

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 93-1683A
AN EXEMPTION FROM THE	)	
COMPETITIVE PROCUREMENT	)	Introduced by Rena Cusma,
PROCEDURES OF METRO CODE	)	Executive Officer
SECTION 2.04.053 TO PERMIT THE	)	
EXECUTIVE OFFICER TO EXECUTE	)	
CONTRACT AMENDMENT NO. 16 WITH	)	
SCS ENGINEERS	)	

WHEREAS, Metro and SCS Engineers entered into a Design Service Agreement on August 22, 1989 for engineering services during the design and modification of the Metro South Transfer Station; and

WHEREAS, The contract amount for SCS services of \$198,162.00 was expanded to \$424,647.98 through fifteen (15) contract amendments; and

WHEREAS, SCS has submitted claims which SCS values at \$228,887.29; and

WHEREAS, Metro analysis of SCS claims finds the SCS claims compensible in the amount of \$56,800 plus interest and the remainder of the SCS claims are without merit; and

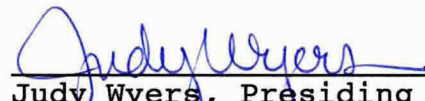
WHEREAS, It is desirable to pay these recognized amounts to SCS at this time; and

WHEREAS, An amendment to the SCS contract for the purpose of making such a payment requires approval by the Metro Contract Review Board in accordance with Metro Code Section 2.04.054(a)(3); now, therefore,

BE IT RESOLVED,

The Metro Contract Review Board authorizes the Executive Officer to execute an amendment to the personal services contract with SCS Engineers to make payment of \$60,350.00 for services rendered beyond the scope of the original contract.

ADOPTED by the Metro Contract Review Board this 11th day of March, 1993.

  
\_\_\_\_\_  
Judy Wyers, Presiding Officer

AMENDMENT NO. 16

Metro Contract No. 900971

To the Design Services Agreement  
for  
Modifications to Metro South Station

This Agreement amends the above-titled Design Services Agreement between Metro and SCS Engineers, Inc., referred to herein as the "Contractor". This Amendment is an expansion of the Contractor's original Scope of Work.

It is acknowledged by Metro and Contractor that the services provided herein are additional services that could not have been anticipated at the time of the award.

Metro agrees to pay to Contractor additional compensation of Sixty Thousand Three Hundred Fifty and No/100 Dollars (\$60,350.00) for the claimed additional work.

Contractor acknowledges that with the above specified payment, it has received all compensation owed to it by Metro under, or in any way related to, the above referenced Agreement.

No payments shall be made under this amendment prior to full execution by both parties of a release from further claims, in form acceptable to the Metro Office of General Counsel.

All terms of the original Agreement and previous Amendments, except as modified herein, shall remain in full force and effect.

SCS ENGINEERS, INC.

METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name, title

\_\_\_\_\_  
Print name, title

\_\_\_\_\_  
Date

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Date

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AMENDMENT NO. 16

Contract No. 900971

**To the Design Services Agreement  
for  
Modifications to Metro South Station**

This Agreement amends the above-titled Design Services Contract between the Metropolitan Service District, referred to herein as "Metro", and SCS Engineers, Inc., referred to herein as the "Contractor". This Amendment is an expansion of the Contractor's original Scope of Work.

It is acknowledged by Metro and Contractor that the services provided herein are additional services that could not have been anticipated at the time of contract award.

The parties set forth below agree to the following additions to the Contract as specifically provided for herein.

This Amendment provides compensation to the Contractor for work performed beyond the original scope of work as described in SCS letter of October 28, 1991. The level of compensation is based upon the analysis contained in the Executive Officer's Decision dated September 1, 1992 which is attached.

Metro agrees to pay to Contractor additional compensation of thirty six thousand six hundred and ninety-five dollars (\$36,695.00) for the claimed additional work.

Contractor acknowledges that with the above specified payment, it has received all compensation owed to it by Metro under, or in any way related to, the above referenced contract.

Upon receipt of the payment specified in this change order, Contractor fully discharges and covenants not to sue Metro, its successors, employees, agents, elected or appointed officials, from and for any liability, claim, or demand of whatever nature, known or unknown, arising, having arisen, or in any way related to payments due under the above referenced agreement.

All terms of the original Agreement and previous Amendments, except as modified herein, shall remain in full force and effect.

SCS Engineers, Inc.

Metropolitan Service District

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**METRO**

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

# Memorandum

Date: February 4, 1993  
To: Judy Wyers, Metro Council Presiding Officer  
From: Neil Saling, Director of Regional Facilities  
Re: Resolution No. 92-1683 - Amendment No. 16 to Contract with SCS Engineers

The subject Resolution was approved by the Council Solid Waste Committee for consideration by the Contract Review Board. Based upon the submission of additional information by SCS not considered in the Executive Officer's analysis, the Contract Review Board remanded the action back to the Solid Waste Committee until the supplemental information could be considered.

The basis for the SCS claim has two parts. The first is a grouping of small individual claims upon which the supplemental information has no impact. The Metro position on these claims has remained unchanged. The second portion of the claim is based upon added effort by SCS during the Construction Phase of the Metro South Station Modifications. The rationale for finding merit in a portion of this part of the claim is based upon precedents which suggest that the Contractor should be compensated for effort which is expended after the original contract completion date has been reached provided that the extension of the time is not caused by the Contractor.

The supplemental information provided by SCS demonstrated that Metro in applying the above rationale had not considered effort valued at \$28,891.88 in its earlier analysis. With no other modifications, this would bring the value of Amendment No. 16 as proposed in the original Resolution to \$67,392.62. Negotiations over the past four months have resulted in a settlement amount of \$60,350.00 which has been accepted by SCS.

It is requested that this action again be addressed by the Contract Review Board after review by the Council Solid Waste Committee. A proposed Resolution No. 92-1683 A is attached.

cc: Dick Engstrom  
Todd Sadlo  
Jim Watkins  
Rob Smoot  
John Houser

enclosure

DRAFT

January 12, 1993

David Roberson  
SCS Engineers  
2950 Northrup Way  
Bellevue, WA 98004

Re: Metro South Station Claims

Dear Mr. Roberson:

I have reviewed your letter of December 18, 1992 and am prepared to make a final settlement offer to you on behalf of Metro.

Based upon your explanation of your Quality Assurance activities, I have accepted the work accomplished after February 1, 1991 in this cost category as shown on the Project Detail Reports. The value of this work (direct labor plus overhead) is \$4556.53. Similarly, Task 19 charges of \$1673.15 for the same time period are accepted as agreed in my December 17, 1992 letter to you.

Conversely, I cannot accept your proposals for additional compensation to SCS for construction management services beyond those already included in compensation based on SCS effort documented in your Project Detail Reports (PDR). While Gamble's invoices to you may reflect work he considered to be "out-of-scope," Metro finds that (1) the work was within the scope of Metro's expectations of "construction management" as defined in the SCS/Metro contract and/or (2) the full compensation to Gamble for all work performed makes the matter moot. Further, the cost of Gamble's services after April 17, 1991 were less than Metro's final payment to Gamble, suggesting that Metro paid for some level of Gamble's services while SCS was still under a contractual obligation to provide construction management services.

Metro offers a sum of \$60,350.00 as compensation for additional services provided by SCS and its subconsultants during the Metro South Station project. This amount is Metro's final offer, but does not include final payment to SCS for post-construction services. If the above settlement offer is acceptable to SCS, a settlement agreement incorporating a mutual release from future claims (but excluding post-construction services) will be prepared by the Metro legal staff and approval of a final change order will be sought from the Metro Contracts Review Board.

Sincerely,

Neil Saling, Director  
Regional Facilities

NS/jg



**METRO**

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

# Memorandum

Date: January 7, 1993

To: Jim Watkins  
Todd Sadlo  
Rob Smoot

From: Neil Saling, Director of Regional Facilities

Subject: Metro South Station Claims

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My memo to you dated January 4, 1993 was in error in recommending a settlement amount of \$62,350.00 for final resolution of the SCS claims. This figure should be \$60,350.00.

While I am anxious to extend this final offer to SCS, Rob Smoot has been less than successful in coordinating the final preparation of the as-built drawings. Until this post-construction phase is complete, there is a potential for a future SCS claim. Thus, an immediate settlement agreement providing for mutual release from future claims would be premature.

I would propose to proceed with our offer with a provision that any mutual release does not apply to post-construction (as-built) work. A proposed letter to SCS is attached.

Please meet with me in my office at 1:30 p.m. on Monday, January 11, 1993 to discuss our final offer.

cc: John Houser



METRO

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

# Memorandum

DATE: December 7, 1992

TO: Jim Watkins  
Rob Smoot  
Todd Sadlo

FROM: Neil Saling, Director of Regional Facilities

SUBJECT: SCS Claim - Revisions to the Executive Officer's Decision

As discussed during our meeting on December 2, I have revised the tentative agency position on the above claim described in my November 25, 1992 memorandum to you. That memorandum proposed a claim settlement offer to SCS Engineers of \$75,000. Upon further analysis, this amount was found to include duplication in payment for administration, overhead and/ or profit to SCS. Further, some expenses of the type disallowed in the EOD were included.

