

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF APPROVING CHANGE ) RESOLUTION NO 99-2786  
ORDER NO. 24 TO THE WASTE TRANSPORT )  
SERVICES CONTRACT ) Introduced by Mike Burton, Executive  
 ) Officer

WHEREAS, as described in the accompanying Staff Report, Metro and the Contractor wish to amend certain terms and payment provisions concerning the current Waste Transport Services Contract, Metro Contract No. 900848; and

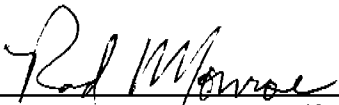
WHEREAS, Metro will incur substantial financial savings over the remaining life of the contract, should Change Order No. 24 be executed; and

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

BE IT RESOLVED:

That the Metro Council authorizes the Executive Officer to execute Contract Change Order No. 24 to the Waste Transport Services Contract, in a form substantially similar to the attached Exhibit A.

ADOPTED by the Metro Council this 27<sup>th</sup> day of May 1999.

  
\_\_\_\_\_  
Rod Monroe, Presiding Officer

APPROVED AS TO FORM:

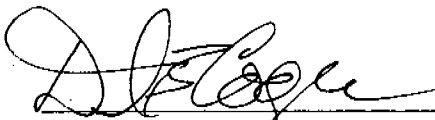
  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

EXHIBIT A

CHANGE ORDER NO. 24  
METRO CONTRACT NO. 900848

**MODIFICATION TO THE CONTRACT BETWEEN  
METRO AND SPECIALITY TRANSPORTATION SERVICES, INC.  
ENTITLED "WASTE TRANSPORT SERVICE"**

This Change Order No. 24, dated as of the last signature date below (the "Effective Date of Change Order No. 24"), hereby amends Metro Contract No. 900848, entitled "Waste Transport Services," dated March 27, 1989, including all prior amendments (which contract and amendments are collectively referred to as the "Waste Transport Service Agreement").

In exchange for the promises and other considerations set forth in the Waste Transport Services Agreement and in this Change Order No. 24, the parties hereby agree as follows:

**A. Purpose**

This purpose of this Change Order No. 24 is to provide for a reduction in the unit price which Metro pays for solid waste transportation services; to provide for the modification to the trailer storage and shuttle operations conducted at Metro South Transfer Station; to set forth conditions for the release to Contractor of the contract retainage funds currently held by Metro; to provide for the lump sum prepayment to Contractor by Metro of certain fixed monthly payments; to amend certain provisions of the Waste Transport Service Agreement; and to incorporate other mutually agreed provisions.

**B. Provisions of Change Order No. 24**

1. Amendment of Payment Provisions

The provisions of Article 12A. of the General Conditions of the Waste Transport Service Agreement are hereby superseded and amended to read as follows:

"Rates. Effective June 1, 1999 or the first day of the month in which Change Order No. 24 becomes effective, whichever is later, for all work required under this Contract, Metro shall make monthly payments to Contractor based upon the unit price of \$331.47 per load. On or prior to the eighth day of each month, Contractor will submit to Metro a billing that indicates the quantity of waste transported from each transport site pursuant to the Contract. The value of unit price work shall be based upon the number of loads of waste actually transported according to the

Contractor Documents for the calendar month just completed. The Contractor shall furnish to Metro such detailed information as set forth in these Contract Documents (including records from transport sites) and as Metro may request to aid in the preparation of monthly payments. After approval by Metro, Metro will pay to the Contractor by the 25<sup>th</sup> day of the following month the sums then due under the Contract Documents.”

2. Amendment of Trailer Parking Provisions

The provisions of Change Order No. 1, Paragraph 3 and of Change Order No. 21, Section 2 entitled “Trailer Parking at Metro South Station” are hereby superseded and amended to read as follows:

“Metro shall henceforth be required to provide a paved storage area at Metro South Station for no more than 10 trailers used by Contractor to haul waste for Metro.”

