

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING CHANGE) RESOLUTION NO. 96-2443
ORDER NO. 21 TO THE WASTE TRANSPORT)
SERVICES CONTRACT WITH JACK GRAY) Introduced by Mike Burton
TRANSPORT, INC.) Executive Officer
)

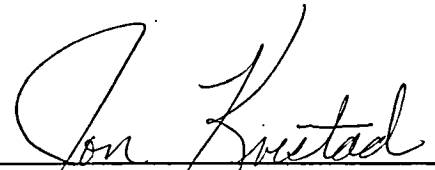
WHEREAS, As described in the accompanying staff report, there are a number of outstanding concerns that Metro and the Contractor wish to resolve in the current Contract ; and

WHEREAS, As explained in the accompanying staff report, Metro will benefit both financially and operationally should Change Order No. 21 be executed; 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 Council authorizes the Executive Officer to execute Change Order No. 21 to the Waste Transport Services Contract attached as Exhibit "A".

ADOPTED by the Metro Council this 6th day of February,
1997.



Jon Kvistad, Presiding Officer

Exhibit "A"

CHANGE ORDER NO. 21
CONTRACT NO. 900848

PROPOSED MODIFICATIONS TO THE CONTRACT
BETWEEN
METRO AND JACK GRAY TRANSPORT, INC.
ENTITLED
"WASTE TRANSPORT SERVICES"

PROJECT: Waste Transport Services
METRO POC: Jim Watkins, Engineering & Analysis Manager
CONTRACTOR POC: Gary Goldberg, Executive V.P.

This agreement, dated as of the last signature date below, hereby amends Metro Contract No. 900848, entitled "Waste Transport Services," dated March 1, 1989, including all prior amendments (herein collectively referred to as the "Original Contract"), as provided herein:

1) Article 27 - Change of Ownership. Delete the article and replace with the following:

"Any change in control or the transfer of a controlling interest in stock ownership of Contractor shall require the prior written consent of Metro. 'Change of Control' shall mean the occurrence of any of the foregoing:

(1) Any person, corporation, limited liability company, partnership, trust or association (other than John S. Gray or any of his affiliates) or any group within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder, shall have acquired after the date hereof beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act), directly or indirectly, of common stock (or other securities convertible into such common stock) representing fifty percent (50%) of the combined voting power of all common stock of Jack Gray Transport, Inc. entitled to vote in the election of directors, other than securities having such power only by reason of the happening of a contingency (hereinafter called a 'Controlling Person'); or

(2) A majority of the Board of Directors of Jack Gray Transport, Inc. shall cease for any reason to consist of

(A) Individuals who on the date hereof were serving as directors of Jack Gray Transport, Inc.; and

(B) Individuals who subsequently become members of the Board if such individuals' nomination for election or election to the Board is recommended or approved by a majority of the Board of Directors or stockholders of Jack Gray Transport, Inc., provided that use of the provisions of this clause (B) shall not be used to evade the intent of this Article 27, Change of Ownership.

For purposes of clause (1) above, a person or group shall not be a Controlling Person if such person or group holds voting power in good faith and not for the purposes of circumventing this provision as an agent, bank, broker, nominee, trustee, or holder of revocable proxies given in response to a solicitation pursuant to the Exchange Act, for one or more beneficial owners who do not individually, or, if they are a group acting in concert, as a group, have the voting power specified in clause (1).

Contractor shall give Metro a written request to approve the change in control prior to any change in control taking effect. If a change in controls occurs without prior written notice to Metro, such change shall constitute a material breach of this contract and Metro, in its sole discretion, may terminate this contract for such breach.

In determining whether to approve or disapprove a request by the Contractor to sell the company, Metro may take the following criteria into consideration:

- (1) Whether the proposed purchaser is of sufficient size to perform the obligations required in the agreement.
- (2) Whether the proposed purchaser has sufficient financial resources to fill the operational and financial guarantees specified in the agreement.
- (3) Whether the proposed purchaser has sufficient favorable experience providing services similar to those required in the agreement.
- (4) The nature of any other commitments which the proposed purchaser may have in related solid waste disposal services either nationally or within the Metro service area.

