

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF APPROVING ) RESOLUTION NO 99-2766  
CHANGE ORDER NO. 8 TO THE )  
WASTE DISPOSAL SERVICES ) Introduced by Mike Burton,  
CONTRACT ) Executive Officer; Rod Monroe, Presiding  
 ) Officer; and Councilor Ed Washington

WHEREAS, As described in the accompanying staff report, Metro and the Contractor wish to amend certain terms and payment provisions, and to resolve other differences concerning the current Waste Disposal Services Contract; and

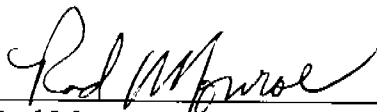
WHEREAS, Metro will incur substantial financial savings over the life of the Contract, should Change Order No. 8 be executed; and

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

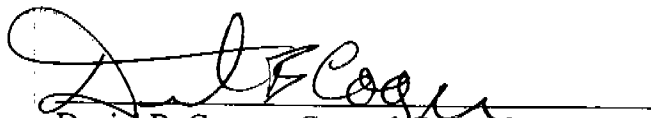
BE IT RESOLVED:

That the Metro Council authorizes the Executive Officer to execute Contract Change Order No. 8 to the Waste Disposal Services Contract in a form substantially similar to attached Exhibit "A."

ADOPTED by the Metro Council this 15<sup>th</sup> day of April 1999.

  
Rod Monroe, Presiding Officer

APPROVED AS TO FORM:

  
Daniel B. Cooper, General Counsel

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

This Contract Change Order No. 8, dated as of the last signature date below, hereby amends Metro Contract No. 900607, entitled "Waste Disposal Services," dated April 11, 1988, including all prior amendments (which contract and amendments are collectively referred to herein as "the Waste Disposal Services Agreement").

**Recitals**

1. In 1998, Waste Management Inc. entered into a merger agreement with USA Waste Services, Inc. Prior to the merger, Contractor, Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems ("OWS"), was a wholly owned subsidiary of Waste Management of North America ("WMNA") and WMNA was a wholly owned subsidiary of Waste Management Inc. Pursuant to the merger agreement, Waste Management Inc. was merged with a wholly owned subsidiary of USA Waste, Inc. The surviving corporation is known as Waste Management Holdings, Inc. ("WMHI"). Thereafter, USA Waste Services changed its name to Waste Management, Inc., and WMHI became a wholly owned subsidiary of Waste Management Inc. Following the merger OWS is a wholly owned subsidiary of WMNA and WMNA is a wholly owned subsidiary of WMHI.
2. A dispute has arisen between Metro and the Contractor ("the Dispute") as to whether the above-described 1998 transactions constitute either or both a change of control and a transfer of a controlling interest in the beneficial ownership of the Contractor under Article 29 of the Waste Disposal Services Agreement. In exchange for the promises and other consideration set forth in the Waste Disposal Services Agreement and in this Contract Change Order, and in order to resolve and compromise the Dispute between the parties without admission or concession by any party as to any statement of fact or law concerning the Dispute, and fully reserving all other rights which the parties may have under the Waste Disposal Services Agreement, the parties hereby agree as follows:

**A. Purpose**

The purpose of this Contract Change Order is to amend certain term and payment provisions of the Waste Disposal Services Agreement and to incorporate therein other mutually agreed provisions.

**B. Provisions of Contract Change Order**

1. Extension of Contract Term.

The provisions of the Contract Forms document entitled "Contract," made and entered into by and between Metro and Oregon Waste Systems, Inc., dated April 11, 1988, are amended to delete the date "December 31, 2009" and to replace such date with "December 31, 2014." In addition, the provisions contained in the Proposal of Oregon Waste System, Inc., dated December 21, 1987, under the heading "Start of Disposal Operation and Contract Completion Time" (the provisions of which having been incorporated into the Waste Disposal Services Agreement under Article 1B.(4) of the General Conditions of the Contract Documents), are deleted and superceded by this Contract Change Order. In addition, the provisions contained in the second paragraph, beginning at the fourth sentence and following to the end of the paragraph in the Contract Document entitled "Invitation to Bid" are deleted and superceded by this Contract Change Order.

2. Amendment of Payment Provisions.

The provisions of Article 19.A of the General Conditions of the Solid Waste Disposal Agreement are amended to provide as follows:

For all work required under this Contract, Metro will make monthly payments to Contractor based upon the rates set forth in this Contract Change Order.

