

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 94-1904
THE EXECUTIVE OFFICER TO EXECUTE)
AN AMENDMENT TO METRO'S CONTRACT) Introduced by Rena Cusma,
WITH OREGON WASTE SYSTEMS) Executive Officer

WHEREAS, Oregon Waste Systems (OWS) operates the Columbia Ridge Landfill near Arlington, Oregon; and

WHEREAS, Metro is contractually obligated to deliver to the Columbia Ridge Landfill 90 percent of all acceptable waste that Metro delivers to any general purpose landfill; and

WHEREAS, Under a "Most Favored Rate Agreement," OWS is obligated to provide Metro a lower rate than most other entities that may deliver waste to the landfill; and

WHEREAS, Metro and OWS have for some time been engaged in negotiations to amend the disposal contract to the mutual benefit of the parties; and

WHEREAS, The attached Exhibit A, entitled "Contract Amendment #4" includes provisions that will result in substantial cost savings to Metro over the remaining 16 years of the disposal contract; and

WHEREAS, Among other provisions, the amendment will terminate the Most Favored Rate Agreement and replace it with a system of credits to Metro for waste generated outside the District that is disposed of at Columbia Ridge; and

WHEREAS, The attached amendment will also provide per ton cost reductions for all solid waste delivered by Metro to Columbia Ridge if Metro delivers to Columbia Ridge waste that is now delivered to the Riverbend Landfill in Yamhill County via the Forest Grove Transfer Station; now, therefore,

BE IT RESOLVED,

That the Council authorizes the Executive Officer to execute the amendment attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of March, 1994.

NOT ADOPTED
Judy Wyers, Presiding Officer

ds
1149a

Exhibit A
Resolution No. 94-1904

Contract Amendment No. 4:

This Amendment is to an Agreement between Metro, a metropolitan service district organized under the laws of Oregon and the 1992 Metro Charter, and Waste Management Disposal Services of Oregon, Inc., a Delaware corporation, (dba Oregon Waste Systems, Inc.) entered into on April 11, 1988, for solid waste disposal services (herein "Original Agreement"). In exchange for the promises and other consideration set forth in the Original Agreement and in this Amendment, the Parties agree as follows:

1. Contractor waives any claims against or compensation from Metro arising out of Section 1 of the Specifications to the Original Agreement, page VI-1, under the heading "Annual Waste Delivery Guarantees by Metro" for 1991, 1992, and 1993.
2. Upon execution of this Amendment, the Most Favorable Rate Agreement between the Parties (dated March 24, 1988) shall be considered terminated, and Metro waives any claims against or compensation from Contractor arising out of the Most Favorable Rate Agreement.
3. Contractor shall no longer be required to maintain the bonds specified in Amendment No. 2 to the Original Agreement, Section 4. The corporate guarantee provided under that Amendment shall remain in effect, and Contractor shall continue to provide a corporate guarantee as specified in Amendment No. 2, Section 4, for the term of the Agreement and any extensions of the Agreement.
4. Metro shall be entitled to the price adjustments specified in Sections 6(a) and (b) of this Agreement if, and for as long as, Metro delivers or otherwise arranges for the delivery to the Columbia Ridge Landfill 100 percent of all acceptable waste generated in the Metro region:
 - (a) That is delivered to any Metro owned, operated, or franchised facility that is permitted to receive more than incidental quantities of putrescible waste, and that is disposed of at any general purpose landfill; and
 - (b) That is delivered to the A.C. Trucking, Forest Grove Transfer Station, and that is disposed of at any general purpose landfill.

5. For purposes of Section 4 of this Amendment:
- (a) "General purpose landfill" means any land disposal facility that is required by law, regulation or permit to utilize a liner and leachate collection system equivalent to or more stringent than that required for municipal solid waste landfills under Subtitle D of the Resource Conservation and Recovery Act and is authorized by law to accept more than incidental quantities of putrescible waste.
 - (b) "Incidental quantities" means small amounts of materials handled by a solid waste facility that, due to both the deminimis amount and the ubiquitous nature of the material, are only allowed by permit as a limited exception to be handled at the facility, but are otherwise banned from acceptance at the facility. In no case shall incidental quantities constitute more than five percent, by volume or by weight, of any load delivered to the facility.
 - (c) "Putrescible waste" means solid waste (other than uncontaminated or only slightly contaminated tree stumps, wood waste, branches, brush, cardboard and paper products and other limited types of waste specifically approved or permitted for disposal by DEQ as a limited exception at a disposal or processing facility) containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies.

