

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 02-3246
THE EXECUTIVE OFFICER TO EXECUTE CHANGE)
ORDER NO. 4 TO THE CONTRACT FOR)
OPERATION OF THE METRO SOUTH AND METRO) Introduced by Mike Burton,
CENTRAL TRANSFER STATIONS) Executive Officer

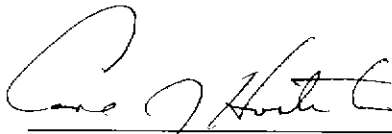
WHEREAS, as described in the accompanying staff report, Metro and BFI Waste Systems of North America, Inc., wish to resolve differences concerning the current Contract for the Operation of the Metro South and Metro Central Transfer Stations, Metro Contract No. 905690 (the "Contract"), by amending certain payment provisions of the Contract; and,

WHEREAS, Contractor will pay to Metro the sum of \$20,571.93 should Change Order No. 4 be executed; and,

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

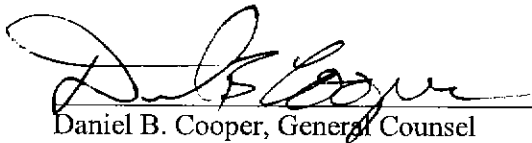
BE IT RESOLVED, that the Metro Council authorizes the Executive Officer to execute Change Order No. 4 to Contract No. 905690, in a form substantially similar to that set forth as the attached Exhibit A.

ADOPTED by the Metro Contract Review Board this 10th day of December, 2002.



Carl Hostjeka, Presiding Officer

Approved to form:



Daniel B. Cooper, General Counsel

CHANGE ORDER NO. 4

This Contract Change Order No. 4, effective December __, 2002, hereby amends Metro Contract No. 905690 between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter ("Metro"), and BFI Waste Systems of North America, Inc. (formerly Browning-Ferris Industries of Oregon, Inc.), "Contractor," dated July 18, 1997, including prior change orders, which contract and change orders are collectively referred to herein as the "Contract".

RECITALS

- A. On or about August 29, 2001, Metro discovered that one of the solid waste compactors at Metro South ("Metro South Compactor No. 1") was damaged and needed repair. Metro had Metro South Compactor No. 1 repaired at a total cost of \$127,746.00.
- B. On or about November 29, 2001, Metro discovered that the other compactor at Metro South ("Metro South Compactor No. 2") was damaged and needed repair. Metro had Metro South Compactor No. 2 repaired at a total cost of \$57,992.86.
- C. A dispute has arisen between Metro and Contractor regarding whether Contractor is responsible for all or part of the costs of repairs of Metro South Compactors Nos. 1 and 2 (the "Dispute"). Metro asserts that Contractor is responsible for all or part of the costs of these compactor repairs under the terms of the Contract. Contractor denies responsibility for the costs of these compactor repairs.
- D. The parties desire to resolve the Dispute by means of a compromise as set forth in this Change Order No. 4.

PURPOSE

The purpose of this change order is to amend the terms of the Contract in order to settle and compromise the Dispute as provided herein.

PROVISIONS OF CONTRACT CHANGE ORDER

- 1. Release. In exchange for the parties' promises contained herein, each party shall release and forever discharge the other party and its agents, attorneys, officers, partners, shareholders, directors, elected officials, employees, representatives, successors and assigns, and each of them, of and from any and all claims, rights, demands, actions, suits, obligations, liabilities, causes of action, damages, proceedings, or losses of any kind, nature, or character, whether now known or unknown, which any party has had, now has, or may hereafter assert against any party on account of or in any way arising out of any

actions, failures to act, events, occurrences, or circumstances of any kind that are the subject of, or related to, the Dispute.

