

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF OBTAINING THE APPROVAL OF THE METRO COUNCIL TO END PURSUIT OF CERTAIN ACCOUNTS RECEIVABLE IN AN AMOUNT EXCEEDING \$10,000) RESOLUTION NO. 04-3490) Introduced by Chief Operating Officer Michael J. Jordan, with the concurrence of Council President David Bragdon

WHEREAS, On May 17, 2002, Metro entered into a Forbearance Agreement regarding the payment of past-due solid waste tip fees; and

WHEREAS, Under the terms of such Forbearance Agreement, the solid waste fees debtor acknowledged the sums owed to Metro, which at the time the agreement was entered totaled \$173,652.24; and

WHEREAS, The solid waste debtor agreed to pay Metro that sum through an initial payment of \$50,000, with the remainder to be paid over 65 months with interest at the rate of 5 percent per year; and

WHEREAS, Metro received the initial payment of \$50,000 on May 17, 2002, and received the monthly payments required under the agreement through May 2003; and


WHEREAS, Thereafter, the solid waste debtor has failed to make the payments required under the Forbearance Agreement, and accordingly, collection of the sums due has been sought by Metro's collection agent; and

WHEREAS, A compromise has been reached that will require Metro to forego pursuit of accounts receivable consistent with prudent credit practices, and the approval of the Metro Council is required when such amounts are over \$10,000; and

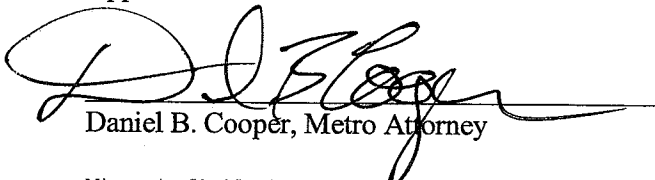
WHEREAS, Metro and the solid waste debtor have entered into an agreement by which the debtor will pay \$80,000 of the sums now owing to Metro in the amount of \$108,630.98, and if such payments are made, the remaining sum owing will not be pursued; now, therefore,

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to enter into the settlement and compromise agreement set forth in the attached Exhibit A, and if the terms of the Final Settlement Agreement are met, further authorizes the Chief Operating Officer to forego pursuit of any remaining account receivable consistent with prudent credit practices.

ADOPTED by the Metro Council this 19th day of August, 2004


David Bragdon, Council President

Approved as to form:


Daniel B. Cooper, Metro Attorney



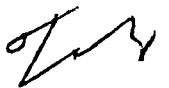
Resolution No. 04-3490
EXHIBIT A

FINAL SETTLEMENT AGREEMENT

This is an Agreement between METRO, an Oregon Metropolitan Service district ("Metro"), NACM-Oregon Service Company, Inc. ("NACM") and Terrell Garrett ("Garrett"). The Agreement becomes effective on the date it is signed by all parties. This Agreement may be executed by the parties on duplicate originals. A facsimile signature on this Agreement is sufficient to bind a party.

Recitals:

1. Metro provided disposal services to R.D. Sevier & Son, Inc., which corporation Garrett did acquire. Garrett and Metro did enter into a certain Forbearance Agreement and Guaranty dated May 17, 2002.
2. Based on said Forbearance Agreement and Guaranty, Metro claims Garrett owes Metro \$108,630.98, plus interest for the disposal services provided by Metro to R.D. Sevier & Son, Inc. There is a dispute arising out of the Forebearance Agreement.
3. For good and valuable consideration, Metro assigned it rights to collect the Debt to NACM.
4. Metro, NACM, and Garrett each intend and desire to enter into a Settlement Agreement and avoid the necessity of engaging in protracted litigation regarding the Debt, with the release and satisfaction of any and all claims which Metro has or may have, known and unknown, against Garrett and R.D. Sevier & Son, Inc., its officers, stockholders, directors, agents and assigns.



Aug 18 2004 11:39AM

5. The parties hereto desire to settle their disputes and buy peace without admitting or conceding any matter, and intend that the full terms and conditions of the specific compromise and settlement are set forth in this Agreement. It is expressly understood by the Parties that the intent, purpose and desire of each party to this Agreement is to release, relinquish and forever discharge each other and R.D. Sevier & Son, Inc. of and from any and all claims, demands, actions and causes of action of any and every kind and character that may now exist, or in the future exist, by or between the parties R.D. Sevier & Son, Inc. relating to the matters which are the subject of this Agreement.

