239	67,330	67,754	8.6%	9.2%
Sep-96	27,887	32,317	60,204	6,086	6,531	66,290	66,735	9.2%	9.8%
Oct-96	26,136	31,608	57,744	5,781	6,202	63,525	63,946	9.1%	9.7%
Nov-96	25,658	30,942	56,600	6,010	6,448	62,610	63,048	9.6%	10.2%
Dec-96	23,873	28,984	52,857	5,893	6,323	58,750	59,180	10.0%	10.7%
Jan-97	22,766	28,863	51,629	5,916	6,347	57,545	57,976	10.3%	10.9%
Feb-97	20,873	26,476	47,349	5,023	5,390	52,372	52,739	9.6%	10.2%
Mar-97	24,868	30,833	55,701	5,755	6,175	61,456	61,876	9.4%	10.0%
Apr-97	26,744	31,464	58,208	6,150	6,599	64,358	64,807	9.6%	10.2%
May-97	26,715	31,759	58,474	6,056	6,498	64,530	64,972	9.4%	10.0%
Jun-97	27,291	31,953	59,244	6,159	6,608	65,403	65,852	9.4%	10.0%
Jul-97	27,959	32,404	60,363	6,097	6,542	66,460	66,905	9.2%	9.8%
Aug-97	28,222	32,596	60,818	5,805	6,228	66,623	67,046	8.7%	9.3%
Sep-97	27,339	32,176	59,515	6,075	6,518	65,590	66,033	9.3%	9.9%
Oct-97	25,617	31,465	57,082	5,768	6,189	62,850	63,271	9.2%	9.8%
Nov-97	25,143	30,798	55,941	5,996	6,433	61,937	62,374	9.7%	10.3%
Dec-97	23,388	28,844	52,232	5,878	6,307	58,110	58,539	10.1%	10.8%
Jan-98	22,267	28,670	50,937	5,885	6,315	56,822	57,252	10.4%	11.0%
Feb-98	20,409	26,295	46,704	4,996	5,361	51,700	52,065	9.7%	10.3%
Mar-98	24,316	30,616	54,932	5,723	6,141	60,655	61,073	9.4%	10.1%
Apr-98	26,147	31,238	57,385	6,114	6,560	63,499	63,945	9.6%	10.3%
May-98	26,113	31,526	57,639	6,020	6,459	63,659	64,098	9.5%	10.1%
Jun-98	26,672	31,713	58,385	6,121	6,567	64,508	64,952	9.5%	10.1%
Jul-98	27,319	32,156	59,475	6,058	6,500	65,533	65,975	9.2%	9.9%
Aug-98	27,572	32,340	59,912	5,766	6,187	65,678	66,099	8.8%	9.4%
Sep-98	26,703	31,918	58,621	6,033	6,473	64,654	65,094	9.3%	9.9%
Oct-98	25,013	31,207	56,220	5,727	6,145	61,947	62,365	9.2%	9.9%
Nov-98	24,545	30,540	55,085	5,952	6,386	61,037	61,471	9.8%	10.4%
Dec-98	22,825	28,598	51,423	5,833	6,259	57,256	57,682	10.2%	10.9%
Jan-99	21,745	28,442	50,187	5,843	6,269	56,030	56,456	10.4%	11.1%
Feb-99	19,928	26,083	46,009	4,959	5,321	50,968	51,330	9.7%	10.4%
Mar-99	23,743	30,367	54,110	5,680	6,095	59,790	60,205	9.5%	10.1%
Apr-99	25,529	30,981	56,510	6,067	6,510	62,577	63,020	9.7%	10.3%
May-99	25,492	31,264	56,756	5,972	6,408	62,728	63,164	9.5%	10.1%
Jun-99	26,035	31,446	57,481	6,072	6,515	63,553	63,996	9.6%	10.2%
Jul-99	26,664	31,862	58,546	6,009	6,447	64,555	64,993	9.3%	9.9%
Aug-99	26,907	32,062	58,969	5,718	6,136	64,687	65,105	8.8%	9.4%
Sep-99	26,054	31,641	57,695	5,982	6,419	63,677	64,114	9.4%	10.0%
Oct-99	24,400	30,933	55,333	5,678	6,093	61,011	61,426	9.3%	9.9%
Nov-99	23,940	30,269	54,209	5,900	6,330	60,109	60,539	9.8%	10.5%
Dec-99	22,257	28,342	50,599	5,782	6,204	56,381	56,803	10.3%	10.9%
Jan-00	21,189	28,165	49,354	5,783	6,205	55,137	55,559	10.5%	11.2%
Feb-00	19,411	25,826	45,237	4,908	5,266	50,145	50,503	9.8%	10.4%
Mar-00	23,132	30,065	53,197	5,621	6,031	58,818	59,228	9.6%	10.2%
Apr-00	24,871	30,669	55,540	6,003	6,441	61,543	61,981	9.8%	10.4%
May-00	24,831	30,946	55,777	5,908	6,339	61,685	62,116	9.6%	10.2%
Jun-00	25,356	31,124	56,480	6,006	6,444	62,486	62,924	9.6%	10.2%
Jul-00	25,966	31,552	57,518	5,942	6,376	63,460	63,894	9.4%	10.0%
Aug-00	26,199	31,727	57,926	5,654	6,067	63,580	63,993	8.9%	9.5%
Sep-00	25,364	31,307	56,671	5,914	6,346	62,585	63,017	9.4%	10.1%
Oct-00	23,748	30,604	54,352	5,613	6,022	59,965	60,374	9.4%	10.0%
Nov-00	23,296	29,944	53,240	5,831	6,256	59,071	59,496	9.9%	10.5%
Dec-00	21,652	28,034	49,686	5,713	6,130	55,399	55,816	10.3%	11.0%



METRO

DATE: May 17, 1995

TO: Chuck Geyer, Senior Solid Waste Planner

FROM: Jeff Stone, Senior Management Analyst *JS*
Douglas Anderson, Senior Economist *DA*

RE: Data and Graphs Describing Tonnage Into Forest Grove Transfer Station During 1994.

The attached data summarize 1994 tonnages delivered to Forest Grove Transfer Station by date, month, weekday, hour, and origin.

These summaries are based on raw data that comprise 55 hard copy pages of output. As no proprietary information is contained in the raw data, you may offer a hard copy and/or diskette of this data to proposers on this RFP. Further questions should be directed to Jeff Stone at 503-797-1668

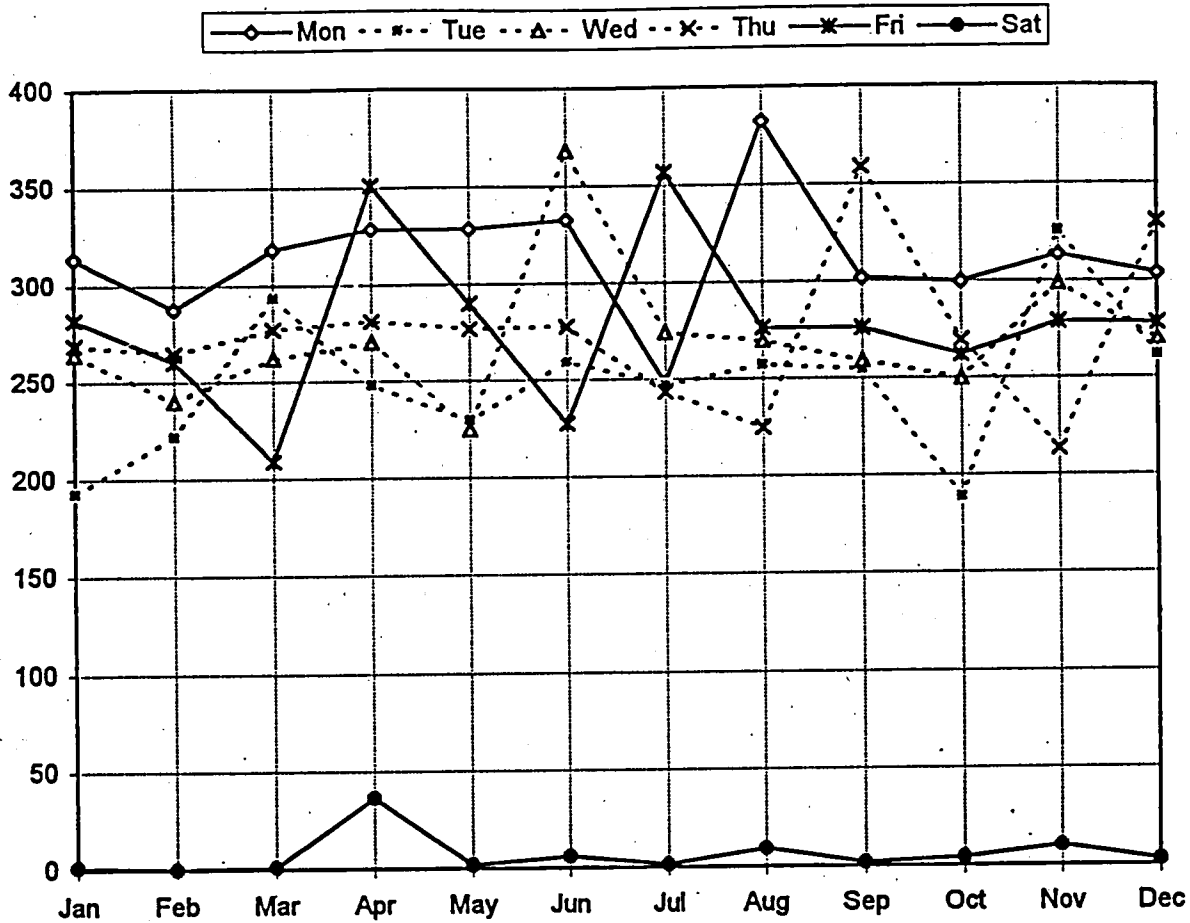
JS:clk

Attachments

cc: Terry Petersen, Planning & Technical Services Manager
Jim Watkins, Engineering & Analysis Manager

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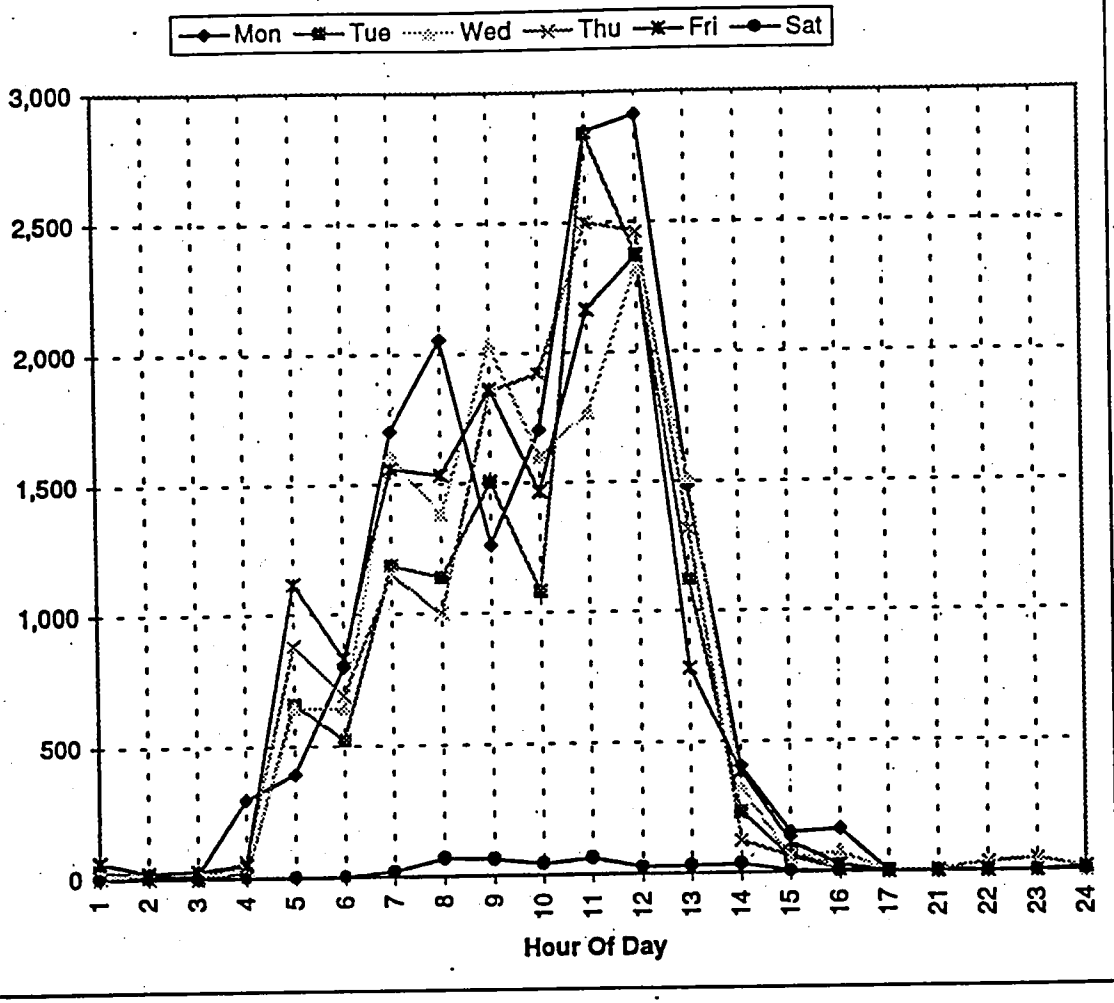
**Tons Of Tri-County Waste Delivered To FGTS During 1994:
Average Per Weekday Per Month**



Average Tons Delivered Per Weekday Per Month During 1994

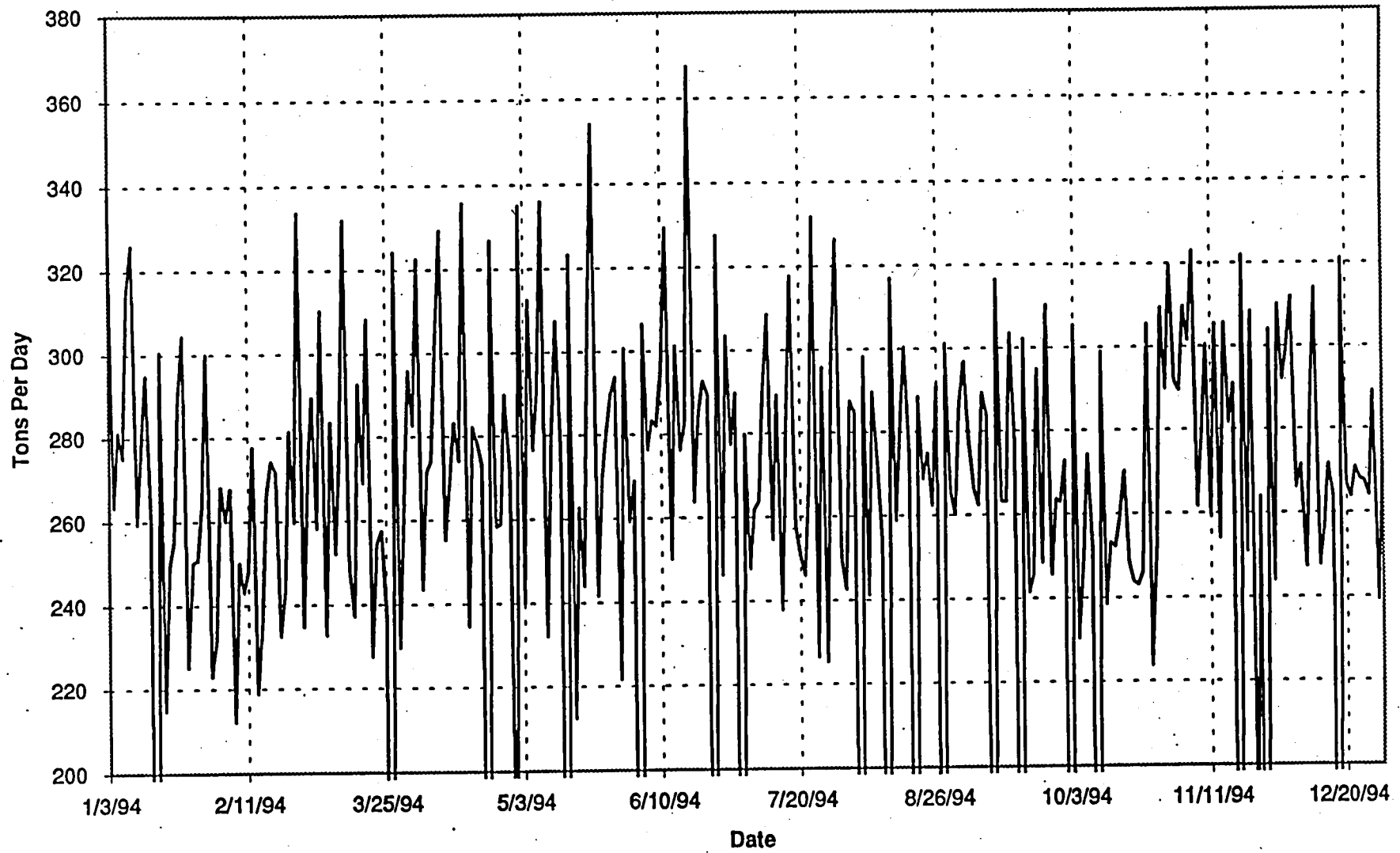
Month	Mon	Tue	Wed	Thu	Fri	Sat
Jan	313.65	192.58	264.49	268.97	282.00	1.45
Feb	287.60	221.63	240.10	264.64	260.50	0.00
Mar	318.47	293.46	261.99	277.36	208.61	1.03
Apr	328.43	247.97	270.32	281.25	351.09	36.36
May	328.30	229.53	224.48	277.00	290.15	1.61
Jun	332.61	259.12	368.14	277.43	227.18	5.47
Jul	247.44	246.67	274.23	243.22	356.80	1.32
Aug	382.54	256.89	269.55	224.66	276.34	8.74
Sep	301.59	254.14	258.66	358.99	275.80	1.55
Oct	299.71	188.20	249.62	269.63	261.77	3.85
Nov	313.39	325.50	298.44	212.85	278.76	9.89
Dec	303.47	261.16	270.08	330.11	277.79	2.69

