

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
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METRO

MEETING: METRO COUNCIL REGULAR MEETING - REVISED AGENDA
DATE: June 20, 1996
DAY: Thursday
TIME: 2:00 PM
PLACE: Council Chamber

Approx.
Time*

Presenter

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 the Minutes for the June 13, 1996
Metro Council Meeting

5. INFORMATIONAL PRESENTATION

2:20 PM
(20 min)

- 5.1 Presentation of MPAC Boundary Committee recommendations
by Portland City Commissioner Charlie Hales and Clackamas
City Commissioner Judie Hammerstead.

6. ORDINANCES - FIRST READING

2:40 PM
(5 min)

- 6.1 **Ordinance No. 96-645**, For the Purpose of Adopting
Metro Code Chapter 2.16 Code of Ethics.

7. ORDINANCES - SECOND READING *(Subject to Suspension of the Rules)*

2:45 PM
(5 min)

- 7.1 **Ordinance No. 96-644A**, For the Purpose of Granting **McFarland**
a Franchise to Waste Management of Oregon/~~TDK~~
~~Corporation~~ for Operating a Solid Waste Processing
Facility.

8. RESOLUTIONS
(Subject to Suspension of the Rules)

2:50PM
(5 min)

- 8.1 **Resolution No. 96-2339**, For the Purpose of Authorizing The Executive Officer to Enter Into An Agreement With The City of Portland Bureau of Environmental Services For Metro to Receive Federal Funds For Projects Which Benefit Columbia Slough Adjacent to St. Johns Landfill.

McCaig

2:55 PM
(5 min)

- 8.2 **Resolution No. 96-2350**, For the Purpose of Authorizing an Intergovernmental Agreement with Clackamas County to Provide Litter Collection Services.

McLain

3:00 PM
(15 min)

9. **EXECUTIVE SESSION, Pursuant to ORS 192.660 (1)(d), to conduct deliberations with persons designated by Metro to carry on labor negotiations.**

3:15 PM
(10 min)

10. **COUNCILOR COMMUNICATIONS**

3:25 PM

ADJOURN

Consideration of the June 13, 1996 Metro Council Meeting Minutes

**Metro Council Meeting
Thursday, June 20, 1996**

MINUTES OF THE METRO COUNCIL MEETING

June 13, 1996

Council Chamber

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

Councilors Absent: None

Presiding Officer Jon Kvistad called the meeting to order at 2:05 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

Mike Burton reviewed the letter sent to Councilor Washington regarding the Transition Committee on Metro Consolidation. The letter was sent to the Council, upon their request, to clarify his position on consolidation. It is his belief that Metro should return responsibility of PCPA and Civic Stadium to the City. If we do accept permanent responsibility for these entities, certain condition must be met which include financing resources from the City of Portland and Multnomah County and amending its process so that Metro has control of that tax. Third, he is requesting a tax study committee be established so that there is a regional base for any taxes and to be included in this is an examination of that tax status at Multnomah County. Fourth, there is a question concerning the organization of governance regarding MERC. He reiterated the Council's communicate with the Executive Office concerning the creation of a separate non-profit, Metro would lose the authority to appoint the boards in order to have the 501-C3 status. Metro has a choice to make about how much separation is wanted, recommendations were included in his attached letter.

Mr Burton updated the Council about the role of facilitating the negotiations between the City of Portland, Beaverton and Washington County concerning the unincorporated areas between Beaverton, Portland and unincorporated Washington County. Metro has had community meetings about the unincorporated areas. This matter is before Metro because the Supreme Court indicated to these jurisdictions that, where there are conflicts in comprehensive planning because of the process we have in this region, Metro will make decisions to come up with solutions to conflicts and comp plans. Mr Burton has attempted to have these entities come up with an agreement which all parties have agreed to, so by the end of the summer he can come before the Council to present this agreement. Ultimately the decision will be the Council's. He recommended not getting involved and avoid being lobbying on this, defer this to the judicial process.

Mr Cooper gave some general guidelines on the parameters for conversations off the record about these unincorporated areas. He suggested avoiding conversations off the record. If conversations do occur, remember what has been included and make sure these conversations are in the record. Avoid contact if possible. If a councilor receives letters, make sure copies are given to council clerks so at the time the proposal comes before the Council, the letters are in the file and can be reviewed by anyone who wishes to look at them. Mr Cooper will summarize this in writing for the Council.

Presiding Officer did stress that since three of the Council are within these jurisdictions, it is a good idea to avoid participating in the community meetings.

Councilor McLain noted that Councilors have already been asked to make comments. Councilor McLain indicated she had handled it by giving an historical overview of what had happened previously and indicate that because it was possibly a quasi-judicial situation, it was necessary to keep the response in an informational mode. She asked Mr Cooper if she could respond in such an informational mode? Mr Cooper will put a summary in writing for the Council. The issue to guard against is the conversation where the Councilor is hearing facts that may not be facts.

Judith Mandt, REM Administrator Manager, announced that REM will go over the 100,000 calls this year for the Recycling Information Center and on behalf of Councilor McFarland and Executive Officer Mike Burton, she is delivering Metrograms (buttons) to the Council. Buttons were distributed to the Councilors.

4. CONSENT AGENDA

4.1 Consideration of the Minutes for the June 6, 1996 Metro Council Meeting.

Motion: Councilor Washington moved the adoption of the minutes of the June 6, 1996 Metro Council Meeting.

Second: Councilor McLain seconded the motion.

Vote: The vote was 6 ayè / 0 nay / 0 abstain. Presiding Officer Jon Kvistad declared the minutes unanimously approved by all those voting.

5. INFORMATIONAL PRESENTATION

- 5.1 Presentation of MPAC recommendations by Portland City Commissioner Charlie Hales - Presiding Officer Kvistad indicated that Mr Hales had asked to reschedule his appearance before the Council until the next Council meeting. This item is deferred until the next Council meeting.

6. ORDINANCES - FIRST READING

- 6.1 **Ordinance No. 96-644**, For the Purpose of Granting a Franchise to Waste Management of Oregon/TDK Corporation for Operating a Solid Waste Processing Facility.

Ordinance No. 96-644 was assigned to the REM Committee.

7. ORDINANCES - SECOND READING

- 7.1 **Ordinance No. 96-631B**, For the Purpose of Adopting the Annual Budget for Fiscal year 1996-97, Making Appropriations and Levying Ad Valorem Taxes, and Declaring an Emergency.

Motion: Councilor Monroe moved the adoption of Ordinance No. 96-631B.

Second: Councilor McLain seconded the motion.

Discussion: Councilor Monroe indicated that the TSCC had some minor recommendations. He asked that staff review TSCC's recommendations.

Dennis Stratchota indicated that TSCC certified the 1996-97 Metro budget and made three recommendations regarding the budget, 1) was with regards to the use of open space bond proceeds, the commission thought that the way several expenditures were portrayed, it appeared to be for operating purposes. The staff responded that expenses are, in fact, not for operating expenses, the accounting staff would work with the auditors to better portray those expenditures so that they did not appear this way, 2) this was an informational item only, this recommendation dealt with an interfund loan, the commission said that the budget included a \$500,000 loan from the Convention Center to Regional Parks and Expo fund and the local budget law requires that loans not repaid a year in advance be returned to the fund from which it was borrowed by the end of the ensuing fiscal year. Metro's response was that they recognized that this is an interfund loan and its repayment will be budgeted in fiscal year 1996-97 as required by the local budget law. Councilor Monroe added that this item has to do with the building of the new Expo facility, it will be on line and making money so the loan will be able to be repaid within the budget year. 3) this recommendation dealt with the intergovernmental revenue estimates and the indication that the award received varies intergovernmental revenues i.e., grant are uncertain. TSCC acknowledged that because the budget is only a plan there is no way that it can be totally reliable on estimates. Metro should closely monitor grant revenues as they related to the plan throughout the year, if the receipt is contingent upon future occurrence, then it may be prudent to postpone expenditure until the grant is certain. Mr Stratchota response to this was that they recognized that the budget is only a plan, that there is close monitoring of revenue for actual amounts received in comparison to budget and because the Transportation Department is most heavily dependent upon grant awards, Metro monitors the awards and receipt of grants on a monthly basis to make sure they are in line with the budget.

Mike Burton added that there is a considerable amount of grant activity that takes place in this budget as it does in any municipal style budget and there is often a need for placeholders as the actual funding allocations that occur from other levels of government don't always occur with the same timing that Metro would like to have them. There is fairly close monitoring process, the work plan in this year's budget supported the Executive Officer have a little tighter administration of the grants. The auditor is undertaking a review of this. This will give additional management and performance data over this next year.

Presiding Officer Kvistad opened the public hearing. There was no public

testimony, Presiding Officer Kvistad closed the public hearing.

Councilor Morissette indicated that in a budget this size we could have found some ways to save money, he will not be supporting the budget. He had pointed to a way that moneys could be saved in the Solid Waste department. He is continually concerned about the cost of operation of this facility. It was about \$1.6 million in savings when tipping fees were reduced a \$1 or \$2 a ton. It is important we continually go through the process of evaluating departments. At some point we are going to have to make some tough decisions and start reducing budgets in some areas. Therefore, he will not be supporting this budget as he hasn't in the past.

Presiding Officer Kvistad indicated he would not be supporting the budget as he has in previous budget votes due to a problem with excise taxes funding government.

Councilor McLain acknowledged that she was proud to support the budget. Three and a half months have been spent working on this budget. She believes a good job has been done on reviewing this budget for the public and that a higher level of scrutiny this next year would be warranted.

Councilor Washington acknowledged Chairman Monroe's wonderful job of getting the budget to the Council, a very good job was done on reviewing all the points and putting together a sound budget.

Councilor Monroe indicated that this is a prudent budget, a responsible budget, a well thought out budget, it reverses the trend of years of increasing the excise tax, it actually reduces it. He urged members of the Council to support the budget.

Vote: The vote was 5 aye/ 2 nay/ 0 abstain. The votes was 5-2 in favor. Councilors Morissette and Kvistad voted nay, Councilors McCaig, Monroe, Washington, McLain, and McFarland voted aye. The motion passed.

8. RESOLUTIONS

- 8.1. **Resolution No. 96-2338**, For the Purpose of Authorizing to Metro Code Chapter 2.04.041(C), Competitive Bidding Procedures, and Authorizing a Sole Source Contract with Eastman Kodak Company to Provide Maintenance and Repair Service on the Kodak 300 Duplicator.

Motion: Councilor McFarland moved the adoption of Resolution No. 96-2338.

Second: Councilor Washington seconded the motion.

Discussion: Councilor McFarland said that Metro have an Eastman Kodak duplicator in the print shop, Eastman Kodak is the only company that can service this duplicator. Metro has received good service in the past from Eastman Kodak.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

- 8.2 **Resolution No. 96-2346**, For the Purpose of Authorizing Execution of Multi-Year Contracts for Primary Service and System Acquisitions and for an Exemption to Contract Code 2.04.044 Granting Authority to the Executive Officer to Enter into Additional Contracts on the Management Information System Project.

Motion: Councilor McFarland moved the adoption of Resolution No. 96-2346.

Second: Councilor Monroe seconded the motion.

Discussion: Councilor McFarland indicated that this resolution has been reviewed several times, this resolution is to support software and training for our new MIS system.

Councilor Morissette questioned the amount being spent on training fees, 3200 hours at a rate of \$145.00 per hour, for a total of \$42,000.00.

Councilor McFarland understood that the number of hours projected for training was a maximum and it was unlikely that Metro would reach that number of hours for training.

Vote: The vote was 6 aye/ 1 nay/ 0 abstain. Councilors McCaig, Monroe, Washington, McLain, McFarland and Kvistad voted aye. Councilor Morissette voted nay. The motion passed.

- 8.3 **Resolution No. 96-2347**, For the Purpose of Authorizing an Exemption to the Metro Code Chapter 2.04.060, Personal Services Contracts with the Portland Art Museum for Sponsorship of an Educational Program in Conjunction with the Museum and Intel Foundation.

Motion: Councilor McLain moved the adoption of Resolution No. 96.2347.

Second: Councilor Washington seconded the motion.

Discussion: Councilor McLain gave an overview of the resolution and indicated that there was a letter from Judith Mandt, the Administrative Manager, attached which answered many of the questions that the REM committee had concerning this proposal. Questions that concerned the committee included; what the criteria was that had been used to select the process and the committee found that there was no real criteria that had been formalized for unsolicited proposals. Councilor McLain indicated that the Council may wish to address the criteria issue in more detail at another time as it effect other unsolicited proposals that come before the Council. The budget impact on this proposal is \$5000. Another question asked by the REM committee was what type of cash contribution or in kind service do other members of this partnership bring to the project. Ms Mandt responded to this question in her memo; Intel's Foundation is providing a cash contribution of \$32,500, Washington Mutual Foundation contributed \$5000, Planet Productions contributed \$50,000 of in kind services, and Sony contributed \$5000 of in kind services.. Several other businesses have provided in kind, creative and audio services. The Museum's contribution is one years work on the part of one staff member to design and

coordinate the program.

Another question which arose in committee was why was it necessary for a sole source contract. It was brought to their attention that the Museum was the entity that had been designated to provide this service. It was important that contact be kept in place. Why is Metro involved? First, the goal of waste reduction; there was tons of paper involved in this project. Intel's contribution would put this in a CD-ROM format so there would be a great reduction in paper recycling. This meets both the waste reduction responsibilities and goals. The criteria that was applied to selecting this project has been provided in the memo. Requests are received for this type of technology in the business grant program and this project fit the waste reduction goal, the types of goals we have in RSWMP.

Vote: The vote was 4 aye/ 3 nay/ 0 abstain. The vote was 4-3 in favor. Councilors Monroe, Washington, McLain and McFarland voted aye, Councilors McCaig, Morissette and Kvistad voted no. The motion passed.

- 8.4 **Resolution No. 96-2323**, For the Purpose of Authorizing Change Order No. 19 to the Contract for Operating Metro Central Station, Change Order No. 19 to the Contract for Operating Metro South Station, and Change Order No. 20 to the Contract for Waste Transport Services.

Motion: Councilor McLain moved the adoption of Resolution No. 96-2323.

Second: Councilor McFarland seconded the motion.

Discussion: Councilor McLain indicated that this resolution was to 1) conduct a pilot project to separate wood waste from other waste that is suitable for production into hog fuel, 2) to increase to amount of waste that is recovered at the Metro transfer station especially the Southern Station, and modify the Metro recycling credit, 3) is to allow commercial haulers to deliver transfer trailers of waste to the Metro Central Station during off hours to avoid traffic congestion. These are all extremely important issues. A slide show during the committee meeting demonstrated how much clean waste is out there. This indicated to the committee that by recovering this waste we will be helping our recycling programs. We are also working on other issues such as improving the Southern or Metro Transfer Station and doing a better job of recovery. Key issues that should be dealt with are that Metro charges customers a disposal fee of \$54.00 per ton for source separated yard debris and for the yard debris delivered to the Metro South Transfer Station it currently cost Metro about \$90.00 per ton to pay the contractor to transfer, transport and dispose of yard debris and compost. This compares to an estimated cost of \$24.00 a ton to transport it to the Metro Central Transfer Station process and put into hog fuel. This action will save Metro money.

Councilor Morissette asked if there was testimony on both sides or was this well supported? Councilor McLain responded that it was supported by staff and there was no testimony at the committee level.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

- 8.5 **Resolution No. 96-2348**, For the Purpose of Authorizing the Executive Officer to Extend Contracts with Devin Oil Company, Inc. and Stein Oil Company for Purchasing Diesel Fuel.

Motion: Councilor McCaig moved the adoption of Resolution No. 96-2348.

Second: Councilor Washington seconded the motion.

Discussion: Councilor McCaig has to do with saving money, no other supplier, and needing our approval to extend the contract.

Jim Watkins, Engineering Manager for REM, spoke about the contract which was competitively bid for a 15 month duration. In the contract there is the option to have three one year extension upon Council approval. REM is now negotiating with Jack Ray to eliminate the clause, they are asking for a one year extension to remove that clause so that longer terms can be implemented and hopefully get a better price. The current savings are \$30,000 to \$50,000 a month by purchasing Jack Ray's fuel. The only things that vary in this contract is the transportation and the mark up, transportation is \$.025 a gallon and markup is \$.015. There is not a lot of money to be saved beyond what is already being saved.

Councilor Monroe supported the continuation of the contract.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

- 8.6 **Resolution No. 96-2321A**, For the Purpose of Revising the By-Laws of the Water Resources Policy Advisory Committee.

Motion: Councilor McLain moved the adoption of Resolution No. 96-2321A.

Second: Councilor Washington seconded the motion

Discussion: Councilor McLain pointed out that this advisory committee has been in existence providing technical advise to the Metro departments on many of the storm water and quality of water issues before Metro. Exhibit A explains the changes to the membership and to updates in the by-laws. Primary changes may be found on pages 1 through 4. The biggest change is the philosophy, the description and focus of the committee. Councilor McLain read the new philosophy. She suggested that this was a good update to the by-laws and the committee.

Amendment: Presiding Officer Kvistad amended the resolution so that the "Coalition for the Livable Future" membership was changed to "an environmental member at large".

Second: Councilor McLain seconded the motion.

Vote: The vote on Presiding Officer Kvistad's proposed amendment was 6 ayes/ 1 nay/ 0 abstain. The motion passed.

Vote: The vote on the full resolution as amended was taken. The vote was 6 aye/ 1 nay/ 0 abstain. The motion passed.

8.7 **Resolution No. 96-2345, For the Purpose of Approving and Adopting the Ancient Forest Preserve Draft Master Plan.**

Motion: Councilor McFarland moved the adoption of Resolution No. 96-2345.

Second: Councilor McLain seconded the motion.

Discussion: Councilor McFarland indicated that this plan honors our commitment in the green spaces master plan for Forest Park and its environs. This is a plan by which we have worked out an ability to protect the land around Forest Park. There was a bid process to develop this plan. The more ancient forest that survives in an urban, setting the better, these forests should be protected.

Chris Wrench, 3103 NW Wilson, Portland, OR 97210, brought to the attention of the Council that this resolution was time certain for 3:25pm. She is here to testify, she is very much in favor of this resolution but there will be at least one individual coming with concerns, i.e., parking.

Presiding Officer Kvistad moved to this to the end of the agenda because public testimony was time certain for 3:25pm.

Public Hearing was opened at 3:25pm.

Chris Wrench discussed the perceived parking space problem. The ancient Forest Park will have five spaces. There are 12 designated spaces at McLay Park and an equal number of spaces on the street. She does not perceive any traffic problem. There is a problem for local residents around the Lief Erickson Drive access to the Forest Park because of a major mountain bike access. The Parks Bureau and City of Portland have made it a major objective to find another alternate mountain bike to Forest Park to relieve that neighborhood situation.

The Ancient Forest Preserve will not have mountain bike use so there is no anticipated problem with regards to parking.

Councilor Morissette indicated that he owns property in the general area so rather than have even a perception of a conflict he won't participate in this process.

Cathy Turner, 5205 SW Menefee Drive Portland OR 97201, Vice President of Friends of Forest Park, believes the management plan before Council is a very good balance of multiple objectives with this piece of property both to preserve it in its relatively pristine quality and to use its for its great educational and recreational potential. Acknowledged Metro staff's efforts in developing this thorough plan.

Nancy Broshot, 1126 8th St, Oregon City, OR 97045, member of the Technical Advisory Committee for Master Plan for the Ancient Forest Preserve as well as

a PhD candidate at PSU with a research site in the Forest. This would be an asset for Metro to have this as a resource. She supports this resolution.

Leslie Labbe, 4935 SW Barnes Rd, Portland, OR 97221, supports this project and would like to include all those in the audience who support this project but do not wish to speak before the Council.

Jamey Hampton, 9400 SW Barnes Rd., Portland, OR 97225, representing Hampton Resources,. This company owned the old growth reserve before Friends of Forest Park purchased it. It had a preservation merit. Funds were raised from the public which reflected the public's support of this reserve. Fundamental tenant of the project is to allow the public to experience an old growth forest. He also supports this plan. He supports granting an easement across his land for the purpose of this plan.

Arnold Rochlin, PO Box 83645, Portland, OR 97283, treasurer of the Friends of Forest Park, collected over \$650,000.00 from 4000 people. There was astonishing interest from the public in this project. They collected 103% of the pledged money. This is something the people really want. Concerning the parking issue, Mr Rochlin lives next to a parking lot, one of Forest Park's parking lots and share the driveway access with the public. He has found no problems with the traffic to date.

Donna Green, 16238 NW McNanee Rd, Portland, OR 97231, asked if the Council had received the letters she has sent? She spoke about the five parking spaces allotted for the Forest Park. She is concerned that there will not be enough parking spaces. She represent McNanee Home Owners Association. Several members are very concerned about the impact that this will have on the local road, a two lane road with no sidewalks. There are a lot of bicyclists, animals, and children. She believes that Hwy. 30 would be a better access to the park than a local access road. Public involvement and concerns that need to be addressed are reflected in the attached letter and include two potential hazardous traffic condition, increased traffic, neighborhood impact, fire protection, vagrancy, police, sanitation, water, environmental concerns. Multnomah County granted approval of a two lot land division, no where was there an indication that McNanee Road would be considered for public access only emergency access. Ms Green reiterated that three times as many people prefer the parking on Hwy. 30 to McNanee Road. They would like to see a cost estimate comparing the two parking sites and prior to a decision being made take a look at the estimated costs in terms of safety and livability. She feels that all of these questions should be addressed before a decision is made.

Councilor McLain thanked all of the speakers that came to testify particularly the last speaker, Donna Green. She appreciates the effort that Ms Green has made in the involvement process of this master plan. Councilor McLain visited the site and Ms Green's home. She believes that those who will be coming to Forest Park will be hardy hikers. She also agrees that the neighborhood does have a right to question issues such as fire protection and vagrancy. She indicated that Table 6 should answer some of the questions concerning costs. Metro is taking on a lead responsibility in these problems. Metro can't give answers until we have experience there. We have done our very best job to make sure there is a master plan in place and will keep the issues of fire, garbage, etc. as the park is developed.

Councilor Washington asked a question about traffic visibility. He suggested that a consideration of road mirrors may be an option.

Pat Lee, Manager of Planning and Capitol Development for the Parks and Greenspaces Dept., responded to Councilor Washington's question. The Master Plan does not propose that Metro should be the managing entity for this park. If we are the managing entity, there would be a requirement to come back for a use permit in order to build the parking lot. Specific traffic issues would be addressed at that time and mitigation that we would want to ensure that are carried out to protect the McNanee as well as visitors to the site.

Councilor McFarland acknowledged the participation of these groups at the committee level and the Council levels. She recommended adoption of the plan and hoped that these concerns will be address as Forest Park is developed.

Vote: The vote was 6 aye/ 0 nay/ 0 abstain. Of those present, the motion passed unanimously

Public testimony closed Chris Wrench, Nancy Broshot, Leslie Labbe, Jamey Hampton, Arnold Rochlin, Donna Green, and Cathy Turner

Response to Washington asked

9. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e). DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS.