Agreement

6. In consideration for NACM not filing a lawsuit against Garrett, Garrett agrees to pay NACM the total amount of \$80,000.00. Payment of the \$80,000.00 will be made as follows:

a. \$40,000.00 via certified or cashier's check made payable to NACM and received by NACM by 5:00 p.m. on September 23, 2004; and

b. \$40,000.00 via certified or cashier's check made payable to NACM and received by NACM by 5:00 p.m. on January 15, 2005.

7. NACM agrees not to file suit, or take any action to execute on the Confession of Judgment signed by Garrett unless Garrett is in default of paragraph 6 of this Agreement by failing to make an installment payment when due as provided in paragraph 6. Upon Garrett's default of this Agreement, NACM may file and execute on the Confession of Judgment without further notice to Garrett.

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8. If Garrett makes the payments as required under paragraph 6, NACM and Metro will execute the necessary documents to evidence the full satisfaction of the Debt and release of claims which Metro has or may have, known and unknown against Garrett and R.D. Sevier & Son, Inc., its officers, stockholders, directors, agents and assigns, and will return the original Confession of Judgment to Garrett and all copies. In such event said Confession of Judgment shall be void and held for naught with all statements and admissions withdrawn as made in compromise not to be used in any future litigation or dispute between the parties or any third party or entity as evidence.

9. If Garrett makes the payments as required under Paragraph 6, the Forbearance Agreement dated May 17, 2002 between Metro, Garrett and R.D. Sevier & Son, Inc. shall be terminated along with the Guaranty signed by Garrett of same date and all obligations of Garrett and R.D. Sevier & Son, Inc. declared fully satisfied and released with the original Guaranty and all copies returned to Garrett. In such event, all original credit applications and original continuing personal guaranties (and copies thereof) delivered by Garrett, R.D. Sevier & Son, Inc., Armstrong Disposal Corporation and Chris Garrett shall be voided and released and the originals returned to the party having executed same. Further, in such event, all benefits, satisfactions, releases and return of documents shall inure to the benefit of said parties and third parties hereto.

10. This Agreement and the Confession of Judgment: (a) represent the final written expression and the complete and exclusive statement of all the promises, representations and covenants made between the parties with respect to the subject of the Debt; and (b) supersede all prior or contemporaneous agreements, representations, and discussions between the parties and their representatives with respect to the same. Any amendment to this Agreement shall not be



Aug 18 2004 11:39AM

valid or binding unless in writing and signed by all of the parties.

11. If any provision of this Agreement is found unlawful, void or for any reason unenforceable, such provision shall be deemed severable from, and shall in no way affect the validity or enforceability of the remaining provisions of this Agreement. Paragraphs 1 through 5 above, denominated "Recitals," are incorporated in this Agreement as material and contractual provisions hereof.

12. This Agreement shall be interpreted, applied and enforced in accordance with the laws of the State of Oregon. Any action to enforce or interpret any of the provisions of this Agreement shall be brought only in the Circuit Court of the State of Oregon for the County of Multnomah. The parties agree to submit to the jurisdiction of that court and waive any objections thereto.

13. In the event of litigation arising from or related to any breach of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs awarded in any action, arbitration or lawsuit, including any appeal thereof, or in any bankruptcy proceeding.

14. The parties executing this Agreement have full authority to bind their principals.

15. The covenants, agreements, conditions and terms contained in this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

16. The parties hereby acknowledge and declare that the terms of this Agreement have been read by them, and are fully understood and voluntarily accepted for the purpose of making a final, entire and complete compromise and settlement of any and all claims between NACM and Metro on the one hand and Garrett and R.D. Sevier & Son, Inc., its officers,



stockholders, agents, directors and assigns on the other hand.

DATED: August ____, 2004

METRO

By: _____
Its: _____

DATED: August ____, 2004

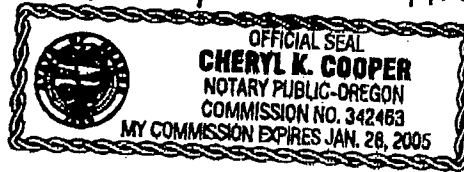
NACM-OREGON SERVICE COMPANY, INC.

By: _____
Its: _____

DATED: August 18th 2004

By: Terrell Garrett
Terrell Garrett

Terrell Garrett
Notary Public, Multnomah County



Cheryl K. Cooper
Exp. 1-28-05

This day August 18, 2004.

