



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Agenda

Meeting: METRO COUNCIL
Date: January 25, 1990
Day: Thursday
Time: 5:30 p.m.
Place: Council Chamber

Approx.
Time*

Presented
By

5:30 p.m. **CALL TO ORDER/ROLL CALL**

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS**
3. **EXECUTIVE OFFICER COMMUNICATIONS**

5:40
(5 min.) 4. **CONSENT AGENDA** (Action Requested: Motion to Adopt the Recommendations Listed Below)

4.1 **Minutes of September 14, 1989** (Action Requested: Motion to Approve the Minutes)

REFERRED FROM THE CONVENTION, ZOO AND VISITOR FACILITIES COMMITTEE

4.2 **Resolution No. 90-1203, For the Purpose of Approving the Appearance by Metro in Estate Proceeding -- In the Matter of the Estate of Stanley L. Smith, Tillamook County Circuit Court Docket No. 4454** (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM THE FINANCE COMMITTEE

4.3 **Resolution No. 90-1210, For the Purpose of Approving a Metro Center Security Services Contract** (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM THE INTERGOVERNMENTAL RELATIONS COMMITTEE

4.4 **Resolution No. 90-1177, Amending the Transportation Policy Alternatives Committee Bylaws** (Action Requested: Motion to Adopt the Resolution)

(continued)

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

4. CONSENT AGENDA

REFERRED FROM THE INTERGOVERNMENTAL RELATIONS COMMITTEE

- 4.5 Resolution No. 90-1200, Allocating the Interstate Transfer Regional Reserve and Amending the Transportation Improvement Program Accordingly (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM THE SOLID WASTE COMMITTEE

- 4.6 Resolution No. 90-1181, For the Purpose of Renewing and Amending the Contract for Personal Services with Stoel, Rives, Boley, Jones & Grey for Assistance as Bond Counsel (Action Requested: Motion to Adopt the Resolution)
- 4.7 Resolution No. 90-1195, For the Purpose of Approving a Request for Proposals Document for the Model Zoning Ordinance (Action Requested: Motion to Adopt the Resolution)
- 4.8 Resolution No. 90-1198, For the Purpose of Supporting Earth Day Activities and Goals in the Metropolitan Region (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM ZOO COMMITTEE

- 4.9 Resolution No. 90-1205, Authorizing the Executive Officer or Her Designee to Dispose of Residential Property Bequeathed to the Metro Washington Park Zoo (Action Requested: Motion to Adopt the Resolution)

5. ORDINANCES, SECOND READINGS

REFERRED FROM THE FINANCE COMMITTEE

5:45
(5 min.)

- 5.1 Ordinance No. 90-330A, For the Purpose of Adopting a Procedure to Include the Ballot Title, Explanatory Statement and Arguments Relating to Certain District Measures in the State Voters' Pamphlet (PUBLIC HEARING) (Action Requested: Motion to Adopt the Ordinance)

Gardner

(continued)

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

5. ORDINANCES, SECOND READINGS

REFERRED FROM THE SOLID WASTE COMMITTEE

- | | | |
|------------------|--|--------|
| 5:50
(5 min.) | 5.2 Ordinance No. 90-321, An Ordinance Enacted as a Supplemental Ordinance to Ordinance No. 89-319; Establishing a Plan for Financing the Metro East Transfer Station to Serve as Part of the Metropolitan Service District Solid and Liquid Waste Disposal System; Authorizing the Issuance of the Series A System Bonds for Such Purpose; and Establishing and Determining Other Matters in Connection Therewith (<u>PUBLIC HEARING</u>) (Action Requested: Motion to Adopt the Ordinance) | Cooper |
|------------------|--|--------|

REFERRED FROM THE ZOO COMMITTEE

- | | | |
|-------------------|--|---------|
| 5:55
(10 min.) | 5.3 Ordinance No. 90-326, For the Purpose of Amending the Metro Code Section 4.01.060 Regarding Admission Fees and policies at Metro Washington Park Zoo (<u>PUBLIC HEARING</u>) (Action Requested: Motion to Adopt the Ordinance) | Knowles |
| 6:05
(15 min.) | 5.4 Ordinance No. 90-329, For the Purpose of Submitting a Metropolitan Service District Tax Base Measure for the Metro Washington Park Zoo (<u>PUBLIC HEARING</u>) (Action Requested: Motion to Adopt the Ordinance) | Gardner |

6. RESOLUTIONS

REFERRED FROM THE ZOO COMMITTEE

- | | | |
|-------------------|---|---------|
| 6:20
(15 min.) | 6.1 Resolution No. 90-1194, Approving the Zoo Five-Year Financial Plan and Submitting a Metropolitan Service District Zoo Capital Serial Levy to District Voters (<u>PUBLIC HEARING</u>) (Action Requested: Motion to Adopt the Resolution) | Gardner |
|-------------------|---|---------|

(continued)

* All times listed on this agenda are approximate. Items may not be considered in the exact order listed.

6. RESOLUTIONS

REFERRED FROM THE SOLID WASTE COMMITTEE

6:35
(5 min.)

6.2 Resolution No. 90-1100, For the Purpose of Authorizing Issuance of a Request for Bids for Construction of Metro South Modification Operations (Action Requested: Motion to Adopt the Resolution)

Hansen

BEFORE THE CONTRACT REVIEW BOARD OF THE METROPOLITAN SERVICE DISTRICT

REFERRED FROM THE CONVENTION, ZOO AND VISITOR FACILITIES COMMITTEE

6:40
(5 min.)

6.3 Resolution No. 90-1199, Authorizing the Award of Furnishings Contracts for the Oregon Convention Center to Krueger, Inc. and Environetics, Inc. (Action Requested: Motion to Adopt the Resolution)

Knowles

REFERRED FROM THE FINANCE COMMITTEE

6:45
(5 min.)

6.4 Resolution No. 90-1201, For the Purpose of Authorizing an Exemption to Metro Code Chapter 2.04.043 Competitive Bidding Procedures and Authorizing a Sole Source Agreement with Dun & Bradstreet Corp. for the Purchase of Credit Reporting Services (Action Requested: Motion to Adopt the Resolution)

Wyers

6:50 7. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

7:05 ADJOURN

gpwb
cn0125.ag

COUNCIL MEETING CONSENT AGENDA

Meeting: COUNCIL
Date: January 25, 1989
Day: Thursday
Time: 5:30
Place: Council Chamber

The following business items have been reviewed by the Presiding Officer of the Council. These items meet the Consent Agenda Criteria established by the Council. The Council is requested to approve the recommendations presented for the following items:

- 4.1 Minutes of September 14, 1989 (Action Requested: Motion to Approve the Minutes)

REFERRED FROM THE CONVENTION, ZOO AND VISITOR FACILITIES COMMITTEE

- 4.2 Resolution No. 90-1203, For the Purpose of Approving the Appearance by Metro in Estate Proceeding -- In the Matter of the Estate of Stanley L. Smith, Tillamook County Circuit Court Docket No. 4454 (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM THE FINANCE COMMITTEE

- 4.3 Resolution No. 90-1210, For the Purpose of Approving a Metro Center Security Services Contract (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM THE INTERGOVERNMENTAL RELATIONS COMMITTEE

- 4.4 Resolution No. 90-1177, Amending the Transportation Policy Alternatives Committee Bylaws (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM THE INTERGOVERNMENTAL RELATIONS COMMITTEE

- 4.5 Resolution No. 90-1200, Allocating the Interstate Transfer Regional Reserve and Amending the Transportation Improvement Program Accordingly (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM THE SOLID WASTE COMMITTEE

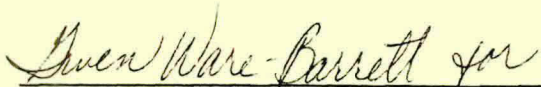
- 4.6 Resolution No. 90-1181, For the Purpose of Renewing and Amending the Contract for Personal Services with Stoel, Rives, Boley, Jones & Grey for Assistance as Bond Counsel (Action Requested: Motion to Adopt the Resolution)

Council Meeting of January 25, 1990
Page 2

- 4.7 Resolution No. 90-1195, For the Purpose of Approving a Request for Proposals Document for the Model Zoning Ordinance (Action Requested: Motion to Adopt the Resolution)
- 4.8 Resolution No. 90-1198, For the Purpose of Supporting Earth Day Activities and Goals in the Metropolitan Region (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM ZOO COMMITTEE

- 4.9 Resolution No. 90-1205, Authorizing the Executive Officer or Her Designee to Dispose of Residential Property Bequeathed to the Metro Washington Park Zoo (Action Requested: Motion to Adopt the Resolution)


Donald E. Carlson, Council Administrator

Agenda Item No. 4.1
Meeting Date January 25, 1990

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

September 14, 1989
Regular Meeting

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

Presiding Officer Mike 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 testified regarding the Jack Gray Transport contract. She said that in regard to issuance of a PUC temporary permit for Jack Gray Transport, if the PUC has failed to conclude the matter by January 1, 1990, that the PUC temporary permit authority person she had contacted had written that "True need is not ordinarily found in cases where existing carriers are able to provide reasonable service. Temporary authority is not granted merely for reasons of convenience or because of a shipper's preference of carriers. The simple willingness of a carrier to charge lower rates will not justify approval of the application." She also quoted from correspondence from the PUC that stated, "If it has been determined that a 'true need exists' staffs approval of a temporary authority application is conditioned on the fact that the applicant has a satisfactory record of compliance with PUC regulations. Staff reviews, past operations to confirm that highway use taxes have been paid in a timely fashion, there have not been suspensions for weight mile tax bond and insurance filing violations, there have not been violations of rate and authority regulations, and finally, the applicant has a satisfactory safety inspection record." Ms. Factor said that Jack Gray's, rating was conditional, and had been for some years. She said that she would be glad to provide copies of the entire PUC staff report and documentation relative to the question of true need for the Council's perusal.

Ms. Factor also testified in regard to Jack Gray's operating plan. She said that Councilor Ruth McFarland had raised questions about Jack Gray's ability to complete trips of 526 miles within 10 hours. She said that 9.56 hours of the trip would have to be done 55 m.p.h. She also said that the Bigs

Junction business community did not support a truck staging area in Bigs Junction.

Charles Hales, Staff Vice President for Governmental Affairs, Homebuilder's Association, Metropolitan Portland testified regarding a proposal, a and staff report that had been brought before the Council's Intergovernmental Affairs Committee regarding an amicus brief to be filed with the Land Use Board of Appeals in the matter of Great American Development vs. The City of Milwaukie. He said that the City of Milwaukie had been reluctant to accept their share of the region's housing density under Goal 10 and had denied a rezoning request from Great American Development which was consistent with the Metropolitan Housing Rule. Mr. Hales said that while 1000 Friends of Oregon supported the brief, the Council's Intergovernmental Relations Committee had tabled consideration of Resolution No. 89-1141, For the Purpose of Coordinating with the Home Builders Association of Metropolitan Portland, 1000 Friends of Oregon, and the State Department of Land Conservation and Development in preparing an Amicus Brief to be Filed with the State Land Use Board of Appeals in Support of the Appellant of the City of Milwaukie Zone Change Case File No. ZC 89-01.

Councilor DeJardin reported that the Intergovernmental Relations Committee had felt that it was not necessary for the Council to support the brief in that 1000 Friends and the Homebuilder's Association was taking the lead on the matter. Mr. Hales pointed out that he felt it was a regional matter that affected the Urban Growth Boundary, and urged the Council as a whole to consider the resolution. Presiding Officer Ragsdale pointed out that if the resolution were removed from the Committee, under the Council rules, it would be placed on a subsequent Council meeting agenda. Councilor Van Bergen said that he felt the City of Milwaukie should be afforded an opportunity to speak to the resolution. The Presiding Officer said that he would accept a motion to consider the matter under the Resolution section of the agenda.

3. EXECUTIVE OFFICER COMMUNICATION

Executive Officer, Rena Cusma, said that she concurred with Mr. Hale's position on the amicus brief issue and believed strongly that Metro had a proper role and responsibility in the matter. Ms. Cusma introduced David Kanner, the newly-hired Public Affairs Specialist. She explained that the position was jointly shared between Public Affairs and the Executive Office.

4. ORDINANCES, FIRST READINGS

4.1 Ordinance No. 89-309, For the Purpose of Amending Code Sections 2.04.040 and 2.04.090 Providing for the Purchase of Food for Resale

The Clerk read the ordinance for a first time by title only. The Presiding Officer referred the ordinance to the Convention, Zoo and Visitors Facilities Committee.

4.2 Ordinance No. 89-310, Amending Ordinance No. 89-294A
Revising the FY 1989-90 Budget and Appropriations
Schedule to Implement the Oregon Laborers International
Local 483 Collective Bargaining Agreement

The Clerk read the ordinance for a first time by title only. The Presiding Officer referred the ordinance to the Finance Committee.

4.3 Ordinance No. 89-312, Amending Ordinance No. 89-294A
Revising the FY 1989-90 Budget and Appropriations
Schedule to Reclass 1.0 FTE Data Processing Operations
Analyst to 1.0 FTE Data Processing Systems Analyst

The Clerk read the ordinance for a first time by title only. The Presiding Officer referred the ordinance to the the Finance Committee.

4.4 Ordinance No. 89-313, Amending Ordinance No. 89-294A,
Adopting a Supplemental Budget, Revising the FY 1989-90
Budget and Appropriations Schedule and Increasing the Solid
Waste Capital Fund and Solid Waste Debt Service Fund

The Clerk read the ordinance for a first time by title only. The Presiding Officer referred the ordinance to the Solid Waste Committee to examine the policy issues and subsequently to the Finance Committee to examine the budgetary impact.

4.5 Ordinance No. 89-314, Amending Metro Code Section 2.04.040
Relating to Public Contracts, General Provisions to Allow
Metro to Enter into an Intergovernmental Agreement with the
State of Oregon to Make Purchases from State Price
Agreements

The Clerk read the ordinance for a first time by title only. The Presiding Officer referred the ordinance to the Internal Affairs Committee.

4.6 Ordinance No. 89-303, For the Adoption of a Model Purchasing
Policy for the Metropolitan Service District Requiring the
Purchase of Yard Debris Compost and Sewage Sludge Compost

The Clerk read the ordinance for a first time by title only. The Presiding Officer referred the ordinance to the Solid Waste Committee.

5. ORDINANCES, SECOND READINGS

5.1 Ordinance No. 89-306, Amending Ordinance No. 89-294A
Revising the FY 1989-90 Budget and Appropriations Schedule
to Increase the Executive Officer's Salary in Accordance
with Senate Bill 1150

The Clerk read the ordinance for a second time by title only. The Presiding Officer announced that the ordinance was first read before the Council on August 8 and referred to Finance Committee. The Finance Committee held a public hearing on August 17 and recommended the Council adopt the ordinance.

Councilor Van Bergen, Finance Committee Vice-Chair presented the Committee's report and recommendations. He said that the salary reflected the quality of the office and that he was supportive of enhancing the level of the salaries for executive and judicial branches of Metro.

Motion: Councilor Van Bergen moved, seconded by Councilor Collier to adopt Ordinance No. 89-306.

Vote: A roll call vote was taken and all twelve councilors voted in favor of the motion.

The motion carried unanimously.

5.2 Ordinance No. 89-307, Amending Ordinance No. 89-294A
Revising the FY 1989-90 Budget and Appropriations Schedule
for Council Per Diem Requirements

The Clerk read the ordinance for a second time by title only. The Presiding Officer announced that the ordinance was first read before the Council on August 8 and referred to Finance Committee. The Finance Committee held a public hearing on August 17 and recommended the Council adopt the ordinance. Councilor Van Bergen, Finance Committee Vice-Chair presented the Committee's report and recommendations.

Motion: Councilor Van Bergen moved, seconded by Councilor Collier to adopt the ordinance.

Councilor Knowles stated that he would oppose the motion because he strongly disagreed with the newly-adopted per diem rules.

Vote: A roll call vote was taken and eleven councilors voted in favor of the motion. Councilor Knowles voted against the motion.

The motion carried.

5.3 Ordinance No. 89-308, Amending Ordinance No. 89-294A
Revising the FY 1989-90 Budget and Appropriations Schedule
for the Purpose of Expanding the Water Quality Study
Program and Adding an Associate Management Analyst Position
in Executive Management

The Clerk read the ordinance for a second time by title only. The Presiding Officer announced that ordinance was first read before the Council on August 1 and referred to Finance Committee. The Intergovernmental Relations Committee considered the ordinance on August 15 and recommended adoption, and the Finance Committee held a public hearing on August 17 and recommended the Council adopt the ordinance. Councilor Gardner, Chair of the Intergovernmental Relations Committee presented the Committee's report and recommendations.

Due to recommendations from the Federal Environmental Protection Agency and the State Department of Environmental Quality Metro was going to undertake a more active role in coordinating the activities in the region as related to water resources and particularly water quality. As a result, one full-time person had been hired in the Planning and Development Department, and it had become apparent that another person was needed.

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

Vote: A roll call vote was taken and all twelve Councilors voted in favor of the motion.

The motion carried unanimously.

6. RESOLUTIONS

Motion: Councilor Knowles moved to suspend the Council's rules to allow introduction of a resolution For the Purpose of Coordinating with the Home Builders Association of Metropolitan Portland, 1000 Friends of Oregon, and the State Department of Land Conservation and Development in preparing an Amicus Brief to be Filed with the State Land Use Board of Appeals in Support of the Appellant of the City of Milwaukie Zone Change Case File No. Z 89-01.

Vote: Five councilors voted in favor of the motion, seven councilors voted against the motion.

The motion to suspend the rules failed to carry.

6.1 Resolution No. 89-1107A, Amending the Pay Plan for Non-Represented Metro Employees

Councilor Collier, member of the Internal Affairs Committee presented the Committee's report and recommendations.

Motion: Councilor Collier moved to adopt Resolution No. 89-1107A.

Vote: All twelve Councilors voted in favor of the motion.

The motion carried unanimously.

6.2 Resolution No. 89-1133A, For the Purpose of Designating the Oregon Processing and Recycling Center as a Major Disposal System Component Pursuant to Metro Code Section 5.01.085 and Authorizing Appropriate Amendments to the Oregon Processing and Recycling Center Franchise Agreement (Franchise No. 7)

Councilor Hansen, Chair of the Solid Waste Committee presented the Committee's report and recommendations as contained in the agenda packet.

Motion: Councilor Hansen moved to adopt Resolution No. 89-1133A.

Vote: All twelve councilors voted in favor of the motion.

The motion carried unanimously.

6.3 Resolution No. 89-1131A, For the Purpose of Authorizing Negotiations with Trans Industries to Obtain the Metro East Station

The Presiding Officer advised the Council that the Solid Waste Committee at its September 7 meeting amended Resolution No. 89-1131 and recommended the Council adopt the amended version. Their committee report as well as the amended resolution had been previously mailed to Councilors and was distributed as a part of the agenda materials.

Councilor Hansen, Chair of the Solid Waste Committee presented the Committee's report and recommendations.

Motion: Councilor Hansen moved to adopt Resolution No. 89-1131A.

Motion to Amend: Councilor Knowles moved to amend the resolution by adding a sentence in the first "Be it Resolved" section to read: "The contract terms shall reflect that the criteria utilized to evaluate the proposals with regard to vertical integration are the ongoing policy of the District. Commitments made by Trans Industries in their proposal regarding lack of involvement in disposal, collection and recycling businesses in the region shall be included in the contract."

The Presiding Officer opened the public hearing. Ms. Berna Plummer submitted written testimony. Ms. T. R. Factor urged the Council to consider the best possible proposal and not to make a decision right away if environmental concerns existed.

Vote on amendment: A roll call vote was taken resulting in Councilors Collier, Hansen, Knowles and Van Bergen voting aye. The other eight councilors voted nay.

The motion failed to carry.

Councilor Devlin said two issues should be resolved in the contract negotiations--a satisfactory "hold harmless clause" and further environmental studies. Councilor Bauer suggested negotiating with the top two proposers since timelines were critical. Councilor Gardner spoke in favor of the motion but agreed further environmental studies were warranted. Councilor Wyers asked if the Shell site was superfund sites or had the potential to be. Bob Martin, Solid Waste Director said it was not at that time, however, releases of contaminants had been documented and it was intended to continue to monitor and test the site. Councilor Wyers also asked General Counsel Dan Cooper if current as well as previous owners would be responsible for financing of clean up costs if the site were later declared a super fund site. Mr. Cooper replied affirmatively. Councilor Van Bergen said that he did not feel the site was centrally located for the region and would like, in the future to be able to renegotiate the contract for ownership, when more was known about the environmental issues.

Vote on the Main Motion: Councilors Buchanan, Collier, DeJardin, Devlin, Gardner, Hansen, Knowles and Ragsdale voted aye. Councilors Bauer, McFarland, Van Bergen and Wyers voted nay.

Council Meeting of September 14, 1989
Page 8

The motion carried.

7. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

Councilor Collier reported to the Council on that the Finance Committee had begun establishing the budget process.

There was no other business, and the meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Elisabeth Ranger, Recording Secretary

Gwen Ware-Barrett, Transcribing Secretary

a:cn914.min

Agenda Item No. 4.2
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1203

CONVENTION, ZOO & VISITORS
FACILITIES COMMITTEE REPORT

RESOLUTION NO. 90-1203, FOR THE PURPOSE OF APPROVING THE
APPEARANCE BY METRO IN ESTATE PROCEEDING -- IN THE MATTER OF
THE ESTATE OF STANLEY L. SMITH, TILLAMOOK COUNTY CIRCUIT COURT
DOCKET NO. 4454

Date: January 11, 1990

Presented By: Councilor Knowles

COMMITTEE RECOMMENDATION: At the January 9, 1990 Convention, Zoo & Visitors Facilities Committee meeting, all members were present and voted unanimously to recommend Council adopt Resolution No. 90-1203.

COMMITTEE DISCUSSION/ISSUES: Metro General Counsel Dan Cooper presented the resolution which would authorize the Office of the General Counsel to appear in the estate proceeding of Stanley L. Smith. In his will, Mr. Smith gave a land parcel to the "governmental body which operates the Portland Zoo." As described in the Staff Report, the estate's settlement was delayed because the initial attorney absconded with approximately \$17,673 and then committed suicide. The estate was reimbursed for \$25,000 by the Oregon State Bar Client Security Fund. The attorney now representing the estate, Mr. Hansen, has not indicated when it will be closed and has taken no action to disburse the monies collected or assign the trust deed. Mr. Cooper explained Metro's only remedy to obtain monies paid under the land sale contract is to file a "Petition for an Order for Partial Distribution" with the Client Security Fund. To file this claim, the Code requires concurrent approval of the Executive Officer and the Metro Council (Section 2.05.040(e)).

General Counsel advised it is important to file the claim; otherwise, the costs of administering the estate will continue to grow. Councilor Van Bergen recommended Metro act to assume the role of the estate's Personal Representative and thereby gain control over payments to Mr. Hansen. Mr. Cooper indicated he would follow the Councilor's suggestion. No additional questions or issues were raised.

jpmthree
b:\901203.cr

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING	)	RESOLUTION NO. 90-1203
THE APPEARANCE BY METRO IN)	
ESTATE PROCEEDING -- IN THE	)	Introduced by Rena Cusma,
MATTER OF THE ESTATE OF	)	Executive Officer
STANLEY L. SMITH, TILLAMOOK)	
COUNTY CIRCUIT COURT)	
DOCKET NO. 4454)	

WHEREAS, Pursuant to Section 2.05.040(e) of the Metro Code, the Executive Officer is requesting authorization for the Office of General Counsel to appear in the above-referenced proceeding; and

WHEREAS, Metro's appearance in the proceeding would be by a Petition for an Order for Partial Distribution; and

WHEREAS, Petitions of this nature are authorized by ORS 116.013; and

WHEREAS, By filing this Petition, Metro may be able to obtain distribution of some, if not all, of the monies paid under the land sale contract; and

WHEREAS, Metro will also request that the Court order assignment of the trust deed from the estate to Metro; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District concurs in the appearance by Metro in Estate Proceeding -- In The

Matter of the Estate of Stanley L. Smith, Tillamook County
Circuit Court Docket No. 4454.

ADOPTED by the Council of the Metropolitan Service
District this _____ day of _____, 1990.

Presiding Officer

DBC/gl
1001

STAFF REPORT

CONSIDERATION FOR THE PURPOSE OF
APPROVING THE APPEARANCE BY METRO
IN ESTATE PROCEEDING IN THE MATTER
OF THE ESTATE OF STANLEY L. SMITH,
TILLAMOOK COUNTY CIRCUIT COURT
DOCKET NO. 4454

Date: January 11, 1990

Presented by: Daniel B. Cooper,
General Counsel

BACKGROUND AND FACTUAL ANALYSIS

Pursuant to Section 2.05.040(e) of the Metro Code, the Executive Officer is requesting authorization for the Office of General Counsel to appear in the above-referenced proceeding.

Decedent, Mr. Stanley L. Smith, gave a parcel of real property to the governmental body which operates the "Portland Zoo." The property was sold in 1985 for the sum of \$60,000. The terms of the sale were a down payment of \$12,000, with a \$48,000 note for the balance secured by a trust deed on the property.

Distribution of the proceeds of the sale of the property was delayed by the fact that the attorney who initially represented the estate, Fred Young, absconded with approximately \$17,673.23 from the estate. Mr. Young subsequently took his own life. Metro did not become aware of this bequest until after Mr. Young's death.

Attorney Peter O. Hansen has been representing the estate since Mr. Young's demise. Mr. Hansen filed a claim with the Oregon State Bar Client Security Fund to try to replace the funds converted by the estate's former attorney. In August 1989, the Board of Bar Governors adopted the Client Security Fund Committee's recommendation that the Client Security Fund reimburse the Smith estate in the amount of \$25,000.

Mr. Hansen has advised the Personal Representative of the estate that disbursement of monies collected pursuant to the land sale contract, as well as assignment of the trust deed, should not be made until administration of the estate is complete and the court orders distribution. Mr. Hansen has not given any indication as to when he anticipates closing the estate.

Metro's appearance in the proceeding would be by a Petition for an Order for Partial Distribution. Petitions of this nature are authorized by ORS 116.013. By filing this petition, Metro may be able to obtain distribution of some, if not all, of the monies paid under the land sale contract. General Counsel will

also request that the court order assignment of the trust deed from the estate to Metro.

DBC/gl

1001

Agenda Item No. 4.3
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1210

FINANCE COMMITTEE REPORT

RESOLUTION NO. 90-1210, APPROVING A CONTRACT FOR SECURITY SERVICES AT METRO CENTER

Date: January 19, 1990

Presented by: Councilor
Wyers

Committee Recommendation: At its January 18, 1990 meeting, the Committee voted unanimously to recommend adoption of Resolution No. 90-1210. Voting yes were Councilors Gardner, Wyers, and Van Bergen. Councilors Collier and Devlin were excused.

Committee Discussion/Issues: Chairman Van Bergen introduced this item indicating it had been brought to his attention after the initial Committee agenda had been established. He expressed concern that the prior security contract had expired in October 1989 and that the services have been acquired through the use of monthly purchase orders in the interim period (see Attachment 1).

Jennifer Sims, Manager of Financial Services, presented the staff report and responded to questions from the Committee. She indicated that contract was bid on a unit cost basis so the level of service can be adjusted as needed. Council staff reported that this contract is a result of an RFB previously approved by the Committee and the Council (Resolution No. 89-1162). The scope of work provides for an increased level of security service for the Metro Center. The fiscal impact is that security service costs will increase from \$210. per month to approximately \$1,625 per month. Council staff pointed out that the Contract Summary form provided by the Finance and Administration Department (Attachment 2) was in error in that the budget line item for this contract shows \$14,000 when in fact it should be \$2,619.

In response to a question on how the additional contract costs will be paid during the remainder of the fiscal year, Ms. Sims indicated that savings in the Utilities line items will be utilized to cover the costs. The Department will process an internal budget adjustment and absorb the costs within the current Materials & Services appropriation in the Building Management Fund.

DEC:pa

#1C:90-1210

Attachments



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

ATTACHMENT NO. 1
Finance Committee Report
Resolution No. 90-1210

Date: January 17, 1989
To: Metro Council Finance Committee
From: Councilor George Van Bergen, Finance Committee Chair *GVB.*
Regarding: AGENDA ITEM NO. 6: RESOLUTION NO. 1210

The last meeting item before the Finance Committee tonight is Resolution No. 90-1210, For the Purpose of Approving a Metro Center Security Services Contract. The contract expired October 1, 1989 and has been honored by purchase orders each month to this date. The attached information is all that has been filed with the Clerk.

I feel it is to our best interest to give as much attention to these default contracts as possible. If the Committee will accede, to consider this item, we will resolve the problem. The options before the Committee are to approve the request, seek additional information or deny the request.

GVB:gpwb

cc: Rena Cusma
Ray Phelps
Flor Matias
Don Carlson



GRANT/CONTRACT SUMMARY

METROPOLITAN SERVICE DISTRICT

513-041414-524790

GRANT/CONTRACT NO. 901113 BUDGET CODE NO. _____
FUND: General DEPARTMENT: F And A (IF MORE THAN ONE) _____
SOURCE CODE (IF REVENUE) _____

INSTRUCTIONS

- OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
- COMPLETE SUMMARY FORM.
- IF CONTRACT IS —
 - SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
 - UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
 - OVER \$2,500, ATTACH QUOTES, EVAL. FORM, NOTIFICATION OF REJECTION, ETC.
 - OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, RFP, ETC.
- PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING

1. PURPOSE OF GRANT/CONTRACT Security guard services for Metro Center

2. TYPE OF EXPENSE ☐ PERSONAL SERVICES ☒ LABOR AND MATERIALS ☐ PROCUREMENT
☐ PASS THROUGH AGREEMENT ☐ INTER-GOVERNMENTAL AGREEMENT ☐ CONSTRUCTION
☐ OTHER

OR

TYPE OF REVENUE ☐ GRANT ☐ CONTRACT ☐ OTHER

3. TYPE OF ACTION ☐ CHANGE IN COST ☐ CHANGE IN WORK SCOPE
☐ CHANGE IN TIMING ☒ NEW CONTRACT

4. PARTIES Sundown Security Services / Metro

5. EFFECTIVE DATE December 15, 1989 TERMINATION DATE December 14, 1991
(THIS IS A CHANGE FROM _____)

6. EXTENT OF TOTAL COMMITMENT: ORIGINAL/NEW \$ 38,992.00
PREV. AMEND _____
THIS AMEND _____

TOTAL

\$ 38,992.00

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1989-90 \$ 11,372.67

B. BUDGET LINE ITEM NAME Professional Services - security AMOUNT APPROPRIATED FOR CONTRACT \$ 14,000

C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF December, 1989 \$ 12,600

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

Sundown Security \$ 38,992.00 ☐ MBE
SUBMITTED BY AMOUNT
Empire Security Services \$ 48,161.60 ☒ MBE
SUBMITTED BY AMOUNT
Freeman International \$ no response (no patrol cars) ☒ MBE
SUBMITTED BY AMOUNT

9. NUMBER AND LOCATION OF ORIGINALS 1 - Contracts File, 1 - Contractor, 1 - MS

10. A. APPROVED BY STATE/FEDERAL AGENCIES? ☐ YES ☐ NO ☒ NOT APPLICABLE
 B. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT ☐ YES ☒ NO
11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS? ☐ YES ☐ NO
 IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION _____
12. WILL INSURANCE CERTIFICATE BE REQUIRED? ☐ YES ☐ NO
13. WERE BID AND PERFORMANCE BONDS SUBMITTED? ☒ YES ☐ NOT APPLICABLE
 TYPE OF BOND Bid security AMOUNT \$ 2,000.00
 TYPE OF BOND Business Services Dishonesty Bond AMOUNT \$ 10,000.00
14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)
- | | | |
|------------|---------------|------------------------------|
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
15. IF THE CONTRACT IS OVER \$10,000
 A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?
☒ YES ☐ NO
 B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?
☐ YES DATE _____ INITIAL _____
16. COMMENTS:

GRANT/CONTRACT APPROVAL

INTERNAL REVIEW

Ray Phelps 1/17/90

DEPARTMENT HEAD

Donald R. G. G. 1/16/90

FISCAL REVIEW

[Signature] 1/18-90

BUDGET REVIEW

CONTRACT REVIEW BOARD

(IF REQUIRED) DATE _____

1. _____
COUNCILOR

2. _____
COUNCILOR

3. _____
COUNCILOR

COUNCIL REVIEW

(IF REQUIRED)

DATE _____

LEGAL COUNSEL REVIEW AS NEEDED:

A. DEVIATION TO CONTRACT FORM _____

B. CONTRACTS OVER \$10,000 _____

C. CONTRACTS BETWEEN GOVERNMENT AGENCIES _____

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A	)	Resolution No. 90-1210
METRO CENTER SECURITY SERVICES)	
CONTRACT	)	Introduced by Rena Cusma,
	)	Executive Officer

WHEREAS, The contract for the security guard services was designated by the Metro Council as an "A" contract; and

WHEREAS, The contract for the Security Guard Services Provider is multi-year and requires Council approval; and

WHEREAS, The Council pursuant to Resolution No. 89-1162 approved a Request for Bids for security guard services; and

WHEREAS, Bids were opened on December 1, 1989, and the Executive Officer has determined that Sundown Security is the lowest, responsive, responsible bidder; and

WHEREAS, The proposal document has been duly filed with the the Clerk of the Council; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District approves a contract with Sundown Security as the Security Guard Services Provider attached as Exhibit A hereto.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1990

Tanya Collier, Presiding Officer

FM/srs

PUBLIC CONTRACT

THIS Contract is entered into between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, hereinafter referred to as "METRO," and Sundown Security, Inc., whose address is 7645 S.W. Capital Hwy. Portland, OR. 97219, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing December 20, 1989 through and including December 19, 1992.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in Attachment B. Metro shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment B.

ARTICLE IV

LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and METRO.

ARTICLE V

TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date

of termination. METRO shall not be liable for indirect or consequential damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

ARTICLE VI

INSURANCE

CONTRACTOR shall maintain such insurance as will protect CONTRACTOR from claims under Workers' Compensation Acts and other employee benefits acts covering all of CONTRACTOR's employees engaged in performing the work under this Contract; and from claims for damages because of bodily injury, including death and damages to property, all with coverage limits satisfactory to METRO. Liability insurance shall have minimum coverage limits of at least the dollar amounts listed in ORS 30.270. Additional coverage may be required in the Scope of Work attached hereto. This insurance must cover CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them. CONTRACTOR shall immediately increase the amounts of liability insurance required to reflect any changes in Oregon Law so that the insurance provided shall cover, at a minimum, the maximum liability limits under the Oregon Tort Claims Act.

If required in the Scope of Work attached hereto, CONTRACTOR

shall provide METRO with a certificate of insurance complying with this article and naming METRO as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

ARTICLE VII

PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws chapter 684.

ARTICLE VIII

ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX

QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality.

All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

ARTICLE X

OWNERSHIP OF DOCUMENTS

All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by CONTRACTOR pursuant to this agreement are the property of METRO and it is agreed by the parties hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction and the copyright to all such documents.

ARTICLE XI

SUBCONTRACTORS; DISADVANTAGED BUSINESS PROGRAM

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the

services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

If required in the Scope of Work, CONTRACTOR agrees to make a good faith effort, as that term is defined in METRO's Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting n/a percent of the contract amount to Disadvantaged Business Enterprise and n/a percent of the contract amount to Women-Owned Business Enterprise. METRO reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and METRO's Disadvantaged Business Program.

ARTICLE XII

RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO against any loss, damage or claim which may result from CONTRACTOR's performance or failure to perform under this agreement or

the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

ARTICLE XIII

SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XIV

INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special

Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference.

Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV

ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

Sundown Security METROPOLITAN SERVICE DISTRICT

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

AMH:jp
CONTRACT.FOR
10/19/89

ATTACHMENT A

SCOPE OF WORK
SECURITY SERVICES

Contractor shall perform all services required by this contract within the time specified in this contract, including extensions.

All services shall be performed in the most highly professional manner and in accordance with the utmost industry standards. Security guard officers assigned to Metro Center shall have the ability to handle sensitive situations in a public setting.

Contractor shall furnish a uniformed security guard and patrols via a radio patrol car to Metropolitan Service District (Metro) building (Metro Center), located at 2000 S.W. First Avenue, Portland, Oregon. Location includes floors 1 through 4, underground parking garage and surface parking lots.

On-site security services to be provided between the hours of 6:00 p.m. through 12:00 a.m. each scheduled business day beginning on Monday at 6:00 p.m. and ending on Saturday morning at 12:00 a.m.

Metro shall have the right to make changes to the scheduled guard hours as needed.

The guard shall be stationed primarily in a designated lobby of the building.

Duties include checking and locking building and department entry doors after 6:00 p.m. Checking stairwells and toilet rooms for unauthorized visitors. The guard shall make regular rounds each hour during the shift checking the building and grounds.

The guard shall lock Metro Center's front doors by 6:30 pm each business day or lock Metro Center's front doors at later hour as required by scheduled night meetings.

The guard shall lock interior doors and underground parking garage gate by 7:00 p.m. each business day.

The guard shall have personnel who enter and leave the building during hours when evening meetings are not scheduled sign in and sign out at the lobby desk.

The guard shall switch off interior lighting as needed and respond to fire alarms and notify sprinkler company when required.

From 1:00 a.m. to 7:00 a.m., Monday through Thursday mornings the Contractor shall provide a radio patrol car, the officer shall conduct grounds, building and door checks, three (3) visits shall occur during the time period.

Page 2
Security Guard Scope of Work

Metro Center's front doors shall be unlocked no sooner than 6:00 a.m. and no later than 7:15 a.m. on scheduled business days.

The guard patrol shall unlock Metro Center's front doors no sooner than 8:00 a.m. and lock front doors no later than 5:30 p.m. on Saturdays, January through April 15, or other times as determined by Metro.

For weekends and holidays the car patrol shall inspect Metro Center grounds and building and provide indoor checks: one during the day and three at night for each day.

For each tour, patrolman is to provide detailed accounting of when grounds and building rounds took place and the recording of all unusual incidence which are noted by the security guard including names of people discovered in the building after normal business operating hours, and license plate identification of the vehicles left in the Metro parking lot after business hours. Names and vehicles can be precluded from the incidence report sheet if the individuals are noted as attending a Metro evening meeting.

For weekend and holiday patrols: incidence reports will note time of patrol and indicated any unusual incidence and observances.

Reports are to be forwarded to Metro's Support Services Supervisor.

Patrolman may be required to carry walkie-talkie to maintain whereabouts of evening janitorial crew and to provide instant communication to patrolman supervisor when needed. Radio equipment is to be provided and maintained by security contractor.

Contractor is to provide assurance that the patrol officers assigned to the building has had a thorough background check and is free from any felony or long standing convictions, is not a user of drugs, can physically provide the service required, when patrolling and sitting at his/her post does not smoke (except in designated areas during authorized breaks).

All Metro property, materials and documents are to be left undisturbed and are not to be handled, read or otherwise used by Contractor or Contractor's employees.

Contractor shall consider all documents confidential, any disclosure of confidential information or removal of Metro property by contractor or Contractor's employees shall be cause for immediate contract cancellation.

Page 3

Security Guard Scope of Work

Any liability, including but not limited to attorney fees, arising from any action or suit brought against the Metro because of

Contractor's willful or negligent release of information, documents or property shall be borne by Contractor.

Contractor shall designate one or more person(s) responsible for Contractor's work under this contract. Contractor shall provide to Metro the names, addresses and telephone numbers of such personnel and shall keep this information current at all times.

Metro shall provide keys to the facility for Contractor's use in the performance of work under this contract. Contractor shall maintain a record of all keys issued to Contractor's employees or agents and shall not have additional keys cut without Metro's approval.

Upon Metro request, Contractor shall provide accounting of all keys issued. Contractor shall return all keys immediately to Metro upon termination or cancellation of this contract. Contractor shall be responsible for the cost of re-keying if any assigned keys are lost or not accounted for.

At the option of Metro, the contract may be extended for additional periods upon 10 days notice to Contractor.

Insurance Requirements:

Comprehensive or Commercial General Liability: Contractor shall obtain at Contractor's expense, and keep in effect during the term of this contract, Comprehensive or Commercial General Liability Insurance covering personal injury and property damage. This insurance shall include contractual liability coverage for the indemnity provided under this contract plus products/completed operations liability.

Coverage limits shall be not less than \$1,000,000 combined single limit per occurrence.

Workers' Compensation: Contractor shall provide workers' Compensation benefits as statutorily required for persons performing work under this contract.

Additional Insured: Insurance coverage, except Workers' Compensation, required for performance of this contract shall name Metro, its Departments, officers, divisions, employees, members and agents as additional insured with respect to the activities performed under this contract.

Page 4

Security Guard Scope of Work

Certificates of Insurance: As evidence of the insurance coverage required by this contract and prior to issuance of a Notice to Proceed, Contractor shall furnish a certificate of insurance to Metro.

The certificate shall specify parties who are Additional Insured or Loss Payees. Insurance coverage required under this contract shall be obtained from insurance companies authorized to do business in the State of Oregon.

Notice of Cancellation or Change: There shall be no cancellation, material change, or intent not to renew of such insurance policies without prior notice to Metro.

Commencement of Work: Contractor shall commence no work under this contract until all insurance requirements have been met and a Notice to Proceed has been issued.

Bidders are encouraged to consult with their insurance agents about the requirements of this contract prior to bid submission.

Other Service:

Service Provider shall advise Metro and conduct building security audits when deemed necessary to make Metro Center more secure from thefts and other harmful crimes.

FM/srs

a\guardscp

METROPOLITAN SERVICE DISTRICT

BID SCHEDULE

FOR

Security Guard Services

ITEM DESCRIPTION	EST. QUAN**	UNIT	UNIT PRICE	TOTALS
1. Security Guard Service	1,560 hrs.	per hour	\$ <u>9.00</u>	\$ <u>14,040.00</u>
2. Patrol Car Visits	456 <u>1040</u>	per visit	\$ <u>4.90</u>	\$ <u>5,096.00</u>
3. Other Services	40	per hour	\$ <u>9.00</u>	\$ <u>360.00</u>
TOTAL BID \$				<u>19,496.00</u>

Company/Firm Name SUN DOWN SECURITY, INC.
Signature *Steven Berland* Date 11/30/89
Name (please print or type) STEVEN BERLAND
Title PRESIDENT
Telephone Number 244-0567

** Estimated quantity may be adjusted by Metro to meet anticipated Metro security service needs.

ADDENDA

The Bidder hereby acknowledges that he/she has received Addenda Numbers _____
(bidder insert No. of each Addendum received)
to these specifications.