2. Contractor's Payment. Within ten (10) days of the full execution of this Agreement, Contractor shall pay to Metro the sum of \$20,571.93. Such payment shall be by a check from Contractor made payable to "Metro."
3. No Admission. This Change Order No. 4 sets forth the settlement and compromise of the Dispute between the parties, and neither this Change Order No. 4 nor the reduced payments provided for herein shall be considered as or construed to be an admission of liability by either Contractor or Metro, each of whom expressly denies any and all wrongdoing or liability.
4. Reasonable Compromise. The parties agree that this Change Order No. 4 is a reasonable compromise of the Dispute and have consulted with legal counsel concerning its content. The parties represent and warrant that this Change Order No. 4 has been approved by legal counsel of the parties, that each of them fully understands the terms of this Change Order No. 4, that each of them has carefully read this Change Order No. 4 and knows its contents, and that each has executed this Change Order No. 4 as a freely performed act.
5. Modification. Except as amended and modified herein, all other terms of the Contract and any previous Contract Change Orders shall remain in full force and effect. Any material conflict between the provisions of the original Contract, including the provisions of other previous Contract Change Orders, and this Contract Change Order No. 4 shall be resolved by reference to and reliance upon this Contract Change Order No. 4.

BFI Waste Systems of North America, Inc.

METRO

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date

M:\rem\od\projects\Legislation\CO#4 exhibit.doc

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3246, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE CHANGE ORDER NO. 4 TO THE CONTRACT FOR OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS

October 23, 2002

Prepared by: Chuck Geyer

BACKGROUND

In 1999, Metro purchased two solid waste compactors for the Metro South Station to replace existing ones that had reached the end of their useful life. The units were purchased and installed by SSI Shredding Systems, Inc. (SSI), at a cost of \$1.5 million. Two additional units were purchased for Metro Central Station from SSI in a subsequent procurement.

In August 2001, Metro discovered that one of the solid waste compactors (No. 1) at Metro South was damaged and needed repair. Metro had the No. 1 compactor repaired at a total cost of \$127,746. In November 2001, Metro discovered that the other compactor (No.2) was damaged and needed repair. Metro had the No. 2 compactor repaired at a cost of \$57,992.86. Of this amount, \$16,849 was for improvements requested by Metro that were not required to restore the equipment to its previous level of operation. This left \$41,143.86 as the amount in dispute for the No. 2 unit.

In June 2002, Metro sent a letter to both the compactor manufacturer SSI, and the transfer station operator, BFI Waste Systems (BFI), seeking reimbursement for Metro's expenses in repairing the compactors at Metro South Station. The letter detailed the basis of Metro's claim for reimbursement and sought to resolve the dispute between the three parties (see attachment 1). In September 2002, during settlement negotiations, compactor No.1 at Metro Central Station experienced a similar cylinder failure.

Metro has resolved its dispute with SSI through a settlement agreement dated October 12, 2002 (see Attachment 2). The agreement provides Metro with a replacement cylinder, parts and labor that will be used to repair compactor No.1 at Metro Central Station. Upgrades have been completed to the other new compactor at Metro Central to prevent a similar cylinder failure.

Metro has negotiated a resolution to its dispute with BFI as contained in the proposed Change Order No. 4 to its operations contract with BFI (Contract No 905690). The change order is attached to Resolution No. 02-3246 as Exhibit A. The change order provides Metro with \$20,571.84, which Metro will receive in the form of a lump sum payment. This is half the cost incurred by Metro to repair compactor No.2 to its previous operational condition.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Code Section 2.04.058(b) requires Council approval of amendments to contracts designated as having a significant impact on Metro. Contract No. 905690 was designated as having such a significant impact.

3. Anticipated Effects

Adoption of the resolution will resolve a bona fide dispute with the transfer station operations contractor regarding the terms and conditions of its contract and does not materially add to or delete from the original scope of work.

4. Budget Impacts

There is no budget impact.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 02-3246.

