BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE SOLID WASTE DISPOSAL SERVICES CONTRACT WITH OREGON WASTE SYSTEMS, INC. TO PROVIDE FOR A LIMITED EXEMPTION TO THE FLOW GUARANTEE PROVISIONS IN ORDER TO PROPERLY CLOSE THE ST. JOHNS LANDFILL	RESOLUTION NO. 90-1279 Introduced by Rena Cusma, Executive Officer

WHEREAS, Metropolitan Service District's agreement with Oregon Waste Systems, Inc. ("OWS") for waste disposal services as authorized by the Council of the Metropolitan Service District requires Metro to deliver ninety percent (90%) of all waste delivered by Metro to a general purpose landfill to Oregon Waste System; and

WHEREAS, During calendar year 1990 Metro has need to continue allowing the direct hauling of solid waste to the St. Johns Landfill; and

WHEREAS, There exists a dispute between Metro and OWS as to whether the direct haul of solid waste to the St. Johns Landfill is subject to the flow guarantee contained in the Contract; and

WHEREAS, Metro East Station will not be completed until January 1991, and the closure requirements for the St. Johns Landfill require continued deliveries of waste until that time in order to properly close the landfill consistent with Department of Environmental Quality permit requirements; and

WHEREAS, In order to resolve the outstanding dispute between Metro and Oregon Waste Systems, Inc. as to the alleged damages to Oregon Waste Systems caused by Metro's continued deliveries of

waste to the St. Johns Landfill, and not as an admission of fault or liability, Metro and Oregon Waste Systems have negotiated a resolution of this matter; and

WHEREAS, Contract Amendment No. 2 attached to the original hereof provides a satisfactory means for resolving this dispute by providing for a lower guarantee of tonnage to Oregon Waste Systems during calendar year 1990, and the payment of a surcharge to Oregon Waste Systems in the approximate amount of twenty-eight cents (28 cents) per ton for a limited time period in order to compensate Oregon Waste Systems for its possible damages; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District hereby approves and authorizes an amendment to the Contract for solid waste disposal services attached hereto as Attachment 1.

ADOPTED by the Council of the Metropolitan Service District this 14th day of June, 1990.

Tanya Collier, Presiding Officer

DBC/gl
1022

CONTRACT AMENDMENT NO. 2

WASTE DISPOSAL SERVICES CONTRACT
OREGON WASTE SYSTEMS/METRO

WHEREAS, The Metropolitan Service District (Metro) and Oregon Waste Systems, Inc. ("OWS" or "Contractor") entered into a certain waste disposal agreement on April 11, 1988 (the "Waste Disposal Services Contract" or "Contract"); and

WHEREAS, There exists a dispute between the parties as to the effect of certain provisions of the Contract that the parties desire to settle amicably without entering into a costly dispute resolution process; now, therefore,

THE PARTIES for the mutual considerations set forth below agree to the following amendments to the Contract as specifically provided for herein:

1. This Amendment No. 2 shall be effective as of January 1, 1990.

2. The waste and ash flow quantities listed in the Appendix to the Contract shall be amended so that the estimated quantity for the year 1990 for Alternate No. 1 shall be changed from 644,000 tons to 314,000 tons. For the calendar year 1990, and only for the calendar year 1990, the provisions of Specifications, Paragraph 1 of the Contract pertaining to Metro's obligation to deliver to Contractor ninety percent (90%) of all waste delivered by Metro to any general purpose landfill shall no longer apply, and instead, Metro's obligation during 1990 shall

/////

be to deliver to Contractor a minimum of 294,000 tons of solid waste.

3. A. Beginning effective January 1, 1990, there shall be added to the Unit Price, and Metro shall pay to Contractor for each ton of Acceptable Waste disposed by Contractor, a "Supplemental Price Adjustment." For the year 1990, the amount of the Supplemental Price Adjustment shall be twenty-eight cents per ton ($0.28/ton). Beginning January 1, 1991, and each January 1 of every year thereafter, the Supplemental Price Adjustment shall be adjusted up or down, in the same manner as the Unit Price, by the percentage price adjustment specified in the Disposal Services Contract, General Conditions, Article 19, Paragraph B. At such time as the total of all Supplemental Price Adjustment payments by Metro to Contractor equals the Target Value, the Supplemental Price Adjustment shall be discontinued and shall no longer be payable by Metro to Contractor. The initial Target Value shall be one and one-half million dollars ($1,500,000) in present value referenced to January 1, 1990, using a ten percent (10%) per annum discount factor and provided that the Target Value shall be subject to adjustment as provided in paragraph 3.B. below.