Tons Of Tri-County Waste Delivered To FGTS During 1994: By Hour And Day Of Week

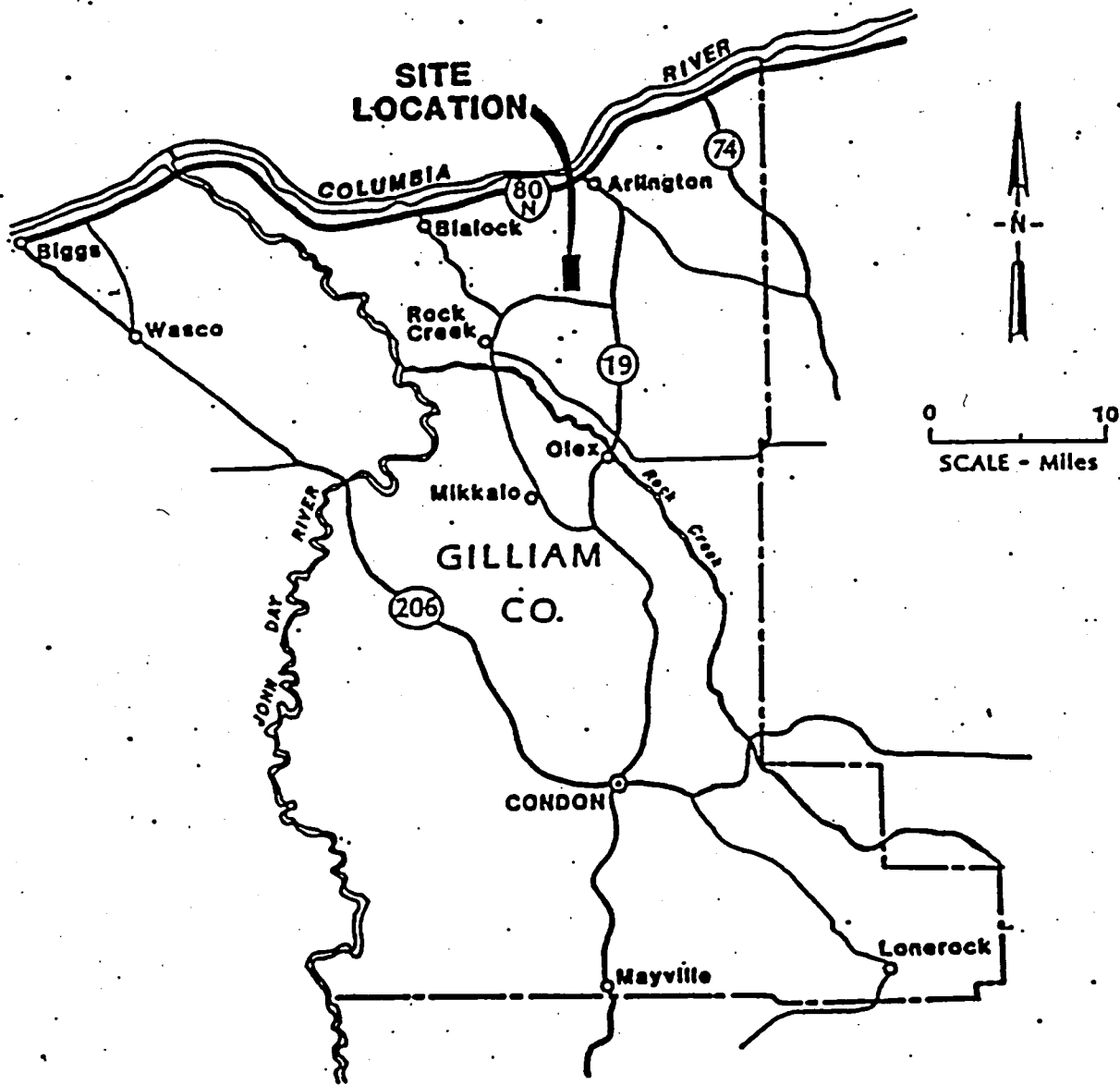


Hour	Mon	Tue	Wed	Thu	Fri	Sat	Grand Total
1	27.50	30.23	16.58	3.09	61.48	0.00	138.88
2	12.44	5.87	15.29	0.65	19.76	0.00	54.01
3	14.24	0.00	20.89	0.00	25.87	0.00	61.00
4	295.03	19.61	31.83	64.55	49.83	0.00	460.85
5	390.25	657.45	643.55	880.22	1,119.41	0.00	3,690.88
6	797.71	520.39	643.17	685.32	830.45	0.00	3,477.04
7	1,700.97	1,185.69	1,613.24	1,152.10	1,559.84	19.91	7,231.75
8	2,053.92	1,137.86	1,382.40	999.04	1,532.66	66.85	7,172.73
9	1,261.78	1,504.55	2,030.37	1,851.55	1,860.64	62.49	8,571.38
10	1,702.15	1,083.00	1,604.48	1,920.58	1,464.95	41.10	7,816.26
11	2,848.25	2,837.92	1,765.06	2,501.38	2,162.77	61.14	12,176.52
12	2,908.96	2,373.93	2,323.73	2,463.68	2,372.56	23.42	12,466.28
13	1,483.73	1,121.71	1,515.52	1,318.10	780.53	27.58	6,247.17
14	406.08	229.35	325.06	122.54	386.22	31.14	1,500.39
15	149.12	58.00	50.94	58.08	112.82	4.11	433.07
16	162.85	7.48	72.68	26.98	26.11	0.00	296.10
17	1.12	1.49	0.00	1.75	0.00	0.00	4.36
21	1.84	0.00	0.00	5.60	0.00	0.00	7.44
22	0.00	0.00	0.00	31.01	0.00	0.00	31.01
23	0.00	0.00	0.00	43.70	0.00	0.00	43.70
24	0.00	0.00	0.00	6.79	10.55	0.00	17.34
Grand Total	16,217.94	12,774.53	14,054.79	14,136.71	14,376.45	337.74	71,898.16

Daily Tonnage Of Tri-County Waste Delivered To FGTS During 1994

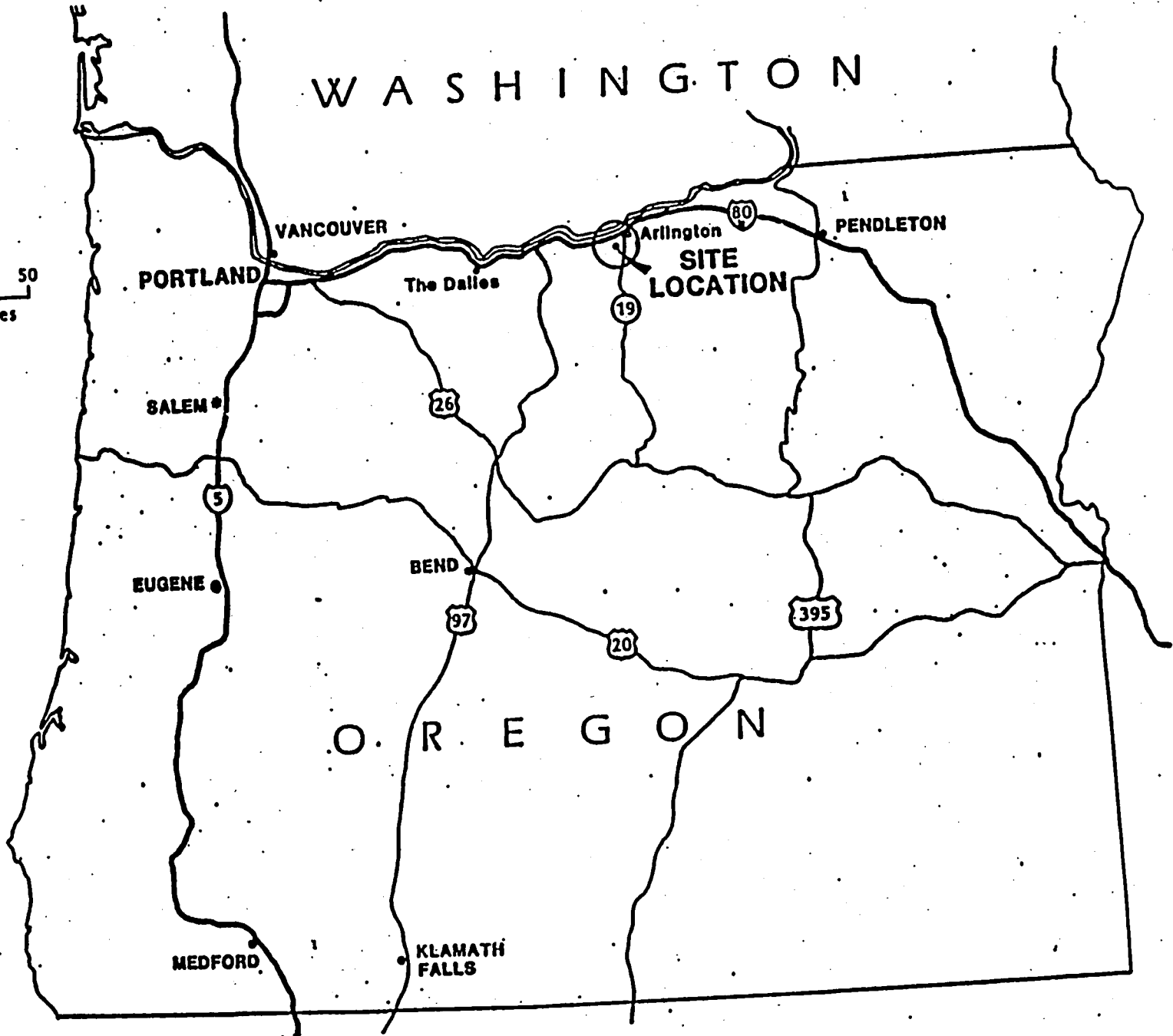
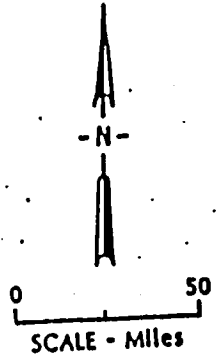


200



SITE VICINITY MAP

WASHINGTON



SITE LOCATION MAP

204

Contract Amendment No. 4:

This Amendment is to an Agreement between Metro, a metropolitan service district organized under the laws of Oregon and the 1992 Metro Charter, and Waste Management Disposal Services of Oregon, Inc., a Delaware corporation, (dba Oregon Waste Systems, Inc.) entered into on April 11, 1988, for solid waste disposal services (herein "Original Agreement"). In exchange for the promises and other consideration set forth in the Original Agreement and in this Amendment, the Parties agree as follows:

1. Contractor waives any claims against or compensation from Metro arising out of Section 1 of the Specifications to the Original Agreement, page VI-1, under the heading "Annual Waste Delivery Guarantees by Metro" for 1991, 1992, and 1993.
2. Upon execution of this Amendment, the Most Favorable Rate Agreement between the Parties (dated March 24, 1988) shall be considered terminated, and Metro waives any claims against or compensation from Contractor arising out of the Most Favorable Rate Agreement.
3. Contractor shall no longer be required to maintain the bonds specified in Amendment No. 2 to the Original Agreement, Section 4. The corporate guarantee provided under that Amendment shall remain in effect, and Contractor shall continue to provide a corporate guarantee as specified in Amendment No. 2, Section 4, for the term of the Agreement and any extensions of the Agreement.
4. Metro shall be entitled to the price adjustments specified in Sections 6(a) and (b) of this Agreement if, and for as long as, Metro delivers or otherwise arranges for the delivery to the Columbia Ridge Landfill 100 percent of all acceptable waste generated in the Metro region:
 - (a) That is delivered to any Metro owned, operated, or franchised facility that is permitted to receive more than incidental quantities of putrescible waste, and that is disposed of at any general purpose landfill; and
 - (b) That is delivered to the A.C. Trucking, Forest Grove Transfer Station, and that is disposed of at any general purpose landfill.

5. For purposes of Section 4 of this Amendment:

- (a) "General purpose landfill" means any land disposal facility that is required by law, regulation or permit to utilize a liner and leachate collection system equivalent to or more stringent than that required for municipal solid waste landfills under Subtitle D of the Resource Conservation and Recovery Act and is authorized by law to accept more than incidental quantities of putrescible waste.
- (b) "Incidental quantities" means small amounts of materials handled by a solid waste facility that, due to both the deminimis amount and the ubiquitous nature of the material, are only allowed by permit as a limited exception to be handled at the facility, but are otherwise banned from acceptance at the facility. In no case shall incidental quantities constitute more than five percent, by volume or by weight, of any load delivered to the facility.
- (c) "Putrescible waste" means solid waste (other than uncontaminated or only slightly contaminated tree stumps, wood waste, branches, brush, cardboard and paper products and other limited types of waste specifically approved or permitted for disposal by DEQ as a limited exception at a disposal or processing facility) containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

6. The price adjustments referenced in Section 4 are as follows:

- (a) Metro's variable rate will be reduced by \$1.00 per ton if delivery pursuant to Section 4 begins before July 1, 1994. Otherwise, Metro's variable rate will be reduced by \$0.65 per ton;
- (b) If delivery pursuant to Section 4 begins on or after July 1, 1994, on January 1, 1995, the variable rate will be reduced by an additional \$0.35 per ton; and
- (c) Beginning with the first annual price adjustment normally occurring after the signing of this Amendment, the "percentage price adjustment (AI)" calculated under the Original Agreement, General Conditions, Article 19.B., shall be reduced by 1/2 percent. If the resulting percentage price adjustment is less than zero, the unit prices shall be reduced by the percentage so obtained.

- (d) If Metro, after having received rate adjustments pursuant to Sections 6(a) and/or (b), is no longer entitled to such adjustments, the variable rate shall be increased by the applicable amounts in Sections 6(a) and/or (b), after such amounts have been adjusted pursuant to Section 6(c) for the period of time that Metro had received the rate adjustments pursuant to Sections 6(a) and/or (b).

7. Contractor shall provide the following credits to Metro during the term of the Original Agreement and any extension thereof, for wastes of comparable type to the waste to be disposed of under the Original Agreement, as modified, other than those generated within Metro boundaries or processed at facilities within Metro boundaries:

- (a) Beginning January 1, 1995, for waste from the city of Seattle or any Partner pursuant to the WWS/Seattle contract and for as long as Seattle waste continues to be disposed of at the Columbia Ridge Landfill:
- \$1.00 per Seattle or Partner ton beginning January 1, 1995, and an additional \$0.50 per ton beginning January 1, 1996.
- (b) For waste from non-Metro region sources other than Seattle or Partner, but not including waste generated in Oregon counties, except Deschutes County, located east of the Cascade Mountains:
- For contracts involving large communities (i.e., communities disposing of greater than 75,000 tons per year at the Columbia Ridge Landfill): \$1.00 per ton beginning immediately upon the effective date of this Agreement and an additional \$0.50 per ton beginning January 1, 1996.
 - Except as provided in Section 1 of this Amendment, for contracts involving small communities (i.e., communities disposing of up to 75,000 tons per year at the Columbia Ridge Landfill): \$0.50 per ton. This credit will begin immediately upon the effective date of this Amendment for contracts that took or will take effect on or after January 1, 1993, and will begin on January 1, 1995, for contracts that took effect before January 1, 1993.
- (c) The credits in this Section 7 are escalated annually by the same CPI increase as described in Section 6(c) above; provided, however, that the additional \$0.50 per ton credit shall not escalate until the first annual price adjustment occurring after the effective date of the additional credit.

8. OWS guarantees that during the remaining term of the Agreement, rebates paid to Metro for non-Metro tonnage received at Columbia Ridge will total at least the sum of monies owed to OWS under Amendment No. 2 as of the effective date of this Amendment, or OWS will pay the difference at the end of the term of the Original Agreement.

9. Additional Conditions.

- (a) Metro shall at all times make good faith efforts to ensure that putrescible waste (other than special waste) generated or disposed of within Metro boundaries that is destined for a general purpose landfill, other than incidental quantities, is disposed of at facilities identified in Sections 4(a) and (b) of this Agreement.
- (b) Metro shall not intentionally forfeit its ownership or control over facilities identified in Sections 4(a) and (b) of this Amendment in such a manner as to significantly diminish the value to Contractor of waste deliveries under Section 4 of this Amendment.
- (c) If Metro is precluded from exercising authority to control the flow of solid waste due to a change in state or federal law, in a manner that significantly diminishes the value to Contractor of waste deliveries under Section 4 of this Amendment, Sections 6(a) and (b) of this Amendment shall be null and void.

OREGON WASTE SYSTEMS, INC.

METRO

By: [Signature]

By: [Signature]

Title: Div. Pres. & Gen. Mgr.

Title: Executive Officer

Date: 3/16/94

Date: 3/16/94

11790

100969

METRO

600 N.E. Grand
Portland, OR 97232-2736



Solid Waste Transport Invoice

Note: If waste is unacceptable,
note such on back of invoice.
Sign, list date and time, notify
Metro immediately.

Transaction number	Time		Date			Truck number	Trailer number	Computer operator	Seal number	Special waste?	Permit number
	Hours	Min.	Month	Day	Year						
309	12:24		03	21	95		159	SRH	66341		

Remarks:

95440 Gross Wt. lb S 1
 32360 Tare Wt. lb M 0
 Net weight tons
 63080 Net Wt./lb 31.54 C5.03

G: 53560 T: 41780
 RYD94: 1(053660) 2(011920) 3(029860)

At transfer station: Metro South MAIN 2
 Verify: 1 Load weight
 2 Seal intact
 3 Seal number

Signature—transfer station contractor

Signature—waste transport contractor

At a landfill: Avonington
 Verify: 1 Seal intact Landfill name
 2 Seal number

Signature—transport unloader/driver Time unloaded

Signature—landfill contractor Time signed

LOAD MANIFEST

DATE: _____
COMPACTOR #: _____ TRAILER #: _____
TRAILER SEAL #: _____

Initialling this form states that there was no apparent damage to the trailer before or after loading. Any damage should be noted below in the comments section.

TRUCK IN Time: _____ TRUCK OUT Time: _____
JGT: _____ JGT: _____
TI: _____ TI: _____

COMPACTOR WEIGHT 1st Bale: _____ Time 1st Bale: _____
Time: _____ Clearance Front: _____
Total: _____ Back: _____

Comments: _____

share/geye/stations/forest/forest/loadmani.frm

LOAD MANIFEST

DATE: _____
COMPACTOR #: _____ TRAILER #: _____
TRAILER SEAL #: _____

Initialling this form states that there was no apparent damage to the trailer before or after loading. Any damage should be noted below in the comments section.

