

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING) RESOLUTION NO 96-2434A
CHANGE ORDER NO. 7 TO THE)
WASTE DISPOSAL SERVICES) Introduced by Mike Burton,
CONTRACT) Executive Officer, and
) Councilor Ruth McFarland

WHEREAS, As described in the accompanying staff report, there are a number of items that Metro and the Contractor wish to resolve in the current Contract; and

WHEREAS, Metro will incur substantial financial savings over the life of the Contract, should Change Order No. 7 be executed; and

WHEREAS, Metro will continue to make every effort to maximize the diversion of waste from landfills consistent with the adopted Metro Regional Solid Waste Management Plan; and

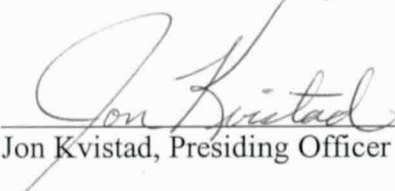
WHEREAS, The resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore,

BE IT RESOLVED:

1. That the Metro Council authorizes the Executive Officer to execute Change Order No. 7 to the Waste Disposal Services Contract in a form substantially similar to attached Exhibit "A."

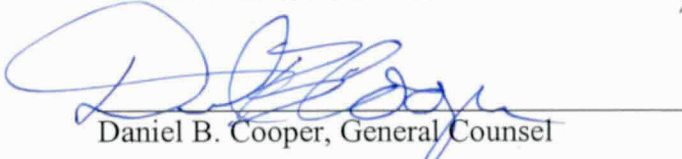
2. That Metro shall continue to maximize the diversion of waste from landfills consistent with the adopted Metro Regional Solid Waste Management Plan.

ADOPTED by the Metro Council this 16th day of January 1997.



Jon Kvistad, Presiding Officer

APPROVED AS TO FORM:



Daniel B. Cooper, General Counsel

EXHIBIT A

CHANGE ORDER NO. 7
METRO CONTRACT NO. 900607

MODIFICATION TO THE CONTRACT BETWEEN
METRO AND WASTE MANAGEMENT DISPOSAL SERVICES OF OREGON, INC.
(dba OREGON WASTE SYSTEMS, INC.)
ENTITLED
"WASTE DISPOSAL SERVICES"

In exchange for the promises and other considerations set forth in the original agreement, previous change orders and this Change Order No. 7, the parties hereby agree as follows:

A. Purpose

The purpose of this Change Order is to replace the terms and conditions of Contract Amendment No. 4 (Change Order No. 4), dated March 16, 1994.

B. Terms of Change Order

1. Effective for the twelve-month period commencing July 1, 1996, and for each twelve-month period thereafter, Contractor shall be paid a base rate of \$27.25 per ton for the initial 550,000 tons of waste delivered to Contractor each period. For each ton of waste delivered to Contractor in excess of 550,000 tons, a declining incremental price will be charged as set forth on the attached Table 1. The base rate shall take effect on the first day of the month that this Amendment is effective and shall be applied to the first 550,000 tons delivered to Contractor, less the amount of tons delivered from July 1, 1996 to the month that this Amendment was executed. Contractor shall receive a declining rate for all additional tons delivered until June 30, 1997.

On January 10, 1997, or the effective date of this Amendment, whichever is later, Metro shall pay Contractor an additional payment of \$1,025,400 in exchange for both Contractor's agreement to modify the payment terms of the original Agreement and in lieu of all future annual lump sum payments under the Original Waste Disposal Services Contract and the elimination of the Supplemental Price Adjustment payment as set forth herein.

2. Effective upon execution of this Amendment, the anniversary of the Waste Disposal Services Contract set forth in Article 19.B for Price Adjustments shall be deemed to be July 1 of each year. Beginning on July 1, 1997, for all the rates shown on Table 1, the "percentage price adjustment (AI)" calculated under said Article 19.B, shall be 90% of the Consumer Price Index (CPI) for the previous calendar year, minus one-half of one percentage point of such CPI. Therefore, the formula in Article 19.B used to calculate the price adjustment shall read:

$$AI = (((CI_X - CI_B) / CI_B) \times 0.9) - 0.005$$
, with the terms of the formula modified so that CI_X represents the Consumer Price Index for the calendar year ending on the previous December 31, and CI_B represents the Consumer Price Index for the calendar year prior to the year used to calculate CI_X .