M:\rem\od\projects\Legislation\CO#4 staff report.doc



METRO

Attachment 1
Resolution No. 02-3246

June 18, 2002

Mr. Tom Garnier, President
SSI Compaction Systems, a division of
SSI Shredding Systems, Inc.
9760 SW Freeman Drive
Wilsonville, Oregon 97070

Mr. Tom Wyatt, General Manager
BFI Waste Systems of North America, Inc.
6161 NW 61st
Portland, Oregon 97210

Re: Compactor Failures at Metro South Transfer Station

Dear Mr. Garnier and Mr. Wyatt:

This letter concerns the recent failures of the solid waste compactors in use at the Metro South Transfer Station ("Metro South"). Metro has incurred significant expenses to repair the Metro South compactors. Based on our analysis of those failures, we believe that the legal responsibility for the majority of such expenses lies with either or both SSI Compaction Systems, a division of SSI Shredding Systems, Inc. ("SSI"), and BFI Waste Systems of North America, Inc. ("BFI"). We hereby demand reimbursement of such expenses, as described below, from SSI and BFI. We invite both of you, however, to engage in settlement negotiations so that we may resolve this matter without resort to litigation. In order to facilitate such discussions between SSI and BFI, I provide in this letter a summary of the compactor failures that have occurred, Metro's view of how and why those failures occurred, and a summary of Metro's legal theories supporting recovery of such expenses from SSI and BFI.

Failure of Metro South Transfer Station Compactor No. 1

On August 29, 2001, Metro South Compactor No. 1 suffered a failure of the compaction cylinder. BFI employees observed oil leaking from the front of the cylinder and, upon inspection, observed that there was serious scoring of the cylinder rod. The following week, the cylinder was removed from the compactor and taken to SSI's plant in Wilsonville, Oregon.

When SSI disassembled the cylinder at its facility, it revealed that the front bearing in the head assembly had suffered a significant failure. The failure was located at approximately the 4 o'clock position (as viewed from the platen-end of the cylinder). Small chips of metal were spread around the head assembly and had accumulated in a hole in the bearing.

There was also evidence of metal to metal contact between the rod and the metal glands in the head assembly.

Furthermore, when the compactor's carriage was removed from the compactor, it showed that the carriage had incurred significant structural damage, including:

- Cracking at all four corners at the front of the carriage;
- Permanent deformation of the vertical members at the front and bottom of the carriage;
- Failure of the welds where the 6"x 12" cross member connects to the angled supports from the load beam; and,
- Fractures of the welds around the nuts used to adjust the bearing pads on the carriage.

Failure of Metro South Compactor No. 2

Metro, SSI, and BFI scheduled a routine replacement of the head gland bearings on Compactor No. 2 at Metro South for November 29, 2001. On that date, when the front bearing assembly was removed from the compaction cylinder large metal chips were found in the cylinder. These chips were up to 1/8 inch thick and varied in length from small chips to pieces that were almost 10 inches in length.

After the cylinder was disassembled, serious scoring was observed on the bottom of the cylinder. The galling of the cylinder wall occurred at the rear of the cylinder and covered about the first seven feet of the stroke. The stop tube bearing had failed and allowed metal to metal contact with the cylinder wall. The metal chips scored both the stop tube and the glands on the piston. The damage on the piston is primarily scoring on the metal glands between the bearings. Based on this damage it appears that the initial contact was between the cylinder wall and stop tube bearing.

The damage to this cylinder was isolated to a portion of the cylinder wall and the lower portion of the piston and stop tube. Such damage is consistent with a failure caused by a misalignment of the rod in the cylinder.

When the carriage from Metro South Compactor No. 2 was removed and inspected, it exhibited damage similar to that on Compactor No. 1. This damage included the cracked welds at the upper and lower front corners of the carriage. BFI had added the gusset plates to the connections of the diagonal supports for the load beam and the horizontal beam across the front of the carriage. When SSI inspected the carriage it also reported that the vertical tubes at the front of the carriage had been deformed.

Analysis of Compactor Failures

Metro retained a metallurgical engineering firm, MEI Charlton, Inc., to examine the Metro South compactors and present an opinion about the cause of the failures. MEI's analysis included examination of both compactors and metallurgical analysis of the damaged

members of the carriage from Compactor No. 1. The results of MEI's analysis showed that the cracks and fractures in Compactor No. 1 were "progressive cyclic fractures that occurred over many load cycles." The cracks exhibited "coarse growth increments, indicative of a low cycle fatigue or crack growth/crack arrest phenomena resulting from many severe, high strain events."

