

**BEFORE THE CONTRACT REVIEW BOARD  
OF THE METROPOLITAN SERVICE DISTRICT**

<b>FOR THE PURPOSE OF AUTHORIZING AN</b>	)	<b>RESOLUTION NO. 92-1611</b>
<b>EXEMPTION TO THE REQUIREMENT OF</b>	)	
<b>COMPETITIVE BIDDING FOR ISSUANCE</b>	)	<b>Introduced by Rena Cusma,</b>
<b>OF A REQUEST FOR FRANCHISE</b>	)	<b>Executive Officer</b>
<b>APPLICATIONS FOR THE PROVISION OF</b>	)	
<b>TRANSFER AND MATERIAL RECOVERY</b>	)	
<b>FACILITIES AND SERVICES FOR</b>	)	
<b>EASTERN WASHINGTON COUNTY</b>	)	

WHEREAS, In June 1990 the Council of the Metropolitan Service District ("Council") adopted Resolution No. 91-1437B establishing policy for development of the "Metro West Transfer and Material Recovery System" as a chapter of the Regional Solid Waste Management Plan; and

WHEREAS, Ordinance No. 91-416, supported by the "Policy and Technical Analysis for the Washington County System Plan," (April 1991) amends the Regional Solid Waste Management Plan to include the chapter referenced above, and provides a firm policy basis for this Resolution; and

WHEREAS, Ordinance No. 91-416 states that "The primary method of facility procurement for transfer facilities in the west watershed will be through the issuance of a request for long-term franchises"; and

WHEREAS, Because a public franchise may be viewed as a public contract subject to the provisions of ORS Chapter 279, an exemption from competitive bid requirements is being sought for issuance of a Request for Franchise Applications (RFF) for procurement of transfer and material recovery services in eastern Washington County; and

WHEREAS, Under Metro Code Section 2.04.041(c) and ORS 279.015(2), the Board may, by resolution, exempt certain contracts from competitive bid requirements, if it finds as follows:

- (a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- (b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency. In making

such finding, the director or board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

WHEREAS, ORS 279.015(5) states that in granting an exemption, the Board shall:

- (a) Where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition.
- (b) Require and approve or disapprove written findings by the public contracting agency that support the awarding of a particular public contract or a class of public contracts, without competitive bidding. The findings must show that the exemption of a contract or class of contracts complies with the requirements of paragraphs (a) and (b) of subsection (2) of this section; now, therefore,

BE IT RESOLVED,

1. The Board makes the following findings in support of an exemption from public bidding requirements for issuance of a franchise for transfer and material recovery facilities and services for eastern Washington County:
  - (a) It is not likely that the exemption will encourage favoritism or substantially diminish competition for public contracts. Metro's decision to issue this RFF for solid waste transfer and material recovery services in eastern Washington County is the result of extensive study and discussion. The policy behind this RFF was established as the local government solution to development of solid waste facilities in Washington County, and has been subjected to considerable public scrutiny and debate. The driving force behind the RFF is not favoritism, but important public policy concerns. Further, the process of requesting franchise applications is itself competitive, allowing all parties potentially capable of providing Metro with a specified level of service the opportunity to submit proposals. The proposed RFF establishes a competitive framework for submittal of applications, and objective criteria for judging those proposals.
  - (b) Awarding of a franchise in accordance with the RFF will result in substantial cost savings for the agency. First, the services needed cannot readily be obtained through a request for bids. Because the envisioned franchise is for a major component of Metro's solid waste

system, it is important that Metro retain control over the design and proposed operation of the selected facility. The franchise relationship is more appropriately established in a process of negotiation, following a request for applications. Second, cost will be an important consideration in award of the franchise. The procurement criteria for this project include a requirement that the cost must be no greater than the cost of a publicly financed facility, using the assumptions and methodology in the technical analysis.

2. Based on these findings, the Board hereby exempts from competitive bidding the major system component franchise to be requested in an RFF entitled "Request for Franchise Applications for the Provision of Transfer and Material Recovery Facilities and Services for Eastern Washington County."

ADOPTED by the Metropolitan Service District Contract Review Board this 28th  
day of May, 1992.

  
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Jim Gardner, Presiding Officer

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## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NOS. 92-1611 AND 92-1612 FOR  
THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE  
REQUIREMENT OF COMPETITIVE BIDDING AND AUTHORIZING  
ISSUANCE OF A REQUEST FOR FRANCHISE APPLICATIONS FOR THE  
PROVISION OF TRANSFER AND MATERIAL RECOVERY FACILITIES  
AND SERVICES FOR EASTERN WASHINGTON COUNTY

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Date: April 27, 1992

Presented by: Jim Watkins  
Chuck Geyer

### PROPOSED ACTION

Approve Resolution Nos. 92-1611 and 92-1612 for the Purpose of Authorizing an Exemption to the Requirement of Competitive Bidding and Authorizing Issuance of a Request for Franchise Applications for the Provision of Transfer and Material Recovery Facilities and Services for Eastern Washington County.