METROPOLITAN SERVICE DISTRICT

BID SCHEDULE

FOR

Security Guard Services

ITEM DESCRIPTION	EST. QUAN**	UNIT	UNIT PRICE	TOTALS
1. Security Guard Service	1,560 hrs.	per hour	\$ <u>8.83</u>	\$ <u>13,774.80</u>
2. Patrol Car Visits	1,040 1,040	per visit	\$ <u>9.57</u>	\$ <u>9,952.80</u>
3. Other Services	40	per hour	\$ <u>8.83</u>	\$ <u>353.20</u>

TOTAL BID \$ 24,080.80

Company/Firm Name Empire Guard Services

Signature *Manuel Scott* Date 11/30/89

Name (please print or type) Manuel Scott

Title Executive Vice President

Telephone Number (503) 288-5138

** Estimated quantity may be adjusted by Metro to meet anticipated Metro security service needs.

ADDENDA

The Bidder hereby acknowledges that he/she has received Addenda Numbers 1 (bidder insert No. of each Addendum received) to these specifications.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1210 FOR THE PURPOSE OF APPROVING A METRO CENTER SECURITY SERVICES CONTRACT

Date: January 18, 1989

Presented by: Flor Matias

FACTUAL BACKGROUND

On September 26, 1989, a Security Guard Services "Request for Bid" (RFB) was filed with Council Staff. The RFB was reviewed by Metro's Finance Committee on October 19 and November 3 to consider a recommendation to have Metro Council approve a resolution to release the RFB for public bid. On November 9, 1989, Resolution No. 89-1162 was passed by Metro Council to approve the release of a request for bid for security guard services. The request for bid for security guard services was made known to the general public through advertisements placed in Portland's Daily Journal of Commerce, The Oregonian and The Skanner (a minority-owned weekly) newspapers. Six security guard contractors responded to a facility walk through, bids were received from two contractors including Empire Security, a minority-owned firm.

The successful bidder which provided the lowest overall security services cost which meets the contract scope of work is Sundown Security of Portland.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 90-1210.

FM/srs

Agenda Item No. 4.4
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1177

INTERGOVERNMENTAL RELATIONS
COMMITTEE REPORT

RESOLUTION NO. 90-1177, AMENDING THE TRANSPORTATION POLICY
ALTERNATIVES COMMITTEE (TPAC) BYLAWS

Date: January 18, 1990

Presented By: Councilor Gardner

COMMITTEE RECOMMENDATION: At the January 9, 1990, Intergovernmental Relations Committee meeting, Councilors Bauer, DeJardin, Devlin and I were present, voting unanimously to recommend Council adopt Resolution No. 90-1177 as amended. Councilor Collier was excused. The amendment, supported 3 to 1 (Councilor Devlin dissenting), provides for TPAC citizen representatives to select their own alternates.

COMMITTEE DISCUSSION/ISSUES: Transportation Director Andy Cotugno presented the resolution which provides for two "housekeeping" changes: (1) replacing the now defunct Regional Development Committee with the Council Intergovernmental Relations Committee as the responsible group to nominate TPAC citizen representatives; and (2) deleting four standing subcommittees which are no longer active and allowing formation of subcommittees as needed. TPAC identified options for giving citizen representatives some provision for alternates, but no single option was recommended. Transportation staff subsequently worked with TPAC members and developed the amendment to allow citizens to select their own alternates. The Committee discussed this issue, with Councilor Devlin expressing concern that allowing citizens to select their own alternates was transfer of Council responsibility. Councilor Devlin noted he was more comfortable with the Council selecting a pool of alternates to serve as needed in place of the citizen representatives. In contrast, it was noted allowing citizens to select their own representatives ensured continuity of viewpoints and provided for flexibility and convenience for the representatives.

jpmthree
b:\901177.cr

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	RESOLUTION NO. 90-1177
TRANSPORTATION POLICY ALTERNATIVES	)	Introduced by
COMMITTEE (TPAC) BYLAWS	)	Mike Ragsdale
)	

WHEREAS, The Bylaws of the Transportation Policy Alternatives Committee (TPAC), dated December 21, 1982, are outdated and need minor housekeeping changes; and

WHEREAS, There is no longer a Regional Development Committee, citizen representatives will be nominated by the Intergovernmental Relations Committee; and

WHEREAS, There is need to delete references to three now defunct standing committees; now, therefore,

BE IT RESOLVED:

That the Council of the Metropolitan Service District amends the TPAC Bylaws as shown in Exhibit A.

ADOPTED by the Council of the Metropolitan Service District this ____ day of _____, 1990.

Tanya Collier, Presiding Officer

- EXHIBIT A -

TRANSPORTATION POLICY ALTERNATIVES COMMITTEE

BYLAWS

ARTICLE I

This Committee shall be known as the TRANSPORTATION POLICY ALTERNATIVES COMMITTEE (TPAC).

ARTICLE II

The Transportation Policy Alternatives Committee coordinates and guides the regional transportation planning program in accordance with the policy of the Metro Council.

The responsibilities of TPAC with respect to transportation planning are:

a. Review the Unified Work Program (UWP) and Prospectus for transportation planning.

b. Monitor and provide advice concerning the transportation planning process to ensure adequate consideration of regional values such as land use, economic development, and other social, economic and environmental factors in plan development.

c. Advise on the development of the Regional Transportation Plan and Transportation Improvement Program.

d. Review projects and plans affecting regional transportation.

e. Advise on the compliance of the regional transportation planning process with all applicable federal requirements for maintaining certification.

f. Develop alternative transportation policies for consideration by JPACT and the Metro Council.

g. Review local comprehensive plans for their transportation impacts and consistency with the Regional Transportation Plan.

h. Recommend needs and opportunities for involving citizens in transportation matters.

The responsibilities of TPAC with respect to air quality planning are:

a. Review and recommend project funding for controlling mobile sources of particulates, CO, HC and NOx.

b. Review the analysis of travel, social, economic and environmental impacts of proposed transportation control measures.

c. Review and provide advice (critique) on the proposed plan for meeting particulate standards as they relate to mobile sources.

ARTICLE III

MEMBERSHIP, VOTING, MEETINGS

Section 1. Membership

a. The Committee will be made up of representatives from local jurisdictions, implementing agencies and citizens as follows:

City of Portland	1
Clackamas County	1
Multnomah County	1
Washington County	1
Clackamas County Cities	1
Multnomah County Cities	1
Washington County Cities	1
Oregon Department of Transportation	1
Washington State Department of Transportation	1
IRC of Clark County	1
Port of Portland	1
Tri-Met	1
Oregon Department of Environmental Quality	1
Metropolitan Service District (non-voting)	
Citizens	<u>6</u>
	19

In addition, the City of Vancouver, Clark County, C-TRAN, Federal Highway Administration, Federal Aviation Administration (FAA), Urban Mass Transportation Administration (UMTA), and Washington Department of Ecology may appoint an associate member without a vote. Additional associate members without vote may serve on the Committee at the pleasure of the Committee.

b. Each member shall serve until removed by the appointing agency. Citizen members shall serve for two years and can be reappointed.

c. Alternates may be appointed to serve in the absence of the regular member. ~~Citizen members shall not have alternates.~~

d. Unexcused absence from regularly scheduled meetings for three (3) consecutive months shall require the Chairperson to notify the appointing agency with a request for remedial action.

Section 2. Appointment of Members and Alternates

a. Representatives (and alternates if desired) of the Counties, the City of Portland and implementing agency shall be appointed by the presiding executive of their jurisdiction/agency.

b. Representatives (and alternates if desired) of Cities within a County shall be appointed by means of a consensus of the Mayors of those Cities. It shall be the responsibility of the representative to coordinate with the Cities within his/her County.

c. Citizen representatives [will be] nominated by the ~~Regional Development~~ [Intergovernmental Relations] Committee of the Metro Council, confirmed by the Metro Council, and appointed by the Presiding Officer of the Metro Council. [Alternates for the citizen members will be selected by each citizen member choosing to have an alternate.]

Section 3. Voting Privileges

a. Each member or alternate of the Committee, except associate members, shall be entitled to one (1) vote on all issues presented at regular and special meetings at which the member or alternate is present.

b. The Chairperson shall have no vote.

Section 4. Meetings

a. Regular meetings of the Committee shall be held each month at a time and place established by the Chairperson.

b. Special meetings may be called by the Chairperson or a majority of the Committee members.

Section 5. Conduct of Meetings

a. A majority of the voting members (or designated alternates) shall constitute a quorum for the conduct of business. The act of a majority of the members (or designated alternates) present at meetings at which a quorum is present shall be the act of the Committee.

b. All meetings shall be conducted in accordance with Robert's Rules of Order, Newly Revised.

c. The Committee may establish other rules of procedure as deemed necessary for the conduct of business.

d. An opportunity will be provided at each meeting for citizen comment on agenda and non-agenda items.

ARTICLE IV

OFFICERS AND DUTIES

Section 1. Officers

The permanent Chairperson of the Committee shall be the Metro Transportation Director.

Section 2. Duties

The Chairperson shall preside at all meetings he/she attends and shall be responsible for the expeditious conduct of the Committee's business.

Section 3. Administrative Support

a. Metro shall supply staff, as necessary, to record actions of the Committee and to handle Committee correspondence and public information concerning meeting times and places.

ARTICLE V

SUBCOMMITTEES

~~Four (4)~~ [One (1)] permanent subcommittee of the Committee ~~are~~ [is] established to oversee the major functional areas in the transportation planning process where specific products are required-[:] ~~These are:~~

~~1. Interagency Coordinating Committee (ICC) -- to guide systems analysis and subarea studies with regard to how these planning activities affect the major corridors and the Regional Transportation Plan; and~~

~~2. [1. Transportation Improvement Program Subcommittee (TIP) -- to develop and update the five-year TIP, including the Annual Element.]~~

~~3. Rideshare.~~

Subcommittees may be established by the Chairperson. Membership composition shall be determined according to mission

and need. The Chair shall consult with the full committee on membership and charge before organization of subcommittees. Subcommittee members can include TPAC members, alternates and/or outside experts. All such committees shall report to the Transportation Policy Alternatives Committee.

ARTICLE VI

REPORTING PROCEDURES

The Committee shall make its reports and findings and recommendations to the Joint Policy Advisory Committee on Transportation (JPACT). The Committee shall develop and adopt procedures which adequately notify affected jurisdictions on matters before the Committee.

ARTICLE VII

AMENDMENTS

The Bylaws may be amended or repealed only by the Metropolitan Service District Council.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1177 FOR THE PURPOSE OF AMENDING THE TRANSPORTATION POLICY ALTERNATIVES COMMITTEE (TPAC) BYLAWS

Date: December 5, 1989

Presented by: Andrew C. Cotugno

FACTUAL BACKGROUND AND ANALYSIS

The Transportation Policy Alternatives Committee (TPAC) Bylaws have not been revised since 1982 and are in need of minor house-keeping updates as follows:

- . As there is no longer a Regional Development Committee, citizen members will now be nominated by the Intergovernmental Relations Committee of the Council.
- . The current bylaws provide for four standing subcommittees. Three are no longer active and need to be deleted. The bylaws have been clarified to allow appointment of subcommittees on an as needed basis.

All other provisions of the bylaws remain unchanged.

TPAC and JPACT recommend adoption of this resolution. In addition, they recommend further consideration be given to representation and voting rights for citizen members. Other members (from agencies) are allowed an alternate to ensure attendance during the absence of the regular member. Citizen members should be allowed some provision in the case when an absence is unavoidable. Possible options include:

- . appointing several people as alternates to fill in whenever any of the regular citizen members are absent.
- . allowing each citizen member to appoint his/her own alternate.
- . allowing each citizen member to send a written proxy allowing another member to vote on his/her behalf.

In addition, TPAC recommends that appointment of the citizen members take into consideration a balance of geographic areas and interest groups, but that the six citizen member positions not be prescribed in the bylaws according to geography and interest groups.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 90-1177.

Agenda Item No. 4.5
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1200

INTERGOVERNMENTAL RELATIONS
COMMITTEE REPORT

RESOLUTION NO. 90-1200, ALLOCATING THE INTERSTATE TRANSFER REGIONAL RESERVE AND AMENDING THE TRANSPORTATION IMPROVEMENT PROGRAM ACCORDINGLY

Date: January 18, 1990

Presented By: Councilor DeJardin

COMMITTEE RECOMMENDATION: At the January 9, 1990, Intergovernmental Relations Committee meeting, Councilors Bauer, Devlin, Gardner and I were present, voting unanimously to recommend Council adopt Resolution No. 90-1200 as amended. Councilor Collier was excused. The amendment, supported unanimously, added a new no. 2 to the "Be It Resolved" section making the \$2 million Convention Center Area allocation contingent upon the City of Portland, by July 1, 1990, finalizing all required actions to form local improvement and urban renewal districts.

COMMITTEE DISCUSSION/ISSUES: Transportation Director Andy Cotugno presented the resolution which allocates the remaining \$5.05 million "Regional Reserve" from the \$17 million Interstate Transfer Fund reserve for the Banfield Freeway. The resolution also provides for \$590,000 additional expenditures of Federal Aid Urban (FAU) funds from the City of Portland contingency and the Regional FAU Reserve. Allocation of the Banfield Regional Reserve could not occur until final costs of the Banfield Freeway were known. Final Freeway costs of \$608,820 are now known and recommended for payment. The resolution provides for additional expenditures for the \$5.05 million as follows:

- 1) \$1 million for final Banfield Light Rail (LRT) costs, commitment of which could leverage an additional \$5 million from the Urban Mass Transit Authority (UMTA) for LRT improvements;
- 2) \$2 million toward Convention Center Area Transportation improvements, consistent with the Council's prior adoption of Resolution No. 89-1109 amending the Transportation Improvement Program (TIP) for Tri-Met's Section 9 and Section 3 discretionary programs;
- 3) \$1.44 million for at least 10 additional light rail vehicles to ensure proper maintenance schedules and provide for projected short-term ridership growth.

Expenditure of the \$590,000 FAU funds would be for: (A) Hawthorne Bridge LRT compatibility studies and a construction reserve if preliminary engineering concludes LRT can be included (\$290,000), and (B) funding for Metro transportation planning (\$300,000). The transportation planning funds are contingent upon equal funding commitments from the State, Tri-Met and the region. Staff noted Metro has received this "expanded" funding consistently since 1977 and it is now up for renewal for another two year commitment. The Committee discussed the Convention Center allocation and Mr. Cotugno recapped Metro's commitments to date of \$2.4 million approved for a new Convention Center LRT station and \$4.3 million supported for Tri-Met's Project Breakeven (Resolution No. 89-1109). Mr. Cotugno noted Metro's Transportation Policy Alternatives Committee (TPAC) supported Resolution No. 90-1200 by a vote of 12 to 4, with the member counties dissenting due to desires for some arterial projects to be funded. At its January 18 meeting, the Joint Policy Advisory Committee on Transportation (JPACT) also voted to recommend Council adoption of the resolution.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ALLOCATING THE	)	RESOLUTION NO. 90-1200
INTERSTATE REGIONAL RESERVE AND	)	Introduced by
AMENDING THE TRANSPORTATION IMPROVE-	)	Mike Ragsdale
MENT PROGRAM ACCORDINGLY)	

WHEREAS, Metro Resolution No. 89-1072 adopted the Metro
Transportation Improvement Program; and

WHEREAS, \$5,053,664 is included in the Interstate Transfer
Regional Reserve; and

WHEREAS, This Reserve is available for allocation to final
costs on the Banfield LRT and Highway project, the I-505 Alternatives
project or to other regional transit or highway projects; and

WHEREAS, Federal-Aid Urban funds are available for region-
wide highway improvements of which a portion remains unallocated; now,
therefore,

BE IT RESOLVED:

1. That the Council of the Metropolitan Service District
hereby allocates the Interstate Transfer Regional Reserve as follows:

Banfield Freeway	\$ 608,820
Banfield LRT	1,000,000
Convention Center Area	2,000,000
Light Rail Vehicles	<u>1,444,844</u>
	\$5,053,664

2. That the \$2,000,000 Convention Center area allocation to
the City of Portland shall revert to the Regional Reserve for recon-
sideration if, by July 1, 1990, the City has failed to finalize all

required City of Portland budget actions and actions required to form local improvement districts and urban renewal districts.

3. That the Council of the Metropolitan Service District hereby allocates Federal-Aid Urban funding as follows:

Hawthorne Bridge Transition Structure -

LRT Compatibility:

P.E.	\$100,000
Reserve	<u>190,000</u>
	\$290,000
Metro Transportation Planning	<u>\$300,000</u>
	<u>\$590,000</u>

4. That the Transportation Improvement Program be amended to incorporate these actions.

5. That these actions are consistent with the Regional Transportation Plan and affirmative Intergovernmental Project Review is hereby given.

ADOPTED by the Council of the Metropolitan Service District this ____ day of _____, 1990.

Tanya Collier, Presiding Officer

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1200 FOR THE PURPOSE OF ALLOCATING THE INTERSTATE TRANSFER REGIONAL RESERVE AND AMENDING THE TRANSPORTATION IMPROVEMENT PROGRAM ACCORDINGLY

Date: December 29, 1989

Presented by: Andrew C. Cotugno

PROPOSED ACTION

This resolution would allocate the last remaining unallocated Interstate Transfer funds, now contained in a Regional Reserve, as follows:

Banfield Freeway	\$ 608,820
Banfield LRT	1,000,000
Convention Center Area	2,000,000
Light Rail Vehicles	<u>1,444,844</u>
	\$5,053,664

It would also allocate FAU funds as follows:

Hawthorne Bridge Transition Structure -
LRT Compatibility:

P.E.	\$100,000
Reserve	<u>190,000</u>
	\$290,000

Metro Transportation Planning	<u>\$300,000</u>
	<u>\$590,000</u>

TPAC and JPACT have reviewed this allocation and TIP amendment and recommend adoption of Resolution No. 90-1200.

FACTUAL BACKGROUND AND ANALYSIS

Of the total \$501 million Interstate Transfer Program, \$65.5 million remains to be spent. However, of this amount only \$5 million remains to be allocated to specific projects. The remainder has already been allocated and the projects are scheduled over the next several years. This \$5 million is the final allocation from the Regional Reserve which was originally \$16.97 million and has had the following allocations to date:

May, 1987

I-505 Alternative . . .	\$1,085,000
Banfield Highway. . .	387,000
Sunset/217.	500,000
Oregon City Bypass. .	<u>50,000</u>
	\$2,022,000

February, 1988

Stark Street.	\$1,150,000
185th Avenue.	1,680,000
82nd Drive.	1,680,000
Marine Drive.	<u>3,200,000</u>
	\$7,710,000

April, 1988

Metro Planning. . . . \$	50,000
--------------------------	--------

May, 1988

Tri-Met TDP Reserve .	\$2,100,000
-----------------------	-------------

April, 1989

Metro Planning. . . . \$	34,914
--------------------------	--------

TOTAL ALLOCATED . . .	\$11,916,914
BALANCE AVAILABLE . .	\$ 5,053,664

THE RECOMMENDATIONS FOR ALLOCATION OF THIS \$5,053,664 ARE DESCRIBED BELOW:

Recommendation No. 1 - Allocate \$608,820 toward final Banfield highway costs.

The overall Banfield highway costs have been finalized and ODOT has indicated that \$608,820 is ineligible for reimbursement from UMTA Section 3 funds. The past Interstate Transfer funding allocation is fully spent and an additional \$608,820 is recommended for allocation.

Tri-Met has indicated that the final Banfield LRT costs are anticipated to be within the Interstate Transfer and Section 3 Full-Funding Agreement amounts previously approved for the project.

ODOT has indicated that the I-505 Alternatives project is nearly complete and sufficient Interstate Transfer allocation is available.

Recommendation No. 2 - Allocate \$1 million toward final Banfield LRT costs.

The Banfield LRT Full-Funding Agreement provides an overall cap to UMTA's funding commitment to the project plus a clause allowing for additional federal funding participation over and above the cap for "extraordinary costs" that were not foreseen in the originally approved scope (for such costs as those incurred due to acts of God and court settlements). The Banfield Full-Funding Agreement currently has approximately \$5 million remaining up to the cap plus a potential additional \$5 million under the provision for "extraordinary cost" eligibility. The following expenditures are proposed by Tri-Met within the remainder of the Full-Funding Agreement:

Settlement of Claims, Legal Fees, Etc.	\$ 2.10 m.
Double Track (Gresham)	6.97
Storage Track (Ruby Junction)	<u>1.03</u>
	\$10.10 m.

However, in 1986, as a precondition to adding the Vintage Trolley project to the scope of the Banfield LRT project, UMTA required that the first \$1 million of costs above the Full-Funding contract be borne locally before any federal funds up to the "extraordinary cost" limit would be provided. In December, 1986, TPAC and JPACT concurred that this amount should be committed from the Interstate Transfer Regional Reserve. At this time, it is necessary to determine whether to seek the additional funding provided by the "extraordinary cost" clause and therefore whether to commit the \$1 million of Interstate Transfer funding. It is recommended that this funding be committed because of the ability to implement a \$5 million package of LRT improvements with only \$1 million of locally available funds subject to later approval of the projects by UMTA.

Recommendation No. 3 - Allocate \$2 million toward Convention Center Area Transportation Improvements.

In early 1989, the City of Portland established a Convention Center Area Transportation Capital Improvement Program (see Attachment A) to support the Convention Center and implement aspects of the Urban Renewal plan. This is a comprehensive package of improvements to traffic circulation, pedestrian amenities, transit improvements, street lighting and other related projects. The total \$33.7 million improvement program relies on a diverse set of funding from the Convention Center project itself, the City of Portland, private property interests, the urban renewal district, previously approved FAU funds and this \$2 million allocation. This improvement program also includes previously approved federal transit funding for the Convention Center LRT station and the Convention Center hotel component of Project Breakeven. If this Interstate Transfer funding is not allocated, the other funding participants could reduce their funding commitment since it would be impossible to implement the full improvement package. Because of the contingent nature of the other funding sources, it is recommended that a deadline of July 1, 1990 be established to finalize all other required City of Portland budget actions and actions required to form local improvement districts and urban renewal districts. If this deadline is not met, this allocation should revert to the Regional Reserve for reconsideration.

Recommendation No. 4 - Allocate the remaining \$1,444,844 for light rail vehicles.

Tri-Met is seeking to acquire at least 10 additional light rail vehicles to improve their present spares ratio to ensure proper maintenance schedules can be met and to provide sufficient capacity to serve short-term ridership growth (see Attachment B). Continued peak-hour ridership growth since opening day has forced Tri-Met to minimize spares in order to maximize actual operating capacity. As ridership continues to grow, further decreases in spares as an option is no longer available. Furthermore, as the vehicles approach 250,000 miles in 1990, a higher spares ratio will be required for recommended maintenance. The need for additional light rail vehicles is as follows:

-	Needed now to allow adequate spares	2
-	Needed through 1998 to keep up with capacity needs of peak hour ridership growth	6
-	Needed through 1998 to stay ahead of peak hour ridership growth	<u>3</u>
	Total	11

In order to establish a vehicle order of at least 10 vehicles, Tri-Met is expecting to commit the following funding sources (including this Regional Reserve):

Section 9 Funding	\$ 9.01 m.
Previous Interstate Transfer Allocation	3.36
Regional Reserve	<u>1.44</u>
	\$13.81 m.

Additional TIP amendments will be required to approve these other aspects of the light rail vehicle purchase.

ALTERNATIVES -- TPAC CONSIDERED AT LENGTH OTHER ALTERNATIVES THAT COULD BE PURSUED IN LIEU OF RECOMMENDATIONS 3 AND 4 (DESCRIBED PREVIOUSLY):

Candidate arterial projects that could be considered are as follows:

Washington County

Baseline Road - 185th to 231st	\$11.97 m.
Murray Boulevard - U.S. 26 to Cornell	1.50 m.

Clackamas County

Sunnybrook Extension - east of I-205	\$10. m.
I-205 LRT	5. m.

Multnomah County

207th - I-84 to Glisan	\$ 5.5 m.
Hawthorne Bridge - LRT Conversion	.3 m.
Hawthorne Bridge Transition Structure - Shortfall	3.2 m.
Metro Transportation Planning	.3 m.

City of Portland

Convention Center area circulation 2.0 m.

This funding could be allocated on a 100 percent discretionary basis, on a 100 percent formula basis or 75 percent formula/25 percent discretionary as now used for FAU allocation. Assuming an allocation of \$3,444,843 (after allocation of Regional Reserve funding to final Banfield highway and LRT costs), possible formula distributions are as follows:

	<u>Population</u>	<u>Percent</u>	<u>100% Formula</u>	<u>75/25 Formula</u>
Multnomah County	139,204	14.1	\$ 485,723	\$ 364,292
City of Portland	419,810	42.4	1,460,613	1,095,460
Clackamas County	179,615	18.1	623,517	467,637
Washington County	251,517	25.4	874,990	656,243
Regional Allocation			0	861,211
TOTAL	990,146	100.0	\$3,444,843	\$3,444,843

In addition, TPAC indicated that sufficient funding should be available for proposed LRT studies, either from this source or others.

The initial package of projects is recommended for adoption in lieu of any of these alternatives because this will complete ongoing projects of regional significance. However, in addition, two items identified above are recommended for allocation of FAU funds:

- I. Hawthorne Bridge Transition Structure (Attachment C) -- include LRT compatibility in structure design of replacement transition structure.
 - a. P.E. to determine preferred LRT alignment on the Hawthorne Bridge and cost to retrofit the entire Hawthorne Bridge for LRT (including consideration of bridge fatigue) as compared to the cost of a new LRT bridge: \$100,000
 - b. Reserve for construction in the event P.E. concludes LRT compatibility can be included: \$190,000
- II. Metro Transportation Planning -- to be included in FY 91 and 92 Unified Work Program: \$300,000

These FAU allocations are recommended to come proportionately from the City of Portland Contingency and the Regional FAU Reserve as follows:

Portland	(42.4%)	\$250,160
Region	(57.6%)	<u>339,840</u>
		\$590,000

As in the past, funding for Metro Transportation Planning is predicated on equal funding commitments from ODOT, Tri-Met and the region.

This funding commitment has been in place for the past four years and is now scheduled for renewal. This FAU allocation would be the region's share of this commitment for the next two years.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 90-1200.

Attachments

CONVENTION CENTER TRANSPORTATION CAPITAL IMPROVEMENTS

March 6, 1989


FINANCE AGREEMENT

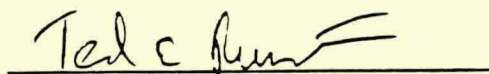
CONVENTION CENTER TRANSPORTATION PROGRAM

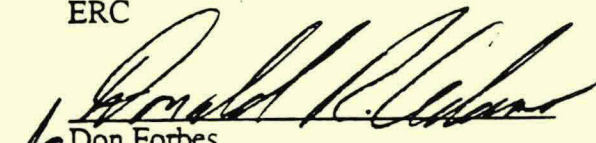
MARCH 6, 1989


We the undersigned do hereby commit our support to implementation of a public improvement program for the Convention Center Area substantially in conformance with the attached Exhibit "A". In so doing, we recognize that the scope and breadth of individual projects remains flexible and subject to the recommendations of the Policy Team and approval of the City Council, but that our mutual intent is to implement these improvements to the highest and best interests of the redevelopment of the district and to complement the public's existing investment in the Oregon Convention Center. To that end, we pledge our combined resources as outlined in the attached Exhibit "A". Recognizing that we as individuals may not possess sole authority to commit corporate or public resources to this end, we agree to seek and obtain such authority as is necessary within forty-five days of execution of this agreement. Should any party hereto, for whatever reason, choose not to fully participate as outlined in Exhibit "A", that action, by virtue of this agreement, shall be cause for the other parties to reduce their fiscal commitment by a commensurate amount. In any case, no such reduction will be accommodated by deletion of elemental projects described in Exhibit "A" and shall be made in a way which preserves the maximum integrity of the program in attempting to meet the stated goals and objectives. In addition to the program outlined in Exhibit "A", the parties understand public safety is a priority issue that will be addressed through a separate program.

By execution of this understanding and agreement, we pledge to one another our continuing support for the overall program and agree to work in good faith to achieve the objectives set forth in Exhibit "A".


Earl Blumenauer, Commissioner
City of Portland

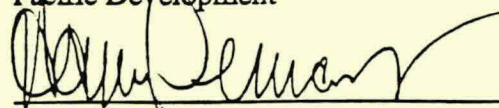

Ted Runstein
ERC


Don Forbes
Oregon Department of Transportation


Larry Troyer
Lloyd Center


Loren Wyss
Tri-Met


Bill Scott
Pacific Development


Harry Demarest
Portland Development Commission


Tom Walsh
Metro/OCC

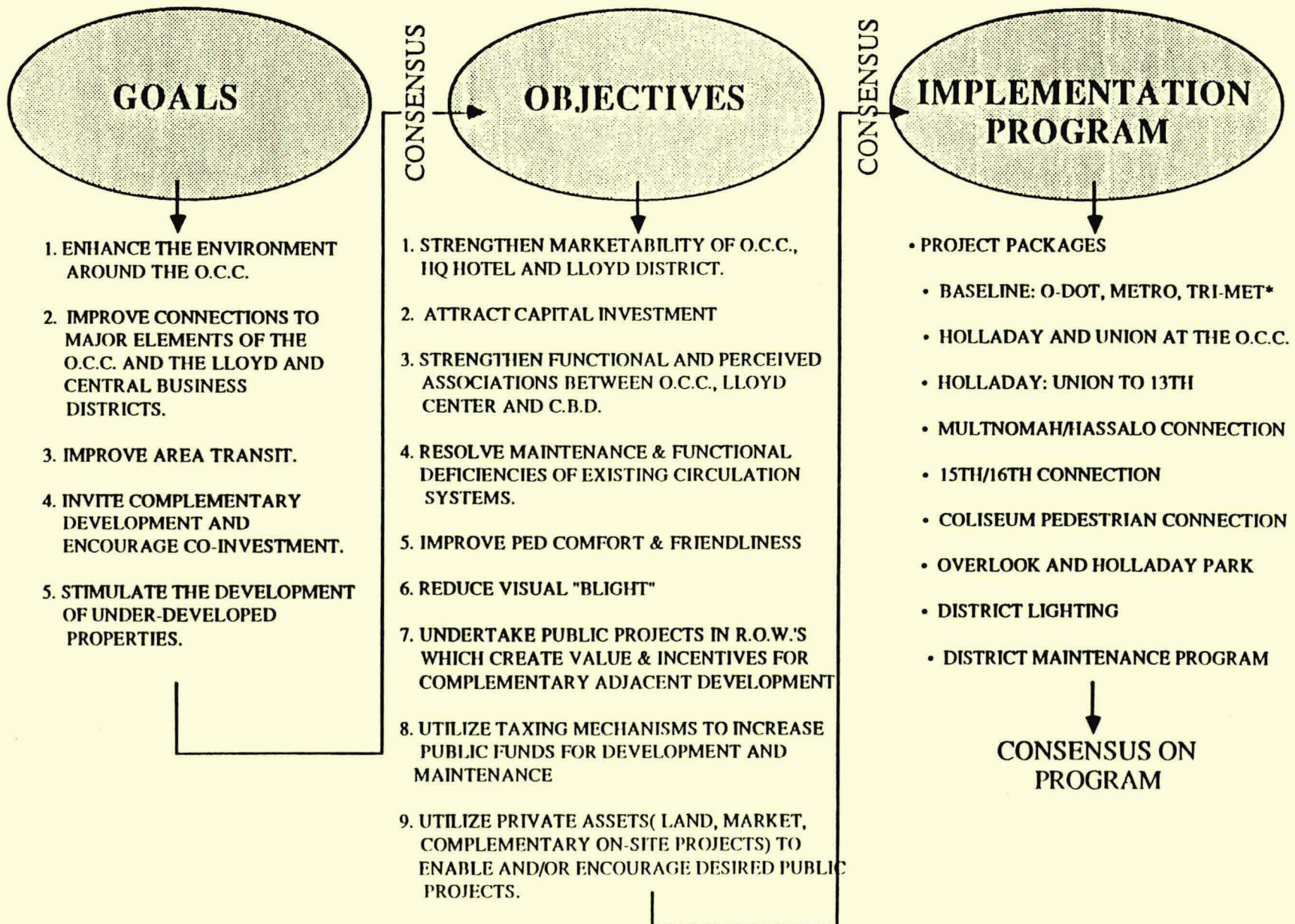
**CONVENTION CENTER
TRANSPORTATION
CAPITAL IMPROVEMENTS**

**Finance Agreement
EXHIBIT 'A'**

March 6, 1989

CONVENTION CENTER TRANSPORTATION CAPITAL IMPROVEMENTS

PROCESS DIAGRAM



CONVENTION CENTER TRANSPORTATION CAPITAL IMPROVEMENTS

MATRIX

PROJECT PACKAGES	PROGRAM GOALS				
	ENHANCE THE ENVIRONMENT AROUND THE O.C.C.	IMPROVE CONNECTIONS TO THE LLOYD AND CENTRAL BUSINESS DISTRICTS	IMPROVE AREA TRANSIT	INVITE COMPLEMENTARY DEVELOPMENT AND CO-INVESTMENT	STIMULATE DEVELOPMENT OF UNDER-DEVELOPED PROPERTIES
HOLLADAY AND UNION AT THE O.C.C.	●	●	●	●	●
HOLLADAY: UNION TO 13TH	●	●	●	●	●
MULTNOMAH/HASSALO CONNECTION	●	●	◐	●	●
15TH/16TH CONNECTION	◐	●	◐	◐	●
COLISEUM CONNECTION	●	●	◐		◐
OVERLOOK & HOLLADAY PARK	●	●			◐
DISTRICT LIGHTING	●	●			◐
DISTRICT MAINTENANCE PROJECTS	●			◐	◐

COMPLEMENTS



CONSISTENT



UNRELATED

CONVENTION CENTER CAPITAL IMPROVEMENTS
IMPLEMENTATION STRATEGY
March 6, 1989

REQUIREMENTS

Element	Budget Estimate (Millions)
Holladay/Union at O.C.C.	\$ 2.327
Holladay, Union to 13th	5.106
Multnomah/Hassalo	0.787
Hotel Site Acquisition	4.500
16th Two-Way, 15th/16th Right-of-Way*	5.026 0.100
Williams/Hassalo Intersection	0.205
District Lighting	2.377
Overlook & Holladay Park	0.847
District Maintenance Projects	ODOT
General Contingency (4.7%)	<u>1.047</u>
Program Total	\$22.322
Baseline	<u>11.381</u>
Area Total	\$33.703

*Railroad property purchase. Remainder donated in exchange for equal land area from street vacations.

CONVENTION CENTER CAPITAL IMPROVEMENTS
IMPLEMENTATION STRATEGY

March 6, 1989

RESOURCES

Source	Amount (Millions)
FAU (King Blvd. / Halliday St.)	\$ 1.960
Match	0.130
Region Funds	2.000
Match	0.300
Tri-Met "Project Breakeven"	4.500
Street Lighting	3.000
Metro Pedestrian Fund	0.200
PDC/Urban Renewal (15th/16th)	5.126
Private Sector Participation	<u>5.106</u>
Program Total	\$22.322
Baseline Funding	<u>11.381</u>
Area Total	\$33.703

CONVENTION CENTER CAPITAL IMPROVEMENTS
IMPLEMENTATION STRATEGY
March 6 1989

EXHIBIT A ADDENDUM
BASELINE RESOURCES

Source	Amount (Millions)
ODOT	\$ 4.700
Lloyd Blvd. Extension	
Holladay Off-Ramp	
Grand Avenue Ramp Improvement	
Tri-Met Grant	\$ 3.481
Holladay LRT Station	
Coliseum Station	
Bus Transfer Facility	
Right of Way	
METRO	\$ 2.700
Lloyd Blvd. & First Avenue Right of Way	
Holladay, 1st-Union Basic Street plus Signals	
Basic LRT Platform	
Union Avenue West Frontage	
Oregon Street to Two-Way	
Detours, Miscellaneous & Engineering	
Pedestrian Improvements	
Hassalo/Williams Right Turn	
Two-Way Lloyd & Misc. @ 9th & 11th	
City	\$.500
OCC Area Lighting to Metro	
Revise Holladay to Eastbound	
Widen Hassalo, Williams - Occident	
Union, East Side Lights	
Consultants (Cooper, ZGF I, ZGF II)	
OCC Project Manager	
Total	\$11.381

CONVENTION CENTER TRANSPORTATION CAPITAL IMPROVEMENTS

Assumptions & Proposed Schedule

March 6, 1989

CONVENTION CENTER TRANSPORTATION CAPITAL IMPROVEMENTS

Proposed Critical Path Dictating Project Schedules

March 6, 1989

The attached project schedules and derivative cash flow and funding projections are based upon a sequence of assumptions regarding the project requirements, characteristics and resources associated with each of the potential participants. The participants include the Portland Office of Transportation, the Oregon Department of Transportation, Tri-Met, the Exposition and Recreation Commission, the Portland Development Commission, the Portland Bureau of Parks, Metro, Melvin Simon & Associates, Inc., and Pacific Development Inc. The assumptions regarding their relevant project requirements, characteristics and resources have been reviewed and confirmed by each. The reconciliation of these multiple objectives suggests the following critical path of interdependent projects and events.

Projects

Events

Projects Associated with Oregon Convention Center

The following must be completed by September 1990:

- All ODOT Baseline projects
- All Tri-Met Baseline projects
- All Metro Baseline projects
- Metro Parking Lot
- All District Maintenance by ODOT, City and others
- All other improvements to Union and Holladay adjacent to the Convention Center

The following should be completed by September 1990:

- Vintage Trolley
- Coliseum Connection
- Phase 1 improvements to Holladay Park
- Phase 1 improvement to the Overlook (ROW acquisition will probably delay this project for a year)

Multnomah/Hassalo

Construction must follow completion of ELA and design work estimated to consume 22 months.

Construction must follow successful acquisition of new ROW to accommodate alignment.

ROW acquisition may be coordinated with acquisition of Headquarters Hotel site.

Construction may be coordinated with construction of Headquarters Hotel.

Holladay/Union-13th

Must follow completion of Multnomah/Hassalo project to assure acceptable vehicular access to district properties during its construction.

Should be completed with or prior to the completion of PDI's initial development on Holladay. Should also avoid conflicts with Christmas shopping season.

15th/16th Streets Project

Must follow successful acquisition of ROW necessary to accommodate alignment.

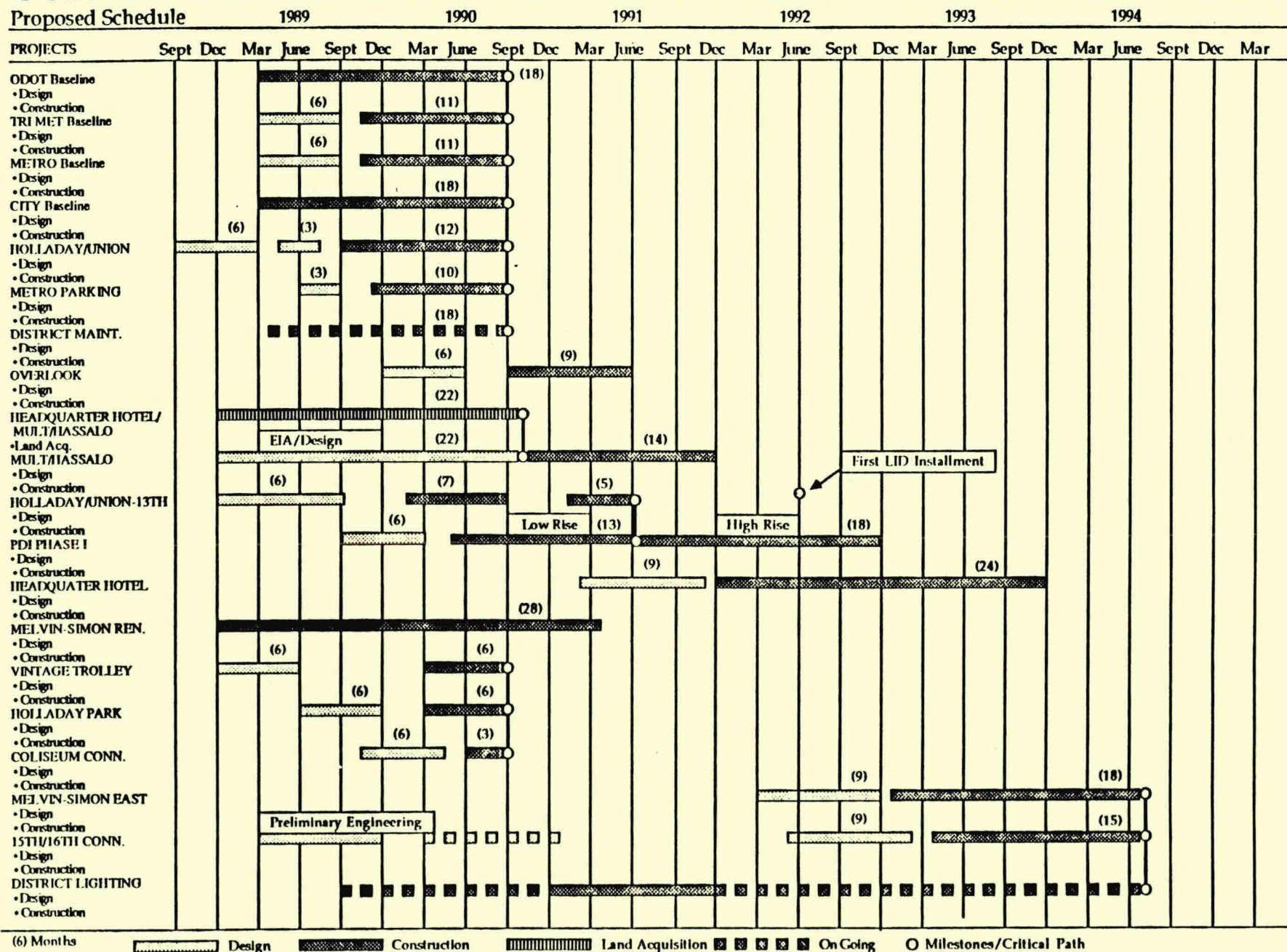
Must be constructed and completed in coordination with Melvin Simon's improvement to its eastside properties.

Must be completed when development and redevelopment of area properties require completion of ring road to accommodate increased vehicular traffic.

Lighting Improvements

To occur in coordination with related projects such as street improvements that are implemented.

CONVENTION CENTER TRANSPORTATION CAPITAL IMPROVEMENTS



LRV PURCHASE

-Analysis-

DRAFT

Part II

- o Ridership Demand
- o Maintenance Requirements
- o Timing and Procurement
Issues
- o Financing Alternatives

Light Rail Vehicle Purchase

In this report the issues surrounding the decision to proceed or not to proceed with the purchase of additional eastside light rail vehicles now are analyzed. Two basic questions are addressed: 1. When do we need LRVs? (ridership and maintenance issues), and 2. How do we pay for them? (financial issues).

I. Timelines

The following discussion of the maintenance and ridership issues should be read keeping several procurement dates in mind. As the scenarios in Exhibit I show, Tri-Met could expect to have additional LRVs delivered by late 1992 at the earliest (Alternative I), or by early to mid-FY 1994 (Alternative II) if we begin the procurement process now. If we wait a year to begin the procurement process, the delivery dates increase one year (Alternative III). Procurement issues are discussed in more detail below.

II. Ridership

A. What is the trend in peak ridership growth?

Peak Load Data

Since the first year of operation, discretionary, off-peak, novelty ridership on MAX has been contracting, as evidenced by declining weekend rail ridership, and peak hour commuter ridership has been expanding, as evidenced by increasing peak hour loads.

