

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

November 21, 1989
Regular Meeting

Councilors Present: Mike Ragsdale (Presiding Officer), Gary Hansen (Deputy Presiding Officer), Lawrence Bauer, Roger Buchanan, Tanya Collier, Richard Devlin, Tom DeJardin, Jim Gardner, David Knowles, Ruth McFarland, George Van Bergen and Judy Wyers

Councilors Absent: None

Presiding Officer Ragsdale called the meeting to order at 5:30 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

Ms. T. R. Factor gave the Council an update on the Jack Gray Contract. She said the PUC Commissioners heard the last of the testimony on November 20, 1989, and the Sherman County Planning Commission would meet on November 30, 1989, to sign off on the conditions. The Sherman County Planning Commission land use decision would be appealed. Ms. Factor noted the attorney handling the appeal was Ed Sullivan of Mitchell, Lang and Smith. She added the Dalles Planning Commission would be meeting on December 7, 1989, to hear more testimony on the Jack Gray staging area in the Dalles, and Mr. Sullivan was also handling information for the opponents there. The PUC Commission was expected to make a decision by December 31, 1989.

3. EXECUTIVE OFFICER COMMUNICATIONS

3.1 Report from Public Financial Management, Incorporated on the Consolidation Financial Analysis Study

Councilor Knowles introduced Rebecca Marshall-Chao, Regional Financial Advisors, Inc. (formerly with Public Financial Management). Ms. Marshall-Chao presented a draft report on Financing Strategies and Sources for Exposition-Recreation Consolidation. She noted the report was based on Metro facilities without a headquarters hotel and consolidation of City facilities only. Metro and the City would share the management pool. In response to questions, Ms. Marshall-Chao explained Certificates of Participation saying they represented a lease purchase financing, which represents an installment sale arrangement. Certificates of Participation would require a lease agreement between Metro and the trustee bank acting for the certificate investors. Title to the facility would be held in trust by the trustee bank and at the end of the lease would to pass to Metro. Councilor Wyers asked if the Metro excise tax had been considered in drafting

this report. Ms. Marshall-Chao said it had been discussed as a possible revenue source. As an example, she said an excise tax could be added to the cost of tickets for Zoo admission or attached to the cost of using landfill facilities.

4. CONSENT AGENDA

Motion: Councilor Devlin moved, seconded by Councilor Gardner, to approve items 4.1 and 4.2 of the consent agenda.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor DeJardin was absent.

The motion carried and the following items were approved:

- 4.1 Resolution No. 89-1126, In the Matter of a Waiver of the Application Deadline for the Submission of materials for Contested Case No. 89-1, Gravett
- 4.2 Resolution No. 89-1165, Amending the FY 1990 Unified Work Program (UWP) to Include an Alternatives Analysis/DEIS for the Hillsboro Segment of the Westside Light Rail

5. ORDINANCES, FIRST READINGS

- 5.1 Ordinance No. 89-324, For the Purpose of Amending Metro Code Chapter 5.04 Relating to Terms of Office for Members of the One Percent for Recycling Advisory Committee

The Clerk read the ordinance by title only for the first time. Presiding Officer Ragsdale announced he had referred the ordinance to the Solid Waste Committee.

- 5.2 Ordinance No. 89-325, For the Purpose of Amending the Metro Code Regarding the Metropolitan Exposition-Recreation Commission

The Clerk read the ordinance by title only for the first time. Presiding Officer Ragsdale announced he had referred the ordinance to the Convention, Zoo and Visitor Facilities Committee.

6. ORDINANCES, SECOND READINGS

- 6.1 Ordinance No. 89-319, An Ordinance Establishing a Plan for Financing from Time-to-Time of Various Components of the Metropolitan Service District's Solid and Liquid Waste Disposal System; Authorizing the Issuance of One or More Series of Revenue Bonds for such Purpose under the Provisions of Supplemental Ordinances Adopted Pursuant Hereto; and Establishing and Determining Other Matters in Connection Therewith

The Clerk read the ordinance by title only a second time. The Presiding Officer explained the ordinance had been introduced by the Solid Waste and Finance Committees and received a first reading before the Council on October 12, 1989, after which it was referred to the Solid Waste Committee. The Solid Waste Committee and Finance Committee held a joint public hearing on November 2. The Solid Waste Committee held another public hearing on November 14 and the Finance Committee held an additional public hearing on November 16. Both Committees recommended the Council adopt the ordinance as amended.

