

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 91-1482
EXECUTIVE OFFICER TO EXECUTE A)
CONTRACT WITH MCFARLANE'S BARK, INC.) Introduced by Rena Cusma,
FOR HAULING AND PROCESSING YARD) Executive Officer
DEBRIS FROM THE METRO SOUTH STATION)

WHEREAS, An estimated 1,500 tons of source-separated yard debris will be disposed of at Metro South Station during fiscal year 1991-92; and

WHEREAS, It is Metro's policy to recycle source-separated yard debris; and

WHEREAS, A public bidding process was used to obtain bids for the hauling and processing of yard debris from the Metro South Station; and

WHEREAS, McFarlane's Bark Inc. was the low, responsible, responsive bidder for hauling and processing yard debris from Metro South Station; and

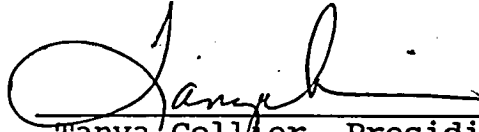
WHEREAS, McFarlane's Bark, Inc. has the necessary equipment and expertise to haul and process the yard debris from Metro South Station into usable products; and

WHEREAS, The Executive Officer has reviewed the contract with McFarlane's Bark, Inc. to haul and process yard debris from Metro South Station and hereby forwards the Agreement to the Council for Approval; now, therefore,

BE IT RESOLVED, That the Council of the Metropolitan Service District authorizes the Executive Officer to execute the attached

contract (Exhibit "A" hereto) with McFarlane's Bark, Inc. to haul and process yard debris from the Metro South Station.

ADOPTED by the Council of the Metropolitan Service District
this 12th day of September, 1991.



Tanya Collier, Presiding Officer



GRANT/CONTRACT SUMMARY

METROPOLITAN SERVICE DISTRICT

GRANT/CONTRACT NO. 902-056 BUDGET CODE NO. 531-310244-526611-75000

FUND: Operations 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 Hauling and Processing of Yard Debris from Metro South Station.

2. TYPE OF EXPENSE

<input type="checkbox"/> PERSONAL SERVICES	<input checked="" 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

<input type="checkbox"/> CHANGE IN COST	<input type="checkbox"/> CHANGE IN WORK SCOPE
<input type="checkbox"/> CHANGE IN TIMING	<input checked="" type="checkbox"/> NEW CONTRACT

4. PARTIES Metro and McFarlanes Bark, Inc.

5. EFFECTIVE DATE September 1, 1991 TERMINATION DATE August 31, 1992
(THIS IS A CHANGE FROM _____)

6. EXTENT OF TOTAL COMMITMENT:

ORIGINAL/NEW	\$ <u>52,500.</u>
PREV. AMEND	_____
THIS AMEND	_____
TOTAL	\$ <u>52,500.</u>

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1991-92 \$ 43,750.

B. BUDGET LINE ITEM NAME Disposal Operation AMOUNT APPROPRIATED FOR CONTRACT \$ 112,500.

C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF July 30, 1991 \$ 107,000.

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

<u>Grimm's Fuel, Co.</u>	\$ <u>38.33/ton</u>	<input type="checkbox"/> MBE
SUBMITTED BY _____	AMOUNT	
<u>McFarlanes's Bark, Inc.</u>	\$ <u>35.00/ton</u>	<input type="checkbox"/> MBE
SUBMITTED BY _____	AMOUNT	
<u>Waste Management of Oregon</u>	\$ <u>65.00/ton</u>	<input type="checkbox"/> MBE
SUBMITTED BY _____	AMOUNT	

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 Bid Bond AMOUNT \$ 500.

TYPE OF BOND Performance Bond AMOUNT \$ 52,500.

14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)

NAME _____ 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:

\$52,500 Contract amount calculated as follows:

1500 tons of Yard Debris @ \$35.00/ton

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 _____

PUBLIC CONTRACT

THIS Contract is entered into between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, hereinafter referred to as "Metro," and McFarlane's Bark, Inc., whose address is 13345 SE Johnson Rd., Milwaukie, Oregon 97222, hereinafter referred to as the "Contractor."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

Contractor shall perform the work and/or deliver to Metro the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing October 1, 1991 through and including September 30, 1992.

