

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF DECLARING)	RESOLUTION NO. 91-1410
CERTAIN PROPERTY SURPLUS AND)	
AUTHORIZING THE EXECUTION OF)	Introduced by Rena Cusma,
A LEASE)	Executive Officer

WHEREAS, The Metropolitan Service District owns an office building separate from the main transfer station building at 6161 NW 61st Avenue, Portland, Oregon 97232; and

WHEREAS, Pursuant to ORS 271.310(3) it has been determined that 175 sq. feet of office space in the building is not immediately needed for public use and will not be needed for public use for at least the next five years; and

WHEREAS, Pursuant to ORS 271.360 a lease has been proposed with Jack Gray Transport, Inc. for 175 sq. feet of office space, attached hereto as Exhibit "A," and incorporated herein; now, therefore,

BE IT RESOLVED,

1. That that portion of the property at 6161 NW 61st Avenue described in the attached Exhibit "A" as is declared to be "surplus property that is not immediately needed for public use and will not be needed for public use for at least the next five years;
2. That the Executive Officer is authorized to execute the attached Contract with Jack Gray Transport, Inc. for lease of the surplus property.

ADOPTED by the Council of the Metropolitan Service District this 23rd day of May, 1991.



Tanya Collier, Presiding Officer

EXHIBIT A

OFFICE LEASE

This Lease is between the Metropolitan Service District, a municipal corporation and public body of the State of Oregon, referred to herein as "OWNER," and Jack Gray Transport, Inc., referred to herein as "LESSEE."

In exchange for the promises and other valuable consideration set forth below, the parties agreed as follows:

1. Premises Leased. LESSEE hereby leases from OWNER a portion of an office building located at 6161 N.W. 61st Avenue, Portland, Oregon. OWNER's building in which the premises are located is a single-story, 1,178 square foot building. The "Premises" leased herein is a 175 square foot office (approximately 9'2" x 19'1") in the northwest corner of the above-described building, identified as "Room Number One." LESSEE shall also have use of certain common areas in the building, to the extent such use does not conflict with the use of such areas by the OWNER, or third parties using such common areas with the consent of OWNER. The leased premises and common areas are shown in the diagram attached as Attachment "A" and made part of this Lease by reference.

2. Term of Lease. The term of this Lease commenced on January 15, 1991, and shall end on January 14, 1996, unless terminated sooner or extended in accordance with the provisions of this Lease.

3. Rent. LESSEE shall pay to OWNER as rent, without deduction, set off, notice, or demand, at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, or at such other place as OWNER shall designate from time to time by notice to LESSEE, the following sums:

(a) During the first through fifth year of the term the sum of \$204.00 per month in advance on the first day of each month of the term. (The rental amount is based upon a rate of \$14.00 per square foot per year on a 175 square foot of leased space. Leased floor space in subparagraph 3-B includes a 10 percent load factor for use of common areas.)

(b) LESSEE shall pay to OWNER upon execution of this Lease all rent that has accrued under this Lease since January 15, 1991, plus the sum the sum of \$204.00 for the last month of the term. If LESSEE fails to pay rent or other charges when due under this Lease, or fails to perform any of its

obligations hereunder, OWNER may use or apply all or any portion of the last month rent for the payment of any rent or other amount when due and unpaid, for the payment of any other sum for which OWNER may become obligated by reason of LESSEE's default or breach, or for any loss or damages sustained by OWNER as a result of LESSEE's default or breach. If OWNER so uses any portion of the last month rent, LESSEE shall, within 10 days after written demand by OWNER, restore the last month rent to the full amount originally deposited, and LESSEE's failure to do so shall constitute a default under this Lease. OWNER shall not be required to keep the last month rent separate from its general accounts, and shall have no obligation or liability for payment of interest on the last month rent. In the event the OWNER assigns its interests in this Lease, OWNER shall deliver to its assignee so much of the last month rent as is then held by OWNER.

(c) LESSEE shall have the right to lease up to two parking spaces and hereby leases the two spaces as of January 15, 1991. The rate for each space shall be \$30.00 per month for the first year, with all amounts accruing for the use of the spaces since January 15, 1991, due upon execution of this Lease. OWNER may increase the rent per space by written notice, thirty (30) days in advance, but the rate shall not be increased more than 10 percent of each year after the first year. Rent for each space leased shall be due and payable on the fifteenth day of the month. LESSEE may terminate lease of either of the parking spaces by giving OWNER written notice thirty (30) days in advance of LESSEE's intent to terminate.