Councilor Hansen, Chair of the Solid Waste Committee, explained to the Council the changes that were made to the ordinance at the Solid Waste meeting on November 14. He said the Committee discussed Appendix A of the ordinance which provided for flow control and recommended source separated recyclables be removed from Appendix A. Councilor Hansen noted all changes recommended by the Solid Waste Committee had been incorporated in the ordinance before the Council.

Main Motion: Councilor Hansen moved, seconded by Councilor Buchanan, to adopt Ordinance No. 89-319.

Councilor Gardner, member of the Finance Committee, said the Finance Committee agreed with changes made by the Solid Waste Committee and also amended the ordinance to insert the name of U.S. National Bank as the Master Trustee. The Committee also made an amendment to put the definition section of the flow control code provisions in alphabetical order. He said all changes recommended by the Finance Committee were included in the ordinance currently before the Council.

Ed Einowski, Bond Counsel, then explained to the Council that there had been two changes made to the ordinance since its approval by the Solid Waste and Finance Committees. They were: 1) typographical errors had been corrected; and, 2) in the appendix the Arlington site had been added to the list of designated facilities.

Motion to Amend: Councilor Hansen moved, seconded by Councilor Buchanan, to amend Section 5.05.030 of the Flow Control Appendix to include No. 7, Arlington Landfill and to accept the general typographical and grammatical corrections to the Ordinance.

Vote on Motion to Amend: A vote on the motion to amend the resolution resulted in all eleven Councilors present voting aye. Councilor DeJardin was absent.

The motion carried unanimously.

Mr. Einowski then explained to the Council the reason for including the Arlington Landfill in the list of designated facilities. He said the purpose of the flow control was to ensure people did not take their waste directly to Arlington. If a significant waste generator in the Metro area were to haul directly to Arlington, Metro would not collect the appropriate fee. Basically, the flow control ordinance would allow hauling directly to places like Arlington, but only if haulers secured the proper license. The purpose of the proviso in paragraph 7 was to ensure this happening.

Vote on Main Motion: A vote on the motion to adopt the resolution as amended resulted in all eleven Councilors present voting aye. Councilor DeJardin was absent.

The motion carried unanimously.

6.2 Ordinance No. 89-320. An Ordinance Enacted as a Supplemental Ordinance to Ordinance No. 89-319; Establishing a Plan for Financing the 1989 Compost Project to Serve as a Part of the Metropolitan Service District's Solid and Liquid Waste Disposal System; Authorizing the Issuance of the 1989 Compost Project Bonds for such Purpose; and Establishing and Determining Other Matters in Connection Therewith

The Clerk read the ordinance by title only a second time. The Presiding Officer explained the ordinance had been introduced by the Solid Waste and Finance Committees and received a first reading before the Council on October 12, 1989, after which it was referred to the Solid Waste Committee. The Solid Waste Committee and Finance Committee held a joint public hearing on November 2. The Solid Waste Committee held an additional public hearing on November 14 and the Finance Committee held an additional public hearing on November 16. Both Committees recommended the Council adopt the ordinance as amended.

Councilor Hansen, Chair of the Solid Waste Committee, summarized the action of his Committee. He said the purpose of this ordinance was to authorize bonds for the composter. At the Solid Waste Committee's public hearing on November 14, no one was present to testify. The Committee voted 3/0 to recommend Council adoption of the ordinance.

Main Motion: Councilor Hansen moved, seconded by Councilor Buchanan, to adopt Ordinance No. 89-320.

Councilor Gardner, member of the Finance Committee, reported action taken at the Committee's November 16 meeting. He explained the two types of bonds covered by this ordinance: Series A for \$26,680,000 which would be an obligation for Metro and Series B for \$1,215,000 which would be the obligation of Riedel. Councilor Gardner noted Mr. Einowski had mentioned the

possibility of a change to the structure of the bond sale. Mr. Einowski said the structure had not changed since the November 16 meeting. He also noted having made typographical and grammatical corrections to the ordinance. For this reason, a motion to amend was needed, similar to the one for the prior ordinance. Mr. Einowski said the figures Councilor Gardner mentioned were approximate. In response to questions from Chair Ragsdale, Dan Cooper, General Counsel, said he had not reviewed the exact language in the ordinance currently before the Council, but had discussed it with Mr. Einowski and did not feel there were any substantial changes to the ordinance as presented to the Finance Committee on November 16.