- a. Effective July 1, 1999, and continuing through December 31, 1999, Metro shall pay Contractor at the rate of \$28.18 per ton for the initial 275,000 tons of waste delivered to Contractor from July 1, 1999 to December 31, 1999. For each ton of Metro Solid Waste Tonnage delivered to Contractor from July 1, 1999 to December 31, 1999 in excess of 275,000 tons, Metro shall pay Contractor a declining incremental price in accordance with the following schedule:

If Metro Solid Waste Tonnage In Excess of 275,000 Tons Is:	The Price Per Ton For Such Metro Solid Waste Tonnage In Excess of 275,000 Shall Be:
275,001 to 296,250 tons	\$10.34 per ton
296,251 to 317,500 tons	\$9.82 per ton
317,501 to 338,750 tons	\$9.31 per ton
338,751 to 360,000 tons	\$8.79 per ton
360,001 to 381,250 tons	\$8.28 per ton
Above 381,251 tons	\$7.76 per ton

- b. Effective January 1, 2000, the basis for Metro monthly payments for work shall change from the annual rate schedule of Change Order No. 7 (and the semi-annual schedule of the Paragraph 2.a above) to a quarterly rate schedule. Effective January 1, 2000, for each ton of Metro Solid Waste Tonnage which Metro delivers, or authorizes to be delivered directly quarterly to Contractor, Metro shall pay Contractor an amount equivalent to the per ton price produced by applying the following declining incremental price schedule to the total quarterly Regional Solid Waste Tonnage:

If Quarterly Regional Solid Waste Tonnage Is:	The Price Per Ton For the Metro Solid Waste Tonnage Included in Such Tonnage Shall Be:
0 to 137,500 tons	\$22.31 per ton
137,501 to 148,125 tons	\$10.34 per ton
148,126 to 158,750 tons	\$9.82 per ton
158,751 to 169,375 tons	\$9.31 per ton
169,376 to 180,000 tons	\$8.79 per ton
180,001 to 190,625 tons	\$8.28 per ton
Above 190,625 tons	\$7.76 per ton

- c. For purposes of determining the rates and sums to be paid under this Article, the following definitions shall apply:

- (1) "Metro Solid Waste Tonnage" shall mean solid waste which Metro delivers or which Metro authorizes to be delivered directly to Contractor.
- (2) "Regional Solid Waste Tonnage" shall mean the total of the following:
  - i. Metro Solid Waste Tonnage; and
  - ii. All solid waste, exclusive of special or hazardous waste, from within the Metro region, disposed of at any general purpose landfill that is owned or operated now or at any future time by the Contractor, Waste Management Holdings, Inc., Waste Management Inc., Waste Management of North America, Inc. or any of their respective corporate parents, or corporate subsidiaries whether in existence at the time of this Contract Change Order or later created; and
  - iii. All solid waste, exclusive of special or hazardous waste or unprocessed construction and demolition waste, which is disposed of at any landfill, whether within or outside the Metro region, and which is generated within the Metro region from facilities owned or operated now or in the future by Contractor, Waste Management

Holdings, Inc., Waste Management Inc., Waste Management of North America, Inc. or any of their respective corporate parents, or corporate subsidiaries whether in existence at the time of this Contract Change Order or later created; and

- iv. Any solid waste described in Paragraphs ii or iii above shall continue to be calculated as Regional Solid Waste Tonnage under this Contract Change Order notwithstanding any subsequent transfer or sale of any facility or solid waste collection route owned or operated by Contractor, Waste Management Holdings, Inc., Waste Management Inc., Waste Management of North America, Inc. or any of their respective corporate parents, or corporate subsidiaries whether in existence at the time of this Contract Change Order or later created.
- (3) For purposes of Paragraph 2.c, any residual from recycling or material recovery facilities located with the Metro region shall be considered generated within the Metro region.
- d. On or about the eighth day of each month, Contractor will submit to Metro a billing which indicates the quantity and the amounts of Regional Solid Waste Tonnage and specifies the amounts of disposed Metro Solid Waste Tonnage for which payment is due. Contractor shall furnish to Metro such detailed information as set forth in the Contract Documents (including records from disposal sites and records relating to Regional Solid Waste Tonnage) as Metro may request to aid in the preparation of its monthly payments. After approval by Metro, Metro will pay sums due to the Contractor by the 25th day of the following month.
  - e. In addition to any submission required under Paragraph 2.d. above, on January, 8, 2000, Contractor shall also submit to Metro a special billing which indicates the quantity and amounts of Metro Solid Waste Tonnage for the six-month period ending December 31, 1999, together with the volumes of solid waste tonnage from the Forest Grove Transfer Station during the twelve-month period ending December 31, 1999 which were disposed at a general purpose landfill other than the Columbia Ridge Landfill and which were in excess of ten percent (10%) of the total tons of Solid Waste that Metro has delivered to or has directed to any General Purpose landfill during that same twelve-month period (the "Excess Forest Grove Tonnage"). For the purposes of this paragraph, the sum of Metro Solid Waste Tonnage for the six-month period ending December 31, 1999, plus the Excess Forest Grove Tonnage shall be referred to as the "Adjusted Metro Solid Waste Tonnage." After review and approval by Metro, Metro will pay to the Contractor an amount determined by applying the effective per ton price that is derived from the schedule in Paragraph 2.a and using the Adjusted Metro Solid Waste Tonnage, to the Metro Solid Waste tonnage for the six-month time period

ending December 31, 1999, less any other payments already made for that same six-month time period.