- 9.1 Resolution No. 96-2340, For the Purpose of Approving a Refinement Plan for the Willamette Cove Target Area as Outlined in the Open Space Implementation Work Plan.
- 9.2 Resolution No. 96-2341, For the Purpose of Approving a Refinement Plan for the Columbia River Shoreline and Islands Target Area as Outlined in the Open Space Implementation Work Plan.
- 9.3 Resolution No. 96-2349, For the Purpose of Authorizing the Executive Officer to Purchase Property as an addition to Howell Territorial Park.

Presiding Officer Kvistad opened an Executive Session pursuant to ORS 109-660(1)(e) at 3:02 PM.

Present: Mike Burton, Cable Access Cameraman, Jim Desmond, Nancy Chase, Charles Ciecko, Jeff Stone, Michael Morrissey, John Houser, Amy Kircshbaum, Chris Rigby, Ray Barker, Daniel Cooper.

Presiding Officer Kvistad closed the Executive Session at 3:22 PM.

Motion: Councilor Washington moved for adoption.

Second: Councilor McFarland seconded the motion.

Vote: 7 ayes/ 0 nays/ 0 abstain.

Motion: Councilor Monroe moved for adoption.

Second: Councilor Washington seconded the motion.

Vote: 7 ayes/ 0 nays/ 0 abstain

Motion: Councilor McFarland moved for adoption.

Second: Councilor Morissette seconded the motion.

Vote: 7 ayes/ 0 nays/ 0 abstain.

10. COUNCILOR COMMUNICATIONS

10.1 Councilor McFarland asked Ms Lisa Godwin from Public Affairs to speak to the planned celebration for the individual who was the 100,000 caller to Metro Recycling. The celebration is planned for noon Monday, June 17 in the Recycling Information Center. There will be prizes for the winner as well as cake and ice cream. There will also be a media advisory about this celebration. The phone number on the button is 234-3000 for the Recycling Information Center.

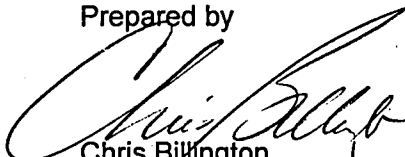
10.2 Councilor Washington first meeting of county/city metro consolidation concerning the PAC and Stadium will be held on June 20th at 8:00am in Commissioner Mike Lindberg's office.

10.3 Any Councilor with office equipment needs should speak with Presiding Officer Kvistad or Jeff Stone at their earliest possible convenience

11. ADJOURN

With no further business to come before Metro Council this afternoon, the meeting was adjourned by Presiding Officer Jon Kvistad at 4:03 pm.

Prepared by



Chris Billington
Clerk of the Council

***Addendum/Attachments:**

A copy of the originals of the following documents can be found filed in the Permanent Record of this Meeting, in the Metro Council Office.

Metro Council Meeting
Thursday, June 6, 1996
Page 12

Document Number:

Document Origination/Originator:

Document Date

061396-01

Seth Tane
Citizen Advisory Panel
13700 NE Newberry Rd
Portland, Oregon 97231

June 10, 1996

061396-02

Donna Green
16238 NW McNamee Rd
Portland, Oregon 97231

June 3, 1996

Seth Tane
13700 NW Newberry rd..
Portland, OR 97231
(503) 735-0339 office
286-6339 home
735-0337 fax

June 10, 1996

To: METRO COUNCIL

Re: Testimony in support of approval of the Ancient Forest Preserve Draft Master Plan

Dear Council Members,

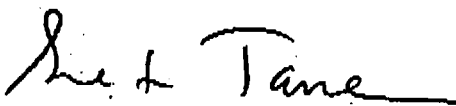
Due to a schedule conflict, I am unable to be present in person to present this testimony, but I request that it be entered into the record as written.

I served on the Citizen Advisory Panel that reviewed the consultant's reports, staff and citizen proposals and concerns and helped to guide the creation of this Master Plan. My own concerns were that the preserve not be too accessible, and that the access route minimize the impact of visitors to this fragile and isolated stand.

In contrast with others who feel that the process has excluded their concerns and did not adequately consider parking alternatives, I remember observing a very well attended open house at the Linnton Community Center, and a long and thoughtful process of consideration of the parking and access alternatives.

This stand represents a unique educational and scientific resource and is all the more remarkable because it was preserved from the clearcutting that claimed all the neighboring tracts by a large group of local citizen volunteers. The gift of this magnificent parcel to the public at large under Metro's stewardship was conditional upon the creation of an acceptable Master Plan. This is a well thought out, economically feasible plan that balances the educational needs of visitors and the habitat and neighborhood requirements of minimal intrusion.

I hope your review of the Ancient Forest Preserve Master Plan will bring you to the same conclusions.

Sincerely, 

Seth Tane

June 3, 1996

To Metro Councilors:

My name is Donna Green and I reside at 16238 NW McNamee Road. I represent McNamee Ridge View Homeowners Association, and we are appealing to you as neighbors. We live outside any appointed Metro Council District, and are being subjected to a decision by you that will forever affect the quality of life for residents on McNamee Road. We support the idea of preservation, and have committed to it in spirit and financially. We simply believe that Highway 30 is a more appropriate site for parking for the Ancient Forest Preserve than on McNamee Road.

Thank you for the opportunity to voice our concerns. This is our 4th attempt now to get someone at Metro to really listen to and address our concerns. Our hope is that you will be the first to actually do so.

First, I'd like to speak to a couple of things Jane Hart, staff planner, said at plan hearings. She said that Highway 30 parking (key word being parking) sites were eliminated in the 1992 land use case creating this parcel. This is not true, and I will further discuss what that 1992 land use case did and did not approve. If, indeed, it had been eliminated in 1992, then it could not have seriously been an option during this plan development. Which goes back to one of my premises in my May 14, 1996 letter to you - I have been receiving nothing but lip service and nobody has seriously considered other parking options. The other thing that Jane Hart said at the June 3rd hearing was that it would cost "several hundred thousand dollars" to develop a Highway 30 site for parking. At the previous hearing on this plan she said it would cost "one million dollars". We would like to know which is true. Further, I think that as responsible decision makers you should know what the cost to develop McNamee Rd. vs. the cost to develop a Highway 30 site actually is.

We have gone the appropriate "public involvement" route for about one year now, and still have not received adequate responses to our concerns. When I attended the only two public planning meetings last summer, I learned that several sites on McNamee Rd. were being considered as options for the parking area. I first voiced our neighborhood's concerns at that time. About six months later, after speaking with Jane Hart to learn the status of the plan, it sounded to me like McNamee Rd. was going to be the selected parking site. After relaying this information to some of my neighbors, I submitted a letter and petition asking Metro to reconsider placing the parking on McNamee to a more appropriate location, like off Highway 30.

After receipt of my petition, I heard from both Mike Burton and Susan McLain. The former encouraged me to continue working through the public involvement process; the latter actually took the time to come to my home along with Jane Hart to discuss our concerns. I appreciated both. I was basically told at that time that McNamee Rd. was going to be the parking location and that it won't be so bad because the quality of the people coming to the park will be such that they won't leave garbage, won't have to go to the bathroom, won't trespass, and cause much traffic. I would love to believe this is true, but I have seen the litter that people now leave by the access gate to the property; this includes needles and used condoms. (I have pictures of the garbage people leave along this road that I'd be happy to show you.) We do not cherish the idea of walking along our road with our small children and finding these "treasures".

In any case, none of our neighborhood concerns have been addressed or even mentioned in the two "Public Involvement" sections of the plan. The most encouraging words I heard so far was from a Regional Parks and Greenspaces Citizen committee member, who stated "It is critical to make sure that the concerns of neighbors are addressed and that a master planning committee work hard and be creative to find solutions to issues." Here you have the opportunity to do just that.

At the risk of sounding like a broken record, I will repeat our concerns.

First, McNamee Rd. is designated as a local street by Multnomah County through an ordinance adopted in July 1995. This ordinance "incorporated assumptions of the Regions 2040 Growth Management Plan." The County states the function of local streets "is to serve local pedestrian, bicycle, and automobile trips." In other words, McNamee Rd.'s function is to serve local transportation needs, not the needs of a region to access a park.

There are two potentially hazardous traffic conditions already on McNamee that will only be worsened by having parking for this regional park on it. One is at its intersection with Highway 30, where site distance blocks the view of any oncoming traffic down McNamee if one is heading up McNamee. The other is when the road turns into one lane under the railroad tressel; during summer, when park visitation will be at its peak, foliage blocks the view of oncoming traffic. Adding thousands of additional trips will only serve to exacerbate these dangerous conditions.

Probably the closest parking alternatives to the old growth parcel that were not seriously considered are near Wapato Drive. Because residents there knew about this proposal early on (during the 1992 land use case) and actively organized against it, Metro ruled it out of consideration. As a matter of fact, even though lip service was paid to them in-so-far as being alternative sites, the plan itself (page 12) states:

"Wapato Drive sites. Two sites (#5-6) on Wapato Drive were analyzed in 1992, and eliminated due to neighborhood concern about increased traffic and parking in front of their homes."

So if these site were eliminated from consideration in 1992, how can one believe they were seriously considered in 1995/1996? And if they were eliminated due to the neighborhoods concerns identified in their letter (see Attachment #1) as "Neighborhood Impact, Fire Protection, Vagrants, Police, Sanitation, Water, Environmental Concerns, Parking", why are our very similar concerns being ignored?

Further, also on page 12 of the plan in the very same paragraph, it states:

"A condition of approval for the land division that created the Preserve required that the Preserve be accessed from McNamee Road."

I checked with Multnomah County to determine exactly what was and what was not approved with the infamous 1992 land division. A letter (see Attachment #2) sent to me in response to my inquiry states:

"...Land Division No. 8-92 (LD 8-92) and Miscellaneous Case No. 1-92 (MC 1-92)...granted approval of a 2 lot land division. The land division created...a 38 acre parcel...to be purchased by the Friends of Forest Park for a conservation area for the protection of open space, forest and wildlife resources."

NOTHING IN THAT LAND USE CASE SAID ANYTHING ABOUT APPROVAL WAS GRANTED FOR A PARK OR A PARKING AREA OFF MCNAMEE ROAD (OR FOR THAT MATTER, ELIMINATING PARKING OFF HIGHWAY 30). The letter further states:

"MC 1-92 granted approval of an easement for access instead of requiring frontage on a public road. The vehicle access easement provided access to Parcel 2 by a logging road from McNamee Road and was for the care and maintenance of Parcel 2 and emergency access. It was specifically stated in the Hearings Officer decision that the road will not be available for public use."

I believe the confusion here is not so much whether or not to place parking on Highway 30 or McNamee Road (since there was no mention of the creation of a park in this application), but rather how to access the 38 acre parcel. Finding A in the decision states:

"The site abuts US Highway 30 Road on the east. Creation of Parcel 2 as a flag lot with direct access off

Highway 30 would be impractical in that Parcel 2 is over half a mile from the highway. Utilization of the existing easement road running from McNamee Road to Parcel 2 will provide adequate access to Parcel 2."

The access that is being discussed is for emergency and maintenance only. Apparently it made more sense to access Parcel 2 from an existing road than by creating a flag lot with a long panhandle. I want to emphasize that Multnomah County cannot approve the creation of a parcel that is landlocked. Therefore, an access had to be provided for, but this was, again, only for maintenance and emergency access only. Please read the accompanying letter and land use decision from Multnomah County.

The most appropriate location for a regional park or preserve or whatever it is called is from a regional road. Highway 30 fits this bill perfectly. As a matter of fact, during the planning process last summer, surveys were filled out with the results being that almost 3 times as many people preferred the parking alternative on Highway 30 to McNamee Road. The plan refers to other sites reviewed as parking alternatives, including Highway 30. There is no reason to eliminate the first Highway 30 site mentioned other than an ODOT Highway 30 Corridor Study, which recommends but does not require limiting new driveways off Highway 30. As a matter of fact, Angell Bros. Quarry just recently constructed a second driveway off of Highway 30, no doubt with ODOT approval. We do not understand why, if given the same number of trips, it is safer to turn on and off McNamee than it would be a parking area along Highway 30. We would like further explanation on this.

Other than the cost, we have not heard a legitimate reason why Highway 30 cannot be used for the parking area. And the cost is questionable, since, as was mentioned earlier, differing figures have been thrown out without any actual cost estimate. Highway 30 can easily be restriped to accommodate a left turn lane as has been done in Burlington and for McNamee Road. I believe the site on Highway 30 is flatter than the site on McNamee, and, as such, would be less costly to develop. Please let us look at the actual costs to develop Highway 30 vs. McNamee Road. And let us try to estimate what this may cost to safety and livability for McNamee residents.

The plan estimates 8,000 - 10,000 people per year will visit the park. This will mean a significant increase in the traffic on McNamee Road. Even though there will only be five or six parking spaces, people traveling throughout the region to visit the park will not know whether or not the parking area is full until they get there. They will likely not turn around and go home after traveling a half hour or longer to get there. They will likely park outside the official parking area, drive up and down McNamee, etc. In any case, this will mean more people driving the length of McNamee (which terminates at Skyline), and will likely mean more people speeding. A recent traffic study conducted by Multnomah County showed that 85% of traffic is traveling at 37 mph or below. Looked at another way, 15% of traffic is traveling above 37 mph. This is on a street with no sidewalk, no curb, and very little to no shoulders. This is also a street with considerable bicycle and pedestrian travel. Siting the parking on McNamee will have a negative impact on the quality of life for me and my neighbors, and nobody cannot tell us this is untrue. Should Metro continue to ignore our plea and site the parking on McNamee, we ask that the impact of traffic be mitigated by the placement of speed bumps, and not at property owners' expense.

We are concerned that the designation of this area as a "garbage free zone" is a joke. Have you not seen the garbage that litters our roads and highways now? Do you really think human beings are not slobs? Just look at what we've already done to our environment.

We are concerned that no provision has been made for fire safety. The fire response is already inadequate. How is Metro going to address this concern? Can a water tank be installed somewhere and easily accessed?

We are concerned with, for lack of a better term, vagrants moving into the area as they have done in the past. The provision of a nice parking area with a view will be most inviting to these people. And these are not the people who will be there during the day when the "good" people will be there; they'll come

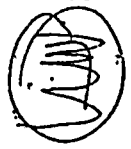
after dark when the "good" hikers are gone. With low levels of police presence, this will be a problem that needs to be addressed. It is more likely that these people will set up camp in a parking area on McNamee than they would right on Highway 30, where they would be much more visible to a higher number of people, including a higher number of police officers that travel the Highway.

Looking to the future, Rails-to-Trails may become a reality. I have already heard that this park/parking area will tie into this. This has much broader implications and impacts on McNamee Road. We believe a decision on Rails-to-Trails should be made first, because once the parking for the park on McNamee exists, it will be impossible to distinguish the two, and we'll likely have even more people on McNamee.

Also looking to the future, how will the park/parking be advertised? My guess is that Friends of Forest Park (FOFP) and Metro will use this as a showcase of an example of a grass roots effort cooperating with government. Already FOFP has 4,400 contributors anxious to see the results of their efforts.

Finally, it is still up in the air as to who will ultimately manage this area. Again, we believe this decision should be made first.

Thank you for your patience and for hearing our concerns. Our past experience has been that nobody has seriously addressed these concerns. Our fear is that Metro has become so large that it cannot see its impact on the little people. Keep in mind that us little people will think twice before voting for additional bond funding for Metro.



ATTACHMENT # 1
 Letter Received 3/31/92
 SAME CONCERNS

MULTNOMAH COUNTY PLANNING COMMISSION
 2115 S.E. MORRISON ST.
 PORTLAND OREGON 97214

R.E. LD 8-92, #50
 MC 1-92, #50

DEAR SIRs;

AS A PROPERTY OWNER ADJACENT TO THE PROPOSED NATURE TRAIL TO THE OLD GROTH STAND, WE STRONGLY OPPOSE THE PROPOSED SITING OF THIS TRAIL. OUR PROPERTY EXTENDS TO THE MIDDLE OF THE CREEK IN THIS RAVINE. DURING THE RAINY SEASON THIS CREEK RUNS FULL AND MAKES PASSAGE UP THIS RAVINE VERY DIFFICULT IF NOT IMPOSSIBLE. OTHER REASONS FOR OUR OPPOSITION ARE AS FOLLOWS:

1. NEIGHBORHOOD IMPACT

WE FEEL THAT THE PROPOSED TRAIL WILL HAVE AN ADVERSE IMPACT ON OUR NEIGHBORHOOD. THE ADDITION OF MANY PEOPLE HIKING AND SIGHT SEEING WILL DEFINITELY INCREASE TRESPASSING ON PRIVATE PROPERTY, VANDALISM, AND MOST LIKELY THEFT. BEING ON THE OUT-SKIRTS OF MULTNOMAH COUNTY WE ALL READY HAVE INADEQUATE POLICE AND FIRE PROTECTION.

CURRENTLY WE HAVE A QUIET RESIDENTIAL COMMUNITY, THE ADDITION OF A PUBLIC TRAIL THROUGH THIS COMMUNITY WILL CHANGE THAT.

2. FIRE PROTECTION

THE FIRE PROTECTION IN THIS AREA IS TOTALLY INADEQUATE THE RESPONSE TIME IS SUCH THAT THE HOMES IN THE NEIGHBORHOOD WOULD BURN TO THE GROUND BEFORE THE FIRE TRUCKS WOULD ARRIVE ON THE SCENE. SHOULD A HIKER GET CARELESS WITH ANY BURNING MATERIAL DURING THE SUMMER MONTHS THE NEIGHBORHOOD COULD EASILY BURN DOWN.

3. VAGRANTS

A PUBLIC ACCESS TRAIL WOULD BE A OPEN INVITATION TO THE HOMELESS AND VAGRANTS TO MOVE INTO THE AREA AND SET UP CAMP. AT OUR CURRENT LEVEL OF POLICE PROTECTION WE WILL HAVE NO HAY TO COMBAT THIS PROBLEM.

4. POLICE

THE POLICE RESPONSE IS FROM GRESHAM, THE RESPONSE TIME FOR ANY EMERGENCY IS LENGTHY. THE ADDED INFLUX OF PEOPLE INTO THE NEIGHBORHOOD COULD CAUSE SERIOUS PROBLEMS IN THIS AREA.

5. SANITATION

NO PROVISIONS HAVE BEEN MADE FOR PUBLIC SANITATION WE ASSUME NONE WILL BE, THIS WILL NOT ONLY CREATE AND PUBLIC NUISANCE, BUT ALSO A HEALTH HAZARD.

MULTNOMAH COUNTY PLANNING COMMISSION
LD 8-92, #50
MC1-92, #50

6. WATER

THE LOCAL WATER DISTRICT CURRENTLY IS HAVING MAJOR SUPPLY PROBLEMS. IT IS DOUBTFUL THAT ANY NEW WATER USAGE PERMITS CAN BE ISSUED AT THIS TIME.

7. ENVIRONMENTAL CONCERNS

THE PROPOSED ACCESS TRAIL WILL HAVE AN ADVERSE AFFECT ON THE NATIVE ENVIRONMENT, DUE TO THE INFLUX OF LARGE GROUPS OF PEOPLE INTO THIS AREA. ALL ENVIRONMENTAL CONDITIONS SHOULD BE ADDRESSED FOR THE PROPOSED TRAIL.

8. HIGHWAY ACCESS

A. CURRENTLY THERE IS NO ACCESS FROM HIGHWAY 30 TO THE PROPOSED TRAIL. THE ONLY ACCESS IN THIS AREA IS TO SERVE LOTS 8, 9, 10, 11 BLOCK 4 BURLINGTON ADDITION. ACCESS FROM THE HIGHWAY AT THIS POINT WOULD NOT ONLY BE EXTREMELY DANGEROUS, BUT WOULD ALSO CREATE A PUBLIC SAFETY HAZARD.

B. THE TRAFFIC COMING FROM PORTLAND WOULD HAVE TO STOP IN THE FAST LANE AT THE BOTTOM OF A FAIRLY STEEP HILL AND ON A CURVE TO ACCESS THIS AREA. THE ROAD IS NOT WIDE ENOUGH FOR A TURNING LANE.

C. THIS IS A CONTROLLED ACCESS AREA ACCORDING TO THE STATE HIGHWAY DEPT. THE ONLY ACCESS IS A DEEDED ACCESS TO LOTS 8, 9, 10, 11 BLOCK 4. IN TALKING TO THE HIGHWAY DEPT. THEY WOULD BE VERY RELUCTANT TO ALLOW ANY ADDITIONAL ACCESS TO OR FROM HIGHWAY 30 AT THIS TIME BECAUSE OF THE HEAVY VOLUME OF TRAFFIC ON HIGHWAY 30 AND THE DANGER OF HAVING VEHICLES TURNING ON TO THIS PROPERTY.

9. PARKING

THERE IS NOT ENOUGH LAND IN THIS AREA TO ALLOW PARKING FOR MORE THAN A VERY FEW VEHICLES, THIS WOULD NECESSITATE HIKERS PARKING ILLEGALLY ON HIGHWAY 30 OR ON ADJOINING PRIVATE PROPERTY. BOTH SIDES OF HIGHWAY 30 HAVE A BIKE LANE AT THIS POINT.

Go BACK TO 6

AS AN ALTERNATIVE TO THE HIGHWAY 30 ACCESS WE WOULD SUGGEST ACCESS OFF OF MCNAMEE RD. NOT ONLY WOULD THERE BE LESS TRAFFIC PROBLEMS, ADEQUATE PARKING COULD BE PROVIDED, IT WOULD BE A SAFER COURSE FOR THE PUBLIC, THERE WOULD BE MUCH LESS NEIGHBORHOOD IMPACT AND ENVIRONMENTAL IMPACT.

THANK YOU

ATTACHMENT # 2



MULTNOMAH COUNTY

DEPARTMENT OF ENVIRONMENTAL SERVICES
TRANSPORTATION AND LAND USE PLANNING DIVISION
2115 SE MORRISON STREET
PORTLAND, OREGON 97214-2865
(503) 248-3043 FAX: (503) 248-3389

May 30, 1996

Ms. Donna Green
16238 NW McNamee Road
Portland, OR 97231

RE: Land Division Case No. 8-92/Miscellaneous Case No. 1-92

Dear Ms. Green:

In response to your letter dated May 22, 1996, Multnomah County Planning has reviewed the Hearings Officer's decision (H.O. decision) and conditions of approval for Land Division No. 8-92 (LD 8-92) and Miscellaneous Case No. 1-92 (MC 1-92). LD 8-92 granted approval of a 2 lot land division. The land division created a 137 acre parcel (parcel 1) and a 38 acre parcel (parcel 2) which was to be purchased by the Friends of Forest Park for a conservation area for the protection of open space, forest and wildlife resources.