Councilor Bauer noted having concerns about approving an amendment without knowing exactly what the changes were. He had no doubt that everyone's intent was positive, but was concerned about the procedure. Chair Ragsdale expressed similar concerns. Councilor Van Bergen expressed concern about the use of the word "liquid" in the ordinance. He had received inquiries from his constituents expressing worry about this being the first step toward removing control of sewage from local agencies. He would like the record to reflect this was not the first step toward invading any of these jurisdictions. The Clerk was asked to note this was part of the legislative intent. Councilor Gardner suggested asking General Counsel to review all the changes and come back to the Council if there was a need for any amendments. He said he was comfortable adopting the ordinance.

Motion to Defer: Councilor Devlin moved, seconded by Councilor McFarland, to remove the item from the agenda and, at the discretion of the Presiding Officer, return it to this evenings agenda.

On discussion, Councilor Collier expressed agreement with Councilor Bauer, but reminded the Council that the ordinance had already gone through the Council as a whole, minus one Councilor, through the Solid Waste and Finance Committees and Mr. Einowski had been very diligent in making every substantive change. She would like to proceed with passage of this ordinance, with assurance from Mr. Einowski that these are simply "clean up the ordinance" changes and not substantive changes.

Vote on Motion to Defer: A vote on the motion to defer resulted in:

Ayes: Councilors Bauer, Devlin, McFarland, Wyers and Ragsdale

Nays: Councilors Buchanan, Collier, Gardner, Hansen, Knowles, and Van Bergen

Absent: Councilor DeJardin

The motion to defer was defeated.

Motion to Amend: Councilor Gardner moved, seconded by Councilor Collier, to amend Ordinance 89-320 to incorporate the housekeeping and typographical corrections made by Mr. Einowski that were reflected in the draft before the Council.

Vote on Motion to Amend: A vote on the motion to amend resulted in:

Ayes: Councilors Buchanan, Collier, Devlin, Gardner, Hansen, Knowles, Van Bergen and Wyers

Nays: Councilors Bauer, McFarland and Ragsdale

Absent: Councilor DeJardin

The motion to amend was carried.

On further discussion, Councilor Wyers stated she was supporting the ordinance in the hope it would be a successful project.

Vote on Main Motion: A roll call vote on the motion to adopt the ordinance as amended resulted in ten Councilors present voting aye. Councilor McFarland voted nay. Councilor DeJardin was absent.

The motion carried.

7. RESOLUTIONS

7.1 Resolution No. 89-1152. For the Purpose of Adopting Disadvantaged Business Program Goals for 1989-90

Councilor Collier, member of the Internal Affairs Committee, reported the Committee recommended adoption of the resolution. She summarized the staff report, noting the continuation of the goals at the same levels were based on the prior year experience of meeting or exceeding the FY 1988-89 program goals. She also told the Council Metro was the only local government with such a program currently in place. Chair Ragsdale commended staff on their efforts in conducting the DBE/WBE program. The other Councilors concurred.

Motion: Councilor Collier moved, seconded by Councilor Gardner, to adopt the resolution.

Vote: A vote on the motion to adopt the resolution resulted in all eleven Councilors present voting aye. Councilor DeJardin was absent.

The motion carried and the resolution was adopted.

7.2 Resolution No. 89-1170, Approving an Intergovernmental Agreement with the City of Portland to Consolidate Regional Convention, Trade, Spectator and Performing Arts Facilities Presently Owned and Operated by the City of Portland and the Metropolitan Service District

Councilor Knowles, Chair of the Convention Center, Zoo and Visitor Facilities Committee, reported his Committee had recommended adoption of the resolution. Councilor Van Bergen, however, had dissented. Councilor Knowles summarized the Committee's review of the Agreement, saying public testimony had been received from Richard Ares, Metro Exposition-Recreation Commission (MERC), and Mitzi Scott, MERC and City of Portland Exposition-Recreation Commission (ERC), in support of the consolidation. He said the Agreement was being presented pursuant to a Memorandum of Understanding (MOU) signed by both

Metro and the City of Portland and approved by the Council several months ago.

Main Motion: Councilor Knowles moved, seconded by Councilor DeJardin, to adopt the resolution.

