



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Agenda

Meeting: **METRO COUNCIL**
Date: **September 13, 1990**
Day: **Thursday**
Time: **5:30 p.m.**
Place: **Council Chamber**

Approx.
Time*

Presented By

5:30 p.m. **CALL TO ORDER/ROLL CALL**

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS**
3. **EXECUTIVE OFFICER COMMUNICATIONS**

(30 min.) **3.1 Urban Growth Management Briefing**

(10 min.) **3.2 Executive Session:** Held under the Authority of ORS 192.660(1)(e) for the Purpose of Discussing Real Property Transactions (No Action Requested; Information Only) Cooper/
Sims

6:10 **4. CONSENT AGENDA**
(5 min.)

4.1 Minutes of May 10, 1990 (Action Requested: Motion to Approve the Minutes)

REFERRED FROM CONVENTION AND VISITOR FACILITIES COMMITTEE

4.2 Resolution No. 90-1316, Confirming Appointments to the Public Policy Advisory Committee for Regional Convention, Trade, Performing Arts and Spectator Facilities (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM SOLID WASTE COMMITTEE

4.3 Resolution No. 90-1230, For the Purpose of Confirming the Appointment of Wilbert H. Randle, Jr. to Fill a Vacancy on the 1st for Recycling Advisory Committee and Assigning Terms (Action Requested: Motion to Adopt the Resolution)

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

5. ORDINANCES, FIRST READINGS

- 6:15
(5 min.) **5.1 Ordinance No. 90-362, For the Purpose of Creating Chapter 5.07 Adopting a Program to Provide Recycling Credits for Eligible Nonprofit Organizations and Amending Ordinance No. 90-340 Adopting the Fiscal Year 1990-91 Metro Budget and Authorizing Funds for this Program (Referred to Solid Waste Committee)**

6. ORDINANCES, SECOND READINGS

- 6:20
(5 min.) **6.1 Ordinance No. 90-358, Revising Metro Code Section 4.01.050 to Include Exclusion from Zoo Premises** **Saucy**
PUBLIC HEARING (Action Requested: Motion to Adopt the Ordinance)

7. RESOLUTIONS

REFERRED FROM THE SOLID WASTE COMMITTEE

- 6:25
(10 min.) **7.1 Resolution No. 90-1311, For the Purpose of Approving the One Percent for Recycling Program Criteria and Guidelines and Application for Provision for FY 1990-91 (Action Requested: Motion to Adopt the Resolution)** **Wyers**
- 6:35
(10 min.) **7.2 Resolution No. 90-1317, For the Purpose of Approving an Agreement Between Burlington Northern Railroad Company and Metro for Construction and Maintenance of Railroad Crossings at Metro East Station (Action Requested: Motion to Adopt the Resolution)** **Wyers**

BEFORE THE CONTRACT REVIEW BOARD OF THE METROPOLITAN SERVICE DISTRICT

REFERRED FROM THE INTERGOVERNMENTAL RELATIONS COMMITTEE

- 6:45
(5 min.) **7.3 Resolution No. 90-1318, For the Purpose of Authorizing an Exemption to the Requirement of Competitive Bidding Pursuant to Metro Code 2.04.060 and Approving a Sole Source Agreement with CEIP (Action Requested: Motion for the Contract Review Board to Adopt the Resolution)** **Gardner**

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

6:50 (45 min.)	7.4 Appeal of Executive Officer's Decision to Reject the Appeal of AMFAB Resources in the Matter of Awarding a Contract for Design, Manufacture and Installation of a Compaction System at Metro South Station <u>PUBLIC HEARING</u> (Action Requested: Consideration of Appeal in Accordance with Metro Code 2.04.031)	Cooper
7:35 (15 min.)	7.5 Resolution No. 90-1310, For the Purpose of Awarding a Contract to Shredding Systems, Inc. for Design, Manufacture and Installation of a Compaction System at Metro South Station (Action Requested: Motion to Adopt the Resolution)	Wyers
7:50 (15 min.)	7.6 Resolution No. 90-1322, Approving a Contract for Provision of Metro/Tri-Met Merger Services (Action Requested: Motion to Adopt the Resolution)	Gardner
8:05	8. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS	
	8.1 Tri-Met Merger	Gardner
	8.2 "Oregon Benchmarks" Report Review Subcommittee (Action Requested: Motion to Recommend Transmittal of Comments to Oregon Progress Board)	Devlin
	8.3 Zoo Capital Maintenance Contracts	McFarland
8:30	ADJOURN	

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Agenda Item No. 4.1
Meeting Date: September 13, 1990

Minutes

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

May 10, 1990
Regular Meeting

Councilors Present: Tanya Collier (Presiding Officer), Gary Hansen (Deputy Presiding Officer), Roger Buchanan, Tom DeJardin, Richard Devlin, Jim Gardner, David Knowles, Ruth McFarland, Mike Ragsdale and George Van Bergen

Councilors Absent: Lawrence Bauer and Judy Wyers

Presiding Officer Collier called the meeting to order at 5:30 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

The Presiding Officer announced that the following items were on the Consent Agenda for consideration:

- 4.1 Minutes of March 22, 1990
- 4.2 Resolution No. 90-1253, For the Purpose of Supporting Congressional Renewal of the National Endowment for the Arts
- 4.3 Resolution No. 90-1179, For the Purpose of Establishing an Organizational Structure for Overseeing High Capacity Transit Studies
- 4.4 Resolution No. 90-1245, For the Purpose of Approving a Contract for Personal Services to Assist in the Drafting of a Model Zoning Ordinance
- 4.5 Resolution No. 90-1258, For the Purpose of Amending the Operations Contract for the St. Johns Landfill to Conduct a Residential Salvageable Building Materials Recovery Demonstration Project

Motion: Councilor Gardner moved, seconded by Councilor DeJardin to approve the Consent Agenda.

Vote: The ten councilors present voted in favor of the motion. Councilors Bauer and Wyers were absent.

The motion carried.

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 90-336, An Ordinance Prohibiting the Sale and Distribution of Laundry Cleaning Agents Containing Phosphorous within the Metropolitan Service District Boundaries

The Clerk read the ordinance for a first time by title only. The Presiding Officer announced that the ordinance had been referred to the Intergovernmental Relations Committee for public hearing.

6. ORDINANCES, SECOND READINGS

6.1 Ordinance No. 90-345, An Ordinance Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 89-1: Gravett

The Clerk read the ordinance for a second time by title only. The Presiding Officer announced that the Council, in its capacity as a quasi-judicial board would consider the ordinance. Presiding Officer Collier announced that the ordinance had been first read before the Council on April 26 at which time General Counsel Dan Cooper presented the hearings officer's report and recommendations. A public hearing was also held, and a motion was made by Councilor Hansen, seconded by Councilor Devlin to adopt the ordinance. The ordinance was then continued to a second reading.

Motion: Councilor Hansen moved (at April 26 meeting), seconded by Councilor Devlin to adopt Ordinance No. 90-345.

Vote: A roll call vote was taken resulting in Councilors Buchanan, Collier, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, Ragsdale and Van Bergen voting aye. Councilors Bauer and Wyers were absent.

The motion carried.

6.2 Ordinance No. 90-344, Amending the Regional Transportation Plan Defining the Priority of the Hillsboro Extension of the Westside Corridor

Presiding Officer Collier announced that the ordinance had been first read before the Council on April 12 and referred to the Intergovernmental Relations Committee for public hearing. The Committee held a public hearing on the ordinance on April 24 and recommended Council adoption.

Motion: Councilor Gardner moved, seconded by Councilor Devlin to adopt Ordinance No. 90-344.

Councilor Gardner said that the Intergovernmental Relations Committee had unanimously recommended the Council adopt the ordinance which would amend the Regional Transportation Plan (RTP) to clarify that the region's priority for further planning for light rail corridors was the 185th Avenue to Hillsboro extension.

The public hearing was opened and closed. No testimony was offered.

Vote: A roll call vote was taken resulting in Councilors Buchanan, Collier, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, Ragsdale and Van Bergen voting aye. Councilors Bauer and Wyers were absent.

The motion carried.

6.3 Ordinance No. 90-346, Amending Ordinance No. 89-294A
Revising the FY 1989-90 Budget and Appropriations Schedule
for the Purposes of Increased Solid Waste Operations and
Establishing a Renewal and Replacement Reserve in the Solid
Waste Capital Fund

Presiding Officer Collier announced that the ordinance had been first read before the Council on April 12 and referred to the Solid Waste Committee for public hearing. The Committee held a public hearing on the ordinance on May 1 and recommended Council adoption.

Motion: Councilor Hansen moved, seconded by Councilor Buchanan to adopt Ordinance No. 90-346.

Councilor Hansen reported that the ordinance was primarily a housekeeping item to make several budget adjustments. He said additional funds were required to pay increased workmen's compensation insurance premiums, purchase office panels, fund retroactive enhancement fees to the City of Forest Grove and to fund a Renewal and Replacement Reserve mandated as a result of adoption of the master bond ordinance (Ordinance No. 89-319).

The public hearing was opened and closed. No testimony was offered.

Councilor Devlin said that he felt that any item that amended the budget should be jointly referred to the Finance Committee and the functional committee.

Vote: A roll call vote was taken resulting in Councilors Buchanan, Collier, Devlin, DeJardin, Gardner, Hansen, Knowles, McFarland, Ragsdale and Van Bergen voting aye. Councilors Bauer and Wyers were absent.

The motion carried.

7. RESOLUTIONS

7.1 Resolution No. 90-1211, For the Purpose of Approving Contract Documents for Insurance Broker of Record

Motion: Councilor Van Bergen moved, seconded by Councilor Hansen to adopt Resolution No. 90-1211.

Councilor Van Bergen presented the Finance Committee's report and recommendations. He reported that the contract was multi-year, and therefore, must be approved by the Council. He said that the contract was for ministerial services for employee health and welfare benefits and that the Finance Committee had recommended the Council approve the contract.

Vote: The ten councilors present voted in favor of the motion. Councilors Bauer and Wyers were absent.

The motion carried.

7.2 Resolution No. 90-1262, Approving Distribution of an RFP for a Personal Services Contract to Assist in Acceleration of the RLIS Project

Motion: Councilor Devlin moved, seconded by Councilor DeJardin to adopt Resolution No. 90-1262A.

Councilor Devlin presented the Intergovernmental Relations Committee's report and recommendations. Councilor Devlin reported that the Intergovernmental Relations Committee had voted unanimously to recommend the Council adopt the resolution which would approve issuing a request for proposal document for a contractor to assist Metro staff in developing the RLIS database. He said that \$150,000 had been budgeted for FY1990-91 for this task, however, it was possible to begin the work during FY 1989-

90 with funds budgeted for a different RLIS activity. Those monies were no longer needed for that activity.

Councilor Devlin also noted that in order to further expedite the contract, the Committee had amended the resolution would include approval of a waiver of contract review. He also noted that in other resolutions approving contract review waiver, the resolution stated that should the scope of work or amount of the contract increase, the contract would not be exempt from Council review. He said that he did not feel that the scope of work was an issue in this contract.

Motion to Amend: Councilor Devlin moved, seconded by Councilor Ragsdale to amend Resolution No. 90-1262A to amend the "BE IT RESOLVED" citation to add the following phrase at the end of the paragraph after budget and before the period "and that the initial contract not exceed \$165,000."

Vote on Amendment: All ten councilors present voted in favor of the amendment. Councilors Bauer and Wyers were absent.

The motion carried.

Vote on Main Motion: All ten councilors present voted in favor of the motion. Councilors Bauer and Wyers were absent.

The motion carried and Resolution No. 90-1262A was adopted as amended.

7.3 Resolution No. 90-1263, For the Purpose of Receiving the Washington County Solid Waste Conceptual Plan

Motion: Councilor Hansen moved, seconded by Councilor Van Bergen to adopt Resolution No. 90-1263.

Councilor Hansen presented the Solid Waste Committee's report and recommendations. Councilor Hansen said that Resolution No. 90-1263 simply acknowledges that Metro has received the Concept Plan from Washington County. He explained that the Plan was created through a process of working with Washington County local government officials and haulers. He said that the purpose of the Plan was to provide Metro with a framework with which to conduct necessary policy and technical analyses on the Washington County System. He said that the next step would be to release a

request for proposals to conduct an analysis of certain components of the Plan.

Councilor Devlin noted that adoption of Resolution No. 90-1263 was not to be construed as acceptance or adoption of the Concept Plan. Adoption of the resolution would merely acknowledge that the Plan had, indeed, been submitted to Metro. He noted that there were still issues in the Plan that should be addressed including two station/three station alternative, facility ownership, vertical integration, facility procurement, post collection mixed waste processing incentives, financing and rate setting.

Councilor Gardner noted that he was comfortable accepting the Plan but did not endorse or reject any of the concepts contained in the Plan. He asked that the record reflect his neutral position on the Plan.

Presiding Officer Collier said that she had concerns with the wording in the "Resolved" section of the resolution that the Council acknowledges receipt of the Plan "in providing a framework to conduct the technical and policy analysis for the system plan." She said that she did not want to mislead Washington County in interpreting the resolution to mean that the Council supported the Plan. She said that she felt the Council should consider whether action on this resolution would prejudice ultimate decisions. She pointed to specific concerns she had with the Concept Plan's content as follows:

1. The Plan states that the Steering Committee decided that the facility should be privately-owned. How could that decision be made prior to receipt of the RFP analysis?
2. The Plan states that the Steering Committee decided that vertical integration should be allowed which is in direct opposition to Metro's facility-ownership policy which prohibits vertical integration.
3. The Plan concludes there are no negative impacts prior to a study being conducted.
4. The Plan speaks to competitive and non-competitive bids where as a public agency, Metro is required to competitively bid contracts of this anticipated size.

Motion: Councilor Knowles moved to amend Resolution No. 90-1263 in the "Be It Resolved" section of the resolution as follows: "That the Council acknowledges receipt of the Washington County Concept Plan (Exhibit A) ~~in providing a framework~~

~~to conduct the technical and policy analysis for the system plan.~~ (Strikeout indicates deleted material.) Councilor McFarland seconded the motion.

Councilor Devlin asked Richard Carson, Planning and Development Director what effect the amendment would have on the RFP document. Mr. Carson replied that the amendment would not effect the RFP since the scope of work was detailed in the RFP document.

Councilor Ragsdale asked when the Council would review the policy decisions that become part of the program's implementation. Mr. Carson said in November, 1990. Councilor Ragsdale noted that he thought that November was late in the process. Councilor Ragsdale said that Metro's Solid Waste Management Plan stated that each jurisdiction must provide adequate zoning for siting facilities. He said that he felt that the Concept Plan seemed to imply that was being deferred and Washington County was ducking that responsibility. He said that he, too, was concerned that receipt of the Plan document might be misconstrued to be endorsement of the policies contained therein.

Councilor Knowles said that he was concerned with the Plan's assumptions regarding public versus private ownership, and asked Mr. Carson to comment on that assumption. Mr. Carson said that staff had made it clear to the Washington County Steering Committee that the analyses would be unbiased and objective. He said that the Steering Committee, in their Concept Plan, merely expressed their preference. Councilor Gardner asked whether the analyses would be limited by the options stated in the Plan. Mr. Carson said that the analyses would be conducted according to the Regional Solid Waste Management Plan rather than the assumptions forwarded by Washington County.

Presiding Officer Collier asked if the Steering Committee had been lead to believe that the Council would endorse the policies set forth in the Concept Plan. Mr. Carson replied that they had not.

Withdrawal of Amendment: Councilor Knowles withdrew his motion to amend in order to incorporate additional amendments.

Motion to Amend: Councilor Ragsdale moved, seconded by Councilor Knowles to amend the third "Whereas" recital of Resolution No. 90-1263 as follows: "WHEREAS, The first phase of that process has been completed in that Washington County representing the County, the Cities in ;the County

and the haulers in the County have submitted a Concept Plan to Metro which ~~provides a framework to conduct the technical and policy analysis necessary to complete a system plan for Washington County; now, therefore,~~ and to amend the "Be It Resolved" section of Resolution No. 90-1263 as follows: " 1. That the Council acknowledges receipt of the Washington County Concept Plan (Exhibit A) in providing a framework to conduct the technical and policy analysis for the system plan. Receipt of the Concept Plan is not be construed as endorsement of any policy recommendations embodied in the Plan.

2. That the Council directs the Council Solid Waste Committee to review the Solid Waste management planning process and make policy recommendations to the Council modifying the work schedule to enhance the role of the Council in addressing the policy issues embodied in the Washington County Concept Plan (Exhibit A)." (Underlines indicate added material; strikeout indicates deleted material.)

Councilor Ragsdale said that the amendment would direct the Solid Waste Committee to revise the decision-making schedule to provide Council involvement earlier in the process. Councilors Van Bergen and McFarland suggested that the resolution be returned to the Solid Waste Committee for review of the amendments proposed and incorporation of those amendments in the resolution.

Vote on Amendment: A roll call vote was taken resulting in Ayes: Councilors Buchanan, Devlin, DeJardin, Gardner, Knowles, Ragsdale and Collier; Nays: Councilors Hansen, McFarland and Van Bergen. Councilors Bauer and Wyers were absent.

The motion carried.

Commissioner Steve Larrance, Washington County, testified that it was not the Steering Committee's intent to seek Council endorsement of the Concept Plan at this meeting. He said that the process was ongoing. He said the process had been positive and urged more Metro councilors to become involved in the

process. Commissioner Larrance said that there was an awareness in Washington County of the requirements of the Regional Solid Waste Management Plan realization that the facilities were needed. He said that the Committee was attempting to meet all the requirements of the Solid Waste Management Plan.

Presiding Officer Collier asked Commissioner Larrance to convey to the Committee that the Council had concerns that the resolution may be construed as endorsing policy recommendations contained in the Concept Plan. She stated reiterated that some of the Concept Plan recommendations conflicted with the Solid Waste Management Plan. She said that the Council did not wish to mislead the Committee.

Councilor Devlin, Commissioner Larrance and Peter Morris, a consultant for the Steering Committee, assured the Council that discussions were ongoing regarding the issues the Council had raised. Mr. Morris said that the Committee acknowledged that there was still a significant amount of work to be done.

<u>Vote on Main Motion:</u>	Eight of the ten councilors present voted aye. Councilors McFarland and Hansen voted nay, and Councilors Bauer and Wyers were absent.
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The motion carried.

7.4 Resolution No. 90-1250A, For the Purpose of Approving a Request for Proposals to Conduct an Analysis for Washington County System Alternatives and Establishing Policy Direction of Analysis

Motion: Councilor Hansen moved, seconded by Councilor DeJardin to adopt Resolution No. 90-1250A.

Councilor Hansen presented the Solid Waste Committee's report and recommendations. He said that adoption of the resolution would approve an RFP to perform system analysis for alternative solid waste transfer, post-collection material recovery and high grade processing facilities in Washington County. He said that the resolution additionally would initiate a public vs. private ownership analysis for the system. He noted that in order to expedite the RFP work to meet the schedule approved by the Council, the Solid Waste Committee had amended the resolution to authorize the Executive Director to enter into a contract with the successful vendor if the scope of work is not substantially changed and the amount of the original contract did not exceed \$160,000.

The public hearing was opened. Commissioner Steve Larrance, Washington County, testified in favor of the resolution. He noted that policy decisions that needed to be made hinged on the results of the studies. He urged the Council to move expeditiously. Commissioner also complimented Solid Waste and Planning and Development staff on their cooperative efforts in working with Washington County. There was no other public testimony offered and the hearing was closed.

Councilor Ragsdale raised questions regarding the use of the word "assumptions" in the RFP document. Becky Crockett, Planning and Development staff, assured Councilor Ragsdale that the assumptions referred to in the RFP document were technical assumptions such as costs for transport and the type of technology best suited for materials recovery in Washington County. Ms. Crockett pointed out that none of the assumptions were policy decisions.

Motion to Amend: Councilor Ragsdale moved, seconded by Councilor Gardner to amend Resolution No. 90-1250A in the first recital of the "Be It Resolved" section as follows:
". . . approves the issuance of the Request for Proposal (Exhibit A) for engineering financial and economic services to conduct the technical analysis for development of ~~on~~ the Washington County System Plan."
(Underlines indicate added material; strikeout indicates deleted material.)

Vote on Amendment: The nine councilors present voted aye. Councilors Bauer, McFarland and Wyers were absent.

The motion carried.

In response to questions raised by Councilor Gardner, Ms. Crockett said that the Washington County system would be analyzed based on both the assumption that the Forest Grove facility would continue to operate at its current franchise level and an additional facility would be added. The other scenario would be that Forest Grove would increase its volume and another station would be added.

Vote on Main Motion: The nine councilors present voted aye. Councilors Bauer, McFarland and Wyers were absent.

The motion carried.

7.5 Resolution No. 90-1247, For the Purpose of Authorizing Execution of Contracts for Heavy Cleaning Equipment for the Oregon Convention Center to Other Than the Apparent Low Bidder

Presiding Officer Collier recessed the Council and convened the District Contract Review Board.

Motion: Councilor Knowles moved, seconded by Councilor DeJardin to adopt Resolution No. 90-1247.

Councilor Knowles presented the Convention & Visitor Facilities Committee's report and recommendation. He said that four equipment lots had been bid by three different vendors. Of the bids received, the apparent low bidder on two of the lots was deemed no-responsive because the products were neither those specified in the bid documents nor an approved substitution. Additionally, Councilor Knowles said that the vendor failed to provide the necessary bid security and DBE/WBE compliance forms.

Vote: The nine councilors present voted aye. Councilors Bauer, McFarland and Wyers were absent.

The motion carried.

COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

Councilor Knowles announced that the Convention and Visitor Facilities Committee had at their last meeting unanimously recommended that the Council appoint Richard Waker to the Metro ERC. Councilor Knowles invited Councilors to contact Mr. Waker if they wished to interview him.

The Presiding Officer announced that recruitment for the Council Senior Management Analyst had been initiated.

There was no other business, and the meeting was adjourned at 7:30 p.m.

Respectfully submitted,

Gwen Ware-Barrett
Clerk of the Council

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Agenda Item No. 4.2
Meeting Date: September 13, 1990

Resolution No. 90-1316

CONVENTION AND VISITOR FACILITIES COMMITTEE REPORT

RESOLUTION NO. 90-1316, CONFIRMING APPOINTMENTS TO THE PUBLIC
POLICY ADVISORY COMMITTEE FOR REGIONAL CONVENTION, TRADE,
PERFORMING ARTS, AND SPECTATOR FACILITIES

Date: August 29, 1990

Presented by: Councilor Knowles

COMMITTEE RECOMMENDATION: At the August 28, 1990, Convention and Visitor Facilities (CVF) Committee meeting, Councilors Buchanan, Van Bergen and myself voted unanimously to recommend Council adopt Resolution No. 90-1316. Councilors Hansen and McFarland were excused.

COMMITTEE DISCUSSION/ISSUES: Convention Center Project staff Neil McFarlane presented Resolution No. 90-1316 which provides for Council confirmation of 9 appointments to the Public Policy Advisory Committee for Regional Convention, Trade, Performing Arts and Spectator Facilities. Total Committee membership of up to 17 is anticipated. Two members not subject to Metro appointment or Council confirmation -- a representative of the Portland Center for Performing Arts (PCPA) Committee/Cultural Planning Steering Committee and a representative from the Portland City Council -- have not yet been appointed.

The staff report to Resolution No. 90-1316 provides background on the Council's actions to date related to and supporting the development of the Committee. CVF Committee members did not raise any questions or issues regarding the resolution.

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METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date August 21, 1990

To: Council Convention and Visitor
Facilities Committee

From David Knowles *DK*
Committee Chair

Regarding Committee Confirmations: Resolution No. 90-1316

Attached for your consideration is Resolution No. 90-1316 which confirms appointments to the committee we are forming to study regional sports and entertainment facilities.

The committee membership was developed by the Executive Officer, myself, and Cliff Carlsen, the proposed Committee Chair. I believe the Committee membership as outlined will provide a balanced and thorough review of all the issues before us.

Resolution No. 90-1316 provides for confirmation of the six citizen members and three Metro ERC facility tenant members, as called for in the previously adopted Council resolution establishing the Committee. Other members of the Committee, such as those appointed by other governments or commissions, are not subject to Council confirmation.

Please contact me prior to the meeting if you have any questions on the committee membership proposed.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF CONFIRMING	)	Resolution No. 90-1316
APPOINTMENTS TO THE PUBLIC POLICY)	
ADVISORY COMMITTEE FOR REGIONAL	)	Introduced by the
CONVENTION, TRADE, PERFORMING ARTS,	)	Executive officer
AND SPECTATOR FACILITIES)	

WHEREAS, the approved FY 1990-91 Metro Budget includes a study program to address the region's future convention, trade, performing arts, and spectator facility needs; and

WHEREAS, On May 24, 1990, the Council adopted Resolution No. 90-1243 providing policy guidance for the facility study; and

WHEREAS, the Adopted Budget includes funds to support this facility study; and

WHEREAS, the Council adopted Resolution No. 90-1284 establishing a public policy advisory committee for Regional Convention, Trade, Performing Arts, and Spectator Facilities, outlining representation, and requiring Council confirmation of citizen and Metro ERC tenant members; and

WHEREAS, the Executive Officer has forwarded appointments for confirmation by the Council; now therefore,

BE IT RESOLVED, that the Council hereby confirms the following appointments to the Public Policy Advisory Committee for

Regional Convention, Trade, Spectator, and Performing Arts
Facilities:

a. Citizen Appointees:

1. Cliff Carlsen, Committee Chair
2. Mary Arnstad
3. Steve Janik
4. Bob Geddes
5. Bob Shiprack
6. Carter MacNichol

b. Metro ERC Facility Tenants

1. Don Roth
2. Michael O'Laughlin
3. Marshall Glickman

ADOPTED by the Council of the Metropolitan Service District
this ____ day of _____, 1990.

Tanya Collier, Presiding Officer

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1316 FOR THE PURPOSE
OF CONFIRMING APPOINTMENTS TO THE PUBLIC POLICY ADVISORY
COMMITTEE FOR REGIONAL CONVENTION, TRADE, PERFORMING
ARTS, AND SPECTATOR FACILITIES

DATE: August 21, 1990

PRESENTED BY: Neil McFarlane

BACKGROUND

- Metro Council has adopted the FY 1990-991 budget, which includes staff and funds to support a facilities study.
- Council resolution No. 90-1243 establishes policy guidance for this effort. Objectives are to develop information and foster community discussion related to:

- Long-term funding for the Portland Center for the Performing Arts and developing a financially healthy performing arts community.
- Construction of a new arena of between 15,000 and 25,000 seats, capable of serving as a new home for the Portland Trailblazers.
- Construction of a 60,000 to 70,000 seat stadium capable of serving as a home for an NFL football franchise.
- Stable funding for the other facilities under the Metro ERC umbrella, including Civic Stadium, the Memorial Coliseum, and the Oregon Convention Center.

The resolution also directs Executive staff to return to the Council with a Committee structure and work plan.

- Resolution No. 90-1284 establishes an advisory committee to guide this effort. This resolution also specified representation for the committee's appointment, as noted below:

- Metro Council
- Metro Executive Officer
- Portland City Council

- Clackamas County Commission
- Multnomah County Commission
- Washington County Commission
- Metropolitan Exposition-Recreation Commission
- Portland Center for the Performing Arts Advisory Committee
- Three Metro ERC facility tenants, including Sports franchises, performing arts groups, and trade show promoters
- Four to six private citizens, which may include representatives of the hotel/motel industry, civic or commerce organizations, representatives of private sector groups promoting new facilities, and the general public.

Appointment to the latter two categories (Metro ERC tenants and private citizens) are subject to Metro Council confirmation, which is the purpose of Resolution No. 90-1316.

A total committee membership of up to 17 is anticipated. The Committee may choose to create sub-committees which will allow more extensive participation.

Appointments

The full committee membership anticipated is shown as Attachment A. Those subject to Council Confirmation are:

Private Citizens:

1. Clifford N. Carlsen, Jr.: Mr. Carlsen is a partner in the law firm of Miller Nash Wiener Hager & Carlsen. Mr. Carlsen has a long record of civic service, including the City of Portland Advisory Committee on the Performing Arts Center, President of the City Club of Portland, and a member and past Chairman of the Metropolitan Arts Commission. Mr. Carlsen will chair the Committee.

2. Mary Arnstad: Ms. Arnstad is the current President of the Portland Oregon Visitors Association (POVA) and is General Manager of the Heathman Hotel. She was also recently appointed by City Commissioner Mike Lindberg to the "Arts 2000 +" steering committee for the Community Cultural Plan, and provides a link between the work of Metro's committee and the City's Cultural Plan committee.

3. Robert Shiprack: Mr. Shiprack is a State Representative from Oregon District 23, and is Executive Secretary of the Oregon Building Trades Council.

4. Robert Geddes: Mr. Geddes is an Executive Vice President of U.S. National Bank, Corporate Counsel, and manager of the Bank's law division. Mr. Geddes is also a former member of the Metropolitan Arts Commission.

5. Stephen T. Janik: Mr. Janik is partner in the firm of Ball, Jankik & Novak. Mr. Janik was nominated as a representative of the Oregon Dome Team.

6. Carter MacNichol: Mr. MacNichol is currently the Real Estate Management and Development Director at the Port of Portland, and is a member of the Children's Museum Board of Directors. He serves as a private citizen.

Metro ERC Tenants:

1. Don Roth: Mr. Roth is the Executive Director of the Oregon Symphony, and represents the tenants at the Portland Center for the Performing Arts (PCPA).

2. Michael O'Laughlin: Mr. O'Laughlin is a principal in the firm of Toro Consumer Shows. He will represent promoters of "flat" shows.

3. Marshall Glickman: Mr. Glickman is a Senior Vice President of the Portland Trailblazers. His responsibilities include marketing, and the franchise's own study efforts regarding a new arena.

Executive Officer's Recommendation

The Executive Officer recommends that the Council approve Resolution No. 90-1316 confirming appointments to the public policy advisory committee for regional convention, trade, performing arts, and spectator facilities.

Committee Membership

PRIVATE CITIZENS (SIX MEMBERS)

1. Cliff Carlsen
2. Mary Arnstad
3. Steve Janik
4. Bob Geddes
5. Bob Shiprack
6. Carter MacNichol

METRO ERC FACILITY TENANTS (3 MEMBERS)

7. Marshall Glickman
8. Don Roth
9. Michael O'Laughlin

REPRESENTATIVE OF PCPA COMMITTEE/CULTURAL PLANNING STEERING COMMITTEE (1 MEMBER)

10. to be named

METRO ERC MEMBER (1 MEMBER)

11. Dick Waker

COUNTY COMMISSIONS (3 MEMBERS)

12. Clackamas: Judie Hammerstead
13. Multnomah: Pauline Anderson
14. Washington: Eve Killpack

PORTLAND CITY COUNCIL (1 MEMBER)

15. to be named

METRO COUNCIL (1 MEMBER)

16. David Knowles

EXECUTIVE OFFICER

17. Rena Cusma

Agenda Item No. 4.3
Meeting Date: September 13, 1990

Resolution No. 90-1230

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1230, FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF WILBERT H. RANDLE, JR. TO FILL A VACANCY ON THE 1% FOR RECYCLING ADVISORY COMMITTEE AND ASSIGNING TERMS

Date: August 23, 1990

Presented by: Councilor
DeJardin

Committee Recommendation: The Committee considered the resolution at its August 21, 1990, meeting. The Committee voted unanimously to recommend adoption of Resolution No. 90-1230. Voting yes were Councilors Buchanan, Collier, DeJardin and Wyers. Councilor Saucy was excused.

Committee Issues/Discussion: Judith Mandt, Assistant to the Director of Solid Waste, indicated that this resolution will confirm the appointment of Wilbert H. Randle, Jr., a Multnomah County resident, to the 1% for Recycling Advisory Committee. The appointment will fill the vacancy created by the resignation of Bruce Lewis, also a Multnomah County resident. Ms. Mandt noted that Mr. Randle has been sitting on the Committee for several months.

The resolution also adopts staggered calendar-year based terms for specific members. This action is in accordance with Ordinance No. 89-324, which amended the original Ordinance establishing the Committee to provide for staggered calendar-year based terms of Committee members to assure continuity.

TD:KF:pa

90-1230.RPT

STAFF REPORT

AGENDA ITEM NO. _____

MEETING DATE August 21, 1990

IN CONSIDERATION OF RESOLUTION NO. 90-1230 FOR THE
PURPOSE OF APPOINTING A CITIZEN MEMBER TO FILL AN
EXISTING VACANCY ON THE 1% FOR RECYCLING CITIZENS
ADVISORY COMMITTEE AND ASSIGNING TERMS

Date: August 10, 1990

Presented by: Judith Mandt

FACTUAL BACKGROUND AND ANALYSIS

A vacancy was created by the resignation of Bruce Lewis. Mr. Lewis resided in Multnomah County. The Ordinance establishing the committee requires representation from three counties. Appointee Wilbert H. Randle, Jr. is also a Multnomah County resident and maintains the geographic balance. Mr. Randle's resume is attached.

Ordinance No. 89-324 introduced by Councilor Wyers for the purpose of amending the original Ordinance created the vehicle for staggered terms of committee members to assure continuity.

Ordinance No. 89-324 also establishes that terms of membership shall be calendar year based.

Following passage of Ordinance No. 89-324, the committee determined which of its members terms would expire in 1990 and which in 1991 to begin the staggered year process. Those assignments are made in the resolution.

Adoption of the subject resolution will confirm the appointment of Wilbert H. Randle, Jr. to fill the unexpired term of Bruce Lewis expiring on December 31, 1991 and assign terms to individual members of the committee.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 90-1230.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF	)	RESOLUTION NO. 90-1230
CONFIRMING THE APPOINTMENT OF)	
WILBERT H. RANDLE, JR.	)	INTRODUCED BY RENA CUSMA,
TO FILL A VACANCY ON THE	)	EXECUTIVE OFFICER
1% FOR RECYCLING ADVISORY)	
COMMITTEE AND ASSIGNING TERMS)	

WHEREAS, The Council of the Metropolitan Service District adopted Ordinance No. 88-250B on July 14, 1988, creating the Recycling Advisory Committee for the 1% For Recycling Program; and

WHEREAS, The Council subsequently adopted Ordinance No. 89-324 on December 14, 1989 to implement staggered terms of two (2) years in even years and two (2) years in odd years; with appointments made on a fiscal year basis; and

WHEREAS, The Executive Officer has authority to appoint members to the Committee for Council confirmation; and

WHEREAS, Membership provides for geographic, industry and citizen representation; and

WHEREAS, The resignation of a citizen member residing in Multnomah County resigned creating a vacancy on the Committee; and

WHEREAS, The Executive Officer has appointed Wilbert H. Randle, Jr. of Multnomah County to fill said vacancy; and

WHEREAS, The committee has decided which of its members shall occupy terms ending December 31, 1990 and which shall occupy terms ending December 31, 1991; now therefore,

BE IT RESOLVED,

1. That the council of the Metropolitan Service District hereby confirms the appointment of Wilbert H. Randle, Jr. of Multnomah County.
2. That the terms of members Mickey Templeton, Carolyn Tomei, and Beverly Seibel shall expire December 31, 1990 and the terms of members Forrest Soth, Karen Griffin and Wilbert Randle, Jr. shall expire December 31, 1991.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1990.

Tanya Collier, Presiding Officer

Agenda Item No. 5.1
Meeting Date: September 13, 1990

Ordinance No. 90-362

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 90-362 FOR THE PURPOSE OF CREATING CHAPTER 5.07 ADOPTING A PROGRAM TO PROVIDE RECYCLING CREDITS TO ELIGIBLE NONPROFIT ORGANIZATIONS AND AMENDING ORDINANCE NO. 90-340 ADOPTING THE FISCAL YEAR 1990-91 METRO BUDGET AND AUTHORIZING FUNDS FOR THIS PROGRAM.

DATE: August 8, 1990

PRESENTED BY: Bob Martin
Pamela Kambur

FACTUAL BACKGROUND AND ANALYSIS

During the past four years, Metro has been working with a coalition of nonprofit charitable rehabilitation organizations¹. These organizations have requested disposal rate relief in recognition of their contribution to the region's recycling efforts. Each of these organizations collect donated goods from the public in order to resell or recycle materials that will generate revenue to fund their charitable activities. During the past three years, an average of 10,000 tons of material was recycled by the Coalition each year while 7,000 tons was disposed. This is a recycling level of approximately 59%.

Members of the Coalition have reported increased disposal needs due to problems they experience with illegal dumping at their facilities. Although they have increased security and staffing, posted signs and attempted to prosecute, the illegal dumping still continues. The Coalition reports that the bulk of the material dumped illegally cannot be reused or recycled due to high levels of contamination. This quantity of material will make it difficult for Coalition members to increase their recycling level without reducing the level of illegal dumping.

Solid Waste Department staff studied rate relief employed by other jurisdictions across the country (see Attachment A). Three basic methods of rate relief include freezing the tip fee, reducing the tip fee based on a fixed percentage, or reducing the tip fee based on the amount of material an agency recycles.

The program reflected in the Ordinance was developed to grant disposal cost relief while at the same time rewarding eligible organizations that increase their recycling level over time. The attached chart (Attachment B) outlines five variations in credits based on sliding scales. Each of the variations relates an organization's recycling level to the amount of credit the organization would receive on their disposal bill.

At a special work session of the Council Solid Waste Committee on July 10, 1990, Committee members expressed preference for the

¹ The Coalition is currently comprised of four nonprofit organizations: Goodwill Industries, Salvation Army, St. Vincent De Paul and Deseret Industries.

variation in which credits change in increments of 10% for recycling above 50%. The Committee asked staff to scale back the budget impact to reflect the cost of a 9 month program that would go into effect in October 1990.

Assuming that the Coalition's disposal needs in FY 1990-91 will remain the same as in past years, three quarters of a year's operation will require 5,250 tons to be landfilled. Full disposal costs (without credits) would total \$267,330. Assuming recycling levels in the 55% through 59% range during the nine months of the program, the cost to Metro will be approximately \$187,000.

Budget Authorization - During an update before the Council Solid Waste Committee on August 7, 1990, Committee members instructed Don Carlson of the Council Staff to provide the budget analysis needed to identify sources of funding from throughout the Agency for this program. In order for this Ordinance to be on the Council agenda on August 23rd, the draft Ordinance reviewed by Executive Management did not include any description of the budget authorization.

Eligibility Criteria - The criteria contained in the Ordinance were developed to clearly define the types of organizations that might qualify for the recycling credits. These criteria reflect descriptions of nonprofit charitable organizations that have the most significant impact on regional waste reduction goals. The criteria are not intended to exclude agencies outside the membership of the existing Coalition. However, Metro staff are not aware of any other agencies that would qualify for the program.

Each of the four members of the Coalition qualify for the program as it is currently written. However, the Office of General Counsel is developing language to add to the eligibility criteria which will ensure the legal constraints related to the separation of church and state are mitigated. After these changes are inserted, preliminary analysis indicates that Deseret Industries will not qualify for the program due to the religious practices inherent in their activities.

**Survey of Waste Reduction Incentives
and Disposal Rate Relief
For Non Profit Charitable Rehabilitation Organizations**

June 1990

**Survey of Waste Reduction Incentives
and Disposal Rate Relief
For Non Profit Charitable Rehabilitation Organizations**

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Introduction

Background

During the 1987, 1988 and 1989 Metro Rate Studies, consideration of rate relief for non profit "thrift stores" was discussed. The request for some form of rate relief came from four of the larger non profit resale and recycling organizations: Deseret Industries, Goodwill Industries, Salvation Army, and St. Vincent de Paul. These agencies collect donated materials from the public which they resell or recycle in order to generate revenue for their charitable purposes¹.

In 1987, the Rate Committee's recommendation was to concentrate Metro funding assistance on the purchase of equipment to refurbish donated items or assist in recycling efforts (such as balers or compactors). However, the Coalition reported that they had already purchased the necessary equipment.

In 1988, the discussion proceeded to the Metro Council. After review and public testimony, the Council decided there were still too many unanswered questions regarding the potential eligibility criteria. Furthermore, the Council viewed the rate relief as a form of a charitable contribution to social service agencies and did not feel it was an appropriate role for Metro involvement.

During the most recent 1989 review, the Coalition has emphasized the significant contribution that their efforts have had in waste reduction. In addition, the recent increases in disposal rates appear to have had an impact on illegal dumping that has an especially hard impact on these agencies serving lower income clients. Thus, Metro staff and Council are continuing to work with Coalition members to develop some form of rate relief.

Contributions of Coalition Members to Regional Waste Reduction

The waste reduction activities of Coalition agencies are categorized as both reuse and recycling:

Reuse activities include resale of donated materials (some of which have been refurbished) and direct reuse by disadvantaged clients of the agencies.

¹ Members of the four local agencies providing these services have requested that Metro no longer refer to them as "non profit thrift stores". This is to reduce possible confusion between non profit and for profit entities referred to as "thrifts". The four agencies have asked to be called: "The Coalition of Non Profit Charitable Rehabilitation Agencies" or shortened to "the Coalition".

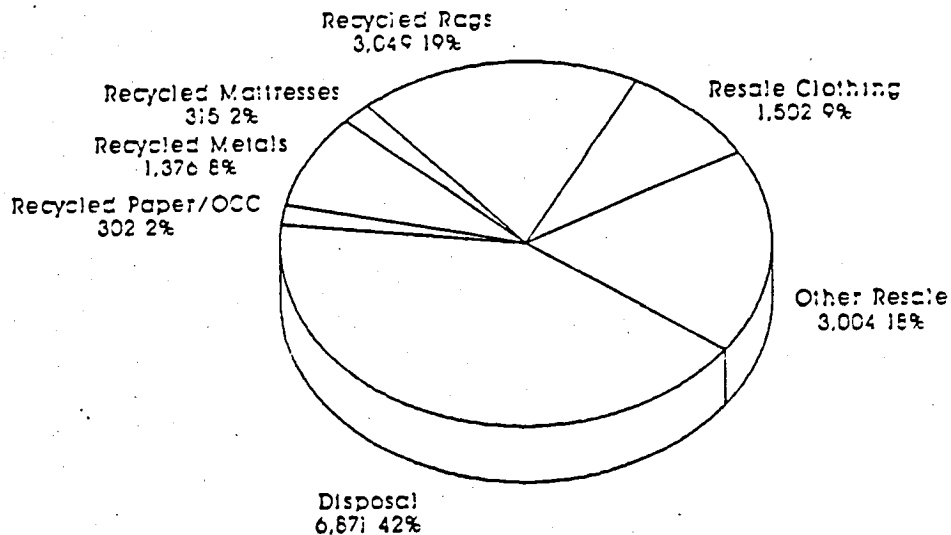
Recycling activities include principal recyclables (such as glass, cardboard, and scrap metals) as well as recycled rags and mattresses.

With the primary focus of Coalition activities being reuse, these activities rank high on the State of Oregon's solid waste hierarchy of "Reduce, Reuse, Recycle, Recover, and Landfill". In recognizing the waste reduction efforts of the Coalition, Metro is highlighting reuse as an important element in the hierarchy. Reuse is an element that is often difficult for a governmental agency to address in program designs.

