

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN )	RESOLUTION NO. 95-2179 <u>A</u>
EXEMPTION FROM COMPETITIVE BIDDING )	
AND AUTHORIZING SOLE-SOURCE AND )	Introduced by Mike Burton
MULTI-YEAR CONTRACTS TO AGRA EARTH )	Executive Officer
AND ENVIRONMENTAL, AND ANTECH )	
ANALYSIS TECHNOLOGY FOR SAMPLING )	
AND TESTING OF YARD DEBRIS COMPOST )	

WHEREAS, Metro Resolution No. <sup>94</sup>91-1889 adopted the Earth-Wise Compost standards and designation program; and

WHEREAS, The purpose of the Earth-Wise Compost program is to provide greater assurance that compost will cause no harm to human health and the environment, and to increase the demand for locally-produced yard debris compost; and

WHEREAS, Consistency in sampling and testing procedures over time is critical to achieving comparable and credible results, and AGRA Earth and Environmental, and Antech Analysis Technology are the current contractors; and

WHEREAS, Antech Analysis Technology is the only laboratory in the Metro area that tests for heavy metals and pesticides; and

WHEREAS, The use of sole-source and multi-year contracts will result in cost savings to Metro; and

WHEREAS, Metro Code Sections 2.04.060 and 2.04.033 require that the Metro Contract Review Board approve sole-source contracts and multi-year contracts; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED, That the Metro Contract Review Board hereby

1. Grants an exemption from the competitive bidding requirements; and

2. Authorizes the Executive Officer to enter into sole-source, multi-year contracts with AGRA Earth and Environmental, and Antech Analysis Technology under the terms and conditions specified in Exhibit A attached to this resolution.

ADOPTED by the Metro Contract Review Board this 3 day of Aug., 1995.



J. Ruth McFarland, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

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**SOLID WASTE COMMITTEE REPORT    REVISED**

CONSIDERATION OF RESOLUTION NO. 95-2179, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS TO AGRA EARTH AND ENVIRONMENTAL, AND ANTECH ANALYSIS TECHNOLOGY FOR SAMPLING AND TESTING OF YARD DEBRIS COMPOST

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Date: August 2, 1995

Presented by: Councilor McLain

**Committee Recommendation:** At the July 18 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 95-2179. Voting in favor: Councilors Kvistad, McFarland and McLain.

At the July 27 Council meeting, Councilor Morissette identified an apparent in the "terms of payment" section of the proposed contract with Agra Earth and Environmental. The language indicated that the total amount of the contract was \$20,200, but that expenditures were limited to \$10,000. Therefore, the resolution was returned to the Solid Waste Committee for review.

At the August 1 meeting, the Committee reviewed amendment language from staff that the amount of the contract and the permitted expenditures were \$20,200. The committee adopted the amendment and unanimously recommended Council approval of the resolution.

**Committee Issues/Discussion:** Debbie Gorham, Waste Reduction and Planning Services Manager, and Lauren Ettlin, Associate Solid Waste Planner, presented the staff report. Ettlin explained that the purpose of the resolution was to enter into sole-source multi-year contracts with two companies for the sampling and collection of yard debris for testing and the actual testing of the samples. AGRA Earth and Environmental would be responsible for sample collection and Antech Analysis Technology would do the testing.

Ettlin commented that yard debris compost must be free of contaminants such as heavy metals and seeds in order to be effectively marketed. Ettlin noted that Metro has been involved in the testing of yard debris since 1988 to help insure end users that the products being produced within the region were acceptable.

The testing program became part of Metro's Earthwise Compost Program last year. Processors who successfully participate in the testing program may use the designation "earthwise compost" in marketing their products. Currently, nine of the eighteen yard debris compost processors in the region are participating in the program. Each processor pays \$1,000 to help defray the cost of the program, estimated to be \$22,100 for FY 95-96.

Councilor McFarland noted that a sole-source contract was being requested and asked if there are other competitors that also perform this type of work. Ettlin noted that when the sampling and

collection work was originally bid out, AGRA was the only bidder. She indicated that other firms declined to bid because of the small amount of work involved. She also noted that Antech was the only firm that performed this type of testing in the Portland area. Antech has been used by Metro to perform yard debris testing since 1988.

Councilor McLain commented that, while she supported the use of a sol-source contract at this time, she wanted the record to show that she would favor a competitive process when the contracts proposed in the resolution expire.

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 95-2179, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS TO AGRA EARTH AND ENVIRONMENTAL, AND ANTECH ANALYSIS TECHNOLOGY FOR SAMPLING AND TESTING OF YARD DEBRIS COMPOST

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Date: July 19, 1995

Presented by: Councilor McLain

Committee Recommendation: At the July 18 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 95-2179. Voting in favor: Councilors Kvistad, McFarland and McLain.

Committee Issues/Discussion: Debbie Gorham, Waste Reduction and Planning Services Manager, and Lauren Ettlin, Associate Solid Waste Planner, presented the staff report. Ettlin explained that the purpose of the resolution was to enter into sole-source multi-year contracts with two companies for the sampling and collection of yard debris for testing and the actual testing of the samples. AGRA Earth and Environmental would be responsible for sample collection and Antech Analysis Technology would do the testing.

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Councilor McLain commented that, while she supported the use of a sol-source contract at this time, she wanted the record to show that she would favor a competitive process when the contracts proposed in the resolution expire.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 95-2179 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS TO AGRA EARTH AND ENVIRONMENTAL, AND ANTECH ANALYSIS FOR SAMPLING AND TESTING OF YARD DEBRIS COMPOST

Date: July 18, 1995

Presented by: Mike Burton,  
Lauren Ettlin

## PROPOSED ACTION

Adopt Resolution No. 95-2179 to authorize entering into sole source and multi-year contracts for sampling and testing of yard debris compost as part of Metro's Earth-Wise Compost Program. The proposed contracts are attached as Exhibit A.