The total additional SCS costs for February 1991, the first month of the extended project period, were \$28,891.88. This amount includes progress payments to W.R. Gamble Engineering of \$11,827.25 which are addressed as a separate claim element. Also included for reimbursement are six (6) trips by Wadkins & Kenniston, only two (2) of which occurred in February 1991. The estimated cost of these February trips is \$274.39 or non-applicable trip costs of \$548.79. Further, the EOD denies payment for Quality Assurance Review, Task 19, Shop Drawing Review and Planning/ Administration. The cost of these functions in February 1991 was \$6225.72. Deducting these amounts from the total February 1991 cost results in a net added cost of \$10,290.12.

Elcon Engineering expended effort after February 1, 1991 valued at \$2692.00. In addition, Rob Smoot verifies that the value of specific Metro taskings of Elcon have a value of \$7004.00. This produces an Elcon claim value of \$9696.00 before any SCS markup.



It is proposed that Metro provide to SCS a summary of specific shortcomings found in the as-built drawings, both in terms of legibility and accuracy. Should SCS choose to make the necessary corrections, they should be paid the withheld funds upon completion of the corrections. Should they refuse to make the corrections, Metro should utilize the withheld funds to pay for staff time to make the necessary corrections. If the latter course is chosen, Metro should ask that the original set of reproducible project drawings be provided by SCS at cost as proposed in our May 18, 1992 letter to SCS.

A proposed response to SCS is attached. Please review the foregoing and provide me comments by COB December 9, 1992.

Enclosure

cc: Glenn Taylor

December 7, 1992

David Roberson  
SCS Engineers  
2950 Northrup Way  
Bellevue, WA 98004

Re: Metro South Transfer Station Claims

Dear Mr. Roberson:

Metro has reviewed the additional information which you provided to me during my visit to your offices on November 13, 1992. This additional information consisted primarily of Project Detail Reports (PDRs) of the 0.00 series for the months of October and November 1990 and February 1991. Metro has also reviewed your October 16, 1992 response to the Metro Executive Officer's Decision (EOD).

The Metro approach to the SCS claims remains based upon the algorithm established in the EOD, i.e. Metro will compensate SCS for allowable costs incurred during the extended project period (February to August 1991) plus the value of work in response to specific taskings. In general, Metro will not revisit decisions contained in the EOD.

The total additional SCS costs for February 1991, the first month of the extended project period, were \$28,891.88. This amount includes progress payments to W.R. Gamble Engineering of \$11,827.25 which are addressed as a separate claim element. Also included for reimbursement are six (6) trips by Wadkins and Kenniston, only two (2) of which occurred in February 1991. The estimated cost of these February trips is \$274.39 or non-applicable trip costs of \$548.79. Further, the EOD denies payment for Quality Assurance Review, Task 19, Shop Drawing Review and Planning/Administration. The cost of these functions in February 1991 was \$6225.72. Deducting these amounts from the total February 1991 cost results in a net added cost of \$10,290.12.

Elcon Engineering expended effort after February 1, 1991 valued at \$2692.00. In addition, Rob Smoot verifies that the value of specific Metro taskings of Elcon have a value of \$7004.00. This produces an Elcon claim value of \$9696.00 before any SCS markup.

The original lump sum Metro/SCS contract provided for a 10% markup on subconsultant costs. For pricing Amendments to the original contract, Metro accepted the SCS proposed markup on subconsultant costs of 15% for administration. Included in the Project Detail Reports (PDRs) is a category entitled "Planning & Administration" with a total value of \$3679.75 over the period of contract extension. The EOD disallows payment for these services. Alternatively, if the 15% markup is applied to the allowable subconsultant costs of Elcon and to the final Gamble payment (\$47,211.98), SCS would receive an added \$8536.20 for administration. While it can be argued that the "Planning & Administration" category of work in the PDR does not include all interfacing activities with a subconsultant, the SCS direct labor hours in this category enjoy a 234% overhead markup. This markup appears to include a profit margin as well as overhead costs and should be sufficient to cover variations in the exact interface effort. It is proposed to use the actual labor and overhead expended for administration as opposed to the standard markup.

David Roberson  
December 7, 1992  
Page Two

It is recommended that SCS be tendered a new settlement offer of \$53,720. This figure is reached through the following calculations:

	\$34,946.98	EOD finding
less	<u>8,055.00</u>	Elcon costs - EOD
	26,891.00	
plus	<u>9,696.00</u>	New Elcon costs
	36,587.98	
plus	<u>10,290.12</u>	Net February 1991 costs
	46,878.10	
plus	<u>3,679.75</u>	Administrative costs
	50,557.85	
plus	<u>3,159.87</u>	15 months interest at 5%
	\$53,717.72	
Use	\$53,720.00	

The remaining issue is Post-Construction Services which brings into question the adequacy of the as-built drawings provided by SCS. In your October 16, 1992 letter, you included \$6665.00 in your claim summary for final compensation for these services. The EOD was silent on the level of compensation for Post-Construction Services as this compensation was not a part of the original claim. The EOD did, however, indicate that preparation of O&M manuals would be paid from funds allocated for post-construction activities. Metro currently has withheld \$6665.00 in payments for post-construction services.

A general summary of the shortcomings of the as-built drawings is contained in Rob Smoot's letter to Lance Wadkins dated November 21, 1991. The shortcomings are both qualitative and quantitative. In the former case, the use of the contractor's drawing set resulted in poor quality reproductions. In the latter case, specific changes are omitted, incorrect and/or confusing.

I propose that Metro furnish SCS a listing of those drawings (about 30) on which no changes occur. SCS would provide new reproducible from the original drawing set held by SCS. For correction of the remaining drawings, SCS would designate a staff member to review the drawings with Rob Smoot in the SCS offices and agree to necessary corrections. Upon provision of the corrected reproducible to Metro, the retained funds would be released to SCS.

I have prepared an addendum to the EOD to reflect the foregoing and have initiated Council action to approve a Change Order in the amount of \$53,720.00 as final settlement compensation. Please provide me your agreement or comments as soon as possible.

Sincerely,

Neil Saling, Director  
Regional Facilities

cc: Glenn Taylor  
Rob Smoot  
Jim Watkins  
Todd Sadlo



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

November 2, 1992

David E. Roberson  
SCS Engineers  
2950 Northrup Way  
Bellevue, WA 98004

Re: Metro South Transfer Station Claims

Dear Mr. Roberson:

Executive Officer  
Rena Cusma

Metro Council

Jim Gardner  
Deputy Presiding Officer  
District 3

Judy Wyers  
Deputy Presiding Officer  
District 8

Susan McLain  
District 1

Lawrence Bauer  
District 2

Richard Devlin  
District 4

Edward P. Gronke  
District 5

George Van Bergen  
District 6

Ruth McFarland  
District 7

Tanya Collier  
District 9

Roger Buchanan  
District 10

Ed Washington  
District 11

Sandi Hansen  
District 12

I appreciate your detailed response to the Executive Officer's Decision (EOD) with regard to the above referenced claim. As you requested, I have also reviewed your letter of March 26, 1992. Based upon your response and the discussion below, I believe a meeting to discuss the factual basis of your claim is appropriate. Please contact me during the week of November 2-6, 1992 to set up a meeting in your offices which is mutually convenient.

The source of the dollar values contained in the EOD for contract administration services is the Project Detail Reports (PDRs) furnished to Metro by SCS on April 13 and April 28, 1992. As I indicated to you earlier, and which you acknowledged in your April 28 letter, the "01", "00" and "---" reports are not mutually exclusive. Attached at Enclosure 1 is the matrix I used to arrive at charges of \$125,424.73 for the period February 1, 1991 to August 31, 1991. Please review these figures based on the source documents listed.

As further evidence that we do not share a common data base, I can find no Quality Assurance Review charged in November 1990 nor January nor February 1991 in the 0489018.01 PDRs which you have furnished to Metro. This suggests that the PDRs which you furnished Metro differ from those you are now using as a basis for your claim. Until we are both using the same base documents, we cannot agree on final figures regardless of the sweet logic in our approach.

As an aside, the 216.5% overhead rate was derived from all labor and overhead charges on PDRs furnished Metro. My computation of the overhead rate during the February-August 1992 period is 232% (\$46,923.44 in overhead charges divided by \$20,185.95 in direct labor charges). (I am agreeable, however, to adopting the 177.4% rate you suggest.) Since these figures are also dependent upon the information furnished, the result of the computation is subject to question.

David E. Roberson

November 2, 1992

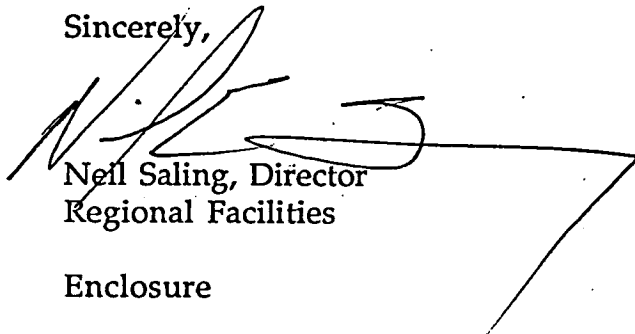
Page 2

With regard to the Elcon Engineering claim, applying the same rationale to the Elcon effort as was applied to the SCS support effort, Elcon expended 456.5 regular hours with a billing value of \$27,817 during the period June 15, 1990 through January 31, 1991. During the period February 1, 1991 through June 30, 1991, Elcon expended 38.5 regular hours and three overtime hours with a billing value of \$2692. These figures are extracted from the Elcon employee time records furnished by SCS on May 5, 1992. Against these billings, the SCS PDR printouts show payments to Elcon during the June 1990 to August 1991 period of \$4024.83. Thus, based on documentation previously provided by SCS, the Elcon unpaid balance should approximate \$26,484.