Based on its observations and analysis, MEI concluded that "[t]he flexibility of the front end of the carriage caused most of the problems. The carriage design allows the load beam to pull and push on the flexible vertical corner posts. This bends the posts, causes the cracks in the post welds, and allows the load beam to move up and down and rotate." Moreover, MEI also noted that "carriage flexing also affects cylinder alignment," and that the unusual wear patterns on both of the Metro South compactor cylinders were due to misalignments of the cylinders, which resulted in undue stress on the cylinders.

Metro's Claims for Recovery of Compactor Repair Expenses from SSI

Metro's contract for the purchase of compactors from SSI, entered into by Metro and SSI in May 1998 (Metro Contract No. 920530), contained two provisions that comprise the basis of Metro's claims for recovery of Metro's compactor repair expenses. First, the contract's scope of work includes the following five-year structural warranty:

SSI will, at its own expense (including parts, labor and transportation), correct any structural failure due to fatigue or stress, of any load bearing member, for a period of 5 years from the date of execution of this agreement.

Under this warranty, SSI is obligated to correct the compactor damage because it resulted from the compactor's structural failure caused by undue fatigue and stress on the compactor's load-bearing members. All of the failed parts in question, including all parts of the carriage and hydraulic cylinders, are load bearing members of the compactor and are covered by this warranty. Those failures occurred within five years of the date of execution of the contract. Thus, SSI is obligated to repair such failures at its own expense, including parts, labor and transportation. This includes all of the costs of removing, transporting, and repairing the carriages and the cylinders.

Second, Article IV of the contract, on the contract's very first page, is an indemnity provision that provides, in relevant part:

CONTRACTOR . . . assumes full responsibility for all liability for . . . physical damage to . . . property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO . . . from any and all . . . damages . . . and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract.

This indemnification provision is extremely broad and covers the expenses that Metro has incurred to repair the compactors. Clearly the damages to the compactors, and the expenses Metro has incurred to repair those damages, arose out of, are related to, and are connected to Metro's contract to purchase the compactors. As such, SSI has assumed responsibility for property damage incurred by Metro, and has agreed to indemnify and hold harmless Metro from any such damages and expenses.

Metro's Claims for Recovery of Compactor Repair Expenses from BFI

Metro believes the compactor's structural failures were the result of undue fatigue or stress caused by normal compacting operations. In discussions to date, however, SSI has asserted that such structural failures may have been caused by improper compactor operations. For example, SSI has asserted that if operator error resulted in solid waste dropping between the compactor carriage and the platen, and the compactor is activated in a compaction stroke, such waste could have caused the undue fatigue or stress that resulted in the failure of the compactor's structural members. Moreover, Metro is aware of at least one incident where solid waste was permitted to drop between the compactor carriage and the platen, which resulted in the compactor having to be shut down for almost an entire day while crews worked to clean the waste out from inside the compactor.

The contract between Metro and BFI for operation of Metro South provides that it is BFI's responsibility to load and operate the compactor "so it will function properly without jamming, puncturing the compactor or container walls, causing fire, explosion, or any other damage." See Section 7.3.B of the Contract's Specifications for Metro South Station. In addition, Article 17 of the Contract's General Conditions is a broad indemnity provision which provides that BFI will indemnify, hold harmless, and defend Metro from all losses and expenses arising or resulting from Contractor's performance or nonperformance of any Contract provision or requirement. Thus, to the extent that the losses and expenses that Metro has incurred as a result of these compactor failures is the result of operator error, BFI must indemnify, hold harmless, and defend Metro for such losses and expenses.