3. Amendment of Shuttle Services Provisions

The provisions of Change Order No. 1, Paragraph 4 and of Change Order No. 21, Section 3, entitled “Shuttle Services at Metro South Station,” are hereby superseded and amended to read only as follows:

“Contractor shall continue to provide such trailer shuttle services to and from the compactors at Metro South Station as are necessary for the Contractor to meet the performance standards specified in the Contract. Notwithstanding any other provision of this Waste Transport Service Agreement, Metro shall not be obligated to make any payment of any consideration whatsoever to Contractor for the performance of any necessary shuttle services work at Metro South Station; provided, however, that during the 90 day period from the Effective Date of Change Order No. 24, Contractor shall not be considered in default for failing to shuttle an empty trailer at the Metro South Station to the compactor within 15 minutes of preparation of a bale for extrusion in accordance with the provisions of Change Order No. 1, Paragraph 4 (the “15 Minute Requirement”). During such 90-day period, Contractor acknowledges that the solid waste must be transported from the Metro South Transfer Station to the Columbia Ridge landfill in a manner that does not adversely affect the operation of the Station. Contractor agrees to take prompt action to take all reasonable actions necessary to avoid any interference with the operation of the Transfer Station. After the expiration of such 90 day period, the 15 Minute Requirement shall be reinstated unless (i) the failure by Contractor to consistently meet the 15 Minute Requirement would not have a material adverse effect on the performance standards imposed on Contractor under the Waste Transport Service Agreement or (ii) Contractor and Metro shall agree to a modification of the operations at

Metro South Station which would otherwise permit Contractor to comply with the 15 Minute Requirement.”

4. Amendment of Contract Extension Provisions

The provisions of Article 31 of the General Conditions of the Waste Transport Service Agreement entitled “Start of Contract, Contract Completion and Contract Extensions” are amended to read as follows:

“Metro, in its sole discretion, may extend the expiration of the term of this Waste Transport Service Agreement from December 31, 2009 to December 31, 2014, under the terms and conditions set forth herein. During any such extension period, Metro shall only be obligated to pay Contractor the unit prices then in effect under Article 12 of the Contract.”

5. Pre-Payment of Future Monthly Fixed Cost Obligation

Not later than ten (10) days following the Effective Date of Change Order No. 24, Metro shall pre-pay to Contractor an amount equal to the present value, calculated using a discount rate of six percent per year, of all remaining unpaid amounts of the future monthly fixed costs payments for which provision is made under the provisions of Article 12A. of the Original Agreement (which amount as of April 30, 1999 is calculated to be \$6,591,878.21). Such pre-payments shall be in exchange for both Contractor’s agreement to modify the payment terms of the Original Agreement as set forth in Paragraph 1 of this Change Order No. 24 and shall be in lieu of all future monthly fixed cost payments as provided under Article 12A. of the Original Agreement; *provided that* before such payment is made, Contractor has provided both (1) an irrevocable letter of credit issued by Mellon Bank, N.A. (“Mellon”), or other financial institution acceptable to Metro, in the amount of \$4,100,000.00 and which contains the requirements set forth in Paragraph 8 of this Change Order No. 24; and (2) a corporate guarantee issued by the Contractor’s parent company, Aasche Transportation Services, Inc. (“Aasche”) which contains the requirements set forth in Paragraph 8 of this Change Order No. 24. Notwithstanding any other provision in the Waste Transport Service Agreement, following the pre-payment for which provision is made under this paragraph, no further fixed cost payments shall be due to or made to Contractor.

The amount described above in this Paragraph 5 shall be paid by wire transfer in immediately available funds to a separate account of Contractor at Mellon. Contractor shall make disbursements from the account in accordance with the provisions of Paragraph 7 of this Change Order No. 24.

6. Release of Retainage and Modification of Contract Retainage Provisions

Notwithstanding any contrary provision contained in Articles 12, 13, 14 or 17 of the Waste Transport Service Agreement, not later than ten (10) days following the Effective Date of Change Order No. 24, Metro shall release and return to Contractor an amount equal to \$2,500,000.00 collected under the provisions of Article 13 of the Waste Transport Service Agreement, as amended, and held by Metro as retainage, together with all interest earned thereon. These funds shall be paid to Contractor in the manner described in Paragraph 5. Contractor shall make disbursements from the account in accordance with the provisions of Paragraph 7 of this Change Order No. 24.

Notwithstanding any contrary provision contained in Articles 12, 13, 14, or 17 of the Waste Transport Service Agreement, and upon the Effective Date of Change Order No. 24, Metro shall defer withholding any further retainage and shall not retain any portion of the payments due to Contractor for the purpose of creating the retainage fund described in Article 13, *provided that* Contractor has provided both (1) an irrevocable letter of credit issued by Mellon, or other financial institution acceptable to Metro, in the amount of \$4,100,000.00, and which contains the requirements set forth in Paragraph 8 of this Change Order No. 24; and (2) a corporate guarantee issued by Aasche which contains the requirements set forth in Paragraph 8 of this Change Order No. 24. The deferral of further retainage set forth in this Change Order No. 24 shall in no way affect any provision of the Waste Transport Service Agreement allowing Metro to retain any other amounts from payments that might otherwise be due to Contractor, nor shall such deferral affect any right of Metro to offset any amounts which may be owed to Metro under the Waste Transport Service Agreement.