## FACTUAL BACKGROUND AND ANALYSIS

In January 1994, the Metro Council adopted Resolution No. <sup>94</sup>91-1889 which designated product standards for yard debris compost. Following adoption of this resolution, Metro developed a voluntary Earth-Wise Compost designation program. Through this program yard debris processors may apply to have their compost tested twice a year for pH level, heavy metals, pesticide residue, plant nutrients, foreign materials, salts and viable seeds. In 1995, nine yard debris processors had their products tested. Those who meet the standards will receive a certificate and be entitled to use the Earth-Wise Compost logo in their advertising.

In order to implement this program, Metro contracts with a company to collect samples from the participating processors, and with various laboratories to test the samples. Samples of compost are collected twice during a 12-month period and 13 tests are performed on each sample. Agra Earth and Environmental was selected as the contractor for collecting samples and conducting maturity tests on finished compost; Antech Analysis Technology is the laboratory that tests for heavy metals and pesticide residue. Both companies are currently under contract to Metro and have performed their tasks satisfactorily during the first year of the Earth-Wise Compost program.

## JUSTIFICATION FOR AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS FOR SAMPLING AND TESTING OF COMPOST

1. It is critical to have consistency in sampling and testing techniques from year to year for comparable results, and to maintain the credibility of the Earth-Wise Compost program. Agra Earth and Environmental and Antech Analysis Technology can provide that consistency.

2. The integrity of the program is dependent on sampling and testing being performed by reputable firms. AGRA Earth and Environmental and Antech Analysis Technology are reputable firms who have performed successfully and are willing to continue their services within the limited budget.
3. Antech Analysis Technology is the only laboratory in the Metro region that tests for heavy metals and pesticides. They have worked with Metro since 1988 on testing yard debris compost. AGRA Earth and Environmental is the only company that responded to the original Request for Proposal for the sampling and respirometry work. This has been attributed to the small amount of funds available and to the specialized nature of the work.
4. Metro can realize cost savings in staff time by eliminating the writing and evaluation of Requests for Proposals for services already successfully provided by AGRA and Antech. The two-year contracts will also ensure that expenditures remain at current levels.
5. By authorizing a multi-year contract with AGRA and Antech, Metro can provide the consistency needed for this new program so that test results from the first three years of the Earth-Wise Compost program are comparable and consistent.

#### BUDGET IMPACT

The FY 1995-96 Solid Waste budget has appropriated \$22,500 for sampling and testing for the Earth-Wise Compost Program. These two contracts will spend \$15,600 of that appropriation. By approving the multi-year contracts, the Council will encumber an additional \$15,600 in the FY 1996-97 budget.

#### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 95-2179.

Exhibit A  
**PERSONAL SERVICES AGREEMENT**

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232, and ANTECH ANALYSIS TECHNOLOGY, referred to herein as "Contractor," located at 501 NE Thompson Mill Road, Corbett, OR 97019. In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective on the last signature date below and shall remain in effect until and including June 30, 1997, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed ELEVEN THOUSAND DOLLARS AND NO/100ths (\$11,000.00).
4. Insurance.
  - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
    - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
    - (2) Automobile bodily injury and property damage liability insurance.
  - b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.



c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

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

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be modified in a writing signed by both parties.

**ANTECH ANALYSIS TECHNOLOGY**

**METRO**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

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Date  
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\_\_\_\_\_  
Date

**Exhibit A  
Scope of Work**

**Project Purpose**

The project involves laboratory testing to determine the presence of cadmium, lead, chlordane and pentachlorophenol in samples of yard debris compost. This project also includes an interpretation of test results.

This testing program is part of Metro's Earth-Wise Compost Marketing Program.

It is estimated that approximately a total of 40 samples will be tested during this two-year contract, two samples from each of 10 processors of yard debris compost each year. The actual number may be more or less than 40 samples.

**Specific Work to be Accomplished**

This is a two-year contract. Contractor will perform all of the tasks below during FY 1995-96 (July 1, 1995 through June 30, 1997) and again in FY 1996-97 (July 1, 1996 through June 30, 1997).

1. Compost samples will be collected from each processor and delivered to Contractor by AGRA Earth and Environmental, who is on contract to Metro. Each sample will be approximately one quart. The first set of samples will be delivered in September 1995 for FY 1995-96 and September 1996 for FY 1996-97.
2. A number of additional samples, not to exceed 10, may be collected during the contract year for tests to be performed on an "as-needed" basis.
3. Contractor will conduct indicated testing within one week of receipt of Metro sample.
4. Contractor will analyze each sample by gas chromatography/electron capture (GC/EC) or other appropriate means to determine the presence of the following chemicals for the following costs:

Test	To determine the presence of:	Cost per sample through Dec. 31, 1995	Cost per sample beginning Jan. 1, 1996	Detection Limit
Pesticide	chlordane	\$85.00	\$100.00	0.001 ppm
Pesticide	pentachlorophenol	\$95.00	\$110.00	0.001 ppm
Metals	cadmium	\$23.00	\$25.00	0.06 ppm
Metals	lead	\$23.00	\$25.00	1.0 ppm
<b>Cost per sample (for all tests):</b>		<b>\$226.00</b>	<b>\$260.00</b>	

5. If a significant level of any compound is found, Contractor will discuss the results with Metro and provide interpretation.
6. Contractor shall submit a synopsis of test results within fifteen working days of receiving compost samples. For each material tested, the synopsis shall include detection limits and methodology. Contractor shall send a copy of test results to Metro's designated contractor and a duplicate copy to Metro. The first and second sets of test results are due as shown on the timeline below.
7. Upon request, Contractor shall provide any technical background information necessary to verify the methods used and accuracy of the tests conducted.
8. All products resulting from this Agreement, including test results and analyses, shall be held confidentially by Contractor, and shall be disclosed only to Metro and Metro's designated contractor.

