

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A)	RESOLUTION NO. 08-3966
SETTLEMENT AGREEMENT WITH ARROW)	
SANITARY SERVICE, INC. REGARDING)	
METRO NOTICE OF VIOLATION NO. NOV-)	Introduced by Chief Operating Officer
196-08)	Michael J. Jordan, with the concurrence of
)	Council President David Bragdon

WHEREAS, in calendar year 2007, Arrow Sanitary Service, Inc. ("Arrow") violated Non-System License No. N-029-05 by exceeding the tonnage limitation by 3,756 tons; and

WHEREAS, on March 18, 2008, Metro issued Notice of Violation No. NOV-196-08 to Arrow for these violations; and

WHEREAS, Arrow submitted to Metro a timely request for a contested case hearing regarding NOV-196-08 in a letter dated April 7, 2008; and

WHEREAS, Arrow disputed the imposition of a \$3,756.00 penalty against Arrow; and

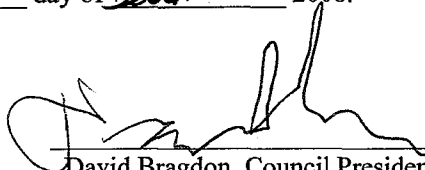
WHEREAS, the Director of Finance and Administrative Services and Arrow ("Director") agreed to the terms of a settlement under which Arrow will pay \$3,200.00 to Metro; and

WHEREAS, Metro Code Section 2.03.090 requires the Council to approve any settlement of unpaid civil penalties executed by the Director; and

WHEREAS, the Chief Operating Officer ("COO") recommends that Metro fully settle NOV-196-08 with respect to the civil penalties imposed in NOV-196-08; now therefore

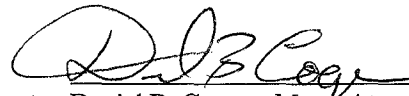
BE IT RESOLVED that the Metro Council approves settlement with Arrow regarding NOV-196-08 and authorizes the COO to enter into a settlement agreement substantially similar to the document attached as Exhibit A.

ADOPTED by the Metro Council this 18th day of December 2008.

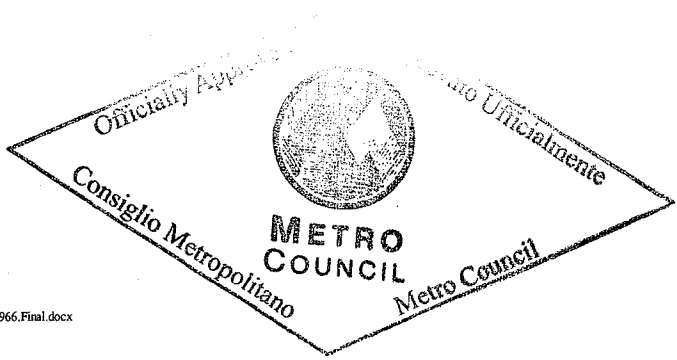


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into as of the last date of signature indicated below, by and between Metro, a metropolitan service district and municipal corporation of the State of Oregon, organized under Oregon Revised Statutes Chapter 268 and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232 (“Metro”) and Arrow Sanitary Service, Inc. (“Arrow”), an Oregon corporation located at 12820 NE Marx, Portland, Oregon 97230 (collectively the “Parties”).

RECITALS

- A. On March 18, 2008, Michael G. Hoglund, Metro Solid Waste and Recycling Department Director (“Director”), issued Notice of Violation No. 196-08 (“NOV-196-08”) to Arrow. Based on an investigation conducted by Metro, the Director found that Arrow violated its Non-System License No. N-029-05 and issued a penalty of \$3,756.00.
- B. Arrow admitted that in calendar year 2007 it violated Non-System License No. N-029-05 by exceeding the tonnage limitation by 3,756. Arrow disputed the Director’s imposition of a penalty of \$3,756.00 to Arrow.
- C. The Parties enter into this Agreement to fully settle and compromise this dispute.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual promises described below, the adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Metro’s Release of Further Enforcement Action. Metro hereby releases, acquits, and forever discharges its authority to pursue further enforcement action against Arrow for the violations alleged in NOV-196-08. The Parties do not intend that the release, acquittal, and discharge provided for in this paragraph shall release, acquit, or discharge any other claim, right, or cause of action or any claim, right, or cause of action for violation of the terms of this Agreement.
2. Statement Not to Contest NOV-196-08. Arrow enters into this Agreement to resolve NOV-196-08 and agrees not to contest the allegations or findings made therein. Metro may use NOV-196-08 in any formal or informal evaluation or proceeding conducted by Metro and related to Arrow.
3. Payment to Metro. In return for the releases described herein and for other valuable consideration that the Parties hereby acknowledge, Arrow shall pay to Metro the sum of \$3,200.00. This amount is a debt owed to Metro and shall be made in full by January 5, 2009. If Arrow fails to make the payment, Metro may initiate suit for the collection of this debt and shall be entitled to simple interest at the rate of nine percent (9%) per year calculated from January 5, 2009, until the debt is paid in full. If Metro must initiate suit for the collection of this debt, the prevailing party in such suit shall be entitled to reasonable attorney fees incurred in such an action, through and including attorney fees incurred on appeal.