In the event that after the Effective Date of Change Order No. 24, Contractor shall (i) fail to maintain the security provided for in this Paragraph 6, or (ii) commit any act described in Article 14 of the Waste Transport Service Agreement which causes Metro to suffer actual damages, the retainage provisions of Articles 12, 13, 14 and 17 shall be reinstated and shall be given the same force and effect as such provisions were given under the Original Agreement, as amended by any amendment or Change Order.

7. Use of Proceeds of Fixed Cost Prepayment and Release of Retainage

Contractor shall apply the proceeds of any prepayment of future monthly fixed costs made under Paragraph 5 of this Change Order No. 24 and the proceeds of any retainage released under paragraph 6 of this Change Order No. 24 solely for the following purposes:

- (a) Repayment of Subordinated Debt, Warrants and Common Stock of the Contractor, together with any obligation attendant thereto; and

(b) Security for the obligations of Contractor to provide the letter of credit referred to in Paragraphs 5, 6 and 8 of this Change Order No. 24 and upon the release of Contractor's obligation to provide such security, for any additional reduction in the outstanding debt of Contractor.

As used herein "Subordinated Debt, Warrants and Common Stock" means (i) all principal, accrued interest, prepayment penalties and fees under the Senior Subordinated Promissory Note, dated January 30, 1998, by Contractor payable to American Capital Strategies, Ltd. ("ACS") in the amount of \$5,500,000; (ii) all principal, accrued interest, prepayment penalties and fees under the Junior Subordinated Promissory Note, dated January 30, 1998, by Contractor payable to ACS, in the amount of \$2,500,000; (iii) all amounts paid to retire the Primary Warrant dated January 30, 1998 to purchase 500,000 shares of Contractor's common stock issued to ACS; (iii) all amounts paid to retire the Conditional Warrant dated January 30, 1998 to purchase 500,000 shares of Contractor's common stock issued to ACS; and (iv) all amounts paid to redeem the Contractor's common stock issued to ACS.

8. Security for Release of Retainage and Prepayment of Fixed Payments

In consideration of the pre-payment of the fixed payment obligation set forth in Paragraph 5 and as security for the deferral of retainage set forth in Paragraph 6, Contractor shall provide the following to Metro:

*i. Irrevocable Letter of Credit.* An irrevocable letter of credit issued by Mellon, or other financial institution acceptable to Metro, in the initial amount of \$4,100,000.00 in a form substantially similar to that set forth in Exhibit 1. The amount available to Metro under the irrevocable letter of credit shall decline at the rate of \$100,000.00 per month for a term of 28 months. Following the completion of the initial 28-month term, an irrevocable letter of credit in the amount of \$1,300,000.00 shall be issued and shall be renewed annually in that same amount for the remainder of the Contract. Any failure to execute and deliver to Metro such irrevocable letter of credit as set forth in this Change Order No. 24 shall constitute a default by Contractor under the Waste Transport Service Agreement.

*ii. Corporate Guarantee.* A corporate guarantee issued by Aasche in a form substantially similar to that set forth in Exhibit 2. The corporate guarantee shall specify that in the event of any default which results in any loss to Metro, whether or not such default results in any contract termination, Aasche shall guarantee the payment to Metro for actual damages, including reasonable attorneys' fees, incurred as a result of the default.

9. Amendment Provisions for Use of Equipment Following Default

Article 10, Section C of the Original Agreement is amended by adding the following provisions, which shall supersede the provisions of Change Order No. 21, Paragraph 7, and the provisions of Change Order No. 23, Section B (4):

“If Contractor does not cure a default within the time allowed herein, and Contractor does not have a surety or the surety elects not to exercise its option under this section, the Contract shall terminate. For 180 days from the date Contractor ceases to provide service, and continuing subsequent to termination, Contractor shall make available to Metro all tractors, trailers, shuttle vehicles, trailer tippers, and all other transport-related materials, equipment (collectively, the ‘Waste Transport Equipment’) and personnel 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 Waste Transport Service Agreement.”