Compactor Repairs and Expenses Incurred by Metro

SSI has nearly completed repairs to the cylinders and carriages of both compactors at Metro South. Regarding Compactor No. 1, the damaged cylinder was removed, a new cylinder was installed, the damaged cylinder was shipped to its manufacturer for inspection and possible repairs, and the carriage was repaired. Metro has incurred \$127,746 in total expenses to date to repair Compactor No. 1. Metro already paid SSI \$127,746 for the repair of Compactor No. 1 at the Metro South Transfer Station. Metro seeks reimbursement of all of those expenses from SSI and BFI. The following table itemizes the repair expenses for Compactor No. 1:

<i>Metro South Compactor No. 1</i>		
New Cylinder for MS Compactor No. 1	SSI (Inv. 28372)	\$106,000.00
Remove Damaged Cylinder and Install New	SSI (Inv. 28728)	\$10,000.00
Carriage Repairs for MS Compactor No. 1	SSI (Inv. 29259)	\$10,000.00
Shipping Cylinder to Kaydon	SSI (Inv. 29626)	\$1,746.00
<i>Subtotal Compactor No. 1 Expenses</i>		<i>\$127,746.00</i>

Regarding Compactor No. 2, the damaged cylinder was removed and rebuilt (including rechroming the cylinder rod), the carriage was rebuilt, and improvements were made to the compactor's head bearings, piston, and stop tube. SSI has billed Metro \$60,130.76 to date to repair Compactor No. 2. Metro acknowledges, however, that the rechroming of the cylinder and improvements to the head bearings, piston, and stop tube were improvements beyond what was necessary to repair damage the compactor had incurred. SSI charged Metro a total of \$16,849 for those improvements, and Metro does not believe that those expenses are the responsibility of either SSI or BFI. SSI has sent Metro invoices totaling \$57,992.86 for repairs to Compactor No. 2. As described above, Metro asserts that SSI and BFI are responsible for \$41,143.86 of the cost of the repairs to Compactor No. 2. The following table shows the Compactor No. 2 repair expenses and delineates the expenses for which Metro is willing to assume responsibility:

<i>Metro South Compactor No. 2</i>		
Remove and Replace Cylinder	SSI (Inv. 30256)	\$23,315.38
Cylinder Rebuild	SSI (Inv. 30256)	\$25,399.00
Rebuild/Repair Compactor	SSI (Inv. 30256)	\$11,416.48
Less Allowance for Carriage Upgrade	SSI (Inv. 30256)	(\$2,138.00)
<i>Subtotal Compactor No. 2</i>		<i>\$57,992.86</i>
Less Rechroming of Cylinder Rod	Perrine email 3/6/02	(\$9,549.00)
Less Improvements to Head Bearings, Piston and Stop Tube	Perrine email 2/28/02	(\$7,300.00)
<i>Metro Responsibility for Improvements</i>		<i>\$16,849.00</i>
<i>Remainder for Repair of Compactor No. 2</i>		<i>\$41,143.86</i>

In addition to the expenses described above, in the event that this matter is resolved in litigation, Metro retains its right to recover any additional expenses it has incurred as a result of these compactor failures under any legal theory.

Metro's Demand for Recovery from SSI and BFI

To date, the invoiced cost of the repairs to both of the compactors totals \$185,738.86. Based on the above analysis, under the terms of the contracts between Metro and SSI and between Metro and BFI, Metro asserts that it is responsible for \$16,849 of the repair costs,

and that SSI and BFI are responsible for the remaining \$168,889.86. Thus, under the terms of the structural warranty and indemnity provisions of Metro's contract with SSI, and under the indemnity provision of Metro's contract with BFI, Metro hereby demands that SSI and BFI pay to Metro the sum of \$168,889.86.

Metro is interested in continuing its strong working relationships with SSI and BFI. As you are both aware, both of the contracts at issue include attorneys' fees provisions whereby the prevailing party is entitled to recover such fees from the other party. It is Metro's hope for the parties to engage in productive settlement discussions to resolve this matter without resort to litigation. Such negotiations, if they are to occur, must be initiated immediately and must conclude no later than July 15, 2002. If you would like to discuss this matter further, please contact Terry Petersen, REM Director, at (503) 797-1669.

Best regards,



Mike Burton
Executive Officer

MB/PE/PG/mca
S:\share\BH\SSSI-BFI Demand letter 061802.doc

cc: Terry Petersen, Director, Regional Environmental Management

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into this 12th day of October, 2002, between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter ("Metro"), and SSI Compaction Systems, a Division of SSI Shredding Systems, Inc. ("SSI").