3. The "Supplemental Price Adjustment" payment required under Waste Disposal Services Contract Amendment No. 2 (Change Order No. 2) is eliminated. The final monthly Supplemental Price Adjustment payment shall be paid for the full month preceding the date of this Amendment.
4. The Contractor shall pay, and Metro shall reimburse the Contractor in full for, the Oregon Department of Environmental Quality annual solid waste permit fee and 1991 Recycling Act annual fee, including all future increases in the above fees. Contractor hereby waives any claims against Metro for additional payments for such fees from previous years.
5. From 1991 to the effective date of this Amendment, Contractor waives any claims against Metro or for compensation from Metro arising out of Section 1 of the Specifications to the Original Agreement, page VI-1, under the heading "Annual Waste Delivery Guarantees by Metro."
6. The Most Favorable Rate Agreement between the Parties (dated March 24, 1988) is terminated, effective as of March 16, 1994. Metro waives any and all claims past, present and future against Contractor or for compensation from Contractor due under, or for any alleged breach, of the Most Favorable Rate Agreement.
7. The obligation of the Contractor to maintain bonds specified in Section 4 of Amendment No. 2 is terminated, effective March 16, 1994. Notwithstanding this termination, the corporate guarantee provided under said Amendment No. 2 shall remain in full force and effect for the term of the Agreement.
8. The provisions contained in schedule A attached hereto shall be given full force and effect for the period from March 16, 1994, until the effective date of this Amendment.
9. Contract Amendment No. 4 is superseded by the provisions of this Change Order No. 7, and Contract Amendment No. 4 is null and void.
10. In addition to the flow commitment guarantee contained in Section 1 of the Specifications to the Original Agreement, page VI-1, under the heading "Annual Waste Delivery Guarantees by Metro" (hereinafter, "Flow Guarantee"), Metro shall at all times make good faith efforts to ensure that putrescible waste (other than special waste) generated or disposed of within Metro boundaries and destined for a general purpose landfill (other than incidental quantities), shall be subject to Metro's authority to deliver waste to the Columbia Ridge Landfill. For the purpose of this Paragraph 10, Metro's good faith efforts shall be considered to have been met as long as Metro continues to comply with the covenants benefiting bond holders contained in Metro's solid waste revenue bonds and so long as Metro continues to exercise the same general level of effort now used to enforce Metro's flow control and illegal waste disposal ordinances and regulations. This commitment is in addition to the Flow Guarantee and shall not be admissible in any proceeding for purposes of interpreting the intent of the parties under the original Flow Guarantee.

11. In the event that any suit, action or other proceeding is commenced challenging the validity or enforceability of this Amendment No. 7, Metro and Contractor agree to defend the validity and enforceability of Amendment No. 7 in such suit, action or proceeding.

Except as modified herein, all other terms and conditions of the Contract and previous change orders shall remain in full force and effect. This Change Order shall be effective beginning with the month of the last signature date below.

OREGON WASTE SYSTEMS, INC.

METRO

By _____

By _____

Title _____

Title _____

Date _____

Date _____

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TABLE 1

METRO DISPOSAL RATES

IF ANNUAL TONNAGE IS:		PRICE PER TON SHALL BE:
0	TO 550,000 TONS	\$ 27.25
550,001	TO 592,500 TONS	\$ 10.00
592,501	TO 635,000 TONS	\$ 9.50
635,001	TO 677,500 TONS	\$ 9.00
677,501	TO 720,000 TONS	\$ 8.50
720,001	TO 762,500 TONS	\$ 8.00
ABOVE 762,501		\$ 7.50

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SCHEDULE A

1. Beginning with the first annual price adjustment normally occurring after March 16, 1994 the "percentage price adjustment (AI)" calculated under the Original Agreement, General Conditions, Article 19.B., shall be reduced by 1/2 percent. If the resulting percentage price adjustment is less than zero, the unit prices shall be reduced by the percentage so obtained.

2. Contractor shall provide the following credits to Metro for wastes of comparable type to the waste to be disposed of under the Original Agreement, as modified, other than those generated within Metro boundaries or processed at facilities within Metro boundaries:
 - (a) Beginning January 1, 1995, for waste from the city of Seattle or any Partner pursuant to the WWS/Seattle contract:
 - \$1.00 per Seattle or Partner ton beginning January 1, 1995, and an additional \$0.50 per ton beginning January 1, 1996.