Contractor shall be entitled to payment for work performed to the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies it may have against Contractor.

ARTICLE VI

INSURANCE

Contractor shall maintain such insurance as will protect Contractor from claims under Workers' Compensation Acts and other employee benefits acts covering all of Contractor's employees engaged in performing the work under this Contract; and from claims for damages because of bodily injury, including death and damages to property, all with coverage limits satisfactory to Metro. Liability insurance shall have minimum coverage limits of at least the dollar amounts listed in ORS 30.270. Additional coverage may be required in the Scope of Work attached hereto. This insurance must cover Contractor's operations under this Contract, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. Contractor shall immediately increase the amounts of liability insurance required to reflect any changes in Oregon Law so that the insurance provided shall cover, at a minimum, the maximum liability limits under the Oregon Tort Claims Act.

If required in the Scope of Work attached hereto, Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours

before services under this Contract commence, whichever date is earlier.

Contractor shall not be required to provide the liability insurance described in this Article if an express exclusion relieving Contractor of this requirement is contained in the Scope of Work.

ARTICLE VII

PUBLIC CONTRACTS

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, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this Contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws chapter 684.

ARTICLE VIII

ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX

QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality.

All workers and subcontractors shall be skilled in their trades. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by Metro, whichever is later. All guarantees and warranties of goods furnished to Contractor or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of Metro.

ARTICLE X

OWNERSHIP OF DOCUMENTS

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this agreement are the property of Metro and it is agreed by the parties hereto that such documents are works made for hire. Contractor does hereby convey, transfer and grant to Metro all rights of reproduction and the copyright to all such documents.

ARTICLE XI

SUBCONTRACTORS; DISADVANTAGED BUSINESS PROGRAM

Contractor shall contact Metro prior to negotiating any subcontracts and Contractor shall obtain approval from Metro before entering into any subcontracts for the performance of any

of the services and/or supply of any of the goods covered by this Contract.

Metro reserves the right to reasonably reject any subcontractor or supplier and no increase in the Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. Contractor shall be fully responsible for all of its subcontractors as provided in Article IV.

If required in the Scope of Work, Contractor agrees to make a good faith effort, as that term is defined in Metro's Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting seven percent (7%) of the contract amount to Disadvantaged Business Enterprise and five percent (5%) of the contract amount to Women-Owned Business Enterprise. Metro reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and Metro's Disadvantaged Business Program.

ARTICLE XII

RIGHT TO WITHHOLD PAYMENTS

Metro shall have the right to withhold from payments due Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Contractor's performance or failure to perform under this agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if Contractor has, in Metro's opinion, violated that provision, Metro shall have the right to withhold from payments due Contractor such sums as shall satisfy that provision. All sums withheld by Metro under this Article shall become the property of Metro and Contractor shall have no right to such sums to the extent that Contractor has breached this Contract.

ARTICLE XIII

SAFETY

If services of any nature are to be performed pursuant to this agreement, Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XIV

INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference.

Otherwise, this Contract represents the entire and integrated agreement between Metro and Contractor and supersedes

all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Metro and Contractor. The law of the State of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV

ASSIGNMENT

Contractor shall not assign any rights or obligations under or arising from this Contract without prior written consent from Metro.

MCFARLANE'S BARK, INC.