Although Coalition members do not weigh all materials coming through the door at their facilities, the amounts reused and recycled have been monitored closely over the past four years. As the pie chart below depicts, resale clothing, "other resale" (furniture, household goods, books, etc) and sales of recycled mattresses contribute to the overall "recycling level"² of 58%.

Estimates of Materials Donated

Annual Average From 1987-89:
16,419 Tons Donated & 58% Recycling Rate



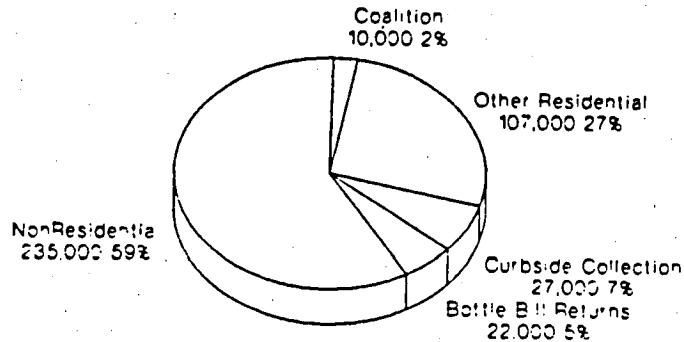
Source: Non-Profit Charitable
Rehabilitation Organizations
(updated 6/18/90)

² "Recycling level" is being used here as a convenient term that is most familiar with the general public. However, it also reflects the overall waste reduction level of the Coalition which includes reuse and resale activities.

The attached spreadsheet was provided by the Coalition and reports the tons reused, recycled, and disposed over the past three years. Coalition recycling efforts accounted for approximately 2% (10,000 tons) of the total tonnages reused and recycled in 1988.

Sources of Total Recycling in 1988

401,000 Tons Reused and Recycled From
1,436,000 Tons Generated = 28%

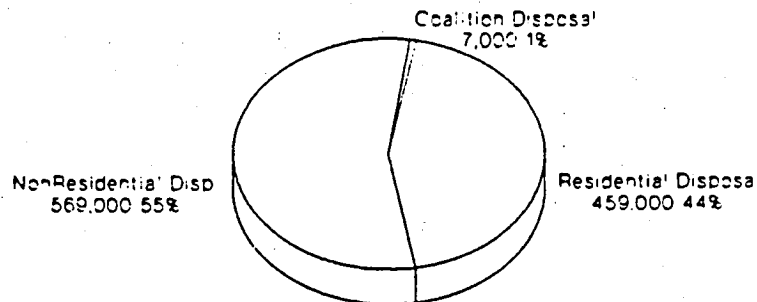


Assumption: Coalition Reuse/Recycling
Has Not Been Counted in Previous
Recycling Levels

In contrast, the total amount disposed by the Coalition represents less than 1% of the total tons disposed in the region.

Sources of Total 1988 Disposal

1,035,000 Tons



Assumption: Coalition Disposal
Deducted From Residential Tons

Updated 6/29/90

Non-Profit Reuse Organization Coalition

Recycled Consumer Goods 1987-1989

All Numbers Represent Tons

Consumer Goods (IN TONS)	The Salvation Army ARC				Goodwill Industries				St Vincent De Paul				Deseret Industries				Total All Co.			
	1987	1988	1989	Average	1987	1988	1989	Average	1987	1988	1989	Average	1987	1988	1989	Average	1987	1988	1989	Average
Resale-Clothing	413	423	442	426	812	853	880	833	269	213	288	241	2	2	3	2	1496	1492	1613	1502
Resale-Other	826	920	938	895	1624	1674	1671	1649	538	288	866	413	4	437	345	221	2992	3319	3820	3177
Clothing Recycled	1398	1337	1506	1414	891	632	786	762	644	718	692	681	168	217	152	192	3101	2904	3137	3049
Mattresses	147	137	116	133	48	44	49	42	109	134	110	122	18	18	20	18	314	334	296	316
Metal	333	263	322	306	250	259	259	255	653	781	936	717	101	95	92	98	1337	1398	1608	1376
Cardboard/Paper	121	125	135	127	83	100	107	91	78	64	62	71	2	23	21	13	283	312	325	302
Non-Saleable Good	1382	2148	2211	1914	2311	2503	2253	2407	2181	2223	2086	2202	339	358	315	348	6213	7231	6865	6871
	4620	5353	5671	5215	6010	6066	6006	6038	4472	4422	5039	4447	635	1149	948	892	15737	16990	17664	16591
Summary-Totals																				
Tons Donated	4620	5353	5671	5215	6010	6066	6006	6038	4472	4422	5039	4447	635	1149	948	892	15737	16990	17664	16591
Tons Non-Saleable	1382	2148	2211	1914	2311	2503	2253	2407	2181	2223	2086	2202	339	358	315	348	6213	7231	6865	6871
Total Tons Recycl	3238	3205	3460	3301	3700	3563	3752	3631	2291	2199	2953	2245	296	791	633	543	9524	9758	10798	9721
Percent Recycled	70	60	61	63	62	59	62	60	51	50	59	50	47	69	67	61	61	67	61	69
Trash Costs	Self Hauling				Contract Hauling				Self Hauling				Self Hauling & Compactor							
Number Trips	708	1100	1160	989	N/A	830	910	N/A	913	959	857	936	112	118	118	115	N/A	3007	3045	N/A
Landfill Fees	62363	58820	58408	79864				N/A	25949	37743	68284	36846	6486	7608	13362	7047	124798	104179	180046	N/A
Direct Expenses (Sal., Fuel, Maint.)	6500	21060	22000	16520				N/A	44395	37923	42850	41159	7113	8334	7960	7724	58008	67317	72810	N/A
Total Costs	88863	79888	120400	96384	80000	92000	123366	98455	80344	75666	111134	78005	12599	15942	21322	14771	182806	171496	252856	N/A
Av Cost Per Trip	126	73	104	97	N/A	111	136	N/A	88	79	130	83	121	135	181	128	N/A	57	83	ERR
Services Provided	Residential work therapy program for substance abusers.				Vocational training & employment to people with disabilities				Food, clothing, shelter for disadvantaged people				Vocational training & employment service to disadvantage people							

Notes: 1. Mattress lbs = Pounds X Average weight of each piece

2. Metal Consists of refrigerators, washers, dryers, etc

A lesser weight for other metals

3. 1987 Resale-Other is estimate based on Resale-Clothing X 2

Summary of Key Issues

The following issues have raised concerns regarding the need for special relief programs and the potential impacts of such programs:

1. Eligibility Criteria - Clear definitions need to be established to limit the number of qualified agencies. This limitation is needed in order to avoid "opening the floodgates" for requests to reduce rates that would have a significant impact on the cost of disposal to all other users.
2. Avoidance of a Disincentive to Recycle - Because some Coalition recycling activities are extremely labor intensive, free or reduced costs for disposal could create a disincentive to continue recycling. In contrast to the reuse and resale activities that generate a profit, recyclable materials may not sell for a price equal to the cost of processing the material. For example, the labor costs involved in stripping plastic webbing off an aluminum lawn chair in order to recycle the aluminum may be cost prohibitive. With disposal rates high, there may be an incentive to continue this recycling activity. If disposal costs decrease, the incentive may no longer exist. This issue is highlighted in the advantage/disadvantage portion for each concept in the Program Concepts Section.
3. Impacts of Illegal Dumping Activity - Coalition members report illegal dumping at their facilities and drop off centers has increased over the past few years as the region's costs of disposal have increased. Coalition members have increased efforts: to staff the facilities during posted drop off hours, to provide security patrols, to fence and warn violators of intent to prosecute, and to initiate actual enforcement proceedings. However, these activities have not curtailed the increased volume of materials being illegally disposed. A large majority of this material is so contaminated it can not be sorted and must be immediately disposed. Coalition members site this as a reason it is difficult for them to increase their overall recycling level beyond the current level.
4. Determining the Appropriate Program Option and Implementation Method - In order to learn from other jurisdictions, a survey was conducted and the results follow. An analysis of program options is also included.

Survey Methods

Other jurisdictions were contacted to learn what is being done to grant rate relief to non profits meeting the eligibility criteria outlined by the Coalition.

First, Metro staff surveyed cities that local Coalition members indicated have assistance programs. Jurisdictions in this first category included:

<u>Name</u>	<u>Category of Rate Relief</u>	<u>Date Surveyed</u>
1. Phoenix, Arizona	Free Disposal	1/90
2. New York City, New York	Free Disposal	4/88,1/90
3. Philadelphia, Pennsylvania	Other (see listings)	6/90
4. Tucson, Arizona	Free Disposal	6/90
5. Detroit, Michigan	None	4/88,1/90
6. Spokane, Washington	Tip Fee Lag	1/90
7. Lane County, Oregon	Reduced Tip Fee	1/90
8. Houston, Texas	Collection Discount	4/88,6/90
9. Memphis, Tennessee	Other (see listings)	4/88,6/90
10. Seattle, Washington	Tip Fee Freeze	4/88,1/90
11. St.Louis, Missouri	None	4/
12. Pinellas County, Florida (St. Petersburg)	Limited Free Disp.	4/88,1/90
13. Sonoma County, California	Reduced Tip Fee	6/90
14. Charlotte, North Carolina	Free Disposal	6/90
15. Madison, Wisconsin	None	4/88
16. Bakersfield, California	None	4/88
17. King County, Washington	Reduced Tip Fee (Implementation in Progress)	1/90,6/90

As a second approach, Metro staff contacted other jurisdictions on a random basis for more examples. The criteria used to select cities to survey included:

- a) populations roughly the same as Portland (listed in the U.S. Census Bureau's "County & City Data Book - 1988"),
- b) cities with solid waste disposal authority. These included:

1. Minneapolis, Minnesota (Metropolitan Council)	Other (See Listings)	1/90
2. Newark, New Jersey	None	1/90
3. Toronto, Ontario, Canada	Free Disposal	6/90
4. Fort Worth, Texas	None	6/90
5. Atlanta, Georgia	Other (See Listings)	6/90
6. Long Beach, California	None	6/90
7. Albuquerque, New Mexico	Other (See Listings)	6/90
8. Oakland, California	None	6/90

Of the 8 jurisdictions contacted on a random basis: 1 had a specific program for rate relief, 3 had broad categories of relief including individuals or business on a seasonal or emergency basis, and 4 had no type of rate relief program.

Listing of Survey Results by Category of Rate Relief

A. Tip Fee Freeze (Disposal Rate Frozen at Historic Level)

- Seattle, Washington - Qualifying organizations are charged the rate that was charged at transfer stations in 1986 (the year the Seattle Council voted to freeze the rate). Although the issue is currently under joint review with King County (the other agency responsible for waste disposal in the Seattle Metro region), no changes have been adopted. One eligibility criterion states: "the organization must be engaged, as a primary form of business, in the processing of abandoned goods for resale or reuse".

B. Tip Fee Lag (Disposal Rate Frozen at Previous Year's Level)

- Spokane, Washington - Non-profit charitable organizations collecting goods for resale and recycling are charged the disposal rate from the previous year.

C. Reduced Tip Fee (Disposal Rate Based on Percentage of Base Rate or Specific Dollar Discount)

- Lane County, Oregon - Non-profit charitable associations whose "primary purpose is the collection of abandoned or discarded materials for resale or reuse" receive a 33 1/3% discount on their disposal fees. This percentage was based on an assumption that approximately one third of the material they collect is unusable (either from curbside collections or illegal disposal at drop off centers).
- Sonoma County, California - Eligible organizations receive a 40% discount on disposal rates. Eligibility criteria include: "agencies not organized or operated for profit which receive contributed clothing,... or other recyclable items primarily for resale..."
- King County, Washington - Although a resolution adopting the concept of a rate discount for qualified organizations was adopted earlier in the year, the method of implementation has not yet been determined. The County has two separate rates for disposal. The rate at the landfill is less than at transfer facilities. The County resolution states eligible organizations will be charged the landfill rate even

though materials are coming in at the transfer station. Eligibility criteria are still under review.

D. Free Disposal (Only Eligible Non Profit Charitable Rehabilitation Agencies Granted Free Disposal)

- Toronto, Ontario, Canada - Disposal charges are waived for participating organizations.
- Tucson, Arizona - Qualifying agencies can dispose for free. To have their bills waived, the organization must be registered as a non-profit entity with the IRS and "engages in active/continual operation of a program of acceptance or collection of goods and materials for recycling, whether through resale or other redistribution by the organizations".
- Phoenix, Arizona - Nonprofit firms "which assist the City in the collection of bulk man-made items and operate their own fleet of trucks" can dispose for free after paying an annual fee of \$180. The city's rationale is that the city saves collection costs, because the city has "uncontained collection days" four times per year, and these organizations efforts help reduce the volume prior to these quarterly collection days.
- Charlotte, North Carolina (Mecklenburg County) - Although Metro staff received conflicting reports during the June 1990 survey, information provided by Coalition members included a copy of a 1981 ordinance that eliminated landfill fees to nonprofits "providing direct rehabilitation services, consisting of employment and training to disabled and disadvantaged citizens...and must include the routine collection of household items ... in order to carry out the purposes of such institutions."
- New York City, New York - A small number of nonprofit agencies are on a list compiled in 1982 and receive free disposal. However, the City is not adding to the list and is considering eliminating the waiver due to a fiscal crisis in the Department.

E. Limited Free Disposal (Based on Percentage of Recycling Level)

- Pinellas County, Florida - After annual review, eligible nonprofit agencies receive free disposal on tonnages up to 25% of the total tons recycled. This 25% formula was based on an avoided cost calculation.

F. Reduced Collection Rates

- Houston, Texas - Although materials provided by the Coalition (via their affiliates in the Seattle area) state Houston "has provided a 60% reduction for the past 10 years", the 1988 and 1990 Metro staff surveys were unable to obtain city staff validation of this statement. It appears a discount may be granted on collection by the private hauler.

G. Other (Exemptions Apply to Broad Categories of Agencies or Individuals; Seasonal or Emergency Criteria)

- Albuquerque, New Mexico - The city provides free disposal to anyone once a year in the form of neighborhood clean-ups.
- Atlanta, Georgia - The city allows free disposal to any non-profit organizations under special circumstances, such as after a damage-causing storm, or when they have taken over the lease of a building.
- Philadelphia, Pennsylvania - Disposal bills are waived by the Commissioner for many non-profit organizations. Qualifying operations include non-profit schools such as universities, as well as thrift stores and others.
- Memphis, Tennessee - Although Metro staff received a conflicting report when conducting the June '90 survey. Information compiled in April 1988 stated that qualified agencies are charged only fifty cents each month for disposal. Information provided by the Coalition (from documents presented to the City of Seattle during their rate review process) states: Memphis "provides a special low rate." It is not clear why there is a discrepancy in the data.
- St. Paul, Minnesota (Metropolitan Council-7 Counties)- State statutes established a surcharge on landfill operators. If any organization can demonstrate it has reduced its waste by 85%, a 15% discount on disposal must be granted (thereby eliminating the surcharge).

Program Concepts and Implementation Methods

Analysis of Program Concepts

The following analysis focuses on concepts that appear the most realistic for the Metro region.

The primary options include:

- Concept 1 - Tip Fee Freeze
- Concept 2 - Reduced Tip Fee (Based on Percentage or Fixed Amount)
- Concept 3 - Limited Free Disposal Based on Waste Reduction Levels

Other concepts included in the analysis but not recommended for primary consideration include the Tip Fee Lag and Free Disposal. The concept of Reduced Collection Rates was not analyzed due to Metro's lack of authority to regulate collection.

Listing of Program Concepts:

Concept 1 - Tip Fee Freeze

Tip fees could be fixed at present levels, insulating the non-profits from future rate increases. For example, the commercial disposal rate at the St. Johns Landfill until June 30, 1990 is \$41.25 per ton. Beginning July 1, the rate will be \$48.00 through February 1990 when the landfill closes. (After February 1, 1991 the rate will be \$55.00 at all Metro facilities). If a freeze were implemented effective before the rate change, eligible non-profits would not have to absorb the \$6.75 increase at the landfill or the \$10.25 increase at transfer stations.

Advantages

- + insulates not-for-profits from rising disposal costs
- + charges enough for disposal to encourage participating organizations to continue recycling³
- + easily administered for Metro & eligible agencies

Disadvantages

- places an increasing annual burden on other disposers

³ Variation of Concept 1 - Upper Limit on Tonnages - Placing an upper limit on the total number of tons eligible for a rate break would create an additional incentive to recycle.

Budget Impact

The cost to Metro would be approximately \$50,000⁴ in FY90-91, based on 7000 tons disposed by Goodwill, Salvation Army, St. Vincent de Paul, and Deseret Industries at St. Johns Landfill and Metro South Station.

Concept 2 - Reduced Tip Fee (Based on Percentage of Base Rate, Recycling Level or Fixed Amount)

A portion of the tip fee could be waived for qualifying not-for-profit organizations. Any one of various rationales could be employed to establish the size of the rate reduction.

One example is to reduce the tip fee by approximately 14% percent which reflects the difference between the current tip fee and the new tip fee⁵.

Advantages

- + buffers the organizations from high disposal costs
- + maintains some disposal charge to provide incentive to minimize residual waste
- + provides a direct incentive to resell and recycle
 - if, as in the example above, the percentage is tied to a waste reduction level
- + simple to administer
 - if based on simple percentage of base rate (not tied to waste reduction level)

Disadvantages

- raises the disposal fee for other disposers

⁴ 2nd Variation to Concept 1 - Annual CPI Adjustment - In order for Metro to recoup a minimal level of disposal costs from year to year, a provision to include an annual Consumer Price Index (CPI) adjustment would cover inflation costs.

⁵ Variation to Concept 2 - Sliding Scale Reduction - This option might include a model that combines a waste reduction incentive and the percent increase the new rate is above the current rate. Such a rate reduction might be structured in the following manner:

If the eligible agency's waste reduction level is 55%, the credit is 10% off the general public rate;
If the eligible agency's waste reduction level is 60%, the credit is 15% off the general public rate; and
If the eligible agency's waste reduction level is 65%, the credit is 20% off the general public rate.

- requires collection of resale and recycling data (if based upon a waste reduction level)
- costs to Coalition rise over time
- Coalition believes illegal dumping places constraint on ability to increase waste reduction level

Budget Impact

Assuming a \$50,000 cost to Metro, a discount of 14% could be granted. This calculation is based on 7,000 tons landfilled and a disposal rate of \$50.92 per ton (based on a weighted average⁶).

Concept 3 - Limited Free Disposal Based on Percentage of Waste Reduction Level

Disposal charges could be eliminated for the qualifying agencies, with the amount of free disposal dependent upon the amount that the organizations resell and recycle. For example, assuming a \$50,000 cost to Metro, Coalition agencies could dispose 980 tons each year for free (based on a current recycling level of 10,000 tons multiplied by 9.8%). Volumes over 980 tons would be subject to full disposal rates.

Advantages

- + provides incentive to recycle
- + (same as Method 2)

Disadvantages

- difficult to administer and monitor⁷
- (same as Method 2)

Budget Impact

Assuming a cost to Metro of \$50,000, a Coalition recycling level of 10,000 tons and a disposal rate of \$50.92/ton, free disposal would be limited to 9.8% of the tons recycled.

⁶ The \$50.92 per ton weighted average reflects the difference in facility rates and the timeline for closure of the landfill by February 1, 1991.

⁷ Concept 3 (and potentially Concept 2) is dependent on specific waste reduction results. The amounts recycled and resold would need to be compiled and monitored. One method would be having scales at participating sites, which would cause significant costs in capital purchase and labor for eligible agencies to weigh everything coming through the door. Another method would be continuing to estimate volumes and weights. A consistent methodology would need to be developed to estimate the quantity and weights of materials in the resale categories. A refurbished and resold mattress, for example, should be consistently the same weight (assuming the same size).

Example from Other Regions: Tip Fee Lag

Disposal charge increases could lag a year behind. Thus, the increase to \$48.00 would not go into effect until the next rate increase, expected on July 1, 1991.

Advantages

- + reduced disposal costs and certainty one year in advance for not-for-profits
- + incentive to reduce residual wastes
- + simple to administer

Disadvantages

- does not completely insulate the organizations from rising disposal costs

Budget Impact

Assuming the cost to Metro is \$50,000 in FY90-91 and 7000 tons are disposed, the charge could be reduced by \$6.75 per ton or \$10.25 per ton depending upon the site.

Example from Other Regions: Free Disposal

Disposal charges are waived entirely.

Advantages

- + eliminates a big expense for not-for-profit organization

Disadvantages

- removes much of the economic incentive to minimize residual waste by recycling, monitoring material contributions, and preventing illegal dumping⁸
- places an increasing rate burden on other disposers
- may provide rationale for some in the general public to illegally dump refuse at participating organization sites.

Budget Impact

(beyond the range of \$50,000 used for comparison purposes)

⁸ Variation to Free Disposal Example - Upper Limit on Tonnages - The lack of a waste reduction incentive might be mitigated by placing a limit on the number of tons eligible for the waiver. This variation of the free disposal option maintains the same financial incentive to reduce waste as the present system.

Implementation Methods

A guiding principle in granting any type of waste reduction credit or rate relief program for agencies such as the Coalition is that other users of the solid waste system should not subsidize the reduced disposal rate by having to pay higher rates. Instead, the Solid Waste Department will look for the means to cover the costs of the program with revenue from a more "general fund" pool, such as the excise tax.

The following methods for program implementation could be applied to any of the program concepts:

Method 1 - Credits at Time of Billing

In order for this method to be implemented, the eligibility criteria would require that qualifying agencies be a credit customer of Metro. When arriving at the gatehouse of any Metro disposal facility, the driver will be charged the same rate as all other disposal customers. However, a credit would be applied at the time the customer is billed and would reflect whatever program concept had been adopted.

Method 2 - Annual Grant Program

Instead of linking the rate differential to specific tonnages as they come through Metro facilities, an estimate of total tons disposed could be made annually. Thus, eligible organizations would receive a lump sum payment (either annually or quarterly) for their use in off-setting the costs of disposal.

Method 3 - Separate Rates

This method presents the most severe impact at the disposal facilities. The gatehouse operators must respond to a continuous line of customers and any questions arising from confusion about rates cause serious queuing problems. The gatehouse operators should not be expected to interpret eligibility criteria and questions concerning different rates. Although an annual application process would clarify which agencies have met the eligibility criteria, questions would still arrive from the general public when viewing the differences in rates.

Eligibility Criteria

Eligibility criteria are needed in order to place limits on the types of agencies that qualify for a recycling credit. Potential criteria fall into three general categories:

- the charitable purpose of the agency,
- the waste reduction achievements of the agency, and
- the administrative needs of Metro.

The survey of other jurisdictions revealed similar criteria have been utilized elsewhere in the country. The following chart summarizes criteria from both the local Coalition suggestions and examples from other jurisdictions.⁹

The only outstanding issue related to eligibility criteria is whether or not Metro can give a discount to charitable organizations that are primarily religious organizations. This issue of "separation of church and state" was addressed by the City of Tucson in the following criteria:

"the organization . . . does not support religious activities with the recycling program; and . . .".

Local representative from Salvation Army expressed concern that their organization would not be able to comply with this criteria. They also felt two of the other organizations, St. Vincent de Paul and Deseret Industries, would find this criteria difficult. Metro staff will be looking for a legal interpretation to determine whether or not this criterion is necessary.

⁹ Under Section IB (part 6), local Coalition members note that the wording should be changed to donated goods instead of abandoned goods if this example from Seattle is used locally. This change is needed due to legal definitions related to illegal dumping prosecution.

SAMPLE ELIGIBILITY CRITERIA

Category

Key Elements of Criteria

I. CHARITABLE PURPOSE

- | | | |
|-----------------|----|---|
| A. Legal/Fiscal | 1. | non-profit organization under section 501 (c) (3) of the Internal Revenue Code |
| | 2. | organization registered as non-profit with Corporation Commission of Oregon |
| | 3. | organization submits Federal Form 990 (Return of Organization Exempt from Income Tax) annually |
| | 4. | organization submits annual report to Oregon Department of Justice Charitable Trust |
| | 5. | organization does not contract with for-profit organizations to collect, process, or sell used goods |
| B. Services | 6. | "organization must provide direct services to disadvantaged people through the collection, processing and sale of used goods" (Coalition)
or
"organization must be engaged, as a primary form of revenue, in the processing of abandoned goods for resale or reuse" (City of Seattle) |

II. WASTE REDUCTION IMPACTS

- | | | |
|---------------|----|--|
| A. Collection | 7. | organization facilitates public recycling efforts via curbside collection or provision of staffed dropoff sites for reusable goods |
| B. Tonnages | 8. | organizations reduce significant amounts of material from going to the landfill (minimum 250 tons/year) |

III. ADMINISTRATIVE NEEDS

- | | | |
|-------------------|-----|--|
| A. Implementation | 9. | organization is a credit customer for Metro disposal facilities |
| B. Monitoring | 10. | organization submits appropriate data to document recycling levels |

CREDITS BASED ON SLIDING SCALE

Recycling Level	CREDITS DECREASING IN INCREMENTS OF:				
	5%	10%	15%	20%	25%
70%	100%	100%	100%	100%	100%
65%	95%	90%	85%	80%	75%
60%	90%	80%	70%	60%	50%
55%	85%	70%	55%	40%	25%
50%	80%	60%	40%	20%	0%
Budget Impact ¹	303,000	250,000	196,000	143,000	89,000
Disposal Cost for Organizations	53,000	106,000	160,000	213,000	267,000
Change for each 5% Recycling Increment	18,000	36,000	53,000	71,000	89,000

HISTORICAL CONTEXT

Estimated Disposal Costs to Coalition Members

FY 87-88	\$117,000
FY 88-89	\$221,000
FY 89-90	\$296,000
FY 90-91*	\$356,000

* Without program

¹ FY 1990-91 Assumptions: Estimated 7,000 tons for disposal multiplied by \$50.92/ton (weighted average) equals \$356,440 in disposal costs without credits. Current Recycling level estimated at 58%.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF CREATING	)	ORDINANCE NO. 90-362
CHAPTER 5.07 ADOPTING A PROGRAM)	
TO PROVIDE RECYCLING CREDITS FOR	)	Introduced by
ELIGIBLE NONPROFIT ORGANIZATIONS	)	Councilor DeJardin
AND AMENDING ORDINANCE NO. 90-340)	
ADOPTING THE FY 1990-91 METRO)	
BUDGET AND AUTHORIZING FUNDS FOR)	
THIS PROGRAM)	

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

A. The following provisions are hereby added to the Metro Code:

CHAPTER 5.07

RECYCLING CREDITS

Section 5.07.010 Purpose: The purpose of this Chapter is to provide disposal cost relief at Metro solid waste disposal facilities for charitable, nonprofit entities that accomplish a significant level of waste reduction and recycling in operating programs that also have significant benefits to the region. It is the intent of this Chapter to provide assistance to organizations that uniquely qualify by achieving significant amounts of waste reduction and recycling while at the same time providing charitable programs that uniquely provide benefits that provide assistance to needy citizens of the region and opportunities for employment to those in need of assistance and rehabilitation.

Section 5.07.020 Program Description: Recycling credits are established to provide disposal cost relief at Metro disposal facilities to organizations that qualify under the eligibility criteria listed in Section 2.

Recycling credits are based on an eligible organization's overall waste reduction level (summarized in this program as "recycling level"). The waste reduction level includes both reuse and recycling activities. The following formula establishes the amount of the recycling credit relative to the organization's recycling level. Recycling credits will be applied to total disposal costs at the time Metro bills the eligible organization:

If the recycling level is 70% or above,
a 100% credit is granted;
If the recycling level is 65% or above,
a 90% credit is granted;
If the recycling level is 60% or above,
an 80% credit is granted;
If the recycling level is 55% or above
a 70% credit is granted;
If the recycling level is 50% or above,
a 60% credit is granted;
If the recycling level is below 50%,
no credit is granted.

The recycling level of the eligible organization will be based on documentation provided to Metro's Solid Waste Director on an annual basis. Recycling credits are not available at facilities where Metro does not serve as the billing entity.

Section 5.07.030 Eligibility Criteria. An organization qualifies to receive a recycling credit if the following criteria have been documented during the annual application process:

- (a) The organization must be classified as a nonprofit organization under Section 501(c)(3) of the United States Internal Revenue Code. Furthermore, the organization submits an annual report on Federal Form 990 (Return of Organization Exempt for Income Tax).
- (b) The organization must be registered as a nonprofit organization with the Corporation Commission of the State of Oregon.
- (c) The organization submits an annual report to the Oregon Department of Justice Charitable Trust Section.
- (d) The organization does not contract with for-profit organizations to collect, process, or sell used goods.
- (e) The organization must be engaged, as a primary form of revenue, in the processing of donated goods for resale or reuse.
- (f) The organization facilitates the opportunity to reuse and recycle for the general public via curbside collection of donated goods or staffing of dropoff sites.

- (g) The waste reduction activities of the organization divert a significant amount of material that might otherwise be landfilled. A significant amount is defined as a minimum of 250 tons per year of donated goods that are either reused or recycled.
- (h) The organization is a credit customer in good standing at Metro disposal facilities.
- (i) The organization submits annual waste reduction data to the Metro Solid Waste Director by February 15th of each year which documents the organization's recycling level for the preceding calendar year using a methodology approved by Metro.
- (j) No portion of the District funds authorized by this program will benefit any religious function of any religious organization.

Section 5.07.040 Annual Agreements for Credits: The Executive Officer is hereby authorized to enter into annual agreements which may not extend beyond the end of the current fiscal year with organizations determined by the Executive Officer to be eligible and who meet the waste reduction levels established herein. Consistent with the budget authorization adopted by the Council of the Metropolitan Service District as provided for in Section 5.07.050 herein the Executive Officer shall on an annual basis enter into agreements with eligible organizations so desiring and allocate available funds for recycling credits to such organizations that continue to meet the eligibility criteria and program requirements provided for herein. In the event that sufficient funds are not available to provide the level of recycling credit established in Section 5.07.020 provided for herein each agreement shall provide that the organization shall only be entitled to the receipt of the credit for tonnages actually delivered until such time as the total authorized amount has been credited throughout the program. Once the annual authorized amount is exhausted by the combined efforts of the eligible organizations then recycling credits shall no longer be available during the remaining portion of that fiscal year unless a further authorization is approved.

The form of such agreements entered into by the Executive Officer shall be consistent with the terms and provisions of this Chapter and shall be in a form approved by the Office of General Counsel.

Section 5.07.050 Budget Authorization: The Council shall establish by Ordinance, which may be the annual budget

ordinance, the amount available for applying for recycling credits pursuant to this program. The Executive Officer may not enter into agreements or authorize the credits in an amount greater than that provided for by the Council. The agreements authorized under Section 5.07.040 are hereby exempted from the requirements of Chapter 2.04 but may be entered into with any eligible organization making application therefore within thirty (30) days prior to funds being available for recycling credits as authorized by the Council.

B. The following provisions apply during FY 1990-91:

The amount authorized by the Council for recycling credits pursuant to Code Chapter 5.07 for FY 1990-91 is \$175,000. Ordinance No. 90-340A, Exhibit B, FY 1990-91 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in Exhibits A and B to this Ordinance for the purpose of financing the recycling credits for nonprofit organizations program.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1990.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

DBC/gl
1032

EXHIBIT A
ORDINANCE NO. 90-362

FISCAL YEAR 1990-91		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCOUNT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
SOLID WASTE REVENUE							
Resources							
	Fund Balance						
	* Construction Account		11,880,239				11,880,239
	* Reserve Account		2,850,000				2,850,000
341500	Documents & Publications		2,381				2,381
343111	Disposal Fees-Commercial		18,682,128		(79,355)		18,602,773
343115	Disposal Fees-Public		1,356,507				1,356,507
343121	User Fees-Commercial		17,266,430		(64,145)		17,202,285
343125	User Fees-Public		1,295,889				1,295,889
343131	Regional Transfer Charge-Commercial		3,136,994				3,136,994
343135	Regional Transfer Charge-Public		277,167				277,167
343151	Rehabilitation & Enhancement Fee-Commercial		120,382				120,382
343155	Rehabilitation & Enhancement Fee-Public		6,670				6,670
343161	Mitigation Fee-Commercial		126,473				126,473
343165	Mitigation Fee-Public		23,791				23,791
343171	Host Fees-Commercial		133,704				133,704
343175	Host Fees-Public		5,255				5,255
343211	DEQ - Orphan Site Account - Commercial		341,607				341,607
343215	DEQ - Orphan Site Account - Public		35,449				35,449
343221	DEQ - Promotional Program - Commercial		520,326				520,326
343225	DEQ - Promotional Program - Public		46,594				46,594
343180	Special Waste Fee		278,667				278,667
343200	Franchise Fees		1,143				1,143
343300	Salvage Revenue		6,000				6,000
343900	Tarp Sales		762				762
347220	Sublease Income		5,714				5,714
361100	Interest on Investments		3,215,617				3,215,617
363000	Finance Charge		50,000				50,000
379000	Other Miscellaneous Revenue		8,817				8,817
391251	Trans. Resources from Conv. Ctr. Debt Srv. Fund		4,756				4,756
391530	Trans. Resources from S.W. Oper. Fund		8,500,000				8,500,000
391534	Trans. Resources from S.W. Capital Fund		3,690,000				3,690,000
391535	Trans. Resources from St. Johns Reserve Fund		26,375,520				26,375,520
393768	Trans. Direct Cost from Rehab. & Enhance.		4,483				4,483
Total Resources			100,249,465		(143,500)		100,105,965

EXHIBIT A
ORDINANCE NO. 90-362

FISCAL YEAR 1990-91		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCOUNT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
SOLID WASTE REVENUE FUND							
OPERATING ACCOUNT: Engineering & Analysis							
	Total Personal Services	8.50	428,843	0.00	0	8.50	428,843
	Materials & Services						
521240	Graphics/Reprographic Supplies		1,450				1,450
521290	Other Supplies		120				120
521310	Subscriptions		500				500
521320	Dues		1,200				1,200
524190	Misc. Professional Services		495,000		(35,000)		460,000
525710	Equipment Rental		250				250
526200	Ads & Legal Notices		28,500				28,500
526310	Printing Services		24,400				24,400
526320	Typesetting & Reprographics Services		800				800
526420	Postage		2,600				2,600
526500	Travel		11,300				11,300
526800	Training, Tuition, Conferences		8,900				8,900
528310	Real Property Taxes		5,500				5,500
529500	Meetings		400				400
	Total Materials & Services		580,920		(35,000)		545,920
	TOTAL EXPENDITURES	8.50	1,009,763	0.00	(35,000)	8.50	974,763

EXHIBIT A
ORDINANCE NO. 90-362

FISCAL YEAR 1990-91		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCOUNT & DESCRIPTION		FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
SOLID WASTE REVENUE FUND							
OPERATING ACCOUNT:Waste Reduction							
Total Personal Services		15.00	633,075	0.00	0	15.00	633,075
Materials & Services							
521100	Office Supplies		8,000				8,000
521110	Computer Software		965				965
521240	Graphics/Reprographic Supplies		20,000				20,000
521260	Printing Supplies		540				540
521290	Other Supplies		2,500				2,500
521293	Promotion Supplies		6,000				6,000
521310	Subscriptions		3,000				3,000
521320	Dues		1,500				1,500
521540	Maintenance & Repairs Supplies-Equipment		225				225
524130	Promotion/Public Relations		266,450				266,450
524190	Misc. Professional Services		1,422,062		(6,000)		1,416,062
524210	Data Processing Services		3,000				3,000
525640	Maintenance & Repairs Services-Equipment		2,800				2,800
525690	Maintenance & Repairs Services-Other		1,500				1,500
525710	Equipment Rental		4,500				4,500
525000	Purchased Property Services		6,000				6,000
526200	Ads & Legal Notices		90,000				90,000
526310	Printing Services		74,500				74,500
526320	Typesetting & Reprographics Services		7,125				7,125
526410	Telephone		2,650				2,650
526420	Postage		10,000				10,000
526440	Delivery Service		360				360
526500	Travel		24,000				24,000
526800	Training, Tuition, Conferences		8,485				8,485
528100	License, Permits, Payments to Other Agencies		1,852,337				1,852,337
529500	Meetings		10,000				10,000
Total Materials & Services			3,828,499		(6,000)		3,822,499
TOTAL EXPENDITURES		15.00	4,461,574	0.00	(6,000)	15.00	4,455,574

EXHIBIT A
ORDINANCE NO. 90-362

FISCAL YEAR 1990-91		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCOUNT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
SOLID WASTE REVENUE FUND							
GENERAL ACCOUNT							
	Requirements						
	BUDGET AND FINANCE						
571500	Purchases-Office Furniture & Equipment		21,000				21,000
	OPERATIONS						
571200	Purchases-Improvements Other Than Buildings		155,000				155,000
571400	Purchases-Equipment & Vehicles		79,000				79,000
571500	Purchases-Office Furniture & Equipment		150,000				150,000
574510	Construction Work Materials		65,000				65,000
	WASTE REDUCTION						
571500	Purchases-Office Furniture & Equipment		20,268				20,268
	METRO SOUTH						
571200	Purchases-Improvements Other than Buildings		800,000		(102,500)		697,500
571300	Purchases-Buildings, Exhibits & Related		40,000				40,000
574130	Engineering Services		3,130,000				3,130,000
574510	Const. Work/Materials-Bldgx, Exhibits & Rel.		300,000				300,000
	GENERAL SERVICES (ZOO)						
574520	Const. Work/Materials-Bldgs, Exhibits & Rel.		40,000				40,000
	ST. JOHNS LANDFILL						
574571	Const. Work/Materials-Final Cover & Imp.		1,250,000				1,250,000
	Total Requirements		6,050,268		(102,500)		5,947,768

EXHIBIT B
ORDINANCE NO. 90-362
SCHEDULE OF APPROPRIATIONS FY 1990-91

	CURRENT APPROPRIATION	REVISION	PROPOSED APPROPRIATIO
SOLID WASTE REVENUE FUND			
Administration			
Personal Services	334,895	0	334,895
Materials & Services	118,826	0	118,826
Subtotal	453,721	0	453,721
Budget and Finance			
Personal Services	320,065	0	320,065
Materials & Services	284,850	0	284,850
Subtotal	604,915	0	604,915
Operations			
Personal Services	747,200	0	747,200
Materials & Services	28,847,736	0	28,847,736
Subtotal	29,594,936	0	29,594,936
Engineering and Analysis			
Personal Services	428,843	0	428,843
Materials & Services	580,920	(35,000)	545,920
Subtotal	1,009,763	(35,000)	974,763
Waste Reduction			
Personal Services	633,075	0	633,075
Materials & Services	3,828,499	(6,000)	3,822,499
Subtotal	4,461,574	(6,000)	4,455,574
Debt Service Account			
Debt Service	1,360,427	0	1,360,427
Subtotal	1,360,427	0	1,360,427
Landfill Closure Account			
Capital Outlay	6,155,000	0	6,155,000
Subtotal	6,155,000	0	6,155,000
Construction Account			
Personal Services	61,247	0	61,247
Capital Outlay	12,350,000	0	12,350,000
Subtotal	12,411,247	0	12,411,247

EXHIBIT B
ORDINANCE NO. 90-362
SCHEDULE OF APPROPRIATIONS FY 1990-91

	CURRENT APPROPRIATION	REVISION	PROPOSED APPROPRIATIO
Renewal & Replacement Account			
Capital Outlay	519,000	0	519,000
Subtotal	519,000	0	519,000
General Account			
Capital Outlay	6,050,268	(102,500)	5,947,768
Subtotal	6,050,268	(102,500)	5,947,768
General Expense			
Interfund Transfers	3,735,353	0	3,735,353
Contingency	2,221,798	0	2,221,798
Subtotal	5,957,151	0	5,957,151
Unappropriated Balance	31,671,463	0	31,671,463
Total Solid Waste Revenue Fund Requirements	100,249,465	(143,500)	100,105,965

ALL OTHER APPROPRIATIONS REMAIN AS PREVIOUSLY ADOPTED



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503 221-1646

Memorandum

DATE: August 29, 1990

TO: Neil Saling, Acting Finance & Administration Director

FROM: Donald E. Carlson, *DEC* Council Administrator

RE: BUDGET AMENDMENT FOR ORDINANCE NO. 90-362

I have been requested by the Solid Waste Committee to prepare the necessary budget amendment to implement Ordinance No. 90-362 which is a recycling credit program for qualified non-profit organizations. Section 3 of the Ordinance will amend the FY 1990-91 Budget and Appropriations Schedule to provide for the fiscal part of the program. Section 3 is proposed to read as follows:

"Section 3 - Budget Authorization.

That Ordinance No. 90-340A, Exhibit B, FY 1990-91 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in Exhibits A and B to this Ordinance for the purpose of financing the recycling credits for non-profit organizations program."

Would you have Kathy Rutkowski prepare Exhibits A and B for the Ordinance. To help her do this she needs to know the following information:

- A. Qualified non-profit organizations will receive a credit on their monthly bills for disposal of materials at District facilities. The Solid Waste Department has estimated the impact of such credits to reduce revenue in the Solid Waste Revenue Fund by \$175,000 for FY 1990-91.
- B. Additional unbudgeted revenue is expected in the Solid Waste Revenue Fund as a result of waste from the Washougal, Washington area. The estimate of such revenue is \$31,500, thus the net anticipated loss of revenue to the Solid Waste Revenue Fund is \$143,500.
- C. The Budget action needed is to:
 - 1. Reduce revenue in the Solid Waste Revenue Fund by \$143,500. (You will need to work with Accounting to determine the appropriate line items.)

NEIL SALING
August 29, 1990
Page 2

2. Reduce expenditures in the Solid Waste Revenue Fund by \$143,500. The Solid Waste Department does not want the Contingency reduced, so the following line items and amounts are proposed:
 - a. Eliminate \$6,000 in the Misc. Professional Services line item in Waste Reduction Program in the Solid Waste Operating Account. (This was to fund a study for rate discounts to non-profit agencies and is no longer needed if this Ordinance is enacted).
 - b. Eliminate \$35,000 in the Misc. Professional Services line item in the Engineering and Analysis Program in the Solid Waste Operating Account. (This was to fund a study of the feasibility of a methane collection system at the St. John's Landfill. The Solid Waste Director has indicated such information can be obtained through other sources.)
 - c. Eliminate \$102,500 in the Improvements Other Than Buildings line item for Metro South in the Solid Waste General Account. (The line item includes \$700,000 for the installation of a new compactor at Metro South and it appears that the contract will be awarded for approximately \$550,000).

Please review this request with your fiscal staff as soon as possible. The Ordinance is scheduled for first reading on September 13, 1990 and the agenda packet is to be printed on September 5, 1990. If you have any questions, please let me know.

