

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING
THE EXECUTIVE OFFICER TO EXECUTE CHANGE
ORDER NO. 3 TO THE CONTRACT FOR THE
OPERATION OF THE METRO SOUTH AND METRO
CENTRAL TRANSFER STATIONS

) RESOLUTION NO. 02-3156
)
)
) Introduced by Mike Burton,
) Executive Officer

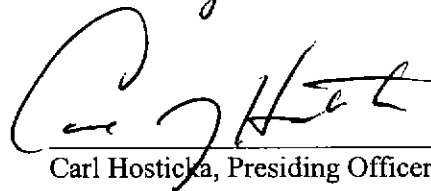
WHEREAS, in 1997 Metro entered into a certain agreement for the operation of the Metro South and Metro Central Transfer Stations, Metro Contract No. 905690 (the "Contract"), with the predecessor of Metro's current contractor, BFI Waste Systems of North America, Inc.; and,

WHEREAS, for the reasons described in the accompanying staff report, it is in the public interest to extend the Contract for two years and to amend certain terms and provisions regarding payment and transfer station operations; and,

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

BE IT RESOLVED, That the Metro Council authorizes the Executive Officer to execute Change Order No. 3 to Contract No. 905690, in a form substantially similar to that set forth as the attached Exhibit "A".

ADOPTED by the Metro Contract Review Board this 14th day of February 2002.


Carl Hosticka, Presiding Officer

Approved as to form:

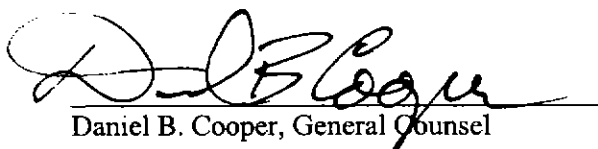

Daniel B. Cooper, General Counsel

EXHIBIT A

METRO CONTRACT NO. 905690

CHANGE ORDER NO. 3

This Contract Change Order No. 3, effective March 1, 2002, hereby amends Metro Contract No. 905690 between Metro and BFI Waste Systems of North America, Inc. (formerly Browning-Ferris Industries of Oregon, Inc.), "Contractor," dated July 18, 1997, including prior change orders, which contract and change orders are collectively referred to herein as the "Contract".

Purpose

The purpose of this change order is to extend the term of the Contract, to amend certain payment provisions of the contract, and to incorporate other mutually agreed provisions to the Contract.

Provisions of Contract Change Order

1. Extension of Contract Term.

The provisions of Paragraph No. 5 of the Contract Document entitled "Agreement" are amended to delete the date "September 30, 2002" and to replace such date with "September 30, 2004." In addition, the provisions of Article 31 of the General Conditions of the contract are amended to delete the date "September 30, 2002" and to replace such date with "September 30, 2004."

2. Amendment of Contract Definitions.

The Provisions of Article 1 of the General Conditions of the Contract are amended to delete the definitions for "Fixed Payment," "Lump Sum Price," "Recovery Credit," and "Variable Payment" and to insert the following new definitions:

"Annual Base Recovery Level" means the number of tons of recovered material from incoming Acceptable Waste (excluding source separated materials such as yard debris, wood or other such materials for which a separate price applies) that the Contractor is required to achieve each year. The Annual Base Recovery Level at Metro Central Station shall be 10,200 tons. The Annual Base Recovery Level at Metro South Station shall be 7,800 tons.

"Annual Base Transfer Level" means the base number of tons of incoming Acceptable Waste (excluding source separated materials such as yard debris, wood or other such materials for which a separate price applies) that the Contractor is expected to transfer for disposal each year. The Annual Base Transfer Level at Metro Central Station shall be 245,000 tons for the Contract Year ending September 30, 2002, and 216,000 tons for subsequent Contract Years. The Annual Base Transfer Level at Metro South Station shall be 245,000 tons for the Contract Year ending September 30, 2002, and 216,000 tons for subsequent Contract Years.

"Contract Year" means the 12-month period beginning on October 1 of each year.

"Fixed Payment for Operation of Public Unloading Area at Metro South Station" means the fixed amount paid to the Contractor for operation of the public unloading area at Metro South Station

as provided on the Price Schedule and as annually adjusted as provided in Article 13B of the General Conditions.

“Fixed Payment for Waste Recovery” means the fixed amount paid to the Contractor for material recovery as provided in the Price Schedule and as annually adjusted as provided in Article 13B(4) of the General Conditions.