On further discussion, Dan Cooper, General Counsel, said he had met with Chris Thomas, attorney representing the City of Portland, as requested by the Convention Center, Zoo and Visitor Facilities Committee at their November 15 meeting to investigate the possibility of certain language changes in the Agreement. He met with Mr. Thomas this morning, November 21, and had for the Council's consideration a "black line" version of the Agreement which included both the changes recommended by the Committee and those requested by Mr. Thomas. In response to a question from Councilor Collier, Councilor Knowles said he had not seen the revised Agreement. Mr. Cooper then explained to the Council the changes. Beginning on page 5, Section 3, the addition of the words "...and Personal"; page 8, Subsection E, changing the word audit to inventory and including Metro ERC and Portland ERC jointly; pages 12 and 13, changing 30 days to 20 days; page 14, Section 7, deleting "...and Interim Budgets"; page 16, Subsection B, adding "..., except as otherwise provided in this section,..." and the addition of the last paragraph; page 27, Subsection B, the addition of language stating neither the City nor the ERC can destroy original records without written approval of Metro; the

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final change was on page 38 and was the addition of the Council Clerk and City Commissioner in charge of the ERC to receive notices.

In response to questions, Mr. Cooper said Metro had not delegated any improper budget authority to either the City or MERC; no Metro ordinances have been violated. He added that under this Agreement, the City retained budget approval for those facilities it continued to own, but had no budget approval authority over Metro facilities.

Motion to Amend: Councilor Knowles moved, seconded by Councilor DeJardin, to approve the amendments as outlined by General Counsel and included in the draft before the Council.

On discussion, Councilor Van Bergen stated he would vote in favor of the amendment in order to have the type of agreement the proponents desire, but would not necessarily vote in favor of the original motion. In response to questions from Councilor Collier, Mr. Cooper said none of the provisions of this Agreement were locked into Phase 2; Phase 2 would terminate this Agreement and all terms would be renegotiated at that time.

Vote on Motion to Amend: All twelve Councilors present voted aye.

The motion carried unanimously.

On further discussion of the main motion, Councilor Devlin said that the minutes of a joint meeting of MERC and the ERC reflected that Commissioners Runstein and Clark indicated they felt there was no agreement regarding certain items being excluded from further phases of consolidation. Councilor Devlin noted concern that not all parties involved were clear as to what was expected in Phase 2. Councilor Gardner expressed the same concerns. He said there were aspects of the Agreement he felt would be objectional as part of a permanent arrangement of a regional system of con-vention, trade and visitor facilities. He also had some concern that changes were being made to the Metro Code, specifically the process for soliciting nominations and appointments to the Metro ERC, and that Metro would be giving up some responsibility on how to use any future excise tax. Councilor Gardner said he could support the Agreement as long as it was not a permanent agreement.

Councilor Van Bergen said he supported the Convention Center as a regional issue, but was opposed to the consolidation on the basis of it not being a regional issue. He felt the citizens in his

community were unwilling to pay the money for these additional facilities. Councilor Knowles stated the only way to achieve Metro's objectives was to take some measured risks and he felt consolidation was the only way to achieve regional benefits.

Vote on Main Motion: A vote on the motion to adopt the resolution as amended resulted in eleven Councilors voting aye; Councilor Van Bergen voted nay.

The motion carried and the resolution was adopted.

Councilor Van Bergen then requested Presiding Officer Ragsdale's assistance in directing staff to prepare the necessary documentation to attach to the contingency account for funds to review the questions he raised concerning the delegation of powers. He said he would like the assistance of Don Carlson, Council Administrator, in preparing documentation for funds for outside counsel to review the issues of the delegation of authority of the Council. Chair Ragsdale directed Mr. Carlson to prepare that information for Councilor Van Bergen.

Presiding Officer Ragsdale called a recess at 7:45 p.m. The meeting reconvened at 7:55 p.m.

7.3 Resolution No. 89-1169A, For the Purpose of Authorizing Award of Contracts to Trans Industries for Construction and Operation of the Metro East Station

Presiding Officer Ragsdale outlined the rules by which the public hearing would be conducted. Each individual would be asked to limit his or her testimony to three minutes and to not repeat testimony already given by someone else. Groups were encouraged to appoint one spokesperson to testify for the entire group.

Solid Waste Committee's Report and Recommendations

Councilor Hansen, Chair of the Solid Waste Committee, stated there were amendments made to the resolution at the Committee level, and General Counsel walked the Committee through all the changes. He then read the entire written report and recommendation of the Committee, dated November 15, 1989, which had been printed in the meeting agenda packet. The report explained the three agreements; Real Estate Purchase/Sale, Construction and Operations. It also discussed key questions and issues raised by Committee members and the public during the public hearing. The Committee had voted 3 to 1 to recommend Council adoption of the resolution, Councilor Wyers cast the no vote, Councilor Buchanan was absent.