DEC:aeb
2000

cc: Solid Waste Committee
Rena Cusma
Bob Martin
Dan Cooper



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503-221-1646

Memorandum

DATE: August 30, 1990

TO: Dan Cooper, General Counsel

FROM: Donald E. Carlson, Council Administrator

RE: BUDGET AUTHORIZATION FOR RECYCLING CREDIT PROGRAM
(ORDINANCE NO. 90-362)

Neil Saling has responded to my request for assistance on the budget modification for Ordinance No. 90-362 with a concern that my suggestions do not fit with the Ordinance as you have drafted it. I agree with his assessment of the situation. Based on a discussion I just concluded with Don Cox, Accounting Manager, it appears we have two options for handling the fiscal management of this program.

First, we can call it a recycling credit program. If we do so, a credit would be applied to the monthly bills of the qualified non-profit agencies. This credit would cause a reduction of revenue in the Solid Waste Revenue Fund. Because we are starting this program during the current fiscal year and the rates established by the Council did not anticipate the loss of this revenue, expenditures should be adjusted downward correspondingly to avoid expenditures in excess of revenues. (I must say this is highly unlikely with a total fund of over \$100,000,000, but the Solid Waste Director has indicated he would prefer to have the Fund Contingency remain the same, so the reductions I identified or some others are appropriate.)

The second option would be to treat this effort as a recycling grant-in-aid program. Under this approach the qualified non-profit would pay the full disposal rate and receive a payment back from the District equivalent to the credit for recycling. Under this option, revenue would not be reduced, but the program would show as an expense in the budget and be included within the appropriation schedule approved by the Council.

It is my understanding that the Solid Waste Department is interested in achieving several things as this program is established. One is that the Council understand the "cost" of the program; two that the fiscal impact be limited; and three that in the long run a source of revenue other than Solid Waste rates be established to pay for this program. The first two points can be achieved by inserting language in the Ordinance limiting the total amount of "credits" or "grants" that could be given during the fiscal year.

MEMORANDUM
August 30, 1990
Page 2

It is my desire that we get this issue resolved as soon as possible so we can have first reading on the Ordinance on September 13, 1990. It is my recommendation that we stick with the recycling credit concept because of the ease of administration of the program and that we limit the total amount of credits for the program to the estimated \$175,000. We should meet with Bob Martin on September 4, 1990, so you can complete the draft and have it filed on September 5, 1990.

If you have any question, please let me know.

DEC:aeb
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cc: Solid Waste Committee
Rena Cusma
Bob Martin
Neil Saling



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

September 5, 1990

Mr. Bob Martin
Director Solid Waste Department
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Mr. Martin:

Re: Ordinance Adopting a Program to Provide Recycling
Credits for Eligible Nonprofit Organizations

The Solid Waste Department staff is preparing an ordinance for the above-stated purpose. I have received and reviewed a draft of the ordinance dated July 26, 1990.

Background:

The intent of the ordinance is to provide financial relief to certain entities which operate programs which receive used household items and other donated materials.

The programs accept donated materials from the general public. The materials consist of items such as household goods in slight disrepair, used clothing, etc., which are then either made reusable by cleaning or repair. In conducting the program the organization offers employment to persons needing rehabilitation in a "sheltered" environment. The goods are then sold in special stores set up for this specific purpose, or are donated directly to persons in need. Among the items received are items not suitable for repair, reuse or resale. These items may be suitable for recycling. The organizations derive financial benefit from the sale of these recyclable materials donated to them. The funds derived from sales is utilized to pay the costs of running the program and offered employment and rehabilitation to those in need. The remaining portion of the material received by the organization is not fit for any useful purpose whatsoever and needs to be disposed of as solid waste. As such, the organizations have in the past incurred and expect to continue to incur financial obligations for paying the cost of disposing of this waste consistent with the District's solid waste disposal requirements and related ordinances.

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Gary Hansen
Deputy Presiding
Officer
District 12

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

Mr. Bob Martin
September 5, 1990
Page 2

The effect of the proposed ordinance as drafted would be to provide for a direct cash subsidy at District expense to these organizations. The subsidy would be conditioned upon the organizations demonstrating they had reduced the volume of waste that would otherwise be disposed of at District facilities. A greater level of waste reduction achieved would earn a higher subsidy level.

Issue:

Of the four organizations operating programs who would otherwise be eligible for receipt of the subsidy contemplated, three organizations have some historic religious affiliation. As a result, the question has arisen as to whether or not there is any constitutional prohibition that would preclude the District from offering the benefits of the program to those organizations that have a religious connection.

Facts:

The three organizations that are in question in this regard are the Salvation Army, the St. Vincent De Paul Society, and Deseret Industries. At the request of this Office, I have been furnished with copies of the Articles of Incorporation and By-Laws of the Salvation Army and St. Vincent De Paul Society. In addition, I have received documentation from those two organizations of their tax exempt status under federal tax law. A review of the Articles of Incorporation and the determinations made by the Internal Revenue Service indicate that, in fact, both of these organizations are considered by the IRS to be religious organizations. The St. Vincent De Paul Society is affiliated with the Catholic church and derives its tax exempt status solely because of that affiliation. The Salvation Army has been determined by the Internal Revenue Service to be a bona fide religious organization and is thus eligible for tax exempt status as such. Deseret Industries has not yet furnished the documented information. However, a staff member of Deseret Industries has informed your staff that Deseret Industries is affiliated with the Church of the Latter Day Saints.

In actual operation, however, both the Salvation Army and the St. Vincent De Paul Society have no religious involvement in their programs. Deseret Industries does have religious elements interwoven into its program.

Mr. Bob Martin
September 5, 1990
Page 3

St. Vincent while nominally affiliated with the Catholic Church has no religious components to its organization or operations. It is administered by a board of directors who are selected by members. No religious qualification or tests exist for the board or members. Members and board members are of a variety of religious backgrounds including those with none at all. Employment and administration of benefits by St. Vincent is also based entirely non-religious factors. No religious symbols or themes are utilized in the program. Based on this information, I believe St. Vincent's is an entirely secular non-religious organization.

The Salvation Army is a religious organization. However, the operation of its Adult Rehabilitation Center has no religious components. The program is administered with no religious connection. The persons who are employed in the sheltered workshop program are not subject to any religious qualifications nor is there any religious service, prayer, counseling, or other religious component utilized in the program. The Thrift Shop proceeds are utilized to support the Adult Rehabilitation Program and are not utilized or available to support the religious functions of the Salvation Army.

Deseret Industries is apparently different. Employees are required to be members of the church and program assistance is only rendered to those referred by a minister or bishop.

Legal Analysis:

Article I, Section 5, of the Oregon Constitution provides:

"No money shall be drawn from the Treasury for the benefit of any religious [sic], or theological institution, nor shall any money be appropriated for the payment of any religious [sic] services in either house of the legislative assembly."

In Dickman v. School District 62C, 232 Or 238, 366 P2d 533 (1961), the Oregon court held unconstitutional public school district purchase of textbooks for use in parochial schools. The court found that expenditures of public funds that assisted a religious purpose were prohibited by Article I, Section 5, of the Oregon Constitution. This was in spite of other courts including the federal courts holding that such expenditures if for a public purpose

Mr. Bob Martin
September 5, 1990
Page 4

(education) did violate the First Amendment to the United States Constitution.

In 1982 the Oregon Attorney General issued an opinion in which he found that neither the Oregon Constitution nor the court's holding in Dickman prohibited the state from contracting with a religious institution for non-religious services as long as the effect of the contract was not to accrue a benefit to the religious functions of the organization. (AG Opinions Vol 43 No. 8128 1982)

I have reviewed all of the Oregon Cases interpreting the religious freedom sections of Article I of the Oregon Constitution (Article I, Section 1-7) since Dickman and find no case which would contradict the Attorney General's opinion. While that opinion is not binding on the District, I find no basis to disagree with it and believe it should be given great deference.

In this matter, I conclude that the proposed recycling credit program can be a benefit to religious organizations such as the Salvation Army, which operate programs with no religious connections that would otherwise be qualified for the benefits offered by the District. The ordinance should include language that restricts the program from providing benefits for the religious functions of any organization.

Yours very truly,

Daniel B. Cooper,
General Counsel

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cc: Councilor Tanya Collier
Councilor Tom DeJardin

Agenda Item No. 6.1
Meeting Date: September 13, 1990

Ordinance No. 90-358

COUNCIL ZOO COMMITTEE REPORT

**ORDINANCE NO. 90-358, REVISING METRO CODE SECTION 4.01.050 TO
INCLUDE EXCLUSION FROM ZOO PREMISES**

Date: August 17, 1990

Presented by: Councilor Saucy

COMMITTEE RECOMMENDATION: At the August 16, 1990, Zoo Committee meeting, Councilors Gardner, McFarland and myself voted unanimously to recommend Council adopt Resolution No. 90-358. Councilor Knowles was not present for this item and Councilor DeJardin was excused.

COMMITTEE DISCUSSION/ISSUES: Ordinance No. 90-358 amends Metro Code Section 4.01.050 describing Penalties for disruptive or inappropriate behavior at the Zoo. The proposed amendments would allow Zoo management to exclude scofflaws from the Zoo for up to 45 days, an option not currently available.

At the August 2, 1990 Zoo Committee meeting, Councilors present discussed the ordinance informally and supported the exclusion provisions, recommending only a technical amendment to replace "Zoo official" with "Zoo Director or his/her designate" in the last line of the ordinance's first page. Zoo staff incorporated this change into the current version. Committee members did not offer any additional comments or changes, but noted their support for the ordinance, particularly with the appeal and waiver provisions for those receiving exclusion notices.

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BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING THE)
REVISION OF METRO CODE SECTION)
4.01.050 TO ALLOW EXCLUSION FROM)
ZOO PREMISES)

ORDINANCE NO. 90-358

Introduced by Rena Cusma
Executive Officer

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

~~[The Metro Council currently authorizes ejection from Zoo
premises by the Director, his/her designate or by any peace officer.
This has been helpful in preventing immediate anti-social or
inappropriate behaviors. However, there is a need for applying longer
term sanctions against entering the Zoo grounds for some cases.
— NOW, THEREFORE,]~~

Metro Code Section 4.01.050 Penalties is amended to read as
follows:

4.01.050 Penalties:

(a) Each violation of these Rules and Regulations shall be
punishable by a fine of not more than \$500.

(b) In addition to prosecution under paragraph (a) above, any
person violating these Rules and Regulations may be ejected from the
Zoo. The decision to eject shall be made by the Zoo Director or
his/her designate, a security officer, or a peace officer.

(c) In addition to the measures prescribed in subsection (a) and
(b) above, violation of these Rules and Regulations may be grounds for
exclusion from Zoo premises. In the event of a violation of these Rules
and Regulations or a violation of any of the laws of the State of
Oregon, any police officer, Zoo security officer, Zoo Director or
his/her designate, or any individual providing security services under
contract with Metro may exclude for a period of not more than forty-five

days, any person who violates any provision of these Rules and Regulations, or any of the laws of the State of Oregon.

(1) Written notice shall be given to any person excluded from the Zoo premises. The notice shall specify the violation of Zoo Rules and Regulations or State law which is the basis for the exclusion and shall specify the dates covered by the exclusion. The notice shall be signed by the issuing party. Warning of the consequences for failure to comply with the exclusion shall be prominently displayed on the notice.

(2) A person receiving an exclusion notice may appeal to the Metro Council in accordance with the Contested Case procedure in Chapter 2.05 of the Metro Code.

(3) At any time within the period of exclusion, a person receiving an exclusion notice may apply in writing to the Zoo Director for a temporary waiver from the exclusion. The Zoo Director may grant a temporary waiver of an exclusion upon a showing of good cause for said waiver.

ADOPTED by the Council of the Metropolitan Service District this
_____ day of _____, 1990.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

90-358.Ord.
GWB:lc



METRO

2000 S.W. First Avenue
Portland, OR 97201-5396
503-221-1646

Memorandum

Date: August 8, 1990
To: Zoo Committee Members
From: Jessica *JFM* Marlitt, Council Analyst
Regarding: AGENDA ITEM NO. 2 -- ORDINANCE NO. 90-358

Please note Zoo staff incorporated a technical amendment to Ordinance No. 90-358 per Committee discussion at the August 2 meeting. On the bottom of the first page of the ordinance, section (c), the last line was revised to replace "Zoo official" with "Zoo Director or his/her designate". This change is consistent with the language used throughout the ordinance when referring to Zoo officials, other than security, who have the authority to administer Code rules regarding Zoo Penalties.

If you have any questions, please contact me at extension 286.

jpmsix
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BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING THE)
REVISION OF METRO CODE SECTION 4.01.050)
TO ALLOW EXCLUSION FROM ZOO PREMISES)

ORDINANCE NO. 90-358

Introduced by Rena Cusma
Executive Officer

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

The Metro Council currently authorizes ejection from Zoo premises by the Director, his/her designate or by any peace officer. This has been helpful in preventing immediate anti-social or inappropriate behaviors. However, there is a need for applying longer term sanctions against entering the Zoo grounds for some cases.

NOW, THEREFORE,

Metro Code Section 4.01.050 Penalties is amended to read as follows:

4.01.050 Penalties:

(a) Each violation of these Rules and Regulations shall be punishable by a fine of not more than \$500.

(b) In addition to prosecution under paragraph (a) above, any person violating these Rules and Regulations may be ejected from the Zoo. The decision to eject shall be made by the Zoo Director or his/her designate, a security officer, or a peace officer.

(c) In addition to the measures prescribed in subsection (a) and (b) above, violation of these Rules and Regulations may be grounds for exclusion from Zoo premises. In the event of a violation of these Rules and Regulations or a violation of any of the laws of the State of Oregon, any police officer, Zoo security Officer, Zoo Director or

his/her designate, or any individual providing security services under contract with Metro may exclude for a period of not more than forty-five days, any person who violates any provision of these Rules and Regulations, or any of the laws of the State of Oregon.

(1) Written notice shall be given to any person excluded from the Zoo premises. The notice shall specify the violation of Zoo Rules and Regulations or State law which is the basis for the exclusion and shall specify the dates covered by the exclusion. The notice shall be signed by the issuing party. Warning of the consequences for failure to comply with the exclusion shall be prominently displayed on the notice.

(2) A person receiving an exclusion notice may appeal to the Metro Council in accordance with the Contested Case procedure in Chapter 2.05 of the Metro Code.

(3) At any time within the period of exclusion, a person receiving an exclusion notice may apply in writing to the Zoo Director for a temporary waiver from the exclusion. The Zoo Director may grant a temporary waiver of an exclusion upon a showing of good cause for said waiver.

ADOPTED by the Council of the Metropolitan Service District this

_____ day of _____, 1990.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

AMR:ck
excl.er

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 90-358
REVISING THE METRO CODE SECTION 4.01.050
TO INCLUDE EXCLUSION FROM ZOO PREMISES

Date: July 5, 1990

Presented by: A. M. Rich

FACTUAL BACKGROUND AND ANALYSIS

The Metro Council currently authorizes ejection from Zoo premises by the Director, her/his designate or by any peace officer. While this has been very helpful in solving immediate anti-social or inappropriate behaviors, there is a need for applying a longer term sanction in more serious cases, as outlined below.

1. During the summer of 1989 a young man was ejected from the Zoo for shooting plastic bread-wrapper clips, with a rubber band, at several specimens in the animal collection; the same young man returned twice more and repeated this act. During any given year many persons are ejected for shoplifting at the Zoo gift shop. The perpetrators and Metro Washington Park Zoo would be better served using the exclusion and knowing a particular offender would not return within a specified time, unless he wished to risk an official processing for trespass.
2. Longer term exclusions would be appropriate in the following situations:
 - a. concert disruption or disturbance
 - b. actions which are against public decency
 - c. actions which pose a threat to visitors, staff, the animal collection or property.

For these reasons, staff recommends amending the Metro Code to permit the use of exclusions in the manner prescribed by Metro Legal Counsel, which has been incorporated into this revision.

EXECUTIVE OFFICER'S RECOMMENDATION:

The Executive Officer recommends approval of Ordinance No. 90-358.

Agenda Item No. 7.1
Meeting Date: September 13, 1990

Resolution No. 90-1311

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1311, FOR THE PURPOSE OF APPROVING THE ONE PERCENT FOR RECYCLING PROGRAM CRITERIA AND GUIDELINES AND APPLICATION FOR PROVISION FOR FY 1990-91

Date: August 23, 1990

Presented by: Councilor
DeJardin

Committee Recommendation: The Committee considered the resolution at its August 21, 1990, meeting. The Committee voted unanimously to recommend approval of Resolution No. 90-1311. Voting yes were Councilors Buchanan, Collier, DeJardin and Wyers. Councilor Saucy was excused.

Committee Issues/Discussion: Judith Mandt, Assistant to the Director of Solid Waste, explained that the 1990-91 program emphasizes market development and recycling, rather than products in the wastestream. Projects dealing with household hazardous waste materials have been eliminated, since they have been addressed through legislation. Newspaper projects have also been eliminated since the industry is likely to pursue innovation. The other change this year is that proposers will complete an application rather than submit a narrative RFP response. Staff believes this change will result in more detailed responses.

The Committee noted that the complaints about last year's process did not come from persons who had proposed projects, and that complaining persons did not avail themselves of a public hearing which was scheduled to hear their concerns. In general, the public is happy with the program.

Another issue discussed related to program funding. It is not clear whether the program is intended to be funded from one percent of the total Solid Waste budget, or from one percent of its operating funds. The Committee asked that the issue be considered and brought before the Council for resolution before November 1, 1990, as is set forth in an FY 1990-91 Budget Note.

TD:KW:pa

90-1311.RPT

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING	)	RESOLUTION NO. 90-1311
THE ONE PERCENT FOR RECYCLING)	
PROGRAM CRITERIA AND GUIDELINES)	
AND APPLICATION FOR PROPOSAL	)	Introduced by Rena Cusma,
FOR 1990-91 FISCAL YEAR	)	Executive Officer

WHEREAS, the Metropolitan Service District established the 1% For Recycling Program in the 1988-89 fiscal year, and it is now in the third year of funding; and

WHEREAS, the 1% For Recycling Advisory Committee was created to develop project Criteria and Guidelines for the Program and to make recommendations regarding projects for funding; and

WHEREAS, the Committee has developed recommendations for Criteria and Guidelines for the 1990-91 funding cycle, and on July 18, 1990 conducted a public meeting to solicit input from potential proposers responding to the Program and has finalized these recommendations for approval; and

WHEREAS, the 1% For Recycling Advisory Committee has recommended that proposals be solicited via an application rather than a Request for Proposals, and has prepared an application form and instruction booklet for use by proposers that the Executive Officer has submitted to the Council Solid Waste Committee for review, concurrence and recommendation to the Metro Council to approve; and

WHEREAS, the Council Solid Waste Committee has reviewed and concurs with the Executive Officer's recommendations to

approve the 1% For Recycling Advisory Committee's recommendations for the Criteria and Guidelines and Application for Proposal; now, therefore,

BE IT RESOLVED, that

1) The Metro Council approves the 1% For Recycling Criteria and Guidelines, Application for Proposal, and Project List for the 1990-91 fiscal year included in Attachments A, B, and C, and incorporated herein by reference; and

2) Approves proceeding with soliciting proposals from the public for this program to implement innovative projects for reuse, recycling, and materials recovery from municipal solid waste generated in the Metropolitan region.

ADOPTED by the Council of the Metropolitan Service District this ____ day of _____, 1990.

Tanya Collier, Presiding Officer

1% FOR RECYCLING PROGRAM**INSTRUCTIONS FOR COMPLETING APPLICATION FORM
Including Program Background****I. PURPOSE OF THE PROGRAM**

The 1% For Recycling Program sets aside 1% of Metro's Solid Waste operating budget each year to fund innovative recycling projects. Recycling includes three elements: collection, processing and marketing of recovered materials. The primary objectives of the 1% program are 1) to reduce the amount of waste generated, 2) to reduce the amount of waste disposed in landfills, and 3) to encourage the development of products made from recovered materials. The expected benefits are lower garbage disposal costs, more landfill space, protecting the environment, and conserving reusable natural resources.

II. FUNDS AVAILABLE AND ELIGIBILITY

In FY 90-91, \$350,000 is available for 1% grants. Individuals, companies, governments and non-profit organizations with creative ideas for waste reduction and recycling are eligible to apply for these grants. The program is intended to provide financial support for experimental projects and new technologies that are small-scale and may not yet be tested or commercially viable.

It is not intended to provide funding for tested recycling programs and technologies, or projects that can receive private financing or other types of government funding. Projects that request money to augment ongoing operations and/or for reimbursement of prior expenditures will not be considered. Because the purpose of the program is to reduce waste within the Portland Metropolitan region, projects must benefit the area within the Metropolitan Service District boundary. This includes the urban areas of Clackamas, Multnomah and Washington Counties.

Listed below are specific projects that will not be considered under the 1% program.

- o Programs currently receiving funding through other Metro Solid Waste Department sources.
- o Projects that result in stockpiling of end product or residues.
- o Feasibility studies, unless they are part of a phased project and are accompanied by a plan for project implementation and estimated costs of implementation.
- o Projects that are unduly competitive or clearly competitive with a facility or facilities already providing the same service or product.

- o Enforcement programs that are the responsibility of other governmental jurisdictions.
- o Neighborhood cleanup events.

III. PROJECT TYPES AND LENGTH OF CONTRACTS

Two general categories of proposals will be considered: 1) Waste Reduction projects that directly reduce the amount of waste going to landfills, and 2) Promotion and Education programs. Different criteria will be used to evaluate the two types of projects. Although a project may have promotional elements, if its main focus is removal and recovery of recyclables from the wastestream, it is a waste reduction proposal. Please note that even though both types of projects will be considered, the emphasis of the program is on waste reduction.

Funding is generally for one-year from the start date to final implementation; however, the time period may be less depending on the proposal. The committee may also recommend funding for multi-year proposals if a budget and implementation schedule are included.

IV. EVALUATION

Applications are evaluated using a standard evaluation method. Projects are ranked against the specific criteria and guidelines described below. Applicants who can demonstrate their project meets at least three of the guidelines, and all the criteria for their program type will receive the highest score. Highest scoring applicants will receive an oral interview. The final selection will be based on the written ranking, the oral interview and the results of reference checks.

A. GUIDELINES - At least three of the following guidelines must be addressed in the application.

- o **Experience:** Describe your past experience in solid waste management and/or knowledge and experience in the project proposed.
- o **Simplicity:** Explain why your project is appropriate for the 1% program and why it can be administered efficiently.
- o **Scale:** Explain why your project is the appropriate scale for the 1% program i.e., why it is not large scale and more appropriate for a competitive bidding process or private financing.
- o **Manageability:** Describe how your project can be completed in the designated time frame and with sufficient resources to successfully carry out the project.
- o **Residue:** Waste Reduction projects that have a low percentage of residue to be landfilled or result in a by-product that can be further processed will be given priority.

- o Markets: Demonstrate that there are markets for the recyclable materials recovered from your project. Are these markets local, regional or national? Describe how the project processes recycled materials and therefore makes them more marketable or uses recycled materials in a manufacturing process.
- o Education: Does the project have good potential for gaining the public's attention and resulting in further waste reduction and recycling?
- o Alternative Funding: Have other funding sources been sought and/or matching funds from other sources been identified?

B. CRITERIA

WASTE REDUCTION PROJECTS: Applicants must demonstrate how they meet the following criteria.

1. Waste Reduction: Project reduces the amount of waste going to the landfill by recovery, reuse or recycling.
2. Reduction: Project results in a high ratio of recyclables removed from the waste stream to a low ratio of residue to be landfilled.
3. Cost/Benefit: Project is or has the potential to be cost effective in removing the largest amounts of waste at the lowest cost. It is economically feasible to develop a full-scale operation that will eventually be self-sustaining from revenues earned from sales of recovered materials, manufactured end products or other means.
4. Risk: Project demonstrates a reasonable level of risk: markets for the recyclables are available, the project is environmentally acceptable, technically feasible, and vendor has the ability to implement. Less complex, low risk proposals will receive higher ratings. However, a project which does not have certainty of success may be funded as a pilot project.
5. Area of Direct Benefit: Proposal must result in direct reduction of waste within the boundaries of the Metropolitan Service District and directly serve residents and/or businesses of the District.

Additional Criteria for Facilities are as follows:

1. Need: demonstrate that there is a need for the facility.
2. Proximity: The geographic location of the facility will not place a vendor in direct competition with an established business engaged in the same or similar operation.

PROMOTION AND EDUCATION PROJECTS: A Promotion and Education proposal must target a distinct audience, promote alternatives to traditional solid waste disposal methods, promote the development or use of recycled products, and/or encourage a reduction in the amount of waste generated.

Applicants must demonstrate how they meet the following five criteria.

1. **Waste Reduction Program:** The proposal does not duplicate or conflict with existing Metro promotion/education programs.
2. **Targeted Audience:** The proposal identifies the intended audience and lists ways of reaching and educating that specific audience.
3. **Program Results:** The proposal identifies methods to evaluate and measure the effectiveness of the proposed program.
4. **Metro Program Philosophy:** The program is consistent with Metro's advertising, education, promotion and waste reduction policies.
5. **Area of Direct Benefit:** The proposal directly benefits residents/and or businesses within the boundaries of the Metropolitan Service District.

V. DECISION PROCESS

A seven-member advisory committee reviews applications for 1% grants. The committee is made up of two citizens from each of the three counties in the district (Clackamas, Multnomah and Washington), who have an interest in waste reduction and preserving the environment. The chair of the committee is a Metro Councilor. The committee is assisted by staff members from Metro's Solid Waste and Public Affairs Departments.

The 1% For Recycling Advisory Committee ranks applications based on the criteria and guidelines explained above. They conduct a personal interview with applicants receiving the highest scores during the written evaluation process. The Committee may request further information from applicants, if needed, at this stage of the process, and reserves the right to consider and reconsider proposals throughout the process. This means a second round of interviews for applicants not initially interviewed. Depending on the nature of the project, applicants may be asked to prepare a business and marketing plan. This plan will be reviewed prior to final selection. Following the oral interviews, the committee recommends projects to Metro's Executive Officer and the Metro Council. The Metro Council makes the final determination on the committee's recommendations.

VI. APPLICATION/CONTRACT CONDITIONS

Confidentiality During Proposal Review. In order to remain objective during the proposal evaluation and selection process, the advisory committee has determined that applicants may not make reference to their individual, corporate, business, or organizational identity in the text of their application. Applications that do not

organizational identity in the text of their application. Applications that do not comply with this requirement will be rejected. Rather, applicants must complete the application transmittal sheet. The transmittal sheet will be withheld until the initial review of the proposals has been completed by the committee. The identification of applicants will be made known to the committee prior to interviews and following completion of the final list of potential grant recipients.

Coordination with Public Affairs Department: Both Waste Reduction or Promotion and Education projects will be required to recognize the 1% Well Spent! program in promotional materials and signage. The Metro Public Affairs department will assist selected applicants with design aspects of this requirement. However, the project budget must include estimated dollar amounts for this component. Applicants for Promotion and Education projects must also consult with Metro's Public Affairs Department as they develop their proposals.

Validity Period and Authority. The application shall be considered valid for a period of at least one hundred twenty (120) days and shall contain a statement to that effect. The application shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind the company contacted during the period in which Metro is evaluating the proposal.

Limitation and Award. This application does not commit Metro to award a contract, or to pay any costs incurred in the preparation and submission of applications in anticipation of the contract. Metro reserves the right to accept or reject any or all proposals received as the result of this request, to negotiate with all qualified sources, or to cancel all or part of this application.

Performance Bonds. Performance bonds shall not be required for projects. However, proposals must contain a list of references of individuals and/or organizations who may be contacted by the committee for experience verification. If this is not possible because the newness of the project precludes applicant's performance record, references may be supplied which speak to applicant's performance in similar areas.

Contract Type. Metro intends to enter into a personal services or public services contract with the selected grantees. A copy of the standard contract which the successful applicants will be required to execute is available to applicants during the proposal development stages upon request.

Billing Procedures. Applicants are informed that the billing procedures of the selected firm may be subject to review and prior approval by Metro before reimbursement of services can occur. The terms of payment will be negotiated between the Contractor and Metro during development of the contract for services and will be specified in the Payment section of the Contract Scope of Work.

Subconsultants; Disadvantaged Business Program. "A subconsultant is any person or firm proposed to work for the prime consultant on this project. Metro does not wish any subconsultant selection to be finalized prior to contract award. For any task or portion of a task to be undertaken by a subconsultant, the prime consultant shall not sign up a subconsultant on an exclusive basis.

In the event that any subconsultants are to be used in the performance of this agreement, the consultant agrees to make a good faith effort, as that term is defined in Metro's Disadvantaged Business Program (Section 2.04.160 of the Metro Code Attachment C) to reach the goals of subcontracting 5 percent of the contract amount to Disadvantaged Businesses and 5 percent to Women Owned Businesses. The consultant shall contact Metro prior to negotiating any subcontract. Metro reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and Metro's Disadvantaged Business Program."

References. Applicants must submit three business and/or personal references as part of the application form.

I:\LEIGH\APPLICATIONS

**APPLICATION FOR ONE PERCENT FOR RECYCLING GRANT
TRANSMITTAL SHEET**

NAME OF INDIVIDUAL, ORGANIZATION OR COMPANY:

PROJECT MANAGER/CONTACT PERSON:

ADDRESS:

TELEPHONE:

Describe your business or organization:

Project Title:

Do you wish to have the information contained in this application treated as confidential?

☐ **Yes** ☐ **No (check one)**

If yes, list page(s) where confidential information appears _____.

Amount of One Percent Well Spent! funds requested: \$ _____.

Applicant's Signature

This transmittal sheet must be signed by an individual or individuals with authority to bind the company contacted during the period in which Metro is evaluating the application.

ONE PERCENT FOR RECYCLING APPLICATION FORM

Respond to every question on the application. If a question is not relevant to your project, state "not applicable." All applications must be typed. If you choose to use a personal computer, please use the same format as the application form and do not exceed the _____ pages in the application. Supplemental materials may be submitted as an attachment, but they will not be reviewed by the Committee members until the oral interview stage of the evaluation process.

The One Percent committee requirements call for applicant anonymity to ensure objectivity and that proposals are judged solely on merit. Therefore do not reference your individual or company name except where specifically requested. Rather use general terms, such as the "company," "organization" or "applicant." Applications that reference individual or company names will be eliminated.

Please make ten copies of your completed application and applicable supplemental materials. Copies must be printed double-sided on recycled paper. Submit your application to the Metro Solid Waste Department by 5:00 p.m. on _____.

PROJECT ABSTRACT

Summarize the key elements of your project below. Include the objective of the project and an overview of the scope of work. Indicate whether the project focuses on waste reduction or promotion and education.

AMOUNT OF ONE PERCENT FUNDS REQUESTED: \$ _____.

The information contained in this application shall be considered valid for 120 days.

1. PROJECT DESCRIPTION

In the space provided below describe your proposal in detail. Please include the following information:

- o The objective of the project**
- o The problem you are addressing**
- o How your project contributes to solving that problem**
- o How you will carry out your project to meet the objective**

If the project can be reduced in scale to a lesser amount of funds than requested, please specify the amount and the way in which it can be cut back.

PROJECT DESCRIPTION (continued)

PROJECT DESCRIPTION (continued)

PROJECT DESCRIPTION (continued)

2. WORKPLAN AND SCHEDULE

Describe below the specific work tasks required to complete your project and a schedule with estimated dates. Please continue on the back side if necessary. Assume that funds will be available for project start-up in February, 1991.

Task

Estimated Date

3. GUIDELINES

Listed below are the guidelines that will assist the One Percent Advisory Committee to evaluate projects for funding. Please explain in the space provided below how your project meets at least three of these guidelines. The order of the guidelines is not intended to imply an order of priority.

- a. Experience: Describe your past experience in solid waste management and/or knowledge and experience in the proposed project.
- b. Simplicity: Explain why your project is not too complex for the 1% program and why it can be administered efficiently.
- c. Scale: Explain why your project is the appropriate scale for the 1% program i.e., why it is not large scale and more appropriate for a competitive bidding process or private financing.
- d. Manageability: Describe how your project can be completed in the designated time frame and with sufficient resources to successfully carry out the project.
- e. Residue: Waste Reduction projects that have a low percentage of residue to be landfilled or result in a by-product that can be further processed will be given priority.
- f. Markets: Demonstrate that there are markets for the recyclable materials recovered from your project. Are these markets local, regional or national? Describe how the project processes recycled materials and therefore makes them more marketable or uses recycled materials in a manufacturing process.
- g. Education: Does the project have good potential for gaining the public's attention and resulting in further waste reduction and recycling?
- h. Alternative Funding: Have other funding sources have been sought and/or matching funds from other sources have been identified?

GUIDELINES (continued)

4. EVALUATION CRITERIA

Please indicate the primary focus of your project. Projects that develop markets for recycled materials may fall into either category.

_____ Waste Reduction

_____ Promotion and Education

If your answer is Waste Reduction, answer section 5. If your answer is Promotion and Education, answer section 6.

5. WASTE REDUCTION PROJECTS

- a. Explain how the proposed project reduces the amount of waste going to landfill by recovery, reuse or recycling. Be specific about the type of material received, recovered, and disposed as part of this project. If possible, describe the current generators of the waste (e.g., residential, retail, manufacturing, etc.)

- b. What is the estimated weight of materials your project will recover or reuse in a product? What percentage of material received will go to the landfill? If you converted volume to weight (i.e., plastics or yard debris) please illustrate the conversion factor.
- c. What is the estimated cost/benefit ratio of the project? This figure determines the cost to process or remove a given number of tons from the waste stream compared to the percent reduction that will result. This figure is calculated by using the following formula:

$$\frac{\text{Total cost of project}}{\text{Total tons recycled}} = \text{cost per ton}$$

If this is a start-up project, estimate and explain how it will be cost effective once the program is fully operational. If you cannot determine actual figures, please describe in a narrative why the proposed project is cost effective.

- d. What is the feasibility of your project becoming a full-scale operation that will eventually be self-sustaining?
- e. Describe the level of risk associated with your project. For example, are markets available for the materials recovered, how stable are the markets, is the technology/program environmentally acceptable? If your project involves a new technology, explain why it is technically feasible and effective.

f. What is the intended market for the recovered material? What quantity of material does the market need to make this an economically viable project? What will be the "end use" for the recovered material?

g. If your project develops a product from recycled material, explain why it is an economically feasible project, i.e., discuss competitive products, cost of production and distribution, and your marketing strategy.

- h. What area does the project serve or impact? Is it throughout the Metro region or in a subarea?**

Additional Criteria for Facilities

- a. Demonstrate why there is a need for the facility.**
- b. Does the proposed facility directly compete with another business engaged in a similar operation?**

6. PROMOTION AND EDUCATION PROJECTS

Please consult with Metro's Public Affairs Department to determine what Metro is currently doing in promotion and education, and to receive assistance in developing evaluation tools.

- a. Explain how your project promotes alternatives to traditional solid waste disposal methods, promotes the use of recycled products and/or encourages a reduction in the amount of waste generated, i.e., "precycling" or packaging.**

b. Please describe how your project proposes a new and different approach to promotion and education that does not duplicate or conflict with Metro's existing promotion programs. How is your project different from existing programs?

c. Identify the specific audience you plan to reach with your proposal and list the specific techniques you will use to implement the program.

d. Describe the methods you will use to measure and evaluate the effectiveness of the proposed program.

e. What geographic area does the project serve or impact?

BUDGET

Please provide the following budget information. Items that do not apply to your proposal should be left blank. Indicate the period after which estimates are no longer applicable. Contingency is included to account for unexpected costs and emergencies. If you want to provide additional budget information, use the reverse side of this form.

REVENUES

Metro grant _____

Other (list) _____

TOTAL REVENUES

EXPENSES

Salaries, wages, benefits _____

Materials and services

Office supplies _____

Promotion and education
(detail) _____

Maintenance & repair _____

Training _____

Outside consulting _____

Overhead _____

Miscellaneous
(list items) _____

Total Materials & Services _____

Capital Outlay

Office equipment _____

Machinery _____

Buildings _____

Leasehold improvements _____

Total Capital Outlay _____

CONTINGENCY

TOTAL EXPENSES

ADDITIONAL BUDGET INFORMATION IF APPROPRIATE

REFERENCES

Please include at least three business and/or personal references. Include addresses and phone numbers and the relationship of the reference to you or your firm/organization.

1.

2.

3.

List of Attachments

1. List of reference materials available for review by applicants
2. List of projects previously funded by 1% grants

LZ:ay
1%APP.ONE
July 30, 1990

ATTACHMENT C

1% For Recycling Program

1990-91 Fiscal Year

Project List

- | | |
|------------------------|-----------------------------|
| ▲ plastics | ▲ small-scale, with ability |
| ▲ scrap wood | to grow |
| ▲ salvage building | ▲ emphasis on market |
| materials | development |
| ▲ mixed waste paper | ▲ high volume of recycling |
| ▲ office paper | ▲ low percentage of |
| ▲ composted material | byproducts to landfill |
| ▲ used motor oil | ▲ emphasize reduction of |
| ▲ green glass (cullet) | waste at source, or |
| | "precycling" |
| | ▲ cost-effective and |
| | manageable |
| | ▲ economically feasible and |
| | self-sustaining |
| | ▲ publicly acceptable |
| | ▲ environmentally sound and |
| | non-polluting |
| | ▲ innovative processing |
| | techniques |
| | ▲ direct benefits to the |
| | tri-county region |
| | ▲ provide incentives for |
| | more recycling |
| | ▲ involve women and/or |
| | minorities |

ATTACHMENT D

1% For Recycling

STATUS REPORT
August 1990

1988-1989 Projects - First Year Funding

Most of these projects will be completed during the second quarter of the fiscal year, at which time a full report will be presented for discussion. It is our expectation at that time to report on project results and what we have learned from them. A brief update on the projects and the grant amounts for the first funding cycle follows.

1. Alpine Disposal and Recycling - Curbside Containers, \$16,658

Received two grants to purchase single bin containers for their customers in northeast Portland. Haulers provide weekly pickup on the same day as garbage collection. Before the containers were provided, Alpine's customer recycling participation rate was 58 percent. In June, after seven months with the containers, the rate was 75 percent. Kampher Sanitary Service, a subcontractor with Alpine, has experienced similar increases in participation. The quantities of material collected have risen from 32,670 tons in October 1989 (control month) to 55,540 tons in June 1990.

2. Citistics - Plastics Recycling in Washington County, \$48,530

1% grant paid for plastics grinder and ten collection drop boxes to set up recycling program in Washington County for mixed plastics. Citistics requested that milk jugs be separated, but all other types of plastics were accepted, mixed together, and then sorted later at the Citistics facility. The program began in May with support from local businesses; an extensive promotion campaign resulted in good participation from citizens.

Citistics had problems with receiving contaminated and non-recyclable materials at the drop boxes, which were located throughout the county, and with equipment (grinder) breakdowns. In June, there was a major problem with marketing the materials. Denton Plastics had originally offered \$.25 per pound for ground plastics, but current value has fallen to \$.06 per pound.

In July, Citistics scaled back the project since, as proposed, it was not economically viable. Costs far exceeded income even with grant funds. Citistics removed a

number of drop boxes. Five remain for milk jugs only, since markets for this material are stable. Removal of drop boxes in other locations so soon after project startup has upset some residents. The milk jug drop-off service continues, however, which constitutes a significant part of what was being left for recycling.

Results so far point out problems with recycling mixed (not source-separated) plastics, and with trying to recycle too many types of plastic. Unstable markets for mixed material significantly effect plastics recycling viability.

3. Clackamas County - Multi-Family Recycling, \$11,570

Set up recycling programs in mobile home parks and retirement centers. Currently serving about 1,000 units. No unusual problems so far. Managers and waste haulers are cooperative. The county is reporting quarterly to Metro on a number of setouts, and volumes of materials. This appears to be a good pilot for Metro's Fiscal Year 90-91 multi-family recycling program.

4. Cloudburst Recycling - Yard Debris Chipping and Composting, \$20,479

Grant purchased a yard debris chipper and ten front-load containers. Cloudburst offers on-site chipping, and sells chips and composted yard debris to customers. The program began in March, and about 70 cubic yards of material have been chipped at customer's homes, as well as 75 yards collected for compost. Many customers have expressed interest in purchasing compost. All has been sold so far. There have been some problems with equipment performance, and less interest in the on-site chipping than expected, but the project has shown success to date.

5. Environmental Learning Center - Resource Conservation Center and Museum, \$20,400

Project completed in December 1989. To date, 67,000 people have toured the resource center. 148 groups, including students and community organizations, have had conducted tours of the facility.

6. Plastics Partnership - Curbside Collection of Mixed Plastics in Southeast Portland, \$60,000

Provides curbside pickup of mixed plastics once a month from 3,000 residences. There is about a 29 percent participation rate, which is higher than projected. The major problems have been with contaminated and non-recyclable plastic materials being mixed with recyclable plastics. Additional promotion and education is proposed to rectify this. The

public shows a strong desire to recycle correctly; however, there is a low understanding of which plastics can actually be recycled. In June, 4,760 pounds of plastics were collected and 3,320 of that was marketed. 1,440 pounds were landfilled because they could not be recycled.

The Plastics Partnership is a joint venture of Portland Waste Associates (hauling company), Wastech, the Rockey Company (public relations) and Partek Plastics. Marketing of the plastics has not been identified as a problem, perhaps because Partek is a partner in the venture.

Computation, a business consulting firm, was the original contractor with Metro. Because of operational difficulties unrelated to Metro, the company is no longer doing business. Wastech has been named as the assignee to take over project management. The project continues to follow its original scope of work, though some minor revisions may be negotiated. Subcontractors are reliable and responsive.

7. PRROS Recycling - Multi-family recycling bins, \$29,730

All of the 45 containers have been distributed. Program has been very successful by increasing apartment recycling and providing data for Metro's future work in this area. The pilot study has helped Metro and others determine barriers to apartment recycling and to identify solutions.

8. Sunflower Recycling Cooperative - Plastics Recycling Depot for Source-Separated Plastics, \$18,500

Funds purchased drop boxes and plastics grinder and conveyor. Sunflower accepts only three types of plastic (HDPE, polypropylene and polystyrene). This is a highly successful program with more materials collected each month. Sunflower has not reported any problems with marketing materials. They have assigned an employee to monitor the drop boxes to help people sort plastic by type. Sorting of non-coded containers is difficult. However, continual education of the public has increased their knowledge in this area and as with the curbside project, the public seems very much to want to recycle correctly.

9. Sunflower Recycling - Yard Debris Transfer Station, \$25,000

1½ grant paid for compactors that allow Sunflower to receive yard debris from the public. Setting up the equipment has taken longer than expected. The project just started up. No data has been collected so far. Sunflower is giving collected yard debris to an organic farmer in the Clackamas area.

1989-90 (Spring) Projects

Almost all of the contracts from the last round of 1½ grants have been signed. Several projects are underway; these are summarized below.