 - (b) For waste from non-Metro region sources other than Seattle or Partner, but not including waste generated in Oregon counties, except Deschutes County, located east of the Cascade Mountains:
 - For contracts involving large communities (i.e., communities disposing of greater than 75,000 tons per year at the Columbia Ridge Landfill): \$1.00 per ton beginning immediately upon the effective date of this Agreement and an additional \$0.50 per ton beginning January 1, 1996.

 - Except as provided in Subsection (a) above, for contracts involving small communities (i.e., communities disposing of up to 75,000 tons per year at the Columbia Ridge Landfill): \$0.50 per ton. This credit will begin March 16, 1994 for contracts that took or will take effect on or after January 1, 1993, and will begin on January 1, 1995, for contracts that took effect before January 1, 1993.

 - (c) The credits in this Section are escalated annually by the same CPI increase as described in Section 1 above; provided, however, that the additional \$0.50 per ton credit shall not escalate until the first annual price adjustment occurring after the effective date of the additional credit.

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 96-2434 FOR THE
PURPOSE OF APPROVING CHANGE ORDER NO. 7 TO THE WASTE
DISPOSAL SERVICES CONTRACT

Date: December 3, 1996

Presented by: Jim Watkins

PROPOSED ACTION

Adopt Resolution No. 96-2434 authorizing the Executive Officer to execute Change Order No. 7 to the Waste Disposal Services Contract.

FACTUAL BACKGROUND AND ANALYSIS

The proposed Change Order (Amendment No. 7) contains ten items. These modifications alter the financial terms as set forth in the Waste Disposal Services Contract, as amended. The effects of the Change Order result in substantial savings of approximately \$37 million over the original contract as amended, without any contract extensions.

The proposed Change Order No. 7 will:

1. Replace the fixed and variable rates to the Contractor with a variable rate that declines as the tons disposed of increases (see table 1).

TABLE 1
METRO DISPOSAL RATES

Annual Tonnage			Price Per Ton
0	TO	550,000 TONS	\$27.25
550,001	TO	592,500 TONS	10.00
592,501	TO	635,000 TONS	9.50
635,001	TO	677,500 TONS	9.00
677,501	TO	720,000 TONS	8.50
720,001	TO	762,500 TONS	8.00
ABOVE 762,501			7.50

2. Assume the annual CPI adjustment remains consistent with the terms of Amendment No. 4.
3. Eliminate the "Supplemental Price Adjustment" payment of \$0.342 per ton to the Contractor.
4. Designate Metro as responsible party for all DEQ fees.

5. Require Contractor to waive any claims against Metro for tonnage guarantees from 1991.
6. Terminate the "Most Favorable Rate" provision of the original contract.
7. Allow Contractor to substitute corporate guarantees in lieu of Performance and Labor/Material Bonds.
8. Ratify Amendment No. 4 until the effective date of Change Order No. 7.
9. Commit Metro to continue "good faith efforts" to direct putrescible waste to the landfill.
10. Require Metro and the Contractor to legally defend Change Order No. 7.

ADDITIONAL INFORMATION

Two tonnage scenarios were used to evaluate the financial impacts of the proposed Change Order. The projected tonnage reflects Metro's current projections for transfer station tonnage that assumes the material recovery facilities currently proposed by private industry will decrease the tonnage going to Metro transfer stations. Tonnage forecasts for 1997 project 75,000 fewer tons will be disposed of at Metro transfer stations than in 1996. To analyze the sensitivity of tonnage versus savings, a second high tonnage forecast was analyzed that was 5% higher than the projected tonnage forecast. A 5% increase in tonnage results in over a 23% increase in savings from \$37 million to \$46 million when comparing Change Order No. 7 to the original contract as amended.

Staff also evaluated the average disposal costs for the original contract, Amendment No. 4 and Change Order No. 7 projected for 1997 assuming a 3% inflation adjustment and the projected tonnage forecast for tonnage. Included in the comparison is the recently negotiated rate for Seattle compared to their old rate.

1997 PER TON DISPOSAL RATE

ORIGINAL CONTRACT	\$ 29.66
AMENDMENT NO. 4	\$ 27.89
CHANGE ORDER NO. 7	\$ 25.15
SEATTLE (old rate)	\$ 28.86
SEATTLE (new rate)	\$ 24.35

As shown in the above table Change Order No. 7 provides a reduction in 1997 of \$2.74 per ton compared with Amendment No. 4 and \$4.51 per ton when compared to the original contract without amendments. The rate reduction that Metro will receive compared to the original contract is the same reduction that staff estimated Seattle will receive in 1997.