While average weekday light rail boardings have increased only slightly since opening year,

FY87 19,500
FY88 19,600
FY89 19,700

peak direction, peak one hour loads have increased about 14% per year on average:

Average AM Peak Loads -Fall-			% Change	Average AM Peak Loads -Spring-			% Change
1986 Fall	1,432		-	1987 Spring	1,518		-
1987 Fall	1,695		18.4%	1988 Spring	1,607		5.9%
1988 Fall	1,912		<u>12.8%</u>	1989 Spring	1,912		<u>18.9%</u>
	Average		15.6%		Average		12.4%

MAX peak hour trip by trip passenger volumes at Lloyd Center from 10/86 through 7/89 are presented in Exhibits II and III. The Lloyd Center is the peak load point.

Present Supply and Demand

Of the 22 vehicles operating during the peak hour, there are 15 inbound direction cars through the peak load point at Lloyd Center. Tri-Met's peak loading standard says that the average load during the peak one hour in the peak direction will be 218% of seated capacity, or 166 passengers per car ("Tri-Met Service Standards," April 1989). This is 76 passengers seated, 90 standing, 4 people standing per square meter throughout the peak hour. At 166 passengers per car, the peak hour capacity of the line at the peak load point is 2,490 passengers.

Presently, passenger volumes during the peak one hour average about 125 to 135 passengers per car. During the peak twenty minutes, passenger volumes average 150 to 166 passengers per car. (See Exhibits III and IV).

During the peak 30 minutes, passenger volumes are consistently 20% higher than the peak hour average and during the peak 20 minutes, passenger volumes are consistently 30% higher than the peak hour average. If we assume the same relationship, the peak 20 minutes will be at an even higher standard when the peak one hour standard of 166 passengers per car is reached. Car loads during the peak 20 minutes will be 264% of capacity, 5 passengers standing per square meter, and car loads during the peak 30 minutes will be 242% of capacity, 4.5 passengers standing per square meter, necessitating schedule adjustments. (See Exhibits III, IV and IX and Section II.D. below.)

Exhibit V is a snapshot of the peak one hour and direction on MAX since the opening of the line, summarizing the data presented in this section.

B. What is the basis for our loading standards and how do they compare to other transit agencies? What level of crowding will people tolerate?

Vehicle loading standards specify the acceptable average number of passengers per vehicle passing the peak load point during the hour (or 20 minutes, or 30 minutes, depending on the transit agency) of the day when the highest passenger loadings occur. The standards are based on the practical capacity of the vehicles as defined by the equipment specifications, and are designed to ensure safety, passenger comfort, and operating efficiency. While different transit agencies may adopt different standards, transit agencies universally measure peak loads in this manner.

To answer our questions, a phone survey of other light rail properties was conducted. Exhibit X presents the results of the survey.

From the results of the survey, it is apparent that:

- o 4 standing passengers per square meter is the maximum "practical" car load that passengers will tolerate on a daily basis, according to nearly all properties surveyed.

- o 6 standees per square meter is considered to be a "crush" load.
- o Calgary operates at near crush conditions throughout the peak hour, but Calgary officials say passengers are compensated for this with 3 minute peak period headways. While Buffalo officials have a goal of achieving over 5 standees per square meter in the peak one hour, they carry no where near this today.
- o Sacramento's peak hour load standard compensates for peak 20 minute loads. Sacramento, which has peak hour loads that are similar to Tri-Met's, is buying 10 additional light rail vehicles to accommodate peak hour growth.
- o Tri-Met's load standard is in line with that of other rail properties.

C. How many vehicles will be needed and when?

Projected Supply and Demand

Based on the the trend in peak hour loads since 1986, we can project increases in MAX peak hour ridership for the next few years using either (a) the average annual increase in peak loads--14% per year--or (b) by fitting a least squares line to the data. Using the least squares formula, projected peak hour ridership increases 7% per year. Exhibits VI and VII present projected peak hour ridership using the least squares formula.

Based on the least squares projection, by 1992 every trip in the peak one hour will operate at 218% of capacity. By 1993 four additional light rail vehicles will be required to operate at 218% of capacity, by 1994 six additional light rail cars will be needed, and by 1995 eight additional cars will be needed. (See Exhibit VIII.)

Without additional cars, we will be carrying five passengers per square meter during the peak 20 minutes by 1992. By 1993, we will be carrying 5 passengers per square meter in the peak 30 minutes and 6 passengers per square meter in the peak 20 minutes. These are crush loads. At or before this point, ridership growth will be constrained by lack of capacity. People will not be able to ride when they want to ride, and while some passengers will adjust and move to the shoulders, others will find other means of transportation. (See Exhibit IX).

How tenable are these projections? The observed increases in MAX peak hour ridership are substantiated by cutline counts which show that traffic volumes in the region are increasing. Between 1986 and 1988, eastside all day traffic volumes increased 12%, 6% annually, and peak hour volumes increased 6%, 3% per year. (Source: Keith Lawton, Metro, 9/89.)

The LRV peak hour ridership projections are nearly identical to Metro 1998 east/west MAX peak hour projections. While one forecast is not verification of another forecast, the observed and projected MAX ridership is consistent with the projected growth that makes Westside light rail construction defensible. The purchase of additional vehicles based on these ridership projections would be entirely consistent with Tri-Met's regional rail plans.

D. Can peak hour capacity be increased without cars? Is there a scheduling technique that will allow Tri-Met to save a car in the peak?

In general there are two techniques available: (a) techniques that would allow us to cut a car by decreasing cycle time, and (b) techniques that would allow us to increase peak load point capacity, by increasing the number of cars though the peak load point in the peak one hour.

All known and available techniques have been analyzed by Bill Coffel, Ken Zatarain and Hal Joram. (See 9/28/89 memo from Bill Coffel, attached).

They concluded that:

- o There is one feasible option for increasing peak hour/direction capacity--an additional car-cut, already in practice at Tri-Met.
- o Only one more opportunity exists to perform the car-cut operation--adding one car trip west of Gateway in the peak.
- o Trip adjustments, where a group of trips is moved slightly so that service is concentrated at the time of greatest need, will be used in conjunction with the car-cut to further relieve peak of the peak overcrowding.
- o Tri-Met's options are limited by (a) the single track operation between Ruby Junction and Cleveland, (b) the design of the line with integration of bus service, and (c) fairly high reverse direction and East County ridership. In fact, passenger volumes east of Gateway remain high, and should reverse commuting and off-peak traffic increase with the opening of the Gresham Mall, the car cut may no longer be viable.
- o Implementation of another car-cut combined with trip adjustments would alleviate peak capacity problems for one year, given the trend in peak hour ridership growth. (See Exhibit VIII).
- o The car cut requires an additional operator.
- o There is no known scheduling technique that would allow Tri-Met to operate with one less car in the peak without severe overcrowding. Again, our options are reduced by single track and bus service meets, but even without these two factors, our ability to increase peak period, peak load point capacity would be limited by the high passenger volumes east of Gateway. Sixty-four percent of the maximum load arrives at Gateway from the east.
- o As an interim measure to alleviate overcrowding, rail service could be supplemented with express bus service from Gateway. Buses would standby at Gateway, and passengers would be encouraged to board express buses.

Advantages would be: 1) Provides a low cost capital solution if spare peak buses are available. 2) Provides a slightly quicker trip.

Disadvantages: 1) Service would require additional operators, each rail car carries the equivalent of three buses. This alternative could not be accomplished by diverting existing bus lines to the rail line to pick up passengers, mostly because there is not enough capacity available even today on the inner segments of the bus lines that are the most likely candidates for diversion (the 15-Mt. Tabor and the 19-Glisan). Diverted bus service will not be attractive to MAX riders because, as local service, it will continue to make lots of local stops. 2) Would be likely to constrain ridership growth. People prefer rail. When the Norristown light rail line was out of operation for six months after a serious accident, SEPTA replaced the rail service with express buses and found that they lost rail ridership. Riders found other means for their commute.

A peak hour MAX fare surcharge was also considered, but ruled out, as a means of increasing peak hour capacity without additional cars. The idea was ruled out because we don't know if it would work, or how well it would work. Also, it is in contradiction with the newly established policy of simpler fares.

E. Why are a greater number of cars required compared to the original 1980 operating plan, although passenger loadings are lower?

The following table compares the two plans:

COMPARISON OF OPERATIONS PLANS

<u>Indicator</u>	<u>Proposed 1980</u>	<u>Existing 1989</u>	<u>Percent Difference</u>
Passengers/Day	31,875	19,700	(38.2%)
Peak Hour and Direction Pax	3,848	1,866	(51.5%)
Peak Fleet	23 cars	22 cars	(4.3%)
Peak Hour/Direction Trains	13	8	(38.5%)
Peak Hour/Direction Cars	22	15	(31.8%)
Short-turn Trains	8	1	(87.5%)
Peak Hour Headway	4.6 min.	6.6 min.	43.4%
Average Schedule Speed	22.6 mph	18.9 mph	16.4%
Cycle Time	96 min.	120 min.	25.0%
Loading Standard	175	166	(5.1%)
Loading Standard Percent	230%	218%	(5.2%)
Average Loading	175	125	(28.6%)
Average Loading Percent	230%	164%	(28.7%)

Source: James Gallagher, Rail Operations, 9/89

Observations:

1. There is a marked difference between the number of cars proposed in the peak hour and direction (22 versus 15) even though the peak fleet (23 versus 22 cars) is nearly identical. Clearly, the peak direction carrying capacity of the two operating plans is different.
2. The cycle time, the time it takes between the start of round trips, is significantly different, approaching the order of 2 trains or 4 cars. The effect of an increase in cycle time is a reduction of the number of trains that can pass the peak load point within one hour. The reasons for the difference in cycle time have been presented in "Justification for New LRV Purchases," 2/4/88, Ken Stanley, attached.

In order to stage a large number of cars at a single point within one hour, service on the balance of the line would suffer given the same peak fleet and/or total fleet.

3. The number of trains we are able to "short-line" today is much lower than what was proposed in 1980 (1 today compared to 8 in 1980) because we have a higher number of passengers east of Gateway than was anticipated in 1980.
4. Finally, the loading standard assumed in 1980 is different, and accounts for one more 1989 car:

	1980 Peak Hour Load	/	Load Standard	-	# Cars
1980	3,848		175		22
1989	3,848		166		23

The 1980 standard was modified in the summer of 1983 to 166 passengers per car. The change was attributed to the difference between the Duwag "B" car assumed in 1980 and the Bombardier car that, by 1983, was ordered and essentially designed.

F. Ridership Summary

If peak period ridership continues to grow at current rates, additional vehicles will be necessary by 1993, given that the second car cut works as planned. Obviously, there is no way to know whether peak ridership will continue to grow as it has since the line opened. Still, because of the long lead time required to buy LRVs, we must make a decision that is based on projected data, but assess the risk that the projections are wrong. If we are making a decision that is based on a compelling situation today, we are probably making a decision that is several years too late. The projections say that by waiting to buy LRVs (Exhibit I, Scenario III) we risk constraining ridership growth on MAX. If commuters are not able to ride when they want to ride, they are likely to find other means of transportation.

The decision when to buy LRVs and how many depends on how we view the future of MAX:

Where do we want the system to be in three or four years?

1. Do we want to risk a degradation of rail service to our current and future riders? If this is our ridership strategy, then how many cars do we purchase and when do we purchase them? (Ridership Strategy #1.)
2. Do we want cars to meet future demand? If this is our ridership strategy, then how many cars do we purchase and when do we purchase them? (Ridership Strategy #2.)
3. Do we want cars to be able to keep pace with growth and to encourage increased ridership by providing an increment of expansion as we are proposing with the Westside line? If this is our ridership strategy, then how many cars do we purchase and when do we purchase them? (Ridership Strategy #3.)

III. Maintenance

- A. How many spare vehicles does rail maintenance require today? Is labor allocated efficiently by rail maintenance?

Current Staffing

Light Rail Vehicle Maintenance is staffed with twelve vehicle mechanics and four vehicle cleaners. Six apprentice mechanics are now in training. Vehicle maintenance is staffed twenty hours a day, seven days a week with alternating shifts. As Exhibit XI shows, nearly all vehicle maintenance and cleaning is performed at night when the greatest number of vehicles are available. Of the twelve vehicle mechanics, seven work a PM shift.

Not all vehicle maintenance can take place at night or on weekends. A number of maintenance tasks require two shifts to complete. A preventive maintenance cycle requires two shifts, more if defects are discovered. Truing also requires two shifts. On a daily basis, one vehicle under goes both interior and exterior cleaning, requiring two shifts. Day shifts are also necessary to take care of in-service problems as they arise.

Current Spare Requirements

Currently, there are twenty-six light rail vehicles in the active fleet. Twenty-two vehicles are required for peak service -- eleven two car trains operate weekdays between 5:30 AM and 9:00 AM and 3:00 PM and 6:00 PM. This leaves four spare vehicles.

A vehicle is in the active fleet if it is not out of service for repairs or modifications for an extended period or an indefinite period. A vehicle is in the inactive fleet if it is out of service for maintenance and cannot be easily rotated into and out of service on a daily, or near daily basis with the rest of the fleet.

One spare LRV is scheduled on a daily basis for preventive maintenance (PMs). Each vehicle is scheduled for preventive maintenance once a month, twelve times a year. Preventive maintenance tasks require that the vehicle be out of service for 24 hours, approximately, more if defects are discovered. Because of the number of vehicles, the length of time the checks require and the number of checks required each year, preventive maintenance cannot be performed just at night or on weekends.

One spare is scheduled on a daily basis for interior/exterior cleaning. Light maintenance and unscheduled repairs are also performed on this vehicle if necessary. This vehicle also serves as a revenue spare. When there is an inservice failure, this vehicle can generally be prepared for revenue service within thirty minutes.

One spare has been required on a daily basis for fleetwide modifications. Small modifications are performed during the night shift, by campaign on weekends or on a vehicle that is in for preventive maintenance. In general, however, modifications have kept one vehicle out of service on a daily basis since opening day. These have included VTAG installation, door sensitive edge, brakes, paint, TWC, intercom, signal tripping. Presently, there are

five fleetwide modifications underway. The number of large modifications are expected to decrease after the air-conditioning retrofit, but by that time overhauls and unscheduled repairs are expected to more than make up for the decrease.

In addition to scheduled maintenance (PMs, cleaning, modifications), unscheduled maintenance also requires spares. These are defects that are discovered during PM checks or in-service when there is an equipment failure. Defects are unpredictable and their impact on spares is also unpredictable. Two or more safety or performance related defects, which require that the vehicle come out of service immediately, may occur on the same day. Non-performance related defect repairs are postponed to the night shift or weekends.

Rail vehicle spare requirements change daily. On some days spares may be required for:

- 1 - Preventive maintenance
- 1 - VTAG installation or other vehicle modification
- 1 - Paint
- 1 - Cleaning and unscheduled repairs

Other days:

- 1 - Accident repair
- 1 - Preventive maintenance
- 1 - Preventive maintenance (if rail maintenance is behind schedule)
- 1 - Unscheduled repairs

Other days:

- 1 - Preventive maintenance
- 1 - Modifications such as passenger intercom installation
- 1 - Cleaning
- 1 - Unscheduled repairs

Exhibit XII presents the results of a survey of spare ratios at other properties. All of the agencies with spare ratios lower than, or similar to, Tri-Met's are in the process of purchasing additional vehicles, or are not yet even in operation (Baltimore).

B. Do we know that high mileage will result in critical mechanical problems?

Yes. Defects (unscheduled repairs) are clearly a function of age and accumulated mileage as the following data show:

Maintenance Indicators-Trend in Unscheduled Repairs:

	FY87	FY88	FY89	
Annual Fleet Mileage	1,375,401	1,417,721	884,400	(1)
Annual Average Miles/Car	52,990	54,500	51,000	(2)
Number of Defects	9,685	9,901	6,990	(1)
Defects Per Car Mile	.00704	.00698	.00790	(1)
Miles Per Defect	142.01	143.19	126.52	(1)
Percent Change-Defects/Mile	-	(.86%)	13.1%	
Percent Change - Miles/Defect	-	.83%	(13.2%)	
Percent Change - Defects	-	2.2%	5.9%	(2)
Percent Change - Car Miles	-	3.0%	(6.8%)	

(1) Eight months actual data.

(2) Annualized, based on eight months actual data.

Source: James Gallagher, Rail Operations, 9/89.

Observations

1. The number of defects (unscheduled repairs) varies with mileage as expected.
2. The rate of occurrence, however, is directly related to the age (and accumulated mileage) of the equipment.
3. Car miles decreased in 1989 partly as a result of single-car "day base" service. However, the rate of occurrence is increasing as car miles decrease, i.e. the age factor. Note the 13.1% increase in defects per car mile versus the 6.8% decrease in car miles. Also, an annualized figure for 1989 defects would be nearly 10,500 for the year. In 1988 the rate of occurrence decreased slightly as both the car miles and raw number of defects increased, not so for 1989.
4. In addition, manhours per defect are increasing. Manhours per defect were 1.12 hours/defect between 1/87-6/87, 1.32 hours/defect between 7/87-12/87, and 1.99 hours/defect 1/89-7/89. (Not shown on table.)
5. The increase in the defect rate is an indication that the vehicles are in need of overhauls, and that the overhaul program should not be postponed.

The increase in unscheduled repairs has reduced the availability of spares for preventive maintenance. Rail Maintenance frequently is unable to meet the preventive maintenance schedule. In June, Rail Maintenance was 12 vehicles behind, half the fleet, 13 behind schedule in July, and as of September 22, Rail Maintenance was 12

PMs behind. (Source: memo from Julie Zaddack to Rudy Luepke, 9/28/89.)

Unable to meet the preventive maintenance schedule, where most defects are discovered, we risk additional inservice failures, or even multiple vehicle failures, resulting in vehicle availability problems.

Rail Maintenance has been able to meet peak service requirements partly because there have always been 26 vehicles in the active fleet, which means that generally, there are 4 vehicles that can be made ready for service on short notice, within 30 minutes to 24 hours. Even so, car availability is constrained today:

- o When car 118 was out of service for three weeks for accident repair, all ongoing modifications were delayed to maintain availability of 22 peak service cars.
- o When defects are found that are safety or performance related, routine maintenance (PMs and cleaning) is postponed to maintain the availability of 22 peak cars. If defects are found that are not performance or safety related, the vehicle goes out anyway and the repairs are made in the evenings or on weekends.

The inability of Rail Maintenance to meet the routine maintenance schedule indicates that additional manpower is needed, or another vehicle is needed, or both.

- C. How many maintenance spares will be required for overhauls, air conditioning? Will additional personnel and working different shifts accomplish maintenance requirements at a cost which is less than the cost of an additional maintenance spare?

One additional maintenance spare is justified and necessary, given current peak service requirements, overhauls, and an increasing defect rate. Two spares may be justified. Additional personnel and different shifts will not accomplish the task for less. However, because under the most optimistic timeline, where Tri-Met purchases LRVs with local funds new LRVs will arrive six months to over a year later than needed for overhauls, a third shift of mechanics will be required.

Air Conditioning

In June 1990, after the Rose Festival, one rail revenue vehicle will be removed from the fleet to perform a prototype installation of air conditioning. The retrofit will keep the vehicle out of service six weeks, until August of 1990. When the retrofit is complete, including testing, each successive vehicle retrofit is expected to take two weeks to complete. Retrofitting air conditioning to the vehicles is a complex task that will require the vehicles to be unavailable for revenue service. This means that for one year between June 1990 and September 1991, there will

be 25 vehicles in the active fleet, one less than today. At this point, there will be only three revenue spares for routine maintenance, cleaning, other modifications, and unscheduled repairs, increasing the chance that peak service requirements will not be met.

Vehicle Overhaul Evaluation

Bombardier recommends that the LRVs be overhauled at 250,000 miles. Rail maintenance plans on beginning the overhaul program on October 1, 1990. This will involve the removal of one car from service when it has reached 225,000 miles of service. Various systems on the car will be dismantled, inspected, and evaluated, and if necessary, overhauled. A detailed vehicle structure inspection will also be performed on the vehicle. At the completion of the first car, the next high-mileage car will be evaluated and overhauled. The total evaluation period of the two cars with revenue vehicle technicians working three shifts (twenty-four hours, seven days a week) will take approximately sixteen weeks, ending the evaluation program in February 1991.

During the overhaul evaluation, these vehicles will not be available for rotation into revenue service. At this point, if the air conditioning retrofit proceeds as planned, there will be only 24 vehicles in the active fleet for four months. Only two vehicles will be available for preventive maintenance, unscheduled maintenance, cleaning, and for rotation into revenue service, seriously increasing the chance either that peak service requirements will not be met, or that scheduled maintenance will be deferred. (See Exhibit XV and Exhibit I.A.)

Given the periodic difficulties Rail Maintenance experiences today with vehicle availability given an active fleet of 26 vehicles, it would not be prudent to reduce the active fleet to 24 vehicles. It is for this reason that other strategies for the air-conditioning retrofit must be analyzed. These options might include: (a) performing the retrofit on weekends, with additional labor, (b) postponing the retrofit until the overhaul evaluations have been completed, or (c) postponing the retrofit until new vehicles arrive. All of these options will increase the cost of the retrofit program.

Progressive Overhaul

At the end of the overhaul evaluation, the active fleet will be 25 vehicles until the air conditioning retrofit is completed. The purpose of the overhaul evaluation is to assign various overhaul tasks to specific preventive maintenance checks (where possible) to keep the vehicle down time to a minimum, therefore keeping the active fleet, the number of vehicles that are available for rotation into service, as large as possible. Just as modifications and unscheduled repairs are routinely performed on vehicles already in the shop for preventive maintenance, various parts will be overhauled during preventive maintenance checks. After the air

conditioning retrofit, and during the progressive overhaul, the active fleet will be 26 vehicles if the progressive overhaul does not require vehicles to be out of service longer than expected, and nothing else diminishes the active fleet (such as an accident, or a series of defects).

Accurate overhaul figures will not be available until the evaluation is conducted. However, all of the known overhaul tasks will double the amount of time required for a PM, if spread out over a period of one year, with 24 hour shifts, seven days a week. It is not known how long the entire progressive overhaul will take, but it will be at least one year, probably more.

If periodic overhauls increase PM time by 100%, and manpower stays the same, theoretically, 13 PM/overhauls can be accomplished each month. That leaves 13 additional preventive maintenance checks to be performed to meet the routine PM schedule. To keep up with the additional maintenance required by an increasing defect rate and by progressive overhauls without additional vehicles, Rail Maintenance plans on adding additional mechanics on all shifts, plus a third shift (for a 24-hour day, 7-day week) staffed with four or five mechanics, and moving as much work as possible to nights. By reducing the elapsed time for overhauls with additional labor, Rail Maintenance believes all 26 monthly PMs can be accomplished without an additional spare. The same result could be accomplished without a third shift if one more revenue spare were available during the day. This way fewer mechanics would work on the vehicles, but over a longer period of time. Exhibit XIII illustrates the tradeoff between labor (an additional shift) and capital (an additional revenue spare). While Tri-Met will have to cover increased maintenance requirements with additional labor, at least for the next several years, the vehicle is clearly the better investment.

- D. Has Rail Maintenance looked at creative approaches to vehicle maintenance, like alternating shifts?

Comparison of Rail Vehicle Overhaul Philosophies

To some extent this question has already been answered. But in addition, there are two different vehicle overhaul philosophies. One approach is to do a comprehensive overhaul at predetermined intervals and simply change out, repair or rehabilitate major vehicle systems and components from the wheels upward. During this process, the vehicle is largely dismantled and unavailable for service for an extended period. The vehicle overhaul evaluation is something like this approach. Another approach, the progressive overhaul, is to recognize that different parts wear out at different rates and to change out or rehabilitate the various parts as they wear out. This is the philosophy Rail Maintenance has selected.

Each has advantages and disadvantages:

Comprehensive Overhaul

Advantages

- o Maximum fleet availability prior to overhaul cycle.
- o Minimum operations staffing

Disadvantages

- o In service failures tend to increase.
- o Vehicle availability is unpredictable.
- o Overhaul becomes a major project; early failures wait for overhaul process to gear up.
- o Demands a larger spare ratio to achieve overhaul productivity in production line fashion.
- o Components not life-expired are changed out indicating a measure of inefficiency and waste.

Progressive Overhaul:

Advantages:

- o Overhaul program is routine and ongoing.
- o Changeout and rehabilitation is less likely to be done prematurely, or worse, upon in-service failure.
- o Fleet requirements can be planned and availability is more predictable because of short-term downtime for progressive overhaul work.
- o Overall fleet reliability is more likely to remain stable during the overhaul process, important with a large fleet of vehicles that are all the same age, accumulating mileage at the same rate.

Disadvantages:

- o Slightly higher annual operating and manpower costs as maintenance labor is not disguised as a "capitalized" cost.

(Source: Memo from James Gallagher to Bill Allen, 8/17/89.)

E. Maintenance Summary

At least one, and preferably two, LRVs are needed now to maintain an adequate spare ratio and meet routine and on-going inspection, maintenance and overhaul requirements.

Exhibit XV shows the mileage that the 26 LRVs will accumulate if they continue to operate exactly as they did in FY89--one car midday, two cars as needed Saturdays and Sundays. Notice that by FY94, the vehicles will be approaching the second overhaul cycle. Under some scenarios we will not see additional vehicles until 1994-1995. It is important to note that with the Gresham Mall and

the Convention Center openings, it will become impossible to maintain one-car midday service. This means the rail cars will accumulate mileage, and will age faster than Table XV suggests, putting Tri-Met at even greater risk for in-service failures and advancing the date of the second overhaul cycle. While these are highly reliable vehicles, the fleet requires at least four revenue spares at all times, even if vehicle maintenance is staffed 24 hours, seven days a week. By 1994 Tri-Met will be approaching a second overhaul cycle, which means another increase in unscheduled repairs; with ridership high and increasing, we risk the predictability of MAX service.

RIDERSHIP AND MAINTENANCE SUMMARY TABLES

LRV Requirements (Based on Exhibit VIII)

Maintenance requirements (Current Service Levels)	1-2
Ridership Strategy #1	1-2
Ridership Strategy #2 (Allows Tri-Met to meet projected demand through 1995)	8*
Ridership Strategy #3 (Allows Tri-Met to meet projected demand through 1997, when Westside opens)	11*

*includes maintenance spares.

	Ridership Req.	Maintenance Req.	Total
Ridership Strategy #1	-	1 - 2	1 - 2
Ridership Strategy #2	6	2	8
Ridership Strategy #3	8	3	11

IV. Timing: Risk and Procurement Issues

- A. What are the ridership and maintenance risks associated with the gap in delivery dates between the alternative procurement/funding scenarios presented in Exhibit I?

Three alternatives for the purchase of light rail vehicles are being discussed:

- I. Fund the vehicles locally, begin the procurement process now. Vehicles would be in service by mid to late 1992.
- II. Fund the vehicles federally, with FY90 and FY91 Section 9 and Regional Reserve funds, begin the procurement process now. Vehicles would be in service by mid to late 1993.
- III. Wait one year. Procure additional vehicles with a possible order for Westside vehicles. Vehicles may be in service by mid to late 1994.

Exhibit VIII (column C) presented the projected number of cars required in the fleet to maintain a 218% load standard. Using column C as a guide, under Alternative I, vehicles will arrive ahead of when they will be needed to accommodate ridership under the status quo ridership strategy, but after they are needed for maintenance purposes. The greatest risk under Alternative I is deferred maintenance. (The financial risk these alternatives present are discussed in Section IV.)

Under Alternative II, vehicles arrive far too late for maintenance purposes, and slightly too late to accommodate peak loads under the status quo ridership strategy. The risks under this alternative are deferred maintenance and possibly the inability to meet peak demand.

Under Alternative III, vehicles arrive far too late for maintenance purposes, and far too late to accommodate peak loads under the status quo ridership strategy. The risks under this alternative are deferred maintenance, the inability to meet peak hour demand, and seriously compromised service quality.

- B. What are the procurement issues presented by each of these alternatives? What about sole source, BUY AMERICA regulations? Are these regulations likely to eliminate any one of these procurement/funding scenarios?

Neither the state or federal sole source or BUY AMERICA regulations will be likely to eliminate any of the three funding alternatives. Based on a precedent set recently by Sacramento, as well as a survey of other rail manufacturers conducted by Tri-Met Engineering this year, it appears that Tri-Met has a good case for the federal approval of sole source procurement with Bombardier as well as a BUY AMERICA waiver if we decide to buy additional LRVs from Bombardier.

The state and federal sole source procurement and BUY AMERICA requirements that would have be fulfilled have been addressed in a memo from Kevin McDonald to Bruce Harder, 9/28/89, attached.

Local Funding

Just in terms of procurement, local funding is, of course, the most straightforward option. BUY AMERICA regulations do not apply, and while state sole source regulations do apply, a contract may be awarded without competitive bidding or RFP if, after making a reasonable effort to identify other sources through a market survey, Tri-Met determines that there is only one source that can provide the equipment. (See McDonald memo.)

Federal Funding

Similar sole source requirements must be met, and a BUY AMERICA waiver must be obtained, if the vehicles are to be federally funded. To obtain an exception to the Buy America Act, Tri-Met would have to show that:

- (a) The application of the Act will be inconsistent with the public interest,
- (b) Materials are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality, or
- (c) The inclusion of domestic materials will increase the cost of the overall project contract by more than 25%.

Tri-Met must satisfy one of the above.

Point (b), that "materials are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality" was the argument that Sacramento officials developed for UMTA. Those documents are also attached.

In Sacramento's case, the approval of the BUY AMERICA waiver was also tacit approval from UMTA that they could proceed to negotiate a contract with Siemen's, the LRV manufacturer, then submit the negotiation memo and cost analysis for UMTA approval of the contract.

Based on the Sacramento precedent, plus recent discussions with Sacramento officials, a likely procurement timeline for federally funded vehicles for Tri-Met would be:

Alternative II:	Bombardier Proposal with Federal Funding, Sole Source Approval and BUY AMERICA Waiver.
Oct. '89-Jan. '90	Board Process Prepare Specifications Prepare BUY AMERICA Waiver Arguments Prepare Regional Funding Package
Jan. '90-Mar. '90	Letter of No Prejudice Request
Jan. '90	Grant Application Submitted
Jan. '90-June '90	BUY AMERICA Waiver Received LONP Received
July '90-Aug. '90	Prepare Price and Cost Analysis for Sole Source Submittal
Sep. '90-Oct. '90	Begin Contract Negotiations with Bombardier
Nov. '90-Dec. '90	Send Cost Analysis and Negotiation Memo to UMTA for Sole Source Approval
Jan. '91	UMTA Approves Contract
Jan. '91	Funds Allocated
Jan. '91-Dec. '91	Engineering and Design
Mar. '91-Feb. '93	Production
Oct. '92-Feb. '93	Delivery

We are pursuing additional information from UMTA on the procurement schedule.

- C. Is the Bombardier price a good price? Perhaps Tri-Met should wait and go through a competitive bidding process to obtain the best price?

The Bombardier price of \$1.9 million per car is their proposed price. Until Tri-Met negotiates with Bombardier, it will be impossible to say what the contract price will be. According to the UMTA sponsored "Rail Car Cost Containment Study," August 1988, negotiated rail car procurements are crucial to obtaining a favorable price.

While it is extremely difficult to make comparisons, because rail car costs are largely determined by the design and the features of the vehicle and the particular car requirements each rail property has, the Bombardier proposed price appears to be reasonable. Baltimore paid \$1.9 million per car recently for an order of 35 cars. Sacramento recently negotiated a price with Siemens Duewag of \$1.4 million a car, down from Siemens' first proposal of \$1.7

million, for an order of 10 cars, and Los Angeles is paying \$1.76 million per car for an order of 35 vehicles. (All prices have been CPI adjusted. Source: Booz, Allen & Hamilton, "Light Rail Vehicle Comparison Matrix," 3/11/89, updated by Denny Porter.)

In cases where the agency requires essentially the same vehicle, effective competition in the rail car industry is likely to be inadequate. The market survey conducted by Tri-Met Engineering this year showed that no manufacturer of LRVs is willing or able to make the Bombardier vehicle for Tri-Met as long as Bombardier is around. Recently San Diego, intending to procure cars that were essentially the same as their original fleet, went out to bid. They encouraged competitive bidding and expected to get a number of proposals. Of the car builders who responded, two were found in compliance with the RFP and invited to submit bids. When bids were submitted, only one was received from Siemens/Duewag. San Diego determined that the bid price was too high, rejected all bids and negotiated a reasonable price with Siemens/Duewag.

One additional cost advantage of a sole source procurement is that Tri-Met is assured of only two fleet types. The proposed BN Bombardier vehicle will be 95% the same as our current fleet, according to Tri-Met Engineering.

- D. Are there any advantages to waiting a year? By waiting will Tri-Met be able to attach an order to an order of Westside vehicles and achieve the price advantage of quantity discounts?

The cost advantage that Tri-Met may receive through quantity discounts is unlikely to outweigh the risks associated with waiting a year. The risk that Westside vehicle funds are not available next fall must be weighed against the price advantage we think we might receive with a larger car order, factoring in inflation.

Things rarely get cheaper in the future, and at 9.4% per year, LRV inflation has outpaced the CPI by over 5% annually since the early '70s. (Source: "Rail Cost Containment Study," UMTA, August 1988.) In order to receive an advantage from a quantity discount by waiting one year, Tri-Met would have to receive a large order discount that is greater than 9.4%.

It is not at all clear from the data presented in the "Rail Cost Containment Study" what the cost advantage is with large orders. Exhibit XVI shows the cost per car for all the light rail vehicle purchases in the U.S. since the early 1970s, CPI adjusted. From the data, it appears that the price per car bears little relationship to the size of the car order. The smallest car order shown was six vehicles. The greatest LRV procurement cost savers identified in the report were:

- o Negotiated procurement,
- o Existing, proven design,
- o Smaller cars, and
- o Large order sizes, which, as Exhibit XVI shows, would be on the order of 100 vehicles.

Waiting a year presents risks on a number of levels. First, we expose ourselves to additional risk on the ridership and maintenance side. Second, there are election risks. Third, even if the May and November votes pass, it is likely that our first Westside allocation from the new start account in FY91 will not include funds for vehicles, but only for final engineering. Jeff Booth feels that funds for Westside vehicles will be a low priority for draws on the new start account next year, and that Tri-Met will not be able to make large draws on the new start account for the Westside until FY92. (See memo from Claire Cushman and Cynthia Weston to Bob Post and Bruce Harder, 8/28/89, attached.)

Since UMTA regulations unequivocally prohibit a procurement of 10 light rail vehicles with an option for 32 (number of Westside vehicles), we would have no alternative but to go ahead with a small order of 10 vehicles if we decide to wait a year then do not get an allocation for Westside vehicles in FY91. Given high LRV inflation, the possibility of Bombardier exiting the light rail business, and the ridership and maintenance risks we are exposing ourselves to by waiting a year, we should be certain beyond a doubt that new start funds will be available in FY91 for Westside vehicles and that the cost advantages are worth the risks before we make a decision to wait a year.

V. Funding Issues

The largest financial problem facing Tri-Met is the decline of federal capital funds. Today, Tri-Met's continuing capital revenues are only \$5 million, while the district's (federally fundable) continuing capital requirements are \$8 million. The current situation will only worsen as inflation increases the cost of capital and Gramm-Rudman dictates further federal transit assistance cuts. In addition, under the 1992 Surface Transportation Act, transit agencies are likely to face 50% local match of federal funds. With one possible exception (explained below), all the available one-time funds from Tri-Met's capital reserves have been programmed.

Tri-Met's estimated federal capital shortfall, given all of the projects that are pending or underway during the next five years, is \$13.9 million. These projects include the Gresham Mall, the Convention Center Hotel, double track, storage track, articulated buses, continuing bus requirements and the North Mall. This assumes that Tri-Met receives a full appropriation from the Banfield Full Funding Agreement, and that Section 9 revenues increase from \$4.5 million in FY89 to \$6.1 million this year. The Section 9 estimates are based on the recent House budget recommendation plus a \$900,000 allocation for MAX, and decline 7% in subsequent years. The estimate also assumes the continuation of 75%/25% federal match.

While federal discretionary funds are likely to be available in the future for some bus purchases, it is unlikely that Section 3 bus monies will be available on a continuing basis for Tri-Met's future bus procurements.

Unless we receive state capital assistance, Tri-Met will be faced with spending its own funds on many capital expenditures that were once federally funded. With a \$13.9 million federal shortfall, it is only a matter of when and which projects. It is for this reason that it is somewhat deceptive to think about purchasing rail vehicles with federal funds as "cheaper" than purchasing rail vehicles with local funds without looking at the total picture.

A. Local Funding

Long-term financing of capital projects is appropriate when the project life is longer than the time required to pay for it. Light rail vehicles, storage track and double track, which all last 30-35 years, and land for the Convention Center Hotel, are all capital expenditures that are appropriate for long-term financing.

Alternative I, local funding of LRVs, could take a number of forms, but one option might be:

- o A municipal lease agreement.
- o Vehicles would be financed over a 25 year period at tax exempt rates.

- o Tri-Met would maintain working capital adequate to maintain a \$6-\$7 million sinking fund invested at taxable rates. The spread between taxable and tax-exempt rates has historically been 1.5 percentage points, and would save Tri-Met \$2 million in costs (present value).
- o The net increase in continuing expenditures would be \$1.7 million a year.

The strengths of financing LRVs locally are:

- o LRVs would be in service at the earliest possible date.
- o Insures federal funds for capital projects that are not appropriate for long-term financing, and for which federal funds have not yet been identified, including the articulated bus procurement in FY94 and FY95 and subsequent bus procurements.

The weaknesses of local financing of LRVs are:

- o Will increase continuing expenditures by \$1.7 million for 25 years.
- o Does not honor the gentleman's agreement we made with Hatfield for the appropriation of Section 3 funds for buses--that it was to free Section 9 funds for the purchase of light rail vehicles.

B. Federal Funding

An alternative for the financing of LRVs with federal funds has recently been developed. This scenario would revise the most recent UMTA Funding Plan as follows:

(millions)

\$ 3.36	Regional Reserve	d e c u)
2.90	Section 9 (\$4.3 million minus \$1.4 million for additional Gresham Mall funds)	
1.03	Storage Track (Section 9)	
2.26	LRVs (Section 9)	
1.80	Section 9 carryover	
<u>4.30</u>	Regional Reserve	
\$15.65	Total	

The key to this scenario is that Tri-Met will agree to locally fund the hotel if the City of Portland agrees to support our request for \$4.3 million additional Regional Reserve funds. Higher Section 9 estimates, based on the House Appropriations Committee recommendation, may allow Tri-Met to utilize Section 9 as proposed in our most recent UMTA Funding Plan for Project Breakeven.

In addition, Tri-Met will attempt to close out the Banfield Full Funding Agreement (F.F.A.) in FY91 for Banfield system improvements:

- \$3.70 Double Track
- \$1.03 Storage Track
- \$2.10 Claims
- \$4.30 Project Breakeven

The scenario is complex and will require discussion and agreement concerning the re-ordering of Tri-Met's capital priorities. It has the following advantages:

- o It honors the gentleman's agreement Tri-Met made with Hatfield to purchase LRVs with Section 9 funds in exchange for Section 3 discretionary funds for buses.
- o Avoids requesting a Letter of No Prejudice for Section 9 funds that would be allocated after the 1992 Surface Transportation Act.
- o Does not diminish the effort to get Banfield Full Funding Agreement funds allocated.
- o Satisfies City of Portland's interest in the Hotel.
- o Satisfies Tri-Met concerns that local monies not be used on a large purchase before the Westside votes.
- o Delivers vehicles within a reasonable, although not optimal, time. (Alternative II).
- o May be able to justify buying the Hotel with local money, if we make a successful bid for F.F.A. and if the lease revenues from the Hotel pay back the expense over time.

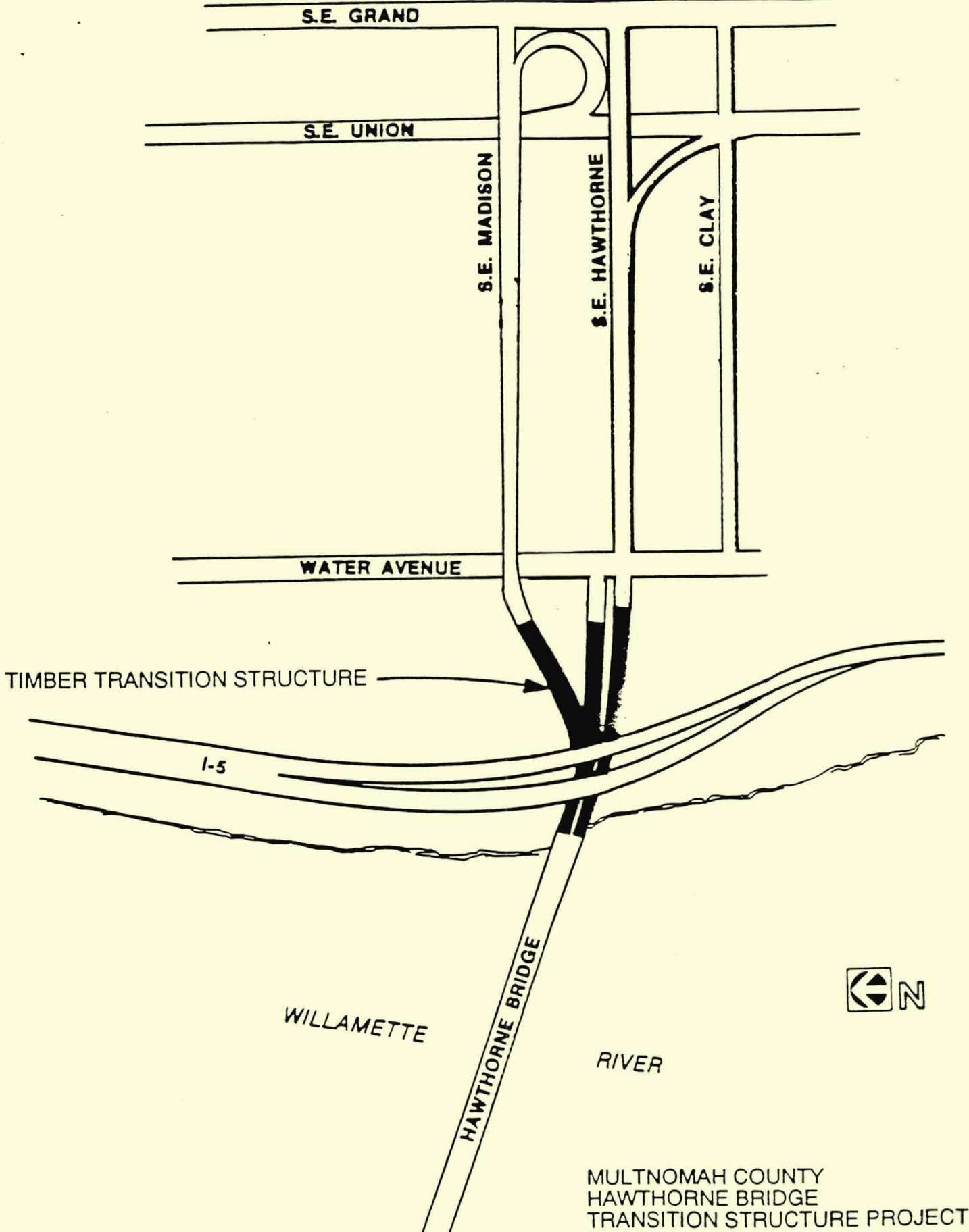
The proposal has the following disadvantages:

- o Regional Reserve strategy may not work, in which case Tri-Met must be prepared to use local funds.
- o May not fulfill Congressional directive to Tri-Met to use Section 9 funds for Project Breakeven. (Although UMTA may question our use of Section 9 funds for this project.)
- o Tri-Met may be locked into the Hotel site purchase this way, a project that is not a top district priority, given the current funding situation.
- o Project Breakeven will no longer "break-even."