**Changes to Form Contract**

1. The product liability coverage requirement is deleted from paragraph 4.a. (1) of the contract.

**Timeline**

<b>Task</b>	<b>Due Date</b>
Receive set one of samples. Begin tests.	For FY 1995-96: September 1995 For FY 1996-97: September 1996
Test results due to Metro, duplicate copy to AGRA Earth and Environmental	For FY 1995-96: November 1, 1995 For FY 1996-97: November 1, 1996
Receive second set of samples. Begin tests.	For FY 1995-96: May 15, 1996 For FY 1996-97: May 15, 1997
Test results due to Metro, duplicate copy to AGRA Earth and Environmental.	For FY 1995-96: June 7, 1996 For FY 1996-97: June 7, 1997

**Terms of Payment**

1. After completing each test and conveying the results to Metro, Antech Analysis/Technology will invoice Metro according to the unit costs set forth above.
2. The cost for any additional testing performed will be negotiated in good faith between Metro and Contractor.

3. The maximum compensation which Metro shall be obligated to pay Contractor for services performed pursuant to this Agreement shall be \$11,000.00. This maximum sum shall include all fees, costs and expenses of whatever nature. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Send invoices to Metro, Attention Solid Waste Department. Metro shall pay Contractor within 30 days of receipt of an approved invoice.

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In exchange for the promises and other consideration set forth below, the parties agree as follows:

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3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed TWENTY THOUSAND TWO HUNDRED DOLLARS (\$20,200.00).
4. Insurance.
  - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
    - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
    - (2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

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8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or



Exhibit A  
**SCOPE OF WORK**

**PROJECT:** Collect compost samples, perform field maturity tests and keep records

**SUMMARY:** Contractor will collect samples twice yearly from certain processors of yard debris compost in Multnomah, Washington and Clackamas counties. Compost maturity will be determined via field assessment of designated parameters. Once compost maturity is determined, the sample will be sent to designated labs for testing. The labs will test the compost for the parameters listed in the Appendix and send test results to Contractor. Contractor will compare test results for both yearly samples to pre-established standards provided by Metro and forward results to Metro.

It is estimated that approximately 10 processors will participate in the program each year, a total of approximately 20 processors during this two-year contract.

At the end of each fiscal year, or about July 1, upon receiving a summary of test results from Contractor, Metro will issue a designation of Earth-Wise for that year (FY1995-96 or FY1996-97) to processors whose compost samples meet or exceed standards. The goal of the project is to increase market demand for yard debris compost and provide greater assurance that compost will not cause harm to human or environmental health.

**CONTRACTOR:** AGRA Earth and Environmental Inc.

**CONTRACT TERM:** This is a two-year contract. Term will begin on the last signature date on the contract and continue through June 30, 1997.

**Contractor's Responsibilities**

This is a two-year contract. Contractor will perform all of the tasks below during FY1995-96 and again during FY1996-97.

**Task 1: Collect first set of samples**

Within ten working days after this contract becomes effective, Contractor will develop a procedure for sampling to be approved by Metro. According to the timeline listed in Task 9: (1) Metro will provide to Contractor a list of processors who will participate in the Earth-Wise Compost program for that year and (2) Contractor will contact processors on the list provided by Metro to arrange to collect a 1-quart sample from each, using dedicated sampling equipment, supplied by Contractor and the Metro-approved sampling procedure. Contractor will verify appropriate types of sampling containers with Metro's designated labs, listed in the Appendix. Contractor will maintain records of sampling procedure, color of compost, odor, company name and contact person, weather, and feedstock for each sample on a standardized form.

## **Task 2: Maturity Assessment**

Contractor will perform assessment of compost maturity in the field for all samples using parameters provided by Metro. In order to reduce subjectivity of field assessment parameters (smell, color), Contractor will designate two staff people to perform these behaviors for *all* samples. The final number will be an average of the assessment made by the two staff people.

## **Task 3: Divide, package, label and send samples to labs**

Three labs, under contract to Metro, will test all of the samples. (Labs are listed in the Appendix.) Contractor will divide samples, package and send portions using laboratories' instructions for transport within 24 hours of sampling. Contractor will use a legal chain of custody to ensure the sample gets from processor to Contractor's offices to labs and a standardized label to affix to each sample to prevent mis-identification.

## **Task 4: Database**

According to the timeline listed under Task 9, Contractor will provide to Metro a database of test results for lab tests for samples collected to date. Contractor must allow the labs at least 15 working days to complete testing of the samples. Contractor will supply the database on diskette and hard copy and integrate all individual test results received from the labs in an easy-to-read format. Contractor will also provide copies of the completed sampling forms.

## **Task 5: Second Set of Samples**

According to the timeline listed under Task 9, Contractor will collect a second set of samples from the same processors as identified in Task 1. The test results from these samples are due to Metro according to the timeline in Task 9. Contractor must allow the labs at least 15 working days to complete testing of the samples. Contractor will use the same process for sampling, maturity assessment and shipment to labs as described in for the first set of samples in steps 1 through 3 above.

## **Task 6: Update Database and Review**

After receiving results back from the labs for both sets of samples, Contractor will evaluate lab test results against pre-established standards (standards are located in the Appendix). Contractor will forward to Metro by the dates listed in the timeline a database of *only* those results where *both* samples meet or exceed minimum standards. The database will be provided on diskette and hard copy. Contractor will also provide copies of the completed sampling forms for the second set of samples.