“Fixed Payment for Waste Transfer” means the fixed amount paid to the Contractor for the transfer of Acceptable Waste received at the transfer station as provided in the Price Schedule and as annually adjusted as provided in Article 13B of the General Conditions.

“Fixed Payments” means the Fixed Payment for Waste Transfer, the Fixed Payment for Waste Recovery, and the Fixed Payment for Operation of Public Unloading Area at Metro South Station.

“Lump Sum Prices” means the Fixed Payment for Waste Transfer, the Fixed Payment for Waste Recovery, and the Fixed Payment for Operation of Public Unloading Area at Metro South Station.

“Recovery Credit” means the payment to the Contractor by Metro for each ton of material that the Contractor recovers from Acceptable Waste (excluding source separated materials such as yard debris, wood or other such materials for which a separate price applies) above the Annual Base Recovery Level. The Recovery Credit represents Metro’s avoided cost of disposal for recovered material and shall be annually adjusted as provided in Article 13B(4) of these General Conditions.

“Variable Payments” means all payments to, and revenues received by the Contractor pursuant to this Contract other than the Fixed Payments.

3. Amendment of Payment Provisions.

a. Amendment of Payment Rates.

The provisions of Article 13.A of the General Conditions and the Price Schedule referenced therein are amended to provide as follows:

A. Rates:

1. For all work performed under this contract from March 1, 2002, to September 30, 2004, Metro will make monthly payments to contractor based on the rates set forth on the Price Schedule attached as Exhibit A to Change Order No. 3, which is incorporated by this reference as if set forth in full.
2. On or prior to the tenth day of each month, Contractor will submit to Metro a billing which indicates the quantity of waste pursuant to the Contract. The value of unit price work shall be based upon the number of tons of acceptable waste received at the transfer station, the number of tons of dry waste transported and disposed and the number of tons of materials recovered as determined by the Metro scalehouses and the according to the Contract Documents for the calendar month just completed. In addition, a compaction maximization bonus will be paid if appropriate. The lump sum payment due shall also be stated in the billing.

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

4. a. In no event shall Variable Payments received by Contractor in a Contract Year exceed 50 percent of total revenues received by Contractor under this Agreement in a Contract Year. In order to assure that such Variable Payments do not exceed 50 percent of total revenues received by Contractor under this Agreement in a Contract Year, the parties agree on the procedures set forth in paragraph 4b of this Section.

b. On a quarterly basis during each Contract Year, and at its sole discretion, Metro shall reconcile the amount of Fixed Payments and of Variable Payments that Contractor has received during that Contract Year. At the time of each such quarterly reconciliation, if the Variable Payments received by Contractor as of that date in the Contract Year exceed 99.5 percent of the amount of Fixed Payments received by Contractor as of that date in the Contract Year, Metro shall thereafter withhold a portion of Variable Payments otherwise due to Contractor in such amount as is necessary to ensure that Variable Payments do not exceed 99.5 percent of Fixed Payments in the Contract Year. If Metro has previously withheld any such Variable Payments from Contractor and thereafter determines at a subsequent quarterly reconciliation that the sum of 99.5 percent of Fixed Payments is greater than the amount of Variable Payments that Contractor has received, Metro shall make no further reduction in Variable Payments and, at its sole discretion, Metro may make additional Variable Payments to Contractor in an amount not to exceed the amount of Variable Payments previously withheld by Metro; provided, that in no event shall total annual Variable Payments exceed 99.5 percent of total annual Fixed Payments in any Contract Year. In addition, Metro shall withhold payment of the final monthly Variable Payments due to Contractor in each Contract Year until such time as Metro has completed the final annual reconciliation pursuant to this paragraph.

5. If, pursuant to Section A(4) of this Article, Metro withholds a portion of Variable Payments otherwise due to Contractor, then either Party may immediately initiate negotiations to amend this Contract as needed to ensure that future Variable Payments due to Contractor do not exceed 99.5 percent of future Fixed Payments in any Contract Year. If such negotiations are requested by either Party, both Parties shall conduct such negotiations in good faith.

b. Amendment of Payment Price Adjustment Provisions.

