

## Council meeting agenda

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Thursday, November 21, 2019

2:00 PM

Metro Regional Center, Council chamber

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REVISED 11/18

**1. Call to Order and Roll Call**

**2. Resolutions**

- 2.1 Resolution No. 19-5054, For the Purpose of Approving [RES 19-5054](#)  
and Authorizing the Execution of the Second Amended and  
Restated Visitor Facilities Intergovernmental Agreement

Presenter(s): Andy Shaw, Metro

Attachments: [Resolution No. 19-5054](#)  
[Exhibit A to Resolution No. 19-5054](#)  
[Staff Report](#)

- 2.2 Resolution No. 19-5009, For the Purpose of Authorizing [RES 19-5009](#)  
Execution of an Intergovernmental Agreement with the  
City of Beaverton for Implementation of the Metro  
Affordable Housing Bond Measure

Presenter(s): Emily Lieb, Metro

Attachments: [Resolution No. 19-5009](#)  
[Exhibit A to Resolution 19-5009](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)

- 2.3 Resolution No. 19-5010, For the Purpose of Authorizing Execution of an Intergovernmental Agreement with the Housing Authority of Clackamas County for Implementation of the Metro Affordable Housing Bond Measure

[RES 19-5010](#)

Presenter(s): Emily Lieb, Metro

Attachments: [Resolution No. 19-5010](#)  
[Exhibit A to Resolution No. 19-5010](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)

**3. Public Communication**

**4. Consent Agenda**

- 4.1 Resolution No. 19-5040, For the Purpose of Confirming New Appointments to the Metro Committee on Racial Equity

[RES 19-5040](#)

Attachments: [Resolution No. 19-5040](#)  
[Exhibit A to Resolution No. 19-5040](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)

- 4.2 Resolution No. 19-5030, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Authorizing American Honda to Transport and Dispose Non-Recoverable Solid Waste, Including Putrescible Waste at the Covanta Waste-to-Energy Facility Located in Brooks, Oregon

[RES 19-5030](#)

Attachments: [Resolution No. 19-5030](#)  
[Exhibit A to Resolution No. 19-5030](#)  
[Staff Report](#)

- 4.3 Resolution No. 19-5031, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Authorizing Pacific Foods of Oregon, Inc. to Transport and Dispose of Non-Recoverable Solid Waste, Including Putrescible Waste at the Covanta Waste-to-Energy Facility Located in Brooks, Oregon  
Attachments: [Resolution No. 19-5031](#)  
[Exhibit A to Resolution No. 19-5031](#)  
[Staff Report](#) [RES 19-5031](#)
- 4.4 Resolution No. 19-5032, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Authorizing Swan Island Dairy to Transport and Dispose Non-Recoverable Solid Waste, Including Putrescible Waste at the Covanta Waste-to-Energy Facility Located in Brooks, Oregon  
Attachments: [Resolution No. 19-5032](#)  
[Exhibit A to Resolution No. 19-5032](#)  
[Staff Report](#) [RES 19-5032](#)
- 4.5 Resolution No. 19-5033, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Authorizing The Boeing Company to Transport and Dispose Non-Recoverable Solid Waste, Including Putrescible Waste at the Covanta Waste-to-Energy Facility Located in Brooks, Oregon  
Attachments: [Resolution No. 19-5033](#)  
[Exhibit A to Resolution No. 19-5033](#)  
[Staff Report](#) [RES 19-5033](#)
- 4.6 Resolution No. 19-5041, For the Purpose of Authorizing the Chief Operating Officer to Approve a New Non-System License Authorizing Martin Brower to Transport and Dispose Non-Recoverable Solid Waste, Including Putrescible Waste at Covanta Waste-to-Energy Facility Located in Brooks, Oregon  
Attachments: [Resolution No. 19-5041](#)  
[Exhibit A to Resolution No. 19-5041](#)  
[Staff Report](#) [RES 19-5041](#)
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- 4.7 Resolution No. 19-5042, For the Purpose of Authorizing the Chief Operating Officer to Issue a New Non-System License Authorizing Owens Corning Gresham Foundation Plant to Transport and Dispose Non-Recoverable Solid Waste, Including Putrescible Waste at Covanta Waste-to-Energy Facility Located in Brooks, Oregon  
Attachments: [Resolution No. 19-5042](#)  
[Exhibit A to Resolution No. 19-5042](#)  
[Staff Report](#) [RES 19-5042](#)

- 4.8 Considerations of the Council Budget Session Minutes for November 14, 2019 [18-5318](#)

## 5. Resolutions

- 5.1 Resolution No. 19-5017, For the Purpose of Amending the FY 2019-20 Budget and Appropriations Schedule and FY 2019-20 Through 2023-24 Capital Improvement Plan to Provide for Changes in Operations [RES 19-5017](#)  
Presenter(s): Lisa Houghton, Metro  
Attachments: [Resolution No. 19-5017](#)  
[Exhibits A & B to Resolution No. 19-5017](#)  
[Staff Report](#)  
[Attachments 1-5 to Staff Report](#)

- 5.2 Resolution No. 19-5021, For the Purpose of Adopting the List of Solid Waste Designated Facilities of the Solid Waste System and to Remove Riverbend Landfill pursuant to Metro Code Chapter 5.05 [RES 19-5021](#)  
Presenter(s): Hila Ritter, Metro  
Attachments: [Resolution No. 19-5021](#)  
[Exhibit A to Resolution No. 19-5021](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)

## 6. Ordinances (Second Reading)



- 6.1 Ordinance No. 19-1438, For the Purpose of Amending Metro Code Chapter 5.00 to Update Certain Terms and Definitions [ORD 19-1438](#)

Attachments: [Ordinance No. 19-1438](#)  
[Exhibit A to Ordinance No. 19-1438](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)

- 6.2 Ordinance No. 19-1439, For the Purpose of Updating Metro Code Chapter 5.02 to Improve Clarity, Removed Outdated Sections and Remove Sections Related to Metro Transfer Station Fees [ORD 19-1439](#)

Attachments: [Ordinance No. 19-1439](#)  
[Exhibit A to Ordinance No. 19-1439](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)

- 6.3 Ordinance No. 19-1440, For the Purpose of Establishing a New Metro Code Chapter 5.03 that Governs Solid Waste Fees at Metro Transfer Stations [ORD 19-1440](#)

Attachments: [Ordinance No. 19-1440](#)  
[Exhibit A to Ordinance No. 19-1440](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)  
[Attachment 2 to Staff Report](#)

- 6.4 Ordinance No. 19-1441, For the Purpose of Establishing a New Metro Code Chapter 5.08 that Governs Administrative Rulemaking Authority for Metro Code Title V [ORD 19-1441](#)

Attachments: [Ordinance No. 19-1441](#)  
[Exhibit A to Ordinance No. 19-1441](#)  
[Staff Report](#)  
[Attachment 1 to Staff Report](#)

**7. Chief Operating Officer Communication**

**8. Councilor Communication**

**9. Adjourn**

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### សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬស្នើសុំទទួលបានកាតបណ្តឹងរើសអើងសូមចូលទស្សនាគេហទំព័រ [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights)។ បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទមកលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ ថ្ងៃធ្វើការ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

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**PLEASE NOTE:** Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times. Agenda items may not be considered in the exact order. For questions about the agenda, call the Metro Council Office at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement and Legislative Coordinator to be included in the meeting record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement and Legislative Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site [www.oregonmetro.gov](http://www.oregonmetro.gov) and click on public comment opportunities.

Agenda Item No. 2.1

**Resolution No. 19-5054**, For the Purpose of Approving  
and Authorizing the Execution of the Second Amended and  
Restated Visitor Facilities Intergovernmental Agreement  
*Resolutions*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AND	)	RESOLUTION NO. 19-5054
AUTHORIZING THE EXECUTION OF THE	)	
SECOND AMENDED AND RESTATED	)	Introduced by Interim Chief Operating Officer
VISITOR FACILITIES INTERGOVERNMENTAL	)	Andrew Scott in concurrence with Council
AGREEMENT		President Lynn Peterson

WHEREAS, Metro owns and/or operates the Oregon Convention Center (OCC), the Portland Exposition Center (Expo) and the Portland's Centers for the Arts (P's) with the expertise and oversight of the Metropolitan Exposition and Recreation Commission (MERC); and

WHEREAS, on January 31, 2001, Metro, City of Portland and Multnomah County entered into the Visitor Facilities Intergovernmental Agreement ("VF IGA") to support regional tourism and spectator facilities, the visitor and hospitality industry and to maximize the economic development benefits associated with visitor facilities, programs and services; and

WHEREAS, the VF IGA facilitates the funding of visitor facilities and on-going marketing and tourism programs in the region through the collection and distribution of transient lodging tax and vehicle surcharges; and

WHEREAS, the VF IGA was subsequently amended in October 2013, to, among other things, reflect updated priorities and needs of the region's visitor facilities and tourism promotion programs, including a mechanism to provide funding for a convention center hotel; and

WHEREAS, in February of 2018, Metro, City and County staff, working in partnership with representatives of the tourism industry, began preparing another thorough set of revisions to the VF IGA, the general purpose of which was to maintain resilient funding reserves, provide adequate funding for the visitor development fund, maintain vital and competitive tourism facilities, and improve conditions for the community and people experiencing homelessness to help Portland remain a desirable destination; and

WHEREAS, Metro staff has negotiated terms and conditions of a revised intergovernmental agreement that achieve the foregoing stated goals and purposes; now therefore,

BE IT RESOLVED that the Metro Council hereby authorizes the Metro Council President to execute the Second Amended and Restated Visitor Facilities Intergovernmental Agreement, in a form substantially similar to the one attached hereto as Exhibit A.

ADOPTED by the Metro Council this 21 day of November, 2019.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney

**SECOND AMENDED AND RESTATED  
VISITOR FACILITIES  
INTERGOVERNMENTAL AGREEMENT**

This Second Amended and Restated Visitor Facilities Intergovernmental Agreement (“Agreement”), dated for reference purposes as of December 5, 2019, is made among the City of Portland (“City”), Multnomah County (“County”), and Metro (each individually, a “Party” and collectively, the “Parties”), and will be in effect from the latest date of signature.

**RECITALS**

- A. The purposes of this Agreement are to support regional visitor facilities and develop the visitor industry in the Portland metropolitan area. The Parties have entered into this Agreement and related agreements to continue supporting and enhancing regional tourism; convention, exhibition, spectator, and arts and cultural facilities; the visitor and hospitality industry; and to maximize the economic development benefits associated with visitor facilities, programs and services for the Portland metropolitan area. This Agreement and the Visitor Facilities Trust Account (“VFTA”) provide additional support necessary to complement programs, investments and contributions made by all Parties for the health of our community and in support of visitor development.
- B. The Parties entered into the original Visitor Facilities Intergovernmental Agreement, dated January 31, 2001 (“2001 Agreement”), to implement the understandings and agreements contained in that certain Memorandum of Understanding dated September 14, 1999. The Amended and Restated Visitor Facilities Intergovernmental Agreement, dated October 25, 2013 (“2013 Agreement”) made changes to funding priorities, added debt obligations that resulted in financing opportunities and efficiencies, revised programmatic services, and modified roles and responsibilities of the Parties. The 2013 Agreement superseded and fully replaced the 2001 Agreement. On May 15, 2019, the Parties entered into a First Amendment to Amended and Restated Visitor Facilities Intergovernmental Agreement, for the limited purpose of providing for funding of the acoustical shell replacement project at the Arlene Schnitzer Concert Hall from the VFTA.
- C. On or about April 26, 2001, the City, County and Metro entered into the Visitor Development Fund Services Agreement (“VDFS”) with the Visitor Development Fund, Inc., whose 15-member board includes two representatives from each of the City, County, and Metro, two members appointed by “Travel Portland” and seven members representing the hotel and car rental business sectors. The Parties intend to update and amend the VDFS to conform to this Agreement.
- D. The Parties recognize and wish to continue successful support of (i) regional efforts to bring visitors and conventions to the Portland metropolitan region, (ii) building, maintaining and operating essential visitor facilities, and (iii) increased economic benefits from travel and tourism in the region through both direct and indirect support for facilities, programs and services through the partnership embodied in this series of agreements, and are entering into this Agreement to further enhance the long-term public

and private sector efforts that have contributed to and promoted growth of the travel and tourism sector and the region's economy.

- E. The Parties recognize (i) it is appropriate to use allocations from the VFTA to fund construction projects for the development and redevelopment of essential visitor facilities, (ii) the details of such projects are likely to be developed over an extended period of time, and (iii) other public and private funding sources for such projects can be leveraged by a commitment of VFTA funds.
- F. The Parties recognize that historically, growth in transient lodging tax collections tend to exceed growth in the Consumer Price Index (CPI), and that by using the CPI to escalate certain VFTA allocations, the VFTA will tend, over time, to accumulate revenues in excess of expenses. The Parties further recognize that strategic opportunities, such as large-scale events and conventions, as well as the impacts of economic cycles cannot be predicted.
- G. The Parties recognize that the area's economic success has not been uniformly shared by the community and a vulnerable portion of the population has been negatively impacted by rapid increases in housing costs. An increased allocation from the VFTA as an additive source of funds to support the significant existing regional investments in affordable housing and supportive services to address the root causes of homelessness and its associated livability and safety concerns is appropriate, and will (i) improve conditions for the community and people experiencing homelessness, (ii) improve the visitor experience, and (iii) help Portland remain a desirable travel and tourism destination.
- H. Since 2013, the VFTA system has benefited from frequent and consistent financial review by a Financial Review Team. The parties now wish to add additional oversight and to expand the existing role of the Visitor Development Fund, Inc. Board to allow for adjustments to VFTA funding allocations in response to specified triggers, which is subject to dispute resolution, as described herein.
- I. The Parties recognize that successful development of the travel and tourism economic sector is dependent on the existence of high-quality facilities for convention, spectator, exhibition, and arts and cultural activities, and in order for the facilities and programs provided for in this Agreement to function in an economically viable manner, all the items included in this Agreement require funding. The loss of funding for any item may threaten the viability of all the other facilities, programs and services.
- J. Upon the Effective Date (defined below in Section 1), the Parties desire this Agreement to supersede and fully replace the 2013 Agreement, as it has been amended to date.

## **AGREEMENT**

### **1. DEFINITIONS**

"2001 Agreement" is defined in Recital B.

“2013 Agreement” is defined in Recital B.

“Additional OCC Operating Support” is defined in Section 3.3.6.

“Additional L&S Support Amount” is defined in Section 3.3.14.

“Administrative Fee” means the annual fee paid to the County as the VFTA trustee and for administering the VFTA. The fee is equal to 0.7% of the gross annual revenues deposited in the VFTA from all sources, and if applicable, costs incurred by the County to defend the VFTA Administrator or the County as the VFTA trustee against a claim that the funds collected or disbursed under this Agreement are unconstitutional or illegal, as long as such claim does not arise from a claim of County negligence or willful misconduct.

“Agreement” means this Second Amended and Restated Visitor Facilities Intergovernmental Agreement.

“Base Amount” is defined in Section 3.3.7.

“Beneficiaries” is defined in Section 3.2.

“Bonds” means, collectively, the Stadium Bonds, the OCC Bonds, the OCC Hotel Project Bonds, and VMC Renovation Bonds and Portland’s Renovation Bonds, if such bonds are issued in the future consistent with Sections 5.5, 5.6 or 6.3.

“Bond Redemption Reserve” is defined in Section 3.3.19.

“City CFO” means the Chief Financial Officer of the City of Portland.

“City 1% TLT” means the 1% transient lodging tax that the City is authorized to collect for the promotion of convention business and tourism under Portland City Charter Section 7-113.2 and Portland City Code Chapter 6.04, and which is a non-VFTA tax.

“City 5% TLT” means the 5% transient lodging tax that the City is authorized to collect for general purposes under Portland City Charter Section 7-113.1 and Portland City Code Chapter 6.04, and which is a non-VFTA tax.

“City Bonds” means, collectively, the Stadium Bonds, and the VMC Renovation Bonds and Portland’s Renovation Bonds, if such bonds are issued by the City in the future consistent with Sections 5.5, 5.6 or 6.3.

“Consolidation Agreement” means the Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District entered into by the City and Metro on December 19, 1989, as further amended in 1992, 2000 and 2013 (collectively, the “Consolidation Agreement”).

“County CFO” means the Chief Financial Officer of Multnomah County.



“Construction Cost Escalation” means the annual construction cost inflation for Portland as published by Engineering News Report.

“CPI” means the Consumer Price Index, Urban, All Consumers, West Region - Size Class A, or any successor index, as issued by the U.S. Department of Labor, Bureau of Labor Statistics.

“Dispute Resolution Committee” or “DRC” is defined in Section 8.1.1.

“Early Termination Date” is defined in Section 9.2.

“East County Cities” means Gresham, Troutdale, Fairview and Wood Village.

“Effective Date” means the date upon which the County adopts an ordinance amending Multnomah County Code Chapter 11 in a manner consistent with this Agreement.

“Escalated” is defined in Section 3.4.

“Excise Tax Fund TLT” or “ETF TLT” means the 3% transient lodging surcharge that the County collects under the authority of Multnomah County Code 11.401(D), and any successor Chapter pertaining to Revenue and Taxation, and is utilized to support specified facilities and programs including the OCC, P’5 and the Regional Arts and Cultural Council, and which is a non-VFTA tax.

“Expo” means the Portland Exposition Center, located Portland, Oregon owned and operated by Metro.

“Financial Review Team” or “FRT” is described in Section 7.2.

“Fiscal Year” or “FY” is defined as the twelve-month period beginning July 1 and continuing through June 30.

“General Reserve” or “GR” is defined in Section 3.3.18.

“Insufficient Funds” or “Insufficient Funding” means a majority of the FRT has found that VFTA resources are anticipated to be inadequate to meet the disbursement obligations and funding priorities set forth in Section 3.3 of the Agreement during the five (5) Fiscal Years immediately succeeding the date of the FRT report.

“Integrated Tax System Cost Recovery” as defined in Section 3.3.15.

“Metro CFO” means the Chief Financial Officer of Metro.

“Net Revenues” mean the collections (including delinquent interest and penalties) from (1) the VFTA TLT Surcharge; (2) the VFTA VRT Surcharge; (3) the SSTLTR (other than the portion attributable to the VFTA TLT Surcharge); and (4) earnings on amounts in the VFTA, less the Administrative Fee. Net Revenues does not include any amounts

required to pay refunds of surcharge taxes, including interest, or other charges required by state law.

“OCC” means the Oregon Convention Center located in Portland, Oregon, owned and operated by Metro.

“OCC Annual Budget” is defined in Section 3.3.6.1.

“OCC Bonds” means the City’s Limited Tax Revenue Bonds, 2001 Series B and Limited Tax Revenue Refunding Bonds, 2011 Series A and any bonds or debt obligations issued to refund those bonds, including refunding of such refunding bonds.

“OCC Capital Improvement Expenses” means the costs associated with renewal and replacement of existing assets, as well as investments in new capital projects, that enhance the marketability of the OCC and maintain its quality and competitiveness.

“OCC Hotel Project” means the privately owned and operated Hyatt Regency Portland at the Oregon Convention Center, scheduled to open in late-2019, which will (i) function as the lead hotel for national marketing and convention purposes, (ii) include the necessary meeting and ballroom facilities, and (iii) provide a dedicated room block agreement of 500 rooms for OCC events and conventions.

“OCC Hotel Project Bonds” means Metro’s Dedicated Tax Revenue Bonds, Series 2017 (Oregon Convention Center Hotel Project), and any bonds or debt obligations issued to refund those bonds, including refunding of such refunding bonds or debt obligations.

“OCC Operating Expenses” means all costs and expenses of operating the OCC during a given Fiscal Year, consistent with the purposes of this Agreement or in accordance with an OCC Annual Budget.

“OCC Operating Revenues” means, for any given Fiscal Year, the gross cash receipts received by the OCC with respect to operations of the OCC.

“Party” or “Parties” means the City of Portland, Multnomah County and Metro.

“P’5” means the Portland’s 5 Centers for the Arts, located in Portland, Oregon owned by the City and operated by Metro (formerly known as the Portland Center for the Performing Arts or PCPA), which includes the Arlene Schnitzer Concert Hall, the Ira Keller Auditorium and the Antoinette Hatfield Hall.

“P’5 Renovation Bonds” means bonds or other debt obligations that may be issued by the City or Metro to fund a major renovation project at the Portland’s 5 Centers for the Arts and any bonds or debt obligations issued to refund those bonds, including refunding of such refunding bonds or debt obligations.

“Restricted Reserve” or “RR” is defined as Section 3.3.16.

“Rose Quarter Facilities” means the Veterans Memorial Coliseum and the Rose Quarter properties owned by the City of Portland, by and through the Office of Management and Finance.

“Spectator Venues and Visitor Activities Fund Revenues” is defined in Section 5.3.2.

“SSTLTR” or “Site-Specific Transient Lodging Tax Revenues” means the transient lodging taxes collected from the users of the OCC Hotel Project based on the City 5% TLT and the Excise Tax Fund TLT, which are non-VFTA taxes, and the VFTA TLT Surcharge.

“Stadium” means Providence Park, located in Portland, Oregon, and owned by the City (formerly known as JELD-WEN Field, PGE Park and Civic Stadium).

“Stadium Bonds” means the City’s Limited Tax Revenue Bonds, 2013 Series A Refunding Bonds (Stadium Project) issued by the City to fund the Stadium improvements, and any bonds or debt obligations issued to refund those bonds, including any refunding of such refunding bonds or debt obligations.

“Strategic Plan” or “Visitor Development Strategic Plan” is defined in Section 7.4.

“Strategic Reserve” is defined in Section 3.3.17.

“Termination Date” is defined in Section 9.3.

“TLT Net Revenues” means the Net Revenues less the VFTA VRT Surcharge.

“Travel Portland” means the Oregon non-profit corporation organized for the primary purpose of promotion, solicitation, procurement and service of convention business and tourism for the Multnomah County area. Travel Portland was formerly known as Portland Oregon Visitors Association or POVA.

“Travel Portland CFO” means the Chief Financial Officer of Travel Portland.

“VDF” or “Visitor Development Fund” is defined in Section 3.3.10.

“VDFI” or “Visitor Development Fund, Inc.” means the non-profit corporation formed to budget for and administer the expenditure of certain VFTA allocations as described in this Agreement or the Visitor Development Fund Services Agreement.

“VDFI Board” means the duly appointed Board of Directors for VDFI, acting in accordance with the VDFSFA and the organization’s bylaws in exercising their responsibilities, including but not limited to decision-making and allocation of funds described in Sections 3.3.6, 3.3.7, 3.3.10 through 3.3.13, 3.3.17 and 7.2.

“VDFSFA” or “Visitor Development Fund Services Agreement” is defined in Recital C.

“VFTA” or “Visitors Facilities Trust Account” means the County tax account that (i) receives the VFTA TLT Surcharge collections, the VFTA VRT Surcharge collections, and the non-VFTA SSTLTR collections, and (ii) disburses Net Revenues and TLT Net Revenues to allocated disbursements as provided in this Agreement.

“VFTA Administrator” means the County CFO, or their designee.

“VFTA TLT Surcharge” is defined in Section 2.1 and is a VFTA tax.

“VFTA VRT Surcharge” is defined in Section 2.2 and is a VFTA tax.

“VFTA Fund Forecast” is defined in Section 4.3.3.

“VMC Renovation Bonds” means bonds or other debt obligations that may be issued by the City to fund a major renovation project at the Veterans Memorial Coliseum and any bonds or debt obligations issued to refund those bonds, including refunding of such refunding bonds or debt obligations.

“Year One” means Fiscal Year 2019-20.

## 2. FUNDING SOURCES AND COMMITMENTS

2.1. Multnomah County Code Chapter 11, Transient Lodging Tax Sections 11.400 through 11.499, or any successor Chapter pertaining to Revenue and Taxation, imposes a surcharge of 2.5% on the consideration charged for the occupancy of space in a hotel, as more fully defined in Multnomah County Code (the “VFTA TLT Surcharge”). The County will deposit the tax collections from the VFTA TLT Surcharge in the VFTA as provided in this Agreement.

2.2. Multnomah County Code Chapter 11, Motor Vehicle Rental Tax Sections 11.300 through 11.399, or any successor Chapter pertaining to Revenue and Taxation, imposes a surcharge of 2.5% on the fees and charges paid to a commercial establishment for the rental of a motor vehicle as more fully defined in Multnomah County Code (the “VFTA VRT Surcharge”). The County will deposit the tax collections from the VFTA VRT Surcharge in the VFTA until the OCC Bonds are paid or defeased, as provided in this Agreement.

2.3. The County will transfer the SSTLTR, as set forth in Multnomah County Code Chapter 11, Transient Lodging Tax Sections 11.400 through 11.499, or any successor Chapter pertaining to Revenue and Taxation, and described in Section 4.1.2 into the VFTA.

2.4. The City will transfer the SSTLTR as described in Section 5.4 to the County to be deposited into the VFTA.

**3. VISITOR FACILITIES TRUST ACCOUNT**

3.1. To implement this Agreement, the County has established the VFTA that is held separate from all other County funds. The County will deposit into the VFTA (i) the revenues described in Sections 2.1 through 2.4 immediately upon receipt, and (ii) the earnings on the amounts held in the VFTA and delinquent interest and penalties that are collected, periodically. The County CFO, as the VFTA Administrator, will disburse funds from the VFTA only as provided in this Agreement.

3.2. The “Beneficiaries” of the VFTA are:

- 3.2.1. The owners of the Bonds,
- 3.2.2. The City of Portland,
- 3.2.3. Metro,
- 3.2.4. The County, and
- 3.2.5. The Visitor Development Fund, Inc.

None of the Beneficiaries are intended third-party beneficiaries of the Agreement.

3.3. The Parties agree that each Fiscal Year, beginning in Year One and continuing until all Bonds are paid or defeased, the VFTA Administrator, after paying the Administrative Fee, refunds of surcharge taxes, including interest, and other charges required by state law, will apply funds in the VFTA solely for the purposes and in the order of priority described in Sections 3.3.1 through 3.3.18 and in accordance with the payment provisions of Section 4.2. Reimbursements are subject to the provisions of Sections 4.2.6 and 4.2.7.

For debt service payments on the Bonds, the order of priority is described in Sections 3.3.1 through 3.3.5. Payments described in Sections 3.3.1 through 3.3.5 will be made to the issuer of the Bonds, or their trustee or paying agent, not later than the dates that the Bonds’ respective legal documents require that payments be made to the trustee or paying agent for the Bonds. The payments described in Sections 3.3.1 through 3.3.5 will not be distributed pro rata.

To fund programs, services, operations, capital improvements, and marketing that support the purposes of this Agreement, the order of priority is described in Sections 3.3.6 through 3.3.15. Unless otherwise stated, allocations are as of Year One. Specified allocations are subject to being Escalated as defined in Section 3.4. The Parties acknowledge that the TLT Net Revenues are deemed allocated first to pay debt service payments on the Bonds.

For the purposes of creating and maintaining reserves, the order of priority in funding a Restricted Reserve (RR), Strategic Reserve (SR) and General Reserve (GR) are described in Sections 3.3.16 through 3.3.18.

DEBT SERVICE ALLOCATIONS

3.3.1. OCC Bonds. First, to the City, the amount necessary to pay scheduled debt service on the OCC Bonds (including any mandatory sinking fund or redemption payments), so long as OCC Bonds remain outstanding, and any amounts required to reimburse the City, as described in Section 4.2.6, for debt service it was required to pay from other sources in previous fiscal years in which insufficient funds were available in the VFTA to pay debt service when due on the OCC Bonds.

3.3.2. Stadium Bonds. Second, to the City, the VFTA portion of the Stadium Bond payment, as established in Section 5.3.1, to pay scheduled debt service on the Stadium Bonds (including any mandatory sinking fund or redemption payments), so long as Stadium Bonds remain outstanding, and any amounts required to reimburse the City, as described in Section 4.2.6, for debt service it was required to pay from sources other than Spectator Venues and Visitor Activities Fund Revenues in previous years in which insufficient funds were available in the VFTA to pay the VFTA portion of the debt service when due on the Stadium Bonds.

3.3.3. OCC Hotel Project Bonds. Third, to Metro, the amount necessary to pay scheduled debt service on OCC Hotel Project Bonds (including any mandatory sinking fund or redemption payments), so long as OCC Hotel Project Bonds remain outstanding and any amounts required to reimburse Metro, as described in Section 4.2.6, for debt service it was required to pay from other sources in previous fiscal years in which insufficient funds were available in the VFTA to pay debt service when due on the OCC Hotel Project Bonds.

3.3.4. VMC Renovation Bonds. Fourth, to the City, the amount necessary to pay scheduled debt service on VMC Renovation Bonds (including any mandatory sinking fund or redemption payments), if such bonds are issued as described in Section 5.5, so long as VMC Renovation Bonds remain outstanding and any amounts required to reimburse City, as described in Section 4.2.6, for debt service it was required to pay from other sources in previous fiscal years in which insufficient funds were available in the VFTA to pay debt service when due on the VMC Renovation Bonds.

3.3.5. Portland's Renovation Bonds. Fifth, to the City or Metro, the amount necessary to pay scheduled debt service on Portland's Renovation Bonds (including any mandatory sinking fund or redemption payments), if such bonds are issued as described in Section 5.6, so long as Portland's Renovation Bonds

remain outstanding and any amounts required to reimburse City or Metro, as described in Section 4.2.6, for debt service it was required to pay from other sources in previous fiscal years in which insufficient funds were available in the VFTA to pay debt service when due on the Portland's 5 Renovation Bonds.

#### FACILITY AND PROGRAM SUPPORT ALLOCATIONS

3.3.6. OCC Operating Support. Sixth, to Metro an amount not to exceed One Million, Four Hundred Twenty-Five Thousand Dollars (\$1,425,000), Escalated, for OCC Operating Support to maintain the OCC's competitiveness. An amount for "Additional OCC Operating Support" may also be requested by Metro annually prior to the Fiscal Year in which it will be paid. The amount of the Additional OCC Operating Support, if any, is subject to review by the Financial Review Team as described in Task 2A of Attachment A and approval by the VDFI Board with the concurrence of the Financial Review Team as described in Sections 3.3.6.1 through 3.3.6.4 and, may be referred to the dispute resolution process in Section 8 by the Financial Review Team as described in Section 3.3.6.5.

3.3.6.1. The Metro CFO will use best efforts to inform the VDFI Board and Financial Review Team by February 1<sup>st</sup> if a request for Additional Operating Support will be made for the following Fiscal Year. A request for Additional OCC Operating Support will be provided by the Metro CFO to the Financial Review Team no later than February 15<sup>th</sup>. The Financial Review Team will review the request and provide advice to the VDFI Board as described in Task 2A of Attachment A no later than March 5<sup>th</sup>. A request for Additional OCC Operating Support will include the proposed preliminary "OCC Annual Budget", which will set forth in reasonable detail (i) anticipated OCC Operating Revenues, anticipated amount of Excise Tax Fund TLT to be directed to OCC operations and the anticipated OCC Operating Support, described in Section 3.3.6, for that Fiscal Year, (ii) anticipated OCC Operating Expenses and any proposed OCC Capital Improvement Expenses, (iii) the amount requested for Additional OCC Operating Support, and (iv) any other information the Metro CFO wishes to provide.

3.3.6.2. No later than March 15<sup>th</sup>, the VDFI Board will convene to (i) consider the FRT recommendation(s) and (ii) take action, through a vote of its authorized membership, to (x) approve the Additional OCC Operating Support, (y) approve a portion of the Additional OCC Operating Support, or (z) deny the Additional OCC Operating Support, and, if Additional OCC Operating Support is approved, (iii) direct the VFTA Administrator to disburse the approved Additional OCC Operating Support.

3.3.6.3. The standards for the VDFI Board's decision will be whether approval of Additional OCC Operating Support in the specified amount will (i) fulfill the purposes of this Agreement and (ii) based on the advice of the Financial Review Team through their action in Task 2A, allow all obligations of this Agreement to be met.

3.3.6.4. Within five (5) business days of the VDFI Board meeting described in Section 3.3.6.2, the decision of the VDFI Board in Section 3.3.6.2 will be completed and reported, in writing, by the VDFI Board Administrator to the VFTA Administrator, the Financial Review Team, and the Parties.

3.3.6.5. If any Party disagrees with the decision of the VDFI Board, the matter is referred to dispute resolution as set forth in Section 8. The VFTA Administrator will initiate dispute resolution by providing notice, which must be given or delivered, as described in Section 10.2, to the Parties and the VDFI Board within five (5) business days. The notice will include the VDFI Board report described in Section 3.3.6.4 and any submitted Financial Review Team report(s).

3.3.6.6. If an amount for OCC Operating Support is approved, either through the process described in this Section 3.3.6 or a dispute resolution decision described in Section 8, then upon adoption by the Metro Council of an annual budget that includes Additional OCC Operating Support, the Metro CFO may transmit the adopted budget to the VFTA Administrator, who will pay the authorized amount for Additional OCC Operating Support from the VFTA, as provided in this Agreement.

3.3.6.7. At the end of any Fiscal Year in which the OCC Operating Support and Additional OCC Operating Support, if any, is not fully expended to meet obligations of the OCC Annual Budget, the remaining funds will be deposited by Metro in an OCC reserve fund dedicated for future capital or operational needs of the OCC. For approved Additional OCC Operating Support allocations that exceed \$500,000, the Metro CFO will provide the Financial Review Team and the VDFI Board with an end of Fiscal Year special report detailing the how such funds were used.

3.3.7. Livability and Safety Supportive Services. Seventh, to the County the amount of One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000), Escalated, (the "Base Amount") to fund services and programs for people experiencing homelessness, or who are at risk of becoming homeless, and services and programs addressing the community livability and safety concerns associated with homelessness. It is the intention of this Section 3.3.7 to add to the existing provision of services and programs for people experiencing homelessness or who are at risk of becoming homeless and services and programs addressing the community livability and safety concerns associated with homelessness



through increased funding to the Joint Office for Homeless Services, or any successor agency.

3.3.7.1. In FY 2023-24, the amount of Two Hundred Fifty Thousand Dollars (\$250,000) will be added to the Base Amount and the reset amount will be Escalated. The timing and amount of this increase will be subject to review by the Financial Review Team as described in Task 1 of Attachment A.

3.3.7.2. The Livability and Safety Support allocation set forth in this Section 3.3.7 will terminate and such payment from the VFTA will no longer be made to the County in the event Multnomah County Code Chapter 11, Motor Vehicle Rental Tax Sections 11.300 through 11.399, or any successor Chapter pertaining to Revenue and Taxation, is modified such that the VFTA VRT Surcharge is no longer imposed or the VFTA VRT Surcharge collections are no longer deposited in the VFTA.

3.3.8. Enhanced OCC Marketing Support. Eighth, to Metro, the amount of Five Hundred Thousand Dollars (\$500,000), Escalated, for enhanced convention center marketing.

3.3.9. Convention Visitor Public Transit Access. Ninth, to Metro, the amount of Five Hundred Thousand Dollars (\$500,000), Escalated, for convention center visitor public transit access.

3.3.10. Visitor Development Fund. Tenth, to VDFI, the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000), Escalated, to be deposited in the “Visitor Development Fund” (or “VDF”) as described in the VDFSFA for convention and tourism marketing purposes.

3.3.11. P’5 Operations Support. Eleventh, to Metro, for so long as Metro operates P’5, the amount of Seven Hundred Fifty Thousand Dollars (\$750,000), Escalated to fund operations, capital improvements and activities at P’5 facilities.

3.3.11.1. In FY 2023-24, this amount will reset to One Million Dollars (\$1,000,000), Escalated. The timing and amount of this increase will be subject to review by the Financial Review Team as described in Task 1 of Attachment A.

3.3.11.2. In FY 2028-29, this amount will reset to One Million Five Hundred Thousand Dollars (\$1,500,000), Escalated. The timing and amount of this increase will be subject to review by the Financial Review Team as described in Task 1 of Attachment A.

3.3.11.3. If the operation of the P’5 facilities are transferred to the City or other public or private entity, this allocation will transfer to that operator.

3.3.12. Rose Quarter Facilities and City Tourism Support. Twelfth, to the City, the amount of Five Hundred Seventy-Five Thousand Dollars (\$575,000), Escalated, to fund Rose Quarter Facilities operations and capital improvements, and other City activities supporting the purposes of this Agreement.

3.3.12.1. In FY 2028-29, this amount will reset to One Million Five Hundred Thousand Dollars (\$1,500,000), Escalated. The timing and amount of this increase will be subject to review by the Financial Review Team as described in Task 1 of Attachment A.

3.3.13. Portland Expo Center Operations Support. Thirteenth, to Metro, Five Hundred Seventy-Five Thousand Dollars (\$575,000), Escalated, to fund operations, capital improvements and activities at the Portland Expo Center.

3.3.13.1. In FY 2026-27 this amount will reset to Seven Hundred Fifty Thousand Dollars (\$750,000), Escalated. The timing and amount of this increase will be subject to review by the Financial Review Team as described in Task 1 of Attachment A.

3.3.13.2. In FY 2028-29, this amount will reset to One Million Five Hundred Dollars (\$1,500,000), Escalated. The timing and amount of this increase will be subject to review by the Financial Review Team as described in Task 1 of Attachment A.

3.3.14. Additional Livability and Safety Supportive Services. Fourteenth, to the County an “Additional L&S Support Amount” as described in Sections 3.3.14.1 through 3.3.14.5, to fund services and programs for people experiencing homelessness, or who are at risk of becoming homeless, and services and programs addressing the community livability and safety concerns associated with homelessness. It is the intention of this Section 3.3.14 to add to the existing provision of services and programs for people experiencing homelessness or who are at risk of becoming homeless and services and programs addressing the community livability and safety concerns associated with homelessness through increased funding to the Joint Office for Homeless Services, or any successor agency.

3.3.14.1. For FY 2019-20, an Additional L&S Support Amount equal to the difference between the Base Amount and Two Million Five Hundred Thousand Dollars (\$2,500,000) will be disbursed.

3.3.14.2. For FY 2020-21, an Additional L&S Support Amount equal to the difference between the Base Amount and Two Million Five Hundred Thousand Dollars (\$2,500,000) will be disbursed.

3.3.14.3. For FY 2021-22, an Additional L&S Support Amount equal to the difference between the Base Amount and Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) will be disbursed.

3.3.14.4. For FY 2022-23, an Additional L&S Support Amount equal to the difference between the Base Amount and Three Million Seven Hundred Seventy-Five Thousand Dollars (\$3,775,000) will be disbursed.

3.3.14.5. Beginning in FY 2023-24, and continuing annually thereafter, an Additional L&S Support Amount equal to the difference between the Base Amount and Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000), Escalated, will be disbursed.

3.3.14.6. The Livability and Safety Support allocation set forth in this Section 3.3.14 will terminate and such payment from the VFTA will no longer be made to the County in the event Multnomah County Code Chapter 11, Motor Vehicle Rental Tax Sections 11.300 through 11.399, or any successor Chapter pertaining to Revenue and Taxation, is modified such that the VFTA VRT Surcharge is no longer imposed or the VFTA VRT Surcharge collections are no longer deposited in the VFTA.

3.3.15. Integrated Tax System Cost Recovery. Fifteenth, to the City an amount based on allocated costs, but not to exceed Two-Hundred Fifty Thousand Dollars (\$250,000), to fund a proportionate share of the annual cost of the City's Integrated Tax System ("ITS") platform to collect funds supporting the purposes of this agreement. The City shall report, in accordance with Section 7.1, a narrative describing the use of VFTA funds to fund a proportionate share of the annual cost of the City's ITS platform.

#### RESERVE ALLOCATIONS

3.3.16. Restricted Reserve. Sixteenth, to a "Restricted Reserve" (or "RR"), which funds will be reserved for use in making disbursements in future years if Net Revenues and TLT Net Revenues are insufficient to pay all disbursements required for Sections 3.3.1 through 3.3.15. The minimum amount to be established and maintained in the RR will be equal to one (1) times the maximum annual payments projected in the VFTA Fund Forecast to be expended for the required allocations in Sections 3.3.6 through 3.3.15 during the next five (5) Fiscal Years.

3.3.16.1. At the end of Year One, the Restricted Reserve will be fully funded at a level equal to one (1) times the maximum annual payments projected in the VFTA Fund Forecast to be expended for the required allocations in Sections 3.3.6 through 3.3.15 during the next five (5) Fiscal Years by transferring funds from the Bond Redemption Reserve to the Restricted Reserve.

3.3.17. Strategic Reserve. Seventeenth, to a "Strategic Reserve" (or "SR"), the difference between the balance of the Strategic Reserve at the end of each Fiscal Year and Two Million Dollars (\$2,000,000), or another amount as may be determined by the VDFI Board, as described below in Sections 3.3.17.8 through

3.3.17.9, or may be referred to the dispute resolution process in Section 8. The purpose of the Strategic Reserve is to fund large-scale events, conventions and other strategic opportunities that will create economic benefit and that require a financial commitment to gain agreement from the event sponsors, organizers or promoters to stage the event in Portland.

3.3.17.1. At the end of Year One, the Strategic Reserve will be fully funded by transferring Two Million Dollars (\$2,000,000) from the Bond Redemption Reserve to the Strategic Reserve.

3.3.17.2. The VDFI Board will establish guidelines, consistent with the terms of the Agreement, for the submission of requests for use of funds from the Strategic Reserve consistent with the purpose of the Strategic Reserve.

3.3.17.3. The VDFI Board will submit all requests for funds to the Financial Review Team at least twenty (20) business days prior to the date of the meeting at which the VDFI Board will consider the request. The Financial Review Team will review each request as described in Task 2B of Attachment A.

3.3.17.4. A request for funds from the Strategic Reserve will be subject to specific action by the VDFI Board, acting through a vote of its authorized membership and taking into consideration all submitted FRT recommendation(s) and report(s). Upon receipt of the Financial Review Team report(s) as described in Task 2B of Attachment A, the VDFI Board will convene within fifteen (15) business days and may (i) approve the request for the amount requested, (ii) reduce the amount and approve the request, or (iii) deny the request. Within five (5) business days of reaching their decision, the decision of the VDFI Board under this Section 3.3.17.4 will be reported in writing by the VDFI Board Administrator and transmitted to the Parties and the VFTA Administrator.

3.3.17.5. If, within five (5) business days of receipt of the VDFI Board decision, any Party objects to the decision of the VDFI Board, the matter is referred to dispute resolution in Section 8. The VFTA Administrator will initiate dispute resolution by providing notice, which must be given or delivered, as described in Section 10.2, to the Parties and the VDFI Board within five (5) business days of the Party's objection. The notice will include the VDFI Board report described in Section 3.3.17.4 and any submitted Financial Review Team report(s).

3.3.17.6. Upon approval of an allocation from the Strategic Reserve, whether such approval is through the process described in Sections 3.3.17.3 through 3.3.17.5 or through the dispute resolution process in Section 8, the VFTA Administrator will encumber within the Strategic Reserve the amount approved until the VDFI Board Administrator submits

a request for payment. The VFTA Administrator will make the disbursement within thirty (30) calendar days of receipt of the request for payment from the VDFI Board Administrator and will inform the Financial Review Team of such disbursement.

3.3.17.7. After the use of funds from the Strategic Reserve has been approved and paid by the VFTA Administrator, the Financial Review Team, as described in Task 2B of Attachment A, will recommend to the VDFI Board a plan for the restoration of funds to the Strategic Reserve, which may include restoration over multiple Fiscal Years and may include transferring funds from the General Reserve.

3.3.17.8. The VDFI Board will convene within twenty (20) business days of receipt of Financial Review Team report(s) under Task 2B of Attachment A, or by March 15<sup>th</sup>, whichever comes first, to consider and act upon the Financial Review Team's recommended plan to restore funds to the Strategic Reserve. Acting through a vote of its authorized membership, the VDFI Board will (i) take action consistent with the terms of the Agreement to (x) accept, (y) modify, or (z) reject the Financial Review Team recommended plan to restore funds to the Strategic Reserve, which may include restoration over more than one Fiscal Year and the use of funds in the General Reserve, and (ii) direct the VFTA Administrator to implement any approved plan. Within five (5) business days of reaching its decision, the decision of the VDFI Board under this Section 3.3.17.8 will be reported in writing by the VDFI Board Administrator and transmitted to the Parties and the VFTA Administrator.

3.3.17.9. If, within five (5) business days of receipt of the VDFI Board decision, any Party objects to the decision of the VDFI Board, the matter is referred to dispute resolution in Section 8. The VFTA Administrator will initiate dispute resolution by providing notice, which must be given or delivered, as described in Section 10.2, to the Parties and the VDFI Board within five (5) business days of the Party's objection. The notice will include the VDFI Board report described in Section 3.3.17.8 and any submitted Financial Review Team report(s).

3.3.17.10. After Year One, if the Restricted Reserve is not funded at the level described in Section 3.3.16, after transferring all funds in the General Reserve to the Restricted Reserve as described in Section 3.3.18, the VFTA Administrator will transfer funds from the Strategic Reserve to the Restricted Reserve to the extent necessary to fully fund the Restricted Reserve.

3.3.18. General Reserve. Eighteenth, to a "General Reserve" (or "GR"), which will be used to replenish the Restricted Reserve and Strategic Reserve or disbursed as directed by the VDFI Board as described in Sections 3.3.17.7 and

3.3.17.8 or Section 7.2.6, or by the Dispute Resolution Committee through dispute resolution in Section 8.

3.3.18.1. After Year One, if the Restricted Reserve is not funded at the level described in Section 3.3.16, the VFTA Administrator will transfer funds in the General Reserve to the Restricted Reserve to the extent necessary to fully fund the Restricted Reserve.

3.3.18.2. Upon approval by of the VDFI Board as described in Sections 3.3.17.7 and 3.3.17.8 or Section 7.2.6, or by the Dispute Resolution Committee through dispute resolution in Section 8, and a report of such decision being provided to the VFTA Administrator in writing, the VFTA Administrator will transfer funds in the General Reserve to the Strategic Reserve or disburse funds held in the General Reserve to the Parties or VDFI Administrator.

3.3.19. Bond Redemption Reserve. Established in the 2013 Agreement, the Bond Redemption Reserve was intended to be used to redeem Bonds prior to their stated maturity date and at their earliest optional redemption date. Funds held in the Bond Redemption Reserve at the end of Year One of this Agreement, will be transferred to the Restricted Reserve as described in Section 3.3.16.1 and the Strategic Reserve as described in Section 3.3.17.1, after which, any remaining funds in the Bond Redemption Reserve will be transfer to the General Reserve described in Section 3.3.18 and the Bond Redemption Reserve will be closed.

3.4. Allocations Subject to Being Escalated. “Escalated” means an annual increase to a stated amount based on the change in the CPI between the second half of the prior calendar year compared to the second half of the year immediately preceding the prior calendar year. For example, for Fiscal Year 2019-2020 (July 1, 2019 – June 30, 2020), each of the allocations will be multiplied by a fraction, the numerator of which is the CPI for the second half of 2018 (July 1 – December 31, 2018) and the denominator of which is the CPI for the second half of 2017 (July 1 – December 31, 2017). If the calculation described above is a negative number, Escalation for that Fiscal Year will be zero and the same amount disbursed the prior Fiscal Year will be disbursed in the next Fiscal Year for Escalated allocations. Escalation for all allocation amounts in Sections 3.3.6 through 3.3.14 begins in the Fiscal Year after Year One and continues annually thereafter unless otherwise stated. For any allocation amount that is reset to a new level, as described in in Sections 3.3.6 through 3.3.14, Escalation for the reset amount begins in the first Fiscal Year after the Fiscal Year in which the reset occurs. For example, Escalation of an allocation that increases in FY 2024-25 begins in FY 2025-26. The VFTA Administrator will calculate the Escalated amount for each Escalated allocation in Sections 3.3.6 through 3.3.14 at least one-hundred (100) calendar days prior to the start of each Fiscal Year.

**4. COUNTY OBLIGATIONS****4.1. Dedication of Net Revenues, TLT Net Revenues, and SSTLTR.**

4.1.1. The County acknowledges that the City and Metro have issued Bonds in reliance upon and secured fully or in part by the Net Revenues and TLT Net Revenues.

4.1.2. The County commits to deposit into the VFTA (i) the tax collections from the VFTA TLT Surcharge and the VFTA VRT Surcharge and (ii) the SSTLTR, once these tax collections are redirected to the VFTA by the City and County.

4.1.3. The County pledges the Net Revenues to pay the OCC Bonds. The pledge is valid and binding from April 1, 2000 and will remain in effect until the OCC Bonds are fully paid. The Net Revenues pledged are immediately subject to the lien of the pledge and that lien is, and will remain, superior to other claims and liens. The County's obligations under this Section 4.1.3 are limited solely to the Net Revenues and this Agreement is not "bonded indebtedness" within the meaning of Section 10, Article XI of the Oregon Constitution or as described in ORS 287A.105.

4.1.4. The County pledges the TLT Net Revenues to pay the Stadium Bonds, the OCC Hotel Project Bonds and, if they are issued as described in Sections 5.5, 5.6 or 6.4, the VMC Renovation Bonds and the P'5 Renovation Bonds in the order of priority established in Sections 3.3.1 through 3.3.5. The pledge is valid and binding from the date of the 2013 Agreement and will remain in effect until the Stadium Bonds, the OCC Hotel Project Bonds and, if they are issued as described in Sections 5.5, 5.6 or 6.4, the VMC Renovation Bonds and the P'5 Renovation Bonds are fully paid. The TLT Net Revenues pledged are immediately subject to the lien of the pledge, and, except as provided in Section 4.1.3, that lien is, and will remain, superior to other claims and liens. The County's obligations under this Section 4.1.4 are limited solely to the TLT Net Revenues and this Agreement is not "bonded indebtedness" within the meaning of Section 10, Article XI of the Oregon Constitution or as described in ORS 287A.105.

4.1.5. The City may assign the County's pledge of the Net Revenues for the benefit of the owners of the OCC Bonds.

4.1.6. The City may assign the County's pledge of the TLT Net Revenues for the benefit of the owners of the City Bonds and Metro may assign the County's pledge of the TLT Net Revenues for the benefit of the owners of the OCC Hotel Project Bonds, and the P'5 Renovations Bonds if they are issued by Metro consistent with Section 6.4.

4.1.7. The County may make further subordinate pledges of the 14.5% base vehicle rental taxes collected under Multnomah County Code 11.301(B), or any successor Chapter pertaining to Revenue and Taxation. Until the Bonds are paid

or defeased, the County will not grant any additional liens on the Net Revenues or TLT Net Revenues.

4.1.8. Pursuant to the authority of ORS 287A.325, the County hereby agrees that it will:

4.1.8.1. Maintain the VFTA TLT Surcharge and the VFTA VRT Surcharge in effect until the OCC Bonds have been paid or the County has transferred sufficient funds to the City to defease the OCC Bonds.

4.1.8.2. Maintain the VFTA TLT Surcharge and the Excise Tax Fund TLT in effect until all OCC Hotel Project Bonds have been paid or the County has transferred sufficient funds to Metro to defease the OCC Hotel Project Bonds.

4.1.8.3. Maintain the VFTA TLT Surcharge in effect until the Stadium Bonds have been paid or the County has transferred sufficient funds to the City to defease the Stadium Bonds and until VMC Renovation Bonds and/or P'5 Renovation Bonds, if such bonds are issued consistent with Sections 5.5 and/or 5.6, have been paid or the County has transferred sufficient funds to the City to defease VMC Renovation Bonds and/or P'5 Renovation Bonds or the County has transferred sufficient funds to Metro if they issue P'5 Renovation Bonds consistent with Section 6.4, to defease the P'5 Renovation Bonds.

4.2. Payment from the VFTA.

4.2.1. The County has established and will maintain a VFTA that complies with the terms of this Agreement.

4.2.2. After paying the Administrative Fee, refunds of surcharge taxes, including interest, and other charges required by state law, the VFTA Administrator will apply funds in the VFTA solely for the purposes and in the order of priority described in Sections 3.3.1 through 3.3.18.

4.2.3. The County will make payments (i) to the City for the OCC Bonds, Stadium Bonds, and VMC Renovation Bonds and P'5 Renovation Bonds, if such bonds are issued as described in Section 5.5 and 5.6, according to the established bond payment schedule, (ii) to Metro, or the bond trustee or paying agent, for the OCC Hotel Project Bonds and P'5 Renovation Bonds, if such bonds are issued as described in Section 6.4, according to the established bond payment schedule, (iii) to Metro quarterly, and (iv) to all other Beneficiaries at the end of each Fiscal Year in the amounts described in Sections 3.3.6 through 3.3.15.

4.2.4. The County will deposit into the reserves the amount required by Sections 3.3.16 through 3.3.18.



4.2.5. For each allocation amount in Section 3.3, if there are insufficient funds flowing into the VFTA to fully fund all allocations, the allocations will be funded from the Restricted Reserve in the same priority order stated in Section 3.3.

4.2.6. If there are insufficient funds in the VFTA in a Fiscal Year to pay the debt service allocations in Sections 3.3.1 through 3.3.5, the City or Metro will be reimbursed in subsequent Fiscal Years after the allocations in Sections 3.3.1 through 3.3.5 are paid for the current Fiscal Year and before allocations in Sections 3.3.6 through 3.3.15 are disbursed for the current Fiscal Year. Reimbursement amounts will be paid with interest. Interest on amounts to be paid under this section will be at the State of Oregon Local Government Investment Pool rate, determined as of the time of the reimbursement, for the time period beginning on the first day of the Fiscal Year following the date in which the payment requiring reimbursement was outstanding and continuing until the reimbursement payment date.

4.2.7. If there are insufficient funds in the VFTA in a Fiscal Year to pay the allocation in Section 3.3.15, the City will be reimbursed in subsequent Fiscal Years after the allocations in Sections 3.3.1 through 3.3.5 are paid for the current Fiscal Year and after any reimbursement described in Section 4.2.6 is paid, but before allocations in Sections 3.3.6 through 3.3.15 are disbursed for the current Fiscal Year. Reimbursement amounts will be paid with interest. Interest on amounts to be paid under this section will be at the State of Oregon Local Government Investment Pool rate, determined as of the time of the reimbursement, for the time period beginning on the first day of the Fiscal Year following the date in which the payment requiring reimbursement was outstanding and continuing until the reimbursement payment date. Except for the debt service allocations in Sections 3.3.1 through 3.3.5 and the allocation described in Section 4.2.7, no other allocation in this Agreement will be eligible for reimbursement in the event of insufficient funds.

4.3. The powers and duties of the County as the VFTA Administrator are as follows:

4.3.1. The VFTA Administrator will maintain records regarding aggregate tax receipts and the calculation of the VFTA revenues and make those records available to the Beneficiaries upon request.

4.3.2. The VFTA Administrator will make an annual accounting of the VFTA and provide that accounting to the Financial Review Team, the VDFI Board and the Parties and will make that accounting available for review by the City Auditor, the County Auditor and the Metro Auditor.

4.3.3. The VFTA Administrator will prepare an annual forecast of projected income and expenses for the VFTA through the life of this Agreement (the “VFTA Fund Forecast”) and provide that forecast to the Financial Review Team, the VDFI Board Administrator and the Parties, and to the Beneficiaries, upon their request.

4.3.4. No later than forty-five (45) calendar days after the end of each quarter, the VFTA Administrator will prepare a report of the prior quarter's VFTA revenues in comparison to VFTA revenues for the same quarter in the prior year and provide that report to the Financial Review Team, the VDFI Board and the Parties.

4.3.5. The County will exercise the rights and powers vested in it by this Agreement and use the same degree of care and skill as a prudent person would exercise or use under the circumstances.

4.3.6. The County may rely upon any certificate from a Beneficiary reasonably believed by the County to be genuine and correct, and reasonably believed by the County to have been signed or sent by the City or Metro authorized representative.

4.3.7. The County will not be answerable for other than its negligence or willful misconduct in the performance of its powers and duties under this Agreement.

4.3.8. This Agreement does not require the County to expend or risk its own funds (other than the Net Revenues or TLT Net Revenues) or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of its rights or powers, if the County has reasonable grounds for believing that repayment of such funds, or in the alternative, indemnity satisfactory to it against such expense, risk or liability, is not reasonably assured to it.

4.3.9. Any moneys held as part of the VFTA will be invested or reinvested by the County in legally authorized investments and administered according to the County's investment policy. All proceeds of such investments will be deposited into and become part of the VFTA.

4.4. The County will not take any action, or fail to take any action, that would cause any tax-exempt Bonds, either existing tax-exempt Bonds or new tax-exempt debt obligations contemplated in this Agreement, to lose federal tax-exempt status and be deemed federally taxable. The County will indemnify the Parties for any costs incurred by the Parties from County action, or failure to take action, that causes the tax-exempt Bonds, either existing tax-exempt Bonds or any new tax-exempt debt obligations contemplated in this Agreement, to lose federal tax-exempt status and be deemed federally taxable.

## **5. CITY OBLIGATIONS**

5.1. The City has issued limited tax revenue bonds, secured by the City's full faith and credit and amortized over a period not to exceed 30 years from the original date of the 2001 Agreement (January 31, 2001), as follows:

5.1.1. The OCC Bonds, dated February 13, 2001, in the amount of \$99,998,888.25 and as subsequently refunded, including the costs of issuance; and

5.1.2. The Stadium Bonds, dated May 15, 2001, in the amount of \$35,000,000 and as subsequently refunded, including costs of issuance.

5.2. The City issued the OCC Bonds conditioned on the VFTA TLT Surcharge and the VFTA VRT Surcharge, the creation of the VFTA, and the County's dedication of the tax collections from the VFTA TLT Surcharge and the VFTA VRT Surcharge to the VFTA. The City issued the Stadium Bonds conditioned on the VFTA TLT Surcharge, the creation of the VFTA, and the County's dedication of the tax collections from the VFTA TLT Surcharge to the VFTA.

5.3. So long as Stadium Bonds are outstanding and are not refunded prior to their maturity:

5.3.1. The debt service on the Stadium Bonds will be apportioned between the City and VFTA as follows:

Fiscal Year	City Portion of Stadium Bond Payment	VFTA Portion of Stadium Bond Payment
FY 2019-20	\$ 1,839,441.40	\$ 1,197,445.50
FY 2020-21	\$ 1,913,019.05	\$ 1,123,839.45
FY 2021-22	\$ 1,989,539.81	\$ 1,049,412.69
FY 2022-23	\$ 2,069,121.41	\$ 204,883.99

5.3.2. The City will pay its portion of the debt service on the Stadium Bonds from resources of the City's Spectator Venues and Visitor Activities Fund (the "Spectator Venues and Visitor Activities Fund Revenues").

5.3.3. The City will calculate and provide directly to the VDFI Board Administrator the amount of any VFTA TLT Surcharge the City estimates to have been collected within East County Cities in the prior Fiscal Year that was applied to pay debt service on the Stadium Bonds. This amount will be administered by the VDFI Board for visitor development programs, services or projects that benefit the East County Cities.

5.4. Beginning the first Fiscal Year SSTLTR is generated by the OCC Hotel Project, the City will transfer funds equal to the SSTLTR attributable to the City 5% TLT, and collected pursuant to Portland City Code Chapter 6.04, to the County to deposit in the VFTA, and continuing for the duration that the OCC Hotel Project Bonds remain outstanding.

5.5. The City intends to issue VMC Renovation Bonds as follows:

5.5.1. No sooner than January 1, 2021, in support of a project to renovate the Veterans Memorial Coliseum, the City intends to issue, in one or more series of bonds or debt obligations, VMC Renovation Bonds, which will be bonds or other

debt obligations expected to provide total net proceeds of not more than Forty Million Dollars (\$40,000,000), escalated using Construction Cost Escalation for each Fiscal Year from Year One until the year of initial debt issuance, to fund the proposed renovation project.

5.5.2. If the City establishes the parameters of the project by December 31, 2027, and thereafter issues VMC Renovation Bonds, the VMC Renovation Bonds may be secured in part or in whole by TLT Net Revenues and will be repaid over a period not to exceed twenty-one (21) years from the date of issuance of each respective series of VMC Renovation Bonds issued. The City will consider financing options that minimize the financial impact of debt service payments on TLT Net Revenues, including the use of full faith and credit bonds, subject to decision by the Portland City Council, in their sole discretion.

5.5.3. At least forty-five (45) calendar days prior to issuing VMC Renovation Bonds, the City will submit the estimated bond debt service schedule to the Financial Review Team for review and verification as described in Task 3A of Attachment A. If the Financial Review Team verifies the debt service as described in Task 3A of Attachment A, the VFTA Administrator is authorized to disburse VFTA funds for the VMC Renovation Bonds debt service payments. If the FRT indicates changes are needed, the City may resubmit a revised estimated bond debt service schedule.

5.5.4. Twice each year, no later than February 15<sup>th</sup> and September 15<sup>th</sup>, in all years before VMC Renovation Bonds are issued, the City will provide an update to the Financial Review Team on the status of its intent to issue VMC Renovation Bonds, including the expected timing of issuance and the estimated annual debt service.

5.6. The City intends to issue P'5 Renovation Bonds as follows:

5.6.1. No sooner than January 1, 2024, in support of a project to renovate the Portland's Centers for the Arts, the City intends to issue, in one or more series of bonds or debt obligations, P'5 Renovation Bonds, which will be bonds or other debt obligations expected to provide total net proceeds of not more than Forty Million Dollars (\$40,000,000), escalated using Construction Cost Escalation for each Fiscal Year from Year One until the initial year of debt issuance, to fund the proposed renovation project.

5.6.2. If the City establishes the parameters of the proposed project by December 31, 2030, and thereafter issues P'5 Renovation Bonds, the P'5 Renovation Bonds may be secured in part or in whole by TLT Net Revenues and will be repaid over a period not to exceed twenty-one (21) years from the date of issuance of each respective series of VMC Renovation Bonds issued. The City will consider financing options that minimize the financial impact of debt service payments on TLT Net Revenues, including the use of full faith and credit bonds, subject to decision by the Portland City Council, in their sole discretion.

5.6.3. At least forty-five (45) calendar days prior to issuing P'5 Renovation Bonds, the City will submit the estimated bond debt service schedule to the Financial Review Team for review and verification as described in Task 3A of Attachment A. If the Financial Review Team verifies the debt service as described in Task 3A of Attachment A, the VFTA Administrator is authorized to disburse VFTA funds for the P'5 Renovation Bonds debt service payments. If the FRT indicates changes are needed, the City may resubmit a revised estimated bond debt service schedule.

5.6.4. Twice each year, no later than February 15<sup>th</sup> and September 15<sup>th</sup>, in all years before P'5 Renovation Bonds are issued, the City will provide an update to the Financial Review Team on the status of the intent to issue P'5 Renovation Bonds, including the expected timing of issuance and the estimated annual debt service schedule.

5.6.5. If Metro issues P'5 Renovation Bonds as described in Section 6.4, the City will not also issue P'5 Renovation Bonds.

5.7. So long as OCC Bonds and City Bonds are outstanding, the City will, at least twelve (12) months prior to the optional redemption date of the OCC Bonds or the City Bonds, consider refunding opportunities and will consider the advice of the Financial Review Team, as described in Task 3B of Attachment A.

5.8. The City will not take any action, or fail to take any action, that would cause any of the Bonds, either existing tax-exempt Bonds or new tax-exempt debt obligations contemplated in this Agreement, if any, to lose federal tax-exempt status and be deemed federally taxable. The City will indemnify the Parties for any costs incurred by the Parties from City action, or failure to take action, that causes the tax-exempt OCC Bonds or new tax-exempt debt obligations contemplated in this Agreement, if any, to lose federal tax-exempt status and be deemed federally taxable.

## **6. METRO OBLIGATIONS**

6.1. Metro has issued the OCC Hotel Project Bonds secured by the TLT Net Revenues. Metro issued the OCC Hotel Project Bonds conditioned on the TLT Net Revenues, ETF TLTs, the creation of the VFTA and the County's dedication of the tax collections from the TLT Net Revenues to the VFTA.

6.2. So long as OCC Hotel Project Bonds are outstanding, Metro will, at least twelve (12) months prior to the optional redemption date of the OCC Hotel Project Bonds, consider refunding opportunities and will consider the advice of the Financial Review Team, as described in Task 3B of Attachment A, on refunding the OCC Hotel Project Bonds.

6.3. Metro may issue P'5 Renovation Bonds consistent with the limitations described in Sections 5.6.1 and 5.6.2, except that the bonds or other debt obligations may be repaid over a period not to exceed thirty (30) years. If Metro is considering issuing P'5

Renovation Bonds, they will provide updates to the Financial Review Team as described in Section 5.6.4. If Metro intends to issue P’5 Renovation Bonds, they will follow the procedure described in Section 5.6.3. If Metro issues P’5 Renovation Bonds, it will be no sooner than January 1, 2024, and they will follow the procedure described in Section 5.7. If the City issues P’5 Renovation Bonds as described in Section 5.6, Metro will not also issue P’5 Renovation Bonds.

6.4. Metro will not take any action, or fail to take any action, that would cause any of the Bonds, either existing tax-exempt Bonds or new tax-exempt debt obligations contemplated in this Agreement, if any, to lose federal tax-exempt status and be deemed federally taxable. Metro will indemnify the Parties for any costs incurred by the Parties from Metro action, or failure to take action, that would cause any of the Bonds, either existing tax-exempt Bonds or new tax-exempt debt obligations contemplated in this Agreement, if any, to lose federal tax-exempt status and be deemed federally taxable.

## 7. JOINT OBLIGATIONS OF CITY, COUNTY AND METRO

7.1. Reporting on use of VFTA funds. All entities receiving funds under Section 3.3.6 through 3.3.15 agree to the following reporting requirements and to provide to the VDFI Board and the Financial Review Team the following information:

7.1.1. No later than March 31<sup>st</sup> of each year, a detailed budget and work plan for each VFTA allocation expected in the next Fiscal Year including anticipated expenditures on specific line items or program categories and performance measures to assess outcomes.

7.1.2. No later than Sept 15<sup>th</sup> of each year, a summary financial statement for each VFTA allocation paid the prior Fiscal Year, including expenditures by specific line items or program categories, and a narrative describing the use of VFTA funds in the previous Fiscal Year, including a review of outcomes against stated performance measures.

7.2. Financial Review Team. The Parties and the VDFI, will establish and maintain a “Financial Review Team” (or “FRT”) charged with certain financial review responsibilities on an ongoing and as needed basis in order to actively monitor and manage VFTA resources, and to advise the VFTA Administrator, the VDFI Board and the Dispute Resolution Committee on actions needed for accountable and efficient application of those resources to meet the purposes of this Agreement.

7.2.1. The Financial Review Team will be composed of three (3) voting members – the City CFO, the County CFO, the Metro CFO – and one (1) non-voting member – the Travel Portland CFO, so long as Travel Portland provides administrative services to the VDFI, or their respective assigned designees. The members will provide the VFTA Administrator with their contact information and the VFTA Administrator will convene the Financial Review Team as needed to meet timelines specified in this Agreement and Attachment A, providing notice to

the members at least ten (10) business days in advance of a meeting. Meetings may be held in person or by means of telephonic or electronic communications.

7.2.2. Attachment A to this Agreement specifies the tasks to be performed by the Financial Review Team including the intended action(s) to be taken, the timing and/or frequency for each task, and the deliverable(s) for each task. The level of authority delegated to the Financial Review Team is also specified for each task in Attachment A.

7.2.3. In making their recommendations and reports, the Financial Review Team will apply the criteria in Attachment A.

7.2.3.1. Except in situations herein where a majority recommendation of the FRT is required to take action, the FRT and its members in making their recommendations and reports on any Task in Attachment A, whether to the VFTA Administrator, the VDFI Board or the Dispute Resolution Committee, do not have to reach consensus or vote on a single recommendation but may instead make as many recommendations as are needed to fully describe the members' opinions or the range of options being recommended by the members.

7.2.3.2. If multiple Financial Review Team written recommendations or reports are made for any Task described in Attachment A, the Financial Review Team document memorializing their deliberations will: (i) include all recommendations and reports submitted by a FRT member, with each recommendation including a full description of the recommended action(s); and (ii) indicate which member(s) support each recommendation.

7.2.4. The role of the Financial Review Team is to provide financial analysis, advice and recommendations to the VFTA Administrator, the VDFI Board and the Dispute Resolution Committee. The Financial Review Team does not have the authority to change or amend any term or allocation of this Agreement. The Financial Review Team and its members individually may recommend amendments to this Agreement to the Parties, which amendments will only be implemented upon agreement, in writing, of the Parties.

7.2.5. As described in Task 1 of Attachment A, the Financial Review Team will perform periodic reviews of the VFTA cash flows and reserves and the VFTA Fund Forecast. At least once each year, no later than March 1<sup>st</sup>, the Financial Review Team will perform a prospective review of the VFTA, and at least once each year, no later than October 1<sup>st</sup>, the Financial Review Team will perform a retrospective review of the VFTA. The Financial Review Team reports of any and all reviews will be provided to the Parties and the VDFI Board Administrator.

7.2.6. As described in Task 1 of Attachment A, in the event of Insufficient Funding, if a majority of the members recommend that the VDFI Board take

action to adjust allocations in Sections 3.3.6 through 3.3.15 to address the anticipated shortfall, the VDFI Board will convene within twenty (20) business days of receipt of the Financial Review Team report or by March 15<sup>th</sup>, whichever comes first.

7.2.6.1. In considering whether to take action related to Insufficient Funding, the standards for the VDFI Board's decision will be based on the FRT recommendation(s) and the purposes of this Agreement.

7.2.6.2. To address Insufficient Funding, the VDFI Board, through a vote of its authorized membership, may take one or more of the limited actions set forth in Section 7.2.6.3 to address the expected amount and timing of potential disbursement shortfalls and to minimize risk to the holders of City and Metro bonds that bond payments might not be made from the VFTA, and then direct the VFTA Administrator to make disbursements consistent with VDFI Board action, as described below.

7.2.6.3. The VDFI Board may take one or more of the following limited actions: (i) apply pro rata reductions to all allocations in Sections 3.3.6 through 3.3.15; (ii) delay scheduled allocation escalations and/or increases for all of the allocations in Sections 3.3.6 through 3.3.15; (iii) delay the issuance of the VMC Renovation Bonds or the P'5 Renovation Bonds; and/or (iv) affirmatively allow the disbursements to be made at their regularly scheduled amounts as set forth in Section 3.3, with no reduction or delays. Provided, however, the VDFI Board may not recommend delaying the issuance of the VMC Renovation Bonds or the P'5 Renovation Bonds until after Fiscal Year 2022 and may only recommend delaying the issuance of such bonds one time. If there is an executed term sheet, development agreement or any other agreement detailing the general terms for a project to be funded by VMC Renovation Bonds or P'5 Renovation Bonds, the issuance shall not be delayed. Any VDFI Board action taken to reduce or delay allocations to address Insufficient Funding will only be in effect for the following Fiscal Year, after which the allocations will automatically reset to the regularly scheduled amounts.

7.2.6.4. The decision of the VDFI Board in Section 7.2.6.1 will be reported in writing by the VDFI Board to the VFTA Administrator and the Parties within five (5) business days. Any Party has five (5) business days of receipt of the VDFI Board decision to notify the VFTA Administrator of its objection to the decision of the VDFI Board, following which the VFTA Administrator will initiate dispute resolution in accordance with Section 8. The VFTA Administrator will provide notice of the dispute to all Parties, as well as copies of the relevant VDFI Board findings described in Section 7.2.6.1. If no Party objects to the VDFI Board



decision within the five (5) business day period, the VDFI Board decision is final.

7.2.7. In an event of Insufficient Funding, if a majority of the Financial Review Team makes a recommendation to the VDFI Board in accordance with Section 7.2.6 and the VDFI Board does not take action within forty-five (45) calendar days of receipt of the Financial Review Team report, or June 1<sup>st</sup>, whichever comes first, then the VFTA Administrator will automatically initiate the dispute resolution process set forth in Section 8. If a VDFI Board decision (or in the event of VDFI Board inaction, a Financial Review Team recommendation) is referred to dispute resolution and the Dispute Resolution Committee does not take action by June 15<sup>th</sup> to address the Insufficient Funding, the VFTA Administrator will reset all allocations in Sections 3.3.6 through 3.3.15 to the Year One amounts for the next Fiscal Year, after which the allocations will automatically reset to the regularly scheduled amounts.

7.3. Visitor Development Strategic Plan. In early 2017, the Parties and the VDFI Board began working together to prepare a Visitor Development Strategic Plan (“Strategic Plan”) to provide general direction for the future use of VFTA funds in support of tourism and the convention industry to maximize the economic benefits for the Portland metropolitan area. Based on that certain Letter of Agreement dated May 11, 2018, signed by the Parties, the Parties and the VDFI Board will work together to complete the Strategic Plan no later than June 30, 2026. Consideration of the Strategic Plan and its subsequent updates will be by the VDFI Board at their next regularly scheduled meetings. Once a Strategic Plan is developed and approved, the Parties and the VDF Board will use their best efforts to update the Strategic Plan at least every five (5) years for as long as this Agreement is in effect.

7.4. The Parties agree to convene to review this Agreement periodically. Beginning on July 1, 2024, any Party may request the Parties convene to consider amendments to this Agreement. If a request to consider amendments is made, the Parties will agree to convene and, in a timely manner, will assign adequate staff resources, establish a schedule for negotiations and participate in the negotiations in good faith. The Parties further agree that if any term or provision of this Agreement or its application to any Party or circumstance is found to be to any extent invalid or unenforceable, as described in Section 10.11, the Parties will immediately convene to review this Agreement and consider if amendments are warranted.

7.5. The Parties will provide written notice to the VDFI Board sixty (60) calendar days in advance of amending this Agreement. The notice will include an explanation, with reasonable particularity, of the proposed amendment and, if available, a copy of the proposed amendment.

## **8. DISPUTE RESOLUTION**

8.1. For specified sections of this Agreement, the VFTA Administrator and any Party may initiate the following dispute resolution process.

8.1.1. The City Mayor, the County Chair and the Metro Council President, or their designees, will be the “Dispute Resolution Committee” (or “DRC”).

8.1.2. The VDFI Board will be a party to and allowed to participate in the dispute resolution process, although it will not have a voting member on the Dispute Resolution Committee.

8.1.3. The VFTA Administrator will give written notice consistent with Section 10.2 to the Parties and the VDFI Board. The notice will identify the dispute for which the dispute process is initiated and include the reports specified in the applicable sections.

8.1.4. The VFTA Administrator will be responsible for convening the Dispute Resolution Committee meeting, which may be held in person or by means of telephonic or electronic communications and will provide the written report of the Dispute Resolution Committee decision.

8.1.5. Within ten (10) business days of the notice, each party may submit a written statement to the VFTA Administrator stating the party’s position on the dispute and the VFTA Administrator will provide the statements and all other relevant materials to the Dispute Resolution Committee and the VDFI Board Administrator at least ten (10) business days before the Dispute Resolution Committee meeting.

8.1.6. Within thirty (30) calendar days of the date the initiating notice was sent, the Dispute Resolution Committee will meet and decide on a resolution of the dispute. Decisions of the Dispute Resolution Committee will be by majority vote. The City, the County and Metro will be entitled to vote on the matter and will not be deemed conflicted out of the decision.

8.1.7. In making their decisions, the Dispute Resolution Committee will consider the purposes of this Agreement, the criteria applied by the Financial Review Team or the VDFI Board as described in this Agreement, and other information presented to them by the Parties or the Board.

8.1.8. The Dispute Resolution Committee has the same range of options available to the VDFI Board as set forth in Section 7.2.6.3 to adjust allocations. If the VDFI Board decision (or in the case of VDFI Board inaction, a Financial Review Team recommendation) is referred to dispute resolution and the Dispute Resolution Committee does not take action and provide a written decision by June 1<sup>st</sup>, the VFTA Administrator will take the action described in Sections 7.2.7 to address the Insufficient Funding.

8.1.9. The Dispute Resolution Committee’s decision will be prepared by the VFTA Administrator, in writing, and reviewed by the Dispute Resolution Committee members prior to completion. The Dispute Resolution Committee’s written decision will be provided to the Parties and the VDFI Board within ten

(10) business days of the Dispute Resolution Committee meeting described in Section 8.1.6. Decisions of the Dispute Resolution Committee are final.

**9. TERMINATION AND REMEDIES**

9.1. The County's obligation to provide Net Revenues for the OCC Bonds will terminate when the OCC Bonds are fully paid or defeased and will end no later than June 1, 2030.

9.2. The County's obligation to provide TLT Net Revenues for the Stadium Bonds and OCC Hotel Project Bonds will terminate when the Stadium Bonds and OCC Hotel Project Bonds are fully paid or defeased and will end (i) no later than June 1, 2023, for the Stadium Bonds and (ii) no later than June 1, 2047, for the OCC Hotel Project Bonds. If the City or Metro does not issue VMC Renovation Bonds and/or P'5 Renovation Bonds, as described in Sections 5.5, 5.6 and 6.4, this Agreement will terminate when the Stadium Bonds and OCC Hotel Project Bonds are paid or defeased (the "Early Termination Date"), and this Agreement may be extended beyond the Early Termination Date by agreement of the Parties.