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____

Date: _____

RB:2V
CONTRACT\YDMS.S.CNT
July 30, 1991

ATTACHMENT A TO CONTRACT

SCOPE OF WORK

1. Contractor shall haul and process into usable products approximately 1,500 tons of source-separated yard debris from the Metro South Station, located at 2001 Washington Street, Oregon City, OR 97045.
2. Contractor shall provide all equipment and personnel necessary to supply the transport and processing services described in this Scope of Work. Equipment shall include, but shall not be limited to, a yard debris grinder, a transport vehicle capable of hauling a 40-yard drop box full of yard debris, two 40-yard drop boxes, and tarps to cover loaded drop boxes during transport. Drop boxes shall be in good working order, painted, and free of holes and major dents. The physical appearance of drop boxes shall be subject to Metro approval, and Contractor shall improve said appearance if so required by Metro.
3. For purposes of this agreement, the term "yard debris" is defined as heterogenous material composed mostly of leaves, branches, yard prunings and grass clippings, with incidental quantities of tree stumps, root balls and sod. The material is reasonably free of waste contamination. Metro will strive to keep the material as clean of contamination as is reasonably possible.
4. Metro guarantees no minimum amount of material for delivery to Contractor and reserves the right to limit the quantity of material to be delivered to Contractor.
5. Source-separated yard debris disposed of at Metro South Station shall be loaded into 40-yard drop boxes by the station operator (currently Waste Management of Oregon).
6. Contractor shall perform hauling operations during regular business hours of the Metro South Station, unless other arrangements are made with the facility operator. Contractor shall coordinate the hauling of material with the operator of the transfer station. Metro's Solid Waste Facilities Manager shall serve as the arbiter in the case of dispute between Contractor and the facility operator.
7. Contractor shall remove the material from a designated area of the transfer station. The material shall be inside Contractor's 40-yard drop box at the transfer station. The material is not compacted. Contractor shall have an empty drop box at the designated area for acceptance of material while the loaded drop box is being hauled to the material

processing facility. Contractor shall remove full drop boxes of material from the transfer station within 24 hours of notification by Metro. Should Contractor not be able to remove material within 24 hours of notification, Metro shall have the right to hire a separate firm to haul the material.

8. All material shall be weighed by Metro on the scales at the transfer station scalehouse before removal of the material from the transfer station site and before delivery of material to the yard debris processing facility. The net weight of the load shall be registered on a transaction invoice and a copy given to the Contractor. This weight shall be the basis for payment to Contractor.
9. Loaded drop boxes shall be covered by a tarp during transport of material from transfer station to processing facility.
10. Once the material has been removed from the transfer station, none of the material covered under this Agreement shall be landfilled or burned in a solid waste mass incinerator. Except for these restrictions, Contractor may handle the final processed product in any lawful manner that Contractor deems appropriate.
11. Contractor shall be solely responsible for processing the material into final usable products.
12. No material shall be stockpiled by Contractor in an unprocessed form for longer than twelve (12) months.
13. Any contaminants contained in the material may be disposed at Metro disposal facilities at Contractor's expense.
14. Contractor shall provide (from insurance companies acceptable to Metro) the insurance coverage designated hereinafter and pay for all costs therefore. Before commencing work under this contract, Contractor shall furnish Metro with certificates of insurance evidencing coverage as specified and where indicated naming Metro as an additional insured.

a. Comprehensive General Liability

Contractor shall maintain Comprehensive General Liability insurance covering all operations, including contractual liability, against bodily injury or death including personal injury and property damage with a combined single limit of not less than \$1,000,000. Such policy shall name

Metro, its directors, officers, agents, and employees as an additional insured. Such insurance shall provide for thirty days prior written notice to Metro in the event of alteration or cancellation.

b. Auto Liability

Contractor shall maintain Auto Liability with a combined single limit of not less than \$1,000,000. Such policy shall insure against bodily injury and property damage arising out of the use by or on behalf of Contractor, his agents and employees in pursuit of services provided for in this Agreement, of any owned, non-owned or hired vehicle. Such policy shall name Metro, its directors, officers, agents and employees as an additional insured. Such insurance shall provide for thirty days prior written notice to Metro in the event of alteration or cancellation.

c. Workers' Compensation Coverage

Contractor shall maintain in force Workers' Compensation coverage as required by the State of Oregon. Contractor shall also maintain Employers' Liability insurance including bodily injury caused by disease with a limit of not less than \$1,000,000. Consultant shall require his sub-consultants (if any) to maintain such insurance also. Contractor shall provide Metro a Certificate of Insurance evidencing that such coverage is in force.