The provisions of Article 13B of the General Conditions are amended to replace Article 13B4 with the following:

4. The Fixed Payment for Waste Recovery and the Recovery Credit paid to the Contractor for each ton of Recovered Materials (\$30/ton during the first year of the Contract) shall be adjusted annually using half the percentage price adjustment (AI) above.

c. Additional Provisions for Fixed and Variable Payments.

The provisions of Article 13 of the General Conditions are amended to include the following additional provisions:

A. Fixed Payment for Waste Transfer: Each month Metro shall pay Contractor a fixed amount for providing basic waste transfer services at each transfer station as provided on the Price Schedule.

B. Variable Payment for Waste Transfer.

1. Metro Central Station. Effective on March 1, 2002, and continuing through September 30, 2002, Metro shall also pay Contractor each month the variable, declining rate, per-ton payments set forth on the attached Price Schedule for the provision of basic waste transfer services at MCS. The variable payment set forth in the Price Schedule shall be applied only to that amount of Acceptable Waste tonnage (excluding source separated materials for which a separate price applies) transferred at MCS between March 1, 2002, and the end of each month that exceeds the sum calculated by combining (1) the product of multiplying by 20,000 the number of months that have then elapsed since March 1, 2002, with (2) the number of tons of such Acceptable Waste transferred at MCS for which any variable payment has been made in any previous month. Effective on October 1, 2002, Metro shall also pay Contractor each month the variable, declining rate, per-ton payments set forth on the attached Price Schedule for the provision of basic waste transfer services at MCS. The variable payment set forth in the Price Schedule shall be applied only to that amount of Acceptable Waste tonnage (excluding source separated materials for which a separate price applies) transferred at MCS between the start of each Contract Year, and the end of each month that exceeds the sum calculated by combining (1) the product of multiplying by 18,000 the number of months that have then elapsed since the start of the Contract Year, with (2) the number of tons of such Acceptable Waste transferred at MCS for which any variable payment has been made in any previous month of the Contract Year.
2. Metro South Station. Effective on March 1, 2002, and continuing through September 30, 2002, Metro shall also pay Contractor each month the variable, declining rate, per-ton payments set forth on the attached Price Schedule for the provision of basic waste transfer services at MSS. The variable payment set forth in the Price Schedule shall be applied only to that amount of Acceptable Waste tonnage (excluding source separated materials for which a separate price applies) transferred at MSS between March 1, 2002, and the end of each month that exceeds the sum calculated by combining (1) the product of multiplying by 20,000 the number of months that have then elapsed since March 1, 2002, with (2) the number of tons of such Acceptable Waste transferred at MSS for which any variable payment has been made in any previous month. Effective on October 1, 2002, Metro shall also pay Contractor each month the variable, declining rate, per-ton payments set forth on the attached Price Schedule for the provision of basic waste transfer services at MSS. The variable payment set forth in the Price Schedule shall be applied only to that amount of Acceptable Waste tonnage (excluding source separated materials for which a separate price applies) transferred at MSS between the start of each Contract Year, and the end of each month that exceeds the sum calculated by combining (1) the product of multiplying by 18,000 the number of months that have then elapsed since the start of the Contract Year, with (2) the number of tons of such Acceptable Waste transferred at MSS for which any variable payment has been made in any previous month of the Contract Year.

C. Fixed Payment for Waste Recovery: Each month Metro shall pay Contractor a fixed amount for providing basic waste recovery services at each transfer station as provided on the Price Schedule.