RECITALS

- A. Metro entered into a contract with SSI in May 1998 (Metro Contract No. 920530) for the purchase of two solid waste compactors for the Metro South Transfer Station ("Metro South"). SSI completed installation of those two compactors ("Metro South Compactor No. 1" and "Metro South Compactor No. 2") by March 1999.
- B. Metro entered into a contract with SSI in June 2000 (Metro Contract No. 922141) for the purchase of two solid waste compactors for the Metro Central Transfer Station ("Metro Central"). SSI completed installation of those two compactors ("Metro Central Compactor No. 1" and "Metro Central Compactor No. 3") in January 2001.
- C. On or about August 29, 2001, Metro discovered that Metro South Compactor No. 1 was damaged and needed repair. Metro and SSI entered into a new contract for the repair of Metro South Compactor No. 1 (Metro Contract No. 923406). SSI repaired Metro South Compactor No. 1, including removing the damaged cylinder, installing a new cylinder, and rebuilding the compactor carriage. SSI sent invoices to Metro for the sum of \$127,746.00 for the work it had done. Between November 2001 and March 2002 Metro made payments to SSI which totaled the amount of SSI's invoices, although Metro reserved its rights to make claims against SSI to recover the costs of the repairs to Metro South Compactor No. 1.
- D. On or about November 29, 2001, Metro discovered that Metro South Compactor No. 2 was damaged and needed repair. Metro and SSI entered into a new contract for the repair of Metro South Compactor No. 2 (Metro Contract No. 923697). SSI repaired Metro South Compactor No. 2 and sent an invoice to Metro for the sum of \$57,992.86 for the work it had done. Metro has not paid SSI for the repair of Metro South Compactor No. 2.
- E. On or about September 16, 2002, Metro discovered that Metro Central Compactor No. 1 was damaged and needs repair.
- F. A dispute has arisen between Metro and SSI regarding which party is responsible for bearing the costs of the repairs to Metro South Compactor No. 1, Metro South Compactor No. 2, and Metro Central Compactor No. 1 (the "Dispute").
- G. Metro asserts that SSI is responsible for the costs of these compactor repairs under the terms of Metro Contract No. 920530 and Metro Contract No. 922141. SSI denies responsibility for the costs of these compactor repairs.

- H. The parties desire to resolve the Dispute by means of a compromise as set forth in this Agreement.

TERMS OF AGREEMENT


In consideration of the mutual covenants and promises contained in this Agreement, the parties acknowledge and agree to settle and compromise the Dispute as follows.


1. **Release.** In exchange for the parties' promises contained herein, each party shall release and forever discharge the other party and its agents, attorneys, officers, partners, shareholders, directors, elected officials, employees, representatives, successors and assigns, and each of them, of and from any and all claims, rights, demands, actions, suits, obligations, liabilities, causes of action, damages, proceedings, or losses of any kind, nature, or character, whether now known or unknown, which any party has had, now has, or may hereafter assert against any party on account of or in any way arising out of any actions, failures to act, events, occurrences, or circumstances of any kind that are the subject of, or related to, the Dispute (as defined in Recital F of this Agreement). Notwithstanding any provision to the contrary, however, such releases shall not include release of and from any claims, right, demands, actions, suits, obligations, liabilities, causes of action, damage, proceedings, or losses of any kind, nature, or character, arising out of or related to any damage to Metro Central Compactor No. 1 that is discovered after the effective date of this Agreement.
2. **Payment for Repairs to Metro South Compactor No. 2.** Pursuant to Metro Contract No. 923697, Metro shall pay to SSI the sum of \$57,992.86, payable in full upon execution of this Agreement.
3. **SSI to Provide and Install New Cylinder.** SSI shall provide to Metro, at no cost to Metro, a new 16" x 306" cylinder, serial number H260004H, manufactured by Hyundai Heavy Industries Co., LTD ("Hyundai Cylinder H260004H"), and SSI shall provide, at no cost to Metro, any modifications necessary to install Hyundai Cylinder H260004H into Metro Central Compactor No. 1. SSI shall remove the damaged compactor cylinder that is currently installed in Metro Central Compactor No. 1 and shall install Hyundai Cylinder H260004H, as modified, into Metro Central Compactor No. 1. In undertaking such work, SSI shall bear all labor and supervisory costs for such work, except as provided in Paragraph 4 of this Agreement.
4. **SSI and Metro to Share Certain Cylinder Installation Costs.** SSI and Metro shall each be responsible for 50% of all documented costs of subcontractors hired by SSI or Metro to (1) remove, or facilitate the removal of, the damaged compactor cylinder that is currently installed in Metro Central Compactor No. 1 (including freight charges to transport the failed cylinder to SSI's facility in Wilsonville, Oregon), and (2) install Hyundai Cylinder H260004H into Metro Central Compactor No. 1. Neither party shall be responsible, however, for any portion of any profit or other markup of subcontractors' documented costs by the other party.

