

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING AN	)	RESOLUTION NO. 96-2319
EXEMPTION FROM COMPETITIVE BIDDING AND	)	
AWARDING MULTI-YEAR PUBLIC CONTRACTS,	)	
SOLICITED THROUGH A REQUEST-FOR-PROPOSAL	)	INTRODUCED BY MIKE BURTON
PROCESS, FOR RECYCLING BUSINESS	)	EXECUTIVE OFFICER
DEVELOPMENT GRANTS.	)	

WHEREAS, The long-term success of Metro's recycling efforts depends on vital markets for secondary materials; and

WHEREAS, Metro has budgeted \$75,000 in FY 1995-'96 for the Recycling Business Development Grant Program to promote market development for recyclables; and

WHEREAS, A technical evaluation committee including experts in the areas of business management, marketing, finance, production management, recycling, and public policy, evaluated five grant applications using the criteria established in the Solicitation for Applications (RFP #95R-36-REM); and

WHEREAS, The evaluation committee selected Re-Use-It, Inc., NW EEE ZZZ Lay Drain Co., and RB Rubber as the best applicants; and

WHEREAS, Metro must monitor distribution of grant monies and performance of grant recipients over an adequate amount of time to ensure prudent use of grant funds; and

WHEREAS, The grant proposals selected for funding are for equipment and/or plant upgrades that require a public contract, and the Metro Code requires such contracts be subject to competitive bidding unless an exemption is obtained from the Metro Contract Review Board; and

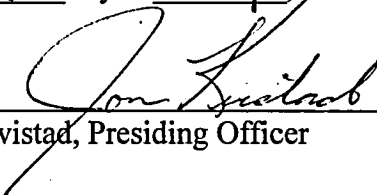
WHEREAS, Metro Code Section 2.04.041(c) authorizes, where appropriate, the use of alternative contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods which are consistent with the public policy of encouraging competition; and

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

BE IT RESOLVED,

1. That the Metro Contract Review Board hereby exempts the recycling business development grant contracts from the competitive bidding requirements.
2. That the Metro Council authorizes the Executive Officer to enter into multi-year public contracts with Re-Use-It, Inc., NW EEE ZZZ Lay Drain Co., and RB Rubber under the terms and conditions specified in Exhibits A1, A2, and A3 attached to this resolution.

ADOPTED by the Metro Council this 16<sup>th</sup> day of May, 1996.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

**PUBLIC CONTRACT**

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232, and Northwest EEE ZZZ Lay Drain., whose address is 931 NE Harlow Place, Troutdale, OR 97060, hereinafter referred to as the "CONTRACTOR."

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

**ARTICLE I  
SCOPE OF WORK**

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in Attachment A, the Scope of Work, which is incorporated herein by this reference. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

**ARTICLE II  
TERM OF CONTRACT**

The term of this Contract shall be for the period commencing March 1, 1996, through and including June 30, 1997.

**ARTICLE III  
CONTRACT SUM AND TERMS OF PAYMENT**

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

**ARTICLE IV  
LIABILITY AND INDEMNITY**

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, 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 Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

## ARTICLE V TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect or consequential damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

## ARTICLE VI INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR's expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability. The policy must be endorsed with contractual liability coverage.

B. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

## ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

## ARTICLE VIII ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

**ARTICLE IX  
QUALITY OF GOODS AND SERVICES**

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades.

CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

**ARTICLE X  
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 hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction and the copyright to all such documents.

**ARTICLE XI  
SUBCONTRACTORS**

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

**ARTICLE XII  
RIGHT TO WITHHOLD PAYMENTS**

METRO shall have the right to withhold from payments due 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.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

**ARTICLE XIII  
SAFETY**

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

**ARTICLE XIV  
INTEGRATION OF CONTRACT DOCUMENTS**

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, Request for Bids or Proposals, General and Special Instructions to Bidders, Proposal, Bid, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

**ARTICLE XV  
ASSIGNMENT**

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

NORTHWEST EEE ZZZ LAY DRAIN CO.

METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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Attachment A

**SCOPE OF WORK**

**1. Background**

**A. Grant Program**

Increased waste recovery and recycling depend upon retaining and expanding processing and manufacturing capacity for recovered materials. Expanding capacity through development of new businesses and products requires capital. Obtaining capital is difficult for early-stage companies. It is particularly difficult for start-up companies in the recycling industry. Banks are unfamiliar with this industry and recycling businesses depend upon not only variable demand for their products, but also variable availability and quality of their input materials. Metro can foster new recycling markets through modest yet critical financing for early stage recycling companies that are likely to become economically self-sustaining. Metro is the only source of grant funding for this purpose in the Pacific Northwest.

Metro's Recycling Business Development Grant Program is intended to nurture the development of the local recycling industry. Specifically, it is intended to provide the essential financial stimulus for the development of innovative, state-of-the art, entrepreneurial businesses that will process locally recovered waste materials into manufacturing feedstock, or use local recycled feedstock to make marketable products.

Grant funds may be used for equipment, plant upgrade, input material testing, product performance testing, and/or market investigation studies. Grant funds cannot be used for salaries, working capital, process control engineering, permit application fees, facility acquisition, or facility lease/mortgage payments. Applicants must pay at least 50 percent of the direct monetary cost to implement their projects.

At least 50 percent of the input material that grantees use for three years after initiation of their projects must be recovered waste material from the Metro area. Although operations meeting this requirement and receiving grants do not have to be located in the Metro tri-county area, preference is given to those that are.

Certain types of projects are specifically encouraged under this program. These include those which:

- Increase demand for materials which are not widely recycled
- Increase the market value of materials which are not economically attractive to recycle
- Enlist partnerships that maximize the return on Metro's investment

Applications were evaluated by a committee of outside experts in the areas of business finance, business management and marketing, economic development, engineering,

and solid waste and recycling. Metro Council Analyst John Houser also served on the Evaluation Committee.

The committee used a two-stage selection process. In the first stage, applications were scored using a rating matrix containing the following criteria:

- Financial Viability:
- Management and Marketing Strength:
- Economic Development Benefit:
- Technical Feasibility:
- Solid Waste Impact:

In the second stage, the committee conducted a series of interviews with the applicants who scored the highest in the first stage. The committee ultimately selected those applications that demonstrated, in their judgment, the best combination of innovation, strategic contribution to the Metro region's recycling system, probability of success and financial need.

## **B. Project Summary and Applicant Profile**

### **Project Summary**

Northwest EEE ZZZ Lay Drain Co. (EZ Lay) has been selected to receive a \$24,000 Metro Recycling Business Development Grant to lease a proprietary production machine for manufacturing a patented drainage system made using recovered expanded polystyrene (EPS) plastic. This low-tech production system has been used successfully since 1988 at an affiliated plant in North Carolina. Conventional funding for this production machine is not available.

### **Applicant Profile**

EZ Lay is a woman-owned, sole proprietorship established in January 1993. It is currently based in Troutdale, Oregon. It is the Northwest regional licensee of EEE ZZZ Lay Drain Co., established in 1986 and based in Pisgah Forest, North Carolina. EZ Lay's processing plant will be located adjacent to Western Insulfoam, an established manufacturer of EPS products located in The Dalles, Oregon.

## **2. Description of the Work.**

### **A. Procure, Install, and Operate Equipment**

Contractor will procure, install, and operate one recycled aggregate drainage system production machine patented and licensed by EEE ZZZ Lay Drain Company of Pisgah Forest, North Carolina.

### **B. Manufacture and Market Recycled Aggregate Subsurface Drainage Systems**

Per its Metro Recycling Business Development Grant Application, dated October 31, 1995, and using the production machine procured under this grant contract, Contractor



will manufacture and market the patented line of EEE ZZZ Lay Drain systems made with recycled EPS.

### **C. Schedule**

Contractor shall complete all work in this contract by June 30, 1997.

### **D. Project Monitoring and Reporting**

Metro staff will visit the Contractor's site periodically to monitor implementation of the Contractor's grant project. With the exception of proprietary processing and financial information, all observations and information obtained during these visits will become part of the public record.