3. Inflation Adjustment.

- a. Notwithstanding the provisions of Article 19.B of the original Agreement, no inflation adjustment shall be made under this Agreement during the period commencing upon the effective date of this Contract Change Order Amendment and terminating on June 30, 2000.
- b. For the Contract Price Adjustments occurring on July 1, 2000, and continuing through the Contract Price Adjustments occurring on July 1, 2009, for all rates shown in paragraph 2.b. of this Contract Amendment, the "percentage price adjustment (AI)" calculated under Article 19.B shall be 70% of the Consumer Price Index ("CPI") for the previous calendar year minus one-half of one percentage point of such CPI. The formula set forth in Article 19.B to calculate the price adjustment is amended to read as follows:

"AI = (((CI<sub>x</sub> - CI<sub>b</sub>) x 0.7) - 0.005), with the terms of the formula modified so that CI<sub>x</sub> represents the amount of the Consumer Price Index for the calendar year ending each December 31, and CI<sub>b</sub> represents the Consumer Price Index for the calendar year which precedes the year used to calculate CI<sub>x</sub>."

- c. For the Contract Price Adjustments occurring after July 1, 2009, the formula set forth in Article 19.B to calculate the price adjustment is amended to read as follows:

"AI = (((CI<sub>x</sub> - CI<sub>b</sub>) x 0.9) - 0.005), with the terms of the formula modified so that CI<sub>x</sub> represents the amount of the Consumer Price Index for the calendar year ending each December 31, and CI<sub>b</sub> represents the Consumer Price Index for the calendar year which precedes the year used to calculate CI<sub>x</sub>."

4. Solid Waste Rate Limitation Provisions.

- a. Definitions.

For purposes of this Contract Change Order Paragraph 4, the following definitions shall apply:

- i. The term "Metro Rate" shall mean the per ton rate for disposal of solid waste derived from the rate schedule in Paragraph 2.b using the total tonnage delivered by Metro to the Contractor during the twelve-month time period ending December 31.

- ii. The term “Market Rate” shall mean the lowest per ton solid waste disposal rate, exclusive of any applicable regulatory fees, charged to any public body, including but not limited to any state, county, city, district, solid waste authority or other similar unit of government, contracting for the annual disposal of at least 200,000 tons of solid waste for a term of at least 10 years in any landfill in Oregon, Washington or Idaho that is owned or controlled by Contractor, Waste Management Holdings Incorporated, Waste Management Incorporated, Waste Management of North America, Inc. or any of their respective corporate parents or corporate subsidiaries, whether in existence at the time of this Contract Change Order or later created. In the event that any such public body has entered into an agreement for landfill disposal which combines the costs of such disposal with any cost not related to such disposal, including but not limited to the collection, transfer or transportation of such solid waste, the Contractor shall demonstrate the amount of the public body’s actual per ton costs for disposal of solid waste.

For the purposes of this Paragraph 4.a.ii only, the term of any solid waste disposal contract shall be determined by reference to the total maximum length of time that such contract is contemplated by its parties to be effective including any permissible contract extensions, but without regard to any provision in such contract allowing any party to opt out or otherwise terminate its obligations under such contract before the expiration of the total maximum length of time of such contract.

Additionally, and also for purposes of this Paragraph 4.a.ii only, “controlled” means either of the following:

- (1) Holding 50 percent or more of the outstanding voting securities of any landfill business entity or in the case of a landfill business entity that has no outstanding voting securities, having the right to 50 percent or more of the profits from the operation of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or
- (2) Having the contractual power to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

- iii. The term “Base Rate” shall mean the per ton price applicable to the first 550,000 tons of Regional Solid Waste Tonnage pursuant to Paragraph 2.b as modified from time to time based upon rate comparison.

b. Initial Rate Comparison.

On or about January 10, 2005 Metro shall undertake to perform a comparison of the Metro Rate in effect as of December 31, 2004 with the Market Rate in effect as of that same date.