9.3. If the City or Metro issues VMC Renovation Bonds and/or P'5 Renovation Bonds consistent with Sections 5.5, 5.6 and 6.4, neither this Agreement nor the imposition of the VFTA TLT will terminate until all Bonds are paid or defeased (the "Termination Date"), and this Agreement may be extended beyond the Termination Date by agreement of the Parties.

9.4. Notwithstanding Sections 8.1, all taxes subject to this Agreement that are imposed but not collected by the County until the OCC Bonds are fully paid or defeased, or June 30, 2030, whichever comes first, will be Net Revenues. Notwithstanding Sections 9.2 and 9.3, after the OCC Bonds are fully paid or defeased, all taxes subject to this Agreement that are imposed but not collected by the County on the Early Termination Date or the Termination Date will be TLT Net Revenues.

9.5. Before the Early Termination Date or Termination Date, this Agreement may only be terminated by the agreement in writing of all Parties.

9.6. So long as any of the OCC Bonds are outstanding and this Agreement is in effect, the obligations of the County to (i) collect the Net Revenue taxes imposed by Multnomah County Code Chapter 11, or any successor Chapter pertaining to Revenue and Taxation, and (ii) maintain the Net Revenues and transfer them to the City to pay the OCC Bonds, as provided in this Agreement, may not be terminated for any reason, including a breach by any Party of its obligations under this Agreement or any amendment to this Agreement.

9.7. So long as the City Bonds and OCC Hotel Project Bonds are outstanding, and this Agreement is in effect, the obligations of the County to (i) collect the TLT Net Revenue taxes imposed by Multnomah County Code Chapter 11, or any successor Chapter pertaining to Revenue and Taxation, and (ii) maintain the TLT Net Revenues and transfer

them to the City to pay the City Bonds and to Metro to pay the OCC Hotel Project Bonds, as provided in this Agreement, may not be terminated for any reason, including a breach by any Party of its obligations under this Agreement or any amendment to this Agreement.

9.8. When the OCC Bonds are fully paid or defeased, the County may terminate or modify the VFTA VRT Surcharge imposed by Multnomah County Code Chapter 11, or any successor Chapter pertaining to Revenue and Taxation. In the event the VFTA VRT Surcharge is terminated or modified as referenced in this Section 9.8, the Livability and Safety Support allocations, including both the Base Amount and the Additional L&S Support Amount, shall terminate as referenced in Sections 3.3.7.2 and 3.3.14.6.

9.9. Upon reaching the Early Termination Date or the Termination Date of this Agreement, the County may terminate or modify the VFTA TLT Surcharge imposed by Multnomah County Code Chapter 11, or any successor Chapter pertaining to Revenue and Taxation.

9.10. Disbursement of any funds remaining in the VFTA upon reaching the Early Termination Date or Termination Date of this Agreement will be determined by the Dispute Resolution Committee in their sole discretion.

**10. GENERAL PROVISIONS**

10.1. Maintenance of Records. All Parties will maintain records of payments made and funds received under this Agreement and such records are subject to audit and inspection by the other Parties.

10.2. Notice. A notice or communication under this Agreement by a Party to another Party will be sufficiently given or delivered if sent with all applicable postage or delivery charges prepaid by: (a) personal delivery; (b) sending a confirmed email copy (either by automatic electronic confirmation or by affidavit of the sender) directed to the email address of the Party set forth below; (c) registered or certified U.S. mail, return receipt requested; or (d) delivery service or “overnight delivery” service that provides a written confirmation of delivery, each addressed to a Party as follows

If to the City:                      City of Portland  
   Office of the Mayor  
   1221 S.W. Fourth Avenue, Room 340  
   Portland, Oregon 97204  
   Email: Ted.Wheeler@portlandoregon.gov  
   Phone No.: 503-823-4120

and

City of Portland  
OMF Bureau of Revenue and Financial Services  
1120 S.W. Fifth Avenue, Room 1204  
Portland, Oregon 97204  
Attn: Chief Financial Officer

**EXHIBIT A**

Email: michelle.kirby@portlandoregon.gov  
Phone No.: 503-823-6851

with copies to:

Spectator Facilities & Development Manager  
1120 S.W. Fifth Avenue, Room 1204  
Portland, Oregon 97204  
Attn: Spectator Venues Program Manager  
Email: SpectatorFacilities@portlandoregon.gov  
Phone No.: 503-823-6958

and

Office of the City Attorney  
City of Portland, Oregon  
1221 S.W. Fourth Avenue, 4th Floor  
Portland, Oregon 97204  
Attn: City Attorney  
Email: Tracy.Reeve@portlandoregon.gov  
Phone No.: 503-823-4047

If to the County:

Multnomah County  
Office of the County Chair  
501 N.E. Hawthorne Blvd., Suite 600  
Portland, Oregon 97214  
Email: mult.chair@multco.us  
Phone No.: 503-988-3308

and

Multnomah County  
Finance and Risk Management Division  
501 N.E. Hawthorne Blvd.  
Portland, Oregon 97214  
Attn: Chief Financial Officer  
Email: eric.arellano@multco.us  
Phone No.: 503-988-6718

with copies to:

County Attorney  
501 N.E. Hawthorne Blvd.  
Portland, Oregon 97214  
Attn: Jenny Madkour  
Email: jenny.m.madkour@multco.us  
Phone No.: 503-988-3138

If to Metro:

Metro  
Office of the Council President  
600 N.E. Grand Avenue.  
Portland, Oregon 97232  
Email: lynn.peterson@oregonmetro.gov  
Phone No.: 503-797-1700

and

Metro  
600 N.E. Grand Avenue.  
Portland, Oregon 97232  
Attn: Chief Financial Officer  
Email: Brian.Kennedy@oregonmetro.gov  
Phone No.: 503-797-1700

with copies to:

Office of Metro Attorney  
600 N.E. Grand Avenue  
Portland, Oregon 97232  
Attn: General Counsel  
Email: Carrie.MacLaren@oregonmetro.gov  
Phone No.: 503-797-1700

Notice to the VDFI Board will be sent to:

Travel Portland  
100 SW Main Street, Suite 1100  
Portland, Oregon 97204  
Attention: President -CEO  
Email: grants@VisitorsDevelopmentFund.com  
Phone No.: 503-275-9797

Each Party may, by notice to the other Party, specify a different address or confirmation number for subsequent notice purposes. Notices may be sent by counsel for a Party. Notice will be deemed effective on the earlier of actual delivery or refusal of a Party to accept delivery, provided that notices delivered by email will not be deemed effective unless simultaneously transmitted by another means allowed under this Section 10.2. For a notice to be effective, the copied persons must also be given notice.

10.3. Successors and Assigns; No Third-Party Beneficiaries. This Agreement will bind each Party, its successors, assigns and legal representatives. No Party, under any condition, may voluntarily assign or transfer its obligations to any third party. Any attempted assignment or transfer will be void. Nothing in this Agreement gives or provides any benefit or right to any non-Party unless such third-persons are individually identified by name in this Agreement and expressly described as intended “third-party beneficiaries” of this Agreement.

10.4. Adherence to Law. The Parties will adhere to all applicable federal and state laws in all activities under this Agreement.

10.5. Waivers. No waiver made by a Party with respect to performance, or the manner or time of performance, of any obligation of another Party or any condition under this Agreement will be considered a waiver of any other rights of the Party making the waiver or a waiver by any other Party. No waiver by a Party of any provision of this Agreement

will be of any force or effect unless in writing and no waiver will be construed to be a continuing waiver.

10.6. Time of the Essence. Time is of the essence of this Agreement.

10.7. Choice of Law and Forum. This Agreement will be construed in accordance with the laws of the State of Oregon and any action brought under this Agreement will be brought in Multnomah County, Oregon.

10.8. Amendment. This Agreement may only be amended by a writing signed by each of the Parties. No amendment to any provision of this Agreement may be implied from any course of performance, any acquiescence by any Party, any failure of any Party to object to another Party's performance or failure to perform, or any failure or delay by any Party to enforce its rights.

10.9. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting its provisions.

10.10. Counterparts; Electronic Transaction. This Agreement may be executed in counterparts, each treated as an original, and the counterparts will constitute one document. The Parties agree that they may conduct this transaction, including any amendments or extension, by electronic means including the use of electronic signatures and facsimiles.

10.11. Severability. If any term or provision of this Agreement or its application to any Party or circumstance will to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to such Party or circumstance other than those as to which it is held invalid or unenforceable will not be affected, and each term or provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

10.12. Construction and Interpretation. To the extent consistent with the context, words in the singular will include the plural, words in the masculine gender will include the feminine gender and the neuter, and vice versa. All provisions of this Agreement have been negotiated at arm's length, and this Agreement will not be construed for or against any Party by reason of the authorship or alleged authorship of any provision of this Agreement.

10.13. Implementation and Effective Date. The Parties agree to take all actions and execute all documents necessary to effect the terms of this Agreement. This Agreement shall become effective on the Effective Date. If the County fails to amend the Multnomah County Code Chapter 11 in a manner consistent with this Agreement within three (3) months following the parties' full execution of this Agreement, this Agreement shall automatically terminate and be of no force and effect.

**CITY OF PORTLAND**

Approved as to form

\_\_\_\_\_  
Tracy Reeve  
City Attorney

\_\_\_\_\_  
Ted Wheeler  
City of Portland Mayor

\_\_\_\_\_  
Date

**MULTNOMAH COUNTY**

Approved as to form

\_\_\_\_\_  
Jenny Madkour  
County Counsel

\_\_\_\_\_  
Deborah Kafoury  
Multnomah County Chair

\_\_\_\_\_  
Date

**METRO**

Approved as to form

\_\_\_\_\_  
Carrie MacLaren  
Metro Attorney

\_\_\_\_\_  
Lynn Peterson  
Metro Council President

\_\_\_\_\_  
Date



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**VISITOR FACILITIES INTERGOVERNMENTAL AGREEMENT  
ATTACHMENT A  
Financial Review Team Tasks and Responsibilities**

The purpose of the Financial Review Team (FRT) is defined in Section 7.2. The composition of the FRT and its convening are described in Section 7.2.1. Decision making for the FRT is described in Section 7.2.3 and allows the FRT to provide multiple recommendations to the VFTA Administrator, VDFI Board and Dispute Resolution Committee (DRC). Reports, recommendations or advice described in the tasks below that are required to be in writing will be transmitted, consistent with the notice provisions of Section 10.2, may be sent via email or another means allowed in Section 10.2. The FRT, or its members individually, may seek the advice from the City Economist, the County Economist and other financial professionals as they deem appropriate. All section references in this Attachment are to the Second Amended and Restated Visitor Facilities Intergovernmental Agreement (the “Agreement”) and defined terms in this Attachment, unless otherwise specified in this Attachment, have the same meaning as in the Agreement.

**Task 1 – Periodic review of VFTA cash flow and reserves and VFTA Fund Forecast per Section 3.5 and Advise VFTA Administrator, VDFI Board or the Parties as needed**

*Timing/Frequency:* The FRT will meet: (1) at least annually, no later than March 1st; (2) within fifteen (15) business days of receipt of the second consecutive quarterly revenue report described in Section 4.3.4 showing negative year-over-year revenue growth; (3) when the VFTA Administrator or other FRT member believes an event with the potential for significant negative impact on the travel and tourism economic sector has occurred; and/or (4) when the GR ending balance exceeds the required RR balance. Nothing precludes the FRT from meeting more frequently and any FRT member may request a review under this Task. Reviews may also be requested by any Party or the VDFI Board.

*FRT Action:* As provided in Section 7.2.5, and at the frequencies described above, the FRT will review VFTA cash flow and reserves and VFTA Fund Forecast to assess the sufficiency and capacity of the VFTA to fund all Agreement obligations and priorities in Sections 3.3.1 through 3.3.15, including bond issuances anticipated in Section 3.3.4 and 3.3.5, and the reserves in Sections 3.3.16 and 3.3.17 during the next five (5) Fiscal Years.

Information to be reviewed in making this assessment will include but is not limited to:

- Historical and projected funding adequacy to meet actual and planned disbursements
- The calculation of amounts required to be maintained in the RR and the adequacy of the RR, SR and GR ending balances to support the VFTA
- The adequacy of VFTA funding capacity, as shown in the VFTA Fund Forecast, compared to actual and planned VFTA funding priorities per Sections 3.3.1 through 3.3.15, including information provided by the City and/or Metro regarding bond issuance as described in Sections 5.5.4 and 5.6.4
- Prepayment and/or refunding possibilities for Bonds and examination of which Bonds would yield the most value to the VFTA system if prepayment or refunding were implemented
- The VFTA Fund Forecast and factors affecting, or projected to affect, the local and national economy, particularly those that influence the VFTA system revenues

*FRT Deliverables:* Within ten (10) business days of meeting, the Financial Review Team will provide a summary report, prepared by the VFTA Administrator in writing and reviewed by the FRT members, describing whether or not the VFTA funds and reserves are anticipated to be adequate to fulfill the allocations in Sections 3.3.1 through 3.3.15, including additional bond

issuances anticipated in Sections 3.3.4 and 3.3.5, and the reserve accounts in Sections 3.3.16 through 3.3.18 and provide that report to the Parties and the VDFI Board.

If a majority of the members of the FRT concur that the VFTA resources are expected to be adequate to meet the disbursement obligations and the priorities in Sections 3.3.1 through 3.3.15, including additional bond issuances anticipated in Sections 3.3.4 and 3.3.5, during the next five (5) Fiscal Years, no recommendation need to be included in the FRT report and the VFTA Administrator will disburse funds as described in the Agreement.

If the FRT has made a determination of Insufficient Funding (i.e., a majority of the FRT finds the VFTA resources are anticipated to be inadequate to meet the disbursement obligations and the priorities in Sections 3.3.1 through 3.3.15, including additional bond issuances anticipated in Section 3.3.4 and 3.3.5, during the next five (5) Fiscal Years), and a majority of the members recommend that action to be taken that address the potential shortfall, the FRT will document the expected amount and anticipated timing of potential disbursement shortfalls and will provide a report for consideration by the VDFI Board identifying one or more of the following recommended actions: (i) pro rata reductions to all allocations in Sections 3.3.6 through 3.3.15, (ii) a delay of scheduled allocation escalations and/or increases for all of the allocations in Sections 3.3.6 through 3.3.15, and/or (iii) a delay of the issuance of the VMC Renovation Bonds or the P'5 Renovation Bonds. The FRT's recommendation will be considered by the VDFI Board under Section 7.2.6.

If a review under this Task was triggered by two consecutive quarters of negative year-over-year growth in VFTA revenues, the FRT will provide a report, prepared by the VFTA Administrator in writing and reviewed by the FRT members, to the VDFI Board summarizing the FRT's findings, including the economic forecast factors to be monitored and the triggers for a subsequent review, if any. If a majority of the FRT recommends the VDFI Board consider an action under Section 7.2.6, the report will include a single FRT consensus recommendation or a plurality of recommendations, indicating which member(s) support each recommendation, and will be provided to the VDFI Board for consideration under Section 7.2.6.

The FRT may recommend to the VDFI Board that funds in the GR be used to redeem Bonds provided the FRT finds that VFTA resources are expected to be adequate to meet the disbursement obligations and the priorities in Sections 3.3.1 through 3.3.15 and the reserves in Sections 3.3.16 and 3.3.17 during the next five (5) Fiscal Years.

The FRT may provide periodic reporting to other relevant VFTA participants as needed. The FRT, or its members individually, may provide advice to the City Mayor, the County Chair, the Metro Council President and the VDFI Board on desired and appropriate adjustments to the VFTA that may require amendment to the Agreement.

**Task 2 – Recommendations on the adequacy of VFTA funds for certain allocations**

**Task 2A: Advise VDFI Board on requests for Additional OCC Operating Support per Sections 3.3.6.1. and 3.3.6.2.**

*Timing/Frequency:* If Metro intends to make a request for Additional OCC Support, no later than March 1<sup>st</sup> and at least five (5) business days prior to the VDFI Board meeting at which the request for Additional OCC Operating Support will be considered, as described in Sections 3.3.6.2.

*FRT Action:* Review VFTA cash flow and reserves and VFTA Fund Forecast and determine expected adequacy of VFTA funds to fulfill the allocations in 3.3.1 through 3.3.15, including bond issuances anticipated in Sections 3.3.4 and 3.3.5, and the reserve accounts in Sections 3.3.16 through 3.3.18. Provide advice to VDFI Board prior to their consideration of a request for

Additional OCC Operating Support per Section 3.3.6.1 or approving such request per Section 3.3.6.2.

Information to be reviewed in making this determination shall include, but is not limited to:

- Historical and projected funding adequacy to meet actual and planned disbursements
- The calculation of amounts required to be maintained in the RR and the adequacy of the RR, SR and GR ending balances to support the VFTA
- The adequacy of VFTA funding capacity, as shown in the VFTA Fund Forecast, compared to actual and planned VFTA funding priorities per Sections 3.3.1 through 3.3.15, including information provided by the City and/or Metro regarding bond issuance as described in Sections 5.5.4 and 5.6.4
- The VFTA Fund Forecast and factors affecting, or projected to affect, the local and national economy, particularly those that influence the VFTA system revenues

*FRT Deliverable:* Within ten (10) business days of meeting, the Financial Review Team will provide a summary report, prepared by the VFTA Administrator in writing and reviewed by the FRT members, to the Parties and the VDFI Administrator (i) describing whether or not the VFTA funds and reserves are anticipated to be adequate to cover all obligations of the Agreement and (ii) advising the VDFI Board whether approval of the request for Additional OCC Operating Support will allow all other obligations of the Agreement to be met. If a majority of the FRT agree on the recommendation for VDFI Board action, the FRT report will only include such recommendation. Otherwise, the FRT will provide a report detailing the recommendations of its members, indicating which member(s) support each recommendation.

Task 2B: Advise VDFI Board on (1) requests for use of SR funds under Section 3.3.17.4 and (2) restoration of SR fund level as described in 3.3.17.8.

*Timing/Frequency:* (1) Within ten (10) business days of receipt of a request from the VDFI Board for an allocation of funds from the SR. (2) Following approval of the use of funds from the SR and payment of such amount by the VFTA Administrator as described in Section 3.3.17.5. The specific timing of such review will be determined jointly by the VFTA Administrator and the VDFI Board Administrator but will be no later than the prospective annual review described in Task 1.

*FRT Action:* Review VFTA cash flow and reserves and VFTA Fund Forecast to (1) Advise the VDFI Board on the expected adequacy of VFTA funds to fulfill the allocations in Sections 3.3.1 through 3.3.15 and the level of the RR as described in Section 3.3.16 if the request is approved, and (2) Advise the VDFI Board on restoration of the SR level to the amount specified in Section 3.3.17.

Information to be reviewed in making this determination shall include, but is not limited to:

- Historical and projected funding adequacy to meet actual and planned disbursements
- The calculation of amounts required to be maintained in the RR and the adequacy of the RR, SR and ending balance to support the VFTA
- The adequacy of VFTA funding capacity, as shown in the VFTA Fund Forecast, compared to actual and planned VFTA funding priorities per Sections 3.3.1 through 3.3.15, including information provided by the City and/or Metro regarding bond issuance as described in Sections 5.5.4 and 5.6
- The VFTA Fund Forecast and factors affecting, or projected to affect, the local and national economy, particularly those that influence the VFTA system revenues

*FRT Deliverables:* (1) Within five (5) business days of meeting, the Financial Review Team will provide a summary report, to the Parties and the VDFI Administrator prepared by the VFTA Administrator in writing and reviewed by the FRT members, advising the VDFI Board whether or not the VFTA funds and reserves are anticipated to be adequate to fulfill the allocations in Sections 3.3.1 through 3.3.15 and the level of the RR, if the request is approved. The FRT may include a recommendation to the VDFI Board on the timing or trigger event needed to disburse funds from the SR. If a majority of the FRT agree on a recommendation for VDFI Board action, the FRT report, will include only one recommendation. Otherwise, the FRT will provide a report detailing the recommendations of its members, indicating which member(s) support each recommendation. (2) Within ten (10) business days of meeting, the Financial Review Team will provide a summary report, prepared by the VFTA Administrator in writing and reviewed by the FRT members, to the VDFI Board with a recommendation for restoration of the SR to Two Million Dollars (\$2,000,000), which may take place over more than one Fiscal Year and may include transferring funds from the GR. If a majority of the FRT agree on the recommendation for VDFI Board action, the FRT report will only include one recommendation. Otherwise, the FRT will provide a report detailing the recommendations of its members, indicating which member(s) support each recommendation.

**Task 3– Review and Verify Bond Debt Service****Task 3A: Verify VMC Renovation Bonds and P’5 Renovation Bonds debt service as described in Section 5.5, 5.6 and 6.4.**

*Timing/Frequency:* Once, within ten (10) business days of receipt of notice from the City or Metro, which is due at least forty-five (45) calendar days prior to bond issuance, as described in Sections 5.5, 5.6 and 6.4.

*FRT Action:* Review the bond or debt obligation debt service for VMC Renovation Bonds and P’5 Renovation Bonds and verify its consistency with the net proceeds calculation described in Sections 5.5.1 and 5.6.1 and the repayment period described in Sections 5.5.2, 5.6.2 or 6.4.

*FRT Deliverable:* Within ten (10) business days of meeting, the FRT will provide a summary report, prepared by the VFTA Administrator in writing and reviewed by the FRT members, to the Parties and the VDFI Administrator verifying the bond or debt obligation debt service is consistent with the application section(s) or describing changes that need to be made to conform the bond or debt obligation debt service to the applicable section(s).

**Task 3B: Advise on bond refunding.**

*Timing/Frequency:* Within one hundred twenty (120) calendar days of the optional redemption date of bonds issued by the City or Metro.

*FRT Actions:* As described in Sections 5.7 and 6.3, review and analyze opportunities to refund Bonds. Factors to consider in this analysis include but are not limited to: the financial benefits for the VFTA and Parties of refunding and the expected adequacy of VFTA revenues. Information that will be reviewed in making this determination will include, but is not limited to:

- Prepayment and/or refunding possibilities for Bonds and examination of which Bonds would yield the most value to the VFTA system if prepayment or refunding were implemented

*Deliverables:* Advice and guidance to the City CFO or Metro CFO regarding potential or proposed bond refunding structure.

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 19-5054 FOR THE PURPOSE OF APPROVING AND AUTHORIZING THE EXECUTION OF THE SECOND AMENDED AND RESTATED VISITOR FACILITIES INTERGOVERNMENTAL AGREEMENT**

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Date: November 14, 2019

Prepared by: Andy Shaw, 503-797-1763

## **BACKGROUND**

In 2001, the City of Portland, Multnomah County and Metro partnered with the tourism industry to establish the Visitor Facilities Trust Account (VFTA). Funded through a combination of a 2.5 percent vehicle rental tax and a 2.5 percent transient lodging tax, the VFTA has financed tourism facilities and programs that help attract visitors to the region and generate tourism spending in the area. Tourism spending as a share of the local economy has grown substantially since 2001. In 2017 alone, tourists spent an estimated \$5.1 billion in the region, supporting more than 35,000 tourism jobs in the region.

The VFTA is established by an intergovernmental agreement (IGA) between the City, County and Metro called the Visitor Facilities IGA (VF IGA). Through this VF IGA, the three local governments have agreed to use tourism taxes to fund capital improvement bonds for the expansion of the Oregon Convention Center (OCC), improvements at Portland's (P's) facilities, and early 2000's expansion of the Civic Stadium (now Providence Park). The VFTA has also funded OCC and P's operations, convention and tourism marketing, and convention visitor transit passes. The VF IGA also called for the creation of the Visitor Development Fund, Inc. (VDFI). The VDFI Board is a public/private board comprised of elected officials from Metro, the County, and City, along with representatives from the hospitality industry. Its purpose is to direct the use of certain allocations established by the VF IGA.

In 2013, the City of Portland, Multnomah County and Metro, working again in partnership with Travel Portland, amended the VF IGA to include additional priorities. The primary impetus for the 2013 update was the addition of a revenue bond to finance the public portion of the costs of developing the Hyatt Oregon Convention Center Hotel. Through a public-private partnership with Mortensen Development and Hyatt Hotels, Metro issued revenue bonds, to be repaid by the VFTA, to match with more than \$150 million in private funding to build the long-anticipated "headquarters" hotel. The OCC controls a block of 500 rooms for booking future conventions. Construction is underway with an anticipated completion of late 2019, and new convention groups are already being booked for the months after the hotel opens.

In February of 2018, the Multnomah County Chair, the Mayor of Portland, and Metro Council President directed staff to once again work with each other and with Travel Portland to develop a new update to the VF IGA. In May of 2018, the Chair, Mayor, and President signed a Letter of Agreement that outlined four priorities to guide this process:

- **Resilient reserves:** “to create and maintain appropriately sized reserves that protect the VFTA during periods of stress and allow for strategic use of excess funds that accumulate during period of higher growth”
- **Adequate Visitor Development Fund:** to keep pace with growth in the tourism industry, “enhance Portland’s competitive position and assure a nimble response to strategic opportunities”
- **Healthy Facilities:** to “strategically allocate VF IGA funds to enhance the existing facilities keeping them vital and competitive and providing the necessary infrastructure for a robust travel industry”
- **Community Livability and Safety:** to make “investments (that) will improve conditions for the community and people experiencing homelessness, improve the visitor experience, and help Portland remain a desirable destination”

The three local government leaders requested staff to “provide recommendations for an amendment to the VF IGA by October 31, 2018”. During 2018, staff actively engaged in negotiations with City and County staff and representatives of Travel Portland to prepare a thorough set of amendments to the existing VF IGA. City, County, Metro, and Travel Portland representatives met throughout the year to develop revenue forecasts for the VFTA, establish funding amounts and funding flows for the priorities outlined above, and develop an agreement about ongoing management and governance of the fund. Staff sought ongoing guidance from the Mayor, Chair, and President at key points in the process.

In December 2018, the Metro Council approved an updated, revised VF IGA, however the version of the agreement was never executed given Multnomah County’s expressed concerns about key provisions. City, County and Metro staff continued to meet throughout 2019 to work towards an agreement that would address the County’s outstanding concerns and meet the four priorities of the parties identified in 2018. In September 2019, the County approved a revised VF IGA based on a general agreement on the terms reached in September. Staff at the City and Metro have identified a handful of changes needed to the version of the agreement adopted by the County in September, and the parties have agreed to further revise the agreement, which revisions are incorporated in the Second Amended and Restated Visitor Facilities Intergovernmental Agreement, which is attached to the Resolution 19-5054 as Exhibit A (the “Amended and Restated VF IGA”).

Second Amended and Restated Visitor Facilities Intergovernmental Agreement (the “Amended and Restated VF IGA”)

The proposed Amended and Restated VF IGA before Council reflects updated and new priorities and needs of the governments managing the region’s visitor facilities and public/private tourism promotion programs. A summary of the revisions made to the existing VF IGA is set forth below:

Funding Allocations under the Amended and Restated VF IGA:

- Authorizes a new, \$40 million bond for capital improvements at the Veterans Memorial Coliseum, to be issued no sooner than January 1, 2021.
- Authorizes a new, \$40 million bond for capital improvements at the Portland’s facilities, to be issued no sooner than January 1, 2024.
- Establishes a new funding priority for Livability and Safety Supportive Services, increasing the existing \$750,000 County support allocation by \$2.5 million in the current fiscal year, and then growing with the consumer price index (CPI).
- Establishes an Additional Livability and Safety Supportive Services allocation that adds specified funding amounts to grow the total combined allocations to “livability” to \$5.25 million by FY 23-24, with CPI increases annually thereafter.
- Consolidates and increases existing funding allocations for the Visitor Development Fund to \$2.5 million in FY 19-20.
- Updates the existing convention visitor transit pass funding allocation as the program shifts from paper to electronic tickets.
- Increases the existing Portland’s and Rose Quarter Facilities “buckets” from an estimated CPI-adjusted amount of \$634,000 to \$1.5 million in FY 28-29.
- Establishes a new Portland Expo Center allocation matching the funding amounts provided to P’s and Rose Quarter Facilities (\$575,000), and increases this allocation to \$1.5 million in FY 28-29.
- Establishes a reimbursement allocation to cover the administrative costs of the City’s updated tax collection system.
- Restructures Fund Reserves as follows:
  - Retains the Restricted Reserve, which is set at one times the maximum annual payments for program (non-bond) allocations and is restricted to covering such funding shortfalls.
  - Establishes a Strategic Reserve set at \$2 million for the purpose of funding large scale events or conventions upon action of the VDFI Board. Upon use, funds would be replenished by any funds available after the Restricted Reserve is fully funded.
  - Replaces the existing Bond Redemption Reserve with a General Reserve to capture surplus revenues.

Oversight under the Amended and Restated VF IGA:

- Retains the Financial Review Team (FRT) to provide annual financial reviews of fund balance, sufficiency of revenues, and future revenue bond issuances.



- Charges the FRT with making recommendations to the VDFI Board in the event of insufficient funding, and prescribes the possible across-the-board funding reductions that could be considered to address funding shortfalls.
- Authorizes the VDFI Board to act on FRT recommendations and reduce funding allocations in times of funding shortages.

Staff believes that the proposed Amended and Restated VF IGA includes fair and reasonable updates and revisions for the public and private partners involved in the tourism and convention industry.

Staff recommends adoption of Resolution 19-5054, approving and authorizing the execution of the Amended and Restated VF IGA. Upon consideration and approval of the Amended and Restated VF IGA by Council and City and County partners, the document will be executed and the new funding allocations and other terms and conditions will be implemented upon Multnomah County's correlating revisions to its County Code. The Amended and Restated VF IGA provides important updated funding and management approaches for the tourism and hospitality industry, and staff acknowledges the hard work and efforts of the jurisdictional partners.

#### **KNOWN OPPOSITION (TO BE UPDATED)**

No known opposition.

#### **LEGAL ANTECEDENTS**

Marketing of the OCC is a necessary part of the Metro's charter authority to operate public cultural, trade, conventional and exhibition facilities, Metro Charter Section 6.

#### **BUDGET IMPACTS**

This resolution seeks authority to enter into the Amended and Restated VF IGA. Approval by all three jurisdictions of the Amended and Restated VF IGA will impact the OCC, Portland's and the Portland Expo Center (Expo) in terms of each venue's rank and priority in the use of VFTA funds. With the approval of this Amended and Restated VF IGA, upon the County's corresponding Code revisions, the three MERC venues will receive additional funds in the 19-20 budget year. The revisions and changes made to the existing VFTA funding system will not threaten the bond payment streams for OCC Hotel bonds issued by Metro.

#### **ANTICIPATED EFFECTS**

Adopting Resolution No. 19-5054 will provide new and ongoing funding for key facilities and programs that Metro manages and operates.

#### **RECOMMENDED ACTION**

Staff recommends Council adopt Resolution No. 19-5054, thereby approving and authorizing the execution of the Second Amended and Restated Visitor Facilities Intergovernmental Agreement.

Agenda Item No. 2.2

**Resolution No. 19-5009**, For the Purpose of Authorizing  
Execution of an Intergovernmental Agreement with the  
City of Beaverton for Implementation of the Metro  
Affordable Housing Bond Measure

*Resolutions*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 19-5009
EXECUTION OF AN INTERGOVERNMENTAL	)	
AGREEMENT WITH THE CITY OF BEAVERTON	)	Introduced by Interim Chief Operating
FOR IMPLEMENTATION OF THE METRO	)	Officer Andrew Scott in concurrence
AFFORDABLE HOUSING BOND MEASURE	)	with Council President Lynn Peterson

WHEREAS, on June 7, 2018, the Metro Council adopted Resolution No. 18-4898, referring to the Metro area voters Ballot Measure 26-199 authorizing general obligation bond indebtedness to fund affordable housing (the "Housing Bond Measure"); and

WHEREAS, on June 28, 2018, the Metro Council passed Ordinance 18-1423 establishing that affordable housing is a "matter of metropolitan concern" and exercising jurisdiction over functions related thereto; and

WHEREAS, on November 6, 2018, the voters approved the Housing Bond Measure, providing Metro with the authority under the laws of the State of Oregon and the Metro Charter to issue bonds and other obligations payable from ad valorem property taxes for the purpose of financing and identifying funds to be used for affordable housing; and

WHEREAS, on January 31, 2019, the Metro Council adopted Resolution No. 19-4956, approving the Metro Housing Bond Measure Program Work Plan (the "Work Plan"), which, among other things, provided that the Housing Bond Measure program would primarily be implemented by local jurisdiction partners who have created individualized plans (each, a "Local Implementation Strategy") to (a) achieve certain unit productions targets, (b) advance racial equity, and (c) ensure community engagement in program implementation; and

WHEREAS, the City of Beaverton has created a Local Implementation Strategy, which strategy was reviewed by the Affordable Housing Bond Community Oversight Committee and has been recommended to the Metro Council for approval; and

WHEREAS, in accordance with the Work Plan, Metro staff has negotiated terms and conditions under which Housing Bond Measure funding will be provided to the City of Beaverton, which terms and conditions are set forth in the proposed intergovernmental agreement attached hereto as Exhibit A; now therefore

BE IT RESOLVED that the Metro Council:

Authorizes the Metro Chief Operating Officer to enter into an intergovernmental agreement with the City of Beaverton substantially in the form attached hereto as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_\_ day of November, 2019.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney



# Intergovernmental Agreement

## Affordable Housing Bond Measure Program IGA

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Metro Contract No. XXXXX

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and City of Beaverton ("Local Implementation Partner" or "LIP"), located at 12725 SW Millikan Way, Beaverton OR, 97005, and is dated effective as of the last day of signature set forth below (the "Effective Date").

### RECITALS

A. The electors of Metro approved Ballot Measure 26-199 on November 6, 2018 (the "Bond Measure"), authorizing Metro to issue \$652.8 million in general obligation bonds to fund affordable housing (the "Bonds").

B. On January 31, 2019, the Metro Council adopted Resolution No. 19-4956, which, among other things, provides that Metro will distribute a portion of the proceeds of the Bonds (the "Bond Proceeds") to eligible local government affordable housing implementation partners, and LIP is a participating local government partner eligible to receive Bond Proceeds.

C. The parties desire to enter into this Agreement to provide the terms and conditions under which Metro will provide Bond Proceeds to LIP to implement the Bond Measure goals, requirements, and restrictions set forth in the Work Plan.

### AGREEMENT

**1. Definitions.** In addition to the definitions above, capitalized terms used in this Agreement have the definitions set forth in this Section 1.

1.1. "Administrative Costs" means Capital Costs that are not Direct Project Costs, including general program administrative expenses (e.g. staff support and overhead costs attributable to Bond Measure program implementation), expenses related to community engagement and outreach, and payments to third-party consultants (e.g. realtors, appraisers, surveyors, title insurers, environmental evaluators, designers, and engineers).

1.2. "Administrative Share" means that portion of the Bond Proceeds totaling \$575,591.

1.3. “Affordable Housing” means land and improvements for residential units occupied by low-income households making 80% or less of area median income, consistent with the intents and purposes of the Bond Measure.

1.4. “Affordable Housing Project(s)” or “Projects” means Affordable Housing that is developed, built or acquired by LIP using Bond Proceeds, or supported by LIP through grants or loans of Bond Proceeds, burdened by a Restrictive Covenant.

1.5. “Area Median Income” or “AMI” means median gross household income, adjusted for household size, for the Portland, Oregon metropolitan statistical area as established each year by HUD.

1.6. “Capital Costs” means costs of Affordable Housing that are capitalizable under generally acceptable accounting principles (GAAP), which costs include the costs of capital construction, capital improvements or other capital costs, as those terms are defined by the relevant provisions of the Oregon Constitution and Oregon law (including ORS 310.140).

1.7. “Concept Endorsement” is as defined in Section 4.1, below.

1.8. “Conversions” means conversion of existing, occupied market-rate housing units to Affordable Housing units burdened by a Restrictive Covenant.

1.9. “Direct Project Costs” means Capital Costs that are expended for the acquisition, development, or construction of an Affordable Housing Project.

1.10. “Disbursement Request” is as defined in Section 4.3, below.

1.11. “Eligible Share” means that portion of the Bond Proceeds totaling \$31,140,595.

1.12. “Final Approval” is as defined in Section 4.2, below.

1.13. “LIS” means the LIP’s local implementation strategy document adopted by LIP and attached to this Agreement as **Exhibit A**.

1.14. “LIS Annual Progress Report” is as defined in Section 9.1, below.

1.15. “New Construction” means development and construction of a new Affordable Housing Project.

1.16. “Oversight Committee” means the Affordable Housing Bond Community Oversight Committee created pursuant to Metro Code Section 2.19.260.

1.17. “Project Funds” means that portion of Eligible Share committed through the Project approval process set forth and distributed in accordance with Section 4.

1.18. “Property Acquisitions” means real property acquisitions by LIP to be used for future development of an Affordable Housing Project.

1.19. “Regional Investment” is as defined in Section 2.2, below.

1.20. "Regional Site Acquisition Program" means the program implemented by Metro to use Bond Proceeds to acquire and develop regionally significant sites for Affordable Housing.

1.21. "Restrictive Covenant" is as defined in Section 5, below.

1.22. "Term" is as defined in Section 11.1, below.

1.23. "Unit Production Targets" means those targets set forth in Section 2.1 below, and include the "Total Unit Target," the "30% or Below Target," the "31%-60% Unit Target," the "61-80% Cap," and the "Two-Bedroom+ Target," each as defined in Section 2.1.

1.24. "Unit(s)" means residential units in an Affordable Housing Project.

1.25. "Work Plan" means Metro's Affordable Housing Bond Measure Program Work Plan adopted by the Metro Council by Resolution 19-4956, as subsequently amended by the Metro Council on October 17, 2019 by Resolution 19-5015.

## **2. Unit Production Targets**

2.1. Unit Production Targets. LIP hereby agrees to adopt and take all necessary and appropriate action to implement the Unit Production Targets set forth below. The parties anticipate the LIP's Unit Production Targets will be met using a combination of funds, including LIP's Eligible Share and Metro's Regional Investment. LIP's failure to make reasonable progress towards meeting its Unit Production Targets, in accordance with the timeline attached hereto as **Exhibit B**, is grounds for termination of this Agreement by Metro as provided in Section 11, after which Metro shall have no further obligation to distribute the Eligible Share.

2.1.1. Total Unit Target: 218. This is the minimum total number of Units to be built or acquired using LIP's Eligible Share. Should LIP build or acquire additional units above the Total Unit Target using its Eligible Share, those units may be occupied by households earning anywhere between 0-80% so long as 30% or Below Target and the 31%-60% Unit Target have been satisfied.

2.1.2. 30% or Below Target: 89. This is number of the Total Unit Target that will be restricted to households earning 30% or less of AMI, in accordance with the terms of the Restrictive Covenant.

2.1.3. 31%-60% Unit Target: 107. This is number of the Total Unit Target that will be restricted to households earning 31%-60% of AMI, in accordance with the terms of the Restrictive Covenant.



2.1.4. 61-80% Cap: 22. This is the maximum number of units contributing to the Total Unit Target that may be restricted to households earning 61-80% of AMI.

2.1.5. Two-Bedroom+ Target: 109. This is number of the Total Unit Target that will be two bedrooms or more.

2.2. Impact of Regional Program. Metro will use ten percent of the total Bond Proceeds to fund and operate its Regional Site Acquisition Program. The parties expect that Metro's Site Acquisition Program will spend approximately \$3,460,066 within LIP's jurisdictional boundary (the "Regional Investment"). Units created in projects that utilize Regional Investment will contribute towards LIP's Unit Production Targets, unless otherwise agreed to by the parties. Metro will make good faith efforts to coordinate and consult with LIP to ensure Metro's decisions regarding the Regional Investment support LIP in reaching its Unit Production Targets. Once LIP has spent or has committed to spend 75% of its Eligible Share, if Metro has not yet spent, or committed to spend, the Regional Investment, then the parties will meet to discuss potential alternative options for how the Regional Investment could be spent by Metro to support LIP's remaining Unit Production Targets. If following such meeting the parties are still unable to identify opportunities for collaboration or agreeable potential alternative options, then LIP's Unit Production Targets will be reduced by the lesser of (a) ten percent or (b) the proportionate share equal to the amount of Regional Investment Metro has not yet spent.

### **3. Local Implementation Partner's Eligible Share.**

3.1. Direct Project Costs; Consistency with LIS. Subject to the terms and conditions of this Agreement, including Section 4, below, and the requirements, limits, and restrictions set forth in both the Work Plan and the Bond Measure, Metro will provide to LIP the Eligible Share on a Project-by-Project basis. LIP may only spend the Eligible Share on Direct Project Costs that are consistent with its LIS, as determined by Metro, in Metro's reasonable discretion, and will spend no portion of the Eligible Share on Administrative Costs.

3.2. Public or Private Ownership. LIP may use its Eligible Share to support the creation of Affordable Housing that is either privately or publicly owned. The Eligible Share may be contributed to privately-owned Projects in the form of loans or grants on terms approved by LIP. The identification and selection of a Project will be at the discretion of LIP, provided, however, all Project selections must comply with the LIS and contribute towards the Unit Production Targets. Publicly-owned Affordable Housing financed with the LIP's Eligible

Share must contribute to the Unit production Targets and must comply with the LIS and the terms and conditions of this Agreement, including, without limitation, the same Project approval process and requirements provided for in Section 4 below.

3.3. Approved Project Types. LIP may use its Eligible Share only for the types of projects described in the Work Plan. As of the Effective Date, the Work Plan sets forth the following approved types of Affordable Housing Projects: (a) New Construction, (b) Conversions, and (c) Property Acquisitions.

#### **4. Metro Approval Process; Disbursement of Funds; Repayment**

4.1. Concept Endorsement. In order for LIP to receive a disbursement of its Eligible Share to fund a New Construction or Conversion Project, LIP must receive an initial funding commitment for such Project (the “Concept Endorsement”) from Metro. LIP’s request for a Concept Endorsement must include general project information, including a project narrative, preliminary sources and uses information, a draft project site plan, copies of relevant due diligence documents, and any other information Metro deems reasonably necessary to issue a Concept Endorsement. Metro will issue the Concept Endorsement to LIP upon Metro’s determination that (a) the Project will reasonably contribute to the Unit Production Targets relative to the amount of the Eligible Share LIP proposes to use for the Project; and (b) the Project will be consistent with the LIS, the Work Plan and the Bond Measure.

4.2. Final Approval. In order for LIP to use its Eligible Share for an Affordable Housing Project, LIP must have received final approval from Metro, as described in this section (“Final Approval”). Metro will issue Final Approval to LIP upon Metro’s determination that (a) the proposed Project reasonably contributes to the Unit Production Targets relative to the amount of the Eligible Share proposed to be used for the Project; and (b) the Project is consistent with the LIS, the Work Plan, and the Bond Measure. LIP’s request for Final Approval will include the Project information described above in Section 4.1, as well as any additional information Metro reasonably requests related to the finalized development program, including design development drawings and an updated sources and uses budget. If after receiving Final Approval, the amount of the Eligible Share initially proposed and approved increases or the Project’s unit count, bedroom mix, or affordability level changes, then LIP must submit an amended request for Final Approval for the Project. Metro will review such an amended request (along with any related Disbursement Request) expeditiously, making best efforts to accommodate LIP’s anticipated Project closing timeline.

4.3. Disbursement. Following Metro's Final Approval of LIP's proposed use of its Eligible Share for an Affordable Housing Project, LIP may request disbursement of the Project Funds from Metro ("Disbursement Request"). Such request will be made in writing (a) no more than 45 days and (b) no less than 10 business days prior to any anticipated closing or need for use. The Disbursement Request will include: (a) a certification from LIP to Metro that the Project information LIP provided to Metro in connection with its request for Final Approval has not changed or been modified in any material way; (b) a completed draft of the proposed Restrictive Covenant that LIP intends to record against the Project in accordance with Section 5 below, (c) a list of finalized sources and uses, (d) a final construction contract schedule of values, if applicable, and (e) wiring instructions or other instructions related to the transmittal of funds. LIP will provide to Metro any other information as Metro may reasonably request related to the Project. Metro will review Disbursement Requests expeditiously and will disburse funds within 10 business days of receiving a completed Disbursement Request.

4.4. Project Failure and Repayment. LIP will use the Project Funds strictly in accordance with the manner and method described in the Final Approval. If the Project financing transaction for which disbursement was sought fails to close within sixty (60) days after Metro disburses the requested funds, then, unless otherwise directed in writing by Metro, LIP will immediately repay to Metro the amount of its Eligible Share disbursed for the Project, including any interest earned thereon. If LIP uses Project Funds for a Property Acquisition, and is thereafter unable to make substantial progress, as reasonably determined by Metro, towards the development of Affordable Housing on the property within four (4) years following the closing date of the Property Acquisition (or such other time period agreed to in writing by Metro), LIP will repay to Metro the amount of the Eligible Share disbursed for the Property Acquisition. LIP acknowledges and expressly affirms its repayment obligations set forth in this section even if such failure is through no fault of LIP. LIP's remaining Eligible Share will be adjusted and increased to reflect such repayment.

## **5. Affordable Housing Restrictive Covenant.**

5.1. General Provisions and Recording Obligations. For all Projects that receive Bond Proceeds, LIP will ensure an affordable housing restrictive covenant (a "Restrictive Covenant") is recorded on the title to the land that comprises the Project. The Restrictive Covenant must be recorded at closing, or upon LIP's contribution of the Bond Proceeds to a Project. LIP will provide Metro a copy of the recorded Restrictive Covenant within ten (10) business days following its recording. If for any reason LIP fails to record a Restrictive Covenant

in accordance with this section, Metro may, at its sole option and upon written notice to LIP, terminate this Agreement in accordance with Section 11, in which case LIP will refund Metro the Bond Proceeds disbursed to LIP for such Project.

5.2. Form for Property Acquisitions. For Property Acquisitions, the Restrictive Covenant will be granted to Metro directly, be recorded in such priority approved by Metro, and shall be substantially in the form attached hereto as **Exhibit C**, or as otherwise approved by Metro.

5.3. Form for New Construction and Conversion Projects. For New Construction Projects and Conversion Projects, the Restrictive Covenant will (a) acknowledge the use of Bond Measure funds, (b) include applicable long-term affordability restrictions, (c) burden the property for a minimum duration of sixty (60) years or thirty (30) years for Conversion Projects where the building is more than ten (10) years old), (d) provide monitoring and access rights to LIP and Metro, (e) name Metro as a third-party beneficiary and (f) unless otherwise agreed to in writing by Metro, be recorded in a priority position only subject to and subordinate to a primary first mortgage or deed of trust and State low-income housing regulatory agreements. The monitoring, access and third party beneficiary language will be subject to Metro's review and approval during the Final Approval process. LIP acknowledges that such language will require Projects to provide to Metro certain data (including financial reports, physical inspection reports, and tenant data) typically collected and prepared by Oregon Housing and Community Services. Metro acknowledges that the Restrictive Covenant may provide for a waiver or temporary relief from the limitations on qualifying income, in order to address incomes rising in place to avoid undue hardship or displacement, or to conform to other regulatory or policy requirements.

## **6. Project Information Reports; Funding Recognition**

6.1. Project Information and Updates. Upon Metro's disbursement of Eligible Share for any particular Project, LIP will provide Metro with regular updates regarding Project construction and completion. LIP will notify Metro of any events during construction that materially affect the Project, including (a) significant extensions of the Project schedule, (b) significant increases to the Project budget, (c) any notices of default issued by LIP or other Project lenders, or (d) any other changes that impact the quality or nature of the Project described in the Final Approval process. If any such material events occur during Project construction, LIP will provide Metro with any additional information Metro reasonably requests related to such events. In addition to providing the general Project updates and information

described above, LIP will provide Metro with the documents listed on the attached **Exhibit D** at the Project milestones referenced therein.

6.2. Funding Recognition. LIP will publicly recognize Metro and the Bond Measure in any publications, media presentations, or other presentations relating to or describing Projects receiving Bond Proceeds. LIP will coordinate with Metro in selecting the date and time for any event recognizing, celebrating or commemorating any Project ground-breaking, completion, ribbon cutting or opening, and provide Metro an opportunity to participate. LIP will ensure that the Bond Measure is officially recognized as a funding source at any such event, and will provide a speaking opportunity for the Metro elected official representing the district in which the Project is located, if such opportunities are provided to LIP or other public officials.

**7. Administrative Funding.** Subject to the terms and conditions of this Agreement, and the requirements and restrictions set forth in both the Work Plan and the Bond Measure, Metro will provide LIP the Administrative Share. Within thirty (30) days of the Effective Date, Metro will disburse to LIP its Administrative Share in accordance with the schedule set forth on Exhibit B attached to this Agreement. Interest earnings on the Administrative Share while held by LIP may be retained by LIP, provided such interest is used for affordable housing, residential services, or supportive services for residents of affordable housing. Metro's obligation to distribute the Administrative Share is conditioned on LIP making reasonable progress towards its Unit Production Targets, as reasonably determined by Metro in accordance with the timeline set forth on the attached Exhibit B.

**8. General Obligation Bonds.** All Bond Proceeds disbursed to LIP pursuant to this Agreement (including both the Eligible Share and the Administrative Share) are derived from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11 and 11b of the Oregon Constitution. LIP covenants and agrees that it will take no actions that would adversely affect the validity of the Bonds or cause Metro not to be able to levy and collect the real property taxes imposed to repay these bonds, which are exempt from Oregon's constitutional property tax limitations. LIP further covenants and agrees that (a) all Bond Proceeds disbursed hereunder will be used only to pay for or reimburse costs that are of a type that are properly chargeable to a Capital Costs (or would be so chargeable with a proper election) to comply with the Oregon Constitution and other applicable laws with respect to the permitted expenditure of general obligation bond proceeds; and (b) within ten (10) days of the event, LIP

will disclose to Metro any events that are required to be included in Metro's continuing disclosure obligations as the issuer of the general obligation bonds. If LIP breaches the foregoing covenants, LIP will immediately undertake whatever remedies or other action may be necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, repayment to Metro of Project Funds.

## **9. LIP Required Annual Reporting**

9.1. Local Implementation Strategy Progress Reports. By the end of each calendar year of the Term, or until LIP has fully expended its Eligible Share, LIP will provide a report to Metro summarizing its LIS progress and outcomes (the "LIS Annual Progress Report"). LIP will create the LIS Annual Progress Report using a template provided by Metro, which template Metro will develop with input from all participating local government partners receiving Bond Proceeds. The Oversight Committee will review the LIS Annual Progress Report and may recommend changes to the LIS to achieve the Unit Production Targets and to better align the LIS with the Work Plan. LIP agrees to participate fully in such annual review process; provided, however, the LIS may be revised or amended only upon written agreement by both LIP and Metro. Failure by LIP to agree to a proposed amendment will not constitute an event of default.

9.2. Financial Eligible Share Reports. Beginning with Metro's first disbursement of any portion of the Eligible Share to LIP for a Project, and continuing each year thereafter, on or before September 15 of each year during the Term until Unit Targets are completed and/or all Eligible Share is disbursed, LIP will provide an annual financial report to Metro containing (a) an itemized list of LIP's expenditure of Project Funds (and interest earnings thereon) through the end of the applicable fiscal year and (b) a certification from LIP to Metro that the Eligible Share was used only to pay for or Capital Costs.

9.3. Administrative Share Reports. On or before September 15 of each year during the Term, LIP will provide an annual report to Metro containing (a) an itemized list of LIP's expenditure of its Administrative Share (and any investment earnings thereon) through the end of the prior fiscal year detailing each entity LIP paid any portion of the Administrative Share and (b) a certification from LIP to Metro that the Administrative Share was used only to pay for or Capital Costs.

**10. Audits, Inspections and Retention of Records.** LIP will keep proper books of account and records on all activities associated with the expenditure of all funds disbursed by Metro under this Agreement. LIP will maintain these books of account and records in accordance with generally

accepted accounting principles through the date that is three (3) years after the anticipated maturity date of the Bonds or the anticipated maturity date of any obligations issued by Metro to refund the Bonds. Metro expects the Bonds will be outstanding until approximately May of 2039. LIP will permit Metro and its duly authorized representatives, upon prior written notice, to inspect books and records, properties, all work done, labor performed and materials furnished during normal business hours, and to review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of Bond Proceeds received from Metro. Access to these books of account and records is not limited to the required retention period. Metro's authorized representatives will have access to records upon reasonable notice at any reasonable time for as long as the records are maintained

#### **11. Term; Termination; Default Remedies; Dispute Resolution**

11.1. The term of this Agreement commences on the Effective Date and terminates on ten years after the Effective Date (the "Term"). The expectation of the parties is that LIP will spend its Eligible Share within seven (7) years after the Effective Date and that all Projects will be completed within the Term of this Agreement. Metro will have no obligation to disburse any remaining portion of LIP's Eligible Share or Administrative Share after the expiration of the Term. The repayment obligations and indemnities set forth in Sections 4, 5, 8 and 14 survive the expiration or earlier termination of this Agreement.

11.2. Metro and LIP may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision will be effective only upon the mutual, written termination agreement signed by both Metro and LIP.

11.3. If Metro reasonably believes LIP is not spending its Eligible Share according to the terms herein or otherwise has otherwise failed to comply with the terms of this Agreement, in addition to any other rights and remedies set forth herein or available at law, or in equity, Metro has the right to immediately withhold or suspend future distributions of Eligible Share and Administrative Share. In such an event Metro will provide LIP with written notice of such determination and will thereafter proceed with the dispute resolution provisions set forth below in Section 11.4.

11.4. Metro and LIP will negotiate in good faith to resolve any dispute arising out of this Agreement. Subject to the provisions set forth below, Metro or LIP may terminate this Agreement during the term if it reasonably determines the other party has failed to comply with any material provision of this Agreement and is therefore in default. Before terminating this Agreement in accordance with this section, the terminating party will provide the other party with

written notice that describes the evidence of default and include a description of the steps needed to cure the default. From the date that such notice of default is received, the defaulting party will have 30 days to cure the default. If the default is of such a nature that it cannot reasonably be cured within 30 days, the defaulting party will have such additional time as required to cure the default, as long as it is acting in a reasonable manner and in good faith to cure the default. If the parties are unable to resolve any dispute within thirty (30) days of after receipt of a written notice of default or such additional time as may be needed to reasonably cure the default, the parties will attempt to settle any dispute through mediation. The parties shall attempt to agree on a single mediator. The cost of mediation will be shared equally. If the parties agree on a mediator, the mediation must be held within 60 days of selection of the mediator unless the parties otherwise agree. If the parties cannot agree on a mediator, or the matter is not settled during mediation, the parties will have all other remedies available at law or in equity.

## **12. Notices and Parties' Representatives**

12.1. Any notices permitted or required by this Agreement will be addressed to the other party's representative(s) designated in this section and will be deemed provided (a) on the date they are personally delivered, (b) on the date they are sent via electronic communication, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this.

Metro:

Emily Lieb

600 NE Grand Ave.

Portland, OR 97232

503-797-1921

[Emily.Lieb@oregonmetro.gov](mailto:Emily.Lieb@oregonmetro.gov)

City of Beaverton:

Javier Mena

PO Box 4755

Beaverton, OR 97005

503-350-4051

[jmena@BeavertonOregon.gov](mailto:jmena@BeavertonOregon.gov)

## **13. Compliance with Law**

13.1. LIP will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to its investment and expenditure of the Bond Proceeds.



13.2. LIP further recognizes that investing Bond Proceeds (through either a loan or grant) could result in a Project being a “public works” for purposes of Oregon’s prevailing wage rate law, ORS 279C.800 to 279C.870, as it may be amended from time to time. LIP will be solely responsible for ensuring that all Projects receiving Bond Proceeds comply with prevailing wage rate law, as applicable.

13.3. No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this section, “program or activity” is defined as any function conducted by an identifiable administrative unit of LIP receiving funds pursuant to this Agreement.

#### **14. Insurance; Indemnification; Limitation on Liability**

14.1. Metro and LIP will self-insure or maintain general liability insurance and workers compensation insurance coverage. Each party is responsible for the wages and benefits of its respective employees performing any work or services related to this Agreement. LIP will add Metro as an additional insured to all commercial general, excess and umbrella liability policies. LIP will provide a certificate of insurance listing Metro as a certificate holder within 30 days of execution of this Agreement.

14.2. Subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, LIP will indemnify, defend, and hold harmless Metro, its elected officers and employees, from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any attorney’s fees in defense of Metro or any attorney’s fees incurred in enforcing this provision) suffered or incurred as a result of third-party claims arising out of LIP’s performance of this Agreement or resulting in whole or in part from any act, omission, negligence, fault or violation of law by LIP, its officers, employees, agents, and contractors. This indemnity includes any third-party claims related to the development, construction, operation, repair, or maintenance of Affordable Housing Projects. This indemnity provision does not apply to third-party claims resulting from the sole negligence or willful misconduct of Metro.

14.3. In no event will either party be liable to the other for, and each party releases the other from, any liability for special, punitive, exemplary, consequential, incidental or indirect losses

or damages (in tort, contract or otherwise) under or in respect of this Agreement, however caused, whether or not arising from a party's sole, joint or concurrent negligence.

**15. Oregon Law, Dispute Resolution, and Forum.** This Agreement is to be construed according to the laws of the State of Oregon. Any litigation between Metro and LIP arising under this Agreement will occur, if in the state courts, in the Multnomah County Circuit Court, and if in the Federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

**16. No Third Party Beneficiaries.** LIP and Metro are the only parties to this Agreement and are the only parties entitled to enforce its terms and the sole beneficiaries hereof. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons any greater than the right and benefits enjoyed by the general public.

**17. Relationship of Parties.** Nothing in this Agreement nor any acts of the parties hereunder will be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture or any association between any LIP and Metro. Furthermore, Metro will not be considered the owner, contractor or the developer of any Project funded with Bond Proceeds. This Agreement is not intended to be a contract that provides for the development or construction of any Project, either directly with a construction contractor or through a developer. Metro specifically waives any provision contained in this Agreement, to the extent it is construed to provide Metro the right to manage, direct or control the developer, general contractor or the subcontractors. The rights and duties of the developer, the general contractor and the subcontractors are the subject of a separate contract or contracts with LIP to which Metro is not a party. LIP waives and releases Metro from any claims and actions related to the construction, operation, repair, or maintenance of any Affordable Housing Projects. If LIP obtains an indemnification agreement from any third-party developer or general contractor receiving Bond Proceeds under this Agreement, LIP will contractually require such party to indemnify Metro to the same extent as LIP.

**18. Assignment; Merger; Entire Agreement.** This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by LIP without Metro's written consent. This Agreement and attached

exhibit(s) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The failure to enforce any provision of this Agreement does not constitute a waiver by Metro of that or any other provision. No waiver, consent, modification or change of terms of this Agreement will bind either party unless it is in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement will not constitute a waiver by that party of that provision, or of any other provision.

**19. Further Assurances.** Each of the parties will execute and deliver any and all additional papers, documents, and other assurances, and will do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.

**20. Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

**21. No Attorney Fees.** Except as otherwise set forth in Section 14 of this Agreement, in the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

**22. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**Metro**

**City of Beaverton**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



## Affordable Housing Bond Beaverton Local Implementation Strategy



# Affordable Housing Bond Beaverton Local Implementation Strategy

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## **I. Introduction**

The City of Beaverton thrives as an ethnically diverse, welcoming city, where all its residents are an essential part of the Beaverton community. As stated by Mayor Denny Doyle in his 2019 State of the City address, “We are a community that cares for every person who calls our region home. We continue to make diversity, equity and inclusion a priority.” People want to be part of this community because of the quality of life and diversity we enjoy, but many existing residents increasingly struggle to remain in Beaverton.

This Local Implementation Strategy (LIS) aims to sustain Beaverton's livability, particularly for those most in need. It will guide the city's efforts as it works to create affordable housing using the Metro Affordable Housing Bond. Beaverton is pleased to be an implementing jurisdiction of this program as these resources will play a critical role in meeting a range of important housing needs in the community, ensuring the livability discussed above. The City will strive to deploy resources and help housing projects develop expeditiously in order to minimize inflationary pressures and receive additional funding from the program should resources be available.

### **Principles of Autonomy & Collaboration**

Three jurisdictions in Washington County will participate in implementation of the Metro Affordable Housing Bond—Washington County, the City of Hillsboro and the City of Beaverton. While each will have a separate LIS, the jurisdictions have agreed to several principles and practices with respect to the development and operation of their strategies.

- First, the three jurisdictions have agreed to share both the bond resources and the goals established for Washington County as a whole, based on the share of bond revenue generated by each of the three jurisdictions.
- Second, each jurisdiction will have autonomy in project selection, commitment of bond resources, and oversight of bond-funded projects. The jurisdictions may choose to collaborate on specific projects that will serve their individual as well as collective community needs. This may result in actual expenditure of bond proceeds across the three jurisdictions in a different blend than envisioned at the outset.
- Third, recognizing that many community partners serve the larger Washington County area, and that many residents perceive that their needs could be met without respect to jurisdictional boundaries, the three implementing jurisdictions will collaborate on community engagement efforts and on developing the partnerships that will help to ensure the success of all bond projects throughout Washington County.

### **Beaverton Housing Needs**

Currently, Beaverton has 876 regulated affordable housing units that are disbursed across the city based on lists compiled by Metro, the City of Beaverton, Washington

County, and Oregon Housing and Community Services. Juxtaposed with the need for regulated affordable housing in Beaverton highlights a severe shortage within our community. In 2015, the City of Beaverton contracted with Angelo Planning Group and Johnson Economics to complete a Housing Strategies Report. Among other things, this report looked at demographic trends, associated housing needs, and a determination of land needs for housing over the next 20 years. The table below represents Beaverton's estimated rental housing needs over a 20-year period starting with 2016:

Total rental housing needed	4,672
Total affordable rental housing needed	2,663
Total 30% AMI (Area Median Income) rental housing needed	841
Total 60% AMI rental housing needed	1,028
Total 80% AMI rental housing needed	794

### Available Resources and Framework Targets

Beaverton's Local Implementation Strategy focuses on the needs of city residents based on feedback from an in-depth community engagement process and Metro's Affordable Housing Bond Program Work Plan (Work Plan) approved by Metro Council on January 31, 2019.

The Metro Work Plan illustrates how the regional goal of creating 3,900 restricted affordable units (1,600 of which are to be available to households earning 30% or less of the Area Median Income (AMI), and 1,950 housing units which are to have two or more bedrooms) is distributed between implementing jurisdictions. From the region, **\$31,140,595** in bond proceeds is dedicated to Beaverton. The overall goal for Beaverton is to support at least **218 units of affordable housing** within the city. These may be newly built units or existing units at risk of rapidly rising rents. While affordable homeownership is an option for bond resources, the city expects to invest its portion of bond proceeds in rental housing.

Recognizing Beaverton's lowest income neighbors have the greatest challenges in securing affordable housing, and consistent with the Work Plan, Beaverton has set a goal that at least **89** of the 218 units will be affordable for households with income at or below 30% AMI. These units may serve people with special needs, people who earn low wages, or live on fixed incomes. As least **35** of these deeply affordable units will be supported with rental assistance provided by the Housing Authority of Washington County, targeting the most fragile households.

The "Tri-County Equitable Housing Strategy to Expand Supportive Housing for People Experiencing Chronic Homelessness" is a strategic plan prepared in February 2019 by the Corporation for Supportive Housing and Context in Action to provide recommendations for Clackamas, Multnomah and Washington Counties to reduce chronic or long-term homelessness for people with complex health conditions.



The plan identified a need for 226 Permanent Supported Housing units (PSH) in Washington County. PSH is an intervention for chronic homelessness, aligning deeply affordable housing with effective delivery of supportive services. The City of Beaverton strives to work with the County and other public partners to identify opportunities to include PSH units within the 89 deeply affordable units the city will fund.

An on-going funding source for services is critically important to make PSH units sustainable. If funding is made available, Beaverton will work with developers, social service agencies, Washington County, and other community partners to link supportive services to the affordable housing to ensure that residents are stable and secure.

Beaverton may explore options to include units with rents appropriate for households with incomes from 61% to 80% AMI (Low Income as defined by HUD). The need for affordable housing crosses income levels and serving higher income households can create cross subsidization for very low-income households. No more than **22** Bond-financed units will have rents at this level.

The need for rental housing crosses a range of household sizes. The private rental housing market has concentrated on small unit sizes – typically studios and one-bedroom apartments. This is also a concern voiced by Beaverton community members in many listening sessions throughout our community engagement process. This mismatch between need and available units is especially difficult for lower-income households. As a result, the Metro Bond Framework set a goal that half the units developed under the bond program must include two or more bedrooms. For Beaverton, this means that at least **109** units will include two or more bedrooms.

### **Advancing Racial Equity**

The City of Beaverton prioritizes advancing racial equity for all its activities. The Diversity Advisory Board and Human Rights Advisory Commission inform the city's activities and advance equity through their effort and input. This is an ongoing priority of elected leadership to mitigate decades of government policy from the federal to local level that contributed to disparate outcomes for communities of color. People of color struggle disproportionately with unaffordable housing, displacement and homelessness. The implementation of the Affordable Housing Bond provides an opportunity to work to address this inequity and to meet the needs of historically marginalized communities.

Efforts and opportunities to address racial equity occur at many points in the implementation of the Affordable Housing Bond. Opportunities to advance racial equity include community engagement to plan development, project selection, and inclusion of minority businesses and workforce in the design and construction of housing with a 20% subcontracting goal of development hard and soft costs to certified minority, women, emerging and disabled veteran-owned businesses.

To ensure we are successful in meeting this goal, staff invested significant time towards meeting with minority owned subcontracting businesses and trade associations to discuss the barriers to participation and to determine solutions and steps the city can

take to overcome these barriers. Beyond this, staff formed culturally specific partnerships for outreach and services, and will continue to focus on accessible tenant selection/screening criteria processes, contracting opportunities post construction, and ongoing reporting of outcomes. The specific implementation strategies Beaverton will employ are discussed in the various sections below.

## **II. Strategy Development**

Meaningful community engagement, especially with communities of color and marginalized communities, is the cornerstone of the LIS development. Washington County, Hillsboro, and Beaverton jointly developed an outreach plan that focused on regional and local nonprofit partners. In developing this outreach plan, equal focus was placed on reaching non-housing organizations and their constituents as housing-related service providers. To be consistent with the outreach and the information being gathered, the plan included six questions asked consistently throughout this process. As of April 30, 2019, the collaborative work of the three jurisdictions resulted in hearing from 451 community members and over 100 agencies, which represented an array of communities and interests, see Outreach Report (Exhibit 1). Efforts were made to reach low-income community members, people of color, people with limited English proficiency, immigrants and refugees, senior residents and people who have experienced housing instability. The City of Beaverton divided its outreach into two phases – Listening and Feedback.

### **Listening Phase**

The City of Beaverton has established boards and commissions that provide input and feedback on city related activities and initiatives. 40% of the city's board and commission members self-identify as a person of color. Due to the importance the city's boards and commissions have in civic engagement, it was imperative to seek input with relevant boards and commissions as part of the LIS development. Staff made presentations to and sought input from the Beaverton Committee for Community Involvement (BCCI), Human Rights Advisory Commission (HRAC), Beaverton Committee on Aging, and the Diversity Advisory Board (DAB). Some members shared personal experiences on access to housing, affordability, discrimination, displacement, etc.

To engage the community at large, over 80 community members attended a widely publicized listening session. This listening session included city board and commission members who acted as volunteer facilitators during breakout sessions. At this session, attendees were able to vote electronically after discussing the six listening session questions in small groups to provide live input to staff throughout. Some of the key take-away from this event included a need to having access to affordable/stable housing, and the challenge of income not keeping up with housing costs/rent increases.

Included in the Outreach Report are summaries of three listening sessions that exemplify the city's community engagement efforts with underrepresented communities. These include a conversation with Habitat for Humanity constituents, an Arabic-speaking community conversation, and participation in a Latino Family Night. Attendees at

these sessions came from a wide variety of backgrounds and represented a diverse cross-section of the Beaverton population. Members of the Beaverton Iraqi community led the Arabic-language session, which allowed for more nuanced input than simultaneous interpretation. Beaverton High School's Latino Family Night invited staff to share information and hear from parents about their housing challenges. Common comments from these sessions were the need for family size housing, including a larger number of 3 and 4-bedroom units, and proximity to good schools and other amenities. At one of the sessions, one attendee said, "it's sometimes easier to get a job than it is to get housing".

Listening sessions included conversations with developers (for profit and nonprofit), general contractors, minority subcontractors and minority small business advocates. Due to limited past participation of developers in creating affordable housing in Beaverton, the conversations with developers focused on opportunities, challenges, and invitations to participate in creating quality affordable housing for the city's most in need. Conversations with contractors focused on potential cost containment and efficiencies. The conversation with minority contractor advocates represented the first step in establishing a system to connect minority subcontractors to city-funded projects, beyond city procurement. Because there are multiple contracting opportunities once an affordable housing project comes online, outreach to minority small business advocates focuses on connecting minority small businesses with property owners/property management companies for contracting opportunities.

### **Public Review Draft Feedback**

The LIS was drafted using the Work Plan and information received through the listening and feedback phase as guides. Staff presented the draft to City Council for feedback on May 7, 2019. Thereafter, the LIS draft was available for community feedback on the city's website, as well as comments from Metro staff, members of the Metro Housing Bond Oversight Committee, and community groups engaged in the Listening phase, and trade associations interested in increasing minority and women participation in housing development projects.

### **Community Feedback**

During the feedback sessions, staff took the opportunity to further engage community participants by asking the following three targeted questions:

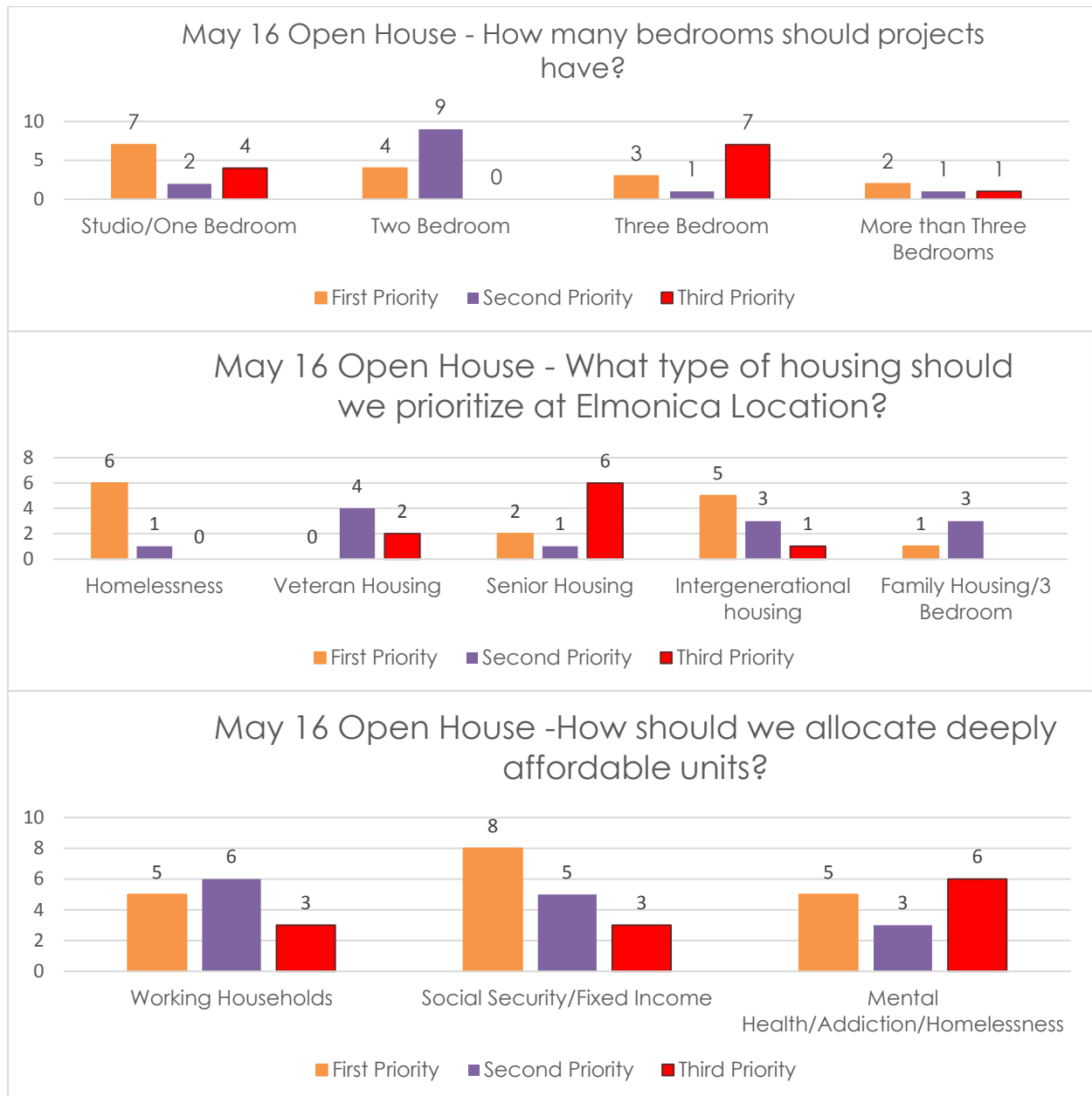
- Given the location and the need, what would you prioritize for the 60 to 80 units at the Elmonica site? (Choices listed were people experiencing homelessness, Veteran housing, senior housing, intergenerational housing, and three bedroom/family housing)
- What type of housing units do you think Beaverton has the greatest need for? (Choices listed were studio/one bedroom, two-bedroom, and three-bedroom units)
- How would you prioritize allocating deeply affordable units, knowing the need and services required are greater than available resources? (Choices listed were

- working households, Social Security households/fixed income, mental health/addictions stabilization and/or people experiencing homelessness)

The City of Beaverton hosted an Open House for residents on May 16, 2019, a follow-up session with the Arabic community using trusted facilitators, and a follow-up presentation in Spanish at the Beaverton School District Latino Night. The open house and feedback sessions were an opportunity for community members to learn more about the LIS and provide their feedback on previously mentioned questions. 33 people attended the Open House, 18 adults participated in the Beaverton School District Latino Night, and 23 adults attended the Arabic Night follow-up session.

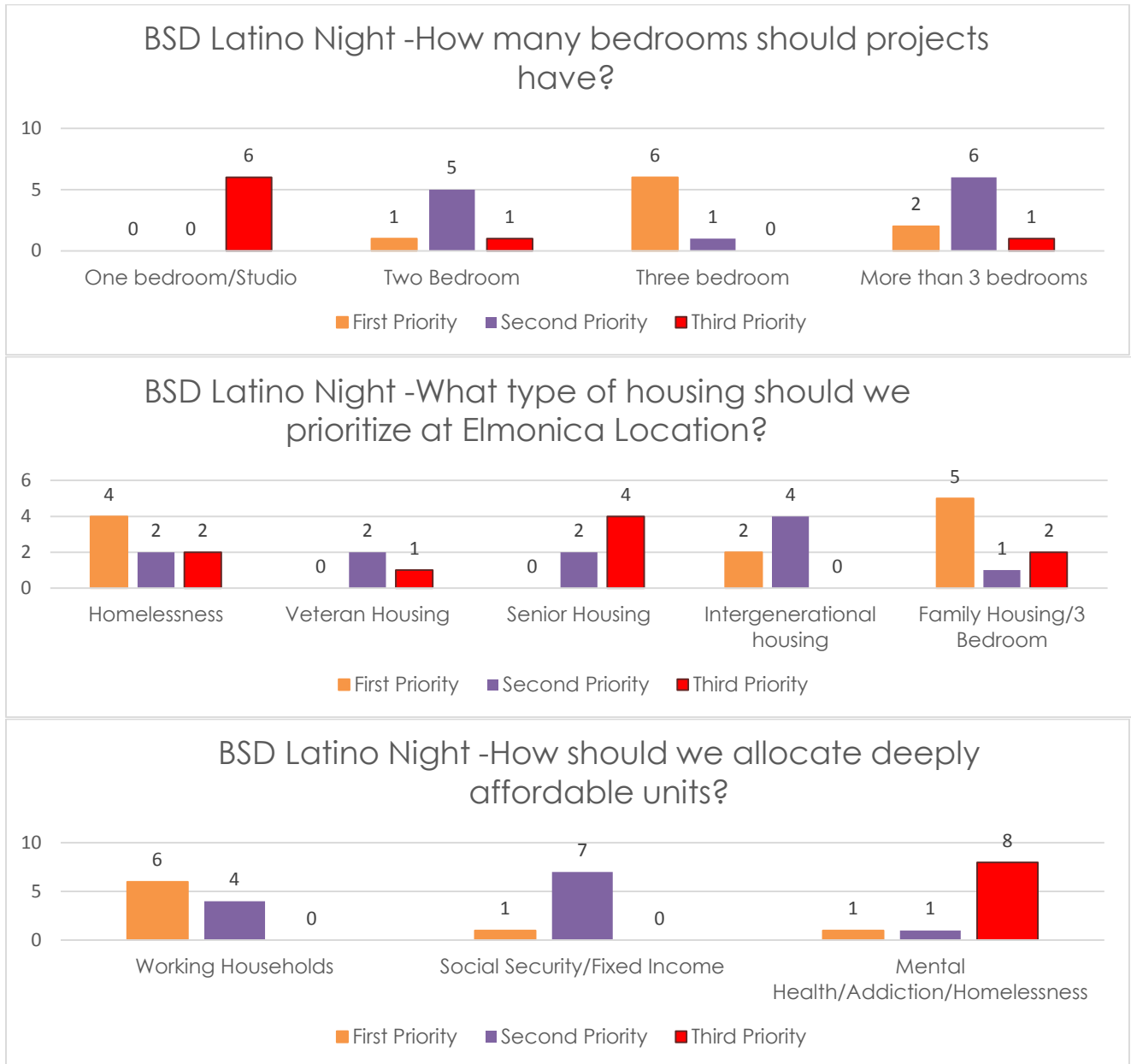
To answer the questions above, community members walked around the room with a sequence of posters designed to provide education and insight into these difficult decisions. We asked community members to vote with stickers in different colors (green for highest priority and red for lowest priority) to indicate how they would prioritize different unit types and services on three different posters. Staff were available to answer questions and feedback sheets were available for community members with more detailed comments. The same posters (translated into Spanish and Arabic) were used in follow-up sessions at the Beaverton School District Latino Night with Spanish speaking staff and for the Arabic community with staff and Arabic facilitators, who also recruited participants for the event to build trust.