4. Use of Premises. The premises shall be used by LESSEE as office space to facilitate its operations at the Metro Central Transfer Station and for no other purpose. Smoking shall not be allowed in the building, and LESSEE shall take reasonable steps to ensure that its invitees, employees, agents, and others under LESSEE's control do not smoke in the building. Use of the common areas of the building shall be limited to the office staff and shuttle drivers of LESSEE employed on site, and shall not extend to other employees of LESSEE. In all other respects, LESSEE shall ensure that its activities in the premises are in compliance with all applicable laws and regulations.

5. Repairs and Maintenance.

5.1 OWNER shall be responsible for all costs of repair and maintenance of the leased premises, except to the extent that repairs or maintenance are not necessitated by ordinary wear and tear and are necessitated by an act of LESSEE, its employees, invitees, agents, contractors, or other persons operating under

LESSEE's control. It shall be LESSEE's responsibility to exercise due diligence in reporting to OWNER conditions, which if not remedied, will exacerbate OWNER's repair or maintenance expenses.

5.2 Any repairs, replacements, alterations, or other work performed on or around the leased premises by OWNER shall be done in such a way as to interfere as little as reasonably possible with the use of the premises by LESSEE. LESSEE shall have no right to an abatement of rent nor any claim against OWNER for any inconvenience or disturbance resulting from OWNER's activities performed in conformance with the requirement of this provision.

5.3 OWNER shall have the right to inspect the premises at any reasonable time or times to determine the necessity of repair. Whether or not such inspection is made, the duty of OWNER to make repairs shall not mature until a reasonable time after OWNER has received from LESSEE notice in writing of the repairs that are required.

6. Alterations. LESSEE shall make no improvements or alterations on the leased premises of any kind without first obtaining OWNER's written consent. All improvements and alterations performed on the leased premises by either OWNER or LESSEE shall be the property of OWNER when installed unless otherwise specified between the parties in writing.

7. Assignment and Subletting. LESSEE shall not assign this Lease or sublet all or any part of the premises without the prior written consent of OWNER.

8. Insurance.

8.1 LESSEE shall maintain for the term of this Lease insurance coverage for bodily injury and property damage liability for a combined single limit of \$500,000.00, and in all other respects to the limits and of a type required of public bodies under ORS chapter 30. LESSEE shall have OWNER named as an additional insured on any liability insurance coverage LESSEE carries for activities conducted on the premises. This insurance shall be exhausted first as primary insurance, notwithstanding that OWNER may have other valid and collectable insurance covering the same risk. LESSEE shall deliver proof of this insurance to OWNER upon request.

8.2 Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss neither party's insurance company shall have a subrogated claim against the other.

9. Indemnification. Throughout the term of this Lease, LESSEE shall indemnify and save harmless OWNER, its officers, elected officials, agents, employees and assigns from and against all claims and actions, and all expenses reasonably and necessarily incurred as a party to an action or claim, whether or not suit is filed, to the extent arising out of or based upon damage or injuries to persons or property caused by any act, omission or fault of LESSEE.

10. Attorneys Fees. In the event of any suit or action by either party to enforce any provision of this Lease, or in any other suit or action arising out of or in connection with this Lease, the prevailing party shall be entitled to recover its cost of suit or action and reasonable attorney fees whether at trial or on appeal.

11. Damage or Destruction.

11.1 If the leased premises are partly damaged and 11.2 below does not apply, the property shall be repaired by OWNER at OWNER's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of OWNER.

11.2 If the leased premises are destroyed or damaged such that the cost of repair exceeds 40 percent of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than 45 days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination, and LESSEE shall be entitled to the reimbursement of any amounts prepaid by LESSEE and attributable to the anticipated term. If neither party elects to terminate, OWNER shall proceed to restore the leased premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters not under the control of OWNER.

11.3 Rent shall be abated during the repair of any damage to the extent the premises are untenable, except that there shall be no rent abatement when the damage occurred as a result of the fault of LESSEE.

12. Liens. Except with respect to activities for which OWNER is responsible, LESSEE shall pay as due all claims for work done on and for services rendered or materials furnished to the leased premises and shall keep the premises free from any liens. If LESSEE fails to pay any such claims or to discharge any lien, OWNER may do so and collect the cost as additional rent. Any

amount so added shall bear interest at the rate of nine percent per annum from the date expended by OWNER and shall be payable on demand. Such action by OWNER shall not constitute a waiver of any right or remedy which OWNER may have on account of LESSEE's default.