D. Variable Payment for Waste Recovery (Recovery Credits).

1. **Metro Central Station.** Effective on March 1, 2002, and continuing through September 30, 2002, Metro shall also pay Contractor each month a Recovery Credit as set forth in Section 3(b) of this Change Order for each ton of material that Contractor recovers out of incoming Acceptable Waste tonnage (excluding source separated materials for which a separate price applies) received at MCS between March 1, 2002, and the end of each month that exceeds the sum calculated by combining (1) the product of multiplying by 850 the number of months that have then elapsed since March 1, 2002, with (2) the number of tons of such material recovered at MCS for which any variable Recovery Credit payment has been made in any previous month. Effective on October 1, 2002, Metro shall also pay Contractor each month a Recovery Credit as set forth in Section 3(b) of this Change Order for each ton of material that Contractor recovers out of incoming Acceptable Waste tonnage (excluding source separated materials for which a separate price applies) received at MCS between the start of each Contract Year and the end of each month that exceeds the sum calculated by combining (1) the product of multiplying by 850 the number of months that have then elapsed since the start of the Contract Year, with (2) the number of tons of such material recovered at MCS for which any variable payment has been made in any previous month of the Contract Year.
2. **Metro South Station.** Effective on March 1, 2002, and continuing through September 30, 2002, Metro shall also pay Contractor each month a Recovery Credit as set forth in Section 3(b) of this Change Order for each ton of material that Contractor recovers out of incoming Acceptable Waste tonnage (excluding source separated materials for which a separate price applies) received at MSS between March 1, 2002, and the end of each month that exceeds the sum calculated by combining (1) the product of multiplying by 650 the number of months that have then elapsed since March 1, 2002, with (2) the number of tons of such material recovered at MSS for which any variable Recovery Credit payment has been made in any previous month. Effective on October 1, 2002, Metro shall also pay Contractor each month a Recovery Credit as set forth in Section 3(b) of this Change Order for each ton of material that Contractor recovers out of incoming Acceptable Waste tonnage (excluding source separated materials for which a separate price applies) received at MSS between the start of each Contract Year and the end of each month that exceeds the sum calculated by combining (1) the product of multiplying by 650 the number of months that have then elapsed since the start of the Contract Year, with (2) the number of tons of such material recovered at MSS for which any variable payment has been made in any previous month of the Contract Year.

E. Fixed Payment for Operation of Public Unloading Area. Metro shall pay Contractor a fixed amount each month for operation of the public unloading area at the Metro South Station, as provided on the Price Schedule.

4. Amendment of Specifications for Metro Central Station.

The provisions of Article 18.1 of the Specifications for Metro Central Station are amended by adding "polystyrene block foam" to the list of materials that the recycling station is required to handle.

5. Amendment of Specifications for Metro South Station.

a. Amendment to Article 17.0

The provisions of Article 17.0 of the Specifications for Metro Central Station are amended by adding "polystyrene block foam" to the list of materials that the recycling station is required to handle.

b. Amendment to Article 28.0

The provisions of Article 28.0 of the Specifications for Metro South Station are amended to include the following additional provision:

For the public unloading area, constructed after the start of this Contract, Contractor shall provide the following additional personnel (at no additional compensation to that provided on the Price Schedule for operation of the public unloading area):

- 2 Equipment Operators (48 hours per week per operator)
- 1 Traffic Spotter (providing 56 hours per week of coverage)
- 1 Litter Patrol Laborer (providing 56 hours per week of coverage)

c. Additional Provision Regarding Operation of the Public Unloading Area.

The provisions of the Specifications for Metro South Station are amended to include the following additional provision:

PUBLIC UNLOADING AREA (BAY 3)

For the public unloading area, constructed after the start of this Contract, Contractor shall provide the following additional equipment, including required fuel and maintenance (at no additional compensation to that provided on the Price Schedule for operation of the public unloading area):

- 2 Skid Loaders
- 1 Front End Loader
- 1 Forklift
- 1 Shuttle Truck
- 1 Walking Floor Trailer to shuttle waste to compactors

d. Amendment to Article 32.1

The provisions of Article 32.1 of the Specifications for Metro South Station are amended to delete the existing introductory paragraph of Article 32.1, as previously amended by Change Order No. 2, and insert the following new introductory paragraph:

The following services will be provided a minimum of five (5) days per week for the transfer station building (including but not limited to the foyer, conference and break rooms), the four (4) scalehouses, all offices, break rooms and bathrooms in the latex paint recycling facility, all offices, break rooms and bathrooms in the public unloading facility, and the onsite trailer used by household hazardous waste personnel, unless otherwise indicated by Metro:

Except as amended and modified herein, all other terms of the Contract and any previous Contract Change Orders shall remain in full force and effect. Any material conflict between the

provisions of the original Contract, including the provisions of other previous Contract Change Orders, and this Contract Change Order No. 3 shall be resolved by reference to and reliance upon this Contract Change Order No. 3.

BFI Waste Systems of North America, Inc.