10. No Other Modifications

Except as modified herein, all other terms and conditions of the Waste Transport Services Agreement shall remain in full force and effect. Any conflict between the provision of the Original Agreement, and other previous amendments or change orders, on the one hand, and this Change Order No. 24, on the other hand, shall be resolved by reference to and reliance upon this Change Order No. 24.

SPECIALITY TRANSPORTATION  
SERVICES, INC.

METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Gary I. Goldberg, President

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT 1**  
**IRREVOCABLE LETTER OF CREDIT**

Metro Regional Government  
600 North East Grand Avenue  
Portland, Oregon 97232-2736

Letter of Credit No. \_\_\_\_\_  
Date: \_\_\_\_\_, 1999

Dear Ladies and Gentlemen:

We hereby issue our Irrevocable Letter of Credit No. \_\_\_\_\_ in your favor for the account of Specialty Transportation Services, Inc. for an aggregate amount up to US\$4,100,000 available by your drafts at sight drawn on Mellon Bank N.A. Pittsburgh, PA and accompanied by the following statement purportedly signed by an authorized signer on your behalf:

*(for partial draws)*

“I hereby certify that the amount of this drawing represents funds due the Metro Regional Government (Metro) by Specialty Transportation Services, Inc. (STS) for actual damages resulting from STS’ breach of the provisions of Article 14 of the Waste Transport Services Contract dated March 1, 1989, as amended (Contract) with Metro and STS. I hereby certify that Metro has exhausted its remedies against STS under the Contract (other than electing to terminate the Contract) and Metro has exhausted its remedies against Aasche Transportation Services, Inc. under the Guarantee dated \_\_\_\_\_, 1999 (excluding the commencement of litigation to enforce the provisions of the Guarantee).”

*(for total draws)*

“I hereby certify that the amount of this drawing represents funds due the Metro Regional Government (Metro) by Specialty Transportation Services, Inc. (STS) for actual damages resulting from the termination in accordance with the procedures set forth in Article 10C or 10D of the Waste Transport Services Contract dated March 1, 1989, as amended (Contract) with Metro and STS.”

This letter of credit expires at this office on September 15, 2001.

The amount available under this letter of credit will be automatically decreased on the dates and by the amounts indicated by the following schedule:



<b>Date:</b>	<b>Amount:</b>
June 15, 1999	\$100,000
July 15, 1999	\$100,000
August 15, 1999	\$100,000
September 15, 1999	\$100,000
October 15, 1999	\$100,000
November 15, 1999	\$100,000
December 15, 1999	\$100,000
January 15, 2000	\$100,000
February 15, 2000	\$100,000
March 15, 2000	\$100,000
April 15, 2000	\$100,000
May 15, 2000	\$100,000
June 15, 2000	\$100,000
July 15, 2000	\$100,000
August 15, 2000	\$100,000
September 15, 2000	\$100,000
October 15, 2000	\$100,000
November 15, 2000	\$100,000
December 15, 2000	\$100,000
January 15, 2001	\$100,000
February 15, 2001	\$100,000
March 15, 2001	\$100,000
April 15, 2001	\$100,000
May 15, 2001	\$100,000
June 15, 2001	\$100,000
July 15, 2001	\$100,000
August 15, 2001	\$100,000
September 15, 2001	\$100,000

Furthermore, any drawing conforming with the terms and conditions of this letter of credit will automatically reduce the amount available under this letter of credit at the time of such drawing, and all subsequent times.

Each draft must be marked "Drawn under Mellon Bank, N.A. Pittsburgh, PA, Letter of Credit No. \_\_\_\_\_."

Except so far as otherwise expressly stated herein, this letter of credit is subject to the "Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500."

We hereby agree with you that drafts drawn under and in compliance with the terms of this letter of credit will be duly honored if presented to us on or before the above stated expiration date.

Very truly yours,

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Authorized Signature

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## EXHIBIT 2 GUARANTEE

This GUARANTEE is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 1999, by Aasche Transportation Services, Inc., a Delaware corporation ("Guarantor"), to and for the benefit of Metro, an Oregon metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter.