VI. Conclusions

While the analysis does not reduce to one simple answer or recommendation, it sets the stage for that decision. A tremendously complex set of issues and variables are reduced to a manageable few. Also, some decisions cannot be made because they must be tested before the outcome is known (i.e. a sole source procurement and BUY AMERICA waiver). Nonetheless, the decision matrix is relatively straightforward:

1. Ridership - We need a clear resolution of how we want the light rail system to respond to ridership demands. How we answer the questions posed on page 6 answer the LRV question from a ridership perspective. (See pages 6 and 15.)
2. Maintenance - We are operating at high risk. (See pages 14-15.)
3. Timing - Maintenance requirements pose a problem under any timetable. However, we must explore the federal funding alternative.
4. Funding - Our long term capital program is at risk under any scenario. We may have to use local funds for some projects, or else delete some projects that are pending. It invites questions of priority, are LRVs basic Tri-Met services? If they are, do we have any choice but to proceed?



Agenda Item No. 4.6
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1181

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1181, FOR THE PURPOSE OF RENEWING AND AMENDING THE CONTRACT FOR PERSONAL SERVICES WITH STOEL, RIVES, BOLEY JONES & GREY FOR ASSISTANCE AS BOND COUNSEL

Date: January 17, 1990

Presented by: Councilor
Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 5 to 0 to recommend Council adoption of Resolution No. 90-1181. Voting: Councilors Hansen, Bauer, Buchanan, DeJardin and Wyers. This action taken January 16, 1990.

Committee Discussion/Issues: General Counsel explained to the Committee the need for renewing and amending the contract with Stoel, Rives, Boley, Jones & Grey (Contractor).

In August 1986 Contractor was retained by Metro to provide bond counsel services for resource recovery projects for a period of three years or until financing for the projects was completed. In August 1987 the scope of services was amended to include negotiations with various firms regarding resource recovery facilities. The compensation limit was increased from \$100,000 to \$145,000. The termination date was not extended.

The Contractor has worked on the compost facility negotiations and bond financing for the Metro East Station. Various delays have prevented the Contractor from completing their work within a three-year time period.

It is proposed that the agreement with Contractor be amended to extend the termination date to January 1, 1991, and to include bond counsel and legal services relative to the Metro East Station.

The unencumbered balance of the contract amount is \$33,681. Contractor has not requested any changes in the compensations for services and has indicated that there are sufficient dollar amounts to cover the personal services.

Renewal and amendment of the agreement must meet the requirements of Metro Code Section 2.04.054(2). The staff report from Bob Martin, dated January 2, 1990, indicates that the conditions of Code Section 2.04.054(2) are met. The details are shown in the staff report.

There was no discussion by the Solid Waste Committee and the Committee voted unanimously to recommend Council adoption of Resolution No. 90-1181.

GH:RB:pa
A:RB.136

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF RENEWING AND	)	RESOLUTION NO. 90-1181
AMENDING THE CONTRACT FOR PERSONAL)	
SERVICES WITH STOEL, RIVES, BOLEY,	)	Introduced by Rena Cusma,
JONES AND GREY ASSISTANCE AS BOND	)	Executive Officer
COUNSEL)	

WHEREAS, The Metropolitan Service District entered into a Personal Services Agreement with Stoel, Rives, Boley, Jones and Grey, Attorneys at Law, (CONTRACTOR) per an Agreement dated August 15, 1986, for the purpose of providing bond counsel services, said contract having been amended by an Agreement dated August 26, 1987, both the original Agreement and the Amendment being attached hereto as Exhibits A and B respectively; and

WHEREAS, Delays have occurred which have not permitted completion of the Scope of Work within the three-year period contemplated in paragraph (1) of the Scope of Work (Exhibit A); and

WHEREAS, Additional bond counsel services are required relative to financing of the Metro East Station which were not specified in the Scope of Work; and

WHEREAS, Metro Code Section 2.04.054(2) requires that renewal, extension or renegotiation of a Personal Services Agreement be accompanied by a determination that there are fewer than three potential contractors qualified to provide the quality and type of services required, and that the initiating department make detailed findings that the quality and type of services required make it unnecessary or impractical to solicit proposals; and

WHEREAS, The period of time required to complete the original Scope of Work and the additional services relative to bond financing of the Metro East Station is estimated to be on or before January 1, 1991; and

WHEREAS, Contractor has not requested any increase in the agreed cost of services per Exhibit B; and

WHEREAS, The unique and complex nature of the services provided to Metro by the CONTRACTOR and the critical time frame for issuance of bonds for major solid waste projects is such that there is no other potential contractor qualified to provide the quality and type of services needed by Metro; and

WHEREAS, Exhibit C of this Resolution is a proposed amendment and extension of the Agreement between Metro and CONTRACTOR; now, therefore,

BE IT RESOLVED,

1. That the conditions of Code Section 2.04.054(a)(2) for renewal and amendment of the Agreement with the CONTRACTOR without solicitation of competitive proposals have been met.

2. That the Agreement with CONTRACTOR shall be amended and renewed pursuant to the terms of Exhibit C.

3. That the Executive Officer is authorized to execute the amended and renewed Agreement with the Contractor as shown in Exhibit C.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1990.

, Presiding Officer

EXHIBIT "A"

Metro Contract No. 86-8-119-SW

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT dated this 15 day of August 1986, is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, hereinafter referred to as "METRO," whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, Edward Einowski & Dennis Leybold and ~~Stoel, Rives, Boley et al~~, hereinafter referred to as "CONTRACTOR," whose address is 900 SW Fifth Ave., Portland, for the period of Aug. 15, 1986, through August 15, 1989, and for any extensions thereafter pursuant to written agreement of both parties.

W I T N E S S E T H :

WHEREAS, This Agreement is exclusively for Personal Services;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

CONTRACTOR AGREES:

1. To perform the services and deliver to METRO the materials described in the Scope of Work attached hereto;
2. To provide all services and materials in a competent and professional manner in accordance with the Scope of Work;
3. To comply with all applicable provisions of ORS Chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, as if such provisions were a part of this Agreement;
4. To maintain records relating to the Scope of Work on a generally recognized accounting basis and to make said records available to METRO at mutually convenient times;
5. To indemnify and hold METRO, its agents and employees harmless from any and all claims, demands, damages,

actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, with any patent infringement arising out of the use of CONTRACTOR'S designs or other materials by METRO and for any claims or disputes involving subcontractors; and

6. To comply with any other "Contract Provisions" attached hereto as so labeled.

METRO AGREES:

1. To pay CONTRACTOR for services performed and materials delivered in the maximum sum of \$100,00⁰ written out One Hundred Thousand and 000/100THS (\$100,000) DOLLARS and in the manner and at the time designated in the Scope of Work; and

2. To provide full information regarding its requirements for the Scope of Work.

BOTH PARTIES AGREE:

1. That METRO may terminate this Agreement upon giving CONTRACTOR five (5) days written notice without waiving any claims or remedies it may have against CONTRACTOR;

2. That, in the event of termination, METRO shall pay CONTRACTOR for services performed and materials delivered prior to the date of termination; but shall not be liable for indirect or consequential damages;

3. That, in the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to an appellate court;

4. That this Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either party; and

5. That this Agreement may be amended only by the written agreement of both parties.

Edward Einowski & Dennis Leybold
Stoel Rives Boley et al

METROPOLITAN SERVICE DISTRICT

By:

Edward Einowski

Date:

Sept. 26, 1986

By:

Dennis Leybold

Date:

9/22/86

___/gl

GL0056. (P)

6/11/86

SCOPE OF WORK

Resource Recovery Bond Counsel

1. Edward Einowski and Dennis Leybold will provide bond counsel services on the resource recovery project for three years or until the financing is completed commencing August 15, 1986.
2. All bond counsel fees and legal advice outside of the scope of bond counsel advice shall be at the hourly rate of \$135.00 per hour for Mr. Einowski and \$125.00 per hour for Mr. Leybold. Services of all other attorneys shall be paid at their regular rates, provided that Metro has given prior authorization for any work to be charged at more than \$135 per hour.
3. Metro shall pay contractors' expenses.
4. Contractors shall provide a monthly summary of expenses and status report on all work undertaken. Metro shall pay all bills on a quarterly basis. Bills for bond counsel services shall be paid 60 percent when presented and the balance when bond proceeds are distributed. If for any reason there are no bond proceeds then no additional payment is due.
5. Metro contact is Debbie Allmeyer.

ESB/gl
6064C/313-2

AMENDMENT TO PERSONAL SERVICES AGREEMENT

Reference is hereby made to a certain Personal Services Agreement dated August 15, 1986, Metro Contract No. 86-8-119-SW (the "Agreement"), between the Metropolitan Service District, a municipal corporation ("Metro"), whose address is 2000 SW First Avenue, Portland, OR 97201, and Stoel Rives Boley Jones & Grey (the "Contractor"), whose address is 900 SW Fifth Avenue, Portland, OR 97219.

1. The Agreement shall be, and it hereby is, amended, modified and supplemented as set forth herein.

2. Metro hereby retains the Contractor to render legal services to Metro in connection with negotiations with various firms selected by Metro, said negotiations pertaining to the procurement of one or more resource recovery facilities (the "Negotiations"). The parties hereto hereby acknowledge that the work to be undertaken by the Contractor in connection with the Negotiations is beyond the scope of the work undertaken by the Contractor pursuant to the Agreement.

3. As compensation for the legal services to be rendered by Contractor in connection with the Negotiations, Contractor shall be paid on an hourly basis at the rate of \$145 per hour, plus expenses incurred. Contractor shall submit monthly invoices for services rendered and expenses incurred pursuant to this Amendment, with all amounts owing hereunder to be paid quarterly by Metro.

4. The legal services to be rendered by the Contractor in connection with the Negotiations shall be deemed to be part of the Scope of Work attached to the Agreement and the relationship between Metro and the Contractor with respect to such legal services shall be governed by the terms and provisions of the Agreement except with respect to the compensation to be paid by Metro to the Contractor for such legal services, which compensation shall be as provided in paragraph 3 of this Amendment.

5. Paragraph 1 on page 2 of the Agreement is hereby amended to read as follows:

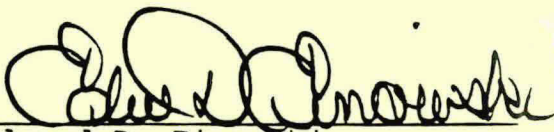
"1. To pay CONTACTOR for services performed and materials delivered in the maximum sum of \$145,000 (One Hundred and Forty-Five Thousand Dollars) and in the manner and at the time designated in the Scope of Work."

6. Except as expressly modified herein, the Agreement shall be and remain in full force and effect.

EXCEPTED AND AGREED TO AS OF THE DATE SET FORTH BELOW:

STOEL RIVES BOLEY JONES & GREY

METROPOLITAN SERVICE DISTRICT

By 
Edward D. Einowski
Dated: 8/26/87

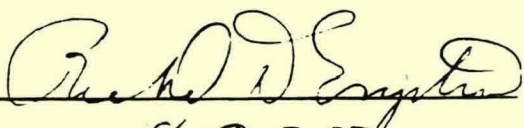
By 
Dated: 8-25-87

EXHIBIT "C"

SECOND AMENDMENT TO PERSONAL SERVICES AGREEMENT

This agreement renews and extends that certain Personal Services Agreement dated August 15, 1986, Metro Contract No. 86-8-119-SW, (AGREEMENT) and the amendment to that agreement executed by Metro on 8-25-87 and by CONTRACTOR on 8-26-87.

The foregoing AGREEMENT is amended as follows:

- 1) The CONTRACTOR shall provide bond counsel and legal services in connection with negotiations for one or more resource recovery facilities and the Metro East Station (transfer and recycling center).
- 2) The CONTRACTOR'S provision of services shall commence on or before August 15, 1989 and terminate on or before January 1, 1991.
- 3) Except as expressly modified herein, the above described AGREEMENT and any amendments thereto, shall be and remain in full force and effect.

Agreed to this _____ day of _____, 1989.

STOEL, RIVES, BOLEY,
JONES & GREY

METROPOLITAN SERVICE
DISTRICT

By _____

By _____

Dated: _____

Dated: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1181 FOR THE PURPOSE
OF RENEWING AND AMENDING THE CONTRACT FOR PERSONAL
SERVICES WITH STOEL RIVES BOLEY JONES AND GREY FOR
ASSISTANCE AS BOND COUNSEL

Date: January 2, 1990

Presented By: Bob Martin

Stoel, Rives, Boley, Jones and Grey, Attorneys at Law (CONTRACTOR) was retained by Metro to provide services under an Agreement dated August 15, 1986. This Agreement is attached to the accompanying Resolution as Exhibit A. The Scope of Work related to bond counsel services for resource recovery projects ". . .for three years or until the financing is completed commencing August 15, 1986." The latest termination date was to be on or before August 15, 1989.

By an amendment to the Agreement dated 8-26-87, attached to the accompanying Resolution as Exhibit B, the Scope of Services was amended to include legal services in connection with negotiations with various firms pertaining to resource recovery facilities. The compensation to be paid to CONTRACTOR was also amended in the August 26, 1987 Agreement from a maximum of One Hundred Thousand (\$100,000) Dollars to a new maximum of One Hundred Forty-five Thousand (\$145,000) Dollars. The termination date was not modified at that time.

CONTRACTOR has been actively involved in the Metro-Riedel compost facility negotiations and bond financing and for the Metro East Station bond financing as well.

Various delays have prevented the completion of CONTRACTOR'S services within the originally contemplated three years. CONTRACTOR'S involvement in negotiations and bond financing has been extensive and complex. It is the consensus of the Solid Waste Department and Executive Management that there is no other contractor qualified to provide the quality and type of services required to accomplish the bond financing process presently underway within the time frame necessary for the financing of the compost facility and the Metro East Station.

It is recommended that the Agreement with CONTRACTOR be amended to provide an extension of time for completion of the Scope of Services shown in the original Agreement and the Amendment, Exhibits A and B to the Resolution, respectively. Also, an amendment to specifically include the bond counsel and legal services relative to the Metro East Station is recommended. CONTRACTOR has indicated that there are sufficient dollar amounts remaining within the contract to cover both prior services rendered as well as those additional services contemplated under the proposed amendment to the Agreement. The present contract amount (Exhibit B) is ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$145,000). As of November 15, 1989, SIXTY THOUSAND NINE HUNDRED TWENTY-EIGHT AND 27/100 DOLLARS (\$60,928.27) has been paid to CONTRACTOR. Billed as of November 15, 1989, but not yet paid, are statements from CONTRACTOR in the total amount of FIFTY

THOUSAND THREE HUNDRED NINETY AND 19/100 DOLLARS (\$50,390.19). The balance remaining of the contract amount (after reducing the balance by the outstanding statements) is THIRTY-THREE THOUSAND SIX HUNDRED EIGHTY-ONE AND 54/100 DOLLARS (\$33,681.54).

CONTRACTOR has not requested any modification in the agreed compensation for services, nor is any recommendation made for an increase in the amount of compensation. The proposed amendment and renewal is shown as Exhibit C to the Resolution.

Renewal and amendment of CONTRACTOR'S agreement with Metro must meet the requirements of Metro Code Section 2.04.054(2), which requires, 1) that there be fewer than three potential contractors qualified to provide the quality and type of services required, and 2) that the initiating department make detailed findings that the quality and type of services required make it unnecessary or impractical to solicit proposals.

The conditions of Code Section 2.04.054(2) are met by virtue of the following:

- 1) CONTRACTOR has been engaged in the regular provision of services to Metro relative to the Scope of Work for a period of three years.
- 2) That legal constraints have required that bonding for the compost facility be complete before the end of calendar year 1989.
- 3) That bonding for construction of the Metro East Station needs to take place in an expeditious manner in order for the scheduled operation date to be met.
- 4) There may be other contractors capable of performing the requisite services, however, no other potential contractor could sufficiently acquaint themselves with the complexities of the bonding process in the time necessary to provide the quality and type of services required by Metro.
- 5) That CONTRACTOR has been providing the necessary high degree of skills required by the present bonding process.
- 6) That it would not only be unnecessary, but highly impractical to consider soliciting proposals for completion of the services needed in the bonding process for the compost facility and the Metro East Station.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 89-1181 to renew and extend CONTRACTOR'S Agreement with Metro to provide bond counsel and legal services.



GRANT/CONTRACT SUMMARY

METRO METROPOLITAN SERVICE DISTRICT

GRANT/CONTRACT NO. 86-8-119 SW BUDGET CODE NO. _____
 FUND: _____ DEPARTMENT: SOLID WASTE (IF MORE THAN ONE) _____
 SOURCE CODE (IF REVENUE) _____

INSTRUCTIONS

- OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
- COMPLETE SUMMARY FORM.
- IF CONTRACT IS —
 - SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
 - UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
 - OVER \$2,500, ATTACH QUOTES, EVAL FORM, NOTIFICATION OF REJECTION, ETC.
 - OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, RFP, ETC.
- PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING

1. PURPOSE OF GRANT/CONTRACT TO EXTEND EXPIRATION DATE AND AMEND SCOPE OF SERVICES — NO CHANGE IN COMPENSATION PROVISIONS

2. TYPE OF EXPENSE ☒ PERSONAL SERVICES ☐ LABOR AND MATERIALS ☐ PROCUREMENT
☐ PASS THROUGH AGREEMENT ☐ INTER-GOVERNMENTAL AGREEMENT ☐ CONSTRUCTION
☐ OTHER

OR

TYPE OF REVENUE ☐ GRANT ☐ CONTRACT ☐ OTHER

3. TYPE OF ACTION ☐ CHANGE IN COST ☐ CHANGE IN WORK SCOPE
☐ CHANGE IN TIMING ☐ NEW CONTRACT

4. PARTIES METRO + STOLL RIVES, BULLY, JONES & GREY ATTORNEYS

5. EFFECTIVE DATE 8-15-89 TERMINATION DATE 1-1-91
 (THIS IS A CHANGE FROM 8-15-89)

6. EXTENT OF TOTAL COMMITMENT: ORIGINAL/NEW \$ 100,000 (TOT)
 PREV. AMEND \$95,000 (TOT)
 THIS AMEND NO CHANGE

TOTAL

\$ 145,000

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1989 ⁴⁰ \$ ALL

B. BUDGET LINE ITEM NAME _____ AMOUNT APPROPRIATED FOR CONTRACT \$ _____

C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF _____, 19____ \$ _____

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

SUBMITTED BY N/A PER CODE 2.04.054(2) \$ _____ ☐ MBE
 SUBMITTED BY _____ \$ _____ ☐ MBE
 SUBMITTED BY _____ \$ _____ ☐ MBE

9. NUMBER AND LOCATION OF ORIGINALS _____

10. A. APPROVED BY STATE/FEDERAL AGENCIES? ☐ YES ☐ NO ☒ NOT APPLICABLE

B. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT ☐ YES ☒ NO

11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS? ☐ YES ☒ NO

IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION _____

12. WILL INSURANCE CERTIFICATE BE REQUIRED? ☐ YES ☒ NO

13. WERE BID AND PERFORMANCE BONDS SUBMITTED? ☐ YES ☒ NOT APPLICABLE

TYPE OF BOND _____ AMOUNT \$ _____

TYPE OF BOND _____ AMOUNT \$ _____

14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)

NAME N/A SERVICE _____ ☐ MBE

NAME _____ SERVICE _____ ☐ MBE

NAME _____ SERVICE _____ ☐ MBE

NAME _____ SERVICE _____ ☐ MBE

15. IF THE CONTRACT IS OVER \$10,000

A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?

☒ YES ☐ NO

B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?

☐ YES DATE _____ INITIAL _____

16. COMMENTS:

CONTRACT AMENDMENT WILL EXTEND THE EXPIRATION
DATE OF THE LEGAL SERVICES ~~CONTRACT~~ AGREEMENT WITH THE
CONTRACTOR AND ADD TO THE SCOPE OF SERVICES RELATIVE
TO BOND COUNSEL AND LEGAL SERVICES FOR THE METRO/PORTLAND
COMPOST FACILITY AND THE METRO EAST STATION (TRANSFER AND
RECYCLING CANSTRA).

GRANT/CONTRACT APPROVAL

INTERNAL REVIEW

DEPARTMENT HEAD

CONTRACT REVIEW BOARD

(IF REQUIRED) DATE _____

COUNCIL REVIEW

(IF REQUIRED)

DATE

FISCAL REVIEW

BUDGET REVIEW

1. _____
COUNCILOR

2. _____
COUNCILOR

3. _____
COUNCILOR

LEGAL COUNSEL REVIEW AS NEEDED:

A. DEVIATION TO CONTRACT FORM _____

B. CONTRACTS OVER \$10,000 _____

C. CONTRACTS BETWEEN GOVERNMENT AGENCIES _____

Agenda Item No. 4.7
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1195

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1195, FOR THE PURPOSE OF APPROVING A
REQUEST FOR PROPOSALS DOCUMENT FOR THE MODEL ZONING
ORDINANCE

Date: January 17, 1990

Presented by: Councilor
Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 5 to 0 to recommend Council adoption of Resolution No. 90-1195. Voting: Councilors Hansen, Bauer, Buchanan, DeJardin and Wyers. This action taken January 16, 1990.

Committee Discussion/Issues: The Planning and Development Director explained to the Committee the purpose of the proposed model zoning ordinance which is to provide clear and objective standards upon which to judge the siting of solid waste facilities. A local jurisdiction could choose to utilize the model ordinance, modify it to meet local conditions, or write their own language. So long as the outcome is clear and objective standards, which do not unreasonably exclude the siting of solid waste facilities, Metro's goals will be served.

The FY 1989-90 budget provides for the development of a model zoning ordinance. It is recommended that a model mitigation agreement also be completed. It is expected that this could be accomplished with no additional budgetary impact.

The Committee stated that they would like to avoid a conditional use process for siting system facilities and want to have a model code that provides outright permitted use.

The Committee asked, in light of Metro's experience with the City of Portland Mitigation agreement, why Metro did not prepare a model mitigation agreement in-house. The Planning Director stated that we have the expertise, but work loads would not allow the Department to prepare a model agreement.

The Committee indicated that siting of solid waste facilities has been a problem and that a model zoning ordinance and mitigation agreement should help.

GH:RB:pa
A:\RB.137

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A	)	RESOLUTION NO. 90-1195
REQUEST FOR PROPOSALS DOCUMENT FOR)	
PROFESSIONAL SERVICES TO COMPLETE	)	Introduced by Gary Hansen
A MODEL ZONING ORDINANCE	)	Councilor

WHEREAS, Section 2.04.033(b) of the Metro Code requires that the Council must approve the proposal document for certain contracts, including multi-year contracts; and

WHEREAS, The Council in reviewing those contracts anticipated in the approved budget, specifically placed the Model Zoning Ordinance Contract on the "A" list, directing that the contract come before the Council; and

WHEREAS, the Council has reviewed the Request for Proposals and related documents; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District approves the Request for Proposals for the Model Zoning Ordinance as Exhibit A hereto and authorizes that it be released for response by vendors or proposers.

ADOPTED by the Council of the Metropolitan Service District
the _____ day of _____, 1990.

, Presiding Officer

EXHIBIT A

REQUEST FOR PROPOSALS
TO DRAFT A MODEL SOLID WASTE FACILITY SITING ORDINANCE

issued by
Metropolitan Service District
Planning and Development Department
November, 1989

TABLE OF CONTENTS

PAGE

I	INTRODUCTION.....	1
II	BACKGROUND.....	1
III	PROPOSED SCOPE OF WORK.....	2
	Element 1 Research and preparation	
	Element 2 Ordinance drafting and review	
IV	PERIODIC REPORTING REQUIREMENTS AND PRESENTATION OF FINDINGS.....	3
V	EXPERIENCE REQUIREMENTS.....	3
VI	PROPOSAL INSTRUCTIONS.....	4
	A. Submission of Proposals	
	B. Deadline	
	C. RFP as Basis for Proposals	
	D. DBE/WBE Requirements	
VII	PROPOSAL CONTENTS.....	5
	A. Transmittal Letter	
	B. Approach/Project Work Plan	
	C. Staffing/Project Manager Designation	
	D. Experience Requirements	
	E. Cost/Budget	
	F. Exceptions and Comments	
VIII	GENERAL PROPOSAL/CONTRACT CONDITIONS.....	6
	A. Limitation and Award	
	B. Contract Type	
	C. Billing Procedures	
	D. Validity Period and Authority	
IX	EVALUATION OF PROPOSALS.....	7
	A. Evaluation Procedure	
	B. Evaluation Criteria	
X	ATTACHMENTS.....	8

REQUEST FOR PROPOSALS
TO DRAFT A MODEL SOLID WASTE FACILITY SITING ORDINANCE

I INTRODUCTION

The Planning and Development Department of the Metropolitan Service District (Metro) is requesting proposals from qualified firms to assist Metro in preparing a model solid waste facility siting ordinance. The ordinance must have clear and objective standards for concluding whether a proposal for a solid waste facility may be approved.

Proposals will be due no later than 5:00 p.m., PST, February 16, 1989, at Metro's Planning and Development Department, 2000 S.W. First Avenue, Portland, Oregon. Details concerning the project and proposal are contained in this document.

II. BACKGROUND

Siting of solid waste facilities to assist and complement the total solid waste management system is a critical factor in implementing the Regional Solid Waste Management Plan. Policies have been adopted in the Plan which state that "Each city and county shall provide appropriate zoning to allow planned solid waste facilities or enter into intergovernmental agreements with others to assure such zoning. Whether by outright permitted use, conditional use or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities".

Metro has determined that the completion of a model solid waste facility siting ordinance would be helpful in assisting local governments. The solid waste facilities to be addressed in the design of the model ordinance are depots, demolition landfills, lumber recovery centers, material recovery centers, mixed construction and demolition debris collection centers, mixed waste composting facilities, small scale specialized incinerators, staging areas, transfer stations, and yard debris processing centers. Working definitions of the subject facilities, along with other related facilities and terms, are supplied in Attachment A.

The project will involve drafting a model ordinance and working with staff, the Metro Land Use subcommittee, the Technical Committee and the Policy Committee. Final review will be completed through the Metro Council's Solid Waste Committee and the full Metro Council.

III. PROPOSED SCOPE OF WORK

Metro is seeking proposals from qualified firms to perform the tasks as described in this section. Definitions for each facility are contained in Attachment A.

Proposers are to develop a work plan and budget per task and subtask identified in the scope of work. The methodologies for each task are to be described in detail. The final work plan and budget will be negotiated after the selection of the consultant, and may vary from these tasks. Proposers may present alternatives to the following tasks which meet the objectives of the study. Attachment B contains a listing of relevant Metro solid waste data materials. All of these materials are available to the proposers upon request. Attachment C is a listing of relevant committee schedules.

Proposers are to present a work plan which can be completed within a seven-month period or less. Metro reserves the right to select part or all of a proposal for implementation.

WORK PROGRAM ELEMENTS AND TASKS

Element 1 Research and preparation

- Task 1.1 Review approved objectives, facility definitions and strategy paper
- 1.2 Complete literature search
- 1.3 Attend project coordination meeting with staff

Element 2 Ordinance Drafting and Review

Task

- 2.1 Ordinance Drafting
 - 2.1.1 Review Ordinance Outline completed by Metro Office of General Counsel and planning staff
 - 2.1.2 Consultant draft of clear and objective standards
 - 2.1.3 Consultant draft of administrative design
 - 2.1.4 Review by Metro planning and Office of General Counsel
- 2.2 Ordinance Review
 - 2.2.0 Distribute model language to staff for review
 - 2.3.0 Revise as appropriate
 - 2.4.0 Present draft to Land Use subcommittee
 - 2.5.0 Attend Second meeting with Land Use
 - 2.6.0 Attend Third meeting with Land Use
 - 2.7.0 Review industry, local government comments, respond as appropriate
 - 2.8.0 Attend Fourth meeting with Land Use
 - 2.9.0 Review model language with Technical subcommittee, revise as necessary
 - 2.10.0 Attend Second meeting with Technical subcommittee

- 2.2 Ordinance Review (continued)
- 2.11.0 Meet with Policy Committee, amend as appropriate
- 2.12.0 Attend Second Policy Committee meeting
- 2.13.0 Attend meeting with Council Solid Waste Committee for
- 2.14.0 Attend second meeting with Council Solid Waste Committee
- 2.15.0 Attend Metro Council meeting
- 2.16.0 Attend second Metro Council meeting
- 2.17.0 Provide a training session for staff

IV. PERIODIC REPORTING REQUIREMENTS AND PRESENTATION OF FINDINGS

After the completion of each task, the consultant is to submit a draft written report for Metro staff review. Metro staff will review each draft and make changes if necessary. After Metro staff review, the consultant will incorporate Metro staff changes and submit a final written report which will be the basis of subcommittee and committee review. As appropriate to the subcommittee or committee direction, revisions may be necessary, and the consultant shall make such changes.

In addition to the final report, proposers are expected to assist Metro staff, as necessary, in presenting the finding of the study to Metro committees throughout the contract period.

V. EXPERIENCE REQUIREMENTS

The proposer must demonstrate knowledge and experience in the following:

- Knowledge of Oregon land use planning requirements,
- knowledge and experience with the administration of zoning ordinances,
- experience working with public review bodies.

In addition, experience with solid waste planning and implementation, and solid waste industry practices will be strongly weighed.

VI. PROPOSAL INSTRUCTIONS

A. Submission of Proposals

Eight copies of the proposal shall be furnished to Metro addressed to:

Mark Turpel
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398

B. Deadline

Proposals will not be considered if received after 5:00 p.m., PST, February 16, 1989. Postmarks are not acceptable.

C. RFP as Basis for Proposals

This RFP represents the most definitive statement Metro will make concerning information upon which proposals are to be based. Any verbal information which is not contained in this RFP will not be considered by Metro in evaluating the proposals. All questions relating to the RFP, or the project, must be submitted in writing to Mark Turpel, Metro, 2000 S.W. First Avenue, Portland, OR 97201-5389. Any questions which in the opinion of Metro warrant a written reply or RFP amendment, will be furnished to all parties receiving a copy of this RFP. Metro will not respond to questions received at Metro after 5:00 pm, PST, February 5, 1989.

D. DBE/WBE Requirements

The successful proposer will be required to meet Metro's Disadvantaged Business Program goals or clearly demonstrate that a good faith effort has been made to meet the goals. The goals for this contract are: Disadvantaged Business Enterprises (DBE) - 7 percent, and Women-Owned Business Enterprises (WBE) - 5 percent of the proposal amount. DBEs and WBEs must be certified as DBE/WBE at the time of RFP closing to count toward the contract goals. A current listing of certified DBE/WBE firms can be obtained from the Office of Minority and Women Businesses, State Executive Department, Salem, OR 97310, (503) 378-5651.

The proposal submitted must contain a fully completed Disadvantage Business Program Compliance Form contained herein (Attachment E). Metro requires any and all proposers to submit completed DBE and WBE utilization forms (Attachment E) with the proposal submission. Detailed procedures for completing the

forms and for demonstrating good faith efforts are contained in Ordinance No. 88-259, Metro's Disadvantaged Business Program (Attachment E). Proposers special attention is directed to Section 2.04.155 (Contract Award Criteria), and Section 2.04.160 (Determination of Good Faith Efforts).

VII. PROPOSAL CONTENTS

The proposal should contain not more than 35 pages of written material (excluding resumes and brochures, which may be included in an appendix), describing the ability of the consultant to perform the work requested. Contents of the proposal should be as follows:

- A. Transmittal Letter -- Indicate who will be assigned to the project, who will be project manager, and that the proposal will be valid for ninety (90) days.
- B. Approach/Project Work Plan -- Describe how the work will be done within the given time frame and budget. Respondents are to develop a work plan, schedule and budget per task identified in the Scope of Work.
- C. Staffing/Project Manager Designation -- Identify specific personnel assigned to major project tasks, their roles in relation to the work required, percent of their time on the project, and special qualifications they may bring to the project.

Proposals must identify a single person as project manager to work with Metro. The consultant must assure responsibility for any subconsultant work and shall be responsible for the day-to-day direction and internal management of the consultant effort.

- D. Experience -- List of projects conducted over the past five years are required here. For each project, include the name of the contact person, her/his title, role on the project, and telephone number. Identify persons on the proposed study team who worked on each project, and their respective roles. Include resumes of individuals proposed for this contract.
- E. Cost/Budget -- Present the proposed cost of the project by task and sub-task and the proposed method of compensation. List hourly rates for personnel assigned to the project, total personnel

expenditures, support services, and subconsultant fees. Requested expenses should also be listed. The budget for this project is not to exceed \$25,000.

- F. Exceptions and Comments -- To facilitate evaluation of proposals, Metro wishes that all responding firms adhere to the format outlined with this RFP. Firms wishing to take exception to, or comment on, any specified criteria within this RFP, should document their concerns in this part of their proposal.

VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitations and Award -- This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to accept or reject any or all proposals received as the result of this request, to negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. Contract Type -- Metro intends to award a personal services contract with the selected firm for this project. A copy of the standard form contract which the successful consultant will be required to execute is attached.
- C. Billing Procedures -- Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. A monthly billing, accompanied by a progress report, will be prepared for review and approval.
- D. Validity Period and Authority -- The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with the authority to bind any company contracted during the period in which Metro is evaluating the proposal.

IX. EVALUATION OF PROPOSALS

- A. Evaluation Procedure -- Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the

following section. The evaluation process will result in Metro developing a short list of the firms who, in its opinion, are most qualified. Interviews with these firms will be requested prior to final selection of one firm.

B. Evaluation Criteria -- This section provides a description of the criteria which will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

1. Project work plan and methodology
Vendors demonstration of providing a sound methodology for accomplishing project objectives.
2. Cost proposal
Proposed cost of project within acceptable range based on proposed work.
3. Project staffing experience
Evidence of experience of persons assigned to complete project tasks including experience in project management, data assessment and solid waste management.
4. Compliance with the RFP
Vendors demonstration of clearly understanding and complying with the RFP.
5. Organization
Ease in understanding written proposal.

X. ATTACHMENTS

- A. Model Solid Waste Facility Ordinance Definitions**
- B. Metro Solid Waste Data Sources**
- C. RFP Time Line**
- D. Personal Services Contract Form**
- E. Disadvantaged Business Program**

ATTACHMENT A - MODEL ORDINANCE FACILITY WORKING DEFINITIONS

Depot shall mean a facility for transferring containerized solid waste from one mode of transportation to another.

Demolition landfill shall mean a facility which is only authorized to accept land clearing debris, building construction and demolition debris and inert materials, and similar substances as further regulated and described in this ordinance. This is in contrast to a general purpose landfill which means a facility which accepts all type of municipal solid waste for burial on-site, but does not accept hazardous wastes as defined by ORS 466.005.

Hazardous waste collection center shall mean a facility for gathering, controlling and processing for safe transport of hazardous materials collected from households and small quantity generators as further regulated and described in this ordinance.

Limited purpose landfill shall mean any land disposal site permitted pursuant to rules adopted under ORS Chapter 459 for the disposal of non-hazardous waste material including asbestos, contaminated soil, demolition debris, wood, treated sludges for industrial processes, or other specific waste material.

Lumber recovery centers shall mean a facility which accepts used or damaged dimensioned lumber or timbers for reprocessing and transport as further regulated and described in this ordinance.

Material recovery centers shall mean a facility for obtaining from solid waste, by pre-segregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.

Mixed construction and demolition debris processing centers shall mean facilities which collect, store, process and distribute construction and demolition debris as further regulated and described in this ordinance.

Mixed waste composting facilities shall mean a facility in which the organic component of the solid waste stream is biologically decomposed under aerobic or anaerobic condition into a humus-like final product that can be used as a soil amendment.

Monofills shall mean a site which accepts only one material or material class for burial, as further regulated and described in this ordinance. An example would be a monofill which only accepts asbestos.

Staging area shall mean a place where empty or loaded trailers or containers are sorted for short durations awaiting transfer to the landfill.

Transfer station shall mean a facility which provides an interim point to dispose of waste, which is then transferred, and where material may be processed for recovery.

Small scale specialized incinerators shall mean an facility which is designed and operated to burn a specific waste product, and shall only be an ancillary use to the primary permitted or conditionally permitted use. This would include incinerators specifically designed for disposal of medical wastes located as a part of a medical facility. This does not include mass incinerators, refuse derived fuel technologies or any other process which utilizes unseparated municipal solid wastes.

Solid waste facility shall mean for the purposes of this ordinance ~~any depot,~~ material recovery center, lumber recovery center, yard debris center, mixed waste composting facility, monofill, limited purpose landfill, hazardous waste collection center or staging area, small scale specialized incinerators, or mixed construction and demolition debris collection centers. General purpose landfills, solid waste incinerators or energy recovery facilities are not included within the term solid waste facility.

Yard debris processing centers shall mean a facility which processes yard debris into a usable soil amendment through controlled biological decomposition.

ATTACHMENT B

LIST OF METRO SOLID WASTE DATA MATERIALS

1. Regional Solid Waste Management Plan
2. Solid Waste Inventory
3. Basic Data for Solid Waste Management
4. Model Solid Waste Facility Zoning Ordinance - Strategy Paper

MT modorfp/dsk1

TIME LINE - MODEL SOLID WASTE ORDINANCE

	1989												1990											
Month	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D								
Week	1234	1234	1234	1234	1234	1234	1234	1234	1234	1234	1234	1234	1234	1234	1234	1234								
1.1 Consultant selection																								
1.1.1 Prepare RFP, staff review, Director approval																	X							
1.1.2 Send to Contracts for review and approval																	X (Sept 27)							
1.1.3 Contracts transmits to Legal for review																	X (Oct 14)							
1.1.4 RFP filed by Contracts with Council																	X (Dec 8)							
1.1.5 CSWC review																	X (Jan 2)							
1.1.6 Council Hearing																	X (Jan 11 or Jan 25) Milestone - RFP approved by end of January							
1.1.7 Amend as appropriate																	X							
1.1.8 Advertise for services, notify pot. contractors																	X (Jan 26)							
1.1.9 Proposals due																	X (Feb 16)							
1.1.10 Review proposals, make recommendation																	X (Feb 21)							
1.1.11 Complete staff report, resolution																	X							
1.1.12 Contract Admin. review/ Executive Officer review																	X							
1.1.13 Schedule & present to Solid Waste subcom.																	X (Mar 6)							
1.1.14 Present to Metro Council																	X March 22 Milestone - Contract award approved by end of March							
1.2 Preparation of Draft Model Ordinance																								
1.2.1 Review approved strategy paper, facility definitions																	X (begin March 26)							
1.2.2 Complete literature search																	X--X							
1.2.3 Attend project coordination meeting with staff																	X							
1.2.4 Review ordinance outline																	X-X							
1.2.5 Draft clear and objective standards																	X--X							
1.2.6 Write administrative procedures																	X-X							
1.2.7 Discuss review w/Metro legal, planning staff																	X							
1.2.8 Revise as appropriate																	X (May 15 - Milestone - First draft model ordinance							
1.2.9 Present draft to Land Use subcom.																	X (May 18)							
1.2.10 Second meeting with Land Use																	X (May 25)							
1.2.11 Prepare letter for public, industry comment																	X							
1.2.12 Send letter to all interested parties																	X							
1.2.13 Review public, industry comments																	X							
1.2.14 Third meeting re: ord. w/ LU subc.																	X (June 22)							
1.2.15 Fourth meeting re: ord. w/ LUsubc.																	X (June 29)							
1.2.16 Review model language with Technical Subcom.																	X (July 27)							
1.2.17 Optional mtg w. Tech sub re: model language																	X (Aug 10 - special meeting date)							
1.2.18 Meet with Policy Com, amend as appropriate																	X (Sept 14)							
1.2.19 Optional mtg w/ Policy Com. re: model code																	X (Oct 12)							
1.2.20 Conduct mtg w/ Council SW com.																	X (Nov 6)							
1.2.21 Optional mtg w/ Council SW com.																	X (Nov 20)							
1.2.22 Conduct mtg w/ Metro Council																	X (Dec 6)							
1.2.23 Complete staff training session - end of project																	X (Dec 15)							

ATTACHMENT "C"

Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT dated this _____ day of _____ 19__, is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, hereinafter referred to as "METRO," whose address is 2000 S.W. First Avenue, Portland, OR 97201-5398, and _____, hereinafter referred to as "CONTRACTOR," whose address is _____, for the period of _____, 19__, through _____, 19__, and for any extensions thereafter pursuant to written agreement of both parties.

W I T N E S S E T H :

WHEREAS, This Agreement is exclusively for Personal Services;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

CONTRACTOR AGREES:

1. To perform the services and deliver to METRO the materials described in the Scope of Work attached hereto;
2. To provide all services and materials in a competent and professional manner in accordance with the Scope of Work;
3. To comply with all applicable provisions of ORS Chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, as if such provisions were a part of this Agreement;

4. To maintain records relating to the Scope of work on a generally recognized accounting basis and to make said records available to METRO at mutually convenient times;

5. To indemnify and hold METRO, its agents and employees harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, with any patent infringement arising out of the use of CONTRACTOR'S designs or other materials by METRO and for any claims or disputes involving subcontractors;

6. To comply with any other "Contract Provisions" attached hereto as so labeled; and

7. CONTRACTOR shall be an independent contractor for all purposes, shall be entitled to no compensation other than the compensation provided for in the Agreement. CONTRACTOR hereby certifies that it is the direct responsibility employer as provided in ORS 656.407 or a contributing employer as provided in ORS 656.411. In the event CONTRACTOR is to perform the services described in this Agreement without the assistance of others, CONTRACTOR hereby agrees to file a joint declaration with METRO to the effect that CONTRACTOR services are those of an independent contractor as provided under Chapter 864 Oregon Laws, 1979.