Main Motion: Councilor Hansen moved, seconded by Councilor Buchanan, to adopt the resolution.

Public Hearing

The Presiding Officer read a letter submitted by Estle Harlan, representing the Tri-County Council, which has been incorporated into these records by reference.

Craig Reiley, Oregon Public Utility Commission (PUC), testified on the findings of the PUC with reference to crossing safety at the site on 61st Avenue. The basic concern was to make sure anyone entering the site had a reasonably safe access. Of major concern was the quantity of hazardous material being transported through the area. The PUC had not done a specific site review, because no proposal had been received from Trans Industries. Councilor Wyers asked how the PUC determined automatic signals were required. Mr. Reiley responded an applicant would need to convince the PUC that gates and flashing lights were not needed. In response to further questions, Mr. Reiley said it would be difficult to determine how many times a day traffic might typically be held up.

Michael Sievers, 3200 N.W. Yeon, Portland, Project Manager for Rose City Resource Recovery, asked the Council to reject the proposed contract with Trans Industries for the Metro East station and to authorize the Executive Officer to begin negotiations with Rose City Resource Recovery. He spoke of the environmental condition of the proposed Trans Industries site and urged that the Dames & Moore report not be the basis of this policy decision.

Mr. Sievers said the Rose City site had known environmental conditions and would not create unnecessary environmental delay or risk for Metro. He added Rose City Resource Recovery had \$1.1 million in escrow for site clean-up. He urged the Council not to link the indemnification issue to the operating agreement for the proposed facility. Councilor Hansen asked why the Rose City site needed \$1.1 million in escrow for clean-up if it was already a clean site. Mr. Sievers responded the \$1.1 million was the amount agreed upon when the site was acquired.

Thomas Brennan, 510 SW Third Avenue, Portland, representing Norcal Solid Waste System, Inc., presented an alternate plan to the Council in a letter which has been incorporated into these records by reference. He said Norcal would support any action to allow all vendors to update and resubmit their proposals and urged the Council to consider all the options available before making any decisions. In response to questions from Councilor

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Wyers, Mr. Brennan said Norcal had been in contact with the Kenton Neighborhood Association and Portsmouth Neighborhood Association. Councilor Hansen asked if any of the groups had endorsed Norcal's proposal on the record, any positive official support. Mr. Brennan said nothing of an official nature had been received.

Greg Hathaway, 1211 SW Fifth Avenue, Portland, attorney representing Norcal, sited three reasons he felt made tonight's decision difficult for the Council; the Trans Industries site was contaminated, the surrounding sites were potential problems and it was unknown if the site would work out because of the environmental problems. Mr. Hathaway said the mitigation factors do not adequately resolve the problems and expose Metro. He then offered a possible solution for Metro; do not approve the contract for Trans Industries this evening, allow the all proposers to resubmit their proposals with necessary modifications, and have Metro re-evaluate them.

Lee Poe, 3911 N. Attu, Portland, a resident of North Portland, testified that any site which impacts any North Portland neighborhoods are opposed by the majority of North Portland citizens. The Trans Industries site affects the University Park, Cathedral Park and St. Johns neighborhoods. Ms. Poe said she did not feel the Council had the authority to protect the St. Johns Bridge. She noted on November 3, 1989, Councilor Hansen asked the North Portland Citizens Committee to call a board meeting. All those attending that meeting agreed they did not want any transfer sites that would impact any North Portland neighborhoods. However, a vote taken at that time resulted in one vote for the Riedel site, one vote for the Trans Industries site, and all the remaining votes for the Norcal site.

Ms. Poe added the Norcal people had been very cooperative with the community. Councilor Knowles asked why the citizens were more favorably inclined toward the Norcal site when it was so close to residential properties and opposed to the Rose City site which was farther away. Ms. Poe said the Rose City people have not been favorable toward the citizens in the community. The Norcal people have been very open. She stated again that no site in North Portland which would impact the area was desired. Baring that, Norcal was the second choice.

Neil Arden, 1817 N. Winchell, Portland, Vice Chair of the Kenton Neighborhood Association, referred to a letter from the Association which stated if the Trans Industries site was not chosen, their second choice was the Riedel site followed by the Norcal site. Mr. Arden said the Rose City site was never a consideration. He said Norcal showed a great deal of concern for the

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neighborhood, adding the Association would be filing another appeal with LUBA against the Rose City site. In response to questions from Councilor Buchanan, Mr. Arden said the Association was not taking a position on the Trans Industries site, only on the alternate sites.