### RECITALS

1. Specialty Transportation Services, Inc. (the "Contractor"), has entered into a Waste Transport Services Agreement (the "Agreement") with Metro dated March 27, 1989, including all amendments.
2. Guarantor is willing to guarantee, as set forth below, the performance of the Contractor under the Agreement;

NOW THEREFORE, as an Inducement to Metro to enter into that certain contract amendment known as Contract Change Order No. 24, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Contractor of all of the Contractor's obligations under the Agreement in accordance with the terms and conditions set forth therein. Additionally, Guarantor absolutely and unconditionally guarantees payment to Metro of all actual damages, including reasonable attorneys' fees, which occur as the result of any default by Contractor that results in any loss whatsoever to Metro, regardless of whether such default results in any contract termination.
2. Notwithstanding any provision in this Guarantee to the contrary, the obligations of the Guarantor under this Guarantee shall be no greater than the obligations of the Contractor under the Agreement. Metro's right to recovery under this Guarantee shall be in addition to any right to recovery obtained under any other instrument. All of the rights and remedies of the Contractor under the Agreement, including, but not limited to, the opportunity to cure any default under the Agreement, shall accrue to the Guarantor in the enforcement of its obligations under this Guarantee and the Agreement.
3. This Guarantee shall be governed by the laws of the State of Oregon exclusive of the choice of law rules thereof, and Guarantor hereby agrees to the service of process in Oregon for any claim or controversy arising out of this Guarantee or relating to any breach hereof and to submit to the exclusive jurisdiction of any court of competent jurisdiction in the State of Oregon in connection therewith.
4. This Guarantee shall be binding upon and enforceable against the Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the assets of the Guarantor),

whether or not such obligations are expressly assumed by such successor, assignee or transferee, and is for the benefit of Metro, and its permitted successors and assigns under the Agreement.

5. Before Metro may bring an action on this Guarantee it must exhaust its remedies against Contractor under the Agreement including, but not limited to, drawing the amount under the irrevocable letter of credit referred to in Paragraph 5 of Contract Change Order No. 24, or demonstrate to a court of competent jurisdiction that it would be futile to do so; provided, however, that in the event that Contractor becomes insolvent, is dissolved, is the subject of any proceeding pursuant to the United States Bankruptcy Code, whether voluntary or involuntary, makes a general assignment for the benefit of creditors, or is the subject of any receivership, and Contractor or its successor in interest shall be unable to give Metro adequate assurance of future performance, then Metro shall be deemed to have exhausted its remedies against Contractor and may proceed directly against Guarantor.
6. No failure or delay by Metro in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided in the Agreement or by law or equity. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.
7. Guarantor may not assign its obligations hereunder.
8. Metro shall notify Guarantor in writing, at its address set forth herein, of Metro's notice to the Contractor of any default on the part of the Contractor due to its failure to meet its obligations under the Agreement.
9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee.
10. Any term used herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.
11. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

Guarantor, at:

Aasche Transportation Services, Inc.  
Leon M. Monachos, Chief Financial Officer  
10214 N. Mt. Vernon Road  
Shannon, IL 61078

Metro, at:

Metro  
Attn: Regional Environmental Management Director  
600 NE Grand Avenue  
Portland, OR 97232

or to such other address as shall be designated by such Party in a written notice to the other Party hereto. Any notice given pursuant to this Section shall be effective immediately upon receipt, and if delivered by hand, upon delivery.

IN WITNESS WHEREOF, the Guarantor has executed this Guarantee as of the date set forth above.

**Aasche Transportation Services, Inc.**

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Authorized Officer

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## REGIONAL ENVIRONMENTAL MANAGEMENT COMMITTEE REPORT

### CONSIDERATION OF RESOLUTION NO. 99-2786, FOR THE PURPOSE OF APPROVING CHANGE ORDER NO. 24 TO THE WASTE TRANSPORT SERVICES CONTRACT

Date: May 19, 1999

Presented by: Councilor Washington

**Committee Recommendation:** At its May 19 meeting, the Committee considered Resolution No. 99-2786 and voted 2-0 to send the resolution to the Council with a do pass recommendation. Voting in favor: Councilor Park and Chair Washington.

**Committee Issues/Discussion:** Terry Petersen, Interim REM Director, presented the staff report. He reviewed the history of the existing contract for the transport of solid waste from Metro's transfer stations to the Arlington landfill by truck. He noted that the contract was initiated on January 1, 1990 with Jack Gray Trucking. A subsequent change in ownership was recognized by Metro and the contract was transferred to Specialty Transportation Services (STS). The length of the contract is 20 years.

Petersen indicated that about 24,800 loads are transported annually with an average load of 30 tons. Metro currently makes a per load payment of \$361.47. Metro also makes a monthly payment of \$69,117 related to the replacement of equipment used by the contractor. Smaller payments also are made related to shuttle services at the transfer stations, trailer weighing and overloads. Metro makes payments totaling about \$9.9 million to STS annually.