The Executive Officer's Decision was based upon information provided in large part by SCS Engineers. The cost figures contained in your latest letter do not agree with the previously furnished information. It is therefore desirable that we meet to agree on a common database before going further with negotiations or arbitration.

I have withdrawn consideration of the EOD by the Metro Council pending clarification of the data base. Hopefully, we will be able to resolve the technical basis for your claim in the near future.

Sincerely,



Neil Saling, Director  
Regional Facilities

Enclosure

cc: Todd Sadlo  
Jim Watkins  
Rob Smoot  
John Houser



**METRO**

# Memorandum

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

DATE: October 19, 1992  
TO: Jim Gardner, Metro Councilor  
FROM: Neil Saling, Director of Regional Facilities  
SUBJECT: Resolution No. 92-1683A

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Request that the above Resolution be removed from the agenda of the October 22, 1992 Council Meeting and returned to the Solid Waste Committee. SCS Engineers has responded to the Executive Officer's Decision (EOD) which addressed the SCS claim and has provided supplementary information which may provide a basis for modification of the EOD and/or lead to additional negotiation.

An updated Staff Report will be provided when the appropriate compensation to SCS has been determined and Change Order No. 16 can be drafted in final form.

cc: Jim Watkins  
Rob Smoot  
Todd Sadlo  
Paulette Allen  
John Houser  
Ruth McFarland

## SCS CONTRACT DISPUTE

- Dispute/claim centers on an allegation of additional services during construction
- Original Agreement August 22, 1989
  - \* Original construction schedule slipped by 7 months due to revisions in design
  - \* Final schedule for completion also slipped
- Original contract value was \$198,162
  - \* Amendments through #15 total \$226,486
  - \* Total value now \$424,648
- Project divided into phases including a Construction Administration Phase
  - \* Construction Administration Phase included an on-site Construction Manager
  - \* Cost of Construction Administration Phase: \$43,000
  - \* Final cost of Construction Administration Phase: \$151,070 primarily for increased Construction Management
- Claim for additional services during Construction Administration Phase received October 28, 1991
  - \* Total claim value: \$228,887
  - \* Four key parts
    - Group of seven known technical claims: \$38,012
    - Construction Contract Administration Services: \$143,856
    - Construction Management Services Markup: \$7,082
    - Pass through of Elcon Engineering Claim: \$39,938
- Discussions with SCS since last year
  - \* Previous offer to settle for \$30,305 rejected by SCS
  - \* Determined formal analysis required
  - \* Analysis in the form of Executive Officer's Decision similar to Corps Contracting Officer's Decision
  - \* Analysis prepared by Todd Sadlo, Jim Watkins, Rob Smoot and myself
- Seven known technical claims
  - \* Can be related to specific events or requests
  - \* Some merit; worth \$6,900 (18%)

- **Contract Administration Claim**
  - \* SCS based claim on four factors
    - Protracted construction duration
    - Added construction complexity
    - Construction acceleration
    - Defense of Contract Documents
  - \* Claim based on allegation that work charged was beneficial to Metro
  - \* Sheets showing charges submitted to Metro
  - \* Claim not related to specific Metro requests or inputs
  - \* No notice of excessive costs given prior to October 28, 1991
  - \* Only protracted duration has merit: \$19,991.14 (14%)
  
- **Construction Management Services Markup**
  - \* Metro paid Construction Manager directly with no markup to SCS
  - \* Computation of payments show total compensation to SCS for Construction Management is adequate to include the markup; therefore, no added compensation
  
- **Elcon Engineering**
  - \* Alleges work done to benefit Metro but no ties to Metro requests or initiatives
  - \* Previous analysis showed \$8,055 (20%) was due to Metro requested work
  
- Total due based on EOD: \$34,946.98 (15%); interest at 5% on amount due raises total to \$36,695.00
  
- Letter to SCS on 9 September 1992 provided EOD and requested factual rebuttal, if any
  - \* Deadline for response 10 October 1992
  - \* Metro will pay amount determined to be due in any event
  
- Change Order #16 provides vehicle to pay SCS amount due



## ATTACHMENT 1.

### Additional Design Costs Alleged to Have Been Incurred by SCS

As stated above, SCS has indicated that it incurred \$395,000 in unreimbursed expenses designing the Metro South modifications. Although this figure was not presented as a claim, it was clearly presented as a threat, and is addressed here for that reason.

SCS's allegations regarding hours worked and expenses incurred during the pre-construction phases are erroneous. At the \$63/hour average rate in its proposal, plus nine percent, SCS's total expenses for this period would have been \$121,558.50. Considering these facts, the \$209,000 that Metro paid to SCS during the pre-construction phases of the contract appears to be very reasonable.

The allegations being made by SCS regarding its expenses during the pre-construction phases of the agreement, if true, would demonstrate that SCS suffered incredible cost overruns during this period. The chart on page 3 of SCS's letter to Metro dated October 28, 1991, alleges that SCS suffered cost overruns of 348 percent during the "Preliminary Concepts and Schematic Design" phase of the agreement. The chart alleges a whopping 678 percent cost overrun in the "Design Development" phase; a 197 percent cost overrun in the "Construction Documents" phase, and a 134 percent cost overrun in the "Bidding Phase." SCS did not mention the alleged cost overruns to Metro at the time they occurred or when it executed amendment No. 5 at the completion of all pre-construction phases.

## SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 91-1683A, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM THE COMPETITIVE PROCUREMENT PROCEDURES OF METRO CODE SECTION 2.04.053 TO PERMIT THE EXECUTIVE OFFICER TO EXECUTE CONTRACT AMENDMENT NO. 16 WITH SCS ENGINEERS

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Date: October 14, 1992

Presented by: Councilor Wyers

Committee Recommendation: At the October 6 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 92-1683A. Voting in favor: Councilors Buchanan, Hansen, McFarland, Van Bergen and Wyers.

Committee Issues/Discussion: Neil Saling, Director of Regional Facilities, explained that this resolution is the result of protracted and ongoing negotiations with SCS Engineers concerning payment for construction design and management services provided by SCS for certain renovations and improvements at Metro South Station. Working from the attached outline, Saling outlined the history of the contract, noting that prior amendments had more than doubled the value of the contract (\$198,162 to \$424,648).

The current dispute involves a claim by SCS for an additional \$228,887 in compensation. Negotiations concerning the claim have been ongoing since last year. A review of the documentation submitted by SCS by Metro's regional facility, solid waste, and legal staffs has found little evidence to support the claim, particularly those elements related to contract administration services.

A complete analysis of each element of the SCS claim is contained in an executive officer's decision (see attached). This analysis found that an additional payment to SCS totalling \$36,695 was justifiable. Resolution No. 92-1683A authorizes the payment of this amount as defined in Amendment No. 16 to the SCS contract. A prior settlement offer of \$30,305 was rejected. Staff is awaiting a response to the offer proposed in the resolution.

Councilor Buchanan questioned Mr. Saling concerning the potential for using mediation or arbitration to resolve the dispute. Saling expressed concern that use of either mediation or arbitration could result in Metro having to pay a higher amount to SCS.

Councilor Van Bergen expressed concern that the amendment did not contain a provision that Metro's offer would only remain valid for a specified period or until a specific date. Councilor Wyers asked if acceptance of the offer would officially complete all negotiations and claims under the contract. Saling noted that SCS would still be free to litigate its claim even if it accepted the Metro offer contained in the resolution. But he agreed with

Councilors Van Bergen and Wyers that the wording of the contract amendment could be changed to provide that acceptance of the offer in the resolution would represent a final disposition of all claims under the contract. Committee members agreed that they could support the resolution if such language could be drafted. Legal counsel has drafted such language which is shown in bold on the attached "Amendment No. 16."

## Staff Report

Consideration of Resolution No. 92-1683, for the purpose of authorizing an exemption from competitive procurement procedures of Metro Code Section 2.04.053 to permit execution of Amendment No. 16 to the contract with SCS Engineers.

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Date: September 17, 1992

Presented by: Neil Saling

### Background

A design services agreement between Metro and SCS Engineers was executed on August 22, 1989. The scope of work was divided into phases to include a Construction Administration Phase during which SCS was to provide construction management services. The face value of the contract was \$198,162.00 which increased to \$424,647.98 through subsequent amendments. The cost allocated to the Construction Administration Phase was \$43,000. Subsequent amendments for additional construction management support raised the cost for this phase to \$151,069.98 (basic lump sum cost plus Amendments No. 8, 10, 12 and 15 plus \$31,050.00 of Amendment No. 9).

The original project schedule envisioned the Construction Administration Phase to begin on December 6, 1989 and to be concluded on June 30, 1990. Work actually began on July 10, 1990 and concluded on April 25, 1991, 78 days after the revised completion date of February 6, 1991.

SCS submitted a number of claims during the project for a variety of added engineering services. The requested compensation for the unresolved portion of these claims was \$38,011.63. On October 28, 1991, SCS submitted an omnibus claim for \$228,807.29. The majority of the SCS claim dealt with construction contract administration services but also included the seven unresolved claims. No previous notice of intent to claim was provided by SCS.

### Analysis

The underlying premise of the SCS claim is that SCS performed additional services which benefitted Metro which were beyond the project scope of work as amended. (SCS also indicated that approximately \$350,000 in additional design services during other construction phases were rendered but would not be claimed.) The claim did not relate specific added effort to Metro requests for support but rather attempted to allocate the added costs to four categories: protracted construction duration, additional

construction complexity, construction contract acceleration, and extraordinary defense of contract documents.