Judy Rounpf, representing the Association of Oregon Recyclers (AOR), began by stating that Rob Guttridge, Oregon Environmental Council, had to leave, but asked her to convey to the Council his support regarding recycling issues. She wanted to address the public policy of Metro. Of particular concern to AOR was the exemption for source separated recyclables from the materials recovery incentive. She also urged prohibiting the contractor from promoting or engaging in activities that would discourage source separation or would encourage commingling of recyclables.

Jeanne Roy, speaking for Recycling Advocates, was there to address one policy question - How should Metro use economic incentives based on the avoided costs of disposal? Recycling Advocates supports giving incentives based on avoided costs, but would like to see those incentives given for recycling, not for burning. She asked that the contract be changed so the operator was paid full avoided costs only when the material had come in as mixed waste, processed and sold for recycling. The operator should not be paid for material that had already been separated by the generator. She asked the Council to support an amendment which would clearly prohibit discouragement of source separation and any mixing of recyclables.

Judy Dehen, 2965 NW Verde Vista, Portland, testified she was there to support the suggested amendments of the Association of Oregon Recyclers. She felt the source separated recyclables should have been put out for bid, so all the recycling companies would have had an equal opportunity to participate.

Mark W. Hope, 8501 N. Borthwick, Portland, representing Waste Recovery, Inc., said he was there in support of the Association of Oregon Recyclers' suggested amendments. He felt if Metro was going to reimburse for source separated material, all who deal in source separated material should be reimbursed.

Charles Bird, Riedel Waste Disposal Systems, said his company had reviewed their proposal and could guarantee transfer of the waste on time. The Riedel site had no trains to worry about and the environmental concerns were minor. He also mentioned two letters of support from the community included in Reidel's original proposal.

Rich Owings, Trans Industries, addressed Mr. Reiley's comments regarding access, safety, routing and the application process. He said Trans Industries had changed their proposal to reduce the number of entrances and exits to the site to one entrance and one exit. In terms of safety, Mr. Owings said they were agreeable to putting on the property any safety devices the PUC deemed necessary. He noted Mr. Reiley stated in his letter he could foresee no need for additional crossing signals for the volume of trucks being proposed for this project. Trans Industries has arranged for a meeting with all parties concerned on November 28, 1989, to discuss what would be necessary in the application. Mr. Owings said the facility would be ready to operate on January 1, 1991, as guaranteed.

Councilor Devlin asked why the liability was limited to the first five years if there were no problems. Mr. Owings said Trans Industries was willing to step up and own the facility and operate it for twenty years. It was Metro's choice to take the business position of ownership and for that reason the business risk shifted. Trans Industries was willing to take the risk during construction and operation, but not when there was no revenue. In response to questions from Councilor Bauer, Dan Cooper, General Counsel, said the contract, with the exception of the wait for the issuance of the DEQ solid waste transfer disposal program, clearly assigns the risk of time delay to Trans Industries for any environmental concern related to the property.

Councilor Van Bergen asked Mr. Owings if Trans Industries was thoroughly convinced there were no problems, why was the indemnity clause a negotiable item on the contract. Mr. Owings responded Trans Industries had indemnified Metro during the construction period and during the operation period. It was his opinion if there were going to be problems they would occur during those two periods. He added Trans Industries had agreed to extend to defend Metro beyond that period up to \$100,000. Councilor Gardner then asked for further clarification from Dan Cooper regarding delays and who would be responsible for the costs. Mr. Cooper said the DEQ permit delay was factored into the agreement. If the permit is not issued by June 15, 1990, the agreement may be terminated. That was the potential for delay to which he was referring. In response to further questions from Councilor Knowles, Mr. Cooper said the construction agreement contains the requirement to clean-up the site.

There was no other public testimony and Presiding Officer Ragsdale closed the public hearing.

Presiding Officer Ragsdale called a recess at 10:40 p.m. The meeting reconvened at 10:55 p.m.

Bob Martin, Director of the Solid Waste Department, summarized his staff's position on recycling issues. He was sympathetic with the principals and the concerns of the recycling community, but felt the terms of the negotiated contract were good. He defended the avoidance cost (recycling incentive), saying source separable material at both St. Johns Landfill and Metro was of a minute amount and there was no incentive for haulers to bring source separated materials to those facilities. The incentive, however, does apply to source separated material brought in by self haulers. Mr. Martin noted being in favor of a commingled system on residential routes, feeling this encourages recycling.