B. If the amount of Acceptable Waste delivered by Metro to Contractor during the period January 1, 1990, through December 31, 1990 ("Target Value Adjustment Period"), is greater than or equal to 300,000 tons, and less than or equal to 328,000 tons, then no adjustment to the Target Value

shall be made. If the amount of Acceptable Waste actually delivered during the Target Value Adjustment Period exceed 328,000 tons then the Target Value shall be adjusted downward by an amount equal to two million dollars ($2,000,000) times the total of amount of Acceptable Waste delivered in excess of 328,000 tons all divided by 314,000 tons. If the amount of Acceptable Waste actually delivered by Metro during the Target Value Adjustment Period is less than 300,000 tons but greater than or equal to 294,000 tons then the Target Value shall be adjusted upward by an amount equal to two million dollars ($2,000,000) times the difference between the actual number of tons of Acceptable Waste delivered and 314,000 all divided by 314,000.

C. If during the Target Value Adjustment Period the amount of Acceptable Waste delivered by Metro is less than 294,000 tons, Paragraph 2 hereof shall be of no effect and Contractor reserves all rights to pursue all available remedies for failure of Metro to deliver during the period Acceptable Waste as provided in the original Contract, including specifically damages for the total volume of Acceptable Waste guaranteed but not delivered to Contractor; provided, however, that any resulting award or judgment by Contractor shall be reduced by the amount of the Supplemental Price Adjustment paid.

4. Notwithstanding the provisions of Articles 19(e), 20 and 21 of the Contract, as long as Contractor has substituted a performance bond and labor & materials bond in the

forms attached hereto as Exhibit "A" in the amount of $5 million each (the "Bonds") provided by a company that meets the requirements of Article 2.J., Metro shall not retain any portion of payments due to Contractor for the purpose of creating the retainage fund provided for in Article 21 of the Contract. The bonds may be provided by National Guaranty Insurance Company of Burlington, Vermont ("NGIC") if, in addition, Contractor provides to Metro the corporate guaranty of Waste Management, Inc. ("WMI") in a form substantially similar to that attached as Exhibit "B." This deferral of the creation of the retainage fund shall in no way affect Metro's right pursuant to the Contract to retain amounts from payments otherwise due to Contractor to offset amounts owed to Metro. At such time as the Bonds or the NGIC Bonds and WMI Guaranty are delivered Metro shall release the Bank of Tokyo Letters of credit Nos. 110LCS820616 and 110LCS820617 dated April 13, 1988. In the event Contractor shall fail to maintain such bonds as provided for herein then the provisions of Article 2.J., 19(e), 20 and 21 shall be given full force and effect.

5. Notwithstanding the provisions of Paragraph 3 of this Contract amendment, the provisions of the Most Favored Rate Agreement between Metro and Contractor entered March 24, 1988, in order to induce Metro to enter into the Waste Disposal Services Contract shall be construed as if no Supplemental Price Adjustment had been made to the prices paid by Metro to Contractor pursuant to the Waste Disposal Services Contract.

6. For the purpose of construing the provisions of the limited guaranty against waste flow fluctuations by Metro contained on page VI-2 of the Specifications contained in the Waste Disposal Services Contract, Metro agrees that Metro will guarantee that the total Acceptable Waste quantities delivered to the Contractor during any calendar year quarter will not vary by plus or minus twenty percent (20%) of the most recent Metro waste quantity projection which provides at least one hundred eighty (180) days advance notification to Contractor. In the event Metro has not provided Contractor with a quarterly projection which provides 180 days prior notification of the amount of Acceptable Waste that Metro projected for delivery to Contractor for a quarter, the actual amount of Acceptable Waste delivered to Contractor during the prior year's quarter shall serve as the basis for the flow guarantee.