METRO AGREES:

1. To pay CONTRACTOR for services performed and materials delivered in the maximum sum of _____ AND _____

/100THS (\$_____) DOLLARS and in the manner and at the time designated in the Scope of Work; and

2. To provide full information regarding its requirements for the Scope of Work.

BOTH PARTIES AGREE:

1. That METRO may terminate this Agreement upon giving CONTRACTOR five (5) days written notice without waiving any claims or remedies it may have against CONTRACTOR;

2. That, in the event of termination, METRO shall pay CONTRACTOR for services performed and materials delivered prior to the date of termination; but shall not be liable for indirect or consequential damages;

3. That, in the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to an appellate court;

4. That this Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either party; and

5. That this Agreement may be amended only by the written agreement of both parties.

CONTRACTOR NAME

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Date: _____

Date: _____

Page 3 - PERSONAL SERVICES CONTRACT

ATTACHMENT E
DISADVANTAGED BUSINESS PROGRAM COMPLIANCE FORM

(To be submitted with Bid or Proposal)

Name of Metro Project: _____

Name of Contractor: _____

Address: _____

Phone: _____

In accordance with Metro's Disadvantaged Business Program, the above-named contractor has accomplished the following:

- _____ 1. Has fully met the contract goals and will subcontract _____ percent of the contract amount to DBEs and _____ percent to WBEs.
- _____ 2. Has partially met the contract goals and will subcontract _____ percent of the contract amount to DBEs and _____ percent to WBEs. Contractor has made good faith efforts prior to bid opening (or proposal submission date, as applicable) to meet the full goals and will submit documentation of the same to Metro within two working days of bid opening (or proposal submission date).
- _____ 3. Will not subcontract any of the contract amount to DBEs or WBEs but has made good faith efforts prior to bid opening (or proposal submission date, as applicable) to meet the contract goals and will submit documentation of such good faith efforts to Metro within two working days of bid opening (or proposal submission date).

Authorized Signature

Date

MODEL SOLID WASTE FACILITY ZONING ORDINANCE

STRATEGY PAPER

METRO



October, 1989

Planning and Development Department

MODEL SOLID WASTE FACILITY ZONING ORDINANCE

STRATEGY PAPER

TABLE OF CONTENTS

I.	OBJECTIVE.....	1
II.	WHY WRITE A MODEL ORDINANCE?.....	1
III.	WHAT SOLID WASTE FACILITIES WILL BE ADDRESSED?.....	1
IV.	WHAT SOLID WASTE FACILITIES WILL NOT BE INCLUDED?	2
V.	HOW DO YOU DEFINE THESE SOLID WASTE FACILITIES?.....	2
VI.	WHAT TYPES OF IMPACTS CAN BE EXPECTED TO BE ADDRESSED?.....	4
VII.	WHAT IS MEANT BY CLEAR AND OBJECTIVE STANDARDS?.....	5
VIII.	WHAT TYPES OF LOCAL REVIEW ARE AVAILABLE, AND HOW MIGHT THESE RELATE TO THE FACILITIES?.....	5
IX.	HOW WOULD THE REGULATIONS BE APPLIED TO ZONING ORDINANCES?.....	5
X.	HOW SHOULD INDIVIDUAL FACILITY TYPES BE ADDRESSED?.....	6
XI.	WHAT MIGHT CONSTITUTE A REASONABLE ORDINANCE STRUCTURE?.....	6

I. OBJECTIVE

To provide clear and objective standards for those facilities listed in the Regional Solid Waste Management Plan or those which will be included within the RSWMP.

II. WHY WRITE A MODEL ORDINANCE?

The Regional Solid Waste Management Plan (RSWMP) states that "Each city and county shall provide appropriate zoning to allow planned solid waste facilities or enter into intergovernmental agreements with others to assure such zoning. Whether by outright permitted use, conditional use or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities."

Metro has the responsibility of seeing that solid waste planning for the region is completed in a timely and effective manner. By funding the development of a model ordinance, Metro can provide assistance to local governments, who can in turn take the model ordinance and adapt it to local conditions.

The City of Portland elected to pursue a mitigation agreement, with its zoning ordinance addressing solid waste facilities with just a few lines of text. (The criteria and standards for siting solid waste facilities are contained within the joint agreement between the City and Metro). This meets the intent of the RSWMP for materials recovery facilities and transfer stations only. However, some local jurisdictions may choose to regulate solid waste facilities through zoning. They may wish to insure that the regulation of solid waste facilities outside the scope of the RSWMP are addressed. It is also likely that the regulations will be similar, whether contained within a mitigation agreement or within a zoning ordinance, so that the effort to write a model ordinance will pay off whether or not a mitigation agreement or zoning ordinance is chosen by a local jurisdiction.

III. WHAT SOLID WASTE FACILITIES WILL BE ADDRESSED?

The solid waste facilities proposed to be addressed are:

1. Demolition landfills
2. Household hazardous material collection depots
3. Limited purpose landfill
4. Materials recovery facilities
5. Mixed waste composting facilities
6. Mixed construction and demolition debris collection centers
7. Monofills
8. Municipal solid waste depots
9. Small scale specialized incinerators
10. Small quantity generator hazardous material collection facilities
11. Transfer stations
12. Transfer, Storage and Disposal facilities (TSD)
13. Wood waste recycling centers
14. Yard debris depots and
15. Yard debris processing centers.

IV. WHAT SOLID WASTE FACILITIES WILL NOT BE INCLUDED?

Energy recovery facilities such as mass incinerators and refuse-derived fuel technology facilities will not be included, consistent with Metro Resolution #89-1039-A. However, small scale special purpose incinerators are proposed to be included, as they can provide specialized means to dispose of small volume specialized wastes, such as medical wastes. No freestanding incinerators are included.

General purpose landfills will be excluded from consideration because of the 20 year contract Metro has with Waste Management for use of their Arlington Landfill.

No other facility other than those explicitly listed will be addressed.

V. HOW DO YOU DEFINE THESE SOLID WASTE FACILITIES?

The following definitions are proposed to describe the various facilities to be included in the model ordinance (the ** indicate where the definitions are new or differ from those in the RSWMP):

Demolition landfill shall mean a facility which is only authorized to accept land clearing debris, building construction and demolition debris and inert materials, and similarly substances as further regulated and described in this ordinance. This is in contrast to a general purpose landfill which means a facility which accepts all types of municipal solid waste for burial onsite, but does not accept hazardous wastes as defined by ORS 466.005. **

Household Hazardous waste collection depot shall mean a facility for gathering, and packaging household hazardous wastes for safe transport to approved processing and/or disposal facilities. **

Limited purpose landfill shall mean any land disposal site permitted pursuant to rules adopted under ORS Chapter 459 for the disposal of non-hazardous waste material including asbestos, treated petroleum contaminated soil, construction, landclearing and demolition debris, wood, treated sludges for industrial processes, or other specific waste material. **

Material recovery facility shall mean a facility for obtaining from mixed solid waste, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. **

Mixed waste composting facility shall mean a facility in which the organic component of the solid waste stream is biologically decomposed under aerobic or anaerobic conditions into a humus-like final product that can be used as a soil amendment.

Mixed construction and demolition debris recycling facility shall mean a facility which collects, stores, processes and recovers recyclable material from mixed construction and demolition debris. **

DEFINITIONS - continued

Monofill shall mean a site which accepts only one material or material class for burial. An example would be a monofill which only accepts asbestos. **

Municipal Solid Waste Depot shall mean a facility for transferring containerized solid waste from one mode of transportation to another.

Select waste shall mean those waste substreams which due to their bulk, weight, or other unique handling characteristics meet one of the following criteria:

1. are not suitable or desirable for processing through regional transfer stations;
2. cannot utilize the primary transport system;
3. if land disposed, can be managed by limited-purpose landfills. **

Small scale specialized incinerator shall mean a facility which is designed and operated to burn a specific waste product, and shall only be an ancillary use to the primary permitted or conditionally permitted use. This would include incinerators specifically designed for disposal of medical wastes located as a part of a medical facility. This does not include mass incinerators or refuse derived fuel technologies or any other process which utilizes unseparated municipal solid wastes. **

Small quantity generator hazardous material collection facility shall mean a facility for the gathering, controlling and processing for safe transport, hazardous materials collected from small quantity generators. **

Solid waste facility shall mean for the purposes of this ordinance any Demolition landfill, Household hazardous material collection depot, Materials recovery facility (or materials recycling facilities), Mixed waste composting facility, Mixed construction and demolition debris recycling facility, Monofills, Municipal solid waste depot, Small scale specialized incinerator, Small quantity generator hazardous material collection facility, Transfer station, Transfer, Storage and Disposal facilities (TSD), Wood waste recycling center, Yard debris depot or Yard debris processing center. General purpose landfills, solid waste incinerators or energy recovery facilities are not included within the term solid waste facility. **

Transfer station shall mean a facility which provides an interim point to temporarily store municipal solid waste for transfer to larger vehicles for transport to a final disposal site. Material recovery may take place prior to transport.

Transfer, Storage and Disposal facility (TSD) shall mean a facility which meets the requirements of the Resource, Conservation and Recovery Act, 42 USC ss 6901-6987, as revised, for the transfer, storage and disposal of hazardous wastes.

Wood waste recycling center shall mean a facility which accepts scrap lumber, timbers, or natural wood debris including logs, limbs and tree trunks, for processing into products such as hog fuel, fuel pellets, or home fireplace logs. All raw materials shall be untreated wood and shall not contain pressure treated or wood preservative treated wood. **

DEFINITIONS - continued

Yard debris depot shall mean a facility which accepts yard debris for temporary storage, awaiting transport to a facility for processing.

Yard debris processing center shall mean a facility which processes yard debris into a usable soil amendment through controlled biological decomposition.

VI. WHAT TYPES OF IMPACTS CAN BE EXPECTED TO BE ADDRESSED?

The following is a list of potential environmental and land use impacts from solid waste facilities:

Environmental

air pollution (including dust/particulates, and volatile emissions)
ground water
landscaping/building/site design
fire prevention/protection
floodplains
geology and soil characteristics
litter
light/glare
methane gas control
noise
odor
surface water
topography
traffic/transportation
vibration
wetlands

Economic

Land Use

buffering, offsite impacts
historic, archeological resources
hours of operation
separation from open space and parks
sewage
signs
storage (visual concerns)

VII. WHAT IS MEANT BY CLEAR AND OBJECTIVE STANDARDS?

The phrase "clear and objective standards" is a term of art within the planning field. Standards which are clear and objective should only yield answers of either "yes" or "no" (eg. - Will a traffic level of service 'D' or better exist after development?) The model ordinance will proscribe clear and objective standards which protect the public from potential adverse impacts as listed on page 4.

In addition, the standards should be "tested" to insure that they are high enough to address legitimate impacts, but not designed to be simply onerous in order to discourage siting or make it impossible.

VIII. WHAT TYPES OF LOCAL REVIEW ARE AVAILABLE, AND HOW MIGHT THIS RELATE TO THE FACILITIES?

Typically, local jurisdictions have two or three types of review. The least involved is an Administrative Review is a type of process where the staff check the standards of the code and either approve or deny a proposal. Usually, no staff discretion is allowed by the code.

A second type of review available to local governments is to conduct a staff review, but after public notice has been completed, either by posting a site, notifying neighboring land owners within a specified distance or by publishing legal notice, or some combination of these methods.

The third major type of review is conducted through a public hearing, with either a Planning Commission, Elected Officials, or a Hearing Officer. This procedure also includes some means of public notice.

With regard to the proposed solid waste facilities, some types of facilities have much greater potential impacts than others. This could be handled by having those facilities which have few impacts processed through an administrative type of review. Other facilities which have greater potential impacts could be considered through a public hearing process.

IX. HOW WOULD THE REGULATIONS BE APPLIED TO ZONING ORDINANCES?

Residential zones are not generally appropriate for the types of solid waste facilities. (If Household Hazardous Waste Depots are sited at fire stations located on residentially zoned land, an exception may be considered)

Likewise, most neighborhood commercial zones, when applied to small (1 acre or less?) sites, do not appear to be good zones for these types of solid waste facilities.

A model ordinance designed to add uses and conditions to commercial, business park and industrial zones would appear to be the most appropriate approach. Where a commercial or industrial zone abuts a residential zone, additional standards may apply, depending upon proximity to residential and the type of solid waste facility. For those entities that have agricultural lands, the uses and standards could also apply, as anticipated in the RSWMP.

X. HOW SHOULD INDIVIDUAL FACILITY TYPES BE ADDRESSED?

In order to avoid confusion with ordinance administration and interpretation problems, it appears to be the best practice to define all possible facilities with as much detail and clarity as possible. This has been started with the definitions contained within this document on pages 2 and 3.

This is in contrast to only using a generic term such as "solid waste facility" to apply to all types of facilities. This strategy is suggested to address the issue of Danwell Corp v. Zoning Hearing Board, which found that a transfer station was not a permitted use or of the same nature as a sanitary landfill (which was a permitted use in the zone).

Although individual facilities may be very specifically defined and included within a zoning ordinance, it is possible to then aggregate logical groupings of facilities by materials processed, or level of potential impacts in order to save ordinance language from repeating some regulatory features.

XI. WHAT MIGHT CONSTITUTE A REASONABLE ORDINANCE STRUCTURE?

Several ordinance features have been discussed. Inclusion directly into appropriate zones, such as industrial and some commercial zones has been recommended. Review procedures ranging from administrative review to full public hearing processes have been described. Following is one possible way that the facilities could be addressed within a model ordinance:

<u>Facility Type</u>	<u>Possible Zones</u>
Demolition landfills	industrial, commercial, agriculture
Household hazardous material collection depots	industrial, commercial, residential?
Limited purpose landfill	heavy industrial, agriculture
Materials recovery facility	heavy industrial
Mixed waste composting facility	heavy industrial
Mixed construction and demolition debris recycling facilities	heavy industrial
Monofills	heavy industrial, agriculture

XI. WHAT MIGHT CONSTITUTE A REASONABLE ORDINANCE STRUCTURE? (continued)

<u>Facility Type</u>	<u>Possible Zones</u>
Municipal solid waste depots	light, heavy industrial
Small scale specialized incinerators	industrial, commercial
Small quantity generator hazardous material collection facilities	heavy industrial
Transfer stations	industrial, agriculture
Transfer, Storage and Disposal facilities (TSD)	heavy industrial
Wood waste recycling centers	light, heavy industrial
Yard debris depots	industrial, commercial
Yard debris processing centers	industrial, agriculture

MODEL ORDINANCE
SELECTED RESOURCE MATERIALS

Metro Documents

Basic Data for Solid Waste Management, June, 1988

Design Standards for the East Transfer and Recycling Center, draft, 1988

Inventory, Solid Waste Management Plan, May 1988

Operation Standards for the East Transfer and Recycling Center, draft, 1988

Regional Solid Waste Management Plan, October, 1988

Waste Stream Characterization Study, SCS Engineers, 1987, and 1989 update

Judicial Decisions

MIG Investments v. Illinois EPA, Supreme Court of Illinois, April, 1988, 5123 N.E. 2d 1 ("Vertical expansion of an existing landfill expands its 'boundaries' so that local government's approval is required by Illinois Environmental Protection Act") Land Use Law, October, 1988

Danwell Corp. v. Zoning Hearing Board, Commonwealth Court of Pennsylvania, April 1988, 540 A.2d 588 ("Trash transfer station is not a permitted use of the same nature as a permitted use in a district that permits sanitary landfills, truck terminals and distributing.") Land Use Law, September, 1988

Local Documents - Legal Agreements/orders

City of Portland/Metro agreement for siting solid waste facilities, 1989

Hillsboro Landfill - DEQ Solid Waste Disposal Permit for a demolition landfill, draft, September, 1989

Oregon City Conditional Use Permit for Metro South Transfer Station September, 1989

Environmental Quality Commission order, March, 1989

DUAL TRACK DOCUMENT DEVELOPMENT PROCESS

Background

The Metro Council has authorized the development of a Model Zoning Ordinance with clear and objective standards for the siting of solid waste disposal facilities. This effort was approved in order to assist local governments who may not have the resources readily available to complete such a document, and because efficiencies could be achieved.

After the initial Metro Council discussion of the Model Ordinance concept, Metro became involved with the siting of the East Transfer Station, with sites proposed to be located within the City of Portland. As the City of Portland Zoning Ordinance had some standards which did not appear to be clear and objective, revision to the Ordinance was suggested. As an alternative, Metro proposed a Mitigation Agreement, whereby City of Portland Zoning Ordinance language objectionable to Metro was struck, and transfer stations and materials recovery facilities were permitted uses subject to a Mitigation Agreement.

The Land Use Subcommittee of the Solid Waste Technical Committee has had initial discussions about the suitability of a Mitigation Agreement in contrast to a Zoning Ordinance amendment. Several members indicated that within their jurisdictions, a Mitigation Agreement may very well be more workable than extensive additions to their zoning ordinances.

The following potential disadvantages of Model Zoning Ordinances are cited: 1) for smaller jurisdictions with relatively short zoning ordinances, the Model Zoning Ordinance provisions could greatly increase the size of the total document, and 2) the provisions of the Model Zoning Ordinance may be used very, very infrequently.

Recommendation

The Land Use Subcommittee recommends that a "dual track" may be the best direction to pursue with regard to a model document. Specifically, The Land Use Subcommittee recommends the development of a Model Mitigation Agreement as well as a Model Zoning Ordinance. This gives a greater range of choice to local jurisdictions as to how they will achieve clear and objective standards for siting solid waste facilities.

National Examples - Legal Documents

Model Zoning Ordinance for Recycling Centers, League of California Cities, July, 1989

East Troy, Wisconsin, Negotiated Agreement for a Landfill

Articles

A Report on Household Hazardous Waste Management, Resource Recycling, September, 1989

Beyond Capacity: Addressing the Concerns of Local Opposition in the Siting Process, Stanford Environmental Law Journal, vol 6:145, 1986-7

Degree of Public Support of Household Hazardous Waste Control Alternatives, American Journal of Public Health, March, 1987

Hazardous Waste Facility Siting through Negotiation, Stanford Environmental Law Journal, vol 6:161, 1986-7

Local Control of Hazardous Wastes through Land Use Regulation, Real Property, Probate and Trust Journal

Zoning for Recycling: One State's Approach, Resource Recycling, July, 1989

Publications

Glossary of Recycling Terms & Acronyms, Resource Recycling, 1988

King County Solid Waste Plan, July, 1989

Refuse Collection and Recycling, Practices and Regulations, Bureau of Governmental Research and Service, 1988

Thesaurus on Resource Recovery Terminology, ASTM Technical Publication #832

The Solid Waste Dilemma, An Agenda for Action, EPA, February, 1989

Understanding the Small Quantity Generator Hazardous Waste Rules, EPA, 1986

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1195, FOR THE PURPOSE OF APPROVING A REQUEST FOR PROPOSALS DOCUMENT FOR THE MODEL ZONING ORDINANCE

Date: December 11, 1989

Presented by: Rich Carson

FACTUAL BACKGROUND

Metro is charged by the State with the responsibility for planning the disposal of solid waste generated within the region. However, local jurisdictions have the permitting authority with regard to land use, including the siting of solid waste facilities.

In order to simplify the siting of needed facilities, the adopted FY 1989-90 budget includes the development of a model zoning ordinance which provides clear and objective standards upon which to judge the siting of solid waste facilities. A local jurisdiction could choose to utilize the model ordinance, modify it to meet local conditions, or write their own language. So long as the local outcome is clear and objective standards, which do not unreasonably exclude the siting of solid waste facilities, Metro's goals will be served.

A work program, timeline and Strategy Paper (outlining 15 specific solid waste facilities, providing working definitions of the facilities, and suggesting the factors for which clear and objective standards shall be written) have been circulated, reviewed and revised by the Solid Waste Land Use Subcommittee, the Solid Waste Technical Committee and the Solid Waste Policy Committee.

During their considerations of the materials, these committees strongly recommended that in addition to a model zoning ordinance, a model mitigation agreement be completed. This model mitigation agreement, similar in form to that which has been consummated between the City of Portland and Metro, was particularly attractive to smaller jurisdictions. The smaller cities felt that they could keep their zoning ordinances short by referencing a mitigation agreement. The two documents would be identical in substance and intent, but differ in form. For this reason, no additional budgetary impacts are expected.

STAFF REPORT
CONSIDERATION OF RESOLUTION No. 90-1195
MODEL ZONING ORDINANCE
page 2

It is staff's conclusion that a well defined, specific product has been described. The consultant, once selected, should be able to proceed rapidly because of the issues already discussed. The RFP has been reviewed and approved by the Office of General Counsel and Contracts Division. The release of the RFP is now timely.

EXECUTIVE OFFICER'S RECOMMENDATION:

The Executive Officer recommends the approval of Resolution No. 90-1195 approving the Request for Proposals for professional planning services for the completion of a Model Zoning Ordinance.

11-28-89
disk5 modorsta

Agenda Item No. 4.8
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1198

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1198, FOR THE PURPOSE OF SUPPORTING EARTH
DAY ACTIVITIES AND GOALS IN THE METROPOLITAN REGION

Date: January 17, 1990

Presented by: Councilor
Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 5 to 0 to recommend Council adoption of Resolution No. 90-1198. Voting: Councilors Hansen, Bauer, Buchanan, DeJardin and Wyers. This action taken January 16, 1990.

Committee Discussion/Issues: In support of Earth Day 1990, Metro will hold a Household Hazardous Waste Collection day on April 21 and will hold special events at the Zoo on April 22.

Metro's work with the Recycling Information Center, the Zoo Education and Endangered Species Program, the Waste Reduction Education Program, the Institutional Purchasing Program, the waste audit, etc., carry out the goals of the Earth Day event.

There was no Committee discussion and the Committee voted unanimously to recommend Council adoption of Resolution No. 90-1198.

GH:RB:pa
A:\RB.139

BEFORE THE COUNCIL OF
THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF SUPPORTING
EARTH DAY ACTIVITIES AND GOALS
IN THE METRO REGION

RESOLUTION NO: 90-1198

Introduced by the Executive
Officer

WHEREAS, This year is the twentieth anniversary of Earth Day and a major effort is taking place worldwide to promote energy and natural resource conservation in order to achieve a sustainable planet, and;

WHEREAS, The Metropolitan Service District, in offering solid waste management services, transportation planning services and management of the Metro Washington Park Zoo, does actively support and take into consideration conservation issues on projects undertaken by the agency; and

WHEREAS, Metro educates citizens in the region on the importance of conserving energy and water, using efficient transportation, and adopting a more ecologically sound lifestyles; and

WHEREAS, Metro is working to insure that energy and natural resource conservation is a component in projects undertaken by the agency and is a component in waste reduction and zoo education programs for the region, and

WHEREAS, Metro is working with the communities in the metropolitan area to achieve a sustainable future by using resources wisely in order to preserve resources for future generations; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Services District hereby supports the goals and activities developed for Earth Day, Earth Year and this Earth Decade.

ADOPTED by the Council of the Metropolitan Service District
this ____ day of _____, 1990.

Tanya Collier, Presiding Officer

Staff Report

RESOLUTION NO. 90-1198, FOR THE PURPOSE OF SUPPORTING EARTH DAY ACTIVITIES AND GOALS IN THE METROPOLITAN REGION

Date: December 19, 1989

Presented by: Joan Saroka

Proposed Action: To support Resolution 90-1198 as a way of recognizing Earth Day goals and activities in the metro area.

Factual Background and Analysis

The year 1990 is the twentieth anniversary of Earth Day.

The first Earth Day, held on April 22, 1970, resulted in over 10,000 schools, 2,000 colleges and universities and a large number of communities participating in events that demonstrated their environmental concerns. In 1970 the U.S. Congress adjourned for Earth Day so that members could attend the events in their communities. Since the first Earth Day the concerns that were voiced were translated into lasting victories, the Clean Air Act, the Clean Water Act and the creation of the Environmental Protection Agency.

This year there is a worldwide effort underway to promote energy and natural resource conservation in order to achieve a sustainable planet.

Metro, in support of Earth Day 1990, will hold a Household Hazardous Waste collection day on April 21. Metro is planning a special event at the zoo in cooperation with the World Forestry Center and the Oregon Museum of Science and Industry (OMSI) to be held on April 22. Metro will distribute the special school lesson plans developed for Earth Day to interested schools and teachers in the metropolitan area. A fact sheet will be developed that emphasizes Metro's waste reduction promotion and education program and the zoo's endangered species program. The fact sheet will promote "Earth Day is Every Day" at Metro. The attached resolution is Metro's proclamation of support for Earth Day, Earth Year and the Earth Decade.

Metro's work with the Recycling Information Center, the zoo education and endangered species program, the waste reduction education program, the institutional purchasing program, the waste

audit and business consultation program and transportation planning carry out the goals of the Earth Day event.

Executive Officer's Recommendation

The Executive Officer recommends adoption of Resolution No. 90-1198.

Agenda Item No. 4.9
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1205

ZOO COMMITTEE REPORT

RESOLUTION NO. 90-1205, AUTHORIZING THE EXECUTIVE OFFICER OR HER DESIGNEE TO DISPOSE OF RESIDENTIAL PROPERTY BEQUEATHED TO THE METRO WASHINGTON PARK ZOO

Date: January 19, 1990

Presented By: Councilor Knowles

COMMITTEE RECOMMENDATION: At the January 18, 1990, Zoo Committee meeting, Councilors DeJardin, Ragsdale and myself voted unanimously to recommend Council adopt Resolution No. 90-1205. Councilors Gardner and McFarland were excused.

COMMITTEE DISCUSSION/ISSUES: Zoo Development Director, Ellen Lanier-Phelps presented the resolution which provides for two actions on the Emerson estate properties bequeathed to the Zoo in 1987:

1. approves the sale of property at 6404 N.E. 35th Avenue, Portland, for an offer of \$39,450, cash at closing;
2. authorizes the Executive Officer or her designee to move forward in selling the property at 6416 N.E. 35th Avenue for a cash price of no less than \$25,000.

Zoo staff briefed the former Convention, Zoo & Visitors Facilities Committee in May, 1989, of the Emerson bequest which had been contested by three of Mr. Emerson's four children, but was ruled in the Zoo's favor, January, 1989. The Committee did not raise any issues, but discussed the option of selling the properties, which are contiguous, as a single package. It was noted the second property is comprised of two lots, each valued at approximately \$11,000 by four residential realtors' estimates. On one lot, there is a single-family home of approximately 800 square feet with no foundation and deemed as a "white elephant" by the realtors. A shed with no electricity spans both lots. Ms. Lanier-Phelps noted the real estate agents advised the Zoo the properties' values would decline due to negative media attention focussed on Portland's inner northeast neighborhoods. The Committee agreed it was appropriate to proceed with the recommended sales to reduce any potential liability and to secure as good a deal as possible for the Zoo.

jpmthree
b:\901205.cr

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 90-1205
THE EXECUTIVE OFFICER OR HER)	
DESIGNEE TO DISPOSE OF RESIDENTIAL	)	Introduced by Rena Cusma,
PROPERTY BEQUEATHED TO THE METRO	)	Executive Officer
WASHINGTON PARK ZOO)	

WHEREAS, Property at 6404 N. E. 35th Avenue and 6416 N. E. 35th Avenue, Multnomah County, was bequeathed to the Metro Washington Park Zoo by one Edward Gordon Emerson, Sr., deceased; and

WHEREAS, Metro Code 2.040.33 requires that the sale of Metropolitan Service District real property be approved by the Council of the Metropolitan Service District; and

WHEREAS, The property at 6404 N. E. 35th Avenue has been listed at \$39,950, an offer has been received at \$39,450, and there exists a need to expeditiously close and receive the total sale price in cash at closing; and

WHEREAS, The property at 6416 N. E. 35th Avenue has been listed for sale at \$35,950 but its sale impaired due to the lack of a foundation under the house, a final sale price of no less than \$25,000 cash at closing will be received and deemed acceptable to the Executive Officer; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District authorizes the Executive Officer or her designee to proceed with the sale of the Emerson estate property at 6404 N. E. 35th Avenue by accepting the offer of \$39,450 for the property, cash at closing.

2. That the Council of the Metropolitan Service District authorizes the Executive Officer or her designee to accept a cash price of no less than \$25,000 for the property at 6416 N. E. 35th Avenue.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1990.

Tanya Collier, Presiding Officer

gl

STAFF REPORT

FOR THE PURPOSE OF ALLOWING FOR THE SALE OF EMERSON ESTATE PROPERTY

January 16, 1990

Presented by: Ellen Lanier-Phelps

FACTUAL BACKGROUND AND ANALYSIS

Edward Gordon Emerson, Sr. died on November 7, 1987, leaving his entire estate to the Washington Park Zoo. In a will dated August 1, 1984, he directed that all his property be "used equally for the care, study, and general welfare of the elephants and the primates." Simultaneously, in preparing his will, he acknowledged having four children, to whom he left nothing. First Interstate Bank was appointed personal representative of the estate. The zoo was notified of Emerson's death on November 20, 1987 and given the estimated value of the estate at around \$90,000, including both real and personal property. The assets largely were in two pieces of real estate in N.E. Portland, valued together at a total taxable figure of \$87,400.

On November 25th, First Interstate Bank declined its role as Personal Representative, due to the threat of a will dispute and the low value of the estate. In ensuing weeks, the Metropolitan Service District, Rena Cusma, Executive Director, was named the new Personal Representative. Ellen Lanier-Phelps, the Zoo Development Director, was authorized to act as the agent of the Personal Representative in connection with the administration, management, supervision, and control of all estate property and assets. Attorney Lawrence Gorin was hired by Metro to oversee the closing and probate matters of the estate.

In February, 1988, an estate sale was held to dispose of Emerson's personal belongings. Funds from that sale, amounted to a gross sale total of \$7,129. These funds were combined into an interest-bearing account with funds deposited from checking and credit union accounts. Because of the threat of a will contest, the two real estate pieces were left unsold until the filing deadline was passed for the dispute.

On April 7th, 1988, three of Emerson's four children filed a petition contesting the will of Edward Emerson, and a lengthy legal process was begun. An original tenant was evicted by the Zoo from the smaller of the two houses, due to non-payment of rent and other bills. Ultimately, two new tenants were housed in the Emerson houses, in order to generate revenue and keep the properties secure during the legal process. The children refused to proffer or negotiate a settlement, and the issue came before Judge Lee Johnson on December 12, 1988.

In January, 1989, Judge Johnson rendered an opinion favoring the validity of the will, therefore enabling the Zoo to proceed with the closing of the probate process of the estate. April 19th, the estate was closed and assets passed into the hands of Metro.

To date, \$25,143. has been deposited into Metro accounts for the Zoo from the estate. Working with Neil Saling of the Metro Finance and Administration Section, we began the process of selling the two residential properties. To do so, three comparative market analyses were requested from real estate agents specializing in the Northeast area

of Portland. Stan Wiley Realtors was selected and a standard Oregon Multiple Listing signed.

At this time, the two pieces are listed separately and are currently on the market at \$39,950 and \$35,950. We have received an offer on 6404 NE 35th for \$39,450; because it closely meets our asking price, we feel it is important to move forward quickly to facilitate the sale of this property.

The second piece includes a small house that does not have a foundation. Because of this, we have found that there does not seem to be any way for a potential buyer to obtain conventional financing for the purchase of this property. Several potential buyers have expressed interest in the piece but have been unable to come up with cash for the asking price. Advice from professional realtors indicates that we will need to lower the asking price considerably to sell the property. Initial indications are that we are looking at a figure closer to \$25,000 as an obtainable selling cost. Because we estimate \$25,000 to be the lowest acceptable offer on the 6416 NE 35th piece, we would like to move ahead in efforts to sell this property and close out the Emerson estate completely.

Council approval is needed on the sale of these properties. Because the nature of the sales is that of a standard residential/house sale, there is a very limited period of time in which to consider and accept or refuse a potential buyer's offer. In order to be able to function within this process, we, therefore, seek approval on the sale of these properties.

Staff requests that Council authorize the Executive Director or her designate to proceed with the sale of these two small residential properties. Metro and zoo administration have screened and evaluated all offers, measuring their ability to meet the asking price and sale requirements. We feel we have received a valid offer for the 6404 NE 35th house and deem it acceptable. We will follow the same process for the second of the pieces, and we would like to be able to proceed with the closure of the one sale now and a future sale when our requirements are met.

Executive Officer's Recommendation

The Executive Officer recommends approval of Resolution No. 90-1205.

STAFF REPORT

FOR THE PURPOSE OF ALLOWING
FOR THE SALE OF EMERSON ESTATE PROPERTY

May 16, 1989

Presented by: Ellen Lanier-Phelps

FACTUAL BACKGROUND AND ANALYSIS

Edward Gordon Emerson, Sr. died on November 7, 1987, leaving his entire estate to the Washington Park Zoo. In a will dated August 1, 1984, he directed that all his property be "used equally for the care, study, and general welfare of the elephants and the primates." Simultaneously, in preparing his will, he acknowledged having four children, to whom he left nothing. First Interstate Bank was appointed personal representative of the estate. The zoo was notified of Emerson's death on November 20, 1987 and given the estimated value of the estate at around \$90,000, including both real and personal property. The assets largely were in two pieces of real estate in N.E. Portland, valued together at a total taxable figure of \$87,400.

On November 25th, First Interstate Bank declined its role as Personal Representative, due to the threat of a will dispute and the low value of the estate. In ensuing weeks, the Metropolitan Service District, Rena Cusma, Executive Director, was named the new Personal Representative. Ellen Lanier-Phelps, the Zoo Development Director, was authorized to act as the agent of the Personal Representative in connection with the administration, management, supervision, and control of all estate property and assets. Attorney Lawrence Gorin was hired by Metro to oversee the closing and probate matters of the estate.

In February, 1988, an estate sale was held to dispose of Emerson's personal belongings. Funds from that sale, amounted to a gross sale total of \$7,129. These funds were combined into an interest-bearing account with funds deposited from checking and credit union accounts. Because of the threat of a will contest, the two real estate pieces were left unsold until the filing deadline was passed for the dispute.

On April 7th, 1988, three of Emerson's four children filed a petition contesting the will of Edward Emerson, and a lengthy legal process was begun. An original tenant was evicted by the Zoo from the smaller of the two houses, due to non-payment of rent and other bills. Ultimately, two new tenants were housed in the Emerson houses, in order to generate revenue and keep the properties secure during the legal process. The children refused to proffer or negotiate a settlement, and the issue came before Judge Lee Johnson on December 12, 1988.

In January, Judge Johnson rendered an opinion favoring the validity of the will, therefore enabling the Zoo to proceed with the closing of the probate process of the estate. April 19th, the estate was closed and assets passed into the hands of Metro.

At this time, \$25,443. has been taken from the closed estate accounts and deposited into Metro accounts for the Zoo, and we have begun the process of selling the two residential properties. To do so, three comparative market analyses were requested from real estate agents specializing in the Northeast area of Portland. Karen Madsen of

Stan Wiley Realtors was selected and a standard Oregon Multiple Listing signed. The two pieces were listed separately at \$43,950 and \$41,950.

Through the market analysis process, we sought input as to what minimal repairs needed to be made on the houses to make them saleable. Bids for an outside personal contract have been solicited by the Zoo's Facilities Management Division to carry out this work, with a low bid of approximately \$750 the first in. We intend to undertake these repairs at the conclusion of the bid process.

Council approval is needed on the sale of these properties. Because the nature of the sale will be that of a standard residential/house sale, there will be a very limited period of time in which to consider and accept or refuse a potential buyer's offer. In order to be able to function within this process, we, therefore, need to develop a streamlined process of council approval on the sale of these properties.

Staff requests allowance for the sale of these two small residential properties. Metro and zoo administration will screen and evaluate all offers, measuring their ability to meet the asking price and sale requirements. When a valid offer is obtained and deemed acceptable, staff would like to bring the offer before the council through a phone vote process.

Agenda Item No. 5.1
Meeting Date: January 25, 1990

ORDINANCE NO. 90-330A

FINANCE COMMITTEE REPORT

ORDINANCE NO. 90-330A, ADOPTING A PROCEDURE TO INCLUDE THE BALLOT TITLE, EXPLANATION STATEMENT AND ARGUMENTS FOR DISTRICT MEASURES IN THE VOTERS' PAMPHLET

Date: January 19, 1990

Presented by: Councilor
Gardner

Committee Recommendation: At its January 18, 1990, meeting, the Committee voted unanimously to recommend adoption of Ordinance No. 90-330 as amended. Voting yes were Councilors Gardner, Wyers and Van Bergen. Councilors Collier and Devlin were excused.

Committee Discussion/Issues: Greg McMurdo, Governmental Relations Manager, presented the staff report. He indicated the Ordinance was a result of legislation enacted at the 1989 Legislative Session authorizing the District to fully utilize the Voters' Pamphlet for District measures. Under provisions of that statute (Chapter 250 Oregon Laws 1989), the District must adopt procedures to follow regarding the preparation, filing and review of ballot titles, explanatory statements and arguments. He indicated the ordinance was drafted after consultation with the Multnomah County Director of Elections and the Secretary of State and is patterned after the provisions used by counties. He suggested an amendment to the ordinance to remove the definition of "Committee Director" and "Political Committee" because they are not used in the ordinance and thus are unnecessary.

Council staff presented three amendments to the Ordinance to make it conform to current District practice (see Attachment 1 to this report). The amendments 1) require the General Counsel to file an explanatory statement with the Council at the time Council acts on an ordinance or resolution referring a measure; 2) require the Executive Officer to file ballot measure material with the Council Clerk at the time it is filed with the Secretary of State; and 3) require the Council Clerk to include the provisions of this Ordinance in the Metro Code.

At the earlier request of Councilor Devlin, Council staff raised the question with Mr. McMurdo regarding the period for filing an objection to the explanatory statement with the Executive Officer (subsection (2) and (3) of Section 5). Subsection (2) requires the Executive Officer to publish notice of an explanatory statement in a newspaper of general circulation in the District. Subsection (3) enables any elector to challenge the explanatory statement within 7 business days of its filing with the Executive Officer. Councilor Devlin's question was why isn't the filing period 7 days from the date of publication rather than 7 days from the date of filing with the Executive Officer?

FINANCE COMMITTEE REPORT
Ordinance No. 90-330A
January 19, 1990
Page 2

Mr. McMurdo responded that this provision is similar to the provision for challenging ballot titles as provided in state law (ORS 255.155) and that he had attempted to provide consistent procedures for the public to follow regarding ballot titles and explanatory statements.

DEC:pa

#1C:\ORD330A.MEM

Attachment



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503 221-1646

Memorandum

DATE: January 18, 1990

TO: Finance Committee *De*

FROM: Donald E. Carlson, Council Administrator

RE: REVIEW OF ORDINANCE NO. 90-330 WHICH ESTABLISHES PROCEDURES
RELATING TO DISTRICT MEASURES TO BE INCLUDED IN THE VOTERS'
PAMPHLET

The purpose of Ordinance No. 90-330 is to provide a set of procedures for the preparation and review of ballot titles, explanatory statements and arguments relating to District measures which will be printed in the Voters' pamphlet. The Ordinance is a requirement of Chapter 250 Oregon Laws 1989.

Following are suggested changes to bring the Ordinance procedure in line with current practice:

1. On page 3 in Section 5(1) delete and insert the following language in the third sentence:

"The explanatory statement for a measure referred by the District shall be filed with the Executive Officer and the Council at the same time as the [ballot title] ordinance or resolution referring the measure is acted on by the Council."

Under current procedures the ballot title for a measure is included in the ordinance or resolution referring the measure. It has been the practice after Council adoption for the Council Clerk to file the ordinance or resolution with the appropriate agencies including the District elections officer, Tax Supervising and Conservation Commission and Secretary of State. This new language will enable the Council review the explanatory statement along with the ballot title and include it with the material given to the Executive Officer for further filing.

2. On page 4 in Section 7 insert the following language:

"The Executive Officer shall file all measures, ballot titles, explanatory statements and arguments that meet the requirements of this Ordinance with the Secretary of State and the Clerk of the Council not later than the 70th day prior to the date of the election for which a Voters' Pamphlet will be printed."

FINANCE COMMITTEE
January 18, 1990
Page 2

This language will ensure that all material relating to an ordinance or resolution adopted by the Council is filed with the Clerk of the Council for record keeping purposes.

3. On page 5 add a new Section 8 which instructs the Council Clerk to include the provisions of this Ordinance in the Metro Code as follows:

"Section 8. The Clerk of the Council pursuant to Chapter 1.01 of the Metro Code shall include the provisions of this Ordinance as part of the Metro Code."

These amendments are shown on the attached ordinance designated as Ordinance No. 90-330A.

DEC:pa

#1C:\FCMEM1.DC

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ADOPTING	)	ORDINANCE NO. 90-330A
ORDINANCE NO. 90-330 WHICH)	
WOULD INCLUDE BALLOT TITLE,	)	Introduced by Rena Cusma,
EXPLANATORY STATEMENTS AND	)	Executive Officer
ARGUMENTS RELATING TO DISTRICT)	
MEASURES BE INCLUDED IN)	
THE STATE VOTERS' PAMPHLET,)	
AS AUTHORIZED BY ORS 251.285)	

WHEREAS, The Metropolitan Service District believes it to be in the interest of the electors of the District that ballot titles, explanatory statements and arguments relating to District measures be included in the state Voters' Pamphlet, as authorized by ORS 251.285 and provided for in sections 1 through 7 of this Ordinance; and

WHEREAS, The Executive Officer shall file all measures, ballot titles, explanatory statements and arguments that meet the requirements of this Ordinance with the Secretary of State not later than the 70th day prior to the date of the elections for which a Voters' Pamphlet will be printed; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

SECTION 1. State Voters' Pamphlet. The Metropolitan Service District believes it to be in the interest of the electors of the District that ballot titles, explanatory statements and arguments relating to District measures be included in the state Voters' Pamphlet, as authorized by ORS 254.285 and provided for in sections 1 through 7 of this Ordinance.

SECTION 2. Definitions. As used in this Ordinance:

~~[(1)]--"Committee-Director"--has-the-meaning-given-that-term in-ORS-260-005.]~~

~~[(2)]~~ (1) "Court" means the Circuit Court of the State of Oregon for the County of Multnomah.

~~[(3)]~~ (2) "Filing Officer" means the director of the Multnomah County Division of Elections.

[~~(4)~~] (3) "Measure" has the meaning given that term in ORS 251.005.

[~~(5)~~--"~~Political-Committee~~"--has-the-meaning-given-that-term in-ORS-260-005.]

[~~(6)~~] (4) "Voters' Pamphlet" means the state Voters' Pamphlet published pursuant to ORS Chapter 251.

SECTION 3. District Measures Included in the Pamphlet. A District measure shall qualify for inclusion in the Voters' Pamphlet under the provisions of ORS 251.285 and sections 1 through 7 of this Ordinance if:

(1) The measure is submitted to the electors at an election for which a Voters' Pamphlet is printed;

(2) All procedures set forth in sections 1 through 7 of this Ordinance relating to the preparation of the ballot title and explanatory statement for the measure, including review by the Court, have been completed on or before the 75th day prior to the date of the election at which the measure is to be submitted to the electors; and

(3) In the case of a measure proposed by initiative or referendum petition:

(a) The Filing Officer certifies that the petition has sufficient qualified signatures to require submission of the measure to the electors; and

(b) Such certification is filed with the Executive Officer on or before the 90th day preceding the election at which the measure is to be submitted to the electors.

SECTION 4. Preparation and Judicial Review of Ballot Titles.

(1) A ballot title for a measure proposed by initiative or referendum petition shall be prepared as provided in ORS 255.145. A ballot title for a measure referred to the electors by the District shall be prepared by the District.