MC 1-92 granted approval of an easement for access instead of requiring frontage on a public road. The vehicle access easement provided access to parcel 2 by a logging road from McNamee Road and was for the care and maintenance of parcel 2 and emergency access. It was specifically stated in the H.O. decision that the road will not be available for public use and the copy of the *Vehicular Easement* document used to meet the conditions of approval of MC 1-92 states "Use of the Access Easement shall be limited to vehicular travel for the purpose of maintaining and caring for the real property described in Exhibit A (parcel 2) and shall not be used by members of Grantee or by the general public for ingress to or egress from the real property described in Exhibit A (parcel 2) except for such purposes." In addition to the vehicle access easement, a pedestrian trail easement was granted to allow public access to parcel 2 (see attached Exhibit A1, submitted at hearing 6/1/92).

In regards to your question regarding an approval of an off-street parking area on either of these two parcels. LD 8-92/MC 1-92 was a land division approval only. It does not convey or grant additional land use approvals for the two parcels. The proposed use for parcel 2 under LD 8-92 was a conservation area for the protection of open space, forest and wildlife resources. This use leaves the property in its natural state with no improvements or development allowed. To further underscore the need for additional approvals if the property was to be converted to a park, the Hearings Officer's decision for LD 8-92's placed as a condition of approval (#3) the following: "Further use or development of Parcel 2 for park purposes will require the owner to apply for and obtain Planning Commission approval of a Community Service Use in accordance with MCC 11.15.7005-.7025." The development of a parking area or any other physical improvements would constitute a land use change from a *Use Permitted Outright* to a *Conditional Use* and would require application and approval of a Community Service designation for a park on parcel 2.

I hope that this answers your questions regarding the approvals granted by LD 8-92 and MC 1-92. Should you have any additional questions, please do not hesitate to contact the Planning Section at 248-3043.

Respectfully,

Lisa Estrin
Planner

enc: Hearings Officer Decision for LD 8-92/MC 1-92



Department of Environmental Services
Division of Planning and Development
2115 S.E. Morrison Street
Portland, Oregon 97214 (503) 248-3043

Decision

This Decision consists of Conditions, Findings of Fact and Conclusions.

June 8, 1992

✓ LD 8-92, #50
MC 1-92, #50

Type 1 Land Division
Access by Easement

Applicant requests approval of a Type 1 land division plus approval of an access by easement to permit the sale of a 38-acre portion of the described site to be retained in their natural condition, for permanent easements for pedestrian access from Highway 30 (trail right-of-way) and vehicular access (emergency and maintenance only) from NW McNamee Road.

Location: 16900 NW McNamee Road
Legal: Tax Lot '6', Section 20, 2N-1W, 1991 Assessor's Map
Site Size: 370 Acres'
Size Requested: 174.88 Acres
Property Owner: Agency Creek Management Company
9400 SW Barnes Road, Suite 400, Portland, 97225
Applicant: Friends of Forest Park
5205 SW Menefee Drive, 97201
Comprehensive Plan: Multiple Use Forest
Present Zoning: MUF-38, Multiple Use Forest District
Minimum lot size of 38 acres

*20 Decision
mailed
6/11/92
pc*

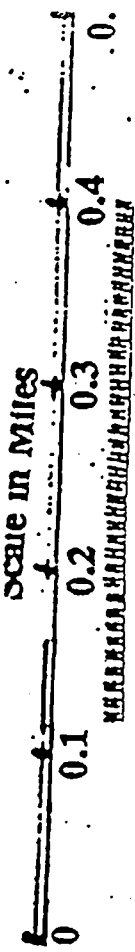
Hearings Officer

Decision #1: Approve, subject to conditions, the requested 2-lot land division in accordance with the provisions of MCC 11.45.080(D).
(LD 8-92)

Decision #2: Approve, subject to conditions, request to use an easement as a means of access to new lots instead of providing frontage on a dedicated street as required in the MUF-38, multiple use forest district per MCC 11.15.2188, all based on the following Findings and Conclusions.
(MC 1-92)

Tentative Plan Map

LD 8-92/MC 1-92



Boundary Hampton Property

Tax Lot 6 Boundary

North

Highway 30

Wapato Dr.

McNamee Road

Railroad

Railroad

Proposed Coastal Range

Power Line

Trail

Parcel 1
(137 Acres)

Parcel 2
(38 Acres)

Tax Lot 6

Trail Access

Vehicle Access

Conditions of Approval: (LD 8-92)

1. Within one year of the date of this decision, deliver the partition plat and other required attachments to the Planning and Development Division of the Department of Environmental Services in accordance with MCC 11.145.710. Obtain applicant's and surveyor's *Instructions for Finishing a Type III Land Division*.
2. This land division shall be valid so long as Parcel 2 is used as a conservation area for the protection of open space, forest and wildlife resources in accordance with MCC 11.15.2168(D) and Parcel 1 is used for any use allowed in the MUF Multiple Use Forest district in accordance with MCC 11.15.2168, .2170 or .2170.
3. Further use or development of Parcel 2 for park purposes will require the owner to apply for and obtain Planning Commission approval of a Community Service Use in accordance with MCC 11.15.7005-.7025.
4. Approval is conditioned on the alternative trail access as proposed by the applicant on June 1, 1992, which terminates above the tressle on NW McNamee Road, as shown on Applicant's Exhibit A-1, dated June 1, 1992.

Findings Of Fact (LD 8-92)

1. **Applicant's Proposal:** The applicant proposes to divide a vacant tract of about 175 acres into two parcels. Parcel 1 would contain about 137 acres and Parcel 2 would contain 38 acres. Applicants, the Friends of Forest Park, are buying Parcel 2 from Agency Creek Management Company. Upon completion of the land division the Friends plan to deed Parcel 2 to Multnomah County for a for the creation of a public park. Parcel 1 will continue in forest production. No dwelling will be built on either parcel.

Background: Applicants have been working with the Parks Services Division in their planning for the transfer of Parcel 2 to the County. Development of Parcel 2 as a park will require Community Service Use approval by the Planning Commission. Until such time as Community Service approval for a park is granted, Parcel 2 will be a used as a conservation area for the protection of open space, forest and wildlife resources. Applicants anticipate that the park will be passive in nature, and will not have picnic tables, ball fields or other similar recreational features.

Vehicle Access: A private logging road over an existing easement will serve Parcel 2. The road runs from NW McNamee Road in a southeasterly direction into the site. This staff report addresses the request for approval of access by easement under Recommended Decision #2 (MC 1-92). Terms of the easement state that use of the road will be only for maintenance and care of Parcel 2. The road will not be available for public use.

Pedestrian Access: Applicants initially proposed a pedestrian trail over an easements running into the site from US Highway 30. The pedestrian access will be the sole means of public access to Parcel 2. A revised pedestrian access route was submitted at the hearing on

④
June 1, 1992 which was preferred by a number of area residents (See Applicant's Exhibit A-1, dated June 1, 1992).

Park Usage: Once Parcel 2 is turned over to the county and a park is approved and developed, applicants estimate a volume of between 500 and 1,000 visitor vehicles per year. The demand for off-site parking is expected to be negligible, given the estimated volume.

A parking lot at the beginning of the new trail head is also proposed. Development of this parking lot may require additional permits from the County.

2. **Site and Vicinity Information:** The site is on the west side of US Highway 30 in the Burlington areas. The 174-acre land division site is part of an area containing a total of 370 acres owned by Agency Creek Management Co. The area is currently in forest production.
3. **Land Division Ordinance Considerations (MCC 11.45)**
 - A. The proposed land division is classified as a Type I because it is "[A]. . . *partition associated with an application affecting the same property for any action proceeding requiring a public hearing . . .*" [MCC 11.45.080(D)]. The proposed land division is associated with an application to use an easement as a means of access to a proposed lot that will not have any frontage on a dedicated public road. This staff report addresses the application for access by easement under Decision # 2 (MC 1-92).
 - B. MCC 11.45.230 lists the approval criteria for a Type I Land Division. The approval authority must find that:
 - (1) *The Tentative Plan is in accordance with:*
 - a) *the applicable elements of the Comprehensive Plan;*
 - b) *the applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission, until the Comprehensive Plan is acknowledged to be in compliance with said Goals under ORS Chapter 197; and*
 - c) *the applicable elements of the Regional Plan adopted under ORS Chapter 197. [MCC 11.45.230(A)]*
 - (2) *Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; [MCC 11.45.230(B)]*
 - (3) *The Tentative Plan or Future Street Plan complies with the applicable provisions, including the purposes and intent of this Chapter; [MCC 11.45.230(C)]*

- (4) *The Tentative Plan or Future Street Plan complies with the Zoning Ordinance or a proposed change thereto associated with the Tentative Plan proposal; [MCC 11.45.230(D)]*
- (5) *If a subdivision, the proposed name has been approved by the Division of Assessment and Taxation and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words "Town", "City", "Place", "Court", "Addition" or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed; [MCC 11 11.45.230(E)]*
- (6) *The streets are laid out so as to conform, within the limits of the Street Standards Ordinance, to the plats of subdivisions and maps of major partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; [MCC 11.45.230(F)] and*
- (7) *Streets held for private use are clearly indicated on the Tentative Plan and all reservations or restrictions relating to such private streets are set forth thereon. [MCC 11.45.230(G)]*

4. **Type I Land Division Approval Criteria:**

A. **Applicable Elements of the Comprehensive Plan**

- (1) **Statewide Goals and Regional Plan:** For the reasons stated below, the proposal satisfies the applicable policies of the Comprehensive Plan. The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission.
- (2) **Applicable Comprehensive Plan Policies:** The following Comprehensive Plan Policies are applicable to the proposed land division. The proposal satisfies those policies for the following reasons:

(a) **No. 12 - Multiple Use Forest Lands**

Findings: The intent of Policy 12 is to encourage small woodlot management, forestry, reforestation and agriculture. The old-growth forest on Parcel 2 will be preserved. Parcel 1 will continue to be a working forest. Both proposed parcels contain 38 acres or more. For these reasons, the proposed land division complies with Policy 12

- (b) **No. 13 - Air and Water Quality and Noise Levels** This policy seeks to maintain and improve air and water quality and reduce noise pollution in the county

Findings: No significant impact on air pollution will result from the proposed land division as no physical development will occur on the site. Therefore, the proposal satisfies Policy 13.

- (c) **Policy 14 - Development Limitations**

Findings: Policy 14 is concerned with mitigating or limiting the impacts of developing areas having any of the following characteristics: slopes over 20%; severe erosion potential; land in the 100 year floodplain; high seasonal water table within 0-24 inches of the surface for 3 or more weeks a year; a fragipan less than 30 inches from the surface; and land subject to slumping, earthslides or movement. Topographic information presented by the applicant indicate that portions of the site contain slopes exceeding 25 percent. Compliance with the Hillside Development and Erosion Control Ordinance pursuant to MCC 11.15.6700—.6735 would be required for any building site with slopes over 25 percent. Therefore, since no development is proposed for either parcel, the application satisfies Policy 14.

- (e) **Policy 37 - Utilities** This policy requires adequate utilities to serve the site.

Findings: Parcel 2 will be used as a conservation area for the protection of open space, forest and wildlife resources. Parcel 1 will continue in forest production. No dwelling is proposed for either parcel. The proposed uses for each parcel do not require the provision of water or sewage disposal facilities. For these reasons, the proposed land division satisfies Policy 37.

- (f) **Policy 38 - Facilities** This policy requires that facilities such as schools and emergency services be available to serve the use.

Finding: The proposed uses for each parcel do not require facilities beyond those now available. For these reasons, the application satisfies Policy 38.

B. Development of Property [MCC 11.45.230(B)]:

Findings: Approval of the request will not affect one way or the other the ability to develop, use or provide access to adjacent properties. For these reasons, and for the reasons stated by the applicant, the proposal satisfies MCC 11.45.230(B).

C. Purposes and Intent of Land Division Ordinance [MCC]

- (1) MCC 11.45.015 states that the Land Division Ordinance. . . *"is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County."* The proposed land division satisfies the purpose of the Land Division Ordinance for the following reasons:
- (a) The size and shape of the proposed lots will accommodate proposed uses that are allowed by the Zoning Ordinance. There will be no overcrowding.
 - (b) Water supply is not necessary for the proposed uses of the site. Approval of the proposed land division will not change the demand for fire or police, services or other utilities.
 - (c) The proposed land division complies with the applicable elements of the Comprehensive Plan. The State Land Conservation and Development Commission has found the Comprehensive Plan to be in compliance with Statewide Planning Goals.
 - (d) The proposal meets the purpose of *"providing classifications and uniform standards for the division of land and the installation of related improvements"* because the proposal is classified as a Type I Land Division and meets the approval criteria for Type I Land Divisions for the reasons stated in these findings. The conditions of approval assure the installation of appropriate improvements in conjunction with the proposed land division.
- (2) MCC 11.45.020 states that the intent of the Land Division Ordinance is to. . . *"minimize street congestion, secure safety from fire, flood, geologic hazards, pollution and other dangers, provide for adequate light and air, prevent the overcrowding of land and facilitate adequate provisions for transportation, water supply, sewage disposal, drainage, education, recreation and other public services and facilities."* The proposal complies with the intent of the Land Division Ordinance for the following reasons:
- (a) The proposal minimizes street congestion by providing access to NW McNamee Road from the proposed lots by way of an existing private access road as shown on the Tentative Plan Map. The eventual use of the parking lot at the trail head will also minimize parking congestion.

- (b) Fire protection will continue to be available to the property. The property is not located within the 100 year floodplain. For this reason, the proposal secures safety from fire, flood, geologic hazard, and pollution.
- (c) The proposal meets the area and dimensional standards of the MUF-38 zoning district as explained in Finding 4.D and thereby prevents the overcrowding of land.
- (d) Finding 4.A(2)(d) addresses transportation system development requirements. Finding 4.A(2)(e) addresses water supply and sewage disposal. Finding 4.A(2)(f) addresses education, fire protection and police service. Based on the above findings, the proposed land division facilitates adequate provision for transportation, water supply, sewage disposal, education, and other public services and facilities.

D. Zoning Ordinance Considerations [MCC11.45.390]:

Findings:

- (1) The site is zoned MUF-38, Multiple Use Forest, District.
- (2) The following minimum area and dimensional standards apply per MCC 11.15.2178:
 - (a) The minimum lot size shall be 38 acres, including one-half of the road right-of-way adjacent to the parcel being created. As shown on the Tentative Plan Map, both parcels meet or exceed this requirement
 - (b) The minimum front lot line length shall be 50 feet. Both parcels exceed this requirement.
 - (c) The minimum yard setbacks are 30 feet front, 10 feet side, and 30 feet rear. If any structures were proposed, there would be adequate area on each parcel to meet all yard requirements.

Conclusions (LD 8-92)

- 1. The proposed land division satisfies the applicable elements of the Comprehensive Plan, including Policy 37 relating to utilities..
- 2. The proposed land division satisfies the approval criteria for Type I land divisions.
- 3. The proposed land division complies with the zoning ordinance.

Conditions of Approval (MC 1-92)

1. When recording the partition plat, record an instrument that demonstrates the legal right of the owner of Parcel 2 to use the easement for access to Parcel 2.
2. When recording the partition plat, record deed restrictions regarding the easement which:
 - A. Reference the Planning Commission decision approving access by easement (MC 1-92) and the land division for the property (LD 8-92); and
 - B. Specify maintenance responsibilities for owners of Parcel 2.
3. When submitting the partition plat to the Planning and Development Division, include a copy of the documents referred to in Conditions 1 and 2 above
4. Prior to signing of the partition plat by the Planning and Development Division, provide written confirmation from Fire Patrol Northwest that the proposed easement roadway will be safe and convenient for emergency vehicle use. The report from the district shall address:
 - A. Width of traveled surface;
 - B. Type of surfacing, including width, type and thickness of base rock;
 - C. Slope of roadway;
 - D. Adequate turning areas for fire-fighting apparatus;
 - E. Specifications for turn-outs at appropriate intervals along the private easement road to allow room for two-way vehicle traffic;
 - F. Specifications for keeping brush back from the traveled surface of the easement roadways;
5. Approval is conditioned on the alternative trail access as proposed by the applicant at the June 1, 1992 hearing (Applicant's Exhibit A-1, dated June 1, 1992).

Findings of Fact (MC 1-92)

- 1 **Applicant's Proposal:** Applicant proposes to use an easement over an existing private logging road to provide access to Parcel 2 that is proposed to be created under Land Division Case LD 8-92. The conditions, findings and conclusions for the land division are addressed in this report under Recommended Decision #1. The existing logging road runs from NW McNamee Road across land owned by Agency Creek Management Co. to the north line of Parcel 1 of the site and on into Parcel 2 as shown on the Applicants' Vicinity Map.

2. **Description of Easement:** The logging road is approximately 30 feet wide and has a gravel surface. Applicants state that the easement rights to use of the road are only for maintenance purposes. Public access will be solely via the pedestrian access trail.
3. **Zoning Ordinance Considerations (MCC 11.15):** MCC 11.15.2188 states that all parcels in the MUF, Multiple Use Forest District shall abut a street or have other access determined be "*safe and convenient for pedestrians and passenger and emergency vehicles.*"

Findings:

- A. The site abuts US Highway 30 Road on the east. Creation of Parcel 2 as a flag lot with direct access off Highway 30 would be impractical in that Parcel 2 is over half a mile from the highway. Utilization of the existing easement road running from McNamee Road to Parcel 2 will provide adequate access to Parcel 2. *look at pg 1*
- B. The proposed private road system will not use up substantial portions of the site as a "panhandle" as would occur if Parcel 2 were created as a flag lot. Compared to a flag lot, the easement road would result in a more efficient use of the land.
- C. Applicants list Fire Patrol Northwest as the fire service provider for the site. A condition of approval requires written confirmation from Fire Patrol Northwest that the road can handle fire-fighting apparatus with respect to width, type of base, top fill, surfacing, slope, turn-around areas, passing turn-outs and brush clearance. Subject to that condition, the request for access by easement satisfies MCC 11.15.2188.
- D. The revised pedestrian access easement is safe and convenient for pedestrians and will help provide better access to the site.

Conclusions (MC 1-92)

1. The criteria for approval of an alternate means of access as required by MCC 11.15.2188 have been met subject to the stated approval conditions.
2. Approval of an easement for access instead of requiring frontage on a public road is appropriate because the distance between Parcel 2 and the public road makes creation of a flag lots fronting on Highway 30 impractical.

ORDINANCE NO. 96-645, For the Purpose of Adopting Metro Code Chapter 2.16, Code of Ethics.

**Metro Council Meeting
Thursday, June 20, 1996**

Staff Report

**CONSIDERATION OF ORDINANCE NO. 96-645 FOR THE PURPOSE OF REVISING
THE METRO CODE TO REFLECT AN ADDITION OF A CHAPTER WHICH
ADDRESSES A CODE OF ETHICS**

Date: June 7, 1996

Presented by:

Mike Burton

PROPOSED ACTION

Ordinance No. 96-645 will amend the Metro Code by adding a Code of Ethics to the Metro Code.

BACKGROUND AND ANALYSIS

To date, the Metro Code has not addressed ethics in a concise, written form. The addition of this chapter will create specific guidelines concerning ethics. This chapter as it is written is modeled on recently adopted Codes of Ethics by other jurisdictions in our area.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends passage of Ordinance No. 96-645.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING)
METRO CODE CHAPTER 2.16 CODE)
OF ETHICS)
)
)

Ordinance No. 96-645
Introduced by
Executive Officer Mike Burton

THE METRO COUNCIL ORDAINS AS FOLLOWS:

A new Chapter is hereby added to the Metro Code to read as follows:

"CHAPTER 2.16

CODE OF ETHICS

Sections:

- 2.16.010 Definitions
- 2.16.020 Trust
- 2.16.030 Objectivity
- 2.16.040 Accountability
- 2.16.050 Leadership

2.16.010 Definitions.

1. "Metro official" means any elected official, employee, appointee to a board or commission, or citizen volunteer authorized to act on behalf of Metro.
 2. "Ethics" means positive principles of conduct. Some ethical requirements are enforced by federal, state, or local law. Others rely on training, or on individuals' desire to do the right thing.
- The provisions of this chapter which are not elsewhere enforced by law shall be considered advisory only.

2.16.020 Trust.

The purpose of Metro is to serve the public. Metro officials treat their office as a public trust.

1. Metro's powers and resources are used for the benefit of the public rather than any official's personal benefit.
2. Metro officials ensure public respect by avoiding even the appearance of impropriety.
3. Policymakers place long-term benefit to the public as a whole above all other considerations, including important individuals and special interests. However, the public interest includes protecting the rights of under-represented minorities.
4. Administrators implement policies in good faith, as equitably and economically as possible, regardless of their personal views.
5. Whistle-blowing is appropriate on unlawful or improper actions.
6. Citizens have a fair and equal opportunity to express their views to Metro officials.
7. Metro officials do not give the appearance of impropriety or personal gain by accepting personal gifts.
8. Metro officials devote Metro resources, including paid time, working supplies, and capital assets, to benefit the public.
9. Political campaigns are not conducted on Metro time or property.

2.16.030 Objectivity.

Metro decisions are based on the merits of the issues. Judgment is independent and objective.

1. Metro officials avoid financial conflict of interest and do not accept benefits from people requesting to affect decisions.
2. If an individual official's financial or personal interests will be specifically affected by a decision, the official is to withdraw from participating in the decision.

3. Metro officials avoid bias or favoritism, and respect cultural differences as part of decision-making.

4. Intervention on behalf of constituents or friends is limited to assuring fairness of procedures, clarifying policies or improving service for citizens.

2.16.040 Accountability.

Open government allows citizens to make informed judgments and to hold officials accountable.

1. Metro officials exercise their authority with open meetings and public records.

2. Officials who delegate responsibilities also follow up to make sure the work is carried out efficiently and ethically.

3. Campaigns for election should allow the voters to make an informed choice on appropriate criteria.

4. Each Metro official is encouraged to improve Metro systems by identifying problems and proposing improvements.

5. Metro government systems are self-monitoring, with procedures in place to ensure appropriate actions.

2.16.050 Leadership.

Ethical leadership sets a good example and treats all citizens with respect.

1. Metro officials obey both the letter and the spirit of all laws and regulations.

2. Leadership facilitates, rather than blocks, open discussion.

3. All Metro departments and work teams are encouraged to develop detailed ethical standards, training, and enforcement.

4. The Metro Auditor will publish a pamphlet containing explanations and examples of ethical principles."

ADOPTED by the Metro Council this _____ day of _____, 1996.

Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

jep
r-o/1266

ORDINANCE NO. 96-644-A, For the Purpose of Granting a Franchise to Waste Management of Oregon/TDK Corporation for Operating a Solid Waste Processing Facility.