Those samples *not* meeting standards shall be maintained by Contractor and not forwarded to Metro on a regular basis, unless specifically requested in writing. Metro will be responsible for forwarding test results to the processors.

potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

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

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly

incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be modified in a writing signed by both parties.

AGRA EARTH AND ENVIRONMENTAL INC.      METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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### **Task 7: Additional Samples**

Metro may request that additional samples be collected and/or additional respirometry tests be performed. Contractor will perform these tasks on a timeline mutually agreed upon by Contractor and Metro and at the same unit costs as designated under "Budget" in this contract.

### **Task 8: Record Keeping, General Information**

Contractor will respond to requests from Metro to collect samples and for general information. Contractor will maintain and have available for Metro review a bound sample log book of all information regarding this program.

### **Task 9: Final Report**

Proposer will write a brief summary and evaluation of the project that includes the following topics and submit it to Metro no later than June 30, 1996 for FY1995-96 and June 30, 1996 for FY1996-97. The log book will be included with the final report.

- Sampling procedure
- Field assessment of compost maturity
- Respirometry tests
- Database
- Packaging and sending samples to labs
- Working with labs
- Logistical problems and suggested solutions
- Suggestions for subsequent Earth-Wise Compost programs
- Other, as suggested by Contractor

#### **Timeline**

<b>Task</b>	<b>Due Date</b>
AGRA provides sampling procedure for approval	Within 10 days of last signature on contract
Metro provides to AGRA a list of companies who will participate in program	For FY1995-96: Oct 15, 1995 For FY1996-97: Oct 15, 1996
AGRA collects first set of samples; conducts field assessment of maturity; divides, packages, labels and send samples to labs	For FY1995-96: Oct 15-30, 1995 For FY1996-97: Oct 15-30, 1996
Labs provide test results to AGRA, duplicate copy to Metro	For FY1995-96: Dec 15, 1995 For FY1996-97: Dec 15, 1996
Database of test results due to Metro for first set of samples	For FY1995-96: Dec 29, 1995 For FY1996-97: Dec 29, 1996
AGRA collect second set of samples; conducts field assessment of maturity; divides, packages, labels and send samples to labs	For FY1995-96: Between May 1 & 8, 1996 For FY1996-97: Between May 1 & 8, 1997
Labs provide test results to AGRA, duplicate copies to Metro	For FY1995-96: June 7, 1996 For FY1996-97: June 7, 1997
Database of test results due to Metro for second set of samples	For FY1995-96: June 15, 1996 For FY1996-97: June 15, 1997

## Schedule for Reports

Report	Due Date
AGRA provides procedure for sampling to Metro for approval.	For FY1995-96: Within ten working days of the effective date of this contract
AGRA provides database of test results from the first set of samples for lab tests and completed sampling forms to Metro.	For FY1995-96: Dec 29, 1995 For FY1996-97: Dec 29, 1996
AGRA provides to Metro the database of test results for second set of samples from lab tests, comparison of test results to standards and completed sampling forms.	For FY1995-96: June 15, 1996 For FY1996-97: June 15, 1997
AGRA provides to Metro the final report and log book to Metro.	For FY1995-96: June 30, 1996 For FY1996-97: June 30, 1997

### This contract does **not** include the following tasks:

- Determine which compost processors will have their compost product sampled
- Maintain contact with yard debris processors beyond initial contact for sampling
- Establish lab testing procedures
- Pay for lab testing procedures
- Establish standards for comparison to lab test results
- Forward test results to compost processors

## BUDGET

Total contract payments will not exceed TWENTY THOUSAND TWO HUNDRED DOLLARS AND NO/100s (\$20,200.00).

Unit cost for all aspects of collection of one sample is \$508.00 per sample, including:

- Travel time to compost sites
- On-site sampling and characterization
- Field tests to determine maturity
- All handling and care of samples including sample division, packaging and shipping to labs
- Log book preparation
- Review and report writing and responding to requests for information

The value of log book preparation and report writing is \$247.00 per sample, and this portion of the per sample unit cost is payable only after: 1) with respect to the test results due on November 15 of 1995 and 1996, upon Metro's receipt of copies of Contractor's log books reflecting all appropriate activities; and 2) with respect to the test results due on June 15 of 1996 and 1997, upon Metro's receipt of the Final Report described above and Contractor's log books reflecting all appropriate activities.

## **TERMS OF PAYMENT**

Metro shall pay Contractor for services performed and materials delivered in the maximum sum of TWENTY THOUSAND TWO HUNDRED DOLLARS (\$20,200.00). This maximum sum includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period, except as noted above regarding a portion of the per sample unit cost. Contractor's billing statements will include an itemized statement of the work done and expenses incurred during the billing period, will not be submitted more frequently than once a month, and will be sent to Metro, Attention Solid Waste Department. Metro will pay Contractor within 30 days of receipt of an approved invoice.

1. Payment for invoiced Expenses is dependent upon Metro review and acceptance of the reports. All costs incurred by the Contractor shall be included in and not exceed \$20,200.00.
2. Metro shall process invoices for payment within thirty days of receipt.

