

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF RENEWING AND ) RESOLUTION NO. 90-1181  
AMENDING THE CONTRACT FOR PERSONAL )  
SERVICES WITH STOEL, RIVES, BOLEY, ) Introduced by Rena Cusma,  
JONES AND GREY ASSISTANCE AS BOND ) Executive Officer  
COUNSEL )

WHEREAS, The Metropolitan Service District entered into a Personal Services Agreement with Stoel, Rives, Boley, Jones and Grey, Attorneys at Law, (CONTRACTOR) per an Agreement dated August 15, 1986, for the purpose of providing bond counsel services, said contract having been amended by an Agreement dated August 26, 1987, both the original Agreement and the Amendment being attached hereto as Exhibits A and B respectively; and

WHEREAS, Delays have occurred which have not permitted completion of the Scope of Work within the three-year period contemplated in paragraph (1) of the Scope of Work (Exhibit A); and

WHEREAS, Additional bond counsel services are required relative to financing of the Metro East Station which were not specified in the Scope of Work; and

WHEREAS, Metro Code Section 2.04.054(2) requires that renewal, extension or renegotiation of a Personal Services Agreement be accompanied by a determination that there are fewer than three potential contractors qualified to provide the quality and type of services required, and that the initiating department make detailed findings that the quality and type of services required make it unnecessary or impractical to solicit proposals; and

WHEREAS, The period of time required to complete the original Scope of Work and the additional services relative to bond financing of the Metro East Station is estimated to be on or before January 1, 1991; and

WHEREAS, Contractor has not requested any increase in the agreed cost of services per Exhibit B; and

WHEREAS, The unique and complex nature of the services provided to Metro by the CONTRACTOR and the critical time frame for issuance of bonds for major solid waste projects is such that there is no other potential contractor qualified to provide the quality and type of services needed by Metro; and

WHEREAS, Exhibit C of this Resolution is a proposed amendment and extension of the Agreement between Metro and CONTRACTOR; now, therefore,

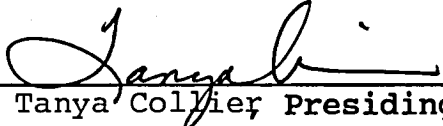
BE IT RESOLVED,

1. That the conditions of Code Section 2.04.054(a)(2) for renewal and amendment of the Agreement with the CONTRACTOR without solicitation of competitive proposals have been met.

2. That the Agreement with CONTRACTOR shall be amended and renewed pursuant to the terms of Exhibit C.

3. That the Executive Officer is authorized to execute the amended and renewed Agreement with the Contractor as shown in Exhibit C.

ADOPTED by the Council of the Metropolitan Service District this 25th day of January, 1990.

  
Tanya Colyer, Presiding Officer

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1181, FOR THE PURPOSE OF RENEWING AND AMENDING THE CONTRACT FOR PERSONAL SERVICES WITH STOEL, RIVES, BOLEY JONES & GREY FOR ASSISTANCE AS BOND COUNSEL

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Date: January 17, 1990

Presented by: Councilor Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 5 to 0 to recommend Council adoption of Resolution No. 90-1181. Voting: Councilors Hansen, Bauer, Buchanan, DeJardin and Wyers. This action taken January 16, 1990.

Committee Discussion/Issues: General Counsel explained to the Committee the need for renewing and amending the contract with Stoel, Rives, Boley, Jones & Grey (Contractor).

In August 1986 Contractor was retained by Metro to provide bond counsel services for resource recovery projects for a period of three years or until financing for the projects was completed. In August 1987 the scope of services was amended to include negotiations with various firms regarding resource recovery facilities. The compensation limit was increased from \$100,000 to \$145,000. The termination date was not extended.

The Contractor has worked on the compost facility negotiations and bond financing for the Metro East Station. Various delays have prevented the Contractor from completing their work within a three-year time period.