(2) Judicial review of any ballot title for a District measure shall be as provided in ORS 255.155.

SECTION 5. Preparation and Judicial Review of Explanatory Statements.

(1) Explanatory statements for all District measures shall be prepared by General Counsel and shall be filed with the Executive Officer. An explanatory statement shall be an impartial, simple and understandable statement of 500 words or less, explaining the measure

and its effect. The explanatory statement for a measure referred by the District shall be filed with the Executive Officer and the Council at the same time as the [~~ballot-title~~] ordinances or resolutions referring the measure is acted upon by the Council. The explanatory statement for a measure proposed by initiative or referendum petition shall be filed with the Executive Officer not later than the seventh business day after the petition is submitted to the Filing Officer for signature verification.

(2) Upon receipt of an explanatory statement, the Executive Officer shall publish in the next available edition of a newspaper of general circulation in the District a notice of receipt of the statement including notice that an elector may file a petition for review of the statement not later than the date referred to in subsection (3) of this section. The Executive Officer and the Filing Officer may jointly publish notice of the explanatory statement and ballot title for a measure in the same publication.

(3) Any elector dissatisfied with an explanatory statement for a District measure may petition the Court stating the reasons why the statement does not meet the requirements of subsection (1) of this section. The petition shall be filed not later than the seventh business day after the statement is filed with the Executive Officer. An elector filing a petition with the Court shall also file a copy of the petition with the Executive Officer not later than the end of the next business day following the date the petition is filed with the Court. The Court shall review the statement and measure, hear arguments, if any, and certify to the Executive Officer a statement for the measure which meets the requirement of subsection (1) of this section. Review by the Court shall be first and final.

SECTION 6. Arguments Supporting and Opposing Measures.

(1) Arguments in support of or opposition to a measure which is subject to this Ordinance may be filed with the Executive Officer not later than the 75th day prior to the date of the election at which the measure is to be submitted to the electors by:

(a) Any person who tenders a filing fee in the amount of \$300 and submits a statement on such form as the Executive Officer may prescribe or provide, which:

(A) identifies the name of the person who submitted the argument;

(B) identifies the name of the organization the person represents, if any;

(C) indicates whether the argument supports or opposes the measure; and

(D) indicates who authorized publication of the argument.

(b) A person who files a petition for the inclusion of the argument in the Voters' Pamphlet which contains the signatures of not less than 1,000 electors of the District. Before the argument is filed with the Executive Officer, the signatures on the petition shall be verified by the Filing Officer. Prior to the circulation of a petition under this paragraph, a prospective petition shall be filed with the Executive Officer, on such form as the Executive Officer may prescribe or provide, which:

- (A) sets forth the text of the proposed argument;
 - (b) identifies the name of the person who submitted the argument;
 - (C) indicates the name of the organization the person represents, if any;
 - (D) indicates whether the argument supports or opposes the measure; and
 - (E) indicates who authorized publication of the argument.
- (2) Arguments shall be typewritten and shall be prepared for printing on 29.7 square inches of the Voters' Pamphlet.

SECTION 7. Filing of Material with the Secretary of State. The Executive Officer shall file all measures, ballot titles, explanatory statements and arguments that meet the requirements of this Ordinance with the Secretary of State and the Clerk of the Council not later than the 70th day prior to the date of the election for which a Voters' Pamphlet will be printed.

SECTION 8. The Clerk of the Council pursuant to Chapter 1.01 of the Metro Code shall include the provisions of this Ordinance as part of the Metro Code.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1990.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

#1C:\ORD90.330

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 90-330 FOR THE
PURPOSE OF ADOPTING A PROCEDURE TO INCLUDE THE
BALLOT TITLE, EXPLANATORY STATEMENT AND ARGUMENTS
RELATING TO CERTAIN DISTRICT MEASURES IN THE
STATE VOTERS' PAMPHLET

DATE: January 4, 1990

PRESENTED BY: McMurdo

Background

The last session of the Legislative Assembly enacted Enrolled Senate Bill 209 (chapter 250, Oregon Laws 1989) which requires the Secretary of State to print the ballot title, explanatory statement and any arguments relating to certain District measures in the state Voters' Pamphlet.

Senate Bill 209 is not self-executing. Metro must adopt a specific enabling ordinance before the District can utilize the Voters' Pamphlet. The ordinance must provide a review procedure for proposed ballot titles and explanatory statements. The ordinance must also provide a procedure to accept arguments for and against District measures

A photocopy of Senate Bill 209 is attached.

Proposed Action

Adopt Ordinance No. 90-330 establishing a procedure to utilize the state Voters' Pamphlet for the ballot title, explanatory statement and any arguments relating to certain Metro measures.

Executive Officer Recommendation

The Executive Officer recommends approval of Ordinance No. 90-330.

Senate Bill 209

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Task Force on Metropolitan Regional Government)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Secretary of State to print metropolitan service district measure and ballot title, explanatory statement and arguments relating to measure in voters' pamphlet prepared for general or special election.

Requires Secretary of State to print district measure information in same manner as county measure information is printed.

A BILL FOR AN ACT

Relating to the voters' pamphlet; amending ORS 251.285.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 251.285 is amended to read:

251.285. (1) The Secretary of State shall have printed in the voters' pamphlet prepared for a general or special election any county measure **or any measure of a metropolitan service district organized under ORS chapter 268**, and the ballot title, explanatory statement and arguments relating to the measure, if the requirements of this section are satisfied.

(2) The county **or district** measure, ballot title, explanatory statement and arguments shall not be printed in the voters' pamphlet unless:

(a) The ballot title is a concise and impartial statement of the purpose of the measure;

(b) The explanatory statement is an impartial, simple and understandable statement explaining the measure and its effect;

(c) The county **or metropolitan service district** adopts and complies with an ordinance that provides a review procedure for a ballot title or explanatory statement which is contested because it does not comply with the requirements of paragraph (a) or (b) of this subsection;

(d) The county **or metropolitan service district** adopts and complies with an ordinance that provides for acceptance of typewritten arguments relating to the measure to be printed on 29.8 square inches of the voters' pamphlet; and

(e) The county **or metropolitan service district** does not require of a person filing an argument a payment of more than \$300, or a petition containing more than a number of signatures equal to 1,000 electors eligible to vote on the measure or 10 percent of the total of such electors, whichever is less.

(3) Any judicial review of a determination made under the review procedures adopted under paragraph (c) of subsection (2) of this section shall be first and finally in the circuit court of the judicial district in which the county is located **or, for a district measure, in the circuit court for the most populous county situated within the metropolitan service district**.

(4) If the county **or metropolitan service district** has adopted and complied with ordinances prescribed in subsection (2) of this section, the decision to include the county **or district** measure,

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

1 ballot title, explanatory statement and arguments in the voters' pamphlet shall be made by:

2 (a) The county governing body with regard to any county measure **or the council of the met-**
3 **ropolitan service district with regard to any district measure;**

4 (b) The chief petitioners of the initiative or referendum with regard to a county **or district**
5 measure initiated or referred by the people. The chief petitioners shall indicate their decision in a
6 statement signed by all of the chief petitioners and filed with the county clerk **or, for a district**
7 **measure, with the executive officer of the metropolitan service district;** or

8 (c) A political committee, as defined in ORS 260.005, that opposes the county **or district meas-**
9 **ure.** The committee shall indicate its decision in a statement signed by every committee director,
10 as defined in ORS 260.005, and filed with the county clerk **or, for a district measure, with the**
11 **executive officer of the metropolitan service district.**

12 (5) The county **or metropolitan service district** shall file the measure, ballot title, explanatory
13 statement and arguments with the Secretary of State not later than the 70th day before the election.
14 The county **or district** shall pay to the Secretary of State the cost of including the county **or dis-**
15 **trict** material in the pamphlet as determined by the secretary. The Secretary of State shall not have
16 this material printed in the pamphlet unless:

17 (a) The time for filing a petition for judicial review of a determination made under paragraph
18 (c) of subsection (2) of this section has passed; and

19 (b) The measure, title, statement and arguments properly filed with the county **or metropolitan**
20 **service district,** are delivered to the secretary.

21

Agenda Item No. 5.2
Meeting Date: January 25, 1990

ORDINANCE NO. 90-321

SOLID WASTE COMMITTEE REPORT

ORDINANCE NO. 90-321, A SUPPLEMENTAL ORDINANCE TO ORDINANCE NO. 89-319; ESTABLISHING A PLAN FOR FINANCING THE METRO EAST TRANSFER STATION TO SERVE AS PART OF THE METROPOLITAN SERVICE DISTRICT'S SOLID WASTE DISPOSAL SYSTEM; AUTHORIZING THE ISSUANCE OF THE METRO EAST TRANSFER STATION BONDS FOR SUCH PURPOSE; AND ESTABLISHING AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH

Date: January 17, 1990

Presented by: Councilor
Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 4 to 0 to recommend Council adoption of Ordinance No. 90-321. Voting: Councilors Hansen, Bauer, Buchanan and Wyers. Absent: Councilor DeJardin. This action taken January 16, 1990.

Committee Discussion/Issues: The Metro Council recently adopted a Master Ordinance No. 89-319 that establishes the framework for financing Metro's Solid Waste capital needs for the coming years. An important function of the Master Ordinance is the assurance it provides the investment community that each facility financing will be performed under a carefully developed and disciplined set of financing covenants.

Ordinance No. 90-321 is a supplemental ordinance to Ordinance No. 89-319 and is for the East Transfer Station project. Proceeds from the proposed bond issue will be used for construction of the Metro East Transfer Station. It is proposed that the bond issue not exceed \$25 million. It is estimated that \$22 million will be the actual amount. The proposed bond issue is a long term (21.5 years), fixed-rate issue.

These are system bonds. System bonds are secured by the System Trust Estate,, which is made up of the systems net revenues, money in any of the construction, debt service, or reserve accounts, and any other property or assets pledged to the System Trust Estate.

As long as system bonds issued under the Master Ordinance are outstanding, Metro covenants to maintain in effect an ordinance regulating the disposal of solid waste generated with the service area (flow control).

The Committee asked what Metro's current amount of bonded indebtedness for DEQ projects was. Staff did not know the amount, but thought it was under \$1 million.

There being no further questions or discussion, the Committee voted unanimously to recommend Council adoption of Ordinance No. 90-321.

GH:RB:pa/A:\RB.140



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

January 19, 1990

The Honorable Tanya Collier
Council Presiding Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Presiding Officer Collier:

Re: Ordinance No. 90-321

After the Council Solid Waste Committee acted to recommend that the Council adopt Ordinance No. 90-321, the Director of the Department of Finance & Administration advised me that the amount of bonds authorized in Ordinance No. 90-321 would be insufficient to finance both the Metro East Station and to repay the outstanding loans to the DEQ as provided for in the bond ordinance. This resulted from the failure of Department staff to include the amount of the DEQ loans in the amounts to be paid.

Because notice has been published for the required public hearing for the issuance of revenue bonds for the Council meeting on January 25, 1990, it is my recommendation that the Council hold the required public hearing on this ordinance, as indicated in the public notice. After conducting the public hearing the ordinance should be re-referred to the Solid Waste Committee so the Committee can have the full opportunity to discuss and make its recommendation on the necessary changes to the ordinance to correct the error that has occurred.

The necessary delay will not have an adverse affect on the District since the present schedule for issuance of these bonds already projects that the issuance date will be delayed beyond the first Council meeting in February for other reasons.

Yours very truly,

Daniel B. Cooper,
General Counsel

gl₁₀₂₃

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Gary Hansen
Deputy Presiding
Officer
District 12

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

Ordinance No. 90-321

The Council of the Metropolitan Service District

An ordinance enacted as a Supplemental Ordinance to Ordinance No. 89-319; establishing a plan for financing the Metro East Transfer Station to serve as a part of the Metropolitan Service District's solid waste disposal system; authorizing the issuance of the Metro East Transfer Station Bonds for such purpose; and establishing and determining other matters in connection therewith.

Prepared by:

*Stoel Rives Boley Jones & Grey,
Bond Counsel*

Table of Contents

[Note: This Table of Contents is provided solely for the convenience of the reader and does not constitute a part of this Ordinance.]

Section A. Findings.

ARTICLE I

DEFINITIONS

Section 101. Terms Defined in Master Ordinance; Conflicting Definitions.	2
Section 102. Definitions.	2

ARTICLE II

AUTHORIZATION, ISSUANCE AND PROVISIONS OF METRO EAST TRANSFER STATION BONDS

Section 201. Authorization of Metro East Transfer Station Bonds; Limited Obligations.	4
(a) Principal Amount.	4
(b) Metro East Transfer Station Bonds to Constitute System Bonds of a Single Series Under Master Ordinance.	4
(c) Limited Obligations.	4
(d) Tax-Exempt Obligations.	5
Section 202. Interest Rates, Maturity Dates, Serial Bonds, Term Bonds and Mandatory Redemption Schedules for the Metro East Transfer Station Bonds.	5
Section 203. Denominations; Dating; Interest Accrual; Computation of Interest; Payments Due on Holidays; Book Entry System; Form of Bonds.	5
(a) Denominations, Numbering and Dating.	5
(b) Interest Accrual.	5
(c) Payments Due on Holidays.	5
(d) Computation of Interest.	5
(e) Method of Payment.	5
(f) Provisions for Book-Entry System.	6
(g) Form of Bonds.	6
Section 204. Redemption Provisions.	7
(a) Redemption Pursuant to Mandatory Redemption Schedule(s).	7
(b) Optional Redemption.	7

ARTICLE III

**DEPOSIT AND APPLICATION OF BOND PROCEEDS;
ESTABLISHMENT AND OPERATION OF ACCOUNTS**

Section 301. Establishment of Accounts; Purpose.	7
Section 302. Use of Metro East Transfer Station Bond Proceeds.	8
Section 303. The Metro East Transfer Station Refunding Account.	8
<u>Section 304. Investment of Moneys in Accounts.</u>	8

ARTICLE IV

MISCELLANEOUS

Section 401. Sale of Metro East Transfer Station Bonds; Authorization of Other Acts.	
Section 402. Special Tax Covenant Relating to the Management Contract.	10
Section 403. Governing Law.	10
Section 404. Headings Not Binding.	10
Section 405. Effectiveness of This Ordinance	10

Metropolitan Service District
Counties of Multnomah, Clackamas and Washington
State of Oregon

Ordinance No. 90-321

An ordinance enacted as a Supplemental Ordinance to Ordinance No. 89-319; establishing a plan for financing the Metro East Transfer Station to serve as a part of the Metropolitan Service District's solid waste disposal system; authorizing the issuance of the Metro East Transfer Station Bonds for such purpose; and establishing and determining other matters in connection therewith.

Be it enacted by the Council of the Metropolitan Service District:

Section A. Findings. The Council (the "Council") of the Metropolitan Service District, a political subdivision organized and existing under the laws of the State of Oregon (the "Issuer"), hereby finds and determines as follows:

(a) Pursuant to and in accordance with the provisions of Oregon Revised Statutes Chapter 268 (the "Act") and related provisions of the Oregon Revised Statutes, the Issuer is responsible for and now operates a solid waste disposal system (as more particularly described in the Master Ordinance referred to below, the "System") for the purpose of managing and disposing of solid waste (as such terms are used in the Act) generated within and without the Service Area (as defined ~~herein~~ in the Master Ordinance referred to below).

(b) Pursuant to the provisions of the Act and other applicable provisions of law, the Issuer is authorized to issue revenue bonds to finance landfills, transfer facilities, resource recovery facilities and other improvements, facilities and equipment necessary or desirable for the System regardless of whether such improvements, facilities and equipment are to be owned by the Issuer or any other person and regardless of whether such improvements, facilities or equipment are to be located within or without the jurisdictional boundaries of the Issuer.

(c) The Issuer has enacted Ordinance No. 89-319 (the "Master Ordinance") in order to establish a plan for

financing from time to time various components and other fiscal needs of the System and authorizing the issuance of one or more series of revenue bonds for such purpose under the provisions of supplemental ordinances adopted pursuant to the Master Ordinance.

(d) In order to refinance the DEQ Loans (as herein defined) and to finance the acquisition, construction and installation of the Metro East Transfer Station (as more particularly described herein), which Metro East Transfer Station will be owned by the Issuer and initially operated by Trans Industries, a joint venture of Browning-Ferris Industries of Oregon, Inc., an Oregon corporation, and Transwaste, Inc., an Oregon corporation (said joint venture or any other person or entity hereafter acting as the manager and operator of the Metro East Transfer Station being herein called the "Manager") and used in the operation of the System, the Issuer has determined to issue pursuant to and as authorized by the Act its Waste Disposal System Revenue Bonds (Metro East Transfer Station Project), 1990 Series A (the "Metro East Transfer Station Bonds") in an aggregate principal amount of not to exceed \$25,000,000, as a Series of System Bonds under and as defined in the Master Ordinance, and is enacting this Ordinance No. 90-321 (the "1990 Supplemental System Ordinance") to establish and determine the terms and conditions of the Metro East Transfer Station Bonds, to secure the repayment of the Metro East Transfer Station Bonds and to set forth, establish and determine other matters relevant to the Metro East Transfer Station Bonds.

ARTICLE I

DEFINITIONS

Section 101. Terms Defined in Master Ordinance; Conflicting Definitions. All terms used herein and not otherwise defined herein shall have the same meanings assigned thereto in the Master Ordinance. In the event of any conflict between the definition of a term as set forth in the Master Ordinance and the definition of that same term as set forth herein, then unless the Master Ordinance expressly allows the definition of such term to be controlled or varied by a Supplemental Ordinance or unless otherwise expressly provided herein, the definition of such term as set forth in the Master Ordinance shall govern and control for all purposes of this 1990 Supplemental System Ordinance.

Section 102. Definitions. As used in this 1990 Supplemental System Ordinance, the following terms shall have the respective meanings set forth below:

"Authorized Denomination" means, with respect to the Metro East Transfer Station Bonds, \$5,000 or any integral multiple thereof.

"Beneficial Owners" shall mean, whenever used with respect to a Metro East Transfer Station Bond, the person or entity in whose name such Metro East Transfer Station Bond is recorded as the beneficial owner of such Metro East Transfer Station Bond by a Participant on the records of such Participant pursuant to the arrangements for book-entry determination of ownership applicable to the Securities Depository.

"Bond Registrar" means, with respect to the Metro East Transfer Station Bonds, the Master Trustee.

"Book-Entry System" shall mean that system whereby the clearance and settlement of securities transactions is made through electronic book-entry changes, thereby eliminating the need of physical movement of securities.

"Business Day" means, with respect to the Metro East Transfer Station Bonds, any day which is not a Saturday, Sunday or holiday or day upon which the principal corporate trust office of the Master Trustee is closed.

"Cede & Co." shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Metro East Transfer Station Bonds.

"DEQ Loans" means the following loans made by the Oregon Department of Environmental Quality to the Issuer:

(i) the loan pursuant to ORS 468.220 for Project Number SWC 118 pursuant to an Offer and Acceptance of State Financial Assistance dated May 18, 1981; and

(ii) the loan pursuant to ORS 468.220 for Project Number SWC 115 pursuant to an Offer and Acceptance of State Financial Assistance dated April 21, 1977.

"DTC" shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

"Interest Payment Date(s)" means, with respect to the Metro East Transfer Station Bonds, each January 1 and July 1 of each year, commencing with the first such date following the issuance of such bonds or, if so determined by the Executive Officer pursuant to the authority conferred thereon pursuant to Section 401 hereof, the second such date following the date of issuance of such bonds.

"Management Contract" means, at any particular time, the Issuer Agreement, if any, then in effect between the Issuer and the Manager pursuant to which the Manager undertakes to manage and operate the Metro East Transfer Station, the initial Management Contract being that certain Metro East Station Service Agreement dated as of December 8, 1989 by and between the Issuer and Trans Industries, a joint venture of Browning-Ferris Industries of Oregon, Inc., an Oregon corporation, and Transwaste, Inc., an Oregon corporation.

"Manager" means, at any particular time, the person or entity, if any, then agreeing pursuant to the Management Contract to serve as manager and operator of the Metro East Transfer Station.

"Mandatory Redemption Amount" shall have the meaning assigned thereto in Section 204(a) hereof.

"Mandatory Redemption Date(s)" shall have the meaning assigned thereto in Section 204(a) hereof.

"Mandatory Redemption Schedule" means, with respect to the Metro East Transfer Station Bonds issued hereunder as Term Bonds, the mandatory redemption schedule established and determined therefor by the Executive Officer pursuant to the authority conferred thereon under Section 401 hereof.

"Metro East Transfer Station" means the waste transfer station to be located at 6161 NW 61st, Portland, Oregon to be owned by the Issuer and used as part of the System.

"Metro East Transfer Station Bonds" means the Issuer's Waste Disposal System Revenue Bonds (Metro East Transfer Station Project), 1990 Series A authorized to be issued and sold under this 1990 Supplemental System Ordinance in an aggregate principal amount of not to exceed \$25,000,000, together with any Completion Bonds issued pursuant to the Master Ordinance for the purpose of financing any Capital Costs of the Metro East Transfer Station.

"Participant" shall mean a brokers-dealer, bank or other financial institution for which DTC holds Metro East Transfer Station Bonds as Securities Depository.

"Paying Agent" means, with respect to the Metro East Transfer Station Bonds, the Master Trustee.

"Requisition Certificate" means, with respect to the Metro East Transfer Station Bonds, a certificate substantially in the form of Exhibit A attached hereto, but with such variations, deletions, insertions and other changes as may be deemed necessary or appropriate by the Executive Officer.

"Securities Depository" shall mean, initially, The Depository Trust Company, New York, New York, and its successors and replacement securities depository appointed hereunder.

"Underwriters" means PaineWebber Incorporated, Shearson Lehman Hutton Inc. and Dean Witter Reynolds Inc..

ARTICLE II

AUTHORIZATION, ISSUANCE AND PROVISIONS OF METRO EAST TRANSFER STATION BONDS

Section 201. Authorization of Metro East Transfer Station Bonds; Limited Obligations.

(a) **Principal Amount.** The Metro East Transfer Station Bonds are hereby authorized to be issued in an aggregate principal amount not to exceed \$25,000,000 for the purposes enumerated in the recitals hereto. The Metro East Transfer Station Bonds shall be issued in a single series, such series to be designated "Metropolitan Service District Waste Disposal System Revenue Bonds (Metro East Transfer Station Project), 1990 Series A".

(b) **Metro East Transfer Station Bonds to Constitute System Bonds of a Single Series Under Master Ordinance.** The Metro East Transfer Station Bonds, together with any Completion Bonds issued pursuant to the Master Ordinance for the purpose of financing any Capital Costs of the Metro East Transfer Station, shall be System Bonds and shall constitute a single Series, all as defined in and within the meaning of the Master Ordinance.

(c) **Limited Obligations.** The Metro East Transfer Station Bonds and all obligations of the Issuer under or with respect to the Metro East Transfer Station Bonds and this 1990 Supplemental System Ordinance shall be and remain limited obligations of the Issuer payable solely and only out of the System Trust Estate. No recourse shall be had against any properties, funds or assets of the Issuer (other than the System Trust Estate) for the payment of any amounts owing under or with respect to the Metro East Transfer Station Bonds or this 1990 Supplemental System Ordinance. Neither the Metro East Transfer Station Bonds, this 1990 Supplemental System Ordinance nor the obligations of the Issuer under or with respect thereto constitute or create an indebtedness of the Issuer within the meaning of any constitutional or statutory debt limitation.

(d) Tax-Exempt Obligations. The Metro East Transfer Station Bonds are issued as, and are intended to be, Tax-Exempt Obligations.

Section 202. Interest Rates, Maturity Dates, Serial Bonds, Term Bonds and Mandatory Redemption Schedules for the Metro East Transfer Station Bonds. The Metro East Transfer Station Bonds shall bear interest at such rate or rates and mature on such dates and in such principal amounts as shall be established and determined by the Executive Officer upon the sale thereof as provided in and pursuant to Section 401 hereof; *provided that* in no event shall the final maturity date of the Metro East Transfer Station Bonds be later than January 1, 2014. The aggregate principal amounts of the Metro East Transfer Station Bonds to be issued as Term Bonds and Serial Bonds and the Mandatory Redemption Schedule for the Metro East Transfer Station Bonds issued as Term Bonds shall be established and determined by the Executive Officer upon the sale of the Metro East Transfer Station Bonds as provided in and pursuant to Section 401 hereof.

Section 203. Denominations; Dating; Interest Accrual; Computation of Interest; Payments Due on Holidays; Book Entry System; Form of Bonds.

(a) Denominations, Numbering and Dating. The Metro East Transfer Station Bonds shall be issued in Authorized Denominations. Each Metro East Transfer Station Bond shall be dated as of the first day of the month in which such bonds are issued. Each Metro East Transfer Station Bond also shall bear its date of authentication as noted thereon by the Master Trustee and shall be numbered consecutively in the order in which it is authenticated by the Master Trustee.

(b) Interest Accrual. Each Metro East Transfer Station Bond shall bear interest from the Interest Payment Date to which interest has been paid next preceding the date of its authentication, unless the date of its authentication:

(i) is an Interest Payment Date to which interest on such Metro East Transfer Station Bond has been paid, in which event such Metro East Transfer Station Bond shall bear interest from its date of authentication; or

(ii) is prior to the first Interest Payment Date for the Metro East Transfer Station Bond, in which event, such Metro East Transfer Station Bond shall bear interest from its date.

(c) Payments Due on Holidays. Interest on the Metro East Transfer Station Bonds shall be due and payable on each Interest Payment Date for such bonds; *provided that* whenever a payment of principal of, premium (if any) or interest on a Metro East Transfer Station Bond is due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day with the same force and effect as if made on the stated due date.

(d) Computation of Interest. Interest on the Metro East Transfer Station Bonds shall be computed on the basis of a 360-day year of twelve 30-day months.

(e) Method of Payment. Payments of interest on the Metro East Transfer Station Bonds shall be made to the registered Owners thereof (as determined at the close of business on the Record Date next preceding the related Interest Payment Date) by Wire Transfer (if requested in writing of the Master Trustee by an Owner of not less than \$1,000,000 aggregate principal amount of Metro East Transfer Station Bonds not less than five days prior to the applicable Interest Payment Date) or by check or draft mailed on the Interest Payment Date to the address of each such Owner as it appears on the registration books of the Issuer maintained by the Master Trustee as Bond Registrar, or to such other address as may be furnished in writing to the Master Trustee prior to the applicable Record Date by such registered Owner.

Payment of the principal of and redemption premium (if any) on the Metro East Transfer Station Bonds shall be made only upon presentation and surrender of such Metro East Transfer Station Bonds on or after the maturity or redemption date, as appropriate, at the principal corporate trust office of the Master Trustee.

(f) Provisions for Book-Entry System. The Metro East Transfer Station Bonds will be subject to a Book-Entry System of ownership and transfer, except as provided in (iii) below. The general provisions for effecting such Book-Entry System are as follows:

(i) The Issuer hereby designates The Depository Trust Company, New York, New York, as the initial Securities Depository hereunder.

(ii) Notwithstanding the provisions regarding exchange and transfer of Metro East Transfer Station Bonds under the Master Ordinance, the Metro East Transfer Station Bonds shall initially be evidenced by one certificate for each maturity (including one certificate for each principal amount due pursuant to a Mandatory Redemption Schedule), in an amount equal to the aggregate principal amount thereof. The Metro East Transfer Station Bonds so initially delivered shall be registered in the name of "Cede & Co." as nominee for The Depository Trust Company. The Metro East Transfer Station Bonds may not thereafter be transferred or exchanged on the registration books of the Issuer held by the Master Trustee as Bond Registrar except:

(A) to any successor Securities Depository designated pursuant to (iii) below;

(B) to any successor nominee designated by a Securities Depository; or

(C) if the Issuer shall, by resolution, elect to discontinue the Book-Entry System pursuant to (iii) below, the Issuer will cause the Master Trustee to authenticate and deliver replacement Metro East Transfer Station Bonds in fully registered form in Authorized Denominations in the names of the beneficial Owners or their nominees; thereafter the provisions of the Master Ordinance regarding registration, transfer and exchange of Metro East Transfer Station Bonds shall apply.

(iii) Upon the resignation of any institution acting as Securities Depository hereunder, or if the Issuer determines that continuation of any institution in the role of Securities Depository is not in the best interests of the Beneficial Owners, the Issuer will attempt to identify another institution qualified to act as Securities Depository hereunder or will discontinue the Book-Entry System by resolution. If the Issuer is unable to identify such successor Securities Depository prior to the effective date of the resignation, the Issuer shall discontinue the Book-Entry System, as provided in (ii)(C) above.

(iv) So long as the Book-Entry System is used for the Metro East Transfer Station Bonds, the Master Trustee will give any notice of redemption or any other notices required to be given to Owners of Metro East Transfer Station Bonds only to the Securities Depository or its nominee registered as the Owner thereof. Any failure of the Securities Depository to advise any of its Participants, or of any Participant to notify the Beneficial Owner, of any such notice and its content or effect will not affect the validity of the redemption of the Metro East Transfer Station Bonds called for redemption or of any other action premised on such notice. Neither the Issuer nor the Master Trustee is responsible or liable for the failure of the Securities Depository or any Participant thereof to make any payment or give any notice to a Beneficial Owner in respect of the Metro East Transfer Station Bonds or any error or delay relating thereto.

(g) Form of Bonds. The Metro East Transfer Station Bonds shall be issued in substantially the form attached hereto as the Bond Form Appendix but with such appropriate modifications, changes, additions and deletions

as may be necessary or appropriate and not inconsistent with the provisions of this 1990 Supplemental System Ordinance or applicable law.

Section 204. Redemption Provisions.

(a) **Redemption Pursuant to Mandatory Redemption Schedule(s).** The Metro East Transfer Station Bonds issued as Term Bonds shall be subject to mandatory redemption prior to maturity in such principal amounts and on such Mandatory Redemption Dates as shall be established pursuant to the applicable Mandatory Redemption Schedule, any such redemption to be at a redemption price equal to 100% of the principal amount to be redeemed plus accrued and unpaid interest thereon through the date fixed for redemption thereof. The principal amount of Metro East Transfer Station Bonds required to be redeemed pursuant to this Section on any particular date is herein called the "Mandatory Redemption Amount" for such date; and "Mandatory Redemption Date" shall mean the Interest Payment Date(s) in each calendar year ~~which falls on the anniversary or semiannual anniversary of the date as shall be~~ selected by the Executive Officer ~~which is not more than 12 months after the date of the Metro East Transfer Station Bonds pursuant to Section 401 hereof.~~

(b) **Optional Redemption.** The Metro East Transfer Station Bonds shall be subject to redemption at the option of the Issuer, in whole or in part, on such dates as shall be established and determined by the Executive Officer upon the sale thereof as provided in Section 401 hereof, any such redemption to be at a price equal to 100% of the principal amount to be redeemed plus accrued and unpaid interest thereon through the date fixed for redemption thereof plus any applicable premium as may be established and determined by the Executive Officer upon the sale thereof as provided in Section 401 hereof.

ARTICLE III

DEPOSIT AND APPLICATION OF BOND PROCEEDS; ESTABLISHMENT AND OPERATION OF ACCOUNTS

Section 301. Establishment of Accounts; Purpose. There are hereby established with the Master Trustee the following account:

(i) the Metro East Transfer Station Construction Account, which shall be a special subaccount of the System Construction Account;

(ii) the Metro East Transfer Station Reserve Account, which shall be a special subaccount of the System Reserve Account;

(iii) the Metro East Transfer Station Debt Service Account, which shall be a special subaccount of the System Debt Service Account;

(iv) the Metro East Transfer Station Rebate Account, which shall be a special subaccount of the System Rebate Account; and

(v) the Metro East Transfer Station Refunding Account, which shall be a special subaccount of the System Construction Account.

The foregoing special subaccounts of the System Construction Account, the System Debt Service Account, the System Reserve Account and the System Rebate Account are being created in connection with the issuance and sale of the Metro East Transfer Station Bonds solely to facilitate the compliance by the Issuer with the provisions of Section 513 of the Master Ordinance with respect to the Metro East Transfer Station Bonds. Neither the creation, existence nor deposit or retention of any funds in such subaccounts is intended to confer on the Owners of the Metro East Transfer Station Bonds any privilege, priority, preference, superior right or special security of any kind whatsoever in or with respect to such subaccounts or funds held therein not enjoyed by the Owners of other System Bonds of any Series hereafter issued. The moneys on deposit from time to time in the Metro East Transfer Station Reserve Account, the Metro East Transfer Station Debt Service Account, the Metro East Transfer Station Rebate Account, and the Metro East Transfer Station Construction Account shall be used, applied and invested in the manner and subject to the conditions and limitations set forth in the Master Ordinance with respect to moneys on deposit in the System Account of which such Accounts are a part. The moneys on deposit from time to time in the Metro East Transfer Station Refunding Account shall be used and applied in the manner and for the purposes set forth in Section 303 hereof.

Section 302. Use of Metro East Transfer Station Bond Proceeds. The proceeds of sale of the Metro East Transfer Station Bonds shall, as soon as practicable upon the delivery thereof to the Master Trustee, be applied as follows:

(a) an amount equal to the accrued interest paid by the initial purchasers of the Metro East Transfer Station Bonds shall be deposited in the Metro East Transfer Station Debt Service Account;

(b) an amount equal to the System Reserve Requirement shall be deposited in the Metro East Transfer Station Reserve Account; *provided that*, if so determined by the Executive Officer pursuant to Section 401 hereof, in lieu of funding the System Reserve Requirement in full out of the proceeds of the Metro East Transfer Station Bonds, the System Reserve Requirement may be met in whole or in part by means of a Credit Facility provided to the Master Trustee on the date of issuance of the Metro East Transfer Station Bonds, and in such event an amount of the Metro East Transfer Station Bond proceeds sufficient to pay the cost of acquiring such Credit Facility shall be promptly applied by the Master Trustee to the payment of such costs as directed in writing by the Issuer and if such Credit Facility is not sufficient to fully satisfy the System Reserve Requirement, then proceeds of the Metro East Transfer Station Bonds shall be deposited by the Master Trustee in the Metro East Transfer Station Reserve Account in an amount which, when added to the amount available to be drawn by the Master Trustee under such Credit Facility, shall equal the System Reserve Requirement;

(c) such amount as shall be specified by the Issuer in writing to the Master Trustee upon the date of issuance and delivery of the Metro East Transfer Station Bonds shall be deposited in the Metro East Transfer Station Refunding Account; and

(d) the balance shall be deposited in the Metro East Transfer Station Construction Account.

Section 303. The Metro East Transfer Station Refunding Account. The moneys on deposit in the Metro East Transfer Station Refunding Account shall be applied for the purpose of prepaying, in accordance with the written instructions of the Authorized Issuer Representative, the DEQ Loans. ~~All moneys on deposit from time to time in the Metro East Transfer Station Refunding Account shall be invested in such Permitted Investments as the Authorized Issuer Representative shall specify in writing from time to time to the Master Trustee.~~ Any moneys remaining on deposit in the Metro East Transfer Station Refunding Account following the payment in full of all amounts owing under the DEQ Loans shall be transferred to the Metro East Transfer Station Construction Account.

Section 304. Investment of Moneys in Accounts. All moneys on deposit from time to time in the

Accounts established pursuant to this 1990 Supplemental System Ordinance shall be invested in such Permitted Investments as the Authorized Issuer Representative shall specify in writing from time to time to the Master Trustee.

ARTICLE IV

MISCELLANEOUS

Section 401. Sale of Metro East Transfer Station Bonds; Authorization of Other Acts. The Metro East Transfer Station Bonds shall be sold in a negotiated sale to the Underwriters as provided in this Section 401. The Executive Officer of the Issuer is hereby authorized, empowered and directed, for and on behalf of the Issuer, to determine and establish the following terms of and other matters relating to the Metro East Transfer Station Bonds subject to the limitations set forth below:

- (a) the aggregate principal amount of the Metro East Transfer Station Bonds, provided that in no event shall the aggregate principal amount of the Metro East Transfer Station Bonds exceed the sum of \$25,000,000;
- (b) the aggregate principal amount of Metro East Transfer Station Bonds to be issued as Term Bonds and the maturity date or dates of such Term Bonds;
- (c) the aggregate principal amount of Metro East Transfer Station Bonds to be issued as Serial Bonds and the maturity dates of such Serial Bonds;
- (d) the Mandatory Redemption Schedule(s) and the related Mandatory Redemption Dates for the Metro East Transfer Station Bonds to be issued as Term Bonds;
- (e) the rates of interest to be applicable to the Metro East Transfer Station Bonds of each maturity;
- (f) the first Interest Payment Date for the Metro East Transfer Station Bonds; and
- (g) the price at which the Metro East Transfer Station Bonds are to be sold to the Underwriters;

The Executive Officer of the Issuer is further authorized, empowered and directed, for and on behalf of the Issuer, to determine whether the System Reserve Requirement shall be met in whole or in part by means of a Credit Facility and to determine and establish such other terms of and other matters relating to the Metro East Transfer Station Bonds as may be necessary or appropriate and not in conflict with the provisions of the Master Ordinance, this 1990 Supplemental System Ordinance or applicable law.

The authority of the Executive Officer of the Issuer to determine and establish the terms of and other matters relating to the Metro East Transfer Station Bonds as provided in this Section shall be exercised by setting forth such terms and other matters as so determined and established in a certificate executed and delivered by the Executive Officer on or prior to the date of issuance and delivery of the Metro East Transfer Station Bonds.

The Contract of Purchase between the Issuer and the Underwriters relating to the Metro East Transfer Station Bonds in substantially the form submitted to the Council of the Issuer in connection with the enactment of

this 1990 Supplemental System Ordinance is hereby approved. The Executive Officer, the Deputy Executive Officer and the Director of Finance and Administration of the Issuer, and any one of them, are each hereby authorized, empowered and directed, for and on behalf of the Issuer:

(i) to execute and deliver such Contract of Purchase in substantially the form approved hereby but with such changes, additions and deletions as may be necessary or appropriate and not inconsistent with the terms of this 1990 Supplemental System Ordinance or applicable law;

(ii) to execute and deliver such other documents, instruments, certificates and agreements as may be necessary or appropriate to carry out and consummate the transactions contemplated by this 1990 Supplemental System Ordinance; and

(iii) to do and perform all other acts and things necessary or appropriate to carry out and consummate the transactions contemplated by this 1990 Supplemental System Ordinance.

The distribution by the Underwriters of a preliminary and a final Official Statement describing the Metro East Transfer Station Bonds and matters pertaining thereto is authorized and/or ratified in all respects and the Executive Officer is hereby authorized to sign and deliver such preliminary and final Official Statements to the Underwriters.

The action taken on December 21, 1989 by the Executive Officer in appointing First Interstate Bank of Oregon, N.A. to act as Master Trustee and as 1989 Trustee (as such term is defined in the Issuer's Ordinance No. 89-320) is hereby approved, ratified and confirmed in all respects.

Section 402. Special Tax Covenant Relating to the Management Contract. In light of the existence of the initial Management Contract for the Metro East Transfer Station and the possibility that upon the expiration of said initial Management Contract the Issuer will enter into another Management Contract with respect to the Metro East Management Contract, the Issuer hereby covenants and agrees that so long as any Metro East Transfer Station Bonds are Outstanding, it will not enter into any Management Contract (howsoever designated) or any other Issuer Agreement relating to the Metro East Transfer Station having such terms and provisions as to cause the interest on the Metro East Transfer Station Bonds to be or become includable for federal income tax purposes in the gross incomes of the Owners thereof.

Section 403. Governing Law. This 1990 Supplemental System Ordinance shall be interpreted governed by and construed under the laws of the State of Oregon, including the Act, as if executed and to be performed wholly within the State of Oregon.

Section 404. Headings Not Binding. The headings in this 1990 Supplemental System Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this 1990 Supplemental System Ordinance.

Section 405. Effectiveness of This Ordinance. This 1990 Supplemental System Ordinance shall, except as otherwise provided by law, become effective immediately upon enactment.

Certification of Ordinance

The undersigned do hereby certify that we are the duly elected or appointed, qualified and acting Presiding Officer of the Council, Clerk of the Council and Executive Officer of the Metropolitan Service District, Counties of Multnomah, Clackamas and Washington, State of Oregon; that the foregoing is a true and complete copy of Ordinance No. 90-321 as enacted by the Council of said district at a regular meeting duly called and held in accordance with law on January 25, 1990; and that the following Councilors voted in favor of said Ordinance:

the following Councilors voted against said Ordinance:

and the following Councilors abstained from voting on said Ordinance:

In witness whereof, the undersigned have hereunto set their hands as of this _____ day of _____, 1990.

Presiding Officer of the Council

Clerk of the Council

The undersigned Executive Officer hereby certifies that the foregoing Ordinance has not been vetoed.

Rena Cusma, Executive Officer

Date: _____, 1990

EXHIBIT A

REQUISITION CERTIFICATE

TO: First Interstate Bank of Oregon, N.A., Master Trustee

FROM: Metropolitan Service District (the "Issuer")

SUBJECT: \$_____ Metropolitan Service District Waste Disposal System Revenue Bonds (Metro East Transfer Station Project), 1990 Series A

This represents Requisition Certificate No. _____ in the total amount of \$_____ to pay those costs of the Metro East Transfer Station detailed in the schedule attached.

The undersigned does certify that:

1. The expenditures for which moneys are requisitioned hereby represent proper charges against the Metro East Transfer Station Construction Account for the subject Metro East Transfer Station Bond issue, have not been included in a previous requisition and have been properly recorded on the Issuer's books. The expenditures for which moneys are hereby requisitioned are set forth in the schedule attached hereto.

2. The moneys requisitioned hereby are not greater than those necessary to meet obligations due and payable or to reimburse the Issuer for its funds actually advanced for costs of the Metro East Transfer Station.

3. All of the funds being requisitioned are being used in a manner which will not cause the interest on the Metro East Transfer Station Bonds to be or become includable for federal income tax purposes in the gross incomes of the Owners thereof.

Executed this ____ day of _____, 19__.

Metropolitan Service District

By: _____
Authorized Issuer Representative

**Bond Form Appendix
to
Ordinance No. 90-321**

AR-_____

**METROPOLITAN SERVICE DISTRICT
WASTE DISPOSAL SYSTEM REVENUE BONDS
(Metro East Transfer Station Project)
1990 SERIES A**

\$ _____

ORIGINAL ISSUE DATE
February 1, 1990

MATURITY DATE

INTEREST RATE

CUSIP

REGISTERED OWNER:

***** Cede & Co. *****

PRINCIPAL AMOUNT:

DOLLARS

The Metropolitan Service District, a political subdivision organized and existing under the laws of the State of Oregon (the "Issuer"), for value received hereby promises to pay (but only from the sources hereinafter provided and not otherwise) to the Registered Owner of this Bond (the "Owner") the Principal Amount specified above on the Maturity Date specified above together with interest on said Principal Amount at the Interest Rate *per annum* set forth above, with all accrued and unpaid interest being due and payable on January 1 and July 1 of each year, commencing July 1, 1990. This Bond is one of an authorized series of Bonds (the "Metro East Transfer Station Bonds") being issued pursuant to the provisions of Chapter 268 of the Oregon Revised Statutes, as amended, and certain other provisions of the laws of the State of Oregon (the "Act"), Ordinance No. 89-319 (the "Master Ordinance"), and Ordinance No. 90-321 (the "1990 Supplemental System Ordinance" and, together with the Master Ordinance being herein called the "Ordinance"). All terms used in this Bond but not otherwise defined herein shall have the respective meanings assigned thereto in the Ordinance.