The Contractor will prepare three progress reports for Metro. The first must be received at Metro's offices within 45 business days after installation of the equipment procured under this contract. The second must be received at Metro's offices by December 30, 1996. The third must be received by June 30, 1997. These reports shall contain the following information:

1. Total tons (or best estimate) of recycled EPS *received* each month from generators in the Metro area, from July 1, 1995, through the month preceding the report.
2. Total tons (or best estimate) of recycled EPS *received* each month from all sources, from July 1, 1995, through the month preceding the report.
3. Total tons of recycled EPS *processed* each month, from July 1, 1995, through the month preceding the report.
4. Total tons of product sold and gross revenues for each product, by month, from July 1, 1995, through the month preceding the report.
5. Total employees and total salaries and wages, by month, from July 1, 1995, through the month preceding the report.
6. Brief narrative description/journal of barriers encountered during implementation of grant project, strategies to overcome barriers, and results of implementing strategies.

### **E. Conditions**

1. A minimum of 50 percent of the post-consumer recycled material used in the Contractor's product will be from the Metro area.
2. Metro will prepare, and Contractor shall execute, any security agreement and UCC forms necessary to convey to Metro a security interest in equipment acquired with grant funds, and to thereafter perfect such security interest. Contractor shall not sell, assign, convey, or otherwise transfer the equipment or grant any other security interest in the equipment without Metro's express written permission for the duration of this contract.

3. The Project Manager reserves the right to approve minor revisions to this Scope of Work that are: 1) consistent with the intent of this grant contract; 2) require Metro action in less than 20 days to avoid expense to the Contractor that is not anticipated in this contract but results directly from attempting to execute it; and 3) that do not alter the dollar value of this contract. Any proposed revisions shall originate with the Contractor and must be submitted in writing to the Project Manager. The Project Manager shall respond to such proposals in five business days or less.
4. Disbursement of funds for this contract is contingent on Contractor obtaining a minimum of \$24,000 of working capital from a third party of record (e.g., the Oregon Economic Development Department) approved by the Project Manager. Contractor can use this contract to help obtain the required third-party match. The purpose of this condition is to ensure that the Contractor has adequate working capital to expand its business as planned and ultimately to become economically self-sustaining, consistent with the purpose of Metro's Recycling Business Development Grant Program.
5. The length of this contract extends beyond the current fiscal year. Therefore, it is subject to future appropriations by the Metro Council to fund its provisions and may be canceled by Metro upon a 30 calendar day written notice to the Contractor of any such failure.

#### **E. Additional Documents**

Metro's Solicitation for Applications for Recycling Business Development Grant (RFP #95R-36-REM), and Contractor's Grant Application, including business plan, are incorporated into this contract by this reference. In the event of any conflict, this contract, and then the Solicitation, shall prevail.

#### **3. Payment and Billing.**

Contractor shall perform the above work for a maximum price not to exceed TWENTY-FOUR-THOUSAND DOLLARS (\$24,000).

The maximum price includes all fees, costs and expenses of whatever nature. Metro will pay Contractor in two installments. The first installment will be \$12,000 payable after July 1, 1996, and upon Contractor meeting condition 4 in Section 2. E. of this Scope of Work. The second payment will be \$12,000. Disbursement of this payment shall be contingent on: a) disbursement of the first payment; b) installation and 30 business days of experience operating the production machine procured under this contract; c) submission of the first report required under 2.D. of this Scope of Work.

Contractor will provide Metro with itemized invoices for all equipment procured under this grant.

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**PUBLIC CONTRACT**

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232, and RB Rubber, whose address is 904 East 10th Ave., McMinnville, OR 97129, hereinafter referred to as the "CONTRACTOR."

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

**ARTICLE I  
SCOPE OF WORK**

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in Attachment A, the Scope of Work, which is incorporated herein by this reference. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

**ARTICLE II  
TERM OF CONTRACT**

The term of this Contract shall be for the period commencing March 1, 1996, through and including June 30, 1997.

**ARTICLE III  
CONTRACT SUM AND TERMS OF PAYMENT**

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

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CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, 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 Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

## ARTICLE V TERMINATION

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B. Automobile bodily injury and property damage liability insurance.

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This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

## ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

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In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

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Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades.

CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

ARTICLE X  
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 hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction and the copyright to all such documents.