13. Default. The following shall be events of default:

(a) Failure of LESSEE to pay any rent or other charge within ten days after it is due.

(b) Failure of LESSEE to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within twenty (20) days after written notice by OWNER specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with if LESSEE begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

(c) Insolvency of LESSEE; an assignment by LESSEE for the benefit of creditors; the filing by LESSEE of a voluntary petition in bankruptcy; an adjudication that LESSEE is bankrupt or the appointment of a receiver of the properties of LESSEE; the filing of any involuntary petition of bankruptcy and failure of LESSEE to secure a dismissal of the petition within thirty (30) days after filing; attachment of the levying of execution on the leasehold interest and failure of LESSEE to secure discharge of the attachment or release of the levy of execution within ten (10) days. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of LESSEE under the Lease.

(d) Failure of LESSEE for thirty (30) days or more to occupy the property for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease, shall be an abandonment of the property.

14. Remedies on Default.

14.1 In the event of a default, the Lease may be terminated at the option of OWNER by notice in writing to LESSEE. If the Lease is not terminated by election of OWNER or otherwise, OWNER shall be entitled to recover damages from LESSEE for the default. If the Lease is terminated, LESSEE's liability to OWNER for damages shall survive such termination, and OWNER may re-enter,

take possession of the premises, and remove any persons or property by legal action or by self help with the use of reasonable force and without liability for damages.

14.2 Following re-entry or abandonment, OWNER may relet the premises and in that connection may make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises, but OWNER shall not be required to relet for any use or purpose other than that specified in the Lease or which OWNER may reasonably consider injurious to the premise, or to any tenant that OWNER may reasonably consider objectionable. OWNER may relet all or part of the premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent free occupancy or other rent concession.

14.3 In the event of termination on default, OWNER shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

(a) The loss of reasonable rental value from the date of default until a new tenant has been, or with the exercise of reasonable efforts could have been, secured.

(b) The reasonable costs of re-entry and reletting including without limitation the costs of any clean up, refurbishing, removal of LESSEE's property and fixtures, and any other expense occasion by LESSEE's failure to quit the premises upon termination and to leave them in the required condition, any remodeling costs, attorneys' fees, court costs, broker commissions, and advertising costs.

(c) Any excess of the value of the rent and all of LESSEE's other obligations under this Lease over the reasonable expected return of the premises for the period commencing on the earlier of the date of trial or the date the premises or reletting continued through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

14.4 OWNER may sue periodically to recover damages during the period corresponding to the remainder of the Lease term, and no action for damages shall bar a later action for damages subsequently accruing.

14.5 The foregoing remedies shall be in addition to and shall not exclude any other remedy available to OWNER under applicable law.

15. Surrender at Expiration.

15.1 Upon expiration of the lease term or earlier termination on account of default, LESSEE shall deliver all keys to OWNER and surrender the leased premises in good condition and broom clean. Alterations constructed by LESSEE with permission from OWNER shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. LESSEE's obligations under this paragraph shall be subordinate to the provisions of this Lease related to destruction of the premises.

15.2 (a) All fixtures placed upon the leased premises during the term, other than LESSEE's trade fixtures, shall, at OWNER's option, become the property of OWNER. If OWNER so elects, LESSEE shall remove any or all fixtures which would otherwise remain the property of OWNER, and shall repair any physical damage resulting from the removal. If LESSEE fails to remove such fixtures, OWNER may do so and charge the costs to LESSEE with interest at the legal rate from the date of expenditure.

(b) Prior to expiration or termination of the lease term, LESSEE shall remove all furnishings, furniture and trade fixtures which remain its property. If LESSEE fails to do so, this shall be an abandonment of the property, and OWNER may retain the property and all rights of LESSEE with respect to it shall cease or, by notice in writing given to LESSEE within twenty (20) days after removal was required, OWNER may elect to hold LESSEE to its obligation of removal. If OWNER elects to require LESSEE to remove, OWNER may effect a removal and place the property in public storage for LESSEE's account. LESSEE shall be liable to OWNER for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by OWNER.