15. Contractor shall provide to Metro a performance bond in an amount equal to 100 percent (100%) of the bid price.

ATTACHMENT B TO CONTRACT

CONTRACT SUM AND TERMS OF PAYMENT

1. Metro shall compensate Contractor \$35.00 per ton for hauling and processing of yard debris from Metro South Station.
2. Metro shall pay Contractor for services performed and materials delivered in the maximum sum of FIFTY TWO THOUSAND FIVE HUNDRED AND NO/100ths DOLLARS (\$52,500.00).
3. Contractor shall submit to Metro a monthly invoice which details services performed by Contractor during the previous month. Contractor shall attach to each invoice copies of transaction receipts equal to the amount being invoiced. Monthly Invoices shall be sent to Metro, Attention: Accounts Payable, 2000 S.W. First Avenue, Portland, OR 97201.
4. Metro shall pay Contractor within thirty (30) days following receipt of an approved invoice from Contractor.

RB:ay
K:\CONTRACT\YDMS.SOW
August 12, 1991

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 91-1482 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A CONTRACT WITH MCFARLANE'S BARK, INC. FOR HAULING AND PROCESSING YARD DEBRIS FROM THE METRO SOUTH STATION

Date: July 29, 1991

Presented by: Sam Chandler
Ray Barker

PROPOSED ACTION

Adoption of Resolution No. 91-1482, authorizing the Executive Officer to execute a contract with McFarlane's Bark, Inc. for processing yard debris from the Metro South Station.

FACTUAL BACKGROUND AND ANALYSIS

Metro began accepting source-separated yard debris at the Metro South Station on July 1, 1991 at a user's cost of \$49/ton. Temporary arrangements were made with Waste Management of Oregon to haul the yard debris in drop boxes to McFarlane's Bark in Milwaukie, Oregon for processing until such time as bids are received and a contract is awarded for these services at Metro South Station.

A Request for Bids (RFB) for hauling and processing of source-separated yard debris from Metro Central and Metro South Stations was issued on June 20, 1991. The RFB provided three alternates for hauling and processing yard debris into usable products. Vendors were asked to bid on one or more of the following:

1. Price per ton for hauling and processing approximately 1,500 tons of yard debris from the Metro South Station
2. Price per ton for hauling and processing approximately 1,800 tons of yard debris from the Metro Central Station
3. Price per ton for hauling and processing a total of approximately 3,300 tons of yard debris from both the Metro Central Station and the Metro South Station

The Bid opening was held July 8, 1991. Trans Industries submitted the only bid: \$35/ton to process and transport yard debris from the Metro Central Station. Because no bids were received to haul and process yard debris from Metro South Station, a second RFB was issued on July 18, 1991 for Metro South Station only. Vendors were asked to submit a price per ton for hauling and processing into usable products approximately 1,500 tons of yard debris from the Metro South Station.

The Bid opening was held July 29, 1991. The bid results were as follows:

<u>VENDOR</u>	<u>UNIT PRICE</u>
McFarlane's Bark, Inc,	\$35.00/ton
Grimm's Fuel Co.	\$38.33/ton
Waste Management of Oregon	\$65.00/ton

McFarlane's Bark, Inc. is the low, responsive, responsible bidder.

The proposed contract with McFarlane's Bark, Inc. for hauling and processing yard debris from Metro Central Station is summarized as follows:

1. Contractor shall haul and process into usable products approximately 1,500 tons of source-separated yard debris from Metro South Station during a one-year period at a cost of \$35/ton (\$52,500 total contract amount).
2. Contractor shall provide to Metro a performance bond in an amount equal to 100 percent (100%) of the bid price (\$52,500).
3. None of the yard debris shall be burned in a mass incinerator or landfilled.
4. No material shall be stockpiled by Contractor in an unprocessed form for longer than 12 months.