## May 16 Open House Results:



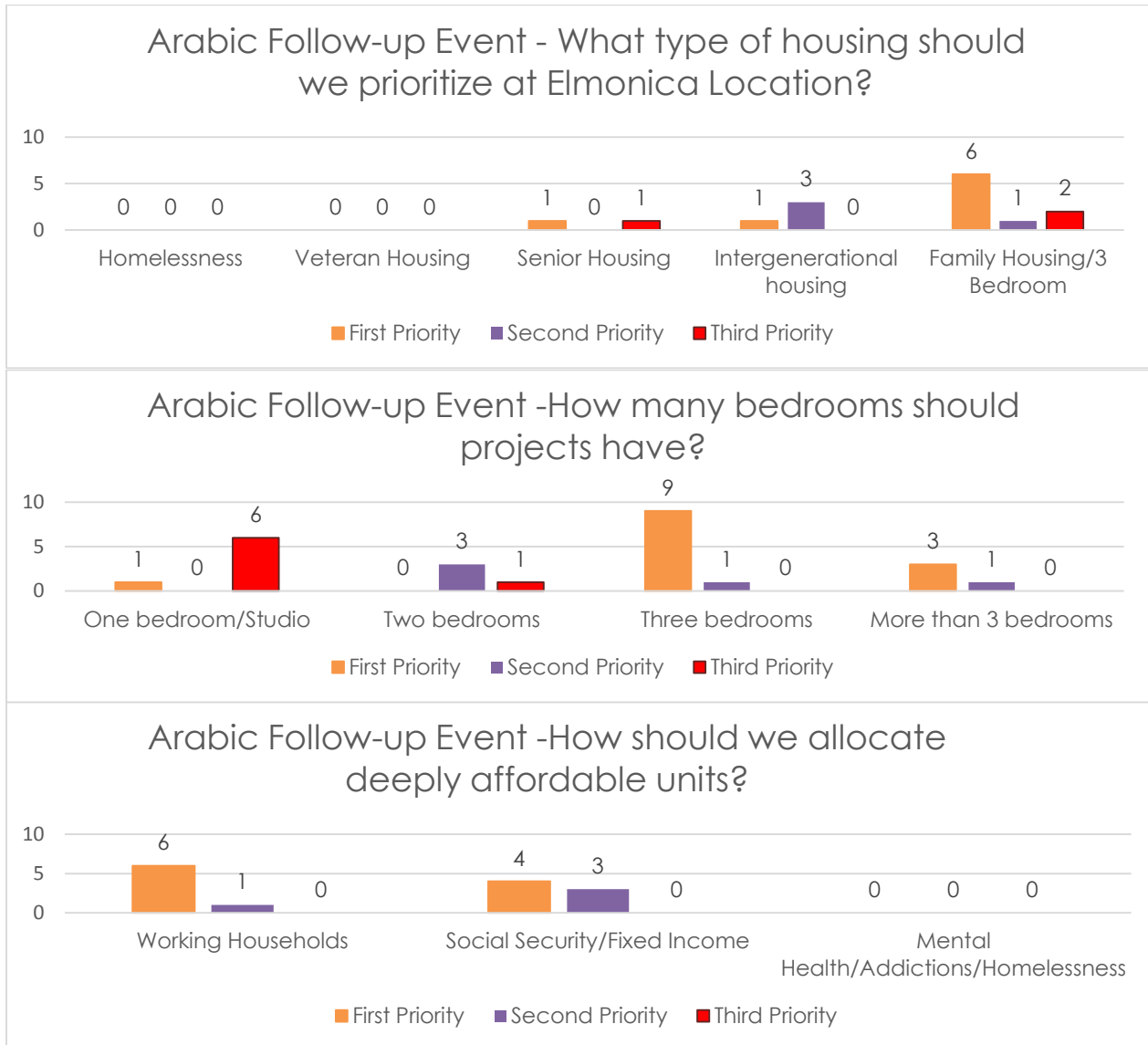
Other comments from the event included the need for separate housing for people experiencing homelessness, the need for family housing with nearby amenities and the need for pet friendly housing.

## Beaverton School District Latino Night Results:



Overwhelmingly, attendees identified the need for three bedroom/family housing.

## Arabic Community Follow-up Results:



Similar to the Beaverton School District event, attendees of the Arabic Community event stressed the need for three bedroom/family housing at the Elmonica site and beyond.

## **Trade Association Feedback**

Like the community engagement process, outreach to MWESB-DV Trade Associations (COBID Registered) and pre-apprenticeship programs is ongoing. Beaverton desires to ensure contracting and employment opportunities are available to women and minority contractors. Therefore, the city is developing partnerships with agencies that can provide guidance its development partners on how to achieve established goals and connect their members to contracting opportunities. To that end, staff met with representatives of the Portland Development Business Group (PDBG), LatinoBuilt, Oregon Association of Minority Entrepreneurs (OAME), Oregon Tradeswomen, Portland's Opportunities Industrialization Center (POIC) and Constructing Hope. The city discussed upcoming opportunities created by the Metro Bond and asked for feedback. The following information was shared with staff:

- Hurdles MWESB-DVs would encounter in providing successful low bids and ideas on overcoming these hurdles
- Difficulty in developing trust with General Contractors (GC)
- Pitfalls of cold calling from the COBID registry list
- Hosting traditionally unsuccessful meet and greet events
- The need for assuring accountability from developers and GCs
- Journeyman to apprentice ratios given the ongoing construction boom in the area
- Lack of developer partnerships with MWESB-DV GCs
- Language Barriers
- Non-COBID registered small businesses
- Lastly, an overall experience of agencies/companies relying on known contractors and previous relationships

## **Local Implementation Strategy Approval**

The community engagement detailed above led to this final LIS draft, which is scheduled to be reviewed by the Metro Housing Bond Oversight Committee on July 26, 2019, and subsequently by Metro Council. It will also be considered and approved by the Beaverton Council.

### **III. Implementation Phases**

Implementation of Bond funded projects is expected to occur over a period of four to seven years. This timeline will allow for the identification of sites, securing needed resources for capital and services, forming partnerships with developers and service providers, procurement of projects through public solicitations, and completing construction. During this period, community needs and opportunities may change. New census data will become available, new community planning efforts may be initiated or completed, and new resources or opportunities may become available while other resources or opportunities may not materialize as anticipated. In addition, certain framework goals may be easily fulfilled, while others may prove more



challenging. Because of the dynamic nature of this work, Beaverton proposes to periodically review, and potentially alter, this Implementation Strategy. Notwithstanding the four to seven years implementation timeline, being responsive to the demonstrated community need for affordable housing is essential and Beaverton will work to fund projects as soon as possible. The Mary Ann, a Phase 1 project, has already been approved (more details about this project can be found in the Project Selection Process). In addition, the City expects to issue solicitations for two projects shortly after the Metro-City of Beaverton Intergovernmental Agreement (IGA) is approved. A third and final solicitation is expected to be issued in the spring/summer 2020.

Beaverton proposes to take a portfolio approach to implementing Bond resources, monitoring and adjusting the LIS when appropriate (Exhibit 2). Because the pace of implementation is uncertain, these review points will not occur at specific points in time, but instead will be based on the commitment of Bond resources to specific projects. Beaverton will use Exhibit 2 tracking worksheet as an addendum to this Implementation Strategy. As project commitments are made, the tracking worksheet will be updated to show balances of funds available, and the framework goals met and still to be achieved. This will provide a real-time update that can guide the selection of the subsequent projects to ensure that overall goals and resource commitments are consistent with the Metro framework. Should the tracking worksheet indicate that a modification to the adopted Implementation Strategy is advisable; the amendment process will include community engagement based on our on-going community engagement process, review and approval by the Beaverton City Council, and submission to Metro for review and approval.

#### **IV. Organizational Plan for Implementation**

Beaverton will use a combination of staff and consultants to administer this Implementation Strategy. In-house staff will be responsible for community engagement and outreach, project selection process, project documentation and funding processes, as well as overall program monitoring and reporting. Beaverton may engage consultants with expertise in financial packaging of affordable housing to review proposed projects during the selection and commitment phases. Similarly, Beaverton may engage consultants or partner with other project funders to leverage their expertise in construction management to help oversee project development.

Some aspects of implementation will require the development of systems new to Beaverton, or that are not efficient at the scale of the handful of projects that are expected to be funded with the Housing Bond. Depending on the activity, either Beaverton will create its own tracking/compliance system or may work with Metro or other jurisdictions to create effective implementation strategies.

In addition to the city's General Fund dollars supporting the housing staffing necessary to implement the bond, Metro has also committed \$655,591 over five years to augment Beaverton's staffing plan for bond implementation. Initially, Beaverton anticipates these

funds will support the addition of one full time equivalent position for community engagement, racial equity work, and monitoring restricted covenants via regulatory compliance agreements. City Council approved this new position effective April 1, 2019.

## **V. Project Selection Process**

Beaverton will work in partnership with developers/owners that are skilled and interested in providing affordable housing and services in the community. The City of Beaverton itself does not intend to be a developer or owner of housing funded under the Bond. Beaverton expects that the Bond funds will provide support for **four projects**.

The City of Beaverton is in the process of creating a Housing Technical Advisory Group (HTAG), which will provide feedback to staff and advise the Mayor on affordable housing related matters, including Housing Bond projects. Like other City of Beaverton advisory groups, every attempt will be made to ensure gender/ethnic diversity as well as industry and end-user expertise.

The city's Real Estate Committee (REC) is an internal committee advisory to the Mayor charged with reviewing city real estate investments. The REC will review proposed projects prior to staff presenting them to the Mayor and subsequently City Council. The project selection process will include public and open solicitations via Notice of Funds Availability (NOFA), Requests for Qualification (RFQ), and Requests for Proposals (RFP), etc. Both internal housing staff and an external review committee will review proposals and make recommendations to the Mayor. Each external review committee will be comprised of experts in affordable housing finance, resident services, homelessness, and development. Prior to the recommendation being presented to the Mayor, the selected proposals will be reviewed by the HTAG and REC for their feedback. The recommended project and feedback are forwarded to the Mayor, who will forward a recommendation to City Council for its selection decision.

Every solicitation document will include a set of expectations for all developers/owners to ensure selected projects achieve both the framework goals and racial equity outcomes. These requirements include a 60-year affordability covenant, inclusion of minority and women owned contractor participation in the development process, and the use of best practice outreach and tenant selection criteria. Specific requirements are fully described in the Project Selection Criteria and Project Implementation sections below.

An exemption to this process is The Mary Ann affordable housing project. This project is expected to be the first project to be funded with Housing Bond resources in Beaverton, and the reasons for being exempted from this selection process are detailed below.

### **Phase 1 Project – The Mary Ann (1<sup>st</sup> & Main)**

Consistent with Metro and Beaverton's intent to demonstrate timely progress in Bond implementation, the City of Beaverton identified a Phase 1 early project: The Mary Ann.

This project will be located at First & Main on a half block site with the capacity for approximately 54 units. Beaverton currently owns a portion of the site and REACH Community Development Corporation (REACH CDC) controls the balance of the half block. Given the property ownership structure, Beaverton selected REACH CDC through a sole source negotiation, as the combined properties can provide for an efficiently scaled development. REACH has a 30+-year history of affordable housing development and operations expertise across the metro region.

The site is a block from Beaverton High School, has great access to transit, and is in a qualified census tract for the purposes of low-income housing tax credits. The adjacent high school has a majority minority enrollment, so housing located near the school could serve a diverse tenant population. The project location supports feedback received during the Listening Phase from community members stressing the need for affordable housing with access to amenities and schools. The city also prioritized this project to leverage city-owned property and the Washington County's commitment of federal HOME Investment Partnership Program funds.

The project is currently envisioned to include a beneficial mix of housing units, including 26 two-bedroom and 3 three-bedroom units targeted to families with children. Eleven of the 54 units will be priced at 30% AMI, and eight Project-Based Section 8 vouchers will ensure those units are affordable to Beaverton's lowest income households and help the project perform financially. While no special needs sub-populations have been identified at this point, REACH CDC and the city will explore opportunities for partnerships with Washington County for the funding of services, and/or service providers who may have clientele needing housing and/or providers who may have valuable services to offer to residents.

The Mary Ann has an estimated total development cost of \$20.9 million. Anticipated funding sources include 9% Low Income Housing Tax Credits (LIHTC), Metro Regional Bond funds, permanent debt, Washington County HOME funds, land write-down of the city's parcel, among other funds. If REACH CDC is successful in receiving 9% LIHTC allocation this summer, the project is scheduled to break ground in the first quarter of 2020 and open 18 months thereafter.

### **Other Sites Identified by the City**

*Elmonica* – The city, in partnership with Metro, has also identified the Elmonica site for a project using Housing bond funds. The Elmonica site is a Metro-owned property, located in west Beaverton on Baseline Rd in the Elmonica light rail station area. The site benefits from excellent access to transit and is in a mixed income neighborhood with commercial services. The site has capacity for 75-85 units. Because of the location, the site can accommodate many different objectives such as senior housing, family housing, and deeply affordable (30%) units, all of which community members expressed a need for during the Listening Phase of our community engagement process. The site is in a federally designated Qualified Census Tract (QCT). A QCT is a geographic area defined by the Census Bureau in which at least 50% of households have income less

than 60% AML. This designation enables the project to maximize the amount of tax credits and the impact of 4% LIHTC as part of the financing package.

The developer/owner of this site will be selected using an RFP jointly managed by Beaverton and Metro. Metro will lead negotiations with the selected developer for disposition of the land. Beaverton will lead financing/funding negotiations.

*Other Sites* – Beaverton is exploring other sites that the city owns or controls that may be desirable for Housing Bond financed projects. Based on feedback received from the early community engagement process, the city will prioritize such sites if they support Implementation Strategy goals and are consistent with feedback. The city will take into consideration:

- the beneficial leverage of free or discounted land;
- high opportunity areas, these areas are defined by with access to good transit, good schools, services, and other amenities;
- opportunities to meet community development goals or develop beneficial service partnerships; and/or
- opportunities to use 4% LIHTC resources

Should Beaverton identify additional city-owned sites under its Local Implementation Strategy, the developer/owner of such sites will be selected using an RFQ or RFP process.

### **Sites Identified by Metro**

The allocation of Affordable Housing Bond funds includes an allocation for land acquisitions carried out by Metro rather than by the implementing jurisdictions. Metro has allocated an estimated \$21 million for acquisition in Washington County. The city will encourage Metro to purchase sites within Beaverton to further leverage the city's allocation of bond funds.

While it is uncertain whether any such sites will be in Beaverton, the city is committed to working closely with Metro should such sites be identified and align with the established LIS. If such sites are identified that meet LIS criteria, Beaverton would work with Metro on the acquisition and jointly select a developer/owner through a competitive process.

### **Sites Proposed by Developers**

The City of Beaverton expects that one of the four projects to be funded using Metro Regional Bond Funds will be selected through a NOFA process. Through this NOFA, the city will target areas with little or no affordable housing and emerging areas near good schools. The NOFA process will follow all Metro and city requirements pertaining to the bond and the selected developer will be required to meet cost, unit mix, affordability, accessibility, and racial equity goals.

## **VI. Leveraging Other Affordable Housing Resources**

While the Metro Bond resources are substantial, those funds will need to be blended with other public and private funding sources, including city resources, to accomplish the unit targets of the Bond. Several principles will guide city efforts to leverage the Bond funds:

- **Maximize the use of non-competitive resources.** The 4% LIHTC program is available on a non-competitive basis to provide equity for affordable housing development. This program is especially useful for larger projects or scattered site projects that can be bundled to achieve the scale desired by equity investors. Developing projects in QCTs or Difficult to Develop Areas (DDAs) can maximize the usefulness of the 4% tax credits.
- **Maximize use of private resources.** Many projects will generate enough rental income to be able to make debt service payments on loans from private banks. While ensuring that projects have appropriate operating budgets and reserves, private debt should be secured for projects whenever feasible.
- **Maximize local resources.** A variety of local resources may be available to support capital and operating expenses:
  - **Project based rental assistance.** Washington County Housing Services has committed project-based Section 8 assistance for 33 units to Beaverton Bond projects. This assistance will allow residents to pay based on their household income, while the project will receive a set rental income based on the Section 8 payment standard.
  - **Property tax exemption.** The City offers property tax exemption to developer/owners that are non-profits under the provisions of ORS 307.540 and apply to the city's program. Other options for property tax exemption may be possible on a project-by-project basis.
  - **Publicly owned land.** The City will prioritize projects developed on City-owned or other publicly owned sites. The ability of the City or other jurisdictions to donate the full value of the sites may vary, but discounted values would be available.
  - **Direct grants or investments.** The City has historically made direct investments in affordable housing. While there is not a specific appropriation at this time, the City is exploring project needs and possible City resources that can support Bond-funded housing projects. Current program modeling shows an additional gap of \$2 - \$6 million for Housing Bond funded projects.
  - **System Development Fees (SDC) assistance.** City Council adopted a resolution on December 4, 2018, to provide limited SDC relief for regulated affordable housing projects and directed staff to collaborate with other jurisdictions that charge SDCs to Beaverton projects for additional SDC relief.
- **Seek other existing affordable housing resources (Federal, State and County resources).** The City recognizes that despite the substantial amount of Bond

funding and the strong commitment of resources from the City, projects may have financing gaps that are best filled with other traditional affordable housing program resources. Sources such as the county HOME funds, State Document Recording Fee, OAHTC, and other sources may be needed to complete financing packages for specific projects. In partnership with the selected developer, Beaverton will work with other funders in a transparent way to find the most effective and efficient way to bring these resources to Bond funded housing projects.

- **Support the pipeline of other affordable housing projects.** While much of Beaverton's efforts during the implementation of the Affordable Housing Bond will be focused on moving the pipeline of Bond funded projects forward, the ongoing availability of other Federal and State affordable housing resources means that there is a likelihood other projects may move forward during the same timeframe. Beaverton will monitor the pipeline of projects proposed and funded in Beaverton and will collaborate with developers to identify the most appropriate funding packages and other support that can be allocated to those projects.
- **Funding for resident and supportive services.** Beaverton will work with regional and state partners to identify a consistent funding source to serve vulnerable homeless or at the risk populations. It is through consistent funding of resident and supportive services that vulnerable populations can remain housed and help the project succeed financially.

## **VII. Project Selection Criteria**

### **Metro Framework**

Beaverton will consider a number of factors in the selection of Housing Bond projects. The first consideration will be how each project contributes to the accomplishment of city's goals in the Metro Framework. Under the Framework, Beaverton has the following targets:

Framework Targets	
Total Units	218
Minimum number of 30% AMI Units (33 units with Project Based Sec 8 rent assistance)	89
Minimum number of 2 Bedroom & Larger Units	109

Beaverton does not expect that each project will reflect the ratios expressed by these targets, but instead will ensure that the overall portfolio of funded projects will achieve this mix.

The ratio of small and large units will reflect the characteristics of the target population of specific projects, and that in turn, should reflect characteristics of a site in terms of whether it is best suited to families with children or smaller households.

Beaverton also anticipates that all projects will include some units with rents at 30% AMI. In some cases, projects will be targeted to low wage earners, while others may be targeted to people with disabilities or other special needs, or people who have experienced homelessness. Some projects may include high concentrations of 30% units so long as there is an identified consistent funding source for the corresponding supportive services needed.

Beaverton is open to considering the inclusion of 61%-80% AMI units when that helps to cross subsidize lower income units or reduces the amount of Bond financing needed for the project, although no such units are currently contemplated.

Beaverton will focus its Bond financed affordable housing on new construction of multi-family rental projects and may also consider multi-family acquisition/rehabilitation projects. Although allowable, Beaverton is not considering investing Bond resources in home ownership strategies.

### **Furthering Beaverton's Affordable Housing Goals**

In addition to fulfilling the Work Plan, Beaverton will work to align the affordable housing developed with the Bond to also support a variety of local goals. These include:

- **Geographic Goals** – Beaverton desires to support projects in opportunity neighborhoods that have good access to transportation, commercial services, community amenities, and provide the opportunity to create inclusive mixed income neighborhoods. This feedback was also received during listening sessions and reinforced during the feedback phase, with requests for housing with access to schools and amenities. These areas include the emerging downtown, recently annexed areas, and areas where private/public investment is being made to improve the livability of the area. Beaverton will seek to disperse units throughout the city, where these locational attributes meet.
- **Target Population Goals** – During the Listening phase, the city received reminders of the need for senior housing, family housing (to include three and four-bedroom units), housing accessible to high needs populations, housing that is compliant with the American with Disabilities Act (ADA) by utilizing universal design, and housing for individuals exiting the foster care system. Due to limited resources and the small number of projects to be funded under the bond, addressing all these needs will not be feasible, but the city will strive to assist as many of these needs as possible.
- **Complement other affordable housing related activities** – The Housing Bond funds allow the city to leverage its funds to continue its work on other affordable housing strategies. These include working with property owners to identify ways to improve the housing stock while avoiding forced displacement of tenants, collaborating with market rate developers to include affordable/restricted units

in their development, working with homebuilders to increase affordable homeownership stock, and providing down-payment assistance for additional affordable home ownership opportunities.

### **Racial Equity**

Beaverton's approach to racial equity in project selection will take into consideration factors such as:

- Increasing affordable housing in areas with existing underserved diverse populations, especially in areas that may be subject to displacement.
- Providing new affordable housing in high opportunity neighborhoods and sites. This would include sites that have good access to transit, jobs, quality schools, commercial services, parks & open space, etc.
- Supporting project teams that have a proven track record of:
  - Outreach, engagement, and ensuring participation of minority and women owned contractors in pre-development and construction of the project, as well as the on-going maintenance of the building;
  - Engaging targeted and/or marginalized communities, communities of color as part of its leasing process;
  - Creating an inclusive tenant screening criteria process, minimizing barriers to housing experience by communities of color;
  - Providing culturally specific resources and services. Beaverton recognizes that culturally specific programs can achieve strong outcomes for diverse groups in the community.

Beaverton will prioritize projects addressing the historical racism and lack of housing access experienced by communities of color, whether that is represented by projects sponsored by culturally specific organizations, or projects sponsored by partnerships in which culturally specific organizations have a meaningful role in project design and operations, or sponsors provide sufficient proof of their ability to connect with communities of color.

### **Connection to Services**

Beaverton expects that Resident Service Coordination will be provided at all projects, appropriate to the level of need of the target population. Resident Services will focus on eviction prevention, helping residents' access mainstream services for which they may be eligible, and community building activities.

Projects serving high needs populations will require robust supportive services to ensure resident stability and positive outcomes. While Beaverton is not a significant provider or funder of supportive services, it is available, in partnership with Washington County, to help connect developer/owners to public and private service providers in the community to create needed partnerships. Beaverton will evaluate each projects target population and service plan to ensure that it is appropriate and durable.



## **Project Cost/Leveraging Funds**

Beaverton plans to use Bond funds to support a portfolio of projects that provide the best return on investment in the form of long-term sustainable housing. These projects will be characterized by efficient design and durable construction. They will use cost effective green building measures to create efficient use of energy and water, and select materials to create healthy living spaces. They will be well aligned with the needs of the target households in terms of space, amenities and service requirements, and will be valuable assets in the communities in which they are located.

The blend of funding sources will have an impact on both hard and soft costs. Hard costs will be impacted by development standards of investors, lenders and other public funders. Soft costs will vary with requirements for specific legal, accounting, reserve requirements, and fees. Leverage will also be impacted by the service needs of the residents.

Beaverton will evaluate all proposed projects to ensure that the costs are reasonable and appropriate to the specific project. In doing this evaluation Beaverton will focus on the amount of Bond funds needed rather than the total development costs of projects. This evaluation may consider:

- Scale appropriate to the target population.
- Scale appropriate to the neighborhood in which the project is located.
- Costs associated with mixed use projects.
- Quality of construction materials.
- Costs associated with service needs of the target population.
- Reasonable fees and reserves.

Beaverton recognizes that in order to accomplish the overall unit target, it will need to have an average Housing Bond expenditure per unit of approximately \$143,000. Some projects may receive significantly less Bond funds than this amount, while others may receive significantly more. The Bond funding levels available for specific projects or funding processes will be clear in the tracking worksheet that is attached to this Implementation Strategy. To the greatest degree possible, Beaverton will try to curate the overall pipeline of projects to achieve the framework goals within the available resources, including private, state, federal and local funds. However, additional resources, including local, may be needed as displayed in Exhibit 2, Beaverton Allocation table, where it shows an estimated deficit of \$2.3 million.

## **Capacity/Readiness to Proceed**

Affordable housing is a specialty business that differs in many ways from market rate housing or other real estate development. Beaverton will seek to partner with non-profit, for-profit, or governmental organizations that have demonstrated skills as affordable housing developer/owners. Expertise with the framework target unit types and with the specific population proposed by a project will also be considered.

Timely implementation of the Housing Bond is critically important. In its selection process, Beaverton will prioritize projects that have a clear path to timely completion. The City may prioritize projects that have appropriate zoning, have secured much or all of the other financing sources, have secured needed service partnerships, have a clear and achievable racial equity plan, etc. Once a project is selected, the city will work and assist the selected developer, to whatever degree possible, through the land use and permitting processes.

## **VIII. Project Implementation**

### **Review & Approval of Projects**

Bond funded projects will go through a multi-level review and approval process as follows:

- Beaverton concept endorsement. The project solicitation and selection process include review and recommendation by an ad-hoc review committee. The recommendation is reviewed by the HTAG and REC for feedback and subsequent recommendation is made to the Mayor. The Mayor makes a recommendation to City Council. Staff will present the potential project to City Council for concept approval and to authorize the Mayor to submit the project to Metro for concept endorsement. To be presented at Council and later be forwarded to Metro for concept endorsement a project must, at a minimum, have site control, a preliminary development plan, preliminary estimate of total development costs, preliminary estimate of needed Housing Bond funds, an identified development team, and a preliminary racial equity plan.
- Metro concept endorsement. Metro staff will review the request, assess the project's compatibility with the LIS and provide a recommendation for endorsement by the Metro COO.
- Beaverton project approval & funding authorization. As the project completes due diligence and moves to financial closing, Beaverton will process project approval by presenting final project details to the HTAG and REC for final review and recommendation. These recommendations will be presented to the Mayor for review, and the Mayor will present the funding request to City Council for the appropriate action.
- Metro project approval & funding authorization. Metro staff will present the project to Metro for final approval and funding authorization per the Beaverton-Metro Intergovernmental Agreement (IGA) process.
- Release of Funds. Once a project has received approval by the Beaverton City Council and Metro, funds will be released to Beaverton and disbursed to the project in accordance with the provisions of the project documents and the IGA.

### **Project Closing**

- Metro-Approved Regulatory Agreement. All projects will be required to execute a Metro-approved Regulatory Agreement that acknowledges the use of Metro

Housing Bond funds and the restrictions associated with the use of such funds. The Regulatory Agreement will be recorded against the project at or prior to closing.

- Period of Affordability. The Regulatory Agreement will generally specify a 60-year period of affordability. The Regulatory Agreement will provide a right of first refusal for qualified nonprofit organizations or government entities to acquire the project upon expiration of the affordability period.
- Accomplishment of Framework Targets. The Regulatory Agreement will also specify the level of affordability and the unit bedroom sizes of the project.
- Resident and Supportive Services for Permanent Supported Housing units. The Regulatory Agreement will align services associated with PSH units to the availability of funding for the services. The unit will cease to operate as a PSH should funding for services no longer be available.
- Reporting Requirements & Monitoring During Operations. The Regulatory Agreement or similar agreement will also provide requirements for periodically providing information relating to the project's financial performance, physical condition, occupancy, tenant income verification, and voluntarily collected tenant demographics. The agreement calling for these reports will provide that reports will be made for the benefit of both Metro and the City of Beaverton. The agreement will also provide physical access to the property when requested by Metro, the City of Beaverton, or other project financing partners.
- Jurisdiction Documents. The City of Beaverton will require a variety of other documents relating to the project. These may include:
  - Disposition and Development Agreements. In the case of properties controlled by the City of Beaverton, the City will develop agreements relating to the transfer of property to the developer/owner.
  - Beaverton will develop documents relating to the form of investment of Bond Funds. These may vary depending on projected cash flow of different projects and may take the form of cash flow dependent loans or grants. In general, Beaverton will support the allocation of modest amounts of program income to restricted reserve accounts dedicated to capital accounts and/or the provision of Resident Services. Projects that are expected to have more significant program income may have requirements for cash flow dependent distributions to the City.
  - Beaverton will specify requirements relating to implementation of Racial Equity Strategies. Strategies will be developed for each project, and requirements will be documented in agreements with the City. This will include:
    - **MWESB (Minority, Women, Emerging Small Business and Disabled Veterans) Contracting**. Bond project sponsors will be required to make good faith efforts to achieve 20% subcontracting participation on the development hard and soft costs to COBID certified MWESBDVs. Specific NOFAs, RFQs or RFPs may have additional goals or requirements. Those responding to Bond

offerings will be required to provide documentation of how they intend to meet COBID subcontracting effort requirements, and successful awardees will be required to report their ongoing project participation to the City.

In order to reach these goals, the City hopes to assist contractors make connections with agencies who work with the promoting, hiring and development of MWESB-DVs. The City has been proactive in meeting with Trade Associations and attending events to promote upcoming Bond projects in the region. As an example of this strategy, Beaverton, in partnership with the City of Hillsboro and Washington County, are hosting a structured informational event for developers, GCs, and trade associations about upcoming opportunities from jurisdictions, developers, and GCs. Complemented by a team building exercise, this event hopes to foster connections, build trust, and begin creating relationships that can lead to increased contracting opportunities and wealth among the MWESBDV population.

- **Workforce and Apprenticeship Participation.** Beaverton is interested in understanding the labor force make-up of each project and encouraging the utilization of apprenticeship programs. The City will track the labor force demographic and hours worked by each apprentice. While specific programs to further this goal are not developed at the time of writing the LIS, staff has engaged in conversation and outreach to pre-apprenticeship programs such as Oregon Tradeswomen, Constructing Hope and Portland Opportunities Industrialization Center. The city will also engage Metro, other implementing jurisdictions, and project sponsors to explore ways to maximize apprenticeship participation.
- **Affirmative Marketing, Tenant Selection & Lease-Up.** Consistent with Metro policy, Beaverton will work to ensure that Bond financed housing serves communities of color, families with children and multiple generations, people living with disabilities, seniors, veterans, households experiencing or at risk of homelessness, and households at risk of displacement. Beaverton will require that project developers/owners make best faith efforts to make units available to minorities and disadvantaged populations using best practice strategies. In general, this will require:
  - Affirmative outreach and marketing to target populations. Developers/owners, and their property management companies (if applicable) will be expected to engage in pro-active efforts to make disadvantaged populations aware of the availability of units, and the process and timeline for application. Beaverton will work with project

sponsors to identify specific target populations for each project and will review the proposed outreach and marketing strategy for each project.

- Beaverton will require that project sponsors use low barrier screening criteria that balances access to target populations, project operations, and community stability. Typical requirements may include less than standard market apartment income-to-rent ratios, reduced credit history requirements, and criminal history requirements that only consider recent convictions that are most directly tied to tenant success. Project sponsors will be required to review appeals to denials of standard screening criteria that take into consideration efforts of applicants that demonstrate stability and potential for tenant success. Project sponsors are also required to review appeals if the disqualifying aspects of a denial are related to a disability and make reasonable accommodations as appropriate.

### **Project Monitoring**

Projects will be subject to monitoring throughout the development process and period of affordability. The monitoring process and expectations will be documented in agreements with the city. In general, this will include:

- Monitoring During Development & Lease Up. Beaverton will require monthly reports during the project development and lease up period and will conduct monthly site inspections in coordination with other funding partners to ensure progress to on-time and on-budget completion. Beaverton will sign off on any change orders and on monthly draw requests.
- During Operations. Beaverton will require annual reports that include information about project physical condition, fiscal condition, occupancy, tenant income verification, and voluntarily collected tenant demographics. Beaverton will conduct periodic site inspections in coordination with other funding partners.

### **Ongoing Community Engagement**

Community engagement opportunities will be organized to allow people to engage across a spectrum of interest levels:

**Inform Community Members:** Some community members will be interested in hearing the highlights about the Local Implementation Strategy for the bond; others will continue to track the process and stay up to date on the latest project news. Staff will use multiple methods of outreach to inform community members about the bond implementation process and major project milestones to ensure community members stay informed. Staff will provide information to assist the

public in understanding the decisions made throughout the planning process and implementation information will be made broadly accessible through multiple means, channels, and sources.

**Consult Community Members:** Some community members will want to make sure the process and outcomes of the LIS broadly address the topics they are interested in. These individuals may desire to weigh in and provide feedback at key points in the process and have their voice be heard. Opportunities for such feedback will be provided via open houses, housing forums, City Council meetings.

**Involve Community Members:** Some community members, such as the Housing Technical Advisory Group (HTAG), relevant Beaverton Boards & Commissions, and other community groups will want to contribute concerns and directed advice throughout bond implementation on a long-term basis. Staff will engage these groups with timely and direct answers to questions, regular updates, and sit-down meetings when possible to discuss the feedback in greater depth. These groups may also act as “champions” of affordable housing and voice their support throughout project selection and development.

## **IX. Reporting on the Implementation Strategy**

### **Annual Report**

Beaverton staff will prepare an annual report to the Beaverton City Council on overall progress of the LIS. This report will be made available to the public and interested stakeholders. The report will include information on committed and completed projects (e.g. project status, Bond funding amounts, total project cost, and units produced by unit size, type and income level served). The report will also include information on overall progress toward achievement of the framework goals and balance of funding available.

### **Reporting to Metro**

Beaverton will submit annual reports to Metro in accordance with the Intergovernmental Agreement.

**OUTREACH REPORT:  
AFFORDABLE HOUSING AND METRO REGIONAL BOND**

## Summary

The Affordable Housing Program undertook extensive consultation with the community to discuss the Metro Affordable Housing Bond and listen to community feedback including multiple Community Conversations. Events were hosted in trauma informed spaces and environments to ensure inclusivity. The City of Beaverton also partnered with Washington County and the City of Hillsboro to supplement findings and extend resources for engagement and outreach. At all Beaverton events interpretation/bilingual facilitators was available and actively utilized, childcare was provided, and refreshments were available. Events also utilized live polling to capture in-depth feedback. To make engagement opportunities inclusive and accessible events and presentations were conducted in a variety of locations, languages, and times. Every effort was made to approach all community engagement activities through a lens of equity and inclusion, with special attention paid to reaching historically underrepresented groups. Efforts were made to reach low income community members, people of color, people with limited English proficiency, immigrant and refugees, senior residents, people with disabilities and people who have experienced housing instability by hosting targeted opportunities directed towards the Arabic community, Latino parents in the Beaverton School District, and Habitat for Humanity clients and by attending meetings for groups and organizations representing these communities. The City of Beaverton asked the following questions:

1. What are the things that are most important to you and/or your family when you think about where you want to live?
2. What do you think are the biggest challenges people have with keeping their housing?
3. What types of services, programs, and/or activities are needed to overcome these challenges?
4. What do you think are the biggest challenges people face when trying to find a place to live?
5. What is the best way for you to find out about available housing?

The listening session held on **March 31** was completed in partnership with **Habitat for Humanity** and focused on Habitat clients. This was the most diverse audience of all presentations. Attendees represented recent immigrants, longtime residents, multiple nationalities, different age groups, and multiple ethnicities and races. At the request of an Iraqi community member, the listening session held on **April 19** focused on the **Arabic community**. Two members from that community promoted the event, translated the materials and guided group discussions. In partnership with the City's Planning team and the Beaverton School District, staff held a listening session at Beaverton High School's **Latino Night** on **April 24**. City staff conducted this event in Spanish to better

connect with the audience. The **Community Conversation** held **April 4** was directed at the community, with postcards sent to multi-family residences in Beaverton and a robust social media campaign. The April 4 event relied on group discussions facilitated by members of the Beaverton Committee for Community Involvement (BCCI). This event was supplemented by an **open house** on **May 16**, designed as a follow-up opportunity for those who attended the April 4 listening session and for those who have not provided feedback yet. The open house format provided an informal opportunity for staff to greet and interact with attendees, while continuing to build community trust and close the feedback loop. At both events open to the public, attendees included senior residents and people with disabilities who expressed the challenges of making ends meet on a fixed income.

In addition, the City attended a variety of other meetings and events including City boards and commissions. Committees such as the Diversity Advisory Board (DAB), Human Rights Advisory Commission (HRAC), Beaverton Committee for Community Involvement (BCCI), and Beaverton Committee on Aging, provided first-hand knowledge of their housing experience and insight on the best outreach and engagement methods to reach the diverse Beaverton population. 40% of people serving on a Beaverton board or commission are a person of color. A majority of the members of DAB and HRAC are people of color. The Beaverton Committee on Aging is made up of a combination of community members with direct experience with seniors and people with disabilities either in their personal or professional experiences.

Through opportunities detailed above, the City of Beaverton was able to hear feedback from over 200 people. **Sixty-nine percent of those who attended feedback events were people of color**, where demographic information was provided. Demographic information was collected at events in table marked with an asterisk. This included **8 presentations, events, and meetings**. See table below for more information on each engagement opportunity.

Date	Stakeholder Group (Asterisk indicates demographic information compiled)	Location	Total Participants	Agencies
3/21/19	Habitat for Humanity Listening Session*	Beaverton City Library	29	1
3/25/19	Beaverton Committee for Community Involvement	Beaverton City Hall	22	1
4/03/19	Human Rights Advisory Commission	Beaverton City Hall	11	1
4/4/19	City of Beaverton Community Conversation*	Highland Middle School	97	1
4/08/19	Diversity Advisory Board	Beaverton City Hall	15	1
4/09/19	Beaverton Committee on Aging	Beaverton City Hall	12	1



<b>4/19/19</b>	Arabic Community Listening Session*	Beaverton City Library	11	1
<b>4/24/19</b>	City of Beaverton and Beaverton School District Latino Night*	Beaverton High School	13	2
<b>5/16/19</b>	Affordable Housing LIS Open House	Highland Middle School	33	1
<b>5/22/19</b>	City of Beaverton and Beaverton School District Latino Night*	Beaverton Middle School	18	2
<b>6/6/19</b>	Arabic Community Feedback Session*	Beaverton City Library	23	1

Staff connected with the following nonprofit and for-profit developers: Hacienda Community Development Corporation (Hacienda CDC), Native American Youth and Family Center (NAYA), REACH Community Development Corporation (REACH CDC), Central City Concern (CCC), Community Partners for Affordable Housing (CPAH), Innovative Housing Initiative (IHI), Bridge Housing, Related, and Community Development Partners (CDP). Conversations with these organizations ranged from responding to affordable housing development interests and opportunities, development challenges, zoning/permitting, incentives, timing, and other related topics. Staff attended the METRO event, "Developing with the Regional Housing Bond: Progress Update and Discussion" geared towards community development corporations and other developers.

Requiring minority and women contracting as well as workforce apprenticeship participation are key components of the implementation strategy. Due to limited capacity and resources, the City has been historically unable to be more active in these programs. To grow and enhance these programs, staff met with a variety of trades, advocacy organizations and general contractors. The objective of these conversations was to establish connections, understand barriers, help facilitate partnerships between developers and contractors, and discuss affordable housing cost containment strategies.

The table below lists the contacts made thus far with developers, contractors and trade organizations.

Date	Stakeholder Group	Topics of Discussion
<b>10/10/18</b>	REACH CDC	Development opportunities, programing, services
<b>1/8/19</b>	Central City Concern	Development opportunities, programing, services
<b>1/16/19</b>	Community Partners for Affordable Housing	Development opportunities, programing, services

<b>2/1/19</b>	Bridge Housing	Development opportunities, programing, services
<b>3/11/19</b>	Walsh Construction	Apprentice program, minority contracting, cost containment strategies
<b>3/22/19</b>	Innovative Housing Inc.	Development opportunities
<b>3/26/19</b>	Related	Development opportunities
<b>3/29/19</b>	Hacienda CDC	Development opportunities, programing, services
<b>4/5/19</b>	Native American Youth and Family Center	Development opportunities, programing, services
<b>4/9/19</b>	Oregon Association of Minority Entrepreneurs	Minority contracting, partnership opportunities and engagement
<b>4/15/19</b>	MESO	Micro enterprises and minority contracting, partnership opportunities
<b>4/18/19</b>	Community Development Partners	Development opportunities
<b>4/18/19</b>	National Association of Minority Contractors	Minority contracting, partnership opportunities
<b>4/19/19</b>	Latino Built	Minority contracting, partnership opportunities
<b>4/24/19</b>	Prosper Portland	Program implementation strategy
<b>4/24/19</b>	IMPACT Beaverton/Beaverton Chamber of Commerce	Partnership opportunities and information sharing
<b>4/24/19</b>	Best HQ	Outreach for partnership opportunities
<b>4/25/19</b>	Professional Business Development Group	Minority Contracting Opportunities and information sharing
<b>4/26/19</b>	Oregon Tradeswomen	Partnership opportunities for women in the trades and information sharing
<b>5/30/19</b>	Constructing Hope	Pre-apprentice programs engagement
<b>6/6/19</b>	Adelante Mujeres	Partnership opportunities for Latinx small business
<b>6/11/19</b>	Portland Opportunities Industrialization Center (POIC)	Pre-apprentice programs engagement
<b>6/19/19</b>	Metropolitan Hispanic Chamber	Partnership opportunities for Latinx small business and partnerships
<b>6/19/19</b>	Native American Chamber	Minority contracting, partnership opportunities
<b>6/18/19</b>	Skanska	Minority contracting, partnership participation

By collaborating with Washington County and Hillsboro, Beaverton gleaned feedback from an additional 300+ people representing over 50 agencies (see Washington County Community Engagement Phase 1 summary). At each opportunity, the team provided a brief overview of the Metro Affordable Housing Bond and its impact in Washington County, and a description of the collaborative community engagement conducted

between the three jurisdictions. Opportunities also included facilitated discussions to answer the following questions:

1. What community-based organizations, service providers, advocacy groups, and communities should we connect with for input about Metro bond implementation strategies?
2. What are the things that are most important to you and/or your family when you think about where you want to live?
3. What do you think are the biggest challenges people have with keeping their housing?
4. What types of services, programs, and/or activities are needed to overcome these challenges?
5. What do you think are the biggest challenges people face when trying to find a place to live?
6. What is the best way for you to find out about available housing?
7. Is there anything else you would like to share about your experience or the need for housing in your community?

The table below outlines the community engagement opportunities conducted through Beaverton and Washington County collaboration:

Date	Stakeholder Group	Location	Total Participants	Agencies
<b>2/07/19</b>	Community Housing Advocates	Beaverton	12	11
<b>2/06/19</b>	Housing Support Services Network	Beaverton	57	42
<b>2/13/19</b>	Washington County Resident Advisory Board	Hillsboro	20	
<b>3/11/19</b>	Self Determination Resources	Beaverton	5	1
<b>3/14/19</b>	SOAR Immigration Legal Services/EMO	Hillsboro	3	1
<b>3/18-3/27</b>	Homeplate Youth Services	(survey)	10	1
<b>3/18/19</b>	Con Plan Workgroup	Hillsboro	31	17
<b>3/25/19</b>	Washington County Parole and Probation	Hillsboro	11	2
<b>3/26/19</b>	OR Law Center	(survey)	15	1
<b>3/27/19</b>	Community Action/CPOs Homeless Forum	Cornelius	43	2
<b>4/4/19</b>	Community Action – Family Advocates & Housing Specialists	Hillsboro	15	1
<b>4/16/19</b>	Head Start Policy Council (parents)	Hillsboro	23	1
<b>4/15-4/17</b>	Con Plan Focus Groups (6)	Hillsboro	38	4
<b>5/22/19</b>	Behavioral Health Council	Hillsboro	20	8

Overall, these sessions and meetings were very successful. By partnering with the City of Hillsboro and Washington County, the City of Beaverton was able to reach individuals and families experiencing homelessness and people with disabilities, as well as service providers working with these communities, outside of Beaverton's readily available network. Through both targeted and broad-brush marketing, the city reached a wide range of residents to discuss priorities for the Metro housing bond, provide education and awareness around the impact of the bond, and build community trust. Staff are cultivating and maintaining an interested and affected group's contact list that will be utilized as Beaverton moves into the feedback phase of the community engagement for the Metro bond and beyond.

Agencies reached through Hillsboro and Washington County collaboration are as follows:

- Boys & Girls Aid
- Beaverton School District Help Center
- Beaverton Social Justice League
- Bienestar
- City of Tigard
- CODA Inc.
- Community Action Organization
- Community Housing Fund
- Community Partners for Affordable Housing
- Community Participations Organizations 10, 12C, 12F, 13, 15
- Ecumenical Ministries-Second Home
- Families for Independent Living/DEAR
- Good Neighbor Center
- HomePlate Youth Services
- Housing Independence
- Impact NW
- Just Compassion
- LifeWorks NW
- Luke-Dorf, Inc.
- Hillsboro School District
- McKinney-Vento Liaison/HEN
- Marjorie Stewart Senior Center
- Mental Health Association of Oregon
- Old Town Church
- Open Door Counseling Center
- Oregon Department of Human Services - Tigard
- Oregon Law Center
- Portland Community College
- Portland Rescue Mission
- Portland State University - Impact Entrepreneurs/HRAC
- Project Access Now
- Proud Ground
- REACH CDC
- Sequoia Mental Health Services, Inc.
- Self Determination Resources Inc.
- Sequoia Mental Health
- SOAR Immigration Legal Services
- Veteran Affairs HUD-VASH
- Vose Neighborhood Advisory Council
- WC County Administrative Office
- WC Dept. of Community Corrections, Parole and Probation
- WC Dept. of Aging & Veteran Services
- WC Dept. of Housing Services
- WC Dept. of Land Use and Transportation
- WC Office of Community Development
- Write Around Portland

In many ways, the input and suggestions received during the community engagement opportunities substantiated the findings from other documents reviewed. Documents reviewed include:

- Community Alliance Tenants – Data Report
- Coalition of Communities of Color – Leading with Race Research Justice in Washington County
- Metro Equitable Housing Report
- Oregon Housing Committee Statewide Supportive Housing Report
- Washington County Consolidated Plan 2015-2020

## Outreach Summary

A robust outreach strategy was developed and implemented for the events, including:

- Multi-family Housing targeted City postcard (10,000 households)
- March/April and May/June Your City newsletter
- Flyers distributed to neighborhood groups, boards & commissions meetings
- Leveraging Partner Organizations (Habitat for Humanity, Beaverton School District, etc.)
- Farmers Market tabling
- Press Release
- City website
- City online calendar
- City Facebook page
- Neighborhood Program Friday Update e-mail distribution list: 230 inboxes/week for four weeks
- Targeted outreach to BOLD (Beaverton Organizing & Leadership Development) participants
- E-Blast to growing Affordable Housing distribution list: 240 inboxes
- Cultural Inclusion monthly e-mail distribution list: 1,146 inboxes
- Emails to Neighborhood Association Committee distribution list (2,857) and Beaverton Board and Commission members (160 members)



## Evaluation Summary

Since the same questions were utilized by the participating jurisdictions, staff were able to compile, code, and analyze responses for the same key themes. The key themes

illustrated throughout community responses included barriers to housing, service needs, location, marketing, and a small number of answers did not fit into any of these categories necessitating an “other” category. A detailed description of each theme is listed below and the percentage of responses that spoke to each theme.

**Washington County, City of Beaverton and City of Hillsboro Engagement Opportunities Results:**

- Barriers (52% of total)
- Service Needs (21% of total)
- Location (16% of total)
- Marketing (8% of total)
- Other (3% of total)

A summary of detail within each category is below.

**Barriers**

This category includes a variety of factors that prevent people from being able to secure or maintain housing. Specifically, these responses fell into one of the following categories:

- Cost (33%) – affordability of rent; application fees; costs to move; deposits; costs related to past rental history, criminal history, and credit history; and utility costs
- Screening Criteria (31%) – rental history; criminal history; credit history; citizenship status; and understanding what purpose screening serves and why it is necessary
- Navigation (16%) – complex system of finding and securing housing; complex application process; ability to understand and follow through with finding and securing housing; bureaucracy is overwhelming; mobility/transient nature of clientele;
- Housing Needs (9%) – unit size; accessibility for developmentally delayed people; safety/livability of units; spaces not trauma informed
- Cultural and Trust (8%) – Cultural differences in understanding of norms and compliance; and fear or distrust about stability of housing, neighbors, environment

**Service Needs**

This category includes factors that are related to specific services that could be offered onsite or ways in which services could better meet the needs of tenants. For the most part, responses were categorized as the following:

- Education (37%) – skills building for self-sufficiency, housing sustainability; vocational training and mentorships; and renter education related to navigating the system, understanding tenant rights, and compliance with rules
- Service Alignment (31%) – coordination between community-based organizations, agencies and other service providers; coordination of services specific to families and seniors;

- Addictions/Mental Health or other Case Management (16%) – onsite mental health and addictions services as well as case management for others who need that level of support

Other mentions included accommodations within the physical space such as community rooms, common space, and storage space

### **Location**

This category includes specifics about where housing is located, proximity to things people may need to thrive and the environment in which housing is situated. Responses primarily fell into the following groups:

- Services (29%) – proximity to grocery stores, employment, medical providers, and other supportive services
- Safe/Sense of community (35%) – good schools; sense of community; and safe, quiet, walkable neighborhood
- Transit (21%) – close to public transportation; and accessible for special needs transportation (LIFT)
- Other comments included equitable distribution of housing in mixed-income areas with broad geographical dispersal

### **Marketing**

This category was specifically focused on how people hear about housing and considerations in how to share information about housing with communities. This was a much smaller number of comments that predominately focused on sharing information through community-based organizations and other word-of-mouth opportunities as well as communicating information in multiple languages and formats.

### ***City of Beaverton Specific Events Engagement Results:***

See above for detailed description of each category and sub-category. Below are the results of community feedback compiled by the City of Beaverton at listening sessions: Habitat for Humanity on March 22, Community Conversation on April 4, Arabic Listening Session on April 19, and Latino Night on April 24.

- Barriers (54% of total)
- Service Needs (14% of total)
- Location (32% of total)

### **Barriers**

- Cost (56%)
- Screening Criteria (12%)
- Navigation (13%)
- Housing Needs (15%)
- Cultural and Trust (4%)
- Other mentions included unstable family situations (i.e. divorce).

**Service Needs**

- Education (42%)
- Service Alignment (46%)
- Addictions/Mental Health or other Case Management (8%)

**Location**

- Services (29%)
- Safe/Sense of community (48%)
- Transit (17%)
- Other mentions were too generic to fall into any one category.

***Outreach Recommendations from City of Beaverton Engagement (based on Question 5 results):***

- Internet
- Word of Mouth
- Leveraging Partner Organizations
- Utilizing Community Locations
- Cellphone Based
- Creating Database of housing for renters and landlords
- Print Media

The most popular answers to this question were utilizing the internet, word of mouth outreach through community leaders and networks, leveraging partner organizations, and utilizing well-known community-specific locations (i.e. library, places of worship, etc.). However, several people noted that internet access is limited; necessitating continued and expanded print marketing to ensure affordable housing outreach is accessible to all. One idea that came out of this conversation was the need to create a "brand," so the community would know the availability of housing notice is from a trusted source.

**Conclusion**

Beaverton is pleased to be an implementing jurisdiction of the Metro Affordable Housing Bond Program. The city seeks to sustain its livability, particularly for those most in need. To that end, Beaverton's Local Implementation Strategy will guide the city's efforts to create affordable housing using proceeds from the Metro Affordable Housing Bond. These and other resources will play a critical role in the city meeting a range of important housing needs in the community, ensuring the livability of the community through the availability of affordable housing meeting the needs of the community. The community engagement process will continue inform every step of the way through the plan's implementation.



# Photos



Listening Session:  
Affordable Housing and Metro Regional Housing Bond

**WELCOME!** أهلاً وسهلاً

حلقه مناقشة:  
الإسكان بالتعاون مع مدينة بيفرتون

April 19, 2019

Community Conversation  
**Affordable Housing & Metro Regional Bond**  
Conversación de la Comunidad: Vivienda Asequible y Bono Regional Metro

**Thursday, April 4 | 5:30-7:30 PM**  
**Highland Park Middle School**  
**7000 SW Wilson Ave**

**What's the future of affordable housing in Beaverton?**  
Come share your solutions and learn about Regional Affordable Housing Bond implementation.

**¿Qué futuro tiene la vivienda asequible en Beaverton?**  
Venga a compartir su opinión y conozca la implementación del Bono Regional de Vivienda Asequible.

*Everyone welcome. Dinner, Spanish interpretation and childcare provided.*

*Todos son bienvenidos. Se proporcionará interpretación al español y cuidado de niños.*

Learn more at:  
[BeavertonOregon.gov](http://BeavertonOregon.gov)



**BEAVERTON LOCAL IMPLEMENTATION STRATEGY  
PORTFOLIO APPROACH**

**Beaverton Portfolio**

	Metro Bond	% of Total
Beaverton Allocation	\$31,140,595	100.0%
Used		
1st & Main	\$3,000,000	
Elmonica	\$10,147,258	
Project C	\$11,089,856	
Project D	\$9,171,202	
Total	\$33,408,316	107.3%
Balance (Deficit)	(\$2,267,721)	-7.3%

**Beaverton Portfolio**

Production	Per Project Modeling Total				Modeling Beaverton-Metro Units Target		
	The Mary Ann	Elmonica	Project C	Project D	Total	Metro	Variance
Units	54	79	66	51	250	218	32
≥2 Bdrm	29	37	42	6	114	109	5
30% PBV	3	19	22	10	54		
	8	9	16	2	35		
Total	11	28	38	12	89	89	0

## EXHIBIT B TO IGA

### Administrative Share Funding and LIP Anticipated Timeline

Total Administrative Share available as of the Effective Date: \$575,591

The parties expect to review the following schedule on an annual basis; provided, however, the schedule set forth below may only be revised or amended upon written agreement by both LIP and Metro.

<b>Fiscal year</b>	<b>Annual Administrative Share Allocation</b>	<b>Percent of total Admin Share</b>	<b>LIP Anticipated Timeline/ Program Milestones</b>
Year 1: 2019-20	\$143,898	25%	The Mary Ann: Construction loan closing, groundbreaking, and construction starts Release NOFA and select developer for Project D Release RFP and select developer for Elmonica
Year 2: 2020-21	\$115,118	20%	Project C: Release RFQ and select developer Project D: Construction loan closing, groundbreaking, and construction starts Elmonica: Construction loan closing, groundbreaking, and construction starts
Year 3: 2021-22	\$115,118	20%	The Mary Ann: Certificate of Occupancy and Lease up Project C: Construction loan closing, groundbreaking, and construction starts
Year 4: 2022-23	\$115,118	20%	Project D: Certificate of Occupancy and Lease up Elmonica: Certificate of Occupancy and Lease up
Year 5: 2023-24	\$57,559	10%	Project C: Certificate of Occupancy and Lease up
Year 6: 2024-25	\$28,780	5%	Final reports and close-out
Year 7: 2025-26	\$0		

## EXHIBIT C TO IGA

After recording return to:  
Office of Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736  
Attn: \_\_\_\_\_

### DECLARATION OF AFFORDABLE HOUSING LAND USE RESTRICTIVE COVENANTS

This Declaration of Affordable Housing Land Use Restrictive Covenants (this "Declaration") is entered into as of \_\_\_\_\_, 2019 (the "Effective Date"), by and between Metro, a municipal corporation of the State of Oregon ("Metro") and \_\_\_\_\_ ("Owner").

#### RECITALS

- A. Owner is the owner of certain real property commonly known as \_\_\_\_\_ in \_\_\_\_\_, Oregon, and legally described on Exhibit A attached hereto.
- B. Owner and Metro are parties to that certain Intergovernmental Agreement dated \_\_\_\_\_, 20\_\_ (the "IGA"), pursuant to which Metro provided to Owner certain funds applied by the Owner to acquire the Property, which funds were proceeds of certain general obligation bonds issued by Metro for the limited purpose of funding affordable housing projects as authorized by Measure 26-199 approved by the voters on November 6, 2019 (the "Ballot Title").
- C. Owner plans to improve a \_\_\_\_ acre parcel [and modify an existing building from its current use as a \_\_\_\_\_] into [BRIEFLY DESCRIBE DEVELOPMENT PLAN].
- D. The parties expect that the Property will be redeveloped and comprised of approximately \_\_\_\_\_ units of affordable housing (the "Project"). At initial occupancy, the Project will serve qualifying persons that earn \_\_\_\_% or less of area median income (AMI).
- E. As required by the IGA, and as consideration for Metro's provision of general obligation bond funds to the Owner to acquire the Property, Owner agrees to the restrictions, covenants and obligations set forth herein.

#### SECTION 1 PROPERTY USE RESTRICTIONS

**1.1 Affordable Housing Land Use.** For the term of this Declaration, the Property and the Project shall at all times be owned, developed, constructed, improved and operated solely as "Affordable Housing" within the meaning of the Ballot Title and as described in the Metro Housing Program Work Plan approved by the Metro Council on January 31, 2019 (the "Work Plan"). For

purposes of the Ballot Title and the Work Plan, “Affordable Housing” is defined as improvements for residential units occupied by households earning 80% or less of median gross household income, adjusted for household size, for the Portland, Oregon metropolitan statistical area as established each year by the U.S. Department of Housing and Urban Development.

1.2 **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. Section 2000d; Section 303 of the Age Discrimination Act of 1975, as amended; 42 U.S.C. Section 6102; Section 202 of the Americans With Disabilities Act of 1990; 42 U.S.C. Section 12132, no owner of the Property shall discriminate against any employee, tenant, patron or buyer of the Property improvements because of race, color, creed, national origin, sex, age or disability. In addition, any such owner shall comply, to the extent applicable to the Property, with the applicable federal implementing regulations of the above-cited laws and other applicable state and federal laws. “Owner” shall mean the fee simple title holder to the Property or any part thereof, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

1.3 **Running with the Land.** Owner hereby declares that the Property subject to this Declaration shall be held, sold and conveyed subject to the forgoing land use restrictions and covenants, which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of Metro. Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to ensure that these restrictions run with the Property for the term of this Declaration.

## SECTION 2 GENERAL PROVISIONS

2.1 **Enforcement.** Metro shall have standing, and may bring an action at law or equity in a court of competent jurisdiction to enforce all restrictions and covenants established by this Declaration and to enjoin violations, ex parte, if necessary. The failure to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter. If legal proceedings of any type are begun so as to enforce the Declaration, the prevailing party shall recover reasonable attorney’s fees, including attorney’s fees on appeal. However, attorney’s fees shall not be recovered by a prevailing party that initiated the legal proceedings unless the initiating party provided 30 days’ written notice to the other party, its successors, and assigns, prior to filing any legal action.

Metro is the only party entitled to enforce the restrictions and covenants set forth herein. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

2.2 **Duration.** Subject to the provisions of the IGA providing for the early termination of this Declaration upon the occurrence of certain events or conditions, or otherwise upon mutual consent of the parties, the restrictions established by this Declaration shall run with and bind the Property in perpetuity.

2.3 **Amendment.** This Declaration may not be amended or revoked except by written

**2.4 Limitation of Liability of Metro.** Under no circumstances shall Metro have any liability to Owner, its successors and assigns, or other user or tenant, lessee, guest or invitee of Owner, its successors and assigns, by virtue of Metro's enforcement or failure to enforce the rights established by this Declaration, and Owner, its successors and assigns, should defend and hold harmless Metro from same.

**2.6 Breach of Agreements.** Owner represents and warrants that this Declaration does not violate any of the terms or conditions of any other agreement to which Owner is a party, or to which the Property is subject.

(Signature of Notarial Officer)

METRO

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of Oregon                    )  
  ss.  
County of \_\_\_\_\_)

        This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
\_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_, an Oregon \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notarial Officer)

**Exhibit A**

**Property Legal Description**



## EXHIBIT D to IGA

### Required Project Completion Reporting

#### Immediate Post Closing (within 10 business days after closing):

- ☐ Copy of recorded Metro approved restrictive covenant
- ☐ Copy of settlement statement

#### Post Construction Completion (within 3 months of recorded temporary certificate of occupancy):

- ☐ Metro project closeout form attesting to use of Metro bond funds for capital costs
- ☐ Copy of temporary certificate of occupancy
- ☐ Resident Services Plan (OHCS form)
- ☐ Affirmative Fair Housing Marketing Plan (HUD Form)
- ☐ Community engagement report
- ☐ MWESB/COBID participation outcomes
- ☐ Workforce outcomes report, if project has stated workforce goals
- ☐ Draft project summary

#### Post-Occupancy (within 3 months of 95% occupancy):

- ☐ Marketing and application outcomes report
- ☐ Final project summary

IN CONSIDERATION OF RESOLUTION NO. 19-5009 FOR THE PURPOSE OF  
AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE  
CITY OF BEAVERTON FOR IMPLEMENTATION OF THE METRO AFFORDABLE  
HOUSING BOND MEASURE

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Date: November 6, 2019  
Department: Planning & Development  
Meeting date: November 21, 2019

Prepared by: Emily Lieb  
Presenter(s): Emily Lieb  
Length: 10 minutes

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## **ISSUE STATEMENT**

As directed by the Program Work Plan, staff has prepared an intergovernmental agreement (IGA) setting forth the terms and conditions under which Metro will disburse Metro Housing Bond funding to the City of Beaverton for eligible program activities. The proposed IGA is attached as Exhibit A to the Resolution.

The IGA is intended to provide clarity and accountability regarding the expenditure of bond funds to achieve specific Unit Production Targets.

## **Eligible funding amounts**

Beaverton is eligible for the following funding amounts to support investment in Affordable Housing Projects that are consistent with the Bond Measure, Work Plan, and approved LIS.

- Eligible Share: \$31,140,595 to be disbursed on a Project by Project basis to support direct capital investments in eligible Affordable Housing Projects.
- Administrative Share: \$575,591 to be released in annual disbursements to support general costs associated with program administration activities.
  - This amount reflects the County's full Administrative Share allocation of \$655,591 less \$80,000 in Housing Bond funds previously disbursed to Beaverton for program administration activities in FY2019-20.

## **Unit production targets**

Beaverton agrees to direct the above funding resources toward the creation of Affordable Housing to achieve the following unit production targets:

- Beaverton will support investments to create a total of 218 permanently affordable homes.
- At least 89 homes will be restricted to households earning 30% or less of area median income (AMI).
- At least 107 homes will be restricted to households earning 31% to 60% of AMI
- No more than 10% of units (22 of 218 total units) may be affordable to households making 61-80% of AMI.
- At least 109 units will contain two or more bedrooms.

## **General IGA provisions to ensure transparency and accountability**

- All projects selected for bond funding must demonstrate consistency with Beaverton's Local Implementation Strategy (LIS), as confirmed through Metro staff review at the concept and final funding stage. See Beaverton's LIS attached as Exhibit A to the IGA.
- Beaverton will record a restrictive covenant ensuring long-term affordability and monitoring obligations for all approved projects.
- Beaverton will submit annual progress reports to Metro, which will be utilized by the Housing Bond Community Oversight Committee as part of their annual review. Along with project progress information, these reports will include metrics and narratives describing outcomes related to advancing racial equity.
- Metro will disburse administrative funding to Beaverton annually. See the Schedule of Administrative Funding Disbursement and Program Milestones attached as Exhibit B to the IGA.
- Beaverton will submit annual end-of-fiscal-year reports to Metro summarizing direct project expenditures and program administrative expenditures, the latter of which is subject to the 5% administrative cap included in the Housing Bond Measure.

## **Beaverton Local Implementation Strategy (LIS)**

In July, Beaverton completed its Local Implementation Strategy (LIS). In accordance with requirements set forth in Metro's Housing Bond Program Work Plan, Beaverton's LIS includes a development plan to achieve the City's share of unit production targets and strategies for advancing racial equity and ensuring community engagement throughout implementation. Key highlights of Beaverton's LIS include:

- Portfolio approach to achieve the unit production targets through four projects, including:
  - Mary Ann Apartments, which received a concept endorsement from Metro Council as a Phase 1 project on March 11, 2019;
  - Plans to partner with Metro on the development of the Metro owned Elmonica site at 170<sup>th</sup> and Baseline, to be facilitated through a joint developer solicitation process;
  - One site to be acquired by the City using bond funds, for development through a Request for Qualifications (RFQ) process; and
  - One project to be selected through an open Notice of Funding Availability (NOFA) process;
- Creation of a Housing Technical Advisory Group to advise staff on investment decisions;
- Requirements for project sponsors to make good faith efforts to achieve 20% subcontracting participation on the development hard and soft costs to COBID certified MWESBDVs;

- Requirements that project developers/owners use low barrier screening and best practice affirmative marketing strategies; and
- Requirement that project developers/owners track the labor force demographic and hours worked by each apprentice.

The Beaverton LIS was reviewed and discussed by the Housing Bond Community Oversight Committee at their July 24th meeting, where Committee members present voted unanimously to recommend the LIS to Metro Council for approval with considerations for ongoing monitoring. A copy of the Oversight Committee's recommendation and noted considerations is attached to this Staff Report.

## **REQUESTED**

Adopt Resolution No. 19-5009, authorizing the Chief Operating Officer to execute an intergovernmental agreement with the City of Beaverton for implementation of the Metro Affordable Housing Bond Measure.

## **IDENTIFIED POLICY OUTCOMES**

Once the IGA is finalized, Beaverton will be eligible to receive \$31,140,595 in Metro bond funding for disbursement on a project-by-project basis, and \$575,591 in funding for program administration costs between FY19-20 and FY25-26, including \$143,898 in FY19-20 administration funding to be disbursed within 30 days of the execution of the IGA.

Ongoing disbursement of funds will be contingent upon demonstrated progress toward achieving Beaverton's share of the Unit Production Targets and Beaverton's compliance with its LIS.

## **POLICY QUESTION(S)**

- Does the Council believe the IGA provides the necessary accountability structures and mechanisms to ensure the region's success in fulfilling the commitments articulated in the Housing Bond Measure?
- Does the Council believe Beaverton's LIS (attached as Exhibit A to the IGA) meets the requirements established by the Council in the Program Work Plan, as recommended by the Community Oversight Committee?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

- Authorize the execution of an intergovernmental agreement with the City of Beaverton for implementation of the Metro Affordable Housing Bond Measure by adopting Resolution No. 19-5009. Such authorization would effectively approve Beaverton's LIS, which is incorporated into the IGA as Exhibit A.
- Reject proposed intergovernmental agreement with the City of Beaverton for implementation of the Metro Affordable Housing Bond Measure, and direct staff to renegotiate the terms and conditions upon which funding will be provided.

## **STAFF RECOMMENDATIONS**

Staff recommends adoption of Resolution No. 19-5009.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

The IGA was shaped through the direction provided in the Housing Bond Program Work Plan, adopted by Metro Council on January 31, 2019, and through consideration of applicable state laws pertaining to the program. Staff from Planning & Development; Office of Metro Attorney; Finance and Regulatory Services; Risk Management; and external bond counsel have all been consulted in development of the IGA.

Metro staff have worked with staff at all seven eligible local implementation partners over the past six months to develop IGA terms that protect the integrity of the program and ability for implementation partners to achieve prescribed outcomes. Beaverton City Council is scheduled to consider approval of the IGA on November 12.

To inform the creation of the LIS, the City of Beaverton hosted eight events, including a listening session for the general public and specific outreach targeting the Arabic community, Latino parents in the Beaverton School District, and Habitat for Humanity clients. Events included translation services and childcare and were hosted at a variety of locations and times to ensure inclusivity. Through these efforts, the City reached over 200 people, and 69% of those who provided demographic information were people of color. Engagement themes included housing barriers, service needs, and location criteria for affordable housing investments. Beaverton City Council reviewed the final LIS on July 9, prior to its referral to Metro for consideration.

Oversight Committee members present at the July 24<sup>th</sup> meeting voted unanimously to recommend Metro Council approval of the LIS as part of the IGA. Staff are not aware of any opposition to Beaverton's LIS or to the IGA.

The proposed Resolution is based on numerous policies previously adopted by the Metro Council, including but not limited to:

- Resolution No. 19-4956, approving the Metro Affordable Housing Bond Program Work Plan
- Resolution No. 18-4898, referring the Affordable Housing Bond Measure to Metro District voters

## **ATTACHMENTS**

**Attachment 1: Metro Housing Bond Community Oversight Committee Recommendations for Beaverton's Local Implementation Strategy**

## METRO HOUSING BOND COMMUNITY OVERSIGHT COMMITTEE

### RECOMMENDATIONS REGARDING BEAVERTON'S LOCAL IMPLEMENTATION STRATEGY

#### RECOMMENDATION TO METRO COUNCIL REGARDING APPROVAL OF BEAVERTON'S LOCAL IMPLEMENTATION STRATEGY

The Oversight Committee recommends that Metro Council take action to approve the City of Beaverton's Local Implementation Strategy (LIS). The Committee has identified the following considerations for the City of Beaverton's ongoing implementation and monitoring of outcomes:

- The City should further define strategies and outcomes that will be measured to demonstrate the advancement of racial equity, including low-barrier screening criteria, affirmative marketing, universal design, voucher prioritization, wraparound services, and contract and workforce diversity.

The Oversight Committee has requested an early response from the City of Beaverton regarding the considerations above and ongoing updates as part of the City's annual LIS progress report. The Oversight Committee expects to address these considerations in its annual LIS review.

#### ADDITIONAL GUIDANCE FOR ALL JURISDICTIONS

In addition to the above considerations, Committee members have offered the following considerations for all jurisdictions participating in implementation of the Housing Bond. This list reflects considerations approved by the committee as of their September 4 meeting and may be further refined as the Committee discusses Local Implementation Strategies from other jurisdictions.

- When describing strategies to advance racial equity, be specific about prioritization among various strategies.
- Use language that acknowledges intersectionality of populations; avoid differentiating between homelessness, disabling conditions including physical and mental health, and addiction.
- Identify screening criteria not relevant to likelihood of successful tenancy that should not be considered.
- Provide further information about jurisdiction commitments to fund supportive services as needed to meet the needs of certain tenants.
- Additional resources need to be identified to successfully serve tenants who need permanent supportive housing.
- Consider further specificity about family sized unit production that includes goals or requirements to ensure three bedroom and larger homes.
- Measuring outcomes regarding workforce equity should include all workers, not solely apprentices.
- Many minority owned businesses need additional support to successfully participate in the COBID certification program.
- Consider sustainability/durability and life cycle costs, and incorporate findings from the 2015 Meyer Memorial Trust study on cost efficiencies in affordable housing in evaluating project.

**Resolution No. 19-5010**, For the Purpose of Authorizing  
Execution of an Intergovernmental Agreement with the  
Housing Authority of Clackamas County for  
Implementation of the Metro Affordable Housing Bond  
Measure

*Resolutions*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 19-5010
EXECUTION OF AN INTERGOVERNMENTAL	)	
AGREEMENT WITH THE HOUSING AUTHORITY	)	Introduced by Interim Chief Operating
OF CLACKAMAS COUNTY FOR	)	Officer Andrew Scott in concurrence
IMPLEMENTATION OF THE METRO	)	with Council President Lynn Peterson
AFFORDABLE HOUSING BOND MEASURE	)	

WHEREAS, on June 7, 2018, the Metro Council adopted Resolution No. 18-4898, referring to the Metro area voters Ballot Measure 26-199 authorizing general obligation bond indebtedness to fund affordable housing (the "Housing Bond Measure"); and

WHEREAS, on June 28, 2018, the Metro Council passed Ordinance 18-1423 establishing that affordable housing is a "matter of metropolitan concern" and exercising jurisdiction over functions related thereto; and

WHEREAS, on November 6, 2018, the voters approved the Housing Bond Measure, providing Metro with the authority under the laws of the State of Oregon and the Metro Charter to issue bonds and other obligations payable from ad valorem property taxes for the purpose of financing and identifying funds to be used for affordable housing; and

WHEREAS, on January 31, 2019, the Metro Council adopted Resolution No. 19-4975, approving the Metro Housing Bond Measure Program Work Plan (the "Work Plan"), which, among other things, provided that the Housing Bond Measure program would primarily be implemented by local jurisdiction partners who have created individualized plans (each, a "Local Implementation Strategy") to (a) achieve certain unit productions targets, (b) advance racial equity, and (c) ensure community engagement in program implementation; and

WHEREAS, the Housing Authority of Clackamas County has created a Local Implementation Strategy, which strategy was reviewed by the Affordable Housing Bond Community Oversight Committee and has been recommended to the Metro Council for approval;

WHEREAS, in accordance with the Work Plan, Metro staff has negotiated terms and conditions under which Housing Bond Measure funding will be provided to the Housing Authority of Clackamas County, which terms and conditions are set forth in the proposed intergovernmental agreement attached hereto as Exhibit A; now therefore

BE IT RESOLVED that the Metro Council:

Authorizes the Metro Chief Operating Officer to enter into an intergovernmental agreement with the Housing Authority of Clackamas County substantially in the form attached hereto as Exhibit A.



ADOPTED by the Metro Council this \_\_\_\_\_ day of November, 2019.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney



# Intergovernmental Agreement

## Affordable Housing Bond Measure Program IGA

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Metro Contract No. XXXXX

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and Housing Authority of Clackamas County ("Local Implementation Partner" or "LIP"), located at 13930 S. Gain Street, Oregon City, Oregon 97045 and is dated effective as of the last day of signature set forth below (the "Effective Date").

### RECITALS

A. The electors of Metro approved Ballot Measure 26-199 on November 6, 2018 (the "Bond Measure"), authorizing Metro to issue \$652.8 million in general obligation bonds to fund affordable housing (the "Bonds").

B. On January 31, 2019, the Metro Council adopted Resolution No. 19-4956, which, among other things, provides that Metro will distribute a portion of the proceeds of the Bonds (the "Bond Proceeds") to eligible local government affordable housing implementation partners, and LIP is a participating local government partner eligible to receive Bond Proceeds.

C. The parties desire to enter into this Agreement to provide the terms and conditions under which Metro will provide Bond Proceeds to LIP to implement the Bond Measure goals, requirements, and restrictions set forth in the Work Plan.

### AGREEMENT

**1. Definitions.** In addition to the definitions above, capitalized terms used in this Agreement have the definitions set forth in this Section 1.

1.1. "Administrative Costs" means Capital Costs that are not Direct Project Costs, including general program administrative expenses (e.g. staff support and overhead costs attributable to Bond Measure program implementation), expenses related to community engagement and outreach, and payments to third-party consultants (e.g. realtors, appraisers, surveyors, title insurers, environmental evaluators, designers, and engineers).

- 1.2. “Administrative Share” means that portion of the Bond Proceeds totaling \$2,446,065.
- 1.3. “Affordable Housing” means land and improvements for residential units occupied by low-income households making 80% or less of area median income, consistent with the intents and purposes of the Bond Measure.
- 1.4. “Affordable Housing Project(s)” or “Projects” means Affordable Housing that is developed, built or acquired by LIP using Bond Proceeds, or supported by LIP through grants or loans of Bond Proceeds, burdened by a Restrictive Covenant.
- 1.5. “Area Median Income” or “AMI” means median gross household income, adjusted for household size, for the Portland, Oregon metropolitan statistical area as established each year by HUD.
- 1.6. “Capital Costs” means costs of Affordable Housing that are capitalizable under generally acceptable accounting principles (GAAP), which costs include the costs of capital construction, capital improvements or other capital costs, as those terms are defined by the relevant provisions of the Oregon Constitution and Oregon law (including ORS 310.140).
- 1.7. “Concept Endorsement” is as defined in Section 4.1, below.
- 1.8. “Conversions” means conversion of existing, occupied market-rate housing units to Affordable Housing units burdened by a Restrictive Covenant.
- 1.9. “Direct Project Costs” means Capital Costs that are expended for the acquisition, development, or construction of an Affordable Housing Project.
- 1.10. “Disbursement Request” is as defined in Section 4.3, below.
- 1.11. “Eligible Share” means that portion of the Bond Proceeds totaling \$113,488,094.
- 1.12. “Final Approval” is as defined in Section 4.2, below.
- 1.13. “LIS” means the LIP’s local implementation strategy document adopted by LIP and attached to this Agreement as **Exhibit A**.
- 1.14. “LIS Annual Progress Report” is as defined in Section 9.1, below.
- 1.15. “New Construction” means development and construction of a new Affordable Housing Project.
- 1.16. “Oversight Committee” means the Affordable Housing Bond Community Oversight Committee created pursuant to Metro Code Section 2.19.260.
- 1.17. “Project Funds” means that portion of Eligible Share committed through the Project approval process set forth and distributed in accordance with Section 4.
- 1.18. “Property Acquisitions” means real property acquisitions by LIP to be used for future development of an Affordable Housing Project.