Appendix A  
**SUMMARY OF LABS TESTING COMPOST SAMPLES  
 FOR METRO'S EARTH-WISE COMPOST PROGRAM**

Tests	Lab and location	Contact Name and Phone
<ul style="list-style-type: none"> <li>- Plant Nutrients</li> <li>- pH</li> <li>- Soluble salts</li> </ul>	OSU Central Analytical Lab Soil Testing 3179 AgLife Science Bldg. Corvallis, OR 97331	Dean Hanson Extension Soils Specialist (503)737-2187
<ul style="list-style-type: none"> <li>- Effect of compost material on indicator seed (toxicity test)</li> <li>- Foreign Materials</li> <li>- Seed Germination</li> </ul>	OSU Seed Lab Corvallis, OR 97331	Roger Danielson (503)737-4464
<ul style="list-style-type: none"> <li>- Presence of pentachlorophenol and/or chlordane</li> <li>- Presence of cadmium and/or lead</li> </ul>	ANTECH Analysis/Technology Lab 501 NE Thompson Mill Rd. Corbett, OR 97019	Diana Tracy President (503)695-2135

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BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN )	RESOLUTION NO. 95-2179
EXEMPTION FROM COMPETITIVE BIDDING )	
AND AUTHORIZING SOLE-SOURCE AND )	Introduced by Mike Burton
MULTI-YEAR CONTRACTS TO AGRA EARTH )	Executive Officer
AND ENVIRONMENTAL, AND ANTECH )	
ANALYSIS TECHNOLOGY FOR SAMPLING )	
AND TESTING OF YARD DEBRIS COMPOST )	

WHEREAS, Metro Resolution No. 91-1889 adopted the Earth-Wise Compost standards and designation program; and

WHEREAS, The purpose of the Earth-Wise Compost program is to provide greater assurance that compost will cause no harm to human health and the environment, and to increase the demand for locally-produced yard debris compost; and

WHEREAS, Consistency in sampling and testing procedures over time is critical to achieving comparable and credible results, and AGRA Earth and Environmental, and Antech Analysis Technology are the current contractors; and

WHEREAS, Antech Analysis Technology is the only laboratory in the Metro area that tests for heavy metals and pesticides; and

WHEREAS, The use of sole-source and multi-year contracts will result in cost savings to Metro; and

WHEREAS, Metro Code Sections 2.04.060 and 2.04.033 require that the Metro Contract Review Board approve sole-source contracts and multi-year contracts; and

WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED, That the Metro Contract Review Board hereby

1. Grants an exemption from the competitive bidding requirements; and

2. Authorizes the Executive Officer to enter into sole-source, multi-year contracts with AGRA Earth and Environmental, and Antech Analysis Technology under the terms and conditions specified in Exhibit A attached to this resolution.

ADOPTED by the Metro Contract Review Board this \_\_\_\_ day of \_\_\_\_\_, 1995.

---

J. Ruth McFarland, Presiding Officer

Approved as to Form:

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Daniel B. Cooper, General Counsel

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**SOLID WASTE COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. 95-2179, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS TO AGRA EARTH AND ENVIRONMENTAL, AND ANTECH ANALYSIS TECHNOLOGY FOR SAMPLING AND TESTING OF YARD DEBRIS COMPOST

-----

Date: July 19, 1995

Presented by: Councilor McLain

**Committee Recommendation:** At the July 18 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 95-2179. Voting in favor: Councilors Kvistad, McFarland and McLain.

**Committee Issues/Discussion:** Debbie Gorham, Waste Reduction and Planning Services Manager, and Lauren Ettlin, Associate Solid Waste Planner, presented the staff report. Ettlin explained that the purpose of the resolution was to enter into sole-source multi-year contracts with two companies for the sampling and collection of yard debris for testing and the actual testing of the samples. AGRA Earth and Environmental would be responsible for sample collection and Antech Analysis Technology would do the testing.

Ettlin commented that yard debris compost must be free of contaminants such as heavy metals and seeds in order to be effectively marketed. Ettlin noted that Metro has been involved in the testing of yard debris since 1988 to help insure end users that the products being produced within the region were acceptable.

The testing program became part of Metro's Earthwise Compost Program last year. Processors who successfully participate in the testing program may use the designation "earthwise compost" in marketing their products. Currently, nine of the eighteen yard debris compost processors in the region are participating in the program. Each processor pays \$1,000 to help defray the cost of the program, estimated to be \$22,100 for FY 95-96.

Councilor McFarland noted that a sole-source contract was being requested and asked if there are other competitors that also perform this type of work. Ettlin noted that when the sampling and collection work was originally bid out, AGRA was the only bidder. She indicated that other firms declined to bid because of the small amount of work involved. She also noted that Antech was the only firm that performed this type of testing in the Portland area. Antech has been used by Metro to perform yard debris testing since 1988:

Councilor McLain commented that, while she supported the use of a sole-source contract at this time, she wanted the record to show that she would favor a competitive process when the contracts proposed in the resolution expire.

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 95-2179 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS TO AGRA EARTH AND ENVIRONMENTAL, AND ANTECH ANALYSIS FOR SAMPLING AND TESTING OF YARD DEBRIS COMPOST

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Date: July 18, 1995

Presented by: Mike Burton,  
Lauren Ettlin

### PROPOSED ACTION

Adopt Resolution No. 95-2179 to authorize entering into sole source and multi-year contracts for sampling and testing of yard debris compost as part of Metro's Earth-Wise Compost Program. The proposed contracts are attached as Exhibit A.

### FACTUAL BACKGROUND AND ANALYSIS

In January 1994, the Metro Council adopted Resolution No. 91-1889 which designated product standards for yard debris compost. Following adoption of this resolution, Metro developed a voluntary Earth-Wise Compost designation program. Through this program yard debris processors may apply to have their compost tested twice a year for pH level, heavy metals, pesticide residue, plant nutrients, foreign materials, salts and viable seeds. In 1995, nine yard debris processors had their products tested. Those who meet the standards will receive a certificate and be entitled to use the Earth-Wise Compost logo in their advertising.