4. Modification and Waiver. This Agreement shall not be modified unless such modification is in writing and signed by all of the Parties. No provision of this Agreement shall be considered waived by any Party unless such a waiver is made in writing signed by the Party making the waiver. Waiver of any provision of this Agreement shall not affect the enforceability of any other provision of this Agreement.
5. Attorney Fees. If any suit or action is brought to enforce or interpret this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorney fees and other costs incurred by the prevailing Party at trial or on appeal.
6. Choice of Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
7. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
8. Entire Agreement. This Agreement is the entire agreement between the Parties.
9. Voluntary Agreement. Each Party hereby declares and represents that it fully understands the terms of this Agreement, that it has had ample opportunity to review this Agreement and solicit and receive the advice of its own legal counsel, and that it voluntarily enters into this Agreement.
10. Authority to Enter Into This Agreement and Signatory Authority. Each Party hereby declares and represents that it has the legal power, right, and authority to enter into this Agreement. The individuals signing below warrant that they have full authority to execute this Agreement on behalf of the Party for which they sign.
11. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together are deemed a single document.

Arrow Sanitary Services, Inc.

Metro

By: _____
Dean Large
Sales Manager, Waste Connections, Inc.

By: _____
Michael J. Jordan
Chief Operating Officer

Date: _____

Date: _____

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3966 APPROVING A SETTLEMENT AGREEMENT WITH ARROW SANITARY SERVICE, INC. REGARDING METRO NOTICE OF VIOLATION NO. NOV-196-08

November 17, 2008

Prepared by: Steve Kraten

BACKGROUND

Arrow Sanitary Service (“Arrow”) is a Waste Connections - owned hauling company with a Metro Non-System License authorizing it to deliver to its affiliated Clark County transfer stations up to 35,367 tons calendar year 2007 of solid waste, generated within the boundaries of Metro and collected by Arrow. In a letter dated July 25, 2007, Metro warned Arrow that it was on track to exceed its NSL cap by the end of 2007 and should take measures to prevent that from happening. Arrow applied for an increase in its NSL tonnage authorization but was denied due to a moratorium in effect at the time. The denial letter, dated September 7, 2007, again warned Arrow that it must adhere to its NSL cap. Despite these warnings, by the end of calendar 2007, Arrow reported delivering a total of 39,123 tons of the waste described above to Arrow’s affiliated Clark County transfer stations, thus exceeding its cap by 3,756 tons.

Metro issued a Notice of Violation to Arrow for the tonnage cap violation, imposing a penalty of \$3,756 - one dollar for each ton in excess of the cap. In a hearing held on October 1, 2008, Arrow contested the penalty based on its assertion that Metro should have reconsidered Arrow’s application or given Arrow special notice when the language of the moratorium was changed so as to allow such NSL tonnage increases. Arrow also asserted that the excess tonnage constituted a single violation for which the Code prescribes a maximum penalty of \$500. In a proposed Final Order issued October 21, 2008, the Hearings Officer found in favor of Metro. Arrow then sought to negotiate a settlement with Metro and expressed its intent to file a Writ of Review if a mutually agreeable settlement could not be reached. Metro agreed to settle the matter for the sum of \$3,200. to avoid further legal proceedings and accrual of additional costs in defending the matter.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed settlement.

2. Legal Antecedents

Metro Code Section 2.03.090 provides that, after the Chief Operating Officer (or his designee) issues an NOV assessing a civil penalty, any settlement that compromises or settles the assessed civil penalty must be approved by the Metro Council.

3. Anticipated Effects

The effects of Resolution No. 08-3966 will be to approve a settlement that requires Arrow to pay METRO the sum of \$3,200 – a penalty reduction of \$556. The proposed settlement will bring finality to the issue and avoid the further expenditure of staff time.

4. Budget Impacts

Regional system fees and excise taxes were paid on the waste at issue. This settlement will add the amount of the penalty to the Solid Waste Fund.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-3966, approving a Settlement Agreement with Arrow substantially similar to the Settlement Agreement attached to the resolution as Exhibit A.

SK:bjl
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