- 1.19. "Regional Investment" is as defined in Section 2.2, below.
- 1.20. "Regional Site Acquisition Program" means the program implemented by Metro to use Bond Proceeds to acquire and develop regionally significant sites for Affordable Housing.
- 1.21. "Restrictive Covenant" is as defined in Section 5, below.
- 1.22. "Term" is as defined in Section 11.1, below.
- 1.23. "Unit Production Targets" means those targets set forth in Section 2.1 below, and include the "Total Unit Target," the "30% or Below Target," the "31%-60% Unit Target," the "61-80% Cap," and the "Two-Bedroom+ Target," each as defined in Section 2.1.
- 1.24. "Unit(s)" means residential units in an Affordable Housing Project.
- 1.25. "Work Plan" means Metro's Affordable Housing Bond Measure Program Work Plan adopted by the Metro Council by Resolution 19-4956, as subsequently amended by the Metro Council on October 17, 2019 by Resolution 19-5015.

## **2. Unit Production Targets**

2.1. Unit Production Targets. LIP hereby agrees to adopt and take all necessary and appropriate action to implement the Unit Production Targets set forth below. The parties anticipate the LIP's Unit Production Targets will be met using a combination of funds, including LIP's Eligible Share and Metro's Regional Investment. LIP's failure to make reasonable progress towards meeting its Unit Production Targets, in accordance with the timeline attached hereto as **Exhibit B**, is grounds for termination of this Agreement by Metro as provided in Section 11, after which Metro shall have no further obligation to distribute the Eligible Share.

- 2.1.1. Total Unit Target: 812. This is the minimum total number of Units to be built or acquired using LIP's Eligible Share. Should LIP build or acquire additional units above the Total Unit Target using its Eligible Share, those units may be occupied by households earning anywhere between 0-80% so long as 30% or Below Target and the 31%-60% Unit Target have been satisfied.
- 2.1.2. 30% or Below Target: 333. This is number of the Total Unit Target that will be restricted to households earning 30% or less of AMI, in accordance with the terms of the Restrictive Covenant.
- 2.1.3. 31%-60% Unit Target: 398. This is number of the Total Unit Target that will be restricted to households earning 31%-60% of AMI, in accordance with the terms of the Restrictive Covenant.

2.1.4. 61-80% Cap: 81. This is the maximum number of units contributing to the Total Unit Target that may be restricted to households earning 61-80% of AMI.

2.1.5. Two-Bedroom+ Target: 406. This is number of the Total Unit Target that will be two bedrooms or more.

2.2. Impact of Regional Program. Metro will use ten percent of the total Bond Proceeds to fund and operate its Regional Site Acquisition Program. The parties expect that Metro's Site Acquisition Program will spend approximately \$12,909,788 within LIP's jurisdictional boundary (the "Regional Investment"). Units created in projects that utilize Regional Investment will contribute towards LIP's Unit Production Targets, unless otherwise agreed to by the parties. Metro will make good faith efforts to coordinate and consult with LIP to ensure Metro's decisions regarding the Regional Investment support LIP in reaching its Unit Production Targets. Once LIP has spent or has committed to spend 75% of its Eligible Share, if Metro has not yet spent, or committed to spend, the Regional Investment, then the parties will meet to discuss potential alternative options for how the Regional Investment could be spent by Metro to support LIP's remaining Unit Production Targets. If following such meeting the parties are still unable to identify opportunities for collaboration or agreeable potential alternative options, then LIP's Unit Production Targets will be reduced by the lesser of (a) ten percent or (b) the proportionate share equal to the amount of Regional Investment Metro has not yet spent.

### **3. Local Implementation Partner's Eligible Share.**

3.1. Direct Project Costs; Consistency with LIS. Subject to the terms and conditions of this Agreement, including Section 4, below, and the requirements, limits, and restrictions set forth in both the Work Plan and the Bond Measure, Metro will provide to LIP the Eligible Share on a Project-by-Project basis. LIP may only spend the Eligible Share on Direct Project Costs that are consistent with its LIS, as determined by Metro, in Metro's reasonable discretion, and will spend no portion of the Eligible Share on Administrative Costs.

3.2. Public or Private Ownership. LIP may use its Eligible Share to support the creation of Affordable Housing that is either privately or publicly owned. The Eligible Share may be contributed to privately-owned Projects in the form of loans or grants on terms approved by LIP. The identification and selection of a Project will be at the discretion of LIP, provided, however, all Project selections must comply with the LIS and contribute towards the Unit Production Targets. Publicly-owned Affordable Housing financed with the LIP's Eligible

Share must contribute to the Unit production Targets and must comply with the LIS and the terms and conditions of this Agreement, including, without limitation, the same Project Requirements provided for in Section 5 below.

3.3. Approved Project Types. LIP may use its Eligible Share only for the types of projects described in the Work Plan. As of the Effective Date, the Work Plan sets forth the following approved types of Affordable Housing Projects: (a) New Construction, (b) Conversions, and (c) Property Acquisitions.

#### **4. Metro Approval Process; Disbursement of Funds; Repayment**

4.1. Concept Endorsement. In order for LIP to receive a disbursement of its Eligible Share to fund a New Construction or Conversion Project, LIP must receive an initial funding commitment for such Project (the “Concept Endorsement”) from Metro. LIP’s request for a Concept Endorsement must include general project information, including a project narrative, preliminary sources and uses information, a draft project site plan, copies of relevant due diligence documents, and any other information Metro deems reasonably necessary to issue a Concept Endorsement. Metro will issue the Concept Endorsement to LIP upon Metro’s determination that (a) the Project will reasonably contribute to the Unit Production Targets relative to the amount of the Eligible Share LIP proposes to use for the Project; and (b) the Project will be consistent with the LIS, the Work Plan and the Bond Measure.

4.2. Final Approval. In order for LIP to use its Eligible Share for an Affordable Housing Project, LIP must have received final approval from Metro, as described in this section (“Final Approval”). Metro will issue Final Approval to LIP upon Metro’s determination that (a) the proposed Project reasonably contributes to the Unit Production Targets relative to the amount of the Eligible Share proposed to be used for the Project; and (b) the Project is consistent with the LIS, the Work Plan, and the Bond Measure. LIP’s request for Final Approval will include the Project information described above in Section 4.1, as well as any additional information Metro reasonably requests related to the finalized development program, including design development drawings and an updated sources and uses budget. If after receiving Final Approval, the amount of the Eligible Share initially proposed and approved increases or the Project’s unit count, bedroom mix, or affordability level changes, then LIP must submit an amended request for Final Approval for the Project. Metro will review such an amended request (along with any related Disbursement Request) expeditiously, making best efforts to accommodate LIP’s anticipated Project closing timeline.

4.3. Disbursement. Following Metro's Final Approval of LIP's proposed use of its Eligible Share for an Affordable Housing Project, LIP may request disbursement of the Project Funds from Metro ("Disbursement Request"). Such request will be made in writing (a) no more than 45 days and (b) no less than 10 business days prior to any anticipated closing or need for use. The Disbursement Request will include: (a) a certification from LIP to Metro that the Project information LIP provided to Metro in connection with its request for Final Approval has not changed or been modified in any material way; (b) a completed draft of the proposed Restrictive Covenant that LIP intends to record against the Project in accordance with Section 5 below, (c) a list of finalized sources and uses, (d) a final construction contract schedule of values, if applicable, and (e) wiring instructions or other instructions related to the transmittal of funds. LIP will provide to Metro any other information as Metro may reasonably request related to the Project. Metro will review Disbursement Requests expeditiously and will disburse funds within 10 business days of receiving a completed Disbursement Request.

4.4. Project Failure and Repayment. LIP will use the Project Funds strictly in accordance with the manner and method described in the Final Approval. If the Project financing transaction for which disbursement was sought fails to close within sixty (60) days after Metro disburses the requested funds, then, unless otherwise directed in writing by Metro, LIP will immediately repay to Metro the amount of its Eligible Share disbursed for the Project, including any interest earned thereon. If LIP uses Project Funds for a Property Acquisition, and is thereafter unable to make substantial progress, as reasonably determined by Metro, towards the development of Affordable Housing on the property within four (4) years following the closing date of the Property Acquisition (or such other time period agreed to in writing by Metro), LIP will repay to Metro the amount of the Eligible Share disbursed for the Property Acquisition. LIP acknowledges and expressly affirms its repayment obligations set forth in this section even if such failure is through no fault of LIP. LIP's remaining Eligible Share will be adjusted and increased to reflect such repayment.

## **5. Affordable Housing Restrictive Covenant.**

5.1. General Provisions and Recording Obligations. For all Projects that receive Bond Proceeds, LIP will ensure an affordable housing restrictive covenant (a "Restrictive Covenant") is recorded on the title to the land that comprises the Project. The Restrictive Covenant must be recorded at closing, or upon LIP's contribution of the Bond Proceeds to a Project. LIP will provide Metro a copy of the recorded Restrictive Covenant within ten (10) business days following its recording. If for any reason LIP fails to record a Restrictive Covenant

in accordance with this section, Metro may, at its sole option and upon written notice to LIP, terminate this Agreement in accordance with Section 11, in which case LIP will refund Metro the Bond Proceeds disbursed to LIP for such Project.

5.2. Form for Property Acquisitions. For Property Acquisitions, the Restrictive Covenant will be granted to Metro directly, be recorded in such priority approved by Metro, and shall be substantially in the form attached hereto as **Exhibit C**, or as otherwise approved by Metro.

5.3. Form for New Construction and Conversion Projects. For New Construction Projects and Conversion Projects, the Restrictive Covenant will (a) acknowledge the use of Bond Measure funds, (b) include applicable long-term affordability restrictions, (c) burden the property for a minimum duration of sixty (60) years or thirty (30) years for Conversion Projects where the building is more than ten (10) years old), (d) provide monitoring and access rights to LIP and Metro, (e) name Metro as a third-party beneficiary and (f) unless otherwise agreed to in writing by Metro, be recorded in a priority position only subject to and subordinate to a primary first mortgage or deed of trust and State low-income housing regulatory agreements. The monitoring, access and third party beneficiary language will be subject to Metro's review and approval during the Final Approval process. LIP acknowledges that such language will require Projects to provide to Metro certain data (including financial reports, physical inspection reports, and tenant data) typically collected and prepared by Oregon Housing and Community Services. Metro acknowledges that the Restrictive Covenant may provide for a waiver or temporary relief from the limitations on qualifying income, in order to address incomes rising in place to avoid undue hardship or displacement, or to conform to other regulatory or policy requirements.

## **6. Project Information Reports; Funding Recognition**

6.1. Project Information and Updates. Upon Metro's disbursement of Eligible Share for any particular Project, LIP will provide Metro with regular updates regarding Project construction and completion. LIP will notify Metro of any events during construction that materially affect the Project, including (a) significant extensions of the Project schedule, (b) significant increases to the Project budget, (c) any notices of default issued by LIP or other Project lenders, or (d) any other changes that impact the quality or nature of the Project described in the Final Approval process. If any such material events occur during Project construction, LIP will provide Metro with any additional information Metro reasonably requests related to such events. In addition to providing the general Project updates and information



described above, LIP will provide Metro with the documents listed on the attached **Exhibit D** at the Project milestones referenced therein.

6.2. Funding Recognition. LIP will publicly recognize Metro and the Bond Measure in any publications, media presentations, or other presentations relating to or describing Projects receiving Bond Proceeds. LIP will coordinate with Metro in selecting the date and time for any event recognizing, celebrating or commemorating any Project ground-breaking, completion, ribbon cutting or opening, and provide Metro an opportunity to participate. LIP will ensure that the Bond Measure is officially recognized as a funding source at any such event, and will provide a speaking opportunity for the Metro elected official representing the district in which the Project is located, if such opportunities are provided to LIP or other public officials.

**7. Administrative Funding.** Subject to the terms and conditions of this Agreement, and the requirements and restrictions set forth in both the Work Plan and the Bond Measure, Metro will provide LIP the Administrative Share. Within thirty (30) days of the Effective Date, Metro will disburse to LIP its Administrative Share in accordance with the schedule set forth on Exhibit B attached to this Agreement. Interest earnings on the Administrative Share while held by LIP may be retained by LIP, provided such interest is used for affordable housing, residential services, or supportive services for residents of affordable housing. Metro's obligation to distribute the Administrative Share is conditioned on LIP making reasonable progress towards its Unit Production Targets, as reasonably determined by Metro in accordance with the timeline set forth on the attached Exhibit B.

**8. General Obligation Bonds.** All Bond Proceeds disbursed to LIP pursuant to this Agreement (including both the Eligible Share and the Administrative Share) are derived from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11 and 11b of the Oregon Constitution. LIP covenants and agrees that it will take no actions that would adversely affect the validity of the Bonds or cause Metro not to be able to levy and collect the real property taxes imposed to repay these bonds, which are exempt from Oregon's constitutional property tax limitations. LIP further covenants and agrees that (a) all Bond Proceeds disbursed hereunder will be used only to pay for or reimburse costs that are of a type that are properly chargeable to a Capital Costs (or would be so chargeable with a proper election) to comply with the Oregon Constitution and other applicable laws with respect to the permitted expenditure of general obligation bond proceeds; and (b) within ten (10) days of the event, LIP

will disclose to Metro any events that are required to be included in Metro's continuing disclosure obligations as the issuer of the general obligation bonds. If LIP breaches the foregoing covenants, LIP will immediately undertake whatever remedies or other action may be necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, repayment to Metro of Project Funds.

## **9. LIP Required Annual Reporting**

9.1. Local Implementation Strategy Progress Reports. By the end of each calendar year of the Term, or until LIP has fully expended its Eligible Share, LIP will provide a report to Metro summarizing its LIS progress and outcomes (the "LIS Annual Progress Report"). LIP will create the LIS Annual Progress Report using a template provided by Metro, which template Metro will develop with input from all participating local government partners receiving Bond Proceeds. The Oversight Committee will review the LIS Annual Progress Report and may recommend changes to the LIS to achieve the Unit Production Targets and to better align the LIS with the Work Plan. LIP agrees to participate fully in such annual review process; provided, however, the LIS may be revised or amended only upon written agreement by both LIP and Metro. Failure by LIP to agree to a proposed amendment will not constitute an event of default.

9.2. Financial Eligible Share Reports. Beginning with Metro's first disbursement of any portion of the Eligible Share to LIP for a Project, and continuing each year thereafter, on or before September 15 of each year during the Term until Unit Targets are completed and/or all Eligible Share is disbursed, LIP will provide an annual financial report to Metro containing (a) an itemized list of LIP's expenditure of Project Funds (and interest earnings thereon) through the end of the applicable fiscal year and (b) a certification from LIP to Metro that the Eligible Share was used only to pay for or Capital Costs.

9.3. Administrative Share Reports. On or before September 15 of each year during the Term, LIP will provide an annual report to Metro containing (a) an itemized list of LIP's expenditure of its Administrative Share (and any investment earnings thereon) through the end of the prior fiscal year detailing each entity LIP paid any portion of the Administrative Share and (b) a certification from LIP to Metro that the Administrative Share was used only to pay for or Capital Costs.

**10. Audits, Inspections and Retention of Records.** LIP will keep proper books of account and records on all activities associated with the expenditure of all funds disbursed by Metro under this Agreement. LIP will maintain these books of account and records in accordance with generally

accepted accounting principles through the date that is three (3) years after the anticipated maturity date of the Bonds or the anticipated maturity date of any obligations issued by Metro to refund the Bonds. Metro expects the Bonds will be outstanding until approximately May of 2039. LIP will permit Metro and its duly authorized representatives, upon prior written notice, to inspect books and records, properties, all work done, labor performed and materials furnished during normal business hours, and to review and make excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of Bond Proceeds received from Metro. Access to these books of account and records is not limited to the required retention period. Metro's authorized representatives will have access to records upon reasonable notice at any reasonable time for as long as the records are maintained

## **11. Term; Termination; Default Remedies; Dispute Resolution**

11.1. The term of this Agreement commences on the Effective Date and terminates on ten years after the Effective Date (the "Term"). The expectation of the parties is that LIP will spend its Eligible Share within seven (7) years after the Effective Date and that all Projects will be completed within the Term of this Agreement. Metro will have no obligation to disburse any remaining portion of LIP's Eligible Share or Administrative Share after the expiration of the Term. The repayment obligations and indemnities set forth in Sections 4, 5, 8 and 14 survive the expiration or earlier termination of this Agreement.

11.2. Metro and LIP may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision will be effective only upon the mutual, written termination agreement signed by both Metro and LIP.

11.3. If Metro reasonably believes LIP is not spending its Eligible Share according to the terms herein or otherwise has otherwise failed to comply with the terms of this Agreement, in addition to any other rights and remedies set forth herein or available at law, or in equity, Metro has the right to immediately withhold or suspend future distributions of Eligible Share and Administrative Share. In such an event Metro will provide LIP with written notice of such determination and will thereafter proceed with the dispute resolution provisions set forth below in Section 11.4.

11.4. Metro and LIP will negotiate in good faith to resolve any dispute arising out of this Agreement. Subject to the provisions set forth below, Metro or LIP may terminate this Agreement during the term if it reasonably determines the other party has failed to comply with any material provision of this Agreement and is therefore in default. Before terminating this Agreement in accordance with this section, the terminating party will provide the other party with

written notice that describes the evidence of default and include a description of the steps needed to cure the default. From the date that such notice of default is received, the defaulting party will have 30 days to cure the default. If the default is of such a nature that it cannot reasonably be cured within 30 days, the defaulting party will have such additional time as required to cure the default, as long as it is acting in a reasonable manner and in good faith to cure the default. If the parties are unable to resolve any dispute within thirty (30) days of after receipt of a written notice of default or such additional time as may be needed to reasonably cure the default, the parties will attempt to settle any dispute through mediation. The parties shall attempt to agree on a single mediator. The cost of mediation will be shared equally. If the parties agree on a mediator, the mediation must be held within 60 days of selection of the mediator unless the parties otherwise agree. If the parties cannot agree on a mediator, or the matter is not settled during mediation, the parties will have all other remedies available at law or in equity.

## **12. Notices and Parties' Representatives**

12.1. Any notices permitted or required by this Agreement will be addressed to the other party's representative(s) designated in this section and will be deemed provided (a) on the date they are personally delivered, (b) on the date they are sent via electronic communication, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this.

Metro:

Emily Lieb

600 NE Grand Ave.

Portland, OR 97232

503-797-1921

[Emily.Lieb@oregonmetro.gov](mailto:Emily.Lieb@oregonmetro.gov)

Housing Authority of Clackamas County:

Stephen McMurtrey

13930 S. Gain Street

Oregon City, OR 97045

503-650-3414

[SMcMurtrey@clackamas.us](mailto:SMcMurtrey@clackamas.us)

## **13. Compliance with Law**

13.1. LIP will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to its investment and expenditure of the Bond Proceeds.

13.2. LIP further recognizes that investing Bond Proceeds (through either a loan or grant) could result in a Project being a “public works” for purposes of Oregon’s prevailing wage rate law, ORS 279C.800 to 279C.870, as it may be amended from time to time. LIP will be solely responsible for ensuring that all Projects receiving Bond Proceeds comply with prevailing wage rate law, as applicable.

13.3. No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this section, “program or activity” is defined as any function conducted by an identifiable administrative unit of LIP receiving funds pursuant to this Agreement.

#### **14. Insurance; Indemnification; Limitation on Liability**

14.1. Metro and LIP will self-insure or maintain general liability insurance and workers compensation insurance coverage. Each party is responsible for the wages and benefits of its respective employees performing any work or services related to this Agreement. LIP will add Metro as an additional insured to all commercial general, excess and umbrella liability policies. LIP will provide a certificate of insurance listing Metro as a certificate holder within 30 days of execution of this Agreement.

14.2. Subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, LIP will indemnify, defend, and hold harmless Metro, its elected officers and employees, from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any attorney’s fees in defense of Metro or any attorney’s fees incurred in enforcing this provision) suffered or incurred as a result of third-party claims arising out of LIP’s performance of this Agreement or resulting in whole or in part from any act, omission, negligence, fault or violation of law by LIP, its officers, employees, agents, and contractors. This indemnity includes any third-party claims related to the development, construction, operation, repair, or maintenance of Affordable Housing Projects. This indemnity provision does not apply to third-party claims resulting from the sole negligence or willful misconduct of Metro.

14.3. In no event will either party be liable to the other for, and each party releases the other from, any liability for special, punitive, exemplary, consequential, incidental or indirect losses

or damages (in tort, contract or otherwise) under or in respect of this Agreement, however caused, whether or not arising from a party's sole, joint or concurrent negligence.

**15. Oregon Law, Dispute Resolution, and Forum.** This Agreement is to be construed according to the laws of the State of Oregon. Any litigation between Metro and LIP arising under this Agreement will occur, if in the state courts, in the Multnomah County Circuit Court, and if in the Federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

**16. No Third Party Beneficiaries.** LIP and Metro are the only parties to this Agreement and are the only parties entitled to enforce its terms and the sole beneficiaries hereof. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons any greater than the right and benefits enjoyed by the general public.

**17. Relationship of Parties.** Nothing in this Agreement nor any acts of the parties hereunder will be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture or any association between any LIP and Metro. Furthermore, Metro will not be considered the owner, contractor or the developer of any Project funded with Bond Proceeds. This Agreement is not intended to be a contract that provides for the development or construction of any Project, either directly with a construction contractor or through a developer. Metro specifically waives any provision contained in this Agreement, to the extent it is construed to provide Metro the right to manage, direct or control the developer, general contractor or the subcontractors. The rights and duties of the developer, the general contractor and the subcontractors are the subject of a separate contract or contracts with LIP to which Metro is not a party. LIP waives and releases Metro from any claims and actions related to the construction, operation, repair, or maintenance of any Affordable Housing Projects. If LIP obtains an indemnification agreement from any third-party developer or general contractor receiving Bond Proceeds under this Agreement, LIP will contractually require such party to indemnify Metro to the same extent as LIP.

**18. Assignment; Merger; Entire Agreement.** This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by LIP without Metro's written consent. This Agreement and attached

exhibit(s) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The failure to enforce any provision of this Agreement does not constitute a waiver by Metro of that or any other provision. No waiver, consent, modification or change of terms of this Agreement will bind either party unless it is in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement will not constitute a waiver by that party of that provision, or of any other provision.

**19. Further Assurances.** Each of the parties will execute and deliver any and all additional papers, documents, and other assurances, and will do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.

**20. Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument.

**21. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

**22. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**Metro**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Housing Authority for Clackamas  
County**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



**Clackamas County**  
**Local Implementation Strategy (LIS)**  
**Metro Affordable Housing Bonds**  
**+++**

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## **I. Introduction**

Clackamas County sits south of the Portland metro area in the Willamette Valley and in the shadow of Mt. Hood. Here we have national forests, hideaway lakes, winding rivers, thriving agriculture, bustling cities, and small town communities.

We're a county with a rich history dating back to 1843 when the early settlers created the four original districts that made up Oregon, naming Clackamas County after the Clackamas Indians.

Today, our county covers nearly 1,900 miles with a little more than 400,000 residents, making us the third largest county in the state by population.

More than half of our residents live in 16 cities; the rest live in unincorporated areas. We are a county of diverse and welcoming communities, where all residents are essential. Diversity, equity, and inclusion are of great importance in our county, but due to the high cost of housing and increasing wage gap, many residents increasingly struggle to remain housed.

This Local Implementation Strategy (LIS) aims to sustain Clackamas County's livability, particularly for those most in need. This LIS will serve as a guide for the county and our partnering communities as we create affordable housing using the Metro Affordable Housing Bond. As a county without entitlement cities (cities with a population of at least 50,000), all bond resources will run through the Housing Authority of Clackamas County (HACC).

Clackamas County is excited to be an implementing jurisdiction of the Metro Bonds. These resources will play a critical role in creating opportunities and will expand our cities racial and cultural and economic diversity while meeting a range of important housing needs that will provide increased stability for decades to come. Our highly skilled staff and committed elected officials will work collaboratively with our community and jurisdictional partners to expedite review periods for projects that come our way in order to capitalize on this exciting resource and get housing built as quickly as we can.

### **Clackamas County Housing Needs**

In 2018, Clackamas County embarked on an ambitious look at a countywide Housing Needs Analysis (HNA). To undertake this endeavor required the collaboration and cooperation of all Clackamas County cities as well as our unincorporated communities. The study was contracted with ECONorthwest with the goal of developing an in-depth understanding of the housing needs in our county, as well as where we need to focus additional resources (monetary or partnership driven) to create opportunities and provide a lasting impact for residents that have been historically marginalized.

To date, Clackamas County has 2,806 existing regulated housing units within the Metro boundary. Of these regulated units there are 543 Public Housing units operated by HACC. The information below represents data provide to HACC through a county-wide Housing Needs Assessment (HNA) and is representative of **new** affordable rental housing needs.

Estimated (New) affordable rental housing needs, based on Median Family Income (MFI), forecasted for the next twenty years (2019-2039) in the urban unincorporated areas of Clackamas County.

Unincorporated* Urban Areas	Extremely Low Income (<30% MFI Need)	Very Low Income (30-50% MFI Need)	Low Income (50-80% MFI Need)	Total affordable rental housing need between 0-80% MFI
All Urban	1,175	1,166	1,666	4,007

Source: U.S. Department of Housing and Urban Development. U.S. Census Bureau, 2012-2016 ACS Table 19001.

\*The data provided is still in DRAFT form and will be updated once finalized.

Estimated rental housing needs, based on Median Family Income (MFI) forecasted for the next twenty years (2019-2039) within the Metro boundary of incorporated cities of Clackamas County.

City*	Extremely Low Income (<30% MFI Need)	Very Low Income (30-50% MFI Need)	Low Income (50-80% MFI Need)	Total affordable rental housing need between 0-80% MFI
Gladstone	62	72	51	185
Happy Valley	473	548	1,025	2,046
Lake Oswego	198	167	198	563
Milwaukie	256	167	274	316
Oregon City	441	353	599	1,393
West Linn	98	164	102	364
Wilsonville	333	592	347	1,272

Source: U.S. Department of Housing and Urban Development. U.S. Census Bureau, 2012-2016 ACS Table 19001.

\*The data provided is still in DRAFT form and will be updated once finalized.

## Available Resources and Framework Targets

This Implementation Strategy focuses on the housing that will be developed within the eligible Metro boundary in Clackamas County. Bond resources are designated for use within Metro jurisdictional boundaries and are not applicable to incorporated and unincorporated communities outside of this boundary; see Attachment 1 for a detailed map of the applicable Metro boundary for Clackamas County. Bond revenues dedicated to HACC are **\$116,188,094**. The goal for HACC is to support at least **812 units of affordable housing** in the community. These can be newly built units or existing units that are at risk of rapidly rising rents. While many of these units are expected to provide rental housing, affordable homeownership opportunities units may also be supported with the bond resources.

Recognizing that our lowest income neighbors have the greatest challenges in securing affordable housing, and consistent with the Metro Bond Framework, HACC has set a goal that at least **333** of these units will be affordable for households with incomes at or below 30% of area median income. These units may serve people with special needs as well as people who earn low wages or have fixed incomes. At least **200** of these units will be supported with rental assistance provided by HACC, allowing them to be targeted to the most fragile households. To aid this process, HACC will provide opportunity for developers to access site-based rental assistance via competitive applications at several points throughout the life of the bond. It is currently anticipated that at a minimum, 2/3 of the vouchers will be offered for use on developments that are not the redevelopment of HACC public housing sites. In order to ensure that residents are stable and secure, HACC will work with project sponsors and developers to connect social service agencies and other community partners as a link to supportive services for these affordable housing units.

Because the need for affordable housing crosses many income levels, and because serving moderate-income households can effectively provide a source of cross-subsidization for lower-income households, HACC may also explore options to include units that have rents appropriate for households with incomes from 61% to 80% of area median income. No more than **81** Bond financed units will have rents at this level. The need for affordable housing crosses income levels, and serving higher-income households can create cross-subsidization for very low-income households.

The private rental housing market has always been concentrated on small unit sizes, while the need for rental housing crosses a range of household sizes. This mismatch between need and available units is especially difficult for lower-income households. As a result, the Metro Bond Framework has set a goal that half of the units developed under the bond program must include two or more bedrooms. For HACC, this means that at least **406** units will include two or more bedrooms.

## **Advancing Racial Equity**

The Housing Authority of Clackamas County prioritizes advancing racial equity for all its activities. This is an ongoing priority of HACC to mitigate decades of government policy from the federal to the local level that contributed to disparate outcomes for communities of color. People of color struggle disproportionately with unaffordable housing, displacement and homelessness. The implementation of the Affordable Housing Bond provides an opportunity to work to address this inequity and to meet the needs of historically marginalized communities.

Efforts and opportunities to address racial equity occur at many points in the implementation of the Affordable Housing Bond. Opportunities to advance racial equity include community engagement and plan development, project selection, the inclusion of minority businesses and workforce in the design and construction of housing, the formation of culturally specific partnerships for outreach and services, accessible tenant selection/screening criteria processes, contracting opportunities post construction, and ongoing reporting of outcomes. The specific implementation strategies HACC will employ are discussed in the various sections below.

## **II. Strategy Development**

HACC has developed this LIS by engaging in a comprehensive outreach and review process during the spring and early summer of 2019. Meaningful community engagement is the basis for this LIS. The outreach process resulted in hearing from hundreds of community members and dozens of local stakeholder agencies and jurisdictional partners. This resulted in perspectives on housing needs across Clackamas County especially focused on special needs populations. Exhibit 1 provides a detailed report on the outreach and engagement process; the highlights are included below.

### **Listening Phase**

To inform our LIS, Clackamas County and HACC recognize the importance of community engagement. To help us outline this process, we began active outreach efforts to inform the public about the forthcoming Affordable Housing Bond and the impact it will have on critical housing needs throughout the communities in Clackamas County. Utilizing advisory boards already in place, feedback from our County Commissioners, jurisdictional partners, and our residents, HACC established several opportunities for information sessions detailing our countywide state of housing needs and the guidelines and outcomes expected through the Affordable Housing Bond program. During these information sessions, county staff asked “key” questions of our audiences to help inform how the formation of our LIS and how best to organize implementation. Below represents findings from these sessions.

### **Review Draft Feedback**

This LIS was drafted using the Metro Affordable Housing Bond Work Plan adopted in February of 2019, as well as with feedback from HACC Board, our Housing Advisory

Board (HAB), and feedback during various listening sessions held by HACC over several months. HACC staff will present the draft LIS to the HACC Board for feedback on June 18, 2019. At that point, the LIS draft was made available for community feedback, as well as comments from Metro staff, members of the Metro Housing Bond Oversight Committee, and community groups engaged in the Listening phase.

### **Local Implementation Strategy Approval**

It is anticipated that a final LIS will be reviewed by the Metro Housing Bond Oversight Committee on August 7, 2019, and subsequently by Metro Council on September 5th, 2019. It will be considered by the HACC Board for final County approval on September 10th, 2019.

### **III. Implementation Phases**

Implementation of Bond funded projects is expected to occur over a period of four to seven years. This timeline will allow for the identification of sites, securing needed resources for capital and services, forming partnerships with developers and service providers, procurement of projects through public solicitations, and completing construction. During this period, community needs and opportunities may change. New census data will become available, new community planning efforts may be initiated or completed, and new resources or opportunities may become available while other resources or opportunities may not materialize as anticipated. In addition, certain framework goals may be easily fulfilled, while others may prove more challenging. Because of the dynamic nature of this work, HACC proposes to periodically review, and potentially reset this Implementation Strategy.

HACC proposes to take a portfolio approach to implementing Bond resources, monitoring and adjusting the LIS when appropriate (Exhibit 2). Because the pace of implementation is uncertain, review points will not occur at specific points in time but instead will be based on the commitment of Bond resources to specific projects.

HACC will use Exhibit 2 as an addendum to this Implementation Strategy. As project commitments are made, the tracking worksheet will be updated to show balances of funds available and progress toward framework goals. This will provide a real-time update that can guide the selection of the subsequent projects to ensure that overall goals and resource commitments are consistent with the Metro framework. Should the tracking worksheet indicate that a modification to the adopted Implementation Strategy is advisable; the amendment process will include community outreach and engagement, review by the HAB and amendment by the HACC Board with submission to Metro for review and approval.

### **IV. Organizational Plan for Implementation**

HACC will use a combination of staff and consultants to administer this Implementation Strategy. In-house staff will be responsible for coordinating community engagement and

outreach, project selection process, project documentation and funding processes, as well as overall program monitoring and reporting. The Housing Authority may engage consultants with expertise in financial packaging of affordable housing to review proposed projects during the selection and commitment phases. Similarly, HACC may engage consultants or collaborate with other project funders to leverage their expertise in construction management to help oversee project development.

Some aspects of implementation will require the development of new systems for HACC. Depending on the activity, HACC will either create its own tracking/compliance system or may work with Metro or other jurisdictions to create effective implementation strategies.

In addition to the county general fund, Metro has committed \$2,446,065 of one-time funds to be spent over five years to augment and support Clackamas County's development team and pre-development activities directly related to bond implementation and bond funded projects. Initially, Clackamas County anticipates that these funds will support additional staffing for our Finance and Community Development departments to implement, track and monitor bond resources over the term of the bonds. In addition, these resources will also support our ongoing community outreach engagement strategies.

## **V. Project Selection Process**

HACC will work in partnership with developers/owners that are skilled and interested in providing affordable housing throughout the County's Metro boundary. In addition, the Housing Authority itself intends to be a developer or owner of housing funded under the Bond. HACC expects that the Bond funds may provide support for a total of approximately 8-12 projects. HACC expects that it will be the developer/owner of approximately 450 units of bond-financed housing and will use approximately \$63.9 MM or 55% of the total bond resources with the remaining balance, \$52.3MM or 45%, available for projects sponsored by non-profit or for-profit developers throughout the eligible bond boundary within the county.

HACC will establish a set of expectations for developers/owners to ensure that both the framework goals and racial equity outcomes are achieved. These are requirements that will apply to all developer/owners; they will not be competitive selection criteria. Requirements will include such things as the period of affordability, the inclusion of MWESB contractor participation in the development process, community engagement during predevelopment, and the use of best practice outreach and tenant selection criteria. The specific requirements are described in the Project Selection Criteria and Project Implementation sections below.

The Housing Authority will utilize the Clackamas County Housing Advisory Board (HAB) as a review committee. The HAB is comprised of Clackamas County residents and industry experts from the fields of affordable housing finance, resident services,

homelessness, affordable housing development, real estate management, culturally specific service providers, the elder community and the construction general contracting industry. The HAB will provide feedback to staff and advise the HACC Board regarding proposed Housing Bond projects.

### **Accessing Bond Resources**

HACC anticipates that access to bond proceeds will occur through several processes; Notice of Funds Availability (NOFA), Requests for Qualification (RFQ) and Requests for Proposals (RFP), and in select cases via negotiated or sole source agreements, are all examples of proposed bond allocation mechanisms. These various avenues for accessing bond resources are explained in greater detail below. However, in all cases in which bond resources are allocated, the selection process will include a set of expectations for all developers/owners to ensure selected projects achieve both the framework goals and racial equity outcomes. These requirements include a 60-year affordability covenant for new construction, a minimum of a 30-year affordability covenant for acquisition/rehab inclusion of minority and women-owned contractor participation in the development process and the use of best practice outreach and tenant selection criteria..

### **NOFA**

HACC anticipates that for sites that are not part of HACC's public housing portfolio competitive NOFA processes will be used to support the release of \$52.3MM (45% of bond proceeds) for projects sponsored within the eligible boundary for Clackamas County.. A competitive NOFA is expected to be released as early as fall of 2019 providing early access to bond resources for projects that can demonstrate project readiness.

### **Request for Qualification (RFQ) or Request for Proposal (RFP)**

HACC anticipates that many but not all sites developed throughout our public housing portfolio will be solely developed by HACC. In those instances where a site is not being developed by HACC we anticipate issuing through a competitive RFQ or RFP our intent to allocate resources from the \$63.9MM (55% of bond proceeds) set aside for this portfolio. Though subject to change, HACC anticipates that the first of our public housing redevelopments, Hillside Park in Milwaukie, will begin in 2021. Following Hillside Park, HACC expects that Clackamas Heights in Oregon City (also a public housing site) would begin its process for redevelopment approvals in 2021 with an RFP for bond resources available sometime after final redevelopment approvals have been granted.

### **Negotiated or Sole-Source Agreements**

In some instances, HACC may choose to engage in a negotiated agreement or sole-source proposal. An example of this type may be the acquisition and rehabilitation of an existing building that provides an opportunity to further Clackamas County's affordable housing stock, or when a developer or landowner has an available site that is adjacent to publically owned property. In both described cases, time may not allow for a competitive



funding release and therefore, HACC would instead consider a rolling process for these types of developments.

In all cases, any proposed use of bond resources will be reviewed first through HACC staff and then via the Housing Advisory Board (HAB) before any recommendation to the HACC board and Metro.

An exception to this process is the Gladstone SRO affordable housing project which had been identified as a potential Bond funded project prior to the development of this LIS. This project is expected to be the first project to be funded with Housing Bond resources in Clackamas County and the reasons for being exempted from this selection process are detailed below.

### **Phase 1 Project – The Gladstone SRO Affordable Housing site**

Consistent with Metro and Clackamas County's hopes to demonstrate timely progress in Bond implementation, HACC has identified a Phase 1 Project. The project, located in Gladstone, is the re-development of an older special needs housing site that can provide up to 45 units. HACC will be the developer/owner of the project.

The site is currently controlled by HACC and has been vacant for a number of years. It had previously been used as a nursing home and then a residential facility for youth. The site can be easily re-adapted, has good service spaces, is close to commercial services, transportation, and is affordable. The development of the Gladstone Single Room Occupancy (SRO) can fill a gap in the existing continuum of housing in Clackamas County by providing property for a singles population with deeply affordable rents and wrap around supportive services.

HACC envisions the project will provide single room occupancy units to single adults. All of the units will have tenant rents at or below 30% AMI and will have project-based rent assistance. HACC is continuing to explore whether the project would be targeted to a specific sub-population or available to a range of income-qualified singles. HACC will explore the opportunity for partnerships with service providers who may have clientele needing housing and/or providers who may have valuable services to offer to residents. The space configuration allows the possibility of locating a medical clinic on site as well as on-site food preparation services available to residents.

The bond funds in this project will be leveraged with 4% tax credits and the site is located in a qualified census tract, increasing the resources generated by the tax credits. Other leverage sources may include the Multifamily Energy Program (MEP), Permanent Supportive Housing (PSH) resources, and a permanent mortgage.

### **Public Housing Re-Positioning**

The Housing Authority is working on master plans to re-position its existing public housing portfolio. There are currently three primary public housing sites—Hillside Park, Clackamas Heights, and Oregon City View Manor. Long-term plans for these sites may include possible sales of current land holdings associated with these sites, possible

purchases of adjacent sites and ultimately the re-development of the bulk of the existing 300 units into new communities. These projects are some of the oldest public housing in Oregon. They have a number of problems including poor physical condition, poor use of land, poor locations and over concentration of lower income households. The Housing Authority's goal is to embark on community-based input and planning exercises that result in well-built mixed-income communities with modern levels of density.

The Housing Authority expects that the new master plans will result in substantially more units of affordable housing. Use of Bond funds to support this re-positioning effort is consistent with Metro requirements that Bond financing only be used for existing affordable housing sites that are part of the redevelopment of a residential property with existing public affordability restrictions, as long as the redevelopment results in a substantial net increase in the total number of affordable homes. In such cases, Bond funds may only be used for the portion of new homes that are not replacing regulated affordable homes currently on the site. HACC expects that it will use some portion of the Bond funds in these re-development projects. While the specific sites, the number of units and characteristics of those units are not set at this time, it is expected that the projects selected for Bond funding will emphasize large family and deeply affordable units.

Should the Housing Authority identify public housing redevelopment sites under this Implementation Strategy, it will determine whether to develop/own the project themselves or to select a developer/owner; HACC anticipates acting as a developer on at least 300 of our public housing units. Should HACC decide to select a developer/owner it may use an RFQ, RFP, or sole source selection process.

### **Sites Identified by Metro**

The allocation of Affordable Housing Bond funds includes an allocation for land acquisitions carried out by Metro rather than by the implementing jurisdictions. Metro has allocated an estimated \$12 million for acquisition in Clackamas County. We will encourage Metro to purchase sites throughout the eligible boundaries in the county to further leverage our allocation of bond funds. HACC is committed to working closely with Metro should such sites be identified. When such sites are identified, HACC and Metro plan to select a developer/owner through a competitive process.

### **Sites Proposed by Developers**

The Housing Authority may accept unsolicited proposals from developers for projects to be funded under the Bond. Developers should be aware that, depending on progress against the Bond framework, such proposals may need to achieve specific targets for income levels, cost, unit types, geographic area, racial equity, accessibility, or other characteristics. Developer/owners are encouraged to work closely with HACC to ensure that their proposals are responsive to the evolving needs of HACC's Implementation Strategy.

## **VI. Leveraging Other Affordable Housing Resources**

While the Metro Bond resources are substantial, in order to accomplish the unit targets of the Bond, these funds will need to be blended with other public and private funding sources, including other HACC resources. A number of principles will guide efforts to leverage the Bond funds:

- **Maximize the use of non-competitive resources.** The 4% LIHTC program is available on a non-competitive basis to provide equity for affordable housing development. This program is especially useful for larger projects or scattered site projects that can be bundled to achieve the scale desired by equity investors. Developing projects in Qualified Census Tracts (QCTs) or Difficult to Develop Areas (DDAs) can maximize the usefulness of the 4% tax credits.
- **Maximize use of private resources.** Many projects will generate sufficient rental income to be able to make debt service payments on loans from private banks. While ensuring that projects have appropriate operating budgets and reserves, private debt should be secured for projects whenever feasible. Additionally, where bonds may be used for homeownership opportunities, the owners' mortgages are an example of leveraging private sources.
- **Maximize local resources.** A variety of local resources may be available to support capital and operating expenses:
  - **Project-based rental assistance.** HACC has committed project-based rental assistance for 200 units to Bond projects. This assistance will allow residents to pay based on their household income, while the project will receive a set rental income based on the rental assistance payment standard.
  - **Property tax exemption.** For project developed/owned by HACC, it will take advantage of property tax exemption under the provisions of ORS 307.092--this is the statute that provides property tax exemptions for housing authorities. It may also consider this exemption to projects under co-development agreements with HACC.
  - **Publicly owned land.** HACC will prioritize projects developed on County/HACC-owned or other publicly owned sites. The ability of HACC or other jurisdictions to donate the full value of the sites may vary, but discounted values would likely be available.
  - **Explore other local resources.** The Clackamas County Board and HACC will work with bond-eligible jurisdictions to identify local resources that support bond financed projects in an effort to encourage bond developments in jurisdictions committed to affordable housing.
  - **Seek other existing affordable housing resources (Federal, State and County resources).** HACC recognizes that despite the substantial amount of Bond funding, projects may have financing gaps that are best filled with other traditional affordable housing program resources. Though it is not anticipated that these competitive resources will be utilized to support bond-financed

developments, sources outside the purview of HACC may be needed to complete financing packages for specific projects. In partnership with the selected developer, HACC will work with other funders in a transparent way to find the most effective and efficient way to bring these resources to Bond funded housing projects as necessary.

- **Support the pipeline of other affordable housing projects.** While much of HACC's efforts during the implementation of the Affordable Housing Bond will be focused on moving the pipeline of Bond funded projects forward, the ongoing availability of other Federal, State, and local affordable housing resources means that there is a likelihood other projects may move forward during the same timeframe. HACC will monitor the pipeline of projects proposed and funded throughout Clackamas County and will collaborate with developers and jurisdictions throughout the county to identify the most appropriate funding packages and other support that can be allocated to those projects.
- **Funding for resident and supportive services.** HACC will work with regional and state partners to identify a consistent funding source to serve vulnerable homeless or at risk populations. It is through consistent funding of resident and supportive services that vulnerable populations can remain housed and help the project succeed financially.

## **VII. Project Selection Criteria and Metro Framework**

HACC will consider a number of factors in the selection of Housing Bond projects. The first consideration will be how each project contributes to the accomplishment of the goals in the Metro Framework. Under the Framework, HACC has the following targets:

Framework Targets	
Total Units	812
Minimum number of 30% AMI Units	333
Maximum number of 61% to 80% AMI Units	81
Minimum number of 2 Bedroom & Larger Units	406

HACC does not expect that each project will reflect the ratios expressed by these targets, but instead that the overall portfolio of funded projects will achieve this mix.

HACC does expect that most projects will include some units that are two bedrooms or larger. The ratio of small and large units will reflect the characteristics of the target

population of specific projects, and that in turn, should reflect characteristics of a site in terms of whether it is best suited to families with children or smaller families.

HACC does expect that most projects will include some units with rents at 30% AMI. In some cases, projects will be targeted to low wage earners, while others may be targeted to people with disabilities or other special needs, or people who have experienced homelessness. Some projects may be designed exclusively to have 30% units or have high concentrations of 30% units with corresponding supportive services.

HACC hopes to include 61%-80% AMI units when that helps to cross-subsidize lower income units or reduces the amount of Bond financing needed for the project.

HACC will focus its Bond financed affordable housing on new construction multi-family rental projects and may also consider multi-family acquisition/rehabilitation projects. Additionally, HACC is considering investing Bond resources in homeownership strategies should the right location and opportunity arise. In our community engagement, participants from communities of color strongly emphasized a desire to see Bond resources promoting access to home ownership among communities of color in Clackamas County.

### **Furthering Clackamas County's Affordable Housing Goals**

In addition to fulfilling the LIS, HACC will work to align the affordable housing developed with the Bond to support a variety of local goals. These include:

- Working to create housing opportunities across the geographic area of this Implementation Strategy. This includes the cities and unincorporated areas of Clackamas County that are in the Metro area.
- Focusing its Bond-financed affordable housing on new construction of multi-family rental projects and explore homeownership opportunities.
- Considering acquisition/rehabilitation projects to prevent displacement.
- Geographic Goals – HACC looks to support projects in opportunity neighborhoods that have good access to transportation, commercial services, community amenities, and provide the opportunity to create inclusive mixed-income neighborhoods.
- Target Population Goals – During the Listening phase, we received reminders of the need for senior housing, family housing (to include three and four-bedroom units), housing accessible to high needs populations, housing that is compliant with the American with Disabilities Act (ADA), and housing for individuals exiting the foster care system. Due to limited resources and the small number of projects to be funded under the Bond, addressing all these needs will not be feasible, but HACC will strive to assist as many of these needs as possible. To do so, HACC will require that project sponsors of bond developments are holding at least two engagement sessions during predevelopment to actively engage with the community surrounding the sites location and to provide listening and feedback sessions to the potential residents that may live there.

- Complementing other affordable housing-related activities – The Housing Bond funds allow HACC to leverage its resources to continue its work on other affordable housing strategies and in other parts of the county that aren't eligible for Bond proceeds. These include working with property owners to identify ways to improve the housing stock while avoiding forced displacement of tenants, collaborating with market-rate developers and nonprofits to also consider development in non-Metro boundary communities, prioritizing Community Development resources to support non-Metro boundary developments, working with homebuilders to increase affordable homeownership stock.
- HACC supports the principle that housing created with the bond should maximize housing choice for tenants.

### **Racial Equity**

HACC's approach to racial equity in project selection will take into consideration factors such as:

- Increasing affordable housing in areas with existing underserved diverse populations, especially in areas that may be subject to gentrification. Throughout our community engagement process, the needs of those historically underserved in growing areas of gentrification were heard. Priority will be placed on developments that provide by location and amenities the ability to create long-term affordable housing with the following criteria considered:
  - Providing new affordable housing in high opportunity neighborhoods and sites. This would include sites that have good access to transit (e.g. bus, rail, bike paths and pedestrian corridors), jobs, quality schools, commercial services, parks & open space, etc.
- Supporting project teams that have a proven track record of:
  - Outreach, engagement, and ensuring participation of minority and women-owned contractors in pre-development and construction of the project, as well as the ongoing maintenance of the building
  - Engaging targeted and/or marginalized communities, communities of color as part of its leasing process
  - Creating an inclusive tenant screening criteria process, minimizing barriers to housing experienced by communities of color

HACC will prioritize projects addressing the historical racial disparity and lack of housing access and opportunity to build equity and generational wealth experienced by communities of color. Addressing these disparities may be through projects sponsored by culturally specific organizations, or projects sponsored by partnerships in which culturally specific organizations have a meaningful role in project design and operations, or sponsors that provide sufficient proof of their ability to connect with communities of color to promote housing access and/or affordable homeownership opportunities.

### **Connection to Services**

HACC expects that Resident Service Coordination will be provided at all projects, appropriate to the level of need of the target population. Resident Services will focus on eviction prevention, helping residents access to mainstream services for which they may be eligible, empowerment services and community building activities.

Projects serving high needs populations will require robust supportive services to ensure resident stability and positive outcomes. HACC currently provides limited supportive services. HACC will work closely with other Clackamas County departments to help connect developer/owners to public and private service providers in the community to create needed partnerships. HACC will evaluate a project's target population and service plan to ensure that it is appropriate and durable. HACC will approve resident service fees in project operating expense budgets.

HACC heard throughout our community engagement with historically under-represented communities, the importance space and place play in regards to the development of a site; importance that moves a building from simply housing to a place called home. To that end, HACC will require that developers/sponsors of bond-financed units detail within their proposals and design how they intend to meet and promote community gathering space opportunities. These may be opportunities both internal to their developments or through site locations that emphasize access to community building through existing amenities such as: parks, libraries, community centers, and other place-making opportunities.

### **Project Cost/Leveraging Funds**

HACC plans to use Bond funds to support a portfolio of projects that provide the best return on investment in the form of long-term sustainable housing. These projects will be characterized by efficient design and durable construction. They will use cost-effective green building measures to create efficient use of energy and water, and select materials to create healthy living spaces. They will be well aligned with the needs of the target households in terms of space, amenities and service requirements, and will be valuable assets in the communities in which they are located.

The blend of funding sources will have an impact on both hard and soft costs. Hard costs will be impacted by development standards of investors, lenders and other public funders. Soft costs will vary with requirements for specific legal, accounting, reserve requirements, and fees. Leverage will also be impacted by the service needs of the residents.

HACC will evaluate all proposed projects to ensure that the costs are reasonable and appropriate to the specific project. In doing this evaluation HACC will focus on the amount of Bond funds needed rather than the total development costs of projects. This evaluation may consider:

- Scale appropriate to the target population.
- Scale appropriate to the neighborhood in which the project is located.
- Costs associated with mixed-use projects.

- Quality of construction materials.
- Costs associated with the service needs of the target population.
- Reasonable fees and reserves.

HACC recognizes that in order to accomplish the overall unit target, it will need to have an average Housing Bond expenditure per unit of approximately \$143,000. Some projects may receive significantly fewer Bond funds than this amount, while others may receive significantly more. The Bond funding levels available for specific projects or funding processes will be clear in the Exhibit 2 tracking worksheet that is attached to this Implementation Strategy.

### **Capacity/Readiness to Proceed**

Affordable housing is a specialty business that differs in many ways from market-rate housing or other real estate development. HACC will seek to partner with non-profit, for-profit, or governmental organizations that have demonstrated skills as affordable housing developer/owners. Expertise with the framework target unit types and with the specific population proposed by a project will also be considered.

Timely implementation of the Housing Bond is critically important and was a point of emphasis throughout our community engagement activities. In its selection process, HACC will prioritize projects that have a clear path to timely completion. HACC may prioritize projects that have appropriate zoning, have secured much or all of the other financing sources, have secured needed service partnerships, have a clear and achievable racial equity plan, etc. While HACC may not make concept endorsements until projects meet benchmarks that indicate the likelihood of projects coming to fruition, HACC suggests that interested developers begin conversations with the Housing Authority at the earliest stages of pre-development to ensure that project programming aligns with the Implementation Strategy.

## **VIII. Project Implementation**

### **Review & Approval of Projects**

Bond-funded projects will go through a multi-stage review and approval process as follows:

- **HACC concept endorsement.** To be forwarded to Metro for concept endorsement a project must, at a minimum, have site control, a preliminary development plan, the preliminary estimate of total development costs, a preliminary estimate of needed Housing Bond funds, and an identified development team. HACC will process concept endorsements first at the staff level, then review by the Housing Advisory Board, and review by the HACC Board work session.
- **Metro concept endorsement.** HACC staff, in conjunction with Metro staff, will present the project to Metro for endorsement by the Metro COO. Metro will review the project for conformance to the adopted Local Implementation Strategy.



- **HACC project approval & funding authorization.** As the project completes due diligence and moves to financial closing, HACC will process project approval by asking the HACC Board to take action.
- **Metro project approval & funding authorization.** HACC staff, in conjunction with Metro staff, will present the project to Metro for final approval and funding authorization.
- **Release of Funds.** Once a project has received approval by HACC and Metro, funds will be released to the Housing Authority and disbursed to the project in accordance with the provisions of the project documents and the Metro Intergovernmental Agreement.

### **Project Closing**

- **Metro-Approved Regulatory Agreement.** All projects will be required to execute a Metro-approved Regulatory Agreement that acknowledges the use of Metro Housing Bond funds and the restrictions associated with the use of such funds. The Regulatory Agreement shall be recorded against the project at or prior to closing.
- **Period of Affordability.** The Regulatory Agreement will generally specify a 60-year period of affordability. For acquisition projects that are more than 10 years old, HACC may consider a shorter period of affordability, but no less than 30 years. The Regulatory Agreement will provide a first right of refusal for qualified nonprofit organizations or government entities to acquire the project upon expiration of the affordability period.
- **The accomplishment of Framework Targets.** The Regulatory Agreement will also specify the level of affordability and the unit bedroom sizes of the project
- **Reporting Requirements & Monitoring During Operations.** The Regulatory Agreement or similar agreement will also provide requirements for periodically providing information relating to the project's financial performance, physical condition, occupancy, tenant income verification, and voluntarily collected tenant demographics. The agreement calling for these reports shall provide that reports will be made for the benefit of both Metro and the Housing Authority of Clackamas County. The agreement shall also provide physical access to the property when requested by Metro, HACC, or other project financing partners.
- **Jurisdiction Documents.** HACC will require a variety of other documents relating to the project. These may include:
  - Development & Disposition Agreements. In the case of properties controlled by HACC, the Housing Authority will develop agreements relating to the transfer of property to the developer/owner.
  - HACC will develop documents relating to the form of investment of Bond Funds. These may vary depending on the projected cash flow of different projects and may take the form of cash flow dependent loans or grants. In general, HACC will support the allocation of modest amounts of program income to restricted reserve accounts dedicated first to the provision of Resident Services. Projects that are expected to have more significant program income may have requirements for cash flow dependent distributions to the Housing Authority.
  - HACC will specify requirements relating to the implementation of racial equity strategies. Strategies will be developed for each project, and requirements will be documented in agreements with the Housing Authority. This will include:

- **MWESB Contracting.** Project sponsors will be required to make best faith efforts to achieve 20% participation of subcontracting of development hard and/or soft costs to certified minority, women, emerging small businesses. Project sponsors will be required to provide documentation of subcontracting efforts and results.
- **Workforce Participation.** The Housing Authority is interested in encouraging participation in project workforce hours by minorities, women and disabled veterans. While specific programs to further this goal are not developed at the time of writing this Implementation Strategy, the Housing Authority will work with Metro, other implementing jurisdictions, and with project sponsors to explore ways to maximize participation in project workforce hours.
- **Affirmative Marketing, Tenant Selection & Lease-Up.** Consistent with Metro policy and feedback provide throughout our community engagement (please see targeted engagements to specific populations in Exhibit 1, pg. 23) outreach sessions, HACC will work to ensure that Bond financed housing serves communities of color, families with children and multiple generations, people living with disabilities, seniors, veterans, households experiencing or at risk of homelessness, and households at risk of displacement. HACC will require that project developers/owners make best faith efforts to make units available to minorities and disadvantaged populations using best practice strategies. In general, this will require:
  - Affirmative outreach and marketing to target populations. Developers/owners, and their property management companies (if applicable) will be expected to engage in proactive efforts to make disadvantaged populations aware of the availability of units, and the process and timeline for application. HACC will work with project sponsors to identify specific target populations for each project and will review the proposed outreach and marketing strategy for each project.
  - HACC will require that project sponsors use low-barrier screening criteria that balance access to target populations, project operations, and community stability. Typical requirements may include less than standard market apartment income-to-rent ratios, reduced credit history requirements, and criminal history requirements that only consider recent convictions that are most directly tied to tenant success. Project sponsors will be required to review appeals to denials of standard screening criteria that take into consideration the efforts of applicants that demonstrate stability and potential for tenant success. Project sponsors are also required to review appeals if the disqualifying aspects of denial are related to a disability and make reasonable accommodations as appropriate.

## **Project Monitoring**

Projects will be subject to monitoring throughout the development process and period of affordability. The monitoring process and expectations will be documented in agreements with the City. In general, this will include:

- **Monitoring During Development & Lease Up.** HACC will require monthly reports during the project development and lease-up period and will conduct monthly site inspections in coordination with other funding partners to ensure progress to on-time and on-budget completion. HACC will sign off of any change orders and on monthly draw requests.
- **During Operations.** HACC will require annual reports that include information about project physical condition, fiscal condition, occupancy, tenant income verification, and voluntarily collected tenant demographics. HACC will conduct periodic site inspections in coordination with other funding partners.
- **Post-Completion Monitoring.** In addition to monitoring of operations, HACC will revisit each developments engagement plan at “natural” stages of completion and stabilization to check proposed goals against actual achievements. The intent of this stage is to reconnect with our community stakeholders to report on outcomes to date and to assess whether we need to revisit the goals of our LIS. Areas of significant interest may be in the following categories and times
  - MWESB proposed outcomes versus actual (50% and 100% construction completion);
  - Workforce participation (50% and 100% construction completion);
  - Low-barrier screening and outreach to communities of color as it pertains to lease up activities (initial lease up period, 1-year anniversary, 3-year anniversary);
  - Connection to services in the community (1-year lease-up anniversary)

## **IX. Reporting on the Implementation Strategy**

### **Annual Report**

HACC staff will prepare an annual report to the Housing Advisory Board and the HACC Board on the overall progress of the Local Implementation Strategy. This information will be made available to the public and interested stakeholders using a variety of strategies such as published reports, newsletter articles and website postings. The report will include information on committed and completed projects (e.g. project status, Bond funding amounts, total project cost, and units produced by unit size, type and income level served). The report will also include information on overall progress toward achievement of the framework goals.

Reporting is a critical step for HACC and Clackamas County to address the impact of our efforts. To that end, each development will be revisited and measured against its

outcomes to determine whether proposed levels of engagement and participation were met. Some of this information may be immediately available after project completion and some, like lease up and retention statistics may take a year or more to fully understand. The information gleaned will be valuable to our long term efforts throughout the life of the bond. It is HACC's intention to revisit these criteria, through annual reporting of the project sponsor, so that we can make periodic changes to our strategies under the LIS and to provide feedback and reporting to our residents, stakeholders, and Metro.

### **Reporting to Metro**

HACC will submit annual reports to Metro in accordance with the Intergovernmental Agreement.

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## **Exhibit 1**

### **OUTREACH & ENGAGEMENT REPORT**

Clackamas County staff from Heath, Housing & Human Services (H3S) and Public and Government Affairs (PGA) initiated outreach and engagement efforts around the Metro Affordable Housing Bond after voters approved the measure in November 2018. Building upon the county's strong relationships with local jurisdictions, affordable housing developers and service providers, county staff organized a series of engagement events targeting those respective stakeholder communities.

The county also contracted with a culturally specific provider, Unite Oregon, to partner on engagement efforts with low-income community members, communities of color, people with limited English proficiency, immigrants and refugees, and people with disabilities. Similar exercises and questions were used across these various engagement events, which reached a broad and diverse cross section of Clackamas County residents. A calendar of events and detailed summaries of each key engagement activity are provided below.

#### **Summary of outreach event themes**

Participants advocated for the need for affordable housing development for a diverse range of populations. This included people with disabilities (including those in recovery), seniors, families with children, and single individuals.

Key themes specific to what communities need for success emerged from engagement efforts across all stakeholder groups. Those included:

- The need for improved countywide access to multimodal transportation systems (especially in the more rural areas, but also increased connectivity between rural and urban areas)
- Increased affordable housing with access to services and jobs
- Improved access to health services (including mental health and addiction services)

Other recurring themes included safety and access to community amenities, such as grocery stores, green spaces, childcare and good schools.

Additional themes emerged specifically from conversations with communities of color, underrepresented and historically marginalized communities. Promoting opportunities for homeownership was a top priority, as was access to community spaces (community rooms in buildings, shared gardens, housing near parks or green spaces, community amenities, and the like). There was also a desire for access to free or low-cost educational opportunities, and family-friendly and culturally-specific activities. Detailed accounts of each engagement event are outlined below.

#### **Calendar of engagement events**

Outreach and engagement was primarily information sharing presentations to local jurisdictions and community fora. In May and June county staff and Unite Oregon held a series of engagement events at which extensive feedback was gathered, summarized further below. An online survey (English only) was also available for community members to anonymously fill out.

#### **Informational Meetings Presenting Preliminary Bond Information to the Larger Community**

11/28/18 and ongoing at monthly meetings	Discussion of Bond and implications with CC Affordable Housing and Homelessness Task Force
11/29/18	Presentation on homelessness and the Bond to Lake Oswego City Council and staff
12/6/18	Discussion at Milwaukie Housing Forum
1/8/19	Presentation to Gladstone City Council
1/8/19	Handout and brief information shared at Clackamas County's Legislative Dinner
1/10/19	Presentation to the Court Appointed Special Advocates for Children

2/19-5/19	Worked with Community Alliance of Tenants and the Institute for Portland Metropolitan Studies on a community engagement plan for our Phase I project in Gladstone
2/26/19	Presentation to Jennings Lodge Community Planning Organization
4/14/19	Presentation to Milwaukie Housing Town Hall

### Community Engagement Events to Solicit Feedback for LIS

Date	Event	Type	Number of Attendees
May 14th	Housing Forum	Targeted outreach to jurisdictional partners (including city officials, CPOs) and developers	56
May 15th	ClackCo Academy resident outreach	Community members (not targeted). Class made up of community members	19
May 23rd	Our Housing, Our Communities	General and Targeted outreach to diverse community members. Sought to engage non-english speaking and POC.	Approx. 40
June 11th	Homeless Solutions Coalition of Clackamas County (HSCCC) Community Meeting	Service Providers	Approx. 45
June 15th	Clackamas County Coordinated Committee (C4 Retreat)	Targeted outreach to Mayors, elected officials, Metro	53

June 20th	Our Housing, Our Communities	General and Targeted outreach to diverse community members. Sought to engage non-English speaking and POC. Discussion around equity.	52
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**Targeted engagement to specific populations or organizations that serve them**

<b>Participating Populations</b>	<b>Focus Groups or Events</b>
Low-income individuals	HSCCC, Unite Oregon meetings (5/23, 6/20)
Seniors	HSCCC, Unite Oregon meetings (5/23, 6/20)
Youth experiencing housing instability	United Oregon meetings (5/23, 6/20), and service providers of this population at HSCCC (6/11)
Individuals with physical disabilities	6/20 Unite Oregon meeting, and service providers of this population at HSCCC meeting (6/11)
Individuals with developmental disabilities (service providers)	HSCCC
Individuals with mental health concerns disabilities (service providers)	HSCCC
Individuals with addictions issues disabilities (service providers)	HSCCC
Individuals with limited English proficiency	Both Unite Oregon meetings (5/23, 6/20)
Immigrants and refugees	Both Unite Oregon meetings (5/23, 6/20)



Individuals with current or previous experience of housing instability	HSCCC (6/11) and Unite Oregon meetings (5/23, 6/20)
Residents of low-income housing	HSCCC (6/11) and Unite Oregon meetings (5/23, 6/20)
Justice-involved individuals disabilities (service providers)	HSCCC meeting (6/11)
Service providers for people on probation and currently incarcerated	HSCCC meeting (6/11)
Community Participation Organization (CPO) members	2/26 Jennings Lodge CPO meeting
Tribal community members	6/20 Unite Oregon meeting

Demographic information was requested at the 6/11/19 Unite Oregon engagement event but not all participants responded. Though age wasn't captured, older adults were in attendance and have attended several events thus far. Of particular interest has been the welcome attendance of non-native English speakers. The goal from our community engagement consultants, Unite Oregon, was to cast a wide net to attract as much feedback from as many different people as we could. Primary to that goal was to recruit people of color, immigrants, and refugees.

Not all who were in attendance have been willing to provide full demographic information but we have received direct feedback and information from: six Arab-Speaking immigrants/refugees; three Vietnamese speakers; 4 identifying as Spanish-speaking or Latino; an individual who identified as mixed race; one native Hawaiian.

Additionally, Unite Oregon provided outreach to people experiencing housing instability. Their feedback regarding increased information and resources relating to housing helped HACC shape the format of our engagement meetings.

**Below is a list of jurisdictions we have had conversations with about the bond, or who have participated in a formal presentation.**

- West Linn
- Tualatin
- Sandy
- Molalla

- Wilsonville
- Happy Valley
- Lake Oswego
- Canby
- Oregon City
- Milwaukie
- Gladstone
- Estacada
- Fire Districts
- Beavercreek
- Johnson City
- Rivergrove

**Staff had informal listening sessions with the following nonprofit and for-profit developers and community groups. These discussions helped HACC staff frame topic areas and priorities within the LIS:**

- Geller Silvis
- Strategies 360
- Sera Design
- Key Bank
- MHA of Oregon
- Milwaukie Floors
- Community Development Partners
- Rose Community Development
- Columbia Care Services
- Related Companies
- Todos Juntos
- Healthy Families Oregon, Clackamas County
- Community Development Partners (CDP)
- Community Partners for Affordable Housing (CPAH)
- Otak
- Columbia Care
- Bridge Housing
- Reach Community Development
- Northwest Housing Alternatives
- Northwest Family Services
- Pedcor
- Dominion
- Structure Development
- Related Northwest
- Portland Habitat for Humanity
- Proud Ground
- NEDCO
- Strategies 360

The “Our Housing, Our Communities!” engagement sessions held on May 23 and June 20 were conducted in partnership with Unite Oregon, whose staff did extensive community outreach to historically marginalized communities to invite attendees. Interpretation was available and actively utilized in Spanish, Vietnamese, and Arabic. Childcare and dinner were provided and gift cards were distributed to all community members in attendance. Events utilized interactive activities to capture in-depth feedback. Attendees represented recent immigrants, longtime residents, multiple nationalities, different age groups, and multiple ethnicities and races.

At the request of the community, the May forum included information about tenant’s rights and basic information about what affordable housing is before the bond portion of the event began. A participatory budgeting exercise was conducted at the June meeting. The two Unite Oregon meetings saw roughly 45 and 60 attendees, respectively.

## **Detailed Engagement Summaries**

### **May 14th Housing Forum: Targeted outreach to jurisdictional partners and developers**

This event was an opportunity to hear from city representatives and Community Planning Organizations (CPOs) as key stakeholders in successful implementation of the Metro Housing Bond in Clackamas County. Marketing strategies for this event included posting on the County Events Calendar, as well as email invitations sent to all elected city representatives, CPO Constant Contact List, as well as a list of active community developers. 56 people attended this event, which was held at Clackamas County's Development Services Building.

Participants identified a strong need for countywide public transportation improvements in order for affordable housing to be the most effective in serving the community, in addition to rent caps and a need for accessible wrap around services. In addition, fee waivers were recommended, as well as further community education around housing need. Participants also recognized the importance of community spaces such as gardens, parks, and community rooms.

What needs to be in place for housing to be successful?

- Countywide public transportation
- Rent caps
- Wrap around services
- Fee Waivers
- Education on housing need
- Community Spaces (shared gardens, parks, community rooms, etc.)

When looking at what populations are in greatest need of affordable housing, participants identified seniors and older adults, Workforce community members, and people with mental health challenges. Other populations identified were people with other types of disability (including people in recovery) and immigrants.

What population in your community is in greatest need of housing?

- Seniors and older adults
- Work Force
- People with Mental Health Challenges
- People with Disabilities
- People in Recovery
- Immigrants

Improved access to multi-modal transportation (including accessible public transportation). Other top 5 needs included access to affordable childcare, health services, and housing that includes supportive services.

What is your community's greatest need?

- Affordable housing
- Transportation
- Affordable childcare
- Access to Health Services
- Supportive Housing

When asked about values that should shape the County's approach to housing development, participants discussed the importance of opportunity areas, mixed income housing, increasing opportunities for homeownership, and providing quality housing. Racial equity was also stressed as a crucial part of smart development policies and practices. It was expressed that leadership needed to keep promises to voters around affordable housing development, by getting it done on an efficient timeline.

### **May 15th Input from ClackCo Academy participants**

ClackCo Academy gives members of the community the opportunity to learn more about county services and programs. This was a closed group, with direct email invites sent to ClackCo Academy participants. Members must live, work, own a business, or work full time in Clackamas County. Space is limited to 25 participants, with an additional five seats reserved for youth ages 16-20.

While the class is made up of community members, this engagement event was not open to the larger community.

What is your community's greatest need?

- Access to Jobs
- Access to services
- Transportation
- Affordable Housing

What population in your community is in greatest need of housing?

- Families with children
- People with disabilities
- Houseless community members
- Very Low Income
- Single Parents

What needs to be in place for housing to be successful?

- Access to multi-modal transportation options (including walkable streets)
- Access to services
- Access to jobs, training/adult education
- Public space/place-making, green space
- Government support and policy evaluation (land use, zoning, etc.)

### **May 23rd Our Housing, Our Communities!**

This was the first event held in partnership with Unite Oregon. Conducted in the evening at the Wichita Center for Family and Community in Milwaukie, this event began with presentations about renters' rights and housing resources, a presentation about the Affordable Housing Bond, and ended with an engagement exercise. Food, childcare, and interpretation in three languages (Spanish, Vietnamese, and Arabic) were provided by Unite Oregon.

What needs to be in place for housing to be successful?

- More food banks nearby
- Gas heating instead of electric, because of the lower utility bill costs associated with gas heat
- Nearby community/cultural centers, as well as parks and natural areas
- Good parking
- High-quality schools
- Accessibility (both of housing and the surrounding neighborhood) for residents with
- Accessible transportation, especially public transit
- Community gardens
- Family-sized housing (3+ bedrooms) for larger families

What population in your community is in greatest need of housing?

- People with disabilities
- Seniors and older adults
- People in recovery
- Low income families
- Single parents
- Domestic violence survivors
- Students
- Larger families
- Families with young children

What is your community's greatest need?

- Transportation: Frequent bus service; affordable housing near transit stations; accessible
- Food: housing close to shopping centers; access to healthy food like co-ops like in Portland; free food resources for people with low incomes; access to community gardens to grow own food
- Health services: proximity to hospitals and clinics
- Affordable housing: cheaper rents for families with children; cheaper rent in general
- Other: child care; educational programs; tutoring or similar activities for children; security and safety at schools; proximity to playgrounds; low-cost home-buying opportunities;

safe and friendly environments; close to stores/shopping opportunities; day care services; space to own a pet; well-ventilated housing units

Attendees gave a list of locations where they would like to see affordable housing in their communities:

- Oak Grove, especially near Fred Meyer
- Milwaukie
- Wilsonville, near major employment areas

### **June 11 Homeless Solutions Coalition of Clackamas County (HSCCC) Meeting**

The HSCCC is a grassroots coalition comprised of more than 200 citizens, agency staff, government officials, church affiliates, and community members in Clackamas County. The mission is to find compassionate and respectful solutions to homelessness through community partnerships. On June 11<sup>th</sup>, members of HSCCC were invited to provide input on how they think the Metro Affordable Housing Bond dollars should be spent in Clackamas County.

What needs to be in place for housing development to be successful (amenities, services, etc.)?

- Need for more accessible case management and other supportive services.
- Access to resources including child care and schools, jobs and training/placement, food.
- Access to mental and physical health services
- Access to multi-modal transportation options
- Place Making/Public Spaces (community building, public art, places for community empowerment)

During the dot voting, the following top 5 were prioritized (in order from most votes to least):

1. Support services
2. Access to transportation (walking, bike, bus, car)
3. Access to schools/childcare
4. Close access to services (medical, dental, etc)
5. Green Space/Play Place

Help us shape our county values around housing.

- Compassion, understanding acceptance. Educating community
- Equity and Inclusion
- Trauma Informed approach to providing services
- Safety
- Community oriented spaces and activities. Community participation
- Sustainability (social, environmental, etc.)
- Accessibility
- Respect, dignity, self-determination, and empowerment

- Provision of and access to support services
  - Education and youth services

During the dot voting, the following top 5 were prioritized (in order from most votes to least):

1. Compassion/understanding. Dignity, respect
2. Equity
3. Trauma Informed
4. Community Education
5. Access to Resources

Additionally, inclusion, sustainability, safety, and young children were called out as important priorities. Participants also pointed to the importance of community self-determination and empowerment as important to sustainable development practices, and expressed an interest in seeing more and improved community spaces.

What is your community's greatest need?

Participants were asked to provide input on the following predesigned categories: Transportation, Access to Health Services, Affordable Housing, access to food, and other. While a majority of participants did not put their city on a sticky note, the following were some of the areas identified:

- Transportation
  - Oregon City rural areas
  - Rural areas (county wide)
  - Milwaukie
  - Oregon City
  - Wilsonville
- Access to Health Services
  - Oregon City
  - Canby
  - Aurora
- Affordable Housing
  - Milwaukie/Oak Grove
  - The Whole Portland Metro Area
  - Milwaukie
  - Happy Valley
  - Oregon City
  - Wilsonville
  - Estacada
  - West Linn
  - Sandy

- Access to Food
  - Milwaukie
- Other
  - Walkability
  - Access to essential services
  - Better understanding of homeless by community
  - Peer support services
  - Access to affordable childcare
  - Access to good jobs, wages, and training
  - LGBTQ+ resources
  - Youth resources
  - Financial education

During the dot voting activity, the following 7 were prioritized as greatest community needs: (in order from most votes to least):

1. Affordable Housing
2. Mental Health & Physical Care
3. Transportation
4. Substance Abuse/Addiction Services
5. Support Services
6. Community Outreach/Awareness
7. Child Care

What population in your community is in greatest need of housing?

Of the predetermined categories, participants prioritized the following (from most to least votes):

1. People with mental health challenges
2. People in recovery
3. People with disabilities
4. Seniors and older adults

The largest number of votes, however, were in the “Other” category. Some of the greatest needs identified included:

- Single adults
- Single parent households
- Youth
- LGBTQ+ community members
- Families with children
- Veterans
- Those with criminal backgrounds and those recently incarcerated
- Houseless community members
- Domestic Violence survivors



- People of Color

During the dot voting activity, the following 8 were prioritized as greatest needs: (in order from most votes to least):

1. Mental Health Challenges
2. Families with children (ranked top along with Mental Health Challenges)
3. People in recovery
4. POC/LGBTQ+
5. Young people (teens and 20s)
6. Low Income
7. People with disabilities
8. Seniors/Older Adults

When asked how people receive their housing news, participants answered as follows:

- Social Media (Twitter, OCCH Chat, Next Door, MACG, etc.)
- Email or E-Newsletter
- Community Group/Meetings
- Government agency communications
- Networking
- Non-profits, day centers/shelters
- Libraries
- Health clinic communications

#### **June 15th Clackamas County Coordinated Committee (C4) Retreat**

The Clackamas County Coordinating Committee (C4) meets to provide coordination and cooperation between jurisdictions within Clackamas County and to form unified positions on land use and transportation plans. Membership is comprised of elected officials from Clackamas County, cities, representatives from unincorporated communities, and representatives from transit, sewer, water, and safety districts. At its June retreat, County staff presented the C4 with information on the Affordable Housing Bond and conducted a similar engagement activity to those described above. Responses listed below are in order of most to least.

What needs to be in place for housing development to be successful?

- Transportation access
- Services nearby
- Meaningful connections to existing neighborhood
- Green spaces

What population in your community is in greatest need of housing?

- Low income households
- Families with children (especially single parent households)
- Single adults experiencing homelessness

- People with behavioral health needs

What is your community's greatest need?