Metro representatives have met with SCS staff to attempt to achieve a settlement of these claims. On July 21, 1992, Metro offered a settlement sum of \$30,305.00 which was rejected by SCS. To establish a supportable level of compensation due SCS based upon the information available, staff has prepared an analysis of the SCS claims in the form of an Executive Officer's Decision (EOD), a copy of which is attached. The EOD was executed by the Executive Officer on September 8, 1992.

The EOD finds partial merit in the SCS claims and recommends a settlement of \$34,946.98 plus 5% interest. This amount (\$36,695.00) is proposed to be paid immediately to SCS. This will be considered a final settlement unless (1) SCS produces factual and logical evidence which refutes the EOD findings, or (2) SCS is awarded additional compensation as a result of litigation.

#### Financial Impact

Since this settlement was not budgeted in FY 92-93, funds will be allocated from the Solid Waste General Account where anticipated savings from the irrigation system repairs are available.

#### Policy Impact

1. Contract Review Board action is required by Metro Code Section 2.04.054(a)(3).
2. Based upon the staff analysis, a payment to SCS in the above amount is supportable and the remainder of the SCS claims are without merit. As this is considerably less than claimed, SCS could choose to litigate the disputed costs and attempt to also recoup alleged design expenditures incurred prior to the Construction Administration Phase.

#### Recommendation

The Executive Officer recommends Contract Review Board approval of Resolution No. 92-1683.

## Executive Officer's Decision

Contract: No. 900971 Design Services for Metro South Station Modifications  
Contractor: SCS Engineers  
Date: September 1, 1992

### Purpose

The following analysis provides the rational basis for decisions by the Metropolitan Service District ("Metro") regarding all outstanding claims made by SCS Engineers ("SCS") against the Metro South Transfer Station Modifications Project. This document discusses the original Agreement and the amendments thereto, the arguments that SCS has made in support of its claims, the key factors impacting the merit of the claims, and Metro's decision.

### Background - SCS Agreement

The Design Services Agreement ("Agreement") between Metro and SCS was executed on August 22, 1989. Services were to commence on July 19, 1989 and to "expire upon the completion of Contractor's services as set forth in this Agreement...". (Article I) SCS was required to "provide leadership to Metro on all matters relating to programming, concept/schematic documents, design development, construction documents, bid phase, and construction administration." (Article II C.) A scope of services was included in Exhibit A to the Agreement and a schedule of activities was included in Exhibit B. Exhibit B anticipated construction beginning on December 6, 1989, and ending on June 30, 1990. A post-construction period was to extend from June 15, to July 31, 1990.

Section B of Exhibit C to the Agreement states that "The total cost of the services provided under this Agreement during all phases shall not exceed \$198,162.00." Section C of Exhibit C breaks down the "Lump Sum Fee for Basic Services" into the categories listed in the schedule. Subsection 6 of Exhibit C lists a cost of \$43,000 for completion of the Construction Administration Phase. Section D of Exhibit C discusses the manner and time of payment, and required monthly invoices "supported by a general description of the work progress or such other evidence of Contractor's right to payment as Metro may direct." This section also sets up a process for SCS and Metro to follow if there is a disagreement over an amount alleged to be owing for that month. The invoice form included in the Agreement states: "NOTE: Fees for services or reimbursable expenses not covered under the project contract should be invoiced separately."

The following contract amendments were executed, allowing for additional payments under the Agreement totalling \$226,485.98 bringing the total contractual cost of the services to \$424,647.98.

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<u>No.</u>	<u>Amount</u>	<u>Date</u>	<u>Purpose</u>
1.	\$6,485.00	11/17/89	Design Services - Landscaping and Wetlands Restoration
2.	\$5,795.00	12/07/89	Survey of Wetlands at South Station
3.	\$6,270.00	01/24/90	Authority to Subcontract with Paul Morris and Larry Epstein Regarding Entry Sign Approval and Planning Approval
4.	\$8,500.00	05/03/90	Revisions to Bid Package (Rate Schedule Included)
5.	\$44,299.00	06/21/90	Additional Design Services: Nine Specified Tasks
6.	-0-	06/21/90	Contract Extension
7.	\$5,000.00	08/28/90	Development of Walking Floor Specifications and Review of Structural Requirements
8.	\$9,936.00	09/28/90	Additional Construction Management to November 8, 1990 (24 days)
9.	\$60,0000.00	11/08/90	Additional Construction Management, November 8 to December 20, 1990, then Half-time December 21, 1990, to March 1, 1991; Additional Design; Visits by Design Engineer, as necessary
10.	\$9,936.00	01/18/92	Additional Full-time Construction Management for through March 14, 1991 (24 days)
11.	VOID - Not Executed by SCS		Electrical Redesign to Accommodate SSI Compactor, Walking Floor Loading System, etc.
12.	\$9,936.00	04/08/91	Additional Full-time Construction Management through April 17, 1991 (Equivalent of 24 Days)

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| 13. | \$5,903.00  | 07/31/91 | Additional Design Services, Three Specified Tasks  |
| 14. | \$7,214.00  | 07/31/91 | Additional Design Services, Two Specified Tasks  |
| 15. | \$47,211.98 | 11/22/91 | Additional Construction Management Services, October through December 1991 (direct payment to W.R. Gamble Engineering) |

### Background - Construction Contract

The project consisted of modifications to Metro South Station, a solid waste transfer station. The modifications included a parking lot for transfer trailers, an employee parking lot, control room, building addition (extension of pit), walking floor, and other improvements. The prime contractor was Emerick Construction ("Emerick"), and the amount of the construction contract was \$2,784,000. Change orders relating to the construction increased the contract amount to \$3,304,706.21. Construction began on July 10, 1990.

Several problems were encountered in the course of the work. These problems included pile delivery delays, difficulty in driving the piles, orientation of existing piles, weather delays, higher than anticipated groundwater, and unscheduled departure of Emerick's excavating subcontractor. Errors and omissions in the design and construction documents were also encountered throughout the life of the project.

The scheduled project completion date was ultimately set as February 6, 1991. SCS certified that substantial completion actually occurred on May 16, 1991. Metro and Emerick concluded that substantial completion occurred on April 25, 1991, for purposes of closing out the construction contract. By mid-July 1991, only punch list items were left to complete, although Emerick remained on-site to construct a household hazardous waste facility for Metro under an amendment to the original construction contract. SCS had no involvement in the design and construction of this latter facility. Notwithstanding, Metro required the services of an on-site construction manager through September 1991 to supervise completion of punch list work. Those services were provided by W.R. Gamble Engineering ("Gamble"), who was paid in full for his services by Change Order No. 15.

### Summary of Claims

In its letter to Metro dated October 28, 1991, SCS provided a summary of the several claims previously filed for additional compensation under the Agreement between the parties. Additionally, SCS claimed \$143,856 for



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"construction contract administration services (No. 505)." SCS also claimed the amount of \$39,937.86 for electrical engineering, accomplished by its subconsultant, Elcon Engineering ("Elcon").

A summary of the SCS claims appears below:

No. 501	Employee Parking Retaining Wall	\$ 9,072.99
No. 504	Area Drain at Intersection	\$ 3,239.31
No. 505	Construction Contract Administration Services	\$143,856.00
No. 508	Repair of Damaged H-pile	\$ 4,479.71
No. 509	Review Type 9 Light Under Bridge	\$ 565.29
No. 511	SCS Site Visits	\$ 6,756.89
No. 513	Review of Delay Claim	\$ 467.85
No. 515	Column Investigation	\$ 13,429.59
	Construction Management Services Markup	\$ 7,081.80
	Elcon Engineering Claim	<u>\$ 39,937.86</u>
	TOTAL	\$228,887.29

In their letter of October 28, 1991, SCS alleges that, prior to completion of the Design Phase, their firm incurred additional expenses totaling \$394,567. This expense is alleged to have been incurred by SCS prior to initiation of the Construction Phase of the Agreement. Although this amount is not claimed by SCS at this time, SCS indicated in its October 28, 1991, letter that its willingness to absorb these alleged design expenses is dependent on Metro's willingness to pay all other pending claims. Attachment 1 includes a brief outline of SCS's allegations related to the Design Phase, and Metro's position regarding those allegations.

Format for Analysis

The SCS claim has essentially four parts. The first is the group of numbered claims related to specific tasks or events (Nos. 501, 504, 508, 509, 511, 513 and 515). The second is the large claim for added compensation for administrative services. The third is a claim by Elcon Engineering also asking compensation for alleged added work. The fourth is the SCS markup on Change Order No. 15 which directly compensated Gamble for construction management services. Unfortunately, these four parts are not mutually exclusive.

Metro requested and received from SCS Project Detail Reports which display for this project direct labor costs, overhead allocations, and reimbursable expenses to include subcontractor expenses. The time period covered by the reports includes the Construction and Post-construction phases. As the work categories listed in the reports are not keyed to the numbered claims nor to formal Metro requests for assistance or Exchange Orders, the potential for overlap exists.

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The discussion which appears below addresses these four major components of the SCS claim:

### No. 501 Employee Parking Retaining Wall

SCS claims that it is entitled to an additional \$9,072.99 for design work that it performed related to construction of the employee parking retaining wall. SCS construction drawings portrayed the wall with the footing incorrectly oriented to the north. Shop drawings for the reinforcing steel in the wall were submitted by Emerick to SCS on September 4 and September 24, 1990, reflecting SCS's erroneous design. SCS failed to note a problem in its design or the shop drawings, and approved Emerick's September 24 submittal. Emerick proceeded to form and pour the footing in accordance with the SCS plans.