**Metro Council Meeting
Thursday, June 20, 1996**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A)	ORDINANCE NO. 96-644-B
FRANCHISE TO WASTE MANAGEMENT OF)	
OREGON FOR OPERATING A SOLID WASTE)	
PROCESSING AND RECOVERY FACILITY)	Introduced by Mike Burton
AND DECLARING AN EMERGENCY)	Executive Officer

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

WHEREAS, Waste Management of Oregon (WMO) and TDK Corporation have applied for a non-exclusive franchise under which TDK Corporation would own, and WMO (as franchisee) would operate, a solid waste processing and recovery facility at Troutdale, Oregon; and

WHEREAS, WMO has submitted a franchise application in compliance with Metro Code Section 5.01.060; and

WHEREAS, The WMO Solid Waste Processing and Recovery Facility will provide recycling of waste delivered by affiliated companies, other commercial haulers, contractors and other businesses; and

WHEREAS, Issuance of a franchise to WMO is consistent with the policies set forth in the Regional Solid Waste Management Plan adopted November 1995 for removing recyclables from the mixed wastestream; and

WHEREAS, Metro Code Section 5.01.110 provides for the ability of Metro Council to grant variances pursuant to criteria contained therein; and

WHEREAS, WMO has requested a variance from Metro rate setting requirements as detailed in the staff report to this ordinance; and

WHEREAS, WMO has requested a variance from Metro Code Section 5.01.120(l) to allow it to retain ownership of its hauling companies and allow non-affiliated companies to use the Facility as detailed in the staff report to this ordinance; and

WHEREAS WMO has requested a variance from those portions of Metro Code sections 5.01.060(b)(6) and 5.01.180(e), requiring that the owner of a facility agree to allow Metro to place a new franchisee in the Facility, or force the sale of the Facility to a new franchisee, if the existing franchise is terminated; and

WHEREAS, based on information submitted by the franchise applicant, specified in the Staff Report or otherwise submitted, the Council has determined that it is appropriate to grant the variances requested; and

WHEREAS, WMO will provide a surety bond in the amount of \$100,000 as determined by Metro staff to be appropriate; and

WHEREAS, the Executive Officer recommends that the Council grant the attached franchise to WMO; and

WHEREAS, the Council unanimously finds that there is need to adopt this ordinance immediately, because planned absences of Council members would otherwise have caused unreasonable delays in the adoption of this ordinance; and

WHEREAS, the Council also unanimously finds that it is necessary for the welfare of the Metro area that this ordinance take effect immediately, because the facility is intended to recover additional materials from the solid waste stream, and the franchisee and facility owner need a signed franchise in order to begin construction of the facility; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

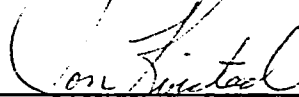
1. The Council authorizes the Executive Officer to enter into the attached franchise agreement within ten days of the effective date of this ordinance.
2. WMO is granted a variance from rate setting under Metro Code Section 5.01.110.

3. WMO is granted a variance from Metro Code section 5.01.120(l) to allow it to retain ownership of its hauling companies and allow non-affiliated companies to use the Facility.

4. WMO is granted a variance from those portions of Metro Code sections 5.01.060(b)(6) and 5.01.180(e) requiring that the property owner agree to allow Metro to place a new franchisee in the Facility, if the existing franchise is vacated.

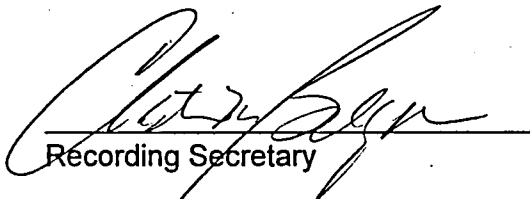
5. An emergency having been declared for the reasons stated above, this ordinance shall take effect immediately, pursuant to Sections 37(2) and 39(1) of the 1992 Metro Charter.

ADOPTED by the Metro Council this 20th day of June, 1996.



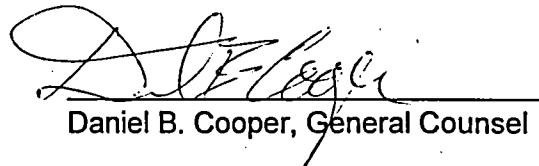
Jon Kvistad, Presiding Officer

ATTEST:



Recording Secretary

Approved as to Form:



Daniel B. Cooper, General Counsel

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF GRANTING A)	ORDINANCE NO. 96-644-A
FRANCHISE TO WASTE MANAGEMENT OF)	
OREGON/TDK CORPORATION FOR)	
OPERATING A SOLID WASTE)	Introduced by Mike Burton
PROCESSING AND RECOVERY FACILITY)	Executive Officer

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

WHEREAS, Waste Management of Oregon (WMO) and TDK Corporation have applied for a non-exclusive franchise to under which TDK Corporation would own, and WMO (as franchisee) would operate, a solid waste processing and recovery facility at Troutdale, Oregon; and

WHEREAS, WMO has submitted a franchise application in compliance with Metro Code Section 5.01.060; and

WHEREAS, The ~~TDK~~WMO -Material- Solid Waste Processing and Recovery Facility will provide recycling of waste delivered by affiliated companies, other commercial haulers, and contractors and other businesses; and

WHEREAS, Issuance of a franchise to ~~TDK~~WMO is consistent with the policies set forth in the Regional Solid Waste Management Plan adopted November 1995 for removing recyclables from the mixed wastestream; and

WHEREAS, Metro Code Section 5.01.110 provides for the ability of Metro Council to grant variances pursuant to criteria contained therein; and

WHEREAS, ~~TDK~~WMO has requested a variance from Metro rate setting requirements as detailed in the staff report to this ordinance; and

WHEREAS, ~~TDK~~WMO has requested a variance from Metro Code Section 5.01.120(l) to allow it to retain ownership of its hauling companies and allow non-affiliated

4. WMO is granted a variance from those portions of Metro the Code sections 5.01.060(b)(6) and 5.01.180(e) requiring that the property owner agree to allow Metro to place a new franchisee in the Facilityfacility, if the existing franshise is vacated.

ADOPTED by the Metro Council this _____ day of _____, 1996.

Jon Kvistad, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

JG:clk
SISHARE\DEPT\WRPS\SW96644A ORD

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 96-644-A FOR THE PURPOSE OF GRANTING A FRANCHISE TO WASTE MANAGEMENT OF OREGON FOR OPERATING A SOLID WASTE PROCESSING AND RECOVERY FACILITY

Date: June 19, 1996

Presented by: Andy Sloop
Scott Klag

INTRODUCTION

The purpose of this report is to provide the information necessary for the Metro Council to evaluate the recommendation that Waste Management of Oregon Inc. (WMO) be awarded a solid waste franchise to operate a solid waste processing and recovery facility (also referred to as a material recovery facility or MRF) to be located in Troutdale, Oregon. The proposed franchise agreement is attached.

The proposed franchise was drafted after a process lasting several months in which Metro staff, local government staff, citizens, processors and franchise applicants discussed the appropriate manner in which to regulate this type of processing facility.

The report is divided into three main parts: (a) a description of the facility, its operations and other relevant applicant information, including requests for variances to the franchise Code; (b) staff analysis of the application and whether the facility meets the criteria as specified in the Metro Code in order to be awarded a franchise; and (c) staff's recommendations and specific conditions to be contained in the franchise agreement.

Key finding and recommendations include:

- The proposed facility will assist the region in accomplishing the goals and objectives of the Regional Solid Waste Management Plan.
- The proposed facility is projected by Metro staff to receive 23,000 tons per year of dry waste with a limit of 38,000 tons. At a 45% recovery rate, the facility would recover between 10,000 and 17,000 tons per year.
- Metro staff, local governments and the applicant are aware of the importance of commercial source-separation programs in the RSWMP and are committed to ensuring that MRFs complement and do not undermine such efforts.
- The proposed franchise will maintain a "level playing field" regarding fees, recovery rate and other requirements with the two other most recently franchised MRFs. Staff recommends that any significant change in MRF requirements be made simultaneously to all Metro franchised MRFs.
- This is the first of 6 or more franchise applications for processing and recovery facilities currently or anticipated to be submitted to Metro. While each application is to be individually reviewed on its own merits, the cumulative impact of all these facilities is important to consider.

I. FACILITY AND APPLICANT INFORMATION

Waste Management of Oregon Inc. submitted its application to Metro for a solid waste processing and recovery facility to be located on land owned by TDK Corp. with facility operation by WMO. Important information about the facility includes the following:

Location:

869 NW Eastwind Drive, Troutdale, Oregon 97060

General Facility Description:

The franchised operation will consist of a 48,750 square foot facility on a 211,701 square foot (4.86 acre) site. The site is in an industrial sanctuary and is bordered by railroad tracks, several manufacturing facilities and vacant land. All processing will be conducted indoors.

Zoning and Permitting:

General industrial; a material recovery facility is a permitted use. No conditional use permits are required. The site was subject to a design review by the City of Troutdale.

The applicant has applied for a DEQ Solid Waste Disposal Permit and has been informed that the permit will be processed under rules that consider the facility a "low risk."

Customers and area served:

WMO is proposing that the facility accept waste and recyclables from commercial businesses and waste haulers from throughout the region, although the majority of users are expected to come from the east Multnomah County area. (Use of the facility by haulers other than those affiliated with WMO requires a variance from Metro Code. See discussion below.)

Facility Activities:

The applicant requests authorization to perform the following activities:

- Recovery of materials from dry, non-putrescible commercial and industrial wastes, and from construction and demolition wastes, with disposal of residual at a Metro designated facility.
- Reloading of yard debris for transport to a processing facility.
- Reloading of contaminated (non-hazardous) soils for transport to a Metro-approved facility.
- Processing of source-separated recyclables from residential and commercial customers.

Variances from Metro Code or other specific conditions requested by the applicant:

1. The applicant has requested a variance from Metro's rate setting authority. (Section 5.01.170)
2. The applicant has requested a variance from Metro Code restrictions on accepting waste from non-affiliated hauling companies. (Section 5.01.120(l))
3. The applicant has requested a variance from Metro Code requirement that would otherwise allow Metro, upon termination of the franchise, to force sale of the facility to a new franchisee, or require the owner to accept a new franchisee as his or her tenant. (Sec 5.01.06(b)(6), 5.01.180(e))

II. ANALYSIS OF FRANCHISE APPLICATION

Completeness and Sufficiency of Application

Applicants for franchises are required to complete the application form and provide additional information as requested. The applicant submitted its franchise request on February 23, 1996. WMO subsequently submitted additional information on its DEQ disposal permit application and its ability to obtain a surety bond. The applicant was notified that its application was administratively complete on April 17, 1996.

The applicant was also very cooperative in discussing and sharing information with staff on a number of additional questions regarding plans for the facility. The discussions and supplied information were important to establishing the specific conditions of the franchise document negotiated with the applicant.

Compliance with Code Requirements

In determining whether to recommend award of a franchise, Metro Code Section 5.01.070(b) requires the Executive Officer to formulate recommendations regarding:

- whether the applicant is qualified,
- whether the proposed franchise complies with Metro's Regional Solid Waste Management Plan (RSWMP),
- whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities, and
- whether or not the applicant has complied or can comply with all other applicable regulatory requirements

Applicant Qualifications

The facility will be operated by Waste Management of Oregon, Inc. which is a wholly owned subsidiary of Waste Management, Inc. Waste Management, Inc. is a subsidiary of WMX

Technologies, a publicly held corporation. Both the local company and the parent corporations have extensive experience in solid waste collection, processing and disposal.

Metro currently has two contracts with Waste Management, Inc. - one for operation of Metro South Transfer Station (expected to expire April 1997), the other a long term contract (ending in 2009) for disposal of solid wastes from Metro Central and Metro South Transfer Station. Based on our knowledge of, and experience in working with WMI, staff considers the franchise applicant to be well qualified to operate the proposed facility.

Compliance with the Regional Solid Waste Management Plan

In determining whether the applicant's facility is in compliance with the Regional Solid Waste Management Plan, staff asked the following questions:

- Are plans for the facility consistent with RSWMP goals and objectives or recommended practices?
- Are plans for the facility in conflict with any RSWMP goals and objectives or recommended practices ?

If approved, the franchise will be consistent with and not in conflict with the goals, objectives and recommended practices in the RSWMP.

Analysis of consistency with the RSWMP

In assessing the facility for consistency with the Plan, staff determined the following:

1. The addition of this proposed facility and consequent increase in recovery capacity in the region is broadly consistent with the RSWMP goals for Regional Facilities and Services:

Goal 8 -- Opportunity to Reduce Waste. Participation in waste prevention and recycling is convenient for all households and businesses in the urban portions of the region.

Goal 12 -- Recovery Capacity. A regionally balanced system of cost-effective solid waste recovery facilities provides adequate service to all waste generators in the region.

Goal 15 -- Facility Regulation. Metro's methods for regulatory control of solid waste facilities will include a system of franchising, contracting, owning and/or licensing to ensure that disposal and processing facilities are provided and operated in an acceptable manner.

2. Addition of the facility will increase the level of recovery in the region and contribute to achieving the following goals in the Plan's Waste Reduction Goals and Objectives:

Goal 7 -- Regional Waste Reduction Goal. The regional waste reduction goal is to achieve at least a 50 percent recycling rate by the year 2005. Per-capita disposal rates and reductions in waste generated attributable to waste prevention programs are also

acknowledged to be key waste reduction indicators. The region's interim goal for the year 2000 is the 52 percent recovery rate as defined by state statute.

Goal 9 -- Sustainability, Objective 9.3. Support an environment that fosters development and growth of reuse, recycling and recovery enterprises.

3. RSWMP Recommended Waste Reduction Practices for Business Waste and Building Waste both call for the addition of these types of facilities. (In the Plan they are referred to as "Regional processing facilities for mixed dry waste".) They are expected to contribute a significant amount of recovery to the region over the next 10 years.

Analysis of conflicts with the RSWMP

In assessing whether granting a franchise for the facility would be inconsistent with or in conflict with any provisions in the Plan, staff addressed the following:

1. Potential conflicts with source separation recycling programs

RSWMP Recommended Waste Reduction Practices for Business Waste and Building Waste both call for the implementation of source separated recycling programs. Under the recommended practices, the purpose of dry waste processing facilities is to capture what remains in the wastestream "downstream" from these programs. Goal 10 in the Plan also emphasizes the importance of source separation while similarly acknowledging a role for post-collection processing.

Staff was concerned that the growth of dry waste processing facilities could undermine the incentive of haulers and business to invest in source separation programs before such programs had the opportunity to be fully implemented throughout the region. While materials would be recovered, staff believes that the amount and value of materials from post collection recovery facilities is lower than what can be achieved in source separation programs.

However, staff determined that local governments are aware of these issues and can be counted on to ensure that this or other similar franchisees do not negatively impact their investments in source separation programs. Local governments were strongly involved in the development of the RSWMP and are committed to the implementation of the RSWMP's recommended practices. Local governments, the applicant and Metro will meet to ensure that all parties are aware of each others activities and to mutually acknowledge that the proposed MRF is intended to complement and not supplant other recycling and waste prevention efforts. Staff also believes that specific provisions in the franchise agreement requiring Metro and the franchisee to annually review this issue will help avoid conflicts with RSWMP recommendations.

2. Potential impacts from vertical integration

Objective 4.6 of the RSWMP requires that consideration of the potential negative impacts of increasing vertical integration in the solid waste system be considered when making decisions about the regulation of facilities. These negative impacts could include: unfair

competitive advantages that could effect prices; service to customers; or market power to diminish competition over time.

Broadly defined, the amount of vertical integration in the solid waste system would increase if WMO becomes the operator of this franchise. However, the current and expected levels of competition among processors indicates to staff that in the case of this franchise, the potential negative impacts of vertical integration are a minimal risk.

It should also be emphasized that the RSWMP says that these issues will be considered on a case-by-case basis. Staff will therefore continue to assess the effects of vertical integration as applications are processed over time.

(Other concerns about vertical integration issues as a result of the franchisee taking waste from other than its own haulers are addressed in the discussions on variances below.)

3. Potential for facility to operate as a transfer station

There are specific recommendations in the Plan regarding transfer stations and reload facilities. It is critical that any facility, such as that proposed by the applicant, is franchised to operate as a processing and recovery facility and not as a transfer and reload facility.

Staff believes that the proposed franchise agreement will effectively ensure that the proposed facility will operate as a processing facility and not a transfer station. Provisions in the agreement designed to accomplish this result include explicit definitions of authorized wastes that can be received at the facilities, prohibitions against intentional receipt of loads that the franchisee knows have minimal or no recovery potential, and the setting of recovery rate requirements.

Need for facility

The proposed facility will improve service in the eastern portion of the Metro region. Staff believes that much of the tonnage expected to be received at the facility will be taken from wastes currently landfilled. However, some of the tonnage needed to reach the tonnage limit in the agreement is expected to come from other processors. Since the facility is being franchised as a marketplace competitor rather than under an exclusive franchise, staff believes this an acceptable and consistent outcome.

The following table shows the source of both the 23,000 tons of dry waste WMO expects to be able to deliver to the facility from its base of existing accounts, and an additional 15,000 tons of dry waste that WMO has indicated it will endeavor to bring into the facility through acquisitions or market competition:

	Expected Delivery from Current Accounts	Potential Delivery	TOTAL
Metro Central	4,600	4,200	8,800
Metro South	3,400	4,900	8,300
Landfills	9,000	2,500	11,500
Processors	6,000	3,400	9,400
TOTALS	23,000	15,000	38,000

Compliance with Regulatory Requirements

Based on conversations with DEQ permitting officials, staff believes that the applicant will be able to obtain its DEQ Solid Waste Disposal Permit and comply with all other regulatory requirements before beginning its operations.

Variance Requests

1. The applicant has requested a variance from Metro's rate setting authority. (Section 5.01.170)

Under the Metro franchise Code, the Council sets the rates charged by a franchisee. Metro Code Section 5.01.110 allows a variance to be granted to this policy if the intent of the requirement can be otherwise achieved and if strict compliance with the requirement: "(1) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or (2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or (3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the district. "

Staff believes that the intent of the rate setting provision of the Code is to prevent franchisees from exercising monopoly power in the marketplace resulting from being a holder of a franchise.

Staff opinion is that the intent of the Code requirement will be achieved by competition in the marketplace. Competition will be maintained because this franchise will not be exclusive, and other franchises have been, and others are expected to be granted, that will compete with this franchise. (Competing facilities have been previously granted this variance.) In addition, strict compliance with the rate setting requirement is inappropriate since all competing facilities set their own rates. Without freedom to set its own rates, the facility

would be unable to effectively compete with other processors. This would result in the facility not opening or failing to stay open. Therefore, staff recommends granting the variance to the rate setting requirement.

2. The applicant has requested a variance from Metro Code restrictions on accepting waste from non-affiliated hauling companies. (Section 5.01.120(l)) Under Section 5.01.120(l), a franchised processor cannot own hauling companies. (A franchisee who accepts waste only from affiliated haulers is exempt from this restriction.) WMO would like to maintain ownership of its hauling companies and allow non-affiliated haulers to use the facility. Metro Code Section 5.01.110 (quoted above) allows a variance to be granted to this policy.

Staff believes that the intent of the Metro Code restriction is to prevent franchisees who also have hauling companies from being able to promote their own haulers and treating competing haulers who must use the facility unfairly.

Staff opinion is that the intent of the Code requirement will be achieved because there will be alternatives to this proposed MRF for competing haulers. In a competitive market, no competing hauler will be forced to use the facility. Competition will be maintained because this franchise will not be exclusive, and other franchises have been, and others are expected to be granted, that will offer additional competition with this franchise. The franchise also contains provisions to ensure fair treatment of all customers using the facility. Strict compliance with this requirement would be unduly burdensome due to the franchisee's current ownership of hauling companies and the fact that other companies that want to use the facility would be denied access. Staff, therefore, recommends granting the variance to the restriction on non-affiliated haulers using the facility.

3. The Franchisee has also requested a variance from a Code requirement that would allow Metro, upon termination of the franchise, to force sale of the facility to a new franchisee, or require the owner of the facility to accept a new franchisee as its tenant. (Section 5.01.180(e) see also Section 5.01.060(b)(6)) Under Section 5.01.110 (quoted above) staff is recommending that this variance be granted. The purpose and intent of this provision is to ensure that an essential franchised facility is not closed due to termination of a franchise, causing system disruptions. By granting franchises for numerous competing recovery facilities, Metro is achieving its goal of system stability without the need for strict compliance with this provision. Strict compliance is inappropriate in this instance because it would require the facility owner to agree to sell, or accept as a tenant, an unspecified new franchisee, and potentially impact material market agreements, tax credits, residual disposal agreements, and insurance agreements. If the provision is applied, it would be extremely burdensome for the reasons stated, and would cause delay that could result in termination of the project. As stated above, operation of the facility will further the objectives of Metro as specified in the RSWMP. In any respect, Metro retains the right of eminent domain with regard to the facility, as specified in state statutes.

III. CONDITIONS OF THE FRANCHISE

The proposed franchise agreement ensures that the facility will continue to operate in accordance with the purposes of Metro's franchise system to protect public health and safety and maintain consistency with the RSWMP.

The franchise document was drafted to be generally consistent with previous franchise agreements. The proposed franchise will maintain a "level playing field" regarding fees, recovery rate and other requirements with the two other most recently franchised MRFs. Staff recommends that any significant change in MRF requirements be made simultaneously to all facilities.

Clarifications and improvements in this franchise over previous ones that will make for better administration and enforcement of the agreement include:

- Clearer definitions of the types of activities and wastes that are authorized and prohibited at the facility.
- Procedures for managing prohibited wastes.
- The required recovery rate of 45% is the same as two previously franchised MRFs (Willamette Resources Inc. and Energy Recovery Inc.) However, the concept of an "operating range" of between 35-45% recovery is established. In this operating range, although there are additional fees imposed as a disincentive, the franchisee would not be out of compliance with the franchise. To maintain a level playing field with previously mentioned MRF's, the fees in the attached agreement are comparable to the penalties in those existing franchises.
- Close coordination of the agreement with the DEQ Solid Waste Disposal Permit process.
- Tonnage limits are based on staff's determination of the amount of dry wastes currently controlled by the applicant plus wastes the applicant maintains it will compete successfully for in the market. To allow flexibility in meeting changing market conditions without causing undue impacts on facility operations, staff recommends that these limits be administered by the Executive Officer.

Other significant conditions of this agreement include:

- "Source separated materials processing" is defined as an authorized activity of the franchise.

There have been concerns raised, particularly by operators of facilities conducting only source separated materials processing, that this franchise language represents a change from previous Metro policy. This is not the case. Facilities engaging in only source-separated processing continue to be exempt under the Metro franchise Code.

However, the source-separation portion of operations at a franchised MRF requires monitoring since it will utilize the same the building and processing equipment as the mixed waste processing. These activities could potentially be the source of nuisance or environmental problems. Because the franchise is for the entire facility site, the agreement will provide the means for addressing potential problems associated with any activities at the site.

- A surety bond of \$100,000 was calculated to be required.

Conditions unique to this franchise include:

- Regulation of yard debris and contaminated soils reloading. Previous franchises have not dealt with these activities.

IV. BUDGET IMPACT

This fiscal analysis provides an order of magnitude estimate of the impact on Metro fee and excise tax revenues of the proposed facility.