TRUCK IN Time: _____ TRUCK OUT Time: _____
JGT: _____ JGT: _____
TI: _____ TI: _____

COMPACTOR WEIGHT 1st Bale: _____ Time 1st Bale: _____
Time: _____ Clearance Front: _____
Total: _____ Back: _____

Comments: _____

share/geye/stations/forest/forest/loadmani.frm

ACCIDENT REPORT

Date of Accident: _____

Time of Accident: _____

Trailer Number: _____

Truck Number: _____

Transfer Station: _____

Compactor Number: _____

1. Where did the accident occur?

2. In your own words, describe what happened.

3. Describe any damage to facility, trailer, truck, or other property.

4. Where were you when the accident occurred?

5. Did you see the accident happen? _____

6. What action, if any, did you take to prevent the accident?

7. Did anyone else see the accident happen? If so, please list their name/names.

8. Did you contact a supervisor? If so, which supervisor(s) did you contact, and when?

9. What, if any, repairs did you make to the trailer or vehicle to make it roadworthy?

10. Please list any other pertinent information here:

Compactor Operator Signature

Transporter Signature

Date

share\geye\stations\forest\forest\accident.rpt

DEQ Fees Per Ton to be Treated as Pass Throughs

1. Annual Solid Waste Permit Fee \$0.21
2. 1991 Recycling Act Annual Fee \$0.09
3. Per Ton Solid Waste Disposal Fee on Domestic Solid Waste \$0.81
4. Orphan Site Account Fee \$0.13

SETTLEMENT AGREEMENT

OREGON AAA (Automobile Club of Oregon), FRIENDS OF THE COLUMBIA GORGE, COLUMBIA RIVER HERITAGE ASSOCIATION, HOOD RIVER VALLEY RESIDENTS COMMITTEE, INC., GERALD BLAKE, JACK MILLS, et al., Petitioners, and METROPOLITAN SERVICE DISTRICT (Metro) and JACK GRAY TRANSPORT, INC., Respondents, in LUBA No. 89-035 mutually agree to settlement of that action as follows:

RECITALS:

1. Metro and Jack Gray Transport, Inc. have entered into a Waste Disposal Services Agreement to transport solid waste from the Portland metropolitan area to the landfill at Arlington, Oregon, by truck; and
2. All the parties desire to mitigate the impact of increased truck traffic through the Columbia River Gorge National Scenic Area; and
3. Administration of the Waste Transport Services Agreement by Metro's Executive Officer has been delegated to Robert B. Martin, Director of Solid Waste; and
4. Suggestions for mitigation measures have been received from local governments located in the Columbia River Gorge National Scenic Area, the Columbia River Gorge Commission, as well as petitioners; and
5. All parties seek resolution of the LUBA appeal based upon implementation of a comprehensive set of measures to mitigate waste disposal truck impact on the Columbia River Gorge National Scenic Area.

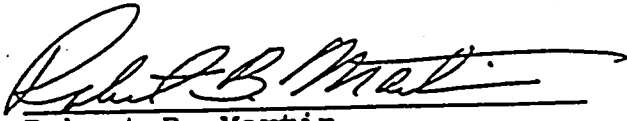
AGREEMENTS:

1. Metro and Jack Gray Transport, Inc. agree to add Mitigation of Truck Impact attached as Exhibit "A" and incorporated herein to the Operations Plan as Exhibit 12 of that Plan required by the Waste Disposal Services Contract between the parties upon dismissal of LUBA No. 89-035.

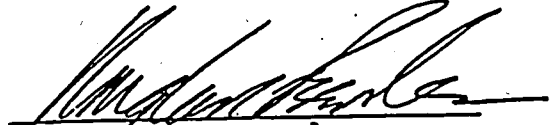
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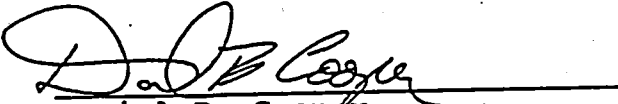
2. Petitioners agree to dismiss LUBA No. 89-035 based on the agreed upon mitigation procedures in Exhibit 12 Mitigation of Truck Impact.



Robert B. Martin
Director of Solid Waste



Douglas L. Peeples
Automobile Club of
America



Daniel B. Cooper
Metro General Counsel



David T. Douthwaite
Attorney for
Jack Gray Transport, Inc.

LS/gl

Mitigation of Truck Impact

1. Staging areas shall be located in areas outside or excluded from the Columbia River Gorge NSA.
2. Jack Gray Transport, Inc. trucks shall stop at designated stopping points outside the Columbia River Gorge NSA, except in cases of emergency as indicated on page 7 of the driver's handbook portion of the Operating Plan. Use of rest areas, turnouts, scenic vista points and state parks shall be limited to cases of emergency.
3. Jack Gray Transport, Inc. trucks shall operate twenty-four (24) hours a day. However, to the extent feasible trucks shall not operate in the Columbia River Gorge NSA during the following times:
 - 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August and September.
 - Daylight hours on Saturday in June, July, August and September.
 - All hours on Sunday in June, July, August and September.
4. Jack Gray Transport, Inc. shall comply with Gilliam County's Waste Reduction Program and Specification 21.0 of the Waste Transport Services Contract by backhauling recyclables from Arlington to available recyclable markets.
5. Per PUC and ODOT operation requirements, Jack Gray Transport, Inc. trucks shall include splash and spray suppressant devices behind each wheel and rain suppressant side flaps on all non-turning axles.
6. Jack Gray Transport, Inc. shall comply with Specification 10.2, paragraph 2, of the Waste Transport Services Contract by utilizing containers which will not leak or release solid waste on roads.
7. Jack Gray Transport, Inc. shall comply with Specification 10.2, paragraph 4, of the Waste Transport Services Contract by maintaining tractors and containers suitably painted to present an acceptable appearance in the opinion of Metro including reasonable promotion of waste reduction and recycling.

8. Monitoring of the Waste Transport Services Contract shall include monthly coordination meetings with a monthly report presented by Jack Gray Transport, Inc. to discuss operational problems, complaints and any extraordinary occurrences per Specification 4.0 of the Waste Transport Services Contract. Monthly reports shall include written explanation of operational changes more than five (5) days during the month causing trucks to stop at points inside the Columbia River Gorge NSA or to operate during the hours indicated in item 3, above.
9. The public review process which has solicited public comment on the draft Operating Plan shall continue to review ongoing operations with mutually agreed Gorge representatives in twice per year meetings. Interested parties who request notice shall be notified of the time and place of the twice per year public meetings. Metro shall prepare a report reviewing the past six (6) months of operations for distribution at the twice per year meetings which shall be available ten (10) days prior to the meeting.
10. Metro shall conduct an annual audit of Jack Gray Transport, Inc. dispatch logs to determine contractor compliance with regulatory requirements, contract specifications and mitigation of truck impact provisions. The audit shall include a determination of the reasons for operations outside these mitigation provisions as part of contract administration. This annual audit shall be reported to the Metro Council as part of contract administration.
11. All mitigation of truck impact provisions for Jack Gray Transport, Inc. shall be requirements for any subcontractor of Jack Gray Transport, Inc. to the extent required by the Waste Transport Services Agreement.
12. Proposed permanent amendments to these mitigation of truck impact provisions in Exhibit 12 of the Operating Plan may be approved by Metro's Executive Officer after thirty (30) days notice to interested parties who request such notice.

LS/gl

EXHIBIT 12

EXHIBIT "A"
Page 2 of 2

EXHIBIT "D"

FINDINGS FOR AN EXEMPTION FROM THE COMPETITIVE BID PROCESS FOR THE PROCUREMENT OF SERVICES FOR THE DISPOSAL AND/OR TRANSPORT OF WASTE FROM THE FOREST GROVE TRANSFER STATION

In order to utilize the proposal process to dispose and/or transport waste from the Forest Grove Transfer Station, findings are presented below to satisfy the following exemption requirements:

- (a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- (b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency.

The approach will not encourage favoritism because it should increase the number of potential proposers. This is because the proposal process will allow greater flexibility in the arrangements vendors can make in the disposal and/or transport of waste. Vendors can propose on only transport to the Columbia Ridge Landfill, in conjunction with the disposal price arranged through Amendment No. 4 to the Waste Disposal Services Contract, or propose to transport and dispose of the waste to any permitted location. By increasing the number of approaches on which vendors can propose, the proposal process will increase competition thereby satisfying "a" above.

The public contract which will be awarded as a result of the exemption will result in substantial savings to Metro, since it increases competition as described above. Under the current franchise arrangement, the Forest Grove Transfer Station operator provides transport and disposal of waste without a competitive process. This procurement should result in additional parties competing to provide these services, resulting in lower costs for transport and disposal. If the resulting contract does not result in savings, or for any other reason Metro decides that it should not award a contract, Metro can choose not to award the contract and simply continue the current arrangements.

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AGENDA ITEM ~~72~~⁷¹
Meeting Date: August 10, 1995

Resolution No. 95-2189

**Resolution No. 95-2189, For the Purpose of Confirming Alternates for Citizen
Representatives to the Transportation Policy Alternatives Committee (TPAC)**



METRO

DATE: August 2, 1995
TO: Metro Council
FROM: Casey Short *CS*
RE: Resolution No. 95-2189

Resolution 95-2189 would confirm the appointments of three alternates to citizen positions on the Transportation Policy Alternatives Committee (TPAC). This item is coming to Council on August 10 without coming through the Transportation Planning Committee, because the committee is not going to meet again until September and it would be preferable to confirm the alternates without additional delay.

BACKGROUND

The Council confirmed new TPAC citizen members in June, with the adoption of Resolution 95-2170. Those people were recommended by a selection committee consisting of Councilor Monroe, Gresham City Council member Claudiette Lavert (a JPACT member), and Transportation Planning Director Andy Cotugno. In making their recommendations, the selection committee asked the new members to recommend their alternates from among the nine other people who were interviewed for TPAC selection. The three recommended alternates come from that group.

There has been an effort to have the alternates share some connection with the members. The selection committee wanted a member to represent freight interests, and both Stephen Abouaf (member) and Elizabeth Dawson (proposed alternate) work in the freight business. The committee also wanted a citizen representative from Clackamas County; Dennis Bridges is the member who lives in Clackamas County, and his proposed alternate Debra Stevens also lives in Clackamas County. Ms. Stevens lives in the Damascus area, which the committee thought would provide a helpful insight into an area that is going to be affected by growth. The final alternate recommendation of Michael Silvey has less connection to the member, Chris Kopca. Both were chosen primarily for their own qualities, and not to fill any specific slot.

If you have any questions about this resolution or about the process, please let me know. Thank you.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING)	RESOLUTION NO. 95-2189
ALTERNATES FOR CITIZEN)	
REPRESENTATIVES TO THE)	Introduced by Councilor
TRANSPORTATION POLICY)	Rod Monroe
ALTERNATIVES COMMITTEE (TPAC))	

WHEREAS, The Transportation Policy Alternatives Committee (TPAC) is organized to provide input to JPACT and the Metro Council on transportation planning, priorities and financing alternatives; and

WHEREAS, The TPAC bylaws have been approved by the Metro Council through adoption of Resolution No. 95-2089; and

WHEREAS, The TPAC bylaws stipulate that TPAC will include six citizen representatives, who will be nominated through a public application process, confirmed by the Metro Council, and appointed by the Council's Presiding Officer; and

WHEREAS, The TPAC bylaws provide for the appointment of alternates for the citizen representatives, to be confirmed by the Council and appointed by the Presiding Officer; and

WHEREAS, TPAC citizen representatives Stephen Abouaf, Dennis Bridges, and Chris Kopca were confirmed by the Council by adoption of Resolution No. 95-2170; and

WHEREAS, The three new citizen members of TPAC have suggested the names of their alternates, chosen from among the pool of applicants for the TPAC appointments; now, therefore,

BE IT RESOLVED,

That the Metro Council:

1. Confirms Elizabeth Dawson as the alternate for TPAC member Stephen Abouaf.
2. Confirms Debra Stevens as the alternate for TPAC member Dennis Bridges.
3. Confirms Michael Silvey as the alternate for TPAC member Chris Kopca.

ADOPTED by the Metro Council this _____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

APPLICATION FORM FOR APPOINTMENT TO METRO TRANSPORTATION POLICY ALTERNATIVES COMMITTEE

The purpose of this form is to obtain general information for use in determining qualifications for appointment to the Metro Transportation Policy Alternatives Committee (TPAC). Please complete and return this form (both sides) no later than 5 p.m. April 28, 1995. Mail or FAX completed forms to:

Pamela Peck, Metro Planning Department

Mailing address: 600 NE Grand Avenue, Portland, OR 97232-2736.

Fax number: 797-1794.

PERSONAL DATA

Name: DAWSON, ELIZABETH L.
(Please type or print last name, first name, middle initial)

Address: 1921 NE 73RD #3, PORTLAND, OR 97213

Phone: (503) 257-2371 (Home) (503) 2932205 (Business) _____ (Other)

Occupation TRAFFIC MANAGER

Do you reside within the Metro Boundary? YES

(Completion of the affirmative action section of the form is completely voluntary.)

- | | | |
|--|-------------|--|
| Ethnic Background: | Gender: | <input checked="" type="checkbox"/> Female |
| <input checked="" type="checkbox"/> White (not of Hispanic origin) | | <input type="checkbox"/> Male |
| <input type="checkbox"/> African American | Disability: | <input type="checkbox"/> Yes |
| <input type="checkbox"/> Hispanic | | <input checked="" type="checkbox"/> No |
| <input type="checkbox"/> Asian or Pacific Islander | Veteran: | <input type="checkbox"/> Yes |
| <input type="checkbox"/> Native American or Alaskan | | <input checked="" type="checkbox"/> No |

(OVER)

EDUCATION

School	Location	Dates	Degree
HOPKINS	NEW HAVEN, CT	1976-1979	HIGH SCHOOL
BOWDOIN COLLEGE	NEW BRUNSWICK, ME	1979-1981	2 YEARS
CONTINUING EDUCATION at HARVARD UNIVERSITY	CAMBRIDGE, MA	1983-1986	1 YEAR of COLLEGE CREDIT
PCC	VARIOUS LOCATIONS	1994-1995	NON-CREDIT for PERSONAL IMPROVEMENT

EMPLOYMENT

FURMAN LUMBER - TRANSPORTATION COORDINATOR	BOSTON, MA	1982-1988
TREESOURCE - TRANSPORTATION COORDINATOR	LAKE OSWEGO, OR	1988-1990
TRICON FOREST PROD. - ASSISTANT TRAFFIC MGR	LAKE OSWEGO, OR	1990-1991
MFP OF OREGON - TRAFFIC MANAGER	LAKE OSWEGO, OR	1991-PRESENT

COMMUNITY SERVICES ACTIVITIES / HONORS

A MEMBER OF THE TRANSPORTATION ASSOCIATION OF PORTLAND SINCE 1989.

CURRENTLY, ON THE BOARD OF DIRECTORS- THE SECOND VICE-PRESIDENT.

EACH YEAR, ATTEND THE PACIFIC NORTHWEST ASSOCIATION OF RAIL SHIPPER'S

SEMINARS HELD IN PORTLAND AND EUGENE.

Interest in applying: I HAVE WANTED TO EXPAND MY INVOLVEMENT IN THE PORTLAND COMMUNITY. AND AFTER ATTENDING A RECENT PRESENTATION BY MICHAEL HOGLUND AT A TRANSPORTATION ASS. OF PORTLAND MEETING, I BECAME VERY INTERESTED IN THE PLANNING BEING DONE AT METRO AND DECIDED TO PURSUE ANY OPPORTUNITIES TO BECOME INVOLVED.

I understand that appointment to this committee will involve a significant time commitment, including regular, special and sub-committee meetings, and am willing to make such a commitment.

4-28-95
(Date)

X Elizabeth L Ows
(Signature)

**APPLICATION FORM FOR APPOINTMENT TO
METRO TRANSPORTATION POLICY ALTERNATIVES COMMITTEE**

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Pamela Peck, Metro Planning Department

Mailing address: 600 NE Grand Avenue, Portland, OR 97232-2736.

Fax number: 797-1794.

PERSONAL DATA

Name: MICHAEL R. SILVEY
(Please type or print last name, first name, middle initial)

Address: 1785 Palisades Terrace Drive, Lake Oswego 97034

Phone: 697-0739 (Home) 221-5293 (Business) _____ (Other)

Occupation: Attorney

Do you reside within the Metro Boundary? Yes

(Completion of the affirmative action section of the form is completely voluntary.)

Ethnic Background:

- White (not of Hispanic origin)
 African American
 Hispanic
 Asian or Pacific Islander
 Native American or Alaskan

Gender: Female

Male

Disability: Yes

No

Veteran: Yes

No

(OVER)

EDUCATION

School	Location	Dates	Degree
<u>U.C. Santa Barbara</u>	<u>Santa Barbara, CA</u>	<u>9/63-6/67</u>	<u>A.B. History (with honors)</u>
<u>Hastings College of The Law</u>	<u>San Francisco, CA</u>	<u>9/67-6/71*</u>	<u>J.D.</u>
	<u>Law Review; Order of the Coif</u>		
	<u>* interrupted by 6 months active duty training for National Guard</u>		

EMPLOYMENT

Crosby, Heafey, Roach & May, Oakland, CA 1971-1991
Foster Pepper & Shefelman, Portland, OR 1991-to present
I specialize in real estate and land use law.

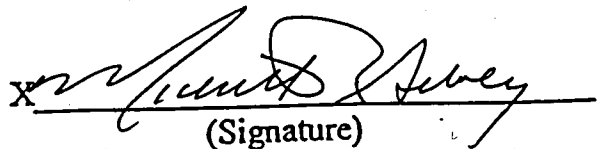
COMMUNITY SERVICES ACTIVITIES / HONORS

YMCA of Columbia-Willamette - Board of Management 1991-present
Member, Executive Comm 1991-present; Chair of Public Policy
Committee 1991-present; Chair of State Public Policy Comm.
Vice Chair of Lake Oswego Comprehensive Plan Citizens
Advisory Comm. 1992-1994. Board Member of NAIP
(National Assoc of Industrial & Office Properties) - see attached
resume for other service contributions
Interest in applying: Having come from the S.F. Bay Area, I understand

traffic and transportation problems and the need for alternative
solutions; additional freeways alone will not help; I would like to
become more involved in regional issues and my background and
experience, I believe, will be of help to the committee.

I understand that appointment to this committee will involve a significant time
commitment, including regular, special and sub-committee meetings, and am willing to
make such a commitment.