It is proposed that the agreement with Contractor be amended to extend the termination date to January 1, 1991, and to include bond counsel and legal services relative to the Metro East Station.

The unencumbered balance of the contract amount is \$33,681. Contractor has not requested any changes in the compensations for services and has indicated that there are sufficient dollar amounts to cover the personal services.

Renewal and amendment of the agreement must meet the requirements of Metro Code Section 2.04.054(2). The staff report from Bob Martin, dated January 2, 1990, indicates that the conditions of Code Section 2.04.054(2) are met. The details are shown in the staff report.

There was no discussion by the Solid Waste Committee and the Committee voted unanimously to recommend Council adoption of Resolution No. 90-1181.

GH:RB:pa  
A:RB.136

EXHIBIT "A"

Metro Contract No. 86-8-119-SW

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT dated this 15 day of August 1986, is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, hereinafter referred to as "METRO," whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, Edward Einowski & Dennis Leybold and ~~Stoel, Rives, Boley et al~~, hereinafter referred to as "CONTRACTOR," whose address is 900 SW Fifth Ave., Portland, for the period of Aug. 15, 1986, through August 15, 1989, and for any extensions thereafter pursuant to written agreement of both parties.

W I T N E S S E T H :

WHEREAS, This Agreement is exclusively for Personal Services;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

CONTRACTOR AGREES:

1. To perform the services and deliver to METRO the materials described in the Scope of Work attached hereto;
2. To provide all services and materials in a competent and professional manner in accordance with the Scope of Work;
3. To comply with all applicable provisions of ORS Chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, as if such provisions were a part of this Agreement;
4. To maintain records relating to the Scope of Work on a generally recognized accounting basis and to make said records available to METRO at mutually convenient times;
5. To indemnify and hold METRO, its agents and employees harmless 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 Agreement, with any patent infringement arising out of the use of CONTRACTOR'S designs or other materials by METRO and for any claims or disputes involving subcontractors; and

6. To comply with any other "Contract Provisions" attached hereto as so labeled.

METRO AGREES:

1. To pay CONTRACTOR for services performed and materials delivered in the maximum sum of \$100,00<sup>0</sup> written out One Hundred Thousand and 000/100THS (\$100,000) DOLLARS and in the manner and at the time designated in the Scope of Work; and

2. To provide full information regarding its requirements for the Scope of Work.

BOTH PARTIES AGREE:

1. That METRO may terminate this Agreement upon giving CONTRACTOR five (5) days written notice without waiving any claims or remedies it may have against CONTRACTOR;

2. That, in the event of termination, METRO shall pay CONTRACTOR for services performed and materials delivered prior to the date of termination; but shall not be liable for indirect or consequential damages;


3. That, in the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to an appellate court;

4. That this Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either party; and

5. That this Agreement may be amended only by the written agreement of both parties.

Edward Einowski & Dennis Leybold  
Stoel Rives Boley et al

METROPOLITAN SERVICE DISTRICT

By: 

Date: Sept. 26, 1986

By: 

Date: 9/22/86

\_\_\_/gl  
GL0056. (P)  
6/11/86

## SCOPE OF WORK

### Resource Recovery Bond Counsel

1. Edward Einowski and Dennis Leybold will provide bond counsel services on the resource recovery project for three years or until the financing is completed commencing August 15, 1986.
2. All bond counsel fees and legal advice outside of the scope of bond counsel advice shall be at the hourly rate of \$135.00 per hour for Mr. Einowski and \$125.00 per hour for Mr. Leybold. Services of all other attorneys shall be paid at their regular rates, provided that Metro has given prior authorization for any work to be charged at more than \$135 per hour.
3. Metro shall pay contractors' expenses.
4. Contractors shall provide a monthly summary of expenses and status report on all work undertaken. Metro shall pay all bills on a quarterly basis. Bills for bond counsel services shall be paid 60 percent when presented and the balance when bond proceeds are distributed. If for any reason there are no bond proceeds then no additional payment is due.
5. Metro contact is Debbie Allmeyer.