ASSUMPTIONS

These assumptions apply to both the analysis of the proposed WMO facility alone and to the aggregate impact of all new MRFs that have been proposed. The analysis is in the form of a "what if" exercise that assumes:

- The franchisees are operating at expected FY 1999-2000 tonnage levels with recovery levels of 45%. These estimates have been made consistent with assumptions of the current REM SWIS report forecasts.
- Impact is measured by the net change in Metro revenues at both Metro and Non-Metro facilities, less savings from lower transfer and disposal expenses.
- The calculated result is for a single year.
- Values used for costs and savings are based on the FY 1996-97 budget.
- No change to the solid waste rate structure or excise tax.

This analysis does not take into account the following factors that would spread or mitigate the impact of revenue decreases:

- The franchises may not come on line in the projected time frame.
- Increases in tonnages, and fees paid, to both Metro and Non-Metro facilities due to unprojected changes in population or economic growth.
- Decreases in the costs of transfer and or disposal services for waste received at Metro South and Central Transfer Stations. (e.g., as the result of rebidding of the operations contracts)

RESULTS OF ANALYSIS

Cumulative Impact of All Anticipated Franchises

This proposed franchise for WMO is the first of six franchise applications and renewals expected to be brought to Council in FY 96-97. Staff believes that it is useful to view the effects on the solid waste system of these proposed facilities to help put the proposed WMO franchise into context. Staff projects that if all the proposed facilities come on line, they will process approximately 140,000 more tons of material each year than are currently being processed. This will increase the regions recovery by 60,000 tons per year which is equivalent to adding about 3% to the regional recovery rate. The processed tonnage will come from Metro transfer stations (56,000 tons per year) and from non-Metro facilities (84,000 tons per year). The cumulative solid waste revenue impact on Metro is estimated to be a net loss of \$1,300,000 to \$1,500,000 per year. The net excise tax loss is estimated to be \$250,000 to \$350,000 per year.

Impact of Proposed WMO Facility

The WMO franchise has a tonnage limit of 38,000 tons per year. This includes 23,000 tons of processable waste per year from Waste Management owned companies. Metro Staff believes that this tonnage will flow to this processing facility independent of any other existing or projected MRFs. The additional 15,000 included in the tonnage limit would come from haulers in the area surrounding the MRF. Metro staff understands that WMO will need to compete with other MRFs for these tons. Competition among existing and proposed MRFs for the same tons was taken into account in staff's projection of the cumulative impact of the six pending franchise applications and renewals.

Analysis was performed to show the financial impact of this MRF on the region's solid waste system at both 23,000 tons per year and at 38,000 tons per year. It is important to remember that the impact at the higher tonnage level would require that WMO succeed in attracting all of the tons generated in the vicinity of its proposed facility.

Impact at 23,000 tons

Tonnages at Metro Central and South Transfer Stations would decline approximately 8,000 tons per year resulting in a loss of \$190,000 in solid waste revenues and a loss of \$40,000 per year in excise taxes.

However, tonnages at Non-Metro Facilities would increase by almost 1,500 tons per year resulting in a gain to Metro of \$25,000 per year in solid waste revenues and a gain of \$5,000 per year in excise taxes

The net loss to Metro would therefore be \$165,000 in solid waste revenues and \$35,000 in excise taxes.

Impact at 38,000 tons

Tonnages at Metro Central and South Transfer Stations would decline approximately 17,000 tons per year resulting in a loss of \$410,000 in solid waste revenues and a loss of \$90,000 per year in excise taxes.

However, tonnages at Non-Metro Facilities would increase by almost 5,500 tons per year resulting in a gain to Metro of \$90,000 per year in solid waste revenues and a gain of \$20,000 per year in excise taxes

The net loss to Metro would therefore be \$320,000 in solid waste revenues and \$70,000 in excise taxes.

The results of this analysis indicate that adding processing facilities to the system has a measurable impact on both solid waste revenues and excise tax receipts. REM is aware of the implications of these and other changes in the regional solid waste system and has developed initiatives such as the rate restructuring process in response. The Council may wish to consider the broader financial impacts of proposed MRFs, and particularly their effect on the excise tax.

STAFFING REQUIREMENTS

Administration and enforcement of this franchise agreement during fiscal year 1996-97 will be handled with existing staff resources. However, the Department is currently assessing the overall need for staff resources required to effectively administer the regulatory system of franchises and licenses. This assessment will be brought forward during the 1997-98 budget process.

V. STAFF RECOMMENDATIONS

Based on the forgoing analysis it is the opinion of staff that WMO Inc. should be granted a non-exclusive franchise in accord with the provisions of the draft franchise attached to Ordinance No. 96-644-A as Exhibit A.

VI. EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 96-644-A

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06/19/96 7:47 AM

SOLID WASTE FRANCHISE
issued by
METRO
600 NE Grand Avenue
Portland, Oregon 97232-2736
(503) 797-1700

FRANCHISE NUMBER: _____
DATE ISSUED: _____ See Section 2
AMENDMENT DATE: _____ N/A
EXPIRATION DATE: _____ See Section 2
ISSUED TO: _____ WASTE MANAGEMENT OF OREGON (WMO)
NAME OF FACILITY: _____ TDK/WMO Solid Waste Processing and Recovery Facility
ADDRESS: _____ 869 NW Eastwind Drive
CITY, STATE, ZIP: _____ Troutdale, OR 97060
LEGAL DESCRIPTION: _____ Parcel Account #64974-5550

(see attached application)
NAME OF OPERATOR: _____ WASTE MANAGEMENT OF OREGON
PERSON IN CHARGE: _____ Garry Penning
ADDRESS: _____ 5330 NE Skyport Way
CITY, STATE, ZIP: _____ Portland, OR 97218
TELEPHONE NUMBER: _____ 503-249-8078

TABLE OF CONTENTS

1. DEFINITIONS3

2. TERM OF FRANCHISE.....7

3. LOCATION OF FACILITY.....7

4. OPERATOR AND OWNER OF FACILITY AND PROPERTY7

5. AUTHORIZED AND PROHIBITED ACTIVITIES7

6. MINIMUM REPORTING REQUIREMENTS9

7. OPERATIONAL REQUIREMENTS12

8. ANNUAL FRANCHISE FEES.....16

9. INSURANCE.....16

10. INDEMNIFICATION.....17

11. SURETY BOND/CONDITIONAL LIEN17

12. COMPLIANCE WITH LAW.....17

13. METRO ENFORCEMENT AUTHORITY18

14. DISPOSAL RATES AND FEES.....19

15. GENERAL CONDITIONS.....19

16. NOTICES20

17. REVOCATION20

18. MODIFICATION20

Amendment C

ADDRESS

869 NW EASTWIND DRIVE,
TROUTDALE, OREGON. 97060

LEGAL DESCRIPTION

PARCEL 3 OF A CERTAIN PARTITION PLAT No. 1994-139, AS RECORDED OCTOBER 19, 1994 IN THE COUNTY RECORDER'S OFFICE, DOCUMENT No. 94-156403, AND OTHERWISE LOCATED IN THE CHARLES FEZETT DONATION LAND CLAIM, SITUATED IN THE SOUTHEAST QUARTER OF SECTION 22 AND THE NORTHWEST QUARTER OF SECTION 26 AND THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, TOGETHER WITH A 50 FOOT PRIVATE COMMON ACCESS EASEMENT FOR INGRESS AND EGRESS FROM COUNTY ROAD 3385, TOGETHER WITH A PUBLIC UTILITY EASEMENT, ALL OF WHICH WILL BE MAINTAINED EQUALLY BY PARCELS 1, 2 AND 3, AS OTHERWISE DESCRIBED IN SAID PARTITION PLAT ABOVE DESCRIBED.

PROPOSED DEVELOPMENT

PROPERTY AREA = 211,701 S.F. = 4.86 ACRES

PROPOSED BUILDING COVERAGE:

MAIN BUILDING	= 48,750 S.F.	23.03%
LOAD-OUT & COVERED RAMP	= 9100 S.F.	4.30%
OFFICE	= 1290 S.F.	.60%
CONCRETE RAMPS =	2280 S.F.	1.08%
		<u>TOTAL 29.01%</u>

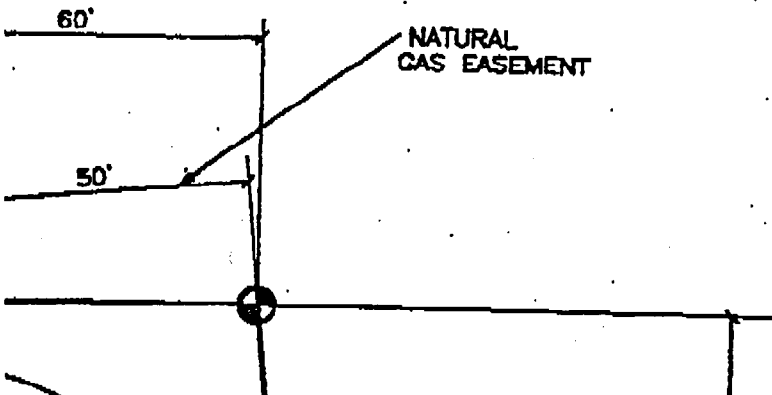
PLANTED AREAS:		
LANDSCAPED AREA=	29,860 S.F.	14.10%

CONCRETE PARKING & MANEUVERING AREAS=	119,580 S.F.	56.49%
CONCRETE PAVED SIDEWALKS=	840 S.F.	0.39%
		<u>211,700 S.F. 100%</u>

AUTOMOBILE PARKING SPACES SHOWN = 24
 DISABLED PARKING SPACES (2 AT 20'x13')
TOTAL SPACES = 26

SIGNAGE

- ONE ENTRANCE SIGN 15 S.F.
- TWO DISABLED PARKING SPOT SIGNS
- TWO STOP SIGNS AT SIDEWALKS
- ONE EMPLOYEE/VISITOR PARKING SIGN



FRANCHISE AGREEMENT

This Franchise is issued by Metro, a municipal corporation organized under ORS chapter 268 and the 1992 Metro Charter, referred to herein as "Metro," to Waste Management of Oregon, Inc., an Oregon corporation, 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

The definitions in Metro Code Section 5.01.010 shall apply to this franchise, as well as the following definitions. Defined terms are capitalized when used. Where Metro Code, State or Federal law definitions are referenced herein, reference is to the definition as amended or replaced. Such terms, as defined at the time this franchise is executed, are included in Exhibit A.

"Affiliated Hauling Companies" means hauling companies owned, either in whole or in part, or legally affiliated with, the franchisee.

"Agreement" means this Franchise Agreement.

"Friable Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, actinolite and tremolite, but only to the extent that such materials, when dry and subjected to hand-pressure, can be crumbled, pulverized or reduced to powder.

"Authorized Waste" or "Authorized Wastes" means those wastes defined as such in Section 5.2 of this Agreement.

"Battery" means a portable container of cells for supplying electricity. This term includes lead-acid car batteries, as well as dry cell batteries such as nickel cadmium, alkaline, and carbon zinc.

"Building Contractor" means any business involved in any physical aspect of the construction and/or demolition of buildings that results in the generation of Construction and Demolition Wastes.

"Business" means a commercial enterprise or establishment licensed to do business in the state of Oregon.

"Clean Fill" means Inert material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include Putrescible Wastes, Construction and Demolition Wastes or Industrial Solid Wastes.

"Commercial Solid Waste" or "Commercial Waste" means Solid Waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include Solid Waste from

TABLE OF CONTENTS

1. DEFINITIONS	Bookmark not defined.9754964	3
2. TERM OF FRANCHISE.....		7
3. LOCATION OF FACILITY.....		7
4. OPERATOR AND OWNER OF FACILITY AND PROPERTY		7
5. AUTHORIZED AND PROHIBITED ACTIVITIES		7
6. MINIMUM REPORTING REQUIREMENTS.....		9
7. OPERATIONAL REQUIREMENTS		12
8. ANNUAL FRANCHISE FEES.....		16
9. INSURANCE.....		16
10. INDEMNIFICATION.....		17
11. SURETY BOND/CONDITIONAL LIEN		17
12. COMPLIANCE WITH LAW.....		17
13. METRO ENFORCEMENT AUTHORITY.....		18
14. DISPOSAL RATES AND FEES.....		19
15. GENERAL CONDITIONS.....		19
16. NOTICES		20
17. REVOCATION		20
18. MODIFICATION		20

manufacturing activities. Solid Waste from business, manufacturing or Processing activities in residential dwellings is also not included.

“Conditionally Exempt Generator Waste” has the meaning specified in 40 C.F.R. § 261.

“Construction and Demolition Waste” means Solid Waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other Construction and Demolition Wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster, and soils, rock, stumps, boulders, brush and other similar material. This term does not include Industrial Solid Waste, Residential Solid Waste or Commercial Solid Waste.

“Contaminated Soils” means soils resulting from the clean-up of a spill that are not Hazardous Waste.

“Contaminated Soils Reloading” means the activity of consolidating Contaminated Soils for transport to a Disposal Site, Processing Facility or Resource Recovery Facility.

“DEQ” means the Oregon Department of Environmental Quality, which includes the Oregon Environmental Quality Commission.

“Disposal Site” has the meaning specified in ORS 459.005.

“Dry, Non-Putrescible Solid Waste” means Commercial, Residential or Industrial Solid Waste, that does not contain food wastes or other Putrescible Wastes. Dry, Non-Putrescible Solid Waste includes only waste that does not require disposal at a municipal solid waste landfill (also referred to as a “general purpose landfill”), as that term is defined by the Oregon Administrative Rules.

“Facility” means the site where one or more activities that the Franchisee is authorized to conduct occur.

“Fiber Based Fuel” means fuel derived through the Processing of Authorized Solid Waste.

“Fiber Based Fuel Processing” means the activity of mechanically Processing Authorized Solid Wastes for use as a fuel.

“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.

“Hazardous Waste” has the meaning specified in ORS 466.005.

“Household Hazardous Waste” has the meaning specified in Metro Code Section 5.02.015(f).

“Industrial Solid Waste” or “Industrial Waste” means:

- (1) Solid Waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS chapters 465 and 466 or under Subtitle C of the Federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, the following wastes or wastes resulting from the following processes:
 - (a) electric power generation;
 - (b) fertilizer/agricultural chemicals;
 - (c) food and related products and by-products;
 - (d) inorganic chemicals;
 - (e) iron and steel manufacturing;
 - (f) leather and leather products;
 - (g) nonferrous metals manufacturing/foundries;
 - (h) organic chemicals;
 - (i) plastics and resins manufacturing;
 - (j) pulp and paper industry;
 - (k) rubber and miscellaneous plastic products;
 - (l) stone, glass, clay and concrete products;
 - (m) textile manufacturing;
 - (n) transportation equipment;
 - (o) water treatment;
 - (p) timber products manufacturing;

- (2) This term does not include :
 - (a) Putrescible Waste, or office or lunch room waste from manufacturing or industrial facilities;
 - (b) Construction and Demolition Waste
 - (c) Contaminated Soils

“Inert” means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

“Inert Landfill” means a place for disposal of Inert Materials, other than a General Purpose Landfill or Limited Purpose Landfill.

“Infectious Medical Waste” or “Infectious Waste” has the meaning specified in ORS 459.386(2).

“Limited Purpose Landfill” means a landfill that is not a General Purpose Landfill but that is authorized by DEQ to accept Solid Waste.

“Metro Regional User Fee” has the meaning specified in Metro Code Section 5.02.015(e).

“Prohibited Wastes” has the meaning set forth in Section 5.3.1 of this Agreement.

“Putrescible Waste” means Solid Waste 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.

“Recoverable Material” means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused or recycled for the same or other purpose(s).

“Recovered Material” means Recoverable Material that has been separated from Solid Waste at the Facility.

“Residential Solid Waste” means the garbage, rubbish, trash, and other Solid Wastes generated by the normal activities of households, including but not limited to, food wastes, ashes, and bulky wastes, but does not include Construction and Demolition Waste. This definition applies to multifamily structures of any size.

“Residue” means Solid Waste, resulting from Solid Waste Material Recovery, that is transported from a franchised Solid Waste Processing and Recovery Facility to a Disposal Site.

“Sludge” means any solid or semi-Solid Waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

“Solid Waste Materials Recovery” means the activity of manually or mechanically Processing Solid Wastes that separates materials for purposes of recycling or recovery.

“Solid Waste Processing and Recovery Facility” means a facility franchised by Metro as a Processing and/or Resource Recovery Facility and authorized to receive specific categories of Solid Waste and to conduct one or more of the following activities: (1) Source-Separated Recyclables Processing, (2) Solid Waste Material Recovery, (3) Yard Debris Reloading (4) Fiber-Based Fuel Processing, (5) Contaminated Soils Reloading.

“Source Separate” or **“Source Separation”** means

- (1) The setting aside of recyclable materials at their point of generation by the generator; or
- (2) That the person who last uses recyclable material separates the recyclable material from Solid Waste.

“Source-Separated Recyclables” means material that has been Source-Separated for the purpose of recycling, recovery, or reuse. This term includes recyclables that are Source-Separated by material type (i.e., source-sorted) and recyclables that are mixed together in one container (i.e., commingled).

“Source-Separated Recyclables Processing” means the activity of reloading, Processing or otherwise preparing Source-Separated Materials for transport to third parties for reuse or resale.

“Special Waste” has the meaning specified in Metro Code Section 5.02.015(s).

“Unacceptable Waste Incident Tracking Form” means the form attached to this Agreement as Exhibit F.

“Yard Debris Reloading” means the activity of consolidating yard debris -- with or without compaction, chipping or grinding -- for transport to a Transfer Station, Processing Facility or Resource Recovery Facility. Reloading of yard debris specifically excludes Composting.

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

The franchised Facility is located at 869 NW Eastwind Drive, Troutdale, Oregon 97060. The legal description of the Facility’s location appears in Exhibit B to this agreement.

4. OPERATOR AND OWNER OF FACILITY AND PROPERTY

- 4.1 The owner of the Facility and the property upon which the Facility is located is TDK Corp., an Oregon corporation. Franchisee warrants that it has obtained the owner’s consent to operate the Facility as specified in the franchise.
- 4.2 The operator of the Facility is Franchisee, Waste Management of Oregon, Inc., an Oregon corporation. Franchisee may contract with another person or entity to operate the Facility only upon 90 days prior written notice to Metro and the written approval of the Executive Officer.

5. AUTHORIZED AND PROHIBITED ACTIVITIES

- 5.1 Franchisee is authorized to operate and maintain a Solid Waste Processing and Recovery Facility and to conduct the following activities (a) Source-Separated Recyclables Processing (b) Solid Waste Materials Recovery (c) Yard Debris Reloading and (d) Contaminated Soils Reloading, subject to the following conditions:
 - 5.1.1 The facility shall accept only Authorized Wastes in this franchise. Franchisee is prohibited from receiving, Processing or disposing of any Solid Waste not authorized in this Franchise. Franchisee shall not knowingly accept loads of Dry, Non-Putrescible Commercial or Industrial Solid Waste or Construction and Demolition Waste that contain only incidental amounts of Recoverable Material or that Franchisee intends to landfill without first Processing for Recoverable Material.

- 5.1.2 This Franchise limits the amount and types of Authorized Waste that may be received each year at the Facility as listed in Section 5.2.1 of this Agreement. The Executive Officer may increase the amount and add types of waste Franchisee is authorized to receive at the facility. Franchisee may receive the designated amount of Solid Waste consistent with (1) applicable law, (2) the terms of this Franchise, and (3) any other applicable permits and licenses obtained from governmental or regulatory entities.
- 5.1.3 Franchisee may accept Authorized Waste from its own Affiliated Hauling Companies, Non-Affiliated Hauling Companies, Building Contractors and other Businesses, but not from the general public.

5.2 Authorized Wastes

- 5.2.1 Franchisee is authorized to conduct the following activities and receive the following categories of wastes according to the tonnage limits specified below:
- 5.2.1.1 Solid Waste Materials Processing of the following categories of Solid Waste up to a combined total of 38,000 tons per year.
- 5.2.1.1.a Dry, Non-Putrescible, Commercial and Industrial Solid Waste.
- 5.2.1.1.b Construction and Demolition Wastes.
- 5.2.1.2 Source-Separated Recyclables Processing of the following categories of Solid Waste with no limit on the tonnage allowed per year:
- 5.2.1.2.a Used oil collected as a Source-Separated Material from residential curbside programs operated by commercial refuse haulers.
- 5.2.1.2.b Source-Separated Recyclables excluding Yard Debris.
- 5.2.1.3 Yard Debris Reloading with no limit on the tonnage allowed per year.
- 5.2.1.4 Contaminated Soil Reloading with no limit on the tonnage allowed per year.

5.3 Prohibited Wastes

- 5.3.1 Franchisee shall not knowingly accept or retain in violation of Sections 5.3.2 or 7.3.2 of this agreement any material amounts of the following types of waste, unless specifically authorized elsewhere within this Agreement:
- 5.3.1.1 Materials contaminated with or containing Friable Asbestos;
- 5.3.1.2 Batteries;
- 5.3.1.3 Commercial or Industrial Waste loads that contain Putrescible Waste;
- 5.3.1.4 Residential Solid Waste;
- 5.3.1.5 Liquid waste;
- 5.3.1.6 Oil, other than as specified in 5.2.1.2.a.
- 5.3.1.7 Putrescible Waste;
- 5.3.1.8 Sludge;

- 5.3.1.9 Tires;
 - 5.3.1.10 Vehicles;
 - 5.3.1.11 Infectious Waste;
 - 5.3.1.12 Special Waste or any sub-stream of Special Waste unless authorized elsewhere within this Agreement;
 - 5.3.1.13 Hazardous Waste;
 - 5.3.1.14 Conditionally Exempt Generator Waste;
 - 5.3.1.15 Household Hazardous Waste;
- 5.3.2 Prohibited Wastes received at the Facility shall be: (1) isolated from other materials at the Facility or (2) removed from the Facility. Franchisee shall transport any Prohibited Waste other than Hazardous Waste to a Disposal Site authorized to accept such waste, unless an alternate Disposal Site or method has been approved by DEQ. Non-hazardous Prohibited Wastes shall be managed pursuant to Section 7.3.2.3 of this Agreement. In the event that Franchisee determines or suspects that discovered waste constitutes Hazardous Waste, franchisee shall immediately initiate procedures to identify the waste and the generator (see Section 7.3.2 herein) and shall, within 48 hours of receipt of the waste initiate procedures to remove the waste. Hazardous Waste must be removed from the facility within 90 days after receipt unless an alternate disposal method and additional storage period has been approved by DEQ. Franchisee shall implement and conduct temporary storage and transportation procedures in accordance with DEQ rules. Franchisee shall record receipt of Prohibited Wastes on Metro's Unacceptable Waste Incident Tracking Form (Attached as Exhibit F).