- i. In the event that the Market Rate effective as of December 31, 2004 exceeds the Metro Rate effective as of that same date, or in the event that the Metro Rate effective as of December 31, 2004 exceeds the Market Rate effective as of that same date by an amount less than five percent of the Metro Rate in effect as of December 31, 2004, no adjustment shall be made to the Base Rate then in effect under Paragraph 2.b of this Contract Change Order.
- ii. In the event that the Metro Rate effective as of December 31, 2004 exceeds the Market Rate effective as of that same date by an amount equal to or in excess of five percent but less than ten percent of the Metro Rate effective on that date, the Base Rate then in effect under Paragraph 2.b of this Contract Change Order shall be reduced effective July 1, 2005 to a revised Base Rate that yields an effective per ton price that is the equivalent of the Market Rate in effect on December 31, 2004, using Regional Solid Waste Tonnage and Metro Solid Waste Tonnage for calendar year 2004.
- iii. In the event that the Metro Rate effective as of December 31, 2004 exceeds the Market Rate effective as of that same date by an amount equal to or greater than 10 per cent of Metro Rate, the Base Rate then in effect under Paragraph 2.b of this Contract Change Order shall be reduced effective July 1, 2005 to a revised Base Rate that yields an effective per ton price that is the equivalent of 90% of the Metro Rate in effect as of December 31, 2004, using Regional Solid Waste Tonnage and Metro Solid Waste Tonnage for calendar year 2004, and the term of the Contract shall be extended to December 31, 2019.

c. Subsequent Rate Comparison.

On or about January 10, 2010 Metro shall undertake to perform a second comparison of the Metro Rate in effect as of December 31, 2009 with the Market Rate in effect as of December 31, 2009.

- i. In the event that the Market Rate effective as of December 31, 2009 exceeds the Metro Rate effective as of that same date, or in the event that the Metro Rate effective as of December 31, 2009 exceeds the Market Rate effective as of that same date by an amount less than five percent of the Metro Rate effective December 31, 2009, no adjustment shall be made



to the Base Rate then in effect under Paragraph 2.b of this Contract Change Order.

- ii. In the event that the Metro Rate effective as of December 31, 2009 exceeds the Market Rate effective as of that same date by an amount equal to or in excess of five percent but less than ten percent of the Metro Rate effective on that same date, the Base Rate then in effect under Paragraph 2.b of this Contract Change Order shall be reduced effective July 1, 2010 to a revised Base Rate that yields an effective per ton price that is the equivalent of the Market Rate in effect as of December 31, 2009, using Regional Solid Waste Tonnage and Metro Solid Waste Tonnage for calendar year 2009.
- iii. In the event that the Metro Rate effective as of December 31, 2009 exceeds the Market rate effective as of that same date by an amount equal to or greater than 10 per cent of Metro Rate effective as of December 31, 2009, the Base Rate then in effect under Paragraph 2.b of this Contract Change Order shall be reduced effective July 1, 2010 to a revised Base Rate that yields an effective per ton price that is the equivalent of 90% of the Metro Rate in effect as of December 31, 2009, using Regional Solid Waste Tonnage and Metro Solid Waste Tonnage for calendar year 2009, and the term of the Contract shall be extended to December 31, 2019, unless an extension to the Contract has been previously made, in which case no additional extension shall be granted.

d. Alternative Means of Contract Extension Following Rate Comparisons.

- i. In the event that both of the respective 2004 and 2009 Rate comparisons result in reductions to the Base Rates then in effect under Paragraph 2.b of this Contract Change Order, the term of this Agreement shall be extended to December 31, 2019.
- ii. In the event that as a result of the respective 2004 and 2009 Rate comparisons, the sum of any reductions made to the effective per ton prices then in effect under Paragraph 2.b of this Contract Change Order were less than ten percent of the Metro Rates in effect when such rate reduction is made, Contractor nevertheless may obtain an extension of the term of this Agreement to December 31, 2019 by providing effective July 1, 2010 a reduction in the per ton disposal price charged under this Agreement equal to the percentage amount which, when combined with the percentage amount of any previous reduction, totals ten percent of the Metro Rate effective on December 31, 2009.
- iii. In the event that neither of the respective 2004 and 2009 Rate comparisons result in reductions to the per ton prices then in effect under Paragraph 2.b

of this Contract Change Order, Contractor nevertheless may obtain an extension of the term of this Agreement to December 31, 2019 by a providing, effective July 1, 2010, a reduction in the Base Rate that yields an effective per ton price reduction equal to five percent of the Metro rate effective on December 31, 2009.

e. Final Rate Comparison.

In the event that, as a result of the rate comparisons made by Metro under this Contract Change Order, the term of this Waste Disposal Services Agreement is extended to December 31, 2019, then on or about January 10, 2015 Metro shall undertake to perform a final comparison of the Metro Rate in effect as of December 31, 2014 with the Market Rate in effect as of that same date.