ESB/gl  
6064C/313-2

EXHIBIT "B"

AMENDMENT TO PERSONAL SERVICES AGREEMENT

Reference is hereby made to a certain Personal Services Agreement dated August 15, 1986, Metro Contract No. 86-8-119-SW (the "Agreement"), between the Metropolitan Service District, a municipal corporation ("Metro"), whose address is 2000 SW First Avenue, Portland, OR 97201, and Stoel Rives Boley Jones & Grey (the "Contractor"), whose address is 900 SW Fifth Avenue, Portland, OR 97219.

1. The Agreement shall be, and it hereby is, amended, modified and supplemented as set forth herein.

2. Metro hereby retains the Contractor to render legal services to Metro in connection with negotiations with various firms selected by Metro, said negotiations pertaining to the procurement of one or more resource recovery facilities (the "Negotiations"). The parties hereto hereby acknowledge that the work to be undertaken by the Contractor in connection with the Negotiations is beyond the scope of the work undertaken by the Contractor pursuant to the Agreement.

3. As compensation for the legal services to be rendered by Contractor in connection with the Negotiations, Contractor shall be paid on an hourly basis at the rate of \$145 per hour, plus expenses incurred. Contractor shall submit monthly invoices for services rendered and expenses incurred pursuant to this Amendment, with all amounts owing hereunder to be paid quarterly by Metro.



4. The legal services to be rendered by the Contractor in connection with the Negotiations shall be deemed to be part of the Scope of Work attached to the Agreement and the relationship between Metro and the Contractor with respect to such legal services shall be governed by the terms and provisions of the Agreement except with respect to the compensation to be paid by Metro to the Contractor for such legal services, which compensation shall be as provided in paragraph 3 of this Amendment.

5. Paragraph 1 on page 2 of the Agreement is hereby amended to read as follows:


"1. To pay CONTACTOR for services performed and materials delivered in the maximum sum of \$145,000 (One Hundred and Forty-Five Thousand Dollars) and in the manner and at the time designated in the Scope of Work."

6. Except as expressly modified herein, the Agreement shall be and remain in full force and effect.

EXCEPTED AND AGREED TO AS OF THE DATE SET FORTH BELOW:

STOEL RIVES BOLEY JONES & GREY

METROPOLITAN SERVICE DISTRICT

By   
Edward D. Einowski  
Dated: 8/26/87

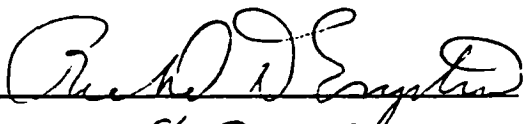
By   
Dated: 8-25-87

EXHIBIT "C"

SECOND AMENDMENT TO PERSONAL SERVICES AGREEMENT

This agreement renews and extends that certain Personal Services Agreement dated August 15, 1986, Metro Contract No. 86-8-119-SW, (AGREEMENT) and the amendment to that agreement executed by Metro on 8-25-87 and by CONTRACTOR on 8-26-87.

The foregoing AGREEMENT is amended as follows:

- 1) The CONTRACTOR shall provide bond counsel and legal services in connection with negotiations for one or more resource recovery facilities and the Metro East Station (transfer and recycling center).
- 2) The CONTRACTOR'S provision of services shall commence on or before August 15, 1989 and terminate on or before January 1, 1991.
- 3) Except as expressly modified herein, the above described AGREEMENT and any amendments thereto, shall be and remain in full force and effect.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 1989.