ARTICLE XI  
SUBCONTRACTORS

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

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RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due 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.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

**ARTICLE XIII  
SAFETY**

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

**ARTICLE XIV  
INTEGRATION OF CONTRACT DOCUMENTS**

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, Request for Bids or Proposals, General and Special Instructions to Bidders, Proposal, Bid, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

**ARTICLE XV  
ASSIGNMENT**

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

**UNITED RECYCLING**

**METRO**

\_\_\_\_\_  
Signature

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Signature

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Print name and title

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Attachment A

**SCOPE OF WORK**

**1. Background**

**A. Grant Program**

Increased waste recovery and recycling depend upon retaining and expanding processing and manufacturing capacity for recovered materials. Expanding capacity through development of new businesses and products requires capital. Obtaining capital is difficult for early-stage companies. It is particularly difficult for start-up companies in the recycling industry. Banks are unfamiliar with this industry and recycling businesses depend upon not only variable demand for their products, but also variable availability and quality of their input materials. Metro can foster new recycling markets through modest yet critical financing for early stage recycling companies that are likely to become economically self-sustaining. Metro is the only source of grant funding for this purpose in the Pacific Northwest.

Metro's Recycling Business Development Grant Program is intended to nurture the development of the local recycling industry. Specifically, it is intended to provide the essential financial stimulus for the development of innovative, state-of-the art, entrepreneurial businesses that will process locally recovered waste materials into manufacturing feedstock, or use local recycled feedstock to make marketable products.

Grant funds may be used for equipment, plant upgrade, input material testing, product performance testing, and/or market investigation studies. Grant funds cannot be used for salaries, working capital, process control engineering, permit application fees, facility acquisition, or facility lease/mortgage payments. Applicants must pay at least 50 percent of the direct monetary cost to implement their projects.

At least 50 percent of the input material that grantees use for three years after initiation of their projects must be recovered waste material from the Metro area. Although operations meeting this requirement and receiving grants do not have to be located in the Metro tri-county area, preference is given to those that are.

Certain types of projects are specifically encouraged under this program. These include those which:

- Increase demand for materials which are not widely recycled
- Increase the market value of materials which are not economically attractive to recycle
- Enlist partnerships that maximize the return on Metro's investment

Applications were evaluated by a committee of outside experts in the areas of business finance, business management and marketing, economic development, engineering, and

solid waste and recycling. Metro Council Analyst John Houser also served on the Evaluation Committee.

The committee used a two-stage selection process. In the first stage, applications were scored using a rating matrix containing the following criteria:

- Financial Viability:
- Management and Marketing Strength:
- Economic Development Benefit:
- Technical Feasibility:
- Solid Waste Impact:

In the second stage, the committee conducted a series of interviews with the applicants who scored the highest in the first stage. The committee ultimately selected those applications that demonstrated, in their judgment, the best combination of innovation, strategic contribution to the Metro region's recycling system, probability of success and financial need.

## **B. Project Summary and Applicant Profile**

### **2. Description of the Work.**

#### **A. Purchase, Install, Operate and Test Equipment**

Contractor will install, operate and test a Kunststoffe Plast Europe Bulk Goods Precision Spreader, or functionally equivalent alternative approved by the Project Manager. Functionally, this device spreads colored particles into a black crumb rubber based containing recycled tires. The resulting product is colored mats and resilient flooring for use in a variety of applications such as gymnasiums and aquatic centers. A key objective of this development is to increase the markets available for recycled rubber products.

#### **B. Schedule**

Contractor shall execute the work described in section 2.A. of this Scope of Work between July 1, 1996, and June 30, 1997.

#### **C. Project Monitoring and Reporting**

Metro staff will visit the Contractor's site periodically to monitor implementation of the Contractor's grant project. With the exception of proprietary processing and financial information, all observations and information obtained during these visits will become part of the public record.

The Contractor will prepare three progress reports for Metro. The first must be received at Metro's offices 30 days after installation of the equipment purchased under this contract. The second must be received at Metro's offices by December 30, 1996. The third must be received by June 30, 1997. These reports shall contain the following information:



1. Total tons (or best estimate) of recycled tire rubber *received* each month from generators in the Metro area, from July 1, 1995, through the month preceding the report.
2. Total tons (or best estimate) of recycled tire rubber *received* each month from all sources, from July 1, 1995, through the month preceding the report.
3. Total tons of recycled tire rubber *processed* (i.e., used to make a product) each month, from July 1, 1995, through the month preceding the report.
4. Total tons of product sold and gross revenues for each product, by month, from July 1, 1995, through the month preceding the report.
5. Total employees and total salaries and wages, by month, from July 1, 1995, through the month preceding the report.
6. Brief narrative description/journal of barriers encountered during implementation of grant project, strategies to overcome barriers, and results of implementing strategies.

