

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO 00-2927
CHANGE ORDER NO. 2 TO THE CONTRACT)
FOR OPERATION OF THE METRO SOUTH) Introduced by Mike Burton, Executive
AND METRO CENTRAL TRANSFER STATIONS) Officer

WHEREAS, in 1997 Metro entered into a certain contract for the operation of the Metro South and Metro Central Transfer Stations, Metro Contract No. 905690 (the "Contract") with Browning-Ferris Industries of Oregon, Inc ("Contractor"); and

WHEREAS, Article 28 of the Contract provides that any change in control or the transfer of a controlling interest in the beneficial ownership of Contractor shall constitute a default under the terms of this Contract, unless Metro consents to such transfer; and

WHEREAS, on July 30, 1999, the Contractor's corporate parent, Browning-Ferris Industries, Inc. entered into a merger agreement with Allied Waste Industries, Inc.; and

WHEREAS, the above-named Merger Agreement constitutes either or both a change in control and a transfer of a controlling interest in the beneficial ownership of the Contractor under Article 28 of the Contract; and

WHEREAS, Metro has received a written request for consent and approval of the transfer of the Contractor to the control of and as a subsidiary of Allied Waste Control, Inc.; and

WHEREAS, Metro's Regional Environmental Management Department staff have recommended approval of such transfer of the Contract, provided that certain other amendments are made to the Contract; and

WHEREAS, it is therefore necessary to amend the Contract for the operations of the Metro South and Metro Central transfer stations to provide for the proposed assignment and to make other necessary modifications; and

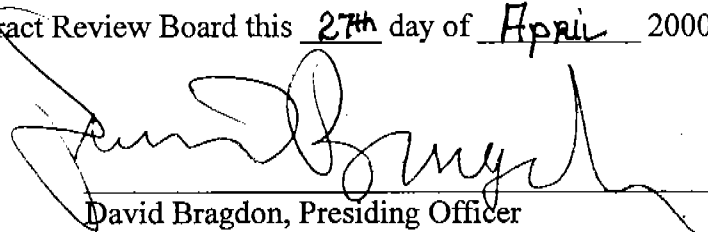
WHEREAS, Change Order No. 2, attached as Exhibit A, provides the necessary modifications to the Contract; and

WHEREAS, this Resolution was submitted to the Executive Officer for consideration and was forwarded to the Metro Council for its approval; now, therefore,

BE IT RESOLVED:

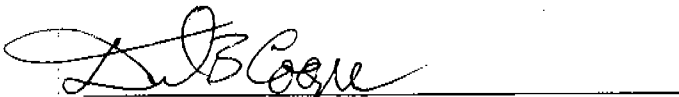
1. That the Metro Council authorizes the Executive Officer on behalf of Metro, to consent to and approve of the transfer and assignment of the Contract from Contractor to the control of and as a subsidiary of Allied Waste Industries, Inc.; and
2. That the Metro Council authorizes the Executive Officer to execute Change Order No. 2 to the Contract for the operation of the Metro South and Metro Central transfer stations, in a form substantially similar to that set forth in the attached Exhibit A.

ADOPTED by the Metro Contract Review Board this 27th day of April 2000.



David Bragdon, Presiding Officer

APPROVED AS TO FORM:



Daniel B. Cooper, General Counsel

MDF:kaj
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4/14/2000

EXHIBIT A

CONTRACT CHANGE ORDER NO. 2
METRO CONTRACT NO. 905690

MODIFICATION TO THE CONTRACT BETWEEN
METRO AND BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
ENTITLED
"CONTRACT DOCUMENTS FOR THE OPERATION
OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS"

This Contract Change Order No. 2 dated as of the last signature date below, hereby amends Metro Contract No. 905690, entitled "Contract Documents for the Operation of the Metro South and Metro Central Transfer Stations," effective October 1, 1997, including a prior amendment (which contract and amendment are collectively referred to herein as "the Transfer Stations Agreement").

Recitals

1. Effective July 30, 1999 Browning-Ferris Industries Inc. entered into a merger agreement with Allied Waste Industries Inc.
2. Prior to the merger, Contractor, BFI Waste Systems of North America, Inc., was a wholly owned subsidiary of Browning-Ferris Industries Inc. Following the merger, Contractor is a wholly owned subsidiary of Allied Waste Industries, Inc.
3. Section 28 of the Transfer Stations Agreement provides that any change in control or the transfer of a controlling interest in the beneficial ownership of Contractor shall constitute a default under the Transfer Stations Agreement, unless Metro consents to such transfer.
4. The above-described July 30, 1999 merger constitutes either or both a change in control and a transfer of a controlling interest in the beneficial ownership of the Contractor under Article 28 of the Transfer Stations Agreement.
5. Contractor has requested that Metro consent to the transfer resulting from the July 30, 1999 merger agreement.