- Access to affordable housing
- Access to services (including health-both mental and physical)
- Improved access to transportation
- Access to jobs and job support/training

Help us shape our county values around housing.

- Commitment to mixed income integration
- Educate community (combat stereotypes, build support and acceptance)
- Living wages/access to employment
- Housing First/low or no barrier housing

### **June 20th Our Housing, Our Communities!**

At the second engagement meeting in partnership with Unite Oregon, we began by debriefing participants about what we had discussed in May. We then provided a short overview of local housing resources with an opportunity for participants to ask questions. Next, we provided a longer training on the concept of participatory budgeting, and then closed with a discussion of how participants define racial equity in affordable housing.

Breakout groups in the following discussion provided feedback on their perspective in what racial equity means in terms of housing. They reported the following:

- Public housing as a utility, not as an investment; a way to start place-making.
- There are lots of subsidies for owners but not renters
- Ownership should occur through multiple ways
  - Low income assistance to ownership
  - Expand down payment assistance
- Barriers to contracting
- Vietnamese participants shared a model of peer-to-peer lending in Vietnam to finance housing. Could there be a revolving fund to finance home purchases at reduced interest rates? How can affordability be passed on to the next owners?
- Clackamas County should hire within the community to build housing with an emphasis on hiring workers connected to families that would be housed.
- Housing opportunities could be prioritized to first-generation owners.
- Buy properties and housing now while it is less expensive and then figure out how to make it affordable to low-income buyers later. In other words, land bank if necessary.

### **Metro Bond Survey Results**

From June 4th to June 26th the County hosted an online survey about the Affordable Housing Bond on its website. Participants were asked to imagine the entire county, and think of a place where they would put new affordable housing before answering the questions below.

Why did you pick that location for affordable housing development?

1. Bus/Max
2. Affordable Grocery Store
3. Job
4. Food Bank, social service agency, other service
5. Where I live now (in my community)
6. Local Park/open space/trail

What are some other things about the area that you picked?

1. Safety
2. Open space/available land/rural/away from the city
3. Accessibility by car (including access to freeways, drivability, parking)
4. Central location (accessible to amenities, groceries, services, near city center etc.)
5. Accessible transportation options, and accessible green space
6. Access to jobs/employment opportunities

What are the biggest challenges people face when trying to find a place to live?

1. Rent is too expensive
2. Move-in costs are too expensive
3. Strict application and screening fee (income requirements, criminal and credit reports, rental history, etc.)
4. Distance from job, school, friends, family, school, etc.
5. Doesn't accept pets
6. Not enough space for a family

How do people find affordable housing?

1. Family/Friends
2. Craigslist
3. Social Media
4. Social Services Providers
5. 211

What do you think are the biggest challenges people have keeping their housing?

1. They can't afford to pay rent
2. Lack of good transportation options
3. The apartment isn't safe or habitable
4. The apartment isn't located where they want to live
5. Not enough support services provided or near the apartment

What types of services, programs, and/or support are needed to overcome these challenges?

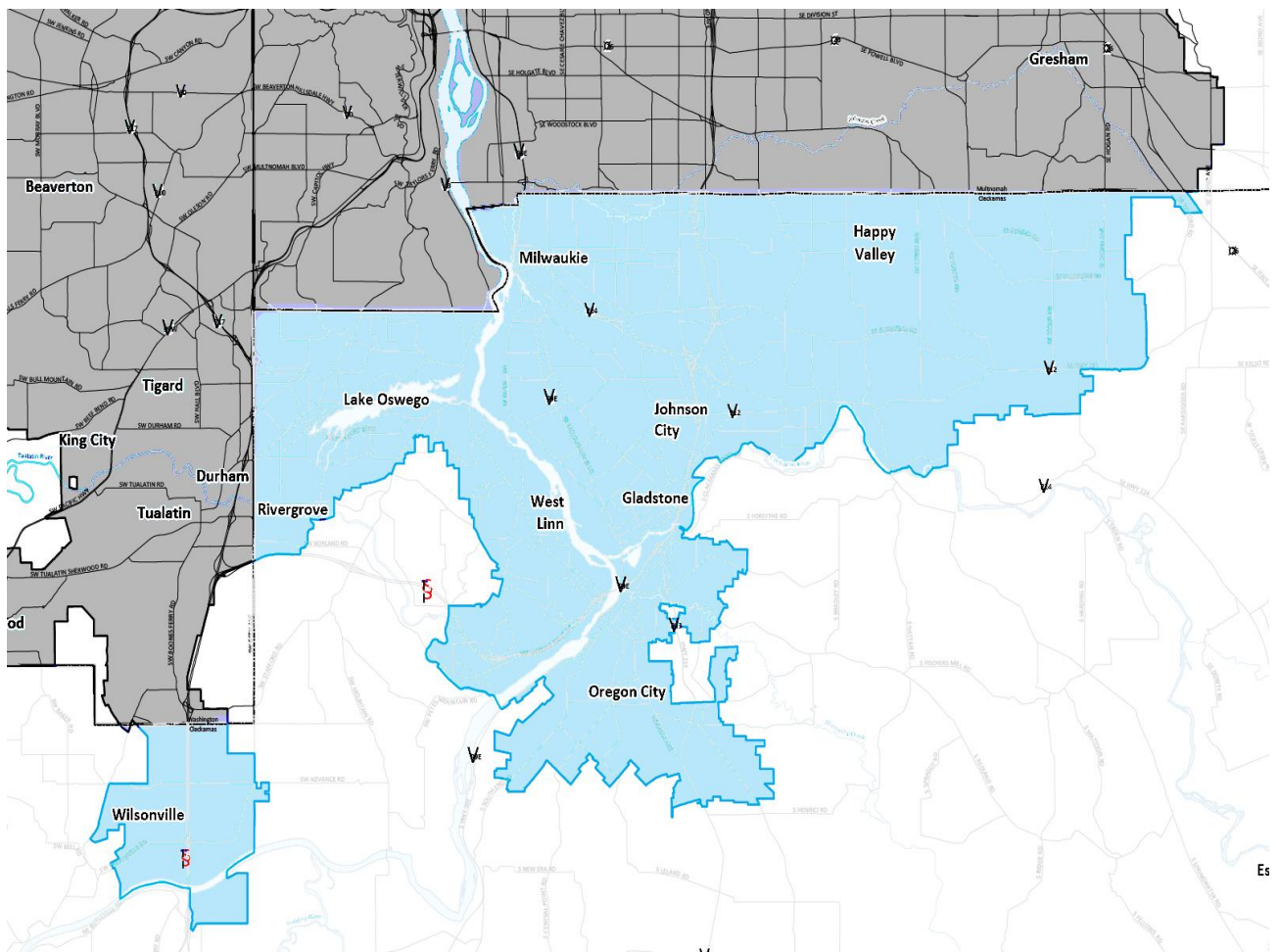
- Quality affordable housing county wide
- Accessible support services (including addiction services, mental and physical health services)
- Better multi-modal transportation infrastructure and services
- Access to jobs and job training/employment services
- Rent control, government and stakeholder buy-in/support

Exhibit 2  
FRAMEWORK TRACKING WORKSHEET

	Metro Bond	% of Total
Clackamas County Allocation	\$116,188,094	100.0%
<u>Utilized to date</u>	\$2,700,000	2%
18000 Webster Road		
Balance Remaining	\$113,488,094	98%

	Unit Production Targets			% of Total
Clackamas County	Total 812	30% AMI 333	Family size 403	100%
18000 Webster Road SRO	45	45	0	6% of Total units; 14% of 30% AMI
Balance Remaining	762	288	0	94%

Attachment 1  
Clackamas County Eligible Bond Placement per the Urban Growth Boundary (UGB)

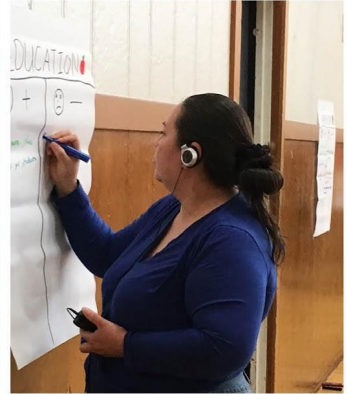












**CLACKAMAS COUNTY - 8/15/2019 Draft IGA Exhibit: Schedule of Administrative Funding and Program Milestones**

Total administrative funding available: \$2,446,065 [see Exhibit B of Work Plan, less any funds received in FY18-19]

*Please note: The amount of administrative funds forecasted is a rough proxy for timeline.*

*Administrative funds include: direct staff costs for program implementation, project monitoring, legal services and community engagement; consultants to assist with implementation, and other direct costs.*

The following schedule is subject to annual review and may be revised with approval from the Metro COO.

Fiscal year	Administrative funding annual allocation	Percent of total share of administrative funding	Anticipated Program Milestones
Year 1: 2019-20	\$489,213	20%	Finalization of LIS and IGA, Bond allocation program planning
			<b>NOFA 1:</b> Release of NOFA for up to 35% of bond allocation – available for projects sponsored by non-profit or for-profit developers throughout the eligible bond boundary within the county – select projects for funding
Year 2: 2020-21	\$489,213	20%	<b>NOFA 1:</b> Construction loan closing, groundbreaking and construction start
Year 3: 2021-22	\$489,213	20%	<b>HACC Public Housing Redevelopment RFP 1:</b> Release of RFP for up to 20% of bond allocation – select projects for funding
Year 4: 2022-23	\$244,607	10%	<b>NOFA 1:</b> Construction completion and Certificate of Occupancy
			<b>HACC Public Housing Redevelopment RFP 1:</b> Construction loan closing, groundbreaking and construction start
			<b>HACC Public Housing Redevelopment RFP 2:</b> Release of RFP for up to 20% of bond allocation – select projects for funding
Year 5: 2023-24	\$244,607	10%	<b>NOFA 1:</b> Lease-up and stabilization
			<b>HACC Public Housing Redevelopment RFP 2:</b> Construction loan closing, groundbreaking and construction start
			<b>NOFA 2:</b> Release of NOFA for up to 10% of bond allocation – available for projects sponsored by non-profit or for-profit developers throughout the eligible bond boundary within the county – select projects for funding
Year 6: 2024-25	\$244,607	10%	<b>HACC Public Housing Redevelopment RFP 1:</b> Lease-up and stabilization
			<b>HACC Public Housing Redevelopment RFP 3:</b> Release of RFP for up to 15% of bond allocation – select projects for funding

Year 7: 2025-26	\$244,607	10%	<b>NOFA 2:</b> Construction loan closing, groundbreaking and construction start
			<b>HACC Public Housing Redevelopment RFP 2:</b> Lease-up and stabilization
			<b>HACC Public Housing Redevelopment RFP 3:</b> Construction loan closing, groundbreaking and construction start

DRAFT

After recording return to:  
Office of Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736  
Attn: \_\_\_\_\_

**DECLARATION OF AFFORDABLE HOUSING  
LAND USE RESTRICTIVE COVENANTS**

This Declaration of Affordable Housing Land Use Restrictive Covenants (this "Declaration") is entered into as of \_\_\_\_\_, 2019 (the "Effective Date"), by and between Metro, a municipal corporation of the State of Oregon ("Metro") and \_\_\_\_\_ ("Owner").

**RECITALS**

A. Owner is the owner of certain real property commonly known as \_\_\_\_\_ in \_\_\_\_\_, Oregon, and legally described on Exhibit A attached hereto.

B. Owner and Metro are parties to that certain Intergovernmental Agreement dated \_\_\_\_\_, 20\_\_ (the "IGA"), pursuant to which Metro provided to Owner certain funds applied by the Owner to acquire the Property, which funds were proceeds of certain general obligation bonds issued by Metro for the limited purpose of funding affordable housing projects as authorized by Measure 26-199 approved by the voters on November 6, 2019 (the "Ballot Title").

C. Owner plans to improve, or cause to be improved a \_\_\_\_ acre parcel [and modify an existing building from its current use as a \_\_\_\_\_] into [BRIEFLY DESCRIBE DEVELOPMENT PLAN].

D. The parties expect that the Property will be redeveloped and comprised of approximately \_\_\_\_\_ units of affordable housing (the "Project"). At initial occupancy, the Project will serve qualifying persons that earn \_\_\_\_% or less of area median income (AMI).

E. Metro and Owner anticipate that funding of the work described in the IGA will require release of this Declaration and execution, delivery, and recordation of a new restrictive covenant imposing long-term affordability restrictions on the Property.

F. As required by the IGA, and as consideration for Metro's provision of general obligation bond funds to the Owner to acquire the Property, Owner agrees to the restrictions, covenants and obligations set forth herein.

## SECTION 1 PROPERTY USE RESTRICTIONS

**1.1 Affordable Housing Land Use.** For the term of this Declaration, the Property and the Project shall at all times be owned, developed, constructed, improved and operated solely as “Affordable Housing” within the meaning of the Ballot Title and as described in the Metro Housing Program Work Plan approved by the Metro Council on January 31, 2019 (the “Work Plan”). For purposes of the Ballot Title and the Work Plan, “Affordable Housing” is defined as improvements for residential units occupied by households earning 80% or less of median gross household income, adjusted for household size, for the Portland, Oregon metropolitan statistical area as established each year by the U.S. Department of Housing and Urban Development.

**1.2 Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. Section 2000d; Section 303 of the Age Discrimination Act of 1975, as amended; 42 U.S.C. Section 6102; Section 202 of the Americans With Disabilities Act of 1990; 42 U.S.C. Section 12132, no owner of the Property shall discriminate against any employee, tenant, patron or buyer of the Property improvements because of race, color, creed, national origin, sex, age or disability. In addition, any such owner shall comply, to the extent applicable to the Property, with the applicable federal implementing regulations of the above-cited laws and other applicable state and federal laws. “Owner” shall mean the fee simple title holder to the Property or any part thereof, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

**1.3 Running with the Land.** Owner hereby declares that the Property subject to this Declaration shall be held, sold and conveyed subject to the forgoing land use restrictions and covenants, which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of Metro. Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to ensure that these restrictions run with the Property for the term of this Declaration.

## SECTION 2 GENERAL PROVISIONS

**2.1 Enforcement.** Metro shall have standing, and may bring an action at law or equity in a court of competent jurisdiction to enforce all restrictions and covenants established by this Declaration and to enjoin violations, ex parte, if necessary. The failure to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

Metro is the only party entitled to enforce the restrictions and covenants set forth herein. Nothing in this Declaration gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

**2.2 Duration.** Subject to the provisions of the IGA providing for the early termination of this Declaration upon the occurrence of certain events or conditions, or otherwise upon mutual consent

**2.3 Amendment.** This Declaration may not be amended or revoked except by written agreement executed by Metro and Owner, their respective successors and assigns, and duly recorded in the manner then provided for by law. In the event Owner is unable to comply with the restrictions set forth herein, and Owner fully repays Metro for funds disbursed to acquire the Property pursuant to the terms of the IGA, the parties will revoke this Declaration.

**2.4 Limitation of Liability of Metro.** Under no circumstances shall Metro have any liability to Owner, its successors and assigns, or other user or tenant, lessee, guest or invitee of Owner, its successors and assigns, by virtue of Metro's enforcement or failure to enforce the rights established by this Declaration, and Owner, its successors and assigns, should defend and hold harmless Metro from same.

2.5 **Choice of Law.** This Declaration shall be interpreted under the laws of the State of Oregon.

**2.6 Breach of Agreements.** Owner represents and warrants that this Declaration does not violate any of the terms or conditions of any other agreement to which Owner is a party, or to which the Property is subject.

The parties have caused this Declaration to be signed by their respective, duly authorized representatives, as of the Effective Date.

OWNER:

---

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

Name: \_\_\_\_\_

Title:

State of Oregon )  
ss.

County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_, an Oregon \_\_\_\_\_.

(Signature of Notarial Officer)

METRO

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of Oregon                    )  
  ss.  
County of \_\_\_\_\_)

        This instrument was acknowledged before me on \_\_\_\_\_, 2019, by  
\_\_\_\_\_, as \_\_\_\_\_, of \_\_\_\_\_, an Oregon \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notarial Officer)

**Exhibit A**

**Property Legal Description**



**Required Project Completion Reporting**

**Immediate Post Closing (within 10 business days after closing):**

- ☐ Copy of recorded Metro approved restrictive covenant
- ☐ Copy of settlement statement

**Post Construction Completion (within 3 months of recorded temporary certificate of occupancy):**

- ☐ Metro project closeout form attesting to use of Metro bond funds for capital costs
- ☐ Copy of temporary certificate of occupancy
- ☐ Resident Services Plan (OHCS form)
- ☐ Affirmative Fair Housing Marketing Plan (HUD Form)
- ☐ Community engagement report
- ☐ MWESB/COBID participation outcomes
- ☐ Workforce outcomes report, if project has stated workforce goals
- ☐ Draft project summary

**Post-Occupancy (within 3 months of 95% occupancy):**

- ☐ Marketing and application outcomes report
- ☐ Final project summary

IN CONSIDERATION OF RESOLUTION NO. 19-5010 FOR THE PURPOSE OF  
AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE  
HOUSING AUTHORITY OF CLACKAMAS COUNTY FOR IMPLEMENTATION OF THE  
METRO AFFORDABLE HOUSING BOND MEASURE

---

Date: November 6, 2019  
Department: Planning & Development  
Meeting date: November 21, 2019

Prepared by: Emily Lieb  
Presenter(s): Emily Lieb  
Length: 10 minutes

---

## **ISSUE STATEMENT**

As directed by the Program Work Plan, staff has prepared an intergovernmental agreement (IGA) setting forth the terms and conditions under which Metro will disburse Metro Housing Bond funding to Housing Authority of Clackamas County (HACC) for eligible program activities. The proposed IGA is attached as Exhibit A to the Resolution.

The IGA is intended to provide clarity and accountability regarding the expenditure of bond funds to achieve specific Unit Production Targets.

## **Eligible funding amounts**

HACC is eligible for the following funding amounts to support investment in Affordable Housing Projects that are consistent with the Bond Measure, Work Plan, and approved LIS.

- Eligible Share: \$113,488,094 to be disbursed on a Project by Project basis to support direct capital investments in eligible Affordable Housing Projects.
  - This amount reflects the County's full Eligible Share allocation of \$116,188,094 less \$2,700,000 in Housing Bond funds previously disbursed to HACC for the acquisition of 18000 Webster Road site, which was approved by the Metro Council for funding in April 2019.
- Administrative Share: \$2,446,065 to be released in annual disbursements to support general costs associated with program administration activities.

## **Unit production targets**

HACC agrees to direct the above funding resources toward the creation of Affordable Housing to achieve the following unit production targets:

- HACC will support investments to create a total of 812 permanently affordable homes.
- At least 333 homes will be restricted to households earning 30% or less of area median income (AMI)
- At least 398 homes will be restricted to households earning 31% to 60% of AMI
- No more than 10% of units (81 of 812 total units) may be affordable to households making 61-80% of AMI

- At least 406 units will contain two or more bedrooms.

### **General IGA provisions to ensure transparency and accountability**

- All projects selected for bond funding must demonstrate consistency with HACC's Local Implementation Strategy (LIS), as confirmed through Metro staff review at the concept and final funding stage. See HACC's LIS attached as Exhibit A to the IGA.
- HACC will record a restrictive covenant ensuring long-term affordability and monitoring obligations for all approved projects.
- HACC will submit annual progress reports to Metro, which will be utilized by the Housing Bond Community Oversight Committee as part of their annual review. Along with project progress information, these reports will include metrics and narratives describing outcomes related to advancing racial equity.
- Metro will disburse administrative funding to HACC annually. See the Schedule of Administrative Funding Disbursement and Program Milestones attached as Exhibit B to the IGA.
- HACC will submit annual end-of-fiscal-year reports to Metro summarizing direct project expenditures and program administrative expenditures, the latter of which is subject to the 5% administrative cap included in the Housing Bond Measure.

### **Clackamas County Local Implementation Strategy (LIS)**

In July, Clackamas County completed its Local Implementation Strategy (LIS). In accordance with requirements set forth in Metro's Housing Bond Program Work Plan, Clackamas County's LIS includes a development plan to achieve the County's share of unit production targets and strategies for advancing racial equity and ensuring community engagement throughout implementation. Key highlights of HACC's LIS include:

- HACC intends to directly develop and own approximately 450 units (55% of the total unit production goal), including 45 units planned for the 18000 Webster Road site in Gladstone, as well as redevelopment efforts on three public housing sites that have been designated for redevelopment.
- Remaining unit production targets will be achieved through funding agreements with third-party developers selected through a competitive solicitation process.
- At least 200 of the 333 targeted deeply affordable units will be supported with rental assistance vouchers allocated by HACC.
- HACC has established a goal of 20% COBID/MWESB contracting participation throughout implementation, and has committed to work with Metro and other partners to explore strategies for encouraging diversity in workforce participation.
- HACC's LIS includes commitments related to the use of low barrier screening and affirmative marketing strategies

The Clackamas County LIS was reviewed and discussed by the Housing Bond Community Oversight Committee at their August 7th meeting, where Committee members present voted unanimously to recommend the LIS to Metro Council for approval with

considerations for ongoing monitoring. A copy of the Oversight Committee's recommendation and noted considerations is attached to this Staff Report.

## **REQUESTED**

Adopt Resolution No. 19-5010, authorizing the Chief Operating Officer to execute an intergovernmental agreement with the Housing Authority of Clackamas County for implementation of the Metro Affordable Housing Bond Measure.

## **IDENTIFIED POLICY OUTCOMES**

Once the IGA is finalized, HACC will be eligible to receive \$113,488,094 in Metro bond funding for disbursement on a project-by-project basis, and \$2,303,216 in funding for program administration costs between FY19-20 and FY25-26, including \$489,213 in FY19-20 administration funding to be disbursed within 30 days of the execution of the IGA.

Ongoing disbursement of funds will be contingent upon demonstrated progress toward achieving HACC's share of the Unit Production Targets and HACC's compliance with its LIS.

## **POLICY QUESTION(S)**

- Does the Council believe the IGA provides the necessary accountability structures and mechanisms to ensure the region's success in fulfilling the commitments articulated in the Housing Bond Measure?
- Does the Council believe HACC's LIS (attached as Exhibit A to the IGA) meets the requirements established by the Council in the Program Work Plan, as recommended by the Community Oversight Committee?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

- Authorize the execution of an intergovernmental agreement with the Housing Authority of Clackamas County for implementation of the Metro Affordable Housing Bond Measure by adopting Resolution No. 19-5010. Such authorization would effectively approve HACC's LIS, which is incorporated into the IGA as Exhibit A.
- Reject proposed intergovernmental agreement with the Housing Authority of Clackamas County for implementation of the Metro Affordable Housing Bond Measure, and direct staff to renegotiate the terms and conditions upon which funding will be provided.

## **STAFF RECOMMENDATIONS**

Staff recommends adoption of Resolution No. 19-5010.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

The IGA was shaped through the direction provided in the Housing Bond Program Work Plan, adopted by Metro Council on January 31, 2019, and through consideration of applicable state laws pertaining to the program. Staff from Planning & Development; Office of Metro Attorney; Finance and Regulatory Services; Risk Management; and external bond counsel have all been consulted in development of the IGA.

Metro staff have worked with staff at all seven eligible local implementation partners over the past six months to develop IGA terms that protect the integrity of the program and ability for implementation partners to achieve prescribed outcomes. Clackamas County staff briefed the Housing Authority of Clackamas County's Housing Advisory Board, which includes the Board of County Commissioners plus a citizen representative, on the IGA in September 4, and the Board of County Commissioners is scheduled to consider approval of the IGA on November 14.

The County conducted extensive engagement to inform its LIS, including events targeting local jurisdiction staff and elected officials, affordable housing developers and service providers, and broader community outreach. The County also contracted with Unite Oregon to provide targeted outreach to low-income community members, communities of color, people with limited English proficiency, immigrants and refugees, and people with disabilities. The Housing Advisory Board reviewed and approved submittal of Clackamas County's LIS to Metro on July 16<sup>th</sup>.

Oversight Committee members present at the August 7<sup>th</sup> meeting voted unanimously to recommend Metro Council approval of the LIS as part of the IGA. Staff are not aware of any opposition to Clackamas County's LIS or to the IGA.

The proposed Resolution is based on numerous policies previously adopted by the Metro Council, including but not limited to:

- Resolution No. 19-4956, approving the Metro Affordable Housing Bond Program Work Plan
- Resolution No. 18-4898, referring the Affordable Housing Bond Measure to Metro District voters

## **ATTACHMENTS**

Attachment 1: Metro Housing Bond Community Oversight Committee Recommendations for Clackamas County's Local Implementation Strategy

## METRO HOUSING BOND COMMUNITY OVERSIGHT COMMITTEE

### RECOMMENDATIONS REGARDING CLACKAMAS COUNTY'S LOCAL IMPLEMENTATION STRATEGY

#### RECOMMENDATION TO METRO COUNCIL REGARDING APPROVAL OF THE HOUSING AUTHORITY OF CLACKAMAS COUNTY'S LOCAL IMPLEMENTATION STRATEGY

The Oversight Committee recommends that Metro Council take action to approve Clackamas County's Local Implementation Strategy (LIS), subject to the County's revision of language related to public solicitation processes described on page 8 as discussed during the August 7<sup>th</sup> meeting. Clackamas County submitted revised language in response to these concerns, which was provided to the Committee as part of their September 4 meeting packet. The Committee has identified the following considerations for Clackamas County's ongoing implementation and monitoring of outcomes:

- The County should further define strategies and outcomes that will be measured to demonstrate the advancement of racial equity, including low-barrier screening criteria, affirmative marketing, universal design, voucher prioritization, wraparound services, and contract and workforce diversity.

The Oversight Committee has requested an early response from the County regarding the considerations above and ongoing updates as part of the County's annual LIS progress report. The Oversight Committee expects to address these considerations in its annual LIS review.

#### ADDITIONAL GUIDANCE FOR ALL JURISDICTIONS

In addition to the above considerations, Committee members have offered the following considerations for all jurisdictions participating in implementation of the Housing Bond. This list reflects considerations approved by the committee as of their September 4 meeting and may be further refined as the Committee discusses Local Implementation Strategies from other jurisdictions.

- When describing strategies to advance racial equity, be specific about prioritization among various strategies.
- Use language that acknowledges intersectionality of populations; avoid differentiating between homelessness, disabling conditions including physical and mental health, and addiction.
- Identify screening criteria not relevant to likelihood of successful tenancy that should not be considered.
- Provide further information about jurisdiction commitments to fund supportive services as needed to meet the needs of certain tenants.
- Additional resources need to be identified to successfully serve tenants who need permanent supportive housing.
- Consider further specificity about family sized unit production that includes goals or requirements to ensure three bedroom and larger homes.
- Measuring outcomes regarding workforce equity should include all workers, not solely apprentices.
- Many minority owned businesses need additional support to successfully participate in the COBID certification program.
- Consider sustainability/durability and life cycle costs, and incorporate findings from the 2015 Meyer Memorial Trust study on cost efficiencies in affordable housing in evaluating project.

Agenda Item No. 4.1

**Resolution No. 19-5040**, For the Purpose of Confirming  
New Appointments to the Metro Committee on Racial  
Equity

*Consent Agenda*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING NEW	)	RESOLUTION NO. 19-5040
APPOINTMENTS TO THE METRO	)	
COMMITTEE ON RACIAL EQUITY	)	Introduced by Council President Lynn Peterson

WHEREAS, in compliance with Metro's Strategic Plan to Advance Racial Equity, Diversity and Inclusion ("Strategic Plan") the Metro Council created the Committee on Racial Equity ("CORE"), approved its charter and confirmed the appointment of its two founding co-chairs on March 16, 2017; and

WHEREAS, by a fair and open process, Metro has recruited applicants for the CORE and the Metro Council President has appointed selected applicants consisting of members of the public who have a commitment to advancing racial equity and the skills, knowledge and lived experience to assist Metro Council and staff on the implementation and evaluation of the Strategic Plan; and

WHEREAS, Metro Code Chapter 2.19.030 requires that the Metro Council confirm appointments made by the Council President to Metro's Advisory Committees; and

BE IT RESOLVED that the appointments by the Metro Council President to the CORE are hereby confirmed to serve for one two-year term, effective immediately, in the form attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Lynn Peterson, Council President

Approved as to Form:

\_\_\_\_\_  
Carrie MacLaren, Metro Attorney



**Exhibit A to Resolution No. 19-5040, For the Purpose of Confirming New Appointments to the Metro Committee on Racial Equity**

**Appointments to Metro's Committee on Racial Equity**

November 7, 2019

Table 1. Individuals recommended for appointment to Metro's Committee on Racial Equity.

Name	County
Daniela Ortiz	Washington
Mahmood Jawad	Washington
Maria Magallon	Clackamas
Nura Elmagbari	Washington
Quincy Brown	Multnomah
Saara Hirsi	Multnomah
Tristan Penn	Washington

IN CONSIDERATION OF RESOLUTION NO. 19-5040, FOR THE PURPOSE OF CONFIRMING  
NEW APOINTMENTS TO THE METRO COMMITTEE ON RACIAL EQUITY

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Date: Thursday, November 7, 2019  
Department: Office of the COO – Diversity,  
Equity and Inclusion  
Meeting Date: Thursday, November 21, 2019

Prepared by: Sebrina Owens-Wilson, 503-797-  
1774,  
Presenter(s) (if applicable): N/A  
Length: N/A

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## **ISSUE STATEMENT**

Resolution No. 19-5040 requests the appointment of seven new members to Metro’s Committee on Racial Equity (CORE). This ensures the CORE can continue to fill their chartered role in advising Metro council and staff on the implementation of the Strategic Plan to Advance Racial Equity, Diversity and Inclusion.

## **ACTION REQUESTED**

The Metro Council appoints seven new members of Metro’s Committee on Racial Equity for two-year terms.

## **IDENTIFIED POLICY OUTCOMES**

This ensures the CORE can continue to fill their chartered role in advising Metro council and staff on the implementation of the Strategic Plan to Advance Racial Equity, Diversity and Inclusion. Furthermore, the appointment of these seven members supports CORE’s wide geographic representation, representation of diverse lived experiences, and inclusion of an array of relevant skills and knowledge that will support CORE in its mission.

## **POLICY QUESTION(S)**

N/A

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

N/A

## **STAFF RECOMMENDATIONS**

Staff recommends that the Metro Council appoint seven new members of Metro’s Committee on Racial Equity for two-year terms. The members recommended for appointment, and their county of residence, are detailed in Exhibit A of Resolution No. 19-5040.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

N/A

## **BACKGROUND**

The CORE is a committee that was created and chartered by the Metro Council in 2017 to advise the Council and staff in advancing racial equity to fulfill the purpose of good government, which is to serve all people effectively and create greater opportunities for people of color to thrive in the region. The CORE is an ongoing, standing Metro committee, whose main purpose is to:

- provide input and advice for the successful implementation of the Strategic Plan to Advance Racial Equity, Diversity and Inclusion (Strategic Plan);
- provide community oversight and opportunities for Metro to have greater accountability to the community on the implementation of the Strategic Plan;
- communicate Metro's progress in implementing the Strategic Plan, and
- assist Metro staff in the creation and implementation of the Strategic Plan evaluation.

In September 2019 DEI Program staff started the process to solicit applications from members of the public to serve on the CORE. Forty two (42) complete applications were submitted by community members interested in serving on the CORE. Two community members (two current CORE members) and four Metro staff reviewed and assessed the applications received using the criteria for committee membership set forth in the CORE charter. This group presents seven applicants recommended for appointment to the CORE. These community members and Metro staff (Raahi Reddy, Sebrina Owens-Wilson, Gloria Pinzon, Kate Fagerholm, Patricia Kepler, and Martine Coblentz) met on October 23, 2019 to identify the roster of recommended appointments. After thoughtful consideration and deliberation, they agreed on the seven names to recommend for appointment, which are listed in Exhibit A to Resolution 19-5040.

#### **ATTACHMENTS**

Short biographies for members recommended for appointment are included in Exhibit A to the Staff Report on Resolution No. 19-5040.

**Exhibit A to the Staff Report on Resolution No. 19-5040, For the Purpose of Confirming New Appointments to the Metro Committee on Racial Equity**

**Committee on Racial Equity**

*Member appointment – member biographies*

**Daniela Ortiz**

Affiliation: Adelante Mujeres

Pronouns: she/her/hers

County of residence: Washington County

About: I grew up in a low-income community, first generation immigrant along with my parents. I had the wonderful opportunity of volunteering in different parts of our barrio, thanks to my mother who was always an active leader in the community. My brothers and I would volunteer at schools, churches, cultural centers, and even attend marches alongside my parents. I have seen what collaborative action from the people can do, and I'm excited to see what we will accomplish working together.

**Mahmood Jawad**

Affiliation: Muslim Educational Trust and Momentum Alliance

Pronouns: he/him/his

County of residence: Washington County

About: As a refugee from Iraq and junior at Oregon Islamic Academy, my ambitions and skills motivate me to empower and transform the marginalized and underrepresented community I come from. Beginning my journey at the Muslim Educational Trust, I was fortunate enough to be surrounded by community and avid leadership amid the 2016 Presidential Election where our social and political order was tested. Furthering my deep dive into social reform and enforcement of public accountability I decided to join the Urban League of Portland where I achieved political and community change that advances equity, social and economic justice and civil rights for minority communities in Oregon.

**Maria Magallon**

Affiliation: Clackamas County

Pronouns: she/her/hers

County of residence: Clackamas County

About: I come from a migrant farmworker family; my parents are from small countryside villages in Mexico. I was born in Texas; my parents moved with the seasonal crops so I consider Mt. Angel Oregon my home town. I have been employed with Clackamas County for almost 25 years; for twenty years I worked in public health and social services providing direct case management to farmworker families and families who were houseless. For the past five years my focus has been on evaluating services, policies and procedures to assure they are equitable and there is meaningful community involvement for underrepresented populations.

**Nura Elmagbari**

Affiliation: Portland Refugee Support Group

Pronouns: she/her/hers

County of residence: Washington County

About: I am a Muslim woman who arrived into this country as a refugee. I have been in this country since I was a child but not much has changed in terms of how people perceive me and what I can accomplish. I want to change the perception about Muslim women as well as do my part to improve my community, all while encouraging other Muslim women to become more involved. I have years of

experience in community and system building, non-profit work, youth development, and working with minority groups. The experience and knowledge I would bring is how to communicate with different communities by developing relationships and taking the time to humbly learn about people, their needs, their struggles, and their desires to live in an inclusive community.

### **Quincy Brown**

Pronouns: he/him/his

County of residence: Multnomah County

About: I grew up in Northeast always learning about structural and historical inequalities deeply nested within Portland's History. From an early age I wanted to challenge perspectives around school access, housing security, and environmental justice. My academic research focuses on the effects of gentrification and displacement on communities of color. I am the Co-Founder and COO of Seiji's Bridge, an educational technology company that develops devices and curriculum for children in special education, and work as a planner at Alta Planning + Design.

### **Saara Hirsi**

Pronouns: she/her/hers

County of residence: Multnomah County

About: I am a disabled immigrant/refugee community and person of color. I am a community organizer, mentor, and working as advocacy consulting for disabled refugee community. I was addressing racial equity barrier impact disabled refugee community during the course of my education, trainings, and volunteers. I had ability to create program and did awareness events support for disabled refugee community. I served on the Oregon Commission for the Blind and Portland Commission on Disability.

### **Tristan Penn**

Affiliation: Nonprofit Technology Enterprise Network

Pronouns: he/him/his

County of residence: Washington County

About: My lived experience as a Diné (Navajo) Man, as well as a Black Man growing up in Central Kansas profoundly shaped my deep and unshakable relationship with racial equity. Indeed, my family, felt the impact of structural, systemic, and institutionalized racism throughout our lives. I began my professional DEI work with Pacific Educational Group's three-year cohort/professional development initiative "Beyond Diversity: Courageous Conversations I & II" while working for Boys & Girls Club and Lawrence Public Schools. Additionally, the work that I have most recently worked on in my current role at NTEN has been the implementation of Racial Affinity Spaces at the annual national conference my organization puts on, The Nonprofit Technology Conference; as well as the formation of a DEI committee on our organization's board.

**Resolution No. 19-5030**, For the Purpose of Authorizing  
the Chief Operating Officer to Issue a Renewed  
Non-System License Authorizing American Honda to  
Transport and Dispose Non-Recoverable Solid Waste,  
Including Putrescible Waste at the Covanta  
Waste-to-Energy Facility Located in Brooks, Oregon

*Consent Agenda*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF	)	RESOLUTION NO. 19-5030
OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM	)	
LICENSE AUTHORIZING AMERICAN HONDA TO TRANSPORT	)	Introduced by Andrew Scott,
AND DISPOSE NON-RECOVERABLE SOLID WASTE,	)	Interim Chief Operating Officer,
INCLUDING PUTRESCIBLE WASTE AT THE COVANTA	)	with the concurrence of Lynn
WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS,	)	Peterson, Council President
OREGON	)	

WHEREAS, Metro Code Section 5.05.110 requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, American Honda holds Metro non-system license No. N-141-17 which expires on December 31, 2019; and

WHEREAS, American Honda filed a complete application seeking a renewed non-system license to transport non-recoverable solid waste including putrescible solid waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review applications for non-system licenses for putrescible waste and that the Metro Council will approve or deny them; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors set forth in Metro Code Section 5.05.140; and

WHEREAS, the Chief Operating Officer recommends that Metro issue a renewed non-system license to American Honda with specific conditions as provided in Exhibit A to this Resolution; now therefore,

BE IT RESOLVED that the Metro Council:

1. Approves the non-system license renewal application of American Honda subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer to issue to American Honda a renewed non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney

Resolution No. 19-5030



600 NE Grand Ave.  
Portland, OR 97232-2736  
oregonmetro.gov

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

### No. N-141-20

<b>LICENSEE:</b>
American Honda Motor Co., Inc. 16800 NE Sandy Blvd. Portland, OR 97230
<b>CONTACT PERSON:</b>
David Misistano Phone: (503) 251-1426 E-Mail: <a href="mailto:david_misitano@ahm.honda.com">david_misitano@ahm.honda.com</a>
<b>MAILING ADDRESS:</b>
American Honda Motor Co., Inc. 16800 NE Sandy Blvd. Portland, OR 97230

ISSUED BY METRO:

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Roy W. Brower  
Interim Property and Environmental Services Director

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Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Non-recoverable solid waste mixed with putrescible waste, including restroom and lunchroom waste, generated at the American Honda site located at 16800 NE Sandy Blvd. in Portland, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE</b>
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 25 tons per calendar year of the waste described in Section 1.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<ol style="list-style-type: none"> <li>The licensee is authorized to transport the waste described in Section 1 to the following non-system facility:  Covanta Waste-to-Energy Facility  4850 Brooklake Road, NE  Brooks, OR 97305</li> <li>This license is issued on the condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or Marion County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 9.</li> </ol>
<b>4</b>	<b>TERM OF LICENSE</b>
	January 1, 2020 to December 31, 2021, unless amended, suspended, or revoked as provided in this license.
<b>5</b>	<b>COVERED LOADS</b>
	The licensee must suitably contain and cover, on all sides, all loads of the waste described in Section 1 that are transported under authority of this license to the non-system facility listed in Section 3 to prevent spillage of waste while in transit.
<b>6</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	The solid waste that the licensee delivers under authority of this license to the non-system facility listed in Section 3 is subject to the regional system fee and excise tax in accordance with Section 8.

8	RECORD KEEPING AND REPORTING
	<ol style="list-style-type: none"> <li>1. The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records include the information specified in the Metro document titled <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</li> <li>2. The licensee must perform the following no later than fifteen days following the end of each month: <ol style="list-style-type: none"> <li>(a) Submit to Metro the records required under Section 8.1 in an electronic format prescribed by Metro;</li> <li>(b) Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li> <li>(c) Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment, and accounting of those fees and taxes.</li> </ol> </li> <li>3. The licensee must make available to Metro (or Metro's designated agent) all records from which Section 8.1 and 8.2 are derived for its inspection or copying or both, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3.</li> <li>4. Metro may require the licensee to report the information required by this section on a weekly or daily basis.</li> <li>5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 8, each day by which the licensee exceeds the due date may constitute a separate violation subject to a penalty of up to \$500 per violation, in accordance with Metro Code Chapter 5.05.</li> </ol>

9	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. The transport of solid waste to the non-system facility, listed in Section 3, authorized by this license, is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li> <li>2. This license is subject to amendment, modification or termination by Metro in the event that Metro determines that: <ol style="list-style-type: none"> <li>(a) There has been sufficient change in any circumstances under which Metro issued this license; or</li> <li>(b) Metro's solid waste system or the public will benefit from, and will be better served by, transporting the waste described in Section 1 of this license to a facility other than that listed in Section 3.</li> </ol> </li> <li>3. In addition to subsections 9.2(a) and (b), Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.</li> </ol>

	<ol style="list-style-type: none"> <li>4. The licensee cannot transfer or assign any right or interest in this license without Metro's prior written approval.</li> <li>5. This license is subject to amendment or termination by Metro upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</li> <li>6. This license authorizes transport of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li> <li>7. Metro may direct the licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by Metro is effective immediately.</li> <li>8. If the licensee exceeds the calendar year authorization set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500, in accordance with Metro Code Chapter 5.05.</li> </ol>
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<b>10</b>	<b>COMPLIANCE WITH LAW</b>
	<p>The licensee must fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative rules adopted pursuant to Metro Code Chapter 5.05, whether or not those provisions have been specifically mentioned or cited in this license. All conditions imposed on the collection and hauling of the licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee are deemed part of this license as if specifically set forth.</p>

<b>11</b>	<b>INDEMNIFICATION</b>
	<p>The licensee must defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses arising out of or related in any way to the issuance or administration of this non-system license. Expenses include, but are not limited to, all attorneys' fees, whether incurred before litigation is commenced, during litigation or on appeal.</p>



IN CONSIDERATION OF RESOLUTION NO. 19-5030 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE AUTHORIZING AMERICAN HONDA TO TRANSPORT AND DISPOSE NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON.

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Date: November 1, 2019  
Department: PES  
Meeting Date: November 21, 2019

Prepared by: Will Ennis, x1667,  
[will.ennis@oregonmetro.gov](mailto:will.ennis@oregonmetro.gov)

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### **ISSUE STATEMENT**

American Honda Motor Co., Inc. (American Honda) is requesting renewal of its Metro Solid Waste Facility Non-System License to transport a maximum of 25 tons per calendar year of non-recoverable solid waste, including putrescible waste, from its facility located at 16800 NE Sandy Blvd. in Portland to the Covanta Waste-to-Energy facility (Covanta) in Brooks, OR.

Metro Code Section 5.05.110(c) requires the Metro Council to approve or deny a non-system license (NSL) to transport putrescible waste to a disposal site.

### **ACTION REQUESTED**

Approve Resolution No. 19-5030 which will authorize the Chief Operating Officer to issue a renewed Metro Non-System Facility License to American Honda for a term of XX years.

### **IDENTIFIED POLICY OUTCOMES**

Approval of the proposed NSL renewal will support Metro's longstanding practice to allow solid waste generated in the Metro region to be transported to disposal sites located outside of the region provided that the transporter applies for and receives Metro authorization.

### **POLICY QUESTION**

Should Metro Council approve the resolution and grant the Chief Operating Officer authority to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to American Honda to deliver up to 25 tons of putrescible waste per calendar year to the Covanta?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to authorize the Chief Operating Officer to issue a renewed NSL to American Honda.
2. Approve the resolution with conditions in addition to or other than those recommended by staff.
3. Do not approve the resolution.

## **STAFF RECOMMENDATIONS**

Staff recommends Metro Council approve of Resolution 19-5030 to authorize the Chief Operating Officer to issue a renewed Metro Solid Waste Facility Non-System License to American Honda.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities.

## **Known Opposition/Support/Community Feedback**

There is no known opposition to the proposed NSL.

## **Legal Antecedents**

Metro Code Chapter 5.05, "Solid Waste Flow Control." Specifically, Section 5.05.140 describes the factors the Chief Operating Officer may consider to determine whether to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which those wastes pose a future risk of environmental contamination;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. Air emissions from the facility are controlled through the use of high efficiency combustion within the furnace/boiler as well as by selective non-catalytic reduction, spray dryer absorbers, fabric filter baghouses and an activated carbon injection system. The ash generated at the facility is then disposed, or used beneficially, in accordance with Oregon Department of Environmental Quality (DEQ) requirements.

- (2) The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;*

Covanta holds a DEQ Solid Waste Energy Recovery Permit. No formal enforcement actions have been taken at Covanta by DEQ in the last five years and Covanta is in compliance with federal, state, and local requirements. Staff has also received confirmation that Covanta has a good compliance record with respect to public health, safety and environmental regulations.

- (3) The adequacy of the non-system facility's operational practices and management controls;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of

future environmental contamination. In addition, Covanta uses operational practices and management controls that are considered by the DEQ to be appropriate for the protection of health, safety, and the environment.

*(4) The expected impact on the region's recycling and waste reduction efforts;*

American Honda has an aggressive internal recycling program and it seeks to deliver only its non-recyclable waste, including putrescible solid waste, to Covanta instead of a landfill.

The Metro-area waste that is delivered to Covanta is not included in Metro's recovery rate calculation because state statute (ORS 465A.010(4)(f)(B)) stipulates that only those wastesheds that burn mixed solid waste for energy recovery within their wasteshed boundaries may count a portion of it towards their DEQ recovery rate calculation. Marion County is the only wasteshed within Oregon that hosts a waste-to-energy facility within its boundaries; therefore, it is the only wasteshed that is currently allowed to include a portion of the in-County waste that is delivered to Covanta in its recovery rate. Approval of the proposed license is not expected to impact the Metro region's recycling and waste reduction efforts.

*(5) The proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement to deliver a minimum of 87 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The proposed NSL is not effective until January 1, 2020, after the expiration of Metro's contractual agreement and therefore, approval of the proposed license will not conflict with Metro's disposal contract.

*(6) The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including, but not limited to public health, safety and environmental regulations; and*

Metro staff's investigation of the applicant revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

*(7) Any other factor the Chief Operating Officer considers appropriate.*

Covanta is the primary disposal site for solid waste generated within Marion County. Marion County generally supports the Metro-authorized flow of solid waste to Covanta.

### **Anticipated Effects**

Adoption of Resolution 19-5030 will authorize the Chief Operating Officer to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to American Honda to transport up to 25 tons of putrescible waste per calendar year to the Covanta.

### **Financial Implications**

The application under consideration is the renewal of an existing NSL. The financial impact of this NSL has already been factored into the budget. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to Covanta under the authority of the proposed NSL.

### **BACKGROUND**

The applicant seeks to renew its NSL to transport non-recoverable solid waste including putrescible waste generated within the Metro region to Covanta. Covanta is a non-system waste-to-energy facility located outside of the region. Metro Code Section 5.05.040 prohibits any person from transporting solid waste to a non-system facility without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste.

The applicant, American Honda, operates an automobile and motorcycle parts distribution center located at 16800 NE Sandy Blvd. in Portland, Oregon (Metro District 1). The facility is used primarily as a warehouse which distributes parts to 90 dealerships in seven states. The facility also houses an office, lunchroom, and automobile repair shop on site.

American Honda routinely generates miscellaneous non-recoverable wastes at the above-mentioned facility which consist primarily of office, restroom, and lunchroom wastes. The facility also generates other non-hazardous wastes from its warehouse activities including labels and floor sweepings. As part of the company's "blue skies for our children" campaign, the company makes efforts to reduce, reuse, and recycle waste whenever possible. For example, the company uses metal pallets, re-usable plastic shipping boxes, and shredded cardboard for packaging parts in an effort to reduce the amount of wood and plastic waste generated at the facility. As part of these efforts, American Honda Motor Company prefers to send its non-recoverable wastes to waste-to-energy facilities instead of landfills for disposal.

Honda has been authorized to transport non-recoverable waste, including putrescible waste, to Covanta since 2013 under a Metro NSL. The current license will expire on December 31, 2019. The licensee delivered approximately three tons of waste to Covanta in calendar year 2018 and about 10 tons through September of 2019.

### **ATTACHMENTS**

Exhibit A to Resolution No. 19-5030: Draft Solid Waste Non-System License No. N-141-20.



**Resolution No. 19-5031**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Authorizing Pacific Foods of Oregon, Inc. to Transport and Dispose of Non-Recoverable Solid Waste, Including Putrescible Waste at the Covanta Waste-to-Energy Facility Located in Brooks, Oregon

*Consent Agenda*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF ) RESOLUTION NO. 19-5031  
OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM )  
LICENSE AUTHORIZING PACIFIC FOODS OF OREGON, INC. ) Introduced by Andrew Scott,  
TO TRANSPORT AND DISPOSE OF NON-RECOVERABLE ) Interim Chief Operating Officer,  
SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT THE ) with the concurrence of Lynn  
COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN ) Peterson, Council President  
BROOKS, OREGON )

WHEREAS, Metro Code Section 5.05.110 requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Pacific Foods of Oregon, Inc. holds Metro non-system license No. N-176-17 which expires on December 31, 2019; and

WHEREAS, Pacific Foods of Oregon, Inc. filed a complete application seeking a renewed non-system license to transport non-recoverable solid waste including putrescible solid waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review applications for non-system licenses for putrescible waste and that the Metro Council will approve or deny them; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors set forth in Metro Code Section 5.05.140; and

WHEREAS, the Chief Operating Officer recommends that Metro issue a renewed non-system license to Swan Island Dairy with specific conditions as provided in Exhibit A to this Resolution; now therefore,

BE IT RESOLVED that the Metro Council:

1. Approves the non-system license renewal application of Pacific Foods of Oregon, Inc. subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer to issue to Pacific Foods of Oregon, Inc. a renewed non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Lynn Peterson, Council President

Approved as to Form:

\_\_\_\_\_  
Carrie MacLaren, Metro Attorney

Resolution No. 19-5031



600 NE Grand Ave.  
Portland, OR 97232-2736  
oregonmetro.gov

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

### No. N-176-20

<b>LICENSEE:</b>
Pacific Foods of Oregon, Inc. 19480 SW 97 <sup>th</sup> Ave. Tualatin, OR 97062
<b>CONTACT PERSON:</b>
Liz Miller Phone: (503) 692-9666 E-Mail: <a href="mailto:liz_miller@pacificfoods.com">liz_miller@pacificfoods.com</a>
<b>MAILING ADDRESS:</b>
Pacific Foods of Oregon, Inc. 19480 SW 97 <sup>th</sup> Ave. Tualatin, OR 97062

ISSUED BY METRO:

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Roy W. Brower  
Interim Property and Environmental Services Director

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Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Non-recoverable solid waste mixed with putrescible waste, including restroom and lunchroom waste, generated at the Pacific Foods facility located at 19480 SW 97 <sup>th</sup> Ave. in Tualatin, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE</b>
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 1,300 tons per calendar year of the waste described in Section 1.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<ol style="list-style-type: none"> <li>The licensee is authorized to transport the waste described above in Section 1 to the following non-system facility:  Covanta Waste-to-Energy Facility  4850 Brooklake Road, NE  Brooks, OR 97305</li> <li>This license is issued on the condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or Marion County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 9.</li> </ol>
<b>4</b>	<b>TERM OF LICENSE</b>
	January 1, 2020 to December 31, 2021, unless amended, suspended, or revoked as provided in this license.
<b>5</b>	<b>COVERED LOADS</b>
	The licensee must suitably contain and cover, on all sides, all loads of the waste described in Section 1 that are transported under authority of this license to the non-system facility listed in Section 3 to prevent spillage of waste while in transit.
<b>6</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	The solid waste that the licensee delivers under authority of this license to the non-system facility listed in Section 3 is subject to the regional system fee and excise tax in accordance with section 8.

8	RECORD KEEPING AND REPORTING
	<ol style="list-style-type: none"> <li>1. The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records include the information specified in the Metro document titled <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</li> <li>2. The licensee must perform the following no later than fifteen days following the end of each month: <ol style="list-style-type: none"> <li>(a) Submit to Metro the records required under Section 8.1 above in an electronic format prescribed by Metro;</li> <li>(b) Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li> <li>(c) Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment, and accounting of those fees and taxes.</li> </ol> </li> <li>3. The licensee must make available to Metro (or Metro's designated agent) all records from which Section 8.1 and 8.2 above are derived for its inspection or copying or both, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3.</li> <li>4. Metro may require the licensee to report the information required by this section on a weekly or daily basis.</li> <li>5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 8 of this license, each day by which the licensee exceeds the due date may constitute a separate violation subject to a penalty of up to \$500 per violation, in accordance with Metro Code Chapter 5.05.</li> </ol>

9	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. The transport of solid waste to the non-system facility, listed in Section 3, authorized by this license, is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li> <li>2. This license is subject to amendment, modification, or termination by Metro in the event that Metro determines that: <ol style="list-style-type: none"> <li>(a) There has been sufficient change in any circumstances under which Metro issued this license; or</li> <li>(b) Metro's solid waste system or the public will benefit from, and will be better served by, transporting the waste described in Section 1 of this license to a facility other than those listed in Section 3;</li> </ol> </li> <li>3. In addition to subsections 9.2(a) and (b) above, Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.</li> </ol>

	<ol style="list-style-type: none"> <li>4. The licensee cannot transfer or assign any right or interest in this license without Metro's prior written approval.</li> <li>5. This license is subject to amendment or termination by Metro upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</li> <li>6. This license authorizes transport of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li> <li>7. Metro may direct the licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by Metro is effective immediately.</li> <li>8. If the licensee exceeds the calendar year authorization set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500, in accordance with Metro Code Chapter 5.05.</li> </ol>
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<b>10</b>	<b>COMPLIANCE WITH LAW</b>
	<p>The licensee must fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative rules adopted pursuant to Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited in this license. All conditions imposed on the collection and hauling of the licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee shall be deemed part of this license as if specifically set forth.</p>

<b>11</b>	<b>INDEMNIFICATION</b>
	<p>The licensee must defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses arising out of or related in any way to the issuance or administration of this non-system license. Expenses include, but are not limited to, all attorneys' fees, whether incurred before litigation is commenced, during litigation or on appeal.</p>

IN CONSIDERATION OF RESOLUTION NO. 19-5031 FOR THE PURPOSE OF  
AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-  
SYSTEM LICENSE AUTHORIZING PACIFIC FOODS OF OREGON, INC. TO TRANSPORT  
AND DISPOSE NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE  
WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS,  
OREGON

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Date: November 1, 2019  
Department: PES  
Meeting Date: November 21, 2019

Prepared by: Will Ennis, x1667,  
[will.ennis@oregonmetro.gov](mailto:will.ennis@oregonmetro.gov)

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## **ISSUE STATEMENT**

Pacific Foods of Oregon, Inc. (Pacific Foods) is requesting renewal of its Metro Solid Waste Facility Non-System License (NSL) to transport up to 1,300 tons of non-recoverable waste, including putrescible waste, from its facility located at 19480 SW 97<sup>th</sup> Avenue in Tualatin (Metro District 3) to the Covanta Waste to Energy facility (Covanta) in Brooks, OR.

Metro Code Section 5.05.110(c) requires the Metro Council to approve or deny a non-system license to transport putrescible waste to a disposal site.

## **ACTION REQUESTED**

Staff requests approval of Resolution No. 19-5031 to issue a renewed NSL to Pacific Foods.

## **IDENTIFIED POLICY OUTCOMES**

Approval of the proposed NSL renewal will support Metro's longstanding practice to allow solid waste generated in the Metro region to be transported to disposal sites located outside of the region provided that the transporter applies for and receives Metro authorization.

## **POLICY QUESTION**

Should Metro Council approve the resolution and grant the Chief Operating Officer authority to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to Pacific Foods to deliver up to 1,300 tons of putrescible waste per calendar year to Covanta?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to authorize the Chief Operating Officer to issue a renewed NSL to Pacific Foods.

2. Do not approve the resolution.

## **STAFF RECOMMENDATIONS**

Staff recommends Metro Council approve of Resolution 19-5031 to authorize the Chief Operating Officer to issue a renewed Metro Solid Waste Facility Non-System License to Pacific Foods.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities.

### **Known Opposition**

There is no known opposition to the proposed NSL.

### **Legal Antecedents**

Metro Code Chapter 5.05, "Solid Waste Flow Control." Specifically, Section 5.05.140 describes the factors the Chief Operating Officer may consider to determine whether to issue a non-system license:

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which those wastes pose a future risk of environmental contamination;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. Air emissions from the facility are controlled through the use of high efficiency combustion within the furnace/boiler as well as by selective non-catalytic reduction, spray dryer absorbers, fabric filter baghouses and an activated carbon injection system. The ash generated at the facility is then disposed, or used beneficially, in accordance with Oregon Department of Environmental Quality (DEQ) requirements.

- (2) *The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;*

Covanta holds a DEQ Solid Waste Energy Recovery Permit. No formal enforcement actions have been taken at Covanta by DEQ in the last five years and Covanta is in compliance with federal, state, and local requirements. Staff has also received confirmation that Covanta has a good compliance record with respect to public health, safety and environmental regulations.



- (3) *The adequacy of the non-system facility's operational practices and management controls;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of future environmental contamination. In addition, Covanta uses operational practices and management controls that are considered by the DEQ to be appropriate for the protection of health, safety, and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

Pacific Foods has an aggressive internal recycling program and it seeks to deliver only its non-recyclable waste, including putrescible solid waste, to Covanta instead of a landfill.

The Metro-area waste that is delivered to Covanta is considered to be disposal and does not count toward recovery in Metro's recovery rate calculation because state statute<sup>1</sup> stipulates that only those wastesheds that burn mixed solid waste for energy recovery within their watershed boundaries may count a portion of it towards their DEQ recovery rate calculation. Marion County is the only watershed within Oregon that hosts a waste-to-energy facility within its boundaries; therefore, it is the only watershed that is currently allowed to include a portion of the in-county waste that is delivered to Covanta in its recovery rate. Approval of the proposed NSL is not expected to impact the Metro region's recycling and waste reduction efforts.

- (5) *The proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement to deliver a minimum of 87 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The proposed NSL is not effective until January 1, 2020, after the expiration of Metro's contractual agreement and therefore, approval of the proposed license will not conflict with Metro's disposal contract.

- (6) *The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental regulations; and*

Metro staff's investigation of the applicant revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

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<sup>1</sup> ORS 465A.010(4)(f)(B)

*(7) Any other factor the Chief Operating Officer considers appropriate.*

Covanta is the primary disposal site for solid waste generated within Marion County. Marion County generally supports the Metro-authorized flow of solid waste to Covanta.

### **Anticipated Effects**

Adoption of Resolution 19-5031 will authorize the Chief Operating Officer to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to Pacific Foods to deliver up to 1,300 tons of putrescible waste per calendar year to Covanta.

### **Financial Implications**

The application under consideration is the renewal of an existing NSL. The financial impact of this NSL has already been factored into the budget. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to Covanta under the authority of the proposed NSL.

### **BACKGROUND**

The applicant seeks to renew its NSL to transport non-recoverable solid waste and putrescible waste generated within the Metro region to Covanta. Covanta is a non-system waste-to-energy facility located outside of the region. Metro Code Section 5.05.040 prohibits any person from transporting solid waste to a non-system facility without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste.

The applicant, Pacific Foods is a locally owned and operated food manufacturing company specializing in soups and non-dairy beverages. Pacific Foods has a robust sustainability program including a dedicated recycling staff of 4-5 full time employees and a current landfill diversion rate of approximately 85 percent. As part of these efforts, the company seeks to become a zero-waste-to-landfill company. The waste that Pacific Foods seeks to transport to Covanta includes lunch room and restroom waste, and off-specification food products contained in aseptic packaging. Pacific Foods minimizes food waste in a variety of ways. For example, certain food by-products go to their cattle farms in the Willamette Valley to be used as animal feed or bedding. Liquid off-specification product (such as broth or soy milk) is de-watered on site to recover the aseptic containers. The waste water is treated on-site and solids captured during the process are transported to Farm Power in Tillamook for anaerobic digestion. Certain products (such as off-specification pea soup) contain too much solid material to be processed through the facility's de-watering machinery. If the off-specification product is edible it is donated to the Oregon Food bank, if it is inedible and cannot be de-watered, it is disposed.

Pacific Foods has been authorized to transport non-recoverable solid waste including putrescible waste to Covanta since 2017 under a Metro NSL. The current license will

expire December 31, 2019. The licensee transported approximately 276 tons to Covanta in calendar year 2018, and about 3432 tons through September of 2019.

## **ATTACHMENTS**

Exhibit A to Resolution No. 19-5031: Draft Non-System License No. N-176-20.

**Resolution No. 19-5032**, For the Purpose of Authorizing  
the Chief Operating Officer to Issue a Renewed  
Non-System License Authorizing Swan Island Dairy to  
Transport and Dispose Non-Recoverable Solid Waste,  
Including Putrescible Waste at the Covanta  
Waste-to-Energy Facility Located in Brooks, Oregon

*Consent Agenda*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF ) RESOLUTION NO. 19-5032  
OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM )  
LICENSE AUTHORIZING SWAN ISLAND DAIRY TO ) Introduced by Andrew Scott,  
TRANSPORT AND DISPOSE OF NON-RECOVERABLE SOLID ) Interim Chief Operating Officer,  
WASTE, INCLUDING PUTRESCIBLE WASTE AT THE COVANTA ) with the concurrence of Lynn  
WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, ) Peterson, Council President  
OREGON )

WHEREAS, Metro Code Section 5.05.110 requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Swan Island Dairy holds Metro non-system license No. N-167-17 which expires on December 31, 2019; and

WHEREAS, Swan Island Dairy filed a complete application seeking a renewed non-system license to transport non-recoverable solid waste including putrescible solid waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review applications for non-system licenses for putrescible waste and that the Metro Council will approve or deny them; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors set forth in Metro Code Section 5.05.140; and

WHEREAS, the Chief Operating Officer recommends that Metro issue a renewed non-system license to Swan Island Dairy with specific conditions as provided in Exhibit A to this Resolution; now therefore,

BE IT RESOLVED that the Metro Council:

1. Approves the non-system license renewal application of Swan Island Dairy subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer to issue to Swan Island Dairy a renewed non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney



600 NE Grand Ave.  
Portland, OR 97232-2736  
oregonmetro.gov

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

### No. N-167-20

<b>LICENSEE:</b>
Swan Island Dairy 4950 N. Basin Ave. Portland, OR 97217
<b>CONTACT PERSON:</b>
Kyle Osterhout Phone: (503) 240-5114 E-Mail: <a href="mailto:kyle.osterhout@kroger.com">kyle.osterhout@kroger.com</a>
<b>MAILING ADDRESS:</b>
Swan Island Dairy 4950 N. Basin Ave. Portland, OR 97217

ISSUED BY METRO:

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Roy W. Brower  
Interim Property and Environmental Services Director

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Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Non-recoverable solid waste mixed with putrescible waste, including restroom and lunchroom waste, generated at the Swan Island Dairy facility located at 4950 N. Basin Ave. in Portland, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE</b>
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 110 tons per calendar year of the waste described in Section 1.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<ol style="list-style-type: none"> <li>The licensee is authorized to transport the waste described above in Section 1 to the following non-system facility:  Covanta Waste-to-Energy Facility  4850 Brooklake Road, NE  Brooks, OR 97305</li> <li>This license is issued on the condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or Marion County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 9.</li> </ol>
<b>4</b>	<b>TERM OF LICENSE</b>
	January 1, 2020 to December 31, 2021, unless amended, suspended, or revoked as provided in this license.
<b>5</b>	<b>COVERED LOADS</b>
	The licensee must suitably contain and cover, on all sides, all loads of the waste described in Section 1 that are transported under authority of this license to the non-system facility listed in Section 3 to prevent spillage of waste while in transit.
<b>6</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	The solid waste that the licensee delivers under authority of this license to the non-system facility listed in Section 3 is subject to the regional system fee and excise tax in accordance with section 8.

8	RECORD KEEPING AND REPORTING
	<ol style="list-style-type: none"> <li>1. The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records include the information specified in the Metro document titled <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</li> <li>2. The licensee must perform the following no later than fifteen days following the end of each month: <ol style="list-style-type: none"> <li>(a) Submit to Metro the records required under Section 8.1 above in an electronic format prescribed by Metro;</li> <li>(b) Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li> <li>(c) Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment, and accounting of those fees and taxes.</li> </ol> </li> <li>3. The licensee must make available to Metro (or Metro's designated agent) all records from which Section 8.1 and 8.2 above are derived for its inspection or copying or both, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3.</li> <li>4. Metro may require the licensee to report the information required by this section on a weekly or daily basis.</li> <li>5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 8 of this license, each day by which the licensee exceeds the due date may constitute a separate violation subject to a penalty of up to \$500 per violation, in accordance with Metro Code Chapter 5.05.</li> </ol>

9	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. The transport of solid waste to the non-system facility, listed in Section 3, authorized by this license, is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li> <li>2. This license is subject to amendment, modification, or termination by Metro in the event that Metro determines that: <ol style="list-style-type: none"> <li>(a) There has been sufficient change in any circumstances under which Metro issued this license; or</li> <li>(b) Metro's solid waste system or the public will benefit from, and will be better served by, transporting the waste described in Section 1 of this license to a facility other than those listed in Section 3.</li> </ol> </li> <li>3. In addition to subsections 9.2(a) and (b) above, Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.</li> </ol>



	<ol style="list-style-type: none"> <li>4. The licensee cannot transfer or assign any right or interest in this license without Metro's prior written approval.</li> <li>5. This license is subject to amendment or termination by Metro upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</li> <li>6. This license authorizes transport of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li> <li>7. Metro may direct the licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by Metro is effective immediately.</li> <li>8. If the licensee exceeds the calendar year authorization set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500, in accordance with Metro Code Chapter 5.05.</li> </ol>
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<b>10</b>	<b>COMPLIANCE WITH LAW</b>
	<p>The licensee must fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative rules adopted pursuant to Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited in this license. All conditions imposed on the collection and hauling of the licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee shall be deemed part of this license as if specifically set forth.</p>

<b>11</b>	<b>INDEMNIFICATION</b>
	<p>The licensee must defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses arising out of or related in any way to the issuance or administration of this non-system license. Expenses include, but are not limited to, all attorneys' fees, whether incurred before litigation is commenced, during litigation or on appeal.</p>

IN CONSIDERATION OF RESOLUTION NO. 19-5032 FOR THE PURPOSE OF  
AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-  
SYSTEM LICENSE AUTHORIZING SWAN ISLAND DAIRY TO TRANSPORT AND  
DISPOSE NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT  
THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON.

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Date: November 1, 2019  
Department: PES  
Meeting Date: November 21, 2019

Prepared by: Will Ennis, x1667,  
[will.ennis@oregonmetro.gov](mailto:will.ennis@oregonmetro.gov)

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## **ISSUE STATEMENT**

Swan Island Dairy is requesting renewal of its Metro Solid Waste Facility Non-System License to transport up to 110 tons per calendar year of non-recoverable solid waste, including putrescible waste, from its facility located at 4950 N. Basin Ave. in Portland to the Covanta Waste-to-Energy facility (Covanta) in Brooks, OR.

Metro Code Section 5.05.110(c) requires the Metro Council to approve or deny a non-system license (NSL) to transport putrescible waste to a disposal site.

## **ACTION REQUESTED**

Approve Resolution No. 19-5032 which will authorize the Chief Operating Officer to issue a renewed Metro Non-System Facility License to Swan Island Dairy for a term of two years.

## **IDENTIFIED POLICY OUTCOMES**

Approval of the proposed NSL renewal will support Metro's longstanding practice to allow solid waste generated in the Metro region to be transported to disposal sites located outside of the region provided that the transporter applies for and receives Metro authorization.

## **POLICY QUESTION**

Should Metro Council approve the resolution and grant the Chief Operating Officer authority to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to Swan Island Dairy to deliver up to 110 tons of putrescible waste per calendar year to Covanta?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to authorize the Chief Operating Officer to issue a renewed NSL to Swan Island Dairy.
2. Approve the resolution with conditions in addition to or other than those recommended by staff.

3. Do not approve the resolution.

### **STAFF RECOMMENDATIONS**

Staff recommends Metro Council approve of Resolution 19-5032 to authorize the Chief Operating Officer to issue a renewed Metro Solid Waste Facility Non-System License to Swan Island Dairy.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities.

### **Known Opposition/Support/Community Feedback**

There is no known opposition to the proposed NSL.

### **Legal Antecedents**

Metro Code Chapter 5.05, "Solid Waste Flow Control." Specifically, Section 5.05.140 describes the factors the Chief Operating Officer may consider to determine whether to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which those wastes pose a future risk of environmental contamination;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. Air emissions from the facility are controlled through the use of high efficiency combustion within the furnace/boiler as well as by selective non-catalytic reduction, spray dryer absorbers, fabric filter baghouses and an activated carbon injection system. The ash generated at the facility is then disposed, or used beneficially, in accordance with Oregon Department of Environmental Quality (DEQ) requirements.

- (2) The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;*

Covanta holds a DEQ Solid Waste Energy Recovery Permit. No formal enforcement actions have been taken at Covanta by DEQ in the last five years and Covanta is in compliance with federal, state, and local requirements. Staff has also received confirmation that Covanta has a good compliance record with respect to public health, safety and environmental regulations.

- (3) The adequacy of the non-system facility's operational practices and management controls;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of

future environmental contamination. In addition, Covanta uses operational practices and management controls that are considered by the DEQ to be appropriate for the protection of health, safety, and the environment.

*(4) The expected impact on the region's recycling and waste reduction efforts;*

Swan Island Dairy has an aggressive internal recycling program and it seeks to deliver only its non-recyclable waste, including putrescible solid waste, to Covanta instead of a landfill.

The Metro-area waste that is delivered to Covanta is not included in Metro's recovery rate calculation because state statute (ORS 465A.010(4)(f)(B)) stipulates that only those wastesheds that burn mixed solid waste for energy recovery within their watershed boundaries may count a portion of it towards their DEQ recovery rate calculation. Marion County is the only watershed within Oregon that hosts a waste-to-energy facility within its boundaries; therefore, it is the only watershed that is currently allowed to include a portion of the in-County waste that is delivered to Covanta in its recovery rate. Approval of the proposed license is not expected to impact the Metro region's recycling and waste reduction efforts.

*(5) The proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement to deliver a minimum of 87 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The proposed NSL is not effective until January 1, 2020, after the expiration of Metro's contractual agreement and therefore, approval of the proposed license will not conflict with Metro's disposal contract.

*(6) The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including, but not limited to public health, safety and environmental regulations; and*

In February 2019, Metro issued a Notice of Violation to Swan Island Dairy for exceeding the tonnage authorization of its NSL in calendar year 2018 by 19 tons (Notice of Violation No. NOV-414-19). The tonnage authorization of the facility's current NSL is 85 tons per calendar year. The applicant has requested a renewed NSL with an increase to 110 tons per calendar year. Swan Island Dairy is currently in compliance with the terms of its NSL.

*(7) Any other factor the Chief Operating Officer considers appropriate.*

Covanta is the primary disposal site for solid waste generated within Marion County. Marion County generally supports the Metro-authorized flow of solid waste to Covanta.

**Anticipated Effects**

Adoption of Resolution 19-5032 will authorize the Chief Operating Officer to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to Swan Island Dairy to deliver up to 110 tons of putrescible waste per calendar year to Covanta.

**Financial Implications**

The application under consideration is the renewal of an existing NSL. The financial impact of this NSL has already been factored into the budget. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to Covanta under the authority of the proposed NSL.

**BACKGROUND**

The applicant seeks to renew its NSL to transport non-recoverable solid waste and putrescible waste generated within the Metro region to Covanta. Covanta is a non-system waste-to-energy facility located outside of the region. Metro Code Section 5.05.040 prohibits any person from transporting solid waste to a non-system facility without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste.

The applicant, Swan Island Dairy, is a dairy processing plant owned by Kroger Company, located at 4950 N. Basin Avenue in Portland, Oregon (Metro District 5). Swan Island Dairy routinely generates miscellaneous non-recoverable wastes which consist primarily of non-recyclable ingredient bags, label backings, excess ingredient powders, garbage bags, plastics and non-recoverable food waste. The facility makes efforts to reduce, reuse, and recycle waste whenever possible. For example, the facility separates out HDPE and PET plastics, cardboard, shrink wrap and wood waste which are delivered to recycling operations. As part of these sustainability efforts, Swan Island Dairy prefers to send its non-recoverable waste to waste-to-energy facilities instead of landfills for disposal.

Swan Island Dairy has been authorized to transport non-recoverable waste to Covanta since 2015 under a Metro NSL. The current license will expire December 31, 2019. The licensee transported approximately 104 tons to Covanta in calendar year 2018, and about 76 tons through September of 2019.

**ATTACHMENTS**

Exhibit A to Resolution No. 19-5032: Draft Solid Waste Non-System License No. N-167-20.

**Resolution No. 19-5033**, For the Purpose of Authorizing  
the Chief Operating Officer to Issue a Renewed  
Non-System License Authorizing The Boeing Company to  
Transport and Dispose Non-Recoverable Solid Waste,  
Including Putrescible Waste at the Covanta  
Waste-to-Energy Facility Located in Brooks, Oregon

*Consent Agenda*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF	)	RESOLUTION NO. 19-5033
OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM	)	
LICENSE AUTHORIZING THE BOEING COMPANY TO	)	Introduced by Andrew Scott,
TRANSPORT AND DISPOSE NON-RECOVERABLE SOLID	)	Interim Chief Operating Officer,
WASTE, INCLUDING PUTRESCIBLE WASTE AT THE	)	with the concurrence of Lynn
COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN	)	Peterson, Council President
BROOKS, OREGON	)	

WHEREAS, Metro Code Section 5.05.110 requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, The Boeing Company holds Metro Solid Waste Facility Non-System License No. N-140-17 which expires on December 31, 2019; and

WHEREAS, The Boeing Company filed a complete application seeking a renewed non-system license to transport non-recoverable solid waste and putrescible waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review applications for non-system licenses for putrescible waste and that the Metro Council will approve or deny them; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors set forth in Metro Code Section 5.05.140; and

WHEREAS, the Chief Operating Officer recommends that Metro issue a renewed non-system license to The Boeing Company with specific conditions as provided in Exhibit A to this Resolution; now therefore,

BE IT RESOLVED that the Metro Council:

1. Approves the non-system license application of The Boeing Company subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer to issue to The Boeing Company a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney



600 NE Grand Ave.  
Portland, OR 97232-2736  
oregonmetro.gov

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

### No. N-140-20

<b>LICENSEE:</b>
The Boeing Company 19000 NE Sandy Blvd. Portland, OR 97230
<b>CONTACT PERSON:</b>
John Rusoff Phone: (971) 563-0257 E-Mail: <a href="mailto:John.W.Rusoff@Boeing.com">John.W.Rusoff@Boeing.com</a>
<b>MAILING ADDRESS:</b>
The Boeing Company 19000 NE Sandy Blvd. Portland, OR 97230

ISSUED BY METRO:

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Roy W. Brower  
Interim Property and Environmental Services Director

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Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Non-recoverable solid waste mixed with putrescible waste, including restroom and lunchroom waste, generated at The Boeing Company facility located at 19000 NE Sandy Blvd in Portland, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE</b>
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 1,000 tons per calendar year of the waste described in Section 1.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<ol style="list-style-type: none"> <li>The licensee is authorized to transport the waste described above in Section 1 to the following non-system facility:  Covanta Waste-to-Energy Facility  4850 Brooklake Road, NE  Brooks, OR 97305</li> <li>This license is issued on the condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or Marion County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 9.</li> </ol>
<b>4</b>	<b>TERM OF LICENSE</b>
	January 1, 2020 to December 31, 2021, unless amended, suspended, or revoked as provided in this license.
<b>5</b>	<b>COVERED LOADS</b>
	The licensee must suitably contain and cover, on all sides, all loads of the waste described in Section 1 that are transported under authority of this license to the non-system facility listed in Section 3 to prevent spillage of waste while in transit.
<b>6</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	The solid waste that the licensee delivers under authority of this license to the non-system facility listed in Section 3 is subject to the regional system fee and excise tax in accordance with section 8.