5. SSI to Provide Two-Year Warranty on New Cylinder. SSI warrants Hyundai Cylinder H260004H to the full extent of the cylinder warranty SSI has received from the manufacturer for Hyundai Cylinder H260004H. Such two-year warranty shall commence on the date that Hyundai Cylinder H260004H is installed into Metro Central Compactor No. 1.
6. SSI to Complete Certain Repairs of Metro South Compactor No. 1. SSI shall undertake and complete work on the carriage of Metro South Compactor No. 1, at no cost to Metro. Such work shall be performed to reinforce the carriage of Metro South Compactor No. 1 and shall be substantially similar to, or better than, the carriage reinforcement work that SSI undertook and completed on Metro South Compactor No. 2 in [insert month] of 2002.
7. No Admission. This Agreement sets forth the settlement and compromise of the Dispute between the parties, and neither this Agreement, nor the work, nor payments described herein shall be considered as or construed to be an admission of liability by either SSI or Metro, each of whom expressly denies any and all wrongdoing or liability.
8. Entire Agreement. This Agreement contains the ENTIRE AGREEMENT of the parties with regard to the Dispute, and there are no separate and independent written or verbal or any other side agreements. This Agreement fully supersedes any and all prior agreements or understandings, whether verbal, written, or otherwise, made between Metro and SSI concerning the compromise of the Dispute.
9. Counterparts. This Agreement may be executed in two counterparts, both of which, when taken together, shall constitute one agreement binding on both parties, notwithstanding that both parties are not signatories to the same counterpart.
10. Choice of Law. This Agreement shall be governed by and interpreted in accordance with, and shall be construed in accordance with, the laws of the state of Oregon, excluding choice of law principles. Venue for any action enforcing the terms of this Agreement shall be in Multnomah County, Oregon.
11. Terms Contractual. The terms of this Agreement, contained in the section entitled "Terms of Agreement," are contractual and are not mere recitals.
12. Waiver. No provision of this Agreement shall be deemed to have been waived unless such waiver is in writing signed by the waiving party. No failure by any party to insist upon the strict performance of any provision of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provisions. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing.
13. Reasonable Compromise. The parties agree that this Agreement is a reasonable compromise of the disputed claims and have consulted with legal counsel concerning its

content. The parties represent and warrant that this Agreement has been approved by legal counsel of the parties, that each of them fully understands the terms of this Agreement, that each of them has carefully read the Agreement and knows its contents, and that each has executed this Agreement as a freely performed act.

SSI COMPACTION SYSTEMS, a Division of SSI SHREDDING SYSTEMS, INC. **METRO**

By: 
Tom Garnier
President

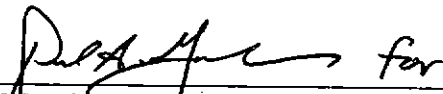
By: 
Mike Burton
Executive Officer

Date: 10/10/02

Date: Oct 12, 2002

APPROVED AS TO FORM

By: _____
Name: _____

By:  for
Marvin D. Fjordbeck
Senior Assistant Counsel, Metro

M:\attorney\confidential\DOCS#09.SW\04METRO.SOU\24compactor warranty claims\SSI settlement agreement 101002.doc