Steve Greenwood, DEQ Solid Waste Manager, explained the permit process to the Council. He said an application had been received for preliminary approval of the site and he did not anticipate the process taking a long time. After preliminary approval, the applicant would need to submit site plans and specifications as part of the permit application. DEQ would then draft a permit with any necessary conditions and hold a public hearing. A final permit would be issued after the public hearing. Mr. Greenwood said the DEQ staff was familiar with the site and did not feel there was any activity there that would necessitate extensive clean-up. In response to questions from Councilor Knowles, he said DEQ staff thought the Trans Industries site was not the source of any kind of hazardous substances that would be subject to the Environmental Division's purview, the State Super Fund law.

Mr. Cooper summarized the impact of the indemnification agreement, saying it protects Metro on two different levels; the first phase was through the termination of the operation agreement, the second phase was after the operation agreement is terminated. Prior to termination of the operation agreement and after acquisition of the property, Trans Industries and its parent companies, have agreed to indemnify and hold Metro harmless from any costs resulting out of any environmental condition of the property prior to the time Metro acquires it. After the termination of the operation agreement there was a continuation of that obligation in part only; to cover the costs of defense and investigation to protect Metro's interest in that matter to the same extent they are protecting their own interest.

In response to questions from Councilor Knowles, Mr. Martin said staff's intention was to follow the recommendations of the Dames & Moore report. Councilor Van Bergen said he felt the primary issue was the additional miles from the site to Arlington. He also noted this was not the low cost collection bid and the cost for the site must be borne by the whole region, not just North Portland. Councilor Van Bergen added hazardous waste does, in

fact, exist on the site and the Dames & Moore report was a review of other reports, not an actual inspection. Also, he felt the indemnity clause was too low.

First Motion to Amend: Councilor Knowles moved, seconded by Councilor Wyers, to add the following to the BE IT RESOLVED section prior to No. 3:

3. That prior to executing the Operations Agreement, the Executive Officer and Trans Industries shall renegotiate the terms of the Agreement to remove the provision that the contractor will be paid a Materials Recovery Incentive on source separated recyclables. The Materials Recovery Incentive shall be paid only on recyclable materials that the contractor extracts from mixed solid waste.

Vote on First Motion to Amend: A vote on the motion resulted in:

Ayes: Councilors Buchanan, Collier, Devlin, DeJardin, Gardner, Knowles, McFarland and Wyers

Nays: Councilors Bauer, Hansen, Van Bergen and Ragsdale

The motion carried.

Second Motion to Amend: Councilor Gardner moved, seconded by Councilor Wyers, to add the following to the BE IT RESOLVED section following Councilor Knowles amendment:

4. That prior to executing the Operations Agreement, the Executive Officer and Trans Industries shall renegotiate the terms of the agreement to include a provision that prohibits Trans Industries from promoting or engaging in any activity which results in the commingling of source separated materials with Acceptable Waste, regardless of whether the source separated materials are kept separate from the Acceptable Waste through enclosure in a bag, box, or any other container.

Councilor Gardner added it was important not to do anything to discourage source separation of recyclables. It is important that Metro do everything possible to encourage source separation of recyclable material.

Vote on Second Motion to Amend: A vote on the motion resulted in:

Ayes: Councilors Collier, Devlin, Gardner, Knowles, McFarland and Wyers

Nays: Councilors Bauer, Buchanan, DeJardin, Hansen, Van Bergen and Ragsdale

The motion was defeated.

Third Motion to Amend: Councilor Wyers moved, seconded by Councilor McFarland, to add the following to the BE IT RESOLVED section following Councilor Knowles amendment:

4. That prior to executing the Operations Agreement, the Executive Officer and Trans Industries shall renegotiate the provisions regarding payments to limit the payment of the Materials Recovery Incentive to 90 percent of Metro's avoided cost for disposal for all recovered materials that are burned or otherwise incinerated except that no Materials Recovery Incentive shall be paid for materials sent to a facility whose primary fuel is solid waste or refuse-derived fuel.

Vote on Third Motion to Amend: A vote on the motion resulted in:

Ayes: Councilors Collier, Devlin, Gardner, Knowles, McFarland and Wyers

Nays: Councilors Bauer, Buchanan, DeJardin, Hansen, Van Bergen and Ragsdale

The motion was defeated.

Fourth Motion to Amend: Councilor Knowles moved, seconded by Councilor Collier, to add the requirement that the additional investigations recommended by Dames & Moore be pursued.