On October 31, 1990, Emerick submitted DCVR #60 (Design Clarification Verification Request), pointing out a problem with the retaining wall footing. On December 11, 1990, Emerick submitted DCVR #72 requesting redesign of the retaining wall. Both of these DCVRs were answered on January 10, 1991, indicating an alternative design. At this point, the pour of the footing was complete.

The evidence is clear that the only reason SCS was required to redesign the employee parking retaining wall is that it failed to portray it properly in the first instance. Metro was required to pay to Emerick an additional \$30,282.00 for adding deadman anchors to the wall, the alternative elected as opposed to demolishing the incorrect footing. That expense, as well as the additional expenses incurred by SCS in redesign, are properly the responsibility of SCS. The SCS claim is without merit, and no compensation is appropriate. Metro reserves its right to demand compensation from SCS for remediation costs.

### No. 504 Area Drain at Intersection

On December 12, 1990, Metro received a letter from Oregon City recommending that a manhole be raised and an area drain be added near the eastern-most catch basin along Washington Street. Metro asked SCS to review the city's recommendation. Rather than review the recommendation, SCS redesigned the catch basin, and submitted a billing to Metro for \$3,239.31.

The billing included 24 hours of engineering time even though the recommendation of the city was not changed. The billing also included 24 hours of drafting, even though the final drawing consisted of a small number of added contour lines that appear to have been freehanded, and the addition of the manhole, a catch basin, and landscaping. SCS's claim for compensation for this work is clearly unreasonable, made more unreasonable considering that the

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manhole should have been incorporated into the original design drawings, and its omission was an error committed by SCS or its surveyor. One-half of the amount claimed is more than adequate compensation for the work performed in redesigning the area drain, or \$1,619.66.

No. 508 Repair of Damaged H-pile

In early January of 1991, the construction contractor damaged the existing H-pile during excavation. Metro subsequently asked the engineer's advice as to whether this damage impaired the structural integrity of the pile. The engineer prepared a sketch and memo describing the recommended repair, and SCS has claimed \$4,479.71 for these efforts. This claim includes \$2,166.38 for a site visit made by Pat Lawrence on December 12, 1990, a date that preceded damage to the H-pile. The claim has merit; however, the amount claimed for the site visit should be deducted resulting in compensation to SCS of \$2313.33.

No. 509 Review Type 9 Light Under Bridge

SCS claims that it should be paid \$565.29 for determining how to attach a Type 9 light to the bridge. The omission of detail relating to the light from the design drawings was the fault of SCS. Since the detail should have been provided in the first instance, the claim is without merit.

No. 511 SCS Site Visits

SCS claims an additional \$6,756.89 for site visits by the engineer, which it alleges were outside of the scope of the Agreement or amendments. Amendment No. 9 included funds for more than eight site visits (see Attachment 2). As part of amendment No. 9, SCS was to make the engineer available to the construction contractor on an as-needed basis, for the purpose of facilitating better communication between the engineer and the contractor. In addition, Metro expected that within the scope of the original Agreement with SCS, the engineer would be visiting the site once every four to eight weeks, depending on the progress of the work.

SCS has failed to demonstrate that it was not compensated for the visits claimed under amendment No. 9. At the time of the visits, there was no indication by SCS that it understood the visits to be outside the scope of work. It is also not clear why SCS believes it was necessary to send both Jim Kenniston and Lance Wadkins, or what benefit Metro obtained. The claimed meetings include routine administration meetings, and at least one meeting to review the status of the work, during which a report was requested from SCS and never provided. This claim is without merit.

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### No. 513 Review of Delay Claim

At Metro's request, SCS reviewed and prepared written comments on a delay claim made by Emerick. This review and report were ultimately not useful to Metro, and were self-serving to SCS. However, since Metro requested the work and it was outside the scope of the original Agreement, the claim has merit. SCS should be compensated in the amount of \$467.85.

### No. 515 Column Investigation

SCS claims \$13,429.59 for investigation of voids experienced in pouring key structural columns. A force work order was issued to SCS on May 3, 1991, for \$2,500 to investigate the problem. No further authorization for expenditures was given.

The amount now claimed by SCS is not supported by a product. At the time of this incident, SCS proposed an elaborate plan for testing the columns, an analysis to prove whether or not they were structurally acceptable, and a determination of the necessary repairs, at a cost of \$35,000. Metro considered the proposal to be unacceptable and rejected it. SCS clearly did not provide a product worth \$13,429.59 for Metro with regard to the column investigation. Metro's maximum exposure for this claim is the amount that it authorized SCS to expend at the time of the investigation, \$2,500.

### Construction Management Services

SCS claims entitlement to \$7,081.80, which is 15 percent of the \$47,211.98 that was paid directly to W.R. Gamble Engineering under amendment No. 15. Metro paid Gamble directly, pursuant to state law, because he was suffering financially. Gamble had performed the work for which he sought compensation, and he had not been paid by SCS.

Metro requested on-site construction management during the construction period, because Metro could not provide such services with in-house staff. Construction management services were provided beyond the anticipated seven month construction period. The cost of these additional services was \$93,773.48 (or \$107,839.50 with the 15% SCS markup).

Additional on-site construction services began in October 1990, following the initial three months of service provided under the original Agreement. These services continued through September 1991; however, after mid-July construction management was essentially limited to review of record drawings, construction claims and punch list activities. Construction management services continued until September 1991.

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Attachment 2 contains a summary of the additional services provided by Gamble. Comparing the Gamble costs listed in Attachment 2 with the amounts paid SCS for construction management (\$108,069.98) demonstrates that SCS has been paid in full for all construction management, including its 15% markup, and has in fact been overpaid in the amount of \$230.48. (It should also be noted that the original SCS proposal showed a 10% SCS administration markup on subconsultant services.)

### Electrical Engineering Claims

SCS previously submitted claims for approximately \$17,000 for electrical engineering of which Metro had offered payment of \$8,055 (see Attachment 3 for analysis of previous claim). SCS rejected the Metro offer. Metro has not previously been informed of any additional charges by Elcon nor has it been previously notified of a claim for any added amount. Neither has Metro been given any analysis or justification to support the validity of such a claim. Regarding the validity of the existing \$17,000 claim, Metro will not pay for the time that SCS's subcontractor spent answering questions that were necessitated by the poor quality of design documents prepared under SCS supervision. Metro will pay the reasonable value of work performed to review substitutions.

It is also inappropriate for SCS to have given its electrical subconsultant authority to bill Metro for hours spent in responding to requests for information unless previously approved by Metro as an addition to the SCS scope of work. Metro had no control over the requests for information, or the subconsultant's willingness to provide answers. That control should have been exercised by SCS in its contract with its subconsultant. \$8,055 is a reasonable payment for the work performed under the claim submitted.

### Administrative Services

SCS's "administrative services" claim is for \$143,856. SCS argues essentially that it has "provided substantial and extensive construction administration services, most of which exceeds [sic] originally-anticipated scope of work as set forth in the (agreement between the parties)." (Page 2, letter of October 28, 1991) SCS states that these services directly benefitted Metro, and were essential to the completion of the project.

The root of SCS's claim is its calculation that it expended 3,140 uncompensated staff hours, at a value of \$181,871, during the construction administration phase of the contract. SCS subtracted from this total claim the amount of \$38,015, which is included in previously submitted claims (Nos. 501, 504, 508, 509, 511, 513 and 515 evaluated above). SCS has then "itemized" the claim into the following four categories:

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A. Protracted Construction Duration and Inflation	\$45,490
B. Additional Construction Complexity	\$43,805
C. Construction Contract Acceleration	\$36,374
D. Extraordinary Defense of Contract Documents	\$18,187

The "itemized" list is in fact a generalized breakdown of the influences on expenses allegedly incurred by SCS, which sheds very little light on the specific omissions or commissions on the part of Metro leading to SCS effort.

In examining the SCS calculation, the base figure of 3,140 hours alleged by SCS to be uncompensated, actually includes all hours expended by SCS during the Construction Phase. (See Exhibit C, page 1, SCS letter of October 28, 1991.) Further, the figures provided demonstrate that the entire calculation of this claim, as well as the allegations of losses suffered by SCS in the Design Phase, is flawed by the very general nature of its presentation. According to the information provided by SCS, the total cost of all phases of the contract, including subconsultants, was \$953,874 (letter of October 28, 1991, Exhibit C, page 1). On Exhibit B, page 3, SCS states that the total cost of its subconsultants was \$334,638.36. SCS's project costs, excluding subconsultants, therefore appear to total \$619,235.64.

Using figures provided by SCS in its original proposal, Metro has calculated that SCS anticipated that "other direct costs" related to the work (including air fare, telephones/faxes, postage, etc.) would amount to approximately nine percent of total costs. Using this percentage, SCS's cost related to the Agreement, less "other direct costs" and the cost of subconsultants, approximates \$533,387. SCS claims that it spent 5,069 total hours working on all phases of this project, not including the work of subconsultants (letter of October 28, 1991, Exhibit C, page 1). Dividing \$533,387 by 5,069 results in an average SCS billing rate of \$105/ hour, over the life of the contract.