BUDGET IMPACT

The FY 1991-92 budget provides \$112,500 for hauling and processing yard debris from Metro Central Station. The proposed contract with McFarlane's Bark, Inc. is for the total amount of FIFTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$52,500.00).

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 91-1482.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: August 13, 1991

Re: Resolution 91-1482 for the Purpose of Authorizing the Executive Officer to Execute a Contract with McFarlane's Bark, Inc. for Hauling and Processing Yard Debris From the Metro South Station

Resolution 91-1482 has been scheduled for consideration by the Committee at the August 20, 1991 meeting.

Background

Metro began accepting yard debris at Metro South on July 1, 1991. While Metro solicited bids for a contract to process and haul this material, the operator of the facility, Waste Management agreed to temporarily process the material and transport it to McFarlane's Bark, Inc. for processing.

The initial Request for Bids (RFB) for Metro South resulted in no bids being received. When the contract was rebid, a total of three bids were received. The low bidder was McFarlane's Bark, Inc. at a cost of \$35 per ton. Other bids included Grimm's Inc. (\$38.33/ton) and Waste Management (\$65/ton). (Note: the low bid is the same as the successful bid by Trans Industries to process and haul yard debris at Metro Central.)

The total cost of the contract will be \$52,500. This amount is significantly less than the \$112,500 budgeted for this contract. This difference is due to two factors: 1) the actual bid on a per ton basis was significantly less than anticipated, and 2) the amount of material projected to be received is less than originally estimated.

The proposed one-year contract will begin on August 1, 1991 and end on July 31, 1991. It is estimated at approximately 1,500 tons of material will be processed during the life of the contract. The contract provides that none of the yard debris material will be burned in a mass incinerator or landfilled. In addition, no material may be stockpiled in an unprocessed form for more than 12 months.

McFarlane's anticipates transporting the material in an unprocessed form to its facility, where it is will be primarily used to produce hog fuel.

Issues and Questions

The actual contract will save Metro a significant amount over the amount budgeted (over 50%). The committee may wish to ask Solid Waste staff:

- 1) Why, in their opinion, was the successful bid significantly less, on a per ton basis, than had been estimated?, and
- 2) Why the estimate for the amount of material to be processed was reduced?

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 91-1482, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A CONTRACT WITH MCFARLANE'S BARK, INC., FOR HAULING AND PROCESSING YARD DEBRIS FROM THE METRO SOUTH STATION

Date: August 29, 1991

Presented by: Councilor Wyers

Committee Recommendation: At the August 20 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 91-1482, as amended. Voting in favor: Councilors Gardner, McFarland, McLain and Wyers.

Committee Issues/Discussion: Ray Barker, Solid Waste Department, reviewed the staff report. He noted that yard debris had not been accepted at the Metro South Station until July 1, 1991. He noted that the purpose of the proposed contract will be to provide for the proper collection and reprocessing of this material into a useful product. McFarlane's proposes to use the material to manufacture compost.

The total amount of the proposed contract is \$52,500, significantly lower than the \$112,500 included in the FY 1991-92 budget. Barker noted that the amount is less because Metro had no historical data upon which to estimate the cost of hauling and reprocessing the material. Initially, the department determined that this could cost up to \$75/ton. McFarlane's bid was \$35/ton.

The contract will be for one year beginning October 1, 1991 and ending September 30, 1992. Barker suggested that the original contract documents, which contain a September 1 start date be amended to read October 1 because the contract would not be considered by the Council until September 12.

Councilor McFarland moved that the resolution be amended to reflect an October 1 start date and that awarding of the contract be approved.

PUBLIC CONTRACT

THIS Contract is entered into between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, hereinafter referred to as "Metro," and McFarlane's Bark, Inc., whose address is 13345 SE Johnson Rd., Milwaukie, Oregon 97222, hereinafter referred to as the "Contractor."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

Contractor shall perform the work and/or deliver to Metro the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing September 1, 1991 through and including August 31, 1992.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

Metro shall compensate the Contractor for work performed and/or goods supplied as described in Attachment B. Metro shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment B.