METRO

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date

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EXHIBIT A
to Change Order No. 3 to Contract No. 905690

PRICE SCHEDULE

METRO SOUTH ITEMS

A. Fixed Monthly Payments

	<u>Between March 1, 2002 and Sept. 30, 2002</u>	<u>Between Oct. 1, 2002 and Sept. 30, 2004</u>
1. Waste Transfer	\$100,000.00	\$90,000.00
2. Waste Recovery	\$20,728.50	\$20,728.50
3. Operation of the Public Unloading Area	\$39,416.67	\$37,900.00
Total MSS Fixed Monthly Payment =	\$160,145.17	\$148,628.50

B. Per Ton Payment Rates for Waste Transfer

Monthly Number of Tons for Which Variable
Payments for Waste Transfer are Due:

<u>Price Per Ton</u>	<u>Between March 1, 2002 and Sept. 30, 2002</u>	<u>Between Oct. 1, 2002 and Sept. 30, 2004</u>
\$5.00	1 to 1,000	1 to 3,000
\$4.75	1,001 to 4,000	3,001 to 6,000
\$4.69	4,001 to 7,000	6,001 to 9,000
\$4.62	7,001 to 10,000	9,001 to 12,000
\$4.57	Over 10,000	Over 12,000

METRO CENTRAL ITEMS

A. Fixed Monthly Payments

	<u>Between March 1, 2002 and Sept. 30, 2002</u>	<u>Between Oct. 1, 2002 and Sept. 30, 2004</u>
1. Waste Transfer	\$154,800.00	\$139,320.00
2. Waste Recovery	\$27,106.50	\$27,106.50
Total MCS Fixed Monthly Payment =	\$178,906.50	\$163,426.70

B. Per Ton Payment Rates for Waste Transfer

Monthly Number of Tons for Which Variable
Payments for Waste Transfer are Due:

<u>Price Per Ton</u>	<u>Between March 1, 2002 and Sept. 30, 2002</u>	<u>Between Oct. 1, 2002 and Sept. 30, 2004</u>
\$7.74	1 to 1,000	1 to 3,000
\$7.39	1,001 to 4,000	3,001 to 6,000
\$7.34	4,001 to 7,000	6,001 to 9,000
\$7.29	7,001 to 10,000	9,001 to 12,000
\$7.22	Over 10,000	Over 12,000

ITEMS FOR BOTH STATIONS

A. Per Ton Price for each ton of source separated yard debris and wood: **\$33.87**

B. Percentage adjustment of CPI: 100%

SOLID WASTE AND RECYCLING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 01-3156, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE CHANGE ORDER NO. 3 TO THE CONTRACT FOR THE OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS

Date: February 26, 2002

Presented by: Councilor Monroe

Committee Recommendation: At its February 6 meeting, the committee considered Resolution No. 01-3156 and voted unanimously to send the resolution, to the Council for adoption. Voting in favor: Councilors McLain, Monroe, Park and Chair Atherton. Councilor Bragdon was absent.

Background: Since October 1, 1997 Metro's two transfer stations have been operated by BFI/Allied under the terms of a contract that will expire on September 30, 2002. The contractor is currently paid about \$5 million annually. The Council has two options for addressing the transfer station operations contract. First, it could direct staff to initiate an RFP process, which would result in the awarding of a new contract effective upon the expiration of the current contract. The second option would be to extend the current contract for up to two additional years.

In the spring of 2001, the REM staff received some indications that the Council would be interested in exploration the use of the RFP option. A staff work group was established to draft a proposed RFP. However, during the summer and fall, a number of uncertainties emerged concerning the future operation of the stations. These included: 1) a increase in the tonnage caps for several local transfer stations, the opening of the new public unloading area at Metro South, and the potential use of Metro Central to facilitate the City of Portland's organics recycling project.

As a result, when the proposed RFP for awarding a new contract was considered by the Solid Waste and Recycling Committee at its November 21, 2002 meeting, the committee members unanimously concluded that the current uncertainties warranted having the staff explore the feasibility of extending the current contract. Staff was directed to identify issues that needed to be addressed in the contract extension negotiations. At the December 5 meeting a framework of issues was agreed upon. These included: 1) no increase in price, 2) increasing material recovery, 3) annualizing the "put-or-pay" provisions of the contract, and 4) setting a price for the operation of the new public unloading area.

The proposed resolution would extend the current contract for two additional years. Council approval is required under provisions of the Metro Code that require such approval of amendments to contracts that have been designated as "significant impact"

Committee Discussion: Terry Petersen, REM Director, presented the staff. He reviewed the history of the committee's review of the proposed RFP and the direction that staff received to try to negotiate a contract extension. He then reviewed how each of the issues raised by the committee were addressed in the proposed extension.