Based upon the 3,140 hours said to have been expended without compensation during the Construction Phase of the contract and an average billing rate of \$105/hour, the SCS billing would be \$329,700, a figure very similar to SCS's claimed total cost for the Construction Phase, (\$349,457.51) including the cost of all subconsultants (letter of October 28, 1991, Exhibit C, page 1). Further, the average rate of \$105/hour derived from SCS's claim does not conform to the average rate of \$63/hour in SCS's proposal. Even the inflation-adjusted figure provided by SCS in its letter of October 28, 1991, is only \$77/hour (letter of October 28, 1991, Exhibit E, page 1). Thus, Metro finds it impossible to correlate hours expended during the Construction Phase with requested compensation.

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The overall presentation of this claim is very simplistic and no attempt has been made to associate the alleged expenses with specific tasks or services, to segregate the claim from payments made or earlier rejected claims, or to demonstrate that the expenses were for tasks not included in the original or amended scope of work. It is impossible to establish a direct correlation between the SCS claims and the numeric information furnished. No attempt has been made to show how Metro benefitted from the expenditures, or the reasonableness of the expenditures. Based on the materials submitted, Metro has no reason to believe that the extra work claimed was actually performed; that SCS has not already been compensated for the hours claimed; that the expenses were incurred for tasks performed outside of the scope of work; that the claimed expenditures were reasonable, or that they benefitted Metro.

To the extent that SCS's claims of entitlement to additional construction administration payments can have validity given the unstructured nature of its basic calculations, the four categories of added effort defined by SCS to support the claims are discussed below:

A. Additional Construction Complexity

SCS states that \$43,805 of its construction administration claim can be attributed to an increase in the complexity of the work, requiring a higher level of involvement by SCS and subconsultants. SCS apparently believes that the increased complexity of the project required it to perform additional services outside the scope of work. Rather than describe what those services were and how they benefitted Metro, SCS describes why it believes the work became more complex, requiring it to expend additional resources. In addition, SCS denies any responsibility for the increased complexity of the work.

SCS states that "Metro and the Construction Contractor established informal agreements about construction matters...which diminished the authority of the SCS team as Construction Manager." (Page 6, letter of October 28, 1991) After discussing this claim with SCS's construction manager, Metro concludes that this allegation is false. The role of W.R. Gamble was established at the preconstruction meeting in conformance with the Agreement, and never changed.

Next, SCS argues that significant design changes were initiated by Metro during construction, or initiated by the construction contractor. Although the construction contractor did make substitutions and request changes, such actions are common in construction projects. SCS was compensated for design changes through contract amendments. If a design change occurred during construction that was not due to an inadequacy in the design documents, SCS should have

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submitted an invoice for the work in conformance with the contract documents, or negotiated payment in advance. In those instances in which SCS received compensation for a design change under a contract amendment, it cannot now claim that it failed to request adequate compensation, and that it is entitled to administrative reimbursement above the 15 percent included in the lump sum payment made, and overhead and profit included in billable hours.

Finally, SCS argues that, along with its subconsultants, it was required to commit more experienced and costly professionals to the project due to the increased complexity, the "higher liability associated with administration of a construction project that markedly deviates from the design," and the need to enforce and defend the construction contract documents. The project did not "markedly deviate from the design." The "complexity" allegation deserves special attention, because it illustrates SCS's failure to accept the shortcomings of the design it provided for the Metro South Station modifications.

The original construction documents issued by SCS on July 6, 1990, were so inadequate that they were retracted and reissued on July 30, 1990. Changes continued to be necessary throughout construction due to a failure to integrate the various elements of the design, as well as numerous omissions and ambiguities. (See discussion of Employee Parking Retaining Wall.)

Metro continues to discover major inadequacies in the facility design that could have been avoided by more thoughtful engineering. These include the pit slab, which has already been damaged due to what appears to be under-design. The irrigation system does not adequately provide water to the grassy areas, in what appears clearly to be a design error. The sanitary lift station designed by SCS continues to flood the facility's main lift station because SCS did not consider the capacity of the existing system when it developed its design. Finally, the dozer ramp required redesign and reconstruction to prevent repeated equipment shippage.

The frustration resulting from poorly developed construction plans was exacerbated when SCS provided four different project managers over the life of the project. The project manager is responsible for the design and must have knowledge of the current progress of the work as it relates to the design. The frequent change in project managers caused major disruption, and undoubtedly resulted in an increase in the time commitment and costs incurred by SCS. Those costs, however, are clearly not Metro's responsibility. Any increased complexity of the work perceived by SCS was, for the most part, created by SCS to Metro's detriment.



B. Construction Contract Acceleration

Construction acceleration was agreed to be necessary by Metro and Emerick and began on October 23, 1990, and ended on December 15, 1990. During that time, Emerick worked ten hours per day, six days per week. This did not impact the Engineer, who was not required to match this schedule. Contrary to SCS's claim narrative, contract amendments Nos. 8 and 9 provided \$69,936 in additional payments for construction management services during a period that included the acceleration. Even though it signed amendments which provided payments for this period, SCS would now like to receive an additional \$36,374, or \$1,000 more per day for the period of acceleration.

SCS has failed to provide any documentation to support its claim that it performed services during acceleration that were outside of the scope of work and for which it did not receive compensation under the contract or an amendment. SCS has made no effort to show how Metro received any benefit for the \$36,374 claimed under this category. SCS has also failed to explain why Metro was not notified of the cost of the alleged additional services on a monthly basis. Contrary to its assertions, SCS was not directed to make a claim for additional "contract administration" payments for this period at a later date. Metro nevertheless considered the documented claim of W.R. Gamble that included time spent during this period for construction management, and satisfied that claim in full under amendment No. 15.

C. Extraordinary Defense of Contract Documents

SCS claims that it provided \$18,187 worth of services to Metro, outside of the scope of services in the Agreement, defending the contract documents. The quality of the contract documents being defended was discussed above. SCS states that Emerick ignored the contractual process for submission of shop drawings; that Emerick failed to implement SCS's proposed solution to siltation problems leading to SCS expenditures; that deliberate issuance of superfluous paperwork by Emerick and its subcontractors "significantly compounded the communication process;" and that SCS found it necessary to defend its subconsultant in antagonistic relations with Emerick.

As for the claim that the contractor ignored procedures for submission of shop drawings, Metro does not agree that this occurred on a regular basis or that it created serious problems. Notwithstanding procedural variances in the submission of shop drawings, it was the responsibility of SCS's construction manager to track compliance with provisions of the contract, not Metro's. This responsibility was not outside the agreed scope of work, and Metro did not obtain any additional benefit from the alleged additional expenditures.

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SCS's example of the storm drain system to demonstrate defense of contract documents is confused, at best. (Letter of October 28, 1991, page 7) Emerick did fail to take adequate steps to control surface water. However, SCS was asked to validate its design due to the failure of the sanitary system to handle the overflow. This incident provided early evidence that SCS had improperly designed the lift station by failing to consider the capacity of the existing system. As mentioned above, the sanitary lift station designed by SCS continues to flood the facility's main lift station.

Comparison of contractor requests for design clarifications on this job against other large construction projects does not show an excessive level of requests. It is Metro's opinion that the time SCS took to answer clarification requests was routinely excessive. If the requests were simple and superfluous, they should have been answerable with minimal effort. Design clarifications are an integral part of the Engineer's responsibility on any construction project and should have been anticipated by SCS.

SCS is correct that an antagonistic relationship developed between the construction contractor on one hand and the construction manager and Engineer on the other. Although the narrative suggests that the engineer was required to protect W.R. Gamble from an abusive contractor for the life of the project, this was hardly the case. Both parties involved in the antagonistic relationship contributed to its maintenance by refusing to yield, including Jim Kenniston of SCS. Dealing with personal relations on the job site can hardly be considered an expansion of the scope of work requiring additional compensation for SCS. Metro obviously did not benefit from SCS's handling of personal relations on the site. The eventual departure of the Emerick party to the problem was negotiated by Metro, not SCS.

### D. Protracted Construction Duration & Inflation

SCS computed this portion of its claim by stating that the original Construction Administration Phase was to last for seven months, and that its bid price for construction administration was \$43,000. SCS then states that since, in its estimation, the actual Construction Administration Phase lasted for 14 months, SCS is entitled to an additional \$43,000, plus \$2,490 for inflation.

This calculation ignores the terms of, and amounts paid under, the contract and amendments. Both the original Agreement and the amendments clearly established lump sum payments for construction management services through April 17, 1991. Additionally, the contract contained procedures for submitting invoices on a monthly basis for additional work. No such invoices were submitted. Billings for SCS work accomplished during the period 6/01/90

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through 8/31/91 total \$157,590 against a contractual basis of \$167,587. These billings include design work directed through contract amendment as well as post-construction effort. During this same period, Metro made payments to SCS of \$157,795 leaving SCS apparently uncompensated by only \$9,792 against the contractual value.

The corresponding reported cost to SCS during the same period (from the 0.00, 0.01 and 0.-- project detail reports provided to Metro by SCS in April 1992) totals \$301,397. Thus, from these records, SCS appears to have expended additional effort which it values at approximately \$133,810 on the Metro South Station Project beyond the contractual basis and \$143,602 beyond the Metro payments. Metro was not routinely invoiced or billed or otherwise notified of these alleged cost overruns.

Notwithstanding the confusing and non-specific nature of the SCS claim, Metro believes that some additional support was provided during a seven month period following the originally scheduled project completion date of February 6, 1991.