ARTICLE IV

LIABILITY AND INDEMNITY

Contractor is an independent contractor and assumes full responsibility for the content of its work and performance of Contractor's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify and hold harmless Metro, its agents and employees, 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 Contract. Contractor is solely responsible for paying Contractor's subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and Metro.

ARTICLE V

TERMINATION

Metro may terminate this Contract upon giving Contractor seven (7) days written notice. In the event of termination,

Contractor shall be entitled to payment for work performed to the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies it may have against Contractor.

ARTICLE VI

INSURANCE

Contractor shall maintain such insurance as will protect Contractor from claims under Workers' Compensation Acts and other employee benefits acts covering all of Contractor's employees engaged in performing the work under this Contract; and from claims for damages because of bodily injury, including death and damages to property, all with coverage limits satisfactory to Metro. Liability insurance shall have minimum coverage limits of at least the dollar amounts listed in ORS 30.270. Additional coverage may be required in the Scope of Work attached hereto. This insurance must cover Contractor's operations under this Contract, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. Contractor shall immediately increase the amounts of liability insurance required to reflect any changes in Oregon Law so that the insurance provided shall cover, at a minimum, the maximum liability limits under the Oregon Tort Claims Act.

If required in the Scope of Work attached hereto, Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours

before services under this Contract commence, whichever date is earlier.

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ARTICLE VIII

ATTORNEY'S FEES

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ARTICLE IX

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ARTICLE X

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of the services and/or supply of any of the goods covered by this Contract.

Metro reserves the right to reasonably reject any subcontractor or supplier and no increase in the Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. Contractor shall be fully responsible for all of its subcontractors as provided in Article IV.

If required in the Scope of Work, Contractor agrees to make a good faith effort, as that term is defined in Metro's Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting seven percent (7%) of the contract amount to Disadvantaged Business Enterprise and five percent (5%) of the contract amount to Women-Owned Business Enterprise. Metro reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and Metro's Disadvantaged Business Program.

ARTICLE XII

RIGHT TO WITHHOLD PAYMENTS

Metro shall have the right to withhold from payments due Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Contractor's performance or failure to perform under this agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if Contractor has, in Metro's opinion, violated that provision, Metro shall have the right to withhold from payments due Contractor such sums as shall satisfy that provision. All sums withheld by Metro under this Article shall become the property of Metro and Contractor shall have no right to such sums to the extent that Contractor has breached this Contract.

ARTICLE XIII

SAFETY

If services of any nature are to be performed pursuant to this agreement, Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XIV

INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference.

Otherwise, this Contract represents the entire and integrated agreement between Metro and Contractor and supersedes

all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Metro and Contractor. The law of the State of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV

ASSIGNMENT

Contractor shall not assign any rights or obligations under or arising from this Contract without prior written consent from Metro.

MCFARLANE'S BARK, INC.

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM

By: _____

Date: _____

RB:ay
CONTRACT\YDMSS.CNT
July 30, 1991

ATTACHMENT A TO CONTRACT

SCOPE OF WORK

1. Contractor shall haul and process into usable products approximately 1,500 tons of source-separated yard debris from the Metro South Station, located at 2001 Washington Street, Oregon City, OR 97045.
2. Contractor shall provide all equipment and personnel necessary to supply the transport and processing services described in this Scope of Work. Equipment shall include, but shall not be limited to, a yard debris grinder, a transport vehicle capable of hauling a 40-yard drop box full of yard debris, two 40-yard drop boxes, and tarps to cover loaded drop boxes during transport. Drop boxes shall be in good working order, painted, and free of holes and major dents. The physical appearance of drop boxes shall be subject to Metro approval, and Contractor shall improve said appearance if so required by Metro.
3. For purposes of this agreement, the term "yard debris" is defined as heterogenous material composed mostly of leaves, branches, yard prunings and grass clippings, with incidental quantities of tree stumps, root balls and sod. The material is reasonably free of waste contamination. Metro will strive to keep the material as clean of contamination as is reasonably possible.
4. Metro guarantees no minimum amount of material for delivery to Contractor and reserves the right to limit the quantity of material to be delivered to Contractor.
5. Source-separated yard debris disposed of at Metro South Station shall be loaded into 40-yard drop boxes by the station operator (currently Waste Management of Oregon).
6. Contractor shall perform hauling operations during regular business hours of the Metro South Station, unless other arrangements are made with the facility operator. Contractor shall coordinate the hauling of material with the operator of the transfer station. Metro's Solid Waste Facilities Manager shall serve as the arbiter in the case of dispute between Contractor and the facility operator.
7. Contractor shall remove the material from a designated area of the transfer station. The material shall be inside Contractor's 40-yard drop box at the transfer station. The material is not compacted. Contractor shall have an empty drop box at the designated area for acceptance of material while the loaded drop box is being hauled to the material