If the total quarterly amount of Acceptable Waste delivered is less than eighty percent (80%), or greater than one hundred and twenty percent (120%), of (a) the total quarterly quantity projected for which 180 days notice was given, or (b) the actual amount of Acceptable Waste delivered in the same quarter of the prior year where projection is not timely made, Metro will reimburse the Contractor for any unit price and lump sum payments which would ordinarily be due Contractor plus any actual additional extraordinary costs incurred by Contractor as a result of Metro's varying from the flow guarantee plus ten percent (10%) of such additional extraordinary costs.

7. As consideration for the Supplemental Price Adjustment provided for herein, the Contractor, except as provided in paragraph 3.C., forever waives any claim it may have against Metro of any nature whatsoever arising out of the failure of Metro to deliver during calendar year 1990 to Contractor for disposal ninety percent (90%) of the total tons of Acceptable Waste which Metro delivers to a general purpose landfill.

8. The Amendment No. 2 is in settlement of disputed language as related to delivery of Acceptable Waste in the calendar year 1990. This Amendment, except for paragraphs 6 and 7, shall not be admissible in any arbitration or judicial action, for example to show damages for subsequent Contract years, except an arbitration or action to enforce its terms.

ENTERED INTO AND AGREED BY THE PARTIES this _____ day of _____ 1990 by:

OREGON WASTE SYSTEMS, INC.	METROPOLITAN SERVICE DISTRICT
By:_____	By:_____
_____ Print Name	_____ Print Name
_____ Title	_____ Title
Date:_____	Date:_____

DBC/gl
1002c

EXHIBIT A

NATIONAL GUARANTY

INSURANCE COMPANY

199 MAIN STREET, 5TH FLOOR, COURTHOUSE PLAZA
BURLINGTON, VT 05401

PERFORMANCE BOND

(AIA 311)

KNOW ALL MEN BY THESE PRESENTS:

That OREGON WASTE SYSTEMS, INC., as Principal, and

NATIONAL GUARANTY INSURANCE COMPANY, as Surety, are held and firmly bound unto METROPOLITAN SERVICE DISTRICT, a municipal corporation of the State of Oregon, as Obligee, in the sum of

Five-Million and no/100---------- Dollars

($ 5,000,000.00------), for the payment of which sum, well and truly to be made, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has entered into a written contract dated April 11, 1988 with the Obligee for

waste disposal services agreement

in accordance with the terms and conditions of said Contract, which is hereby referred to and made a part hereof as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly —

1. Complete the Contract in accordance with its terms and conditions, or

2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner. This bond is effective retroactive January 1, 1990.

Signed, sealed and dated March 29, 1990

Karen E. Bogard
(Witness)

OREGON WASTE SYSTEMS, INC.
(Principal) (Seal)

By Dale B. Tauke
Dale B. Tauke, Assistant Secretary (Title)

NATIONAL GUARANTY INSURANCE COMPANY
(Surety)

By Leo J. Winstead,
Attorney-In-Fact

Bond No. PP90-0503-OB

29582 (9/80)

Printed on recycled paper

POWER OF ATTORNEY

Know all Men by These Presents that the National Guaranty Insurance Company, 199 Main Street, Burlington, Vermont Corporation (the "Corporation"), has constituted and appointed and does hereby constitute and appoint Donald S. Haufe, Thomas R. Frank and Leo J. Winstead of Oak Brook, Illinois each its true and lawful Attorney-in-Fact to execute under such designation in its name and to affix its corporate seal to deliver for and on its behalf as surety thereon or otherwise, bonds of any of the following classes, to-wit:

1. Surety bonds to the United States of America or any agency thereof, including lease and miscellaneous surety bonds required or permitted under the laws, ordinances or regulations of any State, City, Town, Village, Board or any other body or organization, public or private.

2. Bonds on behalf of contractors in connection with bids, proposals or contracts.

The foregoing powers granted by the Corporation shall be subject to and conditional upon the written direction of any officer (or any designee of any such officer) to execute and deliver any such bonds.

IN WITNESS WHEREOF, the Corporation has caused these presents to be signed by its Vice President/Underwriting and its Assistant Secretary, and its corporate seal to be hereto affixed this 29th day of January, 1990.