According to the project detail records submitted by SCS to Metro, SCS expended a total of \$125,424.73 for labor, overhead, direct and reimbursable expenses during the period from February 1, 1991 to August 31, 1991. These records also show that \$51,322.42 were Gamble expenses for on-site construction management and \$1,809.53 were McKeever/Morris expenses for landscape architecture during this period. As these two expenses were compensated through subsequent amendments, the actual administrative expense to SCS for this period was \$72,292.78.

Detailed review of the project documentation provided by SCS suggest the following further reductions in direct labor and overhead costs during this period:

- **Quality Assurance Review:** This category of charges does not appear in the SCS project records until December 1990. Such an activity routinely takes place at a uniform rate throughout the life of a project and is more appropriately an overhead function. Wadkins and Kenniston charged 116 hours of direct labor to this category in January and 45 hours in March 1991. No other charges to this category are recorded. These direct labor costs are not supportable without added justification. The direct labor costs for March were \$919.48.

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- Expert Witness/Litigation: This category of charges begins to appear in May 1991. Wadkins charged 218 direct labor hours to this category during the period May through August 1991 at a direct labor cost of \$6272.75. Metro is unaware of the requirements for an expert witness or support of litigation during this period.
- Task 19: The charges in this category appear to be for supporting clerical assistance which should be a part of overhead. Direct labor charges amount to \$514.85.
- O&M Manual Preparation: Harrington and Wadkins have charged 56 direct labor hours to the General category which is O&M manual preparation at a direct labor cost of \$1045.94. This is a Post-Construction function to be paid from the \$16,662 allocated to pay expenses of this phase.
- Shop Drawing Review: There were 12 direct labor hours charged to this category at a cost of \$315.74. This is a Post-Construction function to be paid from the \$16,662 allocated to pay the expenses of this phase.
- Planning and Administration: This appears to be an overhead item and/or time spent in claim preparation. The direct labor cost of this time is \$755.19.

Expanding the above direct labor charges of \$9823.90 by the derived SCS overhead rate of 216.5%, produces overhead charges of \$21,268.85 or a total rejected cost of \$31,092.80. This reduces the valid project charges during the extended project duration to \$41,199.98.

Additionally:

- During this period SCS also charged \$1005 in micro-computer time and \$238.25 in subscriptions/publications to the project. These are overhead items.
- Contract amendments No. 13 and No. 14 contain reimbursements of \$1,440 and \$5,096 for design effort expended during this period, further reducing the valid charges for administrative support.
- As SCS claimed expenditure of \$13,429.59 for column investigation during this period, this amount must be also deducted. Compensation for work accomplished at Metro direction has been previously addressed.

The algebraic sum of these evaluations of the added SCS effort produce a compensation to SCS of \$19,991.14.

Executive Officer's Decision

Page 16

September 1, 1992

Summary of Findings

The SCS claim for \$228,887.29 suffers from a lack of specificity. Even with the submission by SCS to Metro of its own computer generated project detail reports, the direct correlation of costs to benefits to Metro, much less specifically directed Metro tasks and/or requests, is impossible.

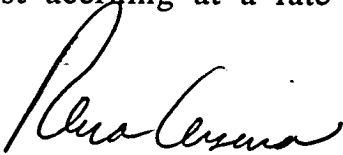
Metro does, however, find that merit exists in some of the individual claims as well as recognizing that some of the effort expended beyond the scheduled project completion date is compensable. The compensation to SCS deemed appropriate from the preceding analysis is \$34,946.98.

By SCS claim, the findings on compensation are shown below:

<u>Description</u>	<u>Requested Amount</u>	<u>Recommended Settlement</u>
No. 501 Employee Parking Retaining Wall	\$ 9,072.00	\$ -0-
No. 504 Area Drain at Intersection	\$ 3,239.31	\$ 1,619.66
No. 505 Contract Administration	\$ 143,856.00	\$ 19,991.14
No. 508 Repair of Damaged H-pile	\$ 4,479.71	\$ 2,313.33
No. 509 Review Type 9 Lights Under Bridge	\$ 565.29	\$ -0-
No. 511 SCS Site Visits	\$ 6,756.89	\$ -0-
No. 513 Review of Delay Claim	\$ 467.85	\$ 467.85
No. 515 Column Investigation	\$ 13,429.59	\$ 2,500.00
Construction Management Services Markup (Unnumbered Claim)	\$ 7,081.80	\$ -0-
Electrical Engineering Claims	\$ 39,937.86	\$ 8,055.00
TOTAL	\$ 228,887.29	\$ 34,946.98

Decision

SCS should be immediately compensated in the amount of \$34,946.98 plus interest accruing at a rate of 5% from September 1, 1991.



Rena Cusma  
Executive Officer

*Sept 8, 1992*

## ATTACHMENT 1

### Additional Design Costs Alleged to Have Been Incurred by SCS

As stated above, SCS has indicated that it incurred \$395,000 in unreimbursed expenses designing the Metro South modifications. Although this figure was not presented as a claim, it was clearly presented as a threat, and is addressed here for that reason.

SCS's allegations regarding hours worked and expenses incurred during the pre-construction phases are erroneous. As discussed in the text of this document, the figures supplied for the entire project hours and expenses result in an average rate of \$111/hour being charged by SCS. Even at this rate, adding nine percent for "other direct costs," SCS's total expenses for this period would be \$233,450.21. At the \$63/hour average rate in its proposal, plus nine percent, SCS's total expenses would have been \$121,558.50. Considering these facts, the \$209,000 that Metro paid to SCS during the pre-construction phases of the contract appears to be very reasonable.

The allegations being made by SCS regarding its expenses during the pre-construction phases of the agreement, if true, would demonstrate that SCS <sup>suffered incredible cost overruns</sup> ~~made numerous irrational business-~~ judgments during this period. The chart on page 3 of SCS's letter to Metro dated October 28, 1991, alleges that SCS suffered cost overruns of 348 percent during the "Preliminary Concepts and Schematic Design" phase of the agreement. The chart alleges a whopping 678 percent cost overrun in the "Design Development" phase, a 197 percent cost overrun in the "Construction Documents" phase, and a 134 percent cost overrun in the "Bidding Phase." SCS did not mention the alleged cost overruns to Metro at the time they

ATTACHMENT 1

Page 2

occurred or when it executed amendment No. 5 at the completion of all pre-construction phases.

Considering amendment no. 5, it is perplexing that SCS would now assert that it incurred \$395,000 in uncompensated expenses for pre-construction phase work. That amendment, dated June 21, 1990, listed specific tasks to be addressed by SCS in completing the design, and provided an additional lump sum payment of \$44,299.00. Now, over one year later, SCS suggests that it forgot to mention in amendment no. 5 the \$395,000 in additional payments to which it is entitled, but will forego if Metro pays a host of other undocumented or unjustified claims. The threat is not well taken, and evidences a lack of good faith on the part of SCS. If made, it is clear that such a claim would have no basis in fact, in law, in the contract, nor in basic principals of fair dealing.

ATTACHMENT 2

<u>Gamble Invoice No. and Date</u>		<u>Amount</u>	<u>Hours Worked Beyond Contract</u>	
			Tim Grace	Walt Gamble
4301.06	October	N/A	160.0	
4301.07	October	N/A	42.0	
4301.08	October	N/A	55.0	
4301.09	November	N/A	133.0	
4301.10	November	N/A	22.0	
4301.11	November	N/A	35.5	
4301.12	December	N/A	90.5	
4301.13	December	N/A	53.5	
4301.14	December	N/A	13.0	
4301.15	January	N/A	147.0	
4301.16	January	N/A	29.0	
4301.17	January	N/A	<u>12.0</u>	
Total Hours Extra			792.5	
Subtotal Cost		\$35,662.50	\$45/hr.	\$95/hr.
4301.18	March	\$ 9,246.42	156.0	20.5
4301.19	April	\$10,055.75	176.0	21.0
4301.20	March & April	\$ 1,305.00	29.0	0
4301.21	February	\$10,572.50	160.0	35.5
4301.22	February	\$ 540.00	12.0	0
4301.23	May	\$ 7,599.36	143.0	12.0
4301.24	June	\$ 8,052.50	161.0	8.5
4301.25	July	\$ 5,005.00	107.0	2.0
4301.26	August	\$ 5,459.45	112.0	4.0
	September	<u>\$ 275.00</u>		
Subtotal Cost		<u>\$58,110.98</u>		
TOTAL		\$93,773.48	plus 15% \$107,839.50	



**ATTACHMENT 2**

Page 2

Metro issued five amendments that included additional on-site construction services (totaling \$108,069.98 for additional on-site construction services) as summarized below.

Amendment No. 8 - \$9,936.00 for additional on-site construction services.

Amendment No. 9 - \$31,050.00 for additional on-site construction services.

The total for Amendment #9 was actually \$60,000.

Amendment No. 10 - \$9,936.00 for additional on-site construction services.

Amendment No. 12 - \$9,936.00 for additional on-site construction services.

Amendment No. 15 - \$47,211.98 for the balance of services being claimed by W.R. Gamble Engineering.