8	RECORD KEEPING AND REPORTING
	<ol style="list-style-type: none"> <li>1. The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records include the information specified in the Metro document titled <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</li> <li>2. The licensee must perform the following no later than fifteen days following the end of each month: <ol style="list-style-type: none"> <li>(a) Submit to Metro the records required under Section 8.1 above in an electronic format prescribed by Metro;</li> <li>(b) Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li> <li>(c) Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment, and accounting of those fees and taxes.</li> </ol> </li> <li>3. The licensee must make available to Metro (or Metro's designated agent) all records from which Section 8.1 and 8.2 above are derived for its inspection or copying or both, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3.</li> <li>4. Metro may require the licensee to report the information required by this section on a weekly or daily basis.</li> <li>5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 8 of this license, each day by which the licensee exceeds the due date may constitute a separate violation subject to a penalty of up to \$500 per violation, in accordance with Metro Code Chapter 5.05.</li> </ol>

9	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. The transport of solid waste to the non-system facility, listed in Section 3, authorized by this license, is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li> <li>2. This license is subject to amendment, modification, or termination by Metro in the event that Metro determines that: <ol style="list-style-type: none"> <li>(a) There has been sufficient change in any circumstances under which Metro issued this license; or</li> <li>(b) Metro's solid waste system or the public will benefit from, and will be better served by, transporting the waste described in Section 1 of this license to a facility other than those listed in Section 3.</li> </ol> </li> <li>3. In addition to subsections 9.2(a) and (b) above, Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.</li> </ol>

	<p>4. The licensee cannot transfer or assign any right or interest in this license without Metro's prior written approval.</p> <p>5. This license is subject to amendment or termination by Metro upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</p> <p>6. This license authorizes transport of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p> <p>7. Metro may direct the licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by Metro is effective immediately.</p> <p>8. If the licensee exceeds the calendar year authorization set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500, in accordance with Metro Code Chapter 5.05.</p>
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<b>10</b>	<b>COMPLIANCE WITH LAW</b>
	<p>The licensee must fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative rules adopted pursuant to Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited in this license. All conditions imposed on the collection and hauling of the licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee shall be deemed part of this license as if specifically set forth.</p>

<b>11</b>	<b>INDEMNIFICATION</b>
	<p>The licensee must defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses arising out of or related in any way to the issuance or administration of this non-system license. Expenses include, but are not limited to, all attorneys' fees, whether incurred before litigation is commenced, during litigation or on appeal.</p>

IN CONSIDERATION OF RESOLUTION NO. 19-5033 FOR THE PURPOSE OF  
AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-  
SYSTEM LICENSE AUTHORIZING THE BOEING COMPANY TO TRANSPORT AND  
DISPOSE NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT  
THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON

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Date: November 1, 2019  
Department: PES  
Meeting Date: November 21, 2019

Prepared by: Will Ennis, x1667,  
[will.ennis@oregonmetro.gov](mailto:will.ennis@oregonmetro.gov)

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### **ISSUE STATEMENT**

The Boeing Company (Boeing) is requesting renewal of its Metro Solid Waste Facility Non-System License (NSL) to transport up to 1,000 tons per calendar year of non-recoverable solid waste, including putrescible waste, from its facility located at 19000 NE Sandy Blvd. in Gresham to the Covanta Waste-to-Energy facility (Covanta) in Brooks, OR.

Metro Code Section 5.05.110(c) requires the Metro Council to approve or deny a non-system license to transport putrescible waste to a disposal site.

### **ACTION REQUESTED**

Approve Resolution No. 19-5033 which will authorize the Chief Operating Officer to issue a renewed Metro Non-System License to Boeing for a term of two years.

### **IDENTIFIED POLICY OUTCOMES**

Approval of the proposed NSL renewal will support Metro's longstanding practice to allow solid waste generated in the Metro region to be transported to disposal sites located outside of the region provided that the transporter applies for and receives Metro authorization.

### **POLICY QUESTION**

Should Metro Council approve the resolution and grant the Chief Operating Officer authority to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to The Boeing Company to deliver up to 1,000 tons of putrescible waste per calendar year to the Covanta Waste-to-Energy facility?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to authorize the Chief Operating Officer to issue a renewed NSL to Boeing.
2. Approve the resolution with conditions in addition to or other than those recommended by staff.
3. Do not approve the resolution.

## **STAFF RECOMMENDATIONS**

Staff recommends Metro Council approve of Resolution 19-5033 to authorize the Chief Operating Officer to issue a renewed Metro Non-System License to Boeing.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to collect fees and taxes, closely monitor and potentially guide Metro area waste to authorized facilities.

## **Known Opposition/Support/Community Feedback**

There is no known opposition to the proposed NSL.

## **Legal Antecedents**

Metro Code Chapter 5.05, "Solid Waste Flow Control." Specifically, Section 5.05.140 describes the factors the Chief Operating Officer may consider to determine whether to issue a non-system license:

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which those wastes pose a future risk of environmental contamination;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. Air emissions from the facility are controlled through the use of high efficiency combustion within the furnace/boiler as well as by selective non-catalytic reduction, spray dryer absorbers, fabric filter baghouses and an activated carbon injection system. The ash generated at the facility is then disposed, or used beneficially, in accordance with Oregon Department of Environmental Quality (DEQ) requirements.

- (2) *The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;*

Covanta holds a DEQ Solid Waste Energy Recovery Permit. No formal enforcement actions have been taken at Covanta by DEQ in the last five years and Covanta is in compliance with federal, state, and local requirements. Staff has also received confirmation that Covanta has a good compliance record with respect to public health, safety and environmental regulations.

- (3) *The adequacy of the non-system facility's operational practices and management controls;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of

future environmental contamination. In addition, Covanta uses operational practices and management controls that are considered by the DEQ to be appropriate for the protection of health, safety, and the environment.

*(4) The expected impact on the region's recycling and waste reduction efforts;*

Boeing has an aggressive internal recycling program and it seeks to deliver only its non-recyclable waste, including putrescible solid waste, to Covanta instead of a landfill.

The Metro-area waste that is delivered to Covanta is not included in Metro's recovery rate calculation because state statute (ORS 465A.010(4)(f)(B)) stipulates that only those wastesheds that burn mixed solid waste for energy recovery within their watershed boundaries may count a portion of it towards their DEQ recovery rate calculation. Marion County is the only watershed within Oregon that hosts a waste-to-energy facility within its boundaries; therefore, it is the only watershed that is currently allowed to include a portion of the in-County waste that is delivered to Covanta in its recovery rate. Approval of the proposed license is not expected to impact the Metro region's recycling and waste reduction efforts.

*(5) The proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement to deliver a minimum of 87 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The proposed NSL is not effective until January 1, 2020, after the expiration of Metro's contractual agreement and therefore, approval of the proposed license will not conflict with Metro's disposal contract.

*(6) The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including, but not limited to public health, safety and environmental regulations; and*

Metro staff's investigation of the applicant revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

*(7) Any other factor the Chief Operating Officer considers appropriate.*

Covanta is the primary disposal site for solid waste generated within Marion County. Marion County generally supports the Metro-authorized flow of solid waste to Covanta.

**Anticipated Effects**

Adoption of Resolution 19-5033 will authorize the Chief Operating Officer to issue a renewed NSL, as provided in Metro Code Chapter 5.05.110, to Boeing to deliver up to 1,000 tons of putrescible waste per calendar year to the Covanta Waste-to-Energy facility.

**Financial Implications**

The application under consideration is the renewal of an existing NSL. The financial impact of this NSL has already been factored into the budget. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to Covanta under the authority of the proposed NSL.

**BACKGROUND**

The applicant seeks to renew its NSL to transport non-recoverable solid waste and putrescible waste generated within the Metro region to Covanta. Covanta is a non-system waste-to-energy facility located outside of the region. Metro Code Section 5.05.040 prohibits any person from transporting solid waste to a non-system facility without an appropriate license from Metro. The proposed NSL renewal is subject to Metro Council approval because it involves putrescible waste.

The applicant, The Boeing Company, operates an airplane parts manufacturing and assembly facility located at 19000 NE Sandy Blvd. in Gresham, Oregon (Metro District 1). Boeing routinely generates miscellaneous non-recoverable wastes at its facility which includes office, restroom, and lunchroom waste and special waste consisting of oily solids, absorbent material, shop cleanup debris, non-hazardous shot-blasting residue, and floor sweepings including mixed metal chips. The company makes efforts to reduce, reuse, and recycle waste and has implemented an internal diversion program in which it tracks its recovery efforts for a variety of materials generated at the site including metals, paper, cardboard, glass, wood, food waste, and landscape waste. As part of these sustainability efforts, Boeing prefers to send its non-recoverable wastes to a waste-to-energy facility instead of landfills for disposal.

Boeing has been transporting miscellaneous non-recoverable waste, including putrescible waste, to Covanta under authority of an NSL since October 2013. The current license will expire on December 31, 2019. The licensee transported approximately 463 tons to Covanta in calendar year 2018, and about 366 tons through September of 2019.

**ATTACHMENTS**

Exhibit A to Resolution No. 19-5033: Draft Non-System License No. N-140-20.

**Resolution No. 19-5041**, For the Purpose of Authorizing  
the Chief Operating Officer to Approve a New Non-System  
License Authorizing Martin Brower to Transport and  
Dispose Non-Recoverable Solid Waste, Including  
Putrescible Waste at Covanta Waste-to-Energy Facility  
Located in Brooks, Oregon

*Consent Agenda*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF	)	RESOLUTION NO. 19-5041
OPERATING OFFICER TO APPROVE A NEW NON-SYSTEM	)	
LICENSE AUTHORIZING MARTIN BROWER TO TRANSPORT	)	Introduced by Andrew Scott,
AND DISPOSE NON-RECOVERABLE SOLID WASTE,	)	Interim Chief Operating Officer,
INCLUDING PUTRESCIBLE WASTE AT THE COVANTA	)	with the concurrence of Lynn
WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS,	)	Peterson, Council President
OREGON	)	

WHEREAS, Metro Code Section 5.05.110 requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Martin Brower filed a complete application seeking a new non-system license to transport non-recoverable solid waste including putrescible solid waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review applications for non-system licenses for putrescible waste and that the Metro Council will approve or deny them; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors set forth in Metro Code Section 5.05.140; and

WHEREAS, the Chief Operating Officer recommends that Metro issue a new non-system license to Martin Brower with specific conditions as provided in Exhibit A to this Resolution; now therefore,

BE IT RESOLVED that the Metro Council:

1. Approves the non-system license application of Martin Brower subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer to issue to Martin Brower a new non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney



600 NE Grand Ave.  
Portland, OR 97232-2736  
oregonmetro.gov

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

**No. N-189-20**

<b>LICENSEE:</b>
Martin Brower company, LLC. 9310 N Harborage St. Portland, OR 97203
<b>CONTACT PERSON:</b>
Kris Richard Phone: (971) 703-5101 E-Mail: <a href="mailto:krichard@martin-brower.com">krichard@martin-brower.com</a>
<b>MAILING ADDRESS:</b>
Martin Brower company, LLC. 9310 N Harborage St. Portland, OR 97203

**ISSUED BY METRO:**

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Roy W. Brower  
Interim Property and Environmental Services Director

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Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Non-recoverable solid waste mixed with putrescible waste, including restroom and lunchroom waste, generated at the Martin Brower Company facility located at 9310 N Harborgate St. in Portland, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE</b>
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 400 tons per calendar year of the waste described in Section 1.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<ol style="list-style-type: none"> <li>The licensee is authorized to transport the waste described in Section 1 to the following non-system facility:  Covanta Waste-to-Energy Facility  4850 Brooklake Road, NE  Brooks, OR 97305</li> <li>This license is issued on the condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or Marion County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 9.</li> </ol>
<b>4</b>	<b>TERM OF LICENSE</b>
	January 1, 2020 to December 31, 2021, unless amended, suspended, or revoked as provided in this license.
<b>5</b>	<b>COVERED LOADS</b>
	The licensee must suitably contain and cover, on all sides, all loads of the waste described in Section 1 that are transported under authority of this license to the non-system facility listed in Section 3 to prevent spillage of waste while in transit.
<b>6</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	The solid waste that the licensee delivers under authority of this license to the non-system facility listed in Section 3 is subject to the regional system fee and excise tax in accordance with Section 8.

8	RECORD KEEPING AND REPORTING
	<ol style="list-style-type: none"> <li>1. The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records include the information specified in the Metro document titled <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</li> <li>2. The licensee must perform the following no later than fifteen days following the end of each month: <ol style="list-style-type: none"> <li>(a) Submit to Metro the records required under Section 8.1 in an electronic format prescribed by Metro;</li> <li>(b) Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li> <li>(c) Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment and accounting of those fees and taxes.</li> </ol> </li> <li>3. The licensee must make available to Metro (or Metro's designated agent) all records from which Section 8.1 and 8.2 are derived for its inspection or copying or both, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3.</li> <li>4. Metro may require the licensee to report the information required by this section on a weekly or daily basis.</li> <li>5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 8, each day by which the licensee exceeds the due date may constitute a separate violation subject to a penalty of up to \$500 per violation, in accordance with Metro Code Chapter 5.05.</li> </ol>

9	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. The transport of solid waste to the non-system facility, listed in Section 3, authorized by this license, is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li> <li>2. This license is subject to amendment, modification, or termination by Metro in the event that Metro determines that: <ol style="list-style-type: none"> <li>(a) There has been sufficient change in any circumstances under which Metro issued this license; or</li> <li>(b) Metro's solid waste system or the public will benefit from, and will be better served by, transporting the waste described in Section 1 of this license to a facility other than that listed in Section 3.</li> </ol> </li> <li>3. In addition to subsections 9.2(a) and (b), Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.</li> </ol>

	<ol style="list-style-type: none"> <li>4. The licensee cannot transfer or assign any right or interest in this license without Metro's prior written approval.</li> <li>5. This license is subject to amendment or termination by Metro upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</li> <li>6. This license authorizes transport of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li> <li>7. Metro may direct the licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by Metro is effective immediately.</li> <li>8. If the licensee exceeds the calendar year authorization set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500, in accordance with Metro Code Chapter 5.05.</li> </ol>
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<b>10</b>	<b>COMPLIANCE WITH LAW</b>
	<p>The licensee must fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative rules adopted pursuant to Metro Code Chapter 5.05, whether or not those provisions have been specifically mentioned or cited in this license. All conditions imposed on the collection and hauling of the licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee are deemed part of this license as if specifically set forth.</p>

<b>11</b>	<b>INDEMNIFICATION</b>
	<p>The licensee must defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses arising out of or related in any way to the issuance or administration of this non-system license. Expenses include, but are not limited to, all attorneys' fees, whether incurred before litigation is commenced, during litigation or on appeal.</p>

IN CONSIDERATION OF RESOLUTION NO. 19-5041 FOR THE PURPOSE OF  
AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM  
LICENSE AUTHORIZING MARTIN BROWER COMPANY, LLC TO TRANSPORT AND  
DISPOSE NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT  
THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON

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Date: November 1, 2019  
Department: PES  
Meeting Date: November 21, 2019

Prepared by: Will Ennis, x1667,  
[will.ennis@oregonmetro.gov](mailto:will.ennis@oregonmetro.gov)

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## **ISSUE STATEMENT**

Martin Brower Company, LLC (Martin Brower) is requesting a new Metro Solid Waste Facility Non-System License (NSL) to transport up to 400 tons per calendar year of non-recoverable solid waste, including putrescible waste, from its facility located at 9310 N Harborgate St. in Portland to the Covanta Waste-to-Energy facility (Covanta) in Brooks, OR.

Metro Code Section 5.05.110(c) requires the Metro Council to approve or deny a non-system license to transport putrescible waste to a disposal site.

## **ACTION REQUESTED**

Approve Resolution No. 19-5041 which will authorize the Chief Operating Officer to issue a new Metro Non-System Facility License to Martin Brower for a term of two years.

## **IDENTIFIED POLICY OUTCOMES**

Approval of the proposed NSL will support Metro's longstanding practice to allow solid waste generated in the Metro region to be transported to disposal sites located outside of the region provided that the transporter applies for and receives Metro authorization.

## **POLICY QUESTION**

Should Metro Council approve the resolution and grant the Chief Operating Officer authority to issue a new NSL, as provided in Metro Code Chapter 5.05.110, to Martin Brower to deliver up to 400 tons per calendar year of putrescible waste to the Covanta Waste-to-Energy facility?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to authorize the Chief Operating Officer to issue a renewed NSL to Martin Brower.
2. Approve the resolution with conditions in addition to or other than those recommended by staff.

3. Do not approve the resolution.

### **STAFF RECOMMENDATION**

Staff recommends Metro Council approve of Resolution 19-5041 to authorize the Chief Operating Officer to issue a renewed Metro Solid Waste Facility Non-System License to Martin Brower.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities.

### **Known Opposition/Support/Community Feedback**

There is no known opposition to the proposed NSL.

### **Legal Antecedents**

Metro Code Chapter 5.05, "Solid Waste Flow Control." Specifically, Section 5.05.140 describes the factors the Chief Operating Officer may consider to determine whether to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which those wastes pose a future risk of environmental contamination;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. Air emissions from the facility are controlled through the use of high efficiency combustion within the furnace/boiler as well as by selective non-catalytic reduction, spray dryer absorbers, fabric filter baghouses and an activated carbon injection system. The ash generated at the facility is then disposed, or used beneficially, in accordance with Oregon Department of Environmental Quality (DEQ) requirements

- (2) The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;*

Covanta holds a DEQ Solid Waste Energy Recovery Permit. No formal enforcement actions have been taken at Covanta by DEQ in the last five years and Covanta is in compliance with federal, state, and local requirements. Staff has also received confirmation that Covanta has a good compliance record with respect to public health, safety and environmental regulations.

- (3) The adequacy of the non-system facility's operational practices and management controls;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of future environmental contamination. In addition, Covanta uses operational practices and management controls that are considered by the DEQ to be appropriate for the protection of health, safety, and the environment.

*(4) The expected impact on the region's recycling and waste reduction efforts;*

Martin Brower has an aggressive internal recycling program and it seeks to deliver only its non-recyclable waste, including putrescible solid waste, to Covanta instead of a landfill.

The Metro-area waste that is delivered to Covanta is considered to be disposal and does not count toward recovery in Metro's recovery rate calculation because state statute (ORS 465A.010(4)(f)(B)) stipulates that only those wastesheds that burn mixed solid waste for energy recovery within their wasteshed boundaries may count a portion of it towards their DEQ recovery rate calculation. Marion County is the only wasteshed within Oregon that hosts a waste-to-energy facility within its boundaries; therefore, it is the only wasteshed that is currently allowed to include a portion of the in-county waste that is delivered to Covanta in its recovery rate. Approval of the proposed NSL is not expected to impact the Metro region's recycling and waste reduction efforts.

*(5) The proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement to deliver a minimum of 87 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The proposed NSL is not effective until January 1, 2020, after the expiration of Metro's contractual agreement and therefore, approval of the proposed license will not conflict with Metro's disposal contract.

*(6) The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental regulations; and*

Metro staff's investigation of the applicant revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

*(7) Any other factor the Chief Operating Officer considers appropriate.*

Covanta is the primary disposal site for solid waste generated within Marion County. Marion County generally supports the Metro-authorized flow of solid waste to Covanta.



**Anticipated Effects**

Adoption of Resolution 19-5041 will authorize the Chief Operating Officer to issue a new NSL, as provided in Metro Code Chapter 5.05.110, to Martin Brower to deliver up to 400 tons of putrescible waste per calendar year to the Covanta Waste-to-Energy facility.

**Financial Implications**

The application under consideration is for a new NSL to transport up to 400 tons of non-recoverable solid waste, including putrescible waste to Covanta Waste-to-Energy facility. While the financial impact of this NSL has not been factored into the budget, its impact is expected to be negligible due to the limited amount of tonnage authorized by the NSL. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to Covanta under the authority of the proposed NSL.

**BACKGROUND**

The applicant seeks a new NSL to transport non-recoverable solid waste, including putrescible waste, generated within the Metro region to Covanta. Covanta is a non-system waste-to-energy facility located outside of the region. Metro Code Section 5.05.040 prohibits any person from transporting solid waste to a non-system facility without an appropriate license from Metro. The proposed NSL is subject to Metro Council approval because it involves putrescible waste.

The applicant, Martin Brower, operates a supply chain and distribution center located at 9310 N Harborage St. in Portland (Metro District 5). The Portland facility supplies McDonald's restaurants in Oregon, southwest Washington, western Idaho and northern California. The facility operates 24 hours a day, seven days a week and employs approximately 120 people.

Martin Brower routinely generates miscellaneous non-recoverable wastes at the above-mentioned facility which consist primarily of office, restroom, and lunchroom wastes. The facility also generates other non-recyclable wastes from its warehouse activities including expired packaged food product, plastics and banding. Martin Brower has a robust sustainability program and seeks to become a zero-waste-to-landfill company by 2025. To that end it has applied for a NSL to deliver non-recyclable waste to a waste-to-energy facility instead of landfill for disposal.

**ATTACHMENTS**

Exhibit A to Resolution No. 19-5041: Draft Non-System License No. N-189-20.

**Resolution No. 19-5042**, For the Purpose of Authorizing the Chief Operating Officer to Issue a New Non-System License Authorizing Owens Corning Gresham Foundation Plant to Transport and Dispose Non-Recoverable Solid Waste, Including Putrescible Waste at Covanta Waste-to-Energy Facility Located in Brooks, Oregon

*Consent Agenda*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF	)	RESOLUTION NO. 19-5042
OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM	)	
LICENSE AUTHORIZING OWENS CORNING GRESHAM	)	Introduced by Andrew Scott,
FOAMULAR PLANT TO TRANSPORT AND DISPOSE NON-	)	Interim Chief Operating Officer,
RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE	)	with the concurrence of Lynn
WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY	)	Peterson, Council President
LOCATED IN BROOKS, OREGON	)	

WHEREAS, Metro Code Section 5.05.110 requires a non-system license of any person that transports solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Owens Corning Gresham Foamular Plant filed a complete application seeking a new non-system license to transport non-recoverable solid waste including putrescible solid waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, Metro Code Chapter 5.05 provides that the Chief Operating Officer will review applications for non-system licenses for putrescible waste and that the Metro Council will approve or deny them; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors set forth in Metro Code Section 5.05.140; and

WHEREAS, the Chief Operating Officer recommends that Metro issue a new non-system license to Owens Corning Gresham Foamular Plant with specific conditions as provided in Exhibit A to this Resolution; now therefore,

BE IT RESOLVED that the Metro Council:

1. Approves the non-system license application of Owens Corning Gresham Foamular Plant subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. Authorizes the Chief Operating Officer to issue to Owens Corning Gresham Foamular Plant a new non-system license substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney



600 NE Grand Ave.  
Portland, OR 97232-2736  
oregonmetro.gov

## METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

### No. N-188-20

<b>LICENSEE:</b>
Owens Corning Gresham Foamular Plant 18456 NE Wilkes Rd. Portland, OR 97230
<b>CONTACT PERSON:</b>
Brandon Huesser Phone: (503) 405-1026 E-Mail: <a href="mailto:Brandon.huesser@owenscorning.com">Brandon.huesser@owenscorning.com</a>
<b>MAILING ADDRESS:</b>
Owens Corning Gresham Foamular Plant 18456 NE Wilkes Rd. Portland, OR 97230

ISSUED BY METRO:

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Roy W. Brower  
Interim Property and Environmental Services Director

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Date

<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Non-recoverable solid waste mixed with putrescible waste, including restroom and lunchroom waste, generated at the Owens Corning Gresham Foamular Plant located at 18456 NE Wilkes Rd. in Portland, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE</b>
	The licensee is authorized to transport to the non-system facility listed in Section 3 up to 50 tons per calendar year of the waste described in Section 1.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<ol style="list-style-type: none"> <li>The licensee is authorized to transport the waste described above in Section 1 to the following non-system facility:  Covanta Waste-to-Energy Facility  4850 Brooklake Road, NE  Brooks, OR 97305</li> <li>This license is issued on the condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or Marion County that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 9.</li> </ol>
<b>4</b>	<b>TERM OF LICENSE</b>
	January 1, 2020 to December 31, 2021, unless amended, suspended, or revoked as provided in this license.
<b>5</b>	<b>COVERED LOADS</b>
	The licensee must suitably contain and cover, on all sides, all loads of the waste described in Section 1 that are transported under authority of this license to the non-system facility listed in Section 3 to prevent spillage of waste while in transit.
<b>6</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	The licensee must report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
<b>7</b>	<b>REGIONAL SYSTEM FEE AND EXCISE TAX</b>
	The solid waste that the licensee delivers under authority of this license to the non-system facility listed in Section 3 is subject to the regional system fee and excise tax in accordance with section 8.

8	RECORD KEEPING AND REPORTING
	<ol style="list-style-type: none"> <li>1. The licensee must keep and maintain accurate records of the amount of all waste that the licensee transports to the non-system facility described in Section 3. These records include the information specified in the Metro document titled <u>Reporting Requirements and Data Standards for Metro Solid Waste Licensees, Franchisees, and Parties to Designated Facility Agreements</u>.</li> <li>2. The licensee must perform the following no later than fifteen days following the end of each month: <ol style="list-style-type: none"> <li>(a) Submit to Metro the records required under Section 8.1 above in an electronic format prescribed by Metro;</li> <li>(b) Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li> <li>(c) Remit to Metro the requisite regional system fee and excise tax in accordance with this license and Metro Code provisions applicable to the collection, payment, and accounting of those fees and taxes.</li> </ol> </li> <li>3. The licensee must make available to Metro (or Metro's designated agent) all records from which Section 8.1 and 8.2 above are derived for its inspection or copying or both, as long as Metro provides at least three business days written notice of an intent to inspect or copy documents. The licensee must, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3.</li> <li>4. Metro may require the licensee to report the information required by this section on a weekly or daily basis.</li> <li>5. If the licensee fails to submit the records or payments to Metro by the timeline set forth in Section 8 of this license, each day by which the licensee exceeds the due date may constitute a separate violation subject to a penalty of up to \$500 per violation, in accordance with Metro Code Chapter 5.05.</li> </ol>

9	ADDITIONAL LICENSE CONDITIONS
	<p>This non-system license is subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1. The transport of solid waste to the non-system facility, listed in Section 3, authorized by this license, is subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li> <li>2. This license is subject to amendment, modification, or termination by Metro in the event that Metro determines that: <ol style="list-style-type: none"> <li>(a) There has been sufficient change in any circumstances under which Metro issued this license; or</li> <li>(b) Metro's solid waste system or the public will benefit from, and will be better served by, transporting the waste described in Section 1 of this license to a facility other than those listed in Section 3.</li> </ol> </li> <li>3. In addition to subsections 9.2(a) and (b) above, Metro may amend, suspend, revoke or terminate this license pursuant to the Metro Code.</li> <li>4. The licensee cannot transfer or assign any right or interest in this license without Metro's prior</li> </ol>

	<p>written approval.</p> <ol style="list-style-type: none"> <li>5. This license is subject to amendment or termination by Metro upon the execution of a designated facility agreement with a facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1.</li> <li>6. This license authorizes transport of solid waste only to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li> <li>7. Metro may direct the licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours written notice. Any redirection of the waste flow by Metro is effective immediately.</li> <li>8. If the licensee exceeds the calendar year authorization set forth in Section 2, each ton or portion thereof by which the licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500, in accordance with Metro Code Chapter 5.05.</li> </ol>
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<b>10</b>	<b>COMPLIANCE WITH LAW</b>
	<p>The licensee must fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative rules adopted pursuant to Metro Code Chapter 5.05 whether or not those provisions have been specifically mentioned or cited in this license. All conditions imposed on the collection and hauling of the licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the licensee shall be deemed part of this license as if specifically set forth.</p>

<b>11</b>	<b>INDEMNIFICATION</b>
	<p>The licensee must defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses arising out of or related in any way to the issuance or administration of this non-system license. Expenses include, but are not limited to, all attorneys' fees, whether incurred before litigation is commenced, during litigation or on appeal.</p>

IN CONSIDERATION OF RESOLUTION NO. 19-5042 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NEW NON-SYSTEM LICENSE AUTHORIZING OWENS CORNING GRESHAM FOAMULAR PLANT TO TRANSPORT AND DISPOSE NON-RECOVERABLE SOLID WASTE, INCLUDING PUTRESCIBLE WASTE AT THE COVANTA WASTE-TO-ENERGY FACILITY LOCATED IN BROOKS, OREGON.

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Date: November 1, 2019  
Department: PES  
Meeting Date: November 21, 2019

Prepared by: Will Ennis, x1667,  
[will.ennis@oregonmetro.gov](mailto:will.ennis@oregonmetro.gov)

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### **ISSUE STATEMENT**

Owens Corning Gresham Foamular Plant (Owens Corning) is requesting a new Metro Solid Waste Facility Non-System License (NSL) to transport up to 50 tons per calendar year of non-recoverable solid waste, including putrescible waste, from its facility located at 18456 NE Wilkes Rd. in Portland to the Covanta Waste-to-Energy facility (Covanta) in Brooks, OR.

Metro Code Section 5.05.110(c) requires the Metro Council to approve or deny a non-system license to transport putrescible waste to a disposal site.

### **ACTION REQUESTED**

Approve Resolution No. 19-5042 which will authorize the Chief Operating Officer to issue a new Metro Non-System Facility License to Owens Corning for a term of two years.

### **IDENTIFIED POLICY OUTCOMES**

Approval of the proposed NSL renewal will support Metro's longstanding practice to allow solid waste generated in the Metro region to be transported to disposal sites located outside of the region provided that the transporter applies for and receives Metro authorization.

### **POLICY QUESTION**

Should Metro Council approve the resolution and grant the Chief Operating Officer authority to issue a new NSL, as provided in Metro Code Chapter 5.05.110, to Owens Corning to deliver up to 50 tons of putrescible waste per calendar year to Covanta?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to authorize the Chief Operating Officer to issue a new NSL to Owens Corning.
2. Approve the resolution with conditions in addition to or other than those recommended by staff.
3. Do not approve the resolution.



## **STAFF RECOMMENDATION**

Staff recommends Metro Council approve of Resolution 19-5042 to authorize the Chief Operating Officer to issue a new NSL to Owens Corning.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

NSLs are the main vehicles by which Metro manages the flow of solid waste transported to facilities located outside of the Metro regional boundary because they allow Metro to closely monitor and potentially guide waste flows to authorized facilities.

## **Known Opposition/Support/Community Feedback**

There is no known opposition to the proposed NSL.

## **Legal Antecedents**

Metro Code Chapter 5.05, "Solid Waste Flow Control." Specifically, Section 5.05.140 describes the factors the Chief Operating Officer may consider to determine whether to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which those wastes pose a future risk of environmental contamination;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. Air emissions from the facility are controlled through the use of high efficiency combustion within the furnace/boiler as well as by selective non-catalytic reduction, spray dryer absorbers, fabric filter baghouses and an activated carbon injection system. The ash generated at the facility is then disposed, or used beneficially, in accordance with Oregon Department of Environmental Quality (DEQ) requirements.

- (2) The non-system facility owner's and operator's regulatory compliance record with federal, state and local requirements, including but not limited to public health, safety and environmental regulations;*

Covanta holds a DEQ Solid Waste Energy Recovery Permit. No formal enforcement actions have been taken at Covanta by DEQ in the last five years and Covanta is in compliance with federal, state, and local requirements. Staff has also received confirmation that Covanta has a good compliance record with respect to public health, safety and environmental regulations.

- (3) The adequacy of the non-system facility's operational practices and management controls;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of future environmental contamination. In addition, Covanta uses operational

practices and management controls that are considered by the DEQ to be appropriate for the protection of health, safety, and the environment.

*(4) The expected impact on the region's recycling and waste reduction efforts;*

Owens Corning Gresham Foamular Plant has an aggressive internal recycling program and it seeks to deliver only its non-recyclable waste, including putrescible solid waste, to Covanta instead of a landfill.

The Metro-area waste that is delivered to Covanta is considered to be disposal and does not count toward recovery in Metro's recovery rate calculation because state statute (ORS 465A.010(4)(f)(B)) stipulates that only those wastesheds that burn mixed solid waste for energy recovery within their wasteshed boundaries may count a portion of it towards their DEQ recovery rate calculation. Marion County is the only wasteshed within Oregon that hosts a waste-to-energy facility within its boundaries; therefore, it is the only wasteshed that is currently allowed to include a portion of the in-county waste that is delivered to Covanta in its recovery rate. Approval of the proposed NSL is not expected to impact the Metro region's recycling and waste reduction efforts.

*(5) The proposed non-system license's effect with Metro's existing contractual arrangements;*

Through 2019, Metro has a contractual agreement to deliver a minimum of 87 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. The proposed NSL is not effective until January 1, 2020, after the expiration of Metro's contractual agreement and therefore, approval of the proposed license will not conflict with Metro's disposal contract.

*(6) The applicant's record regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental regulations; and*

Metro staff's investigation of the applicant revealed a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

*(7) Any other factor the Chief Operating Officer considers appropriate.*

Covanta is the primary disposal site for solid waste generated within Marion County. Marion County generally supports the Metro-authorized flow of solid waste to Covanta.

## **Anticipated Effects**

Adoption of Resolution 19-5042 will authorize the Chief Operating Officer to issue a new NSL, as provided in Metro Code Chapter 5.05.110, to Owens Corning to deliver up to 50

tons per calendar year of non-recoverable solid waste, including putrescible waste, to Covanta.

### **Financial Implications**

The application under consideration is for a new NSL to transport up to 50 tons of non-recoverable solid waste, including putrescible waste, to Covanta. While the financial impact of this NSL has not been factored into the budget, its impact is expected to be negligible due to the limited amount of tonnage authorized by the NSL. The regional system fee and excise tax will continue to be collected on Metro-area waste delivered to Covanta under the authority of the proposed NSL.

### **BACKGROUND**

The applicant seeks a new NSL to transport non-recoverable solid waste and putrescible waste generated within the Metro region to Covanta. Covanta is a non-system waste-to-energy facility located outside of the region. Metro Code Section 5.05.040 prohibits any person from transporting solid waste to a non-system facility without an appropriate license from Metro. The proposed NSL is subject to Metro Council approval because it involves putrescible waste.

The applicant, Owens Corning, is located at 18456 NE Wilkes Rd. in Gresham, Oregon (Metro District 1). The plant makes extruded polystyrene insulation for the western United States and Canada. Its foam insulation products are used to provide commercial building insulating solutions for under slabs, crawlspaces, exterior walls and low slope roof applications. They are also used to insulate soft wall barrier systems, walk-in coolers and wind turbines

Owens Corning routinely generates miscellaneous non-recoverable wastes at the above-mentioned facility which consist primarily of non-recyclable plastic and restroom and lunchroom wastes. The facility makes efforts to reduce, reuse, and recycle waste whenever possible. For example, the company participates in Hoses2Habitat, a program that provides used materials to zoos for use by animals. Off-specification and scrap foam insulation are reintroduced into the manufacturing process. As part of these efforts, Owens Corning prefers to send its non-recoverable wastes to waste-to-energy facilities instead of landfills for disposal.

### **ATTACHMENTS**

Exhibit A to Resolution No. 19-50XX: Draft Non-System License No. N-188-20.

Materials following this page will be distributed at the meeting.

Agenda Item No. 4.8

**Considerations of the Council Budget Session Minutes  
for November 14, 2019**

*Consent Agenda*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

**Resolution No. 19-5017**, For the Purpose of Amending the  
FY 2019-20 Budget and Appropriations Schedule and FY  
2019-20 Through 2023-24 Capital Improvement Plan to  
Provide for Changes in Operations

*Resolutions*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY 2019-20 BUDGET AND APPROPRIATIONS SCHEDULE AND FY 2019-20 THROUGH FY 2023-24 CAPITAL IMPROVEMENT PLAN TO PROVIDE FOR CHANGES IN OPERATIONS	)	RESOLUTION NO 19-5017
	)	Introduced by Andrew Scott, Interim Chief
	)	Operating Officer, with the concurrence of
	)	Council President Lynn Peterson
	)	

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2019-20 Budget; and

WHEREAS, Metro Code chapter 2.02.040 requires Metro Council approval to add any new position to the budget; and

WHEREAS, the need for the increase of appropriations has been justified; and

WHEREAS, adequate funds exist for other identified needs; and

WHEREAS, ORS 294.463(1) provides for transfers of appropriations within a fund, including transfers from contingency that do not exceed 15 percent of a fund's appropriations, if such transfers are authorized by official resolution or ordinance of the governing body, and

WHEREAS, ORS 294.463(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body stating the need for the transfer, and

WHEREAS, ORS 294.338(2) allows an increase in appropriations due to specific purpose grants or gifts when authorized by an official resolution or ordinance of the governing body stating the need for the recognition, and

WHEREAS, ORS 294.338(3) ) allows an increase in appropriations when a request for services, the cost of which is supplied by another entity, necessitates a greater expenditure of public money for any specific purpose in order to provide the services when authorized by an official resolution or ordinance of the governing body stating the need for the recognition, now, therefore

BE IT RESOLVED,

1. That the FY 2019-20 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Resolution for the purpose of recognizing new revenues, approving new FTE, transferring funds from contingency and providing for increased appropriations.
2. That the FY 2019-20 through FY 2023-24 Capital Improvement Plan is hereby amended accordingly.

ADOPTED by the Metro Council this 21<sup>st</sup> day of November, 2019.

APPROVED AS TO FORM:

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Lynn Peterson, Council President

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Carrie MacLaren, Metro Attorney

**Exhibit A**  
**Resolution 19-5017**  
**Schedule of Appropriations**

	<u><b>Current Appropriation</b></u>	<u><b>Revision</b></u>	<u><b>Revised Appropriation</b></u>
<b>GENERAL FUND</b>			
Council	7,726,021	287,450	8,013,471
Office of the Auditor	821,704		821,704
Office of Metro Attorney	2,928,917		2,928,917
Information Services	6,567,223	89,398	6,656,621
Communications	2,631,021		2,631,021
Finance and Regulatory Services	5,893,713	125,000	6,018,713
Human Resources	3,568,235	135,440	3,703,675
Property and Environmental Services	2,399,023		2,399,023
Parks and Nature	12,330,623		12,330,623
Planning and Development Department	36,522,239		36,522,239
Research Center	5,585,459	533,000	6,118,459
Special Appropriations	3,824,148	435,000	4,259,148
Non-Departmental			
Debt Service	2,173,009		2,173,009
Interfund Transfers	19,576,655		19,576,655
Contingency	9,180,676	(1,072,288)	8,108,388
<i>Total Appropriations</i>	121,728,666	533,000	122,261,666
Unappropriated Balance	20,548,620		20,548,620
<b>Total Fund Requirements</b>	<b>142,277,286</b>	<b>533,000</b>	<b>142,810,286</b>
<b>MERC FUND</b>			
MERC	96,915,293	(646,000)	96,269,293
Non-Departmental			
Interfund Transfers	6,773,587		6,773,587
Contingency	21,694,903	646,000	22,340,903
<i>Total Appropriations</i>	125,383,783	-	125,383,783
<b>Total Fund Requirements</b>	<b>125,383,783</b>	<b>-</b>	<b>125,383,783</b>
<b>NATURAL AREAS FUND</b>			
Parks and Nature	8,556,370	500,000	9,056,370
Non-Departmental			
Interfund Transfers	2,724,478		2,724,478
Contingency	4,000,000	(500,000)	3,500,000
<i>Total Appropriations</i>	15,280,848	-	15,280,848
Unappropriated Balance	7,570,836		7,570,836
<b>Total Fund Requirements</b>	<b>22,851,684</b>	<b>-</b>	<b>22,851,684</b>



**Exhibit A**  
**Resolution 19-5017**  
**Schedule of Appropriations**

**PARKS AND NATURAL AREAS LOCAL OPTION LEVY FUND**

Parks and Nature	12,354,504	150,346	12,504,850
Special Appropriations	1,000,000		1,000,000
Non-Departmental			
Interfund Transfers	4,258,205	39,000	4,297,205
Contingency	4,418,926	(189,346)	4,229,580
<i>Total Appropriations</i>	22,031,635	-	22,031,635
<b>Total Fund Requirements</b>	<b>22,031,635</b>	<b>-</b>	<b>22,031,635</b>

**SOLID WASTE FUND**

Property and Environmental Services	85,012,844	925,084	85,937,928
Non-Departmental			
Interfund Transfers	7,018,314	30,000	7,048,314
Contingency	15,291,645	(955,084)	14,336,561
<i>Total Appropriations</i>	107,322,803	-	107,322,803
Unappropriated Balance	31,189,775		31,189,775
<b>Total Fund Requirements</b>	<b>138,512,578</b>	<b>-</b>	<b>138,512,578</b>
<b>Total Appropriations</b>	<b>840,927,783</b>	<b>533,000</b>	<b>841,460,783</b>
<b>Total Unappropriated Balance</b>	<b>507,926,111</b>	<b>-</b>	<b>507,926,111</b>
<b>TOTAL BUDGET</b>	<b>1,348,853,894</b>	<b>533,000</b>	<b>1,349,386,894</b>

**Exhibit B**  
**Resolution 19-5017**  
**Schedule of FTE**

	<b>Current FTE</b>	<b>Revision</b>	<b>Revised FTE</b>
<b>GENERAL FUND</b>			
<b>TOTAL FUND FTE</b>	<b>323.65</b>	<b>2.45</b>	<b>326.10</b>
<b>MERC FUND</b>			
<b>TOTAL FUND FTE</b>	<b>200.70</b>	<b>1.00</b>	<b>201.70</b>
<b>OREGON ZOO OPERATING FUND</b>			
<b>TOTAL FUND FTE</b>	<b>203.85</b>	<b>0.50</b>	<b>204.35</b>
<b>PARKS AND NATURAL AREAS LOCAL OPTION LEVY FUND</b>			
<b>TOTAL FUND FTE</b>	<b>47.60</b>	<b>1.70</b>	<b>49.30</b>
<b>SOLID WASTE FUND</b>			
<b>TOTAL FUND FTE</b>	<b>151.81</b>	<b>23.20</b>	<b>175.01</b>
<b>TOTAL FTE</b>	<b>958.71</b>	<b>28.85</b>	<b>987.56</b>

All Other FTE Remain as Previously Adopted

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION 19-5017 FOR THE PURPOSE OF AMENDING THE FY 2019-20 BUDGET AND APPROPRIATIONS SCHEDULE AND THE FY 2019-20 THROUGH FY 2023-24 CAPITAL IMPROVEMENT PLAN FOR CHANGES IN OPERATIONS

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Date: 11.7.19

Prepared by: Lisa Houghton, 503.797.1829,  
Lisa.Houghton@oregonmetro.gov

Department: Finance and Regulatory Services

Presenter Lisa Houghton, 503.797.1829,  
Lisa.Houghton@oregonmetro.gov

Meeting date: 11.21.19

Length: 15 minutes

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#### ISSUE STATEMENT

This resolution will authorize increases in appropriations and FTE in the FY 2019-20 Budget and approve changes to the FY 2019-20 through FY 2023-24 Capital Improvement Plan.

#### ACTION REQUESTED

Council adoption of Resolution 19-5017.

#### IDENTIFIED POLICY OUTCOMES

Council approval will authorize the additional appropriations and FTE requested by departments for FY 2019-20 and approve requested changes to the FY 2019-20 through FY 2023-24 Capital Improvement Plan.

#### POLICY QUESTION

Council should consider whether the increases of appropriations and FTE have been justified, that adequate funds exist for other identified needs and that proposed changes to the Capital Improvement Plan appear appropriate.

#### POLICY OPTIONS FOR COUNCIL TO CONSIDER

Adoption of the Resolution will provide sufficient appropriations and FTE to accommodate the changes in operations outlined by the departments. Adoption will also allow for changes to capital projects, again due to operational factors.

Disapproval of the Resolution will require departments to reevaluate their proposed changes to operational and capital plans due to the denied requests for additional resources and changes in capital projects.

#### STAFF RECOMMENDATIONS

The Interim Chief Operating Officer recommends adoption of Resolution 19-5017.

#### STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

**Known Opposition:** None known.

**Legal Antecedents:** ORS 294.463(1) provides for transfers of appropriations within a fund, including transfers from contingency that do not exceed 15 percent of a fund's appropriation, if such transfers are authorized by official resolution or ordinance of the governing body. ORS

294.463(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body stating the need for the transfer. ORS 294.338(2) allows an increase in appropriations due to specific purpose grants or gifts when authorized by an official resolution or ordinance of the governing body stating the need for the recognition. ORS 294.338(3) allows an increase in appropriations when a request for services, the cost of which is supplied by another entity, necessitates a greater expenditure of public money for any specific purpose in order to provide the services when authorized by an official resolution or ordinance of the governing body stating the need for the recognition. Metro code chapter 2.02.040 requires the Metro Council to approve the addition of any position to the budget. Metro's adopted financial policies require any project exceeding \$100,000 or an existing CIP project increasing greater than 20 percent to receive Council approval.

**Anticipated Effects:** This action provides for changes in operations as described above, recognizes new revenues, provides additional appropriations authority, adds 28.85 FTE and changes the status of 1.00 FTE from limited duration to regular.

**Budget Impacts:** This action has the following impacts on the FY 2019-20 budget:

- Adds 2.45 FTE, changes the status of 1.00 FTE from limited duration to regular status and provides and provides \$1,072,288 to the General fund through a transfer from the fund's contingency
- Adds 23.20 FTE and provides \$955,084 to the Solid Waste fund through a transfer from the fund's contingency.
- Recognizes \$464,000 in additional revenues, increases interfund resource transfers by \$69,000 and increases appropriations by \$533,000 in the Planning sub-fund
- Add 1.70 FTE and provides \$189,346 to the Parks and Local Option Levy fund through a transfer from the fund's contingency
- Adds 1.00 FTE and provides \$88,000 to the P'5 Center for Performing Arts fund through a transfer from the fund's contingency
- Adds Add .50 FTE in the Oregon Zoo Operating fund
- Amends the FY 2019-20 through FY 2023-24 Capital Improvement Plan for projects at the various Property and Environmental Services sites, Parks and Natural Area sites, the Oregon Zoo, the Portland5's Center for the Performing Arts and OCC. The changes result in a \$500,000 decrease to Natural Areas fund's contingency and increases of \$498,000 and \$236,000 to the Portland5's Center for the Performing Arts and OCC contingencies respectively.

## **BACKGROUND**

The following amendments have been proposed for Council review and action:

### *Senior Management Analyst 1.00 FTE and Technology Consulting and Training Contracted Professional Services*

Council and Finance and Regulatory Services (FRS) are requesting additional FTE and appropriations to implement Councilor Gonzalez's Budget Note #4 "Decrease Barriers for COBID Firms and Enhance Metro's Ability to Meet Our Equity in Contracting Strategy". The request includes the following:

- 1.00 FTE Limited Duration Senior Management Analyst. Staff from the Construction Project Management Office, Procurement Services and the Diversity Equity and Inclusion (DEI)

program recently completed a pilot project with the National Association of Minority Contractors (NAMC Oregon) to increase the utilization and ease of working with COBID contractors on projects. The position will provide a working out of class opportunity for a current Metro employee to spend six to nine months implementing the recommendations from this pilot by providing support for project managers and procurement staff. The position end date will be 8.31.2020. At the conclusion of the project, FRS and the Chief Operating Officer's (COO's) Office will evaluate whether to request an ongoing, full-time position to continue the work. Additional costs for the position will be split evenly between the Solid Waste and Parks and Natural Areas Local Option Levy funds.

- \$50,000 to retain technology consulting services to evaluate and improve the processes Metro uses for COBID reporting. This work will speed the development of reporting on COBID utilization and provide data in closer to real-time for project managers and other staff. The FRS budget will increase by the additional appropriations.
- \$75,000 for additional training for project managers and COBID certified and eligible firms. Training providers may include local community-based organizations, national procurement training providers and other contractors with expertise in improving equity in contracting and contract administration practices. The FRS budget will increase by the additional appropriations.

This action requests an additional 1.00 Limited Duration FTE and transfers of \$39,346, \$39,346 and \$125,000 from the Solid Waste, the Parks and Natural Areas Local Option Levy and the General Fund contingencies respectively.

*Regional Investment Strategy (RIS), Diversity, Equity and Inclusion (DEI) and Government Affairs and Policy Development (GAPD) - Multi-division request for conversion of a limited duration 1.00 FTE to regular status and additional appropriations*

This integrated request is asking for additional appropriations for the purposes of advancing Council direction to prepare a potential regional transportation funding measure for Council's referral consideration in late spring 2020. \$485,000 of the requested appropriations will support the following primary activities:

- A strategic regional communications and engagement effort in winter-spring 2020, prior to Council's possible referral of the measure to voters. Evidence from peer cities and regions that have led successful transportation funding efforts demonstrate the importance of helping residents understand the potential benefits and impacts of a measure prior to Council's referral decision.
- Supporting community partnerships with four nonprofit culturally-specific organizations to engage and empower people of color and other historically marginalized people in decision-making around the potential transportation funding measure. These funds will pair with existing Community Partnership funding from Communications to help advance the Metro Council's direction that the measure and the Regional Investment Strategy support the agency's racial equity, diversity and inclusion goals.
- Supporting a partnership with Getting There Together, a key coalition partner for the project, helping the organization fully engage its member organizations in the transportation measure process, including decision-making and community engagement.

Of the amount requested, \$50,000 will be directly managed by DEI for conducting an analysis of the potential racial equity impacts of the proposed measure, including revenue mechanisms, project investments and potential programs.

In addition to the above \$485,000 requested for contracted professional services, the request asks for the following personnel services appropriations:

- \$34,380 to fund the temporary use of .20 FTE through June 2020. This role is critical to managing the RIS related Community Partnerships and other community engagement activities in alignment with the Council's racial equity, diversity and inclusion policies and goals.
- \$109,570 to fund a currently defunded GAPD 1.00 FTE position through the end of the current fiscal year. Since January 2019, GAPD has used vacancy savings to support the position which manages the implementation of strategic transportation investment communications. The additional appropriations will ensure strategic communications will continue uninterrupted until the Council referral decision in late spring 2020.

The final component of the request includes the following change in a position's status:

- The conversion of a limited duration 1.00 FTE Program Analyst position to regular status. The limited duration position is currently set to expire December 2020 (FY20-21). This position supports RIS and focuses on tasks such as project management, facilitating decision-making, coordination between funding measures, and communications and engagement strategy.  
The current year annualized costs of the position are budgeted at \$136,000. This request does not seek additional appropriations for the current year.

This action requests a \$628,950 transfer from the General Fund contingency and a change from limited duration to regular status for a 1.00 FTE Program Analyst.

*Traffic Control Technicians II, Service Supervisor II, Hazard Waste Technicians, Program Coordinator I, Finance Manager and Program Assistant II – 22.70 FTE*

Property and Environmental Services (PES) is requesting FTE increases to address significant changes in Solid Waste Operations at Metro South Station. The new operations contract, effective January 1, 2020, will no longer include traffic control services. Additionally, the South Station has started providing seven day service for Hazardous Waste. Both of these programmatic changes directly impact the department's strategic priorities and ability to effectively serve the public. The following FTE requests will address these changes:

- 13.00 FTE for Traffic Control - 12.00 FTE Traffic Control Tech IIs and 1.00 FTE Service Supervisor II: As noted above, traffic and inspection duties at the South Station are currently provided under the Metro South transfer station operations contract which expires December 31, 2019. These duties were carved out of the replacement operations Request for Proposal (RFP) and instead included in a stand-alone RFP. After reviewing the proposals received, the solicitation was cancelled. PES Operations staff believes that the region will be better served with Metro staff performing the traffic and inspection duties, improving diversity, and creating career pathways for those experiencing barriers to employment. Replacing contractor provided staff with agency personnel will result in a decrease of Materials and Services costs and a related increase in Personnel Service costs. Annualized costs for the positions are estimated at \$891,700; costs for the remainder of this fiscal year are \$445,866.
- 7.25 FTE Hazardous Waste Technicians: 3.25 FTE will be used to increase seven part time positions to 1.00 FTE. An additional 3.00 FTE will be placed at the South Station to accommodate the increase to seven day service and the remaining 1.00 FTE will be placed at the Central Station. The increase in FTE will allow both stations to better provide the essential services the public depends on and also result in all Hazardous Waste Technician positions being fulltime. Annualized costs for the positions are estimated at \$528,300; costs for the remainder of this fiscal year are \$308,192.

Property and Environmental Services is also requesting the following FTE increases to address structural shortfalls due to increasing demands for services and financial and administrative support:

- 1.00 FTE Program Coordinator I to oversee an additional RID Patrol Crew. The RID Patrol program has grown in scope and importance over the last year and it will continue to grow dramatically with the expansion of the work transition program, referred to as the new Conservation Corps program, beginning in 2020. The addition of a fourth RID Patrol Crew, led by this new position, will help implement the new program and maintain current service levels. Annualized costs for the position are estimated at \$100,000; costs for the remainder of this fiscal year are \$58,356
- 1.00 FTE Finance Manager. In prior years, PES and Parks and Nature have shared a single Finance Manager. Over the last several years, both departments have experienced significant increases in their programs, FTE, and financial management needs. Creating this position will provide each department with a full time Finance Manager and allow for implementation of better processes and best practices, improved capital oversight and more effective management of large programmatic initiatives. Each department will absorb the costs of their Finance Manager. Annualized costs for the position are estimated at \$148,200; costs for the remainder of this fiscal year are \$74,105.
- .45 FTE Program Assistant II increase to make the position fulltime. The increase will provide additional administrative support to address current gaps in coverage for the RID program, and help maintain current service levels. Annualized costs for the FTE increase are estimated at \$50,100; costs for the remainder of this fiscal year are \$29,222.

This action requests 22.70 additional FTE and a \$915,738 transfer from the Solid Waste Fund Contingency

#### Technology and Information Systems Security Manager

Information Services is requesting the following position:

- 1.00 FTE Manager I for overseeing security training, policies and practices to ensure that Metro's technology and information systems are securely operated and resilient to attacks. The position would also be in charge of application and role security, cloud data governance establishing incident management procedures as well as business continuity plans. Information Security has become increasingly important, particularly for governments. The 2019 Verizon Data Breach Report noted 79% of cyber-espionage last year occurred in the public sector. Annualized costs for this position are estimated at \$153,000; costs for the remainder of this fiscal year are \$89,398.

This action requests the addition of 1.00 FTE and an \$89,398 transfer from the General Fund contingency.

#### Assistant Director of Production

Portland's 5 Centers for the Arts is requesting the following position:

- 1.00 FTE Assistant Director of Production Manager I to provide management and oversight of three production supervisors, ensure regular training on safe stage practices, plan for stage maintenance and asset management and support clients and events as needed. Show needs have increased in recent years, resulting in higher demands on this team. Annualized costs for the position are estimated at \$117,000; costs for the remainder of this fiscal year are estimated at \$88,000.

This action requests the addition of 1.00 FTE and an \$88,000 transfer from the Portland's Centers for the Arts Fund contingency.

*Nutrition Technician I- .50 FTE increase*

The Oregon Zoo is requesting the following:

- Nutrition Technician I .50 FTE increase to make the position fulltime. The position functions as a member of the animal nutrition and veterinary care team with a primary responsibility for animal diet preparation and delivery, supply and enrichment item delivery, and stock keeping. Annualized costs for the 0.50 FTE increase are estimated at \$45,000. This action does not request additional appropriations; the department will absorb the current year's additional cost through vacancy savings.

This action requests the addition of .50 FTE.

*Community Partnership and Decommissioning Contracted Professional Services, Associate Public Affairs Specialist, Administrative Specialist II and Senior Natural Resource Scientist - 1.20 FTE increases*

Parks and Nature is requesting the following:

- Associate Public Affairs Specialist increase of .20 FTE to make the position 1.00 FTE. The additional support will allow the Communications team to meet the growing and changing demands for online engagement. Annualized costs for the FTE increase are estimated at \$16,000.
- Administrative Specialist II increase of .50 FTE to make the position 1.00 FTE. The additional FTE will provide support for the Department's volunteer program and special projects. Annualized costs for the FTE increase are estimated at \$35,000.
- Senior Natural Resource Scientist .50 FTE to make the position 1.00 FTE. The additional FTE will help with ongoing restoration needs. Annualized costs for the FTE increase are estimated at \$67,200.

No additional appropriations are requested; the additional personnel costs will be covered by reducing materials and services.

- \$100,000 in appropriations for four components of their Community Partnerships; co-created community partnerships, partnership innovation funds, sponsorships for community-led activities, and Metro-led program support. These additional funds will allow the Community Partnerships program to have sufficient funding to plan for and implement a strategy to diversify the environmental sector work force, and to offer sufficient funds to serve the needs of an estimated ten additional projects that directly benefit communities of color and other historically marginalized groups.
- \$50,000 in appropriations for the Blue Lake Wetland Trail Decommissioning project. This project was identified and budgeted for in FY 2018-19. Due to staff and contractor capacity constraints, the project work did not begin in earnest until after the deadline to request the carry forward of FY 2018-19 unspent appropriations. The project work includes naturalizing a portion of the Blue Lake Wetland trail.

This action requests the addition of 1.20 FTE and a \$150,000 transfer from the Parks and Natural Areas Local Option Levy Contingency.



Security Officers, Custodial Lead and Assistant Management Analyst- 1.25 FTE increases

The Deputy Chief Operating Officer (DCOO) is requesting the following FTE increases for the Metro Regional Center (MRC) Operations:

- Custodial Team Lead increase of 0.25 FTE to make the position 1.00 FTE. Increasing numbers of staff working in the MRC, changes to furniture layouts and Campus Operations program development are increasing the time needed for this position to adequately fulfill its responsibilities and adequately plan custodial team. Annualized costs for the FTE increase are estimated at \$11,200.
- Safety and Security Officer increase of 0.50 FTE to make two positions 1.00 FTE. Currently there is not an adequate security presence to manage MRC security related business needs. Current shifts do not start early enough or run late enough to ensure a consistent security presence. Critical responsibilities including monitoring the front entrance, patrolling the grounds and being present during regular evening meetings. Annualized costs for the FTE increases are estimated at \$26,500.
- Assistant Management Analyst of 0.50 FTE to help support the MRC operations and capital projects. The cPMO program and MRC operations have steadily expanded in scope over the last several years but support staff numbers have remained constant. The additional .50 FTE will result in 2.00 FTE supporting the programs' increased portfolios, responsibilities and project work. Annualized costs for the FTE increase are estimated at \$56,600.

No additional appropriations are requested for the FTE increases; the costs will be absorbed by the existing budget.

This action requests the addition of 1.25 FTE.

Pay Equity - Contracted Professional Services, Temporary Staff and additional .20 FTE

Human Resources is requesting the following:

- .20 FTE Program Specialist to make an existing 0.80 FTE position fulltime. The increase is necessary to provide adequate service over workers' compensation and leave, which are the core responsibilities of this position. Annualized costs for the .20 FTE increase are estimated at \$20,000; this action does not request additional appropriations for the current year's partial cost of \$13,000.
- \$85,440 to complete the pay equity study which began in FY18-19. Uncertainty about the contractor's availability last spring resulted in the department not requesting to carry forward unspent prior year appropriations of \$60,440. This request asks for that amount and an additional \$25,000 to cover increased costs.
- \$50,000 for temporary labor costs. The department needs variable hour temporary employees to help with a backlog of electronic filing needs, records retention requirements and other varying functions. The department doesn't currently have any budget for temporary labor.

This action requests the addition of .20 FTE and a \$135,440 transfer from the General Fund contingency.

Executive Level Recruitment Services- Contracted Professional Services

The Council Office is requesting \$62,000 to retain the services of an executive level search firm for the Chief Operating Officer recruitment.

This action requests a \$62,000 transfer from the General Fund contingency.

Consulting Services, Innovators program, and Staff Development, Travel and Supplies

The Deputy Chief Operating Officer (DCOO) is requesting \$31,500 for the following key programs and services:

- Consulting services to support departments and venues in developing operational measures to regularly gauge success of strategies, programs and services. This request asks for \$15,000 additional one-time appropriations for consulting services.
- Innovators program training and recognition. This request asks for \$1,500 additional ongoing appropriations for materials and services costs.
- Staff development, travel and office/computer equipment. The DCOO is requesting funding to support its operations and the professional development of DCOO staff. This request asks for \$15,000 additional ongoing appropriations for materials and services costs

This action requests a \$31,500 transfer from the General Fund contingency.

Recognition of Additional Revenues and Payments relating to Aerial Imagery of the Portland Metropolitan Region

Metro annually contracts for aerial imagery and LiDAR for the Portland Metropolitan region on behalf of the Regional Aerial Photo Consortium (Consortium). The Consortium agreed to have Department of Geology and Mineral Industries (DOGAMI) administer the 2019 project but in June DOGAMI informed Metro and the Consortium that they would not be able to successfully facilitate the project to completion. Metro agreed to assume the role of administer once DOGAMI withdrew. Payments from Consortium partners, originally planned for receipt by DOGAMI, will instead be received by Metro. Similarly payments for contracted professional services originally planned for processing by DOGAMI will be made by Metro.

This amendment requests the recognition of \$464,000 of additional revenues to be received from Consortium members and \$69,000 in interfund transfers. The amendment also requests an additional \$533,000 in appropriations for the related payments to vendors.

This action requests recognition of \$464,000 of additional revenues, transfers of \$30,000 and \$39,000 from Property and Environmental Services and Parks and Natural Areas respectively and \$533,000 in additional appropriations.

Parks and Nature - Capital Improvement Plan Changes -

The following Capital Improvement Projects require revision as outlined below:

Natural Areas Fund:

- Land Acquisitions (TEMP98) – Two large land purchases initialed anticipated to close in the prior year were delayed due to legal settlements. Property in the Tonquin and Chehalem Ridgetop areas are now scheduled for purchase in FY 2019-20. Other small easement purchases are also now scheduled for this year. The \$1,000,000 in increased costs for land acquisitions will be offset by a \$500,000 reduction in Payments to Other Agencies and a \$500,000 transfer from the contingency.

General Asset Management Fund (Parks Renewal and Replacement):

- Blue Lake Park Master Plan (LA141): The original Blue Lake Park Master Plan was put on hold due to concerns about unaddressed infrastructure issues. An in-depth study of the Blue Lake Park water/wastewater system, an ADA study of the facilities and an engineering review of existing structures has since been completed. The updated master plan will incorporate this new information the REDI action plan, the Parks and Nature System Plan, the Connect with Nature information and provide the opportunity to “re-nature” the park as

part of climate resiliency. The \$100,000 increase in project costs will be absorbed by delaying other projects.

- Oxbow Sanitary System Upgrade (LI011) – Parks and Nature contracted with 3J Consulting to do a potable water and sanitary facilities condition assessment. As the consultant refines the design and engineering of the new system it has become clear that \$80,000 in additional funds are required for the current year. The increase in project costs will be absorbed by delaying other projects.

This action amends the FY 2019-20 through 2023-24 Capital Improvement Plan and requests a \$500,000 transfer from the Natural Areas Bond Fund Contingency. Attachment 1 outlines the Capital Projects changes requested.

#### Oregon Convention Center Capital Improvement Plan Changes

The following Capital Improvement Projects require revision as outlined below:

- Elevator Modernizations #8R207D: Project budget has decreased based on full design and equipment cost estimates.
- Escalator Safety Skirt Brush #8R207B: Project budget has decreased based on full design and equipment cost estimates.
- Elevator Door and Operator Replacement #8R207C: Project budget has increased based on full design and equipment cost estimates.
- Dragon Cafe #8R208: Project schedule has shifted, resulting in an increase in the current year budget. In addition, project budget has increased based on full design and equipment cost estimates.
- Orbit Cafe #8R213: Project schedule has shifted, resulting in an increase in the current year budget. In addition, project budget has decreased based on full design and equipment cost estimates.
- Space Planning – Design #8R224: Project schedule has shifted, resulting in an increase in the current year budget.
- Space Planning – King Boardroom and Admin Lobby #8R224A: Project schedule has shifted, resulting in a decrease in the current year budget.
- Space Planning – Guest Services #8R224B: Project schedule has shifted, resulting in an increase in the current year budget.
- Major Renovation #8R082: Project schedule has shifted, resulting in a decrease in the current year budget.

This action amends the FY 2019-20 through 2023-24 Capital Improvement Plan and increases the Oregon Convention Center Fund contingency by \$236,000. Attachment 2 outlines the Capital Projects changes requested.

#### Portland's 5 Centers for the Arts Capital Improvement Plan Changes

The following Capital Improvement Projects require revision as outlined below:

- Arlene Schnitzer Concert Hall (ASCH) Acoustical Enhancements #8R092: Total project budget has increased based on initial cost estimates from the new contractor. This project has \$6.5 million in outside funding, resulting in a net cost to Portland's 5 of \$2.5 million. Project schedule has shifted, resulting in a decrease in the current year budget.
- Arlene Schnitzer Concert Hall (ASCH) Broadway and Park Marquees #8R220: The Marquees at the Broadway and Park Street entrances to the concert hall are at or near the end of useful life and require seismic as well as cosmetic and electrical upgrades. Project scope includes the replacement of the manual letter boards with electronic displays. This

project will receive \$1.5 million in funding through an intergovernmental agreement with the City of Portland and Prosper Portland.

- Headset Upgrade #8N095: This project will replace the communication system in the Keller Auditorium, Newmark Theatre, and Winningstad Theatre. The current headsets are 20-30 years old and are no longer compatible with the change from analog to digital stage equipment.
- Keller Chiller #8R247: Project budget has increased based on full design and equipment cost estimates.
- Newmark Sound System #8R128: Project budget has increased based on full design and equipment cost estimates.
- Keller Café #85112: Project schedule has shifted, resulting in an increase in the current year budget.
- Arlene Schnitzer Concert Hall Piano Replacement #8R216: Project schedule has shifted, resulting in an increase in the current year budget.
- Newmark Piano Replacement #8R217: Project schedule has shifted, resulting in an increase in the current year budget.
- Keller Elevator Modernizations #8R175: Project scope has been reduced to fund the ASCH Acoustical Enhancement project.
- Antoinette Hatfield Hall Digital Signage #P5TBD82: Project has been eliminated to fund the ASCH Acoustical Enhancement project.

This action amends the FY 2019-20 through 2023-24 Capital Improvement Plan and increases the Portland's Centers for the Arts Fund contingency by \$498,000. Attachment 3 outlines the Capital Projects changes requested.

#### Property and Environmental Services - Capital Improvement Plan Changes

The following Capital Improvement Projects require revision as outlined below:

- MCS Concrete Pad Replacement (SMC008): This project will take place over two years and has an estimated cost of \$500,000 each of the two years. The project is a major removal and replacement of a concrete pad for Bay 2 at Metro Central. Project costs will be offset by cost reductions in other capital projects.
- Fleet (70001S): A loader owned by a contract operator had to be retired and instead of changing the contract with the Operator to have them purchase a new loader, Metro determined it would be better to purchase the equipment directly. Total price of the Loader, \$380,000, needs to be added to the Fleet current year budget.
- Land Acquisition (SWTBD): \$3,000,000 was budgeted for the current year as a placeholder for possible purchase opportunities. It has become apparent that not all of the funds will be required for land purchases in FY 2019-20. The placeholder amount is being reduced by \$330,000 to fund other projects.
- Metro Paint Processing Room Expansion (SWTBD16): The project has been delayed due to prioritization and the expectation is that only a small amount of money will be spent in the current year. Project costs of \$200,000 are being redirected to the two projects listed above in FY 2019-20.
- New Facility CRC Design (SWTBD18): The project has been delayed for at least a year to receive more input from leadership. Project costs of \$250,000 are being redirected to the two projects listed above in FY 2019-20.
- MSS and MCS Pest Prevention Engineering & Design (SWTBD28 and SWTBD29): The two projects have been delayed a year due to project prioritization. Project costs of \$50,000 per project are being redirected to the two projects listed above in FY 2019-20.

This action amends the FY 2019-20 through 2023-24 Capital Improvement Plan. Attachment 4 outlines the Capital Projects changes requested.

*The Oregon Zoo - Capital Improvement Plan Changes*

The following Capital Improvement Projects require revision as outlined below:

- Boardwalk Repairs (Z0093): An additional \$110,000 of repairs to the Zoo boardwalk are needed due to conditions found during structural member replacements on the boardwalk. The conditions noted called for re-scoping, proposal submission, and navigating emergency contract procurement for the additional work and contract amount in order to get the boardwalk in safe operating condition. The additional costs will be absorbed by a reduction in other maintenance and repairs cost.
- CT Scanner (ZOOTBD): A \$285,400 CT Scanner for the Zoo Veterinary Hospital is needed to provide superior diagnostic capabilities and allow veterinary staff to diagnose and treat health issues for the zoo's animal collection. Due to the complexity of our collection, the equipment will be flexible and allow imaging of various sizes and tissue densities. The additional costs will be absorbed by a reduction in other materials and services costs.

This action amends the FY 2019-20 through 2023-24 Capital Improvement Plan. Attachment 5 outlines the Capital Projects changes requested.

**ATTACHMENTS**

- Resolution 19-5017
- Exhibit A – Schedule of Appropriations
- Exhibit B – Schedule of FTE
- Attachments 1-5 Capital Project Details

**Mid Year Amendment FY 2019-20 BUDGET**  
**Capital Project Detail**

**Parks and Natural Areas**

Attachment 1

Resolution 19-5017

New? Y/N	Project ID	Project Title	GL Acct	Fund ID	Dept ID	Est. End Date						Source of Funding	Other Project Comments
							2019	2020	2021	2022	2023		
N	TEMP98	Natural Areas Acquisition	570000	351	2800	6/30/2020		3,000,000				Contingency & M&S	
Y	LA141	Blue Lake Master Plan	524000	617	3310	6/30/2020		100,000				Reduction of other projects	
N	PBL008	Blue Lake Shoreline Walkway	524000	617	3310			0				Delay/canceled projects	
N	PBL002	Blue Lake Fencing	524000	617	3310			0				Delay/canceled projects	
N	PBL004	Blue Lake Inclusive Play Assessments	524000	617	3310			0				Delay/canceled projects	

**Mid Year Amendment FY 2019-20 BUDGET**  
**Capital Project Detail**

**Oregon Convention Center**

Attachment 2

Resolution 19-5017

New? Y/N	Project ID	Project Title	GL Acct	Fund ID	Dept ID	Est. End Date						Source of Funding	Other Project Comments
							2020	2021	2022	2023	2024		
N	8R207D	VT Elevator Modernizations (#1)	526100	550	55999	6/30/2020	150,000						
N	8R207B	VT: Escalator Safety Skirt Brush	526100	550	55999	6/30/2020	65,000						
N	8R207C	VT: Elevator Door & Operator Replacement	562100	550	55999	6/30/2020	350,000						
N	8R208	Dragon Café HVAC & Space Mods	526100	550	55999	6/30/2020	655,000						
N	8R213	Orbit Café Improvements	526100	550	55999	6/30/2020	852,000						
N	8R224A	Space Planning-Staff Support Area: King BR & Admin Lobby	526100	550	55999	6/30/2021	300,000	450,000					
N	8R224	Space Planning-Design	526100	550	55999	6/30/2020	147,000						
N	8R224B	Space Planning-Guest Services Renovation	526100	550	55999	6/30/2021	230,000	1,020,000					
N	8R082	Major Renovation	526100	550	55999	6/30/2020	8,960,000						

**Mid Year Amendment FY 2019-20 BUDGET**  
**Capital Project Detail**

**Portland's 5 Centers for the Arts**

Attachment 3

Resolution 19-5017

New? Y/N	Project ID	Project Title	GL Acct	Fund ID	Dept ID	Est. End Date						Source of Funding	Other Project Comments
							2020	2021	2022	2023	2024		
Y	8R220	ASCH Broadway and Park Marquees	574000	554	58999	6/30/2021	350,000	1,174,000					
Y	8N095	Clear-Com Headset Upgrade	574000	554	58999	6/30/2020	110,000						
N	8R247	Keller Chiller	574000	554	58999	6/30/2020	2,188,000						
N	8R128	Newmark Sound System	574000	554	58999	6/30/2020	275,000						
N	8R092	ASCH Acoustical Enhancements	574000	554	58999	6/30/2021	1,800,000	6,540,000					
N	85112	Keller Café	574000	554	58999	6/30/2020	329,000						
N	8R216	ASCH Piano Replacement	574000	554	58999	6/30/2020	200,000						
N	8R217	Newmark Piano Replacement	574000	554	58999	6/30/2020	150,000						
N	8R175	Keller Elevator Modernizations	526100	554	58999	6/30/2021	250,000	100,000					
N	P5TBD82	AHH Digital Signage	574000	554	58999	n/a		0	0				



**Mid Year Amendment FY 2019-20 BUDGET**  
**Capital Project Detail**

**Property and Environmental Services**

Attachment 4

Resolution 19-5017

New? Y/N	Project ID	Project Title	GL Acct	Fund ID	Dept ID	Est. End Date						Source of Funding	Other Project Comments
							2019	2020	2021	2022	2023		
Y	SMC008	Major concrete removal and installation for MCS	571000	534	34100	12/1/2020	0	500,000	500,000			Reduction of other CIP projects	
Y	700015	Fleet: Caterpillar Loader	574000	536	34100	12/31/2019	0	380,000				Reduction of other CIP projects	
N	SWTBD08	SW System Land Acquisition	570000	536	34100	6/30/2024	0	0	5,000,000	5,000,000	5,000,000	N/A	
N	SWTBD16	Metro Paint Processing Room Expansion	571000	536	34100	6/30/2023	0	50,000	450,000	900,000	200,000	N/A	
N	SWTBD18	New Facility CRC Design	571000	536	34100	6/30/2023	0	0	250,000	1,000,000	750,000	N/A	
N	SWTBD28	MSS Pest Prevention Engineering & Design	571000	536	34100	6/30/2022	0	0	200,000	100,000		N/A	
N	SWTBD29	MCS Pest Prevention Engineering & Design	571000	536	34100	6/30/2022	0	0	200,000	100,000		N/A	

**Mid Year Amendment FY 2019-20 BUDGET**  
**Capital Project Detail**

**Oregon Zoo**

Attachment 5

Resolution 19-5017

New? Y/N	Project ID	Project Title	GL Acct	Fund ID	Dept ID	Est. End Date						Source of Funding	Other Project Comments
							2019	2020	2021	2022	2023		
N	ZOO93	Boardwalk Repairs	526030	120	22100	6/30/2020	110,000					Operating Expense	
Y	TBD	Vet CT Scanner	574000	120	21300	6/30/2020	285,400					Operating Expense	

Agenda Item No. 5.2

**Resolution No. 19-5021**, For the Purpose of Adopting the  
List of Solid Waste Designated Facilities of the Solid Waste  
System and to Remove Riverbend Landfill pursuant to  
Metro Code Chapter 5.05

*Resolutions*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE LIST	)	RESOLUTION NO. 19-5021
OF DESIGNATED FACILITIES OF THE SOLID	)	
WASTE SYSTEM AND TO REMOVE	)	Introduced by Acting Chief Operating Officer
RIVERBEND LANDFILL PURSUANT TO	)	Andrew Scott in concurrence with Council
METRO CODE CHAPTER 5.05	)	President Lynn Peterson

WHEREAS, Metro Code Chapter 5.05 states that no person may transport solid waste generated within Metro to a solid waste facility or disposal site unless it is a designated facility or the person has obtained a non-system license; and

WHEREAS, Metro regulates the solid waste generated within the region that is transported outside of its jurisdictional boundary through non-system licenses and designated facility agreements, pursuant to Metro's statutory and charter authority as set forth in Metro Code Chapter 5.05; and

WHEREAS, on October 23, 2014, the Metro Council adopted a list of designated facilities of the solid waste system that included Coffin Butte Landfill, Riverbend Landfill, Columbia Ridge Landfill, Cowlitz County Headquarters Landfill, Finley Buttes Regional Landfill, Hillsboro Landfill, Roosevelt Regional Landfill, Tualatin Valley Waste Recovery, and Wasco County Landfill; and

WHEREAS, Metro Code Section 5.05.060 states that the Metro Council will consider the list of designated facilities for adoption by resolution at least every five years or anytime there is a proposed change to the list as provided in Metro Code Chapter 5.05; and

WHEREAS, Metro Code Section 5.05.080 states that the Metro Council may remove a facility from the designated facilities list by its own motion; and

WHEREAS, Metro's landfill capacity policy prohibits disposal of waste generated within the Metro region at a new or limited capacity landfill in order to conserve limited land and resources in and around the Metro region; and

WHEREAS, Riverbend Landfill meets the definition of a "limited capacity landfill" as defined in Metro Code and is therefore ineligible to be a designated facility; and

WHEREAS, the Chief Operating Officer recommends amending the designated facilities list to remove Riverbend Landfill and adopting the list of solid waste designated facilities attached as Exhibit A; now therefore,

BE IT RESOLVED that the Metro Council:

1. Removes Riverbend Landfill from the list of designated facilities of the solid waste system.
2. Adopts the list of designated facilities attached as Exhibit A, effective January 1, 2020 pursuant to Metro Code Section 5.05.060:
3. Authorizes the Chief Operating Officer to execute an agreement between Metro and a designated facility that includes putrescible waste.

ADOPTED by the Metro Council this \_\_\_\_\_ day of November, 2019.

---

Lynn Peterson, Council President

Approved as to Form:

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Carrie MacLaren, Metro Attorney

# Exhibit A to Resolution No. 19-5021

## Designated Facilities of Metro's Solid Waste System

*Effective January 1, 2020*

The Metro Council has found that the following disposal sites and solid waste facilities meet the criteria set forth in Metro Code Section 5.05.060 and are designated as part of Metro's solid waste system. In accordance with Metro Resolution No. 19-5021, this list of designated facilities is hereby effective on January 1, 2020.