- i. In the event that the Market Rate effective as of December 31, 2014 exceeds the Metro Rate effective as of that same date, or in the event that the Metro Rate effective as of December 31, 2014 exceeds the Market Rate that same date by an amount less than five percent of the Metro Rate in effect as of December 31, 2014, no adjustment shall be made to the Base Rate then in effect under Paragraph 2.b of this Contract Change Order.
- ii. In the event that the Metro Rate effective as of December 31, 2014 exceeds the Market Rate effective as of that same date by an amount equal to or in excess of five percent the Base Rate then in effect under Paragraph 2.b of this Contract Change Order shall be reduced effective July 1, 2015, to yield an effective per ton price equal to the greater of either ninety percent of the Metro Rate effective on December 31, 2014 or the Market Rate effective on December 31, 2014.

f. Resolution of Disputes Relating to Rate Comparisons and Rate Adjustments.

Any controversy or claim arising out of or relating in any way to the Rate Comparisons or the rate adjustments for which provision is made in this Contract Change Order shall be subject to the arbitration provisions contained in Article 26 of the Waste Disposal Services Agreement, and the following additional provisions:

- i. Discovery methods permitted by AAA Commercial Arbitration Rule 23 shall be permitted concerning any controversy or claim arising out of or relating in any way to the Rate Comparisons or the rate adjustments for which provision is made in this Contract Change Order.
- ii. Notwithstanding any contrary provision of Article 26 of the Waste Disposal Services Agreement, no controversy or claim arising out of or

relating in any way to the Rate Comparisons or the rate adjustments for which provision is made in this Contract Change Order shall be consolidated with any other arbitration.

- iii. Contractor may identify any written information regarding transport or disposal costs with respect to customers other than Metro as confidential or proprietary in nature or otherwise exempt from disclosure under the Oregon Public Records Law. Metro shall maintain as confidential and shall not disclose, such information. Upon receipt by Metro of any requests for disclosure of information identified by the Contractor as confidential or proprietary in nature or otherwise exempt from disclosure under the Oregon Public Records Law, Metro shall notify the Contractor of the request after consideration of the public interest in disclosure of the requested information. Contractor shall respond in writing within seven (7) days of Metro's notice whether the requested information should be released or defended. If Contractor elects to defend the exemption of the requested information from public disclosure, Contractor shall assume all responsibilities for such defense. Contractor shall indemnify and hold Metro harmless for all costs and expense incurred in the defense of the request, including court and appeal costs and attorney fees and expenses. Nothing in this paragraph is intended to require Metro to refuse to disclose information after being so ordered by a competent judicial authority.
- iv. Any arbitrator's decision concerning the Rate Comparisons or the rate adjustments for which provision is made in this Contract Change Order that is rendered after the effective date of such rate adjustment as set forth in this Change Order shall be retroactive to the effective date provided for the rate adjustment under this Contract Change Order.

5. Waste Flow Guarantees.

The provisions of Section 1 of the Specifications to the original Agreement, page VI-1, under the heading "Annual Waste Delivery Guarantees By Metro" (hereinafter "flow guarantee") and the provisions of Change Order No. 7, paragraph 10 are hereby amended as follows:

Metro makes the following guarantee for Contractor:

- a. Each calendar year, Metro agrees to deliver to Contractor's disposal site or to landfills owned or operated by Contractor, Waste Management Holdings, Incorporated, Waste Management Incorporated, Waste Management of North America, Inc. or any of their respective corporate parents or corporate subsidiaries, whether in existence at the time of this Change Order or later created, a minimum of 90 percent of the total tons of acceptable waste that Metro delivers to any general purpose landfill during the calendar year.

- b. 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 or landfills owned and operated by Contractor and its affiliates. For the purposes of this provision, 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 as 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 shall not be admissible in any proceeding for purposes of interpreting the intent of the parties under the original flow guarantee.

6. Alternative Transportation.

The parties acknowledge that during the remainder of this Agreement, Contractor may make proposals for the use of alternative modes of transportation of Metro solid waste to Contractor's facilities. Metro agrees that it shall not unreasonably withhold its consent to any requested assignment by Contractor of the transportation contract, provided that in such requested assignment, Contractor (1) proposes the use of an alternate mode of transportation, including but not limited to rail transportation, barge transportation, or other means of transport; (2) assures the use of an alternate transportation mode that results in no adverse impacts to the operation of any Metro transfer station; and (3) provides, as of the date that such alternative transportation proposal is made, for transport and disposal at a price no greater than the combined cost of such transport and disposal, expressed on a tonnage basis, under this Solid Waste Disposal Services Agreement and any Metro Waste Transport Services agreement for transportation to Contractor's facility in effect at the time of such alternative transportation proposal. In the event that Metro consents to a requested assignment, Metro shall make, and bear the expense of, all reasonable modifications to any Metro transfer station to accommodate the Contractor's proposed alternative means of solid waste transportation.