In order to implement this program, Metro contracts with a company to collect samples from the participating processors, and with various laboratories to test the samples. Samples of compost are collected twice during a 12-month period and 13 tests are performed on each sample. Agra Earth and Environmental was selected as the contractor for collecting samples and conducting maturity tests on finished compost; Antech Analysis Technology is the laboratory that tests for heavy metals and pesticide residue. Both companies are currently under contract to Metro and have performed their tasks satisfactorily during the first year of the Earth-Wise Compost program.

### JUSTIFICATION FOR AUTHORIZING SOLE-SOURCE AND MULTI-YEAR CONTRACTS FOR SAMPLING AND TESTING OF COMPOST

1. It is critical to have consistency in sampling and testing techniques from year to year for comparable results, and to maintain the credibility of the Earth-Wise Compost program. Agra Earth and Environmental and Antech Analysis Technology can provide that consistency.

2. The integrity of the program is dependent on sampling and testing being performed by reputable firms. AGRA Earth and Environmental and Antech Analysis Technology are reputable firms who have performed successfully and are willing to continue their services within the limited budget.
3. Antech Analysis Technology is the only laboratory in the Metro region that tests for heavy metals and pesticides. They have worked with Metro since 1988 on testing yard debris compost. AGRA Earth and Environmental is the only company that responded to the original Request for Proposal for the sampling and respirometry work. This has been attributed to the small amount of funds available and to the specialized nature of the work.
4. Metro can realize cost savings in staff time by eliminating the writing and evaluation of Requests for Proposals for services already successfully provided by AGRA and Antech. The two-year contracts will also ensure that expenditures remain at current levels.
5. By authorizing a multi-year contract with AGRA and Antech, Metro can provide the consistency needed for this new program so that test results from the first three years of the Earth-Wise Compost program are comparable and consistent.

#### BUDGET IMPACT

The FY 1995-96 Solid Waste budget has appropriated \$22,500 for sampling and testing for the Earth-Wise Compost Program. These two contracts will spend \$15,600 of that appropriation. By approving the multi-year contracts, the Council will encumber an additional \$15,600 in the FY 1996-97 budget.

#### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 95-2179.

Exhibit A  
**PERSONAL SERVICES AGREEMENT**

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232, and ANTECH ANALYSIS TECHNOLOGY, referred to herein as "Contractor," located at 501 NE Thompson Mill Road, Corbett, OR 97019. In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective on the last signature date below and shall remain in effect until and including June 30, 1997, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed ELEVEN THOUSAND DOLLARS AND NO/100ths (\$11,000.00).
4. Insurance.
  - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
    - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
    - (2) Automobile bodily injury and property damage liability insurance.
  - b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

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

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.



16. Modification. Notwithstanding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be modified in a writing signed by both parties.

ANTECH ANALYSIS TECHNOLOGY

METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Print name and title

\_\_\_\_\_  
Date  
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\_\_\_\_\_  
Date

**Exhibit A  
Scope of Work**

Project Purpose

The project involves laboratory testing to determine the presence of cadmium, lead, chlordane and pentachlorophenol in samples of yard debris compost. This project also includes an interpretation of test results.

This testing program is part of Metro's Earth-Wise Compost Marketing Program.

It is estimated that approximately a total of 40 samples will be tested during this two-year contract, two samples from each of 10 processors of yard debris compost each year. The actual number may be more or less than 40 samples.

Specific Work to be Accomplished

This is a two-year contract. Contractor will perform all of the tasks below during FY 1995-96 (July 1, 1995 through June 30, 1997) and again in FY 1996-97 (July 1, 1996 through June 30, 1997).

1. Compost samples will be collected from each processor and delivered to Contractor by AGRA Earth and Environmental, who is on contract to Metro. Each sample will be approximately one quart. The first set of samples will be delivered in September 1995 for FY 1995-96 and September 1996 for FY 1996-97.
2. A number of additional samples, not to exceed 10, may be collected during the contract year for tests to be performed on an "as-needed" basis.
3. Contractor will conduct indicated testing within one week of receipt of Metro sample.
4. Contractor will analyze each sample by gas chromatography/electron capture (GC/EC) or other appropriate means to determine the presence of the following chemicals for the following costs:

Test	To determine the presence of:	Cost per sample through Dec. 31, 1995	Cost per sample beginning Jan. 1, 1996	Detection Limit
Pesticide	chlordane	\$85.00	\$100.00	0.001 ppm
Pesticide	pentachlorophenol	\$95.00	\$110.00	0.001 ppm
Metals	cadmium	\$23.00	\$25.00	0.06 ppm
Metals	lead	\$23.00	\$25.00	1.0 ppm
<b>Cost per sample (for all tests):</b>		<b>\$226.00</b>	<b>\$260.00</b>	

5. If a significant level of any compound is found, Contractor will discuss the results with Metro and provide interpretation.
6. Contractor shall submit a synopsis of test results within fifteen working days of receiving compost samples. For each material tested, the synopsis shall include detection limits and methodology. Contractor shall send a copy of test results to Metro's designated contractor and a duplicate copy to Metro. The first and second sets of test results are due as shown on the timeline below.
7. Upon request, Contractor shall provide any technical background information necessary to verify the methods used and accuracy of the tests conducted.
8. All products resulting from this Agreement, including test results and analyses, shall be held confidentially by Contractor, and shall be disclosed only to Metro and Metro's designated contractor.