Accordingly, in exchange for the promises and other considerations set forth in the Transfer Stations Agreement and in this Contract Change Order, the parties hereby agree as follows:

A. Purpose

The purpose of this Contract Change Order No. 2 is to amend certain terms and provisions of the Transfer Stations Agreement and to incorporate therein other mutually agreed provisions.

B. Provisions of Contract Change Order

1. Amendment of Reimbursement for Maintenance Cost Provisions. The provisions of Article 13.H.2 of the General Conditions, Operations of the Metro South and Metro Central Transfer Stations are amended to provide as follows:

“Repair and Replacement of less than \$20,000 per Occurrence: Contractor shall be reimbursed (per the Force Account procedures excluding Item #3) for 50% of all costs associated with the repair or replacement of parts necessary to keep the transfer equipment and facility operating or to return the equipment to an operational state, including the replacement of parts which have become unusable as a result of normal wear and tear, except (i) those parts included under Section H.1 above, for which the Contractor shall be responsible for 100% of the cost; and (ii) for the first \$10,000 per year of costs associated with repair and replacement performed under this subsection H.2 at both transfer stations.

Contractor shall be reimbursed (per the Force Account procedures excluding item #3) for 35% of all costs associated with the repair or replacement of parts necessary to keep the materials recovery equipment operating or to return the equipment to an operational state, including the replacement of parts which have become unusable as a result of normal wear and tear, except those parts included under Section H.1 above for which the Contractor shall be responsible for 100% of the cost.”

2. Amendment of Materials, Employees, and Workmanship Provisions. The provisions of Article 24 of the General Conditions, Operations of the Metro South and Metro Central Transfer Stations are amended to add a new Section C, as follows:

“C. Contractor shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document. Contractor shall comply with Section 2.04.520(a) of the Metro code regarding the use of recycled materials and products, particularly in the purchase of motor oil, antifreeze and tires.”

3. Amendment to General Provisions. The provisions of Article 2 of the General Conditions, Operations of the Metro South and Metro Central Transfer Stations are amended to add a new Section R, as follows:

“R. Contractor, Browning-Ferris Industries, Inc., Allied Waste Industries, Inc., and each of them, and any or all of their respective corporate parents or corporate subsidiaries, whether in existence at the time of this change order or later created, agree not to dispute, contest or challenge in any way exercise by Metro of any flow control authority as described in its ordinances, regulations and bond covenants unless the exercise of such flow control authority has been judicially declared or affirmed to be legally invalid by the highest court of law or equity having jurisdiction to consider the legality or illegality of Metro’s exercise of flow control authority. Any breach of this

provision, as determined by the sole opinion of Metro, shall constitute a default subject to the remedies contained in Article 11B of the General Conditions.”

4. Amendment to Provisions for On-Site Personnel at Metro South Transfer Station.

The provisions of Article 28.H of the Specifications for Metro South Station, are amended to provide as follows:

“H. During the peak periods of 10 a.m. to 2 p.m. weekdays and 10 a.m. to 4 p.m. weekends, the Contractor shall provide twice as many personnel as those required in subsections C, E, F and G of this section. Additional personnel may be required based on seasonal fluctuations and weekend vs. weekday operations. The Contractor shall be responsible for identifying such trends and adjusting the number of personnel as required at no additional cost to Metro.”

5. Amendment to Provisions for Janitorial Services at Metro South Transfer Station.

The introductory provisions of Article 32.1 of the Specifications for Metro South Station are amended to delete the phrase “and main and small scalehouse,” and substitute in its place the phrase “4 scalehouses, office, break room and bathrooms in the latex facility,”

6. No Other Amendments or Modifications.

Except as amended and modified herein, all other terms and conditions of the Transfer Stations Agreement shall remain in full force and effect. Any material conflict between the provision of the original Agreement, and other previous amendments or contract change orders, on the one hand, and this Contract Amendment No. 2, on the other hand, shall be resolved by reference to and reliance upon this Contract Amendment.