On April 1, 1997, Seattle's rate will drop to \$41.47 per ton for transport and disposal. Based on information provided by OWS in a letter written in 1991 and confirmed by Metro staff, Seattle's transportation costs were represented as \$15.87 per ton. Staff analysis based on railroad cost of living increases and recently signed railroad contracts, estimated that Seattle's transportation costs will be \$17.22 in 1997 leaving \$24.35 per ton for disposal. Since Change Order No. 7 is tonnage sensitive, it would only take an additional 34,000 tons (5.2% increase) delivered to Metro transfer stations to lower the above rate for Change Order No. 7 from \$25.15 to \$24.35.

During the negotiations one of the primary goals of both parties was to provide savings equivalent to what Metro would potentially lose by terminating the Most Favorable Rate (MFR) agreement. Seattle's waste is only guaranteed until 2006 whereas Metro's contract terminates in 2009. In an attempt to evaluate the value of the MFR agreement staff assumed that OWS would successfully rebid the Seattle contract in 2006 and continue to send the waste to Columbia ridge with no rate reduction in 2006. The value of the MFR agreement for the projected tonnage forecast is \$67 million and for the high tonnage forecast \$69 million compared to the similar \$63 million and \$73 million respective savings offered by Change Order No. 7 when combined with the previous savings Metro currently enjoys from Amendment No. 4.

Considering all the variables that are involved in the analysis, such as tonnage, inflation rate, transportation costs, and the long term disposition of Seattle's waste, the savings offered by OWS clearly show that by agreeing to Amendment No. 7 they are attempting to compensate Metro for eliminating the MFR Agreement.

The specific items contained in the Change Order are more fully addressed below on an item by item basis.

Item #1 replaces the fixed and variable rate to the Contractor with a variable rate that declines as the number of tons increases. For the first 550,000 tons in each fiscal year the base rate will be \$27.25 per ton which is a 64 cent reduction on the first 550,000 tons in comparison to Amendment No. 4. A rate of \$10.00 per ton will be charged for the next 42,500 tons. Each additional 42,500 tons will be charged at a rate 50 cents lower than the previous rate with the minimum rate set at \$7.50 per ton.

As a part of the negotiated settlement for eliminating the lump sum payment of \$ 1,802,950 per year, Metro agreed to a one time lump sum payment of \$1,025, 400 to be paid on January 10, 1997, or the effective date of this Amendment, which ever comes latter. Even with the lump sum payment in FY 1996-97 Metro still saves an additional \$1.1 million compared to Amendment No. 4.

Metro receives credit for all tons delivered from July 1, 1996, to the effective date of the Change Order toward meeting the first 550,000 tons in FY 1996-97. Given current projections Metro would only pay the base rate on approximately 264,000 tons in the current

fiscal year and the remaining tons would be at the reduced rate if the Amendment is signed in December 1996.

Item #2 modifies the annual price adjustment formula. This change was to assure that the annual price adjustment under Change Order No. 7 would be the same as under Amendment No. 4. The item limits increases to 90% of the index less 1/2 percent for all payments. The financial impact is neutral compared to Amendment No. 4 except for changing the timing of future cost of living increases. OWS agreed to delay the next adjustment from April 1997 to July 1997 which offers a small savings to Metro but more importantly (from a budgeting perspective) coincides with Metro's fiscal year.

Item #3 eliminates the "Supplemental Price Adjustment" payment \$0.342 per ton to the Contractor. Payments would have continued until 1999 totaling \$721,232. The purpose of the payment was made to compensate the Contractor for Metro's failure to deliver waste guaranteed to the Contractor during the initial year (1990) of the Contract.

Item #4 eliminates an existing dispute of a change in law provision in the original contract over payments to the Contractor for DEQ fees enacted by legislation and adopted after execution of the contract.

Item #5 requires the Contractor to waive any claims for additional compensation for violation of the 90% tonnage guarantees from 1991 to the effective date of this Change Order. The Contractor had claimed that, as with 1990, Metro may have violated the guarantees contained in the contract for these years.

Item #6 terminates the Most Favored Rate Agreement. This provision was contained in Amendment No. 4. Metro also waives any claims against the Contractor for any alleged breach of the Most Favorable Rate Agreement.

Item #7 substitutes the Contractor's corporate guarantee for the performance and labor and materials bond requirements of Amendment No. 2, which eliminated the retainage requirements of the contract. The corporate guarantee will now take the place of both the bond and retainage guarantees for performance of the contract.