Metro shall within thirty (30) days of receipt of a request to enter into the transaction either approve or disapprove the request, provided such approval shall not be unreasonably withheld. If Metro requests information regarding the above criteria the thirty (30) day approve/disapprove time period shall begin upon satisfactory response by the Contractor to Metro.

However, notwithstanding any provision herein, in the event a controlling interest in Contractor is proposed to be transferred to another entity which is providing solid waste disposal services to Metro at Metro's primary disposal site either directly or through any company which it controls, or which has a common single parent corporation or other similar entity, then Metro at its sole discretion may approve or disapprove the transaction."

- 2) Trailer Parking at Metro South Station. Change Order No. 1 to the original Contract (paragraph 3) required Metro to provide a paved storage area for approximately 105

transport containers. Metro shall henceforth be required to provide at Metro South Station a paved storage area for no more than 51 trailers used by Contractor to haul waste for Metro.

- 3) Shuttle Services at Metro South Station. Change Order No. 1 to the original Contract (paragraph 4) required Metro to provide "additional compensation" to Contractor under certain circumstances, related to the provision by Contractor of shuttle services.

Henceforth, the "additional compensation" specified in paragraph 4 of Change Order No. 1 shall be a monthly fee of \$7,500 per month (as annually adjusted per Article 12B) unless the number of loads transported is less than 632 loads for the month. No "additional compensation" shall be paid to the Contractor for months in which less than 632 loads were transported from Metro South by the Contractor.

If, and only if, the number of spaces available to the Contractor is reduced below 65 spaces and the number of loads transported is greater than or equal to 632, the monthly payment to Contractor for shuttle services at Metro South Station will be adjusted as follows where "AS" means available spaces:

$$\$10,767 - (\$50.26 \times AS) = \text{monthly payment}$$

- 4) Right to Terminate - Change Order No. 15. Paragraph 3(a) of Change Order No. 15 to the original Contract (relating to fuel purchases by Metro) allowed either party to terminate change Order No. 15. Paragraph 3(a) of Change Order No. 15 is hereby amended to remove Contractor's right to terminate. Metro retains its right to terminate Change Order No. 15 as specified in paragraph 3 (a) of the amendment. All other provisions in Change Order No. 15, including the termination provisions of Paragraph 3(b), remain in full force and effect.
- 5) Termination of Change Order No. 9. Change Order No. 9 is hereby terminated. The change order provided procurement and mobilization of the equipment necessary to perform shuttle operations at the Metro/Riedel Compost Facility. All terms of the change order have been completed except paragraph 5 regarding reimbursement for a shuttle vehicle. Contractor agrees to forfeit receipt of all further payments (effective upon execution of this Change Order No. 21) including the purchase of a replacement shuttle in the year 2002.
- 6) Retainage Interest. Article 13 of the General Conditions of the original Contract requires that interest shall accrue to the Contractor, but shall be retained in the interest bearing account until completion of performance. Article 13 is hereby amended to pay Contractor all interest from Contractor's retainage account upon maturity of the account's separate investments. In addition the balance of the Money Market Account will be paid to Contractor upon signing of this Change Order. However, no interest payment shall be paid to the Contractor that will reduce the Contractor's retainage account below \$2,500,000.
- 7) Use of Equipment following Default. Article 10, Section C of the original Contract is amended by adding the following paragraph:

"If Contractor does not cure a default within the time allowed herein, and Contractor either does not have a surety or the surety elects not to exercise its option under this section, the Contract shall terminate. For 90 days from the date Contractor ceases to provide service, and continuing subsequent to termination, Contractor shall make available to Metro all tractors, trailers and yard goats used or available for use in carrying out the Contract at the time Contractor ceases to provide service. This provision shall survive termination of the Contract."

8) Notice of Credit Default. Article 10, Section A is amended by adding a new paragraph, as follows:

"5. Notice of Credit Default. Default by Contractor on a lending agreement with any lending institution utilized by Contractor shall be considered a default by Contractor under this contract. To the extent Contractor fails to cure a default under such lending agreement, under the terms for cure and in the time frame provided in such agreement, Metro shall have the right to terminate this Contract. Contractor shall provide to Metro, or require all of its lending institutions to provide directly to Metro, copies of all correspondence relating to a loan default or alleged default under a lending agreement, upon receipt by Contractor or issuance by the lending institution, as the case may be."