1. White, Wykoff & Company - Yard Debris Compost Bins, \$17,650

Grant helped contractor purchase 500 simplified yard debris compost bins made from wire. The bins were marketed in local retail gardening stores with a discount coupon offered to individuals agreeing to participate in a follow-up survey. The bins have been very popular, and all 500 have sold. The contractor has invested now in manufacturing the product on an ongoing basis, and has orders with local retailers. Survey data will assist Metro in setting up a composting program as part of the recommendations of the Regional Yard Debris Plan.

2. Pacific Landings, Ltd - Oil Recycling Containers, \$25,000

In May, the Pac-Lube oil changing containers were distributed to 5,000 residences in Gresham. Gresham Sanitary Service collects the recycled oil with the other curbside recyclables. The contractor distributed a questionnaire on oil changing habits and the impact of containers on oil recycling. 150 questionnaires have been returned so far, and about 100 individuals have used the Pac-Lube box to recycle their oil.

3. Morley & Associates - Paint Recycling, \$50,000

This contract will probably not be executed. Federal regulations introduced since the grant was awarded could make paint recycling unfeasible. These regulations regarding mercury content would prohibit the use of interior latex. Staff and the grantee are tracking the regulations to determine their impact on future paint recycling activities.

4. Oregon Puppet Theatre, \$17,200

The contractor is working closely with Public Affairs to develop a puppet show on school recycling. Stage construction is nearly complete, and the script is in progress. In the fall, the Oregon Puppet Theatre will train staff and volunteers to present the show.

5. Protekt, Inc. - Renamed: Mobile Recovery Systems, Inc., \$110,000

Grant paid to purchase and retrofit a multi-materials vehicle for curbside recycling. A grinder designed by Partek engineers will be mounted on a bin behind the cab of

the vehicle; it will receive bottle-grade materials collected curbside, granulate them, and drop the resulting material into the bin below. Partek has agreed to pay a premium additional \$.05 per pound for materials received pre-ground. The truck was purchased 8/10, and retrofitting for the grinder began the following week. Target date for startup of curbside service is October 1, 1990.

6. Recyclotron - Oregon Museum of Science & Industry, \$40,000

Grant assists with costs to design and build a computer interactive, "Rube Goldberg-type" machine for the public to use to learn about recycling. This machine will take two years to build in a phased plan. The first year is for prototype work, and is funded at \$40,000; Metro has committed to second-year funding at \$60,000 if Phase I proceeds satisfactorily. The plan is for the final product to be installed in the Global Issues Hall of the new OMSI facility, after initial installation at their present location during its last months of operation. Design work for the project has commenced.

7. United Pacific Recycling, Inc., \$54,000

This project will be conducted in two phases; the grant pays for design and fabrication of a machine to pulverize drywall to remove gypsum for use as a fertilizer. The powdered gypsum will be mixed with a binder, forming a substance that can be pelletized and packaged for agricultural application. The contractor is working with the laboratory to generate a laboratory product analysis for Metro's review. This phase of the project is \$5,000. If determined to be safe for use, the contractor will be advised to proceed with the second phase of the project, which is funded at \$49,000. This is expected to occur by the end of September.

8. Dejashoe®, \$110,000

Northwest Quality Innovations has prepared a draft business plan for this project which will manufacture 5000 shoes made from totally recycled materials. The contractor is perfecting the prototype model and soliciting orders from local businesses. The shoes should be on the market by Christmas.

9. City of West Linn, \$24,250

Metro has signed the contract for this pilot for mixed waste paper from the residential wastestream. We are waiting for the City of West Linn to sign the contract. The project should begin in September.

ATTACHMENT E

Funding innovative
recycling projects

PUBLIC INFORMATION WORKSHOP
WEDNESDAY, July 18, 1990
4:00 - 5:30 p.m.

Topics For Comment

1. Program Goals and what is innovative
2. Greater emphasis on waste reduction and projects which result in greater volumes being diverted from the landfill
3. Market Development: How could the 1% program place greater emphasis on developing market demand for recycled products?

Examples: - paper products
 - rubber products
 - soil enhancers
 - plastic products
 - salvaged building materials

4. Precycling: Should the 1% program place emphasis on source reduction?

Examples: - refilling containers
 - low maintenance gardening
 - packaging

5. Processing Capacity: Should one of the goals of the program be to increase processing capacity in the region?
6. During the award process this year, members of the public testified that grant funding to collectors in the unregulated Portland area constitutes a competitive edge. The committee deems it appropriate for this group to be eligible to receive 1% grant(s), since all have opportunity to apply and those funded are doing groundwork that could result in benefit to other haulers.

Procedural Changes

1. There will be applications and an instruction booklet for the program this year, rather than the Request for Proposal format previously used for this program.
2. Program submittal period will be reduced to 30 days.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1311 FOR THE PURPOSE OF APPROVING THE ONE PERCENT FOR RECYCLING PROGRAM CRITERIA AND GUIDELINES AND APPLICATION FOR PROPOSAL

Date: August 21, 1990

Presented by: Judith Mandt
Leigh Zimmerman

The following staff report presents the Criteria and Guidelines and Project List recommended for the 1% For Recycling Program for the 1990-91 fiscal year.

BACKGROUND

The 1% For Recycling Program was established in the 1988-89 fiscal year. Two years of project funding totaling \$699,628 have occurred since the program began. A brief description of each project and status to date is included in this report as Attachment D.

The 1% For Recycling Committee worked throughout last fall and the first part of this year to select projects for the 1989-90 fiscal year; their work was completed in April. During this process, the Committee concurred that it is desirable to begin developing the criteria and guidelines, project list, and proposal solicitation earlier in the fiscal year. So, following the conclusion of last year's program, the Committee reconvened in June to begin the process for FY 1990-91 funds. The schedule for completion is aimed at project selection and approval by the end of the calendar year.

On July 18, the Committee conducted a public workshop to solicit reactions to this year's focus (topics for comment are included in this report as Attachment E). Notices were mailed to approximately 800 individuals, firms and organizations; about 50 people attended the meeting. Comments primarily addressed markets, the need for more stable markets, and market development. Additionally, some processing center operators asked for assistance in continuing or expanding their operations.

The Committee met on July 25 to consider the public's comments. They again reviewed the criteria and guidelines. The Request For Proposals was changed to an Application For Proposal because the Committee wishes to simplify the process, both for proposers and Committee members, while retaining flexibility for proposers to advance new and creative ideas. This creates a format to eliminate some unavoidable subjectiveness and the necessity to interpret how proposals meet the program objectives. The criteria is posed in the form of questions, so that proposers

express how it is met specifically, rather than in the context of a proposal narrative. An application instruction booklet has been prepared for inclusion with the packet.

It is recommended that the proposal application period be reduced from 60 days to 45 days.

Additionally, the Committee recommends that the program focus on market development and emphasize "Precycling" this year, rather than selecting materials to emphasize as was done last year with paint, building salvage, and used motor oil. The types of projects and characteristics recommended to be eligible are listed in the project list below:

Project List

- | | |
|------------------------|-----------------------------|
| ▲ plastics | ▲ small-scale, with ability |
| ▲ scrap wood | to grow |
| ▲ salvage building | ▲ emphasis on market |
| materials | development |
| ▲ mixed waste paper | ▲ high volume of recycling |
| ▲ office paper | ▲ low percentage of |
| ▲ composted material | byproducts to landfill |
| ▲ used motor oil | ▲ emphasize reduction of |
| ▲ green glass (cullet) | waste at source, or |
| | "precycling" |
| | ▲ cost-effective and |
| | manageable |
| | ▲ economically feasible and |
| | self-sustaining |
| | ▲ publicly acceptable |
| | ▲ environmentally sound and |
| | non-polluting |
| | ▲ innovative processing |
| | techniques |
| | ▲ direct benefits to the |
| | tri-county region |
| | ▲ provide incentives for |
| | more recycling |
| | ▲ involve women and/or |
| | minorities |

EXECUTIVE OFFICER RECOMMENDATIONS

The Executive Officer recommends approval of Resolution No. 90-1311 with recommendations for the 1% For Recycling Program for the 1990-91 fiscal year, as submitted by the 1% For Recycling Program Advisory Committee.

Agenda Item No. 7.2
Meeting Date: September 13, 1990

Resolution No. 90-1317

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 90-1317, FOR THE PURPOSE OF APPROVING AN AGREEMENT BETWEEN BURLINGTON NORTHERN RAILROAD COMPANY AND METRO FOR CONSTRUCTION AND MAINTENANCE OF RAILROAD CROSSINGS AT METRO EAST STATION

Date: September 6, 1990

Presented by: Councilor
DeJardin

Committee Recommendation: At the September 4, 1990, meeting the Committee voted unanimously to recommend Council adoption of Resolution No. 90-1317. Voting in favor were Councilors Buchanan, Collier, DeJardin, Saucy and Wyers.

Committee Issues/Discussion: James Watkins, Engineering & Analysis Manager, explained that the Public Utilities Commission is requiring construction of protective devices at the North and South entrances to Metro East Station. Under the proposed agreement, Metro agrees to pay Burlington Northern to construct and maintain the automatic gates and flashing light signals at the South entrance. Trans Industries has separately agreed to pay Metro not only for these construction costs, but also for construction of a traffic signal at the North entrance, and to pay maintenance costs as long as Trans Industries operates the facility.

Although Trans Industries is bearing these expenses, Burlington Northern will enter into an agreement only with Metro in its capacity as the long-term owner.

Construction costs are estimated at \$118,000 with annual track and signal maintenance costs estimated at \$8,000. After Trans Industries' operating contract expires, Metro will pay the annual maintenance costs directly to Burlington Northern.

The Committee had no questions or comments about the resolution and voted unanimously to recommend Council adoption.

TD:KF:pa

90-1317.RPT

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING	)	RESOLUTION NO. 90-1317
AN AGREEMENT BETWEEN BURLINGTON)	
NORTHERN RAILROAD COMPANY AND	)	Introduced by Rena Cusma,
METRO FOR CONSTRUCTION AND	)	Executive Officer
MAINTENANCE OF RAILROAD CROSSINGS)	
AT METRO EAST STATION)	

WHEREAS, Resolution No. 89-1169A authorized the award of contracts to Trans Industries for construction and operation of the Metro East Station ; and

WHEREAS, The Public Utility Commission of Oregon requires that, at the railway crossings at the two entrances to Metro East Station, grade crossings be constructed and maintained, and protective devices be installed and maintained; and

WHEREAS, Trans Industries has agreed to pay for materials and labor for installation of the required crossing work and to also pay for maintenance costs during the period of their existing operations contract; and

WHEREAS, Burlington Northern Railroad Company has submitted a letter of agreement to Metro (hereto attached as Attachment A and hereinafter referred to as the "Burlington Northern Agreement") detailing the estimated costs of construction and maintenance of the portion of the required work that Burlington Northern will perform; and

WHEREAS, Metro General Counsel has reviewed the Burlington Northern Agreement and recommends its execution; and

WHEREAS, Metro Council approval is required because the agreement commits the District to expenditures for maintenance in future years [Metro Code 2.04.033 (a)]; 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 Executive Officer is authorized to execute the agreement, hereto attached as Attachment A, with Burlington Northern Railroad Company for construction and maintenance of railroad crossings at Metro East Station.

ADOPTED by the Council of the Metropolitan Service District the _____ day of _____, 1990.

Tanya Collier, Presiding Officer



BURLINGTON NORTHERN RAILROAD

PACIFIC DIVISION

2200 First Interstate Center
999 Third Avenue
Seattle, WA 98104-1105

Mr. Bob Martin
Metro Solid Waste Director
2000 SW First Avenue
Portland, OR 97201-5398

July 30, 1990

Dear Mr. Martin:

The Metropolitan Service District of Portland, Oregon, is sponsoring a project to construct two driveway crossings of Burlington Northern trackage adjacent to the west edge of NW 61st Street between NW Culebra Street and NW Front Street at Willbridge (Portland) Oregon.

This is an agreement between the Metropolitan Service District of Portland, hereinafter called "Metro", and the Burlington Northern Railroad Company hereinafter called the "Railway".

60
Metro desires to construct a 60-foot wide crossing with automatic flashing light signals and gates at the south crossing as shown on Exhibit A sketch attached and a 60-foot wide crossing with a signal interconnection to the adjacent traffic light at the north crossing, as shown on Exhibit A-1 sketch attached.

The grade crossing surface for each of the two above crossings will be furnished by Metro. Metro intends to purchase "OMNI" shimless rubber crossings and furnish that material to the Railway for installation.

60
Railway work is required for accomplishment of the Metro project. Railway work includes signal work, track rehabilitation and placement of the rubber crossing surface material at each of the two planned crossings. All Railway work to be done under terms of this agreement will be done at Metro expense. Attached are estimates of cost for Railway work to be done at Metro expense amounting to a total estimated cost of \$122,500 not including flagging (\$76,799--signal work and \$45,800--track work). The estimate is provided for information only and all construction billings made by the Railway to Metro will be for actual cost of the work performed.

\$41,200
\$117,999 Jmc .

Flagging and other protective services or devices may be required for the project at the discretion of our Roadmaster in Vancouver, Washington. The Roadmaster should have 72 hours' notice in advance of any work affecting Railway property or operations. We would expect the Railway to bill Metro for any flagging or protective service cost, and that Metro would promptly pay such billing. Flagging charges would be approximately \$13.50 per hour, per man, per eight hour day, plus additives. Additives amount to approximately 55 percent of direct labor charges.

Mr. Bob Martin
July 30, 1990
Page 2

On completion of the project, Metro, at its sole cost and expense, shall maintain all improvements, other appurtenances, advance warning signs and pavement markings, with the exception of the crossing which will be maintained by the Railway at Metro's expense.

Jac Metro will reimburse the Railway for 100 percent of the annual crossing maintenance cost, including the cost of removal and reinstallation of the crossing surface material for periodic track maintenance work as well as renewals as required, amounting to \$15 per track foot for the crossings installed under this agreement. The crossings in this project amount to ~~154~~ ¹²⁰ track feet at \$15 per foot equals ~~\$2,310~~ ^{\$1,800} annual maintenance cost based on 1989 costs. Adjustments to the annual maintenance charge will be made annually commencing July 1, 1991, and will be based upon the percentage of change in the Association of American Railroads' Cost Recovery Index Series RCR (1977 equals 100), Table A for the Western District Material Prices, Wage Rates and Supplements Combined (excluding fuel), or successor index mutually agreed upon by the parties, from the year 1989 which shall be used as a base year for the calendar year immediately prior to the year in which the change is to be made effective.

Upon completion of the installation of crossing signal equipment, the Railway shall thereafter operate and maintain said equipment in accordance with normal operating procedures and requirements. Metro will reimburse the Railway for 100 percent of the annual maintenance cost based upon the Association of Railroads' (AAR) Maintenance Cost Recovery Index. Signal equipment in this proposed installation contains 39 AAR units (two units in the north crossing signal interconnection and 37 units in the south crossing signal system) and the annual maintenance cost is \$151.97 per AAR unit based upon 1987 costs. Adjustments to the annual maintenance cost will be made based upon the percentage of change in the Association of American Railroads' Cost Recovery Index.

In the event the signal systems installed under this agreement are partially or wholly destroyed and the cost of repair or replacement cannot be recovered from the person or persons responsible for such destruction, then, in that event the cost of repair or replacement shall be borne by Metro.

Either party hereto may assign any receivables due them under this agreement provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this agreement.

Mr. Bob Martin
July 30, 1990
Page 3

If Metro agrees to the above conditions, please have the proper official of Metro execute duplicate copies of this letter form of agreement in the space provided and return one copy of the fully executed agreement for my further handling.

Sincerely,


G. E. Haug
Division Engineer

By: C. A. Lundgren
Public Works Engineer

CAL/jl2790fb02

Att.

cc: Mr. R. J. Frazier
Mr. R. L. Boyce

File: Portland, Oregon--Metro Waste Transfer Crossings of the
61st Street Spur Track

File: AFE 90-1865

METRO

By: _____

Title: _____

WILLBRIDGE ORE.

HIGHWAY GRADE CROSSING - NO. & SO. XINGS.
 BNRR TRACKS MILE POST - 4.21 (DOT NO.)
 TYPE OF WARNING DEVICE - FL/GATES(EM)
 TYPE OF SIGNAL CONTROL - MOTION(SO.) + INTER-TIE(NO.)
 BN LINE SEGMENT NUMBER -

 CHARGE ACCOUNT 709 - ACCURED ACCOUNTS RECEIVABLE
 CONSTRUCTION EXPENDITURES - REIMBURSABLE

BASIC ESTIMATE	LABOR	MATERIAL
HCS-3 FLASHING LIGHT SIGS. W/GATES(EM TYPE)	2500	22000
OVERLAY TRACK CIRCUIT W/CASE	1200	4500
HCS-9 PMD-2 MOTION DETECTOR(BI-DIRECTIONAL)ST	3000	17750
1-WAY ASSEMBLY F/EM GATE	200	700
ELECTRICAL POWER SERVICE	1200	800
TRAFFIC SIGNAL INTERCONNECTION	120	300
MISC. LABOR/MAT'L.	250	500

ADDITIVES		
PURCHASE AND STORE EXPENSE		4451
FREIGHT ON MATERIAL		466
RENTAL OF EQUIPMENT		2118
ENGINEERING-CONSTRUCTION	423	
ENGINEERING-PRELIMINARY	1694	
PREPARATION OF BILLS	848	
LIABILITY INSURANCE		1711
EXPENSES		847
LABOR SURCHARGE	6428	

SUB TOTALS	\$ 17863	\$ 56143
		17863

TOTAL ACCOUNT - 709		\$ 74006
---------------------	--	----------

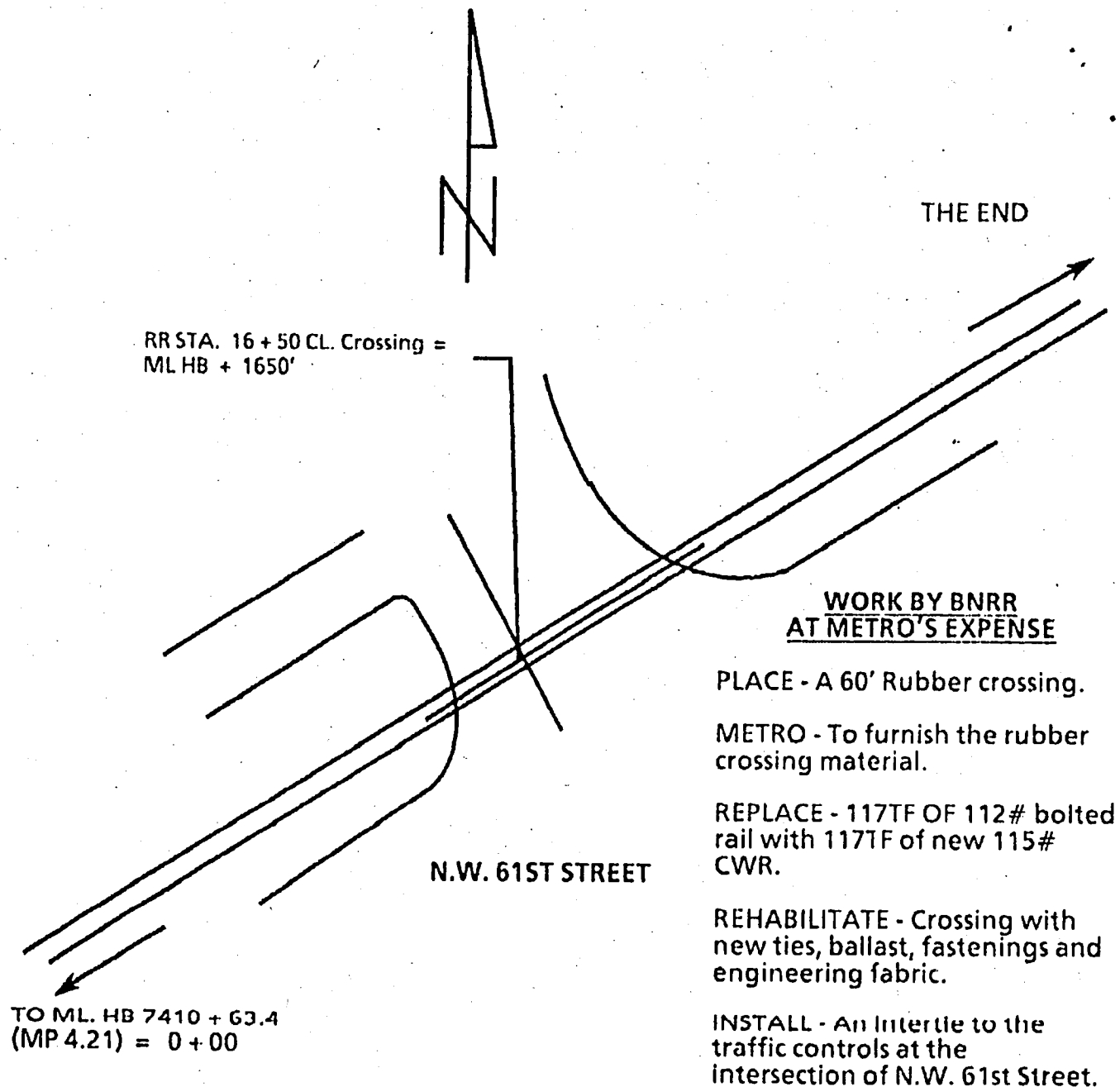
CHARGE ACCT. 761 - USE TAX STATE AND PROVIDENCE
 STATE TAX

		2793
TOTAL COST		\$ 76799
LESS SALVAGE		0

NET COST OF PROJECT		\$ 76799
---------------------	--	----------

OFFICE OF:
 ENGINEER COMMUNICATIONS AND CONTROL SYSTEMS
 NORTHERN REGION
 ST PAUL MINNESOTA
 05-09-1990

Cost Estimate
Signal Work - Metro Driveways
(North & South Crossings)
N.W. 61st Street
Willbridge, OR.

**EXHIBIT 'A-1'**

BN RAILROAD CO.

NORTHERN REGION - PACIFIC DIVISION

**CONSTRUCT XING & INSTALL INTERTIE AT
DRIVEWAY / N.W. 61ST STREET
(NORTH CROSSING)
WILLBRIDGE, OREGON.**

NO SCALE

SUPT. MAINT. & ENGINEERING - SEATTLE, WA. - 7-5-90

REVISED 8-24-90

AFE ESTIMATE SHEET BURLINGTON NORTHERN RAILROAD

Cost Estimate for track work
Metro Driveway North Crossing-NW 61ST. St.

		RFA No. North Xing		
		Sheet No. 1 of 2		
Description		Labor	Material	Total
<u>LINE SEGMENT NO. 0646</u>				
Construct North Crossing at Willbridge, OR				
Pacific Division	5th Sub.			
Acct. 709 - Accrued Accounts Receivable				
Preliminary Engineering		200		
Construction Engineering		400		
Excavate & Place Engineering Fabric - 100'		785	250	
Renew 65 Cross Ties No. 5		920	1,173	
Relay 117 Feet of Track		470		
234 LF New 115# CWR			1,996	
4 Plant Welds (Laurel)			152	
130 Tie Plates			330	
482 Track Spikes 5/8" X 6"			102	
250 Rail Anchors 115#			180	
4 Compromise Joints 115/112			374	
12 Track Bolts 1 1/8" X 6"			20	
12 Track Bolts 1 1/16" X 6"			15	
12 Lock Washers 1 1/8"			4	
12 Lock Washers 1 1/16"			3	
130 Cu. Yds. of Crushed Rock (160 Tons)			778	
Surface Line & Tamp Track		630		
Place 60' Rubber Crossing		1,350		

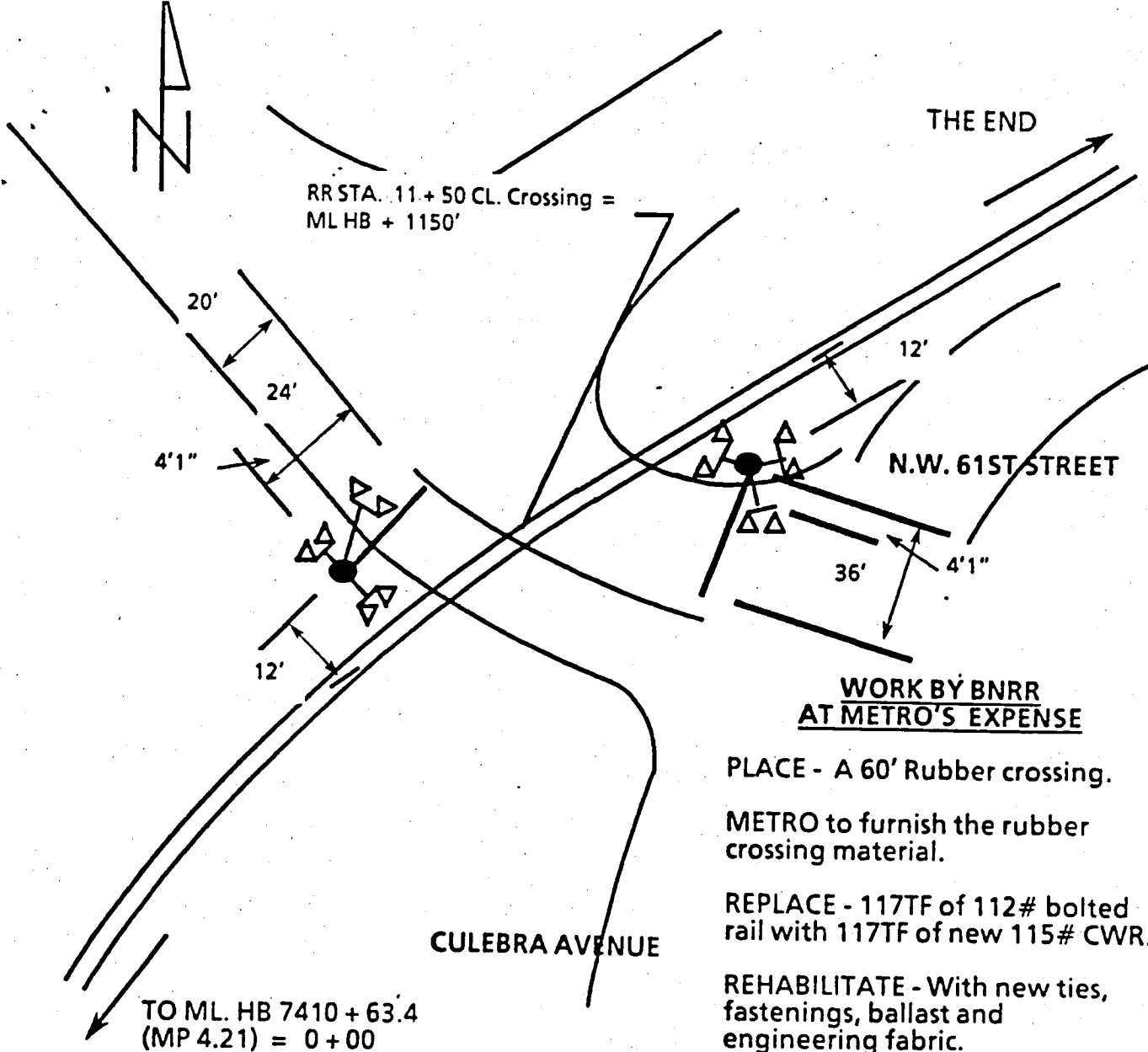
AFE ESTIMATE SHEET



BURLINGTON
NORTHERN
RAILROAD

Cost Estimate for track work
METRO Driveway North Crossing - NW 61st St.

Description		RFA No. North Xing		
		Sheet No. 2 of 2		
Description		Labor	Material	Total
Unload Material		200		
Load Salvage		100		
Work Train Service		220		
Material Handling - 9.50%	5,377		514	
Transportation			538	
Equipment Rental - 37%	5,275		1,952	
Business Expense - 30%	5,237		1,583	
Accounting - 5%	5,237	264		
Labor Additives		2,996		
70.41% @ 600 = 422				
51.02% @ 317 = 135				
52.51% @ 5,445 = 2,339				
45.57% @ 300 = 100				
Liability Insurance			528	
Salvage Credit			(350)	
Contingencies		865	1,058	
Total Acct. 709		9,400	11,200	20,600
DTJ 6/29/90 revised 8/24/90				



**WORK BY BNRR
AT METRO'S EXPENSE**

PLACE - A 60' Rubber crossing.

METRO to furnish the rubber crossing material.

REPLACE - 117TF of 112# bolted rail with 117TF of new 115# CWR.

REHABILITATE - With new ties, fastenings, ballast and engineering fabric.

INSTALL - Automatic flashing light traffic control devices, shoulder mount type, with gates and motion sensing devices.

EXHIBIT 'A'

BN RAILROAD CO.

NORTHERN REGION - PACIFIC DIVISION

CONSTRUCT XING & SIGNALIZE DRIVEWAY

N.W. 61ST STREET (SOUTH CROSSING)

WILLBRIDGE, OREGON.

NO SCALE

SUPT. MAINT. & ENGINEERING - SEATTLE, WA. - 7-6-90

AFE ESTIMATE SHEET BURLINGTON NORTHERN RAILROAD

Cost Estimate for Track Work
Metro Driveway South Crossing - NW 41st Street

RFA No. *South Xing*

Sheet No. 1 of 2

Description		Labor	Material	Total
<u>LINE SEGMENT NO. 0646</u>				
Construct South Crossing at Willbridge, OR				
Pacific Division	5th Sub.			
Acct. 709 - Accrued Accounts Receivable				
Preliminary Engineering		200		
Construction Engineering		400		
Excavate & Place Engineering Fabric - 100'		785	250	
Renew 65 Cross Ties No. 5		920	1,173	
Relay 117 Feet of Track		470		
234 LF New 115# CWR			1,996	
4 Plant Welds (Laurel)			152	
130 Tie Plates			330	
482 Track Spikes 5/8" X 6"			102	
250 Rail Anchors 115#			180	
4 Compromise Joints 115/112			374	
12 Track Bolts 1 1/8" X 6"			20	
12 Track Bolts 1 1/16" X 6"			15	
12 Lock Washers 1 1/8"			4	
12 Lock Washers 1 1/16"			3	
130 Cu. Yds. of Crushed Rock (160 Tons)			778	
Surface Line & Tamp Track		630		
Place 60' Rubber Crossing		1,350		

AFE ESTIMATE SHEET



BURLINGTON
NORTHERN
RAILROAD

*Cost Estimate for Track Work
Metro Driveway South Crossing - N.W. 61st Street*

RFA No. *South King*

Sheet No. 2 of 2

Description		Labor	Material	Total
Unload Material		200		
Load Salvage		100		
Work Train Service		220		
Material Handling - 9.56%	5,377		514	
Transportation			538	
Equipment Rental - 37%	5,275		1,952	
Business Expense - 30%	5,275		1,583	
Accounting - 5%	5,275	264		
Labor Additives		2,996		
70.41% @ 600 = 422				
51.02% @ 264 = 135				
52.51% @ 4,455 = 2,339				
45.57% @ 220 = 100				
Liability Insurance			528	
Salvage Credit			(350)	
Contingencies		865	1,058	
Total Acct. 709		9,400	11,200	20,600
DTJ 6/29/90				

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1317 FOR THE PURPOSE OF APPROVING AN AGREEMENT BETWEEN BURLINGTON NORTHERN RAILROAD COMPANY AND METRO FOR CONSTRUCTION AND MAINTENANCE OF RAILROAD CROSSINGS AT METRO EAST STATION

Date: September 4, 1990

Presented by: Bob Martin

PROPOSED ACTION

Approval of an agreement with Burlington Northern Railroad Company for construction and maintenance of railroad crossings at Metro East Station.

BACKGROUND AND ANALYSIS

The Public Utility Commission is requiring the construction of protective devices and grade crossings at the north and south entrances to the Metro East Station. The north entrance - the primary access to the site - will be protected by a traffic signal. The south entrance will be protected by automatic gates and flashing light signals. Additional work required includes an electronic intertie between the railroad tracks and the traffic signal, track rehabilitation, and placement of rubber surface materials at each crossing.

The City of Portland is filing the application for the PUC permit. Trans Industries and their subcontractor CH2M-Hill have worked closely with both the City and Burlington Northern in preparing the application. The application is currently out for final review and comment to Multnomah County, Burlington Northern, Metro, Trans Industries, and the Oregon Department of Transportation.

The agreement between Metro and Burlington Northern addressed in Resolution 90-1317 obligates Metro to pay for construction and maintenance of that portion of the crossing work to be performed by Burlington Northern. The portion of the work not included within this agreement is the equipment and installation costs for the traffic signal at the north entrance. The signal purchase and installation will be done under the subcontract for the reconstruction of NW 61st Ave.

In keeping with their testimony before the Metro Council, Trans Industries has agreed to pay material and labor costs for both the Burlington Northern work and the traffic signal. Trans Industries has also agreed to pay the Burlington Northern maintenance costs for the duration of their operations contract (three to five years).

Burlington Northern has estimated the materials and labor costs

for work on both entrances at \$117,999. The annual costs for track maintenance is estimated at \$1,800. The annual cost for signal equipment maintenance is estimated at \$5,927.

Staff plans that under future operations contracts for Metro East Station Metro will pay the maintenance costs.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 90-1317.

Agenda Item No. 7.3
Meeting Date: September 13, 1990

Resolution No. 90-1318

INTERGOVERNMENTAL RELATIONS COMMITTEE REPORT

RESOLUTION NO. 90-1318, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF COMPETITIVE BIDDING PURSUANT TO METRO CODE 2.04.060 AND APPROVING A SOLE SOURCE AGREEMENT WITH CEIP

Date: August 29, 1990

Presented by: Councilor Gardner

COMMITTEE RECOMMENDATION: At the August 28, 1990, Intergovernmental Relations Committee meeting, Councilors Bauer, Devlin, Hansen and myself voted unanimously to recommend Council adopt Resolution No. 90-1318. Councilor McFarland was excused.

COMMITTEE DISCUSSION/ISSUES: Transportation Department Director Andy Cotugno presented Resolution No. 90-1318 which approves a sole source contract with CEIP to provide a one-year intern for the RLIS (Regional Land Information System) project.

CEIP is the only non-profit firm specializing in recruiting and placing college students and young professionals in the environmental field. Transportation has used CEIP to locate summer interns because it is less expensive than the department hiring staff directly and the placement results have been excellent. The department's FY90-91 budget includes funds for the proposed RLIS intern, whose primary work would be to support Council reapportionment. The Committee did not raise any questions or concerns regarding the contract or project.

jpmsix
a:\901318.cr

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 90-1318
EXEMPTION TO THE REQUIREMENT OF) Introduced by Rena Cusma,
COMPETITIVE BIDDING PURSUANT TO) Executive Officer
METRO CODE 2.04.060 AND APPROVING)
A SOLE SOURCE AGREEMENT WITH CEIP)

WHEREAS, The Transportation Data Resource Center has a special one-year project to reapportion the Metro Council districts; and

WHEREAS, For several years the Department has hired special project interns through the CEIP organization; and

WHEREAS, The CEIP is the only organization of its type in the nation; and

WHEREAS, A definite cost savings will be realized by hiring an intern through this organization; now, therefore,

BE IT RESOLVED:

That the Council of the Metropolitan Service District exempts the sole-source agreement between CEIP and Metro from the competitive bidding process and approves the agreement attached as Exhibit A for a one-year period.

ADOPTED by the Council of the Metropolitan Service District this ____ day of _____, 1989.

Tanya Collier, Presiding Officer

AGREEMENT
THE CEIP FUND, INC.

THIS AGREEMENT, made and entered into between EIP/ , hereinafter called EIP, a division of The CEIP Fund, Inc., a Massachusetts corporation, and the Metropolitan Service District , hereinafter called the "Contractor."

WHEREAS, EIP desires to promote professional development through assignment of individuals on a short-term basis with agencies, organizations and corporations and,

WHEREAS, the Contractor has projects to complete and believes that it can provide a reasonable learning situation for such individuals on the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, EIP and the Contractor agree as follows:

1. TERM

The term of this Agreement shall be for a 39-week period to occur within the dates of October 1, 1990 - June 30, 1991 , plus a suitable period prior to these dates for referral of candidates.

2. DUTIES OF CONTRACTOR

- a. The Contractor agrees to review candidates referred by EIP for the project involving GIS software work in support of tasks carried out by the Data Resource Center in re-apportioning Metro Council districts using census data.
- b. The Contractor agrees to supervise the Associate assigned by EIP who is acceptable to Contractor for the term set forth in Section 1 of this Agreement, and to allow the Associate to attend EIP meetings which are a part of EIP's educational program, which is one business day plus suitable travel time.
- c. The Contractor agrees to reimburse said Associate for out-of-pocket expenses, such as for project-related travel and materials, when such expenses are required for the satisfactory completion of the project, and have been approved by the Contractor.

3. DUTIES OF EIP

- a. EIP agrees to screen candidates from its applicant pool and to refer to Contractor its most qualified candidates for Contractor's review.
- b. EIP agrees to assign an Associate acceptable to Contractor for the term set forth in Section 1 of this Agreement, and to pay the Associate \$ 320.00 per week on a bi-weekly basis for 39 weeks.
- c. EIP agrees to provide to the Associate, at various times throughout the year, regional meetings, seminars where geographically feasible, and on-site visits, as a part of its educational programs.
- d. EIP shall have no liability to the Contractor for failure to supply suitable candidates.

4. COST

The total cost of the Associate project to Contractor shall be \$15,049.00 , which represents the total of the compensation, payroll taxes and insurance for said Associate, plus an administrative fee of \$ 3,483.00 relating to the recruitment for and administration of the project. The preparation and filing of withholding statements and similar forms are payroll matters which are solely the responsibility of EIP. In the event that a candidate referred by EIP is hired by Contractor independently, either to avoid participation in EIP or to enroll said Associate on Contractor's payroll, Contractor shall be liable for the portion of the cost relating to the administrative fee.

5. PAYMENT BY CONTRACTOR

No invoice shall be submitted to Contractor until an Associate is assigned. Upon assignment of Associate, represented by submission to Contractor of a copy of a letter confirming assignment of the Associate with Contractor signed by EIP, Contractor shall become liable for payment of a deposit of no less than the administrative fee plus four week's salary and taxes of the Associate. The remaining portion of the total cost is due at regular intervals and payable in full no later than completion of Associate project. Payment from contractor shall always be within thirty (30) days of the date of an EIP invoice. In the event that a balance remains due for a period greater than 45 days from the invoice date, Contractor becomes liable for finance charges of 2% above the prime rate determined by starting 30 days after the invoice date.

6. INSURANCE

During the performance of services described in this Agreement, EIP shall cover the Associate by workers' compensation policy in accordance with the requirements of the state in which the Associate is assigned, and by an employer's liability policy limited to the amount of \$1,000,000. Any liability in excess of this amount required by Contractor shall be the responsibility of the Contractor.

7. TERMINATION

Without waiving any other rights it may have, EIP reserves the right to recall the Associate in the event of failure by the Contractor to perform any of its obligations herein. Contractor may, if it reasonably determines that the Associate is inadequately or incompetently performing the work assigned pursuant to this Agreement, send written notice of intent to terminate ten (10) days in advance, along with election as to whether or not it wishes work to be continued on the project through the assignment of another individual. If Contractor elects not to continue, this Agreement shall terminate and any amount due from Contractor as set forth in Section 4 shall be adjusted accordingly. Any payments made by Contractor in excess of that required for the compensation of the Associate for work to date shall be adjusted and refunded to Contractor. If Contractor elects to terminate, or if the Associate works on the project less than four (4) weeks of the term, Contractor is liable for a reduced administrative fee of \$500. If said notice is accompanied by the Contractor's election to have work continued (or no such election accompanies said notice), EIP shall make reasonable efforts to refer other candidates to the Contractor for the unexpired portion of the term. EIP shall make reasonable efforts to refer other candidates if the Associate for any other reason fails to complete the term. EIP shall have no liability to the Contractor for failure to provide additional candidates or for unsatisfactory work performed by any Associate. If Associate project lasts more than four (4) weeks, Contractor is liable for the full administrative fee.

8. ACKNOWLEDGEMENT

Publication of any work by the Contractor (direct or indirect) of the Associate's efforts shall include, when appropriate, acknowledgement of the participation of EIP and proper credit to said Associate. Any publication shall be at the sole discretion of the Contractor.

9. INFORMATION DISCLOSURE

In the course of the Associate's assignment, the Associate might have exposure and/or access to valuable proprietary and confidential information of the Contractor. Contractor shall be responsible for obtaining and enforcing any agreement concerning proprietary information from the Associate.

10. REFERRAL OF CANDIDATES

Candidates for projects will be referred without regard to race, age, religion, national origin, political or union affiliation, marital status or sex. Physical or mental handicaps will be considered only as they may relate to bona fide job requirements.

11. RIGHT TO AMENDMENTS

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on

Contractor

Regional Director, EIP

by

(Title)

Date

Date

EXHIBIT A

to the
A G R E E M E N T
between
THE CEIP FUND, INC.
and
METROPOLITAN SERVICE DISTRICT

1. CEIP agrees to indemnify and hold harmless Contractor, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney fees, arising out of or in any way connected with CEIP's performance of this agreement and the performance of any CEIP Associate assigned to Contractor by CEIP.
2. Contractor shall have the right to terminate this agreement and to suspend any CEIP Associate assigned to it immediately and without notice in the event that such Associate's behavior or actions would be grounds for termination or suspension under Contractor's Personnel Rules.