#### **D. Conditions**

1. A minimum of 50 percent of the post-consumer recycled material used in the Contractor's product will be from the Metro area.
2. Metro will prepare, and Contractor shall execute, any security agreement and UCC forms necessary to convey to Metro a security interest in equipment acquired with grant funds, and to thereafter perfect such security interest. Contractor shall not sell, assign, convey, or otherwise transfer the equipment or grant any other security interest in the equipment without Metro's express written permission for the duration of this contract.
3. The Project Manager reserves the right to approve minor revisions to this Scope of Work that are: 1) consistent with the intent of this grant contract; 2) require Metro action in less than 20 days to avoid expense to the Contractor that is not anticipated in this contract but results directly from attempting to execute it; and 3) that do not alter the dollar value of this contract. Any proposed revisions shall originate with the Contractor and must be submitted in writing to the Project Manager. The Project Manager shall respond to such proposals in five business days or less.
4. The length of this contract extends beyond the current fiscal year. Therefore, it is subject to future appropriations by the Metro Council to fund its provisions and may be canceled by Metro upon a 30 calendar day written notice to the Contractor of any such failure.

#### **E. Additional Documents**

Metro's Solicitation for Applications for Recycling Business Development Grant (RFP #95R-36-REM), and Contractor's Grant Application, including business plan, are incorporated into this contract by this reference. In the event of any conflict, this contract, and then the Solicitation, shall prevail.

### **3. Payment and Billing.**

Contractor shall perform the above work for a maximum price not to exceed THIRTEEN-THOUSAND, FIVE HUNDRED DOLLARS (\$13,500).

The maximum price includes all fees, costs and expenses of whatever nature. Metro will pay Contractor in two installments. The first installment will be \$5,000 payable within 30 days of contract execution and prior to June 30, 1996. The second payment shall be \$7,500, payable between July 1, 1996, and June 30, 1997, and contingent on: a) installation and 30 business days of experience operating the production machine procured under this contract; and b) submission of the first report required under section 2.C. of this Scope of Work.

Contractor will provide Metro with itemized invoices for all equipment purchased under this grant.

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**PUBLIC CONTRACT**

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter; whose address is 600 NE Grand Avenue, Portland, Oregon 97232, and Re-Use-It, Inc., whose address is 2501 SE Gladstone St., Portland, OR 97202, hereinafter referred to as the "CONTRACTOR."

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

**ARTICLE I  
SCOPE OF WORK**

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in Attachment A, the Scope of Work, which is incorporated herein by this reference. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

**ARTICLE II  
TERM OF CONTRACT**

The term of this Contract shall be for the period commencing March 1, 1996, through and including June 30, 1997.

**ARTICLE III  
CONTRACT SUM AND TERMS OF PAYMENT**

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

**ARTICLE IV  
LIABILITY AND INDEMNITY**

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, 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 Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

## ARTICLE V TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect or consequential damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

## ARTICLE VI INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR's expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability. The policy must be endorsed with contractual liability coverage.

B. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an aggregate limit, the aggregate limit shall not be less than \$1,000,000. METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

## ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

## ARTICLE VIII ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

**ARTICLE IX  
QUALITY OF GOODS AND SERVICES**

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades.

CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

**ARTICLE X  
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 hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction and the copyright to all such documents.

**ARTICLE XI  
SUBCONTRACTORS**

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

**ARTICLE XII  
RIGHT TO WITHHOLD PAYMENTS**

METRO shall have the right to withhold from payments due 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.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

**ARTICLE XIII  
SAFETY**

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

**ARTICLE XIV  
INTEGRATION OF CONTRACT DOCUMENTS**

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, Request for Bids or Proposals, General and Special Instructions to Bidders, Proposal, Bid, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

**ARTICLE XV  
ASSIGNMENT**

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

RE-USE-IT INC.

METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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Attachment A

**SCOPE OF WORK**

**1. Background**

**A. Grant Program**

Increased waste recovery and recycling depend upon retaining and expanding processing and manufacturing capacity for recovered materials. Expanding capacity through development of new businesses and products requires capital. Obtaining capital is difficult for early-stage companies. It is particularly difficult for start-up companies in the recycling industry. Banks are unfamiliar with this industry and recycling businesses depend upon not only variable demand for their products, but also variable availability and quality of their input materials. Metro can foster new recycling markets through modest yet critical financing for early stage recycling companies that are likely to become economically self-sustaining. Metro is the only source of grant funding for this purpose in the Pacific Northwest.

Metro's Recycling Business Development Grant Program is intended to nurture the development of the local recycling industry. Specifically, it is intended to provide the essential financial stimulus for the development of innovative, state-of-the art, entrepreneurial businesses that will process locally recovered waste materials into manufacturing feedstock, or use local recycled feedstock to make marketable products.

Grant funds may be used for equipment, plant upgrade, input material testing, product performance testing, and/or market investigation studies. Grant funds cannot be used for salaries, working capital, process control engineering, permit application fees, facility acquisition, or facility lease/mortgage payments. Applicants must pay at least 50 percent of the direct monetary cost to implement their projects.

At least 50 percent of the input material that grantees use for three years after initiation of their projects must be recovered waste material from the Metro area. Although operations meeting this requirement and receiving grants do not have to be located in the Metro tri-county area, preference is given to those that are.

Certain types of projects are specifically encouraged under this program. These include those which:

- Increase demand for materials which are not widely recycled
- Increase the market value of materials which are not economically attractive to recycle
- Enlist partnerships that maximize the return on Metro's investment

Applications were evaluated by a committee of outside experts in the areas of business finance, business management and marketing, economic development, engineering, and

solid waste and recycling. Metro Council Analyst John Houser also served on the Evaluation Committee.

The committee used a two-stage selection process. In the first stage, applications were scored using a rating matrix containing the following criteria:

- Financial Viability:
- Management and Marketing Strength:
- Economic Development Benefit:
- Technical Feasibility:
- Solid Waste Impact:

In the second stage, the committee conducted a series of interviews with the applicants who scored the highest in the first stage. The committee ultimately selected those applications that demonstrated, in their judgment, the best combination of innovation, strategic contribution to the Metro region's recycling system, probability of success and financial need.

## **B. Project Summary and Applicant Profile**

### **Project Summary**

Re-Use-It, Inc. (RUI) has been selected to receive a \$37,500 grant for equipment and plant upgrades to enable it to densify and market polyethylene and polystyrene foam recovered from the Metro area. RUI is committing \$45,000 of its own funds for this project.

### **Applicant Profile**

RUI is a Portland-based sole-proprietorship founded in 1993. The company currently collects, inspects, bales and markets polyurethane foam and rebond carpet pad from the Metro area.

## **2. Description of Work, Schedule, and Reporting Requirements**

### **A. Procure, Install, Operate and Test Equipment**

Contractor shall procure, install, test and operate the equipment specified below (or functionally equivalent alternative proposed by the Contractor and approved by the Project Manager). Contractor also shall implement plant upgrades specified below. All determinations as to whether equipment other than that specified below constitutes a "functionally equivalent alternative" shall be made by Metro, whose determination shall be final.

#### **1. Air Handling System, including:**

Quickdraft Air Eductors

Bags and Rack (Advanced Specialties with Kee Klamps)

Installation



2. SSI 600 Granulator
3. Upgrade building power system for operation of granulator, air handling system and associated densifier.

#### **B. Schedule**

Tasks #1 and #3 in section 2.A. of this Scope of Work shall be completed by July 30, 1996.

Task #2 in section 2.A. of this Scope of Work shall be completed by June 30, 1997.

#### **C. Project Monitoring and Reporting**

Metro staff will visit the Contractor's site periodically to monitor implementation of the Contractor's grant project. With the exception of proprietary processing and financial information, all observations and information obtained during these visits will become part of the public record.

