

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING A ) RESOLUTION NO. 00-2879  
PERSONAL SERVICES CONTRACT FOR )  
THE PROVISION OF LEGAL SERVICES ) Introduced by Executive Officer Mike Burton

WHEREAS, Metro has been named as a defendant in the case named *Waste Connections, Inc., et al v. Metro*, filed in the United States District Court for the District of Oregon; and

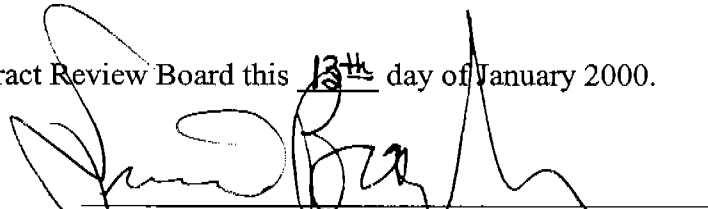
WHEREAS, the Metro General Counsel has recommended the retention of outside legal counsel to assist and advise in the vigorous defense of the aforementioned law suit; and

WHEREAS, the Metro General Counsel has recommended the retention of Jacob Tanzer and the law firm of Ball Janik LLP; now, therefore be it

RESOLVED,


That the Metro Counsel authorizes the execution of a Personal Services Contract with Jacob Tanzer and Ball Janik LLP in a form substantially similar to that attached hereto as Exhibit "A."

ADOPTED by the Metro Contract Review Board this 13<sup>th</sup> day of January 2000.



David Bragdon, Presiding Officer

APPROVED AS TO FORM:



Daniel B. Cooper, General Counsel

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## STAFF REPORT

### FOR THE PURPOSE OF AUTHORIZING A PERSONAL SERVICES CONTRACT FOR THE PROVISION OF LEGAL SERVICES

## FACTUAL BACKGROUND AND ANALYSIS

Resolution No. 00-2879 authorizes the execution of a personal service contract with Jacob Tanzer, attorney at law, and Ball Janik LLP to represent Metro in defense of the case *Waste Connection, Inc., et al v. Metro* filed in the United States District Court for the District of Oregon.

On September 29, 1999, Metro was served with summons and complaint in this matter. Plaintiff Waste Connections and its subsidiaries challenges the provision of Metro Code Chapter 5.05, the Metro flow control ordinance. Plaintiff claims that the Metro ordinance is unconstitutional because it violates the Commerce Clause of the United States Constitution. Additionally, plaintiffs claim that the existence of the ordinance resulted in damages to them in an unspecified amount. After conferring with representatives of several law firms and conducting interviews with others, the General Counsel reached a conclusion that the vigorous defense of the government would be best achieved by utilizing the services of Mr. Tanzer, a former Oregon Supreme Court Justice and the law firm with which he is affiliated, Ball Janik LLP. Mr. Tanzer and Ball Janik have assisted Metro in filing its answer in federal district court and will assist Metro in the defense of the matter under the terms of the attached agreement. The terms of the contract require Metro's Office of General Counsel to participate fully in all decisions regarding significant aspects of the matter and to otherwise control the litigation.

## EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 00-2879.

## EXHIBIT A

Project \_\_\_\_\_  
Contract No. \_\_\_\_\_

### PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and Jacob Tanzer, attorney at law, and Ball Janik LLP, each located at 101 SW Main Street, Suite 1100, Portland, OR 97204 referred to herein as "Contractors."

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

1. Duration. This personal services agreement shall be effective December 17, 1999 and shall remain in effect until and including June 30, 2001, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference as if set forth in full. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed ONE HUNDRED THOUSAND AND 00/100THS DOLLARS (\$100,000.00).
4. Insurance.
  - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
    - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
    - (2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

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

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects.

Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

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

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

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

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

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

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

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

**JACOB TANZER**

**METRO**

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

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

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

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

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

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

**BALL JANIK LLP**

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

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

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

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**OUTSIDE COUNSEL – OFFICE OF GENERAL COUNSEL  
COORDINATION AND BILLING PROTOCOLS**

A. Coordination.

The Metro General Counsel has ultimate responsibility and authority for decisions made in handling all legal matters. As soon as possible after outside counsel is retained, the Metro General Counsel or his designee (the Metro attorney) shall discuss their respective degree of involvement, division of responsibility, and strategy. At a minimum, the Metro attorney shall participate fully in all decisions regarding significant aspect of the matter. Unless there is a valid reason for his or her not appearing, the Metro General Counsel and Metro attorney shall enter an appearance in any lawsuit as attorneys of record.

Except for quickly obtainable routine factual information (*e.g.*, telephone numbers, addresses), all communications by outside counsel with Metro personnel shall be through the Metro attorney, unless the Metro attorney agrees in a specific instance that direct communication would be more efficient.

Outside counsel shall forward a copy of all documents to the Metro attorney with sufficient time for meaningful review before dissemination or filing. If time does not permit forwarding a document, it shall be reviewed with the Metro attorney by telephone.

Outside counsel shall promptly furnish the Metro attorney with copies of all legal opinions, memoranda of law, or other research, pleadings and correspondence.

All settlement overtures shall be reported immediately to the Metro attorney.

Outside counsel shall avoid contact with media representatives covering Metro matters, whether or not on subject of the matter for which outside counsel is retained. If media representatives contact outside counsel concerning matters being handled for Metro, outside counsel shall decline any comment beyond confirming factual matters that are already a matter of public record. All media calls shall be referred to the Office of General Counsel.

B. Billing.

All billings by outside counsel are subject to the approval of Metro's General Counsel. It is expected that outside counsel will adhere to the following billing procedures, and that any significant deviation from them will be discussed with the General Counsel or the Metro attorney in advance.

Prior to entering into a personal services agreement on any matter, outside counsel shall provide an estimate of hours and costs for identifiable phases of the claim, and a statement of its hourly rates and billing policies.

Any major research projects will be discussed and approved in advance.

Because the outside counsel is being retained, at least in part, because of its expertise in this area of law, no basic legal research shall be billed to Metro.

There shall be a primary contact at the law firm who is aware of the status of the matter at all times. The primary contact will be personally involved in and responsible for all aspects of the matter, including billing.

Neither other counsel nor experts may be retained on Metro's behalf without prior approval by the responsible Metro attorney. Only one outside counsel attorney should attend meetings, arguments and depositions, unless otherwise authorized.

Outside counsel shall not bill for start-up time of educating a lawyer when a matter has been transferred to another attorney unless the transfer and billing is pre-approved by the Metro Attorney.

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