STOEL, RIVES, BOLEY,  
JONES & GREY

METROPOLITAN SERVICE  
DISTRICT

By \_\_\_\_\_

By \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1181 FOR THE PURPOSE  
OF RENEWING AND AMENDING THE CONTRACT FOR PERSONAL  
SERVICES WITH STOEL RIVES BOLEY JONES AND GREY FOR  
ASSISTANCE AS BOND COUNSEL

Date: January 2, 1990

Presented By: Bob Martin

Stoel, Rives, Boley, Jones and Grey, Attorneys at Law (CONTRACTOR) was retained by Metro to provide services under an Agreement dated August 15, 1986. This Agreement is attached to the accompanying Resolution as Exhibit A. The Scope of Work related to bond counsel services for resource recovery projects ". . . for three years or until the financing is completed commencing August 15, 1986." The latest termination date was to be on or before August 15, 1989.

By an amendment to the Agreement dated 8-26-87, attached to the accompanying Resolution as Exhibit B, the Scope of Services was amended to include legal services in connection with negotiations with various firms pertaining to resource recovery facilities. The compensation to be paid to CONTRACTOR was also amended in the August 26, 1987 Agreement from a maximum of One Hundred Thousand (\$100,000) Dollars to a new maximum of One Hundred Forty-five Thousand (\$145,000) Dollars. The termination date was not modified at that time.

CONTRACTOR has been actively involved in the Metro-Riedel compost facility negotiations and bond financing and for the Metro East Station bond financing as well.

Various delays have prevented the completion of CONTRACTOR'S services within the originally contemplated three years. CONTRACTOR'S involvement in negotiations and bond financing has been extensive and complex. It is the consensus of the Solid Waste Department and Executive Management that there is no other contractor qualified to provide the quality and type of services required to accomplish the bond financing process presently underway within the time frame necessary for the financing of the compost facility and the Metro East Station.

It is recommended that the Agreement with CONTRACTOR be amended to provide an extension of time for completion of the Scope of Services shown in the original Agreement and the Amendment, Exhibits A and B to the Resolution, respectively. Also, an amendment to specifically include the bond counsel and legal services relative to the Metro East Station is recommended. CONTRACTOR has indicated that there are sufficient dollar amounts remaining within the contract to cover both prior services rendered as well as those additional services contemplated under the proposed amendment to the Agreement. The present contract amount (Exhibit B) is ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$145,000). As of November 15, 1989, SIXTY THOUSAND NINE HUNDRED TWENTY-EIGHT AND 27/100 DOLLARS (\$60,928.27) has been paid to CONTRACTOR. Billed as of November 15, 1989, but not yet paid, are statements from CONTRACTOR in the total amount of FIFTY

THOUSAND THREE HUNDRED NINETY AND 19/100 DOLLARS (\$50,390.19). The balance remaining of the contract amount (after reducing the balance by the outstanding statements) is THIRTY-THREE THOUSAND SIX HUNDRED EIGHTY-ONE AND 54/100 DOLLARS (\$33,681.54).

CONTRACTOR has not requested any modification in the agreed compensation for services, nor is any recommendation made for an increase in the amount of compensation. The proposed amendment and renewal is shown as Exhibit C to the Resolution.

Renewal and amendment of CONTRACTOR'S agreement with Metro must meet the requirements of Metro Code Section 2.04.054(2), which requires, 1) that there be fewer than three potential contractors qualified to provide the quality and type of services required, and 2) that the initiating department make detailed findings that the quality and type of services required make it unnecessary or impractical to solicit proposals.

The conditions of Code Section 2.04.054(2) are met by virtue of the following:

- 1) CONTRACTOR has been engaged in the regular provision of services to Metro relative to the Scope of Work for a period of three years.
- 2) That legal constraints have required that bonding for the compost facility be complete before the end of calendar year 1989.
- 3) That bonding for construction of the Metro East Station needs to take place in an expeditious manner in order for the scheduled operation date to be met.
- 4) There may be other contractors capable of performing the requisite services, however, no other potential contractor could sufficiently acquaint themselves with the complexities of the bonding process in the time necessary to provide the quality and type of services required by Metro.
- 5) That CONTRACTOR has been providing the necessary high degree of skills required by the present bonding process.
- 6) That it would not only be unnecessary, but highly impractical to consider soliciting proposals for completion of the services needed in the bonding process for the compost facility and the Metro East Station.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 89-1181 to renew and extend CONTRACTOR'S Agreement with Metro to provide bond counsel and legal services.