15.3 (a) If LESSEE does not vacate the leased premises at the time required, OWNER shall have the option to treat LESSEE as a tenant from month to month, subject to all of the provisions of this Lease except for the provisions for term and renewal, and at a rental rate equal to 150 percent of the rent last paid by LESSEE during the original term. Failure of LESSEE to remove fixtures, furniture, furnishings, or trade fixtures which LESSEE is required to remove under this Lease shall constitute a failure to vacate to which this paragraph shall apply if the property not removed would substantially interfere with occupancy of the premises by another tenant or with occupancy by OWNER for any purpose including preparation for a new tenant.

(b) If a month to month tenancy results from a holdover by LESSEE under this paragraph 15.3, the tenancy shall

be terminable at the end of any monthly rental period on written notice from OWNER given not less than ten (10) days prior to the termination date which shall be specified in the notice. LESSEE waives any notice which would otherwise be provided by law with respect to a month-to-month tenancy.

16. Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the parties right to require strict performance of the same provision in the future or of any other provision.

17. Notices. Any notice required or permitted under this Lease shall be given when actually delivered or forty-eight (48) hours after deposited in the United States mail as certified mail addressed to the address listed with each party's name below, or such other address as may be specified from time to time by either of the parties in writing.

18. Succession. Subject to the above-stated limitations on transfer of LESSEE's interest, this Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

19. Right to Cure Defaults. If LESSEE fails to perform any obligation under this Lease, OWNER shall have the option to do so after thirty (30) days written notice to LESSEE and without prior notice in case of an emergency. All of OWNER's expenditures to correct the default shall be reimbursed by LESSEE on demand with interest at the rate of nine percent per annum from the date of expenditure by OWNER.

20. Inspection. OWNER shall the right to enter upon the premises at any time to determine LESSEE's compliance with this Lease, to make necessary repairs to the building or to the premises, or to show the premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this Lease, to place and maintain upon the premises notices for leasing or selling of the premises.

21. Interest on Rent and Other Charges. Any rent or other payment required of LESSEE by this Lease, shall, if not paid within ten (10) days after it is due, bear interest at the maximum legal rate from the due date until paid.

22. Proration of Rent. In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, the rent shall be prorated as of the date of commencement or termination, and in

the event of termination for reasons other than default, all prepaid rent shall be refunded to LESSEE or paid on its account.

The parties agree, as specified above, this _____ day of _____, 1991.

JACK GRAY TRANSPORT, INC.

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address (for notice purposes):

Address (for notice purposes):

Metropolitan Service District
2000 S.W. First Avenue
Portland, Oregon 97201-5398

1050c

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 91-1410 FOR THE PURPOSE OF DECLARING CERTAIN PROPERTY SURPLUS AND AUTHORIZING THE EXECUTION OF A LEASE

Date: April 4, 1991

Presented by: Sam Chandler

FACTUAL BACKGROUND AND ANALYSIS

Metro owns a new office building on the site of the Metro Central Station located at 6161 NW 61st Avenue, Portland, Oregon. The building was constructed to provide office space for Metro's Site Supervisor, Hazardous Waste Specialist, and other personnel necessary to transfer station operations. The building is located in an area that is zoned "heavy industry," and has approximately 1,178 square feet of space.