Witness:

Assistant Secretary

National Guaranty Insurance Company

Vice President/Underwriting

GUARANTEE

This Guarantee made as of the _____ day of _____, 1990, by WASTE MANAGEMENT, INC., a _____ corporation ("Guarantor"), to and for the benefit of the METROPOLITAN SERVICE DISTRICT ("Metro") ;

WITNESSETH:

WHEREAS, Oregon Waste Management, Inc., an Oregon corporation, (the "Contractor"), has entered into a Waste Disposal Agreement (the "Agreement") with the Metro dated as of April 11, 1988;

WHEREAS, Guarantor is willing to guarantee, as set forth below, the performance of the Contractor under the Agreement; and

WHEREAS, Metro would not agree to accept the Performance Bond and Labor and Materials Bond ("Bonds") issued by National Guaranty Insurance Company of Burlington, Vermont ("NGIC") unless the Guarantor provided this Guarantee;

NOW, THEREFORE, as an inducement to Metro to accept the bonds required by Amendment No. 2, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Contractor of all of the Contractor's obligations under the Agreement in accordance with the terms and conditions set forth therein. Notwithstanding any provision in this Guarantee to the contrary,

the obligations of the Guarantor under this Guarantee shall be no greater than the obligations of the Contractor under the Agreement, and in all events the obligation of the Guarantor shall not exceed ten million dollars ($10,000,000). The maximum obligations under the Bonds and the Guarantee are not additive. Recovery by Metro under this Guarantee shall be in lieu of any recovery against the Bonds and shall reduce in like amount the maximum obligation of the surety under the Bonds. The specific Bond to be reduced (Labor and Materials Bond or Performance Bond) shall depend upon the nature of the Metro recovery. In like manner, recovery by Metro under either of the Bonds shall in like amount reduce forever the maximum obligation of the Guarantor hereunder. All of the rights and remedies of the Contractor under the Agreement, including, but not limited to, the opportunity to cure any default under the Agreement, shall accrue to the Guarantor in the enforcement of its obligations under this Guarantee and the Agreement.

2. This Guarantee shall be governed by the laws of the State of Oregon exclusive of the choice of law rules thereof, and Guarantor hereby agrees to the service of process in Oregon for any claim or controversy arising out of this Guarantee or relating to any breach hereof and to submit to the exclusive jurisdiction of any court of competent jurisdiction in the State of Oregon in connection therewith.

3. This Guarantee shall be binding upon and enforceable against the Guarantor, its successors, assigns and

legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the assets of the Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee, and is for the benefit of Metro, and its permitted successors and assigns under the Agreement.

4. Before Metro may bring an action on this Guarantee it must exhaust its remedies against Contractor under the Agreement or demonstrate to a court of competent jurisdiction that it would be futile to do so. Provided however in the event Contractor becomes insolvent, is dissolved, is the subject of any proceeding pursuant to the United States Bankruptcy laws, whether voluntary or involuntary, makes a general assignment for the benefit of creditors, or is the subject of any receivership, then Metro shall be deemed to have exhausted its remedies against Contractor and may proceed directly against Guarantor.

5. No failure or delay by Metro in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided in the Agreement or by law or equity. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in

writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

6. Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee or all or substantially all of the assets of Guarantor. Notice of any such assignment shall be given in writing to Metro within thirty (30) Days after the effective date of any such merger, consolidation or transfer.

7. Metro shall notify Guarantor in writing, at its address set forth herein, of Metro's notice to the Contractor of any default on the part of the Contractor due to its failure to meet its obligations under the Agreement.

8. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee.

9. Any term used herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

10. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

/////

/////

Guarantor, at:

Waste Management, Inc.
Attn: Herbert A. Getz
Corporate Secretary
3003 Butterfield Road
Oakbrooke, Illinois 60521

Metro, at:

Metropolitan Service District
Attn: Solid Waste Director
2000 S. W. First Avenue
Portland, OR 97201-5398

or to such other address as shall be designated by such Party in a written notice to the other Party hereto. Any notice given pursuant to this Section shall be effective immediately upon receipt, and if delivered by hand, upon delivery.