BFI WASTE SYSTEMS
OF NORTH AMERICA, INC.

METRO

Signature

Signature

Print name and title

Print name and title

Date

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EXECUTIVE SUMMARY

PROPOSED ACTION

Adoption of Resolution No. 00-2927, authorizes the Executive Officer to execute Change Order No. 2 to the operations contract for Metro South and Metro Central.

WHY NECESSARY

The contract to operate the transfer stations, between Metro and BFI, contains a clause that requires Metro's consent to a merger if a change of control or a transfer of a controlling interest in the beneficial ownership of the Contractor occurred. Under the terms of the merger BFI became a wholly owned subsidiary of Allied Waste Industries, Inc. which constitutes a default unless Metro consents to the transfer.

ISSUES/CONCERNS

Since BFI requested Metro's consent to the merger Metro's Executive Officer has the following options:

- 1) Recommend to the Metro Contract Review Board that it provide its consent without conditions;
 - 2) Recommend that consent be approved with negotiated conditions; or
 - 3) Recommend that the Metro Contract Review Board deny consent because the proposed change of control or transfer of controlling interest is not in the public interest.
- The Executive Officer instructed staff to negotiate with BFI/Allied to determine acceptable conditions for granting consent of the merger.
 - Several factors in the solid waste industry were occurring that resulted in financial uncertainty for the Contractor, primarily from tonnage loss at the stations.
 - After several negotiating sessions both parties agreed to a reduction in janitorial and maintenance costs totaling \$20,000 per year, language that encourages the use of recycled material, Contractor will not dispute Metro's flow control authority and a staffing adjustment allowing more flexibility.

BUDGET IMPACT

Metro will receive a net saving of \$20,000 per year.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 00-2927 FOR THE PURPOSE OF AUTHORIZING CHANGE ORDER NO. 2 TO THE CONTRACT FOR OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS

Date: April 19, 2000

Presented by: Terry Petersen

PROPOSED ACTION

The Contract Review Board is requested to adopt Resolution No. 00-2927, authorizing the Executive Officer to execute Change Order No. 2 to Metro Contract No. 905690, entitled "Contract Documents for the Operation of the Metro South and Metro Central Transfer Stations".

EXISTING LAW

Metro Code section 2.04.058(b) for Public Contract Amendments requires that "No contract which was designated as a contract having a significant impact on Metro may be amended without the express approval of the council evidenced by a duly adopted resolution or ordinance;" unless the amendment met one of the approved exceptions under 2.04.058(b). The proposed amendment does not comply with the approved exceptions.

BACKGROUND

In 1997, Metro and Browning-Ferris Industries (BFI) entered into a five year agreement for the operation of Metro South and Metro Central transfer stations during the period of October 1, 1997 to September 30, 2002. On March 8, 1999 BFI announced plans to merge with Allied Waste Industries, Inc. Under the terms of the merger, BFI would become a wholly owned subsidiary of Allied Waste Industries, Inc.

The contract between Metro and BFI contains a clause that requires Metro's consent to a merger if a change of control or a transfer of a controlling interest in the beneficial ownership of the Contractor occurred. Without Metro consent, BFI would be in default of the contract, which could result in termination. BFI requested Metro's consent for the merger on May 3, 1999 prior to the completion of the merger transaction.

Metro staff and BFI began conducting negotiations over the conditions of granting consent. However, negotiations were not completed before the effective date of the merger, which occurred on July 30, 1999. After the merger, negotiations continued with several factors delaying completion, such as issues concerning flow control, loss of tonnage, and the potential use of Metro Central for an organic waste project. Another major concern was the ramifications to Metro's facilities from the proposed Transfer Station Service Plan that was being discussed within SWAC. Change Order No. 2 is the result of these negotiations.

Under the change order Metro would grant its consent in exchange for the following consideration:

- Reimbursement by Metro for maintenance costs will be lowered by \$10,000 annually.
- Contract language, consistent with Metro Code, has been added to encourage the use of recycled materials and products.
- Contractor agrees not to dispute Metro's flow control authority over waste.
- Personnel requirements at Metro South are adjusted to allow the Contractor more flexibility in staffing the site.
- The Contractor will be responsible for additional janitorial duties for the latex building, saving Metro \$10,000 per year.

BUDGET IMPACT

The budget impact, is a net saving for Metro of approximately \$20,000 per year for the remaining two years of the contract.

RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 00-2927.