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Metro East Transfer Station Bonds issued pursuant to the Ordinance.

FIRST INTERSTATE BANK OF OREGON, N.A.
as Master Trustee

By: _____
Its Authorized Officer

Date of Authentication: _____

THE TERMS AND CONDITIONS OF THIS BOND ARE CONTINUED ON THE REVERSE SIDE HEREOF, WHICH CONTINUED TERMS AND CONDITIONS SHALL HAVE THE SAME EFFECT AS IF PRINTED ABOVE.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and laws of the State of Oregon and the Ordinance to have happened, to exist and to have been performed precedent to and in the issuance of this Bond and the Metro East Transfer Station Bonds do exist, have happened and have been performed in regular and due time, form and manner as required by said Constitution, laws and Ordinance; that this Bond and the Metro East Transfer Station Bonds do not exceed any constitutional or statutory limitation or indebtedness; and that provision has been made for the payment of the principal of and interest on this Bond and the Metro East Transfer Station Bonds as provided in the Ordinance.

This Bond shall not be valid or become obligatory for any purpose unless and until it has been authenticated in the space provided below by a duly Authorized Officer of the Master Trustee.

IN WITNESS WHEREOF, THE METROPOLITAN SERVICE DISTRICT has caused this Bond to be signed by means of the manual or facsimile signatures of its Presiding Officer and Executive Officer, all as of the Original Issue Date set forth above.

METROPOLITAN SERVICE DISTRICT

Presiding Officer

Executive Officer

This Bond and the rights of the Owner are in all respects subject to and governed by the Ordinance, and the Owner, by acceptance of this Bond, assents to and agrees to be bound by all terms and provisions set forth in the Ordinance.

The Metro East Transfer Station Bonds are being issued to provide funds which, together with other available funds, will be used to: (1) pay part of the cost of acquiring, constructing and equipping the Metro East Transfer Station to be used as part of the Issuer's solid waste disposal system; (2) refund certain outstanding indebtedness relating to the Issuer's solid waste disposal system; (3) make a deposit to the System Reserve Account established under the 1990 Supplemental System Ordinance in an amount equal to the System Reserve Requirement; and (4) pay certain Costs of Issuance incurred in connection with the issuance and sale of the Metro East Transfer Station Bonds. The Metro East Transfer Station Bonds, together with any Additional Bonds hereafter issued under the Master Ordinance, are equally and ratably secured by a pledge of the System Trust Estate, which includes a pledge of the Net Revenues derived by the Issuer from the operation of the System. For a more detailed description of the collateral pledged as security for the Metro East Transfer Station Bonds and the terms of such pledge, reference should be made to the Ordinance. The Metro East Transfer Station Bonds are not in any manner or to any extent a general obligation of the Issuer nor a charge upon any revenues or property of the Issuer not specifically pledged thereto. The Owners of the Metro East Transfer Station Bonds cannot compel the Issuer to levy any taxes for the purpose of paying any amounts owing under the Metro East Transfer Station Bonds. The Metro East Transfer Station Bonds are payable solely and only out of the System Trust Estate pledged thereto.

The Metro East Transfer Station Bonds are subject to mandatory and optional redemption prior to maturity only as provided in the Ordinance.

The Metro East Transfer Station Bonds are issuable as fully registered Bonds without coupons as provided for in the Ordinance. This Bond is transferable by the Owner as provided for in the Ordinance.

No recourse shall be had for the payment of the principal of, or premium, if any, or interest on, any of the Metro East Transfer Station Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Ordinance against any past, present or future councilor, officer, employee or agent of the Issuer, or any successor, under any rule of law of equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such councilor, officer, employee or agent as such is hereby expressly waived and released as a condition of, and in consideration for, the issuance of this Bond.

The Owner shall have no right to enforce the provisions of the Ordinance or to institute action to enforce the covenants therein, or to take any action with respect to any System Event of Default under the Ordinance, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Ordinance. If a System Event of Default (as defined in the Ordinance) occurs, the principal of all Metro East Transfer Station Bonds then outstanding under the Ordinance may be declared due and payable upon the conditions and in the manner and with the effect provided in the Ordinance.

The Issuer, the Master Trustee and any paying agent of the Issuer or the Master Trustee may treat the person in whose name this Bond is registered as the Owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, and neither the Issuer, the Master Trustee nor any paying agent shall be affected by notice to the contrary.

The Ordinance prescribes the manner in which it may be discharged, including a provision that the Metro East Transfer Station Bonds shall be deemed to be paid if cash and/or Government Obligations (as defined in the Ordinance) maturing as to principal and interest in such amounts and at such times as will be such to insure the availability of sufficient moneys to pay the principal of, and premium, if any, and interest on, the Metro East Transfer Station Bonds shall have been deposited with the Master Trustee, after which the Metro East Transfer Station Bonds shall no longer be secured by or entitled to the benefits of the Ordinance, except for the purposes of registration and exchange of Metro East Transfer Station Bonds and of payment from such source.

Reference is hereby made to the Ordinance, copies of which are on file with the Master Trustee, for the provisions, among others, with respect to the nature and extent of the rights, duties and obligations of the Issuer, the Master Trustee and the Owners of the Metro East Transfer Station Bonds, the terms upon which the Metro East Transfer Station Bonds are issued and secured, the collection and disposition of the Net Revenues pledged as security for the Metro East Transfer Station Bonds, the modification, amendment or supplementation of the Ordinance, and other matters, to all of which the Owner assents by the acceptance of this Bond.

Modifications and alterations of the Ordinance or of any supplements thereto may be made only to the extent and in the circumstances permitted by the Ordinance.

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____

(please insert social security or other tax identification number of assignee)

the within Bond and does hereby irrevocably constitute and appoint _____ as attorney to transfer this Bond on the books kept for registration thereof with the full power of substitution in the premises.

Date:

Note: the signature(s) must correspond with the name(s) as written on the face of this Bond in every particular without enlargement, alteration or any change whatsoever.

Signature Guarantees: _____

(Bank, Trust Company or NYSE Firm)

(Authorized Officer)

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 90-321, TO FINANCE THE METRO EAST TRANSFER STATION, A PORTION OF METRO'S SOLID WASTE CAPITAL FACILITY

Date: January 18, 1990

Presented By: Ray Phelps

PROPOSED ACTION

INTRODUCTION

The Metropolitan Service District is considering adopting Ordinance No. 90-321 which will provide for financing the construction of the Metro East Transfer Station of the Solid Waste System and retire debt due the Oregon Department of Environmental Quality related to the original financing of the Metro South Transfer Station. This is the first financing under the supplemental ordinance system provided for in the Solid Waste Capital System Master Ordinance No. 89-319.

PRIOR ACTION

The St. Johns Landfill will close February 1, 1991, making it imperative to have an alternate method of disposal by that date. The Metro East Transfer Station Project was proposed as an integral part of the solution.

On November 21, 1989, the Council approved the Metro East Transfer Station Project and committed to payments as the contractor brings the station on line. Ordinance No. 90-321 would authorize the sale of bonds to finance this commitment.

DEQ BONDS

Department of Environmental Quality Bonds were issued in the process of financing the Metro South Transfer Station and were pledged against the gross revenue of the Solid Waste System. The revenue bonds now being issued are backed by a pledge on net revenues of the system. Retirement of the DEQ bonds would place all financing for the Solid Waste System on the same priority with respect to claim on net revenues.

<u>Loan No.</u>	<u>Date</u>	<u>Size</u>	<u>Outstanding</u>
115	04/01/77	\$2,150,000	\$ 510,000
118	05/01/81	4,487,000	<u>3,291,000</u>
			\$3,801,000

Loan No. 118 pays off over about 12 years at varying interest rates but averaging about 7.15 percent. It is expected that the interest

rate on the new bonds will be comparable to DEQ Loan No. 118. Retiring this loan should be about cost neutral.

Loan No. 115 is at a 4 percent but pays off in about two years. Interest saved by not financing Loan No. 115 would probably not offset the cost of either persuading the State to accepting a subordination of the DEQ claims or of the risk to the successful rating of the new bonds without primary claim on system revenues.

SYSTEM BONDS

The bonds to be authorized by Ordinance No. 90-321 are of a classic municipal type with fixed rate and maturity of about 21-1/2 years. The principal is amortized over a 20-year period following the completion of construction in February 1991.

Authorized bond quantity should not exceed \$28,500,000. Exact sizing will depend upon market interest rates at the time of issue. The interest rate effects Deposit to Debt Service Reserve Fund, Deposit to Capitalized Interest Fund and Total Underwriters' Discount.

BOND ISSUE SUMMARY ESTIMATE

Date: March 1, 1990

Delivery: March 21, 1990

Par Mount of Bonds	\$27,340,000.00
Accrued Interest from 02/01/90 to 03/15/90	<u>106,065.14</u>
Total Sources	\$27,446,065.14
Total Underwriter's Discount (1.500%)	\$ 410,100.00
Costs of Issuance*	160,000.00
Deposit to Debt Service Reserve Fund (DSRF)	2,667,025.00
Deposit to Capitalized Interest Fund (CIF)	1,789,058.37
Deposit to Retire DEQ Bonds	3,801,000.00
Deposit to Project Construction Fund	18,016,403.77
Deposit to Construction Contingency Fund	601,293.00
Contingency	<u>1,185.00</u>
Total Uses	\$27,446,065.14

*Cost of issuance includes financial advisor, feasibility report, "comfort letter," printing, trustee, etc.

SECURITY FOR SYSTEM BONDS

System Bonds are secured by the System Trust Estate, which is made up of the system's net revenues, money in any of the construction, debt service or reserve accounts, and credit enhancement for the system, and any other property or assets pledged to the System Trust Estate. All System Bonds are issued on a parity basis with other System Bonds, unless the Supplemental Ordinance for the issue specifically says otherwise.

FLOW CONTROL

As long as System Bonds issued under Master Ordinance are outstanding, Metro covenants to maintain in effect an ordinance regulating the disposal of solid waste generated within the service area. This ordinance will insure that sufficient solid waste is disposed of through the system to maintain revenues necessary in each fiscal year to comply with financial terms of the Master Ordinance.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 90-321.

BR/srs

br\misc\stfrpt.bond

Agenda Item No. 5.3
Meeting Date: January 25, 1990

ORDINANCE NO. 90-326

ZOO COMMITTEE REPORT

ORDINANCE NO. 90-326, AMENDING THE METRO CODE SECTION 4.01.060
REGARDING ADMISSION FEES AND POLICIES AT THE METRO WASHINGTON
PARK ZOO

Date: January 19, 1990

Presented By: Councilor Knowles

COMMITTEE RECOMMENDATION: At the January 18, 1990, Zoo Committee meeting, Councilors DeJardin, Ragsdale and myself voted unanimously to recommend Council adopt Resolution No. 90-326. Councilors Gardner and McFarland were excused.

COMMITTEE DISCUSSION/ISSUES: Zoo Assistant Director Kay Rich presented the ordinance which increases Zoo admission fees for adults, senior citizens and youth by 50 cents effective February 1, 1990. The last fee increase was April 1, 1988, establishing the present level of \$3.00 for adults, \$2.00 for senior citizens and youth. Five-Year Financial Plan revenue projections prepared in 1987 included periodic admission fee increases. It was noted the ordinance also includes amended language describing group and education discounts, but the discount opportunities remain unchanged (\$1.00 per student in Education Groups; 20% discount for other groups of 25 or more). A public hearing was opened, but no one came forward to testify. The Committee raised no additional issues and the ordinance was passed without debate.

jpmthree
b:\90326.cr

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 90-326
METRO CODE SECTION 4.01.060)	
REGARDING ADMISSION FEES AND	)	Introduced by Rena Cusma,
POLICIES AT METRO WASHINGTON	)	Executive Officer
PARK ZOO)	

1. Metro Code Section 4.01.060 is amended to read as follows:

"4.01.060 Admission Fees and Policies:

"(a) Regular Fees:

(1) Definitions:

(A) An Education discount is offered to groups of five or more students in a state accredited elementary, middle, junior or high school or pre-school/daycare center. Qualifications for Education Discount include a minimum of one chaperon for every five students of high school age or under; registration for a specific date at least two weeks in advance; and the purchase of curriculum materials offered by the Zoo, or submission of a copy of the lesson plan that will be used on the day of the visit."

["School-Group"-is-defined-as-a-group-of
-five-or-more-students-of-a-state-accredited

~~-school-elementary,-middle,-junior-and-senior
-high-schools-or-registered-pre-school/daycare
-center-including-at-least-one-chaperon-for-
-every-five-students-of-high-school-age-or
-under.---Registration-for-a-specified-visit
-date-at-least-two-weeks-in-advance-is-required
-in-order-for-a-school-group-to-qualify-for
-the-school-group-rate-]"~~

"(B) The Group Discount is defined as any group of twenty-five (25) or more (including school groups that have not met the requirements for the Education Discount.)

~~["Group-Other-Than-School-Group"-is-defined
as-any-group,-other-than-a-school-group,
of-twenty-five-(25)-or-more-members-who-have
purchased-tickets-at-least-one-day-in-advance.
All-advance-tickets-shall-bear-an-expiration
date-not-to-exceed-six-(6)-months-from-the-date
of-issuance-]"~~

"(2) Fee Schedule:

Adult (12 years through 64)	<u>\$3.50</u> [\$3.00]
Youth (3 years through 11 years)	<u>\$2.00</u> [\$1.50]

Child (2 years and under) free
Senior Citizen (65 years and over) \$2.00 [~~\$1.50~~]
Education [~~School~~] Groups (per student) \$1.00
Chaperons accompanying Education
[~~School~~] groups \$1.00
Groups other than Education [~~School~~] groups
25 or more per group 20% discount
from appropriate
fee listed above"

, Presiding Officer

ATTEST:

AMR:can
401060.amd
December 6, 1989

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 90-326 FOR THE PURPOSE OF AMENDING THE METRO CODE SECTION 4.01.060 REVISING ADMISSION FEES AND POLICIES AT THE METRO WASHINGTON PARK ZOO

Date: November 28, 1989

Presented by: Sherry Sheng

FACTUAL BACKGROUND AND ANALYSIS

In January 1984, the Metro Council adopted Resolution No. 84-444, which set forth financial principles and policies for the District. The specific financial policies relating to the operation of the Zoo include the following:

1. The Zoo shall rely on the property tax for a portion of its revenue:
2. A ratio of approximately 50 percent tax and 50 percent non-tax revenues shall be maintained for funding Zoo operations;
3. The Council shall annually review admission fees to assist in meeting policy 2 above; and
4. Any operating fund surplus will be periodically transferred to the Capital Improvement fund to implement the Zoo's Master Plan.

The Five-Year Financial Plan prepared in 1989 projected revenues and costs in accordance with these policies. Revenue projections were based not only on continued property tax support, but also on periodic admission fee adjustments, the next of which was projected by January 1, 1990. The last fee increase became effective April 1, 1988. It established the admission fees at the present \$3.00 for adults and \$1.50 for senior citizens and youth. The recommended new fee schedule is \$3.50 for adults, \$2.00 for senior citizens and youth, and \$1.00 for individuals in education groups, effective Feb. 1, 1990.

Table I shows projected non-tax revenues, as a percent of operation and maintenance costs for FY 1989-90 to 1992-93, as proposed in the Five-Year Financial Plan. The new admission fee schedule will assist in providing non-tax revenue at 50% or better of Operations and Maintenance costs in FY 1989-90, and at approximately 50% thereafter.

Table 1

NON-TAX REVENUES AS A PERCENT OF
OPERATIONS AND MAINTENANCE

	<u>FY 88-89</u>	<u>FY 89-90*</u>	<u>FY 90-91</u>	<u>FY 91-92</u>	<u>FY 92-93</u>
Operations and Maint. **	\$8,238,492	\$9,542,842	\$10,139,434	\$10,954,904	\$11,759,917
Non-Tax Revenues (1/1/90 Admission increase) ***	\$4,947,471	\$5,290,625	\$5,560,390	\$6,014,964	\$6,468,193
Percent of Operations and Maint. Costs	60%	55%	55%	55%	55%

The actual level of admissions and revenues during the fiscal year are subject to weather conditions and other non-calculable circumstances. Actual amounts may vary either positively or negatively compared to projections. So far this fiscal year admissions revenues are greater than estimated. Expenses are also greater than estimated. If revenue increases exceed cost increases into the spring, the excess revenue will be applied towards projects outlined in the Master Plan, as directed in the Metro guidelines. The fee increase is readily justifiable based on the expanded services provided by the Zoo since 1987 in the areas of capital improvements and programming.

*Figures are those in the projected FY 89-90 budget.

**Includes Personal Services, Materials and Services, Capital Outlay, Insurance, and General Fund Transfers.

***Includes all revenues except property taxes and the Fund Balance.

Capital Improvements

The newest improvement for visitors since 1987 is the just opened Africa Exhibit; the AfriCafe and the Aviary. This fiscal year 1989-90, work will start on the final phase of the Africa Exhibit - the African Rainforest.

Programming

The expanded programming at the Zoo includes:

1. Birds of Prey show
2. Animal Keeper Talks
3. World of Reptiles Show
4. ZooLights Festival

The new exhibits, animals and programming have contributed to lengthening the average stay per visit. The additional time spent at the zoo represents an increased value to the visitor for the admission price.

The proposed admission rate at the zoo still remains a bargain compared to similar institutions in the West and in the Metro area as shown in Table II and III. Disadvantaged residents of the Metro and surrounding areas may still benefit from free admission every Tuesday after 3:00 p.m. and the other special free days offered during the year. Even with the fee increase, the Zoo remains one of the most reasonable entertainment and educational values in the Metro area, compared to any other attractions, even to movies and sporting events. The recent trend of increased visitors does suggest that visitors to the Zoo are willing to pay a fair admission fee for a recreational experience that leaves them with some new knowledge in an increasingly sophisticated and pleasing environment.

Table II ADMISSION RATES AT WESTERN INSTITUTIONS

	ADULT	SENIOR	YOUTH
Wildlife Safari (Winston)	\$6.50	\$4.50	\$4.50
San Francisco Zoo	\$5.00	\$4.00	\$2.00
Los Angeles Zoo	\$4.50	\$3.50	\$2.00
Denver Zoo	\$4.00	\$2.00	\$2.00
Rio Grande Zoo	\$4.00	\$2.00	\$2.00
Point Defiance Zoo (Tacoma)	\$3.50 res. \$5.00 non-res.	\$3.00 \$4.50	\$2.25 \$3.50
Woodland Park Zoo (Seattle)	\$3.50	\$1.75	\$1.75
Hogle Park (Salt Lake City)	\$4.00	\$2.00	\$2.00

Table III

ADMISSION RATES AT SELECTED OREGON FACILITIES

	ADULT	SENIOR	YOUTH
Movie	\$5.50	\$3.00	\$3.00
OMSI	\$4.25	\$2.75	\$2.75
Shows at the Expo Center	\$4.00	\$4.00	\$2.00
World Forestry Center	\$3.00	\$2.00	\$2.00
High Desert Museum (Bend)	\$4.50	\$4.00	\$2.50
Metro Washington Park Zoo	\$3.50	\$2.00	\$2.00
Childrens Museum (requested donation)	\$3.00	\$2.50	\$2.50
Japanese Gardens	\$3.50	\$2.00	\$2.00

The proposed new rate will assist in paying for increased levels of activities and programming including:

- maintaining the approximate ratio of 50% for tax and 50% for non-tax revenues
- allowing us to adequately care for the service needs of increasing numbers of visitors (custodial, landscaping, visitor services, security, etc.)
- providing a contingency fund for some unanticipated costs that were not previously expected, including the anticipated increase in the minimum wage.

In addition to the changes in the fee structure, the definitions clause is being modified to better conform with the Zoo's efforts to encourage school groups to use the Zoo as an educational resource.

Recommendation:

It is therefore recommended, based on the foregoing information, that the admission rates be increased to \$3.50 for adults, \$2.00 for seniors/youths and \$1.00 for the educational rate for students and chaperons. It is also recommended that the definitions be modified as shown in the proposed ordinance.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 89-326.

AMR:can
401060am.sr

Agenda Item No. 5.4
Meeting Date: January 25, 1990

ORDINANCE NO. 90-329

ZOO COMMITTEE REPORT

ORDINANCE NO. 90-329, SUBMITTING A METROPOLITAN SERVICE DISTRICT TAX BASE MEASURE FOR THE METRO WASHINGTON PARK ZOO

Date: January 19, 1990

Presented By: Councilor Gardner

COMMITTEE RECOMMENDATION: At the January 18, 1990, Zoo Committee meeting, Councilors DeJardin, Knowles, Ragsdale and myself voted unanimously to recommend the Council adopt Ordinance No. 90-329 as amended. Councilor McFarland was excused. The amendments are as follows:

- 1) Reduce the tax base amount from \$5.31 to \$5.10 million annually;
- 2) In the Ballot Title "Explanation", change "The Zoo has not tax base (\$0) now." to "Currently, there is no tax base (\$0) to operate the Zoo.";
- 3) In the Ballot Title "Explanation", add the word "Zoo" in the 5th sentence before "functions";
- 4) In the Ballot Title "Explanation", add the word "Concession" in the 3rd sentence before the word "sales".

Amendment no. 3 is contingent upon Metro General Counsel's review and approval.

COMMITTEE DISCUSSION/ISSUES: Zoo Director Sherry Sheng began by giving a brief summary of Ordinance No. 90-329, for a tax base to operate the Zoo, and the companion piece Resolution No. 90-1194, for a 3-year serial levy to fund capital improvements and the renovation of the Children's Zoo (the Animals Around Us project). Committee members inquired about revenue and expenditure changes from the Zoo's December 5th Five-Year Plan and the December 28 revised version. Zoo staff explained the increase of approximately \$635,000 in Enterprise Fund revenues owed to more accurate food sales data recently compiled for this year's experience with the Africafe and its catering facility. The projected increases result primarily from continuing growth in group sales and the new "Crossroad" food services outlet to be built in Africa III. Zoo staff noted the approach to this Five-Year Plan was not as fiscally conservative as in past plans because catering services revenues are not driven by changes in the weather. Zoo further explained the increase in projected Federal grants and other revenue resulted in large part from increase Friends of the Zoo (FOZ) fund raising efforts. It was noted with the opening of the Oregon Convention Center, the Zoo should examine closer ties with the Portland/Oregon Visitors Association (POVA) to increase Zoo marketing to Convention Center users.

Discussion of the first amendment, to decrease the tax base from \$5.3 to \$5.1 million, focussed on removing funding for the possibility of Metro joining the Public Employees Retirement System (PERS) (approximately \$200,000 per year), while accepting and providing funding for the Zoo's proposed Five-Year Plan program commitments. In supporting the amendment, Councilors noted: (A) PERS should be discussed in context of the agency as a whole and not on an incremental basis; (B) PERS should be considered during labor contract bargaining;

(C) A tax base of \$5.1 million funds the programs the Zoo desires; the \$200,000 decrease reflects the removal of PERS funding; (D) The \$5.1 million provides solid funding for the "foreseeable" 5-year future, consistent with the Zoo's Five-Year Plan. The primary concerns in opposition to the amendment were having a tax base which Metro will not have to revisit in the near future and having adequate funding to provide for any unforeseen major expenditures.

The remaining three amendments were offered to clarify the Ballot Title and ensure voters understand the tax base is solely for the purpose of funding Zoo operations. Staff was directed to have General Counsel review amendment no. 3 because State statute requires the sentence proposed to be amended -- the 5th sentence -- be included in the Ballot Title.

jpmthree
b:\ord329.cr

CONVENTION, ZOO & VISITORS
FACILITIES COMMITTEE REPORT

ORDINANCE NO. 90-329, SUBMITTING A METROPOLITAN SERVICE
DISTRICT TAX BASE MEASURE FOR THE METRO WASHINGTON PARK ZOO

Date: January 3, 1990

Presented by: Councilor DeJardin

COMMITTEE RECOMMENDATION: At the December 28, 1989, Convention, Zoo & Visitors Facilities Committee meeting, all members were present and voted 4 to 1 (Councilor Knowles dissenting) to recommend Council adoption of Ordinance No. 90-329 as amended. The amendment changed the tax base amount from \$4.78 million to \$5.31 million.

COMMITTEE DISCUSSION/ISSUES: Zoo Director Sherry Sheng presented the ordinance approving and submitting a tax base measure, for the May 15, 1990 ballot, to fund Metro Washington Park Zoo operations. Executive Officer Rena Cusma attended and gave her support of a \$5.31 million tax base. She said the updated Zoo budget projections (Attachment 1 hereto) included policy assumptions, such as Metro joining the Public Employees Retirement System (PERS), which increased the tax base from the original \$4.78 million proposal. Noting the new 5-year projections resulted from the recently commenced FY90-91 budget preparation process, Zoo staff highlighted the following changes:

- 1) Election costs are continued in the Administration Division for 1990 in case the tax base or capital serial levy fail;
- 2) The Animal Management Division has increased staff to provide full 7-day coverage which has been understaffed to date;
- 3) Africa III animal purchase costs are included because they were not previously budgeted;
- 4) Funds added to cover additional Africa III gardening costs;
- 5) The Education Division has increased part-time staff to handle work now covered by volunteers and increased funds to cover higher paper costs (due to recycled paper purchases), sign replacement costs;
- 6) Marketing Division costs are increased to support bigger Summer concert series;
- 7) Visitor Services funds increased to upgrade the cash register system and buy new equipment to better manage the system; and
- 8) Per FY90/91 budget preparation instructions, personnel fringe benefit rates increased by 4 percent and the General Fund transfer increased in case excise tax measures are unsuccessful.

Council Administrator Don Carlson presented his analysis and recommendations (Attachment 2 hereto) responding to the Zoo's proposed \$5.2 million tax base amount, which had been submitted to Council staff December 20, 1989. A public hearing was held and Mr. Phil Jackson, Friends of Washington Park Zoo, President Elect, testified in support of the proposed \$5.31 million tax base. No other testimony was offered.

The Committee discussed the increase from \$4.78 to \$5.31 million and in amending the ordinance to reflect the \$5.31 million amount, Councilor Knowles dissented. Councilor Knowles made the following

points: 1) there is always new cost information emerging but some of the Zoo's expenditure categories showed "fairly dramatic increases"; 2) the types of program changes envisioned generally come during the budget process, where they receive healthy debate; 3) it is troublesome to receive all of the Zoo information at the last minute; and 4) he was not prepared to support major policy considerations without having had the program narratives in advance of the meeting.

In supporting the increased tax base, Councilors noted the Zoo needed long-term, stable funding; Metro's unknown excise tax possibilities require cautious budgeting; the difference between the \$4.78 and \$5.31 million is not great; and, approval of the \$5.31 million does not guarantee program funding as envisioned because program funding and priorities will still be subject to the annual budget process and Council approval. The complete, updated Zoo Five-Year Financial Plan, with program narratives, will be reviewed and acted upon via Resolution No. 90-1194.

jpmthree
b:\90329.cr

Handed out at
12-28-89 CZVF
mtg.

ZOO 5 YEAR PROJECTIONS, 1989

SYOP1227.WK1

12/28/89

PROJECTED ATTENDANCE	970,000	985,000	1,000,000	1,015,000	1,050,000	1,065,000
	FY89-90 PROJECTED FTE AMOUNT	FY90-91 PROJECTED FTE AMOUNT	FY91-92 PROJECTED FTE AMOUNT	FY92-93 PROJECTED FTE AMOUNT	FY93-94 PROJECTED FTE AMOUNT	FY94-95 PROJECTED FTE AMOUNT
ZOO REVENUE						
Tax Base		5,310,000	5,628,600	5,966,316	6,324,316	6,703,769
Fund Balance-Beginning	2,232,119	1,480,244	1,693,144	1,808,296	1,898,852	1,758,419
Real Property Taxes-Current Year	5,005,000	4,779,000	5,065,740	5,369,684	5,691,885	6,033,392
Real Property Taxes-Prior Year	425,300	502,200	455,917	483,272	512,270	543,005
ENTERPRISE REVENUES						
Admissions	1,981,512	2,327,339	2,528,196	2,734,084	2,999,276	3,218,580
Rental-Conveyances	29,100	39,400	40,000	40,600	52,500	53,250
Food Service-Regular/Food	1,492,300	1,870,465	2,102,000	2,306,000	2,524,500	2,733,000
Food Service-Regular/Beer&Wine	52,000	52,000	58,000	62,000	66,000	70,000
Food Service-Catering/Food	170,000	263,000	300,000	340,000	365,000	400,000
Food Service-Catering/Beer&Wine	22,000	35,000	40,000	42,000	44,500	47,000
FOOD SUBTOTAL	1,736,301	2,220,465	2,500,000	2,750,000	3,000,000	3,250,000
Retail Sales	452,200	522,444	595,000	663,000	751,000	809,000
Retail Sales-Vending	32,300	33,490	35,000	37,000	39,000	41,000
RETAIL SUBTOTAL	484,500	570,041	630,000	700,000	790,000	850,000
Sale of Animals	5,000	10,000	10,000	11,000	11,000	12,000
Tuition & Lectures	94,854	112,197	116,685	121,352	127,420	133,790
Exhibit Shows/Zoo	12,000	13,000	14,000	15,000	16,000	17,000
Railroad Rides	370,300	394,000	400,000	406,000	420,000	426,000
ENTERPRISE SUBTOTAL	4,721,567	5,686,442	6,238,881	6,778,036	7,416,196	7,960,620
OTHER INCOME						
Federal Grants-Op.-Non Cat.-Direct	75,000	100,000	100,000	100,000	100,000	100,000
Interest on Investments	133,927	88,815	101,589	108,498	113,931	105,505
Donations & Bequests	163,000	165,000	171,600	179,320	187,391	195,824
Zoo Parents	37,180	40,898	44,987	49,485	54,434	59,877
Other Miscellaneous Revenue	43,680	45,427	47,245	49,134	51,590	54,170
Sale of General Fixed Assets	4,160	4,326	4,499	4,679	4,913	5,159
SUBTOTAL	456,947	444,466	469,920	491,116	512,259	520,535
Total Resources	12,840,933	12,892,351	13,923,601	14,930,404	16,031,461	16,815,971

12/20/09

PROJECTED ATTENDANCE

	970,000		985,000		1,000,000		1,015,000		1,050,000		1,065,000	
	FY09-90		FY90-91		FY91-92		FY92-93		FY93-94		FY94-95	
	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT
ADMINISTRATION												
Personal Services	9.75	404,170	10.00	457,716	10.25	496,969	10.50	539,342	10.50	585,719	10.75	638,099
Materials & Services		170,124		270,468		222,148		291,009		239,308		247,914
Capital Outlay		3,737		5,179		5,306		32,059		5,849		6,003
Total Expenditures	9.75	586,031	10.00	733,363	10.25	724,503	10.50	863,209	10.50	830,956	10.75	892,096
ANIMAL MANAGEMENT												
Personal Services	39.92	1,513,625	42.20	1,748,681	44.42	1,963,384	43.92	2,057,794	46.22	2,479,242	46.22	2,665,134
Materials & Services		313,651		329,538		307,919		316,110		327,090		344,672
Capital Outlay		25,075		16,001		31,366		17,435		19,302		21,291
Total Expenditures	39.92	1,852,351	42.20	2,094,140	44.42	2,302,669	43.92	2,385,340	46.22	2,826,433	46.22	3,031,097
FACILITIES MANAGEMENT												
Personal Services	36.20	1,300,965	38.09	1,511,290	39.84	1,664,973	39.84	1,755,238	41.51	2,072,528	42.51	2,281,513
Materials & Services		1,222,869		1,329,566		1,395,014		1,512,261		1,607,053		1,683,926
Capital Outlay		425,028		433,846		445,833		449,944		460,054		484,957
Total Expenditures	36.20	2,949,662	38.09	3,274,702	39.84	3,505,820	39.84	3,717,443	41.51	4,149,234	42.51	4,450,396
EDUCATION												
Personal Services	18.79	545,542	19.85	635,941	21.35	737,873	21.60	801,329	23.10	936,347	23.10	1,006,554
Materials & Services		221,403		313,617		312,959		266,015		277,123		294,104
Capital Outlay		13,904		30,349		49,645		146,050		15,207		15,016
Total Expenditures	18.79	780,849	19.85	979,907	21.35	1,100,477	21.60	1,214,994	23.10	1,228,678	23.10	1,316,554
MARKETING												
Personal Services	3.96	145,192	4.00	163,669	4.00	175,944	4.00	189,144	4.00	203,329	4.00	218,574
Materials & Services		205,967		321,918		329,387		340,106		356,247		370,515
Capital Outlay		3,615		5,720		5,400		5,624		5,049		6,003
Total Expenditures	3.96	354,774	4.00	491,308	4.00	510,740	4.00	542,954	4.00	565,425	4.00	595,172
VISITOR SERVICES												
Personal Services	58.10	1,110,962	65.35	1,371,712	70.40	1,554,721	73.55	1,705,224	76.25	1,881,315	77.78	2,029,134
Materials & Services		947,581		1,100,977		1,322,202		1,454,684		1,597,652		1,707,767
Capital Outlay		50,995		66,351		54,225		64,496		64,717		75,432
Total Expenditures	58.10	2,109,538	65.35	2,627,039	70.40	2,931,147	73.55	3,224,404	76.25	3,543,685	77.78	3,812,333
ZOO TOTAL												
Personal Services	166.72	5,020,456	179.49	5,888,928	190.26	6,593,865	193.41	7,048,071	201.58	8,158,480	204.36	8,839,008
Materials & Services		3,089,595		3,754,084		3,889,628		4,183,864		4,406,154		4,640,978
Capital Outlay		523,154		557,447		591,864		716,409		579,777		609,663
Total Expenditures	166.72	8,633,205	179.49	10,200,459	190.26	11,075,357	193.41	11,948,344	201.58	13,144,411	204.36	14,097,649

ZOO 5 YEAR PROJECTIONS, 1989

12/28/89

5YOP1227.WK1

PROJECTED ATTENDANCE

	970,000		985,000		1,000,000		1,015,000		1,050,000		1,065,000	
	FY89-90		FY90-91		FY91-92		FY92-93		FY93-94		FY94-95	
	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT
OPERATING TRANSFERS												
Trans. Indirect Costs to Gen'l Fund		699,927		824,000		865,200		908,460		953,883		1,001,577
Trans. Indirect Costs to Bldg Fund		174,748		174,748		174,748		174,748		174,748		174,748
Trans. Indirect Cost to Insur. Fund												
Total Operating Transfers		874,675		998,748		1,039,948		1,083,208		1,128,631		1,176,325
TOTAL OPERATING EXPENDITURES & TRANSFERS	166.72	9,507,880	179.49	11,199,207	190.26	12,115,305	193.41	13,031,552	201.58	14,273,042	204.36	15,273,974
Contingency		328,252		335,976		363,459		390,947		428,191		458,219
TOTAL OPERATING TRANSFERS & CONTINGENCY		1,202,927		1,334,724		1,403,407		1,474,155		1,556,822		1,634,544
Unappropriated Fund Balance		1,195,007		1,357,167		1,444,837		1,507,905		1,330,227		1,083,778
Trans. Resources to Zoo Cap. Fund		1,009,794										
TOTAL EXPENDITURES	166.72	12,840,933	179.49	12,892,351	190.26	13,923,601	193.41	14,930,404	201.58	16,031,461	204.36	16,815,971



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

- ATTACHMENT 2 -

DATE: December 28, 1989

TO: Convention Center, Zoo, Visitor Facilities Committee

FROM: Donald E. Carlson, ^{DO}Council Administrator

RE: Increased Expenditure and Revenue Projections for the
Zoo 5 Year Financial Plan and Resulting Increased Zoo
Tax Base Request

The purpose of this memo is to inform you that the Zoo Department has submitted a new set of financial projections which increase Zoo expenditures by an average of almost \$1 million per year for the next three fiscal years. The effect of these new expenditure projections is to increase the amount of the proposed tax base from \$4,780,000 (proposed December 5, 1989) to \$5,200,000.

The history of the Zoo tax levy request is as follows:

- 1) On September 1, 1989, the Executive Officer submitted a five year financial plan recommending a three year mixed serial levy to fund the operation of the Zoo and construction of the "Animals Around Us" exhibit. The amount of the proposed levy was \$6,350,000 per year with portions of each years' levy to be spent for the aforementioned capital purpose. On an annual average basis, \$4,989,219 would be spent for operations and \$1,360,781 for capital.
- 2) On December 5, 1989, the Executive Officer recommended to the Committee the Council submit two tax levy measures to the voters in May 1990 -- one a tax base to fund the operation and maintenance of the Zoo and the second a three year serial levy to fund the "Animals Around Us" exhibit. The revised five year financial plan figures submitted in December 5, 1989, were based on an initial tax base amount of \$4,780,000. The Capital levy amount was verbally reported to be \$1,511,979 per year for each of three years. The average annual tax levy for operations for the next three years would be \$5,072,536 which is slightly higher than the comparable amount for the earlier proposed three year serial levy.
- 3) On December 20, 1989, Council staff received a revised set of 5 year expenditure and revenue projections which recommend setting the initial tax base at \$5,200,000 which is \$420,000 higher than the proposed December 5, 1989, tax

base. The annual average amount of the tax levy for the next three years would be \$5,518,240 which is over \$500,000 more than the three year serial levy amount and approximately \$450,000 more than the initial tax base amount.

A summary of the differences between the three sets of projections is shown in Exhibit A. Included are the differences in total operating costs; tax levy amounts; enterprise revenue amounts and other revenue amounts. Also shown in Exhibit A is the annual average information for the prior three year levy period (1987-88, 1988-89 and 1989-90).

The differences in the various expenditure plans by organizational unit and revenue source are shown in Exhibit B for the first year of the new levy period (1990-91). Exhibit B reveals there are proposed increases over the August 15 and December 5 plans in all Zoo divisions. The largest increases on a percentage basis appear to be in the Administration, Education and Marketing Divisions. Council staff recently met with the Zoo Director and Assistant Zoo Director to review the proposed increases. While there may be some valid need to increase the projections to maintain the current level of service at the Zoo, it also appears there are attempts to enhance or increase the level of some programs at the Zoo. Council staff is not sure what changed between December 5 and December 20 to warrant an approximate 9% overall expenditure increase and a corresponding increase in the property tax levy.

It should be pointed out that the December 20, 1989, Zoo projections do not include some other potential cost increases such as a 4% increase in possible fringe costs and a higher General Fund transfer. The former potential cost is a possibility if the District converts its retirement plan from the current private systems to the PERS system. Council staff is aware that preliminary discussions are underway by the Administration and that the new FY 1990-91 budget manual has instructed departments to budget fringe costs approximately 4% higher than last year. The decision to switch retirement plans is one the Council must make because of the intergovernmental agreement and the budget impacts. The potential cost increase to the General Fund is likely to occur if the District is not successful in implementing an excise tax for General Government costs and/or the District does not find revenue sources to replace the loss of Convention Center Project transfer funds.

Without arguing the merits or details of the Zoo's increased operating expenditures, the primary point of concern is to insure the prudent use of taxpayer monies. A possible alternate course

CONVENTION CENTER, ZOO, VISITOR FACILITIES COMMITTEE
December 28, 1989
Page 3

of action, which would minimize debate about the proposed cost increases, might be as follows:

- 1) Develop a new set of financial projections based on the Zoo's December 5 plan, but adding an amount necessary to cover potential PERS costs and increased General Fund transfer costs (if the excise tax is not implemented). These base figures would result in the tax base amount.
- 2) Have any program expenditures beyond the tax base amount identified above be incorporated by Zoo management only to the extent they can be covered by increased enterprise revenues.

This second step ensures tax base monies will be used to pay for essential operations at a current service level.

DEC:aeb
Attachment

A:\CZVF1228.MEM

EXHIBIT A

SUMMARY OF THREE EXPENDITURES AND REVENUE PLANS
FOR ZOO OPERATIONS

ITEM	PRIOR LEVY PERIOD ANNUAL AVERAGE	1990-91 PROJECTION	1991-92 PROJECTION	1992-93 PROJECTION	THREE YEAR ANNUAL AVERAGE
OPERATING COSTS					
SERIAL LEVY PLAN	\$8,326,805	\$10,139,434	\$10,954,904	\$11,759,917	\$10,951,418
1st TAX BASE PLAN	\$8,326,805	\$10,085,181	\$10,857,567	\$11,611,350	\$10,851,366
2nd TAX BASE PLAN	\$8,326,805	\$10,985,751	\$11,875,913	\$12,769,476	\$11,877,047
TAX LEVY AMOUNT					
SERIAL LEVY PLAN	\$3,727,702	\$4,599,117	\$5,173,800	\$5,194,740	\$4,989,219
1st TAX BASE PLAN	\$3,727,702	\$4,780,000	\$5,066,800	\$5,370,808	\$5,072,536
2nd TAX BASE PLAN	\$3,727,702	\$5,200,000	\$5,512,000	\$5,842,720	\$5,518,240
ENTERPRISE REVENUE					
SERIAL LEVY PLAN	\$4,372,941	\$5,320,513	\$5,773,653	\$6,212,093	\$5,768,753
1st TAX BASE PLAN	\$4,372,941	\$5,320,513	\$5,773,653	\$6,212,093	\$5,768,753
2nd TAX BASE PLAN	\$4,372,941	\$5,688,442	\$6,238,881	\$6,778,036	\$6,235,120
OTHER INCOME					
SERIAL LEVY PLAN	\$400,439	\$239,876	\$241,311	\$256,101	\$245,763
1st TAX BASE PLAN	\$400,439	\$258,277	\$277,445	\$288,632	\$274,785
2nd TAX BASE PLAN	\$400,439	\$444,466	\$476,787	\$505,896	\$475,716

EXHIBIT B
SUMMARY OF ZOO OPERATING FUND
EXPENDITURES & REVENUE PLANS

EXPENDITURES	FY88-89 ACTUAL	FY89-90 PROJECTED	1st (8/15/89) FY90-91 PROJECTED	2nd (12/5/89) FY90-91 PROJECTED	3rd (12/20/89) FY90-91 PROJECTED
ADMINISTRATION	\$515,103	\$586,031	\$584,521	\$580,376	\$716,927
(FTE)	(9.25)	(9.75)	(10.00)	(10.00)	(10.00)
ANIMAL MANAGEMENT	\$1,668,297	\$1,852,351	\$2,000,081	\$1,969,275	\$2,041,357
(FTE)	(38.60)	(39.92)	(41.42)	(41.42)	(42.20)
FACILITIES MANAGEMENT	\$2,413,419	\$2,949,662	\$3,171,134	\$3,154,317	\$3,240,795
(FTE)	(33.78)	(36.20)	(36.95)	(36.95)	(38.09)
EDUCATION	\$555,251	\$780,849	\$789,742	\$778,532	\$1,015,728
(FTE)	(18.00)	(18.79)	(19.79)	(19.79)	(19.85)
MARKETING	\$302,894	\$354,774	\$379,964	\$377,060	\$485,246
(FTE)	(3.85)	(3.96)	(3.96)	(3.96)	(4.00)
VISITOR SERVICES	\$1,787,600	\$2,109,538	\$2,304,320	\$2,315,948	\$2,576,026
(FTE)	(59.96)	(58.10)	(59.05)	(59.05)	(65.35)
OTHER TRANSFERS	\$987,487	\$874,675	\$909,671	\$909,671	\$909,671
Subtotal Operations	\$8,230,051	\$9,507,880	\$10,139,433	\$10,085,179	\$10,985,750
(FTE)	(163.44)	(166.72)	(171.17)	(171.17)	(179.49)
CONTINGENCY	\$0	\$328,252	\$304,183	\$403,407	\$329,573
UNAPPROP. BALANCE	\$2,241,563	\$1,195,007	\$893,159	\$1,497,004	\$1,478,028
TOTAL EXPENDITURES	\$10,471,614 *	\$11,031,139 *	\$11,336,775	\$11,985,590	\$12,793,351

* Does not include transfers to the Capital Fund.