The Contractor will prepare three progress reports for Metro. The first must be received at Metro's offices 60 days after installation of the equipment purchased under this contract. The second must be received at Metro's offices by December 30, 1996. The third must be received by June 30, 1997. For monitoring and reporting purposes, the "Metro area" means Clackamas, Multnomah, and Washington Counties. These reports shall contain the following information:

1. Total tons (or best estimate) of recycled foam polyethylene and polystyrene plastics *received* each month from generators in the Metro area, from July 1, 1995, through the month preceding the report.
2. Total tons (or best estimate) of recycled foam polyethylene and polystyrene plastics *received* each month from all sources, from July 1, 1995, through the month preceding the report.
3. Total tons of recycled foam polyethylene and polystyrene plastics *processed* each month, from July 1, 1995, through the month preceding the report.
4. Total tons of product sold and gross revenues for each product, by month, from July 1, 1995, through the month preceding the report.
5. Total employees and total salaries and wages, by month, from July 1, 1995, through the month preceding the report.
6. Brief narrative description/journal of barriers encountered during implementation of grant project, strategies to overcome barriers, and results of implementing strategies.

#### **D. Conditions**

1. A minimum of 50 percent of the post-consumer recycled material used in the Contractor's product will be from the Metro area.

2. Metro will prepare, and Contractor shall execute, any security agreement and UCC forms necessary to convey to Metro a security interest in equipment acquired with grant funds, and to thereafter perfect such security interest. Contractor shall not sell, assign, convey, or otherwise transfer the equipment or grant any other security interest in the equipment without Metro's express written permission for the duration of this contract.
3. The Project Manager reserves the right to approve minor revisions to this Scope of Work that are: 1) consistent with the intent of this grant contract; 2) require Metro action in less than 20 days to avoid expense to the Contractor that is not anticipated in this contract but results directly from attempting to execute it; and 3) that do not alter the dollar value of this contract. Any proposed revisions shall originate with the Contractor and must be submitted in writing to the Project Manager. The Project Manager shall respond to such proposals in five business days or less.
4. The length of this contract extends beyond the current fiscal year. Therefore, it is subject to future appropriations by the Metro Council to fund its provisions and may be canceled by Metro upon a 30 calendar day written notice to the Contractor of any such failure.

#### **E. Additional Documents**

Metro's Solicitation for Applications for Recycling Business Development Grant (RFP #95R-36-REM), and Contractor's Grant Application, including business plan, are incorporated into this contract by this reference. In the event of any conflict, this contract, and then the Solicitation, shall prevail.

#### **3. Payment and Billing.**

Contractor shall perform the above work for a maximum price not to exceed THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500).

The maximum price includes all fees, costs and expenses of whatever nature. Metro will pay Contractor in two installments. The first installment will be \$26,000 payable within 30 days of contract execution and prior to June 30, 1996. The second payment will be \$11,500 payable between July 1, 1996, and June 30, 1997. The second payment shall be contingent on receipt of the first progress report, and 30 business days of experience operating the grinder procured under this grant.

Contractor will, contemporaneously with any request(s) for payment and in non event more than 30 days after procurement, provide Metro with itemized invoices for all equipment and services procured under this contract.

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## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 96-2319 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AWARDING MULTI-YEAR PUBLIC CONTRACTS, SOLICITED THROUGH A REQUEST-FOR-PROPOSAL PROCESS, FOR RECYCLING BUSINESS DEVELOPMENT GRANTS.

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Date: April 4, 1996

Presented by: Andy Sloop  
Jim Goddard

### PROPOSED ACTION

Approve Resolution No. 96-2319 authorizing an exemption from competitive bidding and awarding multi-year public contracts, solicited through a request-for-proposal process, for recycling business development grants..

### BACKGROUND

The FY 95-96 Regional Environmental Management budget includes a \$75,000 grant program for recycling business development. The purpose of the program is to nurture the development of the local recycling industry. Specifically, it is intended to provide the essential financial stimulus for the development of innovative, state-of-the art, entrepreneurial businesses that will process locally recovered waste materials into manufacturing feedstock, or use local recycled feedstock to make marketable products.

Grant funds may be used for equipment, plant upgrade, input material testing, product performance testing, and/or market investigation studies. Grant funds cannot be used for salaries, working capital, process control engineering, permit application fees, facility acquisition, or facility lease/mortgage payments.