7. Amendment to Assignment Provision.

The provisions of Article 28 of the General Conditions are amended to add a new Section C, as follows:

- C. An intra-company assignment or delegation between different subsidiaries or branches of the parent corporation of Contractor shall not be construed as an assignment or delegation that requires the prior written consent of Metro. For the purposes of Article 28 and the third sentence of Article 29 only, "parent corporation" means Waste Management, Inc. as it is constituted as of the date of the execution of this Change Order No. 8.

8. No Other Modifications.

Except as modified herein, all other terms and conditions of the original Contract and all other previous amendments or change orders shall remain in full force and effect. Any material conflict between the provisions of the original Agreement, and other previous amendments or change orders, on the one hand, and this Contract Amendment No. 8 on the other hand, shall be resolved by reference to and reliance upon this Contract Amendment.

OREGON WASTE SYSTEMS, INC.

METRO

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

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## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 99-2766 FOR THE PURPOSE OF APPROVING CHANGE ORDER NO. 8 TO THE WASTE DISPOSAL SERVICES CONTRACT

Date: March 11, 1999

Presented by: Bruce Warner

## PROPOSED ACTION

Adopt Resolution No. 99-2766 authorizing the Executive Officer to execute Change Order No. 8 to the Waste Disposal Services Contract.

## SUMMARY

The proposed Change Order contains nine key modifications. 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 \$60 million over the original contract (to December 31, 2009).

The proposed Change Order No. 8 will:

- Reduce the disposal price on the first 550,000 tons from \$28.18 per ton to \$22.31 per ton on January 1, 2000, thereby reducing the average disposal rate to \$17.37 per ton from \$23.94.
- Freeze Metro's contract disposal rates until January 1, 2000.
- Reduce the inflation adjustment in the contract from July 1, 2000 through July 1, 2009.
- Establish a procedure for comparing Metro's rate to "market rates," every five years, and requires a reduction in the average rate charged Metro if that rate exceeds the "market rate" by more than five percent.
- Include all solid waste disposed of by Waste Management, Inc. or affiliated companies in the tonnage used to determine Metro's rate.
- Extend the term of the contract five years until December 31, 2014.
- Provide the contractor with an additional five-year contract extension if the disposal rate is reduced voluntarily or as a result of the comparison to market rates.
- Modify the waste delivery guarantees in the existing contract so that up to ten percent of the region's waste can be delivered to general purpose landfills that are not owned or affiliated with the disposal contractor.
- Establish criteria for the contractor to provide transportation services, using an alternative transport mode at no increase in Metro's cost.

## FACTUAL BACKGROUND

Effective April 11, 1988, Metro entered into a solid waste disposal services contract with Oregon Waste Services, Inc. (Since that time, the corporate name of the entity has been changed to Waste Management Disposal Services of Oregon.) Article 29 of the general contract conditions states in part that: *“Any change of control, or the transfer of a controlling interest in the beneficial ownership of Contractor shall constitute a default under the terms of this contract unless Metro consents to such a transfer.”*

On July 16, 1998, without requesting or receiving the prior consent of Metro, Waste Management was merged with Dome Merger Subsidiary, Inc., a wholly-owned subsidiary of USA Waste, Inc., which had been formed solely for the purpose of accomplishing the merger. Waste Management was the surviving corporation following the merger with Dome, but became a wholly owned subsidiary of USA Waste through an exchange of shares, which occurred at the time of the merger. Following the merger, USA changed its name to “Waste Management, Inc.” and Waste Management became known as “Waste Management Holdings, Inc.”

On September 3, 1998, Metro Executive Officer Mike Burton informed representatives of new Waste Management that the consummation of the merger without requesting or receiving the consent of Metro violated Article 29 of the solid waste disposal services contract. The Executive Officer declared the contract in default, and provided the Contractor with the contractually required period to cure the default or provide Metro reasonable assurances that the default would be promptly cured.

Thereafter, Waste Management also requested that Metro meet with them to discuss resolution of the dispute that had arisen due to the merger described above. This change order is the result of those negotiations. Changes have also been proposed to the terms of the franchise for Waste Management’s Forest Grove Transfer Station. The proposed franchise changes are an integral part of the settlement offer and will be presented to the Metro Council in the form of an ordinance.

## ANALYSIS

The marketplace for disposal services has changed dramatically since Metro entered into its disposal contract in 1988. Construction of two additional regional landfills has created a competitive market that has reduced disposal costs in the northwest. This change, combined with the inflation adjustments in the contract, has caused Metro’s disposal cost to rise above market rates, even with the rate reductions obtained in previous amendments to the disposal services contract. This change order brings Metro’s disposal costs down to market levels and establishes procedures that provide Metro with a means to keep its rates near market rates in the region.