GRANT/CONTRACT SUMMARY

METROPOLITAN SERVICE DISTRICT

GRANT/CONTRACT NO. 901 371 BUDGET CODE NO. 140 121100 524190
 FUND: _____ DEPARTMENT: Trans (IF MORE THAN ONE) _____
 SOURCE CODE (IF REVENUE) _____

INSTRUCTIONS

- OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
- COMPLETE SUMMARY FORM.
- IF CONTRACT IS —
 - SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
 - UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
 - OVER \$2,500, ATTACH QUOTES, EVAL. FORM, NOTIFICATION OF REJECTION, ETC.
 - OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, RFP, ETC.
- PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING

1. PURPOSE OF GRANT/CONTRACT CEIP Intern for Council Reapportionment

2. TYPE OF EXPENSE ☒ PERSONAL SERVICES ☐ LABOR AND MATERIALS ☐ PROCUREMENT
☐ PASS THROUGH AGREEMENT ☐ INTER-GOVERNMENTAL AGREEMENT ☐ CONSTRUCTION
☐ OTHER

OR

TYPE OF REVENUE ☐ GRANT ☐ CONTRACT ☐ OTHER

3. TYPE OF ACTION ☒ CHANGE IN COST ☐ CHANGE IN WORK SCOPE
☒ CHANGE IN TIMING ☐ NEW CONTRACT

4. PARTIES Metro / CEIP

5. EFFECTIVE DATE 7-20-90 TERMINATION DATE 6-30-91
 (THIS IS A CHANGE FROM 9-21-90)

6. EXTENT OF TOTAL COMMITMENT: ORIGINAL/NEW \$ 62,430.00
 PREV. AMEND _____
 THIS AMEND 18,532
 TOTAL \$ 24,775.00

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1989 \$ 24,775.00
 B. BUDGET LINE ITEM NAME Misc. Prof. Svc AMOUNT APPROPRIATED FOR CONTRACT \$ 24,775.00
 C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF _____, 19____ \$ _____

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

SUBMITTED BY _____	\$ _____	<input type="checkbox"/> MBE
AMOUNT		
SUBMITTED BY _____	\$ _____	<input type="checkbox"/> MBE
AMOUNT		
SUBMITTED BY _____	\$ _____	<input type="checkbox"/> MBE
AMOUNT		

9. NUMBER AND LOCATION OF ORIGINALS _____

10. A. APPROVED BY STATE/FEDERAL AGENCIES? ☐ YES ☐ NO ☒ NOT APPLICABLE
B. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT ☐ YES ☒ NO
11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS? ☐ YES ☐ NO
IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION _____
12. WILL INSURANCE CERTIFICATE BE REQUIRED? ☐ YES ☒ NO
13. WERE BID AND PERFORMANCE BONDS SUBMITTED? ☐ YES ☒ NOT APPLICABLE
TYPE OF BOND _____ AMOUNT \$ _____
TYPE OF BOND _____ AMOUNT \$ _____
14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)
- | | | |
|------------|---------------|------------------------------|
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
15. IF THE CONTRACT IS OVER \$10,000
A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?
☒ YES ☐ NO
B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?
☐ YES DATE _____ INITIAL _____
16. COMMENTS:

GRANT/CONTRACT APPROVAL

INTERNAL REVIEW

A. Colquhoun
DEPARTMENT HEAD

Donald S. Craft
FISCAL REVIEW 8/21/90

BUDGET REVIEW _____

CONTRACT REVIEW BOARD

(IF REQUIRED) DATE _____

1. _____
COUNCILOR
2. _____
COUNCILOR
3. _____
COUNCILOR

COUNCIL REVIEW

(IF REQUIRED)

DATE _____

LEGAL COUNSEL REVIEW AS NEEDED:

- A. DEVIATION TO CONTRACT FORM _____
- B. CONTRACTS OVER \$10,000 _____
- C. CONTRACTS BETWEEN GOVERNMENT AGENCIES _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1318 FOR THE PURPOSE
OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF COM-
PETITIVE BIDDING PURSUANT TO METRO CODE 2.04.060 AND
APPROVING A SOLE SOURCE AGREEMENT WITH CEIP

Date: August 21, 1990

Presented by: Andrew Cotugno

PROPOSED ACTION

Exemption of a one-year sole-source agreement with the CEIP for an intern to do a special RLIS project from the competitive bidding process and approval of the agreement, as shown in Exhibit A to the resolution.

ACTUAL BACKGROUND AND ANALYSIS

For several years the Transportation Department summer intern program has been staffed by college students and young professionals employed by CEIP.

CEIP is the only nonprofit environmental intern program in the nation. CEIP screens and employs these young people while they work for us. It is a national organization and attracts applicants throughout the country.

CEIP/Pacific Northwest has been sole-source approved by Tri-Met, the Washington State Department of Transportation, City of Seattle, Seattle Metro, King County, National Park Service and others. There is no similar organization in the Portland region.

The benefits to us are that we do not have to advertise or screen applicants and are able to interview and choose people that best suit our needs from a nationwide pool. We pay CEIP an hourly wage rate and administrative fee that includes fringes and insurance.

One Assistant Transportation Planner over the 52-week period working 40 hours per week at \$8.00/hour would cost the department \$32,528 if hired as a Metro employee directly (excluding recruitment costs). The CEIP costs including administrative fee are \$24,775.

The Transportation Department has committed to completing the Council redistricting by June 1991. Another staff person is essential to that effort and was provided for in the FY 90-91

budget as an intern provided by CEIP. Contracting with CEIP allows us to have the best person with an economy of time and expense.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 90-1318.

Agenda Item No. 7.5
Meeting Date: September 13, 1990

Resolution No. 90-1310



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: September 9, 1990

TO: Metro Council

FROM: Karla Forsythe, Council Analyst *KF*

RE: RESOLUTION NO. 90-1310, FOR THE PURPOSE OF AWARDED A CONTRACT TO SHREDDING SYSTEMS, INC. FOR DESIGN, MANUFACTURE AND INSTALLATION OF A COMPACTION SYSTEM AT METRO SOUTH STATION

The Solid Waste Committee at its August 21, 1990, meeting voted to recommend approval of this resolution, thereby recommending approval of a proposed contract award for a second compaction system at Metro South Station to Shredding Systems, Inc. (SSI).

By letter dated August 24, 1990, AMFAB appealed the Notice of Award issued on August 20, 1990. On September 4, 1990, the Executive Officer rejected the appeal. Staff has been advised that AMFAB will appeal the Executive Officer's decision to the Council in its capacity as the Contract Review Board. In accordance with Code provisions, the appeal must be filed no later than Tuesday, September 11, 1990. However, no appeal documents have been filed as of the date of this memorandum.

The appeal and the resolution (if the appeal is denied) will come before the Council at the September 13, 1990, meeting. Materials included for your review at this time include Resolution No. 90-1310 and the proposed contract with SSI, the Committee report, the staff report, AMFAB's appeal of the contract award, and the letter from the Executive Officer rejecting the appeal. The appeal documents will be distributed to you as soon as they are received.

KF:pa

90-1310.MEM

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1310, FOR THE PURPOSE OF AWARDING A CONTRACT TO SHREDDING SYSTEMS, INC. FOR DESIGN, MANUFACTURE AND INSTALLATION OF A COMPACTION SYSTEM AT METRO SOUTH STATION

Date: September 6, 1990

Presented by: Councilor
DeJardin

Committee Recommendation: At the August 21, 1990, Solid Waste Committee meeting the four Councilors present (Buchanan, Collier, Wyers and myself), voted unanimously to recommend Council adoption of Resolution No. 90-1310, awarding a compaction system contract at Metro South Station to Shredding Systems, Inc. (SSI).

Committee Issues/Discussion: Chuck Geyer, Solid Waste Planner, presented staff's report in support of the resolution. He explained that an AMFAB compaction system currently is in operation at Metro South Station. It was procured through an RFP. During that procurement process, AMFAB proposed a one-bale system; SSI proposed a two-bale system. The contract was awarded to AMFAB, primarily because the RFP evaluation criteria gave weight to a vendor who had an existing system.

In order to provide system back-up and improve efficiency, Metro South Station is now procuring a second compaction system for Metro South. An RFP for the second system was issued in May, 1990. In preparing the RFP documents, staff changed the technical specifications from the first RFP to increase the average bale weight and push distance. Staff also revised the evaluation criteria. Specifically, staff evaluated technical compliance on a pass/fail basis instead of awarding points, and added three new criteria: Long-term risk assessment, warranties, and compatibility with the existing system. The revised criteria allowed a vendor such as SSI, who does not have a two-bale compaction system in operation, to make up for a lack of specific system experience by proposing more favorable terms in other areas. The RFP was approved by the Council prior to issuance.

AMFAB responded to the RFP by proposing a one-bale system similar to the one already installed at Metro South. SSI responded by proposing a two-bale system, similar to the system proposed in response to the first RFP, but with some design modifications.

Staff reviewed the proposals and found both vendors could comply with technical specifications. AMFAB was awarded points for operational reliability based on a review of its existing compaction system, while SSI received no points. With regard to warranties, Mr. Geyer clarified that staff had incorrectly stated that SSI warranted all components. In fact, neither firm warranted wear items. However, on manufactured items, SSI offered a two-year warranty; AMFAB offered one year. SSI also

offered additional warranties of merchantability and implied fitness.

Staff rated both vendors equal in operational compatibility. AMFAB could show compatibility based on its existing system; SSI proposed to address compatibility by installing a computerized control system. SSI was awarded more points for cost, since it proposed a figure of \$573,000 compared to AMFAB's proposed figure of \$629,396.

Mr. Geyer explained that risk assessment was the most complex criteria. Staff determined that SSI provided adequate indemnification for potential claims from Jack Gray Transport (JGT), whereas AMFAB offered no indemnification.

Staff said that the two proposals were virtually tied after scoring. As a way of differentiating between them, staff prepared final contract language and informed the vendors that their responses would be used in the evaluation. SSI proposed two changes, both denied by staff. AMFAB proposed 20 changes, some acceptable to staff, some not. Overall, staff determined that terms agreeable to SSI offered more protection to Metro.

The Committee asked staff for additional detail about several issues. The Committee asked staff to address concerns that the two-bale system would cause damage. Mr. Geyer explained the concern was that the bales will bulge and push out trailer walls. He said SSI addressed this concern by making a design change to the system which it had proposed in response to the first RFP. He noted that the RFP did not specify a single-bale system.

Staff clarified that SSI's original price was adjusted upward to include \$75,000 in required umbrella insurance coverage.

In response to questions about which vendor demonstrated better compliance with WBE/DBE requirements, staff said that the SSI proposals met the goals by showing adequate funds through subcontractors, while AMFAB showed fewer subcontractor dollars allocated to WBE/DBE and fell below the goal.

Wally Mehrens, Executive Secretary, Building Trades Council, asked whether SSI is a licensed general contractor with expertise in installation. The Committee asked staff and SSI representatives to clarify the issue. Dan Saltzman and Tom Garnier of SSI explained they had reason to believe that Wilhelm Trucking, which will handle installation, is a licensed general contractor.

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Jeff Bachrach and Carl Winans appeared on behalf of AMFAB. They took the position that staff had made a unilateral decision about how to break the tie between the proposals, and failed to fully explain to the vendors that their proposals for final contract language would be used to break the tie. They argued that given a tie, Metro should award the contract to a vendor with a proven one-bale system, rather than risk problems with a new two-bale system. They further argued that since the warranty offered by SSI did not cover many of the components, and that since SSI offered a one-year warranty on third party work which constituted the bulk of the contract, staff should have reduced SSI's points. Mr. Winans also commented that staff incorrectly calculated up time for the AMFAB system. He said that even with the recent design modification, the bulging problem with a two-bale system will lead to progressive failure of the trailers.

Staff explained that the down time calculation included time attributable both to mechanical problems and to machine jamming. Mr. Winans countered that AMFAB should not be penalized for jamming caused by operator-generated overloads.

The Committee inquired about Code provisions which might address how to break a tie. Monica Little, Legal Counsel, said she was not aware of any such provision, but believed the method used by staff is legally defensible. She emphasized that a letter sent to vendors had explained that their proposed final contract language would be used in the evaluation.

The Committee asked why staff chose not to recommend award to the experienced vendor. Staff responded that as a result of the changes in the evaluation criteria, the playing field was levelled. Staff also believed SSI offers superior warranties, although they do not cover all components.

The Committee asked if staff had realized that all components were not covered in the SSI warranty proposals, and whether the change impacted the point award. Staff responded that the SSI offer was still superior, and that the warranty covered manufactured components.

The Committee asked staff about the merits of a two-bale, as opposed to a one-bale, system. Staff explained that both systems were found to meet technical specifications. The systems were not evaluated for comparable merit. Staff also noted that if the SSI system did not perform, SSI could either remove the system or replace it with a one-bale system. If the system must be removed, Metro's money will be refunded, and the first system will serve as a backup. With regard to damage from sloughing or

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bulging, staff believes SSI's indemnification provisions offer protection. If damage occurs, JGT will submit claims, which SSI will pay if the claims exceed the claim amount attributable to the current AMFAB system.

Doug DeVries, JGT Northwest General Manager, responded to Committee questions about potential damage to trucks. He said there are a few strong and valid concerns since there is no data on the two-bale system. He said that although indemnification is a good step, the indemnification covers a five-year period, whereas the trucking contract term is 20 years. The Committee asked staff to clarify what will happen if the system does not perform. Staff said that after six months, if SSI is paying a substantial number of claims, SSI can terminate the contract by removing the system and refunding Metro payments, or replace it with a one-bale system. The Committee asked if Mr. DeVries had reviewed the new design. He said design changes since the first RFP had lessened his firm's concerns, but there was still a lack of data about how the two-bale system will perform. The trucks were designed with a one-bale system in mind.

Mr. Saltzman commented that the decision comes down to discretion and the Council's willingness to accept staff's analysis. Technically, SSI has a .10 point advantage. He said Rabanco has ordered two SSI systems for Metro East. SSI believes diversification reduces risk, and that the two-bale system is superior.

TD:KF:pa

90-1310.RPT

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A	)	RESOLUTION NO. 90-1310
CONTRACT WITH SHREDDING SYSTEMS INC.))	
FOR DESIGN, MANUFACTURE AND	)	Introduced by Rena Cusma
INSTALLATION OF A COMPACTION SYSTEM )	)	Executive Officer
AT METRO SOUTH STATION)	

WHEREAS, On May 24, 1990, the Council of the
Metropolitan Service District authorized issuance of a Request
for Proposals for the Metro South Station Compaction System; and

WHEREAS, Two firms, Shredding Systems Inc. and AMFAB
Resources responded to the Request for Proposals; and

WHEREAS, Based on the lower price, superior warranty,
risk protection and general contractual provisions, Shredding
Systems Inc. is the preferred proposer; now therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District
approves the award of a contract to Shredding Systems Inc.

(EXHIBIT "A") for the Metro South Station Compaction System.

ADOPTED by the Council of the Metropolitan Service
District this _____ day of _____, 1990.

Tanya Collier, Presiding Officer

DRAFT

EXHIBIT "A"

Contract No. _____

PUBLIC CONTRACT

THIS CONTRACT dated this _____ day of _____, 1990, is entered into between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, hereinafter referred to as "METRO," and _____, whose address is _____, hereinafter referred to as the "CONTRACTOR."

BOTH PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment "A." All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for a period commencing _____ through and including _____.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in Attachment "A." METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment "A," or additional work authorized pursuant to Article VI, CHANGES.

ARTICLE IV

LIABILITY AND INDEMNITY

A. General CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify and hold

harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and METRO.

B. Long Term Liability and Indemnity Contractor shall indemnify, defend and hold harmless Metro, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with damage to transport trailers caused by the Contractor's compaction system, to the extent such damage exceeds the damage caused by the existing compaction system at the Metro South Station, as determined by Metro. The comparison of damage between the two systems shall be calculated on a per ton basis, based on claims submitted by transport contractors. Contractor shall promptly pay such claims, as determined by Metro.

After a period of six months from successful completion of Acceptance Testing, Contractor shall submit in writing its decision to pursue one of the following three options: 1) continue to pay damages as determined by Metro; 2) remove the compaction system and refund to Metro all payments made to the Contractor, less reasonable expenses incurred by the Contractor for installation, facility modifications and removal of the system; or 3) remove the system and provide Metro with an alternative single bale compaction system at no additional cost to Metro. If Contractor chooses to provide Metro with an alternative single bale system, Contractor shall submit to Metro a schedule for manufacture and installation of the system, not to exceed ninety-five (95) days from the expiration of the six month period above. The alternative system must meet or exceed the technical specifications contained in the Scope of Work (Attachment "A"), including Acceptance Testing and the resulting removal and refund provisions contained therein.

If Contractor chooses option #1 above, Contractor shall continue to be responsible for such trailer damages as described above for a period not to exceed five years from successful completion of Acceptance Testing, except that Contractor may petition Metro after a period of one year from successful completion of Acceptance Testing to pursue options #2 or #3 above. Metro shall have the option of granting any such petition, except that such granting shall not be unreasonably withheld.

ARTICLE V

TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR fourteen (14) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for all actual and reasonable costs for work performed to the date of termination including direct labor (direct labor cost reimbursement shall be limited to a rate of \$35.00/hr. for skilled labor, \$50.00/hr. for engineering, and \$27.50/hr for drafting services), materials and expenses, plus fifteen (15) percent. A claim shall be presented by the CONTRACTOR within fifteen (15) days of the date of termination, and shall include all documentation to justify the claimed costs. Subject to its right to withhold payments pursuant to Article XIII, METRO shall make payment to CONTRACTOR within thirty (30) days from receipt of such claim, provided that all costs are justified and verified. METRO shall not be liable for indirect or consequential damages resulting from termination of the Contract. Termination by METRO shall not waive any claim or remedies it may have against the CONTRACTOR.

ARTICLE VI

CHANGES

A. METRO Change Orders. METRO may, at any time, without notice to the CONTRACTOR'S surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract

B. Payment or Credit for Additional Work. All requests for payment for additional work shall be made only under the conditions and procedures set forth in this Article. For purposes of this Article, the term "additional work" means work which is in addition to the work required to be performed under the original Contract or any amendments thereof, but does not include any work required to comply with any changes in law, statutes, rules, regulations, ordinances, permit(s) or permit conditions.

C. Request for Proposal for Additional Work.

1. In the event METRO issues a written change order requesting additional work, it shall also send the CONTRACTOR a Request for Proposal (RFP). Within fourteen (14) calendar days after receipt of an RFP for additional work from METRO, the CONTRACTOR shall submit to METRO an itemized proposal stating the actual and reasonable costs to

the CONTRACTOR for performing such additional work, a schedule for performing such work, and the effect, if any, on the CONTRACTOR'S performance of the existing Contract work by reason of the additional work. The CONTRACTOR'S proposal shall be based on the least costly method for performing the additional work in accordance with all provisions of the Contract. The parties hereby agree that the profit margin on all work performed pursuant to this section of Article VI shall be deemed to be ten percent (10%) of the actual cost of performing the work.

2. No request for proposals by METRO shall be construed as authorization for the CONTRACTOR to perform the additional work covered by such RFP. To obtain authorization to perform any additional work, the CONTRACTOR must be notified in writing by METRO that the CONTRACTOR is ordered to proceed with the relevant additional work. In any such written notification METRO shall indicate whether it accepts or rejects the CONTRACTOR'S proposal. If Metro rejects the CONTRACTOR'S proposal but orders the additional work to be performed, the CONTRACTOR shall perform the additional work as force account work as provided in Section D of this Article. If Metro does not order the CONTRACTOR to perform the relevant work, the CONTRACTOR shall not be entitled to any reimbursement for the work in the CONTRACTOR'S proposal or the costs of developing the proposal.

D. Force Account Work. If the amount of payment cannot be agreed upon prior to the beginning of the work, Metro may issue a written Notice to Proceed pursuant to Section C of this Article directing that the work be done on a force account basis. If this occurs, the CONTRACTOR shall furnish labor, equipment, and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

1. Labor, including forepersons who are directly assigned to the force account work (actual payroll cost, including wages, customary fringe benefits, labor insurance, and labor taxes as established by law). No other fixed labor burdens will be considered, unless

approved in writing by METRO in advance of performance of the force account work.

2. Material delivered and used on the designated work, including sales tax, if paid for by the CONTRACTOR or its subcontractor.
3. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of \$100.
4. Additional bonds, as required and approved by METRO.
5. Additional insurance (other than labor insurance, as required and approved by METRO).

To the costs above there shall be added a fixed fee of ten percent (10%) of the cost of Items 1, 2, and 3 and a fixed fee of five percent (5%) to the cost of Items 4 and 5. An additional fixed fee of ten percent (10%) shall be allowed the CONTRACTOR for the administrative handling of portions of the work that are required to be performed by an approved subcontractor. No additional fixed fee will be allowed for the administrative handling of work performed by a subcontractor of a subcontractor. The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other general expense. For equipment under Item 3 above, rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances will be made for those items.

E. METRO Furnished Materials and Equipment. METRO reserves the right to furnish such materials and equipment as it deems expedient for work undertaken pursuant to this Article, and the CONTRACTOR shall have no claims for profit or added fees on the cost of such materials and equipment.

F. CONTRACTOR Records.

1. The CONTRACTOR shall maintain its records in such a manner as to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations. The CONTRACTOR shall furnish METRO with report sheets in duplicate of each day's force account work no later than the working day following the performance of said work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the CONTRACTOR, sub-contractor, or other forces. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment and hours operated.
2. Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the CONTRACTOR or its authorized agent.
3. To receive partial payments and final payment for force account work, the CONTRACTOR shall submit in a manner approved by METRO, detailed and completed documented verification of the CONTRACTOR'S and any of its subcontractors' actual current costs involved in the force account work pursuant to the issuance of an approved Change Order. Such costs shall be submitted within thirty (30) days after said work has been performed.
4. No payment will be made for work billed and submitted to METRO after the 30-day period has expired. No extra or additional work shall be performed by the CONTRACTOR, except in an emergency endangering life or property, unless in pursuance of a written Change Order and Notice to Proceed as described in this Article.

G. Deductions from Payments for Deleted Work. All deductions from payment for deleted work shall be made under the conditions and procedures of this Article. For purposes of this Article, the term "deleted work" means work which is deleted from the work required to be performed under the original Contract, but does not include any work which need not be performed due to any changes in law, statutes, rules, regulations, ordinances, permit(s), permit conditions, or regulatory policies.

H. Request for Proposal for Deleted Work.

1. In the event METRO issues a written change order deleting work, it shall also send the CONTRACTOR a Request for Proposal (RFP). Within fourteen (14) calendar days after receipt of an RFP for deleted work, the CONTRACTOR shall submit an itemized proposal stating the actual and reasonable costs which would be avoided by deleting work called for in the Contract, a schedule for deleting the relevant work, and the effect, if any, on the CONTRACTOR'S performance of the remaining Contract work by reason of the deleted work. The CONTRACTOR'S proposal shall be based on all current and future avoided costs to the CONTRACTOR for deleting the work and any profit margins or markups which the CONTRACTOR'S proposal includes for such work.
2. No Request for Proposals by METRO shall be construed as authorization for the CONTRACTOR to delete the work covered by an RFP for deleted work. The CONTRACTOR shall not delete any work unless and until an order from METRO authorizing such deletion is served upon the CONTRACTOR. In any such written notification METRO shall indicate whether it accepts or rejects the CONTRACTOR'S proposal.
3. If METRO rejects the CONTRACTOR'S proposal but orders the work to be deleted, the CONTRACTOR shall delete the work. METRO may make all appropriate deductions from payments, according to the formula below, if METRO has ordered the CONTRACTOR to delete work, regardless of whether the CONTRACTOR has complied with such order.

I. Amount of Deductions for Deleted Work. The amount of any deductions from payments for deleted work shall be equal to all current and future avoided costs resulting from the

deleted work plus any profit margin or markups which the CONTRACTOR'S proposal includes for such work. If the latter profit margin or markup figures are unavailable, the parties hereby agree that the CONTRACTOR'S profit margin on all work shall be deemed to be ten percent (10%) of the actual cost of performing the work. The CONTRACTOR shall submit complete records of materials and labor usage to METRO for review.

ARTICLE VII

INSURANCE

CONTRACTOR shall maintain such insurance as will protect CONTRACTOR from claims under Workers' Compensation Acts and other employee benefits acts covering all of CONTRACTOR'S employees engaged in performing the work under this Contract; and from claims for damages due to bodily injury, including death and damages to property, all with coverage limits as specified within this Article. This insurance must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them. CONTRACTOR is expressly and wholly responsible for insuring damage to any equipment during execution of this Contract.

Before commencing work on this Contract, CONTRACTOR shall provide METRO with a copy of the insurance endorsement(s) showing METRO as an additional insured. CONTRACTOR shall also furnish METRO with certificate(s) of insurance specified herein naming METRO as an additional insured and showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statements:

A. This/These policy(ies) shall be considered as primary insurance and exclusive of any insurance carried by METRO and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that METRO may have other valid and collectible insurance covering the same risk.

B. This/These policy(ies) shall not be cancelled, reduced in coverage, nor materially altered until after sixty (60) days' written notice of such cancellation, reduction or alteration in coverage shall have been received by METRO.

C. No act on the part of the insured shall affect the coverage afforded to METRO under the insurance covered by this/these certificate(s).

D. This/These policy(ies) consist only of insurance on an occurrence basis, not on a claims made basis.

DESIGNATED INSURANCE REQUIREMENTS

Maintenance of insurance by CONTRACTOR as specified in this Article shall constitute the minimum coverage required.

Designated Insurance Requirements

Limits

- (1) (a) Workers' Compensation covering all employees who are engaged in any work under the Contract (including subcontractors' employees).

Statutory
(State/Federal)

The Contractor shall require its Workers' Compensation carrier to provide Metro with an endorsement for waiver of subrogation.

- (b) Employers' Liability including bodily injury caused by disease.
Not less than

\$1,000,000

- (2) Comprehensive General Liability, and Protection and Indemnity.

Contractors' Public Liability and Contractual Liability Coverage:

- (i) Bodily injury (inc. death) and Personal Injury

- (ii) Broad Form Property Damage and Broad Form Property Damage including Completed Operations, and shall include coverage for Explosion, Collapse and Underground.

- (i and ii coverage)

\$1,000,000 per occurrence/
\$1,000,000 aggregate
bodily injury and
property damage

- (3) Comprehensive Automobile Liability including Owned, Nonowned and Hired Vehicles:

- (i) Bodily injury (inc. death)

- (ii) Property damage

(i and ii coverage)

\$1,000,000 per
occurrence/aggregate
combined single
limit bodily injury
and property damage

(4) Umbrella Coverage

to achieve a total
coverage of
\$3,000,000 per
occurrence/
\$3,000,000 aggregate

(i) Bodily injury (inc. death)
and Personal Injury

(ii) Broad Form Property Damage
and Broad Form Property
Damage including Completed
Operations, and shall
include coverage for
Explosion, Collapse and
Underground.

(i and ii coverage)

\$1,000,000 per
occurrence/
\$1,000,000 aggregate
bodily injury and
property damage

A. When activities of the CONTRACTOR are to be accomplished within a public or private right-of-way requiring special insurance coverage, the CONTRACTOR shall conform to the particular requirements and provide the required insurance.

The CONTRACTOR shall include in its liability policy all endorsements that the said authority may require for the protection of the authority, its officers, agents, and employees. Insurance coverage for special conditions, when required, shall be provided by the CONTRACTOR at its own expense at no additional cost to METRO.

B. The CONTRACTOR shall maintain the above insurance at all times until completion of the Contract or until the termination date of the Contract, whichever is later.

C. Maintenance of insurance by the CONTRACTOR as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of CONTRACTOR under this Contract and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

D. METRO shall have the right, at its sole option, to require the CONTRACTOR to place all of the aforementioned insurance coverages through such Master Policy as METRO may obtain if such would reduce the premiums for such coverages. The CONTRACTOR agrees that METRO may deduct from the Contract Sum the amount of the premiums payable on any policy obtained through a Master Policy, or, at METRO'S discretion, pay the same directly to the insurance carrier. The CONTRACTOR further agrees to comply with such regulations as METRO may issue from time to time to improve the administration of the Master Policy.

ARTICLE VIII

PUBLIC CONTRACTS

The provisions set out in Oregon Revised Statutes, Chapters 187 and 279, as amended or superseded, including the latest additions and revisions, and Chapter 2.04 of the Metro Code, are incorporated by reference as part of these Contract Documents.

ARTICLE IX

ATTORNEYS' FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE X

QUALITY OF GOODS

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO. CONTRACTOR shall provide warranties as attached hereto as Attachment "B."

ARTICLE XI

OWNERSHIP OF DOCUMENTS

All documents produced by CONTRACTOR pursuant to this agreement are the property of METRO and it is agreed by the parties hereto that such documents are work made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction to all such documents.

ARTICLE XII

SUBCONTRACTORS; DISADVANTAGED BUSINESS PROGRAM

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract. METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

CONTRACTOR agrees to make a good faith effort, as that term is defined in METRO'S Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting seven (7) percent of that portion of the work that is subcontracted to Disadvantaged Business Enterprise and five (5) percent of that portion of the work that is subcontracted to Women-Owned Business Enterprise. METRO reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and METRO'S Disadvantaged Business Program.

ARTICLE XIII

RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due 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. Upon completion of the Scope of Work the Parties shall cause the compaction system to be tested according to the procedures set out in the Scope of Work to determine their conformance to this contract. METRO shall make the payments due CONTRACTOR in association therewith, as contemplated by this contract if the following conditions are met: (i) the compaction system perform substantially as required and (ii) if CONTRACTOR has otherwise performed the work required of in hereunder. If the foregoing conditions are not met, METRO shall at its option either (i) accept and make full payment for the compaction system without waiver of any claims for damages or other remedies it may have against the CONTRACTOR, (ii) accept and make payment based on the percentage of the actual throughput as it relates to the specifications, (iii) immediately notify CONTRACTOR thereof and CONTRACTOR shall promptly cause such conditions to be met, at which time the compaction system shall be retested, or (iv) notify CONTRACTOR that the compaction system is being rejected. If METRO accepts the compaction system pursuant to (i) or (ii),

such acceptance shall not constitute a waiver of METRO'S rights under any warranty provided for in this Contract. In the event METRO rejects the compaction system pursuant to (iv), CONTRACTOR shall remove the compaction system as specified in Item 4 of Attachment "A" -- Scope of Work. Prior to acceptance METRO may make use of the compaction system, and will make the compaction system fully available to CONTRACTOR to perform any necessary remedial work.

ARTICLE XIV

SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provision of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XV

INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any Proposal Documents including, but not limited to, the Advertisement for Proposals, General and Special Instructions to Proposers, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the negotiating of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XVI

PRECEDENCE OF CONTRACT DOCUMENTS

All determination of the precedence of or discrepancy in the Contract Documents shall be made by METRO, but in general, precedence will be in accordance with the following list with the highest precedence item at the top:

1. Specifications and Drawings
2. Signed Public Contract (including Attachments)
3. Requests For Proposals
4. Proposals

Addenda, Clarifications and all Change Orders to the Contract Documents take the same order of precedence as the specific sections that they are amending.

ARTICLE XVII

ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

ARTICLE XVIII

METRO'S REMEDIES IN THE EVENT OF CONTRACTOR INSOLVENCY, DISSOLUTION, BANKRUPTCY OR GENERAL ASSIGNMENT FOR CREDITORS

The parties agree that if the CONTRACTOR becomes insolvent, is dissolved, files for Bankruptcy, is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such events could impair or frustrate the CONTRACTOR'S performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, METRO shall be entitled to request of the CONTRACTOR or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of the CONTRACTOR and Surety to comply with such request within ten (10) calendar days of service upon both the CONTRACTOR and Surety of a written request from METRO for such assurances shall entitle METRO to terminate the CONTRACTOR right to perform Contract pursuant to Article V. METRO shall not be bound to the Contract by an insolvent CONTRACTOR'S trustee or receiver.

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

MML/gl
1036

ATTACHMENT "A"

SCOPE OF WORK

1.0 GENERAL. ~~Metro is seeking proposals from qualified firms to~~ Contractor shall perform the following services and to deliver the products described. The work consists of the design, manufacture, installation, shakedown, and warranty of a compaction system for the Metro South Station. The system will be located at the Northeast end of the pit floor, and be compatible with the proposed design (see drawings for more detail), proposed method of operation (i.e. a pit-type operation with conveyor loading system) and current mode of waste transport. ~~The work included under this RFP is seen by Metro as shall~~ occurring in the following parts.

1.1 Technical Specifications. Contractor will be responsible for the design and manufacture of the compaction system. The system shall consist of a programmable compactor, an associated loading hopper system to receive waste from a conveyor (or walking floor) that bridges the two compactors' loading chambers, trailer securing device and a system to transmit the weight of a load to a computer located in the compactor control room. The compaction system shall meet or exceed the following specifications.

- A. Capable of being loaded by a conveyor which will be located at the Northeast end of the current pit, as well as direct loading by the CAT/loader in the event of conveyor failure.
- B. Compact and load into transfer vehicles 100 tons per hour (1200 tons per day in a 12 hour period).
- C. Achieve road legal average payloads of 30 tons, and maximum payloads of 32 tons in the transfer vehicles.
- D. Produce a load (of either one or more bales) which is compatible with designated transport equipment ~~(see drawing in appendix)~~, and place it inside the transfer vehicle such that no compaction/pressure is exerted on walls or ceiling which results in structural damage/deformation or puncturing of the unit; and such that overloading will not occur. Contractor will be responsible for costs incurred due to improper loading or overloading and damage until final acceptance by Metro in addition to coverages negotiated as part of the final contract.

- E. Ability to extrude the load any distance in the range of zero to seven feet into the trailer.
- F. Payloads shall be achieved using waste received at the facility and the transfer vehicles currently under contract with Metro. Proposers are responsible for determining the pertinent waste and transfer vehicle characteristics ~~(additional information is provided in the Appendix);~~
- G. Compactor should have the ability to automatically compact waste to desired payloads through a programmable series of compaction and clear strokes which occur as waste is loaded into the system, as well as determining/displaying and executing the optimum extrusion distance into the trailer. When in the automatic mode, optimum extrusion distance should be the limit during extrusion. The automatic pattern should be programmable (i.e. capable of achieving desired payloads by varying densities within a load in combination with extrusion distance through software modifications).

~~Proposers shall include in their proposals a per hour cost for reprogramming of the automatic pattern after successful completion of acceptance testing.~~ Contractor is responsible for programming costs necessary to complete acceptance testing, and shall include such costs in the total proposal costs.

In addition, the compactor should have the ability to vary the compaction/clear stroke pattern and the length of compaction strokes in the manual mode from the CAT and control room. Extrusion distance should be able to be varied from the dozer ramp control point, with an extrusion display which monitors distance during extrusion.

- H. Capable of operation by the CAT operator in the pit as well as by an operator located in the compactor control room, with an additional control panel located under the dozer ramp indicated on the drawings.
- I. Provide visual display of length and weight of bale during compaction at all three control points. A display board(s) visible to the CAT operator is required as one of the three visual displays. Transmission of weight data to computer system located in control room. If multiple bales are produced, a total net weight for the combined bales should be transmitted.

Metro will provide an IBM compatible PC and software for conversion of the data for manifesting and data storage purposes ~~(software/hardware specifications are contained in the Appendix).~~

- J. Front and rear load cells which produce weights certifiable by the State of Oregon as legal for trade (level of accuracy plus or minus 0.1%) and NTEP approved.
- K. A hydraulic hitch which connects directly from the compactor to the transfer vehicle, capable of operation from the control panel located under the dozer ramp. The hitch shall be secured directly to the compactor, and be compatible with the transfer vehicle.
- L. Accept the wide variety of materials contained in the waste stream delivered to the facility, while minimizing jamming or breakdown. Proposer should indicate materials requiring special treatment, such as exclusion or breakup prior to loading into the unit.
- M. Minimize dust, odor, litter/spillage through the loading design;
- N. Conform with all applicable federal, state and local laws.
- O. Capable of being installed and operated as per the above specifications, in the space and in the general configuration as shown in the drawings.

2.0 Installation. Contractor is responsible for the installation of the system and all associated costs. Contractor shall obtain from Metro a Notice to Proceed prior to installation of the system. Contractor shall not be entitled to any reimbursement for standby costs incurred between the completion of manufacture and Metro's issuance of the Notice to Proceed with installation. The installation must be accomplished to minimize disruptions to facility operations. Ideally the installation should be accomplished during a weekend. Installation shall not exceed 5 calendar days. Installation is complete once the system has successfully prepared at least one load. Contractor is responsible for obtaining any necessary permits/regulatory approvals, and for specifying interface requirements with Metro or Metro Contractor's such as the manifest system contractor.

Installation must be completed within 95 calendar days after

signing of a contract. Metro reserves the right to withhold payments (as well as other remedies as determined in the final contract) for failure to complete the work in a timely manner. Metro reserves the right to extend the time limits stated above, and will do so if Metro determines such an extension is in Metro's best interest and/or an extension is required due to a delay caused by Metro.

- 3.0 Shakedown. After installation, the Contractor shall conduct a shakedown of the system. Shakedown procedures and a schedule shall be presented to Metro for approval, prior to the start of shakedown. Shakedown procedures shall include, but not be limited to, scheduling and testing procedures for interfacing with the onsite computer manifesting and data storage procedures.

The shakedown period is the Contractor's opportunity to test the system and correct any deficiencies found, prior to performance of the acceptance test. The Contractor shall be responsible for operation of the system during this period, and shall minimize interference in the daily operations. The transfer station operator will be responsible for loading waste into the system under the Contractor's direction per approval from Metro. The transport contractor will be responsible for providing transport vehicles for receiving loads under the Contractor's direction per approval from Metro.

Contractor shall pay for any extraordinary costs incurred by the transfer station operator, transport contractor and/or Metro due to system shakedown, including, but not limited to, equipment or facility damage. Contractor shall be responsible for all maintenance and repairs of the compaction system during this period.

The shakedown period shall not exceed ten (10) calendar days from the time Metro approves the shakedown procedures. Metro reserves the right to withhold payments (as well as other remedies as determined in the final contract) for failure to complete the work in a timely manner. Metro reserves the right to extend the time limits stated above, and will do so if Metro determines such an extension is in Metro's best interest and/or an extension is required due to a delay caused by Metro.

4.0 Acceptance Testing

Contractor shall indicate in writing to Metro that the shakedown is complete and that the system is ready for acceptance testing. All permanent system components must be in place before requesting the acceptance test, including successful shakedown of the computerized manifesting/data retrieval system. Any exceptions to this requirement are contingent upon the prior approval of Metro. Metro shall

conduct the acceptance test of the system to determine whether it meets the specifications contained herein. Contractor shall be responsible for providing the equipment operators for the test, with the exception of the CAT/loader operator and shuttle drivers. It is the responsibility of the Contractor to provide adequate training to the CAT/loader operator and shuttle drivers. Metro reserves the right to determine the specific date and time of the test in order to ensure sufficient waste, equipment and personnel. The test parameters for acceptance are compliance with the technical specifications. Generally, the Metro representative will conduct the test using the following guidelines:

- A. Compact and load into transfer vehicles an average of 100 tons per hour over a continuous 6 hour period. Metro shall ensure that a transfer trailer is in position to receive a load once ready for extrusion. Any delay in the provision of a trailer shall act as an extension of the six hour time period.
- B. The average payload during this period shall be 30 tons.
- C. Overloads shall not be counted for either item A or B, nor will an extension of time be granted to compensate for overloads. Both A and B shall be determined at the onsite scale.
- D. The bale(s) must maintain its integrity and not abrade or bulge against the sides or the top of the trailer during extrusion into the trailer. Excessive sloughing out the rear of the trailer shall not occur. Compliance with this standard will be determined by a visual inspection of the onsite Metro representative whose determination shall be final.
- E. Achieve the parameters in items A through D while producing road legal weights for the transfer vehicle.
- F. Metro shall conduct a visual inspection of the system prior to, and at the conclusion of the testing with the Contractor, noting any obvious leaks, equipment failures/damage or abnormal wear and tear, as determined at the sole discretion of Metro. Contractor shall repair such leaks, damage or wear as a precondition to both the acceptance test and final payment if test parameters in items A through E are successfully accomplished. If Metro concludes that such leaks, equipment failure/damage or wear are of a reoccurring

nature, Metro, in its sole discretion, may declare that the system has failed the acceptance test.

In the event that Metro declares that the equipment has failed to pass the acceptance test, Contractor shall remove the compaction system within 7 calendar days of notification of such failure, and refund to Metro all payments made to date, less reasonable costs for installation and removal, and facility modification costs if applicable. Only these costs (installation/removal/modification) shall qualify for purposes of payments by Metro to Contractor under Article V of the Contract. Metro reserves the right to allow the Contractor to retake the acceptance test at a later date, or to waive any minor irregularity which occurs during the test. Metro will not unreasonably deny the Contractor's request for a second acceptance test. Metro also reserves the right, in its sole discretion, to exercise the remedies set forth in Article 13 of the Contract.

- 5.0 Maintenance. ~~Proposers shall describe routine, periodic, and annual maintenance requirements for the system, the number of hours per year for each level, and the intervals at which each level is required (i.e. daily, weekly, etc.). Proposers should indicate which maintenance requirements should be performed by parties other than the transfer station operator, including the replacement/repair of system components. Proposals should specify what maintenance is covered under the proposed warranty and included in the proposal price.~~

~~Proposals should specify what service contracts are available from the proposing firm, including, at a minimum, an emergency service agreement for a two (2) hour response time, 24 hours a day, 7 days a week.~~

The successful Contractor shall be responsible for all maintenance and repair costs to the system prior to acceptance by Metro. Contractor shall provide 5 sets of maintenance manuals. Contractor shall thoroughly train transfer station personnel in routine, periodic and annual maintenance procedures to the satisfaction of Metro.

- 6.0 Training, Manuals, Drawings. Contractor shall provide thorough training to the transfer station operator in the operation of the system and general training to Metro personnel. Contractor shall provide 5 sets of operations manuals. Contractor shall provide two (2) sets of as-built drawings of the equipment in sufficient detail to identify all components of the system.

- 7.0 Bonds/Insurance. Contractor shall provide Performance and Labor and Materials Bonds on the enclosed forms, or substitutes acceptable to Metro, in amounts equal to 100% of

the contract amount. Said bonds shall be submitted with an executed Contract and have a term of one year. Before commencing the work, Contractor shall provide certificates of insurance as described in Article VII of the Contract.

ATTACHMENT "B"

BILLING PROCEDURES

Billing procedures are subject to the review and prior approval of Metro before reimbursement of services can occur.

Payments will be made to the successful Contractor on the following basis for goods and services described in Attachment "A", including necessary permits and facility modifications:

\$170,520	upon contract signing
\$113,680	upon certification the compactor is ready for delivery
\$142,100	upon completion of installation
\$142,100	upon acceptance by Metro

<u>TOTAL</u>	\$568,400
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Payments made prior to final acceptance shall not be interpreted as an acceptance by Metro of any part of the work. Contractor shall be required to refund any amount deemed appropriate by Metro paid prior to final acceptance.

In addition to the above amounts, Metro shall include in the total contract amount an additional \$5,000 for programming of the automatic control system, for Metro-requested reprogramming of the system after successful completion of Acceptance Testing. Contractor shall be reimbursed at an hourly rate of \$48.00 per hour.

TOTAL CONTRACT AMOUNT= **\$573,400**

WARRANTY

The SSI Compactor System is covered by the Shredding System Inc. Limited Warranty. The warranty is as follows:



**SHREDDING SYSTEMS, INC.
LIMITED GENERAL WARRANTY**

1. EQUIPMENT WARRANTY:

Shredding Systems, Inc. warrants, subject to terms of this Limited Warranty, that at the time of shipment to the buyer, all equipment manufactured by it is free from defects in material and workmanship. Shredding Systems does not authorize any person to create for it any other obligation or liability in connection with this sale.

(a) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO THIS SALE IS LIMITED IN DURATION TO THE DURATION OF THIS LIMITED WARRANTY. SHREDDING SYSTEMS DISCLAIMS ANY OTHER LIABILITY IN TORT OR OTHERWISE IN CONNECTION WITH THIS SALE, INCLUDING STRICT LIABILITY ON TORT.

(b) THE PERFORMANCE OF REPAIRS OR NEEDED ADJUSTMENTS IS THE EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY OR ANY IMPLIED WARRANTY. See Part 4 of this Warranty. Shredding Systems may, at its option, refund the purchase price of the unit less reasonable depreciation if the used equipment or components are returned to Shredding Systems.

(c) SHREDDING SYSTEMS SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM BREACH OF THIS LIMITED WARRANTY OR ANY IMPLIED WARRANTY.