IN WITNESS WHEREOF, the Guarantor has executed this Guarantee as of the date set forth above.

WASTE MANAGEMENT, INC.

By: _____
Authorized Officer

DBC/gl
1003c

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 90-1279 FOR THE PURPOSE OF AMENDING THE SOLID WASTE DISPOSAL SERVICES CONTRACT WITH OREGON WASTE SYSTEMS

Date: June 5, 1989 Presented by: Bob Martin
Dan Cooper

FACTUAL BACKGROUND AND ANALYSIS

Metro's contract for disposal with Oregon Waste Systems states that "Metro agrees to deliver to the Contractor's Disposal Site a minimum of ninety percent (90%) of the total tons of acceptable waste (other than ash) which Metro delivers to any general purpose landfill during that calendar year." Evidently when this contract language was developed in 1987, it was contemplated that the St. Johns Landfill would close January 1, 1990.

Because that is now not the case (St. Johns Landfill will close in February 1991) the landfill in Gilliam County will in reality receive only that waste which first goes to the Metro South Transfer Station in 1990. This represents about forty percent (40%) of the waste going to a general purpose landfill in 1990.

Resolution No. 90-1279 is the result of a negotiated settlement of this altered waste delivery schedule. It states that for calendar year 1990 the 90% requirement is not applicable and instead Metro will deliver 294,000 to 328,000 tons. To compensate Oregon Waste Systems for this reduced scale of operation from that contemplated in the contract documents, the attached contract amendment increases compensation to Oregon Waste Systems by $1.5 million to be paid at the rate of $0.28 per ton for approximately ten years.

If Metro delivers more than 328,000 tons in 1990 the additional compensation decreases. Current estimates are that we will deliver about 343,000 tons, and if so the additional compensation will be about $1.4 million.

Resolution 90-1279 also substitutes a Letter of Credit with a corporate guarantee for the retainage as allowed by Metro Code.

No budget amendment is necessary if this resolution is adopted.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 90-1279.

BM:ay
STAF0605.RPT
June 8, 1990

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1279, FOR THE PURPOSE OF AMENDING THE SOLID WASTE DISPOSAL SERVICES CONTRACT WITH OREGON WASTE SYSTEMS, INC. TO PROVIDE FOR A LIMITED EXEMPTION TO THE FLOW GUARANTEE PROVISIONS IN ORDER TO PROPERLY CLOSE THE ST. JOHNS LANDFILL

Date: June 6, 1990 Presented by: Councilor Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 5 to 0 to recommend Council adoption of Resolution No. 90-1279. Voting: Councilors Hansen, Bauer, Buchanan, DeJardin, and Wyers. This action was taken June 5, 1990.

Committee Discussion/Issues: An Executive Session was held by the Solid Waste Committee on June 5, 1990, prior to the consideration of Resolution No. 90-1279. The Executive Session was held under the authority of ORS 192.660(1)(h) for the purpose of discussing threatened litigation with legal counsel.

In regular session Bob Martin, Solid Waste Director, presented the staff report regarding Resolution No. 90-1279.

The agreement with Oregon Waste Systems, Inc. (OWS) for waste disposal services requires Metro to deliver 90 percent of all waste delivered by Metro to a general purpose landfill to OWS.

During 1990, Metro has need to continue allowing the direct hauling of solid waste to the St. Johns Landfill. There exists, however, a dispute between Metro and OWS as to whether the direct haul of solid waste to the St. Johns Landfill is subject to the flow guarantee contained in the contract.

In order to resolve the outstanding dispute between Metro and OWS as to alleged damages to OWS caused by Metro's continued deliveries of waste to the St. Johns Landfill, and not an admission of fault or liability, Metro and OWS have negotiated a resolution of this matter as provided for in Contract Amendment No. 2. It provides for a lower guarantee of tonnage to OWS during calendar year 1990, and the payment of a surcharge to OWS in the approximate amount of $.28 per ton for a limited period of time in order to compensate OWS for its possible damages.

The Solid Waste Committee stated that the proposed contract amendment provides an equitable means for resolving the dispute. There were no further questions, comments or issues raised during regular session and the Committee voted unanimously to recommend Council adoption of Resolution No. 90-1279.