ENCLOSURE 1

SCS ADMINISTRATIVE CHARGES  
February 1, 1991 to August 31, 1991

Month	Source Document	Labor & Overhead	Consultants	Reimbursable Expenses	Monthly Total
February	0489018.01	\$1,776.67	-0-	-0-	\$1,776.67
March	0489018.00	12,948.41	\$14,539.34 (12,729.81)*	\$1,510.73	28,998.48
April	0489018.00	10,966.56	20,025.61 (20,025.61)*	482.61	31,474.78
May	0489018.00	14,246.17	-0-	1555.36	15,801.53
June	0489018.00	10,679.05	-0-	1334.28	12,013.33
July	0489018.00	9,529.38	18,567.00 (18,567.00)*	139.80	28,236.18
August	0489018.00	6,963.15	-0-	160.61	7,123.76
TOTALS		\$67,109.39	\$53,131.95 (51,322.42)*	\$5,183.39	\$125,424.73

\* W.R. Gamble expenses



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

<b>FAX Memo</b>		# Pages
Date: <u>22 MAY 91</u>	Time: <u>1:45</u>	<u>5</u>
To: <u>LANCE WADKINS</u>		
Location: <u>S.C.S.</u>		
FAX #:		
From: <u>ROB SMOOT</u>		
Location: <u>METRO SOUTH</u>		
FAX#:	Phone: <u>657-0915</u>	

May 22, 1991

Mr. Lance Wadkins  
Project Manager - Metro South Station  
SCS Engineers, Inc.  
2950 Northrup Way  
Bellevue WA 98004

Executive Officer  
Rena Cusma

Metro Council

Tanya Collier  
Presiding Officer  
District 9

Jim Gardner  
Deputy Presiding  
Officer  
District 3

Susan McLain  
District 1

Lawrence Bauer  
District 2

Richard Devlin  
District 4

Tom DeJardin  
District 5

George Van Bergen  
District 6

Ruth McFarland  
District 7

Judy Wyers  
District 8

Roger Buchanan  
District 10

David Knowles  
District 11

Sandi Hansen  
District 12

Dear Lance:

I have completed my review of your letters dated March 4, 5, 6 and 7, 1991 regarding additional electrical design services from Elcon. I have considered each item addressed on the attachments to the above letters and include my comments below. Amendment #11, attached, includes those items which Metro considers to be an expansion of SCS's scope of work.

Item #1 of the attachment to your letter of March 4, 1991 is regarding Elcon's review of the transformer cutover sequence. I am disturbed that Elcon spent so much time on such a simple task, however, I have included this in Amendment #11.

Item #2 of the attachment to your letter of March 4, 1991 is regarding Elcon's review of motor starters on the walking floor. This effort could have been avoided had SCS coordinated the writing of the walking floor specification with Elcon. This is considered by Metro to be within the scope of our original agreement.

The services of Elcon, as proposed in your letter of March 5, 1991, have not been necessary. No Amendment will be written for these services.

Item #1 of the attachment to your letter of March 6, 1991 is regarding Elcon's review and comments to retain the temporary service pole in the northwest corner of the trailer storage yard. Metro agrees that this work is extra, and it is included in Amendment #11.

Item #2 of the attachment to your letter of March 6, 1991 is regarding Elcon's coordination to provide lighting to the Oregon City sign. Metro agrees that this work is extra, and it is included in Amendment #11.

Page Two  
May 22, 1991  
Lance Wadkins

Item #3 of the attachment to your letter of March 6, 1991 is regarding Elcon's review of the location of the handhole for the future scale. This is considered by Metro to be within the scope of our original agreement.

Item #4 of the attachment to your letter of March 6, 1991 is regarding Elcon's design of a sprinkler controller. This is considered by Metro to be within the scope of our original agreement.

Item #5 of the attachment to your letter of March 6, 1991 is regarding Elcon's review of the differences between the Amfab and the Shredding Systems (SSI) compactor. Much of this time was spent reviewing control wiring requirements. Metro considers the work performed by Elcon in reviewing control wiring requirements to be included in our original scope of work. Metro agrees that the work performed by Elcon to review the power requirements of the SSI compactor to be extra and estimates that half of Item #5 is for that activity. This is reflected in Amendment #11.

Item #6 of the attachment to your letter of March 6, 1991 is regarding Elcon's preparation of a Request for Proposal (RFP) to have the construction contractor furnish and install (2) two inch conduits from MCC-90 to MH-1. Metro agrees that this work is extra, and it is included in Amendment #11.

Item #7 of the attachment to your letter of March 6, 1991 is regarding Elcon's review and design to replace one conveyor with two walking floors. Metro agrees that this work is extra, and it is included in Amendment #11.

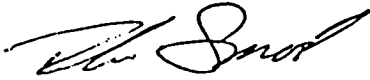
Each Item listed on the attachment to your letter of March 7, 1991 is for review and design in response to requests for clarifications or approved substitutions. This work could have been anticipated by SCS as typical for this type of construction and design. Metro considers this work within our original agreement.

The four letters referenced above represent a request/proposal to provide electrical engineering services for a cost totaling \$27,256. Amendment #11 represents the summation of the comments made above, and is for a cost totaling \$8,055.

Page Three  
May 22, 1991  
Lance Wadkins

Please call if you have any concerns or questions  
regarding my review of these items.

Sincerely,



Rob Smoot, Project Manager  
Solid Waste Department

cc: Jim Watkins, Metro



# METRO

2000 SW First Ave.  
Portland, OR 97201-5398  
(503) 221-1646

## Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: February 24, 1993

Re: Resolution No. 93-1683A, For the Purpose of Authorizing an Exemption From the Competitive Procurement Procedures of Metro Code Section 2.04.053 to Permit the Executive Officer to Execute Contract Amendment No. 16 with SCS Engineers

Resolution No. 93-1683A is scheduled to be considered by the Committee at the March 2 meeting.

### Background

This resolution reflects the results of a negotiated settlement between Metro and SCS Engineers concerning final payment to SCS for construction management and design services related to the renovation of Metro South Station. SCS initially requested additional payment of \$228,887, while Metro believed that no additional funds were owed.

Staff initially brought forward this resolution last November with a recommendation that Metro should offer SCS a final payment of \$36,695. The Solid Waste Committee approved the resolution on November 3, 1992. However, prior to full Council consideration, staff asked that the resolution be returned to the committee to allow further negotiations. Earlier committee discussion of the resolution is included in the staff report attached in this agenda packet.

Resolution No. 93-1683A would increase the amount of the proposed settlement to \$60,350. Staff has not provided a breakdown of the additional funds requested or the justification for the increased payment.

### Issues and Questions

The committee may wish to address the following issues related to its consideration of this resolution:

- 1) Could staff provide a breakdown of the funds paid under the settlement and the justification for each of these amounts?
- 2) What source of funds will be used to pay the proposed settlement?

**SOLID WASTE COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. 93-1683A, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM THE COMPETITIVE PROCUREMENT PROCEDURES OF METRO CODE SECTION 2.04.053 TO PERMIT THE EXECUTIVE OFFICER TO EXECUTE CONTRACT AMENDMENT NO. 16 WITH SCS ENGINEERS

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Date: March 3, 1993

Presented by: Councilor Washington

**Committee Recommendation:** At the March 2 meeting, the Committee unanimously voted to recommend Council adoption of Resolution No. 93-1683A. Voting in favor: Councilors Buchanan, McFarland, McLain, Washington and Wyers.

**Committee Issues/Discussion:** Neal Saling, Director of Regional Facilities, reviewed the history of this proposal. He noted that the resolution addresses a dispute between Metro and SCS Engineers concerning final payment under a contract for design and construction management services during the renovation of Metro South Station.

Saling noted that in November, the Solid Waste Committee approved an offer to SCS of about \$37,000 to resolve the dispute. Prior to final Council consideration, SCS submitted additional material and Metro staff agreed to further negotiations. The amended resolution provides for a settlement of \$60,350. The amount in addition to the original offer includes work documented by SCS which occurred after the original completion date of the contract.

Councilor Wyers asked if this was a disputed claim and if the Office of General Counsel had reviewed the proposed settlement. Saling indicated that the Office of General Counsel advised that Metro could incur up to \$20,000 in court costs to adjudicate the dispute.

Councilor Washington asked if these types of disputes were common. Saling explained that they were common, but usually involved construction contractors not the design and management contractor.

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN ) Resolution No. 93-1683 A  
EXEMPTION FROM THE COMPETITIVE )  
PROCUREMENT PROCEDURES OF METRO ) Introduced by Rena Cusma,  
CODE SECTION 2.04.053 TO PERMIT ) Executive Officer  
THE EXECUTIVE OFFICER TO EXECUTE )  
CONTRACT AMENDMENT NO. 16 WITH )  
SCS ENGINEERS )

WHEREAS, Metro and SCS Engineers entered into a Design Service Agreement on August 22, 1989 for engineering services during the design and modification of the Metro South Transfer Station; and

WHEREAS, the contract amount for SCS services of \$198,162.00 was expanded to \$424,647.98 through fifteen (15) contract amendments; and

WHEREAS, SCS has submitted claims which SCS values at \$228,887.29; and

WHEREAS, Metro analysis of SCS claims finds the SCS claims compensible in the amount of \$56,800 plus interest and the remainder of the SCS claims are without merit; and

WHEREAS, it is desirable to pay these recognized amounts to SCS at this time; and

WHEREAS, an amendment to the SCS contract for the purpose of making such a payment requires approval by the Metro Contract Review Board in accordance with Metro Code Section 2.04.054(a) (3); NOW THEREFORE,



BE IT RESOLVED, that

The Contract Review Board of Metro authorizes the Executive Officer to execute an amendment to the personal services contract with SCS Engineers to make payment of \$60,350.00 for services rendered beyond the scope of the original contract.

ADOPTED by the Metro Contract Review Board this \_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Judy Wyers, Presiding Officer