6. MINIMUM REPORTING REQUIREMENTS

- 6.1 Franchisee shall collect and transmit to Metro, according to the timetable in Section 6.2, accurate records of the following information:
- 6.1.1 Record number designating an individual incoming or outgoing load (which should be the same as the ticket number on the weight slips).
 - 6.1.2 Customer (incoming loads) and end-user (outgoing loads) account number (which, on a semi-annual basis, Franchisee shall provide to Metro via a computer listing that cross-references this account number with the customer or end user's name, address, and telephone number).
 - 6.1.3 Designation of the load in one of the following categories:

Incoming Type A Waste: Solid Waste received by the Facility of which, on a weight basis, less than 5% is eventually transported to a General Purpose or Limited Purpose Landfill. This category excludes Incoming Type C Waste.

Incoming Type B Waste: Solid Waste received by the Facility of which, on a weight basis, more than 5% is eventually transported to a General Purpose or Limited Purpose Landfill. This category excludes Incoming Type C Waste

Incoming Type C Waste: Contaminated Soils and Yard Debris. By notice to Franchisee, Metro may request that other materials be moved from Incoming Type A or B to this category.

Outgoing Type D Material: Recovered material -- excluding Outgoing Type E Material -- marketed (sold) by the Facility as a useful commodity.

Outgoing Type E Material: Clean Fill recovered at the Facility and delivered to a Clean Fill Disposal Site.

Outgoing Type F Material: Material transported from the Facility to a General Purpose or Limited Purpose Landfill.

- 6.1.4 Date the load was received at or transmitted from the Facility.
 - 6.1.5 Time the load was received at or transmitted from the Facility.
 - 6.1.6 Material type (which Franchisee shall describe by the type of material in the load (e.g., glass, OCC, etc.) or by providing a code and a cross-reference-listing of codes to material types).
 - 6.1.7 Whether load is from inside or outside of Metro's jurisdictional (geographical) boundaries. If from outside the Metro boundary, indicate the load's city of origin, or county if not from within a city.
 - 6.1.8 Net weight of the load.
 - 6.1.9 The fee charged or paid the hauler for incoming loads.
 - 6.1.10 Receipt of any materials encompassed by Section 5.3.2 of this Agreement, utilizing Metro's Unacceptable Waste Incident Tracking Form (Attached as Exhibit F).
- 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. In addition to the transaction data required under Section 6.1, Franchisee shall provide: (1) a summary of the previous month's incoming and outgoing tonnage by origin/destination and type of material, but not including destination information for outgoing recovered materials; and (2) a report showing, by type of material, tons in inventory at the beginning of the month, tons placed in inventory during the month, and tons remaining in inventory at the end of the month. A cover letter shall accompany the data which certifies the accuracy of the data and is signed by an authorized representative of Franchisee.

6.3 The Franchisee shall participate in an annual review with Metro of the Facility's performance. The review will cover the following topics:

6.3.1 The Facility's performance in accomplishing waste reduction goals consistent with the adopted RSWMP. In particular, this review shall include whether the facility's operation is consistent with both local government and private sector efforts to expand source separation recycling programs for commercial and industrial generators and at construction and demolition sites;

6.3.2 Receipt or release of Hazardous Waste or Infectious Waste at the Facility; nuisance complaints as recorded in the log required under Section 7.4.1.2; changes to site equipment, hours of operation and/or staffing; and other significant changes in the Facility's operations that occurred during the previous year; and

6.3.3 Whether a franchise modification is needed, per Section 18 of this Agreement.

Within one year after the Facility begins operations, and each year thereafter, Metro will contact Franchisee to schedule the annual review meeting. Metro will provide at least three business weeks advance notice of this meeting. At least one business week prior to this meeting, Franchisee shall submit a summary, in letter format, addressing the above-listed topics.

6.4 Within two business days of sending to DEQ, the Franchisee shall send to the Metro Regional Environmental Management Department, copies of all correspondence, exhibits or documents submitted to the DEQ relating to the terms or conditions of the DEQ solid waste permit or this Franchise. In addition, Franchisee shall send to Metro, upon receipt, copies of any notice of non-compliance, citation, or enforcement order received from any local, state or federal agency with jurisdiction over the Facility.

6.5 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, records, receipts, books, maps, plans, and other like materials of the Franchisee that are directly related to the Franchisee's operation.

6.6 Fees and charges shall be charged on the basis of tons of waste received. Either a mechanical or automatic scale approved by the National Bureau of Standards and the State of Oregon may be used for weighing waste.

6.7 Where a fee or charge is levied and collected on an accounts receivable basis, pre-numbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or canceled tickets shall be retained for three years. The Executive Officer may approve use of an equivalent accounting method.

6.8 Any periodic modification by Metro of the reporting forms themselves shall not constitute any modification of the terms of Section 6.1 of this Agreement, nor shall Metro include within the reporting forms a request for data not otherwise encompassed within Section 6.1.

7. OPERATIONAL REQUIREMENTS

7.1 General Requirements

- 7.1.1 Franchisee's compliance with this Agreement shall constitute compliance with the Metro Licensing Standards for Yard Debris Reload Facilities.
- 7.1.2 The Franchisee shall provide an operating staff which is qualified to carry out the functions required by this Agreement and to otherwise ensure compliance with the conditions of this Franchise.
- 7.1.3 A copy of this Franchise Agreement shall be displayed on the Facility's premises, and in a location where it can be readily referenced by Facility personnel. Additionally, signs shall be erected at a location visible to all haulers prior to tipping a load at the Facility, and in conformity with local government signage regulations. These signs shall be easily and readily visible, legible, and shall contain at least the following information:
 - 7.1.3.1 Name of the Facility;
 - 7.1.3.2 Address of the Facility;
 - 7.1.3.3 Emergency telephone number for the Facility;
 - 7.1.3.4 Operational hours during which the Facility shall be open for the receipt of authorized waste;
 - 7.1.3.5 Rates and fees;
 - 7.1.3.6 Metro's name and telephone number; and
 - 7.1.3.7 A list of all Authorized and/or Prohibited Wastes under this Franchise.

7.2 General Operating and Service Requirements

- 7.2.1 If Franchisee contemplates or proposes to close the facility for more than 120 days, or permanently, Franchisee shall provide Metro with written notice, at least 90 days prior to closure, of the proposed closure schedule and procedures.
- 7.2.2 If Franchisee contemplates or proposes a closure of the facility for more than two business days but less than the time specified in Section 7.2.1, Franchisee shall notify Metro and local government Solid Waste authorities of the closure and its expected duration. Franchisee shall provide the required notification no later than 24 hours after the closure.
- 7.2.3 If any significant occurrence, including but not limited to a breakdown of equipment, or fire, results in a violation of any conditions of this Franchise or of the Metro Code, the Franchisee shall:
 - 7.2.3.1 Take immediate action to correct the unauthorized condition or operation;

- 7.2.3.2 Immediately notify Metro so that the situation can be evaluated and addressed as needed; and
- 7.2.3.3 Prepare, and submit to Metro within 10 days, a report describing the Franchise or Metro Code violation.
- 7.2.4 The Franchisee shall establish and follow procedures to give reasonable notice and justification prior to refusing service to any customer of the Facility. Copies of notification and procedures for such action will be retained on file for three years for possible review by Metro.
- 7.2.5 The Franchisee shall not, by act or omission, unlawfully discriminate against any person. Rates and disposal classifications established by Franchisee shall be applied reasonably and in a non-discriminatory manner.

7.3 Operating Procedures

- 7.3.1 Unless otherwise allowed by this Franchise, all Processing of wastes shall occur inside Facility buildings. Storage may occur outside, in an orderly manner, as specified in the Facility's operating procedures.
- 7.3.2 Franchisee shall establish and follow procedures for accepting, managing and Processing loads of Solid Waste received at the facility. These procedures shall demonstrate compliance with the Franchise, and shall be submitted to Metro in writing for review and approval. For new facilities, operating procedures shall be submitted prior to any waste being accepted. For existing facilities, operating procedures shall be submitted along with other required application materials. Franchisee may, from time to time, modify such procedures. All proposed modifications to facility plans and procedures shall be submitted to the Metro Regional Environmental Management Department for review and approval. The Executive Officer shall have 10 business days from receipt of proposed modifications to object to such modifications. If the Executive Officer does not object, such modifications shall be considered approved following the 10-day period. Franchisee may implement proposed modifications to facility plans and procedures on a conditional basis pending Metro review and notice from Metro that such changes are not acceptable. The procedures shall include at least the following:
 - 7.3.2.1 Methods of notifying generators not to place Putrescible Wastes, Hazardous Wastes, or other Prohibited Wastes in drop boxes or other collection containers destined for the Facility;
 - 7.3.2.2 Methods of inspecting incoming loads for the presence of Prohibited or Unauthorized Waste;
 - 7.3.2.3 Methods for managing and transporting for disposal at an authorized Disposal Site each of the Prohibited Wastes listed in Section 5 if they are discovered at the Facility; and
 - 7.3.2.4 With respect to Contaminated Soils, procedures and methods for determining what kinds or types of soils will be accepted at the facility, which procedures

and methods shall include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility.

- 7.3.2.5 Objective criteria and standards for accepting or rejecting loads.
- 7.3.2.6 Methods (that may include rate disincentives) for discouraging Facility users from delivering Solid Waste that is not transported in compliance with Sections 7.3.6 and 7.3.9.
- 7.3.2.7 Methods for addressing all other operating requirements of Section 7.
- 7.3.3 All Authorized Solid Wastes received at the facility must, within two business days from receipt, be either (1) Processed or appropriately stored or (2) properly disposed of.
- 7.3.4 Upon discovery, all Prohibited Wastes shall be removed or managed in accordance with Section 7.3.2.3 of this Agreement.
- 7.3.5 Sorting and Processing areas shall be cleaned on a regular basis, in compliance with plans and procedures required under Section 7.3.2.
- 7.3.6 All vehicles and devices transferring or transporting Solid Waste from the facility shall be constructed, maintained, and operated to prevent leaking, spilling, or blowing of Solid Waste on-site or while in transit.
- 7.3.7 The Franchisee shall not mix any Source-Separated Recyclable materials brought to the Facility with any other Solid Wastes. Materials recovered at the Facility may be combined with Source-Separated Recyclable Materials for Processing and shipment to markets.
- 7.3.8 The Franchisee shall reuse or recycle all uncontaminated Source-Separated Recyclable Materials brought to the Facility.
- 7.3.9 Franchisee shall take reasonable steps to notify and remind haulers that all loaded trucks coming to or leaving the facility must be covered, or suitably cross-tied to prevent any material from blowing off the load during transit.
- 7.3.10 All recovered materials and processing residuals must be stored in bales, drop boxes or otherwise suitably contained. Material storage areas must be maintained in an orderly manner and kept free of litter. Stored materials shall be removed at sufficient frequency to avoid creating nuisance conditions or safety hazards.
- 7.3.11 Contaminated water and sanitary sewage generated on-site shall be disposed of in a manner complying with local, state and federal laws and regulations..
- 7.3.12 Public access to the Facility shall be controlled as necessary to prevent unauthorized entry and dumping.

7.4 Environmental Protection Requirements

- 7.4.1 Franchisee shall respond to all citizen complaints on environmental issues (including, but not limited to, blowing debris, fugitive dust or odors, noise, traffic, and vectors). If Franchisee receives a complaint, Franchisee shall:
- 7.4.1.1 Attempt to respond to that complaint within one business day, or sooner as circumstances may require, and retain documentation of unsuccessful attempts; and
 - 7.4.1.2 Log all such complaints by name, date, time and nature of complaint. Each log entry shall be retained for one year.
- 7.4.2 To control blowing or airborne debris, Franchisee shall:
- 7.4.2.1 Keep all areas within the site and all vehicle access roads within a 1/4 mile of the site free of litter and debris;
 - 7.4.2.2 Patrol the Facility and all vehicle access roads within a 1/4 mile of the site daily;
- 7.4.3 With respect to odor, dust and noise control, the Franchisee shall:
- 7.4.3.1 Control odor and dust on and from 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 established by the Franchisee with Metro approval.
 - 7.4.3.2 Take specific measures to control odors in order to avoid or prevent any violation of this Agreement, which measures include (but are not limited to) adherence to the contents of the odor minimization plan set forth in Section 7.4.3.3.
 - 7.4.3.3 Before the facility begins operating, submit an odor minimization plan to Metro. This plan shall include (but not be limited to) (1) methods that will be used to minimize, manage, and monitor all odors of any derivation including malodorous loads received at the Facility, (2) procedures for receiving and recording odor complaints, and (3) procedures for immediately investigating any odor complaints in order to determine the cause of odor emissions, and promptly remedying any odor problem at the Facility.
- 7.4.4 With respect to vector control, the Franchisee shall operate the Facility in a manner that is not conducive to infestation of rodents or insects. If rodent or insect activity becomes apparent, Franchisee shall initiate and implement supplemental vector control measures as specified in the Facility operating procedures or as a modification to such procedures, at Franchisee's own cost.
- 7.4.5 The Franchisee shall operate and maintain the facility to prevent contact of Solid Wastes with stormwater runoff and precipitation.

7.5 Processing and Recovery Requirements for Dry, Non-Putrescible Solid Wastes (See Exhibits C, D and E for controlling details of recovery rates computations.)

7.5.1 Franchisee shall attain and maintain a recovery rate of 45 percent for all Incoming Type B Material (as defined in Section 6.1.3) entering the facility. If Franchisee's recovery rate is between 35 percent and 45 percent, it will be considered to be in compliance with this Agreement, but subject to an enforcement fee, per Section 7.5.2.3 and the schedule attached to this Agreement as Exhibit E.

7.5.2 Calculation of Recovery Rates and Associated Fee

7.5.2.1 The recovery rate will be calculated by use of a three-month rolling average. Exhibits C and D attached hereto reflect the controlling details of the calculation process.

7.5.2.2 Computation of the three-month rolling average used in determining the recovery rate, and enforcement of the recovery rate under Section 13.1 shall not commence until the beginning of the fourth month after the Facility begins operating. For purposes of this section, the date the Facility begins operating shall be the date on which the first load of Authorized Waste is delivered to the Facility. Operations beginning on or before the 15th day of the month shall be treated as having begun at the beginning of the month.

7.5.2.3 Franchisee will pay the enforcement fee to Metro shown in Exhibit E.

7.5.2.4 Except as specified in Section 7.5.2.2, the recovery rate shall not be less than 35%, based on a 3-month rolling average. Failure to achieve this minimum recovery rate shall result in the issuance of a notice of non-compliance per Section 13.1 of this Agreement.

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. Metro reserves the right to change its franchise fees at any time, by action of the Metro Council, to reflect franchise system enforcement and oversight costs.

9. INSURANCE

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

9.1.1 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

9.1.2 Automobile bodily injury and property damage liability insurance.

- 9.2 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.
- 9.3 Metro, its elected officials, departments, employees, and agents shall be named as Additional Insureds. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
- 9.4 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.

10. 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.

11. SURETY BOND/CONDITIONAL LIEN

Franchisee shall provide a surety bond or letter of credit in the amount of One Hundred Thousand Dollars (\$100,000), in a form acceptable to Metro, or at its option may provide a conditional lien on the franchise property in a form satisfactory to Metro.

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, including all applicable Metro Code provisions whether or not those provisions have been specifically mentioned or cited herein. 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 Enforcement of this Franchise shall be as specified in the Metro Code. In addition to the enforcement provisions of the Code, failure to achieve recovery rates specified in Section 7.5 of this Franchise shall be enforced as follows:

Recovery Rate	Violation	Penalty or Fee
Any three month average recovery rate below 45%	no violation	Pay enforcement fee specified in Section 7.5
Failure to reach average 35% rate for three month period ("initial failure")	First violation	No fine. Increased monitoring and/or discussions with Franchisee
Failure to meet 35% rate for first successive calendar month following initial failure	Second violation	\$500 fine for each violation. Increased monitoring and/or discussions with Franchisee
Failure to meet 35% rate for second successive calendar month following initial failure	Third violation	
Failure to meet 35% rate for third successive calendar month following initial failure	Fourth violation	
Failure to meet 35% rate for any six individual calendar months in a 12-month period following initial failure.		\$500 fine for each violation plus suspension, modification or revocation of franchise.
Failure to meet 25% rate for any two calendar months in a six-month period.		

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 and carrying out other necessary functions related to this Franchise. Access to inspect is authorized:

- (a) During all working hours;
- (b) At other reasonable times with 24 hours notice;
- (c) At any time without notice when, in the opinion of the Metro Regional Environmental Management Department Director, such notice would defeat the purpose of the entry. In such instance, the Director shall provide a written statement of the purpose for 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, fees, or standards regarding matters within Metro's authority, and to enforce all such legal requirements against Franchisee.

13.4 At a minimum, Metro may exercise the following oversight rights in the course of administering this Agreement: (1) perform random on-site inspections; (2) conduct an annual

franchise audit to assess compliance with operating requirements in this Agreement; (3) conduct an annual audit of inventory and billing records; (4) analyze monthly transaction data; (5) invoice Franchisee for any fees or penalties arising under this Agreement; (6) perform noncompliance investigations; (7) inspect and visually characterize incoming and outgoing loads for the purpose of assessing Prohibited Waste and/or Recoverable Material received and disposed; (8) maintain regular contact with the Franchisee; and (9) review and approve Franchisee's operating plan and amendments to the plan. In all instances Metro shall take reasonable steps to minimize disruptions to Franchisee's operations.

- 13.5 Nothing in this Agreement shall be construed to limit, restrict, curtail, or abrogate any enforcement provision contained in the Metro Code, nor shall this Agreement be construed or interpreted so as to limit or preclude Metro from adopting ordinances that regulate the health, safety, or welfare of any individual or group of individuals within its jurisdiction, notwithstanding any incidental impact that such ordinances may have upon the terms of this Agreement or the Franchisee's operation of the Facility.

14. DISPOSAL RATES AND FEES

- 14.1 Franchisee is exempted from collecting and remitting Metro Fees on waste received at the Facility in conformance with this Agreement. Franchisee is fully responsible for paying all costs associated with disposal (including Metro Regional User Fee and Excise Tax) of Residue generated at the Facility.
- 14.2 Franchisee may only dispose of Solid Waste and Residue generated at the Facility at a Metro designated facility or under Metro authority of a non-system license issued by Metro as specified in Metro Code Chapter 5.05.
- 14.3 Franchisee shall establish uniform rates to be charged for all loads accepted at the Facility. To minimize potential customer conflicts regarding the recoverability of loads, the Franchisee shall minimize the number of rate categories and shall not change the rates during an operating day. Franchisee shall establish objective criteria and standards for acceptance of loads.

15. GENERAL CONDITIONS

- 15.1 Franchisee shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Franchise.
- 15.2 Neither the parent company of the Franchisee nor its subsidiaries nor any other Solid Waste facilities under its control shall knowingly accept Metro area Solid Waste at any of its non-designated facilities, except as authorized by a non-system license issued by Metro.
- 15.3 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.
- 15.4 This Franchise may not be transferred or assigned without the prior written approval of Metro.

- 15.5 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.
- 15.6 This Franchise shall be construed, applied, and enforced in accordance with the laws of the State of Oregon and all pertinent provisions of the Metro Code.
- 15.7 If any provision of the Franchise shall be found invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Franchise shall not be affected.

16. NOTICES

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

Garry Penning
Waste Management of Oregon
5330 NE Skyport Way
Portland, OR 97218

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

Metro Franchise Administrator
Regional Environmental Management Department
Metro
600 N.E. Grand Avenue
Portland, Oregon 97232-2736

- 16.3 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.

17. REVOCATION

Suspension, modification or revocation of this Franchise shall be as specified herein and in the Metro Code. (See especially Sections 12 and 13 and Metro Code Chapter 5.01.)

18. MODIFICATION

- 18.1 At any time during the life of this Franchise, either the Executive Officer or the Franchisee may propose amendments or modifications to this Agreement. Except as specified in the Metro Code, no amendment or modification shall be effective unless it is in writing, approved by the Metro Council, and executed by the Franchisee and the Executive Officer.

18.2 The Executive Officer shall review the franchise annually, consistent with Sections 6.4 and 6.5 of this Agreement, in order to determine whether the Franchise should be changed and whether a recommendation to that effect needs to be made to the Metro Council. While not exclusive, the following criteria and factors may be used by the Executive Officer in making a determination whether to conduct more than one review in a given year:

- 18.2.1 Franchisee's compliance history;
- 18.2.2 Changes in volume, waste composition, or operations of the Franchisee;
- 18.2.3 Changes in local, state, or federal laws or regulations that should be specifically incorporated into this Franchise;
- 18.2.4 A significant release into the environment from the facility;
- 18.2.5 A significant change or changes to the approved site development plan and/or conceptual design; or
- 18.2.6 Any change in ownership that Metro finds material or significant.
- 18.2.7 Community requests for mitigation of impacts to adjacent property resulting from facility operations.

WASTE MANAGEMENT OF OREGON, INC.

METRO

Mike Burton, Metro Executive Officer

Date

Date

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EXHIBIT A

SUPPLEMENTARY DEFINITIONS

These definitions are attached strictly for the convenience of the reader, are taken directly from the Metro Code, or State or Federal law, as they were in effect at the time this Agreement was executed.

“**Conditionally Exempt Generator**” means a generator who generates less than 2.2 pounds of acute hazardous waste as defined within 40 C.F.R. § 261, or who generates less than 220 pounds of hazardous waste in one calendar month.

“**Disposal Site**” means the land and facilities used for the disposal of Solid Wastes, whether or not open to the public, but does not include Transfer Stations or processing facilities. [Source: Metro Code Section 5.01.010 (g)]

“**Executive Officer**” means the Metro Executive Officer or the Executive Officer’s designee.

“**Franchise**” means the authority given by the Council to operate the Facility in accordance with this Franchise Agreement.

“**Franchise Fee**” means the “Annual Franchise Fee” described and defined in Metro Code § 5.03.030.

“**Hazardous Waste**” does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015 (3):

(a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliant, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection. [Source: ORS 466.005 (7)]

“Infectious Waste” includes:

(a) "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(b) "Cultures and stocks," which includes etiologic 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" does not include throat and urine cultures.

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

(d) "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

“Metro Regional User Fee” means those fees which pay for fixed costs associated with administrative, financial and engineering services and waste reduction activities of the Metro waste management system. Contingency fees on all costs and general transfers of Solid Waste funds to other Metro departments for direct services are included in this fee. This fee is collected on all Solid Waste originating or disposed of within the region. Metro Code § 5.02.015(o).

“Petroleum Contaminated Soil” means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300, is not included in the term.

“Processing” means the use of any process, mechanism, device, or technique in order to obtain from Solid Waste materials that still have useful physical or chemical properties and can be reused or recycled for some purpose.