The extension provides for no price increases other than the inflationary increases permitted under the terms of the existing contract. The potential for increasing material recovery is addressed by a tripling of the minimum recovery rate at Metro South. It is anticipated that the new public unloading area will significantly contribute to increased recovery at Metro South. The "put-or-pay" provisions have been annualized which will significantly reduce the potential of a negative impact on Metro due to normal seasonal tonnage fluctuations. Peterson noted that the new "put-or-pay" language was carefully

reviewed by legal staff and Metro's bond counsel to insure that it complied with new IRS requirements relating to contracts for the private operation of a public facility. Finally, Peterson noted that the negotiated price for the operation of the new public unloading facility was very favorable (\$37,000/month) and less than the estimated cost that staff had originally estimated.

Councilor McLain commented that she was pleased that material recovery was being enhanced at Metro South despite a projected decline in overall tonnage at the facility. Councilors Monroe and Atherton praised the staff and BFI/Allied for their negotiation effort that produced a revised contract that was acceptable to both parties and addressed issues of interest to the committee.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3156 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE CHANGE ORDER NO. 3 TO THE CONTRACT FOR THE OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS.

January 10, 2002

Presented by: Terry Petersen

BRIEF DESCRIPTION OF RESOLUTION

This resolution would approve Change Order No. 3 to Contract No. 905690 between Metro and Browning-Ferris Industries (BFI). Provisions of the change order extend the contract for an additional two years and make other changes regarding the method of payment, operation of a new public unloading area at Metro South Station and other miscellaneous provisions.

EXISTING LAW

Metro Code 2.04.058(b) requires that contracts designated as having a significant impact on Metro cannot be amended without the express approval of the Metro Council. Contract No. 905690 was originally designated as having a significant impact on Metro.

BACKGROUND

Effective October 1, 1997, Metro entered into a contract with Browning-Ferris Industries to operate both of Metro's transfer stations. The award of the contract was the result of a twenty-month proposal process that resulted in four firms submitting proposals on three possible options. Sixteen proposed combinations were evaluated based on three criteria: cost, materials recovery approach, and operations and maintenance programs.

The current contract is scheduled to expire on September 30, 2002. Metro pays the contractor approximately \$5 million per year under the contract. A new procurement process would take approximately 20 months from initiation through mobilization.

On November 21, 2001, Regional Environmental Management Department (REM) staff presented to the Metro Council's Solid Waste & Recycling Committee a draft request for proposals to obtain a new contract for operation of Metro's transfer stations. The Committee instructed staff to explore the possibility of extending the existing contract instead. On December 5, 2001, the REM director presented to the Committee a framework for negotiating an extension. The framework addressed the objectives of maintaining current prices during the extension, increasing materials recovery, lowering and annualizing "put-or-pay" requirements and obtaining reasonable prices for operation of the new public unloading area at MSS. These objectives were achieved in the proposed change order and are addressed in more detail below.

For the following reasons, the Regional Environmental Management Department believes an extension of the existing contract is appropriate at this time.

1. Uncertainty regarding the tonnage levels to be received by the two stations

Recent decisions by Metro regarding the tonnage caps at other facilities have yet to be fully felt throughout the solid waste system. This policy change, together with a review of regional transfer station capacity scheduled for 2002 and possible additional cap adjustments, make it difficult to estimate with certainty the amount of waste to be handled during the next contract period. Combined with the effects of a declining economy and major waste reduction initiatives (particularly concerning organics recovery), the uncertainty regarding the tonnage to be handled during a re-bid period creates a great deal of risk to prospective bidders. Metro would expect to pay for this risk through higher prices.

2. It is difficult at this time to specify major aspects of the Scope of Work for a re-bid.

Metro has recently constructed a new public unloading area at Metro South Station. Its operation and integration with the rest of the site are still evolving. An extension would provide time to determine optimal staffing levels and operational requirements. At Metro Central Station, Metro will be providing support to the City of Portland's commercial organics program. The details of Metro's role will not be determined until the City completes the operator selection process. This will not occur in time to be specified in a re-bid.

3. Metro cannot provide accurate historical operating data to potential proposers.

As with tonnage projections, Metro lacks representative data regarding utility costs and recycling capabilities due to recent changes. A new rate structure by PGE (30% increase in October) has affected operations as the operator changes behavior to minimize costs in conjunction with negotiations with the utility. In addition, the recovery potential at Metro South is uncertain due to the new building. Potential proposers will want more certainty regarding these factors when preparing proposals.