processing facility. Contractor shall remove full drop boxes of material from the transfer station within 24 hours of notification by Metro. Should Contractor not be able to remove material within 24 hours of notification, Metro shall have the right to hire a separate firm to haul the material.

8. All material shall be weighed by Metro on the scales at the transfer station scalehouse before removal of the material from the transfer station site and before delivery of material to the yard debris processing facility. The net weight of the load shall be registered on a transaction invoice and a copy given to the Contractor. This weight shall be the basis for payment to Contractor.
9. Loaded drop boxes shall be covered by a tarp during transport of material from transfer station to processing facility.
10. Once the material has been removed from the transfer station, none of the material covered under this Agreement shall be landfilled or burned in a solid waste mass incinerator. Except for these restrictions, Contractor may handle the final processed product in any lawful manner that Contractor deems appropriate.
11. Contractor shall be solely responsible for processing the material into final usable products.
12. No material shall be stockpiled by Contractor in an unprocessed form for longer than twelve (12) months.
13. Any contaminants contained in the material may be disposed at Metro disposal facilities at Contractor's expense.
14. Contractor shall provide (from insurance companies acceptable to Metro) the insurance coverage designated hereinafter and pay for all costs therefore. Before commencing work under this contract, Contractor shall furnish Metro with certificates of insurance evidencing coverage as specified and where indicated naming Metro as an additional insured.

a. Comprehensive General Liability

Contractor shall maintain Comprehensive General Liability insurance covering all operations, including contractual liability, against bodily injury or death including personal injury and property damage with a combined single limit of not less than \$1,000,000. Such policy shall name

Metro, its directors, officers, agents, and employees as an additional insured. Such insurance shall provide for thirty days prior written notice to Metro in the event of alteration or cancellation.

b. Auto Liability

Contractor shall maintain Auto Liability with a combined single limit of not less than \$1,000,000. Such policy shall insure against bodily injury and property damage arising out of the use by or on behalf of Contractor, his agents and employees in pursuit of services provided for in this Agreement, of any owned, non-owned or hired vehicle. Such policy shall name Metro, its directors, officers, agents and employees as an additional insured. Such insurance shall provide for thirty days prior written notice to Metro in the event of alteration or cancellation.

c. Workers' Compensation Coverage

Contractor shall maintain in force Workers' Compensation coverage as required by the State of Oregon. Contractor shall also maintain Employers' Liability insurance including bodily injury caused by disease with a limit of not less than \$1,000,000. Consultant shall require his sub-consultants (if any) to maintain such insurance also. Contractor shall provide Metro a Certificate of Insurance evidencing that such coverage is in force.

15. Contractor shall provide to Metro a performance bond in an amount equal to 100 percent (100%) of the bid price.

ATTACHMENT B TO CONTRACT

CONTRACT SUM AND TERMS OF PAYMENT

1. Metro shall compensate Contractor \$35.00 per ton for hauling and processing of yard debris from Metro South Station.
2. Metro shall pay Contractor for services performed and materials delivered in the maximum sum of FIFTY TWO THOUSAND FIVE HUNDRED AND NO/100ths DOLLARS (\$52,500.00).
3. Contractor shall submit to Metro a monthly invoice which details services performed by Contractor during the previous month. Contractor shall attach to each invoice copies of transaction receipts equal to the amount being invoiced. Monthly Invoices shall be sent to Metro, Attention: Accounts Payable, 2000 S.W. First Avenue, Portland, OR 97201.
4. Metro shall pay Contractor within thirty (30) days following receipt of an approved invoice from Contractor.