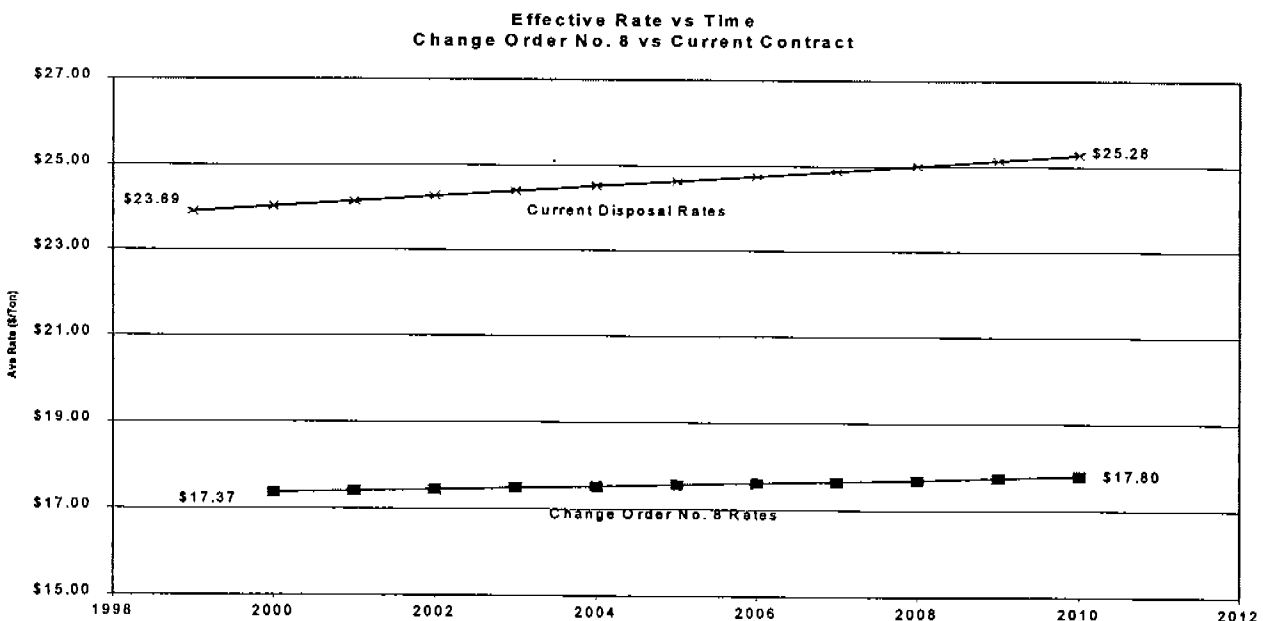
Savings and Disposal Rate - One of Metro’s primary objectives in these negotiations was to obtain a rate that was comparable with the market for disposal services in the Northwest. A

consultant was retained to determine disposal prices paid by other jurisdictions. It was determined that the lowest contract price in the Northwest was the Snohomish County contract, with a current rate of \$17.38 per ton. Most of the remaining contracts in the Northwest range between \$18.00 and \$21.00 per ton.

A number of tonnage scenarios were used to evaluate the financial impacts of the proposed Change Order. The financial information provided in this document is based on the estimates of tonnage used during negotiations with new Waste Management. These tonnage figures are slightly lower than current tonnage and grow at two percent per year. All estimates assume an average increase in the consumer price index of 2.6% over the life of the contract.

The total cash savings compared to current contract terms are estimated to be approximately \$60 million over the life of the existing contract. These savings remain relatively constant over a wide range of tonnage. Due to the structure of the payment schedule in the existing contract and in this change order, Metro's average disposal cost per ton varies significantly with tonnage. The rates agreed to in this change order were designed to produce an average disposal cost of \$17.37 per ton based on an estimated Metro tonnage of 729,000 tons for the 1999-2000 fiscal year. This compares with an average disposal rate of \$23.94 per ton at current contract rates. Using the higher tonnage in Metro's budget estimates for the 1999-00 fiscal year, the projected disposal rate would be \$17.04 per ton versus \$23.30 per ton under the current contract.

Because of the tiered rate structure and proposed changes in the contract's inflation adjustment, Metro's rate should remain relatively constant over the remaining life of the existing disposal contract. The average rate will increase from \$17.37 per ton in the 1999-2000 fiscal year to approximately \$17.80 per ton in the 2009-10 fiscal year (see graph, below). This rate of increase is about 10% of the estimated inflation rate per year. Most other contracts in the northwest increase at between 65% and 85% of the inflation rate each year. If tonnage growth exceeds the 2% growth rate assumed in these estimates, Metro's rate could actually decline.