### I. Disposal sites and solid waste facilities owned or operated by Metro.

- |  |   |
|--|---|
| 1) <u>Metro Central Station</u><br>6161 NW 61 <sup>st</sup> Avenue<br>Portland, Oregon 97210 | 2) <u>Metro South Station</u><br>2001 Washington<br>Oregon City, Oregon 97045 |
|--|---|

### II. Disposal sites and solid waste facilities located within Metro's boundary.

All disposal sites and solid waste facilities located within the Metro boundary that are subject to Metro regulatory authority under Chapter 5.01. All such designated facilities are required to obtain a Metro-issued license or franchise unless otherwise exempt from such requirement.

### III. Disposal sites and solid waste facilities located outside of Metro's boundary.

The out-of-region designated facilities listed below are authorized to accept certain wastes generated from inside the Metro boundary as specified by and subject to an agreement between Metro and the owner of the disposal site or solid waste facility. In addition, Metro may issue non-system licenses to waste generators or persons transporting waste to these or other disposal sites or solid waste facilities.

- |   |   |
|---|---|
| 1) <u>Coffin Butte Landfill</u><br>29175 Coffin Butte Road<br>Corvallis, Oregon 97330                   | 5) <u>Hillsboro Landfill</u><br>3205 SE Minter Bridge Road<br>Hillsboro, Oregon 97123             |
| 2) <u>Columbia Ridge Landfill</u><br>18177 Cedar Springs Lane<br>Arlington, Oregon 97812                | 6) <u>Roosevelt Regional Landfill</u><br>500 Roosevelt Grade Road<br>Roosevelt, Washington 99356  |
| 3) <u>Cowlitz County Headquarters Landfill</u><br>3434 Silverlake Road<br>Castle Rock, Washington 98611 | 7) <u>Tualatin Valley Waste Recovery</u><br>3205 SE Minter Bridge Road<br>Hillsboro, Oregon 97123 |
| 4) <u>Finley Buttes Regional Landfill</u><br>73221 Bombing Range Road<br>Boardman, Oregon 97818         | 8) <u>Wasco County Landfill</u><br>2550 Steele Road<br>The Dalles, Oregon 97058                   |

IN CONSIDERATION OF RESOLUTION NO. 19-5021, FOR THE PURPOSE OF ADOPTING THE LIST OF DESIGNATED FACILITIES OF THE SOLID WASTE SYSTEM AND TO REMOVE RIVERBEND LANDFILL PURSUANT TO METRO CODE CHAPTER 5.05.

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Date: November 7, 2019  
Department: Property and Environmental  
Services (PES)  
Meeting Date: November 21, 2019

Prepared by: Hila Ritter, 503-797-1862,  
[hila.ritter@oregonmetro.gov](mailto:hila.ritter@oregonmetro.gov)  
Presenter(s): Roy Brower and Hila Ritter  
Length: 10 minutes

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### **ISSUE STATEMENT**

Metro Council seeks the adoption of the solid waste designated facilities list and the removal of Riverbend Landfill from the list pursuant to Metro Code Chapter 5.05.

### **ACTION REQUESTED**

Approve Resolution No. 19-5021 to adopt the solid waste designated facilities list, remove Riverbend Landfill from the list, and authorize Metro's Chief Operating Officer to execute agreements with certain designated facilities that may include the acceptance of putrescible waste.

### **IDENTIFIED POLICY OUTCOMES**

Approval of this resolution will implement Metro's landfill capacity policy (Ordinance No. 17-1401) and prohibit Metro area waste from being disposed at new or limited capacity landfills. This resolution will also establish a list of solid waste facilities and disposal sites that Council authorizes to accept certain types of waste from the region, and act as Metro's agent to collect and remit regional system fees and excise taxes. These out-of-region facilities become designated as part of Metro's solid waste system by Council adoption.

### **POLICY QUESTIONS**

1. Should the Metro Council adopt the proposed list of designated facilities, attached as Exhibit A, to designate eight solid waste facilities and disposal sites outside of the Metro region as part of Metro's solid waste system?
2. Should the Metro Council remove Riverbend Landfill from the list of designated facilities according to the provisions of Metro Code Chapter 5.05 and as described in this resolution?
3. Should the Metro Council authorize the Chief Operating Officer to execute an agreement with a designated facility that may include the acceptance of putrescible waste?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the resolution as proposed to adopt the list of designated facilities and remove Riverbend Landfill from the list.
2. Amend the resolution to adopt a list of designated facilities that is different than that recommended by staff.

3. Do not approve Resolution No. 19-5021.

### **STAFF RECOMMENDATIONS**

Staff recommends that Metro Council adopt Resolution No. 19-5021 to approve the designated facilities list. If Metro Council approves this resolution, the adopted list will be effective January 1, 2020.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Designation of a solid waste facility or disposal site outside the Metro region requires Metro Council approval. If the Metro Council designates a facility, the Chief Operating Officer may execute a designated facility agreement (DFA) between Metro and the designated facility that allows the facility to accept Metro region waste and to collect Metro's regional system fees and excise taxes on Metro's behalf. As of the date of this report, nine solid waste facilities are designated outside of the Metro region:

1. Coffin Butte Landfill, Benton County, Oregon – Republic Services
2. Columbia Ridge Landfill, Gilliam County, Oregon - Waste Management
3. Cowlitz County Headquarters Landfill, Cowlitz County - Washington, Cowlitz County
4. Finley Buttes Regional Landfill, Morrow County, Oregon - Waste Connections
5. Hillsboro Landfill, Washington County, Oregon - Waste Management
6. Riverbend Landfill, Yamhill County, Oregon - Waste Management
7. Roosevelt Regional Landfill, Klickitat County, Washington – Republic Services
8. Tualatin Valley Waste Recovery, Washington County, Oregon - Waste Management
9. Wasco County Landfill, Wasco County, Oregon – Waste Connections

On July 25, 2019, Metro notified Waste Management that Riverbend Landfill was no longer eligible for inclusion on the designated facilities list because it is a limited capacity landfill, as defined in Metro Code. With the exception of Riverbend Landfill all of the other facilities on the list meet the criteria in Code and do not conflict with Metro's landfill capacity policy. A fuller discussion of the Landfill Capacity Policy is provided later in this report.

In addition to adopting the amended designated facilities list, the Chief Operating Officer seeks to execute new agreements with the designated facilities. These updated DFAs will better align existing language among the agreements for increased consistency as well as incorporate policy decisions made since Metro Council last adopted the list in 2014, such as the adoption of the 2030 Regional Waste Plan and the adoption of a Business Food Waste Requirement. Additionally, Metro's long-term disposal contract with Waste Management expires on December 31, 2019. That disposal contract required Metro to send at least 90 percent of the region's putrescible waste to a disposal site owned by Waste Management. Beginning in 2020, Metro's new disposal contract with Waste Management covers only the waste received at Metro transfer stations. Therefore, staff seeks to include the acceptance of putrescible waste in certain DFAs to reduce the need for haulers to individually obtain a non-system license from Metro.

The proposed DFAs contain changes that are largely updates, clarifications, and alignment of expectations across designated facilities including:



- A facility that is authorized to accept putrescible waste may receive it from the Metro area.
- Metro area waste may be accepted for disposal, processing, or transfer.
- All records are subject to inspection or audit by Metro.
- Cleanup material may be accepted from a recurring event.
- Definitions found in Metro Code Chapter 5.00 have been removed from the agreements.
- Terminology has been updated for clarity and modernization.

## **LANDFILL CAPACITY POLICY**

In December 2014, the Metro Council approved Resolution 14-4589, which directed Metro staff to develop a landfill capacity policy to evaluate the disposal capacity at new, existing or expanded landfills and to recommend changes to Metro Code to implement the policy. Council was aware that many existing landfills available for the disposal of waste from the Metro region had well over 100 years of capacity, and that the region's waste should not contribute unnecessarily to the expansion of any specific landfill or to the development of a new one. Metro Council was also concerned that Riverbend Landfill was almost at capacity and was proceeding with expansion plans. In 2016, 26 percent of total Metro area waste transported for disposal at a landfill was transported to Riverbend, which represented 58 percent of the waste received at Riverbend in that year.

In 2015 and early 2016, at the direction of Council, staff studied the issue of landfill capacity, including how it is calculated and how it is defined. Through Resolution No. 16-4710, Metro Council directed staff to develop a policy that keeps Metro area waste from contributing to the expansion of any existing landfill or the creation of any new landfill. The policy approach was based on staff research, including scenario impact modeling, and input from Metro Council, local governments, business groups and other stakeholders.

In 2017, Metro Council approved Ordinance No. 17-1401 and associated Code changes to establish Metro's landfill capacity policy which states, in part, that if a landfill operator seeks approval from the Oregon Department of Environmental Quality (DEQ) for an expansion of a landfill, and that approval is not given by May 25, 2017, then the landfill is considered a "limited capacity landfill." Beginning in 2020, a limited capacity landfill is ineligible for use as a disposal site for Metro area waste.

Riverbend Landfill sought an expansion and received approval from DEQ for that expansion after May 25, 2017. Riverbend Landfill is thus a "limited capacity landfill" per Metro Code Section 5.05.055, and Metro area waste is prohibited from being disposed there after January 1, 2020.

## **BACKGROUND**

The proposed designated facility list in Exhibit A, effective January 1, 2020, includes Metro's transfer stations and a general description of all solid waste facilities located

within the Metro region that are subject to regulatory authority under Chapter 5.01 (this applies to all solid waste facilities in the region that are required to obtain a Metro-issued license, franchise, or are otherwise exempt from such requirements). The list also includes the following out-of-region designated facilities: Coffin Butte Landfill, Columbia Ridge Landfill, Cowlitz County Headquarters Landfill, Finley Buttes Regional Landfill, Hillsboro Landfill, Roosevelt Regional Landfill, Tualatin Valley Waste Recovery, and Wasco County Landfill. The effective date of January 1, 2020, prospectively removes Riverbend Landfill from the designated facility list upon the expiration of its current DFA.

### **Riverbend Landfill, DFA No. 932399**

Waste Management of Oregon, Inc., is the owner and operator of Riverbend Landfill located in Yamhill County. The landfill first began accepting Metro area waste as a Metro designated facility in 2008. Staff soon became aware of growing concern over the impact of Riverbend Landfill's operations on surrounding neighbors and farming activities. This escalated when Waste Management of Oregon applied to DEQ to expand the footprint of the landfill to allow for additional capacity. Riverbend Landfill faces ongoing legal issues regarding its requests to expand. Community members have appealed and legally challenged Yamhill County's decision to allow the landfill's proposed expansion. In addition, community members were vocal opponents of Metro's decision to allow the region's waste to be disposed at Riverbend Landfill. Yamhill County's land use approval to allow Riverbend Landfill to expand has been in litigation since 2010 and was remanded back to the county by the Oregon Supreme Court earlier this year. It is unclear whether Waste Management will seek another approval from the county given the Court's decision.

In 2014, Metro Council adopted Resolution 14-4589 which directed Metro staff to research and develop a Landfill Capacity Policy that would determine which landfills are eligible to receive Metro area waste. Riverbend Landfill applied to DEQ in early 2017 to amend its site development plan to expand its landfill and DEQ approved the expansion in that same year. This approval to expand, which came after May 25, 2017, resulted in Riverbend becoming a limited capacity landfill as defined in Metro Code and thus ineligible to receive Metro area waste after January 1, 2020. Metro staff recommends removing Riverbend Landfill from the list of designated facilities.

### **Proposed Designated Facilities of Metro's Solid Waste System**

The Council considered the factors described in Metro Code Section 5.05.060 when it initially added the following facilities to the designation list and, as such, it is not necessary to further review those factors with respect to including those facilities on the list in Exhibit A. Instead, a short description of these facilities is provided below.

#### **1. Coffin Butte Landfill, DFA No. 932397**

Republic Services, is the owner and operator of Coffin Butte Landfill. Coffin Butte Landfill is an existing disposal site located in Benton County (about 75 miles from Metro Regional Center). Metro has executed a DFA with the landfill that allows it to accept certain types of waste (for example, non-putrescible processing residual, special waste, cleanup material, inert waste, etc.) for disposal. Republic Services is well known to Metro and has extensive experience in recycling, solid waste collection, transfer and disposal. Coffin Butte Landfill is

a permitted Subtitle D disposal site under the Resource Conservation and Recovery Act (RCRA), which establishes national landfill standards.

**2. Columbia Ridge Landfill, DFA No. 932396**

The applicant, Waste Management Disposal Services of Oregon, Inc., is the owner and operator of Columbia Ridge, an existing disposal site located in Gilliam County (about 141 miles from Metro Regional Center). Metro has executed a DFA with the landfill that allows it to accept certain types of waste for disposal. The applicant is well known to Metro and has extensive experience in recycling, solid waste collection, transfer and disposal. Columbia Ridge Landfill is a permitted Subtitle D disposal site under RCRA.

**3. Cowlitz County Headquarters Landfill, DFA No. - 933507**

The applicant, Cowlitz County Public Works, is the owner and operator of Cowlitz County Headquarters Landfill, an existing disposal site located in Cowlitz County, Washington (about 59 miles from Metro Regional Center). Metro has executed a DFA with the landfill that allows it to accept certain types of waste for disposal. The applicant is a public organization that is well known to Metro. Cowlitz County Headquarters Landfill is a permitted Subtitle D disposal site under RCRA.

**4. Finley Buttes Regional Landfill, DFA No. 932398**

The applicant, Waste Connections, is the owner and operator of Finley Buttes Regional Landfill, an existing disposal site located in Morrow County (about 168 miles from Metro Regional Center). Metro has executed a DFA with the landfill that allows it to accept certain types of waste for disposal. The applicant is well known to Metro and has extensive experience in recycling, solid waste collection, transfer and disposal. Finley Buttes Landfill is a permitted Subtitle D disposal site under the RCRA.

**5. Hillsboro Landfill, DFA No. 932404**

The applicant, Waste Management of Oregon, Inc., is the owner and operator of Hillsboro Landfill, disposal site located in Hillsboro, Oregon (about 24 miles from Metro Regional Center). Metro has executed a DFA with the landfill that allows it to accept certain types of waste for disposal. The facility is a special purpose landfill and is not permitted by DEQ to accept putrescible waste. The applicant is well known to Metro and has extensive experience in recycling, solid waste collection, transfer and disposal. Hillsboro Landfill is designed to meet Subtitle D disposal site standards under RCRA.

**6. Roosevelt Regional Landfill - DFA No. 932400**

The applicant, Republic Services, is the owner and operator of Roosevelt Regional Landfill. Roosevelt Regional Landfill is an existing disposal site located near Roosevelt, Washington (about 141 miles from Metro Regional Center). Metro has executed a DFA with the landfill that allows it to accept certain types of waste for disposal. The applicant is well known to Metro and has extensive experience in recycling, solid waste collection, transfer and disposal. Roosevelt Landfill is a permitted Subtitle D disposal site under the RCRA.

**7. Tualatin Valley Waste Recovery (TVWR), DFA No. 933672**

The applicant, Waste Management of Oregon, Inc., is the owner and operator of Tualatin Valley Waste Recovery (TVWR), an existing material recovery facility located in Hillsboro, Oregon (about 24 miles from Metro Regional Center). Metro has executed a DFA with the facility that allows it to accept non-putrescible waste and source separated recyclables for

material recovery processing. The applicant is well known to Metro and has extensive experience in recycling, solid waste collection, transfer and disposal.

#### **8. Wasco County Landfill, DFA No. 932401**

The applicant, Waste Connections, is the owner and operator of Wasco County Landfill, an existing disposal site located in Wasco County (about 88 miles from Metro Regional Center). Metro has executed a DFA with the landfill that allows it to accept certain types of waste for disposal. The applicant is well known to Metro and has extensive experience in recycling, solid waste collection, transfer and disposal. Wasco Landfill is a permitted Subtitle D disposal site under RCRA.

#### **Proposed Designated Facilities of Metro's Solid Waste System - Conclusion**

Metro conducts site inspections at these landfills and material recovery facility and staff finds them to be well-run operations with no observable reason to suspect impending problems or issues. The landfills use operational practices and management controls that are typical of RCRA Subtitle D landfills, and the material recovery facility also uses appropriate practices and controls that are typical for a recycling facility, for the proper management and disposal of waste and adequate for the protection of health and the environment. The landfills and material recovery facility are permitted by DEQ or Washington's Department of Ecology and those agencies have reported that there are no current enforcement or compliance issues associated with these sites, and that none of the landfills have sought expansion. Therefore, none of these landfills are a limited capacity landfill as defined in Metro Code.

Staff concludes that these applicants have demonstrated they are fully qualified to operate these facilities in a competent and efficient manner and that the environmental risk associated with the use of these disposal sites and material recovery facility are regulated by the appropriate local and state authorities.

#### **ATTACHMENTS**

- A. Exhibit A: Designated Facilities of Metro's Solid Waste System
- B. Attachment 1 to Staff Report: Map

HR

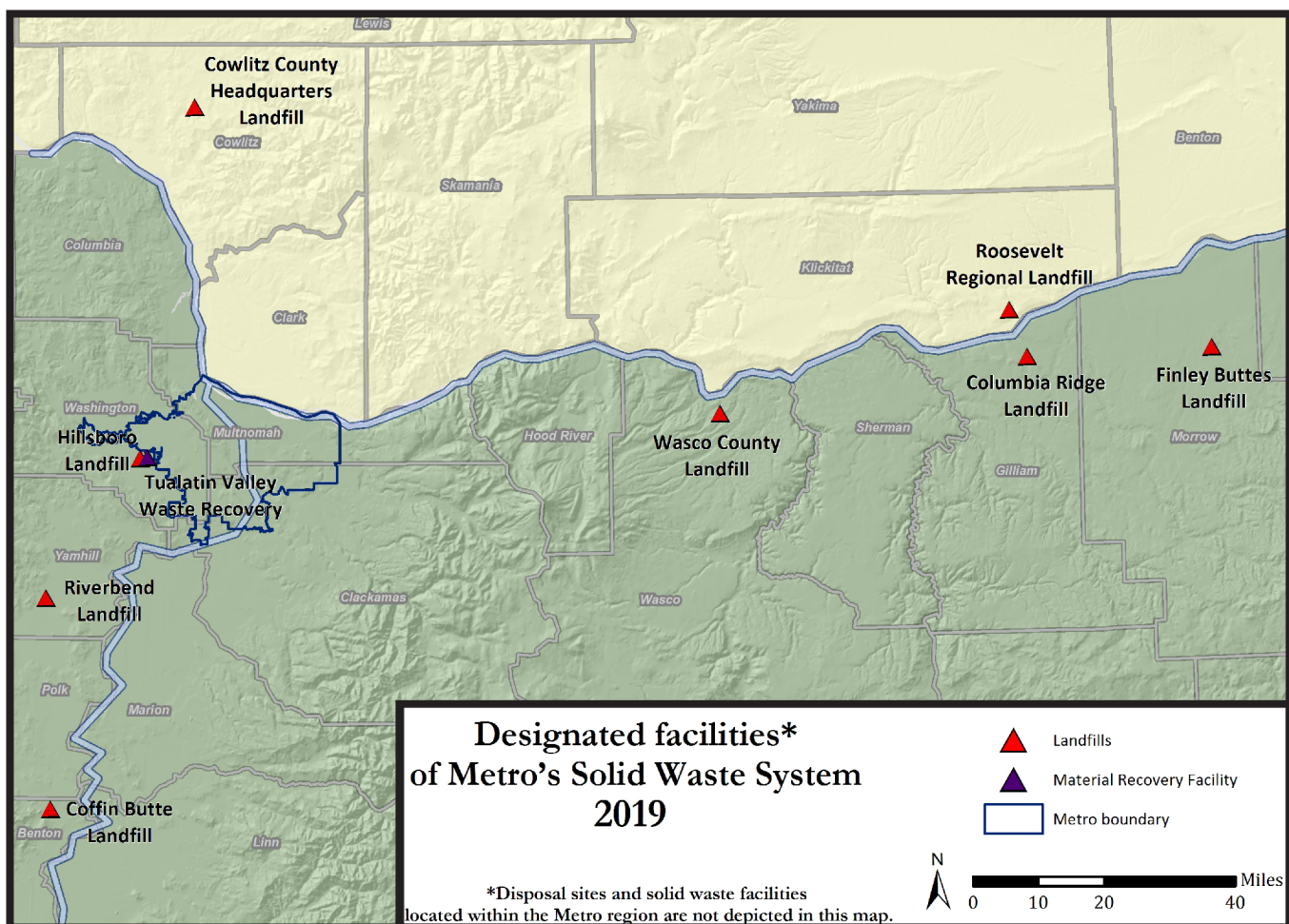
# Attachment 1: Map



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

Attachment 1 to Staff Report for Resolution No. 19-5021



2019 Designated Facilities of Metro's Solid Waste System that are outside the Metro region.

Agenda Item No. 6.1

**Ordinance No. 19-1438**, For the Purpose of Amending  
Metro Code Chapter 5.00 to Update Certain Terms and  
Definitions

*Ordinances (Second Reading)*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 19-1438
CODE CHAPTER 5.00 TO UPDATE CERTAIN	)	
TERMS AND DEFINITIONS	)	Introduced by Acting Chief Operating Officer
	)	Andrew Scott in concurrence with Council
	)	President Lynn Peterson

WHEREAS, the Metro solid waste code is set forth in Title V of the Metro Code; and

WHEREAS, Metro Code Chapter 5.00 contains the definitions for the solid waste code; and

WHEREAS, updating Metro Code Chapter 5.00 with various housekeeping changes will improve clarity, consistency and make the code easier to understand by the public; and

WHEREAS, the various amendments to this chapter include revising the definitions of “rate” and “regional system fee” to clarify the terms; and

WHEREAS, staff solicited input from the public on the proposed changes to Metro Code Chapter 5.00 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

WHEREAS, following the close of the 30-day comment period, a regulated entity noted that the term “available regional tonnage” in Metro Code Section 5.01.195 (tonnage allocation process) was not defined in code and was ambiguous because that term could refer to either the *region’s* total tonnage or to the amount of the region’s tonnage *remaining* after Metro had reserved at least 40 percent for the Metro transfer stations; and

WHEREAS, the various amendments add a definition for “available regional tonnage” to remove any ambiguity and clarify that the term means the amount of the region’s tonnage *remaining* for allocation to privately owned transfer stations after Metro has first reserved at least 40 percent for the Metro transfer stations; and

WHEREAS, the Chief Operating Officer recommends that the Metro Council adopt these amendments to Metro Code Chapter 5.00 to improve clarity and consistency and to conform with other updates and improvements proposed under companion Ordinance Nos. 19-1439 and 19-1440; and

WHEREAS, the Metro Council finds that the amendments to Metro Code Chapter 5.00 provide greater clarity for the public and further the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.00 is amended as set forth in the attached Exhibit A.

ADOPTED by the Metro Council this 21<sup>st</sup> day of November 2019.



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Lynn Peterson, Council President

Attest:

Approved as to Form:

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Sara Farrokhzadian, Recording Secretary

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Carrie MacLaren, Metro Attorney

# EXHIBIT A TO ORDINANCE NO. 19-1438

## CHAPTER 5.00

### SOLID WASTE DEFINITIONS

#### 5.00.010 Definitions

For the purposes of Title V Solid Waste, unless the context requires otherwise, the following terms have the meaning indicated:

**Activity** means a primary operation or function that is performed in a solid waste facility or at a disposal site, including but not limited to resource recovery, composting, energy recovery, and other types of processing; recycling; transfer; incineration; and disposal of solid waste. This term does not include operations or functions that serve to support the primary activity, such as segregation.

**Agonomic application rate** means land application of no more than the optimum quantity per acre of compost, sludge or other materials. In no case may the application adversely impact the waters of the State. The application must be designed to:

- (1) Provide the amount of nutrient, usually nitrogen, needed by crops or other plantings, to prevent controllable loss of nutrients to the environment;
- (2) Condition and improve the soil comparable to that attained by commonly used soil amendments; or
- (3) Adjust soil pH to desired levels.

**Alternative Program** means a solid waste management service proposed by a local government that differs from the service required under Chapter 5.10.

**Authorized official** means a person authorized to issue citations under Chapter 5.09.

**Available regional tonnage** means the amount of putrescible solid waste tonnage that Metro may allocate to privately owned transfer stations after Metro has first reserved the applicable minimum amount of putrescible tonnage for the Metro transfer stations.

**Business** means any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies and excluding businesses whose primary office is located in a residence.

**Business recycling service customer** means a person who enters into a service agreement with a waste hauler or recycler for business recycling services.

**Chief Operating Officer** means the Metro Chief Operating Officer or the Chief Operating Officer's designee.

**Clean fill** means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving that does not contain contaminants that could adversely impact the waters

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of the State or public health. This term does not include putrescible waste, cleanup material, construction and demolition waste, or industrial waste.

**Cleanup material** means solid waste resulting from the excavation or cleanup of releases of hazardous substances into the environment, including street sweeping waste, non-hazardous contaminated soils that do not qualify as clean fill (such as petroleum contaminated soils) and contaminated debris resulting from the cleanup of chemical spills or releases. This term does not include solid waste generated by manufacturing or industrial processes.

**Closure** means restoring a solid waste facility or a disposal site to its condition before licensed or franchised solid waste activities began at the site. Closure includes, but is not limited to, the removal of all accumulations of solid waste and recyclable materials from the site.

**Code** means the Metro Code.

**Community enhancement fee** or **enhancement fee** means the fee collected in addition to general disposal rates that pays for rehabilitation and enhancement projects in the areas surrounding solid waste facilities and disposal sites.

**Compost** means the stabilized product of composting.

**Composting** means the controlled biological decomposition of organic material.

**Conditionally exempt generator** (CEG) means a conditionally exempt small quantity generator as defined in 40 CFR 261.5.

**Council** means the Metro Council.

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

**Department** means Metro's Property and Environmental Services Department.

**Designated facility** means a facility in the system of solid waste facilities and disposal sites that Metro authorizes under Chapter 5.05 to accept waste generated within the jurisdiction of Metro.

**Direct haul** means the delivery of putrescible waste from a solid waste facility directly to Metro's contract operator for disposal of putrescible waste. Direct haul is an activity under Chapter 5.01.

**Disposal fee** means a fee that pays the direct unit costs of transportation and disposal of general purpose solid waste.

**Disposal site** means the land, buildings, and equipment used for the disposal of solid waste whether or not open to the public. This term does not include a solid waste facility.

**Electronic device** means:

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- (1) A computer monitor of any type having a viewable area greater than four inches measured diagonally;
- (2) A desktop computer or portable computer;
- (3) A television of any type having a viewable area greater than four inches measured diagonally; or
- (4) Any part of a clothes washer, clothes dryer, refrigerator, freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier.

**Energy recovery** means a type of resource recovery that is limited to methods in which all or a part of solid waste materials are processed to use the heat content or another form of energy.

**Facility** means the land, buildings, and equipment used for an activity.

**Franchise** means the grant of authority or privilege given by the Council to operate a disposal site, transfer station, energy recovery facility, or to conduct any other activity that requires authorization under Chapter 5.01.

**Franchisee** means the holder of a current, validly issued franchise granted by the Council under Chapter 5.01.

**Franchise fee** means the fee Metro charges the franchisee for the administration of the franchise.

**Hazardous substance** means any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC 9601 et seq., oil, as defined in ORS 465.200, and any substance designated by DEQ under ORS 465.400.

**Hazardous waste** has the meaning provided in ORS 466.005.

**Hearings officer** means a person that Metro designates to hear and decide cases under this title.

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

**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.

**License** means the permission given by the Council or Chief Operating Officer to operate a solid waste facility not otherwise exempted or requiring a franchise under Chapter 5.01.

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**Licensee** means the holder of a current, validly issued license granted by the Council or Chief Operating Officer under Chapter 5.01.

**Limited capacity landfill** means a landfill that has sought a site development plan amendment for expansion of the landfill capacity from the Oregon Department of Environmental Quality, and has not received approval from the Department by May 25, 2017, or the equivalent determination in another state. [Ord. 17-1401, Sec. 2.]

**Local government** means any city or county that is within Metro's jurisdiction, including the unincorporated areas of Clackamas, Multnomah, and Washington Counties.

**Local government action** means adoption of any ordinance, order, regulation, contract, or program affecting solid waste management.

**Material recovery** means a type of resource recovery that is limited to manual or mechanical methods of obtaining material from solid waste that still has useful physical or chemical properties and can be reused, recycled, or composted for some purpose. Material recovery includes obtaining material from solid waste that is used in the preparation of fuel, but excludes the extraction of heat content or other forms of energy from the material.

**Medical waste** means solid waste that is generated as a result of patient diagnosis, treatment or immunization of human beings or animals.

**Metro Central Station** is the Metro solid waste transfer and recycling station located at 6161 NW 61st Avenue, Portland, Oregon 97210.

**Metro South Station** is the Metro solid waste transfer and recycling station located at 2001 Washington Street, Oregon City, Oregon 97045.

**New landfill** means a landfill that receives its initial permission from DEQ to receive solid waste on or after May 25, 2017, or the equivalent determination in another state. [Ord. 17-1401, Sec. 2.]

**Non-commercial customer** means a person who is not primarily engaged in the business of collection or transportation of solid waste and who is not authorized by any federal, state or local government to perform such collection or transportation.

**Non-putrescible waste** means any waste that contains no more than trivial amounts of putrescible materials or minor amounts of putrescible materials contained in such a way that they can be easily separated from the remainder of the load without causing contamination of the load. This term includes construction and demolition waste. This term does not include cleanup material, source-separated recyclable materials, special waste, land clearing debris or yard debris.

**Non-system facility** means any solid waste facility, disposal site, transfer station, processing facility, recycling drop center, resource recovery facility or other facility for the disposal, recycling or other processing of solid waste if the facility is not part of the system.

**Non-system license** means the permission given by the Council or Chief Operating Officer to transport solid waste generated within the Metro boundary to a non-system facility.

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**Person** has the same meaning as in Metro Code Section 1.01.040. For any person other than an individual, the acts of the person's employees, contractors, and authorized agents are considered the acts of the person.

**Petroleum contaminated soil** means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. This term does not include soil that is contaminated with petroleum products but also contaminated with hazardous waste or radioactive waste.

**Process, processing, or processed** means a method or system of altering the form, condition or content of wastes, including but not limited to composting, vermiprocessing and other controlled methods of biological decomposition; classifying; separating; shredding, milling, pulverizing, or hydropulping. This term does not include incineration or mechanical volume reduction techniques such as baling and compaction.

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

**Processing residual** means the solid waste that remains after resource recovery has occurred and which is intended for disposal.

**Putrescible** means rapidly decomposable by microorganisms, 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.

**Putrescible waste** means waste containing putrescible material.

**Radioactive waste** means the same as defined in ORS 469.300.

**Rate** means the amount that a solid waste facility or disposal site charges to receive, process, transfer, or dispose of solid waste.

**Recoverable solid waste** means source-separated or homogeneous material accepted in a single transaction at Metro Central Station or at Metro South Station in a form that is usable by existing technologies (notwithstanding the presence of incidental amounts or types of contaminants) for reuse, recycling, controlled biological decomposition of organic material including composting and digestion, and the preparation of fuels that meet an engineering, industrial, or market specification. This term does not include mass burning, incineration in refuse derived fuel facilities, and similar methods of extracting energy from mixed solid wastes.

**Recyclable 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, recycled, or composted for the same or other purpose(s).

**Recycle or recycling** means any process by which waste materials are transformed into new products in such a manner that the original products may lose their identity.

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**Recycling drop center** means a facility that receives and temporarily stores multiple source-separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale. This term does not include a facility that processes source-separated recyclable materials.

**Regional Solid Waste Management Plan** or **RSWMP** means the Regional Solid Waste Management Plan adopted as a functional plan by Council and approved by DEQ.

**Regional system fee** means a fee that recovers the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.

**Reload** means the activity of receiving solid waste for the purpose of consolidating and transferring it to a solid waste facility.

**Required use order** means a written order issued pursuant to Chapter 5.05 requiring a waste hauler or other person to use a designated facility pursuant to the terms of the order.

**Residence** means the place where a person lives.

**Resource recovery** means a process by which useful material or energy resources are obtained from solid waste.

**Reuse** means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

**RSWMP requirement** means the portions of the Regional Solid Waste Management Plan that are binding on local governments as set forth in Chapter 5.10.

**Segregation** means the removal of prohibited wastes, unauthorized wastes, bulky material (such as but not limited to white goods and metals) incidental to the transfer of solid waste. Segregation does not include resource recovery or other processing of solid waste. The sole intent of segregation is not to separate useful material from the solid waste but to remove prohibited, unauthorized waste or bulky materials that could be hard to handle by either the facility personnel or operation equipment.

**Solid waste** means all putrescible and non-putrescible wastes, including without limitation, 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; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals; infectious waste; and other such wastes, including without limitation cleanup materials, commingled recyclable material, petroleum contaminated soil, special waste, source-separated recyclable material, land clearing debris and yard debris. This term does not include:

- (1) Hazardous wastes;
- (2) Radioactive wastes;

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- (3) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates; or
- (4) Explosives.

**Solid waste facility** means a facility at which solid waste is received for transfer, resource recovery, and/or processing. The term does not include disposal sites.

**Solid waste system facility** means a facility that Metro designates as part of Metro's system for the management and disposal of solid and liquid waste. This term includes, but is not limited to, all designated facilities set forth in Chapter 5.05 and any non-system facility that receives solid waste from within the Metro area, whether pursuant to an authorized non-system license or otherwise.

**Source separate** or **source separated** or **source separation** means that the person who last uses recyclable material separates the recyclable material from solid waste.

**Source-separated recyclable material** or **Source-separated recyclables** means solid waste that has been source separated by the waste generator for the purpose of reuse, recycling, or composting. This term includes (1) all homogenous loads of recyclable materials that have been source separated by material type for the purpose of recycling (i.e., source-sorted) and (2) residential and commercial commingled recyclable materials, which include only those recyclable material types that the local jurisdiction, where the materials were collected, permits to be mixed together in a single container as part of its residential curbside recyclable material collection program. This term does not include any other commingled recyclable materials.

**Special waste** means any waste (even though it may be part of a delivered load of waste) that falls within one or more of the following categories:

- (1) Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc.) of a type listed in 3 through 9 or 11 of this definition below.
- (2) Waste transported in a bulk tanker.
- (3) Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or includes 25 or more gallons of free liquid per load, whichever is more restrictive.
- (4) Containers (or drums) that once held commercial products or chemicals, unless the containers (or drums) are empty as provided in 40 CFR 261.7(b)(1).



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- (5) Sludge waste from septic tanks, food service, grease traps, or wastewater from commercial laundries, laundromats or car washes.
- (6) Waste from an industrial process.
- (7) Waste from a pollution control process.
- (8) Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in 1 through 7 or 9 of this definition.
- (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 disposal of wastes listed in 1 through 8 of this definition.
- (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).
- (11) Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4, but not empty containers so marked.
- (12) Any waste that requires extraordinary management or special handling. Examples of such special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products.
- (13) Medical waste.

**Standard recyclable materials** means newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, aluminum, container glass, high-grade office paper, tin/steel cans, yard debris, mixed scrap paper, milk cartons, plastic containers, milk jugs, phone books, magazines, and empty aerosol cans. **State** means the State of Oregon.

**Substantial compliance** means local government actions, on the whole, conform to the purposes of the performance standards in Chapter 5.10 and any failure to meet individual performance standard requirements is technical or minor in nature.

**System** means all facilities that Metro designates as part of its system for the management and disposal of solid and liquid waste. This includes, but is not limited to, the following:

- (1) Recycling and other volume reduction facilities;
- (2) Landfills, or other disposal means;
- (3) Resource recovery facilities (including steam production and electrical generating facilities using solid waste as fuel);

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- (4) Recycling and transfer stations;
- (5) Roads, water lines, wastewater lines and treatment facilities to the extent used to carry out the provisions of ORS chapter 268 and other applicable laws of the state of Oregon;
- (6) All buildings, fixtures, equipment, real property and personal property that Metro owns, leases, operates or uses to dispose of solid and liquid waste;
- (7) Designated facilities as provided in Chapter 5.05.

**Transaction** means a customer's use of a Metro transfer station disposal facility, hazardous waste facility, or household hazardous waste collection event, for the purpose of delivering for disposal a single load of solid or hazardous waste during a single visit from a single vehicle (whether or not accompanied by, or transporting, one or more trailers). A solid waste disposal transaction occurs when a customer enters a Metro transfer station facility, hazardous waste facility, or household hazardous waste collection event.

**Transaction fee** means the fee that Metro imposes for each transaction at a Metro transfer station to pay for related scalehouse costs.

**Transfer** means the activity of receiving solid waste for purposes of transferring it from one vehicle or container to another vehicle or container for transport. Transfer may include segregation, temporary storage, consolidation of solid waste from more than one vehicle, and compaction. This term does not include resource recovery or other processing of solid waste.

**Transfer station** means a solid waste facility whose primary activity includes, but is not limited to, the transfer of solid waste to a disposal site.

**Unacceptable waste** means waste that is either:

- (1) Prohibited from disposal at a disposal site by state or federal law, regulation, rule, code, permit or permit condition; or
- (2) Special waste without an approved special waste permit.

**Useful material** means material that still has useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and which, when separated from solid waste, is suitable for use in the same or other purpose(s). For purposes of this Code, cleanup materials are not useful materials. Types of useful materials include, but are not limited to:

- (1) Material that can be reused;
- (2) Recyclable material;
- (3) Organic material(s) suitable for controlled biological decomposition (such as for making compost);
- (4) Material used in the preparation of fuel;

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- (5) Material intended to be used, and which is in fact used, for construction or land reclamation (such as inert material for fill);
- (6) Material intended to be used, and which is in fact used, productively in landfill operations (such as roadbeds or alternative daily cover).

**Vermiprocessing** means a controlled method or system of biological processing that utilizes worms to consume and digest organic materials, and that produces worm castings for productive uses.

**Waste** means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose. For the purpose of Chapter 5.09, the term “waste” also includes any such material even if it is broken, recoverable, or recyclable.

**Waste hauler** means any person who is (1) franchised, licensed or permitted by a local government unit pursuant to state law to collect and haul solid waste; or (2) engaged, in whole or part, in the collection, transportation, delivery, or disposal of solid waste generated by such person or others within the Metro boundary.

**Waste hierarchy** means first, reduce the amount of solid waste generated; second, reuse material for its originally intended purpose; third, recycle or compost material that cannot be reduced or reused; fourth, recover energy from material that cannot be reduced, reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and fifth, landfill solid waste that cannot be reduced, reused, recycled, composted or from which energy cannot be recovered.

**Waste Reduction Program** means the Waste Reduction Program required by ORS 459.055(2)(a), adopted by the Metro Council as part of the RSWMP, and accepted and approved by the DEQ as part of the RSWMP.

**Yard debris** means vegetative and woody material generated from residential or commercial landscaping activities. Yard debris includes landscape waste, grass clippings, leaves, hedge trimmings, branches, sod, scrapings, stumps and other vegetative waste having similar properties. This term does not include other solid waste such as soil, demolition debris, painted or treated wood waste. [Ord. 81 111, Sec. 2; Ord. 82-146, Sec. 2; Ord. 86-210, Sec. 1; Ord. 88-257, Sec. 2; Ord. 88-278, Sec. 1; Ord. 89-269, Sec. 2; Ord. 89-295, Sec. 1; Ord. 89-319; Ord. 90-337, Sec. 2; Ord. 90-372, Sec. 1; Ord. 91-386C, Sec. 2; Ord. 91-388, Secs. 1 and 8; Ord. 91 422B, Sec. 1; Ord. 92-455B, Sec. 1; Ord. 92-473A, Sec. 1; Ord. 93-482, Sec. 1; Ord. 94-531, Sec. 2; Ord. 94-557; Ord. 95-597, Sec. 1; Ord. 95-621A, Sec. 2; Ord. 97-681B, Sec. 1; Ord. 98-720A, Sec. 2; Ord. 98 762C, Secs. 1 and 54; Ord. 00 866, Sec. 1; Ord. 00-867, Secs. 1-2; Ord. 00-873, Sec. 1; Ord. 00-876A, Sec. 1; Ord. 01-907A, Sec. 1; Ord. 01 914, Sec. 1; Ord. 01 916C, Sec. 1; Ord. 01-917, Sec. 1; Ord. 02-937A, Sec. 3; Ord. 02-951B, Sec. 1; Ord. 02 974, Sec. 1; Ord. 03 1018A, Sec. 1; Ord. 03-1019, Sec. 1; Ord. 06 1101; Ord. 06-1103, Sec. 1; Ord. 06-1107; Ord. 07-1147B, Secs. 1, 5 and 9; Ord. 08-1183A; Ord. 08-1200; Ord. 12-1272, Secs. 1-2; Ord. 12-1277, Sec. 4; Ord. 13-1306, Sec. 1; Ord. 13-1311; Ord. 14-1323, Sec. 6; Ord. 14-1331; Ord. 16-1386.]

IN CONSIDERATION OF ORDINANCE NO. 19-1438 FOR THE PURPOSE OF AMENDING  
METRO CODE CHAPTER 5.00 TO UPDATE CERTAIN TERMS AND DEFINITIONS

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Date: October 30, 2019

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Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

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### **ISSUE STATEMENT**

Metro staff seeks to update and improve Metro's solid waste code (Metro Code Title V) and administrative rules to provide greater clarity and predictability for the public and those that are directly involved in the region's solid waste system.

### **ACTION REQUESTED**

Adopt Ordinance No. 19-1438 to amend Metro Code Chapter 5.00 (Solid Waste Definitions) to add and update certain terms and definitions to improve clarity and consistency and to conform with other proposed updates and improvements to Metro Code Chapter 5.02. This ordinance is a companion to Ordinance Nos. 19-1439 and 19-1440 that Metro Council will consider collectively at its meetings on November 7 and November 21, 2019.

### **IDENTIFIED POLICY OUTCOMES**

The proposed updates to Metro's solid waste code remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

### **POLICY QUESTION(S)**

Should the Metro Council approve of the proposed updates and improvements to Metro Code Chapter 5.00 to make the code easier to understand and more adaptive to changing conditions?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the ordinance as proposed to amend Metro Code Chapter 5.00 as described in this staff report. This option will result in making the code easier to read and understand. There are no known financial implications associated with the option.

2. Amend the ordinance to adopt other revisions to Metro Code Chapter 5.00 that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the scope of the alternate proposal. In addition, such revisions may require similar changes to the other code chapters proposed in Ordinance Nos. 19-1439 and 19-1440 for consistency.
3. Do not approve the ordinance. This option will result in maintaining status quo. There are no known financial implications associated with the option.

## **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 19-1438 to amend Metro Code Chapter 5.00.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Approval of this ordinance would result in updates and housekeeping improvements to certain terms and definitions in Metro Code Chapter 5.00 as detailed in Exhibit A. These revisions are associated with the other updates and housekeeping improvements proposed under companion Ordinance Nos. 19-1439 and 19-1440.

Staff recommends revising the following terms and definitions in Metro Code Chapter 5.00 as described below:

- 1) Rate – Revise the definition to clarify that the term means the amount that a solid waste facility or disposal site charges to receive, process, transfer, or dispose of solid waste.
- 2) Regional system fee - Revise the definition to clarify that the term means the fee that Metro assess to recover the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.
- 3) Solid Waste Disposal Transaction - Shorten the term to *transaction*.
- 4) Transaction Charge – Change the term to *transaction fee* for clarification and consistency.

In addition to the revisions described above, staff recommends adding a definition for “available regional tonnage” to Chapter 5.00 to clarify the tonnage allocation framework provisions in Chapter 5.01. After the public comment period closed for the proposed code revisions, Metro received a comment from a regulated entity noting that the above-referenced term was not defined and was ambiguous as it relates to the allocation methodology. Staff recommends adding the following definition to Chapter 5.00 to clarify the meaning of the term as it is used in Chapter 5.01:

- Available regional tonnage means the amount of putrescible solid waste tonnage that Metro may allocate to privately owned transfer stations after Metro has first

reserved the applicable minimum amount of putrescible tonnage for the Metro transfer stations.

## **KNOWN OPPOSITION**

There is no known opposition to the proposed revisions to Metro Code Chapter 5.00. However, Metro received comments requesting that Metro add a new term and amend other definitions in Metro Code Chapter 5.00 as part of these proposed revisions.

Metro also received several other comments that were outside the scope of these proposed code updates and housekeeping improvements. For example, one person submitted a general comment about Metro's authority to use the regional system fee to recover system costs. A fuller description of the comments that Metro received during the comment period and Metro staff's response to those comments are provided as Attachment 1 to this report.

Staff does not recommend any additional changes to Chapter 5.00 other than those described in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

## **PUBLIC OUTREACH**

Metro staff notified interested parties via email of the proposed updates and housekeeping improvements to Metro Code Title V. The proposed code chapters, draft administrative rules, and a summary of the proposed changes were also posted on Metro's website.

Metro provided an opportunity for the public to review and submit comments on the proposed updates and housekeeping improvements. The public comment period was open from August 12 through September 13, 2019. Metro staff also held an informational meeting for the public on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The meeting was attended by four industry representatives and four representatives of government organizations.

As previously mentioned, during the comment period Metro received several comments about various aspects of the proposed code updates and housekeeping improvements. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

## **LEGAL ANTECEDENTS**

Metro Charter, Title V of the Metro Code and ORS Chapters 268 and 459.

## **ANTICIPATED EFFECTS**

Approval of this ordinance would amend Metro Code Chapter 5.00 as provided in Exhibit A to add, update and clarify certain solid waste definitions.

## **BUDGET IMPACTS**

There are no expected budget impacts associated with the adoption of this ordinance.

## **BACKGROUND**

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in the region's garbage and recycling system. These efforts have sought to remove unnecessary and outdated provisions, improve readability, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

Metro staff seeks to revise Metro Code Chapter 5.00 to improve clarity and consistency and to conform with other proposed housekeeping changes to Chapters 5.02 and 5.03. The collective changes proposed under Ordinance Nos. 19-1438, 19-1439, and 19-1440 are intended to update and improve current Metro Code Chapter 5.02.

The current Chapter 5.02 (*Disposal Charges and User Fees*) sets forth Metro's transfer station fees as well as the regional system fee. The chapter is confusing because it blends the regional system fee (which is for the use of the region's waste system and is assessed at the time of disposal) with Metro's own transfer station fees (which are only applicable to garbage transferred at Metro's transfer stations).

## **ATTACHMENTS**

- Exhibit A
- Attachment 1

# ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1438

## Metro's Response to Comments on Proposed Changes to Metro Code Title V

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

### **1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):**

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.



In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: *Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.*

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: *Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.*

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. *McCann v. Rosenblum* stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, *Qwest Corp. v. City of Surprise* said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." *Rogue Valley Sewer Services v. City of Phoenix* stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

*Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.*

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**2) Bruce Walker - City of Portland (email dated September 11, 2019):**

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

*Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.*

*However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.*

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**3) Shannon Martin - City of Gresham (email dated September 11, 2019):**

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

*Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.*

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

**4) Theresa Koppang - Washington County (email dated September 11, 2019):**

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

*And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.*

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

**5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):**

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

**6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):**

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*

*transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.*

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

**7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):**

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
  - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
  - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

*As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.*

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.



Agenda Item No. 6.2

**Ordinance No. 19-1439**, For the Purpose of Updating  
Metro Code Chapter 5.02 to Improve Clarity, Removed  
Outdated Sections and Remove Sections Related to Metro  
Transfer Station Fees

*Ordinances (Second Reading)*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF UPDATING METRO	)	ORDINANCE NO. 19-1439
CODE CHAPTER 5.02 TO IMPROVE CLARITY,	)	
REMOVE OUTDATED SECTIONS AND	)	Introduced by Acting Chief Operating Officer
REMOVE SECTIONS RELATED TO METRO	)	Andrew Scott in concurrence with Council
TRANSFER STATIONS FEES	)	President Lynn Peterson

WHEREAS, the Metro solid waste code is set forth in Title V of the Metro Code; and

WHEREAS, Metro Code Chapter 5.02 contains the requirements for Metro's transfer station fees as well as the regional system fee; and

WHEREAS, the proposed updates to Metro Code Chapter 5.02 include moving provisions related to Metro transfer station fees to a new, separate chapter to improve clarity, consistency and make the code easier to understand by the public; and

WHEREAS, the proposed updates to Metro Code Chapter 5.02 remove the requirement that the regional system fee be set by ordinance to enable greater flexibility for Metro to protect the public's interest and better respond to changing conditions; and

WHEREAS, as a result of updating and renumbering Metro Code Chapter 5.02, Metro Code Section 5.06.030 must also be updated to correct a cross reference to former Section 5.02.020; and

WHEREAS, the proposed updates to Metro Code Chapter 5.02 also remove unnecessary and outdated provisions, clarify terms, and other housekeeping revisions that will also improve its readability and make it easier to understand; and

WHEREAS, staff solicited input from the public on the proposed changes to Metro Code Chapter 5.02 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

WHEREAS, because all current Chapter 5.02 code sections related to Metro's transfer station fees will be moved to a new Chapter 5.03 and because several sections of current Chapter 5.02 have been re-ordered to establish a more logical flow, current Chapter 5.02 should be repealed and replaced in its entirety with the attached Exhibit A to avoid confusing tracked changes; and

WHEREAS, the Chief Operating Officer recommends that the Metro Council adopt the proposed updates to Metro Code Chapter 5.02 to improve clarity and consistency and to conform with other updates and improvements proposed under companion Ordinance Nos. 19-1438 and 19-1440; and

WHEREAS, the Metro Council finds that the updates to Metro Code Chapter 5.02 provide greater clarity for the public and further the goals of the agency; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 5.02 is repealed and replaced in its entirety with a new Chapter 5.02 ("Regional System Fee") as set forth in the attached Exhibit A.

2. The last sentence of Metro Code Section 5.06.030 is replaced with the following sentence:  
“The Metro Council will set the enhancement fee amount for any solid waste facility subject to the fee.”

ADOPTED by the Metro Council this 21<sup>st</sup> day of November 2019.

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Lynn Peterson, Council President

Attest:

Approved as to Form:

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Sara Farrokhzadian, Recording Secretary

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Carrie MacLaren, Metro Attorney

# **EXHIBIT A TO ORDINANCE NO. 19-1439**

## **CHAPTER 5.02**

### **REGIONAL SYSTEM FEE**

5.02.010	Purpose
5.02.020	Regional System Fee Requirement
5.02.030	Exceptions to Regional System Fee
5.02.040	Declaration of Origin
5.02.050	Regional System Fee Applied to Mixed Waste Loads
5.02.060	Regional System Fee on Cleanup Material
5.02.070	Special Exemptions and Waivers from Regional System Fee
5.02.080	Collection and Payment of Regional System Fee
5.02.090	Due Date of Regional System Fees
5.02.100	Liability for Worthless or Uncollectible Accounts
5.02.110	Use of Regional System Fees
5.02.120	Scale Weights Required
5.02.130	Administrative Rules to Implement Chapter

## **EXHIBIT A TO ORDINANCE NO. 19-1439**

### **5.02.010 Purpose**

The purpose of this chapter is to establish the method for setting, collecting and administering the regional system fee. Metro uses regional system fee revenue to recover the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.

### **5.02.020 Regional System Fee Requirement**

- (a) Except as otherwise provided in this chapter, all solid waste generated from inside the Metro jurisdictional boundary is subject to a regional system fee at the time the waste is delivered to a Metro transfer station or otherwise disposed.
- (b) Any person who transports solid waste generated from inside the Metro jurisdictional boundary must pay the regional system fee to Metro at the time the waste is disposed.
- (c) Notwithstanding subsection (b), Metro may authorize a designated facility located outside the Metro jurisdictional boundary to collect and remit the regional system fee on behalf of the person transporting the waste.
- (d) Metro will round the regional system fee to the nearest one-hundredth of a ton and prorate it based on the actual weight of solid waste.
- (e) The regional system fee owed to Metro by any person pursuant to this chapter is a debt owed to Metro.

### **5.02.030 Exceptions to Regional System Fee**

The regional system fee does not apply to:

- (a) Solid waste accepted at a licensed or franchised solid waste facility located within the Metro jurisdictional boundary;
- (b) Solid waste accepted at a facility that is exempt from regulation under Chapter 5.01;
- (c) Cleanup material accepted at a facility that treats the cleanup material to applicable DEQ standards and provided that the treated waste is not transported to a disposal site;
- (d) Useful material that is accepted at a disposal site that is a Metro designated facility pursuant to Chapter 5.05 or accepted at a disposal site under authority of a Metro non-system license issued pursuant to Chapter 5.05, provided that the useful material is:
  - (1) Used productively in the operation of the disposal site (such as for roadbeds or alternative daily cover); and
  - (2) Accepted at the disposal site at no fee.

## **EXHIBIT A TO ORDINANCE NO. 19-1439**

- (e) Processing residual produced by any tire processor that is regulated pursuant to Chapter 5.01 and that sorts, classifies or processes used tires into fuel or other products, provided the processing residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent specified in a Metro license or franchise under Chapter 5.01.

### **5.02.040 Declaration of Origin**

- (a) If a person transports solid waste to a designated facility outside of the Metro jurisdictional boundary, then the person must inform the designated facility operator that the solid waste was generated or originated inside the Metro region.
- (b) If a dispute arises regarding whether a person informed the facility operator that the solid waste was generated or originated inside the Metro region, then the person transporting the waste has the burden of proving that the person communicated this to the designated facility operator.

### **5.02.050 Regional System Fee Applied to Mixed Waste Loads**

If a solid waste load in a vehicle or container contains a mixture of waste generated both inside and outside of the Metro jurisdictional boundary, then the entire load is considered to be generated within the Metro region. In such cases, the person transporting the waste must report the waste as generated inside the Metro region and pay the regional system fee on the entire load, unless the person provides documentation to Metro showing the total weight of that waste that was generated only within the Metro jurisdictional boundary.

### **5.02.060 Regional System Fee on Cleanup Material**

Notwithstanding Sections 5.02.020 and 5.02.030, a reduced regional system fee applies to cleanup material that is transported to any disposal site authorized by Metro to accept that material.

### **5.02.070 Special Exemptions and Waivers from Regional System Fee**

- (a) The Chief Operating Officer may issue a special exemption to a public agency, local government, or qualified non-profit entity as specified in Metro Code Subsections 5.07.030(a), (b), (d) and (j) to waive the regional system fee for solid waste generated within the Metro jurisdictional boundary.
- (b) For all special exemptions in subsection (a), the Chief Operating Officer must provide the Council with an annual report indicating:
  - (1) The amount of solid waste recycled and disposed under the special exemption permits granted by the Chief Operating Officer during the fiscal year; and
  - (2) The total regional system fee revenue that was not collected during the fiscal year because of the special exemptions granted.

## **EXHIBIT A TO ORDINANCE NO. 19-1439**

- (c) The Chief Operating Officer may waive the regional system fee on putrescible solid waste if the waste is:
  - (1) Generated outside of Metro's regional boundary;
  - (2) Collected by a hauler that is regulated by a local government unit; and
  - (3) Accepted at Metro Central Station or Metro South Station.

### **5.02.080 Collection and Payment of Regional System Fees**

A person satisfies payment of the regional system fee as required under Section 5.02.020 if the person pays the fee at a Metro transfer station or pays the fee:

- (a) As required by a non-system license authorized under Chapter 5.05, or
- (b) To a designated facility located outside the Metro jurisdictional boundary if Metro has authorized that designated facility to collect and remit the regional system fee on behalf of the person transporting the waste.

### **5.02.090 Due Date of Regional System Fees**

Regional system fees accumulate on a monthly basis. A person liable for regional system fees must pay the accumulated fees to Metro by the 15<sup>th</sup> day of the month for waste disposed of in the preceding month. If the 15<sup>th</sup> day of the month occurs on a holiday or weekend, amounts are due by the end of the first business day that follows.

### **5.02.100 Liability for Worthless or Uncollectible Accounts**

- (a) Metro may waive liability for regional system fees on charge accounts that are worthless and charged off as uncollectible, provided that the facility operator submits to Metro an affidavit stating the name and amount of each uncollectible charge account and documenting good faith efforts that the operator made to collect the accounts.
- (b) Regional system fees are not considered uncollectible unless the underlying account is also uncollectible. If the operator has paid the regional system fees previously and wishes to deduct the previously paid regional system fees from the next payment due to Metro, the operator must notify Metro in writing that the underlying account is uncollectible. If Metro agrees that the underlying account is uncollectible, Metro may then authorize the operator to deduct from the next payment due to Metro the previously paid amount found worthless and charged off. However, if the operator thereafter collects on any such account, in whole or in part, the operator must include the amount collected in the first return it files after the collection and pay the regional system fees with the return.

## **EXHIBIT A TO ORDINANCE NO. 19-1439**

### **5.02.110 Use of Regional System Fees**

Metro may only use regional system fee funds to recover the costs for all associated regional solid waste activities related to managing, planning and administering the entire recycling, processing and disposal system.

### **5.02.120 Scale Weights Required**

A facility or disposal site that receives solid waste generated or originated within the Metro jurisdictional boundary must use certified scale weights to calculate, on a tonnage basis, all regional system fees that the facility or disposal site submits to Metro.

### **5.02.130 Administrative Rules to Implement Chapter**

The Chief Operating Officer may adopt administrative rules under the provisions set forth in Chapter 5.08 to govern the obligations under this chapter and implement all provisions of this chapter.



IN CONSIDERATION OF ORDINANCE NO. 19-1439 FOR THE PURPOSE OF UPDATING  
METRO CODE CHAPTER 5.02 TO IMPROVE CLARITY, REMOVE OUTDATED SECTIONS AND  
REMOVE SECTIONS RELATED TO METRO TRANSFER STATIONS FEES

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Date: October 24, 2019

Prepared by: Warren Johnson  
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Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

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## ISSUE STATEMENT

Metro staff seeks to update and improve Metro's solid waste code (Metro Code Title V) and administrative rules to provide greater clarity and predictability for the public and those that are directly involved in the region's solid waste system.

## ACTION REQUESTED

Adopt Ordinance No. 19-1439 to update Metro Code Chapter 5.02 (Disposal Charges and User Fees) to move all provisions related to Metro transfer station fees into a new, separate chapter to clarify that the regional system fee applies to *all users* of the regional waste system, whereas Metro's transfer station fees apply *only* at Metro's own transfer stations. The proposed ordinance also includes various other housekeeping revisions to improve clarity and consistency and to conform to other proposed code amendments. This ordinance is a companion to Ordinance Nos. 19-1438 and 19-1440 that Metro Council will consider collectively at its meetings on November 7 and November 21, 2019.

## IDENTIFIED POLICY OUTCOMES

The proposed updates to Metro's solid waste code remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

## POLICY QUESTION(S)

1. Should the current Chapter 5.02 (Disposal Charges and User Fees) be split into two separate chapters to clarify that the regional system fee applies to *all users* of the regional waste system, whereas Metro's transfer station fees apply *only* at Metro's own transfer stations?
2. If yes, should the regional system fee and Metro's transfer station fees be set by resolution versus ordinance?

3. Should Metro's account policies be moved from code to administrative rules?

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the ordinance as proposed to update Metro Code Chapter 5.02 as described in this staff report. This option will result in making the code easier to read and understand. There are no known financial implications associated with the option.
2. Amend the ordinance to adopt other revisions to Metro Code Chapter 5.02 that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the extent of the alternate proposal. In addition, such revisions may require similar changes to the code chapters proposed in Ordinance Nos. 19-1438 and 19-1440 for consistency.
3. Do not approve the ordinance. This option will result in maintaining status quo. If the Council does not approve this ordinance, then it is not necessary for the Council to establish a new code chapter to govern Metro's transfer station rates as proposed in companion Ordinance No. 19-1440. There are no known financial implications associated with the option.

### **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 19-1439 to update Metro Code Chapter 5.02. Since all of the current Chapter 5.02 code sections related to Metro's transfer station fees would be moved to a new chapter and because several sections of current Chapter 5.02 would be re-ordered to establish a more logical flow, staff recommends that the current Chapter 5.02 be repealed and replaced in its entirety with the attached Exhibit A to avoid confusing tracked changes.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Approval of this ordinance would result in updating current Chapter 5.02 and moving Metro transfer station fees to a new separate chapter (Chapter 5.03) while Chapter 5.02 continues to govern the regional system fee. The proposed ordinance also includes various other housekeeping revisions to improve clarity and consistency as described below and provided in Exhibit A. These revisions are associated with the other updates and housekeeping improvements proposed under companion Ordinance Nos. 19-1438 and 19-1440.

Staff recommends updating Metro Code Chapter 5.02 as described below:

1. Move all provisions related to Metro transfer station fees into new Metro Code Chapter 5.03.
2. Update language throughout the chapter to remove legalese, passive voice, nominalizations and lengthy sentences.

3. Break up lengthy code sections into shorter, separate sections for ease of reading. For example, rather than have one lengthy code section with the general heading “Regional System Fees,” that section has been split into several discrete parts with more descriptive headings.
4. Remove the vague term “user fee” and replace it with “regional system fee” to more accurately reflect the nature of the fee. Although the current Chapter 5.02 is entitled *Disposal Charges and User Fees*, the term “user fee” is used only once in the chapter and that term has been replaced with the term “regional system fee” for many years. Thus, the “user fee” terminology is confusing.
5. Remove the requirement that the regional system fee be set by ordinance. If approved, the Council could establish the regional system fee by resolution and it could take effect 30 days after adoption. This avoids the need to wait 90 days for fees to take effect and allows the Metro Council to be more responsive to changing conditions.
6. Remove code sections that are no longer applicable. For example, the “Direct Haul Disposal Charge” was designed to reimburse Metro when someone delivered waste directly to Columbia Ridge Landfill, because that delivery charge was initially placed on Metro’s disposal contract account. Metro would then seek repayment from the hauler. This code section is no longer necessary with Metro’s new disposal contract because that contract does not mandate the use of Columbia Ridge Landfill by private parties.
7. Move the “Account Policies at Metro Transfer Stations” code section into administrative rule to better reflect that *internal* account policies for Metro’s transfer stations should not be housed in the Metro Code.
8. General housekeeping to update Metro Code Section 5.06.030 to correct a cross reference to former Section 5.02.020.

## KNOWN OPPOSITION

There is no known opposition to the proposed revisions to Metro Code Chapter 5.02. However, Metro received several comments expressing concern about changing the timing of Metro’s transfer station fee-setting process. Staff understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

Metro also received several other comments that were outside the scope of these proposed code updates and housekeeping improvements. For example, one person submitted a general comment about Metro’s authority to use the regional system fee to recover system costs. A fuller description of those comments and Metro staff’s response to those comments are provided as Attachment 1 to this report.

Staff does not recommend any additional changes to Chapter 5.02 other than those described in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

## **PUBLIC OUTREACH**

Metro staff notified interested parties via email of the proposed updates and housekeeping improvements to Metro Code Title V. The proposed code chapters, draft administrative rules, and a summary of the proposed changes were also posted on Metro's website.

Metro provided an opportunity for the public to review and submit comments on the proposed updates and housekeeping improvements. The public comment period was open from August 12 through September 13, 2019. Metro staff also held an informational meeting for the public on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The meeting was attended by four industry representatives and four representatives of government organizations.

As previously mentioned, during the comment period Metro received several comments about various aspects of the proposed code updates and housekeeping improvements. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

## **LEGAL ANTECEDENTS**

Metro Charter, Title V of the Metro Code and ORS Chapters 268 and 459.

## **ANTICIPATED EFFECTS**

Approval of this ordinance would update Metro Code Chapter 5.02 as provided in Exhibit A to improve clarity and consistency and to conform to other proposed code amendments.

## **BUDGET IMPACTS**

There are no expected budget impacts associated with the adoption of this ordinance.

## **BACKGROUND**

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in the region's garbage and recycling system. These efforts have sought to remove unnecessary and outdated provisions, improve readability, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials. Metro staff seeks to continue these efforts by updating Chapter 5.02 to make it easier to read and understand.

The current Metro Code Chapter 5.02 (*Disposal Charges and User Fees*) sets forth Metro's transfer station fees as well as the regional system fee. The chapter is confusing because it blends the regional system fee (which is for the use of the region's waste system and is typically assessed at the time of disposal) with Metro's own transfer station fees (which are only applicable to garbage transferred at Metro's transfer stations).

To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposes to split the existing Chapter 5.02 into the following two chapters:

1. Chapter 5.02 (Regional System Fee) will continue to govern the regional system fee.
2. Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) will govern Metro's own transfer station fees.

In addition to the proposed revisions and new chapter described above, some current code sections would be transferred into administrative rules to allow Metro to more quickly address changing market conditions when those conditions may affect the circumstances applicable to those fees. In particular, the proposed administrative rules would authorize Metro's Chief Operating Officer to temporarily establish an interim fee for a waste material (such as wood, polystyrene, and plastics) if necessary to address a significant change in market conditions or an emergency circumstance.

The proposed administrative rules would be posted for public comment and an oral hearing if the Metro Council were to adopt the proposed changes to Chapter 5.02 and establish a new Chapter 5.03.

## **ATTACHMENTS**

- Exhibit A
- Attachment 1

# ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1439

## Metro's Response to Comments on Proposed Changes to Metro Code Title V

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

### **1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):**

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.

In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.



- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. *McCann v. Rosenblum* stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, *Qwest Corp. v. City of Surprise* said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." *Rogue Valley Sewer Services v. City of Phoenix* stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

*Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.*

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**2) Bruce Walker - City of Portland (email dated September 11, 2019):**

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

*Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.*

*However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.*

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**3) Shannon Martin - City of Gresham (email dated September 11, 2019):**

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

*Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.*

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

**4) Theresa Koppang - Washington County (email dated September 11, 2019):**

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

*And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.*

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

**5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):**

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

**6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):**

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*

*transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.*

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

**7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):**

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
  - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
  - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

*As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.*

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.

**TERRELL GARRETT  
GREENWAY RECYCLING, LLC  
15204 SE RIVER FOREST DR.  
MILWAUKIE, OR 97267  
(503) 793-9238  
12 August 2019**

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: Comments on proposed changes to Chapter 5

Dear Council President Peterson and Councilors:

Remarkably, GreenWay Recycling has only a few comments on the proposed changes to Chapter 5. Conceptually and mostly in practice, this is a piece of legislation that we support.

Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decisionmakers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decisionmaker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.

Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the "discrete" services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a "blended" rate which is in violation of these parameters.

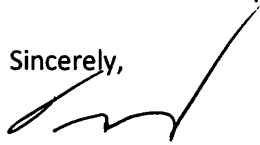
Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, terms such as "Recoverable Solid Waste", "Recyclable Material", and "Recycling" seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.

Second, 5.02.030 (d) (2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "Accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.

The third and final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. McCann v. Rosenblum stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, Qwest Corp. v. City of Surprise said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed."" Rogue Valley Sewer Services v. City of Phoenix stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean mrf, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportionate share.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terrell Garrett', with a long, sweeping horizontal stroke extending to the right.

Terrell Garrett



## Warren Johnson

---

**From:** Walker, Bruce [Bruce.Walker@portlandoregon.gov]  
**Sent:** Wednesday, September 11, 2019 9:47 AM  
**To:** Warren Johnson  
**Subject:** [External sender] RE: Requesting your comments on proposed changes to Metro's solid waste code

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren –

I'm resubmitting my comments with a clarification that Metro include in their administrative rules a commitment to sending fee info to local govts. by March 31.

Thanks!

Bruce

Warren –

Thank you for sharing information regarding proposed changes to Metro's solid waste code at yesterday's local government solid waste directors meeting.

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.

Thank you and please let me know if you have any questions.

Bruce

---

**From:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Sent:** Friday, August 23, 2019 3:56 PM  
**To:** Walker, Bruce <Bruce.Walker@portlandoregon.gov>  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Thanks for the comment Bruce. I'll include it in the record.

Warren Johnson  
Metro  
(503) 797-1836

---

**From:** Walker, Bruce [<mailto:Bruce.Walker@portlandoregon.gov>]  
**Sent:** Friday, August 23, 2019 12:46 PM  
**To:** Warren Johnson  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Warren –

Thank you for sharing information regarding proposed changes to Metro's solid waste code at yesterday's local government solid waste directors meeting.

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution but requests that notice of the new fee schedule be provided in March of each year.

Thank you and please let me know if you have any questions.

Bruce

Include The Food - Be Cart Smart

**Bruce Walker**

City of Portland Bureau of Planning & Sustainability  
Solid Waste & Recycling Program Manager  
1900 SW 4th Avenue, Room 7100  
Portland, OR 97201  
503.823.7772  
(he/him)  
[www.portlandoregon.gov/bps](http://www.portlandoregon.gov/bps)

The City of Portland is committed to providing meaningful access. For accommodations, modifications, translation, interpretation or other services, please contact 503-823-7700 or use City TTY 503-823-6868.

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**From:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.
- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro's own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro's administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

## Warren Johnson

---

**From:** Shannon Martin [shannon.martin@greshamoregon.gov]  
**Sent:** Wednesday, September 11, 2019 10:07 AM  
**To:** Warren Johnson  
**Cc:** Steve Fancher  
**Subject:** [External sender] RE: Requesting your comments on proposed changes to Metro's solid waste code

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Hello Warren,

Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments fee change information no later than March 31<sup>st</sup> is necessary for us to have in order to complete our rate review process.

Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1<sup>st</sup> adjustment.

Thank you,

Shannon Martin  
Program Manager | Recycling & Solid Waste  
City of Gresham | 503-618-2624

CITY OF  
GRESHAM

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**From:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

**CAUTION:** External Email

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.
- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro's own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro's administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

## Warren Johnson

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**From:** Theresa Koppang [Theresa\_Koppang@co.washington.or.us]  
**Sent:** Wednesday, September 11, 2019 10:08 AM  
**To:** Warren Johnson  
**Subject:** [External sender]Metro Code Changes/Admin Rules

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Hi Warren,

Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.

And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.

Thank you and please let me know if you have any questions.

**Theresa Koppang | Manager**

Washington County Department of Health and Human Services | Solid Waste & Recycling | Code Enforcement  
155 N. First Ave. MS 5A, Hillsboro OR 97124

[Theresa\\_koppang@co.washington.or.us](mailto:Theresa_koppang@co.washington.or.us)

[Website](#) | [Facebook](#) | [Sign Up](#) for e-news and alerts

direct: 503-846-3663 main: 503-846-3605

## Warren Johnson

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**From:** Winterhalter, Rick [rickw@clackamas.us]  
**Sent:** Friday, September 13, 2019 9:12 AM  
**To:** Warren Johnson  
**Cc:** Polk, Eben  
**Subject:** [External sender]comments on rule changes

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren:

I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners:

- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.

Regards,  
Rick

Rick Winterhalter  
Sustainability & Solid Waste Program  
Clackamas County  
150 Beavercreek Rd.  
Oregon City, OR 97045  
503.742.4466

**I have one share in corporate Earth, and I am nervous about the management.**

-E.B. White, writer (1899-1985)

***Oregon's 2050 Vision:***

*Oregonians in 2050 produce and use materials responsibly  
conserving resources •protecting the environment •living well*

## Warren Johnson

---

**From:** Peter Brandom [Peter.Brandom@hillsboro-oregon.gov]  
**Sent:** Friday, September 13, 2019 8:55 AM  
**To:** Warren Johnson  
**Cc:** Theresa Koppang (theresa\_koppang@co.washington.or.us); Walker, Bruce; Eben Polk; Winterhalter, Rick; Kathy Folsom; Martin, Shannon (Shannon.Martin@greshamoregon.gov)  
**Subject:** [External sender]RE: Requesting your comments on proposed changes to Metro's solid waste code  
  
**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren,

Below are our comments on the proposed regulatory changes, not in order of importance. Thank you for the opportunity to comment, and for the time and effort to provide clarification at the meeting this week.

- Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.
- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.
- Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of '...all sources and uses of funds that affect the solid waste revenue fund budget...' for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.
- Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.
- Note existing typo in 5.03.040(c).

Thank you,  
Peter

Peter Brandom | *Senior Project Manager*  
City of Hillsboro, Oregon  
phone 503-681-6191  
email [peter.brandom@hillsboro-oregon.gov](mailto:peter.brandom@hillsboro-oregon.gov)  
web [www.hillsboro-oregon.gov](http://www.hillsboro-oregon.gov) | Twitter [@cityofhillsboro](https://twitter.com/cityofhillsboro)



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**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Thursday, August 22, 2019 11:27 AM  
**To:** Peter Brandom <[Peter.Brandom@hillsboro-oregon.gov](mailto:Peter.Brandom@hillsboro-oregon.gov)>  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Thanks for the comment. I'll include this in the record.

Please let me know if you have any other comments or questions about the proposed changes. Thanks again.

Warren Johnson  
Metro  
(503) 797-1836

---

**From:** Peter Brandom [<mailto:Peter.Brandom@hillsboro-oregon.gov>]  
**Sent:** Thursday, August 22, 2019 10:51 AM  
**To:** Warren Johnson  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

We would like to see a chapter that regulates rate setting and rates at private transfer stations in the same way that rates are set at the Metro stations.

---

**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.

- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro’s own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro’s administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

September 13, 2019

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232- 2736

RE: Metro Proposed Solid Waste Code Changes

Dear Metro Councilors,

This letter represents the Clackamas County Refuse and Recycling Association (CCRRA), Portland Haulers' Association (PHA), and Washington County Haulers' Association (WCHA) comments regarding Metro's proposed solid waste code changes. As you know, CCRRA, PHA, and WCHA members provide services across the solid waste system including hauling, resource recovery & transfer, processing and landfilling for all areas of the Metro region. Members are committed to working cooperatively with their regulatory local governments to provide safe, modern, and efficient waste collection services that include garbage, recycling, and organics collection at reasonable rates.

Members very much appreciate the opportunity to review the proposed changes to Metro's solid waste code and engage in the related public process. While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:

- cutting two months off the public process -- from the current 90 days to 30 days— provides less time and arguably less opportunity for full public input and participation and
- shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as a part of the local government rate setting process.

As a result, CCRRA, PHA and WCHA ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.

Members are committed to working with Metro, local governments, as well as the community at large, and share our expertise in the industry. Our coordinated efforts among state, regional, local, industry and community members contribute to Oregon's position as a national leader in recycling and waste management. We look forward to the opportunity to continue serving as a resource, imparting experience from our own challenges as large and many small, family and

women-owned companies, in navigating the business of waste management while promoting our common values advancing equity in waste management. Please don't hesitate to contact Beth Vargas Duncan at 971-707-1683 or [bethvd@orra.net](mailto:bethvd@orra.net) with any questions.

Sincerely,

Josh Brown, President  
Clackamas County Refuse & Recycling Association

Vallerie Gruetter Hill, President  
Portland Haulers' Association

Mike Leichner, President  
Washington County Haulers' Association

Agenda Item No. 6.3

**Ordinance No. 19-1440**, For the Purpose of Establishing a  
New Metro Code Chapter 5.03 that Governs Solid Waste  
Fees at Metro Transfer Stations

*Ordinances (Second Reading)*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING A	)	ORDINANCE NO. 19-1440
NEW METRO CODE CHAPTER 5.03 THAT	)	
GOVERNS SOLID WASTE FEES AT METRO	)	Introduced by Acting Chief Operating Officer
TRANSFER STATIONS	)	Andrew Scott in concurrence with Council
	)	President Lynn Peterson

WHEREAS, the Metro solid waste code is set forth in Title V of the Metro Code; and

WHEREAS, Metro Code Chapter 5.02 contains the requirements for Metro's transfer station fees as well as the regional system fee; and

WHEREAS, moving all provisions and sections related to Metro transfer station fees from Chapter 5.02 to a new "Solid Waste Fees at Metro Transfer Stations" chapter would improve clarity, consistency and make the code easier to understand by the public; and

WHEREAS, updating the code to remove the requirement that Metro transfer station fees be set by ordinance would enable greater flexibility for Metro to protect the public's interest and better respond to changing conditions; and

WHEREAS allowing Metro's Chief Operating Officer to temporarily establish or change Metro transfer station fees when necessary for a new waste stream or when emergency circumstances exist would likewise enable greater flexibility to respond to changing conditions; and

WHEREAS, moving certain sections of code into administrative rules, removing unnecessary and outdated provisions, clarifying terms, and making other housekeeping revisions would improve its readability and make it easier to understand; and

WHEREAS, staff solicited input from the public on establishing new Metro Code Chapter 5.03 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

WHEREAS, the Metro Council finds that establishing a new Metro Code Chapter 5.03 to govern Metro transfer station fees will provide greater clarity for the public; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Title V, Solid Waste, is amended to add a new Metro Code Chapter 5.03, ("Solid Waste Fees at Metro Transfer Stations"), as set forth in the attached Exhibit A.
2. All Metro transfer station fees in effect as of the date this ordinance becomes effective will remain in effect until the Metro Council adopts a new fee schedule.

ADOPTED by the Metro Council this 21<sup>st</sup> day of November 2019.