Petersen explained that Metro entered into negotiations with three basic goals: 1) reduce costs, 2) address traffic issues at Metro South and improve waste reduction and 3) address alternative transportation options. The change order would make several changes in the existing contract.

First, Metro would prepay all remaining payments related to capital replacement. This prepayment would be \$6.6 million and would come from the undesignated portion of the solid waste revenue fund. This action would virtually eliminate this portion of the fund balance which has been budgeted at \$7.3 million. As a result of Council budget action, this portion of the fund balance has been declining during the past two years. The funds have been used to pay for the system fee credit for recycling facilities and to "buy-down" solid waste disposal rates.

Second, Metro would return the \$2.5 million in retainage funds that have been withheld under the existing contract.

Third, the per load charge would be reduced by \$30, or about \$1 per ton. This change would result in an estimated savings of \$7.8 million over the remaining life of the contract.

Fourth, elimination of the annual payment for shuttle services which total \$93,142 annually. This change would result in an estimated savings of \$1 over the remaining life of the contract.

Fifth, STS would reduce the number of trailers staged at Metro South from 60 to 10. The cost of developing an alternative staging site would be borne by STS. This change would allow Metro to proceed with its facility master plan that would include a new public drop off area and improve station operations. Staff estimates the savings from this change at \$1 million.

Sixth, the change order addresses the issue of a potential default on the contract by STS after Metro has made its \$6.6 million prepayment. STS would be required to provide Metro with an irrevocable letter of credit. The letter of credit initially would be for \$4.1 million. It would decline at a rate of \$100,000 per month as Metro begins to reap the benefits of the per load charge reduction and the elimination of shuttling costs. The value of the letter would continue to decline to a minimum level of \$1.3 million. Metro also would have the right to withhold any outstanding payments due to STS (valued at \$1 million) and the right to use existing equipment for up to six months after the default (valued at \$600,000). When coupled with the potential savings from the moving of the staging area, staff has concluded that these protections are roughly equivalent to the initial Metro prepayment.

Staff estimates that the total cash flow savings from the change order are about \$9 million.

Councilor Park requested that a one-page spread sheet be developed to explain the changes incorporated by the proposed resolution. He also asked for further clarification of the nature of the default protections provided by the change order. Petersen reviewed these protections which included the letter of credit, the ability to withhold payment, the use of equipment and the avoided costs associated with the staging area.

Judge Laura Pryor, Gilliam County, testified in favor of the change order. She noted that there were concerns about the impact of trucks in Arlington and on the county's road system including blowing debris, noise and road damage. She noted that STS had been an excellent partner in addressing these issues.

**EXECUTIVE SUMMARY  
RESOLUTION 99-2786  
CHANGE ORDER 24 TO THE WASTE TRANSPORTATION CONTRACT**

**PROPOSED ACTION**

Passage of Resolution 99-2786 would authorize Change Order No. 24 to the contract with Specialty Transportation Services, Inc. (STS) for waste transport services.

**WHY NECESSARY**

- This change order would result in estimated net cash flow savings of about \$9 million over the life of the remaining contract (to December 31, 2009).
- The Change Order would eliminate the requirement that Metro provide a large parking area for STS trailers at the Metro South Station. This change would free up space that could be used to increase waste recovery and improve customer service.

**ISSUES/CONCERNS**

Metro has minimized risk associated with pre-paying the fixed payments in the following ways:

- A declining letter of credit from STS in the amount of \$4.1 million.
- The ability for Metro to withhold contract payments.
- Existing Contract provisions give Metro access to STS equipment in the event of default.

**BUDGET/FINANCIAL IMPACT**

- The undesignated fund balance would be used for the \$6.6 million needed to pre-pay the fixed costs. Metro Council approval of a budget amendment in the amount of \$6.6 million would be necessary to make this expenditure (see Ordinance No. 99-798).



## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 99-2786 FOR THE PURPOSE OF APPROVING CHANGE ORDER NO. 24 TO THE WASTE TRANSPORT SERVICES CONTRACT

Date: May 5, 1999

Presented by: Terry Petersen

## PROPOSED ACTION

Adopt Resolution No. 99-2786 for the purpose of authorizing Change Order No. 24 to the contract with Specialty Transportation Services, Inc. for waste transport services.