“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. [Source: Metro Code Section 5.01.010 (s)]

“Resource Recovery Facility” means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from Solid Waste.. [Source: Metro Code Section 5.01.010 (v)]

“Solid Waste” means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard, discarded or abandoned vehicles or parts thereof, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals, and infectious waste as defined in ORS 459.386.;

Solid Waste does not include:

- (1) hazardous waste as defined in ORS 466.005;
- (2) materials used for fertilizer or for other similar productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals;

“Special Waste” means any waste (even though it may be part of a delivered load of waste) which comprises:

- (1) containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in below; or
- (2) waste transported in a bulk tanker; or
- (3) liquid waste, including (1) outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test, or (2) more than 25 gallons of free liquid per load;
- (4) any container that once held commercial products or chemicals, unless the container is empty. A container is “empty” for purposes of the preceding clause when:
 - (a) all wastes have been removed that can be removed using the practices commonly employed to remove materials from the type of container, e.g., pouring, pumping, crushing, or aspirating; and
 - (b) one end has been removed (for containers in excess of 25 gallons); and
 - (c) no more than one inch thick (2.54 centimeters) of residue remains on the bottom of the container or inner liner; or
 - (d) no more than 1 percent by weight of the total capacity of the container remains in the container (for containers up to 110 gallons); or

- (e) no more than 0.3 percent by weight of the total capacity of the container remains in the container for containers larger than 110 gallons. Containers that once held acutely hazardous wastes must be triple rinsed with an appropriate solvent or cleaned by an equivalent alternative method. Containers that once held substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be empty according to label instructions or triple rinsed with an appropriate solvent or cleaned by an equivalent method. Plastic containers larger than five gallons that hold any regulated waste must be cut in half or punctured, dry and free of contamination to be accepted as refuse; or
- (5) sludge waste from septic tanks, food service, grease traps, wastewater from commercial laundries, laundromats or car washes; or
- (6) waste from an industrial process; or
- (7) waste from a pollution control process; or
- (8) residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in the other parts of this definition; or
- (9) soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or
- (10) chemical containing equipment removed from service (for example – filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical containing equipment); or

“Transfer Station” means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a Solid Waste collection and disposal system or Resource Recovery system, between a collection route and a processing facility or a Disposal Site. This definition does not include Solid Waste collection vehicles. [Source: Metro Code Section 5.01.010 (z)]

“Yard Debris” means vegetative and woody material generated from residential property or from commercial landscaping activities. "Yard debris" includes landscape waste, grass clippings, leaves, hedge trimmings, stumps and other similar vegetative waste, but does not include demolition debris, painted or treated wood. [Source: Metro Code Section 5.01.010 (cc)].

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EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

PARCEL ACCOUNT #64974-5550

A PARCEL OF LAND IN THE CHARLES FEZETT DONATION LAND CLAIM LYING WITHIN SECTION 27, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF TROUTDALE, COUNTY OF MULTNOMAH, AND STATE OF OREGON.
SECTION 27, TOWNSHIP 1, RANGE 3.

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Exhibit C

Example of the Computation of Recovery Rates and Associated Administration Fees

Origin/ Destination	Material Type ¹	Tonnages			
		Month 8	Month 9	Month 10	All Three Months
Incoming	A: Less than 5% delivered to a General Purpose or Limited Purpose Landfill. Excludes Type C material.	1,462.00	1,604.00	1,800.00	4,866.00
	B: Greater than or equal to 5% delivered to a General Purpose or Limited Purpose Landfill. Excludes Type C material.	2,951.00	3,059.00	1,918.00	7,928.00
	C: Contaminated soils or source separated yard debris.	20.00	40.00	60.00	120.00
Outgoing	C: Contaminated soils or source separated yard debris.	20.00	40.00	60.00	120.00
	D: Recovered Material Sold Directly ² (excludes Type E)	2,000.00	1,713.00	1,174.00	4,887.00
	D: Recovered Material Placed In Inventory ³ (excludes Type E).	417.00	1,000.00	1,000.00	2,417.00
	D: Total Recovered Material (excludes Type E).	2,417.00	2,713.00	2,174.00	7,304.00
	E: Clean Fill delivered to a Clean Fill Disposal Site.	196.00	350.00	944.00	1,490.00
	F: Transported to a General Purpose or Limited Purpose Landfill.	1,800.00	1,600.00	600.00	4,000.00
Mass Balance: Incoming Minus Outgoing ⁴		0.00	0.00	0.00	0.00
Recovery Rate ⁵ = (D - 95% A)/(D + F - A)		37.32% ⁶	43.90% ⁶	47.64% ⁶	41.65%

Fees Due Metro

a. Regional User Fee

Currently \$17.50 for each ton of F. Payable on a monthly basis upon disposal.
 Either the applicable landfill will pay or, in the case of a non-system license, franchisee will pay.
 User fee rate is set annually in the Metro budget process.

b. Excise Tax

Metro's "User Fee and Excise Tax" form is used to compute this fee in accordance with Metro Code Chapter 7.
 Either the applicable landfill will pay or, in the case of a non-system license, franchisee will pay.
 Excise tax rate is set annually in the Metro budget process and is currently 7.5% (scheduled to be reduced to 7.25% on September 1, 1996).

c. Administration Fee

None due if three month recovery rate is 45% or greater.
 If three month recovery rate is less than 45%, then Metro will issue franchisee an invoice which multiplies the last month's Type F tons times the applicable rate that Metro calculates in accordance with the following formula, $(((W - X) * (Y - Z)) / 5)$
 Example using the above chart: Administration Fee For Month 10 = $(((W - X) * (Y - Z)) / 5) * F$ where
 F = Tons of Material type G for the third month involved in the applicable calculation of recovery rate.
 W = The Administration fee corresponding to the recovery rate 5% less than Y as shown in Exhibit E.
 X = The Administration fee corresponding to Y as shown in Exhibit E.
 Y = The next higher recovery rate than Z that is shown in Exhibit E.
 Z = The average recovery rate for months 8, 9, and 10. See footnote 5 below for a sample calculation.
 Example corresponding to the above table: Administration fee = $(((\$2.29 - \$0) * (45 - 41.65)) / 5) * 600 = [\$1.5343] * 600 = \$ 920.58$

¹See Exhibit D for definitions and pictorial relationship of Material Types.

²Amount of recovered material sold during the month, exclusive of material sold from inventory.
 See Section 6.2 for details regarding monthly inventory report.

³Amount of recovered material placed in inventory during the month.
 Does not include material taken from inventory, reprocessed, and then placed back in inventory (no double counting).

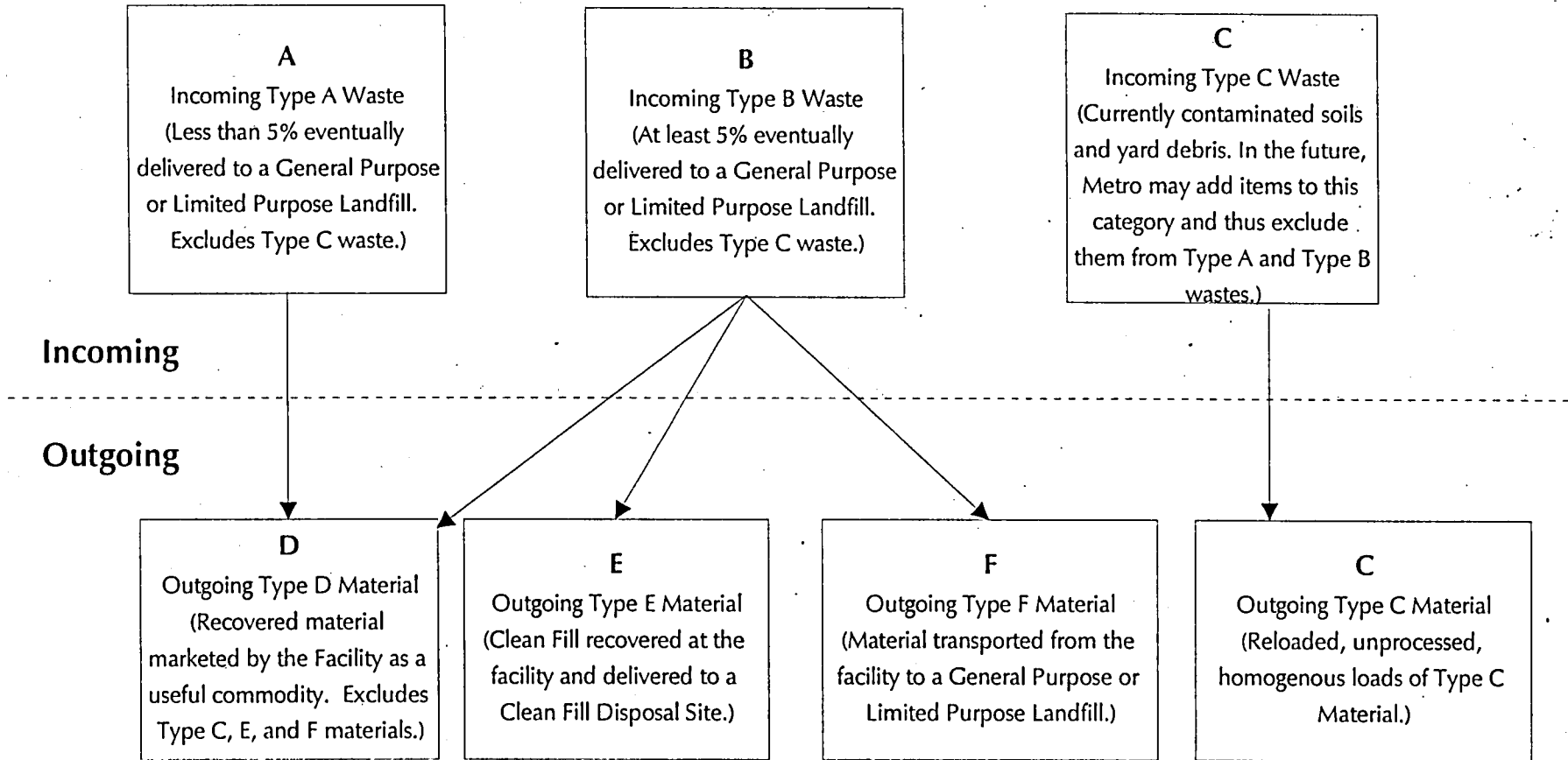
⁴Monthly summary report to Metro must address reasons why mass balance does not equal zero.

⁵Example of computation of recovery rate for the three month period:
 Rate = $(D - 95\% A) / (D + F - A) = (7,304 - .95 * 4,866) / (7,304 + 4,000 - 4,866) = .41648$ (rounded to nearest .01%, this equals 41.65%)

⁶The above calculation of recovery rates as they pertain to Administration fees are based on three month periods, not on individual months.
 However, Section 13.1 of the franchise bases notices of non-compliance on individual monthly recovery rates.

Exhibit D

Formula for Computing Recovery Rates from Type B Waste



**Recovery Rate for
Type B Waste**

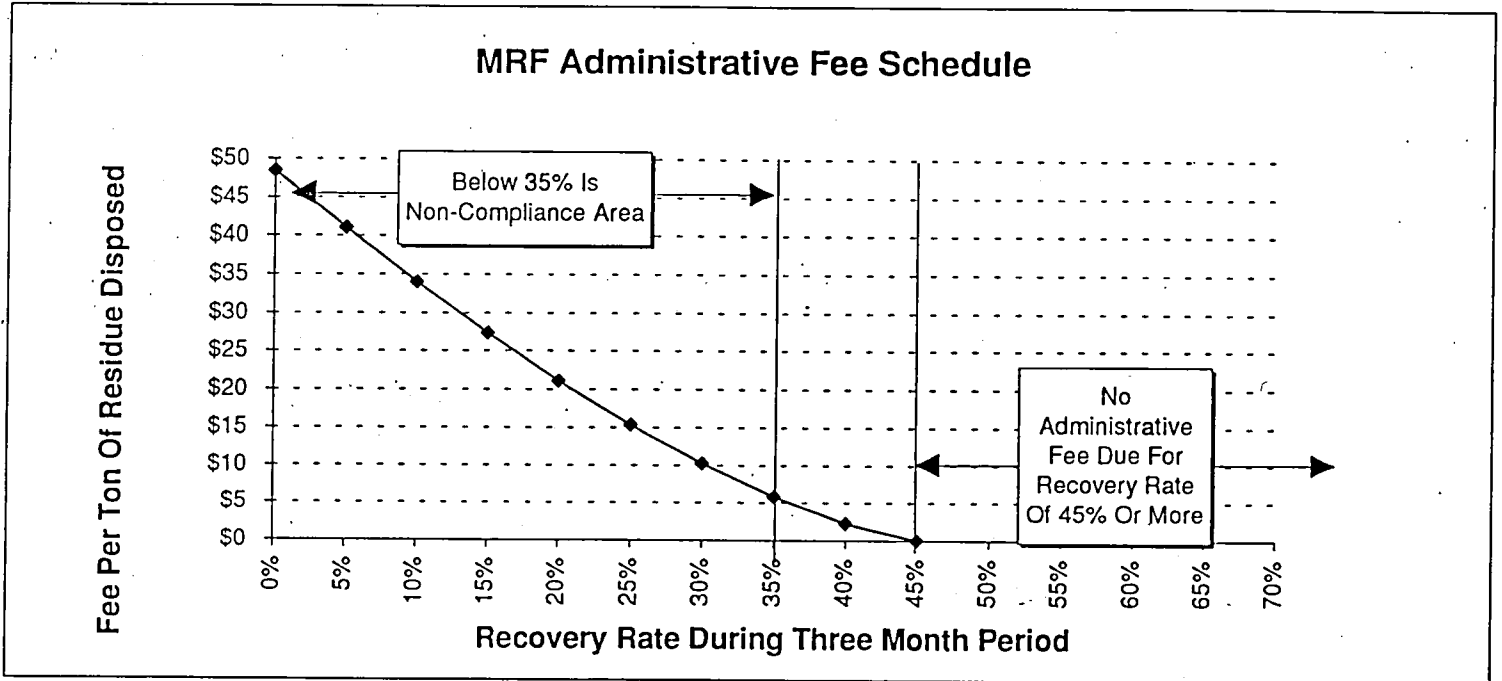
$$\begin{aligned}
 &= \frac{\text{Amount of Type B Recovered}}{\text{Amount of Type B Recovered} + \text{Amount of Type B Disposed}} = \frac{(D-.95A)}{(D-.95A) + (G-.05A)} = \frac{D-.95A}{D + G - A}
 \end{aligned}$$

EXHIBIT E

Fee Schedule For Administrative Fees

Recovery Rate	Administrative Fee Per Ton	Percent of Current (\$17.50/ton) Regional User Fee
0.00%	\$48.38	276.43%
5.00%	\$41.05	234.59%
10.00%	\$34.03	194.44%
15.00%	\$27.35	156.30%
20.00%	\$21.09	120.54%
25.00%	\$15.33	87.62%
30.00%	\$10.18	58.16%
35.00%	\$5.77	32.97%
40.00%	\$2.29	13.10%
45.00%	\$0.00	0.00%

No Administrative fee due if recovery rate exceeds 45%.
See Exhibits C and E for derivation of recovery rate.



Version 3 as of June 13, 1996

S:\share\Dept\WRPS\MRFs\3Step_V2.XLS Version 2 as of June 13, 1996 at 4 p.m.



METRO

Regional Environmental
Management
600 NE Grand Ave
Portland, OR 97232-2736
(503) 797-1650
Fax (503) 797-1795

EXHIBIT F

Unacceptable Waste Incident Tracking Form

Item Number: _____ Date Discovered: _____

Description of Unacceptable Waste: _____

Generator (if known): _____


Waste Hauler: _____

Waste was determined to be: Hazardous Non-Hazardous

Disposition: _____

Date Disposed: _____

original = Franchise Administrator
yellow = Franchisee
pink = file

 June 1996
Printed on recycled paper, please recycle!

RESOLUTION NO. 96-2339, For the Purpose of Authorizing the Executive Officer to Enter Into An Agreement with The City of Portland Bureau of Environmental Services for Metro to Receive Federal Funds for Projects Which Benefit Columbia Slough Adjacent to St. Johns Landfill.

**Metro Council Meeting
Thursday, June 20, 1996**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 96-2339
EXECUTIVE OFFICER TO ENTER INTO AN)	
AGREEMENT WITH THE CITY OF PORTLAND)	Introduced by Mike Burton
BUREAU OF ENVIRONMENTAL SERVICES)	Executive Officer
FOR METRO TO RECEIVE FEDERAL FUNDS)	
FOR PROJECTS WHICH BENEFIT THE)	
COLUMBIA SLOUGH ADJACENT TO THE)	
ST. JOHNS LANDFILL)	

WHEREAS, It is in conformance with Metro adopted plans to carry out projects benefiting surface water adjacent to St. Johns Landfill and within the Smith & Bybee Lakes Management area; and

WHEREAS, Funds from a Federal grant through the City of Portland Bureau of Environmental Services are available under Intergovernmental Agreement 905029 to reimburse Metro for most or all costs of certain projects that benefit the Columbia Slough adjacent to St. Johns Landfill; 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 authorizes the Executive Officer to enter into an Intergovernmental Agreement (Metro Contract No. 905029, attached as Exhibit A, B, C and D) with the City of Portland Bureau of Environmental Services for projects which benefit the Columbia Slough adjacent to St. Johns Landfill.

ADOPTED by the Metro Council this _____ day of _____, 1996.

Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

DMO:clk
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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 96-2339 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN AGREEMENT WITH THE CITY OF PORTLAND BUREAU OF ENVIRONMENTAL SERVICES FOR METRO TO RECEIVE FEDERAL FUNDS FOR PROJECTS WHICH BENEFIT COLUMBIA SLOUGH ADJACENT TO ST. JOHNS LANDFILL

Date: May 3, 1996

Presented by: Jim Watkins
Dennis O'Neil

PROPOSED ACTION

Approval of Resolution No. 96-2339, authorizing the Executive Officer to enter into an agreement with the City of Portland Bureau of Environmental Services for Metro to receive Federal funds for projects which benefit Columbia Slough adjacent to St. Johns Landfill.

FACTUAL BACKGROUND AND ANALYSIS

The City of Portland has received a ten million dollar Federal grant from the US Environmental Protection Agency for projects which revitalize the Columbia Slough system. The City's Bureau of Environmental Services can use this money itself to carry out projects and can fund projects by other agencies. As of December 1995, the City was willing to allocate up to \$221,000 to assist Metro with projects which will benefit Columbia Slough adjacent to the St. Johns Landfill and to provide an interpretive center for Columbia Slough. The interpretive center project is being discussed by the City and the Metro Regional Parks and Greenspaces department.

In this attached intergovernmental agreement, the City of Portland agrees to reimburse Metro for up to \$93,000 for three projects benefiting Columbia Slough adjacent to St. Johns Landfill. These projects are:

1. Planting and maintaining trees and shrubs on the landfill bank along the North Slough arm of Columbia Slough.
2. Removing a sunken barge that virtually blocks water flow in and out of the North Slough arm of Columbia Slough
3. Monitoring and mapping visible seeps in the landfill bank along Columbia Slough and then experimenting with excavation and patching methods intended to eliminate these visible seeps.

The contract will be in force until 1998.

This agreement has several benefits. It is an example of Metro, City, and Federal cooperation in projects to revitalize the Columbia Slough. Under its closure plan for St. Johns Landfill, Metro would have planted vegetation and tried to plug visible seeps along the landfill bank fronting

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Columbia Slough to reduce the environmental impact of the landfill. Because Federal money is used for these projects rather than closure fund money, more of the fund will remain as a contingency for any future remediation requirements.

There is a risk that Metro may not be reimbursed for project costs which the City or the Federal government determine to be ineligible for reimbursement. However, it appears that contractual service costs, which are expected to make up most of the cost of these projects, will be eligible for reimbursement without extensive and burdensome documentation.

BUDGET IMPACT

Metro will receive up to \$93,000, which can be added to funds already budgeted for projects related to St. Johns Landfill. An amendment to the FY 1996-97 budget is not needed to recognize this revenue, because the budget already provides for it.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 96-2339.

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TRANSMITTAL SUMMARY

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
 TEL 503 797 1700 | FAX 503 797 1799



METRO

To: Risk and Contracts Management

From: _____ Date: 5/6/96 Vendor: City of Portland
 Department: REM Subject: _____ 1120 SW 5th Ave
 Division: Engineering Bid Revenue Contract Portland OR 97204
 Name: Dennis O'Neil RFP Other Vendor no.: _____
 Title: Sr. SW Planner Contract no.: 905029
 Extension: 1697 Purpose: Reimbursement for SJF Expenditures -

Expense: Barge Removal, Seep Discharge
 Procurement Personal/professional services Services (LM) Construction IGA

Revenue	Budget code(s)	Price basis	Contract term
<input checked="" type="checkbox"/> Contract	<u>531-39000-339200-75960</u>	<input type="checkbox"/> Unit prices, NTE	<input type="checkbox"/> Completion*
<input type="checkbox"/> Grant	<u>531-310400-339200-75000</u>	<input type="checkbox"/> Per task <u>NA</u>	<input type="checkbox"/> Annual
<input type="checkbox"/> Other		<input type="checkbox"/> Total/lump sum	<input type="checkbox"/> Multi-year**
This project is listed in the 199 <u>6</u> -199 <u>7</u> budget.		Payment required	<u>7/1/96</u> Beginning date*
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Type A	<input type="checkbox"/> Lump sum <u>NA</u>	<u>6/30/98</u> Ending date
<input type="checkbox"/> No	<input type="checkbox"/> Type B	<input type="checkbox"/> Progress payments	

Total commitment	Original amount	\$ <u>93,000⁰⁰</u>
	Previous amendments	\$ _____
	This transaction	\$ _____
	Total	\$ <u>93,000⁰⁰</u>
	A. Amount of contract to be spent fiscal year _____	\$ <u>NA</u>
	B. Amount budgeted for contract _____	\$ <u>NA</u>
	C. Uncommitted/discretionary funds remaining as of _____	\$ <u>NA</u> ...

Approvals

Project manager _____	Division manager <u>Jim Watkins</u>	Department director _____
Fiscal _____	Budget manager _____	Risk _____

Legal _____
 * See instructions on reverse. ** If multi-year, attach schedule of expenditures. *** If A or B is greater than C, and other line item(s) used, attach explanation/justification.

Competitive quotes, bids or proposals

Submitted by	\$Amount	M/W/DBE	Foreign or Oregon contractor
Submitted by	\$Amount	M/W/DBE	Foreign or Oregon contractor
Submitted by	\$Amount	M/W/DBE	Foreign or Oregon contractor

Comments _____

Attachments Ad for bid Plans and specifications Bidders list (M/W/DBEs included)

Instructions

- Secure contract number from Risk and Contracts Management. Place number on the transmittal summary and all contract copies.
- Complete transmittal summary form to the extent of project completion.
- If contract is:
 - Sole source, attach memo detailing justification pursuant to ORS 279.
 - Less than \$2,500, attach memo detailing need for contract and contractor's capabilities, bids, etc.
 - More than \$2,500 but less than \$25,000, attach quotes, informal solicitations, evaluation forms, etc.
 - More than \$25,000 attach RFP/RFB complete with summary, all required documents and all evaluation, utilization forms.
- List and identify all subcontractors below.
- Provide completed RFB/RFP packet to Risk and Contracts Management.

Subcontractor/supplier _____
 Address _____
 City/state/ZIP _____
 Phone _____

M/W/DBE certified _____ Ethnicity _____
 Type of work _____
 Dollar amount _____

Subcontractor/supplier _____
 Address _____
 City/state/ZIP _____
 Phone _____

M/W/DBE certified _____ Ethnicity _____
 Type of work _____
 Dollar amount _____

Attach additional list(s) as necessary.