**Changes to Form Contract**

1. The product liability coverage requirement is deleted from paragraph 4.a. (1) of the contract.

**Timeline**

<b>Task</b>	<b>Due Date</b>
Receive set one of samples. Begin tests.	For FY 1995-96: September 1995 For FY 1996-97: September 1996
Test results due to Metro, duplicate copy to AGRA Earth and Environmental	For FY 1995-96: November 1, 1995 For FY 1996-97: November 1, 1996
Receive second set of samples. Begin tests.	For FY 1995-96: May 15, 1996 For FY 1996-97: May 15, 1997
Test results due to Metro, duplicate copy to AGRA Earth and Environmental.	For FY 1995-96: June 7, 1996 For FY 1996-97: June 7, 1997

**Terms of Payment**

1. After completing each test and conveying the results to Metro, Antech Analysis/Technology will invoice Metro according to the unit costs set forth above.
2. The cost for any additional testing performed will be negotiated in good faith between Metro and Contractor.

3. The maximum compensation which Metro shall be obligated to pay Contractor for services performed pursuant to this Agreement shall be \$11,000.00. This maximum sum shall include all fees, costs and expenses of whatever nature. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Send invoices to Metro, Attention Solid Waste Department. Metro shall pay Contractor within 30 days of receipt of an approved invoice.

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## Exhibit A

Metro Contract No. 904396

### PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232, and AGRA Earth and Environmental Inc., referred to herein as "Contractor," located at 7477 SW Tech Drive Portland, OR 97223-8025.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective on the last signature date below and shall remain in effect until and including June 30, 1997, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed TWENTY THOUSAND TWO HUNDRED DOLLARS (\$20,200.00).
4. Insurance.
  - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
    - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
    - (2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or

Exhibit A  
**SCOPE OF WORK**

**PROJECT:** Collect compost samples, perform field maturity tests and keep records

**SUMMARY:** Contractor will collect samples twice yearly from certain processors of yard debris compost in Multnomah, Washington and Clackamas counties. Compost maturity will be determined via field assessment of designated parameters. Once compost maturity is determined, the sample will be sent to designated labs for testing. The labs will test the compost for the parameters listed in the Appendix and send test results to Contractor. Contractor will compare test results for both yearly samples to pre-established standards provided by Metro and forward results to Metro.

It is estimated that approximately 10 processors will participate in the program each year, a total of approximately 20 processors during this two-year contract.

At the end of each fiscal year, or about July 1, upon receiving a summary of test results from Contractor, Metro will issue a designation of Earth-Wise for that year (FY1995-96 or FY1996-97) to processors whose compost samples meet or exceed standards. The goal of the project is to increase market demand for yard debris compost and provide greater assurance that compost will not cause harm to human or environmental health.

**CONTRACTOR:** AGRA Earth and Environmental Inc.

**CONTRACT TERM:** This is a two-year contract. Term will begin on the last signature date on the contract and continue through June 30, 1997.

**Contractor's Responsibilities**

This is a two-year contract. Contractor will perform all of the tasks below during FY1995-96 and again during FY1996-97.

**Task 1: Collect first set of samples**

Within ten working days after this contract becomes effective, Contractor will develop a procedure for sampling to be approved by Metro. According to the timeline listed in Task 9: (1) Metro will provide to Contractor a list of processors who will participate in the Earth-Wise Compost program for that year and (2) Contractor will contact processors on the list provided by Metro to arrange to collect a 1-quart sample from each, using dedicated sampling equipment, supplied by Contractor and the Metro-approved sampling procedure. Contractor will verify appropriate types of sampling containers with Metro's designated labs, listed in the Appendix. Contractor will maintain records of sampling procedure, color of compost, odor, company name and contact person, weather, and feedstock for each sample on a standardized form.

## **Task 2: Maturity Assessment**

Contractor will perform assessment of compost maturity in the field for all samples using parameters provided by Metro. In order to reduce subjectivity of field assessment parameters (smell, color), Contractor will designate two staff people to perform these behaviors for *all* samples. The final number will be an average of the assessment made by the two staff people.

## **Task 3: Divide, package, label and send samples to labs**

Three labs, under contract to Metro, will test all of the samples. (Labs are listed in the Appendix.) Contractor will divide samples, package and send portions using laboratories' instructions for transport within 24 hours of sampling. Contractor will use a legal chain of custody to ensure the sample gets from processor to Contractor's offices to labs and a standardized label to affix to each sample to prevent mis-identification.

## **Task 4: Database**

According to the timeline listed under Task 9, Contractor will provide to Metro a database of test results for lab tests for samples collected to date. Contractor must allow the labs at least 15 working days to complete testing of the samples. Contractor will supply the database on diskette and hard copy and integrate all individual test results received from the labs in an easy-to-read format. Contractor will also provide copies of the completed sampling forms.

## **Task 5: Second Set of Samples**

According to the timeline listed under Task 9, Contractor will collect a second set of samples from the same processors as identified in Task 1. The test results from these samples are due to Metro according to the timeline in Task 9. Contractor must allow the labs at least 15 working days to complete testing of the samples. Contractor will use the same process for sampling, maturity assessment and shipment to labs as described in for the first set of samples in steps 1 through 3 above.

## **Task 6: Update Database and Review**

After receiving results back from the labs for both sets of samples, Contractor will evaluate lab test results against pre-established standards (standards are located in the Appendix). Contractor will forward to Metro by the dates listed in the timeline a database of *only* those results where *both* samples meet or exceed minimum standards. The database will be provided on diskette and hard copy. Contractor will also provide copies of the completed sampling forms for the second set of samples.

Those samples *not* meeting standards shall be maintained by Contractor and not forwarded to Metro on a regular basis, unless specifically requested in writing. Metro will be responsible for forwarding test results to the processors.



potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

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

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly

incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be modified in a writing signed by both parties.

AGRA EARTH AND ENVIRONMENTAL INC.      METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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Print name and title

\_\_\_\_\_  
Print name and title

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Date

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Date

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**Task 7: Additional Samples**

Metro may request that additional samples be collected and/or additional respirometry tests be performed. Contractor will perform these tasks on a timeline mutually agreed upon by Contractor and Metro and at the same unit costs as designated under "Budget" in this contract.