4/15/95
(Date)


(Signature)

FOSTER PEPPER & SHEFELMAN

MICHAEL R. SILVEY

PERSONAL:

Born April 13, 1945
San Mateo, California

PROFESSIONAL EXPERIENCE:

Foster Pepper & Shefelman
Portland, Oregon
Partner - 1993-
Of Counsel - 1991-1992

Real Estate Development - Practice emphasizes representing developers in all aspects of commercial and residential real estate, including purchase transactions, loans for acquisition and construction, refinancing, development agreements, securing land use approvals and leasing.

Financial Institutions - Substantial experience in real estate loans, and personal property secured loans. Additional experience includes mergers and acquisitions of financial institutions, loan workouts and non-judicial, judicial, and personal property foreclosures and mortgage servicing.

Chair of the Real Estate Practice Group

Crosby, Heafey, Roach & May
Oakland, California
Partner - 1977-1990
Associate - 1971-1976
Secretary - 1979-1986
Treasurer - 1986-1990

EDUCATION:

Hastings College of Law
University of California
J.D., 1971, Order of the Coif

University of California, Santa Barbara
A.B., with Honors, 1967

ADMITTED TO PRACTICE:

California, 1972

Oregon, 1990



PROFESSIONAL ACTIVITIES:

American Bar Association

Oregon State Bar
Member, Real Estate and
Land Use Section

California State Bar
Conference of Delegates
Member, Executive Committee,
1986-1989

Vice-Chair, Executive Committee,
1988-1989

Multnomah County Bar Association

Alameda County Bar Association
Chair, Real Property Section
Chair, Legislation Committee

ORGANIZATIONS:

Associated Oregon Industries

BOMA

NAIOP
Portland Chapter
Member, Board of Directors, 1993-

Oregon Mortgage Bankers Association

Urban Land Institute

... continued

PUBLICATIONS AND PRESENTATIONS:

Author, "Judicial Foreclosure," California Real Property Journal, April, 1990.

Lecturer at Continuing Legal Education seminars and industry group conferences on real property brokerage practice, land use, and environmental law.

COMMUNITY ACTIVITIES:

City of Lake Oswego
Comprehensive Plan Review Committee
Citizen Member, 1992-

YMCA of Columbia-Willamette
Member, Board of Directors, 1991-
Member, Executive Committee, 1992-
Chair, Public Policy/Relation's
Committee, 1991-

Oregon State YMCA
Public Policy Committee, 1993-

Contra Costa County Airport
Land Use Commission.
Public member, 1982-1985
The Commission has jurisdiction over
approvals for development near the
County's major airport.

City of Orinda
General Plan Committee
Member, 1988-

City of Orinda
Gateway Advisory Committee
Member, 1989-1990
The Committee is charged with
developing a specific plan on 1,000
acres of undeveloped property.

**APPLICATION FORM FOR APPOINTMENT TO
METRO TRANSPORTATION POLICY ALTERNATIVES COMMITTEE**

The purpose of this form is to obtain general information for use in determining qualifications for appointment to the Metro Transportation Policy Alternatives Committee (TPAC). Please complete and return this form (both sides) no later than 5 p.m. April 28, 1995. Mail or FAX completed forms to:

Pamela Peck, Metro Planning Department
Mailing address: 600 NE Grand Avenue, Portland, OR 97232-2736.
Fax number: 797-1794.

PERSONAL DATA

Name: Stevens, Debra M.
(Please type or print last name, first name, middle initial)

Address: 14482 SE Wyeast Ave. Clackamas OR 97015

Phone: (503) 658-5286 539-1509
(Home) (Business) (Other)

Occupation: Currently at home with children, and involved in community work

Do you reside within the Metro Boundary? yes

(Completion of the affirmative action section of the form is completely voluntary.)

Ethnic Background:

- White (not of Hispanic origin)
 African American
 Hispanic
 Asian or Pacific Islander
 Native American or Alaskan

Gender: Female

Male

Disability: Yes

No

Veteran: Yes

No

(OVER)

AGENDA ITEM 8.3
Meeting Date: August 10, 1995

Resolution No. 2190

Resolution No. 95-2190, Supplementing Resolution No. 95-2169 pertaining to the issuance of General Obligation Bonds (Open Spaces Program) in the Principal Amount of Not to Exceed \$135,600,000 for the Purpose of Financing the Acquisition and Improvement of Various Parcels of Land as Part of Metro's Open Spaces Program.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 95-2190 WHICH SUPPLEMENTS RESOLUTION NO. 95-2169 AUTHORIZING THE ISSUANCE OF THE OPEN SPACES GENERAL OBLIGATION BONDS, AND SETS THE PRINCIPAL AND INTEREST PAYMENT DATES.

Date: July 31, 1995

Presented by: Craig Prosser

BACKGROUND AND ANALYSIS

Resolution 95-2190 supplements Resolution 95-2169 which authorized the issuance of the Open Spaces General Obligation Bonds. Resolution 95-2190 sets the principal and interest payment dates to September and March of each year, rather than July and January as provided in the original resolution. The September/March dates coordinate more closely with the issuance date (September) and improves Metro's ability to invest bond proceeds for greater yield.

BUDGET IMPACT

There is no budget impact on this Resolution.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 95-2178.

METRO

RESOLUTION No. 95-2190

A RESOLUTION SUPPLEMENTING RESOLUTION NO. 95-2169 PERTAINING TO THE ISSUANCE OF GENERAL OBLIGATION BONDS (OPEN SPACES PROGRAM) IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$135,600,000 FOR THE PURPOSE OF FINANCING THE ACQUISITION AND IMPROVEMENT OF VARIOUS PARCELS OF LAND AS PART OF METRO'S OPEN SPACES PROGRAM.

ADOPTED BY THE METRO COUNCIL
ON _____, 1995
EFFECTIVE ON _____, 1995

BEFORE THE METRO COUNCIL

A RESOLUTION SUPPLEMENTING
RESOLUTION No. 95-2169 PERTAINING
TO THE ISSUANCE OF GENERAL
OBLIGATION BONDS (OPEN SPACES
PROGRAM) IN THE PRINCIPAL AMOUNT
OF NOT TO EXCEED \$135,600,000 FOR
THE PURPOSE OF FINANCING THE
ACQUISITION AND IMPROVEMENT OF
VARIOUS PARCELS OF LAND AS PART
OF METRO'S OPEN SPACES PROGRAM.

) RESOLUTION No. 95-2190
)
) INTRODUCED BY MIKE BURTON
)
)
)
)
)
)
)
)
)
)

SECTION A. FINDINGS. As the preamble to this Resolution, the Metro Council recites the matters set forth in this Section. To the extent any of the following recitals relates to a finding or determination which must be made by the Council in connection with the subject matter of this Resolution or any aspect thereof, the Council declares that by setting forth such recital such finding or determination is thereby made by the Council. This Section A and the recitals, findings and determinations set forth herein constitute a part of this Resolution.

(A) POLITICAL SUBDIVISION. Metro is a municipality and political subdivision organized and existing under and pursuant to Article XI, Section 14 of the Oregon Constitution, the laws of the State of Oregon and the Metro Charter.

(B) PRIOR AUTHORIZATION OF BONDS AND SUPPLEMENTAL RESOLUTIONS. On June 22, 1995, the Metro Council adopted Resolution No. 95-2169 (the "Initial Resolution") authorizing the issuance and sale of general obligation bonds in an aggregate principal amount not to exceed \$135,600,000 (the "Bonds") for the purpose of financing the capital costs of the Metro Open Spaces Program (the "Program"). In the Initial Resolution, the Metro Council reserved the right to adopt subsequent resolutions pertaining to the issuance and sale of the Bonds as it determines are necessary or appropriate. This resolution is being adopted to supplement the Initial Resolution in order to conform the dates upon which the principal of and interest on the Bonds will be due and payable to those dates which work best with Metro's cash management and investment policies.

NOW, THEREFORE, BE IT RESOLVED BY THE METRO COUNCIL AS FOLLOWS:

SECTION 1. DEFINITIONS. All terms used in this resolution and not otherwise defined herein shall have the respective meanings assigned thereto in the Initial Resolution.

SECTION 2. PAYMENT DATES. The Initial Resolution is hereby modified and supplemented as provided in this Section 2. The term "INTEREST PAYMENT DATE" shall mean each September 1 and March 1 of each year. The first Interest Payment Date for the Bonds of a particular series shall be the first March 1 or September 1 following the issuance and delivery of such series of Bonds. The Bonds of each series shall mature on September 1 of each of the years determined by Metro's Executive Officer (under the authority granted in the Initial Resolution) in connection with the issuance and sale of such series, provided that the first such maturity date shall be September 1, 1996 and the final maturity date shall be September 1, 2015. Any Bonds issued as term bonds (as determined by Metro's Executive Officer under the authority granted in the Initial Resolution) shall be subject to mandatory redemption on September 1 of such years and in such principal amounts as shall be determined by the Executive Officer under the authority granted in the Initial Resolution. The Series A Bonds shall be dated as of the first day of the month in which they are issued and delivered.

SECTION 3. EFFECTIVENESS OF RESOLUTION. This Resolution shall take effect immediately upon its adoption by the Metro Council.

ADOPTED THIS ____ DAY OF _____, 1995.

J. Ruth McFarland
Presiding Officer of Metro Council

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel



METRO

DATE: August 10, 1995
TO: Metro Council
FROM: Casey Short, ^{CS} Council Analyst
RE: RFP for South/North Technical Assistance

In May, Transportation Planning staff came to Council requesting authorization to release a Request for Proposals for a multi-year contract for technical assistance in preparing a Draft Environmental Impact Statement for the South/North Light Rail project. Council approved the request, but required the staff to return to Council for approval of the recommended contractor.

I was advised a couple of weeks ago that the proposals had been received, and an interview panel was being formed. After discussing with several Councilors how and whether there should be some Council representation in the interviews, the decision was made that I would sit in on the interviews.

Those interviews were held yesterday, August 9, with the three teams that submitted proposals. I am satisfied that the process was fair and thorough. The selection committee included four representatives of other jurisdictions, as well as two staff members from Transportation Planning (see below for a list). The committee came to a preliminary recommendation of the team to select, which recommendation will be forwarded to the Executive and then to the Council; you will probably be given that recommendation in September. From my perspective as Council staff, I am comfortable that it was a good process, and that the major contract elements of engineering analysis, financial analysis, and intergovernmental coordination will be well addressed by the contractor. If you have any questions, please let me know.

SELECTION COMMITTEE:

Richard Brandman, Metro
Leon Skiles, Metro
Bob Post, Tri-Met
Leo Huff, ODOT
Elsa Coleman, City of Portland
Rod Sandoz, Clackamas County

Also present: Sharon Kelly Meyer, John Gray, Casey Short

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 95 -2191
THE EXECUTIVE OFFICER TO PURCHASE) Introduced by Mike Burton
PROPERTY WITHIN THE FOREST PARK) Executive Officer
REGIONAL TARGET AREA)

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, Forest Park was designated as a Greenspace of regional significance in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, The J.J. & Associates property has been identified as an important natural area within the Forest Park Project Area; and

WHEREAS, A Process for Considering and Executing Options to Purchase Lands was adopted by Council Resolution No. 94-1919; and

WHEREAS, Resolution 95-2069 authorized the Executive Officer to enter into an agreement with J.J. & Associates to option their property based on the terms outlined in Exhibit A; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to purchase the property, identified in Exhibit A, for \$225,000 plus closing costs and taxes, subject to certain conditions being fulfilled.

ADOPTED by Metro Council this _____ day of _____, 1995.

J. Ruth Mc Farland , Presiding Officer

Staff Report

CONSIDERATION OF RESOLUTION NO. 95 -2191, FOR THE PURPOSE OF
AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY IN
THE FOREST PARK TARGET AREA

Date: 28 July 1995

Presented by: Nancy Chase

PROPOSED ACTION

Resolution No. 95 - 2191 requests the approval of a resolution to authorize the Executive Officer to purchase property from J.J. & Associates in the Forest Park Target Area.

BACKGROUND AND ANALYSIS

Resolution 95 - 2132 approved an option for the purchase of property in the Forest Park Target area. The Forest Park Target Area was specified as a Metro regional site in Measure 26 -26. This option was part of the Options Demonstration Project approved by Council Resolution 93 -1832.

The optioned property is 115 acres in size and was recently logged and reforested. The owner, J.J. & Associates, will continue to be responsible for maintenance of the reforestation until State approval is given. This property is accessed off NW Newberry Road and is in the wildlife corridor connecting Forest Park to the Coast Range. A goal of the Forest Park Target Area is to protect the corridor through purchase of land and/or easements. The site may also be used for the "Greenway to the Pacific" trail.

The option, approved by Council under Resolution 95 - 2132, stated that the land would be purchased for \$250,000 subject to an appraisal of the fair market value of the property indicating a value of at least 85% of the sale price. An appraisal was completed by Arvidson & Associates setting the value at \$194,500. A sale price of \$225,000 has been agreed upon. All "due diligence" items are in the process of being reviewed and will receive final approval by the Open Space Staff and General Counsel prior to closing.

BUDGET IMPACT

Monies for this property will come from the Open Space, Parks and Streams Bond Measure. The Forest Park Target Area is budgeted to receive \$4.7 million dollars for land acquisition with an acquisition goal of 320 acres. Bond funds will be received by Metro in September, 1995. This property is scheduled to close in the same month. The property is in unincorporated Multnomah County and will be owned and managed by Metro. The property will be land banked with minimal maintenance costs. J. J. & Associates will continue to have some maintenance responsibilities until the new plantings have been established and approved by the State Forester (5 year period).

OPTION TO PURCHASE REAL PROPERTY

THIS OPTION AGREEMENT (the "Agreement") is made and entered into by and between JJ & Associates (the "Seller") and Metro, a municipal corporation of the state of Oregon organized under Oregon Revised Statutes, chapter 268, and the 1992 Metro Charter (the "Buyer"), this 31 day of MARCH, 1995.

1. Grant of Option. Seller, in consideration of the sum of \$100 (one hundred dollars), does hereby grant to Buyer the sole and exclusive option to purchase the real property described in Exhibit "A", attached and incorporated by this reference into this Agreement (the Property) in the manner and for the price stated in this Agreement.
2. Option Terms.
 - 2.1 Term. This agreement shall become effective (the effective date) on that date executed by seller, provided that within 28 days thereafter, Buyer formally accepts the agreement and delivers to seller a fully executed agreement and the initial cash sum as provided in Section 3. The initial term of the option shall commence on the effective date and shall continue until July 31, 1995. Buyer shall have the right to extend the term of the option for an additional period of three months, commencing on the date the initial term expires and ending on October 31, 1995. Buyers payment of the additional cash sum due under Section 2 before the initial term expires shall constitute an election to extend the option to the extended term date above.
 - 2.2 Exercise of Option. Buyer may exercise this option by written notice to Seller at any time during the term stating that Buyer has elected to exercise the option. Upon exercise of this option, buyer shall be obligated to purchase the Property from Seller and Seller shall be obligated to sell the property to Buyer for the price and in the manner herein set forth.
 - 2.3 Failure to Exercise Option. If Buyer fails for any reason to exercise this option in the manner set forth herein, buyer shall have no further claim against or interest in the Property or any of the option money payments, unless buyer is entitled to a refund of the option money payments under another provision of this Agreement. In the event of the failure to exercise the option Buyer shall provide Seller with any instruments that Seller reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of this option.

material inducements to Buyer to enter into this Agreement. The Covenants specifically delineated in this section are the following:

- 8.1 Information. Seller agrees to deliver to Buyer, within 20 days after the effective date, photocopies of all documents related to the use or ownership of the Property that Seller possesses, including (without limitation) all studies, reports, aerial photographs, and other documents of a like nature.
- 8.2 Maintenance. Before the Closing Date, Seller shall maintain the Property in the same condition as it now exists, ordinary wear and tear excepted, and shall not cause or permit any waste.
- 8.3 Seller's Promise to Remove Personal Property. Before the Closing Date, Seller promises to remove or cause to be removed from the subject Property at Seller's expense any and all personal property and/or trash, rubbish, or any other unsightly or offensive materials, unless otherwise agreed to in writing by Buyer.
- 8.4 Covenant to Maintain Property in Natural State. Seller, its successors and assigns hereby covenants, promises, agrees to maintain the Property in its existing condition as of the effective date of this option.
- 8.5 Ownership. During the term, Seller shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, unless it is transferred subject to this option, nor grant an option to any third party to acquire all or any portion of it.

9. Seller's Representations.

- 9.1 Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the subject Property in accordance with this Agreement.
- 9.2 The subject Property has legal vehicular access to a public road.
- 9.3 No one other than Seller will be in possession of any portion of the subject Property at the close of escrow.
- 9.4 There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending or threatened against the subject Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the subject Property, or any portion thereof, affect the value of the subject Property or any portion thereof, or subject an owner of the subject Property, or any portion thereof, to liability.

cause or permit any such tanks to be installed in the Property before Closing.

- 9.9 Status of Seller. Seller warrants that Seller is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in IRC § 1445.

Each of the above representations is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow. Seller shall indemnify, defend with counsel of Buyer's choice and hold Buyer harmless from all expense, loss, liability, damages and claims, including Buyer's attorney fees, if necessary, arising out of the breach of any of Seller's warranties, representations, and covenants. Upon close of escrow, if Buyer so requests, Seller shall deliver to Buyer a certificate in a form satisfactory to Buyer's counsel stating that each of the above representations is true and current as of the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing warranties and representations cease to be true before the close of escrow, Seller shall be obligated to use its best efforts to remedy the problem before the close of escrow. If the problem is not remedied before close of escrow, Buyer may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the subject Property and all option payments shall be refunded to Buyer, or (b) defer the Closing Date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

10. Remedies Upon Default. In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Seller. In the event Buyer defaults in the performance of any of its obligations under this Agreement, Seller shall have the right to retain the option payment and such forfeiture shall be Seller's exclusive remedy for Buyer's nonperformance.
11. Property Taxes and Expenses. During the term of this option, Seller shall pay all taxes, assessments, and expenses related to the Property. Property taxes shall be prorated as of the Closing Date.
12. Closing.