(d) Shredding Systems does not warrant wear of consumable items such as: Knives; bearing wear strips; filter elements; fluids; cylinder seals, packings and bearings; hydraulic hoses and electric solenoids.

2. DURATION OF WARRANTY:

The duration of this warranty is twenty-four (24) months on from the date of first use for all SSI manufactured parts. Twelve (12) month for all third party items (Buy-outs) except as noted.



Hydraulic Cylinders twenty-four (24) months with normal inspection and maintenance.

An article may be repaired any number of times under this warranty, but such repair shall not affect the duration of the warranty.

3. WARRANTY NULLIFICATION:

This warranty will become null and void if any of the following conditions occur:

(a) Improper usage, neglect, or disregard of our maintenance or operating instructions, or safety precautions necessary to insure safe and continued operation.

(b) Improper usage, neglect, or disregard of basic equipment maintenance requirements.

(c) Any repairs or alterations made by anyone other than a factory representative unless written approval is given by Shredding Systems.

(d) Alteration of the compactor, power systems, or electrical controls.

(e) Alteration or adjustments to the compactor, power system, or electrical controls so as to produce operation or conditions not set out in accordance with the operation and maintenance manual, unless written approval is given by Shredding Systems.

(f) Failure to comply, complete and return to Shredding Systems the required warranty maintenance forms as specified in our maintenance and operating instructions for documentation of maintenance and system status.

(g) Failure to operate the unit in accordance with the equipment specifications that were submitted with the unit when it was originally sold.

(h) Failure to allow Shredding Systems to install components for modification of equipment as recommended and required from time to time by Shredding Systems in maintenance bulletins provided to customers.



4. RETURN UNDER WARRANTY

Shredding Systems agrees to replace or repair the defective article, part, or machine thereof under the terms of this Warranty provided written notice of such defect is sent to shredding Systems prior to expiration of the time period specified in Part 2 of this Warranty, and provided said article or component is made available for inspection and verification by Shredding Systems as provided in this part, and provided Shredding Systems is given a reasonable time to repair, replace or correct.

At the request of Shredding Systems, buyer shall return the defective article or component, freight prepaid, to Shredding Systems for inspection and evaluation, or make it available on-site, at the option of Shredding Systems. The buyer must provide documentation explaining the circumstances for the return and the reason for the occurrence. Should the article be found defective in material or workmanship, Shredding Systems will replace or repair the article and return it by surface transportation freight collect or other means directed by Shredding Systems to buyer. On-site labor required to install items returned under warranty is not the responsibility of Shredding Systems.

After the expiration of the General Warranty described above, a Limited warranty will thereafter cover major replacement parts. That warranty is as follows:

- 1) Components manufactured by Shredding Systems will be covered by the Limited General Warranty;
- 2) Components not manufactured by Shredding Systems will be covered only by the component manufacturers warranty.
- 3) Shredding Systems does not warrant wear of consumable items such as: knives; bearing wear strips; filter elements; fluids; cylinder seals, packings & bearings.
- 4) Warranty terms are otherwise as outlined in the Limited General Warranty.

SHREDDING SYSTEMS
COMPACTOR CONSUMABLES

QTY.	DESCRIPTION	COST	LIFE EXP.
14	WEDGE BEARINGS # 80-1069 /\$186.00 =	\$2,604.00	1 YEAR
4	CARRIAGE BEARINGS # 80-1064 /\$285.60 =	\$1,142.40	6 MONTHS
4	PLATEN BEARINGS # 80-1046 /\$487.20 =	\$1,948.80	6 MONTHS
1-SET	LID SCRAPER (UHMW 2pcs) /\$115.20 =	\$115.20	4 MONTHS
1-SET	GATE WEAR STRIPS "CHAMBER SIDE"	\$240.00	1 YEAR
1-SET	GATE WEAR STRIPS "DISCHARGE SIDE"	\$240.00	6 MONTHS
1	PLATEN KNIFE	{ \$4,745.00	1 YEAR
1	CHAMBER KNIFE		1 YEAR
2	AIR FILTERS /\$48.00	\$96.00	4 MONTHS
1	HYD. FILTER # F60P /\$210.56	\$210.56	4 MONTHS
2	HYD. FILTER # 72F20 /\$1,69.80	\$2,139.60	4 MONTHS
4	PRESSURE FILTERS /\$468.54	\$1,874.16	4 MONTHS
2	SUCTION FILTER /\$527.90	\$1,055.80	4 MONTHS
1	FUSE # FNM-20 /\$1.85	\$1.85	AS NEED
6	FUSES # FRS-200 /\$25.36	\$152.16	AS NEED
6	FUSES # FRS-15 /\$3.54	\$21.24	AS NEED
900 GAL.	HYD. FLUID /\$2.40 A-GAL .	\$2,160.00	AS REQ'D

GRANT/CONTRACT NO. _____ BUDGET CODE NO. 531 - 317000 - 571200 75000
 FUND: Gen. Acct DEPARTMENT: Solid Waste (IF MORE THAN ONE) _____
 SOURCE CODE (IF REVENUE) _____

INSTRUCTIONS

1. OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
2. COMPLETE SUMMARY FORM.
3. IF CONTRACT IS —
 - A. SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
 - B. UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
 - C. OVER \$2,500, ATTACH QUOTES, EVAL FORM, NOTIFICATION OF REJECTION, ETC.
 - D. OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, RFP, ETC.
4. PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING

1. PURPOSE OF GRANT/CONTRACT Provide compaction system at Metro South Station

2. TYPE OF EXPENSE ☐ PERSONAL SERVICES ☒ LABOR AND MATERIALS ☐ PROCUREMENT
☐ PASS THROUGH AGREEMENT ☐ INTER-GOVERNMENTAL AGREEMENT ☐ CONSTRUCTION
☐ OTHER

OR

TYPE OF REVENUE ☐ GRANT ☐ CONTRACT ☐ OTHER

3. TYPE OF ACTION ☐ CHANGE IN COST ☐ CHANGE IN WORK SCOPE
☐ CHANGE IN TIMING ☒ NEW CONTRACT

4. PARTIES Metro and Shredding Systems, Inc.

5. EFFECTIVE DATE September 13, 1990 TERMINATION DATE January 6, 1996
 (THIS IS A CHANGE FROM _____)

6. EXTENT OF TOTAL COMMITMENT: ORIGINAL/NEW \$ 573,400.00
 PREV. AMEND _____
 THIS AMEND _____
 TOTAL \$ _____

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1990 - 91 \$ 573,400.00
Improvements -
 B. BUDGET LINE ITEM NAME Other than Buildings AMOUNT APPROPRIATED FOR CONTRACT \$ 700,000.00
 C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF July 31, 1990 \$ 700,000.00

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

AMFAB Resources \$ 629,396.00 ☐ MBE
 SUBMITTED BY Shredding Systems, Inc. AMOUNT 573,400.00 ☐ MBE
 SUBMITTED BY _____ AMOUNT _____ ☐ MBE
 SUBMITTED BY _____ AMOUNT _____ ☐ MBE

9. NUMBER AND LOCATION OF ORIGINALS 1 - SW 1 - Vendor 1 - Contracts

10. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT ☐ YES ☒ NO
11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS? ☐ YES ☒ NO
IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION _____
12. WILL INSURANCE CERTIFICATE BE REQUIRED? ☒ YES - ☐ NO
13. WERE BID AND PERFORMANCE BONDS SUBMITTED? ☐ YES ☐ NOT APPLICABLE
TYPE OF BOND _____ AMOUNT \$ _____
TYPE OF BOND _____ AMOUNT \$ _____
14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)
- | | | | | |
|------|------------------------------------|---------|----------------------------|---|
| NAME | <u>SUMA International</u> | SERVICE | <u>Electrical Supplier</u> | <input checked="" type="checkbox"/> MBE |
| NAME | <u>Riverside Steel Fabrication</u> | SERVICE | <u>Steel Fabrication</u> | <input checked="" type="checkbox"/> MBE |
| NAME | _____ | SERVICE | _____ | <input type="checkbox"/> MBE |
| NAME | _____ | SERVICE | _____ | <input type="checkbox"/> MBE |
15. IF THE CONTRACT IS OVER \$10,000
- A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?
☒ YES ☐ NO
- B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?
☐ YES DATE _____ INITIAL _____
16. COMMENTS:

GRANT/CONTRACT APPROVAL

INTERNAL REVIEW	CONTRACT REVIEW BOARD (IF REQUIRED) DATE _____	COUNCIL REVIEW (IF REQUIRED)
<i>JRW</i> <u>[Signature]</u> DEPARTMENT HEAD	1. _____ COUNCILOR	DATE _____
<u>[Signature]</u> FISCAL REVIEW 8/13/90	2. _____ COUNCILOR	
<u>[Signature]</u> BUDGET REVIEW	3. _____ COUNCILOR	

LEGAL COUNSEL REVIEW AS NEEDED:

- A. DEVIATION TO CONTRACT FORM _____
- B. CONTRACTS OVER \$10,000 [Signature]
- C. CONTRACTS BETWEEN GOVERNMENT AGENCIES _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1310 FOR THE PURPOSE OF APPROVING A CONTRACT WITH SHREDDING SYSTEMS INC. FOR DESIGN, MANUFACTURE AND INSTALLATION OF A COMPACTION SYSTEM AT METRO SOUTH STATION

Date: August 13, 1990

Presented by: Chuck Geyer
Monica Little

PROPOSED ACTION

Adopt Resolution No. 90-1310 approving a contract with Shredding Systems Inc. for the design, manufacture and installation of a compaction system at Metro South Station.

FACTUAL BACKGROUND AND ANALYSIS

On January 1, 1990, Metro began transporting waste from the Metro South Station to the Columbia Ridge Landfill, approximately 150 miles away. Waste is compacted prior to shipment in order to reduce the number of shipments and to be more cost-effective. Compaction is achieved through the use of a compactor, acquired during phase one of the compaction project as described in the staff report of April 11, 1989. This compaction system was installed in November of 1989.

In order to provide redundancy and to improve the efficiency of operations at the Metro South Station, the Solid Waste Department issued a Request for Proposals (RFP) for a second compaction system. The issuance of the RFP was authorized by Resolution 90-1225A.

On June 15, 1990, Metro received two proposals in response to the RFP, one from Shredding Systems Inc. (SSI) and another from AMFAB Resources. The proposals were evaluated according to the criteria contained in the RFP. The results of the evaluation, are summarized in ATTACHMENT NO. 1. A subsequent adjustment to the SSI price to include umbrella coverage results in an addition of two points to the AMFAB score stated in the attachment. A maximum of 100 points was available. SSI proposed a total contract price of \$573,400, AMFAB's proposed price was \$629,396.

Final contract language was prepared and forwarded to each firm for comment. SSI requested two changes to the contract language regarding insurance requirements. Metro refused to allow either change and SSI agreed to withdraw its request. The resulting contract is contained in EXHIBIT "A" of Resolution No. 90-1310.

Amfab requested approximately 20 changes to the contract language. The request included changes to the insurance requirements, ownership of documents, liability for transport trailer damage, training requirements and the substitution of a letter of credit for the required bonds. Metro accepted or modified the majority of the changes proposed in the attached contract (ATTACHMENT NO.2) as its "bottom line" position. Metro refused to allow the remaining changes and Amfab agreed to accept the proposed language.

Since the contract language submitted to both firms was almost the same, the changes made to the Amfab contract substantially alters its terms in relation to the attached contract with SSI. While the contract language contained in ATTACHMENT NO. 2 (with Amfab) may be acceptable, the attached contract with SSI (EXHIBIT "A") is preferred because of its protections and guarantees to Metro.

Based on the lower price, superior warranty, risk protection and general contractual provisions staff recommends award of a contract to SSI for provision of a compaction system at the Metro South Station.

BUDGET IMPACTS

\$700,000 is budgeted for this system during fiscal year 1990-91. The contract amount is \$573,400.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution 90-1310.

**METRO**2000 S.W. First Avenue
Portland, OR 97201-5396
503 221-1646

Memorandum

ATTACHMENT NO. 1

DATE: July 7, 1990

TO: Jim Watkins, Engineering & Analysis Manager

FROM: Chuck Geyer, Senior Solid Waste Planner *CG*

RE: Results of Metro South Station Compaction System Evaluation

Two proposals were received in response to the Metro South Compaction System RFP. The firms submitting proposals were Amfab Resources, a division of Harris Waste Management Group, Inc. and SSI Shredding Systems. An evaluation team reviewed the proposals, conducted interviews with the firms, and solicited and reviewed clarifications regarding each proposal. The team has completed its scoring of the proposals in conformance with the evaluation criteria contained in the RFP.

The results of the scoring are 65.5 points for Amfab Resources and 67.5 points for SSI. Below is presented the scoring for each firm by each evaluation criteria, as well as a summary of the reasons for the scores. For a detailed explanation of each criteria you should consult the appropriate section of the RFP as well as the criteria clarification which are attached.

Proposal Evaluation Criteria	AMFAB	SSI
■ Compliance with <u>Technical Specifications</u> (noncompliance will result in rejection of the proposal)	yes	yes

Both firms stated their systems would comply with the technical requirements of the RFP. Technical information for both systems was reviewed and it was concluded that both systems should be able to meet the requirements.

■ Operational Reliability (20%)	12.75	0
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Scoring was based on the amount of downtime (due to both mechanical failures and shutdowns due to jamming, lid detaching etc.) versus operating hours of the proposed systems. Since SSI has not put its proposed system into operation it received zero points. The score for Amfab was based on interviews with reference facilities and the experience at Metro South Station. The score was derived using an acceptable base of 70% operating time as the minimum acceptable level (i.e. if a system operated at 70% it would receive a score of zero).

■ Warranty (20%)

8.2

17.

Evaluation was based on comparing the proposed warranties to each other, to the warranty obtained with the first compaction system at Metro South, and to the desired items contained in the RFP. SSI basically offered a two year warranty on all items, while Amfab offered one year. Strengths of the SSI warranty in relation to that of Amfab's also included its clarity and implied warranty of merchantability or fitness. Amfab's proposed warranty was evaluated as inferior to the warranty provided with the first compaction system.

■ Compatibility with existing Metro South Station configuration and equipment (15%) 12.75 12.75

Both systems are compatible with the spatial and operational modifications which are underway at the facility. Both systems have controls and displays similar to the existing system. Team concerns over SSI two bale system were alleviated by its computerized control system. Both system's are compatible with the transport equipment.

■ Project team experience (5%) 4.75 4.75

The Amfab team proposed is essentially the same as that used for the first compaction system. The team has experience in other installations as well. The SSI team's individual members have direct experience in compaction systems through previous employers. The SSI team members, as well as the firm in general, have extensive experience in solid waste applications for shredders as well as general material handling experience. The broad experience of SSI was felt to be comparable to the specific experience of Amfab.

■ Cost (20%) 16 20

Points were derived using the formula contained in the evaluation criteria clarification. SSI had the lower total cost and therefore received maximum points for this criteria.

■ Long-term Liability Risk Assessment (20%) 11 13

SSI proposed to indemnify Metro against damage claims from the transport contractor in the event that the proposed compactor causes damage to trailers in excess of damage caused by the existing compactor. The indemnity measures proposed include options such as damage payments, equipment removal with refunds, and system redesign at no cost to Metro. Such remedies would be available to Metro once shakedown begins.

Amfab proposed no indemnification measures. Amfab claimed that no such measures were needed since an Amfab system was specified in the agreement with the transporter. Amfab maintained in their proposal that this specification in the transport agreement removes any risk to Metro from damage claims resulting from damage caused to trailers by either their existing compactor at Metro South or the system proposed in response to this RFP.

While Metro agrees that the current system is specified in the transport agreement and that the specification should decrease the risk of claims for damage from the transport contractor, it is unclear whether the proposed system will provide similar protections for Metro. Each Amfab system produced is essentially a prototype with innovations based on a review of the performance of previous units and the requirements of the purchaser. The specifications contained in the Metro RFP for this project included performance requirements in excess of the previous compactor acquired for the site. Given that the previous system has produced loads which resulted in significant damage to trailers, it is possible the proposed unit with higher operating hydraulic pressures and a longer extrusion distance will result in an increase in damage to trailers. Since the proposed unit is different than that unit specified in the transport contract, Metro may be at risk for any increased damage to transport trailers. Amfab was unwilling to indemnify Metro against this possible increase in trailer damage even during shakedown and acceptance testing. Due to the lack of indemnification for any increased risk to Metro from an increase in damage to transport trailers, Amfab received a lower score than SSI which provided such indemnification.

■	Compliance with Disadvantaged Business Program (noncompliance will result in rejection of the proposal)	yes	yes
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Amfab proposed subcontracting approximately 2% of the project costs to a firm certified as both a DBE/WBE. Amfab stated that they planned to subcontract only about 4% of the total project, and that no DBE/WBE firms were available for the drayage portion. After review of the submittals, Metro's DBE/WBE liaison officer concurred that insufficient subcontracting was planned for Amfab to reach Metro's 12% DBE/WBE subcontracting goals. However, Amfab apparently overlooked an opportunity to reach DBE/WBE goals through the use of DBE or WBE material suppliers.

SSI originally stated that it would meet the stated DBE/WBE goals. However, after reviewing the utilization forms submitted and applying criterion contained in the Metro Code it was found that only 60% of the DBE amount would apply since the DBE would act as a material supplier. Therefore the original submittal (the one accepted by Metro) contained 4% DBE participation rather than the stated goal of 7%. SSI did reach the goal of 5% for WBE participation. SSI subsequently submitted a revised DBE utilization form showing an increase in DBE participation to the 7% level.

Based on a review of the information submitted, the Disadvantaged Business Program liaison officer concluded that neither firm should be disqualified from competition based solely on DBE/WBE subcontracting efforts.

Total Scores	65.45	67.5
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Based on the above evaluation it is recommended that Metro enter into negotiations with SSI Shredding Systems for acquisition of a second compaction system at Metro South Station.

METRO SOUTH STATION COMPACTION RFP (MAY 1990)
Clarifications regarding Evaluation Criteria

1. Operational Reliability (20%)- Utilizing information submitted on reference sites using compactions systems supplied by the proposer, Metro will evaluate the ability of the proposed system to achieve the technical specifications contained in the RFP while minimizing downtime and repair costs.

(Specification from RFP)

- 5.0 Demonstrated reliability. The proposer shall describe the reliability of the compaction system proposed. To establish reliability, the proposer shall indicate the number of hours of operation and downtime, of similar systems at reference sites. The quantity of waste being received at the reference site should be comparable to the situation at the Metro South Station (approximately 250,000 tons per year). Proposers should supply a contact name, phone number and address for each reference site. Metro will verify the information submitted, and evaluate this criteria as it relates to the technical specifications contained herein.
2. Warranty (20%)- Each proposed warranty will be evaluated relative to warranties contained in other proposals as well as to the warranty received for the initial compaction system for Metro South. The list of warranted items which will serve as the basis of comparison is contained in the RFP. The warranty of the successful proposer will be attached to the final contract as Attachment "B".

(Specification from RFP)

- 6.0 General Warranty. Proposers shall propose a warranty for all major components, and a general warranty for the system. Proposers shall list those parts which cannot be obtained within 8 hours and shall propose inventory costs for these items. Evaluation of the proposed warranty will be based on consideration of the following factors, and/or additional factors proposed:

- warranty of nonconsumables vs consumables (wear items)
- length
- parts and/or labor
- onsite response time/shipment requirements
- Contractor manufactured parts vs third party
- provision of maintenance as part of the warranty
- assessment of liquidated damages/partial refund for failure to achieve maximum payloads and/or delay of transfer station and transport contractors due to equipment malfunction
- compliance with warranty conditions of Article X of the Contract

- response time for the repair of warranted items

3. Long-term Liability Risk Assessment (20%)- Utilizing technical information regarding the proposed system, reference site operating experience and Metro's own experience with compaction systems, Metro will assess the potential for damage to the transport contractor's trailers by all proposed systems. Metro will then assess the ability of proposed risk mitigation measures to minimize Metro's exposure to financial and legal claims which may arise due to damage caused by a proposed system. Metro's assessment of a system's potential for damaging trailers will focus on the system's ability to maintain bale integrity, the system's ability to sense problems during extrusion and safeguards against over-extrusion. Metro assessment of risk mitigation measures will include a comparison of proposed measures in relation to Metro assessment of the potential for damage as well as the ability of a measure to prevent legal and financial harm to Metro in the event damage occurs.

(Specification from RFP)

- 7.0 Long-term Liability Risk Assessment. Metro specified a single bale system in the Waste Transport Services Contract. Nevertheless, multiple bale (and other type) systems may be proposed in response to this RFP. Metro will, however, evaluate the long-term liability risk exposure, with regard to trailer damage, of all proposed systems. The analysis shall assess the potential liability to Metro in relation to any measures (such as indemnification, insurance, etc.) proposed by the vendor to mitigate such risk.

4. Compatibility with existing Metro South Station configuration and equipment (15%)- Metro South Station is being modified to accommodate a dual compaction system. The existing compaction system is compatible with the proposed modifications and operational procedures. Metro will evaluate proposed systems for conformance with the physical requirements of the site as described in the drawings, as well as operational consistency with the proposed configuration and existing compaction system. Operational assessment will focus on such aspects as loading procedures, extrusion and informational systems.

(Specification from RFP)

- 8.0 Operational Compatibility. Metro will relocate its existing compaction system and construct a space for the compaction system acquired through this RFP. Metro will evaluate the proposed system for compatibility with facility operations and the existing compaction system. Proposers should describe the operational compatibility of their proposed system (i.e. similar loading, compaction and extrusion

procedures and controls in relation to the existing compaction system).

5. Project team experience (5%)- Metro will assign scores based on experience in providing solid waste compaction systems, other solid waste system applications, and general experience with material handling systems in that order. This evaluation will include an examination of the firm's, project manager's and team members' experience as they relate to the above areas of experience.

6. Cost (20%)- Metro will allocate points as follows.

The proposal price of the lowest cost proposal will be subtracted from that of the subject proposal. The difference is then divided by the subject proposal price, the result is then subtracted from 1 and then multiplied times 20. The lowest cost proposal will receive all 20 points.

Contract No. _____

PUBLIC CONTRACT

THIS CONTRACT dated this _____ day of _____, 1990, is entered into between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, hereinafter referred to as "METRO," and _____, whose address is _____, hereinafter referred to as the "CONTRACTOR."

BOTH PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment "A." All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for a period commencing _____ through and including _____.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in Attachment "A." METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment "AB," or additional work authorized pursuant to Article VI, CHANGES.

ARTICLE IV

LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or

property arising out of or related to this Contract, and shall indemnify and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and METRO.

ARTICLE V

TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR fourteen (14) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for all actual and reasonable costs for work performed to the date of termination including direct labor (direct labor cost reimbursement shall be limited to a rate of \$35.00/hr. for skilled labor, \$50.00/hr. for engineering, and \$27.50/hr for drafting services), materials and expenses, including all costs of subcontractor's work performed, plus fifteen (15) percent. A claim shall be presented by the CONTRACTOR within ~~fifteen (15)~~ thirty (30) days of the date of termination, and shall include all documentation to justify the claimed costs. Subject to its right to withhold payments pursuant to Article XIII, METRO shall make payment to CONTRACTOR.

within thirty (30) days from receipt of such claim, provided that all costs are justified and verified. METRO shall not be liable for indirect or consequential damages resulting from termination of the Contract. Termination by METRO shall not waive any claim or remedies it may have against the CONTRACTOR.

ARTICLE VI

CHANGES

A. METRO Change Orders. METRO may, at any time, without notice to the CONTRACTOR'S surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract

B. Payment or Credit for Additional Work. All requests for payment for additional work shall be made only under the conditions and procedures set forth in this Article. For purposes of this Article, the term "additional work" means work which is in addition to the work required to be performed under the original Contract or any amendments thereof, but does not include any work required to comply with any changes in law, statutes, rules, regulations, ordinances, permit(s) or permit conditions.

C. Request for Proposal for Additional Work.

1. In the event METRO issues a written change order requesting additional work, it shall also send the CONTRACTOR a Request for Proposal (RFP). Within fourteen (14) calendar days after receipt of an RFP for additional work from METRO, the CONTRACTOR shall submit to METRO an itemized proposal ~~stating the actual and reasonable costs to the CONTRACTOR for performing such additional work, a schedule for performing such work, and the effect, if any, on the CONTRACTOR'S performance of the existing Contract work by reason of the additional work. The CONTRACTOR'S proposal shall be based on the least costly method for performing the additional work in accordance with all provisions of the Contract. The parties hereby agree that the profit margin on all work performed pursuant to this section of Article VI shall be deemed to be ten percent (10%) of the actual cost of performing the work.~~

2. No request for proposals by METRO shall be construed as authorization for the CONTRACTOR to perform the additional work covered by such RFP. To obtain authorization to perform any additional work, the CONTRACTOR must be notified in writing by METRO that the CONTRACTOR is ordered to proceed with the relevant additional work. In any such written notification METRO shall indicate whether it accepts or rejects the CONTRACTOR'S proposal. If Metro rejects the CONTRACTOR'S proposal but orders the additional work to be performed, the CONTRACTOR shall perform the additional work as force account work as provided in Section D of this Article. If Metro does not order the CONTRACTOR to perform the relevant work, the CONTRACTOR shall not be entitled to any reimbursement for the work in the CONTRACTOR'S proposal or the costs of developing the proposal.

D. Force Account Work. If the amount of payment cannot be agreed upon prior to the beginning of the work, Metro may issue a written Notice to Proceed pursuant to Section C of this Article directing that the work be done on a force account.

basis. If this occurs, the CONTRACTOR shall furnish labor, equipment, and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

1. Labor, including forepersons who are directly assigned to the force account work (actual payroll cost, including wages, customary fringe benefits, labor insurance, and labor taxes as established by law).

(a) Engineering services at \$50.00 per hour

(b) Drafting services at \$27.50 per hour

(c) Subcontracting services as invoiced

No other fixed labor burdens will be considered, unless approved in writing by METRO in advance of performance of the force account work.

2. Material delivered and used on the designated work, including sales tax, if paid for by the CONTRACTOR or its subcontractor.

3. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of \$100.
4. Additional bonds, as required and approved by METRO.
5. Additional insurance (other than labor insurance, as required and approved by METRO).

To the costs above there shall be added a fixed fee of ten percent (10%) of the cost of Items 1 (excluding subparts a, b and c), 2, and 3 and a fixed fee of five percent (5%) to the cost of Items 1.(a), 1.(b), 4 and 5. An additional fixed fee of ten percent (10%) shall be allowed the CONTRACTOR for the administrative handling of portions of the work that are required to be performed by an approved subcontractor ~~4.(item 1.(c))~~. No additional fixed fee will be allowed for the administrative handling of work performed by a subcontractor of a subcontractor. The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other general expense. For equipment under Item 3 above, rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current.

rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances will be made for those items.

E. METRO Furnished Materials and Equipment. METRO reserves the right to furnish such materials and equipment as it deems expedient for work undertaken pursuant to this Article, and the CONTRACTOR shall have no claims for profit or added fees on the cost of such materials and equipment.

F. CONTRACTOR Records.

1. The CONTRACTOR shall maintain its records in such a manner as to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations. The CONTRACTOR shall furnish METRO with report sheets in duplicate of each day's force account work no later than the working day following the performance of said work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the CONTRACTOR, sub-contractor,

or other forces. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment and hours operated.

2. Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the CONTRACTOR or its authorized agent.
3. To receive partial payments and final payment for force account work, the CONTRACTOR shall submit in a manner approved by METRO, detailed and completed documented verification of the CONTRACTOR'S and any of its subcontractors' actual current costs involved in the force account work pursuant to the issuance of an approved Change Order. Such costs shall be submitted within thirty (30) days after said work has been performed.

4. No payment will be made for work billed and submitted to METRO after the 30-day period has expired. No extra or additional work shall be performed by the CONTRACTOR, except in an emergency endangering life or property, unless in pursuance of a written Change Order and Notice to Proceed as described in this Article.

G. Deductions from Payments for Deleted Work. All deductions from payment for deleted work shall be made under the conditions and procedures of this Article. For purposes of this Article, the term "deleted work" means work which is deleted from the work required to be performed under the original Contract, but does not include any work which need not be performed due to any changes in law, statutes, rules, regulations, ordinances, permit(s), permit conditions, or regulatory policies.

H. Request for Proposal for Deleted Work.

1. In the event METRO issues a written change order deleting work, it shall also send the CONTRACTOR a Request for Proposal (RFP). Within fourteen (14) calendar days after receipt of an RFP for deleted work, the

CONTRACTOR shall submit an itemized proposal stating the actual and reasonable costs which would be avoided by deleting work called for in the Contract, a schedule for deleting the relevant work, and the effect, if any, on the CONTRACTOR'S performance of the remaining Contract work by reason of the deleted work. The CONTRACTOR'S proposal shall be based on all current and future avoided costs to the CONTRACTOR for deleting the work and any profit margins or markups which the CONTRACTOR'S proposal includes for such work.

2. No Request for Proposals by METRO shall be construed as authorization for the CONTRACTOR to delete the work covered by an RFP for deleted work. The CONTRACTOR shall not delete any work unless and until an order from METRO authorizing such deletion is served upon the CONTRACTOR. In any such written notification METRO shall indicate whether it accepts or rejects the CONTRACTOR'S proposal.

3. If METRO rejects the CONTRACTOR'S proposal but orders the work to be deleted, the

CONTRACTOR shall delete the work. METRO may make all appropriate deductions from payments, according to the formula below, if METRO has ordered the CONTRACTOR to delete work, regardless of whether the CONTRACTOR has complied with such order.

I. Amount of Deductions for Deleted Work. The amount of any deductions from payments for deleted work shall be equal to all current and future avoided costs resulting from the deleted work plus any profit margin or markups which the CONTRACTOR'S proposal includes for such work. If the latter profit margin or markup figures are unavailable, the parties hereby agree that the CONTRACTOR'S profit margin on all work shall be deemed to be ten percent (10%) of the actual cost of performing the work. The CONTRACTOR shall submit complete records of materials and labor usage to METRO for review.

ARTICLE VII

INSURANCE

CONTRACTOR shall maintain such insurance as will protect CONTRACTOR from claims under Workers' Compensation Acts and other employee benefits acts covering all of CONTRACTOR'S employees engaged in performing the work under this Contract; and from

claims for damages due to bodily injury, including death and damages to property, all with coverage limits as specified within this Article. This insurance must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them. CONTRACTOR is expressly and wholly responsible for insuring damage to any equipment during execution of this Contract.

Before commencing work on this Contract, CONTRACTOR shall provide METRO with a copy of the insurance endorsement(s) showing METRO as an additional insured. CONTRACTOR shall also furnish METRO with certificate(s) of insurance specified herein naming METRO as an additional insured and showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statements:

A. This/These policy(ies) shall be considered as primary insurance and exclusive of any insurance carried by METRO and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that METRO may have other valid and collectible insurance covering the same risk.

B. This/These policy(ies) shall not be cancelled, reduced in coverage, nor materially altered until after ~~sixty~~

~~(60)~~ thirty (30) days' written notice of such cancellation, reduction or alteration in coverage shall have been received by METRO.

C. No act on the part of the insured shall affect the coverage afforded to METRO under the insurance covered by this/these certificate(s).

D. This/These policy(ies) consist only of insurance on an occurrence basis, not on a claims made basis.

DESIGNATED INSURANCE REQUIREMENTS

Maintenance of insurance by CONTRACTOR as specified in this Article shall constitute the minimum coverage required.

Designated Insurance Requirements

Limits

- (1) (a) Workers' Compensation covering all employees who are engaged in any work under the Contract (including subcontractors' employees).

Statutory
(State/Federal)

The Contractor shall require its Workers' Compensation carrier to

provide Metro with an endorsement
for waiver of subrogation.

(b) Employers' Liability including
bodily injury caused by disease.

Not less than

\$1,000,000

(2) Comprehensive General Liability,
and Protection and Indemnity.

Contractors' Public Liability and
Contractual Liability Coverage:

(i) Bodily injury (inc. death)
and Personal Injury

(ii) Broad Form Property Damage
and Broad Form Property
Damage including Completed
Operations, and shall
include coverage for Explosion,
Collapse and Underground.

(i and ii coverage)

\$1,000,000 per

occurrence/

\$1,000,000 aggregate

bodily injury and
property damage

- (3) Comprehensive Automobile Liability
including Owned, Nonowned and
Hired Vehicles:

(i) Bodily injury (inc. death)

(ii) Property damage

(i and ii coverage)

\$1,000,000 per
occurrence/aggregate
combined single
limit bodily injury
and property damage

- (4) Umbrella Coverage

to achieve a total
coverage of
\$3,000,000 per
occurrence/
\$3,000,000 aggregate

(i) Bodily injury (inc. death)
and Personal Injury

(ii) Broad Form Property Damage
and Broad Form Property
Damage including Completed
Operations, and shall
include coverage for
Explosion, Collapse and
Underground.

(i and ii coverage)

\$1,000,000 per
occurrence/
\$1,000,000 aggregate
bodily injury and
property damage

~~A. When activities of the CONTRACTOR are to be
accomplished within a public or private right of way requiring
special insurance coverage, the CONTRACTOR shall conform to the
particular requirements and provide the required insurance.~~

~~The CONTRACTOR shall include in its liability
policy all endorsements that the said authority may require for
the protection of the authority, its officers, agents, and
employees. Insurance coverage for special conditions, when
required, shall be provided by the CONTRACTOR at its own expense
at no additional cost to METRO.~~

B. The CONTRACTOR shall maintain the above insurance at all times until completion of the Contract or until the termination date of the Contract, whichever is later.

C. Maintenance of insurance by the CONTRACTOR as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of CONTRACTOR under this Contract and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

D. In the event CONTRACTOR'S required insurance coverages are cancelled or reduced, METRO shall have the right, at its sole option, to require the CONTRACTOR to place all of the aforementioned insurance coverages through such Master Policy as METRO may obtain ~~if such would reduce the premiums for such~~ coverages. The CONTRACTOR agrees that METRO may deduct from the Contract Sum the amount of the premiums payable on any policy obtained through a Master Policy, or, at METRO'S discretion, pay the same directly to the insurance carrier. The CONTRACTOR further agrees to comply with such regulations as METRO may issue from time to time to improve the administration of the Master Policy.

ARTICLE VIII

PUBLIC CONTRACTS

The provisions set out in Oregon Revised Statutes, Chapters 187 and 279, as amended or superseded, including the latest additions and revisions, and Chapter 2.04 of the Metro Code, are incorporated by reference as part of these Contract Documents.

ARTICLE IX

ATTORNEYS' FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE X

QUALITY OF GOODS

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. All guarantees and warranties of goods furnished to CONTRACTOR or

subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO. CONTRACTOR shall provide warranties as attached hereto as Attachment "BC."

ARTICLE XI

OWNERSHIP OF DOCUMENTS

~~All documents produced by CONTRACTOR pursuant to this agreement are the property of METRO and it is agreed by the parties hereto that such documents are work made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction to all such documents.~~

All documents which the CONTRACTOR is required to provide pursuant to Attachment "A" - Scope of Work, are the property of METRO. To the extent that such documents contain "trade secrets" as this term is defined in ORS Chapter 192, Metro, as allowed by law, may restrict access to the documents or any portions of the documents which are deemed to contain "trade secrets." METRO shall have the right to utilize all documents which the CONTRACTOR is required to provide to operate, maintain and repair the equipment and may allow access to such documents to contractors or subcontractors involved in operation, maintenance and repair of the equipment.

ARTICLE XII

SUBCONTRACTORS; DISADVANTAGED BUSINESS PROGRAM

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract. METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

CONTRACTOR agrees to make a good faith effort, as that term is defined in METRO'S Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting seven (7) percent of that portion of the work that is subcontracted to Disadvantaged Business Enterprise and five (5) percent of that portion of the work that is subcontracted to Women-Owned Business Enterprise. METRO reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and METRO'S Disadvantaged Business Program.

ARTICLE XIII

RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due CONTRACTOR such sums as reasonably 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. Upon completion of the Scope of Work the Parties shall cause the compaction system to be tested according to the procedures set out in the Scope of Work to determine their conformance to this contract. METRO shall make the payments due CONTRACTOR in association therewith, as contemplated by this contract if the following conditions are met: (i) the compaction system perform substantially as required and (ii) if CONTRACTOR has otherwise performed the work required of in hereunder. If the foregoing conditions are not met, METRO shall at its option either (i) accept and make full payment for the compaction system without waiver of any claims for damages or other remedies it may have against the CONTRACTOR, (ii) accept and make payment based on the percentage of the actual throughput as it relates to the specifications, (iii) immediately notify CONTRACTOR thereof and CONTRACTOR shall promptly cause such conditions to be met, at which time the compaction system shall be retested, or (iv) notify CONTRACTOR that the compaction system is being rejected. If METRO accepts the compaction system pursuant to (i) or (ii),

such acceptance shall not constitute a waiver of METRO'S rights under any warranty provided for in this Contract. In the event METRO rejects the compaction system pursuant to (iv), CONTRACTOR shall remove the compaction system as specified in Item 4 of Attachment "A" -- Scope of Work. Prior to acceptance METRO may make use of the compaction system, and will make the compaction system fully available to CONTRACTOR to perform any necessary remedial work.

ARTICLE XIV

SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provision of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XV

INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any Proposal Documents including, but not limited to, the Advertisement for Proposals, General and

Special Instructions to Proposers, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the negotiating of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XVI

PRECEDENCE OF CONTRACT DOCUMENTS

All determination of the precedence of or discrepancy in the Contract Documents shall be made by METRO, but in general, precedence will be in accordance with the following list with the highest precedence item at the top:

1. Specifications and Drawings
2. Signed Public Contract (including Attachments)
3. Requests For Proposals
4. Proposals

Addenda, Clarifications and all Change Orders to the Contract Documents take the same order of precedence as the specific sections that they are amending.

ARTICLE XVII

ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

ARTICLE XVIII

METRO'S REMEDIES IN THE EVENT OF CONTRACTOR INSOLVENCY, DISSOLUTION, BANKRUPTCY OR GENERAL ASSIGNMENT FOR CREDITORS

The parties agree that if the CONTRACTOR becomes insolvent, is dissolved, files for Bankruptcy, is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such events could impair or frustrate the CONTRACTOR'S performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, METRO shall be entitled to request of the

CONTRACTOR or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of the CONTRACTOR and Surety to comply with such request within ten (10) calendar days of service upon both the CONTRACTOR and Surety of a written request from METRO for such assurances shall entitle METRO to terminate the CONTRACTOR right to perform Contract pursuant to Article V. METRO shall not be bound to the Contract by an insolvent CONTRACTOR'S trustee or receiver.

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

MML/gl
1036

ATTACHMENT "A"

SCOPE OF WORK

1.0 GENERAL. ~~Metro is seeking proposals from qualified firms to~~ Contractor shall perform the following services and to deliver the products described. The work consists of the design, manufacture, installation, shakedown, and warranty of a compaction system for the Metro South Station. The system will be located at the Northeast end of the pit floor, and be compatible with the proposed design (see drawings for more detail), proposed method of operation (i.e. a pit-type operation with conveyor loading system) and current mode of waste transport. The work ~~included under this RFP is seen by Metro as shall~~ occurring in the following parts.

- 1.1 Technical Specifications. Contractor will be responsible for the design and manufacture of the compaction system. The system shall consist of a programmable compactor, an associated loading hopper system to receive waste from a conveyor (or walking floor) that bridges the two compactors' loading chambers, trailer securing device and a system to transmit the weight of a load to a computer located in the compactor control room. The compaction system shall meet or exceed the following specifications.
- A. Capable of being loaded by a conveyor which will be located at the Northeast end of the current pit, as well as direct loading by the CAT/loader in the event of conveyor failure.
 - B. Compact and load into transfer vehicles 100 tons per hour (1200 tons per day in a 12 hour period).
 - C. Achieve road legal average payloads of 30 tons, and maximum payloads of 32 tons in the transfer vehicles.
 - D. Produce a load (of either one or more bales) which is compatible with designated transport equipment ~~(see drawing in appendix)~~, and place it inside the transfer vehicle such that no compaction/pressure is exerted on walls or ceiling which results in structural damage/deformation or puncturing of the unit; and such that overloading will not occur. ~~Contractor will be responsible for costs incurred due to improper loading or overloading and damage until final acceptance by Metro in addition to coverages negotiated as part of the final contract.~~

- E. Ability to extrude the load any distance in the range of zero to seven feet into the trailer.
- F. Payloads shall be achieved using waste received at the facility and the transfer vehicles currently under contract with Metro. Proposers are responsible for determining the pertinent waste and transfer vehicle characteristics ~~(additional information is provided in the Appendix);~~
- G. Compactor should have the ability to automatically compact waste to desired payloads through a programmable series of compaction and clear strokes which occur as waste is loaded into the system, as well as determining/displaying and executing the optimum extrusion distance into the trailer. When in the automatic mode, optimum extrusion distance should be the limit during extrusion. The automatic pattern should be programmable (i.e. capable of achieving desired payloads by varying densities within a load in combination with extrusion distance through software modifications).

~~Proposers shall include in their proposals a per hour cost for reprogramming of the automatic pattern after successful completion of acceptance testing.~~ Contractor is responsible for programming costs necessary to complete acceptance testing, and shall include such costs in the total proposal costs.

In addition, the compactor should have the ability to vary the compaction/clear stroke pattern and the length of compaction strokes in the manual mode from the CAT and control room. Extrusion distance should be able to be varied from the dozer ramp control point, with an extrusion display which monitors distance during extrusion.

- H. Capable of operation by the CAT operator in the pit as well as by an operator located in the compactor control room, with an additional control panel located under the dozer ramp indicated on the drawings.
- I. Provide visual display of length and weight of bale during compaction at all three control points. A display board(s) visible to the CAT operator is required as one of the three visual displays. Transmission of weight data to computer system located in control room. If multiple bales are produced, a total net weight for the combined bales should be transmitted.

Metro will provide an IBM compatible PC and software for conversion of the data for manifesting and data storage purposes ~~(software/hardware specifications are contained in the Appendix).~~

J. Front and rear load cells which produce weights certifiable by the State of Oregon as legal for trade (level of accuracy plus or minus 0.1%) and NTEP approved.

K. A hydraulic hitch which connects directly from the compactor to the transfer vehicle, capable of operation from the control panel located under the dozer ramp. The hitch shall be secured directly to the compactor, and be compatible with the transfer vehicle.

L. Accept the wide variety of materials contained in the waste stream delivered to the facility, while minimizing jamming or breakdown. Proposer should indicate materials requiring special treatment, such as exclusion or breakup prior to loading into the unit.

M. Minimize dust, odor, litter/spillage through the loading design;

N. Conform with all applicable federal, state and local laws.

O. Capable of being installed and operated as per the above specifications, in the space and in the general configuration as shown in the drawings.