---

Lynn Peterson, Council President

Attest:

Approved as to Form:

---

Sara Farrokhzadian, Recording Secretary

---

Carrie MacLaren, Metro Attorney

# EXHIBIT A TO ORDINANCE NO. 19-1440

## CHAPTER 5.03

### SOLID WASTE FEES AT METRO TRANSFER STATIONS

5.03.010	Purpose
5.03.020	Metro Transfer Station Fees
5.03.030	Source-Separated Recyclable Materials Credit
5.03.040	Metro Transfer Station Operating Authority
5.03.050	Metro Transfer Station Fees Adopted Annually
5.03.060	Fee Setting Requirements; Provisional Fees
5.03.070	Independent Review of Fee Setting Process; Written Report
5.03.080	Council Adoption of Metro Transfer Station Fees; Emergency Fee
5.03.090	Posting Metro Transfer Station Fees
5.03.100	Solid Waste Fees at Metro Transfer Stations
5.03.110	Transaction Fee
5.03.120	Minimum Fee
5.03.130	Waiver of Metro Transfer Station Fees
5.03.140	Review of Metro Transfer Station Fee Criteria and Policies
5.03.150	Account Policy at Metro Transfer Stations
5.03.160	Administrative Rules to Implement Chapter

#### **5.03.010 Purpose**

The purpose of this chapter is to establish a consistent, predictable and transparent framework when Metro adopts solid waste fees for its transfer stations.

#### **5.03.020 Metro Transfer Station Fees**

- (a) Metro assesses the following fees at its transfer stations and household hazardous waste facilities:
  - (1.) Disposal fee
  - (2.) Transaction fee
  - (3.) Household hazardous waste management fee
  - (4.) Conditionally exempt generator waste fee
  - (5.) Recoverable solid waste fee
  - (6.) Special waste fee
  - (7.) Litter control fee
- (b) In addition to the fees listed in subsection (a), Metro may also assess any applicable Metro “pass through” fees (such as the regional system fee, Metro excise tax and community enhancement fee) as well as any applicable DEQ fees.



## **EXHIBIT A TO ORDINANCE NO. 19-1440**

### **5.03.030 Source-Separated Recyclable Materials Credit**

- (a) A non-commercial customer at Metro Central Station or Metro South Station who delivers certain source-separated recyclable materials (except yard debris) that are generated by a household may receive a disposal charge credit. The Chief Operating Officer will establish by administrative rule the circumstances under which the credit is available.
- (b) Notwithstanding subsection (a), the Chief Operating Officer may also designate source-separated recyclable materials that Metro will accept from customers at no charge.

### **5.03.040 Metro Transfer Station Operating Authority**

- (a) The Chief Operating Officer has authority to operate and manage the Metro transfer stations. The Chief Operating Officer may delegate that authority.
- (b) In addition to the Chief Operating Officer's authority to operate and manage the Metro transfer stations, the Chief Operating Officer may also establish by administrative rule the circumstances and conditions under which Metro transfer station fees apply.
- (c) The Chief Operating Officer may establish an additional fee as necessary for a waste stream not specifically listed in Section 5.03.020. If the Chief Operating Officer establishes a fee not listed in Section 5.03.020, that fee is only effective for not more than 120 days unless the Metro Council affirms or modifies it.

### **5.03.050 Metro Transfer Station Fees Adopted Annually**

Each year the Metro Council will determine Metro transfer station fees. In doing so, the Council will use the procedures and criteria set forth in this chapter. The Council may adopt changes to the fees as it deems necessary and may update the fee amount more frequently than annually.

### **5.03.060 Fee Setting Requirements; Provisional Fees**

Each year the Chief Operating Officer will propose fee amounts to the Council. The Chief Operating Officer's proposed fees are provisional until adopted by Council pursuant to Section 5.03.080. In preparing provisional fee amounts the Chief Operating Officer will:

- (a) Consider all sources and uses of funds that affect the solid waste revenue fund budget during the next fiscal year;
- (b) Follow generally accepted practices for selection of methodologies, assumptions, requirements, and other technical factors that determine the fees;
- (c) Consider any solid waste fee criteria and fee setting policies adopted by Council;
- (d) Consider operational needs for each transfer station, including customer demand; and

## **EXHIBIT A TO ORDINANCE NO. 19-1440**

- (e) Perform any other due diligence that the Chief Operating Officer finds necessary to meet the purpose of this chapter.

### **5.03.070 Independent Review of Fee Setting Process; Written Report**

- (a) Before the Council can adopt the provisional Metro transfer station fees, the Chief Operating Officer must submit the provisional fees to at least one independent reviewer. The Chief Operating Officer will provide the reviewer with the fee model, data, assumptions, criteria, and any other information that the Chief Operating Officer used to calculate the provisional fees.
- (b) The independent reviewer will test the provisional fees using criteria set forth in this chapter, any fee criteria adopted by Council, and any other criteria the Chief Operating Officer specifies or which the reviewer recommends based on generally accepted best practices for fee review.
- (c) After the review is complete, the independent reviewer will submit a written report to the Chief Operating Officer documenting the reviewer's findings, exceptions and recommendations. The Chief Operating Officer must include this written report in the materials submitted for review during Council consideration.

### **5.03.080 Council Adoption of Metro Transfer Station Fees; Emergency Fee**

- (a) After the independent reviewer has submitted the required written report, the Council may adopt the Chief Operating Officer's provisional fee amounts by resolution. In adopting the fee amounts, Council will consider all materials the Chief Operating Officer provided to the independent reviewer under section 5.03.070(a) as well as the independent reviewer's written report.
- (b) The fees adopted by Council will take effect 30 days after adoption unless Council chooses a later date.
- (c) Notwithstanding subsection (a), the Chief Operating Officer may establish a Metro transfer station fee under an emergency circumstance. Any fee established under this authority is effective for not more than 120 days unless either the Council affirms or modifies the fee or unless the circumstance giving rise to the emergency ceases to exist.

### **5.03.090 Posting Metro Transfer Station Fees**

Upon the effective date of any transfer station fee amount, Metro will post the fees at Metro Central Station and Metro South Station. Metro will also post a list of all current Metro transfer station fees on the Metro website and otherwise publicize the fees to its customers and the public generally.

## **EXHIBIT A TO ORDINANCE NO. 19-1440**

### **5.03.100 Solid Waste Fees at Metro Transfer Stations**

The solid waste fees at the Metro Central Station and Metro South Station consist of:

- (a) A fee for each ton of solid waste comprised of:
  - (1.) A disposal fee;
  - (2.) The regional system fee as set forth in Chapter 5.02;
  - (3.) The community enhancement fee as set forth in Chapter 5.06; and
  - (4.) All applicable DEQ fees established in Oregon Revised Statutes Chapters 459 and 459A, as implemented in Chapter 340 Division 90 of Oregon Administrative Rules.
- (b) All applicable solid waste excise taxes as set forth in Chapter 7.01, stated separately; and
- (c) A transaction fee.

### **5.03.110 Transaction Fee**

There is a fee for every transaction at a Metro transfer station. A transaction may occur at a staffed scale or at an automated scale.

### **5.03.120 Minimum Fee**

Notwithstanding Section 5.03.100, there is a minimum fee to accept solid waste at Metro Central Station and Metro South Station. The minimum fee consists of the transaction fee as set forth in Section 5.03.110 plus a fee based on a minimum load weight.

### **5.03.130 Waiver of Metro Transfer Station Fees**

- (a) The Chief Operating Officer may waive the disposal fee for solid waste accepted from a non-commercial customer at the Metro Central Station or Metro South Station under extraordinary, emergency conditions or circumstances.
- (b) The Chief Operating Officer may waive the regional system fee for solid waste accepted at the Metro Central Station or Metro South Station if the waste is generated outside of the Metro jurisdictional boundary and collected by a hauler that is regulated by a local government.

### **5.03.140 Review of Metro Transfer Station Fee Criteria and Policies**

The Council may undertake a review of the Metro transfer station fee criteria and policies at any time to ensure that they reflect the purpose of this chapter, meet Metro's needs, support Metro's management of the regional solid waste system, and address any Council findings that result from the periodic review.

## **EXHIBIT A TO ORDINANCE NO. 19-1440**

### **5.03.150 Account Policy at Metro Transfer Stations**

By administrative rule the Chief Operating Officer will establish appropriate account policy requirements for Metro's transfer stations. The account policy requirements will be designed to diminish Metro's risk of loss due to non-payment for new and existing accounts, and to establish payment methods, due dates and prudent credit practices.

### **5.03.160 Administrative Rules to Implement Chapter**

The Chief Operating Officer may adopt administrative rules under the provisions set forth in Chapter 5.08 to govern the obligations under this chapter and implement all provisions of this chapter.

IN CONSIDERATION OF ORDINANCE NO. 19-1440 FOR THE PURPOSE OF ESTABLISHING A  
NEW METRO CODE CHAPTER 5.03 THAT GOVERNS SOLID WASTE FEES AT METRO  
TRANSFER STATIONS

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Date: October 24, 2019

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Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

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## ISSUE STATEMENT

Metro staff seeks to update and improve Metro's solid waste code (Metro Code Title V) and administrative rules to provide greater clarity and predictability for the public and those that are directly involved in the region's solid waste system.

## ACTION REQUESTED

Adopt Ordinance No. 19-1440 to establish a new Metro Code Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) and move the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter to clarify that the regional system fee applies to *all users* of the regional waste system, whereas Metro's transfer station fees apply *only* at Metro's own transfer stations. In addition, move some current code sections into administrative rules to allow Metro to more quickly address changing market conditions when those conditions may affect the circumstances applicable to those fees. The proposed ordinance also includes various other housekeeping revisions to improve clarity and consistency and to conform to other proposed code amendments. This ordinance is a companion to Ordinance Nos. 19-1438 and 19-1439 that Metro Council will consider collectively at its meetings on November 7 and November 21, 2019.

## IDENTIFIED POLICY OUTCOMES

The proposed ordinance will establish a new Chapter 5.03 to govern Metro transfer station fees to update and improve Metro's solid waste code. This ordinance is a companion to Ordinance Nos. 19-1438 and 19-1439 that collectively remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

## **POLICY QUESTION(S)**

1. Should the current Chapter 5.02 (Disposal Charges and User Fees) be split into two separate chapters to clarify that the regional system fee applies to *all users* of the regional waste system, whereas Metro's transfer station fees apply *only* at Metro's own transfer stations?
2. If yes, should the regional system fee and Metro's transfer station fees be set by resolution versus ordinance?
3. Should Metro's account policies be moved from code to administrative rules?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the ordinance as proposed to establish Metro Code Chapter 5.03 and move the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter as described in this staff report. This option will result in making the code easier to read and understand. There are no known financial implications associated with the option.
2. Amend the ordinance to adopt other changes to Metro's solid waste code that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the extent of the alternate proposal. In addition, such revisions may require similar changes to the code chapters proposed in Ordinance Nos. 19-1438 and 19-1439 for consistency.
3. Do not approve the ordinance. This option will result in maintaining status quo. If the Council does not approve this ordinance, then the decision may require a similar action for the code changes proposed in Ordinance No. 19-1439 for consistency. There are no known financial implications associated with the option.

## **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 19-1440 to establish Metro Code Chapter 5.03 and move the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter. Staff also recommends moving certain sections of code into administrative rules and making other housekeeping improvements as described in this staff report.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Approval of this ordinance would result in establishing a new Metro Code Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) and moving the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter. The proposed ordinance also includes moving certain sections of code into administrative rules and making other housekeeping improvements to improve clarity and consistency as described below and provided in Exhibit A. These revisions are associated with the other updates and housekeeping improvements proposed under companion Ordinance Nos. 19-1438 and 19-1439.

Staff recommends establishing Metro Code Chapter 5.03 and other housekeeping improvements as described below:

1. Remove all provisions related to Metro transfer station fees from current Metro Code Chapter 5.02 and move to new Chapter 5.03.
2. Authorize Metro's Chief Operating Officer to temporarily establish or change Metro transfer station fees when necessary for a new waste stream or when emergency circumstances exist.
3. Update language throughout the chapter to remove legalese, passive voice, nominalizations and lengthy sentences.
4. Break up lengthy code sections into shorter, separate sections for ease of reading.
5. Establish the uniform term "fee" to describe all of Metro's fees, user fees, charges, surcharges and rates.
6. Remove the requirement that Metro transfer station fees be set by ordinance. If approved, the Council could establish Metro transfer station fees by resolution and it could take effect 30 days after adoption. This avoids the need to wait 90 days for fees to take effect and allows the Metro Council to be more responsive to changing conditions.
7. Remove transfer station fee amounts from Metro Code and establish an annual fee schedule.
8. Move the "Account Policies at Metro Transfer Stations" code section into administrative rule to better reflect that *internal* account policies for Metro's transfer stations should not be housed in the Metro Code.
9. Move code sections that are applicable to certain Metro transfer station fees to administrative rules so that Metro can be more nimble in establishing the circumstances for when these fees should apply. These include:
  - a. Litter Control Fee
  - b. Household Hazardous Waste Management Fee
  - c. Recoverable Solid Waste Fee
  - d. Special Waste Fee
  - e. Christmas Tree Fee

In addition to the above, this staff report includes a draft set of administrative rules to illustrate which code sections would be moved to rule under the proposed ordinance (Attachment 2, AR 5.03-1000 through 1080). If Metro Council adopts Ordinance No. 19-1440, then the Chief Operating Officer will consider whether to adopt a final version of these administrative rules as provided in code. Metro Code requires a 30-day public comment period and an oral hearing before any proposed rule can be adopted by the Chief Operating Officer.

## **KNOWN OPPOSITION**

There is no known opposition to establishing a new Metro Code Chapter 5.03 and moving the Metro transfer station fee provisions from current Chapter 5.02 to this new chapter. However, Metro received several comments expressing concern about changing the timing of Metro's transfer station fee-setting process. Staff understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

Metro also received several other comments that were outside the scope of these proposed code updates and housekeeping improvements. For example, one person submitted written comments about Metro's longstanding practice of charging a "blended" rate for putrescible and non-putrescible waste at its transfer stations. Another commenter requested that Metro establish rate-setting requirements for privately-owned transfer stations. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

Staff does not recommend any additional changes to Chapter 5.03 other than those described in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

## **PUBLIC OUTREACH**

Metro staff notified interested parties via email of the proposed updates and housekeeping improvements to Metro Code Title V. The proposed code chapters, draft administrative rules, and a summary of the proposed changes were also posted on Metro's website.

Metro provided an opportunity for the public to review and submit comments on the proposed updates and housekeeping improvements. The public comment period was open from August 12 through September 13, 2019. Metro staff also held an informational meeting for the public on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The meeting was attended by four industry representatives and four representatives of government organizations.

As previously mentioned, during the comment period Metro received several comments about various aspects of the proposed code updates and housekeeping improvements. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

## **LEGAL ANTECEDENTS**

Metro Charter, Title V of the Metro Code and ORS Chapters 268 and 459.



## **ANTICIPATED EFFECTS**

Approval of this ordinance would establish Metro Code Chapter 5.03 to govern Metro transfer station fees as provided in Exhibit A to improve clarity and consistency and to conform to other proposed code amendments.

## **BUDGET IMPACTS**

There are no expected budget impacts associated with the adoption of this ordinance.

## **BACKGROUND**

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in the region's garbage and recycling system. These efforts have sought to remove unnecessary and outdated provisions, improve readability, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials. Metro staff seeks to continue these efforts by establishing a new Metro Code Chapter 5.03 to make the code easier to read and understand.

The current Metro Code Chapter 5.02 (*Disposal Charges and User Fees*) sets forth Metro's transfer station fees as well as the regional system fee. The chapter is confusing because it contains the regional system fee (which is for the use of the region's waste system and is typically assessed at the time of disposal) along with Metro's own transfer station fees (which are only applicable to garbage transferred at Metro's transfer stations).

To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposes to split the existing Chapter 5.02 into the following two chapters:

1. Chapter 5.02 (Regional System Fee) will continue to govern the regional system fee.
2. Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) will govern Metro's own transfer station fees.

In addition to the proposed revisions and new chapter described above, some current code sections would be transferred into administrative rules to allow Metro to more quickly address changing market conditions when those conditions may affect the circumstances applicable to those fees. In particular, the proposed administrative rules would authorize Metro's Chief Operating Officer to establish a temporary fee for a waste material (such as wood, polystyrene, and plastics) if necessary to address a significant change in market conditions or an emergency circumstance.

The proposed administrative rules would be posted for public comment and an oral hearing if the Metro Council were to adopt the proposed changes to Chapter 5.02 and establish a new Chapter 5.03.

## **ATTACHMENTS**

- Exhibit A
- Attachment 1
- Attachment 2

# ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

## Metro's Response to Comments on Proposed Changes to Metro Code Title V

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

### **1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):**

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.

In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: *Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.*

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: *Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.*

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. *McCann v. Rosenblum* stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, *Qwest Corp. v. City of Surprise* said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." *Rogue Valley Sewer Services v. City of Phoenix* stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

*Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.*

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**2) Bruce Walker - City of Portland (email dated September 11, 2019):**

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

*Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.*

*However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.*

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**3) Shannon Martin - City of Gresham (email dated September 11, 2019):**

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

*Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.*

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

**4) Theresa Koppang - Washington County (email dated September 11, 2019):**

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

*And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.*

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

**5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):**

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*



Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

**6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):**

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*

*transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.*

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

**7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):**

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
  - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
  - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

*As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.*

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.

**TERRELL GARRETT  
GREENWAY RECYCLING, LLC  
15204 SE RIVER FOREST DR.  
MILWAUKIE, OR 97267  
(503) 793-9238  
12 August 2019**

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: Comments on proposed changes to Chapter 5

Dear Council President Peterson and Councilors:

Remarkably, GreenWay Recycling has only a few comments on the proposed changes to Chapter 5. Conceptually and mostly in practice, this is a piece of legislation that we support.

Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decisionmakers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decisionmaker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.

Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the "discrete" services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a "blended" rate which is in violation of these parameters.

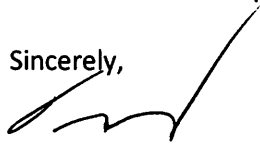
Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, terms such as "Recoverable Solid Waste", "Recyclable Material", and "Recycling" seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.

Second, 5.02.030 (d) (2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "Accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.

The third and final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. McCann v. Rosenblum stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, Qwest Corp. v. City of Surprise said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed."" Rogue Valley Sewer Services v. City of Phoenix stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean mrf, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportionate share.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terrell Garrett', with a long, sweeping flourish extending upwards and to the right.

Terrell Garrett

## Warren Johnson

---

**From:** Walker, Bruce [Bruce.Walker@portlandoregon.gov]  
**Sent:** Wednesday, September 11, 2019 9:47 AM  
**To:** Warren Johnson  
**Subject:** [External sender] RE: Requesting your comments on proposed changes to Metro's solid waste code

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren –

I'm resubmitting my comments with a clarification that Metro include in their administrative rules a commitment to sending fee info to local govts. by March 31.

Thanks!

Bruce

Warren –

Thank you for sharing information regarding proposed changes to Metro's solid waste code at yesterday's local government solid waste directors meeting.

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.

Thank you and please let me know if you have any questions.

Bruce

---

**From:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Sent:** Friday, August 23, 2019 3:56 PM  
**To:** Walker, Bruce <Bruce.Walker@portlandoregon.gov>  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Thanks for the comment Bruce. I'll include it in the record.

Warren Johnson  
Metro  
(503) 797-1836

---

**From:** Walker, Bruce [<mailto:Bruce.Walker@portlandoregon.gov>]  
**Sent:** Friday, August 23, 2019 12:46 PM  
**To:** Warren Johnson  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Warren –

Thank you for sharing information regarding proposed changes to Metro's solid waste code at yesterday's local government solid waste directors meeting.

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution but requests that notice of the new fee schedule be provided in March of each year.

Thank you and please let me know if you have any questions.

Bruce

Include The Food - Be Cart Smart

**Bruce Walker**

City of Portland Bureau of Planning & Sustainability  
Solid Waste & Recycling Program Manager  
1900 SW 4th Avenue, Room 7100  
Portland, OR 97201  
503.823.7772  
(he/him)  
[www.portlandoregon.gov/bps](http://www.portlandoregon.gov/bps)

The City of Portland is committed to providing meaningful access. For accommodations, modifications, translation, interpretation or other services, please contact 503-823-7700 or use City TTY 503-823-6868.

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**From:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.
- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro's own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro's administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**



## Warren Johnson

---

**From:** Shannon Martin [shannon.martin@greshamoregon.gov]  
**Sent:** Wednesday, September 11, 2019 10:07 AM  
**To:** Warren Johnson  
**Cc:** Steve Fancher  
**Subject:** [External sender] RE: Requesting your comments on proposed changes to Metro's solid waste code

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Hello Warren,

Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments fee change information no later than March 31<sup>st</sup> is necessary for us to have in order to complete our rate review process.

Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1<sup>st</sup> adjustment.

Thank you,

Shannon Martin  
Program Manager | Recycling & Solid Waste  
City of Gresham | 503-618-2624

CITY OF  
GRESHAM

---

**From:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

**CAUTION:** External Email

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.
- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro's own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro's administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

## Warren Johnson

---

**From:** Theresa Koppang [Theresa\_Koppang@co.washington.or.us]  
**Sent:** Wednesday, September 11, 2019 10:08 AM  
**To:** Warren Johnson  
**Subject:** [External sender]Metro Code Changes/Admin Rules

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Hi Warren,

Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.

And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.

Thank you and please let me know if you have any questions.

**Theresa Koppang | Manager**

Washington County Department of Health and Human Services | Solid Waste & Recycling | Code Enforcement  
155 N. First Ave. MS 5A, Hillsboro OR 97124

[Theresa\\_koppang@co.washington.or.us](mailto:Theresa_koppang@co.washington.or.us)

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direct: 503-846-3663 main: 503-846-3605

## Warren Johnson

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**From:** Winterhalter, Rick [rickw@clackamas.us]  
**Sent:** Friday, September 13, 2019 9:12 AM  
**To:** Warren Johnson  
**Cc:** Polk, Eben  
**Subject:** [External sender]comments on rule changes

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren:

I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners:

- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.

Regards,  
Rick

Rick Winterhalter  
Sustainability & Solid Waste Program  
Clackamas County  
150 Beavercreek Rd.  
Oregon City, OR 97045  
503.742.4466

**I have one share in corporate Earth, and I am nervous about the management.**

-E.B. White, writer (1899-1985)

***Oregon's 2050 Vision:***

*Oregonians in 2050 produce and use materials responsibly  
conserving resources •protecting the environment •living well*

## Warren Johnson

---

**From:** Peter Brandom [Peter.Brandom@hillsboro-oregon.gov]  
**Sent:** Friday, September 13, 2019 8:55 AM  
**To:** Warren Johnson  
**Cc:** Theresa Koppang (theresa\_koppang@co.washington.or.us); Walker, Bruce; Eben Polk; Winterhalter, Rick; Kathy Folsom; Martin, Shannon (Shannon.Martin@greshamoregon.gov)  
**Subject:** [External sender]RE: Requesting your comments on proposed changes to Metro's solid waste code  
  
**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren,

Below are our comments on the proposed regulatory changes, not in order of importance. Thank you for the opportunity to comment, and for the time and effort to provide clarification at the meeting this week.

- Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.
- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.
- Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of '...all sources and uses of funds that affect the solid waste revenue fund budget...' for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.
- Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.
- Note existing typo in 5.03.040(c).

Thank you,  
Peter

Peter Brandom | *Senior Project Manager*  
City of Hillsboro, Oregon  
phone 503-681-6191  
email [peter.brandom@hillsboro-oregon.gov](mailto:peter.brandom@hillsboro-oregon.gov)  
web [www.hillsboro-oregon.gov](http://www.hillsboro-oregon.gov) | Twitter [@cityofhillsboro](https://twitter.com/cityofhillsboro)

---

**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Thursday, August 22, 2019 11:27 AM  
**To:** Peter Brandom <[Peter.Brandom@hillsboro-oregon.gov](mailto:Peter.Brandom@hillsboro-oregon.gov)>  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Thanks for the comment. I'll include this in the record.

Please let me know if you have any other comments or questions about the proposed changes. Thanks again.

Warren Johnson  
Metro  
(503) 797-1836

---

**From:** Peter Brandom [<mailto:Peter.Brandom@hillsboro-oregon.gov>]  
**Sent:** Thursday, August 22, 2019 10:51 AM  
**To:** Warren Johnson  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

We would like to see a chapter that regulates rate setting and rates at private transfer stations in the same way that rates are set at the Metro stations.

---

**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.

- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro’s own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro’s administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

September 13, 2019

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232- 2736

RE: Metro Proposed Solid Waste Code Changes

Dear Metro Councilors,

This letter represents the Clackamas County Refuse and Recycling Association (CCRRA), Portland Haulers' Association (PHA), and Washington County Haulers' Association (WCHA) comments regarding Metro's proposed solid waste code changes. As you know, CCRRA, PHA, and WCHA members provide services across the solid waste system including hauling, resource recovery & transfer, processing and landfilling for all areas of the Metro region. Members are committed to working cooperatively with their regulatory local governments to provide safe, modern, and efficient waste collection services that include garbage, recycling, and organics collection at reasonable rates.

Members very much appreciate the opportunity to review the proposed changes to Metro's solid waste code and engage in the related public process. While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:

- cutting two months off the public process -- from the current 90 days to 30 days— provides less time and arguably less opportunity for full public input and participation and
- shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as a part of the local government rate setting process.

As a result, CCRRA, PHA and WCHA ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.

Members are committed to working with Metro, local governments, as well as the community at large, and share our expertise in the industry. Our coordinated efforts among state, regional, local, industry and community members contribute to Oregon's position as a national leader in recycling and waste management. We look forward to the opportunity to continue serving as a resource, imparting experience from our own challenges as large and many small, family and



women-owned companies, in navigating the business of waste management while promoting our common values advancing equity in waste management. Please don't hesitate to contact Beth Vargas Duncan at 971-707-1683 or [bethvd@orra.net](mailto:bethvd@orra.net) with any questions.

Sincerely,

Josh Brown, President  
Clackamas County Refuse & Recycling Association

Vallerie Gruetter Hill, President  
Portland Haulers' Association

Mike Leichner, President  
Washington County Haulers' Association

**Solid Waste  
Administrative Rule**

**AR 5.03-1000 through 1080**

Administrative Rule of Metro Code Chapter 5.03  
Administrative Rule Adoption Record and Findings

**AR 5.03-1000 through 1080  
Solid Waste Rates at Metro Stations Administrative Rules**

These administrative rules are adopted under the authority of Metro Code Chapter 5.08, which authorizes the Chief Operating Officer (COO) to adopt and amend administrative rules. In accordance with Metro Code, the COO provided an opportunity for public comment and held a public hearing on these rules before their adoption.

The COO finds that these administrative rules are necessary to implement certain provisions of Metro Code Chapter 5.03 and adopts Administrative Rules Nos. 5.03-1000 through 1080. The requirements of these administrative rules are in addition to all other requirements and provisions in Metro Code Chapter 5.03. These rules have the same force and effect as any other provision of Metro Code Chapter 5.03.

It is so ordered:

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Andrew Scott  
Interim Metro Chief Operating Officer

---

Date

## SOLID WASTE

### ADMINISTRATIVE RULES

AR 5.03-1000 through 1080

#### Solid Waste Rates at Metro Stations

Effective: XXX, 2020

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##### 5.03 – 1000 Purpose

The purpose of these rules is to implement Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations); to ensure that the Metro' transfer station fees are consistent, predicable and transparent; and to establish appropriate account policy requirements to diminish Metro's risk of loss due to non-payment.

##### 5.03 – 1005 Legal Authority

These administrative rules are issued under the authority of Metro Code Chapters 5.03 and 5.08. These rules are in addition to all other requirements and provisions in Metro Code Chapter 5.03.

##### 5.03 – 1010 Definitions

Unless otherwise specifically defined, all terms used are as defined in Metro Code Chapter 5.00.

##### 5.03 – 1015 Applicability of Rules

The Metro transfer station fees apply to Metro South Station and Metro Central Station.

##### 5.03 – 1020 Effective Date

These rules are effective on XXXX.

## ATTACHMENT 2 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

### 5.03 – 1025 Metro Transfer Station Fee Setting

1. In accordance with Metro Code Chapter 5.03, each year the Chief Operating Officer will propose provisional Metro transfer station fee amounts for consideration by Metro Council. The provisional transfer station fees will include the following at Metro South Station and Metro Central Station:
  - a. Disposal fee
  - b. Transaction fee
  - c. Household hazardous waste management fee
  - d. Conditionally exempt generator waste fee
  - e. Recoverable solid waste fee
  - f. Special waste fee
  - g. Litter control fee
2. The Chief Operating Officer may establish an interim fee for an additional service or waste material not specifically listed in this section or may revise a fee amount if necessary to address a substantial change in market conditions. Any interim fee adopted pursuant to this section is only effective for not more than 120 days unless the Metro Council affirms or modifies it.

### 5.03 – 1030 Source-Separated Recyclable Materials Credit

1. A non-commercial customer at Metro Central Station or Metro South Station who disposes of source-separated standard recyclable materials (except yard debris) that are generated by a household will receive a disposal charge credit. The credit amount is based on whether the non-commercial customer is disposing of fewer than 100 pounds of recyclables or 100 pounds or more of recyclables.
2. Notwithstanding subsection (1), the Chief Operating Officer may designate source separated recyclable materials that Metro will accept from customers at no charge.

### 5.03 – 1035 Household Hazardous Waste Management Fee

1. Customers delivering household hazardous waste at a Metro hazardous waste facility must pay a “household hazardous waste management fee.” This fee is in lieu of any other base disposal fee, the regional system fee, and community enhancement fees that may be required under Chapters 5.02, 5.03, 5.06, and excise taxes required by Chapter 7.01.
2. The household hazardous waste management fee may differ depending on container size.
3. Depending on container size, the fee may not apply to post-consumer architectural paint under the Oregon paint stewardship system set forth in ORS 459A.820 et seq.
4. The Chief Operating Officer may waive the household hazard waste management fee in a specific instance upon a finding that a waiver is in the public interest.

### 5.03 – 1040 Conditionally Exempt Generator Waste Fee

1. For conditionally exempt generator (CEG) waste from non-household sources, a customer must pay the actual disposal costs of the waste calculated from the current Metro contractor price schedules, Metro and contractor labor costs (as applicable), all applicable excise taxes, and the cost of material used for managing the waste.
2. Notwithstanding subsection (1), Metro will not assess the conditionally exempt generator waste fee under this section for:
  - a. Post-consumer architectural paint under the Oregon paint stewardship system as set forth in ORS 459A.820 et seq; or
  - b. Hazardous waste generated at any facility operated by Metro.
3. The Chief Operating Officer may waive the conditionally exempt generator waste fee in a specific instance upon a finding that a waiver is in the public interest.

## ATTACHMENT 2 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

### 5.03 – 1045 Recoverable Solid Waste Fee

1. Metro will collect a “recoverable solid waste fee” on different classes of recoverable solid wastes accepted at Metro Central Station or Metro South Station.
2. The recoverable solid waste fee is in addition to the transaction fee, community enhancement fee set forth in Metro Code Chapter 5.06, and the base disposal fee.
3. For purposes of this section, “managing” and “management” of recoverable solid waste means any of the following activities: acceptance, onsite handling and logistics, quality assurance, mixing of wastes to meet an engineering or market specification, processing such as grinding and shredding that may alter the form but does not substantially alter the content of the waste, residuals management, reloading, transport and delivery to a recycling site, and similar activities directly related to the handling and disposing of recoverable solid waste.
4. For purposes of this section, a class of recoverable solid waste is distinguished from other classes of wastes by a material difference in the management cost or by physical characteristics that require different practices to manage the waste.
5. The Chief Operating Officer may specify new classes of recoverable solid wastes, set tonnage fees for new classes of recoverable solid wastes, and change tonnage fees for existing classes of recoverable solid wastes.
6. The material management fee for each class of recoverable solid waste is equal to the sum of:
  - a. The contractual costs that Metro pays, if any, to a contract operator of Metro Central Station or Metro South Station for managing the class of recoverable solid waste, expressed on a per-ton basis;
  - b. Metro’s direct costs, if any, for personnel, materials, services and capital incurred directly by Metro for managing the class of recoverable solid waste, expressed on a per-ton basis; and
  - c. An allocation of Metro’s administrative, overhead, capital, and fixed contractual costs that is reasonably related to managing the class of recoverable solid waste, expressed on a per-ton basis.
7. Nothing in subsection (6) modifies Council’s authority to set recoverable solid waste fees at any time.
8. Notwithstanding subsections (2) and (5):
  - a. The Chief Operating Officer will establish fees for recoverable solid wastes that are typically accepted and managed on a unit or count basis rather than by scale weight. Metro will base these fees on its actual costs for managing the wastes.
  - b. The Chief Operating Officer will establish a minimum fee for loads of recoverable solid waste.
9. This section does not apply to any source-separated recyclable material that the Chief Operating Officer designates as exempt from fees.

### 5.03 – 1050 Special Waste Fee and Permit Application Fee

1. A special waste fee applies to all special wastes disposed of at a Metro transfer station. A special waste permit application fee applies to all special waste permit applications. This fee is in lieu of any other base disposal fee, the regional system fee, and community enhancement fees that may be required under Chapters 5.02, 5.03, 5.06, and excise taxes required by Chapter 7.01. The purpose of the special waste fee and permit application fee is to require a person that disposes of special waste to pay the cost of services provided by Metro to manage special wastes. These fees apply to all special wastes.
2. The special waste fee is the amount equal to Metro’s actual costs in managing special waste. These costs comprise of special handling costs, cleanup costs, and lab or testing costs. The special waste fee applies to all permitted special wastes and to all non-permitted special wastes that Metro

## ATTACHMENT 2 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

discovers at a Metro-operated facility that result in additional management costs not otherwise covered by, or incorporated within, any other Metro transfer station fee.

3. The special waste permit application fee is \$25.00. Metro will collect this fee at the time it receives a special waste permit application.
4. The special waste fee and special waste permit application fee do not apply to household hazardous waste accepted at Metro hazardous waste facilities or Metro household hazardous waste collection events.

### **5.03 – 1055 Litter Control Fee**

1. A customer must pay a “litter control fee” if the customer enters Metro Central Station or Metro South Station and any portion of the customer’s solid waste or recoverable solid waste is unsecured and visible to Metro scalehouse personnel.
2. The amount of the litter control fee may vary depending on the load weight.
3. Metro will not impose the litter control fee if the solid waste or recoverable solid waste is only visible through a secure covering.
4. Metro will collect the litter control fee in the same manner that Metro collects all other transfer station fees at the facility.

### **5.03 – 1060 Transaction Fee During Automated Scale Malfunction**

If a customer must use the staffed scales because the automated scales are unavailable due to a physical site limitation, a limit or restriction of the computer operating system, or a malfunction of the automated scales, then the transaction fee is the amount authorized for automated scales.

### **5.03 – 1065 Rounded Fees for Cash Payments**

When a non-account customer pays in cash, Metro will round total fees at the Metro South Station and the Metro Central Station to the nearest whole dollar amount, with any \$0.50 fee rounded down.

### **5.03 – 1070 Christmas Tree Fee**

The fee for accepting up to three Christmas trees in one transaction will be the amount equal to the transaction fee at the Metro transfer station.

### **5.03 – 1075 Account Policy at Metro Transfer Stations**

1. A person may pay Metro transfer station fees and all taxes using cash, credit card, check, or under Metro’s credit policy. Metro will not grant credit to any person before it approves a credit application in a manner or on forms as required.
2. The Chief Operating Officer will establish appropriate account requirements designed to diminish Metro’s risk of loss due to non-payment for new and existing accounts. Metro may require existing account holders to reapply for credit or provide additional guarantees as the Chief Operating Officer considers necessary.
3. Account charges accrue on a monthly basis. Metro will mail statements on or about the 10th day of the month for disposal services rendered in the prior month. An account holder must pay the statement no later than the last business day of the month in which Metro mails the statement. The statement is past due thereafter. A statement is not “received” unless the account holder personally delivers it to the Metro Department of Finance and Regulatory Services during business hours or unless Metro’s mail room receives it on or before the due date.
4. An account customer must immediately notify Metro if the customer sells, terminates, or makes a substantial change in the scope of its business after Metro approves its application for credit. Metro may terminate the customer’s credit if the customer does not provide the required notice.

## ATTACHMENT 2 TO STAFF REPORT FOR ORDINANCE NO. 19-1440

5. The Chief Operating Officer may adjust accounts receivable and reverse finance charges in accordance with prudent credit practices. The Chief Operating Officer will report adjustments over \$1,000.00 to the Council in writing on a monthly basis.
6. Consistent with prudent credit practices, the Chief Operating Officer may end pursuit of an account receivable when the likelihood of collecting does not justify further collection costs. The Chief Operating Officer will provide Council with a written report, at least monthly, of all accounts receivable over \$1000.00 for which Metro has ended collection efforts. Only Council may approve ending collection efforts on an account over \$10,000.00.

### 5.03 – 1080 Finance Charges and Past Due Accounts

1. Metro will assess a finance charge in the amount of the greater of \$25.00 or 1.5 percent of the sum of all past due fees on all unpaid, past due fees beginning on the 15th day of the month following the month in which Metro mails a statement, and continuing on the 15th day of each month thereafter until paid. Finance charges accrue only on unpaid past due balances, and not on previously assessed finance charges. Metro will continue to assess finance charges on negotiated repayment schedules. Metro will first apply payments to finance charges and then to the oldest amount past due. In addition to any other finance charge or fee, Metro will also assess a 30 percent collection fee on the past-due balance owing on any account that Metro forwards to a collection agency.
2. If an account is 15 days past due, then Metro may place an account on a cash only basis until the account holder pays all past due disposal and finance charges. Metro may close an account if Metro has placed it on a cash only basis more than twice during any 12 month period. Metro may deny facility access to a person whose account is past due for 30 days or more. The Chief Operating Officer has discretion to place an account on a cash only basis or deny facility access.

Agenda Item No. 6.4

**Ordinance No. 19-1441**, For the Purpose of Establishing a  
New Metro Code Chapter 5.08 that Governs  
Administrative Rulemaking Authority for Metro Code Title  
V

*Ordinances (Second Reading)*

Metro Council Meeting  
Thursday, November 21, 2019  
Metro Regional Center, Council Chamber



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING A	)	ORDINANCE NO. 19-1441
NEW METRO CODE CHAPTER 5.08 THAT	)	
GOVERNS ADMINISTRATIVE RULEMAKING	)	Introduced by Acting Chief Operating Officer
AUTHORITY FOR METRO CODE TITLE V	)	Andrew Scott in concurrence with Council
	)	President Lynn Peterson

WHEREAS, the Metro solid waste code is set forth in Title V of the Metro Code; and

WHEREAS, Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10 in Title V each have their own sections that govern administrative rulemaking procedures for those specific code chapters; and

WHEREAS, consolidating those multiple administrative rulemaking sections into a new “Administrative Rulemaking” chapter that governs the entire Metro Code Title V would ensure that the procedures are uniform throughout Metro Code Title V; and

WHEREAS, in the current administrative rulemaking procedures the timing of the oral hearing in relation to the general public comment period is confusing, thus requiring a revision to clarify the timing; and

WHEREAS, staff solicited input from the public on establishing new Metro Code Chapter 5.08 by providing a 30-day public comment period during August and September 2019 and hosting a public informational meeting on September 9, 2019; and

WHEREAS, the Metro Council finds that establishing a new Metro Code Chapter 5.08 to govern administrative rulemaking procedures for the entire solid waste code will provide greater clarity for the public and create consistent, transparent and objective procedures for adopting administrative rules that further implement the requirements of Metro Code Title V; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Title V, Solid Waste, is amended to add a new Metro Code Chapter 5.08, (“Administrative Rulemaking Authority for Title V”), as set forth in the attached Exhibit A.
2. Metro Code Section 5.01.280 is repealed.
3. Metro Code Section 5.02.170 is repealed.
4. Metro Code Section 5.05.260 is repealed.
5. Metro Code Section 5.06.100 is repealed.
6. Metro Code Section 5.09.170 is repealed.
7. Metro Code Section 5.10.080 is repealed.

ADOPTED by the Metro Council this 21<sup>st</sup> day of November 2019.

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Lynn Peterson, Council President

Attest:

Approved as to Form:

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Sara Farrokhzadian, Recording Secretary

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Carrie MacLaren, Metro Attorney

# **EXHIBIT A TO ORDINANCE NO. 19-1441**

## **CHAPTER 5.08**

### **ADMINISTRATIVE RULEMAKING AUTHORITY FOR TITLE V**

5.08.010	Purpose
5.08.020	Chief Operating Officer May Adopt Rules
5.08.030	Public Comment Opportunity Required
5.08.040	Oral Hearing; Requirements
5.08.050	Adoption of Administrative Rules
5.08.060	Effective Date of Administrative Rules
5.08.070	Temporary Rules; Adoption and Effective Date
5.08.080	Writ of Review; Final Decision
5.08.090	Prior Rules, Performance Standards and Forms Remain in Effect
5.08.100	Agency-wide Rulemaking Procedures Supersede this Chapter

#### **5.08.010 Purpose**

The purpose of this chapter is to set forth consistent, transparent and objective procedures for adopting administrative rules that further implement the obligations and requirements of Metro Code Title V.

#### **5.08.020 Chief Operating Officer May Adopt Rules**

The Chief Operating Officer may adopt or amend rules to implement any provision of Title V (Solid Waste). Any rule adopted or amended under this chapter has the same force and effect as any other chapter provision in Title V.

#### **5.08.030 Public Comment Opportunity Required**

Before the Chief Operating Officer adopts or amends a rule, the Chief Operating Officer must provide an opportunity for written public comment for a period of at least 30 days. The Chief Operating Officer will provide notice of the public comment period in a manner reasonably calculated to reach interested parties. The notice will include a brief description of the proposed rule; the location at which a person may obtain a copy of the full text of the proposed rule; the method for submitting public comments; and the deadline for submitting public comments.

#### **5.08.040 Oral Hearing; Requirements**

- (a) In addition to written public comments, the Chief Operating Officer will also hold an oral hearing on any proposed rule or amendment to an existing rule during the written comment period. Metro will give notice of and schedule the oral hearing at the same time that it makes available the proposed rules, provided that the oral hearing cannot be scheduled less than 10 days from the notice date. The notice will include the time,

## **EXHIBIT A TO ORDINANCE NO. 19-1441**

place, and purpose of the oral hearing, a brief description of the proposed rule, and the location at which a person may obtain copies of the full text of the proposed rule.

- (b) During the oral hearing, the Chief Operating Officer will receive any offered written or oral testimony regarding the proposed rule, in addition to any written comments received during the written public comment period.

### **5.08.050 Adoption of Administrative Rules**

- (a) After the written public comment period is closed, the Chief Operating Officer may adopt the rule as originally proposed, adopt a modified version of the proposed rule, or reject the proposed rule.
- (b) If the Chief Operating Officer intends to adopt a substantially modified version of the proposed rule, the Chief Operating Officer must provide a notice of opportunity to comment on the proposed modifications along with a copy of the text of the new proposed changes to each person who has provided contact information and has either submitted written comments on the proposal, testified at the oral hearing, or asked to receive a notice of proposed modifications. Metro must also post the notice on its website. The public has 15 days from the notification date to provide written comment on the proposed modifications, but no further public hearing is required. After the 15-day comment period ends, the Chief Operating Officer may adopt the proposed rule.

### **5.08.060 Effective Date of Administrative Rules**

With the exception of a temporary rule, any rule adopted under this chapter takes effect 30 days after the Chief Operating Officer adopts it, unless the Chief Operating Officer specifies a later effective date.

### **5.08.070 Temporary Rules; Adoption and Effective Date**

Notwithstanding Sections 5.08.030 (Public Comment) and 5.08.040 (Oral Hearing), the Chief Operating Officer may adopt a temporary rule without prior public notice, written comment or hearing upon a written finding that a failure to act promptly will result in serious prejudice to the public interest or the interest of an affected party. The Chief Operating Officer must include the specific reasons for the serious prejudice. Any rule adopted pursuant to this section expires no later than 180 days from its effective date.

### **5.08.080 Writ of Review; Final Decision**

For purposes of ORS 34.020, any rule adopted by the Chief Operating Officer under this chapter is considered a final decision.

## **EXHIBIT A TO ORDINANCE NO. 19-1441**

### **5.08.090 Prior Rules, Performance Standards and Forms Remain in Effect**

Any form, performance standard, or administrative rule (formerly known as an “administrative procedure”) that is in effect on the date when this chapter is adopted continues to remain in effect unless otherwise repealed or amended.

### **5.08.100 Agency-wide Rulemaking Procedures Supersede this Chapter**

If the Metro Council establishes rulemaking procedures that are applicable agency-wide, then the rulemaking procedures set forth in this chapter are superseded by the agency-wide procedures.

IN CONSIDERATION OF ORDINANCE NO. 19-1441 FOR THE PURPOSE OF ESTABLISHING A  
NEW METRO CODE CHAPTER 5.08 THAT GOVERNS ADMINISTRATIVE RULEMAKING  
AUTHORITY FOR METRO CODE TITLE V

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Date: October 24, 2019

Prepared by: Warren Johnson  
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Department: PES

Presenter(s): Warren Johnson

Meeting date: November 7, 2019

Length: 5 minutes

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## **ISSUE STATEMENT**

Metro staff seeks to update and improve Metro's solid waste code (Metro Code Title V) and administrative rules to provide greater clarity and predictability for the public and those that are directly involved in the region's solid waste system.

## **ACTION REQUESTED**

Adopt Ordinance No. 19-1441 to establish a new Metro Code Chapter 5.08 (Administrative Rulemaking Authority for Title V) to set forth consistent, transparent and objective procedures for adopting administrative rules that further implement the requirements of Metro Code Title V.

## **IDENTIFIED POLICY OUTCOMES**

The proposed ordinance will repeal all chapter-specific administrative rulemaking procedures throughout Metro Code Title V and establish a new Chapter 5.08 (Administrative Rulemaking Authority for Title V) that will govern administrative rulemaking for the entire solid waste code.

## **POLICY QUESTION(S)**

Should Metro Council repeal all chapter-specific administrative rulemaking procedures and establish a new Metro Code Chapter 5.08 that will govern administrative rulemaking for the entire solid waste code (Title V)?

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

1. Approve the ordinance as proposed to repeal all chapter-specific administrative rulemaking procedures and establish new Metro Code Chapter 5.08 as described in this staff report. This option will result in making the code easier to understand and

more consistent by establishing a uniform administrative rulemaking process for the entire solid waste code. There are no known financial implications associated with the option.

2. Amend the ordinance to adopt other revisions to Metro Code Chapter 5.08 that are different than those described in this staff report. The potential effects and financial implications of this option are unknown at this time because they would be dependent on the scope of the alternate proposal.
3. Do not approve the ordinance. This option will result in maintaining status quo. There are no known financial implications associated with the option.

## **STAFF RECOMMENDATIONS**

Staff recommends approval of Ordinance No. 19-1441 to repeal all chapter-specific administrative rulemaking procedures throughout Metro Code Title V and establish a new Chapter 5.08 that will govern administrative rulemaking for the entire solid waste code.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Approval of this ordinance would result in changes to the Metro solid waste code that:

- 1) Establish a new Metro Code Chapter 5.08 that will govern the administrative rulemaking process for the entire solid waste code;
- 2) Update administrative rulemaking procedures to clarify the timing of an oral hearing during a public comment period; and
- 3) Repeal all chapter-specific administrative rulemaking procedures from Metro Code Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10.

## **KNOWN OPPOSITION**

There is no known opposition to establishing a new chapter to govern the administrative rulemaking process for the entire solid waste code. However, Metro received a comment requesting changes to Metro's current administrative rulemaking procedures. Metro also received several other comments that were outside the scope of these proposed code updates and housekeeping improvements. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

Staff does not recommend any additional changes to Metro's administrative rulemaking procedures other than those provided in Exhibit A. These proposed updates are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

## **PUBLIC OUTREACH**

Metro staff notified interested parties via email of the proposed updates and housekeeping improvements to Metro Code Title V. The proposed code chapters, draft administrative rules, and a summary of the proposed changes were also posted on Metro's website.

Metro provided an opportunity for the public to review and submit comments on the proposed updates and housekeeping improvements. The public comment period was open from August 12 through September 13, 2019. Metro staff also held an informational meeting for the public on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The meeting was attended by four industry representatives and four representatives of government organizations.

As previously mentioned, during the comment period Metro received several comments about various aspects of the proposed code updates and housekeeping improvements. A fuller description of those comments and Metro staff's response to those comments are provided as Attachment 1 to this report.

## **LEGAL ANTECEDENTS**

Metro Charter, Title V of the Metro Code and ORS Chapters 268 and 459.

## **ANTICIPATED EFFECTS**

Approval of this ordinance would result in repealing all chapter-specific administrative rulemaking procedures from Metro Code Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10 and establishing new Metro Code Chapter 5.08 that will govern the administrative rulemaking process for the entire solid waste code.

## **BUDGET IMPACTS**

There are no expected budget impacts associated with the adoption of this ordinance.

## **BACKGROUND**

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in the region's garbage and recycling system. These efforts have sought to remove unnecessary and outdated provisions, improve readability, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

The proposed ordinance establishes a new chapter (Metro Code Chapter 5.08) for the purpose of standardizing and consolidating all of the administrative rulemaking procedures for Title V in a central location. The proposed ordinance also amends each of



the other chapters in Title V to remove all chapter-specific administrative rulemaking provisions.

## **ATTACHMENTS**

- Exhibit A
- Attachment 1

# ATTACHMENT 1 TO STAFF REPORT FOR ORDINANCE NO. 19-1441

## Metro's Response to Comments on Proposed Changes to Metro Code Title V

October 24, 2019

Over the past few years and at the direction of the Metro Council, Metro staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. To provide more clarity regarding the relationship between the regional system fee and Metro's own transfer station fees, Metro staff proposed a series of updates to four new or revised chapters of Metro Code.

On August 12, 2019, Metro opened a 30-day public review and comment period to solicit input on a series of proposed updates and housekeeping improvements to Metro Code Chapters 5.00, 5.02, 5.03 and 5.08. The public comment period was open from August 12 through September 13, 2019. Metro staff also held a public informational meeting on September 9, 2019, to present more information about the proposed code changes, answer questions, and solicit input. The comments received from the public during that time and Metro's responses are summarized below.

### **1) Terrell Garrett – Greenway Recycling (letter dated August 12, 2019):**

- Mr. Garret's Comment #1: *Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decision makers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decision maker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.*

Metro's Response to Mr. Garrett's Comment #1: The addition of a new Chapter 5.08 (Administrative Rulemaking) simply moves Metro's *current* administrative rulemaking sections to a new chapter and does not alter Metro's current rulemaking process, which has been in effect for several years. Currently, Metro Code has chapter-specific administrative rulemaking procedures in Chapters 5.01, 5.02, 5.05, 5.06, 5.09, and 5.10. The proposed code updates are housekeeping measures that would standardize and consolidate Metro's current administrative rulemaking procedures for Metro Code Title V in a central location.

In practice, administrative rules do not create new “policy” but merely interprets and implements the Metro Council’s policy decisions as reflected in Code. Metro’s administrative rulemaking process is modeled after Oregon’s Administrative Procedures Act, but it has been tailored to better address the needs and practices of the regional government.

Although there is an opportunity for public comment before a proposed rule is adopted, there is generally not an “appeal” right if a particular individual or business is dissatisfied with the proposed rule, unless there is an allegation that the rule violates law or was adopted without following the proper process. The appropriate appeal venue for those types of allegations would be in circuit court because they are legal challenges and not simply policy disagreements. Metro’s current administrative rulemaking process provides that same opportunity in those situations. With the exception of a minor change to clarify the timing of when an oral hearing is to be held, the current administrative rulemaking process is completely unchanged from that which Metro has had for several years.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #2: *Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the “discrete” services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a “blended” rate which is in violation of these parameters.*

Metro’s Response to Garrett’s Comment #2: The fees that Metro charges for solid waste disposal services at its transfer stations comply with the Metro Charter.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett’s Comment #3: *Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, term such as “Recoverable Solid Waste,” “Recyclable Material,” and “Recycling” seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.*

Metro’s Response to Mr. Garrett’s Comment #3: Metro is a home rule local government that has independent charter and statutory authority to manage the

region's solid waste system. Metro's definitions for solid waste, including recyclable materials, may differ from the state's definitions because of Metro's independent authority to regulate solid waste.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #4: *Second, 5.02.030(d)(2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.*

Metro's Response to Mr. Garrett's Comment #4: Metro is a home rule local government that has independent charter and statutory authority to manage the region's solid waste system. Metro's definition of source-separated recyclables does not completely align with the state's definition because of Metro's independent authority to regulate solid waste. Oregon's statutory definition differs from Metro's by inclusion of a criterion that essentially states that a recyclable material is only defined as recyclable if it costs less to recycle it than it does to landfill it. In effect that means that if it costs more to collect, process and sell a recyclable than it would to collect, transfer and dispose of that material in a landfill, it is no longer a recyclable.

Metro's definition reflects a belief that the statute is overly narrow because it does not take into account externalities associated with the value of recyclables and the costs associated with disposal. There are quantifiable values associated with the environmental benefits from recycling and quantifiable environmental costs associated with burying recyclables in a landfill that are not reflected in hauling, transfer, processing and landfilling fees and rates. Metro's definition allows for consideration of these factors when developing policies, programs and regulations related to recycling.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Garrett's Comment #5: ...final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. *McCann v. Rosenblum* stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, *Qwest Corp. v. City of Surprise* said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed." *Rogue Valley Sewer Services v. City of Phoenix* stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean MRF, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

*Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportional share.*

Metro's Response to Mr. Garrett's Comment #5: Metro agrees with the general concept regarding the distinction between a fee and a tax. However, Metro believes the commenter is interpreting the law too narrowly. The law does not require that only those that pay a fee may benefit from the fee, but rather that those funds be used to pay for program (or system) costs. As an example, a fishing permit fee may be used in part to fund fish conservation efforts or educational classes that benefit the environment and public at large, in addition to benefitting those paying the actual fishing permit fee.

Per state statute, Metro's regional system fee may be used to fund a broad array of services and activities related to solid waste management. ORS 459.335 provides that Metro may use its regional system fee for activities "related to solid waste, including activities of regional concern that are directly related to reducing the environmental impact from the generation, collection, transportation, processing and disposal of solid waste" as well as the "planning, administrative and overhead costs for activities related to solid waste." Thus, the legislature has provided explicit authority for Metro to use regional system fees for various solid waste related activities that benefit the public at large in addition to those paying the fee directly.

Contrary to the assertion that Metro uses regional system fees "to pay for its own facilities," Metro in fact uses its transfer station fees (and not regional system

fees) to primarily fund the direct costs of operations at Metro facilities. Regional system fees would only be used in a manner allowed by state statute. Finally, Metro disagrees with the underlying premise that the public transfer stations “compete” with private solid waste facilities. The public transfer stations serve all customers and the public stations provide an array of services to the public that are not provided by privately-owned solid waste facilities. Metro’s public facilities are not comparable to private facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**2) Bruce Walker - City of Portland (email dated September 11, 2019):**

- Mr. Walker’s Comment: *The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:*

*Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.*

*However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1st. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process. Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.*

Metro’s Response to Mr. Walker’s Comment: Metro understands that it is important for local governments to have timely disposal rate information to inform their annual solid waste rate review process. However, staff is not recommending any changes to the timing or process of Metro’s annual fee-setting that generally occurs in March. As it has always done, Metro will continue to provide its local government partners with the most complete and accurate fee information available by March 31 each year.

It should be noted that current code language does not require that the Metro Council set fees in March. The Metro Council can set fees at any time and the proposed code changes do not alter that. However, having fees adopted by resolution rather than by ordinance allows the Metro Council to be more flexible and responsive if fees need to be changed quickly to address rapidly changing

market conditions, system disruptions or the addition of a new waste stream. Again, the proposed changes do not affect the process or timing for setting fees; they merely provide flexibility for when those fees can legally become effective.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

**3) Shannon Martin - City of Gresham (email dated September 11, 2019):**

- Mr. Martin's Comment: *Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments with fee change information no later than March 31st is necessary for us to have in order to complete our rate review process.*

*Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1st adjustment.*

Metro's Response to Mr. Martin's Comment: Refer to Metro's response to Mr. Walker's comment above.

**4) Theresa Koppang - Washington County (email dated September 11, 2019):**

- Ms. Koppang's Comment: *Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.*

*And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.*

Metro's Response to Ms. Koppang's Comment: Refer to Metro's response to Mr. Walker's comment above.

**5) Rick Winterhalter - Clackamas County (email dated September 13, 2019):**

- Mr. Winterhalter's Comment: *I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners. Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Winterhalter's Comment: Refer to Metro's response to Mr. Walker's comment above.

**6) Peter Brandom – City of Hillsboro (email dated September 13, 2019):**

- Mr. Brandom's Comment #1: *Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.*

Metro's Response to Mr. Brandom's Comment #1: Metro does not currently exercise its authority to regulate rates at privately-owned transfer stations. However, Metro is taking steps to establish greater rate transparency and help its local government partners better understand the rates charged at transfer stations. As part of this effort, Metro has prepared estimates of the costs of service offered at publically and privately-owned facilities and shared that information with local governments. Later this year the Metro Council will consider whether to perform a more detailed rate review or implement other measures with respect to rates at privately-owned facilities.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment. The proposed updates and housekeeping improvements are not intended to alter current policy or make substantive changes to the code unless the Metro Council directs otherwise.

- Mr. Brandom's Comment #2: *Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.*

Metro's Response to Mr. Brandom's Comment #2: Refer to Metro's response to Mr. Walker's comment above.

- Mr. Brandom's Comment #3: *Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of "...all sources and uses of funds that affect the solid waste revenue fund budget..." for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and*



*transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.*

Metro's Response to Mr. Brandom's Comment #3: Metro already considers "...all sources and uses of funds that affect the solid waste revenue fund budget..." as part of its annual budget process. Metro's budget is developed through a public process and readily accessible on Metro's website. The Metro Council determines Metro's transfer station fees based on budget considerations.

Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #4: *Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.*

Metro's Response to Mr. Brandom's Comment #4: Staff finds it unnecessary to add "mixed waste loads" as a defined term in Metro Code Chapter 5.00. Staff does not recommend any additional changes to the proposed code updates in response to the above-referenced comment.

- Mr. Brandom's Comment #5: *Note existing typo in 5.03.040(c).*

Metro's Response to Mr. Brandom's Comment #5: The typo has been corrected.

**7) The following comment is an excerpt from a letter submitted by the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association (letter dated September 13, 2019):**

- Hauler Associations' Comment: *While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:*
  - *Cutting two months off the public process –from the current 90 days to 30 days – provides less time and arguably less opportunity for full public input and participation and*
  - *Shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as part of the local government rate setting process.*

*As a result, the Clackamas Refuse and Recycling Association, Portland Haulers' Association and Washington County Haulers' Association ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.*

Metro's Response to Hauler Associations' Comment: The proposed code changes do not shorten the time or opportunity for public input and participation during Metro's fee-setting process. Metro is not proposing any change to the fee-setting process itself. Interested parties, local governments and regulated entities will

still have the same amount of time and a full opportunity for public input and participation before the Metro Council sets fees. The only change is that the effective date of those fees will no longer require a mandatory 90-day waiting period as is required when Metro Council takes action by ordinance rather than by resolution.

As previously explained in Metro's response to Mr. Walker above, staff is not recommending any changes to the timing or process of Metro's annual fee-setting that generally occurs in March. The proposed changes merely provide flexibility for when those fees can legally become effective.

**TERRELL GARRETT  
GREENWAY RECYCLING, LLC  
15204 SE RIVER FOREST DR.  
MILWAUKIE, OR 97267  
(503) 793-9238  
12 August 2019**

Metro Council  
600 NE Grand Ave.  
Portland, OR 97232

Re: Comments on proposed changes to Chapter 5

Dear Council President Peterson and Councilors:

Remarkably, GreenWay Recycling has only a few comments on the proposed changes to Chapter 5. Conceptually and mostly in practice, this is a piece of legislation that we support.

Our primary comment is focused on the concept of bringing formal Administrative Rulemaking to Metro. This is a great idea and should have happened years ago. Well formed, it needs a couple of additions to make it workable for the public, industry, government, and Metro. There is no defined "Board" of decisionmakers to speak to. As presented, the Chief Operating Officer may have a "designee" oversee a hearing and then others not in attendance may make the decision. I want to talk to the decisionmaker(s). Anything short of that is just lip service and will denigrate the process. Next, there is no provision for oversight. No oversight board nor appeal to Council. This places too much power in the hands of one person and leaves room for capricious behavior and is not indicative of a proper participatory public process that balances the needs of local governments, the public, industry, and regional government.

Solid Waste Fees at Metro Transfer Stations, proposed Chapter 5.03 continue to ignore the "discrete" services offered by Metro and Chapter III, Section 15 of the Metro Charter by providing a "blended" rate which is in violation of these parameters.

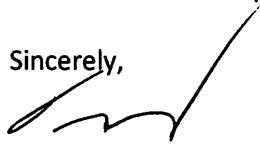
Since this is an opportunity to clean up and change Code, we would like to comment on existing parts of the Code which have not been addressed by Staff. Within Definitions, terms such as "Recoverable Solid Waste", "Recyclable Material", and "Recycling" seem to muddle together and wander somewhat from State law which requires Metro to utilize DEQ definitions. This needs to be cleaned up.

Second, 5.02.030 (d) (2) utilizes the concept of a "zero" tip fee. We all know that curbside recycling markets today demand a negative revenue price, in fact, quite close to that of disposal. In today's Wall Street Journal, certain bonds have dipped into negative returns. In other words, even the bond market recognizes negative pricing. This Code section is archaic and out of date. Similar to curbside recycling, this Code section should be changed to reflect "Accepted at the disposal site at a fee lesser than that of disposal." This mirrors concepts presented in ORS 459 and ORS 459a and recognizes the current state of markets.

The third and final comment regarding changes that should be made to existing Code is both in the Definitions and 5.02.110 regarding the use of Regional System Fees. McCann v. Rosenblum stated "A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast is imposed on persons who apply for and receive a government service that directly benefits them." Further, Qwest Corp. v. City of Surprise said "the distinction between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation and benefit of the parties upon whom the assessment is imposed."" Rogue Valley Sewer Services v. City of Phoenix stated "A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes." This regional system fee is not due from the public, but rather from those who present the material for landfill disposal. Metro, as a governmental entity, collects and manages this fee and the regulation of those who pay it. Based upon the case law above, we fail to understand how our money paid for regional system fees benefits us when used to regulate or subsidize an unrelated entity such as a compost operation, clean mrf, or other entity that does not pay these fees. Further, we fail to understand how Metro's use of these fees to pay for its own facilities that compete against us is beneficial to us.

Granted, Metro is entitled to the benefit of these fees as Metro pays them just as we do. However, if Metro is to benefit from the fees for its own plant, property, and equipment, all others who pay the fees should receive their proportionate share.

Sincerely,

A handwritten signature in black ink, appearing to read "Terrell Garrett", with a long, sweeping flourish extending upwards and to the right.

Terrell Garrett

## Warren Johnson

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**From:** Walker, Bruce [Bruce.Walker@portlandoregon.gov]  
**Sent:** Wednesday, September 11, 2019 9:47 AM  
**To:** Warren Johnson  
**Subject:** [External sender] RE: Requesting your comments on proposed changes to Metro's solid waste code

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren –

I'm resubmitting my comments with a clarification that Metro include in their administrative rules a commitment to sending fee info to local govts. by March 31.

Thanks!

Bruce

Warren –

Thank you for sharing information regarding proposed changes to Metro's solid waste code at yesterday's local government solid waste directors meeting.

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution and requests that Metro establish in administrative rules that notice of the new fee schedule be provided to local governments in March of each year.

Thank you and please let me know if you have any questions.

Bruce

---

**From:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Sent:** Friday, August 23, 2019 3:56 PM  
**To:** Walker, Bruce <Bruce.Walker@portlandoregon.gov>  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Thanks for the comment Bruce. I'll include it in the record.

Warren Johnson  
Metro  
(503) 797-1836

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**From:** Walker, Bruce [<mailto:Bruce.Walker@portlandoregon.gov>]  
**Sent:** Friday, August 23, 2019 12:46 PM  
**To:** Warren Johnson  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Warren –

Thank you for sharing information regarding proposed changes to Metro's solid waste code at yesterday's local government solid waste directors meeting.

The City of Portland is supportive of changing the requirement that Metro fees and the regional system fee can be established by resolution:

Remove the requirement that Metro fees and the regional system fee be set by ordinance. Council can now establish these amounts by resolution and they can take effect 30 days after adoption. This avoids the need to wait 90 days for rates to take effect and allows the Metro Council to be more responsive to changing market conditions that may require modified or new rates.

However, Portland does have concerns regarding the timing of Metro Council approval of the fees. Metro fees are an important component of the solid waste ratemaking process and Portland develops rates that haulers charge customers during March and April of each year. Portland City Council needs to approve rates in May for implementation on July 1<sup>st</sup>. Therefore, the current schedule where Metro approves fees in March works very well for our rate review. Delaying provision of Metro fees until late spring would pose significant problems for our process.

Portland supports the change for Metro adopting fees by resolution but requests that notice of the new fee schedule be provided in March of each year.

Thank you and please let me know if you have any questions.

Bruce

Include The Food - Be Cart Smart

**Bruce Walker**

City of Portland Bureau of Planning & Sustainability  
Solid Waste & Recycling Program Manager  
1900 SW 4th Avenue, Room 7100  
Portland, OR 97201  
503.823.7772  
(he/him)  
[www.portlandoregon.gov/bps](http://www.portlandoregon.gov/bps)

The City of Portland is committed to providing meaningful access. For accommodations, modifications, translation, interpretation or other services, please contact 503-823-7700 or use City TTY 503-823-6868.

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**From:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.
- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro's own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro's administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

## Warren Johnson

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**From:** Shannon Martin [shannon.martin@greshamoregon.gov]  
**Sent:** Wednesday, September 11, 2019 10:07 AM  
**To:** Warren Johnson  
**Cc:** Steve Fancher  
**Subject:** [External sender] RE: Requesting your comments on proposed changes to Metro's solid waste code

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Hello Warren,

Thank you for the opportunity to comment on Metro's proposed solid waste code changes. Gresham is in support of Metro adopting fees by resolution. However, it is important for local governments to receive fee changes in advance of our rate review process. Having Metro commit to providing local governments fee change information no later than March 31<sup>st</sup> is necessary for us to have in order to complete our rate review process.

Gresham Council needs to approve rates by May in order for us to notify customers 30 days in advance before a July 1<sup>st</sup> adjustment.

Thank you,

Shannon Martin  
Program Manager | Recycling & Solid Waste  
City of Gresham | 503-618-2624

CITY OF  
GRESHAM

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**From:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <Warren.Johnson@oregonmetro.gov>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

**CAUTION:** External Email

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.



In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.
- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro's own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro's administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

## Warren Johnson

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**From:** Theresa Koppang [Theresa\_Koppang@co.washington.or.us]  
**Sent:** Wednesday, September 11, 2019 10:08 AM  
**To:** Warren Johnson  
**Subject:** [External sender]Metro Code Changes/Admin Rules

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Hi Warren,

Thank you for sharing information regarding proposed changes to Metro's solid waste code at the last local government solid waste directors meeting. Washington County supports the changes you outlined regarding the requirement that Metro fees and the regional system fee be established by resolution.

And while the timing of Metro Council approval of the fees is not as critical to Washington County's rate-making process, it is a concern to other jurisdictions. Therefore, I'm requesting that notice of the new fee schedule be made available to local governments by March 31 of each year.

Thank you and please let me know if you have any questions.

**Theresa Koppang | Manager**

Washington County Department of Health and Human Services | Solid Waste & Recycling | Code Enforcement  
155 N. First Ave. MS 5A, Hillsboro OR 97124

[Theresa\\_koppang@co.washington.or.us](mailto:Theresa_koppang@co.washington.or.us)

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direct: 503-846-3663 main: 503-846-3605

## Warren Johnson

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**From:** Winterhalter, Rick [rickw@clackamas.us]  
**Sent:** Friday, September 13, 2019 9:12 AM  
**To:** Warren Johnson  
**Cc:** Polk, Eben  
**Subject:** [External sender]comments on rule changes

**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren:

I believe you heard from Clackamas in the August 29<sup>th</sup> meeting regarding the importance of ensuring we have the disposal rate information from Metro early in our annual review process. This note is to support the comments provided by our regional partners:

- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.

Regards,  
Rick

Rick Winterhalter  
Sustainability & Solid Waste Program  
Clackamas County  
150 Beavercreek Rd.  
Oregon City, OR 97045  
503.742.4466

**I have one share in corporate Earth, and I am nervous about the management.**

-E.B. White, writer (1899-1985)

***Oregon's 2050 Vision:***

*Oregonians in 2050 produce and use materials responsibly  
conserving resources •protecting the environment •living well*

## Warren Johnson

---

**From:** Peter Brandom [Peter.Brandom@hillsboro-oregon.gov]  
**Sent:** Friday, September 13, 2019 8:55 AM  
**To:** Warren Johnson  
**Cc:** Theresa Koppang (theresa\_koppang@co.washington.or.us); Walker, Bruce; Eben Polk; Winterhalter, Rick; Kathy Folsom; Martin, Shannon (Shannon.Martin@greshamoregon.gov)  
**Subject:** [External sender]RE: Requesting your comments on proposed changes to Metro's solid waste code  
  
**Categories:** CODE COMMENTS

**CAUTION:** This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Warren,

Below are our comments on the proposed regulatory changes, not in order of importance. Thank you for the opportunity to comment, and for the time and effort to provide clarification at the meeting this week.

- Expanding on the comment below, the revised Administrative Rules are severely deficient without either a chapter dedicated to Solid Waste Rates at Private Transfer Stations or inclusion of specific rate setting rules for private stations in the proposed chapters (5.03, AR 5.03-1000 through 1080), and any needed adjustments to other chapters, Rules or Definitions. This should include specific descriptions and justifications for all fees charged at private stations (5.02 or separate chapter with the same scope for private facilities). The lack of a chapter to regulate rate setting at facilities that are authorized by Metro to operate within the regional system presents a big void in the system, and we've seen how the private operators have taken advantage of this void. Just like cities and counties regulate collection rates of private companies operating within the system, private facilities should be regulated just like the public facilities. There should be no distinction between public and private facilities in this regard.
- Please explicitly state in the Rules that Metro will provide the other local governments transfer station fee information no later than March 31 of each year.
- Not seeing it explicitly in 5.03.060 or elsewhere, does Metro rate setting process include a review of '...all sources and uses of funds that affect the solid waste revenue fund budget...' for the prior calendar year? If not, and if that is part of the rate review process, that should be explicit. A clear and transparent picture of year-to-year budget requirements (i.e., specifically how revenues are used by Metro) has not been as apparent as it should be.
- Consider defining "Mixed Waste Loads" in 5.00 (reference in 5.02.050) to clarify meaning.
- Note existing typo in 5.03.040(c).

Thank you,  
Peter

Peter Brandom | *Senior Project Manager*  
City of Hillsboro, Oregon  
phone 503-681-6191  
email [peter.brandom@hillsboro-oregon.gov](mailto:peter.brandom@hillsboro-oregon.gov)  
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**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Thursday, August 22, 2019 11:27 AM  
**To:** Peter Brandom <[Peter.Brandom@hillsboro-oregon.gov](mailto:Peter.Brandom@hillsboro-oregon.gov)>  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

Thanks for the comment. I'll include this in the record.

Please let me know if you have any other comments or questions about the proposed changes. Thanks again.

Warren Johnson  
Metro  
(503) 797-1836

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**From:** Peter Brandom [<mailto:Peter.Brandom@hillsboro-oregon.gov>]  
**Sent:** Thursday, August 22, 2019 10:51 AM  
**To:** Warren Johnson  
**Subject:** RE: Requesting your comments on proposed changes to Metro's solid waste code

We would like to see a chapter that regulates rate setting and rates at private transfer stations in the same way that rates are set at the Metro stations.

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**From:** Warren Johnson [<mailto:Warren.Johnson@oregonmetro.gov>]  
**Sent:** Monday, August 12, 2019 11:36 AM  
**To:** Warren Johnson <[Warren.Johnson@oregonmetro.gov](mailto:Warren.Johnson@oregonmetro.gov)>  
**Subject:** Requesting your comments on proposed changes to Metro's solid waste code

I want to make you aware of some proposed changes to Metro's solid waste code and invite you to provide Metro with your comments and feedback.

As you know, over the past few years and at the direction of the Metro Council, Metro's solid waste staff has been working to update Metro's solid waste code and administrative rules to provide greater clarity and predictability for the public and for those directly involved in our region's solid waste system. Our efforts have sought to remove unnecessary and outdated provisions, clarify terms, and enable greater flexibility for Metro to protect the public's interest and respond to sudden changes in markets for various types of materials.

In 2017 the Metro Council adopted requirements to guide the operations of material recovery and conversion technology facilities. It also made necessary housekeeping changes to terms and definitions in Metro's solid waste code. With the recent adoption of the 2030 Regional Waste Plan and the initiation of Metro's new disposal contract in January 2020, it is time to update the solid waste code again.

We have now made available on [Metro's website](#), for public comment over the next five weeks, four new or revised chapters of Metro code and new administrative rules to clarify the relationship between the regional system fee and Metro's transfer station fees. Metro staff proposes the following updates to Metro's solid waste code:

- Chapter 5.00 (Solid Waste Definitions) – Update current chapter to ensure that definitions conform with proposed changes to Chapters 5.02 and 5.03.

- Chapter 5.02 (Regional System Fee) – Update current Chapter 5.02 and move Metro transfer station fees and administrative rulemaking provisions to new separate chapters (Chapters 5.03 and 5.08 respectively). Chapter 5.02 will continue to govern the regional system fee.
- Chapter 5.03 (Solid Waste Fees at Metro Transfer Stations) – Establish a new chapter that will govern Metro’s own transfer station fees.
- Chapter 5.08 (Administrative Rulemaking Authority for Title V) – Establish a new chapter that will govern Metro’s administrative rulemaking process for the entire solid waste code.

We are also proposing to move some provisions out of Metro code and into administrative rules to enable more flexibility for both Metro and the solid waste industry to respond to emergencies and disruptions. Those administrative rules would only be implemented, following another public comment period, if the Metro Council adopts the proposed changes to the four chapters of the Metro code described above. However, we are including the draft administrative rule language and an example of a Metro transfer station fee schedule on the Metro website so you can see how Metro proposes to implement the code amendments.

I invite you to submit written comments on any of the proposed policy changes, including preliminary comments on the draft administrative rules, between now and 5 p.m. on Friday, Sept. 13. You are also welcome to attend a meeting at which Metro staff will present more information about these proposed code changes, answer questions and solicit input. This [meeting](#) will be held on Monday, Sept. 9, from 1 to 3 p.m. in rooms 370A and B at Metro Regional Center (600 NE Grand Ave., Portland). Comments received at that meeting and during the public comment period will inform the final code amendments that will come before the Metro Council for its consideration later this year or in early 2020.

I look forward to receiving your comments on this matter. Thank you.

**Warren Johnson**

Interim Program Director

Solid Waste Information, Compliance, and Cleanup

Metro | [oregonmetro.gov](http://oregonmetro.gov)

600 NE Grand Ave.

Portland, OR 97232-2736

503-797-1836

September 13, 2019

Metro Council  
600 NE Grand Avenue  
Portland, OR 97232- 2736

RE: Metro Proposed Solid Waste Code Changes

Dear Metro Councilors,

This letter represents the Clackamas County Refuse and Recycling Association (CCRRA), Portland Haulers' Association (PHA), and Washington County Haulers' Association (WCHA) comments regarding Metro's proposed solid waste code changes. As you know, CCRRA, PHA, and WCHA members provide services across the solid waste system including hauling, resource recovery & transfer, processing and landfilling for all areas of the Metro region. Members are committed to working cooperatively with their regulatory local governments to provide safe, modern, and efficient waste collection services that include garbage, recycling, and organics collection at reasonable rates.

Members very much appreciate the opportunity to review the proposed changes to Metro's solid waste code and engage in the related public process. While we understand the need for Metro staff to have independent authority and flexibility to change Metro's fees, we do have concerns. Specifically we are concerned that:

- cutting two months off the public process -- from the current 90 days to 30 days— provides less time and arguably less opportunity for full public input and participation and
- shortening the time may create added challenges to align Metro's fee increases so those added costs can be included as a part of the local government rate setting process.

As a result, CCRRA, PHA and WCHA ask that Metro continue to provide a required 90 day public process before adjusting Metro fees.

Members are committed to working with Metro, local governments, as well as the community at large, and share our expertise in the industry. Our coordinated efforts among state, regional, local, industry and community members contribute to Oregon's position as a national leader in recycling and waste management. We look forward to the opportunity to continue serving as a resource, imparting experience from our own challenges as large and many small, family and

women-owned companies, in navigating the business of waste management while promoting our common values advancing equity in waste management. Please don't hesitate to contact Beth Vargas Duncan at 971-707-1683 or [bethvd@orra.net](mailto:bethvd@orra.net) with any questions.

Sincerely,

Josh Brown, President  
Clackamas County Refuse & Recycling Association

Vallerie Gruetter Hill, President  
Portland Haulers' Association

Mike Leichner, President  
Washington County Haulers' Association



Materials following this page were distributed at the meeting.