WHEREAS, additional studies have been recommended by the firm of Dames & Moore; and

BE IT RESOLVED,

4. That the additional investigations listed as items 1, 2 and 3 on page 31 of the Dames & Moore report dated November 2, 1989 be conducted by Metro.

On discussion, staff noted item #1 addressed the collection of two sets of soil samples from six specific areas along the northwest corner of the site for the purpose of verifying and pinpointing any soil contamination. Item #2 recommended an additional monitoring well be installed along NW 61st Avenue and the existing wells be completely purged and samples analyzed. Item #3 recommended 20 test pits be excavated around the northwest and northeast sides to evaluate the possibility of battery chips disposal on-site.

Vote on Fourth Motion to Amend: A vote on the motion resulted in all twelve Councilors present voting aye.

The motion carried unanimously.

Fifth Motion to Amend: Councilor Devlin moved, seconded by Councilor Wyers, to amend 6.2 (b) of the Real Estate Agreement in such a fashion that retains the original intent of at least our portion of the negotiations that Trans Industries be limited to \$100,000 in outside expenses, but they continue to be obligated for in-house counsel. "...; provided, however, the foregoing obligation to defend shall ~~terminate, and be of no further force and effect, at and after such time as be limited to the expenditure by Seller has incurred on of an~~ aggregate of One Hundred Thousand and No/100 Dollars (\$100,000.00) in Transaction Costs. Thereafter, Purchaser shall pay Transaction Costs directly incurred on behalf of Purchaser."

Vote on Fifth Motion to Amend: A vote on the motion resulted in all twelve Councilors present voting aye.

The motion carried unanimously.

On further discussion of the main motion as amended, Councilor McFarland said the site was outside Metro's original boundary, it was flawed as far as moving traffic in and out, and it contained numerous hazardous wastes on and around it. She said she could not support the motion. Councilor Gardner also could not support

the motion, saying Metro did not know what was on the site now, nor would they in five years. Councilor Buchanan spoke in favor of the motion, saying it was a known factor and he supported it. Councilors Devlin and Hansen also spoke in favor of the motion.

Vote on Main Motion as Amended: A vote on the motion resulted in:

Ayes: Councilors Bauer, Buchanan, Collier, Devlin, DeJardin, Hansen, Knowles, and Ragsdale

Nays: Councilors Gardner, McFarland, Van Bergen and Wyers

The motion carried and the resolution was adopted.

7.4 Resolution No. 89-1175, For the Purpose of Award of a Contract for Metro South Operations to Waste Management of Oregon

Bob Martin, Solid Waste Director, presented the report to the Council. He summarized events leading up to the bid opening (November 20, 1989), noting the RFP had been before both the Solid Waste Committee and the full Council. Because of time constraints, the resolution was being presented directly to the full Council. Three bids were received; Waste Management of Oregon (\$4,684,195), Trans Industries (\$5,517,198), and Wastech (\$5,848,156). The low bid was received from Waste Management of Oregon. Staff's recommendation was that Waste Management of Oregon be awarded the bid.

Motion: Councilor Collier moved, seconded by Councilor Knowles, to adopt Resolution No. 89-1175.

On discussion, Councilor Van Bergen expressed concern about anti-trust litigation involving Waste Management in other parts of the country. Councilor Devlin noted having similar concerns. In response to questions, Dan Cooper, General Counsel, said he had no knowledge of any antitrust convictions involving the local subsidiary of Waste Management. Councilor Knowles declared a potential conflict of interest. He had in the past worked under a subcontract with Northwest Strategies, the lobbying organization for Waste Management. He then asked if Waste Management had complied with Metro's affirmative action requirements. Mr. Martin affirmed they had. The percentage for DBE was 7% and for WBE 3.7%, which exceeded Metro's goal.

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In response to questions from Councilor Hansen, Mr. Cooper said, depending on the circumstances, Metro could possibly revoke or terminate the contract if Waste Management were convicted of an antitrust violation. He added the State of Oregon, unlike other states, does not have a statutory provision that bars corporations guilty of antitrust violations from bidding on any local or state government contracts.

Vote: A vote on the motion to adopt the resolution resulted in nine Councilors voting aye. Councilor Van Bergen voted nay. Councilors DeJardin and McFarland were absent.

The motion carried and the resolution was adopted.

8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

Councilor Knowles, Chair of the Convention Center, Zoo, Visitor Facilities Committee, said the meeting scheduled for November 28 was canceled.

There was no other business and the meeting was adjourned at 1:00 a.m.

Respectfully submitted,



Ann Brunson
Clerk

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