9) Effect of Amendment. Except as modified herein, all other terms and conditions of the Original Contract and previous Change Orders shall remain in full force and effect.

JACK GRAY TRANSPORT, INC.

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

MDF:kaj
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12/9/96

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 96-2443 FOR THE PURPOSE APPROVING CHANGE ORDER NO. 21 TO THE WASTE TRANSPORT SERVICES CONTRACT

Date: December 27, 1996

Presented by: Jim Watkins

PROPOSED ACTION

Adopt Resolution No. 96-2443 authorizing the Executive Officer to execute Change Order No. 21 to the Waste Transport Services Contract.

FACTUAL BACKGROUND AND ANALYSIS

The proposed change order contains nine items. These modifications rectify a number of long standing concerns of both Metro and the Contractor, thereby benefiting both parties. The specific items are addressed below on an item by item basis.

Item #1 modifies the criteria under which the Contractor can change ownership of its company. The change was requested by the company in order to facilitate a change in ownership from a private to a publicly held company. An action which the current owner, Jack Gray, has considered in the past. Specific changes include increasing the threshold from 10% to 50% for a transfer in the "controlling interest" of the Contractor to trigger Metro's right to approve such transfers, as well as specific criteria and time limits for approval. The item will permit the Contractor to restructure while protecting Metro's interests.

Item #2 of the change order reduces the number of parking spaces Metro is obligated to provide the Contractor at Metro South Station from 105 to 51. Metro requested this change in order to provide more room at the facility for anticipated modifications.

Item #3 adjusts the amount of compensation the Contractor will receive for shuttling services for moving its trailers to and from the compactors from the on-site parking, provides a minimum performance level to receive such compensation, and adjusts such compensation if the number of parking spaces available falls below 65. Change Order No. 1 to the Contract included providing parking for the Contractor at the facility in exchange for shuttling services and additional compensation since the value of the parking was less than the shuttling service provided. Staff believes that this additional compensation exceeds the market value for such service and that more space is needed to modify the facility. This item makes these adjustments, saving Metro over \$120,000 annually.

Item #4 eliminates the Contractors ability to terminate Metro's purchase of fuel used by the Contractor. By Metro purchasing the fuel, it saves the amount of federal excise tax (approx. \$350,000 per year) which would have been paid had the Contractor bought the fuel. These

savings (taken through a reduction in payments to the Contractor) amounted to about \$784,000 from April 1994 through June 1996. Metro must in turn absorb the risk in changes in fuel prices, which has resulted in an additional \$174,000 in savings over the same period. Metro retains its right to terminate the fuel purchase arrangement and revert to the original arrangement where it is the Contractor's responsibility to purchase fuel.

Item #5 terminates a previous change order which obligated Metro to reimburse the Contractor for the provision of equipment at the compost facility. Metro had anticipated the use of such equipment at the Washington Co. (and later the Forest Grove) transfer station projects. Termination of this provision will save Metro approximately \$ 1,227 per month through April 1998, or approx. \$15,000 per year.

Item #6 releases the funds from the retainage account for the Contract in excess of \$2,500,000. In the current language such funds were placed in an interest bearing account established by Metro which the Contractor could not access. The change allows Contractor use of these funds while maintaining the level of protection sought by Metro. This change was requested by the Contractor and is recommended by staff in exchange for other concessions.

Item #7 expands the conditions under which a Contractor default can be declared, as well as Metro's right to use the Contractor's equipment in the event of a default.

Item #8 extends Metro's rights under the default provisions of the Contract to include the Contractor's default on lending agreements. This increases Metro's protection under the Contract.

Item #9 is a standard provision limiting the change order to the specific items and stating that all other contractual provisions remain in effect.

BUDGET IMPACT

Metro saves approximately \$135,000 annually due to shuttle savings and terminating the equipment purchase related to the compost facility. Additionally, Metro secures about \$350,000 in annual federal excise tax savings.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 96-2443