2.0 Installation. Contractor is responsible for the installation of the system and all associated costs. Contractor shall obtain from Metro a Notice to Proceed prior to installation of the system. Contractor shall not be entitled to any reimbursement for standby costs, for the first sixty (60) days following certification the compactor is ready for delivery, incurred between the completion of manufacture and Metro's issuance of the Notice to Proceed with installation. From the sixtieth (60th) day until the start of installation METRO shall reimburse Amfab at the rate of \$150.00 per calendar day (for the cost of Amfab's invested funds), unless METRO makes the next installment payment, at which time METRO will gain an additional sixty (60) day extension prior to reimbursing Amfab for invested funds, unless METRO makes the last installment payment. The installation must be accomplished to minimize disruptions to facility operations. Ideally the installation should be accomplished during a weekend. Installation shall not

exceed 5 calendar days. Installation is complete once the system has successfully prepared at least one load. Contractor is responsible for obtaining any necessary permits/regulatory approvals, and for specifying interface requirements with Metro or Metro Contractor's such as the manifest system contractor.

Installation must be completed within 95 calendar days after signing of a contract, but not prior to 90 days of the signing of a contract without approval from Metro.. Metro reserves the right to withhold payments (as well as other remedies as determined in the final contract) for failure to complete the work in a timely manner. Metro reserves the right to extend the time limits stated above, and will do so if Metro determines such an extension is in Metro's best interest and/or an extension is required due to a delay caused by Metro. Notwithstanding anything herein to the contrary, Amfab shall not be liable for delays caused by the elements, rebellion, riots, strikes, labor troubles or civil commotion of any kind.

- 3.0 Shakedown. After installation, the Contractor shall conduct a shakedown of the system. Shakedown procedures and a schedule shall be presented to Metro for approval, prior to the start of shakedown. Shakedown procedures shall include, but not be limited to, scheduling and testing procedures for interfacing with the onsite computer manifesting and data storage procedures.

The shakedown period is the Contractor's opportunity to test the system and correct any deficiencies found, prior to performance of the acceptance test. The Contractor shall be responsible for operation of the system during this period, and shall minimize interference in the daily operations. The transfer station operator will be responsible for loading waste into the system under the Contractor's direction per approval from Metro. The transport contractor will be responsible for providing transport vehicles for receiving loads under the Contractor's direction per approval from Metro.

Contractor shall pay for any extraordinary costs incurred by the transfer station operator, transport contractor and/or Metro due to system shakedown, including, but not limited to, equipment (except transfer trailers) or facility damage. Contractor shall be responsible for all maintenance and repairs of the compaction system during this period.

The shakedown period shall not exceed ten (10) calendar days from the time Metro approves the shakedown procedures. Metro reserves the right to withhold payments (as well as other remedies as determined in the final contract) for failure to complete the work in a timely manner. Metro reserves the right to extend the time limits stated above, and will do

so if Metro determines such an extension is in Metro's best interest and/or an extension is required due to a delay caused by Metro.

4.0 Acceptance Testing

Contractor shall indicate in writing to Metro that the shakedown is complete and that the system is ready for acceptance testing. All permanent system components must be in place before requesting the acceptance test, including successful shakedown of the computerized manifesting/data retrieval system. Any exceptions to this requirement are contingent upon the prior approval of Metro. Metro shall conduct the acceptance test of the system to determine whether it meets the specifications contained herein. Contractor shall be responsible for providing the equipment operators for the test, with the exception of the CAT/loader operator and shuttle drivers. It is the responsibility of the Contractor to provide adequate training to the CAT/loader operator and shuttle drivers. Metro reserves the right to determine the specific date and time of the test in order to ensure sufficient waste, equipment and personnel. The test parameters for acceptance are compliance with the technical specifications. Generally, the Metro representative will conduct the test using the following guidelines:

- A. Compact and load into transfer vehicles an average of 100 tons per hour over a continuous 6 hour period. Metro shall ensure that a transfer trailer is in position to receive a load once ready for extrusion. Any delay in the provision of a trailer shall act as an extension of the six hour time period.
- B. The average payload during this period shall be 30 tons.
- C. Overloads shall not be counted for either item A or B, nor will an extension of time be granted to compensate for overloads. Both A and B shall be determined at the onsite scale.
- D. The bale(s) must maintain its integrity and not abrade or bulge against the sides or the top of the trailer during extrusion into the trailer. Excessive sloughing out the rear of the trailer shall not occur. Compliance with this standard will be determined by a visual inspection of the onsite Metro representative whose determination shall be final.

E. Achieve the parameters in items A through D while producing road legal weights for the transfer vehicle.

F. Metro shall conduct a visual inspection of the system prior to, and at the conclusion of the testing with the Contractor, noting any obvious leaks, equipment failures/damage or abnormal wear and tear, as determined at the sole discretion of Metro. Contractor shall repair such leaks, damage or wear as a precondition to both the acceptance test and final payment if test parameters in items A through E are successfully accomplished. If Metro concludes that such leaks, equipment failure/damage or wear are of a material and reoccurring nature, Metro, in its sole discretion, may declare that the system has failed the acceptance test.

In the event that Metro declares that the equipment has failed to pass the acceptance test, Contractor shall remove the compaction system within 7 calendar days of notification of such failure, and refund to Metro all payments made to date, less reasonable costs for installation and removal, and facility modification costs if applicable. Only these costs (installation/removal/modification) shall qualify for purposes of payments by Metro to Contractor under Article V of the Contract. Metro reserves the right to allow the Contractor to retake the acceptance test at a later date, or to waive any minor irregularity which occurs during the test. Metro will not unreasonably deny the Contractor's request for a second acceptance test. Metro also reserves the right, in its sole discretion, to exercise the remedies set forth in Article 13 of the Contract.

5.0 Maintenance. ~~Proposers shall describe routine, periodic, and annual maintenance requirements for the system, the number of hours per year for each level, and the intervals at which each level is required (i.e. daily, weekly, etc.). Proposers should indicate which maintenance requirements should be performed by parties other than the transfer station operator, including the replacement/repair of system components. Proposals should specify what maintenance is covered under the proposed warranty and included in the proposal price.~~

~~Proposals should specify what service contracts are available from the proposing firm, including, at a minimum, an emergency service agreement for a two (2) hour response time, 24 hours a day, 7 days a week.~~

The successful Contractor shall be responsible for all maintenance and repair costs to the system prior to acceptance by Metro. ~~Contractor shall provide 5 sets of~~

~~maintenance manuals. Contractor shall thoroughly train transfer station personnel in routine, periodic and annual maintenance procedures to the satisfaction of Metro.~~

- 6.0 Training, Manuals, Drawings. ~~Contractor shall provide thorough training to the transfer station operator in the operation of the system and general training to Metro personnel. Contractor shall provide 5 sets of operations manuals. Contractor shall provide two (2) sets of as built drawings of the equipment in sufficient detail to identify all components of the system.~~

~~Contractor shall provide five days training, for thorough training to the transfer station operator, in the operation and maintenance of the system and general training to Metro personnel. In the event that such training is not completed within (5) five days, Metro will pay to Amfab a sum of \$400.00 per day for each additional day. Training in excess of (8) eight hours per day or any time on Saturdays, Sundays or holidays will be at Metro's request and will be charged at overtime rates of Amfab. Additional training, in accordance with above, will be invoiced as a change to the scope of work. Contractor shall provide 5 sets of operations manuals. Contractor shall provide two (2) sets of descriptive drawings of the equipment in sufficient detail, as determined by Metro, to identify all pertinent components (and their dimensions and relative locations) of the system.~~

- 7.0 Bonds/Insurance. Contractor shall provide Performance and Labor and Materials Bonds on the enclosed forms, or substitutes acceptable to Metro, in amounts equal to 100% of the contract amount. Said bonds shall be submitted with an executed Contract and have a term of one year. Before commencing the work, Contractor shall provide certificates of insurance as described in Article VII of the Contract.

ATTACHMENT "B"

BILLING PROCEDURES

Billing procedures are subject to the review and prior approval of Metro before reimbursement of services can occur.

Payments will be made, within twenty-one (21) days of presentation of invoice, to the successful Contractor on the following basis for goods and services described in Attachment "A", including necessary permits and facility modifications:

\$187,319 upon contract signing
\$124,879 upon certification the
contractor is ready for delivery
\$156,099 upon completion of installation
\$156,099 upon acceptance by Metro

TOTAL \$624,396

Payments made prior to final acceptance shall not be interpreted as an acceptance by Metro of any part of the work. Contractor shall be required to refund any amount deemed appropriate by Metro paid prior to final acceptance.

In addition to the above amounts, Metro shall include in the total contract amount an additional \$5,000 for programming of the automatic control system, for Metro-requested reprogramming of the system after successful completion of Acceptance Testing. Contractor shall be reimbursed at an hourly rate of \$85.00 per hour.

TOTAL CONTRACT AMOUNT= \$629,396

WARRANTY

Contractor warrants all parts other than consumables and wear parts against defects in materials and workmanship for a period not to exceed twelve (12) months from the date of installation, provided Metro gives Contractor written notice within fifteen (15) days of discovery of such defects. Consumable and wear parts are warranted for sixty (60) days. A list of consumable and wear parts is attached as "Exhibit 1" to the Warranty.

Contractor, reserves the right to conduct a physical inspection of any part alleged to be defective to verify that the failure was due to a defect and not due to normal use or unusual circumstances. Upon determining that the failure was due to a defect, Contractor will provide parts and labor and replace, repair or adjust any defective parts during the terms of the specified warranty periods. For the first ninety (90) days following successful completion of the Acceptance Test, Contractor will provide, at no additional cost to Metro, inspection and adjustment of the hydraulic and control systems.

Contractor assumes express responsibility for all loss of oil during startup and shake down of the compactor. Additionally, for the first ninety (90) days following successful completion of the Acceptance Test, Contractor will replace any catastrophic loss of oil due to mechanical failure of component parts, fittings and hoses.

Contractor expressly disclaims warranty liability for damage caused by operation of the equipment at pressures greater than 2500 psi if there is evidence of manual adjustment or removal of the pressure relief valve.

The specified warranties do not cover normal wear and tear incurred during the intended use of the equipment.

NEW MATERIAL AS WELL

Contractor warrants that it will furnish and install the equipment in conformance with all known and existing statutory requirements and applicable codes. After acceptance, Metro will be responsible for assuring that equipment guards and lock outs are maintained and the equipment is operated in accordance with applicable codes. Metro will be responsible for assuring that personnel assigned to operate and maintain the equipment receive initial and ongoing training on the proper maintenance and operation of the equipment. Metro will be responsible for assuring that the equipment is maintained in good operating condition, and will be responsible for assuring that all warnings and decals attached to the equipment are maintained.

THE SPECIFIED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES OR OBLIGATIONS EXPRESS OR IMPLIED. CONTRACTOR EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS PROFITS OR LOSS OF USE OR OTHER ECONOMIC LOSS. EXCEPT AS EXPRESSLY PROVIDED HEREIN,

CONTRACTOR DISCLAIMS ALL OTHER LIABILITY TO METRO OR ANY OTHER
PERSON IN CONNECTION WITH THIS AGREEMENT OR THE USE OR
PERFORMANCE OF CONTRACTOR'S EQUIPMENT SOLD HEREUNDER, INCLUDING
LIABILITY FOR NEGLIGENCE OR STRICT LIABILITY IN TORT.

MML/gl
1127

CONSUMABLE AND WEAR ITEMS

FOR TRANS-PAK MODEL 500

Qty.	Expected Life (Mos.)	Item Description	Price Each
PLATEN:			
2	6	UHMW Side Wear Strip - Front	\$ 72.00
2	6	UHMW Side Wear Strip - Rear	39.00
2	6	UHMW Bottom Wear Strip - Front	62.50
2	6	UHMW Bottom Wear Strip - Rear	37.00
4	6	Bottom Wheel Assembly	617.00
2	12	Lower Rear Side Guide Rollers	279.00
4	12	Front Side Guide Rollers	291.00
4	6	Top Wheels Back	529.00
2	6	Top Front Wheels	531.00
1	6	Platen Knife Assembly	2,700.00
CHAMBER:			
1	12	Chamber Knife Assembly	1,800.00
1	3	Rubber Wiper Strip	232.00
CABLE WINCH ASSEMBLY:			
1	3	Winch Cable	65.00
CYLINDER:			
6	6	Trolley Cam Roller	102.75
1	6	2" Retract hose	1,260.00

Qty.	Expected Life (Mos.)	Item Description	Price Each
PLATEN LID:			
16	2/6	Aluminum Bronze Wear Strips	36.00
50		Wear Strip Bolts w/Lock Washers	23.40/C
COVER LID:			
1	6	Locking Roller Subassembly	830.00
2		Shear Pins	
FILTERS AND FILTER ELEMENTS:			
12	3/6	Recirculation Filter Elements	78.50
2	3/6	Return Filter Elements	45.00
5	2	Air Filters	48.86

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KENNETH M. ELLIOTT
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Special Counsel

August 24, 1990

RECEIVED

AUG 24 1990

TIME: 4:35 PM
METRO SERVICE DISTRICT
OFFICE GENERAL COUNSEL

HAND DELIVERED

*Also Admitted to Practice
in State of Washington

Ms. Rena Cusma
Executive Director
Metropolitan Service District
2000 SW First
Portland, OR 97201

Re: AMFAB Resources Appeal of Contract Award for South Station
Compaction System

Dear Ms. Cusma:

This office represents AMFAB Resources.

AMFAB submitted a proposal in response to the Solid Waste Department's Request For Proposals (RFP) for the design, manufacture and installation of a compaction system for the Metro South Station. AMFAB and a second proposer, Shredding Systems, Inc. (SSI), received an equal score in the Staff's evaluation of the proposals. A Notice of Award was given to SSI on August 20, 1990.

AMFAB has filed this appeal of that recommended contract award, pursuant to Metro § 2.04.031. A copy of the appeal and attached exhibit has been delivered to the Contracts Administrator.

Very truly yours,

O'DONNELL, RAMIS, CREW & CORRIGAN

Jeff H. Bachrach

JHB/lf

jhb\amfab\cusma.h1

cc: Metro Contracts Administrator (hand delivered)
Dan Cooper, Metro General Counsel (hand delivered)
Monica Little, Asst. General Counsel (hand delivered)
Carl Winans, AMFAB
Steven A. Schumeister, AMFAB (by FAX)

RECEIVED

AUG 24 1990

TIME 4:37 PM
METRO SERVICE DISTRICT
OFFICE GENERAL COUNSEL

BEFORE THE METROPOLITAN SERVICE DISTRICT
CONTRACTS ADMINISTRATOR

AMFAB RESOURCES,)
Appellant,)
vs.)
METROPOLITAN SERVICE DISTRICT,)
Contracting Agency.)

APPEAL OF NOTICE OF AWARD
OF CONTRACT FOR METRO SOUTH
STATION COMPACTION SYSTEM
PROJECT TO SHREDDING SYSTEMS,
INC.

This appeal is filed on behalf of AMFAB Resources pursuant to
Metro Code § 2.04.031.

In May, 1990, Metro issued a Request For Proposals (RFP) for
the design, manufacture, installation and warranty of a compaction
system at the Metro South Station. Proposals were due by June 15,
1990. Responsive proposals were received from Shredding Systems,
Inc. (SSI) and the appellant, AMFAB Resources (AMFAB).

The Metro Solid Waste Department (Staff) determined that the
proposals were equal based on the evaluation point system provided
for in the RFP. A Notice of Award was sent to SSI on August 20,
1990. AMFAB has standing to file this appeal as an "aggrieved
proposer," pursuant to § 2.04.031(b).

The procedures followed by Metro in recommending award of the
contract to SSI violated the terms of the RFP and OAR 137-30-
010(4), 137-30-065, 137-30-070(2) and 137-30-090(2). The public
contracting procedures used by Metro are controlled by ORS 279.049
and the implementing regulations contained in Oregon Administrative
Rules Chapter 137, Division 30.

1 As discussed in this appeal, the award of the contract to SSI
2 is beyond Metro's legal authority. Therefore, Metro has no choice
3 but to reject Staff's recommendation and award the compaction
4 system contract to AMFAB.

5 1. SSI's Proposal Was Not Timely Filed.

6 OAR 137-30-015(2)(b)(A) requires the contracting agency to
7 state a "time after which bids will not be received." Metro's RFP
8 stated: "Proposals will be due at 4:00 p.m. PDT, Friday, June 15,
9 1990 . . . Proposals will not be considered if received after this
10 time." The statement in the RFP that Metro would not consider
11 proposals received after the deadline time was consistent with OAR
12 137-30-070(2), which states, "Late bids . . . shall not be
13 considered."

14 In violation of the unequivocal language in both the RFP and
15 the OAR, Metro accepted SSI's proposal even though it was received
16 about 10-15 minutes after the stated deadline. Metro had no
17 authority to ignore the terms of its RFP and the clear mandate of
18 state law. Neither the RFP nor state law provides Metro with the
19 discretion to waive SSI's failure to file on time. The proposal
20 should not have been accepted and, consequently, Metro cannot award
21 the contract to SSI.

22 With the rejection of SSI's proposal, Metro must award the
23 contract to AMFAB, because Staff has already determined that
24 AMFAB's proposal complies with all RFP procedures and requirements
25 and that it is an acceptable proposal.

26

1 While the other claims cited in this appeal provide
2 alternative basis for overruling the Staff recommendation, this
3 first claim is dispositive: SSI's proposal must be rejected
4 because it was filed late, and the contract must be awarded to
5 AMFAB because it is the only responsive proposer.

6 2. Illegal Tie-Breaker.

7 a. Background.

8 The RFP established a point system for evaluating the
9 proposals based on six criteria. After applying the criteria,
10 Staff awarded equal points to both proposals. Staff sent
11 proposed contracts to both parties on August 1, 1990, with a
12 cover letter stating in part:

13 "Enclosed is a draft contract for the provision of
14 a compaction system at the Metro South Station.
15 Please comment on the acceptability of the contract
16 language, along with proposed changes, by August 7,
1990. Metro will evaluate the proposed changes in
developing its recommendation for award of a
contract."

17 In response, SSI suggested two changes, both of which
18 were rejected by Metro. AMFAB proposed about 20 modifications
19 to the contract and Metro accepted many of them. It should
20 be emphasized that Metro voluntarily and unilaterally
21 incorporated AMFAB's suggestions into what Metro then termed
22 its "bottom line" contract proposal. AMFAB had never said it
23 would not sign the original Metro contract without its
24 suggested changes. The changes were offered in response to
25 Metro's request for comments. When Metro presented its
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1 "bottom line" contract, AMFAB stated its willingness to sign
2 it.

3 Unbeknownst to AMFAB, the evaluation criterion that was
4 used to break the tie was the fact that Metro adopted more contract
5 revisions suggested by AMFAB than by SSI. That procedure was not
6 explained in the August 1 letter. AMFAB only learned about the
7 tie-breaking criterion when it received the Staff report on Friday,
8 August 17. The Notice of Award to SSI was sent on Monday, August
9 20. The Metro Solid Waste Committee recommended in favor of
10 Staff's decision at its hearing on August 21. In his testimony
11 before the committee, Chuck Geyer, Senior Solid Waste Planner,
12 confirmed the process that was used to break the tie.

13 b. Violation of OAR 137-30-010(4) and 137-30-090(2).

14 The process and criterion Metro used to break the tie
15 between the two proposers are illegal because they were not
16 provided for in the RFP. OAR 137-30-010(4) states that "Any
17 special terms and conditions shall be included in the bid
18 documents." OAR 137-30-090(2) provides that "No bid shall be
19 evaluated for any requirement or criterion that is not
20 disclosed in the bid documents or public agency regulation."

21 Staff had no legal authority to use the contract revision
22 criterion as a basis for breaking the tie between the two
23 proposers because it was not disclosed in the bid documents.
24 SSI cannot be awarded the contract based on an unauthorized
25 tie-breaker criterion.

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1 c. Due Process Violation.

2 Even if the August 1 letter to the proposers could be
3 considered part of the bid documents, nonetheless, the
4 contract revision process would still not be a valid tie-
5 breaking criteria. The letter does not clearly state that the
6 proposers' response will be used to break the tie. More
7 importantly, the letter does not explain what standards were
8 to be used in evaluating and comparing the proposers'
9 responses.

10 By failing to notify AMFAB that a tie-breaking criterion
11 was being added to the RFP, and by failing to adequately
12 explain the nature of the criterion, Staff violated AMFAB's
13 due process rights, provided by the Oregon Constitution and
14 the U.S. Constitution.

15 3. Review Criteria and Analysis.

16 As discussed above, it is illegal for Metro to rely on the
17 unauthorized tie-breaking criterion created by Staff. Pursuant to
18 OAR 137-30-090(2), Metro can only rely on the evaluation criteria
19 contained in the RFP. A re-evaluation of how the Staff applied the
20 review criteria will reveal several categories in which additional
21 points should be awarded to AMFAB.

22 a. Experience.

23 One of the evaluation criterion awarded points based on
24 the proposer's experience. The basis for the experience
25 criterion, according to the RFP, is "projects that the
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1 proposing firm/team has conducted that are similar to the work
2 required for this project."

3 AMFAB has designed, manufactured and installed 20
4 compaction systems nearly identical to the system being
5 proposed for Metro. SSI has never manufactured and installed
6 a compaction system. Despite this enormous disparity in
7 experience with "projects . . . similar to the work required"
8 for Metro's RFP, Staff awarded equal points for experience to
9 both AMFAB and SSI.

10 While SSI had no direct experience with compaction
11 systems, the Staff's evaluation noted:

12 "The SSI team members, as well as the firm in
13 general, had extensive experience in solid waste
14 application for shredders as well as general
15 material handling experience. The broad experience
16 of SSI was felt to be comparable to the specific
17 experience of AMFAB."

18 The experience criterion, as stated in the RFP, addressed
19 specific experience with compaction systems. Staff misapplied
20 that criterion by giving SSI equal points for its general
21 experience in other areas of the solid waste industry. A
22 proper and objective application of the experience criterion
23 will result in at least a minimal increase in AMFAB's score
24 and corresponding decrease in SSI's. That change in score
25 will be enough to break the tie in favor of AMFAB.

26 **b. Operational Reliability.**

Metro established an objective formula for awarding
points in this category. Twenty points are awarded if a

1 similar compaction system, installed by the proposer, is
2 operating at 100% availability, based on the system's down
3 time versus operating hours. Points were awarded on a sliding
4 scale of 0 for systems operating at 70% availability up to 20
5 points for 100% availability.

6 Staff improperly calculated the number of points that
7 should be awarded to AMFAB in this category. The 12.75 points
8 awarded to AMFAB is based on an availability rate of about
9 89%. However, in testimony before the Solid Waste Committee,
10 Staff stated that the existing compaction system at the South
11 Station, which was designed, manufactured and installed by
12 AMFAB, is operating at an availability rate in the low 90's.
13 If the availability rate is 91%, for example, then AMFAB's
14 score should be increased by 1.33 points. It should be noted
15 that the actual availability records indicate a 97% efficiency
16 rate, which would require an increase in AMFAB's score of 5.33
17 points.

18 Even the lower availability rate cited by Staff should
19 have resulted in additional points to AMFAB. The reliability
20 formula should be recalculated, based on Staff's own
21 testimony, so as to break the tie between the two proposers.

22 c. Warranty.

23 Staff awarded SSI more than twice as many points for its
24 warranty provisions as compared to AMFAB's (17 to 8.2).

25 / / / / /
26

1 In Staff's written analysis of the warranties, it stated
2 that "SSI basically offered a two-year warranty on all items."
3 A closer scrutiny of SSI's warranty (see attached Schedule A,
4 "Warranty Analysis") reveals that the two-year warranty does
5 not apply to all items, but rather applies to a far more
6 limited list of items. Indeed, the majority of items on SSI's
7 list are either covered by a one-year warranty or are excluded
8 from the warranty's coverage. Chuck Geyer acknowledged the
9 more limited nature of SSI's two-year warranty in his
10 testimony before the Solid Waste Committee. He testified that
11 the points awarded do not reflect this clarification, but that
12 nonetheless SSI's warranty remains superior.

13 Based on Mr. Geyer's testimony, SSI's point total in this
14 category should be reduced. Any reduction would result in
15 breaking the tie in favor of AMFAB.

16 Furthermore, while Staff has some discretion to make
17 subjective evaluations in comparing the two proposals, there
18 must be a reasonable basis in fact and logic to support its
19 conclusions. There is no rational basis for concluding that
20 SSI's warranty is worth twice as many points as AMFAB's. A
21 detailed analysis of the two warranties' provisions is
22 provided in a chart form in the attached schedule A. That
23 objective analysis vividly illustrates that Staff's awarding
24 of twice as many points to SSI was arbitrary and unsupported
25 by the evidence. It would be appropriate for Metro to re-

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1 evaluate the warranty provisions and recalculate the points
2 awarded in this category.

3 4. No Comparison of Technology.

4 The Staff did not award points based on a comparison of the
5 type of system being proposed and the reliability of the underlying
6 technology. Rather, Staff gave both proposals a passing mark,
7 stating that "their systems would comply with the technical
8 requirements of the RFP."

9 The public interest would be served by a comparative analysis
10 of the two proposed compaction systems, particularly in light of
11 the fact that SSI has proposed a new and untested type of system.
12 Such a comparative analysis would also be a more appropriate tie-
13 breaking criterion.

14 The standard compaction system creates one bale of waste.
15 AMFAB has designed, manufactured and installed 20 compaction
16 systems using the one-bale technology. SSI proposes a system that
17 will produce two bales, which will then be pushed together in the
18 back of the transport trailers.

19 The existing transportation contract between Metro and Jack
20 Gray Transport, Inc. (JGT) specifies that a one-bale compaction
21 system will be used. In two independent analyses conducted by JGT
22 and Wastech, Inc. (two businesses active in the solid waste
23 industry and the operation of transfer stations), both concluded
24 that the two-bale compaction system, if it worked at all, would

25 / / / / /

1 cause far more problems and damage than the one-bale system.

2 Wastech stated:

3 "Shredding Systems has never built a unit of this type.
4 Therefore, Metro would be buying a prototype with the
5 inherent problems of a prototype."

6 JGT stated:

7 "We have had numerous discussions in house regarding both
8 our theories about the two-bale interaction with our
9 trailers and about some of the load and material
10 characteristics we have seen so far. We still conclude
11 that the allowance and utilization of a two-bale
12 compaction system will unnecessarily compromise the
13 integrity and longevity of our equipment."

14 In light of the fact that both proposals were rated as even,
15 it would be logical and prudent to use the one-bale system, as is
16 called for in Metro's transportation contract and which has proved
17 to be reliable technology. It is not in the public interest to
18 ignore the crucial differences between the one-bale and two-bale
19 systems and the risks choosing the latter type of system creates
20 for Metro.

21 5. Conclusion.

22 Appellant requests that Metro reject SSI's proposal as not
23 being timely filed, and therefore award the compaction system
24 contract to AMFAB.

25 In the alternative, Appellant requests that Metro determine
26 the tie-breaking criterion made up by Staff to be invalid, and that
27 a recalculation of the evaluation points be used as a basis for
28 breaking the tie.

29 / / / / /

1 And, in the alternative, appellant requests that Metro use a
2 comparison of the proposed one-bale and two-bale systems as a basis
3 for breaking the tie.

4 DATED this 24th day of August, 1990.

5 Respectfully submitted,

6 O'DONNELL, RAMIS, CREW & CORRIGAN

7
8 By: Jeff H. Bachrach

9 Jeff H. Bachrach, OSB #84402
10 Of Attorneys for Appellant
11
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14
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22
23
24
25
26

jhb\amfab\metro.app(lf)

SCHEDULE A

August 20, 1990

METRO SOUTH TRANSFER STATION COMPACTION SYSTEM

WARRANTY ANALYSIS

<u>ITEM</u>	<u>AMFAB</u>	<u>SSI</u>
Contractor mfg. parts	12 months (A-1)*	24 months (S-1)*
Third party items (All vendor parts)	12 months (A-1)	12 months or by (S-2) mfgs. warranty (S-3)
On-site Labor	Fully (A-2) Covered	Excluded (S-4)
Freight on warranty items (Both ways)	Included (A-3)	Excluded (S-6)
Consumable items	60 days (A-4)	Excluded (S-7)
Fluids	90 days (A-5)	Excluded (S-8)
Hydraulic cylinders	12 months (A-1)	24 months (S-9)
- seals	12 months (A-1)	Excluded (S-10)
- packings	12 months (A-1)	Excluded (S-11)
- bearings	12 months (A-1)	Excluded (S-12)
Hydraulic hoses	12 months (A-1)	Excluded (S-13)
Electric solenoids	12 months (A-1)	Excluded (S-14)
Inspections & Adjustments	90 days at (A-6) no cost	Not mentioned

* References in the (parentheses) are to attached warranty documents

Exclusive remedy

Performance of
repairs or
adjustments

Performance of
repairs or
adjustments

AND

Obligated to
make unit
perform

OR Return unit to
SSI

Warranty nullification

1 item (A-7)

8 items (S-15)

Response to repair

2 hrs weekdays
4 hrs weekends
(Proposal)

"A REASONABLE
TIME" (S-16)

WARRANTY

The SSI Compactor System is covered by the Shredding Systems Inc. Limited Warranty. The warranty is as follows:

SHREDDING SYSTEMS, INC. LIMITED GENERAL WARRANTY

1. EQUIPMENT WARRANTY:

Shredding Systems, Inc. warrants, subject to terms of this Limited Warranty, that at the time of shipment to the buyer, all equipment manufactured by it is free from defects in material and workmanship. Shredding Systems does not authorize any person to create for it any other obligation or liability in connection with this sale.

(a) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO THIS SALE IS LIMITED IN DURATION TO THE DURATION OF THIS LIMITED WARRANTY. SHREDDING SYSTEMS DISCLAIMS ANY OTHER LIABILITY IN TORT OR OTHERWISE IN CONNECTION WITH THIS SALE, INCLUDING STRICT LIABILITY ON TORT.

(b) THE PERFORMANCE OF REPAIRS OR NEEDED ADJUSTMENTS IS THE EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY OR ANY IMPLIED WARRANTY. See Part 4 of this Warranty. Shredding Systems may, at its option, refund the purchase price of the unit less reasonable depreciation if the used equipment or components are returned to Shredding Systems.

(c) SHREDDING SYSTEMS SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM BREACH OF THIS LIMITED WARRANTY OR ANY IMPLIED WARRANTY.

(d) Shredding Systems does not warrant wear of consumable items such as: Knives; bearing wear strips; filter elements; fluids; cylinder seals, packings and bearings; hydraulic hoses and electric solenoids.

S-7

S-13 S-8

S-14 S-10

S-11

S-12

2. DURATION OF WARRANTY:

The duration of this warranty is twenty-four (24) months on from the date of first use for all SSI manufactured parts. Twelve (12) month for all third party items (Buy-outs) except as noted.

Hydraulic Cylinders twenty-four (24) months with normal inspection and maintenance.

An article may be repaired any number of times under this warranty, but such repair shall not affect the duration of the warranty.

3. WARRANTY NULLIFICATION:

This warranty will become null and void if any of the following conditions occur:

- (a) Improper usage, neglect, or disregard of our maintenance or operating instructions, or safety precautions necessary to insure safe and continued operation.
- (b) Improper usage, neglect, or disregard of basic equipment maintenance requirements.
- (c) Any repairs or alterations made by anyone other than a factory representative unless written approval is given by Shredding Systems.
- (d) Alteration of the compactor, power systems, or electrical controls.
- (e) Alteration or adjustments to the compactor, power system, or electrical controls so as to produce operation or conditions not set out in accordance with the operation and maintenance manual, unless written approval is given by Shredding Systems.
- (f) Failure to comply, complete and return to Shredding Systems the required warranty maintenance forms as specified in our maintenance and operating instructions for documentation of maintenance and system status.
- (g) Failure to operate the unit in accordance with the equipment specifications that were submitted with the unit when it was originally sold.

(h) Failure to allow Shredding Systems to install components for modification of equipment as recommended and required from time to time by Shredding Systems in maintenance bulletins provided to customers.

4. RETURN UNDER WARRANTY

Shredding Systems agrees to replace or repair the defective article, part, or machine thereof under the terms of this Warranty provided written notice of such defect is sent to shredding Systems prior to expiration of the time period specified in Part 2 of this Warranty, and provided said article or component is made available for inspection and verification by Shredding Systems as provided in this part, and provided Shredding Systems is given a reasonable time to repair, replace or correct.

S-16

At the request of Shredding Systems, buyer shall return the defective article or component, freight prepaid, to Shredding Systems for inspection and evaluation, or make it available on-site, at the option of Shredding Systems. The buyer must provide documentation explaining the circumstances for the return and the reason for the occurrence. Should the article be found defective in material or workmanship, Shredding Systems will replace or repair the article and return it by surface transportation freight collect or other means directed by Shredding Systems to buyer. On-site labor required to install items returned under warranty is not the responsibility of Shredding Systems.

S-6

S-4

After the expiration of the General Warranty described above, a Limited warranty will thereafter cover major replacement parts. That warranty is as follows:

- 1) Components manufactured by Shredding Systems will be covered by the Limited General Warranty;
- 2) Components not manufactured by Shredding Systems will be covered only by the component manufacturers warranty.
- 3) Shredding Systems does not warrant wear of consumable items such as: knives; bearing wear strips; filter elements; fluids; cylinder seals, packings & bearings.
- 4) Warranty terms are otherwise as outlined in the Limited General Warranty.

S-3

S-7

AMFAB WARRANTY

Contractor warrants ^{A-1}all parts other than consumables and wear parts against defects in materials and workmanship for a period not to exceed twelve (12) months from the date of installation, provided Metro gives Contractor written notice within fifteen (15) days of discovery of such defects. Consumable and wear parts are warranted for ^{A-4}sixty (60) days. A list of consumable and wear parts is attached as "Exhibit 1" to the Warranty. Contractor, reserves the right to conduct a physical inspection of any part alleged to be defective to verify that the failure was due to a defect and not due to normal use or unusual circumstances. Upon determining that the failure was due to a defect, Contractor will ^{A-3}provide parts and ^{A-2}labor and replace, repair or adjust any defective parts during the terms of the specified warranty periods. For the first ^{A-6}ninety (90) days following successful completion of the Acceptance Test, Contractor will provide, at no additional cost to Metro, inspection and adjustment of the hydraulic and control systems.

Contractor assumes express responsibility for all loss of oil during startup and shake down of the compactor. Additionally, for the first ^{A-5}ninety (90) days following successful completion of the Acceptance Test, Contractor will replace any catastrophic loss of oil due to mechanical failure of component parts, fittings and hoses.

Contractor expressly disclaims warranty liability for damage caused by operation of the equipment at pressures greater than 2500 psi if there is evidence of manual adjustment or removal of the pressure relief valve. (A-7)

The specified warranties do not cover normal wear and tear incurred during the intended use of the equipment.

Contractor warrants that it will furnish and install the equipment in conformance with all known and existing statutory requirements and applicable codes. After acceptance, Metro will be responsible for assuring that equipment guards and lock outs are maintained and the equipment is operated in accordance with applicable codes. Metro will be responsible for assuring that personnel assigned to operate and maintain the equipment receive initial and ongoing training on the proper maintenance and operation of the equipment. Metro will be responsible for assuring that the equipment is maintained in good operating condition, and will be responsible for assuring that all warnings and decals attached to the equipment are maintained.

THE SPECIFIED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES OR OBLIGATIONS EXPRESS OR IMPLIED. CONTRACTOR EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS PROFITS OR LOSS OF USE OR OTHER ECONOMIC LOSS. EXCEPT AS EXPRESSLY PROVIDED HEREIN,

AMFAB

CONTRACTOR DISCLAIMS ALL OTHER LIABILITY TO METRO OR ANY OTHER
PERSON IN CONNECTION WITH THIS AGREEMENT OR THE USE OR
PERFORMANCE OF CONTRACTOR'S EQUIPMENT SOLD HEREUNDER, INCLUDING
LIABILITY FOR NEGLIGENCE OR STRICT LIABILITY IN TORT.

MML/gl
1127



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

*sent to recipient with
receipt requested*

September 4, 1990

AMFAB Resources
Harris Group
2519 North Front Street
Woodburn, OR 97071

Gentlemen:

Re: AMFAB Resources Compaction System Contract Appeal

By letter dated August 24, 1990, AMFAB Resources, a Division of Harris Waste Management Group, Inc. ("AMFAB") appeals the Notice of Award for the Metro South Station Compaction System contract. Based on a thorough review of the contract file, I have determined that AMFAB's appeal is without merit and therefore is rejected.

BACKGROUND

On May 25, 1990, the Metropolitan Service District ("Metro") issued a Request for Proposals ("RFP") for a waste compaction system for the Metro South Station. The RFP stated that proposals were due at 4:00 p.m. PDT, June 15, 1990. The RFP also stated that proposals received after the specified time would not be considered.

At approximately 3:45 p.m. on June 15, 1990, the Metro Solid Waste Department received a telephone call from a representative of Shredding Systems, Inc. ("SSI") advising that its proposal was en route. SSI's proposal was delivered to Metro at 4:10 p.m. The only other proposal received in response to the RFP was from AMFAB. AMFAB's proposal was delivered prior to the 4:00 p.m. deadline. Based on advice from Metro's Office of General Counsel, SSI's proposal was accepted.

An evaluation team comprised of members of Metro's Solid Waste Department evaluated the proposals according to the evaluation criteria set out in the RFP. The Office of General Counsel served in an advisory capacity to the evaluation team. Using the criteria set out in the RFP, the evaluation team determined that the two proposals were equal. AMFAB's score was 65.45. SSI received a score of 67.50.

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

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Deputy Presiding
Officer
District 12

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

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District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

By letters dated July 26, 1990, AMFAB and SSI were advised that both proposals had received "virtually identical scores." The firms were advised that Metro would not enter into negotiations with a single firm but would prepare contracts based on each firm's proposal. The firms then would have an opportunity to review and comment on their respective draft contracts. The firms were told that:

"Based on the comments received, Metro will then prepare final contracts which will be forwarded to the Metro Council. Staff will recommend award of a single contract based on the comments received."

A staff memorandum detailing, by criteria, the numerical scoring of the proposals was attached to the July 26, 1990, letters. On July 31, 1990, and August 1, 1990, respectively, SSI and AMFAB were sent letters reiterating the selection process. Draft contract language was forwarded with the letters.

SSI requested two changes to the contract language. Both changes involved insurance provisions. One of the changes requested by SSI would have deleted the umbrella insurance coverage requirement. SSI's original proposal included umbrella coverage as an optional item. Since this option had not been considered during the evaluation process, staff requested that SSI include the cost of umbrella coverage in its proposal. SSI advised staff that umbrella insurance coverage would add \$75,000 to its proposed price. Based on this price increase, staff reevaluated the proposal prices and awarded AMFAB two additional points under the price criterion. AMFAB's adjusted score was 67.45. The second request from SSI involved the notification period for cancellation of insurance coverage. This change was rejected by Metro.

AMFAB requested approximately sixteen changes. Several of the changes requested by AMFAB added substantive items which were not requested by SSI. AMFAB requested a modification to the language which would have precluded the Contractor from claiming standby costs in the event notice to proceed with installation is delayed by Metro. AMFAB's requested language would have required that Metro reimburse AMFAB for standby costs after the thirtieth day of installation delay at the rate of \$150 per calendar day. It also added a five-day limit on training and required Metro to pay for any training beyond the five-day limit. AMFAB requested modification of the provision which required "as-built" drawings. In

addition to these changes, AMFAB requested several revisions to the contract language which affected contract administration procedures.

Based on a review of the changes requested by the two proposers, it was determined that SSI's proposal would be recommended for contract award.

Notice of Conditional Award was issued to SSI by letter dated August 20, 1990. AMFAB filed timely notice of appeal on August 24, 1990. Metro Code 2.04.031.

ANALYSIS

1. Waiver of Time Deadline for Submission of Proposals

AMFAB's first contention is that SSI's proposal cannot be considered because it was filed after the deadline specified for receipt of proposals. AMFAB cites both the RFP and the Oregon Administrative Rules ("OAR").

The OAR provisions which AMFAB relies on are the Attorney General's Model Contracting Rules ("Model Rules"). Though public agencies may use the Model Rules as guidance in their public contracting procedures, State law does not require public agencies to either adopt or follow the Model Rules. Metro has not adopted the Model Rules and is not bound by the guidance provided in the Model Rules. Since the OAR provisions cited by AMFAB are not binding on public agencies, Metro is not precluded from waiving strict compliance with the designated time deadline for submission of proposals.

The underlying purpose of the requirement that late bids be rejected is to protect the integrity of the public bidding system. Since the determinative factor in a competitive, sealed bid process is price, it would be unfair to accept a bid after timely bids have been opened and the bid prices publicly read.

In a RFP process, price is not the sole determinative criteria for award of the contract. No formal public reading of proposals occurs, thus there is minimal opportunity for a proposer to gain a competitive advantage by submitting a late proposal. This is particularly true in the present case where AMFAB's proposal remained sealed after it was received.

AMFAB was not prejudiced by the waiver of the time deadline. By accepting SSI's proposal, Metro's policy goal of obtaining competitive proposals for the compaction system was achieved.

2. Procedure to Determine Most Responsive Proposal

AMFAB's second contention is that the procedure used by Metro to break the tie between the proposals was illegal. As a preliminary matter, the RFP did not contain a methodology for breaking a tie in the proposal scores. State contracting statutes and the Metro Code also are silent on procedures for breaking a tie in bids and proposals. However, both have a stated preference for Oregon goods and services.

The thrust of AMFAB's argument is that Metro failed to inform the proposers that the proposals received virtually identical scores, and that their comments and proposed language changes to the draft contract would be utilized to determine which of the two proposals would be recommended for contract award. AMFAB's argument disregards the explanation given in Metro's July 26, 1990 letters. These letters clearly inform the proposers of the results of the evaluation of both proposals.

The staff memorandum which was attached to the July 26, 1990 letters presents a detailed explanation of the evaluation scoring for each proposal. The July 26th letters also advised both proposers that staff would recommend a single contract based on the proposers' comments to the draft contracts. This procedure was reiterated in the July 31, 1990 and August 1, 1990 letters which were sent to SSI and AMFAB, respectively. The facts simply do not support AMFAB's contention that it only became aware of the "tie-breaking criterion" when it received the Staff Report on August 17, 1990.

AMFAB also argues that Metro violated certain provisions of the Model Rules and due process when it evaluated the proposals on criteria not contained in the RFP. As noted earlier, the Model Rules are not binding on public agencies. However, the more important point is that the procedure used by Metro provided both proposers with advance notice of the fact that their comments to the draft contract would be used to determine the recommended proposal. Under these circumstances, the

procedures followed by Metro did not violate AMFAB's due process rights.

There can be little doubt that the parties were treated equally and fairly in the process utilized to determine which proposal would be in the best interest of the agency. Both proposers were given notice that the evaluation scores were virtually identical. Both proposers also were given notice that their comments to the draft contract would be considered in determining the recommended proposal.