### FACTUAL BACKGROUND AND ANALYSIS

The attached Request for Franchise Applications (RFF) is being issued in conformance with Resolution No. 91-1437B which established policy for development of the Washington County solid waste system chapter to the regional solid waste management plan and Ordinance No. 91-416 which amends the Regional Solid Waste Management Plan to incorporate the Metro West Transfer and Material Recovery System Chapter.

The Plan Chapter for the Metro West Transfer and Material Recovery System recommends that long-term franchises be issued for transfer and material recovery facilities established in Washington County. This is consistent with the application process and award of a Major Disposal System Component franchise under Section 5.01.085 of the Metro Code. Section 5.01.085(d) of the Code requires that the Council establish application procedures, the review process for applications and the criteria to be utilized in determining which, if any, applications should be approved prior to authorizing a franchise agreement.

The RFF meets the requirements of Metro Code Section 5.01.085 with respect to submitting applications for major disposal system components franchises.

The purpose of the RFF is to acquire a long-term, privately owned transfer and material recovery facility for Eastern Washington County. Washington County has been divided into two service areas serving Western and Eastern Washington County which are referred to as Service Areas #1 and #2, respectively (Please see map included in RFF).

## **BASIC FACILITY REQUIREMENTS**

The services requested must be performed in a facility that meets basic requirements. These requirements, which are discussed in more detail in the RFF, are that the facility:

1. Process all waste received each day.
2. Limit public self-haul waste disposal to weekends.
3. Provide for public drop-off of source-separated recyclables prior to weighing.
4. Provide post collection material recovery of waste received utilizing proven technology and methods.
5. Remove unacceptable waste.

## **FINANCING**

Metro has identified as an option for financing the acquisition, construction and installation of the facility and equipment, issuance of tax exempt limited obligation revenue bonds. Metro would issue the bonds and enter into a loan agreement with the franchisee. The franchisee would secure repayment of the loan through a mortgage and any credit enhancement needed to maintain Metro's current bond rating. Metro would in turn make a guaranteed monthly payment to the franchisee equal to the principal and interest due on the bond, provided the facility is operating. Alternative financial approaches will also be considered.

## **FRANCHISE EVALUATION CRITERIA**

Each application will be evaluated by a selection committee based upon the information submitted regarding the following evaluation criteria:

1. The experience/qualifications of the applicant and project team.
2. Technical strength of both the proposed design and operations plan.
3. Cost - Applicants will be ranked according to acceptability of their financial structure and the resulting rate from capital and operating costs. The rate will be compared to the rate resulting from a publicly owned facility utilizing the methodology contained in the technical analysis.
4. Applicants will only be evaluated if appropriate land use approvals are submitted.
5. Compliance with Franchise Code.

## FUTURE FINANCING

It is expected that over the life of the Franchise Agreement changes will occur in material recovery technology. The RFF provides a vehicle for future financing of required capital investments.

## TIMELINE

Metro is scheduled to issue the RFF in May 1992, receive applications in late June and award a franchise in late 1992. Construction should be complete by the end of 1994.

## JUSTIFICATION FOR USING RFF PROCESS

Metro Code Section 2.04.041(c) allows the Contract Review Board to exempt specific contracts from the competitive bidding selection process by resolution subject to the requirements of ORS 279.015 (2) and (5). The Board, where appropriate, can direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition. Resolution No. 92-1611, before the Contract Review Board, would exempt this selection process from the competitive bidding process. Under Resolution No. 92-1612, the Metro Council would authorize staff to issue a Request for Franchise Applications.

## BUDGET IMPACTS

There are no immediate impacts on the FY 1991-92 Budget as any costs for financial consultants and bond counsel will be reimbursed from bond proceeds if Metro issues the bonds.

Long term impacts will not be known until the negotiations are complete and a rate established based on both capital and operating expenses. The Washington County Technical Analysis estimated the capital and operating costs for a transfer and material recovery facility located in the Eastern service area. The medium range capital cost estimate (including site acquisition costs) is approximately \$10.3 million. Operating costs, representative of costs expected in the year 2003 when the facility is running at full capacity, is estimated to be \$1.7 million per year.

## EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends Contract Review Board approval of Resolution Nos. 92-1611 and 92-1612



## SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1611, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF COMPETITIVE BIDDING FOR ISSUANCE OF A REQUEST FOR FRANCHISE APPLICATIONS FOR THE PROVISION OF TRANSFER AND MATERIAL RECOVERY FACILITIES AND SERVICES IN EASTERN WASHINGTON COUNTY

CONSIDERATION OF RESOLUTION NO. 92-1612, FOR THE PURPOSE OF AUTHORIZING ISSUANCE OF A REQUEST FOR FRANCHISE APPLICATIONS FOR THE PROVISION OF TRANSFER AND MATERIAL RECOVERY SERVICES FOR EASTERN WASHINGTON COUNTY

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Date: May 6, 1992

Presented by: Councilor Wyers

Committee Recommendation: At the May 5 meeting, the Committee decided to jointly consider Resolution No. 92-1611 and Resolution No. 92-1612. The Committee voted 2-1, in a single motion, to recommend Council adoption of both resolutions. Voting in favor: Councilors Hansen and Wyers, Voting Against: Councilor Van Bergen.