## SUMMARY

Metro Council approval of Change Order No. 24 to the Specialty Transportation Services, Inc. (STS) Contract would result in several benefits to Metro and the Region's ratepayers. Most importantly, there would be net savings of approximately \$9 million over the remainder of the contract.

Key elements of the proposed change order are as follows:

1. Metro would prepay future fixed costs of \$8.85 million (128 payments of \$69,117) discounted at 6.0%, resulting in a one-time payment of approximately \$6.6 million.
2. STS would provide Metro with an irrevocable letter of credit in the initial amount of \$4.1 million to protect Metro in the event that STS defaults or the contract is terminated. The letter of credit would decline monthly to a final value of \$1.3 million. The \$1.3 million letter of credit would be maintained for the remainder of the contract in lieu of retainage. STS would also provide Metro with a corporate guarantee from Aasche Transportation Services, Inc., the parent company of STS.
3. The per-load payment would be reduced by \$30, resulting in a price of \$331.47 per load at the time the change order is executed. The savings from this price reduction would be approximately \$7.8 million over the duration of the Contract.
4. STS would move most of their transport trailers off Metro property at Metro South Station and the \$93,142 annual shuttle cost would be eliminated. This change would allow Metro to proceed with facility improvements at Metro South that would increase waste recovery and reduce the hauling costs of commercial customers. Metro would obtain savings of about \$1.0 million in reduced contract payments. Metro would also be able to avoid approximately \$1 million in costs associated with replacing the trailer parking lot at Metro South. In addition, there would be indirect system savings as wait times would be reduced for commercial haulers if a new public dumping area is constructed in the space to be vacated by STS under the Change Order.

5. The estimated combined savings from the reduction in the per-load charge and the elimination of the annual shuttle cost total \$8.89 million over the remaining life of the Contract.

## FACTUAL BACKGROUND

Metro has a contract with Specialty Transportation Services, Inc. (STS) for transporting waste to the Columbia Ridge Landfill from the Metro South and Central transfer stations. The 20-year contract will expire on December 31, 2009. During FY97-98, STS transported 723,950 tons in 24,757 loads to the landfill. The total of all payments to STS during FY97-98 was \$9,858,853.

There are several key provisions of the existing contract that are relevant to this change order. The payments to STS consist of three components, which follow: (1) fixed monthly payments in the amount of \$69,117 for the duration of the contract; (2) per-load payments, currently in the amount of \$361.47; and (3) miscellaneous payments for trailer shuttling, trailer weighing, and managing overloaded trailers. The per-load and miscellaneous payments are adjusted annually based on the consumer price index.

Metro currently holds \$2.5 million in retainage, as specified in Article 13 of the contract. Metro retained 5% of all STS payments until the retainage equaled \$2.5 million. The retainage is in an interest-bearing account managed by Metro with the interest accruing to STS. The \$2.5 million retainage is available for use by Metro in the event that STS defaults and is unable to perform according to the contract specifications.

A third condition of the Contract that is relevant to this change order relates to the staging area used for transport trailers as well as the shuttling of trailers to and from the compactors at Metro South Station. When the original contract was executed, it was intended that the transfer station operator, not the transport contractor, would provide on-site shuttling services. This provision was revised in subsequent contract changes such that STS now provides shuttling service at both Metro South and Central Transfer Stations. In return for this shuttling service at Metro South, Metro pays STS \$7,765 per month and also provides STS with a staging area on Metro property.

## KEY ISSUES AND CONSIDERATIONS

*Risk Associated With Contractor Default.* Prepaying the fixed payments under the Contract increases Metro's risk, since \$6.6 million would be paid prior to STS providing the services associated with the payment. A number of factors reduce Metro's level of risk. First, Metro has obtained a declining letter of credit in the amount of \$4.1 million. The letter of credit would decline, along with Metro's risk, at the rate of \$100,000 per month. Secondly, since Metro pays for services after they have been performed, Metro normally has obtained about \$1.0 million of services from STS that have not yet been paid for. In the event of a default, Metro has the right under the Contract to withhold these payments. The Contract also specifies that Metro shall have access to STS equipment in the event of default for 180 days after contract termination (worth about \$600,000). By eliminating the requirement that Metro provide a large parking area for STS trailers, Metro could save avoided costs of \$1.0 million for providing a new staging area.

STS would also be required to provide Metro with a corporate guarantee from Aasche Transportation Services, Inc. This is a financial and performance guarantee.