Item #8 ratifies Amendment No. 4 until the effective date of this Change Order at which time it is terminated

Item #9 commits Metro, in addition to the flow guarantees in the Original Agreement, to make good faith efforts to ensure that putrescible waste destined for a general purpose landfill shall be subject to Metro's authority to deliver waste to the Columbia Ridge Landfill. Good faith efforts are further defined as Metro continuing to comply with the flow control covenants benefiting bond holders and continuing to exercise the same general level of effort now used to enforce Metro's flow control and illegal waste disposal ordinances and regulations.

Item #10 requires both Metro and the Contractor to agree to defend the validity and enforceability of Change Order No. 7.

BUDGET IMPACT

Under the most probable tonnage scenarios, Metro would save approximately \$37 million over the current contract considering the effects of Amendment No. 4. Savings are approximately \$63 million over the terms of the original contract (i.e., without Amendment No. 4). For this fiscal year each month under Change Order No. 7 will result in savings of over \$85,000. However the net savings for this fiscal year will be \$1.1 million because of the \$1 million lump sum payment that must be paid to OWS upon signing this Change Order.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 96-2434.

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Don't waste the opportunity

Renegotiated contract between Metro, Oregon Waste Systems lowers the rates, takes out the trash

Next week, the Metro Council can take the first step toward possible lower garbage rates for the Portland area. Metro's negotiators and Oregon Waste Systems have agreed on changes in their 20-year garbage-disposal contract.

It's a good enough deal that councilors should approve it.

Metro Executive Mike Burton, who spearheaded the negotiations, thinks it could eventually save residential garbage customers 15 to 30 cents a can. But a couple of other things have to happen first. Metro has to decide to reduce the \$75-per-ton fee it charges local garbage haulers, and cities have to decide to pass that savings on to customers.

But approving the renegotiated contract is the first step.

Basically, the changes mean Metro gets lower rates and Oregon Waste Systems gets more garbage for its Columbia Ridge landfill near Arlington.

Metro would save about \$85,000 a month, or about \$37 million over the remaining 13 years of the contract.

The new deal soothes at least a couple of irritants that have been dogging the relationship between Metro and Oregon Waste Systems. The first is a Metro guarantee that the company will get 90 percent of all the region's waste slated for a general-purpose landfill. The company believes Metro hasn't stuck to that guarantee.

Under the new deal, Oregon Waste Systems agrees to quit pursuing that claim and gives Metro an economic incentive to live up to the guarantee in the future.

The second controversy is over a deal signed by former Metro Executive Rena Cusma in 1994. That deal involved a dispute over whether Oregon Waste Systems should give Metro a rate break under a "most favorable rate" clause in the contract because Seattle and other customers negotiat-

ed better deals than Metro to dump at Arlington.

Cusma gave up the provision for other concessions, including rebates for non-Metro garbage dumped at Arlington.

But Cusma's dealmaking spawned an argument between her and the Metro Council, and resulted in lawsuits in and out of Metro.

The deal now on the table terminates the most-favorable-rate provision, and says Metro won't pursue related claims against Oregon Waste Systems. As part of the deal, the council also would finally ratify

Cusma's action.

We favored the 1994 plan, saying that Cusma "took immediate and certain savings instead of gambling on a better deal that might — or might not — happen." And in fact, Metro has saved about \$2 million since the deal took effect.

The same principle applies now. A couple of Metro councilors think Metro can get a better deal for ratepayers and

should hold out. Presiding Officer Jon Kvistad has made noises about keeping the deal off the council's Dec. 19 agenda.

Other councilors shouldn't allow that. This contract is the result of about a year and a half of hard negotiating between Metro and Oregon Waste Systems, and there's little reason to think it's not the best pact the parties could come up with.

In fact, the only better deal Metro could get, at least until the contract expires in 2009, is from Oregon Waste Systems itself. Competitors can offer all kinds of enticements, but the truth remains that Oregon Waste Systems holds the contract.

Further, the company didn't have to come to the table — although it made sense for it to do so in a growing region with a new competitive climate.

This deal is good for the company, for Metro and for the region. The council shouldn't thumb its nose at it.

“A bird in the hand is worth two in the bush, and the two in the bush might be dead birds.”

— Rod Monroe,
Metro councilor

“Nobody can give them a better deal. We have the contract.”

— Art Dudzinski,
Waste Management Inc.