4. The current contractor provides high-quality operations at competitive prices.

The current rates, which would apply during the extension, were obtained through a very competitive procurement process in 1997. According to a survey of other jurisdictions, those rates are still very competitive. Surveys of our customers indicate a high level of satisfaction with the current operator. Staff has enjoyed a good working relationship with current operator, particularly in working through changing situations.

An extension would allow Metro to establish a more certain basis for a future re-bidding of operations, while working through changes to the solid waste system. Staff believes the reasons for an extension outweigh any potential benefits of a re-bid at this time.

ADDITIONAL ELEMENTS OF CHANGE ORDER NO. 3

In addition to extending the existing contract for two years, Change Order No. 3 also amends other provisions of the contract. These include the method of payment and associated recovery requirements, operation of the Metro South public area and the provision of additional miscellaneous services at no cost.

Put-or-Pay Changes

The change order will restructure the "put-or-pay" provisions of the existing agreement. In order to comply with IRS rules on the private operation of publicly owned facilities financed with tax-exempt bonds, put-or-pay provisions for both waste and recovery were included in the original contract. These provisions required Metro to pay for set amounts of waste and recovery at each station on a monthly basis

- regardless of whether these levels were achieved. Given recent changes in tonnage and recovery potential, these provisions need to be revised.

Changes to the payment provisions contained in Change Order No. 3 will establish lower put-or-pay levels and calculate these levels on an annual basis. The put-or-pay levels for handling waste at Metro transfer stations will decline by a total of 32,000 tons for the remainder of the current contract year ending in September, and 72,000 tons annually for the extension period. This lower level reflects expectations that tonnage received at the stations will decline over the next two years due to the factors stated above.

On a monthly basis, the put-or-pay level for waste is higher (2,000 tons per month per station) for the current contract year than during the two remaining years of the extension. This year's higher level is required to ensure compliance with IRS rules. This is because variable payments were made to operate the new public area at Metro South during over the last six months, and these variable payments need to be offset by higher fixed payments for the remainder of this contract year, as compared to the extension period. The change order also makes the payment for operation of the new public unloading area part of the fixed payments.

In the past, the put-or-pay level for waste was on a monthly basis. Low tonnage months such as February regularly threatened to fall below the put-or-pay level. To ensure that Metro does not pay for tonnage not received, even with the lower levels, the change order will establish an annual basis for the put-or-pay. So even if a particularly month is low, the higher tonnage months will offset these low tonnage months. This initially ensures that Metro will only pay for tons received.

The change order also resets the put-or-pay level for material recovery. In particular, the level of recovery required at Metro South will increase to reflect Metro's investment in the new public unloading area, which should increase the opportunity for recovery. The recovery levels required have also been changed from a percentage to a fixed number of tons at each facility and will be calculated on an annual basis.

Operation of the Metro South Public Unloading Area

In August 2001, a new 26,000 square foot public unloading area at Metro South Station opened to receive waste from public customers. The area has been operated since that time through the force account provisions of the existing contract. These payments are considered variable payments under IRS rules. Prior to developing Change Order No. 3, staff negotiated a draft change order to operate the area for the remainder of the original contract period, at a fixed cost of \$45,000 per month. Staff expected to bring this change order to the Council early this year. Change Order No. 3 now incorporates and supersedes that draft change order, and will increase the annual fixed payment by an amount equal to \$37,900 per month to pay for operation of the public unloading area. Staff was able to negotiate a lower price for this work because Change Order No. 3 extends the contract term by two years.

Miscellaneous Changes

The change order adds some other services at no additional cost to Metro. The contractor will now be required to accept polystyrene foam block from the public at no additional cost. Metro had been providing this service on an experimental basis during the past year while reimbursing the contractor for additional labor expenses. The contractor has agreed to waive this charge as part of this change order. Likewise, the contractor has agreed to waive additional charges for extending janitorial services to the new office in the Latex Paint Recycling Building at Metro South.

BUDGET IMPACT

Payments for waste transfer and recovery will remain equivalent to the current contract amount. Payments for operation of the new public unloading building at Metro South will be approximately \$7,000 per month less than would have been paid. Additional miscellaneous savings will total approximately \$1,000 per month. Total annual savings over the course of the extension will be approximately \$96,000.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 02-3156.