RB:ay
K:\CONTRACT\YDASS.SOW
August 12, 1991

PUBLIC CONTRACT

THIS Contract is entered into between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, hereinafter referred to as "Metro," and McFarlane's Bark, Inc., whose address is 13345 SE Johnson Rd., Milwaukie, Oregon 97222, hereinafter referred to as the "Contractor."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

Contractor shall perform the work and/or deliver to Metro the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing September 1, 1991 through and including August 31, 1992.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

Metro shall compensate the Contractor for work performed and/or goods supplied as described in Attachment B. Metro shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment B.

ARTICLE IV

LIABILITY AND INDEMNITY

Contractor is an independent contractor and assumes full responsibility for the content of its work and performance of Contractor's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify and hold harmless Metro, its agents and employees, 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 Contract. Contractor is solely responsible for paying Contractor's subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and Metro.

ARTICLE V

TERMINATION

Metro may terminate this Contract upon giving Contractor seven (7) days written notice. In the event of termination,

Contractor shall be entitled to payment for work performed to the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies it may have against Contractor.

ARTICLE VI

INSURANCE

Contractor shall maintain such insurance as will protect Contractor from claims under Workers' Compensation Acts and other employee benefits acts covering all of Contractor's employees engaged in performing the work under this Contract; and from claims for damages because of bodily injury, including death and damages to property, all with coverage limits satisfactory to Metro. Liability insurance shall have minimum coverage limits of at least the dollar amounts listed in ORS 30.270. Additional coverage may be required in the Scope of Work attached hereto. This insurance must cover Contractor's operations under this Contract, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. Contractor shall immediately increase the amounts of liability insurance required to reflect any changes in Oregon Law so that the insurance provided shall cover, at a minimum, the maximum liability limits under the Oregon Tort Claims Act.

If required in the Scope of Work attached hereto, Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours

before services under this Contract commence, whichever date is earlier.

Contractor shall not be required to provide the liability insurance described in this Article if an express exclusion relieving Contractor of this requirement is contained in the Scope of Work.

ARTICLE VII

PUBLIC CONTRACTS

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, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this Contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws chapter 684.

ARTICLE VIII

ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX

QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality.

All workers and subcontractors shall be skilled in their trades. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by Metro, whichever is later. All guarantees and warranties of goods furnished to Contractor or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of Metro.

ARTICLE X

OWNERSHIP OF DOCUMENTS

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this agreement are the property of Metro and it is agreed by the parties hereto that such documents are works made for hire. Contractor does hereby convey, transfer and grant to Metro all rights of reproduction and the copyright to all such documents.

ARTICLE XI

SUBCONTRACTORS; DISADVANTAGED BUSINESS PROGRAM

Contractor shall contact Metro prior to negotiating any subcontracts and Contractor shall obtain approval from Metro before entering into any subcontracts for the performance of any

of the services and/or supply of any of the goods covered by this Contract.

Metro reserves the right to reasonably reject any subcontractor or supplier and no increase in the Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. Contractor shall be fully responsible for all of its subcontractors as provided in Article IV.

If required in the Scope of Work, Contractor agrees to make a good faith effort, as that term is defined in Metro's Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting seven percent (7%) of the contract amount to Disadvantaged Business Enterprise and five percent (5%) of the contract amount to Women-Owned Business Enterprise. Metro reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and Metro's Disadvantaged Business Program.

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By: _____

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APPROVED AS TO FORM

By: _____

Date: _____

RB:2V
CONTRACT\YD\SS.CNT
July 30, 1991