Total utilization: \$ _____
 Total contract: \$ _____
 Percent utilization: _____

EXHIBIT A
Intergovernmental Agreement

This Intergovernmental Agreement entered into as of this _____ day of _____, 1996, by Metro and the City of Portland, (City) Bureau of Environmental Services (BES).

In consideration for the mutual benefits to be realized by the parties, Metro and BES do mutually agree as follows:

I. SCOPE OF AGREEMENT

The St. Johns landfill has developed seeps that are discharging to the Columbia Slough. The seeps may be impacting water quality in the Slough. The character of the visible seeps along the natural dike around the St Johns landfill indicates that local anomalies in the natural dike may be producing these seeps. Shallow excavation in these areas followed by patching with specialized sealing material and/or low permeable soil will probably eliminate the visible seeps in these areas.

Metro will visually monitor and map the seeps discharging to the Slough. A comparison of these results with the 1991 and 1995 seep maps will be made. Metro will provide the City of Portland Bureau of Environmental Services (BES) with three copies of the 1996 seep map, seep comparison, and any other materials produced under this agreement.

Metro will excavate and patch all seeps discharging to the Slough with specialized sealing material and/or low permeable soil. In 1997 Metro will monitor the area to determine the effectiveness of patching the seeps discharging to the Slough.

Prior to 1978 a barge sank in the north arm of the Slough. Today, the barge remains and virtually blocks flow into and out of the Slough. Because the barge has been at the site for so long, it may provide habitat value. Before removing the barge, Metro will evaluate the habitat value of the barge. If the barge provides habitat value, Metro will replace the barge with a structure of equal habitat value. The structure will not impede flow into and out of the Slough.

In the fall of 1995, Metro and EnviroCorps planted vegetation along the south bank of the north arm of the Slough (north side of the St. Johns landfill). With this agreement, Metro will be reimbursed for their cost of revegetating this area.

II. COMPENSATION

Total compensation not to exceed \$93,000

This project is funded one hundred percent through the Columbia Slough Revitalization Grant. Metro shall bill Environmental Services for actual cost of service and material rendered no more frequently than once per month. The invoice shall be itemized to include work accomplished for the billing period, as outlined in the Scope of Work.

III. INSURANCE

Metro shall provide the insurance necessary for the projects including but not limited to:

- Workers' Compensation Insurance
- General Liability Insurance
- Automotive Liability Insurance

IV. PROJECT MANAGEMENT

The City Project Manager is Amy Chomowicz or such other person as shall be designated in writing by the Director of the Bureau of Environmental Services. The Metro project manager is Dennis O'Neil. Metro must inform BES in writing of any change in project manager.

V. EFFECTIVE DATES OF AGREEMENT

This agreement shall begin on the final date of signature and be in force to June 30, 1998.

VI. AMENDMENT TO AGREEMENT

Metro and the City of Portland Bureau of Environmental Services may terminate or amend this agreement by mutual written consent.

VII. INDEMNIFICATION

To the extent permitted by the Oregon Tort Claims Act and the Oregon Constitution, Metro shall hold harmless, defend and indemnify the City and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney's fees and costs) brought against any of them arising from Metro's work or any subcontractor's work under this Agreement.

VIII. FEDERAL REQUIREMENTS

This project is federally funded; federal requirements apply. The contractor must comply with: Executive Order 11246 Equal Employment Opportunity; the Copeland "Anti-Kickback" Act; sections 103 and 107 of the Contract Work Hours and safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulation (29 CFR part 5); and all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act, section 508 of the Clean Water Act, Executive Order 11738, and EPA regulation (40 CFR part 15).

A copy of these requirements is available upon request.

IX. RECORDS

All records must be maintained for at least three years after the close of the grant. The grant is

scheduled to close on June 30, 1998.

X. ACCESS

The contractor agrees to allow access by the City, the Environmental Protection Agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records which are directly pertinent to this agreement.

IN WITNESS WHEREOF,

Metro and the City of Portland Bureau of Environmental Services have executed this Agreement as of the date first above written.

METRO

By: _____

Name: _____

Date: _____

Approved as to form:

CITY OF PORTLAND

AK

By: _____

W

Name: Dean Marriott

Directory, Bureau of Environmental Services

Date: _____

City Attorney
Date: _____

By: _____

Name: Mike Lindberg

Commissioner of Public Utilities

Date: _____

By: _____

Name: Barbara Clark

Date: _____

EXHIBIT B

Scope of Work

Eliminate and Monitor Visible Seeps

1. Monitor and map visible seeps in the St. Johns landfill.
2. Compare the results from the 1996 seep monitoring study with the 1991 and 1995 seep studies.
3. Provide the City of Portland Environmental Services with three copies of the 1996 seep map, seep comparison, and any other materials produced under this agreement.
4. Eliminate all visible seeps by excavation and patching.
5. In fall of 1997, monitor the area of visible seeps to determine the effectiveness of patching the seeps.
6. Keep the BES Project Manager informed of progress and decisions on the method to repair seeps.

Remove Barge from North Slough Arm

1. Evaluate the habitat value of the barge. The barge may provide habitat value to wildlife. If it does, replace the barge with a structure of equal habitat value that does not block flow into or out of the Slough.
2. Remove and dispose of the barge.

Revegetate the South Bank of the North Slough Arm (north side of the landfill)

1. Provide BES with an inventory of vegetation planted by EnviroCorps during the fall of 1995 on the south side of the north arm of the Slough.

EXHIBIT C

Project Schedule

Eliminate and Monitor Visible Seeps

1. September 1996: visually monitor and map seeps that are discharging into the Slough.
2. September 1996: Prepare a report that: discusses the current status of the seeps discharging into the Slough and compares the 1996 results with previous seep reports.
3. October 1996: Inform the BES Project Manager of the method Metro will use to patch the seeps.
4. October 1996: patch or eliminate all visible seeps.
5. September 1997: visually monitor areas of visible seeps to determine the effectiveness of patching effort.
6. September 1997: Prepare a report that: discusses the 1997 findings and compares the 1997 seep monitoring results with previous seep reports.

Remove Barge from North Slough Arm

1. September 1996: determine the habitat value of barge.
2. October 1996: Prepare a report that describes the habitat value of the barge and provide BES with three copies of the report.
3. October and November 1996: remove barge and if necessary replace it with a structure of equal habitat value that does not restrict flow into or out of the Slough.

Revegetate South Bank of the North Slough Arm (north side of the landfill)

1. December 1996: provide BES with an inventory of vegetation planted on the south side of the north Slough arm.

EXHIBIT D

Estimated Costs

This project is funded one hundred percent through the Columbia Slough Revitalization Grant.

Note: The following task items are annual estimates, all billings will reflect actual time and material expenditures.

Monitor and map visible seeps	\$11,000
Eliminate all visible seeps	46,000
Remove barge	35,000
Reimburse for revegetating south bank of north Slough arm	1,000
Total	\$93,000

Agenda Item Number 8.2

RESOLUTION NO. 96-2350, For the Purpose of Authorizing An Intergovernmental Agreement with Clackamas County to Provide Litter Collection Services.

**Metro Council Meeting
Thursday, June 20, 1996**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 96-2350
AN INTERGOVERNMENTAL AGREEMENT)
WITH CLACKAMAS COUNTY TO PROVIDE) Introduced by Mike Burton
LITTER COLLECTION SERVICES) Executive Officer

WHEREAS, Metro has the responsibility to collect roadside litter in the area near the Metro South Transfer Station located at 2001 Washington Street, Oregon City; and

WHEREAS, Metro entered into an intergovernmental agreement in June 1994 with the Clackamas County Department of Transportation and Development to provide litter collection services in the area of the Metro South Transfer Station; and

WHEREAS, The intergovernmental agreement with Clackamas County for litter collection services expires on June 30, 1996; and

WHEREAS, a new intergovernmental agreement has been negotiated between Metro and Clackamas County; and

WHEREAS, The Executive Officer has reviewed the intergovernmental agreement with Clackamas County to provide litter collection services and hereby forwards the Agreement to the Council for approval; now, therefore,

BE IT RESOLVED,

That the Metro Council, pursuant to Metro Code Section 2.04.033 (a)(1), authorizes the Executive Officer to enter into an intergovernmental agreement with the Clackamas County Department of Transportation and Development, attached as Exhibit "A," to provide litter collection services in the area of the Metro South Transfer Station.

ADOPTED by the Metro Council this _____ day of _____, 1996.

Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel
RB:clk
BARK/RESOLUT1/SW962350.RES

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 96-2350 FOR THE PURPOSE OF AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY TO PROVIDE LITTER COLLECTION SERVICES

May 28, 1996

Presented By: Terry Petersen

PROPOSED ACTION

Adopt Resolution No. 96-2350 approving an Intergovernmental Agreement with the Clackamas County Department of Transportation and Development to provide litter collection services in the area of the Metro South Transfer Station.

FACTUAL BACKGROUND AND ANALYSIS

Metro has the responsibility to remove roadside litter in the area near the Metro South Transfer Station located at 2001 Washington Street, Oregon City. Metro entered into an Intergovernmental Agreement in June 1994 with the Clackamas County Department of Transportation and Development to collect litter from roadsides in the area of the Metro South Transfer Station. The agreement was for a two-year period and expires on June 30, 1996. Metro has been very satisfied with the litter collection services provided by Clackamas County.

A new Intergovernmental Agreement has been negotiated with Clackamas County to collect litter from roadsides along: 3.5 miles of I-205 from the Oregon City exit north to the Clackamas exit; 1 mile of Washington Street from the Abernethy Road intersection north to the Agnes Street intersection on the north side of I-205; Clackamas River Drive from its intersection with Washington Street north to a point one-half mile distant; and the Oregon City bypass for a distance of 1 mile in both directions from the intersection of Washington Street and the Oregon City bypass.

The proposed scope of work is virtually the same as in the previous agreement with Clackamas County. The total cost for the services is the same as before. Under the agreement, the County collects litter approximately once every seven days, with two crews of four-to-six workers per crew.

BUDGET IMPACT

The proposed new contract shall not exceed \$62,000 for the period of July 1, 1996 through June 30, 1998. The budget for fiscal year 1996-97 provides \$32,000 for litter collection for the Metro South Station area. Expenditures for litter collection are expected to total \$31,000 for FY 96-97.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 96-2350.

STAFF REPORT

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EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 96-2350.

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, entered into under the provisions of ORS Chapter 190, is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and the CLACKAMAS COUNTY DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, whose address is 902 Abernethy Road, Oregon City, Oregon 97045, hereinafter referred to as "County, for the period commencing July 1, 1996 through and including June 30, 1998.

WHEREAS, Metro has a need for services and the County can provide these services;

IT IS MUTUALLY AGREED AS FOLLOWS:

The County Agrees:

1. To provide the services as outlined under the Scope of Work attached hereto as Attachment A; and
2. To provide all the labor, equipment and materials necessary to perform the services in a competent manner; and
3. To assume full responsibility for all liability for bodily injury or physical damage to person or property arising out of the performance of the work under this Contract, and to indemnify and hold harmless Metro, its agents and employees, from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of the performance of the work under this Contract, to the extent permitted by the Oregon Tort Claims Act and Article XI Section 10 of the Oregon Constitution.

Metro Agrees:

1. To compensate the County for services performed and materials supplied as set forth in Attachment A to a maximum of \$62,000.00; and
2. To make such compensation payments on a monthly basis within thirty (30) days of receipt of the County's invoice; and
3. To provide full information regarding its requirements for services to be provided and to notify the County of any changes in the overall Scope of Work.

Both Parties Agree:

1. That this Contract may be terminated by either party upon at least thirty (30) days written notice to the other; and
2. That in the event of termination, Metro shall pay the County for services performed prior to the date of termination; and
3. That this Contract may be amended only by the written consent of both parties; and
4. That at the discretion of the County, litter collection services may be temporarily interrupted due to flooding or inclement weather conditions such as snow or ice.

THEREFORE, This Contract has been executed as of the date first above written.

CLACKAMAS COUNTY DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT,
BY AND THROUGH THE BOARD OF COUNTY
COMMISSIONERS

METRO

Chair

By: _____

Commissioner

Title

Commissioner

Title

Date

Date

APPROVED:

APPROVED AS TO FORM:

Executive Director,
Department of Transportation and Development

County Counsel

RB:clk
s:\bark\contract\905066.iga

Attachment A
SCOPE OF WORK

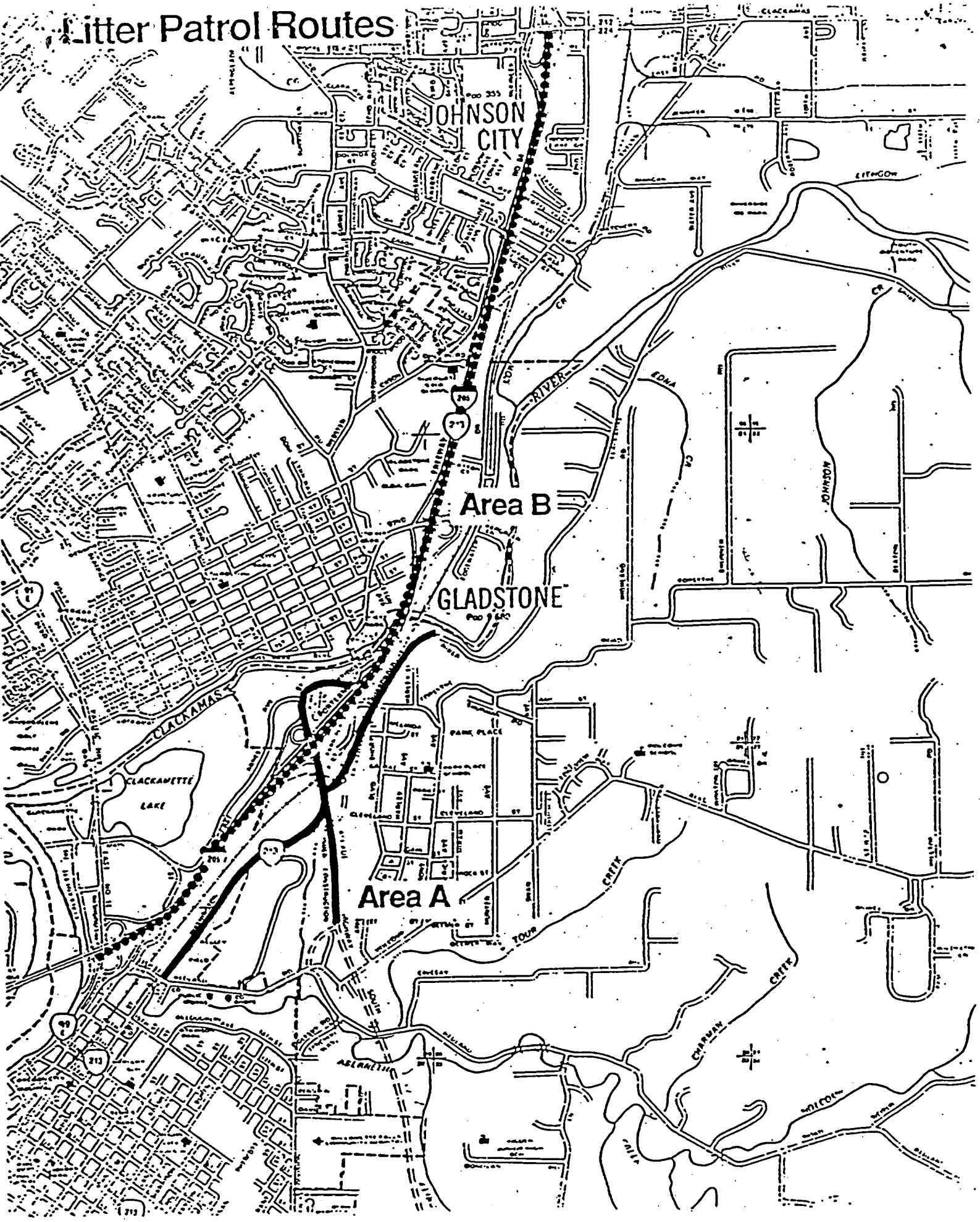
1. County shall collect litter from roadsides along: 3.5 miles of I-205 from the Oregon City exit north to the Clackamas exit; 1 mile of Washington Street from the Abernethy Road intersection north to Agnes Street intersection on the north side of I-205; and .5 mile of Clackamas River Drive from its intersection with Washington Street north to a point one-half mile distant. Both sides of Oregon City Bypass for a distance of 1 mile from the intersection of Washington Street and Oregon City Bypass. See attached description/map.
2. County shall collect litter approximately once every seven (7) days on a date agreed to by both parties in advance. Saturdays shall be the preferred day of the week.
3. County shall fill litter bags and place them along the roadside. Filled bag collection will be provided by Metro. Metro will reimburse the County for the cost of litter bags utilized for this contract.
4. Workers shall be courteous to the public, not obstruct traffic, and shall in all ways conduct themselves in a manner properly representative of Metro and the County.
5. County shall supply all labor and supervision. Approximately four to six workers shall be provided per crew. Two crews should be used when possible.
6. County shall be paid \$5.00 per man-hour for litter collection services, and \$13.50 per hour for each of two supervisors when the collection crews are working. Beginning July 1, 1997, the hourly rate for crew supervisors shall increase to \$14.00 per hour for each of two supervisors.
7. County shall be paid for 1.5 hours per week at \$45.00 per hour for program administration, not to exceed \$3,510.00 per year.
8. County shall be reimbursed for work crew vehicle rental costs at \$60.00 per work day not to exceed \$3,120.00 per year.
9. County shall be reimbursed for annual liability insurance costs for work crews not to exceed the premium cost of the policy.
10. All visible, unconcealed litter objects, greater than approximately one square inch in size shall be collected. Bulky items may be separately set along the roadside. Items of excess unmanageable weight shall not be handled. Supervisors shall see that the workers perform according to the stipulations and use extreme caution at all times.
11. County will provide special cleanup crews, when available, for major cleanup efforts on public lands required after storms, high winds or other such occurrences.

12. The entire collection area (Areas A and B attached) shall be picked up at least once every two weeks.

13. Metro shall pay Contractor for services performed and materials delivered in the maximum sum of SIXTY-TWO THOUSAND AND NO/100THS DOLLARS (\$62,000.00). This maximum sum includes all fees, costs and expenses of any nature whatsoever. Each of Metro's payments to Contractor shall equal a percentage of the total contract price, and that percentage shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once per month. Send invoices to Metro, Attention Solid Waste Department. Metro shall pay Contractor within thirty (30) days of receipt of an approved invoice.

RB:clk
s:\bark\contract905066.iga

Litter Patrol Routes



TRANSMITTAL SUMMARY

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
 TEL 503 797 1700 | FAX 503 797 1799



METRO

To: Risk and Contracts Management

From:	<u>Date</u> <u>May 28, 1996</u>	<u>Vendor</u> <u>Clackamas County</u>
<u>Department</u> <u>REM</u>	Subject	<u>Dept. of Transportation & Devlpt.</u>
<u>Division</u> <u>ES</u>	<input type="checkbox"/> Bid	<u>902 Abernethy Road.</u>
<u>Name</u> <u>RAY BARKER</u>	<input checked="" type="checkbox"/> Contract	<u>Oregon City, OR 97045</u>
<u>Title</u> <u>Management Asst.</u>	<input type="checkbox"/> RFP	<u>Vendor no.</u> <u>5254</u>
<u>Extension</u> <u>1694</u>	Purpose	<u>Contract no.</u> <u>905066</u>
	<u>Litter collection for Metro South Station area.</u>	

Expense

Procurement
 Personal/professional services
 Services (L/M)
 Construction
 IGA

Revenue	Budget code(s)	Price basis	Contract term
<input type="checkbox"/> Contract	<u>531-310274-524190-75000</u>	<input checked="" type="checkbox"/> Unit prices, NTE	<input type="checkbox"/> Completion*
<input type="checkbox"/> Grant		<input type="checkbox"/> Per task	<input type="checkbox"/> Annual
<input type="checkbox"/> Other		<input type="checkbox"/> Total/lump sum	<input checked="" type="checkbox"/> Multi-year**
This project is listed in the 199 <u>6</u> -199 <u>7</u> budget.		Payment required	<u>July 1, 1996</u>
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Type A	<input type="checkbox"/> Lump sum	<u>Beginning date*</u>
<input type="checkbox"/> No	<input type="checkbox"/> Type B	<input checked="" type="checkbox"/> Progress payments	<u>June 30, 1998</u>
			<u>Ending date</u>

Total commitment	Original amount	\$ <u>62,000.00</u>
	Previous amendments	\$ _____
	This transaction	\$ _____
	Total	\$ <u>62,000.00</u>
	A. Amount of contract to be spent fiscal year <u>1996 - 1997</u>	\$ <u>31,000.00</u>
	B. Amount budgeted for contract <u>Misc. Prof. Services</u>	\$ <u>1,420,427.00</u>
	C. Uncommitted/discretionary funds remaining as of <u>7/1/96</u>	\$ <u>1,420,427.00</u> ***

Approvals

<u>Project manager</u>	<u>Division manager</u>	<u>Department director</u>
<u>Fiscal</u>	<u>Budget manager</u>	<u>Risk</u>

Legal

* See instructions on reverse. ** If multi-year, attach schedule of expenditures. *** If A or B is greater than C, and other line item(s) used, attach explanation/justification.

Competitive quotes, bids or proposals

Submitted by	\$Amount	M/W/DBE	Foreign or Oregon contractor
Submitted by	\$Amount	M/W/DBE	Foreign or Oregon contractor
Submitted by	\$Amount	M/W/DBE	Foreign or Oregon contractor

Comments _____

Attachments Ad for bid Plans and specifications Bidders list (M/W/DBEs included)

Instructions

- Secure contract number from Risk and Contracts Management. Place number on the transmittal summary and all contract copies.
- Complete transmittal summary form to the extent of project completion.
- If contract is:
 - Sole source, attach memo detailing justification pursuant to ORS 279.
 - Less than \$2,500, attach memo detailing need for contract and contractor's capabilities, bids, etc.
 - More than \$2,500 but less than \$25,000, attach quotes, informal solicitations, evaluation forms, etc.
 - More than \$25,000 attach RFP/RFB complete with summary, all required documents and all evaluation, utilization forms.
- List and identify all subcontractors below.
- Provide completed RFB/RFP packet to Risk and Contracts Management.

Subcontractor/supplier _____
 Address _____
 City/state/ZIP _____
 Phone _____

M/W/DBE certified _____ Ethnicity _____
 Type of work _____
 Dollar amount _____

Subcontractor/supplier _____
 Address _____
 City/state/ZIP _____
 Phone _____

M/W/DBE certified _____ Ethnicity _____
 Type of work _____
 Dollar amount _____

Attach additional list(s) as necessary.

Total utilization: \$ _____

Total contract: \$ _____

Percent utilization: _____