6. The price adjustments referenced in Section 4 are as follows:

- (a) Metro's variable rate will be reduced by \$1.00 per ton if delivery pursuant to Section 4 begins before July 1, 1994. Otherwise, Metro's variable rate will be reduced by \$0.65 per ton;
- (b) If delivery pursuant to Section 4 begins on or after July 1, 1994, on January 1, 1995, the variable rate will be reduced by an additional \$0.35 per ton; and
- (c) Beginning with the first annual price adjustment normally occurring after the signing of this Amendment, the "percentage price adjustment (AI)" calculated under the Original Agreement, General Conditions, Article 19.B., shall be reduced by 1/2 percent. If the resulting percentage price adjustment is less than zero, the unit prices shall be reduced by the percentage so obtained.

- (d) If Metro, after having received rate adjustments pursuant to Sections 6(a) and/or (b), is no longer entitled to such adjustments, the variable rate shall be increased by the applicable amounts in Sections 6(a) and/or (b), after such amounts have been adjusted pursuant to Section 6(c) for the period of time that Metro had received the rate adjustments pursuant to Sections 6(a) and/or (b).

7. Contractor shall provide the following credits to Metro during the term of the Original Agreement and any extension thereof, for wastes of comparable type to the waste to be disposed of under the Original Agreement, as modified, other than those generated within Metro boundaries or processed at facilities within Metro boundaries:

- (a) Beginning January 1, 1995, for waste from the city of Seattle or any Partner pursuant to the WWS/Seattle contract and for as long as Seattle waste continues to be disposed of at the Columbia Ridge Landfill:
- \$1.00 per Seattle or Partner ton beginning January 1, 1995, and an additional \$0.50 per ton beginning January 1, 1996.
- (b) For waste from non-Metro region sources other than Seattle or Partner, but not including waste generated in Oregon counties, except Deschutes County, located east of the Cascade Mountains:
- For contracts involving large communities (i.e., communities disposing of greater than 75,000 tons per year at the Columbia Ridge Landfill): \$1.00 per ton beginning immediately upon the effective date of this Agreement and an additional \$0.50 per ton beginning January 1, 1996.
 - Except as provided in Section 1 of this Amendment, for contracts involving small communities (i.e., communities disposing of up to 75,000 tons per year at the Columbia Ridge Landfill): \$0.50 per ton. This credit will begin immediately upon the effective date of this Amendment for contracts that took or will take effect on or after January 1, 1993, and will begin on January 1, 1995, for contracts that took effect before January 1, 1993.
- (c) The credits in this Section 7 are escalated annually by the same CPI increase as described in Section 6(c) above; provided, however, that the additional \$0.50 per ton credit shall not escalate until the first annual price adjustment occurring after the effective date of the additional credit.

8. OWS guarantees that during the remaining term of the Agreement, rebates paid to Metro for non-Metro tonnage received at Columbia Ridge will total at least the sum of monies owed to OWS under Amendment No. 2 as of the effective date of this Amendment, or OWS will pay the difference at the end of the term of the Original Agreement.
9. Additional Conditions.
- (a) Metro shall at all times make good faith efforts to ensure that putrescible waste (other than special waste) generated or disposed of within Metro boundaries that is destined for a general purpose landfill, other than incidental quantities, is disposed of at facilities identified in Sections 4(a) and (b) of this Agreement.
 - (b) Metro shall not intentionally forfeit its ownership or control over facilities identified in Sections 4(a) and (b) of this Amendment in such a manner as to significantly diminish the value to Contractor of waste deliveries under Section 4 of this Amendment.
 - (c) If Metro is precluded from exercising authority to control the flow of solid waste due to a change in state or federal law, in a manner that significantly diminishes the value to Contractor of waste deliveries under Section 4 of this Amendment, Sections 6(a) and (b) of this Amendment shall be null and void.

OREGON WASTE SYSTEMS, INC.

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

11790