The underlying rationale for the requirement that evaluation criteria be disclosed is to assure fairness in the evaluation process. In the present case, both parties were advised in the July 26th, and July 31st and August 1st letters that their responses to the proposed contract provisions would be used in developing a recommendation for contract award. Both parties were on equal footing. AMFAB chose to respond by proposing modifications to several substantive provisions and a number of administrative provisions of the draft contract. The fact that Metro did not reject AMFAB's requested modifications does not negate the fact that, with the addition of the changes requested by AMFAB, its proposed contract language was less favorable to Metro than the contract language agreed to by SSI.

Even if it is determined that Metro should follow the guidance in the Model Rules, SSI would be the winning proposal. Under the Model Rules, the first criteria for breaking a tie is application of the Oregon preference adopted in ORS 279.021 (1). The preference favors good or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal. The Metro Code, at Section 2.04.040 (b), contains a similar preference. In the present case, both proposers intend to manufacture the required equipment in the state of Oregon.

The second criteria under the Model Rules for breaking a tie is a preference for bidders/proposers, "...whose principal offices or headquarters are located in Oregon." OAR 137-30-095. In the present case, SSI's headquarters are located in Oregon. AMFAB Resources is a division of the Harris Waste Management Group, Inc. ("Harris Group"). The Harris Group is headquartered in Minneapolis, Minnesota.

The final methodology under the Model Rules for breaking a tie, in the event the first two criteria do not result in a single successful bidder or proposer, involves drawing lots. Fortunately, Metro does not have to rely on this somewhat arbitrary methodology for deciding which proposal should be awarded the contract.

3. Application of Evaluation Criteria

AMFAB's third argument focuses on its disagreement with the way the proposals were scored by Metro's evaluation team. Under the Metro Code, disagreement with proposal scores cannot serve as a basis for an appeal of a contract award.

Section 2.04.031(b) of the Metro Code provides, in part, as follows:

"In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal."

It comes as no surprise that AMFAB, as the unsuccessful proposer, is challenging the proposal scores. However, as contemplated by the quoted Code provision, disagreements regarding the qualitative judgments made in scoring proposals may not be used as a basis for invalidating a contract award decision.

CONCLUSION

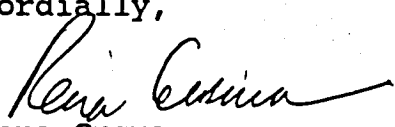
The underlying premise of AMFAB's appeal is that it was treated unfairly in the evaluation process. After reviewing the file, I have determined that AMFAB was treated fairly and that it was not prejudiced by Metro's decision to consider SSI's proposal.

AMFAB's contract award appeal is rejected. Please be advised that, in accordance with Metro Code Section 2.04.031(b), AMFAB has five working days from the postmark date of this

AMFAB Resources
Page 7
September 4, 1990

decision in which to preserve its appeal to the Contract Review Board.

Cordially,


Rena Cusma
Executive Officer

RC/MML/gl
1149

cc: Gwen Ware-Barrett, Clerk of the Council
Neil Saling, Acting Director, Finance & Administration
Amha Hazen, Contracts Administrator
Chuck Geyer, Project Manager
Daniel B. Cooper, General Counsel

Agenda Item No. 7.6
Meeting Date: September 13, 1990

Resolution No. 90-1322

The Intergovernmental Relations Committee will consider this item at their meeting September 11. Materials will be provided to the Council on September 13. Others wanting copies should contact the Clerk of the Council at 221-1646, extension 206.

M.S.D.
SEARS FACILITY PURCHASE NEGOTIATION HISTORY
Dated 9-13-90 by ColdwellBanker Team

	Offeror	Date	Price	Parking	Ratio of Parking to Metro Tenants	Asbestos/Hazardous Waste	Design Review	Other/Comment
1.	PDI Offer #1	6-13-90	\$7,600,000 - 1990	No restraints	All 550 stalls 3/1,000 on 183,000	No mention of	None mentioned	
2.	Metro 1st Counteroffer	7-19-90	\$3,990,000	Stalls: Unknown Term: Co-terminous with state lease at fair market price (Assumed 175 to 250) (200)	2/1,000 183,100 sq.ft.	Deliver clear of hazardous waste	None	
3.	PDI Offer #2	8-15-90	\$5,900,000	Assume state obligation up to 346 stalls \$56/\$51 fixed 4 years +15%/annually thereafter Term: 30 yrs.	2.65/1,000 119,000 sq.ft.	PDI Bill Scott mentioned several hundred thousand to remove asbestos	Design review parking mgte Proposal opportunity	
4.	Metro 2nd Counteroffer	8-28-90	\$4,300,000	125 stalls under state terms 51/56 + 15% of market	Bal: 535 4.5/1,000 119,000 sq.ft.	Deliver clear all hazardous waste	Acceptable: which shall not be unreasonable withheld	Parking garage became focus of value differential. Bldg. value: 2.3M approx.
5.	PDI Offer #3	9-6-90	\$5,500,000	*250 stalls Term: Long term? Rate: \$51 to 1996 then CPI annually thereafter	Bal: 410 stalls 3.44/1,000 119,000 sq.ft.	Delivered free of asbestos (\$60,000 + cost)	Timely review as stated	PDI feels value in garage equal to \$4M with average 10 year trend in revenue
6.	Metro 3rd <u>Suggested Counteroffer</u>	9-14-90	\$5,000,000 (\$4,500,000) \$500,000 extra for guaranteed income	*250 stalls Term: 10 yrs. + 5 Rate: \$75 flat then mkt. 410 approx. remaining stalls	Bal: 410 stalls 3.44/1,000 119,000 sq.ft.	Deliver clear all hazardous waste	Design review "which shall not be unreasonable withheld"	Closing on August 1991 *\$60,000 annually extra income - Additional benefits to Metro

Council
9/13/90

SSI Shredding Systems

28655 SW Boones Ferry Road

P.O. Box 869

Wilsonville, OR 97070

(503) 682-3633

FAX (503) 682-1704

Council
9/13/90

September 11, 1990

Hon. Tanya Collier
1641 SE 71st
Portland, OR 97216



RE: Agenda Item 7.5: Approval of a Second Compaction System for Metro South

Dear Councilor Collier:

At your September 13 meeting, the Executive Officer and the Solid Waste Committee will recommend that Metro approve a contract with Shredding Systems, Inc. (SSI) for the design, manufacture and installation of a second compactor for the Metro South Transfer Station.

I am writing to request your support of the Executive Officer's recommendation to approve Resolution 90-1310, which was unanimously approved by the Council Solid Waste Committee at their August 21 meeting.

The recommendation to select our compaction system is a result of a fair and competitive proposal evaluation process -- a process that started nearly one year ago. Our proposal has been the subject of intense scrutiny and review by Metro staff. We have accepted contractual language that provides Metro a strong product warranty and long-term risk protection. We have agreed to tough warranty and indemnification provisions because we have full faith in our product and its ability to reliably perform to Metro's satisfaction.

We cannot say it any better than stated by Metro staff in their report to the Solid Waste Committee:

"Based upon the lower price, superior warranty, risk protection and general contractual provisions, staff recommends award of a contract to SSI..."

We will be at the full Council meeting to answer questions. Should you have questions or comments about our proposal prior to the meeting, please contact me, or Dan Saltzman (225-9060).

We look forward to working with Metro to achieve an effective solid waste recycling and disposal system for our region.

Sincerely,

A handwritten signature in cursive script, appearing to read 'T. Garnier'.

Thomas J. Garnier
President

C: Hon. Rena Cusma

Doc. T5814

SSI Shredding Systems

28655 SW Boones Ferry Road

P.O. Box 869

Wilsonville, OR 97070

(503) 682-3633

FAX (503) 682-1704

Council
9/13/90

CHRONOLOGY OF EVENTS RELATED TO SELECTION OF SECOND COMPACTOR FOR METRO SOUTH TRANSFER STATION



1989

June: Metro awards contract to AMFAB for manufacture of first compactor at Metro South. Award is culmination of RFP process begun in 1988. Shredding Systems, Inc. (SSI) was only other proposer to respond to RFP.

1990

February: Solid Waste staff send draft RFP for second compactor at Metro South to potential vendors for comment. SSI and AMFAB provide written comments.

March 12: Solid Waste Committee considers and unanimously approves issuance of RFP for second compactor at Metro South.

March 22: RFP removed from Full Council agenda and returned to Solid Waste Committee.

May 14: Solid Waste Committee considers and approves new RFP for second compactor at Metro South. SSI requests that staff develop more detailed explanation on how RFP evaluation criteria and scoring are to be applied to proposals. Staff agrees to do so.

May: Both SSI and AMFAB provide written questions and comments on new RFP.

May 24: Full Council approves issuance of new RFP for second compactor at Metro South.

June 6: Solid Waste staff issue "Clarifications Regarding Evaluation Criteria" for second compactor RFP.

Staff also provides responses to SSI and AMFAB written questions and comments.

June 15: Metro receives proposals from SSI and AMFAB for second compactor at Metro South

Chronology of Events for
Selection of Second Compactor
at Metro South
Page 2

- June 28: Metro Council approves FY90/91 budget that allocates funds for contract to purchase and install second compactor at Metro South.
- July 26: Solid Waste staff publishes results of RFP evaluation process indicating virtually identical scores. Cover letter to vendors explains Metro will prepare contracts for AMFAB and SSI to review, and that staff will recommend award of a contract based on the comments received from each vendor.
- July 31: SSI and AMFAB receive draft contracts from Metro for comment on acceptability of contract language, and requesting any proposed changes. Cover letter states: "Metro will evaluate the proposed changes in developing its recommendation for award of a contract."
- August 13: Solid Waste staff prepare Resolution 90-1310, and staff report, for award of second compactor contract to SSI.
- August 21: Solid Waste Committee unanimously approves Resolution 90-1310. SSI and AMFAB testify at meeting.
- SSI receives written Notice of Award from Metro.
- August 24: AMFAB files written appeal of Solid Waste Committee decision to Executive Director.
- September 4: Executive Director issues written rejection of AMFAB appeal.
- September 11: AMFAB files written appeal of Executive Director's rejection of its appeal to full Council as Contract Review Board.
- September 13: Full Council as Contract Review Board to meet to hear appeal and to vote on Resolution 90-1310.

AMFAB® RESOURCES

HARRISGROUP

August 20, 1990

Mr. David Saucy
Council Solid Waste Committee
Metropolitan Service District
2015 14th Avenue
Forest Grove, OR 97116

RE: Resolution 90-1310

Dear Council Member Saucy:

On Tuesday, August 21, 1990, the Metro Solid Waste Staff will present to the Council Solid Waste Committee the staff's recommendation in regard to the award of a contract for the design, manufacture and installation of a compaction system at the Metro South Transfer Station. The recommendation is based upon an evaluation by staff as to the feasibility of proposals submitted by Amfab Resources ("Amfab") and Shredding Systems, Inc. ("SSI").

It is the position of Amfab that its proposal is in compliance with the evaluation criteria presented in the R.F.P. and, more importantly, and contrary to the staff recommendation, is superior to the proposal submitted by SSI for the following reasons:

1. Attached to this letter is an analysis on a point-by-point basis as to each of the criteria used to evaluate the contracts. An examination of such analysis will confirm that the contract should be awarded to Amfab.
2. Metro South Transfer presently operates an Amfab designed, manufactured and installed compaction system. Installation of a system by SSI will result in increased burdens on Metro for the operation, training and maintenance of both systems. In addition, the use of dissimilar system will result in the need for an unnecessary duplication of inventory for spare parts.
3. In the event of the installation of the SSI system, it would be impossible to access the origin of damages to the trailers as they would be loading from both machines. This would create a tense adversarial environment between

2519 North Front Street
Woodburn, OR 97071
(503) 982-8500
FAX (503) 241-1219

Mr. David Saucy
August 20, 1990
Page 2

Metro, Jack Gray, and Waste Management as well as the compactor vendors.

4. Metro Staff, to accommodate the SSI design, changed the compactor technical specifications after Metro signed the 200 million plus Transportation Services Contract. Of great concern now is that Metro Staff recognizes the SSI machine may not meet performance specifications and by its design could literally destroy the transportation contractor's fleet of trailers, and has asked for indemnification from SSI.
5. Further concern developed at the Metro East Transfer Station when the contractor, after the construction contract was signed, changed two of the compactors from Amfab as proposed, to SSI. Bob Martin in his letter to me dated July 23, 1990, stated he was still working with Trans Industries on a resolution concerning compactor equivalency and Metro's liability regarding potential trailer damage from using SSI's two bale loading system.
6. The Amfab Trans-Pak is a proven compaction system with an excellent track record of reliability and service for Metro South Station. To date, only Amfab Resources, and not SSI, has produced a tried and proven machine used in compaction systems.

It is our sincere hope that the staff and committee will consider and evaluate fairly the proposals. We are confident that such a review will necessitate the unanimous choice of Amfab Resources for a compaction system at Metro South.

Yours very truly,

AMFAB RESOURCES

Carl N. Wihans
General Manager

CRITERIA AND EVALUATION

1. Operation Reliability (20%) 12.75 0

Ability of proposed system to achieve the technical specifications while minimizing downtime and repair costs.

The existing compaction system at Metro South Station was installed by Amfab on Thanksgiving weekend 1989. Its first day of operation produced 75 loads and has since processed over 260,000 tons of waste with an up-time availability of over 97%. Repair and parts cost to Metro from Amfab has been less than \$5,000.00.

Amfab should have received a higher score than 12.75.

2. Warranty (20%) 8,2 17

Warranty will be evaluated relative to warranties contained in other proposals as well as the warranty for the initial compaction system at Metro South.

See attached schedule "A" for analysis.

Amfab's warranty is superior because it covers full parts and on site labor without exclusions, and consumables for 90 days. SSI's warranty excludes freight, as well as on site labor and the major potential problem areas of the hydraulic cylinders including bearings, seals, hoses and solenoids.

Amfab's warranty is superior to that furnished with the first compactor in that the first compactor warranty only included fifty percent of the cost of freight, services and labor.

Amfab should have received very close to 20 points, and SSI fewer points than was allocated.

3. Compatibility with existing Metro South configuration and equipment (15%) 12.75 12.75

The existing system is compatible. Evaluation of proposed physical and operational consistency with the existing system.

The Amfab unit is the same dimensionally with some improved operational characteristics as desired by Metro.

Criteria and Evaluation
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Page Two

The SSI system, while similar physically, will have dissimilar controls and operational procedures. It requires heavier, more expensive electrical service because it requires 300 H.P. vs. Amfab's 200 H.P. The SSI machine has to make two bales to make a trailer load which doubles operation cycles and will increase maintenance, repair and power costs.

With the SSI system, after the first bale is ejected into a trailer, the trailer with truck and driver must wait until the next bale is made and ejected. The second bale must push the first bale into the front of the trailer.

It is believed that the straight vertical ends of the SSI bale will slough and as the second bale contacts the first bale lateral forces of waste will scour against the trailer sidewalls and cause produce ultimate trailer structural failure. The increased load length from sloughing may also destroy the front bulkhead of the trailers.

It is also uncertain that SSI can provide the load weight distribution as required by the technical specifications.

Amfab should receive the full 15 points and SSI close to 0.

4. Project team experience (5%) 4.75 4.75

Experience in providing solid waste compaction systems, other solid waste systems applications, and material handling systems, in that order.

Amfab has provided 20 systems, SSI 0.

Staffs rating was 4.75 to 4.75.

5. Cost (20%)

Formula: 1 - $\frac{\text{Highest proposal} - \text{lowest proposal}}{\text{lowest proposal}}$ x 20=points

Lowest cost proposal to receive 20 points.

1 - $\frac{629,396 - 573,400}{573,400}$ x 20 = 18.05 Amfab points.

SSI points = 20, Amfab 18.05.

6. Long-term Liability Risk Assessment (20%)

11

13

Metro specified a single bale system in the Waste Transport Service Contract. Evaluate the long-term liability risk exposure to trailer damage of all systems and mitigation of risks by vendor.

Amfab proposed the system specified in the Waste Transport Services Contract which should mitigate risk to Metro.

SSI has proposed an indemnification, limited to five years, for damage to transport trailers that exceeds damage caused by the existing system. Comparison of damage shall be calculated on a per ton basis based on claims submitted by transport contractors. Comparison on the basis is ambiguous and cannot be ascertained

After 6 months SSI can unilaterally void contract by removing the compactor, with no further responsibility to Metro or the transport contractor for progressive damage or further failures caused by SSI equipment. In addition, SSI's contract effectively requires Metro to pay SSI for original installation costs, removal costs, and facility modifications.

Or after 6 months SSI can remove their compactor as above and provide a single bale compactor system 95 days thereafter, thus leaving Metro without a system for 95 days; and if it also fails to meet performance specifications, SSI can remove it and walk without further responsibility or indemnification to Metro. Metro must also pay for the original installation, removal and facility modifications.

This indemnification is entirely illusory and provides Metro with no protection.

Amfab should have received close to 20 points, SSI much less.

SCHEDULE A

August 20, 1990

METRO SOUTH TRANSFER STATION COMPACTION SYSTEM

WARRANTY ANALYSIS

<u>ITEM</u>	<u>AMFAB</u>	<u>SSI</u>
Contractor mfg. parts	12 months (A-1)	24 months (S-1)
Third party items (All vendor parts)	12 months (A-1)	12 months or by (S-2) mfgs. warranty (S-3)
On-site Labor	Fully (A-2) Covered	Excluded (S-4)
Freight on warranty items (Both ways)	Included (A-3)	Excluded (S-6)
Consumable items	60 days (A-4)	Excluded (S-7)
Fluids	90 days (A-5)	Excluded (S-8)
Hydraulic cylinders	12 months (A-1)	24 months (S-9)
- seals	12 months (A-1)	Excluded (S-10)
- packings	12 months (A-1)	Excluded (S-11)
- bearings	12 months (A-1)	Excluded (S-12)
Hydraulic hoses	12 months (A-1)	Excluded (S-13)
Electric solenoids	12 months (A-1)	Excluded (S-14)
Inspections & Adjustments	90 days at (A-6) no cost	Not mentioned

Exclusive remedy

Performance of
repairs or
adjustments

Performance of
repairs or
adjustments

AND

Obligated to
make unit
perform

OR Return unit to
SSI

Warranty nullification

1 item (A-7)

8 items (S-15)

Response to repair

2 hrs weekdays
4 hrs weekends
(Proposal)

"A REASONABLE
TIME" (S-16)

Plus SSI there is confusion with terminology between Limited Warranty,
General Warranty, Limited Federal Warranty and Limited warranty.

WARRANTY

The SSI Compactor System is covered by the Shredding System Inc. Limited Warranty. The warranty is as follows:

**SHREDDING SYSTEMS, INC.
LIMITED GENERAL WARRANTY**

1. EQUIPMENT WARRANTY:

Shredding Systems, Inc. warrants, subject to terms of this Limited Warranty, that at the time of shipment to the buyer, all equipment manufactured by it is free from defects in material and workmanship. Shredding Systems does not authorize any person to create for it any other obligation or liability in connection with this sale.

(a) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO THIS SALE IS LIMITED IN DURATION TO THE DURATION OF THIS LIMITED WARRANTY. SHREDDING SYSTEMS DISCLAIMS ANY OTHER LIABILITY IN TORT OR OTHERWISE IN CONNECTION WITH THIS SALE, INCLUDING STRICT LIABILITY ON TORT.

(b) THE PERFORMANCE OF REPAIRS OR NEEDED ADJUSTMENTS IS THE EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY OR ANY IMPLIED WARRANTY. See Part 4 of this Warranty. Shredding Systems may, at its option, refund the purchase price of the unit less reasonable depreciation if the used equipment or components are returned to Shredding Systems.

(c) SHREDDING SYSTEMS SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM BREACH OF THIS LIMITED WARRANTY OR ANY IMPLIED WARRANTY.

(d) Shredding Systems does not warrant wear of consumable items such as: Knives; bearing wear strips; filter elements; fluids; cylinder seals, packings and bearings; hydraulic hoses and electric solenoids.

(S-7)

S-13 S-8

S-14 S-10

S-11

S-12

2. DURATION OF WARRANTY:

The duration of this warranty is twenty-four (24) months on from the date of first use for all SSI manufactured parts. Twelve (12) month for all third party items (Buy-outs) except as noted.

Hydraulic Cylinders twenty-four (24) months with normal inspection and maintenance.

An article may be repaired any number of times under this warranty, but such repair shall not affect the duration of the warranty.

3. WARRANTY NULLIFICATION:

This warranty will become null and void if any of the following conditions occur:

- (a) Improper usage, neglect, or disregard of our maintenance or operating instructions, or safety precautions necessary to insure safe and continued operation.
- (b) Improper usage, neglect, or disregard of basic equipment maintenance requirements.
- (c) Any repairs or alterations made by anyone other than a factory representative unless written approval is given by Shredding Systems.
- (d) Alteration of the compactor, power systems, or electrical controls.
- (e) Alteration or adjustments to the compactor, power system, or electrical controls so as to produce operation or conditions not set out in accordance with the operation and maintenance manual, unless written approval is given by Shredding Systems.
- (f) Failure to comply, complete and return to Shredding Systems the required warranty maintenance forms as specified in our maintenance and operating instructions for documentation of maintenance and system status.
- (g) Failure to operate the unit in accordance with the equipment specifications that were submitted with the unit when it was originally sold.

(h) Failure to allow Shredding Systems to install components for modification of equipment as recommended and required from time to time by Shredding Systems in maintenance bulletins provided to customers.

4. RETURN UNDER WARRANTY

Shredding Systems agrees to replace or repair the defective article, part, or machine thereof under the terms of this Warranty provided written notice of such defect is sent to Shredding Systems prior to expiration of the time period specified in Part 2 of this Warranty, and provided said article or component is made available for inspection and verification by Shredding Systems as provided in this part, and provided Shredding Systems is given a reasonable time to repair, replace or correct.

- (S-16) At the request of Shredding Systems, buyer shall return the defective article or component, freight prepaid, to Shredding Systems for inspection and evaluation, or make it available on-site, at the option of Shredding Systems. The buyer must provide documentation explaining the circumstances for the return and the reason for the occurrence. Should the article be found defective in material or workmanship, Shredding Systems will replace or repair the article and return it by surface transportation freight collect or other means directed by Shredding Systems to buyer. On-site labor required to install items returned under warranty is not the responsibility of Shredding Systems.
- (S-4)

After the expiration of the General Warranty described above, a Limited warranty will thereafter cover major replacement parts. That warranty is as follows:

- 1) Components manufactured by Shredding Systems will be covered by the Limited General Warranty;
- (S-3) 2) Components not manufactured by Shredding Systems will be covered only by the component manufacturers warranty.
- (S-7) 3) Shredding Systems does not warrant wear of consumable items such as: knives; bearing wear strips; filter elements; fluids; cylinder seals, packings & bearings.
- 4) Warranty terms are otherwise as outlined in the Limited General Warranty.

WARRANTY

Contractor warrants ^{A-1} all parts other than consumables and wear parts against defects in materials and workmanship for a period not to exceed twelve (12) months from the date of installation, provided Metro gives Contractor written notice within fifteen (15) days of discovery of such defects. Consumable and wear parts are warranted for ^{A-4} sixty (60) days. A list of consumable and wear parts is attached as "Exhibit 1" to the Warranty. Contractor, reserves the right to conduct a physical inspection of any part alleged to be defective to verify that the failure was due to a defect and not due to normal use or unusual circumstances. Upon determining that the failure was due to a defect, Contractor will ^{A-3} provide parts and ^{A-2} labor and replace, repair or adjust any defective parts during the terms of the specified warranty periods. For the first ^{A-6} ninety (90) days following successful completion of the Acceptance Test, Contractor will provide, at no additional cost to Metro, inspection and adjustment of the hydraulic and control systems.

Contractor assumes express responsibility for all loss of oil during startup and shake down of the compactor. Additionally, for the first ^{A-5} ninety (90) days following successful completion of the Acceptance Test, Contractor will replace any catastrophic loss of oil due to mechanical failure of component parts, fittings and hoses.

Contractor expressly disclaims warranty liability for damage caused by operation of the equipment at pressures greater than 2500 psi if there is evidence of manual adjustment or removal of the pressure relief valve. (A-7)

The specified warranties do not cover normal wear and tear incurred during the intended use of the equipment.

NEW MATERIAL
Contractor warrants that it will furnish and install the equipment in conformance with all known and existing statutory requirements and applicable codes. After acceptance, Metro will be responsible for assuring that equipment guards and lock outs are maintained and the equipment is operated in accordance with applicable codes. Metro will be responsible for assuring that personnel assigned to operate and maintain the equipment receive initial and ongoing training on the proper maintenance and operation of the equipment. Metro will be responsible for assuring that the equipment is maintained in good operating condition, and will be responsible for assuring that all warnings and decals attached to the equipment are maintained.

THE SPECIFIED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES OR OBLIGATIONS EXPRESS OR IMPLIED. CONTRACTOR EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS PROFITS OR LOSS OF USE OR OTHER ECONOMIC LOSS. EXCEPT AS EXPRESSLY PROVIDED HEREIN,

AMFAB

CONTRACTOR DISCLAIMS ALL OTHER LIABILITY TO METRO OR ANY OTHER PERSON IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF CONTRACTOR'S EQUIPMENT SOLD HEREUNDER, INCLUDING LIABILITY FOR NEGLIGENCE OR STRICT LIABILITY IN TORT.

MML/gl
1127

MINUTES OF THE COUNCIL SOLID WASTE COMMITTEE
OF THE METROPOLITAN SERVICE DISTRICT

August 21, 1990

Council Chamber

Committee Members Present: Tom DeJardin (Chair), Judy Wyers (Vice Chair), Roger Buchanan and Tanya Collier

Committee Members Absent: None

1. Committee Tour of Solid Waste Facilities

The Solid Waste Committee, Councilors Buchanan, Collier, DeJardin, Saucy and Wyers; Metro staff, and members of the public left Metro Center at 3:05 p.m. to tour the Riedel Composter and Metro East Station construction sites. The Committee returned to Metro Center to convene the regularly scheduled meeting.

Chair DeJardin called the regular meeting to order at 5:36 p.m.

2. Consideration of Resolution No. 90-1310, For the Purpose of Awarding a Contract to Shredding Systems, Inc. for Design, Manufacture and Installation of a Compaction System at Metro South Station

Chuck Geyer, Senior Solid Waste Planner, gave staff's report. Mr. Geyer said in December 1988, staff recommended a sole source contract with Amfab to obtain a compactor for Metro South Station. He said the Solid Waste Committee rejected that procurement approach for a competitive bidding process. He said in spring 1989, staff issued a competitive RFP to which Amfab and Shredding Systems, Inc. (SSI) responded. He said evaluation of their proposals resulted in procurement of an Amfab compactor installed at Metro South on Thanksgiving weekend 1989. He said in May 1990, staff issued an RFP for Metro South's second compactor.

Mr. Geyer reviewed the differences between the current and previous compactor RFPs issued. He said technical specifications were changed to require higher than average payloads and the ability to extrude the bales further into the trailers up to seven feet. He said evaluation criteria was changed for the current RFP. He said that in the first RFP, compliance with the technical specifications was worth 50 points. He said the second RFP's technical specifications were judged on a pass/fail basis. He said on the previous RFP, project team experience was awarded 10 points and the current RFP awarded 5 points. Staff added the criteria "Long Term Liability Risk Assessment," worth 20 points, to the current RFP. He said "Warranty" was not in the evaluation criteria in the first RFP but worth 20 points in the current RFP. He said "Operational Compatibility," not in the first RFP, was worth 15 points in the current RFP. He said both "Reliability" and "Costs" were in both the first and second RFPs and were both worth 20 points.

Mr. Geyer said the addition of "Long Term Liability Risk Assessment" leveled the playing field for the two vendors. He said the first RFP gave "Operational Reliability" 20 points and none of the additional risk protection measures.

Mr. Geyer discussed the results of the Metro South Station compaction system evaluation. He said both Amfab and SSI proved compliance with "Technical Specifications." He said SSI received a zero on "Operational Reliability" because they had no operational experience and Amfab scored 12.75 of 20 points based on their operations at the other locations and at Metro South. He said SSI received 17 of 20 points for Warranty and Amfab received 8.2 points. He said SSI offered a two-year warranty and AMFAB offered a one-year warranty. He noted staff redrafted Amfab warranty language for Amfab's review because staff was not happy with the warranty Amfab offered. Mr. Geyer noted Warranty language as printed in staff's report was inaccurate because it stated SSI offered a warranty on all items and said SSI, like Amfab, offered a warranty on all items excepting consumables and wear items. He said Amfab received 12.75 of 15 points for "Compatibility with existing Metro South Station configuration and equipment" and SSI received 12.75 points. He said the evaluation team expressed concern about the two-bale system which pushed bales together and then extruded them, but staff believed the computerized safeguards would prevent any problems. He said Amfab and SSI each received 4.75 points of 5 points for "Project team experience." He said a formula was used to derive cost points and Amfab received 16 of 20 points and SSI received 20. He said staff had added \$75,000 into SSI's evaluation because Amfab had to purchase \$3 million in umbrella insurance and that gave Amfab 2 additional points.

Mr. Geyer said Amfab received 11 of 20 points and SSI, 13 points for Long Term Liability Risk Assessment. He said that criteria would protect Metro against damage claims from Jack Gray Transport (JGT) if trailers were damaged by the bales extruded from the compaction system.

Mr. Geyer said firms were asked to provide an indemnification clause to indemnify Metro against claims that might exceed claims Metro currently received from JGT for damage caused by Amfab's compactor to JGT trailers. Staff would use a database to measure such claims. He said Metro had a variety of protections for excessive damage, including removal of the system and reimbursement of Metro's payment or that SSI could remove the two-bale system and replace it with a one-bale system. He said Amfab proposed no indemnification.

Mr. Geyer said both firms met "Compliance with Disadvantaged Business Program" criteria.

Mr. Geyer said the total scores awarded were: SSI - 67.5 and Amfab - 67.45. He said because the scores represented a virtual tie, staff prepared final contract language for the two firms to review and comment

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August 21, 1990

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upon, and sent them back to the firms to make comments and proposed changes. Staff reviewed those comments and proposed changes, developed bottom line criteria in response, and sent back rewritten contracts asking the firms if they would sign them and both firms indicated they would. He said the comments received from both firms did differentiate the proposals. He said SSI proposed two changes which staff denied according to bottom line criteria and SSI agreed to sign without their proposed changes included. He said Amfab returned their proposal with approximately 20 changes. Staff accepted and rejected some changes and some changes were modified. Amfab agreed with staff's changes. Mr. Geyer said based on the final process, staff believed SSI provided the better compaction system contract. Mr. Geyer said staff believed both firms could build a compactor to Metro's satisfaction and the scores were very close, but that the final steps of the process differentiated between the proposers.

Monica Little, Legal Counsel, noted the two changes SSI had made were for the umbrella coverage provision and the number of days notice required for SSI to give Metro in the event their coverage was cancelled. She said Amfab proposed changes to the General Conditions and some substantive changes to the scope of work's Technical Specifications. She said a number of their proposed changes to the General Conditions did not affect Metro unfavorably. She said staff believed several changes Amfab proposed to the scope of work and Technical Conditions were not favorable to Metro. She said the Technical Specifications section contained language on the contractor stepping forward to assume responsibility for costs incurred due to improper loading or overloading and damage during the time period prior to final acceptance of the equipment. She said Amfab rejected the language. She said that meant Metro or another party would have to assume those costs.

Ms. Little said Amfab also requested a language changed under "Installation." She said in discussions about bottom line language Metro submitted, Amfab said there should be a time limit for any delay between the time period when the equipment was ready for delivery, and Metro's issuance of a notice to actually proceed with the installation. She said as staff had originally proposed, Amfab would have been responsible for any standby costs they incurred if there was a delay between the period of time they had completed fabrication and Metro had the facility ready to accept the equipment. She said their language, after the 60th day, charged Metro \$150 per calendar day for any delay between the time they were ready to install the equipment and the time Metro issued Notice to Proceed. Ms. Little said such provisions did not mean significant dollar amounts, but represented a subtle risk exposure, or shift, that was a burden to Metro.

Ms. Little said Technical Specifications contained language related to training and the obligations the contractor was willing to assume with

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regard to training. Metro proposed the contractor provide thorough training which was standard industry practice. She said Amfab had some limited restrictions on the amount of training they would provide and if Metro went beyond the five-day training limit, Metro would have to pay \$400 per day for each additional day of training. Ms. Little said there was also concern about as-built drawings.

Ms. Little said the Amfab warranty did not cover a two-year time period and the SSI warranty did. She said the longer warranty would give Metro more protection. She said General Counsel made the basic assumption it would be in Metro's best interest if the proposers offered warranties of fitness and a warranty of merchantability. She said SSI indicated they would give Metro those warranties for the two-year duration of their general warranty. She said the Amfab proposal expressly disclaimed the warranties of merchantability and the warranty of fitness for intended purposes. General Counsel believed those differences between the two proposers reflected on the kind of protection the proposers would afford Metro.

Councilor Buchanan asked where SSI's center of operations was located. Mr. Geyer said SSI was located in Wilsonville, Oregon. Councilor Buchanan asked what brand of compactor Wastech, Inc. used at their facility in Vancouver, British Columbia. Mr. Geyer said they used an Amfab compactor. Councilor Buchanan asked if staff researched the history of that compactor when they drafted the proposals. Mr. Geyer said staff did research that compactor. Councilor Buchanan asked under what criteria the two-bale system would be changed to a one-bale system. Mr. Geyer said under SSI's long-term indemnification agreement, if their two-bale system caused excessive damage to a JGT truck and SSI was no longer willing to pay those damages as they stated in indemnification language, that after a six-month period SSI had the option to remove the two-bale system and manufacture a one-bale system for replacement purposes.

Councilor Buchanan asked about previous testimony in which JGT expressed concern about how a two-bale system could damage their trailers. Mr. Geyer explained SSI proposed to build an extension chamber to absorb bulging as the two bales were compressed together before they were extruded into the truck trailers. He said the extension chamber represented a design change from SSI's previous proposal.

Councilor Collier asked if SSI met DBE/WBE goals. Mr. Geyer said SSI met the goals. Councilor Collier noted Amfab's letter dated August 20 from Carl Winans stated their liability risk assessment was better than Amfab's. She said Amfab's letter noted after six months, SSI could unilaterally void the contract by removal of the compactor with no further responsibility to Metro, and that SSI's indemnification was illusory and provided Metro with no protection. She said the letter noted Metro could be without service for 95 days if the two-bale system

had to be converted to a one-bale system. Mr. Geyer said SSI would have to refund Metro's money if they removed their system and Metro would still have the first compactor on-line.

Chair DeJardin opened the public hearing.

Wally Mehrens, Columbia Building Trades Council executive secretary, discussed SSI's proposal. He said he saw no data to confirm SSI was a licensed general contractor with experience in such installation processes. He said Attachment C had two contractors listed, but it was not clear whether those subcontractors worked for Amfab or SSI. He said it was not clear whether those subcontractors were DBE/WBE. He asked if the contractors listed had performed similar installation work before. Mr. Geyer explained DBE/WBE requirements as fulfilled by SSI further.

Tom Garnier, SSI president, said Gresham Transfer and Wilhelm Trucking had both handled previous SSI installations. He said either of those two firms would be chosen for installation at Metro South based on a bid process. Councilor Collier asked if either contractor was a licensed general contractor in the State of Oregon. Mr. Garnier said Wilhelm Trucking was the largest equipment installer in the state. Councilor Collier asked Mr. Mehrens if Mr. Garnier's testimony satisfied his questions about SSI's competency to install the compactor.

Jeff Bachrach, O'Donnell Ramis Crew & Corrigan, emphasized the proposal points awarded were virtually tied and the RFP did not contain any provisions on how to break a tie. He said at this meeting staff testified they made a unilateral decision to break the tie by sending the contract to the two proposers asking for their comments and proposals. He said proposers were not told they would be penalized if they made more changes or requests than other proposers. He said Amfab received the contract with a request from Metro staff asking for comments and proposals. He said Amfab was unaware the revised contract would be used to break the tie and said Metro staff should have informed Amfab of that. He said factors to consider in breaking the tie included the two-bale system. He said if the two-bale system was unsuccessful, removal of the system would involve costs to Metro. He asked why Metro did not choose the one-bale system which did not require extensive indemnification. He said SSI's two-year warranty was not a two-year warranty on all component parts and the points awarded to Amfab were not upgraded accordingly. He said SSI had a one-year warranty, as Amfab did on third party parts and labor, but noted SSI was subcontracting almost the entire contract. He said the point award system used was not equitable. He said staff did not note when awarding points that SSI's two year warranty would not cover everything. He said that should create at least a one or two point deduction from SSI's score in which case Amfab would win.

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Carl Winans, Amfab general manager, said 20 Amfab units were in operation, that Amfab had two patents, and Amfab compactors had a good track record. He cited the performance of the Amfab compactor currently in operation at Metro South. He said the two-slug system would have detrimental effects on truck trailers. He said using the SSI compactor would cause higher electrical costs at Metro South. He discussed the differences between the two systems and said the proposed SSI computer controls were unproven. He noted Amfab installed its own compactors and their equipment was hauled by Gresham Transfer. Mr. Winans discussed how Amfab would fulfill DBE/WBE requirements in the execution of this contract.

Councilor Buchanan asked about compaction downtime referred to by Mr. Winans. The Committee and staff discussed downtime and operator error.

The Committee asked both SSI and Amfab representatives if their companies were union-organized. Both representatives said no.

Councilor Collier asked Ms. Little if the Metro Code gave instructions on what to do in the case of a tie. Ms. Little said it did not.

Ms. Little said staff sent a letter to SSI and AMFAB which stated their response to the bottom line contract language would be used in evaluating and developing staff's recommendation for the contract. Councilor Collier asked Mr. Geyer why SSI was selected. Mr. Geyer said evaluation criteria for the first compactor was heavily weighted towards reliability, which eliminated SSI, because they had no operational history. He said during this process staff emphasized indemnification language criteria which SSI fulfilled. Councilor Collier asked if testimony given at this meeting would have changed the points given. Mr. Geyer said Mr. Bachrach's testimony on work contracted by SSI did not alter the issues because the warranty in question was for manufacturer's components which would be covered in any case. Chair DeJardin asked Ms. Little if Metro's award of the contract to SSI could withstand legal challenges. Ms. Little said it would.

Mr. Geyer said staff asked for and got indemnification for damage to JGT trailers. He said if equipment did excessively damage trailers, Metro could reject the equipment and get its money back. He said the long-term reliability risk assessment would protect Metro and JGT.

Councilor Wyers asked why staff believed the two-bale system was better. Mr. Geyer said staff evaluated the systems on a pass/fail basis only. Staff believed the two-bale system would meet the required technical specifications, as would the one-bale system.

Chair DeJardin asked what concerns JGT might have with the two-bale system.

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Doug DeVries, Jack Gray Transport northwest general manager, said there was no available data to demonstrate the effect on truck trailers from the two-bale system. He said the trailers were specially engineered and difficult and expensive to replace. He said JGT appreciated staff's efforts to achieve indemnification language. He said JGT, however, was uncomfortable because the duration for indemnification language was five years and the JGT contract with Metro was for twenty years. He said there was no existing system comparable to the two-bale system.

Chair DeJardin asked Mr. Geyer if impacts on JGT trailers would be assessed during the six-month testing period. Mr. Geyer said if JGT trailers experienced damage, JGT would submit a claim. He said that claim rate would be compared to the claim rate Metro had from JGT because of the Amfab compactor. Councilor Collier asked Mr. DeVries if JGT had looked at SSI's new design and if he had the same concerns with the new design. Mr. DeVries said JGT concerns were lessened slightly but said the new design incorporated an eight-foot extension to the rear in which part of the bale would be in the trailer and part of the bale would be in the extension chute while the second bale was made. He said there was no available data on that method. He said Metro's waste transport services contract was specific to a one-bale compactor so JGT designed their trailers to match a one-bale system.

Councilor Collier noted Mr. DeVries' testimony on their twenty-year contract versus the five-year indemnification language. She asked if JGT concerns would be allayed during the six month testing period. Mr. DeVries said again the system was experimental in nature and asked how JGT could in 10 to 12 years attribute fatigue to components to the two-bale system. Councilor Wyers said metal fatigue was also dependent on the type of material originally used for manufacture. Mr. DeVries noted when these issues first arose, JGT confirmed that if there was premature system failure under the one-bale system the risk would be borne by JGT. He said JGT designed their trailers for the Amfab 500 or a comparable system. He said JGT would bear the risk if they did not use the appropriate material in construction. He said JGT would be more comfortable with the two-bale system if it had a proven track record.

Councilor Wyers asked if SSI would bear costs for JGT for any trailer damage. Ms. Little said SSI would bear the cost differential for any higher costs than those incurred by the Amfab compactor.

Mr. Bachrach reminded the Committee the two proposers were tied. He said no points were given to Amfab for their proven, one-bale system as compared to an unproved two-bale system. He said that should be a factor as a tie-breaker. He said there was discussion at this meeting on whether a two-bale system would be successful. He said the issue could be resolved by utilizing proven technology and said all solutions were an invitation to a lawsuit. He said in the case of a tie-breaker,

it was difficult to determine why Metro would choose the untested system.

Mr. Saltzman responded to testimony given. He noted an RFP procedure was used in this process and noted the RFP process was meant to look at factors other than cost and allow some discretion in decision-making. He said SSI realized score differential was very close and said there must be some way to break a tie. He said Council utilized the RFP process and staff's recommendation should be trusted. He noted Metro's diverse approach to transfer stations and said it could be applied to compactors as well. He said the indemnification language and superior compactor design would compensate for the lack of operational experience.

Chair DeJardin asked if anyone else present wished to testify. No one else appeared to testify and the public hearing was closed.

Motion: Councilor Collier moved to recommend the full Council adopt Resolution No. 90-1310.

Vote: Councilors Buchanan, Collier, DeJardin and Wyers voted aye. Councilor Saucy was absent. The vote was unanimous and the motion passed.

The Committee thanked proposers and staff for their hard work in the RFP process.

Chair DeJardin introduced Karla Forsythe, Council Analyst, to the Committee and those present and noted Ms. Forsythe would staff the Solid Waste Committee as analyst.

3. Consideration of Resolution No. 90-1311, For the Purpose of Approving the One Percent for Recycling Program Criteria and Guidelines and Application for Proposal for FY 1990-91

Judith Mandt, Assistant to the Director of Solid Waste, introduced Leigh Zimmerman, Associate Solid Waste Planner, and noted Ms. Zimmerman's work for the 1% for Recycling Committee. She said the resolution and attachments contained the 1% for Recycling Advisory Committee's guidelines and application for proposals for the FY 1990-91 funding cycle. Ms. Mandt thanked Councilor Wyers for her work as chair of the 1% for Recycling Advisory Committee. Ms. Mandt noted the program for FY 1990-91 would be geared towards markets rather than materials re-use. She said the Committee wished to emphasize marketing and "pre-cycling," or reduction at the source. Ms. Mandt discussed markets and their current status.

Ms. Mandt noted proposers would fill out applications with explanations of proposed projects rather than RFPs as done previously.