# GRANT/CONTRACT SUMMARY

METRO METROPOLITAN SERVICE DISTRICT

GRANT/CONTRACT NO. 86-8-119 SW BUDGET CODE NO. \_\_\_\_\_

FUND: \_\_\_\_\_ DEPARTMENT: SOLID WASTE (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 TO EXTEND EXPIRATION DATE AND AMEND SCOPE OF SERVICES — NO CHANGE IN COMPENSATION PROVISIONS

2. TYPE OF EXPENSE

<input checked="" type="checkbox"/> PERSONAL SERVICES	<input type="checkbox"/> LABOR AND MATERIALS	<input type="checkbox"/> PROCUREMENT
<input type="checkbox"/> PASS THROUGH AGREEMENT	<input type="checkbox"/> INTER-GOVERNMENTAL AGREEMENT	<input type="checkbox"/> CONSTRUCTION
		<input type="checkbox"/> 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 + STOEHL RIVES, BULLY, JONAS + GREY ATTORNEYS

5. EFFECTIVE DATE 8-15-89 TERMINATION DATE 1-1-91  
 (THIS IS A CHANGE FROM 8-15-89)

6. EXTENT OF TOTAL COMMITMENT:

ORIGINAL/NEW	\$ <u>100,000 (TOT)</u>
PREV. AMEND	\$ <u>245,000 (TOT)</u>
THIS AMEND	<u>NO CHANGE ABOVE</u>
<b>TOTAL</b>	\$ <u>245,000</u>

### 7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1989 <sup>90</sup> 8 \$ ALL - 250

B. BUDGET LINE ITEM NAME \_\_\_\_\_ AMOUNT APPROPRIATED FOR CONTRACT \$ \_\_\_\_\_

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 N/A PER CODE 2.04.054 (2) \$ \_\_\_\_\_  MBE

SUBMITTED BY \_\_\_\_\_ \$ \_\_\_\_\_  MBE

SUBMITTED BY \_\_\_\_\_ \$ \_\_\_\_\_  MBE

### 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 N/A SERVICE \_\_\_\_\_  MBE

NAME \_\_\_\_\_ SERVICE \_\_\_\_\_  MBE

NAME \_\_\_\_\_ SERVICE \_\_\_\_\_  MBE

NAME \_\_\_\_\_ SERVICE \_\_\_\_\_  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:

CONTRACT AMENDMENT WILL EXTEND THE EXPIRATION DATE OF THE LEGAL SERVICES ~~CONTRACT~~ AGREEMENT WITH THE CONTRACTOR AND ADD TO THE SCOPE OF SERVICES RELATIVE TO BOND COUNSEL AND LEGAL SERVICES FOR THE METRO/RAIL COMBOST FACILITY AND THE METRO EAST STATION (TRANSFER AND RECYCLING CANSTAR).

## GRANT/CONTRACT APPROVAL

INTERNAL REVIEW

  
DEPARTMENT HEAD

CONTRACT REVIEW BOARD

(IF REQUIRED) DATE \_\_\_\_\_

COUNCIL REVIEW

(IF REQUIRED)

1. \_\_\_\_\_  
COUNCILOR DATE

FISCAL REVIEW

2. \_\_\_\_\_  
COUNCILOR

BUDGET REVIEW

3. \_\_\_\_\_  
COUNCILOR

LEGAL COUNSEL REVIEW AS NEEDED:

A. DEVIATION TO CONTRACT FORM \_\_\_\_\_

B. CONTRACTS OVER \$10,000 \_\_\_\_\_

C. CONTRACTS BETWEEN GOVERNMENT AGENCIES \_\_\_\_\_