*Retainage.* After Metro releases the currently held retainage to STS, the collection of the retainage will be suspended unless a contractual breach is committed. Additional security will also be provided by the letter of credit provided by STS and the corporate guarantee of Aasche.

*Alternative Transport Modes.* There continues to be interest among elected officials and others in examining alternatives to trucking waste through the Columbia Gorge. The changes to the Disposal Contract with Waste Management, Inc. (approved by the Council as Change Order No. 8 in Resolution No. 99-2766) included a provision that Metro's Disposal Contractor may propose an alternative transportation method to Metro, as long as the transport price does not increase. Since the alternative transportation mode provisions in Change Order 8 anticipated that the Disposal Contractor would "buy-out" the Transportation Contract, the changes to the STS Contract in Change Order 24 should not materially change the likelihood of a change in mode. Any changes to the value of the Transportation Contract would obviously be reflected in the price paid to "buy-out" the Contract.

*Waste Reduction and System Costs.* The REM Facility Master Plan calls for the construction of a new dumping area for public self-haul customers at Metro South Station in an area now used by STS for trailer storage. It is necessary for STS to reduce the number of trailers stored at Metro South before this public dumping area can be constructed. As a condition of this change order, Metro would be obligated to provide STS with storage space for only 10 trailers. This would free up sufficient space for construction of the new public area.

Once the public self-haul customers are moved to the new area, the existing transfer station building would be reserved for commercial haulers. There would be sufficient space inside the existing building to allow for substantially more waste recovery activities. The space restriction at Metro South has been a long-standing obstacle to waste recovery. Increased waste recovery at Metro South would help the Region to move toward its waste reduction goals.

By separating public and commercial customers, the new public dumping area would also reduce traffic queuing at Metro South Station. With the increase in tipping space for commercial trucks inside the transfer station building and the separation of public and commercial vehicles, there should be a substantial improvement in on-site queuing time for commercial haulers. As a result, hauling costs and total system costs in the Region (collection through disposal) would be reduced.

## FINANCIAL ANALYSIS

The following paragraphs summarize the financial analyses that have been conducted by financial staff of the REM and Administrative Services Departments and Metro's financial advisor, Clancy, Gardiner, & Pierce.

*Discounted Fixed Costs.* Over the remainder of the Contract, Metro would pay STS \$829,404 annually, or \$8.85 million in total fixed payments. The lump sum payment called for in this change order is the present value of these payments at a discount rate of 6 percent.

*Unit Price Reduction.* Based on the conservative assumption that the tonnage from Metro's transfer stations would be 600,000 tons in 1999 and increase 2 percent annually, the \$30 per load reduction in the unit price represents cash savings of \$7.8 million (assuming 30 tons per load) over the remainder of the contract. These calculations also assume an inflation rate of 2.6 percent per year.

*Metro South Shuttle and Trailer Staging Area.* The Change Order specifies that Metro would no longer be required to make payments to STS for shuttling trailers to and from the compactors at Metro South Station. This change reduces Metro's costs by \$93,142 annually, or a total savings of \$1.0 million for the remainder of the Contract. Because the Change Order also specifies that STS would move most of their transport trailers off of the property at Metro South Station, Metro would also avoid any costs associated with constructing and leasing an alternative trailer staging area, which would be necessary to implement the REM Facility Master Plan. For the purposes of estimating the value of these changes related to the transfer trailers, it is assumed that the present value of the avoided costs associated with the alternative trailer staging area is \$1.0 million. Therefore, the total savings related to STS moving trailers off of the Metro South Station property and eliminating the shuttle payment could be about \$2.0 million.

*Total and Net Savings.* This change order would result in the payment of remaining fixed cost payments to STS during the remainder of the Contract (to December 31, 2009), based on their present value. This reduction in future payments would be offset by the initial lump sum payment of fixed costs and the lost interest. The net cash flow savings are estimated to be about \$9 million.

## BUDGET IMPACT

Funds in the amount of \$6.6 million would be needed to prepay the fixed costs upon approval of the Change Order. Metro Council approval of a budget amendment transferring \$6.6 million from Contingency to the Operating Account of the Solid Waste Revenue Fund would be necessary to make this expenditure (see Ordinance No. 99-798). After the prepayment of the fixed costs to STS, the estimated undesignated ending Fund Balance for FY98-99, based upon March 1999 tonnage forecasts, would be about \$700,000 (\$7.3 million - \$6.6 million).

## EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 99-2786.

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