Certain other conditions also apply. Applicants must pay at least 50 percent of the direct monetary cost to implement their projects. At least 50 percent of the input material that grantees use for three years after initiation of their projects must be recovered waste material from the Metro area. Although operations meeting this requirement and receiving grants can be located outside the Metro tri-county area, preference is given to operations located in the Metro area.

### EVALUATION PROCESS

Five applications were received in response to Metro's Solicitation for Applications (RFP 95R-36-REM). An evaluation committee made up a Metro Council Analyst and outside experts in the areas of business finance, business management and marketing, economic development, engineering, and solid waste and recycling, reviewed the applications using the following criteria: 1) financial viability; 2) management and marketing strength; 3) economic development benefit; 4) technical feasibility; and 5) solid waste impact.

Using this review process, three applications were selected for further consideration. After a series of additional, in-depth written and oral questions from the Evaluation Committee and staff, the Evaluation Committee made specific grant recommendations, as follows:

<u>Grantee</u>	<u>Size of Grant</u>
Re-Use-It, Inc. (RUI)	\$37,500
NW EEE ZZZ Lay Drain Co.	\$24,000
RB Rubber, Inc.	\$13,500

These awards reflect the Committee's assessment of the relative strength of each proposal in terms of innovation, strategic contribution to the Metro region's recycling system, probability of success and financial need.

#### DESCRIPTION OF COMPANIES SELECTED FOR GRANTS

RUI is a Portland-based sole-proprietorship founded in 1993 that collects, inspects, bales and markets polyurethane foam and rebond carpet pad from the Metro area. It has been selected to receive a \$37,500 grant for equipment and plant upgrades to enable it to densify and market polyethylene and polystyrene foam plastic recovered from the Metro area. It is committing approximately \$63,000 of its own funds for this project.

NW EEE ZZZ Lay Drain Co. is a sole-proprietorship established in 1993 and based in Troutdale. It is the Northwest regional licensee of EEE ZZZ Lay Drain Co., Inc. established in 1986 and based in Pisgah Forest, North Carolina. NW EEE ZZZ Lay has been selected to receive a \$24,000 grant to lease a proprietary production machine for manufacturing a patented drainage system made using recovered expanded polystyrene (EPS) plastic. This low-tech production system has been used successfully since 1988 at an affiliated plant in North Carolina. NW EEE ZZZ Lay's processing plant will be located adjacent to Western Insulfoam, an established manufacturer of EPS products located in The Dalles, OR. NW EEE ZZZ Lay is committing approximately \$31,000 of its own funds for this project.

RB is an Oregon corporation established in 1984 and based in McMinnville. It is a molded rubber product manufacturer, wholesaler and retailer. It has been selected to receive a \$13,500 grant to buy an off-the-shelf machine for metering colored material into black rubber feedstock made from scrap tires. This feedstock will be used to make value-added, colored, resilient flooring. RB is committing \$86,500 of its own funds for this project.

All three of these companies submitted sound business plans, will be using proven technologies in innovative recycling applications, and will make strategic contributions to the region's recycling system. It is projected that, upon completion of these grant projects, these companies will add a minimum of 6,000 tons per year of processing capacity to the region's private recycling system. These projects also are expected to create a minimum of 10 new jobs. Staff projects that the amount of foam plastics disposed in the Metro area will be reduced by at least 30% as a result of these grant projects. RB Rubber's project will significantly increase the

percentage of scrap tires that flow to high-value-added end markets instead of being burned for energy. It may also help reduce tipping fees for tires and thereby reduce the propensity for illegal dumping of scrap tires. Because RB's grant project is only part of the company's larger growth and diversification plan, it is impossible to attribute a specific, quantitative, solid waste impact solely to the grant project.

#### JUSTIFICATION FOR THE USE OF PUBLIC CONTRACTS

All three of the proposals selected for funding include equipment procurement. These types of projects require a public contract rather than a personal services agreement. Since these projects were selected using a "Request for Proposal" process rather than a competitive bidding process, an exemption from competitive bidding is required.

#### BUDGET IMPACT

The FY 95-96 REM Department budget has appropriated \$75,000 for these contracts. \$31,000 will be spent on these grant contracts in FY 95-96 and \$44,000 will be carried over and spent in FY 96-97. Metro's grant funds will be leveraged with \$180,500 in direct financial investments from the grantees.

#### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 96-2319.