Waste Flow - Another key element of the negotiations was to eliminate the possibility of an increase in Metro's disposal rate due to diversion of waste by firms owned or operated by Metro's disposal contractor. Waste Management has a large vertically integrated solid waste operation in the Metro area and controls enough waste to materially effect the disposal rate based on how it directs the waste for disposal. Provisions were included in this change order so that Metro's rate is not impacted by Waste Management's business decisions regarding where to deliver waste. These terms will also provide a modest incentive for Waste Management to recover materials from the waste since a reduction in tonnage due to waste recovery could increase its average rate per ton for disposal services.

Flow Guarantee - The merger of Waste Management and USA Waste created a situation where virtually all of the waste in the Metro region is disposed of at landfills owned by the merged firm. Under the delivery guarantee in the existing disposal contract, Metro was contractually obligated to take actions that would essentially perpetuate this situation and limit the possibility of competition in the region. The waste flow guarantee in the proposed change order will permit up to 10% of the region's solid waste to go to other landfills owned by firms other than Waste Management as long as existing requirements of the Metro Code are met. While this is not the most competitive market condition, it does introduce the possibility of more competition than would have existed under the current contract terms.

Transportation Mode - There is continued interest in alternatives to transporting solid waste in trucks through the Columbia Gorge National Scenic Area. Terms were included in this change order to allow assignment of Metro's transportation services contract to the disposal contractor if an alternate mode of transportation is provided at no additional cost to Metro. Any buy-out of the transportation contract will be the responsibility of the disposal contractor.

## SECTION-BY-SECTION REVIEW

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

**Item 1. Contract Term.** This item extends the term of the contract from December 31, 2009 to December 31, 2014. Tonnage limits in the contract that could conflict with the change in contract term were also eliminated.

**Item 2. Payment Provisions.** This item modifies the payment terms in the contract. A payment schedule is provided that eliminates the contract price increase scheduled for July 1, 1999. A new price schedule is established that takes effect on January 1, 2000 that will lower the rate on the first 550,000 tons of waste from \$28.18 to \$22.31 per ton. This section also modifies the tonnage used to calculate the rate that Metro pays for disposal. All tonnage originating within the Metro boundaries that is disposed of by Waste Management or at a general-purpose landfill owned by Waste Management will be included in the calculation of Metro's disposal rate.

**Item 3. Inflation Adjustment.** This item changes the formula for calculating the annual price adjustments due to inflation to 70% of the increase in the consumer price index less one half of one percent for the term of the existing contract from 90 percent of the increase in the consumer price index less one half of one percent. The current contract methodology will apply for price adjustments after December 31, 2009.

**Item 4. Market Comparison.** This item establishes a methodology for comparing Metro's average disposal cost to "Market Rates" every five years for the remainder of the contract. The market price will be the lowest disposal price charged under a comparable municipal contract at any landfill owned by Waste Management in Oregon, Washington or Idaho. If the Market Rate is more than 5% lower than Metro's average rate, Metro's rates must be reduced to the Market Rate or by 10%, whichever is less. If the cumulative rate reductions in the first two reviews result in a cumulative rate reduction of 10% or more, the contract will be extended another five years. If no rate reductions are required, the contract can be extended if Waste Management makes a voluntary 5% rate reduction. Only one additional five-year contract extension can be obtained under these provisions, even if multiple rate reductions are required. These provisions also strengthen the access to record provisions and establish an expedited dispute resolution process for resolving disputes involving determination of the Market Rate.

**Item 5. Waste Flow Guarantee.** This item alters the terms of the flow guarantee in the existing contract. Under the new guarantee, Metro agrees to deliver 90% of the acceptable waste to Columbia Ridge Landfill or other landfills owned or operated by Waste Management. Metro currently agrees to deliver 90% of the acceptable waste that it delivers to any general-purpose landfill to the Columbia Ridge Landfill.

**Item 6. Alternative Transportation.** This item provides criteria under which the Contractor may assume the responsibility for transportation of Metro's solid waste. Metro agrees to approve assignment of the transportation contract if the Contractor proposes to utilize an alternate means of transportation (such as rail or barge) at cost equal to or less than the combined cost of transportation and disposal at the time the proposal is made.

### BUDGET IMPACT

Under the most probable tonnage scenarios, Metro would save approximately \$60 million over the current contract. There is no budget impact due to this change order in the current fiscal year. The net savings due to this change order, during the 1999-2000 fiscal year, will be approximately \$2.4 million. The cost reduction in succeeding years will be about twice the 99-00 impact.

### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 99-2766.

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Staff Report In Consideration Of Resolution No. 99-2766  
March 11, 1999