GH:RB:pa

RRB.192

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 90-1279 FOR THE PURPOSE OF AMENDING THE SOLID WASTE DISPOSAL SERVICES CONTRACT WITH OREGON WASTE SYSTEMS

Date: June 5, 1989 Presented by: Bob Martin
Dan Cooper

FACTUAL BACKGROUND AND ANALYSIS

Metro's contract for disposal with Oregon Waste Systems states that "Metro agrees to deliver to the Contractor's Disposal Site a minimum of ninety percent (90%) of the total tons of acceptable waste (other than ash) which Metro delivers to any general purpose landfill during that calendar year." Evidently when this contract language was developed in 1987, it was contemplated that the St. Johns Landfill would close January 1, 1990.

Because that is now not the case (St. Johns Landfill will close in February 1991) the landfill in Gilliam County will in reality receive only that waste which first goes to the Metro South Transfer Station in 1990. This represents about forty percent (40%) of the waste going to a general purpose landfill in 1990.

Resolution No. 90-1279 is the result of a negotiated settlement of this altered waste delivery schedule. It states that for calendar year 1990 the 90% requirement is not applicable and instead Metro will deliver 294,000 to 328,000 tons. To compensate Oregon Waste Systems for this reduced scale of operation from that contemplated in the contract documents, the attached contract amendment increases compensation to Oregon Waste Systems by $1.5 million to be paid at the rate of $0.28 per ton for approximately ten years.

If Metro delivers more than 328,000 tons in 1990 the additional compensation decreases. Current estimates are that we will deliver about 343,000 tons, and if so the additional compensation will be about $1.4 million.

Resolution 90-1279 also substitutes a Letter of Credit with a corporate guarantee for the retainage as allowed by Metro Code.

No budget amendment is necessary if this resolution is adopted.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 90-1279.

BM:ay
STAF0605.RPT
June 8, 1990

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1279, FOR THE PURPOSE OF AMENDING THE SOLID WASTE DISPOSAL SERVICES CONTRACT WITH OREGON WASTE SYSTEMS, INC. TO PROVIDE FOR A LIMITED EXEMPTION TO THE FLOW GUARANTEE PROVISIONS IN ORDER TO PROPERLY CLOSE THE ST. JOHNS LANDFILL

Date: June 6, 1990 Presented by: Councilor Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 5 to 0 to recommend Council adoption of Resolution No. 90-1279. Voting: Councilors Hansen, Bauer, Buchanan, DeJardin, and Wyers. This action was taken June 5, 1990.

Committee Discussion/Issues: An Executive Session was held by the Solid Waste Committee on June 5, 1990, prior to the consideration of Resolution No. 90-1279. The Executive Session was held under the authority of ORS 192.660(1)(h) for the purpose of discussing threatened litigation with legal counsel.

In regular session Bob Martin, Solid Waste Director, presented the staff report regarding Resolution No. 90-1279.

The agreement with Oregon Waste Systems, Inc. (OWS) for waste disposal services requires Metro to deliver 90 percent of all waste delivered by Metro to a general purpose landfill to OWS.

During 1990, Metro has need to continue allowing the direct hauling of solid waste to the St. Johns Landfill. There exists, however, a dispute between Metro and OWS as to whether the direct haul of solid waste to the St. Johns Landfill is subject to the flow guarantee contained in the contract.

In order to resolve the outstanding dispute between Metro and OWS as to alleged damages to OWS caused by Metro's continued deliveries of waste to the St. Johns Landfill, and not an admission of fault or liability, Metro and OWS have negotiated a resolution of this matter as provided for in Contract Amendment No. 2. It provides for a lower guarantee of tonnage to OWS during calendar year 1990, and the payment of a surcharge to OWS in the approximate amount of $.28 per ton for a limited period of time in order to compensate OWS for its possible damages.

The Solid Waste Committee stated that the proposed contract amendment provides an equitable means for resolving the dispute. There were no further questions, comments or issues raised during regular session and the Committee voted unanimously to recommend Council adoption of Resolution No. 90-1279.

GH:RB:pa

RRB.192