12.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by Buyer, but in all events the Closing

- 12.3 **Costs.** Buyer and Seller each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Seller shall pay the premium for the title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Buyer shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.
- 12.4 **Prorations.** All items of expense incurred by Seller with respect to the Property shall be paid by Seller at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Seller and Buyer as of the Closing Date.
- 12.5 **Title Insurance Policies.** As soon as practicable after Closing, and in any event no later than 30 days after the Closing Date, Seller shall cause the Title Company to issue at Seller expense its standard form Owner's ALTA Title Insurance Policy, with extended coverage, in the amount of the purchase price, insuring fee simple title to the Property vested in Buyer, subject only to the permitted exceptions.
13. **Conveyance.** At the Closing, Seller shall execute, acknowledge, and deliver to Buyer a Statutory Warranty Deed conveying the Property to Buyer, subject only to the permitted exceptions.
14. **Waiver.** Failure by Seller or Buyer to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.
15. **Successors and Assigns.** Subject to the limitations on Seller's right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of Seller and Buyer. Buyer may assign its interest in this Option Agreement and the Property to any person or entity, without the consent of Seller. In the event that an assignee assumes the obligations of Buyer hereunder, then Buyer shall have no further liability with respect to this Agreement.
16. **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller: JJ & Associates
747 West Powell Blvd.
Gresham, Oregon 97030

23. No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance title to the subject Property and delivery of money and documents in the escrow), shall not merge with transfer of title but shall remain in effect until fulfilled.
24. Governing Law: Interpretation. This Agreement shall be governed by the laws of Oregon. In the event a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Seller and Buyer intend that (a) that portion of this Agreement be enforced to the extent permitted by law, and (b) the balance of this Agreement remain in full force and effect.
25. Time is of the Essence. Time is of the essence of this Agreement.
26. Statutory Disclaimer. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

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Executed on the day and year first above written.

SELLER:

J.J. Associates

By: James G. Moore

Name: James G. Moore

Title: Partner

BUYER:

Mike Burton

By: Mike Burton

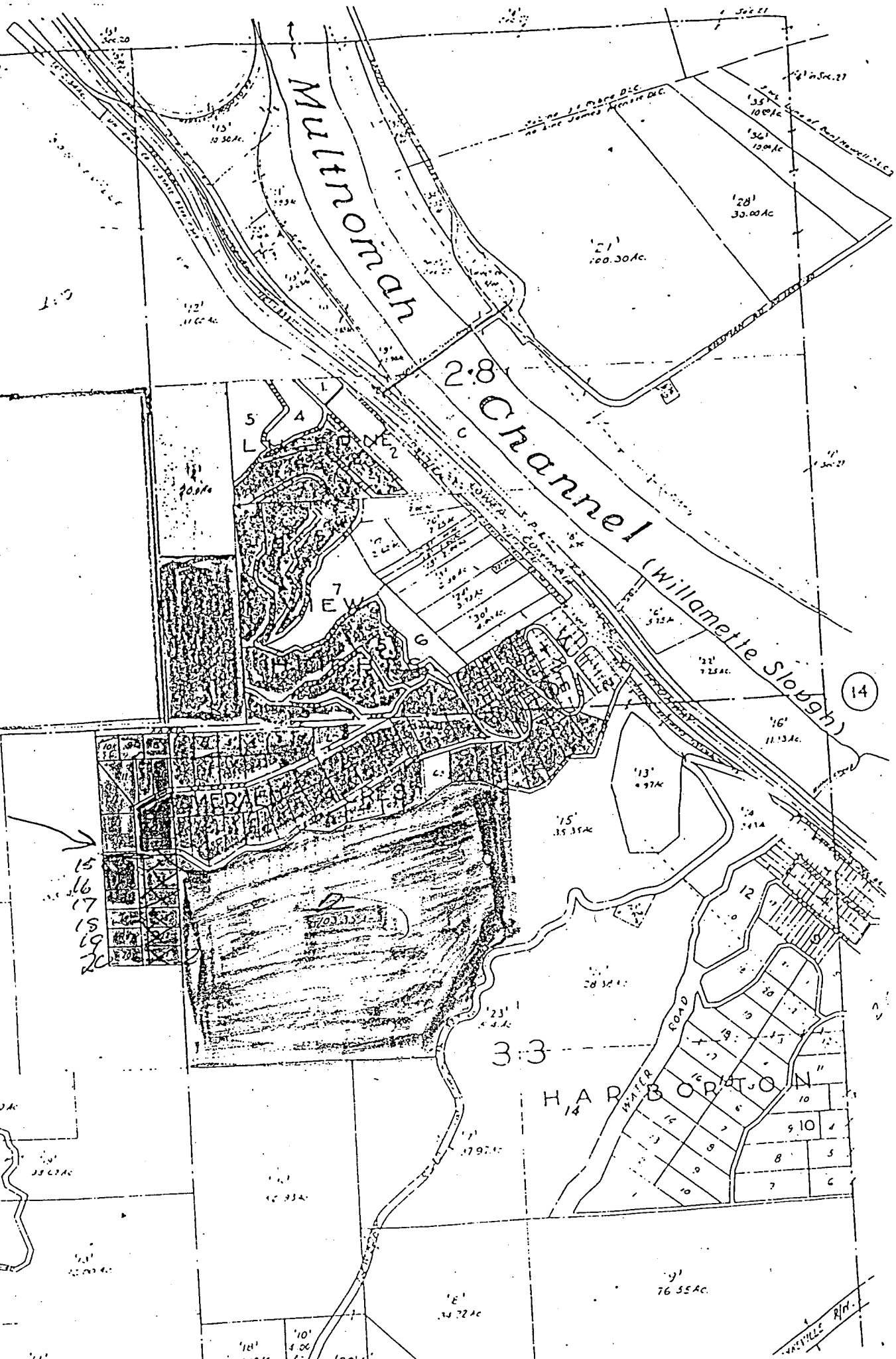
Name: Mike Burton

Title: Executive Officer

Attachments:

Exhibit A - Property

Exhibit B - Form of Memorandum



Multnomah

2.8 Channel (Willamette Slough)

HARBOR BORTON

WATER ROAD

15
16
17
18
19
20

3.3

14

JAMES HENRIE D.C.
JAMES HENRIE D.C.

128' 30.00 AC

121' 100.30 AC

135' 100 AC
136' 100 AC

122' 7.23 AC

126' 11.34 AC

113' 0.97 AC

125' 15.35 AC

128' 30.00 AC

123' 5.4 AC

121' 17.92 AC

121' 16.34 AC

121' 34.72 AC

121' 76.55 AC

120' 9.00 AC

WASVILLE R/W

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 95 -2185
THE EXECUTIVE OFFICER TO PURCHASE) Introduced by Mike Burton
PROPERTY WITHIN THE SANDY RIVER) Executive Officer
REGIONAL TARGET AREA)

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, The Sandy River was designated as a Greenspace of regional significance in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, The J.J. & Associates property has been identified as an important natural area within the Sandy River Project Area, and

WHEREAS, A Process for Considering and Executing Options to Purchase Lands was adopted by Council Resolution No. 94-1919; and

WHEREAS, Resolution 95-2069 authorized the Executive Officer to enter into an agreement with J.J. & Associates to option their property based on the terms outlined in Exhibit A, now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to purchase the property, identified in Exhibit A, for \$330,000 plus closing costs and taxes, subject to certain conditions being fulfilled.

ADOPTED by Metro Council this _____ day of _____, 1995.

J. Ruth Mc Farland , Presiding Officer

Staff Report

**CONSIDERATION OF RESOLUTION NO. 95 -2185, FOR THE PURPOSE OF
AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY
WITHIN THE SANDY RIVER REGIONAL TARGET AREA**

Date: 27 July 1995

Presented by: Nancy Chase

PROPOSED ACTION

Resolution No. 95 -2185 requests the approval of a resolution to authorize the Executive Officer to execute an agreement with J.J. & Associates to purchase property in the Sandy River Regional Target Area.

BACKGROUND AND ANALYSIS

The J.J. & Associates property is located on the Sandy River, abutting Oxbow Park property. It is 39.85 acres in size and zoned for commercial forest use.

The property has been determined as an important property to acquire because of its scenic, water quality protection and habitat values. The acquisition will expand the land base of Oxbow Park, protect the views from the park and the river and the water quality of Buck and Gordon Creek, tributaries of the Sandy River.

The site is heavily forested in market grade Douglas Fir, Maple, Hemlock and Cedar. The current owners have pending permits to clear cut the property. Investigation by Metro attorney, Todd Sadlo, has verified that a clear cut permit would be issued for this property.

The option for this property was approved by Resolution 95 - 2069 on January 5, 1995. In the option J.J. and Associates agreed to a base price of \$330,000 subject to an appraisal indicating a value of at least 85% of the sale price. An appraisal was completed by Palmer, Groth and Pietka on June 5, 1995 indicating a value of \$310,000. Over 90% of the value is in harvestable timber. Option money totaling \$4,000 has already been paid. Metro has until September 15, 1995 to exercise the option. All "due diligence" items have been approved by Open Space staff and General Counsel.

BUDGET IMPACT

Money for this property will come from the Open Space, Parks and Streams Bond Measure. The Sandy River Target Area budget is 5.7 million dollars with an acquisition goal of 808 acres. Bond funds will be received by September, 1995. This property is scheduled to close in the same month.

Because of the property's location there are no anticipated additional maintenance costs. The property will be owned by Metro and will be included in the Oxbow Park management unit. A master plan process will be initiated for Oxbow Park in FY 95/96.

The owner, Mr. James Moore has requested that the transaction be closed as soon as possible, because of financial and health considerations. Mr. Moore had assumed a March, 1995 election date for the bond measure when he optioned the property. The added time from March to May was an unforeseen complication. As the funds will be advanced prior to bond issuance, this action also authorizes an interfund loan of not more than \$350,000 during this fiscal year to be paid back from bond proceeds. The Solid Waste Fund will loan these funds to the Open Spaces Fund.

Because of the property's location there are no anticipated maintenance costs. The land will be included in the Oxbow Park management unit and maintained by existing staff.

OPTION TO PURCHASE REAL PROPERTY

THIS OPTION AGREEMENT (the "Agreement") is made and entered into by and between JJ & Associates (the "Seller") and Metro, a municipal corporation of the State of Oregon organized under Oregon Revised Statutes, chapter 268, and the 1992 Metro Charter (the "Buyer"), this 15th day of December, 1994.

1. Grant of Option. Seller, in consideration of the sum of \$3,000, does hereby grant to Buyer the sole and exclusive option to purchase the real property described in Exhibit "A" attached and incorporated by this reference into this Agreement (the "Property") in the manner and for the price stated in this Agreement.
2. Option Terms.
 - 2.1 Term. This Agreement shall become effective (the effective date) on that date executed by Seller, provided that within 28 days thereafter, Buyer formally accepts the agreement and delivers to Seller a fully executed agreement and the *initial cash sum* as provided in Section 3. The initial term of the option shall commence on the effective date and shall continue for a period of six months until 6/15/95. Buyer shall have the right to extend the term of the option for an additional period of three months, commencing on the date the initial term expires and ending on 9/15/95. Buyer's payment of the *additional cash sum* due under Section 2 before the initial term expires shall be deemed to constitute an election to extend the option to the extended term date above.
 - 2.2 Exercise of Option. Buyer may exercise this option by written notice to Seller at any time during the term stating that Buyer has elected to exercise the option. Upon exercise of this option, Buyer shall be obligated to purchase the Property from Seller and Seller shall be obligated to sell the Property to Buyer for the price and in the manner herein set forth.
 - 2.3 Failure to Exercise Option. If Buyer fails for any reason to exercise this option in the manner set forth herein, Buyer shall have no further claim against or interest in the Property or any of the Option Money Payments, unless Buyer is entitled to a refund of the Option Money Payments under another provision of this Agreement. In the event of the failure to exercise the option, Buyer shall provide Seller with any instruments that Seller reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of this option.

3. Option Money. In payment for Seller's grant of this option, Buyer has paid or will pay Seller the following *option money payments*: (a) The *initial cash sum* of \$3,000 mentioned in Section 1; and (b) If Buyer elects to extend the option term under Section 2, Buyer will pay Seller at the time of the election the *additional cash sum* of \$1,000.
4. Purchase Price and Terms. Seller sets the Sale price at \$330,000 (three hundred and thirty thousand dollars) less the option payments made to seller. In the event the appraisal of the fair market value of the property indicates a value of at least 85% of the Sale price then the sale shall go forward to closing at the Sale price. In the event the indicated value is less that 85% of the Sale price then Metro is no longer obligated by this Agreement to proceed to closing but may still elect to proceed to closing at the Sale price. The appraisal shall be performed by an appraiser licensed in the State of Oregon and mutually selected by both parties. The appraiser shall be retained and paid by the Buyer.
5. Recording. On the effective date, Seller shall execute, acknowledge and deliver to Buyer a memorandum in the form attached as Exhibit B. In the event Buyer fails to exercise the option before the term expires, the memorandum will automatically terminate on that date and the Seller will not have to seek a release or quitclaim deed. Buyer shall record the memorandum.
6. Possession. Possession of the Property shall remain with Seller, subject to the covenants in this Agreement, until Buyer exercises the option and closing of the sale of the property. Buyer shall be entitled to exclusive possession of the Property on and after the closing date.
7. Access to Property. Seller grants to Buyer and its agents the right to enter on the Property at any reasonable times before the closing date for the purpose of conducting tests or studies that Buyer may deem necessary or appropriate in connection with its acquisition of the Property. Seller shall cooperate with Buyer in making such tests and studies. No soil tests or drilling shall be undertaken without first obtaining Seller's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Buyer shall not interfere with or disturb the rights of any tenants of Seller in possession of any portion of the Property. Buyer shall protect, defend, and hold Seller harmless from any loss, liability, or damage to persons or property arising out of or related to Buyer's activities on the Property. If Buyer fails to exercise the option and purchase the Property, Buyer shall fully compensate Seller for any physical damage to the Property or charge on it attributable to Buyer's activities pursuant to this paragraph. In the event Buyer fails to exercise the option, Buyer shall deliver to Seller a legible copy of any reports, studies, and drawings owned by Buyer that relate to the Property.

8. Covenants of Seller. Seller acknowledges that the Covenants of Seller contained in this Agreement, including the Covenants contained in this Section 7 (the "Covenants"), are material inducements to Buyer to enter into this Agreement. The Covenants specifically delineated in this section are the following:

8.1 Information. Seller agrees to deliver to Buyer, within 20 days after the effective date, photocopies of all documents related to the use or ownership of the Property that Seller possesses, including (without limitation) all studies, reports, aerial photographs, and other documents of a like nature.

8.2 Maintenance. Before the Closing Date, Seller shall maintain the Property in the same condition as it now exists, ordinary wear and tear excepted, and shall not cause or permit any waste.

8.3 Seller's Promise to Remove Personal Property. Before the Closing Date, Seller promises to remove or cause to be removed from the subject Property at Seller's expense any and all personal property and/or trash, rubbish, or any other unsightly or offensive materials, unless otherwise agreed to in writing by Buyer.

8.4 Covenant to Maintain Property in Natural State. Seller, its successors and assigns hereby covenants, promises, agrees to maintain the Property to retain (specific features needed undisturbed).

8.5 Ownership. During the term, Seller shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, unless it is transferred subject to this option, nor grant an option to any third party to acquire all or any portion of it.

9. Seller's Representations.

9.1 Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the subject Property in accordance with this Agreement.

9.2 The subject Property has legal vehicular access to a public road.

9.3 No one other than Seller will be in possession of any portion of the subject Property at the close of escrow.

9.4 There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending or threatened against the subject Property, or any portion

thereof, or pending or threatened against Seller which could affect Seller's title to the subject Property, or any portion thereof, affect the value of the subject Property or any portion thereof, or subject an owner of the subject Property, or any portion thereof, to liability.

9.5 There are no:

- (a) Intended public improvements or private rights which will result in the creation of any liens upon the subject Property or any portion thereof;
- (b) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the subject Property or any portion thereof;
- (c) Actual or impending mechanic's liens against the subject Property or any portion thereof; and
- (d) Notices or other information giving Seller reason to believe that any conditions existing on the subject Property or in the vicinity of the subject Property or in ground or surface waters associated with the subject Property may have a material effect on the value of the subject Property or subject the owner of the subject Property to potential liabilities under environmental laws.

9.6 Other than NONE, there is no lease, license, permit, option, right of first refusal, or other agreement, written or oral, which affects the subject Property or any portion thereof.

9.7 Neither the grant nor the exercise of the option will constitute a breach or default under any agreement to which Seller is bound and/or to which the subject Property is subject.

9.8 Hazardous Substances. For purposes of this subsection, the phrase "Hazardous Substances" has the same meaning as is designated in ORS 465.200(9). Seller warrants, represents, and covenants as follows:

- (a) To the knowledge of Seller, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government;

- (b) Seller has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, or emitted or released from, the Property any Hazardous Substances in violation of any environmental laws of the federal or state government; and
- (c) To the knowledge of Seller, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Seller agrees not to cause or permit any such tanks to be installed in the Property before Closing.

9.9 Status of Seller. Seller warrants that Seller is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in IRC § 1445.

Each of the above representations is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow. Seller shall indemnify, defend with counsel of Buyer's choice and hold Buyer harmless from all expense, loss, liability, damages and claims, including Buyer's attorney fees, if necessary, arising out of the breach of any of Seller's warranties, representations, and covenants. Upon close of escrow, if Buyer so requests, Seller shall deliver to Buyer a certificate in a form satisfactory to Buyer's counsel stating that each of the above representations is true and current as of the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing warranties and representations cease to be true before the close of escrow, Seller shall be obligated to use its best efforts to remedy the problem before the close of escrow. If the problem is not remedied before close of escrow, Buyer may elect to either (a) terminate this Agreement in which case Buyer shall have no obligation to purchase the subject Property, or (b) defer the Closing Date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this Agreement or by law or equity.

10. Remedies Upon Default. In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Seller. In the event Buyer defaults in the performance of any of

its obligations under this Agreement, Seller shall have the right to retain the option consideration without thereby waiving Seller's right to recover damages for breach of contract or any other remedy provided in this Agreement or by law or equity.

11. Property Taxes and Expenses. During the term of this option, Seller shall pay all taxes, assessments, and expenses related to the Property. Property taxes shall be prorated as of the Closing Date.

12. Closing.

12.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by Buyer, but in all events the Closing shall occur within 30 days after the date that the exercise notice is given. The escrow for the Closing shall be established at the office of Fidelity Title Company (the "Title Company"), at 900 SW Fifth St., Portland, OR 97204.

12.2 Closing Obligations. On the Closing Date, Seller and Buyer shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Seller and Buyer.