4.

If Garrett is in default of the Agreement, he authorizes the entry of judgment and confesses judgment in favor of plaintiff for \$108,630.98, together with simple interest at the rate of 9% per annum on the sum of \$108,630.98 from July 22, 2004 until it is paid in full.

5.

Garrett admits that the amounts set forth in paragraphs 2 and 4 above are justly and presently due from R.D. Sevier & Son., Inc. and Garrett to plaintiff. Garrett is aware that this Confession of Judgment can be entered against him without further legal proceedings if he fails to abide by the terms and conditions of repayment as set forth in the Agreement.

6.

Garrett executed this Confession of Judgment after the date or dates when the sums described in paragraphs 2 and 4 were due.

Dated: August 2, 2004.

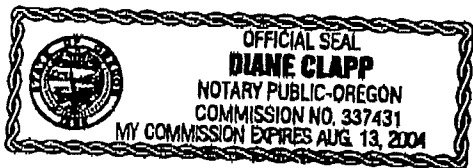
By: Terrell Garrett
Terrell Garrett

STATE OF OREGON)
)ss.
County of Multnomah)

Signed and affirmed before me on August 2, 2004 by Terrell Garrett.

Diane Clapp
Notary Public for Oregon

My Commission expires: August 13, 2004



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3490 FOR THE PURPOSE OF OBTAINING THE APPROVAL OF THE METRO COUNCIL TO END PURSUIT OF CERTAIN ACCOUNTS RECEIVABLE IN AN AMOUNT EXCEEDING \$10,000.

August 19, 2004

Presented by: Bill Stringer

BACKGROUND

On May 17, 2002, Metro entered into a Forbearance Agreement regarding the payment of past-due solid waste tip fees with Terrell Garrett, 15204 SE River Forest Road Milwaukie, Oregon 97257, a hauler who formerly held a credit account for disposal of solid waste at Metro transfer stations. Under the terms of the Forbearance Agreement, Mr. Garrett acknowledged the sums owed to Metro, which totaled \$173,652.24 at the time the agreement was entered.

Under the terms of the agreement, Mr. Garrett agreed to pay Metro with an initial payment of \$50,000, and the remainder to be paid over 65 months with interest at the rate of 5 percent per year. Metro received the initial payment of \$50,000 on May 17, 2002, and received the monthly payments required under the agreement through May 2003. Thereafter, Mr. Garrett has failed to make the payments required under the agreement, and accordingly, NACM, Metro's collection agent, has sought collection of the sums due. The amount still owed to Metro by Mr. Garrett is \$108,630.98, of which \$5,566.65 is finance charges that were added to the past-due disposal fees.

A compromise has been reached that will require Metro to forego pursuit of a portion of the outstanding amount owed. NACM and Mr. Garrett have entered into an agreement by which Mr. Garrett will pay \$80,000 of the \$108,630.98 now owing; and if such payments are made, the remaining \$28,630.98 will not be pursued.

Metro Code allows the Chief Operating Officer to end pursuit of an account receivable, consistent with prudent credit practices, when the likelihood of collecting does not justify further collection costs. The Code further stipulates that Council approval is required to end pursuit of amounts over \$10,000. The Chief Operating Officer has concluded pursuing payment of the remaining amount would not be justified by the collection costs, and through this resolution seeks Council approval to end pursuit.

ANALYSIS / INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

The conditions for ending pursuit of a solid waste account receivable, and seeking Council approval when the amount is over \$10,000, are found in Section 5.02.060(h) of Metro Code.

3. Anticipated Effects

The effect of Resolution No. 04-3490 will be to accept \$80,000 of the \$108,630.98 currently owed Metro, and agree to cease pursuit of the \$28,630.98 balance. The \$80,000, less contingency fees in costs retained by Metro's collection agent (35% of the first \$20,000; 25% of the next \$20,000; and 15% of the balance collected, not to exceed \$24,900, as per the agreement with NACM), will be reported as revenue during the current fiscal year. Because the entire \$108,630.98 was written off as uncollectible and deducted from Metro's assets in the financial statements for the fiscal year ending June 30, 2004, there will be no additional effect on Metro's financial position, and there will be no adverse impact on Metro's credit rating.

4. Budget Impacts

This resolution will not affect Metro's budgeted expenditures. The collected amount minus contingency fees (\$80,000, less NACM costs) will be reported as an increase in the cash balance of the Solid Waste Fund.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3490.