**Task 8: Record Keeping, General Information**

Contractor will respond to requests from Metro to collect samples and for general information. Contractor will maintain and have available for Metro review a bound sample log book of all information regarding this program.

**Task 9: Final Report**

Proposer will write a brief summary and evaluation of the project that includes the following topics and submit it to Metro no later than June 30, 1996 for FY1995-96 and June 30, 1996 for FY1996-97. The log book will be included with the final report.

- Sampling procedure
- Field assessment of compost maturity
- Respirometry tests
- Database
- Packaging and sending samples to labs
- Working with labs
- Logistical problems and suggested solutions
- Suggestions for subsequent Earth-Wise Compost programs
- Other, as suggested by Contractor

**Timeline**

<b>Task</b>	<b>Due Date</b>
AGRA provides sampling procedure for approval	Within 10 days of last signature on contract
Metro provides to AGRA a list of companies who will participate in program	For FY1995-96: Oct 15, 1995 For FY1996-97: Oct 15, 1996
AGRA collects first set of samples; conducts field assessment of maturity; divides, packages, labels and send samples to labs	For FY1995-96: Oct 15-30, 1995 For FY1996-97: Oct 15-30, 1996
Labs provide test results to AGRA, duplicate copy to Metro	For FY1995-96: Dec 15, 1995 For FY1996-97: Dec 15, 1996
Database of test results due to Metro for first set of samples	For FY1995-96: Dec 29, 1995 For FY1996-97: Dec 29, 1996
AGRA collect second set of samples; conducts field assessment of maturity; divides, packages, labels and send samples to labs	For FY1995-96: Between May 1 & 8, 1996. For FY1996-97: Between May 1 & 8, 1997
Labs provide test results to AGRA, duplicate copies to Metro	For FY1995-96: June 7, 1996 For FY1996-97: June 7, 1997
Database of test results due to Metro for second set of samples	For FY1995-96: June 15, 1996 For FY1996-97: June 15, 1997

## Schedule for Reports

Report	Due Date
AGRA provides procedure for sampling to Metro for approval.	For FY1995-96: Within ten working days of the effective date of this contract
AGRA provides database of test results from the first set of samples for lab tests and completed sampling forms to Metro.	For FY1995-96: Dec 29, 1995 For FY1996-97: Dec 29, 1996
AGRA provides to Metro the database of test results for second set of samples from lab tests, comparison of test results to standards and completed sampling forms.	For FY1995-96: June 15, 1996 For FY1996-97: June 15, 1997
AGRA provides to Metro the final report and log book to Metro.	For FY1995-96: June 30, 1996 For FY1996-97: June 30, 1997

This contract does **not** include the following tasks:

- Determine which compost processors will have their compost product sampled
- Maintain contact with yard debris processors beyond initial contact for sampling
- Establish lab testing procedures
- Pay for lab testing procedures
- Establish standards for comparison to lab test results
- Forward test results to compost processors

## BUDGET

Total contract payments will not exceed TWENTY THOUSAND TWO HUNDRED DOLLARS AND NO/100s (\$20,200.00).

Unit cost for all aspects of collection of one sample is \$508.00 per sample, including:

- Travel time to compost sites
- On-site sampling and characterization
- Field tests to determine maturity
- All handling and care of samples including sample division, packaging and shipping to labs
- Log book preparation
- Review and report writing and responding to requests for information

The value of log book preparation and report writing is \$247.00 per sample, and this portion of the per sample unit cost is payable only after: 1) with respect to the test results due on November 15 of 1995 and 1996, upon Metro's receipt of copies of Contractor's log books reflecting all appropriate activities; and 2) with respect to the test results due on June 15 of 1996 and 1997, upon Metro's receipt of the Final Report described above and Contractor's log books reflecting all appropriate activities.

## **TERMS OF PAYMENT**

Metro shall pay Contractor for services performed and materials delivered in the maximum sum of TWENTY THOUSAND TWO HUNDRED DOLLARS (\$20,200.00). This maximum sum includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period, except as noted above regarding a portion of the per sample unit cost. Contractor's billing statements will include an itemized statement of the work done and expenses incurred during the billing period, will not be submitted more frequently than once a month, and will be sent to Metro, Attention Solid Waste Department. Metro will pay Contractor within 30 days of receipt of an approved invoice.

1. Payment for invoiced Expenses is dependent upon Metro review and acceptance of the reports. All costs incurred by the Contractor shall be included in and not exceed \$10,000.00.
2. Metro shall process invoices for payment within thirty days of receipt.

Appendix A  
**SUMMARY OF LABS TESTING COMPOST SAMPLES  
 FOR METRO'S EARTH-WISE COMPOST PROGRAM**

Tests	Lab and location	Contact Name and Phone
<ul style="list-style-type: none"> <li>- Plant Nutrients</li> <li>- pH</li> <li>- Soluble salts</li> </ul>	OSU Central Analytical Lab Soil Testing 3179 AgLife Science Bldg. Corvallis, OR 97331	Dean Hanson Extension Soils Specialist (503)737-2187
<ul style="list-style-type: none"> <li>- Effect of compost material on indicator seed (toxicity test)</li> <li>- Foreign Materials</li> <li>- Seed Germination</li> </ul>	OSU Seed Lab Corvallis, OR 97331	Roger Danielson (503)737-4464
<ul style="list-style-type: none"> <li>- Presence of pentachlorophenol and/or chlordane</li> <li>- Presence of cadmium and/or lead</li> </ul>	ANTECH Analysis/Technology Lab 501 NE Thompson Mill Rd. Corbett, OR 97019	Diana Tracy President (503)695-2135

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