12.2.1 Seller shall deposit the following:

- (a) The conveyance documents described in Section 11, duly executed and acknowledged;
- (b) A duly executed affidavit certifying that Seller is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC § 1445;
- (c) Original counterparts of legible photocopies of all documents, feasibility studies, surveys, engineering reports, and other items of a similar nature in the possession of Seller that relate to the Property;
- (d) Such documents as Buyer or the Title Company may require to evidence the authority of Seller to consummate this transaction; and
- (e) Such other documents and funds, including (without limitation) escrow instructions, as are required of Seller to close the sale in accordance with this Agreement.

12.2.2 Buyer shall deposit the following:

- (a) The cash payment specified in Section 4, minus any credits available to Buyer under the terms of this Agreement;
- (b) Such documents as Seller or the Title Company may require to evidence the authority of Buyer to consummate the transaction contemplated; and
- (c) Such other documents and funds, including (without limitation) escrow instructions, as are required of Buyer to close the sale and purchase of the Property in accordance with this Agreement.

12.3 **Costs.** Buyer and Seller each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Seller shall pay the premium for the title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Buyer shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

12.4 **Prorations.** All items of expense incurred by Seller with respect to the Property shall be paid by Seller at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Seller and Buyer as of the Closing Date.

12.5 **Title Insurance Policies.** As soon as practicable after Closing, and in any event no later than 30 days after the Closing Date, Seller shall cause the Title Company to issue at Seller expense its standard form Owner's ALTA Title Insurance Policy, with extended coverage, in the amount of the purchase price, insuring fee simple title to the Property vested in Buyer, subject only to the permitted exceptions.

13. **Conveyance.** At the Closing, Seller shall execute, acknowledge, and deliver to Buyer a Statutory Warranty Deed conveying the Property to Buyer, subject only to the permitted exceptions.

14. **Waiver.** Failure by Seller or Buyer to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

15. **Successors and Assigns.** Subject to the limitations on Seller's right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and

assigns of Seller and Buyer. Buyer may assign its interest in this Option Agreement and the Property to any person or entity, without the consent of Seller. In the event that an assignee assumes the obligations of Buyer hereunder, then Buyer shall have no further liability with respect to this Agreement.

16. Notices. All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller: J. J. & Associates
747 W. Powell Blvd.
Gresham, Oregon 97030

To Buyer: Metro
Attention: Nancy Chase
600 NE Grand Ave.
Portland, OR 97232-2736

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

17. Attorney Fees. If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.
18. No Commission. Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.
19. Risk of Loss. Seller shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the exercise notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Seller shall give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within 15 days following receipt by

Buyer of written notice from Seller of such casualty or condemnation and Seller will return to Buyer the Option Money Payments previously paid.

20. Integration, Modification, or Amendments. This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Seller and Buyer, in writing.
21. Representation. Seller and Buyer have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 16, each party shall be responsible for all attorney fees incurred by it with respect to this Agreement.
22. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
23. No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance title to the subject Property and delivery of money and documents in the escrow), shall not merge with transfer of title but shall remain in effect until fulfilled.
24. Governing Law; Interpretation. This Agreement shall be governed by the laws of Oregon. In the event a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Seller and Buyer intend that (a) that portion of this Agreement be enforced to the extent permitted by law, and (b) the balance of this Agreement remain in full force and effect.
25. Time is of the Essence. Time is of the essence of this Agreement.
26. Statutory Disclaimer. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Executed and effective on the day and year first above written.

SELLER:

JJ Associates

By: James G. Moore

Name: _____

Title: _____

BUYER:

Metro

By: Mike Burton

Name: Mike Burton

Title: Executive Officer

Attachments:

Exhibit A - Property

Exhibit B - Form of Memorandum

KLA
1220
10/04/94



First American Title Insurance Company of Oregon

An assumed business name of TITLE INSURANCE COMPANY OF OREGON

MULTNOMAH COUNTY OFFICES

HOLLYWOOD OFFICE
4127 NE Sandy Blvd.
Portland, OR 97212
(503) 249-0655
FAX (503) 249-0325

EAST SIDE OFFICE
10735 S.E. Stark, Suite 100
Portland, Oregon 97216-2796
(503) 255-9103
FAX (503) 255-4327

MAIN OFFICE
200 S.W. Market, Suite 150
Portland, Oregon 97201-5705
(503) 790-7890
FAX (503) 790-7891

GRESHAM OFFICE
594 N.W. Eastman Parkway
Gresham, Oregon 97030
(503) 667-1333
FAX (503) 665-8374

THE NORTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 11,
TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, IN THE COUNTY
OF MULTNOMAH AND STATE OF OREGON.

EXCEPT THE RIGHT OF THE PUBLIC IN AND TO THAT PART THEREOF INCLUDED WITHIN
THE BOUNDARIES OF COUNTY ROAD NO. 1423, (GORDON CREEK);

REGIONAL SERVICES

RECEIVED
DEC 19 1994
General Services

When recorded, mail to:
Metro
600 NE Grand Avenue
Portland, OR 97232-2736
Attn.: Office of General Counsel



METRO

Exhibit B

MEMORANDUM OF OPTION

This is a memorandum of a certain Option Agreement dated 12/15, 1994, between JJA Associates ("Seller"), and Metro, an Oregon municipal corporation ("Buyer"). By said Option Agreement, Seller has granted to Buyer an exclusive option to purchase that certain real property in Multnomah County, Oregon, described in Exhibit A attached herein and incorporated herein by this reference.

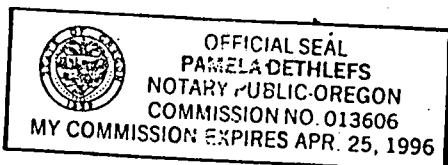
Said option extends from the date of the Option Agreement through and including 9/15/95, at which time it shall automatically expire.

SELLER: JJA Associates By James G. Moore

State of Oregon)
County of Multnomah) ss.

On this 15th day of Dec., 1994, before me Pamela Dethlefs the undersigned Notary Public, personally appeared JAMES G. MOORE and _____ personally known to me (or proved to be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (she or they) executed it.

Pamela Dethlefs
My commission expires: 4/25/96



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 95 - 2192
THE EXECUTIVE OFFICER TO PURCHASE)
PROPERTY IN THE TRYON CREEK) Introduced by Mike Burton,
WATERSHED) Executive Officer

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, The Tryon Creek Watershed has been designated as a greenspace of regional significance in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, A Process for Considering and Executing Options to Purchase Lands was adopted by Council Resolution No. 94 - 1919; and

WHEREAS, The Lindstrom property has been identified as an important natural area in the Tryon Creek watershed; and

WHEREAS, Resolution No.95 - 2107 authorized the Executive Officer to enter into an agreement Larry and Nina Lindstrom for their property; now, therefore,

BE IT RESOLVED,

That Metro Council authorizes the Executive Officer to purchase the property as identified in Exhibit A, for \$580,000 plus closing costs and taxes, subject to certain conditions being fulfilled.

ADOPTED by Metro Council this _____ day of _____, 1995.

J. Ruth Mc Farland , Presiding Officer

Staff Report

CONSIDERATION OF RESOLUTION NO. 2192, FOR THE PURPOSE OF
AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY IN
THE TRYON CREEK WATERSHED

Date: 30 July 1995

Presented by Nancy Chase

PROPOSED ACTION

Resolution No. 95 - 2192 requests the approval of a resolution that would authorize the Executive Officer to purchase property in the Tryon Creek watershed from Larry L. and Nina L. Lindstrom.

BACKGROUND AND ANALYSIS

A back up option for the Lindstrom property was approved by Council Resolution No. 95 - 2107. The option set a minimum sale price subject to an appraisal. It was recognized at the Council hearing that the property was already under option to another party and that staff would need to work with both the property owner and the option holder. Since then a price of \$580,000 for the 10 acre parcel has been agreed upon by both parties.

The site is the headwater of Arnold Creek, an important tributary to Tryon Creek. The property is critical for protection of water quality and is heavily vegetated with second growth douglas fir.

Tryon Creek was recognized as a Regional Target Area by the Open Space, Parks and Streams Bond Measure.

BUDGET IMPACT

Money for this property will come from the Open Space, Parks and Streams bonds. The Tryon Creek Linkages is targeted for 20 acres with a \$1,300,000 budget (\$1million regional dollars, \$300,000 Multnomah County local share). Bond funds will be received in September 1995. This property is scheduled to close in the same month. Open Space staff will work with the Friends of Arnold Creek and Portland Parks to assume maintenance responsibilities.

AGREEMENT OF PURCHASE AND SALE


THIS AGREEMENT OF PURCHASE AND SALE (the "Agreement") is made and entered into as of the last date of signature indicated below, by and between Larry L. Lindstrom and Nina L. Lindstrom (the "Seller"), and Metro, a municipal corporation established pursuant to Oregon law and the 1992 Metro Charter (the "Buyer").

Recitals

- A. The Seller is the owner of the real property which consists of vacant land, (hereinafter referred to as the "Property,") located in the City of Portland, County of Multnomah, state of Oregon, and more particularly described in Exhibit A attached.
- B. The Buyer desires to purchase from the Seller, and the Seller desires to sell to the Buyer the Property. The terms of this Agreement are as follows:

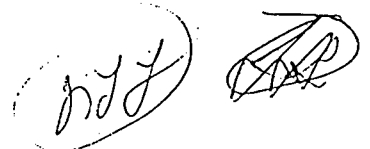
Terms

1. **Purchase and Sale.** The Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the Property upon the terms and conditions set forth in this Agreement.
2. **Purchase Price.** The purchase price for the Property shall be \$580,000 (five hundred eighty thousand dollars).
3. **Payment of Purchase Price.** The purchase price shall be payable as follows:
 - (a) **Deposit.** The Buyer has paid into escrow the sum of \$10,000. The Escrow Holder shall invest the deposit in a federally insured, interest-bearing account. The accrued interest shall be treated as part of the deposit. If the deposit is retained by the Seller, the Seller shall receive the interest. If the deposit is returned to the Buyer, the Buyer shall receive the interest. At Closing, this deposit, together with interest on it, shall be credited toward payment of the purchase price.
 - (b) **Cash Balance.** On or before the closing date, the Buyer shall deposit into escrow the cash, a wire transfer of funds, a certified check, or a cashier's check, in the amount of \$570,000, the balance of the purchase price.
4. **Escrow**
 - (a) **Opening of Escrow.** With the deposit by the Buyer of the sum of \$10,000.00, escrow will be opened for consummating this transaction. The Buyer and the



Seller's possession, Seller shall notify Buyer of the existence of such reports.

- B. Before Closing, Buyer may engage consultants or engineers of the Buyer's choosing to conduct environmental studies of the Property as the Buyer deems necessary. The Buyer or its agents shall have the right to enter the Property at reasonable times before closing to make such tests, inspections, studies, and other investigations as the Buyer may require, at the Buyer's expense and risk. The Buyer shall indemnify and hold the Seller harmless from any loss, damage, or claim arising out of the Buyer's access to the Property for the purpose of making tests, inspections, studies, and other investigations. It shall be a condition to closing that the results of such studies or analyses be acceptable to the Buyer in its sole discretion. This condition shall be removed automatically on August 16, 1995, unless Seller receives written notice from Buyer, on or before August 15, 1995, that Buyer cannot accept the Property due to the results of its investigation under this section. If Seller receives such notice, Seller and Buyer may resolve the issues raised by the investigation and proceed to closing, or either party may terminate this Agreement.
- (iii) Representations, Warranties, and Covenants of Seller. The Seller shall have duly performed each and every agreement to be performed by the Seller hereunder and the Seller's representations, warranties, and covenants set forth in this Agreement shall be true and correct as of the Closing Date.
- (iv) No Material Changes. At the Closing Date, there shall have been no material adverse changes related to or connected with the Property, whether directly or indirectly.
- (v) Seller's Deliveries. The Seller shall have timely delivered each and every item to be delivered by the Seller pursuant to this Agreement.
- (vi) Title Insurance. As of the close of the escrow, the Escrow Holder shall have issued or shall have committed to issue the title policy to the Buyer.
- (vii) Sale of bonds. The obligation of the Buyer to close is contingent on the sale of bonds by the Buyer to finance this transaction, as currently scheduled for September 13, 1995.

Handwritten signatures and initials at the bottom right of the page. One signature is circled and appears to be 'ndf'. Another signature is partially visible to the right.

- (i) Deed. A statutory warranty deed duly executed and acknowledged in recordable form by the Seller, conveying the Property to the Buyer subject only to exceptions acceptable to buyer as establish under Section 5 of this Agreement.
 - (ii) Nonforeign Certification. The Seller represents and warrants that it is not a "foreign person" as defined in IRC §1445. The Seller will give an affidavit to the Buyer to this effect in the form required by that statute and related regulations.
 - (iii) Proof of Authority. Such proof of the Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Seller to act for and bind the Seller, as may be reasonably required by the Escrow Holder and/or the Buyer.
 - (vi) Lien Affidavits. Any lien affidavits or mechanic's lien indemnifications as may be reasonably requested by the Escrow Holder in order to issue the title policy.
- (b) By Buyer. On or before the Closing Date, the Buyer shall deliver the following in escrow to the Escrow Holder.
- (i) Purchase Price. The purchase price in accordance with Section 3 above.
 - (ii) Proof of Authority. Such proof of the Buyer's authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Buyer to act for and bind the Buyer, as may be reasonably required by the Escrow Holder and/or the Seller.

7. Deliveries to Buyer at Closing. The Seller shall deliver possession of the Property to the Buyer at close of escrow.

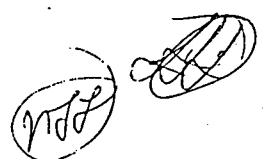
8. Title Insurance. At closing, the Seller shall provide, at its expense, a standard owner's title insurance policy in the amount of the purchase price specified above, insuring title vested in the Buyer or its nominees, subject only to exceptions acceptable to Buyer as established under Section 5 of this Agreement.



or other agreements or instruments to which the Seller is a party or affecting the Property.

(b) Warranties and Representations Pertaining to Real Estate and Legal Matters.

- (i) The information contained in the recitals is true and correct.
- (ii) Except as disclosed to the Buyer in writing, there is no litigation, claim, or arbitration, pending or threatened, with regard to the Property or its operation.
- (iii) The Seller will give the Buyer at least ten business days' notice before commencing any forcible entry and detainer action or any other action with respect to the Property and will refrain from bringing any such action except on such terms as are mutually acceptable to the Seller and the Buyer. The Buyer shall not unreasonably withhold the Buyer's consent to any action that the Seller wishes to institute before closing, and the Buyer's failure to disapprove any such action within ten business days after the Seller's request shall be deemed to constitute the Buyer's consent.
- (iv) No attachments, execution proceedings, assignments for the benefit of creditors insolvency, bankruptcy, reorganization, or other proceedings are pending or, to the best of the Seller's knowledge, threatened against the Seller, nor are any such proceedings contemplated by the Seller.
- (v) The Seller is, or at the time of closing will be the legal and beneficial fee simple titleholder of the Property and has or will have at closing good, marketable, and insurable title to the Property, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgments, or other matters, except as disclosed by the preliminary title report. There shall be no change in the ownership, operation, or control of the Seller from the date of this Agreement until the Closing Date, except as the change is to secure fee title in Seller for purposes of this transaction at or prior to the Closing Date.
- (vi) The Seller has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal or options to purchase the Property.
- (vii) The Seller has not received any notices from any insurance company of any defects or inadequacies in the Property.





- (iv) Comply with all government regulations;
- (v) Keep the Buyer timely advised of any repair or improvement required to keep the Property in substantially the same condition as when inspected by the Buyer.
- (d) General Representation. The Seller's representations and warranties contained here are true and accurate, and are not misleading. The Seller's representations and warranties contained here shall be continuing and shall be true and correct as of the Closing Date with the same force and effect as if remade by the Seller in a separate certificate at the time. The Seller's representations and warranties contained here shall survive the close of escrow and shall not merge into the deed and the recordation of the deed in the official records.

11. As Is. Other than the Seller's representations and warranties contained in this Agreement and those contained in any instrument delivered to the Buyer at closing, the Buyer acknowledges that it is purchasing the Property AS IS.

12. Buyer's Representations and Warranties. In addition to any express agreements of the Buyer contained here, the following constitute representations and warranties of the Buyer to the Seller:

- (a) The Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to here and to consummate the transactions contemplated here.
- (b) All requisite action has been taken by the Buyer in connection with entering into this Agreement and the instruments referred to here and the consummation of the transactions contemplated here.
- (c) The persons executing this Agreement and the instruments referred to here on behalf of the Buyer have the legal power, right, and actual authority to bind the Buyer to the terms and conditions of this Agreement.
- (d) This Agreement and all documents required by it to be executed by the Buyer are and shall be valid, legally binding obligations of, and enforceable against the Buyer in accordance with their terms.
- (e) Neither the execution and delivery of this Agreement and documents referred to here, nor the incurring of the obligations set forth here, nor the consummation of the transactions contemplated, nor compliance with the terms of this Agreement and the documents referred to here conflicts with or results in the material breach of any terms, conditions, or provisions of or constitute a default under any bond, note or other evidence of indebtedness, or any contract, indenture, mortgage, deed of trust, loan partnership agreement, lease, or other agreements or instruments to which the Buyer is a party.



brokers' or finders' fees or commissions in connection with the negotiation, execution, or consummation of this Agreement, then the Buyer shall indemnify, hold harmless, and defend the Seller from and against such claims if they shall be based on any statement or representation or agreement by the Buyer, and the Seller shall indemnify, hold harmless, and defend the Buyer if such claims shall be based on any statement, representation, or agreement made by the Seller.

16. **Required Actions of Buyer and Seller.** The Buyer and the Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated and shall use their best efforts to accomplish the close of escrow in accordance with the provisions here.

17. **Entry.** The Buyer, its agents, and designees shall have reasonable access to the Property to conduct necessary appraisals, studies, or tests and for the purpose of confirming that it is in substantially the same condition at closing as it was when inspected. The Buyer's right to access does not negate the warranties and covenants contained here. The Buyer shall indemnify and hold the Seller harmless from any loss, damage, or claim arising out of the Buyer's access to the Property.