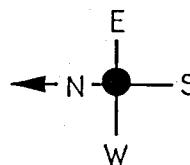
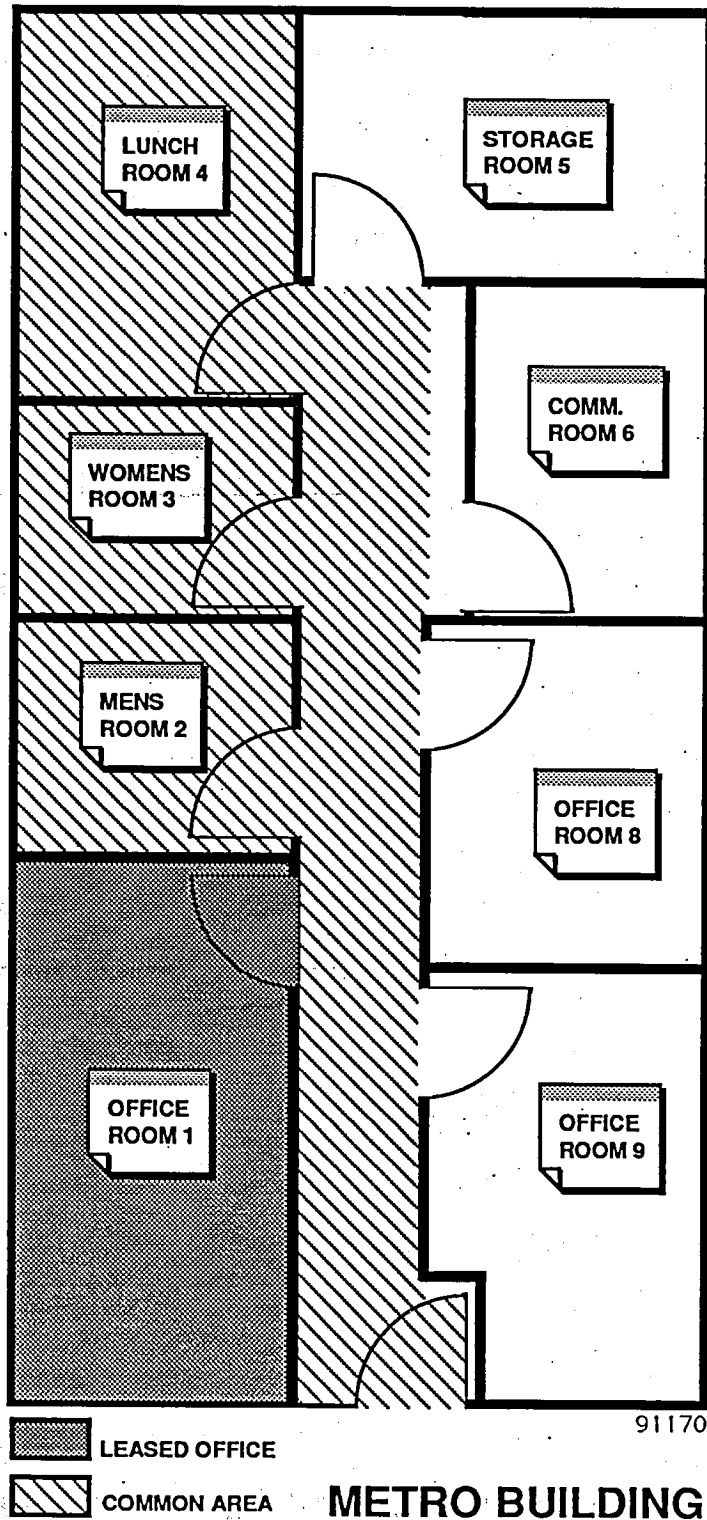
Jack Gray Transport, Inc. (JGT) has requested a lease with Metro for an office in the northwest corner of the above-referenced building. The building was constructed to accomodate an office for JGT, to facilitate solid waste transport from the facility. This space is not immediately needed for public use. It is proposed that Metro enter into a lease agreement with JGT for this space. JGT has been utilizing this space since mid-January, and the proposed lease is retroactive to January 15, 1991. Highlights of the proposed lease are as follows:

1. Office size: 9'2" x 19'1" (175 square feet)
2. Rate per square foot: \$14.00
3. Monthly rent: \$204.00
4. Parking spaces: Two, at a rate of \$30 per month each
5. Term of lease: Five years, from Jan 15, 1991

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 91-1410.

ATTACHMENT A



SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 91-1410, FOR THE PURPOSE OF
DECLARING CERTAIN PROPERTY SURPLUS AND AUTHORIZING THE
EXECUTION OF A LEASE

Date: May 7, 1991

Presented by: Councilor Wyers

Committee Recommendation: At the May 7, 1991 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 91-1410. Voting in favor were Councilors DeJardin, Gardner, McFarland, McLain and Wyers.

Committee Issues/Discussion: Ray Barker, Assistant Facilities Manager, said the Resolution authorizes execution of a lease with Jack Gray Trucking for one office in the new Metro building next to Metro Central Transfer Station. He said that office space for Jack Gray was included when the building was planned. Jack Gray's shuttle operation would be run from this office. Jack Gray would pay \$204 monthly in rent for a lease term of five years, and would also lease two parking space.

Councilor McFarland asked if the monthly rent would remain at \$204 throughout the lease term. Mr. Barker said that it would, and that the rent is based on information provided by Coldwell Banker. He said the \$204 includes reasonably anticipated adjustments over the next five years, and is an average.

Councilor McFarland suggested that the Department reconsider the amount of rent on a yearly basis.