Committee Issues/Discussion: The purpose of the proposed resolutions is to authorize the release of the Request of Franchise (RFF) for the procurement of a new transfer station to be located and serve eastern Washington County. The facility will serve Service Area #2 as defined in the RFF documents.

Bob Martin, Jim Watkins, and Chuck Geyer presented the staff report relating to the proposed resolutions. Martin reviewed the timeline for the procurement process. He indicated that the RFF would be released in late May and potential respondents will have about six weeks to prepare their proposals. Metro staff will take no more than 45 days to review the proposals and recommend a preferred vendor. Following a negotiation process, not to exceed 120 days, Martin anticipates that the franchising process will be completed by about the end of the year. Martin noted that the Council must approve any final franchise agreement which would include proposed location, disposal rates, and construction costs of the new transfer station.

Martin briefly reviewed the legislative history relating to the development of disposal facilities in Washington County. He noted that the general requirements of the county's disposal system are outlined in the plan chapter added to the Regional Solid Waste Management Plan by Ordinance No. 91-416. The Council set additional criteria for the transfer station procurement process in Resolution No. 91-1437B. Martin explained that the transfer station will be franchised under the "Major Disposal System Components" section of Metro's Franchise Code.

Martin reviewed data related to the need for the new facility which will be required to be completed by the end of 1994. He noted that, in 1991, the Metro South Station received about 314,000 tons

of solid waste and that this amount will increase to about 346,000 tons by 1995. This amount will be about twice the station's design capacity and close to exceeding the maximum permitted tonnage under Metro's agreement with Oregon City. In 1991, Metro Central received about 259,000 tons of material. Only a slight increase in this amount is anticipated by 1995.

Martin explained that the proposed new transfer station would initially process about 145,000 tons annually. As a result, the total processed at Metro South would be reduced to 231,000 tons annually and at Metro Central the total processed would be reduced to 234,000 tons annually. The new facility would reach its design capacity of 196,000 tons/year in 2005. Throughout this period, the Forest Grove Transfer Station would continue to operate at about 65,000 tons/year.

Watkins and Geyer reviewed the RFF document, noting that the types of technical, operational and cost data that will be required are essentially the same as that required under the RFF document for the Service Area #1 procurement process initiated last fall.

Todd Sadlo, Office of General Counsel, noted that Yamhill County voters will be voting on two initiatives on May 19 that could limit Metro's continued use of the Riverbend Landfill. Currently, all of the solid waste from the Forest Grove Transfer Station (approx. 65,000 tons/annually) is sent to Riverbend.

Councilor Wyers asked what would happen to the Forest Grove Transfer Station if restrictions on Riverbend were established. Martin noted that if such restrictions are enacted, Metro would need to review a variety of options concerning the Forest Grove Transfer Station including: 1) sending the material to Marion County or 2) sending the material to Columbia Ridge which would probably require, either the installation of a compactor at Forest Grove, or sending the material collected at Forest Grove to another Metro facility for compacting before shipping to Columbia Ridge. Martin indicated that he did not believe that any restrictions at Riverbend would affect the need for the new transfer station.

**(Note:** It appears that Yamhill County voters have approved both initiatives that could effectively limit the amount of material that can be received by Riverbend from outside the county. One of the initiatives would appear to establish a limit of about 15,000 tons/year. But, our Office of General Counsel has advised that many legal issues appear to exist concerning the implementation of the initiatives and it is unclear if, or when, any limits on use of Riverbend by the Forest Grove Transfer Station will be established.)

Councilor Van Bergen asked Martin if he was recommending proceeding with the procurement of the new station. Martin responded yes. Van Bergen asked if the new station would be financed similar to the Composter facility. Martin replied that it would probably be more like the financing scheme used for the Metro Central Station.



Van Bergen inquired about the potential need for bank guarantees or credit enhancements similar to those needed at the Composter and what types of default procedures would be in place. Martin contended that such issues will be the subject of negotiations with the potential franchisee. Van Bergen also expressed concern about Metro's level of control over the designation of new operators of facilities that have defaulted.

Councilor Wyers asked Mr. Sadlo why an exemption from competitive bidding was needed. Councilors Wyers and Van Bergen expressed concern about limiting participation in the bidding process. Sadlo responded that the exemption was needed because Metro was seeking unique proposals in response to an RFF, not a response to a specific set of bid requirements. Thus, the exemption is required under the Metro Code and state law.

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