18. **Legal and Equitable Enforcement of This Agreement**

- (a) **Default by the Seller.** In the event the close of escrow and the consummation of the transaction here contemplated do not occur by reason of any default by the Seller, the Buyer shall be entitled to all its out-of-pocket expenses incurred in connection with the transaction, including the deposit, and shall have the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.
- (b) **Default by the Buyer.** In the event the close of escrow and the consummation of the transaction here contemplated do not occur by reason of any default by the Buyer, the Buyer and the Seller agree that it would be impractical and extremely difficult to estimate the damages that the Seller may suffer. Therefore, the Buyer and the Seller agree that a reasonable estimate of the total net detriment that the Seller would suffer in the event that the Buyer defaults and fails to complete the purchase of the property is and shall be, and the Seller's sole and exclusive remedy (whether at law or in equity), an amount equal to the deposit. This amount shall be the full, agreed, and liquidated damages for the breach of this Agreement by the Buyer, all other claims to damage or other remedies being herein expressly waived by the Seller. The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to the Seller. Upon default by the Buyer, this Agreement shall be terminated and neither party shall have any further rights or obligations under it, each to the other, except for the right of the Seller to collect such liquidated damages form



- (f) Time of Essence. The Seller and the Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision.
- (g) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. In the event the date on which the Buyer or the Seller is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

21. **Accommodating a 1031 Exchange.** If Seller desires to transfer the property through an exchange transaction under Section 1031 of the Internal Revenue Code, Purchaser agrees to cooperate with such transaction. Seller agrees to indemnify, hold harmless, and defend Purchaser from and against any and all claims, damages, costs, liability, losses, and expenses arising out of the exchange transaction.

22. **Governing Law.** The parties acknowledge that this Agreement has been negotiated and entered into in the State of Oregon. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the state of Oregon.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR

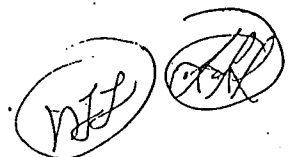
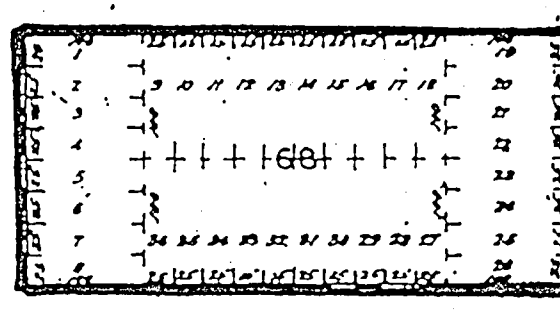
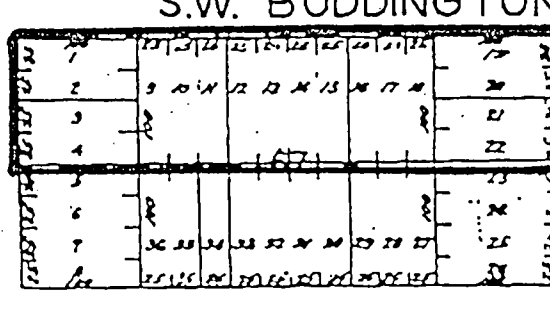
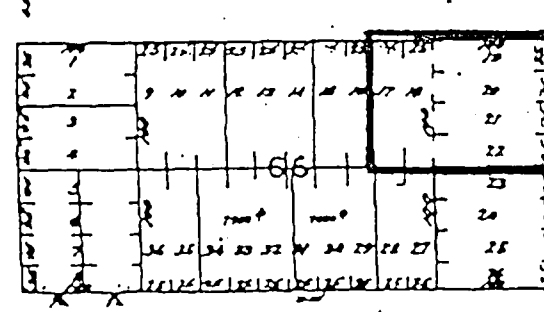
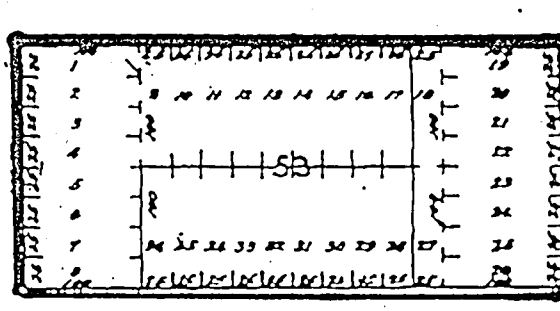
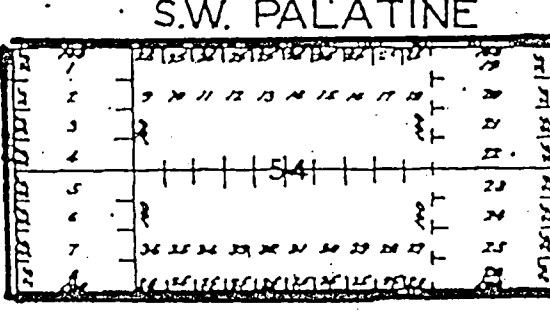
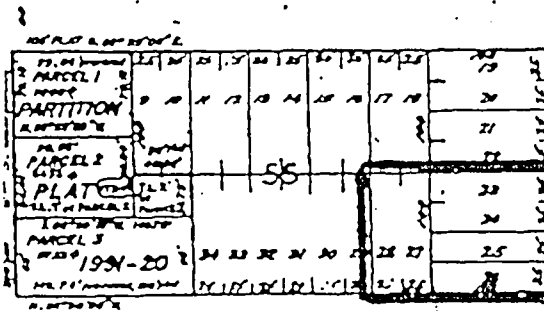
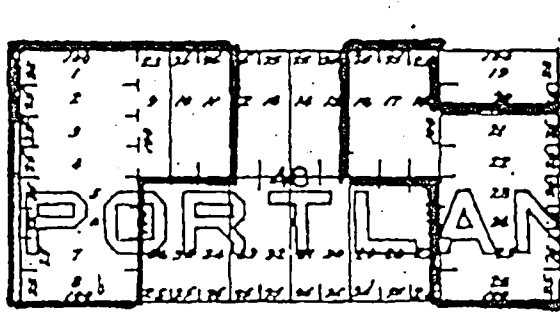
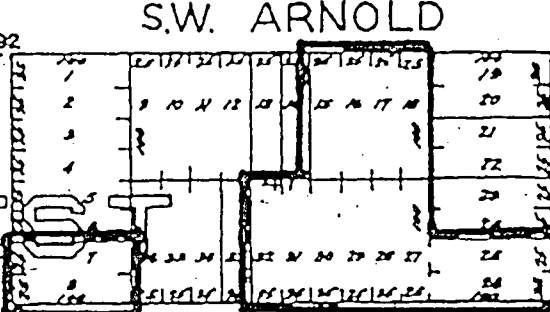
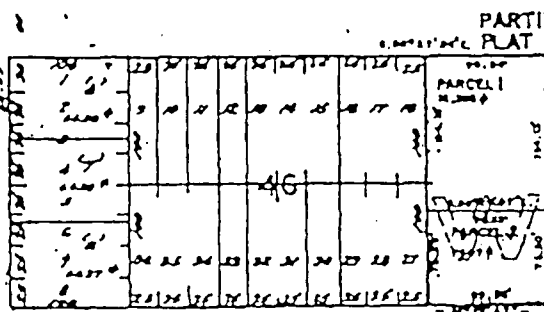
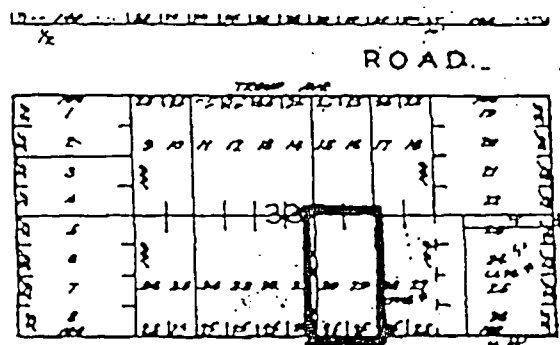
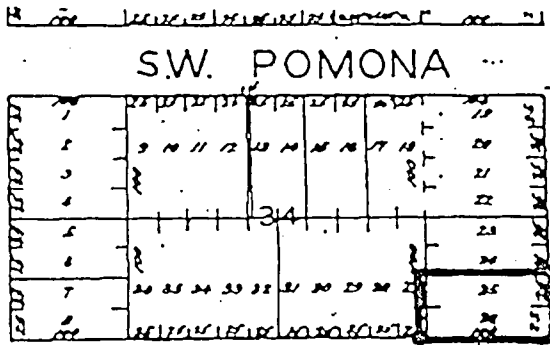
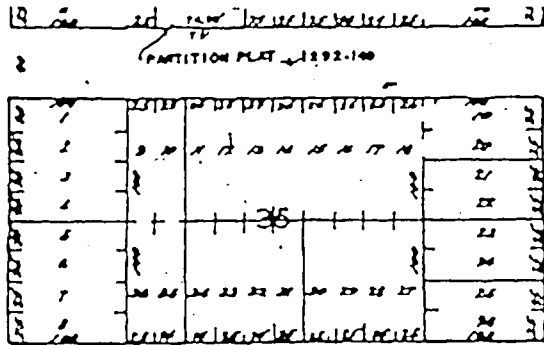


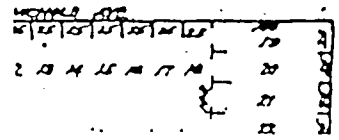
EXHIBIT "A"

WEST



Neighborhood: West Portland Park.

Legal Description: West Portland Park Addition—Lots 29, 30, Blk 33; Lots 25 & 26, Blk 34; Lots 7, 8, 15-18, 25-32, Blk 47, Lots 1-11, 16-18, 21-26, 34-36, Blk 48; Lots 1-36, Blk 53; Lots 1-36, Blk 54; Lots 23-28, Blk 55; Lots 17-22, Blk 66; Lots 1-4, 9-22, Blk 67, Lots 1-36, Blk 68.



BEFORE THE METRO COUNCIL

RELATING TO THE OFFICE OF THE METRO)
AUDITOR, AMENDING THE METRO CODE,)
AND DECLARING AN EMERGENCY)
)
ORDINANCE NO. 95-610A
Introduced by
Councilor Don Morissette

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Chapter 2.15, Metro Auditor, is hereby added to the Metro Code.

2.15.010 Independence

The office of auditor is an elected position defined by the 1992 Metro Charter with specific duties including the requirement to make continuous investigations of the operations of Metro. These investigations include financial and performance audits. The auditor is required to make reports to the Metro council and executive officer with recommendations for action.

The office of auditor consists of the Metro auditor and such subordinate employees as the council may provide. The auditor has neither a management nor a policy role, rather the auditor provides independent and objective information about Metro programs and services. The functions of the auditor include financial as well as performance audits of all departments, offices, commissions, activities and operations of Metro and reports regarding compliance with adopted laws, policies and sound fiscal practices.

The office of auditor will adhere to government auditing standards in conducting its work and will be considered independent as defined by those standards. The auditor will strive to assure maximum coordination between its function and the audit needs of Metro including the council and executive officer.

2.15.020 Funding

In each annual budget sufficient funds and personnel shall be provided by the Metro council to carry out the responsibilities specified herein.

2.15.030 Audit Schedule

Each year the auditor shall submit an annual plan to the Metro council for review and comment. The plan shall include the departments, commissions, activities, functions and offices scheduled for audit during the year. This plan may be amended during the year as deemed necessary by the auditor. However, additional resources not authorized in the annual budget may not be utilized without council approval. Additionally, the auditor may spontaneously initiate and conduct any other audit deemed necessary to undertake with notification to the council prior to conducting the audit.

In the selection of audit areas, the determination of audit scope and timing of audit work, the auditor should consult with federal, state, local jurisdiction auditors, and independent auditors so the desirable audit coverage is provided and audit effort may be properly coordinated.

The Metro council and executive officer may request that the auditor perform special audits that are not included in the annual audit schedule. Such audits will be considered by the auditor taking into account available resources and audit priorities. The final decision regarding the audit schedule shall remain with the auditor.

Special audit reports will be handled the same as regular audit reports, except that in personnel matters of a confidential nature, reporting on results may be limited to the executive officer and the presiding officer of Metro.

2.15.040 Scope of Audits

(a) The auditor shall conduct financial and performance audits to independently determine whether:

- (1) Activities and programs being implemented have been authorized by Metro Charter or Code, state law or applicable federal law regulations;**
- (2) Activities and programs are being conducted as prescribed by the council and executive officer to accomplish the objectives intended by the Metro Charter or Code, state law or applicable federal law or regulations;**
- (3) Activities or programs efficiently and effectively serve the purpose intended by the Metro Charter, Code, state law or applicable federal law or regulations;**
- (4) Activities and programs are being conducted and funds expended in compliance with applicable laws;**
- (5) Revenues are being properly collected, deposited and accounted for;**
- (6) Resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;**
- (7) Financial and other reports are being provided that disclose fairly and fully all information that is required by law, that is necessary to ascertain the nature and scope of programs and activities and that is necessary to establish a proper basis for evaluating the programs and activities;**

- (8) There are adequate operating and administrative procedures and practices, systems or accounting internal control systems and internal management controls which have been established by management; or
- (9) There are indications of fraud, abuse or illegal acts which need further investigation.

(b) Audits shall be conducted in accordance with government auditing standards applicable to financial and performance audits.

2.15.050 Access to Records and Property

All officers and employees of Metro shall furnish the auditor with requested information and records within their custody regarding powers, duties, activities, organization, property, financial transactions and method of business required to conduct an audit or otherwise perform audit duties. In addition, they shall provide access for the auditor to inspect all property, equipment and facilities within their custody. If such officers or employees fail to produce the aforementioned information, then the auditor may cause a search to be made and exhibits to be taken from any book, paper or record of any such official or employee, excepting personal information, and every office having the custody of such records shall make a search and forward such requested exhibits to the auditor.

2.15.060 Audit Reports

Each audit conducted by the auditor shall result in a written report. These final audit reports shall be made available to the public. The final audit report will include the written ~~comments~~ ~~responses~~ of the ~~reviewed~~ ~~audited~~ entity ~~(for fact verification only)~~ before it is released to the public. The auditor shall provide the final report to the presiding officer and the executive officer prior to releasing the report to the public.

2.15.070 Responses to Audit Reports

The auditor shall furnish a final draft of each audit report to the audited entity for review and comment before it is released. The responsible official head of the audited entity may respond in writing to the auditor's recommendations within 10 working days, or at the auditor's discretion, a longer time frame may be specified. If a timely response is not received the auditor shall so note at the time the report is released. The response must specify agreement with the audit findings and recommendations, or reasons for disagreement, as well as proposed plans for implementing solutions to identified problems and a proposed timetable to complete such activities.

2.15.080 External Audits

Subject to the requirements of the Metro Code pertaining to contracts, the auditor shall appoint external Certified Public Accountants to conduct certified financial statement audits, as specified by state or local law. The auditor shall coordinate and monitor the conduct of and the responses to external financial statement audits. The auditor shall work toward the elimination of duplicative audit work through cooperation with state, federal and external auditors. The auditor may also, within budgeted appropriations, contract with other professionals to assist in the performance of the audit function. The auditor will coordinate and monitor audit related assistance provided by such professionals.

2.15.090 Report of Irregularities

If the auditor detects apparent violations of law or apparent instances of malfeasance or nonfeasance by an officer or employee or information that indicates derelictions may be reasonably anticipated, the auditor shall report the irregularities to the presiding officer of the Metro council and the executive officer. If the irregularity is potentially criminal in nature,

the auditor shall notify the District Attorney, when appropriate, in addition to those previously cited.

Section 2. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that it is needed to immediately define the office of auditor so that the auditor may function with the full authority provided by this Ordinance, an emergency is declared to exist and the Ordinance takes effect upon passage.

ADOPTED by the Metro Council this ____ day of _____, 1995.

J. Ruth McFarland, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

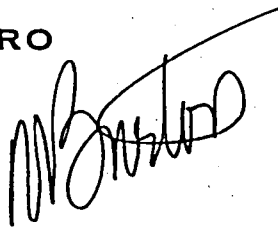
Daniel B. Cooper, General Counsel

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1238



METRO

To: Metro Council

From: Mike Burton, Executive Officer 

Re: New state law's effect on urban growth boundary

Date: August 10, 1995

Due to a key change mandated in the recently passed House Bill 2709, there could be a significant increase in the numbers of acres added to the region's urban growth boundary. The bill requires that reviews of urban growth boundaries be based on immediate past history of the housing market. As a direct result of HB 2709, our planning staff estimates that 26,000 acres would have to be added to Metro's urban growth boundary if the boundary were amended in December 1995. That would be more land than Metro has been studying for the 50 year urban reserves. And to make it even worse, a similar expansion every five years would be required if we continue at the same rate of land consumption.

Metro staff estimates that at this rate of land consumption, more than 60,000 acres would be added to the urban growth boundary by the year 2020. With this amount of additional land, Metro's boundary would nearly reach the rural cities of Canby, Sandy and North Plains. The regional landscape would be vastly different than it is today, with sprawl and the accompanying problems being the order of the day. This does not even address the cost of the additional infrastructure needed to serve this new area.

I find that completely unacceptable and I welcome the opportunity to work with the Council to prevent that from happening. I believe we all agree that this region's livability would suffer immeasurably if 26,000 acres were allowed to be added to the boundary.

Consequently, I am preparing a recommendation to the Council to accelerate implementation of the 2040 growth concept so that we can avoid this growth management and land-use catastrophe. I plan to forward that recommendation the

first week in September. In the meantime, I wanted to alert you to the ramifications of HB 2709 and solicit your thoughts and ideas.

My proposal for greatly reducing the effect of HB 2709 involves the method we can use to determine how much land would be needed inside the urban growth boundary. Amendments to HB 2709 that were supported by both Metro and the governor's office allowed new policies to be used in calculating that land amount.

Metro's 2040 growth concept, for example, assumes higher levels of redevelopment in town centers and in light rail station areas, with smaller average lot sizes for new homes. If Metro and our local partners adopt and implement Region 2040 as soon as possible, the land needed to accommodate the projected 20-year population would be dramatically reduced. If we could begin implementation of the concepts today, there would be enough land inside the urban growth boundary for the next 20 years.

Obviously, implementing Region 2040 cannot occur overnight. Nonetheless, achieving land savings under a ramped-up implementation of 2040 can be done-- if we start now. Much of this increased density would be achieved by allowing more townhouses and small lot single family homes, for which there is an increasing market demand.

The timing on adopting policies for early implementation is crucial. As you know, the Council is scheduled to adopt the Region 2040 growth concept by ordinance this fall. I am preparing a package of recommended new policies for implementing the 2040 growth concept more quickly, with the intent that the Council would consider that recommendation in concert with review of the urban growth boundary scheduled for next spring. I will provide the Council with specific policy recommendations of alternatives to the 26,000 acre expansion that would be required under HB 2709.

Many local governments discussing the impact of HB 2709 at the Metro Policy Advisory Committee have indicated they are ready to proceed with a ramped-up implementation of the 2040 growth concepts. I also agree that this alternative is in the best interest of the region and this option would be greatly preferred to a large expansion of the urban growth boundary.

Up until HB 2709's passage, 20-year housing market projections were based on long term demographic and housing trends. HB 2709 now requires that we use immediate past history when reviewing urban growth boundaries. For Metro's urban growth boundary, this means that if the boundary is amended in December 1995, the last five years of actual housing market experience must be used as the basis for any expansion. During the past five years, this region has been using

land more rapidly than we have done historically. This means a greater impact on the urban growth boundary than if we used long-term trends for the rates of land consumption. If implementation of the growth concept has already begun, then the planned for trends can be used as a basis to reduce the amount of land needed to be brought in under HB 2709's requirements.

I agree with MPAC and many local governments that stopping with these last five years as a basis flies in the face of what this region has said about wanting to enhance livability and manage its growth--and using the urban growth boundary as the tool.

I look forward to working with you in developing alternatives that are far more palatable to our regional partners and the citizens we serve.



METRO

DATE: August 9, 1995

TO: Councilor John Kvistad

FROM: ^{JW} Jim Watkins, Engineering and Analysis Manager

RE: Discussion and Recommendations of Issues Relating to the Transport and Disposal of Waste from the Forest Grove Transfer Station

Below are discussions and recommendations regarding issues raised at the Council Solid Waste Committee meeting of August 1, 1995.

1. Extensions It was suggested that the "original" (i.e., contained in a first draft) 120 day extension provision be substituted for the final draft's extension of up to four years in no less than 2 year increments. The committee adopted such an amendment to the RFP as described in Attachment No. 1.

Discussion: The first draft referred to did not contain a 120 day extension, but rather a 120 day notice period of a one year extension. Staff changed the extension period for a period not to exceed four years so that if it is in Metro's interest to extend the contract at the end of the original five year period, Metro will be able to do so at its sole discretion and at existing contract prices. This gives Metro a great deal of flexibility, particularly when interfacing with the rest of the solid waste system. If, for example, the market rate for disposal has dramatically increased, Metro may decide that no savings could be realized by competitively bidding the waste and that an extension is more cost effective. The main point is that an extension period involves no risk to Metro, may result in cost savings and would only be granted with approval by the Metro Council.

Recommendation: Staff recommends that the extension period of up to four years in no less than two year increments be retained in the RFP, or at least the original extension period of one year. This would involve repealing the amendment made to the RFP at the August 1st Council Solid Waste Committee meeting. The amendment to be repealed is included as Attachment No. 1.

2. Tax and Fee Increases It was recommended that the last sentence of Article 19, Taxes and Fees, of the GENERAL CONDITIONS be changed to read "Any such taxes and fees, or any increases in such taxes and fees, shall be the responsibility of the Contractor with no increase in compensation from Metro."

Discussion: The purpose of the change would be to make it very explicit that increases in taxes and fees are to be paid by the Contractor and should be included in the proposal price and annual adjustment. Such increases are generally addressed in the change in law provisions of the RFP and such a change would be consistent with those provisions.

Recommendation: Make the recommended change.

3. Retainage It was recommended that funds be retained from monthly payments. Councilor Kvistad requested an analysis of such an action on competitiveness and the appropriate language to modify the RFP. These are contained in Attachment No. 2.

Discussion: See Attachment No. 2.

Recommendation: It is recommended that a provision reinforcing Metro's ability to withhold payments be added to the RFP (Attachment No. 3), but that a retainage provision not be included.

4. Tonnage Scenarios The RFP evaluates cost based on two tonnage scenarios. Staff recommends that only tonnage scenario #1 be used.

Analysis: Staff originally proposed using two tonnage scenarios to evaluate proposals, one to reflect historical trends and the second the effect of reduced tonnage at the Forest Grove Transfer Station (FGTS). The purpose of reducing tonnage at the FGTS was to assess the financial impact to Metro if one or two major accounts shifted from the FGTS to Metro South or Metro Central. However, the second tonnage scenario actually included in the RFP was based on the implementation of waste reduction programs included in the updated Regional Solid Waste Management Plan (RSWMP). Staff has concluded that the tonnage scenario under RSWMP penalizes proposals under Alternate #4, and that while the RSWMP tonnage scenario (#2 in the RFP) is possible, other scenarios are also possible and would represent a greater risk to Metro (i.e., reduced tonnage at the FGTS). Since it is not possible to model all such scenarios, risk to Metro is better reflected in utilizing a single tonnage scenario (#1) in the evaluation of proposals.

Recommendation: Modify Item 5(B), EVALUATION OF PROPOSALS, on page 5 of the RFP as follows:

"B. Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of proposals submitted to accomplish the work defined in this RFP.

1. Cost - The cost of a proposal will be evaluated utilizing the spreadsheet contained in the Appendix (a computerized version is available to aid Proposers in preparing their prices). Prices submitted for an alternate will be used ~~with each of two tonnage scenarios to~~ compute a total cost. For alternates #1, #2 and #3, proposals must include prices for both transport and disposal as well as a percentage of the CPI or they will be rejected. For alternate #4, a transport price and percentage of the CPI must be included. The disposal price for alternate #4 has been computed ~~utilizing the tonnage scenarios in conjunction~~ with the disposal price and savings available to Metro under Amendment No. 4 to Metro's Waste Disposal Contract. Both the amendment and the computation are contained in the Appendix.

For prices submitted which require compaction, a \$2 per ton surcharge is included in computing the total cost. This is to reflect the additional capital and operating costs incurred under this method.

Seventy Five (75) points are available for the cost criterion. ~~Forty points will be given to the lowest cost proposal under tonnage scenario #1, and thirty five points will be given to the lowest cost proposal under tonnage scenario #2.~~

Proposals which are not the lowest cost for a tonnage scenario will be allocated points based on a percentage of the lowest cost proposal for the tonnage scenario. The formula to allocate points to proposals other than the lowest cost is as follows:

"Other" total cost \$ _____ minus "Lowest" total cost \$ _____ = Difference

Percentage = 1 - (Difference divided by "Lowest" total cost)

— Percentage times points available = points for other than lowest cost proposal.

75 Points

JW:ay
Attachments

cc: Bern Shanks, Director, Regional Environmental Management

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ATTACHMENT NO. 1

Summary of Amendments to RFP #95R-21-SW
at the CSWC Meeting of 8-2-95

1. RFP, Item 3, top of Page 3:

DELETE "four years in no less than two year increments." and INSERT "one hundred twenty days."

2. SCOPE OF WORK, Item 1.0, Page 1, 3rd paragraph:

DELETE "an additional four years" and INSERT "one hundred twenty days"

3. GENERAL CONDITIONS, Article 28, page 31, last paragraph:

DELETE "year" and INSERT "hundred and twenty days"

ATTACHMENT NO. 2

Request for Retainage Provisions and Analysis for RFP #95R-21-SW

At the August 1st Council Solid Waste Committee meeting, Councilor Kvistad requested staff to prepare retainage provisions for RFP #95R-21-SW and an analysis of the impact on competitiveness of utilizing such provisions. Attached are the provisions we recommend for inclusion in the RFP if a retainage approach is to be utilized. An analysis follows.

The retainage approach would be for Metro to retain 5% of each monthly payment until reaching a target level of \$500,000. Initially the Contractor would be required to provide labor and materials bonds or a letter of credit in lieu of the retainage. The bonds or letter of credit would be reduced annually by the amount which has accumulated in retainage. This approach has been utilized in other major contracts.

Staff decided not to utilize a retainage approach in the RFP after comparing the impact on competitiveness to the risk to Metro if the Contractor fails to perform. After discussing the retainage issue with a number of potential transport vendors, staff concluded that it was likely that at least one vendor may not propose. Staff estimated that a lack of competition could result in an increase of up to \$2 per ton, or over \$700,000 over the life of the contract.

If the Contractor failed to perform, it was assumed that Metro would use its existing transport and disposal system until a replacement contract was in place (one year at most.) The purpose of retainage is to have funds available to cover increased costs from a replacement contractor over the amount you have available to pay the nonperforming contractor. The additional cost to Metro was assumed to be \$3 per ton for one year, or about \$200,000, all or part of which would be eventually recovered from the required bonds or letter of credit required under the current approach.

While retainage would make some cash immediately available to offset the increase, it should be remembered that it would probably take the entire contract length to accumulate the recommended amount of \$500,000. The monthly payment which would be withheld in the event of a default is over \$100,000 and is immediately available to defray increased costs which may be incurred from the replacement contractor(s). Assuming the increase is \$3 per ton, Metro would be able to cover at least 3 months of increased costs from the payment withheld.

Since an alternative transport and disposal system is available in the event a Contractor does not perform, staff believes the decision to use a retainage provision rests on an economic comparison. As potential savings are over three times the potential risk, staff recommends not utilizing retainage and reinforcing Metro's right to withhold payments (see attached).

**Changes to RFP # 95R-21-SW
Required to Incorporate Retainage Provisions**

Note: The retainage approach incorporated by these changes will reduce bonds or the letter of credit amounts annually by the amount held in retainage.

1. GENERAL CONDITIONS, Table of Contents, Page i:

INSERT: “ARTICLE 13 -- Retainage” and “ARTICLE 14 -- Metro’s Right to Withhold Payment and to Withdraw Funds from Retainage”

RENUMBER remaining Articles and correct cross references.

2. GENERAL CONDITIONS, ARTICLE 9, Item C, Page 9:

REPLACE the second sentence with “Metro may deduct such damages from any amount due or which may become due, or from funds held in retainage, or the amount of such damages shall be due and collectible from the Contractor or the Surety within fifteen (15) days of service of notice by Metro that liquidated damages have been imposed.”

3. GENERAL CONDITIONS, ARTICLE 12, Item A, Page 13:

REPLACE the last two sentences of the item with “After approval by Metro, Metro will pay to the Contractor by the 25th day of the following month ninety-five percent (95%) of the value of unit price work less any previous payments. The withholding of five percent (5%) of payments as retainage shall be subject to the provisions of Articles 13 and 17.”

4. GENERAL CONDITIONS, INSERT new ARTICLE 13 and 14 as follows:

ARTICLE 13

Retainage

Metro shall retain five percent (5%) of all unit price payments to Contractor until the total amount of such retainage equals \$500,000 (the designated amount of the Bonds or Letters of Credit under Article 17). This retainage shall not be returned to Contractor until completion of the performance of this Contract, including all extensions to its term. The retainage will be placed in an interest bearing account, pursuant to ORS 279.420. Interest shall accrue to the Contractor, but shall be retained in the interest bearing account until completion of performance.

If at any time the total amount of retainage ever falls below five percent (5%) of the total contract payments made to Contractor or \$500,000, whichever amount is less, due to deductions from retainage allowed by the Contract, Metro shall be entitled to the remedies described in Article 17 of these General Conditions.

ARTICLE 14

Metro's Right to Withhold Payment and to Withdraw Funds from Retainage

- A. Metro shall have the right to withhold from payments due Contractor and to withdraw from funds held in retainage such sums as necessary, to protect Metro against any loss or damage which may result from negligence or unsatisfactory work by Contractor, failure by Contractor to perform or abide by any of his/her obligations under this Contract or claims against Contractor or Metro relating to Contractor's performance or work. In addition, Metro may withhold payments from Contractor and withdraw from funds held in retainage for damages by Contractor to others not adjusted or resolved, failure of Contractor to make proper payment to his/her employees, material suppliers and subcontractors, and where there is filing of any claim against Metro or Contractor. In no event shall amounts withheld from payment under this section be construed to mean amounts attributable to retainage. Metro's right to retain five percent (5%) of Contract payments under Article 13 of these General Conditions is in addition to Metro's right to withhold payments under this paragraph. Metro shall provide at least ten (10) days' notice of its intent to withhold payments or withdraw funds from retainage under this Article, and Contractor shall have the right to dispute such actions as provided in these Contract Documents.
- B. No action taken by Metro under this Article shall affect any of the other rights or remedies of Metro granted by any other provision or provisions of this Contract or by law or relieve Contractor from any consequences or liabilities arising from his/her acts or omissions.
5. GENERAL CONDITIONS, renumbered ARTICLE 17, Performance and Labor and Materials Bonds, Page 22:

REPLACE the first paragraph with the following:

“Not later than sixty (60) days prior to each irrevocable Letter of Credit or Performance and Labor and Materials Bond expiration date which occurs before Metro has retained, pursuant to Article 13, \$500,000, Contractor shall execute and deliver to Metro Performance and Labor and Materials Bonds on the forms bound herewith, or an irrevocable Letter of Credit acceptable to Metro, which shall secure and be conditioned upon the full, faithful and complete performance of the Contract and prompt payment of all persons supplying labor and materials for the performance of the Contract and other protection to Metro, as provided in such Bonds or Letter of Credit. Except that, the initial term of the Performance and Labor and Materials Bonds or Letter of Credit shall be for the period beginning with the execution of the Contract and shall be in the amount of \$500,000.

There shall be annual reductions in the amount of the Bonds or Letter of Credit which become due for all years following the bond or letter of credit term and such reductions shall be made effective upon renewal of the Bonds or Letter of Credit. The amount of the annual reductions shall be equal to the amount of Contract payments which Metro has retained by the date on which the relevant Bonds or Letter of Credit are due for renewal. No further Bonds or Letter of Credit

shall be due for any periods following the next Contract anniversary date after Metro has retained payments from Contractor equal to \$500,000 subject to the following paragraph. Failure to execute and deliver to Metro the Bonds or Letter of Credit required above shall constitute a default by the Contractor under the terms of the Contract, but such a default shall not extend to the Surety or Banking Institution under the terms of the Bonds or Letter of Credit.

It is possible that the total amount of retainage may reach \$500,000 and then fall below \$500,000 due to Metro's exercise of its rights to deduct funds from retainage. It is also possible that at any time the total amount of retainage may fall below five percent (5%) of the total Contract payments made to Contractor due to Metro's exercise of its rights to deduct funds from retainage. If either or both of these events occur(s), Metro shall have the right to require Contractor to execute and deliver a new Letter of Credit or Bonds of the form described above, within ninety (90) days of service of written notice of such intent from Metro. The amount of such Letter of Credit or Bonds shall be the sum necessary, when added to the existing Bond or Letter of Credit, if any, and the amount of any existing retainage, to equal \$500,000. The term for such a Bonds or Letter of Credit would extend until the succeeding Contract anniversary date or until the amount of retainage is equal to \$500,000, whichever occurs last."

6. GENERAL CONDITIONS, renumbered ARTICLE 18, Contractor's and Metro's Liability Insurance, Item A:

REWRITE the last sentence of third paragraph as follows:

"In case of any breach of any provision of this Article, Metro, at its option, may take out and maintain, at the expense of the Contractor, such insurance as Metro may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract including funds held in retainage."

ATTACHMENT NO. 3

ARTICLE 14

Metro's Right to Withhold Payment

- A. Metro shall have the right to withhold funds from payments due Contractor, to protect against and compensate Metro for any loss or damage which may result from negligence or unsatisfactory work by Contractor, failure by Contractor to perform or abide by any of Contractor's obligations under this Contract or claims against Contractor or Metro relating to Contractor's performance or work. In addition, Metro may withhold payments from Contractor for damages by Contractor to others not adjusted or resolved, failure of Contractor to make proper payment to Contractor's employees, material suppliers and subcontractors, and where there is filing of any claim against Metro or Contractor. Metro shall provide at least ten (10) days' notice of its intent to withhold payments under this Article, and Contractor shall have the right to dispute such actions as provided in these Contract Documents.
- B. No action taken by Metro under this Article shall affect any of the other rights or remedies of Metro granted by any other provision or provisions of this Contract or by law or relieve Contractor from any consequences or liabilities arising from Contractor's acts or omissions.

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WHY METRO IS REQUESTING PROPOSALS FOR DISPOSAL OF SOLID WASTE BEING DELIVERED TO THE FOREST GROVE TRANSFER STATION

For some time now, the Metro Executive Officer and Council have been seeking ways to reign in the costs of transporting and disposing of solid waste. This effort has in part been prompted by the region's exceptional success at recycling, which leaves Metro with less tonnage-generated revenue to pay its fixed costs. We are taking a close look at our entire revenue structure and at the way we purchase goods and services.

On March 23, 1995, the Metro Council agreed with the Executive Officer that Metro could save money for solid waste disposal if it sought proposals for the transport and disposal of solid waste being delivered to the Forest Grove Transfer Station. (Resolution No. 95-2118) The "Request for Proposals" has been drafted and will be advertised soon, pending approval by the Council at its August 10 meeting.

The Forest Grove Station is a Metro franchised facility that for many years has delivered its waste to the Riverbend Landfill in Yamhill County. In 1990, Metro began shipping the bulk of the region's waste to Columbia Ridge Landfill in eastern Oregon under a 20-year contract. The Forest Grove Station continued to make its own arrangements for delivery of its waste (about 10 percent of the region's mixed municipal waste) to Riverbend Landfill. Because there is now significant competition for solid waste disposal, the Executive Officer and Council have decided that it is time for Metro to seek a new contract for disposal of the Forest Grove Station waste. The resolution before the Council on August 10 simply addresses the details of that procurement.

The details are in fact rather complicated. On March 16, 1994, Metro amended its contract with Oregon Waste Systems (OWS), owners of the Columbia Ridge Landfill (Amendment No. 4). One aspect of that amendment was a reduced price for disposal of the Forest Grove Station waste at Columbia Ridge. Under Amendment No. 4, OWS agreed to give Metro \$1 off each ton Metro delivers to Columbia Ridge, if Metro also delivers the Forest Grove Station waste (a total of about 785,000 tons). At the time Amendment No. 4 was executed, Metro staff calculated that it was a better deal than continued delivery of the Forest Grove Station waste to Riverbend.

In part because of Amendment No. 4, Sanifill, the owners of Riverbend Landfill, convinced Yamhill County to replace its franchise agreement, which allowed the county to establish disposal rates, with a license agreement that allows Sanifill to charge any rate it deems appropriate. Riverbend Landfill is now capable of competing for the Forest Grove Station waste, and has said that it can beat the savings that would be provided to Metro through Amendment No. 4. Through this procurement, Metro hopes that Riverbend will submit a proposal that is superior to Amendment No. 4. Metro also hopes that OWS, now recognizing that Sanifill may beat Amendment No. 4, will make an offer to surpass both Amendment No. 4 and Sanifill's proposal. It is exactly this kind of competition, (that may also draw the participation of at least two other regional landfills) that can only lead to savings for regional ratepayers.