REVENUE

FUND BALANCE	\$2,010,538	\$2,241,563	\$1,297,919	\$1,604,602	\$1,480,244
TAXES	\$3,784,856	\$3,731,533	\$4,478,467	\$4,802,200	\$5,182,200
ENTERPRISE	\$4,580,389	\$4,845,947	\$5,320,513	\$5,320,513	\$5,686,442
ALL OTHER	\$367,082	\$456,947	\$239,876	\$258,277	\$444,466
TOTAL	\$10,742,865	\$11,275,990	\$11,336,775	\$11,985,592	\$12,793,352

LEVY AMOUNT \$3,783,592 (A) \$3,801,533 (A) \$4,599,117 (B) \$4,780,000 (C) \$5,200,000 (C)

(A) Total levy was \$5,500,000 with \$1,716,408 and \$1,698,467 dedicated for capital purposes in 1988-89 and 1989-90 respectively.

(B) Total levy projected at \$6,350,000 with \$1,750,883 dedicated for capital purposes.

(C) Amount of projected tax base.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF SUBMITTING A	)	ORDINANCE NO. 90-329
METROPOLITAN SERVICE DISTRICT TAX)	
BASE MEASURE FOR THE METRO	)	Introduced by the
WASHINGTON PARK ZOO	)	Convention, Zoo & Visitors
	)	Facilities Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Short Title

This ordinance shall be known as the "Metropolitan Service District Tax Base Ordinance" and may be so cited and pleaded and shall be referred to herein as "this ordinance."

Section 2. Definitions

A. "Council" means the Council of the Metropolitan Service District.

B. "District" means the Metropolitan Service District and all of the land and territory included within the boundaries of the District.

C. "Zoo" means the Metro Washington Park Zoo operated by the District under ORS 268.310(5).

Section 3. Findings

A. ORS 268.310(5) permits the District to "acquire, construct, alter, maintain, administer and operate metropolitan zoo facilities."

B. ORS 268.315 provides that "For the purpose of performing the functions set forth in subsection (5) of ORS 268.310, the District, when authorized at any properly called election held for such purpose, shall have the power to levy an ad valorem tax on all taxable property within its boundaries not to exceed in any one year one-half of one percent (.005) of the true cash value of all taxable property within

the boundaries of such district, computed in accordance with ORS 308.207."

C. The Zoo currently receives approximately 50 percent of its operating costs from a serial levy that will expire on June 20, 1990.

D. The Zoo, with unique educational and recreational offerings, is utilized by and benefits District residents.

E. A regional funding base is necessary to provide for part of the continued adequate care, maintenance and development of the Zoo's animal collection, programs and physical facilities.

Section 4. Purposes

The purposes of this ordinance are:

A. To provide for part of the maintenance and operation of the Zoo by approving submission of a tax base to be effective on July 1, 1990, to the voters on May 15, 1990.

B. To perpetually allocate this proposed tax base to the operation and maintenance of the Metro Washington Park Zoo.

Section 5. Submission of Tax Base

If approved by the voters, this tax base shall be effective July 1, 1990.

Section 6. Allocation of Zoo Tax Base

Upon approval of the tax base measure by the voters, the following section is added to Chapter 4.01 of the Code of the Metropolitan Service District:

4.01.070 Allocation of Zoo Tax Base

- (a) Upon approval of a tax base submitted on May 15, 1990 to the voters of the Metropolitan Service District the Council shall allocate the entire amount of the tax base to the operation

and maintenance of the Metro Washington Park Zoo. The allocation shall continue until the voters of the District approve a new tax base or the District ceases to operate and maintain the Zoo.

- (b) Any constitutionally authorized increase in the tax base approved by the voters on May 15, 1990 subsequently levied by the Council shall be used exclusively to operate and maintain the Metro Washington Park Zoo.

Section 7. Ballot Title

A. The Ballot Title for the tax base described in Section 5 of this ordinance shall be as follows:

CAPTION: ESTABLISHES A TAX BASE FOR OPERATING THE ZOO
(8 words)

QUESTION: SHALL THE METROPOLITAN SERVICE DISTRICT ESTABLISH A
(20 words) [~~\$5,310,000~~] \$5,100,000 TAX BASE STARTING FISCAL YEAR 1990-91 TO OPERATE THE METRO WASHINGTON PARK ZOO?

EXPLANATION: THIS MEASURE PROVIDES A [~~\$5,310,000~~] \$5,100,000 TAX BASE
(98 words) TO OPERATE THE ZOO. IT STARTS JULY 1, 1990, WHEN THE CURRENT \$5,500,000 VOTER-APPROVED LEVY FOR ZOO OPERATION AND CONSTRUCTION ENDS. [~~THE-ZOO-HAS-NO-TAX-BASE-(\$0)-NOW-~~] CURRENTLY, THERE IS NO TAX BASE (\$0) TO OPERATE THE ZOO. THE TAX BASE WILL BE USED WITH ZOO GATE AND CONCESSION SALES INCOME TO OPERATE AND MAINTAIN THE ZOO. THE ESTIMATED TAX RATE RESULTING FROM THE BASE WOULD BE 15 CENTS PER \$1,000 OF ASSESSED VALUE AT CURRENT VALUES, OR \$9.01 FOR A HOME ASSESSED AT \$60,000. ANY CONSTITUTIONALLY AUTHORIZED INCREASE IN THE TAX BASE SUBSEQUENTLY LEVIED BY THE COUNCIL SHALL BE APPORTIONED TO THE ZOO FUNCTIONS OR ACTIVITIES SPECIFIED BY THE COUNCIL IN THE BALLOT TITLE IN THE SAME PROPORTION AS THE ORIGINAL ALLOCATION. IF THE DISTRICT REDUCES OR CEASES TO PROVIDE A FUNCTION OR ACTIVITY FOR WHICH THE TAX BASE HAS BEEN ALLOCATED, THEN THE COUNCIL MAY USE THAT PORTION OF THE TAX BASE FOR ANY LAWFUL PURPOSE OF THE DISTRICT.

B. The above Ballot Title shall be filed with the Director of Records and Elections of Multnomah County not later than March 15,

1990.

Section 8. Submission of Proposal to Secretary of State

This ordinance shall be filed with the Secretary of State no later than March 6, 1990, to meet publication requirements for the Voters' Pamphlet.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1990.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

jpmtwo
b:\zoolevy.ord
01-18-90

Agenda Item No. 6.1
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1194

ZOO COMMITTEE REPORT

RESOLUTION NO. 90-1194, APPROVING THE ZOO FIVE-YEAR FINANCIAL PLAN AND SUBMITTING A METROPOLITAN SERVICE DISTRICT ZOO CAPITAL SERIAL LEVY TO DISTRICT VOTERS

Date: January 19, 1990

Presented By: Councilor Gardner

COMMITTEE RECOMMENDATION: At the January 18, 1990, Zoo Committee meeting, Councilors DeJardin, Knowles, Ragsdale and myself voted unanimously to recommend Council adopt Resolution No. 90-1194. Councilor McFarland was excused.

COMMITTEE DISCUSSION/ISSUES: There was no formal Zoo Department presentation as Director Sherry Sheng had briefly reviewed the resolution in her presentation of the Zoo operations tax base under Ordinance No. 90-329. Resolution No. 90-1194 provides for Council approval of the Zoo Five-Year Financial Plan, on which the tax base and proposed serial levy are based. It was noted the Five-Year Plan will be adjusted to reflect the reduction in the tax base to \$5.1 million (amendment no. 1 to Ordinance No. 90-329). The resolution also approves submittal of a three-year serial levy of \$1.512 million per year to fund Zoo capital improvements and the renovation of the Children's Zoo, the "Animals Around Us" project. The Committee did not raise any issues or questions and the motion passed without debate.

jpmthree
b:\901194.CR2

CONVENTION, ZOO & VISITORS
FACILITIES COMMITTEE REPORT

RESOLUTION NO. 90-1194, APPROVING THE ZOO FIVE-YEAR FINANCIAL
PLAN AND SUBMITTING A METROPOLITAN SERVICE DISTRICT ZOO
CAPITAL SERIAL LEVY TO DISTRICT VOTERS

Date: January 3, 1990

Presented By: Councilor DeJardin

COMMITTEE RECOMMENDATION: At the December 28, 1989, Convention, Zoo & Visitors Facilities Committee meeting, all Councilors were present and voted unanimously to recommend Council adoption of Resolution No. 90-1194 as amended to incorporate the levy amount of \$1,512,000 per year. The adoption recommendation was contingent upon receipt of the updated Zoo Five-Year Financial Plan.

COMMITTEE DISCUSSION/ISSUES: Resolution No. 90-1194 calls for Council approval and submittal of a three-year serial levy, FY90-91 through FY92-93, to fund Zoo capital projects, including the "Animals Around Us" reconstruction of the Children's Zoo. The levy would be on the May 15, 1990 ballot. In previous work-sessions on Zoo tax measures, the Committee had reached consensus on the "Animals Around Us" project as the primary capital enhancement for the next three-year period. The increased levy amount results from carry-over operations funds for FY90-91 and beyond not being transferred to capital projects, as reflected in past projections. It was agreed the Committee Chair would request Resolution No. 90-1194 be listed for a public hearing on the Council January 11, 1990, agenda since it was listed as "information only" on the Committee agenda. The Committee raised no additional issues or questions, but stressed the approval recommendation was contingent on the updated Zoo Five-Year Financial Plan being submitted to the Council Office in time for printing in the January 11, 1990, Council agenda packet.

jpmthree
b:\901194.cr

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING THE	)	RESOLUTION NO. 90-1194
ZOO FIVE-YEAR FINANCIAL PLAN AND)	
SUBMITTING A METROPOLITAN SERVICE	)	Introduced by the
DISTRICT ZOO CAPITAL SERIAL LEVY	)	Convention, Zoo and Visitor
TO DISTRICT VOTERS	)	Facilities Committee

WHEREAS, ORS 268.310(5) authorizes the Metropolitan Service District to "Acquire, construct, alter, maintain, administer and operate metropolitan zoo facilities."; and

WHEREAS, ORS 268.315 provides that "For the purpose of performing the functions set forth in subsection (5) of ORS 268.310, the District, when authorized at any properly called election held for such purpose, shall have the power to levy an ad valorem tax on all taxable property within its boundaries not to exceed in any one year one-half of 1 percent (.005) of the true cash value of all taxable property within the boundaries of such District, computed in accordance with ORS 308.207."; and

WHEREAS, The current three-year zoo serial levy which provides funds for zoo operations and capital improvements expires on June 30, 1990; and

WHEREAS, The Metro Washington Park Zoo, with unique educational and recreational offerings, is utilized by and benefits District residents; and

WHEREAS, The Zoo is the largest paid attraction for visitors throughout the State of Oregon and provides economic benefits to the Northwest and metropolitan region; and

WHEREAS, A regional funding base is necessary to provide for continued development of the Zoo's physical facilities; and

WHEREAS, During fiscal years 1990 through 1992 revenues of \$1,512,000 each year totalling \$4,536,000 for the three-year period will be needed to fund Zoo capital expenses; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District approves the five-year financial plan for the Metro Washington Park Zoo (attached hereto as Exhibit A) as the basis for meeting the immediate capital financial needs of the Zoo.

2. That the Council approves submission of a three-year capital serial levy to be effective on July 1, 1990, to the voters of the district on May 15, 1990, the revenues of which will be used for capital construction permitted under ORS 268.310(5) and to pay the costs of holding the election.

3. That the ballot title for this measure is approved as shown on Exhibit B attached hereto.

4. That the Executive Officer is instructed to file this Resolution with the District Elections Officer and the Tax Supervising and Conservation Commission no later than March 15, 1990.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1990.

Tanya Collier, Presiding Officer

jpmtwo b:\zoolevy.res

* PLEASE NOTE: This Five-Year Financial Plan will be amended to reflect the change under Ordinance No. 90-329 for a tax base of \$5.1 million per year for operations.

- EXHIBIT A -

**FIVE-YEAR FINANCIAL PLAN
FOR
THE METRO WASHINGTON PARK ZOO**

DECEMBER 28, 1989

TABLE OF CONTENTS

OVERVIEW

Statement of Departmental Mission	3
Program Divisions	4
External Considerations	5
Summary of Capital Improvement Projects	6

REVENUE

Major Assumptions	7
Identification of Major Revenue Sources	8
Projected Revenue Detail	11

EXPENDITURES

Major Assumptions	12
Overview by Expenditure Category	13
Narrative of Expenses by Programs	15
Projected Expense Detail	19

CAPITAL IMPROVEMENT PROJECTS

Identification of Projects	21
Projected Capital Budget Detail	22

OVERVIEW

Statement of Departmental Mission

The Metro Washington Park Zoo serves as a cultural institution to meet the needs of the public and to enhance the quality of life in the metropolitan community. It assists in economic development as a destination tourist attraction and as a valuable community asset.

The Washington Park Zoo provides a unique educational and recreational opportunity through which the public can see and experience wildlife in a more naturalistic setting. The Department contributes to the conservation of animals in the wild and in the Zoo by:

- 1) cooperating as a participating institution in appropriate AAZPA Species Survival Plans and other organized conservation efforts;
- 2) continuing to research and improve husbandry techniques, exhibit environments, animal management concepts and captive propagation; and
- 3) educating the public regarding conservation.

Program Divisions

The Zoo Operations Fund includes the following six divisions:

The Administration Division includes the offices of the Director, the Assistant Director, the Development Officer and the Financial Reporting and cash control Supervisor. It provides for overall leadership and coordination with the Executive Officer of all Zoo programs, liaison with the Friends of the Washington Park Zoo, the development program and the cash control program.

The Animal Management Division maintains, propagates, researches, and exhibits a healthy, representative collection of exotic and domestic animals, and provides input in general management decision, policies and procedures with staff, division managers, Assistant Director and Director.

The Educational Services Division provides educational materials and programs for use by Zoo visitors, school groups and other special groups, prepares and maintains signs and other interpretive displays on the grounds, and operates the Children's Zoo, the Insect Zoo and other summer programs.

The Facilities Management Division is responsible for providing support services to all Zoo guests and divisions. Services include building and exhibit maintenance, custodial, landscape development and maintenance, railroad operation and maintenance, utility system and vehicle equipment maintenance.

The Marketing Division is responsible for encouraging Zoo attendance and support through media campaigns, group sales, events, outreach programs and general promotional efforts.

The Visitors Services Division provides services to visitors through the programs of admissions, zoo railway, food service/catering, retail sales/rentals and safety/security.

External Considerations

Significant operational and capital improvements have been made at the Zoo since it became an operating division of the Metropolitan Service District (M.S.D.) in 1976, about two and a half years before the current Metro was established by the voters. Capital improvements include:

- 1) improvements at entryway;
- 2) new elephant yard and crush;
- 3) primate house remodel;
- 4) new quarantine facilities;
- 5) lemur exhibit;
- 6) cascade stream and pond;
- 7) new maintenance facilities;
- 8) penguinarium remodel;
- 9) Swigert Fountain;
- 10) bandstand;
- 11) Alaska tundra exhibit;
- 12) gift shop remodel;
- 13) West Bear Grotto remodel;
- 14) elephant museum;
- 15) Africa I & II;
- 16) Education/Administration Center; and
- 17) Africa III (under construction).

These improvements, new special events and promotions, and exceptional weather brought attendance to a 26 year high of 1,003,413 in fiscal year 1988-89. Attendance for 1987/88 was 891,614. These figures compare to 556,675 for fiscal year 1975/76. It is anticipated that attendance will reach 1,065,000 in fiscal year 1994/95 due to:

- 1) increasing metropolitan population
- 2) new exhibits
- 3) new programs and events
- 4) convention center.

The opening of the Africa exhibit in April of 1989 increased Zoo attendance and an increase in tourism is anticipated from the opening of Metro's Oregon Convention Center. Current parking facilities will constrain achieving attendance levels much higher than those projected in the last two years of the forecast.

Summary of Capital Improvement Projects

The Zoo Capital Fund provides for the major capital improvements at the Zoo. These improvement projects implement the Zoo Master Plan with tax revenues set aside for these projects, and with private funding raised through the development program.

In March 1987, the voters of the District approved a \$5.5 million per year serial levy, allotting about \$3,725,000 per year for operations and \$1,775,000 for capital improvements. That levy began July 1, 1987 and expires June 30, 1990. Projects built, or to be built, with the capital improvements portion of the current levy, transfers from operating revenues and funds carried over from the previous levy were: Africa I, II, & III and a number of smaller projects such as the Research/Propagation Center. The remodel of the Childrens Zoo will be the major project provided by the capital fund serial levy covering the three fiscal years of 1990/91 to 1992/93.

More detailed descriptions of Zoo capital improvement projects, funding, costs and schedules are included in the Capital Budget section of this forecast.

REVENUE SOURCES

Major Assumptions

The following assumptions have been used in developing the Zoo's revenue projections for this five-year forecast.

- 1) The current property tax levy (\$5,500,000 per year 1987-1990) will be replaced in 1990 with a tax base for operations and maintenance beginning at \$5,310,000 and a capital construction three-year serial levy at \$1,512,000 per year.
- 2) Property taxes will fund approximately 50 percent of Zoo operation and maintenance costs (Res. No. 84-444, adopted 1/26/84).
- 3) Non-property tax revenues (principally enterprise revenues) will fund the other approximately 50 percent of Zoo operation and maintenance costs; the Council will annually review admission fees to meet this objective (Res. No. 84-444, adopted 1/26/84).
- 4) The Council will approve implementation and a method of funding for a continuing sequence of projects as described in the Zoo Master Plan (Res. 84-444, adopted 1/26/84).

Identification of Major Revenue Sources

Property Tax Revenues:

The Council, through Resolution 84-444, recommended to the Executive Officer that property tax revenues fund up to 50% of Zoo operations each year. The current three-year serial levy approved by the voters in 1987 calls for \$5.5 million per year split \$3,725,000 (68 percent) for operations and \$1,775,000 (32 percent) for capital improvements. This levy began July 1, 1987 and expires June 30, 1990.

This financial forecast assumes that the property tax levy will be replaced by the voters of the district with a tax base for operations and maintenance beginning at \$5,310,000 and a capital construction three-year serial levy at \$1,512,000 per year, no later than July 1, 1990.

Property tax revenues actually collected average about 90% of the levy total, as reflected in the attached revenue detail.

Were the property tax levies requested renewed at a significantly reduced level, consequences for the Zoo would be severe cut-back of services. Hours open to the public would be cut, all free admission times and reduced admission for senior citizens would be eliminated, staff would be reduced, and the capital improvement project sequence outlined in the Master Plan would be halted.

If voters do not approve a tax base for Zoo operations, the probable result would be closing of the Zoo. An attempt to replace this lost revenue would require a significant increase in admission fees, causing an overall reduction in attendance which would defeat the purpose.

Admission Fees:

Attendance is critical in the projection of admission fee revenue. Metro and Hobson & Associates studied Metro Washington Park Zoo attendance records in 1985, and found a high correlation between population trends in Multnomah, Washington and Clackamas counties and Zoo attendance. This correlation was used in previous Zoo attendance projections.

The estimated figures for FY 1988/89 through 1994/95 are based on recent trends with consideration of future events. Rising attendance is anticipated as a result of increased regional tourism following the opening of Metro's Oregon Convention Center. New and return visits by local residents are expected following the opening of the Rainforest Exhibit in 1991 and Animals Around Us in 1993, as demonstrated with the opening of Africa in April 1989.

Attendance projections are:

<u>Fiscal Year</u>	<u>Projected Attendance</u>
89-90	970,000
90-91	985,000
91-92	1,000,000
92-93	1,015,000
93-94	1,050,000
94-95	1,065,000

The projected attendance is based on the expected draw of the Africa exhibit which opened in late April of 1989. This draw continues with 15,000 increases in each of the following years, bolstered by the opening of the third phase of the Africa exhibit and then increases more dramatically with the opening of Animals Around Us in fiscal year 1993/94.

The Metro Council, through Resolution 84-444 recommended to the Executive Officer that property taxes fund no more than 50 percent of Zoo operating costs. Admission fees have been adjusted to meet this policy. Current fees are \$3.00 for 12 years through 64 years, and \$1.50 for youth 3 through 12 years and senior citizens; children under 3 are admitted free. Admission is free for all after 3:00 p.m. each Tuesday, and there are additional free days for special groups.

Admission revenue forecasts are based on the following schedule of fee increases, to maintain 50% of operating revenue from non-tax sources based on attendance projections, and assuming that adult and youth/senior fees will remain at a 2:1 ratio.

<u>Effective Date</u>	<u>Adult</u>	<u>Youth/Seniors</u>
Current Fee	\$ 3.00	\$ 1.50
March 1, 1990	\$ 3.50	\$ 2.00
January 1, 1992	\$ 4.00	\$ 2.50
January 1, 1994	\$ 4.50	\$ 3.00

Enterprise Revenues Excluding Admissions:

As a result of increased attendance and longer stays by visitors, per capita revenues for food, gifts, railroad and other services are expected to rise. Factors that will contribute to longer stays are: increased and more naturalistic exhibit areas, expanded gift shopping possibilities, new food-service areas and increased on-grounds special events.

While the AfriCafe, for example, is expected to have a strong positive effect on food revenues, it is also expected to give visitors a respite from the many cool and damp northwest days. This opportunity to "warm up" in very pleasant surroundings, combined with other improvements, should positively affect the length of stays and, as pointed out by Hobson & Associates, should result in a related rise in per capita revenue.

Zoo concessions managers currently set prices according to their experience of the market rate for comparable services and goods.

PROJECTED REVENUES

ZOO 5 YEAR PROJECTIONS, 1989		SY0P1227.WK1					
12/28/89							
PROJECTED ATTENDANCE		970,000	985,000	1,000,000	1,015,000	1,050,000	1,065,000
		FTE	FTE	FTE	FTE	FTE	FTE
		PROJECTED	PROJECTED	PROJECTED	PROJECTED	PROJECTED	PROJECTED
		AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
ZOO REVENUE							
Tax Base			5,310,000	5,620,600	5,966,316	6,324,316	6,703,769
Fund Balance-Beginning		2,232,119	1,480,244	1,693,144	1,800,296	1,898,052	1,750,419
Real Property Taxes-Current Year		5,005,000	4,779,000	5,065,740	5,369,604	5,691,005	6,033,392
Real Property Taxes-Prior Year		425,300	502,200	455,917	483,272	512,270	543,005
ENTERPRISE REVENUES							
Admissions		1,981,512	2,327,339	2,520,196	2,734,004	2,999,276	3,210,500
Rental-Conveyances		29,100	39,400	40,000	40,600	52,500	53,250
Food Service-Regular/Food		1,492,300	1,870,465	2,102,000	2,306,000	2,524,500	2,733,000
Food Service-Regular/Beer&Wine		52,000	52,000	50,000	62,000	66,000	70,000
Food Service-Catering/Food		170,000	263,000	300,000	340,000	365,000	400,000
Food Service-Catering/Beer&Wine		22,000	35,000	40,000	42,000	44,500	47,000
FOOD SUBTOTAL		1,736,301	2,220,465	2,500,000	2,750,000	3,000,000	3,250,000
Retail Sales		452,200	522,444	595,000	663,000	751,000	809,000
Retail Sales-Vending		32,300	33,490	35,000	37,000	39,000	41,000
RETAIL SUBTOTAL		484,500	570,441	630,000	700,000	790,000	850,000
Sale of Animals		5,000	10,000	10,000	11,000	11,000	12,000
Tuition & Lectures		94,054	112,197	116,605	121,352	127,420	133,790
Exhibit Shows/Zoo		12,000	13,000	14,000	15,000	16,000	17,000
Railroad Rides		370,300	394,000	400,000	406,000	420,000	426,000
ENTERPRISE SUBTOTAL		4,721,567	5,606,442	6,230,801	6,778,036	7,416,196	7,960,620
OTHER INCOME							
Federal Grants-Op.-Non Cat.-Direct		75,000	100,000	100,000	100,000	100,000	100,000
Interest on Investments		133,927	80,015	101,509	100,490	113,931	105,605
Donations & Bequests		163,000	165,000	171,600	179,320	187,391	195,024
Zoo Parents		37,100	40,090	44,907	49,405	54,434	59,077
Other Miscellaneous Revenue		43,600	45,427	47,245	49,134	51,590	54,170
Sale of General Fixed Assets		4,160	4,326	4,499	4,679	4,913	5,159
SUBTOTAL		456,947	444,466	469,920	491,116	512,259	520,535
Total Resources		12,040,933	12,892,351	13,923,601	14,930,404	16,031,461	16,815,971

EXPENDITURES

Major Assumptions

- 1) An inflation factor of 4% has been built into projections for expenditures in personal services, materials and services and capital outlay. An additional 1 to 3.5% has been used in personal services attributable to changes in the various pay plans.
- 2) The Zoo's budget will provide for an unappropriated balance each year sufficient to balance the budget for the following year and assure cash flow from July 1 to December, when the first tax collection payment is received.
- 3) The General Fund transfer (according to Metro standard forecast assumptions) is expected to increase at a rate of 5 percent in order to maintain the current level of service.
- 4) The Insurance Fund transfer is expected to remain flat according to Metro standard forecast assumptions.
- 5) The budget will provide a contingency line item equal to 3 percent of the projected operating cost including transfers. While the contingency is listed, it is assumed not to be spent and is included in the following year's fund balance.

Overview by Expenditure Category

Personal Services:

Forecasts for personnel are based on current staffing levels plus new positions that will be required for the expanded and more complex exhibits and new programming. The greatest increases will be in Animal Management, Visitor Services, Facilities Management and Education to accommodate increased attendance, expanded exhibits and new programs.

Materials and Services:

While certain materials and services costs, such as merchandise for resale, are directly related to Zoo attendance, and can be adjusted accordingly, other costs like those associated with an expanding animal collections are not that related and cannot be so readily adjusted. Increases are primarily attributable to projected inflation, increased utility costs for expanded exhibits, higher costs for merchandise purchased for resale, new programs and graphics. Materials and Services also provides for a utility study including an up-to-date mapping of facilities.

Capital Outlay:

Capital outlay is projected to increase slightly partly in order to equip expanded exhibits and related visitor support services opening during this period. The Zoo plans to carry out a continuing facility improvements program during these years to upgrade utility systems, replace roofs, replace equipment and perform necessary preventative maintenance.

General Fund:

Amount assessed the Zoo for Metro support services is projected to rise by 5% per year, in line with Metro standard forecast assumptions.

Insurance:

Insurance costs are projected to stay flat over the next five years, in line with Metro standard forecast assumptions.

Building Management:

Because Zoo staff are not housed in Metro's central office complex, there is no assessment for the cost of building management.

Contingency:

The budget projection provides a contingency line item equal to 3 percent of the projected operating costs including transfers to the general fund and insurance funds. While the contingency is listed, it is assumed not to be spent and is included in the following year's fund balance.

Narrative of Expenses by Programs

Administration

Personal Services:

The Administration Division shows an increase of 1.0 FTE from 1989/90 to 1994/95. The projected increases in visitors and related revenues necessitate an additional .75 FTE increase in vault room staff. This increase is recommended to maintain cash and internal control. The Development programs absorbs the other .25 FTE with an increase from .5 FTE to .75 FTE for the management intern.

Materials and Services:

Expenses in materials and services for administration are not expected to increase much beyond the 4 percent inflationary figure except for adjustments for election costs and receipt of a grant from the Institute of Museum Services for special projects.

Capital Outlay:

Costs for office equipment and furniture needed to maintain standard services over a five-year period, adjusted for 4 percent inflation are reflected in capital outlay with one major increase for purchase of a new copying machine in 1992/93.

Animal Management

Personal Services:

Increased employee longevity requires additional staff to fill in for vacations and sick leave. Additionally, the opening of new and more complex exhibits such as the Africa Exhibit in April of 1989, the Rainforest Exhibit in June, 1991 and the Research and Propagation Center, which will open in phases, will require new keeper staff. A new senior keeper will be added in 1993/94 to lead the work in a reorganized program that will include the animal hospital, nursery, and owl rehabilitation. Thus, five positions will be added to the keeper staff over the period of this projection.

It has also been determined that the relief veterinarian, presently a contracted service, should be brought on staff half-time to give better care to an expanding animal collection.

There has been no increase in curatorial staff since 1976. To provide assistance with growing administrative tasks and to provide time for the curators to work in the field with keepers, managing

the collection and keeping up with national level animal breeding programs and studbook, an additional assistant curator will be brought on staff in 1993/94.

Materials and Services:

Increases in Materials and Services costs reflect inflation and expenses relating to new animals and their care in the Rainforest Exhibit.

Capital Outlay:

Capital Outlay costs are attributable to inflation, the need for computer and audio-visual equipment, the purchase of a typewriter and furniture and the purchase of an electric cart to speed up internal travel from the Research Building to other parts of the Zoo.

Facilities Management

Personal Services:

Additions in personnel are required to keep up with additional service demands related to increased attendance, special events such as Zoolights, more complex and labor intensive facilities such as the Rainforest Exhibit and Animals Around Us and an always aging physical plant.

The expenditure detail encompassed by this projection shows an increase of 6.31 FTE. This includes 1) adding a position to coordinate division contracted services including preparation of specs, getting quotes and bids and managing the contractors; 2) adding a position to streamline and expand the purchasing and distribution of materials and equipment used by staff, 3) adding two gardener positions to care for the increases in landscaping that will come with the opening of the Rainforest and Animals Around Us Exhibits, 4) adding a maintenance technician to assist the electrician with the increasing electrical service needs at the Zoo and 5) adding 1.31 maintenance positions to assist with maintenance of expanding facilities.

Materials and Services:

Increases in Materials and Services reflect inflation, expenses relating to landscaping and maintenance required by new exhibits, and special events, increased utility costs and use and costs relating to upkeep on an aging facility.

Capital Outlay:

Capital Outlay includes costs for upkeep, rehabilitation and replacement of exhibit, railroad and vehicular equipment and other Zoo facilities.

Education

Personal Services:

Personnel needed for education, graphics and volunteer activities during the period of this projection increase 4.31 FTE. These include 1) the addition of an assistant for the volunteer coordinator to aid with the extensive, seven day a week volunteer activities; 2) a second program coordinator to assume responsibility for school programming and curriculum development and 3) a half-time position in 1991/92, increasing to full-time in 1993/94 that will assist with maintaining the increasing quantity of audio-visual equipment at the Zoo and to provide graphics upkeep and production; and 4) the addition of 1.25 keepers necessary to staff the new Animals Around Us Exhibit.

Materials and Services:

Major increases in Materials and Services costs for this period are related to services to be used in community programming and curriculum development, a new Zoo directional system, and updating the Elephant Museum files. There are also increases in printing costs due to higher costs for recycled paper and those related to an expanding Friends of the Zoo membership and production of classroom materials.

Capital Outlay:

Capital Outlay increases are related primarily to inflation, additional computer equipment, audio-visual equipment, replacement in exhibits and lab cages for the Childrens Zoo. A major cost in 1992/93 is for furnishing and equipping a Discovery Room that will be built as part of Animals Around Us.

Marketing

Personal Services:

The very slight increase in Personnel is to accommodate marketing Zoolights and other special events.

Materials and Services:

Increases in this category are mainly related to professional and artistic services in the newly formatted concert series, costs related to a continuation of Zoolights, the opening of the Rainforest Exhibit and use of recycled paper. A substantial part of these expenses will be offset by increased enterprise revenues and sponsor underwriting.

Capital Outlay:

Capital Outlay expenses relate to equipment and furniture replacements and additions.

Visitor Services

Personal Services:

The increased volume of business particularly in the food and retail services and the need for higher security call for an increase of about 19.18 FTE over this period for the Visitor Services Division. Most of this increase (16.78 FTE) is for additional visitor services workers required for special events and to operate the Crossroads facility to be located in the new Rainforest Exhibit, a facility that will be developed in Animals Around Us, and the expanding catering service for picnics and the African banquet and meeting space. Other increases are for operating the gates, the train and providing security needed with expanded operations.

These costs will be more than offset by increased earnings in food and retail.

Materials and Services:

The major costs for materials and services relate directly to projected increases in attendance and the materials needed to achieve the revenues projected to be earned from sales and services to zoo visitors. Other costs include maintenance of equipment and printing the Zoo map.

Capital Outlay:

Capital Outlay provides for equipment acquisition and replacement for food and retail operations including cash registers, fryers, washers, tables, etc. It will also allow the installation of equipment to provide better information for monitoring these operations.

PROJECTED OPERATING EXPENSES

ZOO 5 YEAR PROJECTIONS, 1989												
12/28/89												
PROJECTED ATTENDANCE												
5YOP1227.WK1												

	970,000		985,000		1,000,000		1,015,000		1,050,000		1,065,000	
	FY89-90		FY90-91		FY91-92		FY92-93		FY93-94		FY94-95	
	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT

ADMINISTRATION												
Personal Services	9.75	404,170	10.00	457,716	10.25	496,969	10.50	539,342	10.50	585,719	10.75	630,899
Materials & Services		170,124		270,460		222,140		291,009		239,300		247,914
Capital Outlay		3,737		5,179		5,306		32,059		5,049		6,003
Total Expenditures	9.75	586,031	10.00	733,363	10.25	724,503	10.50	863,209	10.50	830,956	10.75	892,096
ANIMAL MANAGEMENT												
Personal Services	39.92	1,513,625	42.20	1,740,601	44.42	1,963,304	43.92	2,057,794	46.22	2,479,242	46.22	2,665,130
Materials & Services		313,651		329,530		307,919		310,110		327,890		344,672
Capital Outlay		25,075		16,001		31,366		17,435		19,302		21,291
Total Expenditures	39.92	1,852,351	42.20	2,090,140	44.42	2,302,669	43.92	2,385,340	46.22	2,826,433	46.22	3,031,097
FACILITIES MANAGEMENT												
Personal Services	36.20	1,300,965	38.09	1,511,290	39.04	1,664,973	39.04	1,755,230	41.51	2,072,520	42.51	2,201,513
Materials & Services		1,222,069		1,329,566		1,395,014		1,512,261		1,607,053		1,683,926
Capital Outlay		425,020		433,046		445,033		449,904		460,054		404,957
Total Expenditures	36.20	2,949,662	38.09	3,274,702	39.04	3,505,020	39.04	3,717,443	41.51	4,149,234	42.51	4,450,396
EDUCATION												
Personal Services	10.79	545,542	19.05	635,941	21.35	737,073	21.60	801,329	23.10	936,347	23.10	1,006,554
Materials & Services		221,403		313,617		312,959		266,015		277,123		294,104
Capital Outlay		13,904		30,340		49,645		146,050		15,207		15,016
Total Expenditures	10.79	780,849	19.05	979,907	21.35	1,100,477	21.60	1,214,994	23.10	1,228,670	23.10	1,316,554
MARKETING												
Personal Services	3.96	145,192	4.00	163,669	4.00	175,944	4.00	189,144	4.00	203,329	4.00	210,574
Materials & Services		205,967		321,910		329,307		340,106		356,247		370,515
Capital Outlay		3,615		5,720		5,400		5,624		5,049		6,003
Total Expenditures	3.96	354,774	4.00	491,300	4.00	510,740	4.00	542,954	4.00	565,425	4.00	595,172
VISITOR SERVICES												
Personal Services	50.10	1,110,962	65.35	1,371,712	70.40	1,554,721	73.55	1,705,224	76.25	1,801,315	77.70	2,029,134
Materials & Services		947,501		1,100,977		1,322,202		1,454,604		1,597,652		1,707,767
Capital Outlay		50,995		66,351		54,225		64,496		64,717		75,432
Total Expenditures	50.10	2,109,530	65.35	2,627,039	70.40	2,931,147	73.55	3,224,400	76.25	3,543,605	77.70	3,812,333
ZOO TOTAL												
Personal Services	166.72	5,020,456	179.49	5,800,920	190.26	6,593,065	193.41	7,040,071	201.50	8,150,400	204.36	8,839,000
Materials & Services		3,009,595		3,754,004		3,809,620		4,183,864		4,406,154		4,640,970
Capital Outlay		523,154		557,447		591,064		716,409		579,777		609,663
Total Expenditures	166.72	8,633,205	179.49	10,200,459	190.26	11,075,357	193.41	11,940,344	201.50	13,144,411	204.36	14,097,649

ZOO 5 YEAR PROJECTIONS, 1989

5TOP1227.WK1

12/28/89

PROJECTED ATTENDANCE

970,000 985,000 1,000,000 1,015,000 1,050,000 1,065,000

	FY89-90		FY90-91		FY91-92		FY92-93		FY93-94		FY94-95	
	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT	FTE	PROJECTED AMOUNT
OPERATING TRANSFERS												
Trans. Indirect Costs to Gen'l Fund		699,927		824,000		865,200		900,460		953,883		1,001,577
Trans. Indirect Costs to Bldg Fund		174,740		174,740		174,740		174,740		174,740		174,740
Trans. Indirect Cost to Insur. Fund												
Total Operating Transfers		874,675		998,740		1,039,940		1,083,200		1,128,631		1,176,325
TOTAL OPERATING EXPENDITURES & TRANSFERS	166.72	9,507,000	179.49	11,199,207	190.26	12,115,305	193.41	13,031,552	201.58	14,273,042	204.36	15,273,974
Contingency		328,252		335,976		363,459		390,947		420,191		450,219
TOTAL OPERATING TRANSFERS & CONTINGENCY		1,202,927		1,334,724		1,403,407		1,474,155		1,556,822		1,634,544
Unappropriated Fund Balance		1,195,007		1,357,167		1,444,837		1,507,905		1,330,227		1,083,770
Trans. Resources to Zoo Cap. Fund		1,809,794										
TOTAL EXPENDITURES	166.72	12,840,933	179.49	12,892,351	190.26	13,923,601	193.41	14,930,404	201.58	16,031,461	204.36	16,815,971

CAPITAL IMPROVEMENT PROJECTS

Identification of Projects

Projects most urgently needed due to Zoo physical and programming limitations have been classed as committed projects. They are funded by the current tax levy and donations.

Key projects set to occur during the five years covered by this plan are:

Africa Exhibit Phases I & II: Opened in late April, 1989.

Africa Exhibit Phase III: A rainforest exhibit, which will complete the renovation of the lower end of the Zoo. It will include a hay barn, an upgraded electrical service for the bottom half of the Zoo and exhibit space for such animals as bats, spotted otters, African rock python, spoonbill, monitors, crocodiles and fish. Construction will start in FY 89-90, and be completed in FY 1990-91.

Animals Around Us: This extensive remodelling of the Childrens Zoo will be the major project funded from the new levy. Construction will be completed in Fiscal Year 1992-93.

Research and Propagation Center: The design will begin after an architect has been selected during FY 89-90 with construction phased over the period of this projection.

Remodel of Middle Room - Elephant Barn: This room, presently used for storing hay, will be adapted for housing elephants during 1991/92 and 1992/93.

These projects, with the exception of the Research/Propagation Center and Elephant Barn Room Remodel are listed specifically in the Zoo Master Plan adopted by Council in May, 1987 (Res. No. 87-760). The Research/Propagation Center is a breeding center to be located on Zoo grounds but not open to the public, described in the Master Plan without cost projections (Zoo Master Plan, p. 129).

PROJECTED CAPITAL BUDGET

200 5 YEAR PROJECTIONS, 1989

SYN0093.WK1

12/27/89

PROJECTED ATTENDANCE

970,000 985,000 1,000,000 1,015,000

	FTE	FY89-90 PROJECTED AMOUNT	FTE	FY90-91 PROJECTED AMOUNT	FTE	FY91-92 PROJECTED AMOUNT	FTE	FY92-93 PROJECTED AMOUNT	FY90-91 WITHOUT INFLATION	FY91-92 WITHOUT INFLATION	FY92-93 WITHOUT INFLATION
ZOO CAPITAL											
Personal Services											
Construction Coordinator	1.00	47,744	1.00	51,564	1.00	55,431	1.00	59,509	47,744	47,744	47,744
Secretary	0.50	8,862	0.50	8,857	0.50	9,521	0.50	10,236	8,201	8,201	8,201
Fringe		15,290		19,939		21,434		23,042	18,462	18,462	18,462
Total Personal Services	1.50	69,896	1.50	80,359	1.50	86,386	1.50	92,867	74,407	74,407	74,407
Materials & Services											
Office Supplies				460		487		562	450	450	500
Computer Software				494		514		562	475	475	500
Dues		100		104		162		169	100	150	150
Travel		910		900		1,622		1,687	950	1,500	1,500
Training, Tuition & Conferences		475		515		811		844	495	750	750
Miscellaneous											
Total Materials & Services		1,485		2,569		3,596		3,825	2,470	3,325	3,400
Capital Projects											
Purchases-Office Furniture & Equipment		2,000		2,184		2,271		2,362	2,100	2,100	2,100
ALASKA EXHIBIT		5,000		2,600		2,704		2,812	2,500	2,500	2,500
ADMIN./EDUC. CENTER											
NISC. EXHIBIT IMPROVEMENTS		75,000		125,000		125,000		130,000			
UPDATE MASTER PLAN				100,000							
AFRICA-PHASE 1 & 2		20,000									
AFRICA-PHASE 3		1,079,123		3,165,181							
NEXT PROJECT								700,000			
RESEARCH AND PROPAGATION CENTER		110,000		125,000				125,000			
AQUARIUM STUDY											
ANIMALS AROUND US				700,000		3,000,000		1,254,037			
AFRICAPE BASEMENT		130,000									
ELEPHANT BARN RENODEL						80,000		200,000			
Contingency		142,511		150,000		150,000		150,000			
Total Capital Projects		2,363,634		4,449,965		3,359,975		2,564,211			
TOTAL CAPITAL OUTLAY	1.50	2,435,015	1.50	4,532,093	1.50	3,449,950	1.50	2,660,903			
Unappropriated Balance		4,603,193		2,533,334		1,048,196		276,614			
TOTAL REQUIREMENTS	1.50	7,038,208	1.50	7,066,227	1.50	4,498,146	1.50	2,937,517			
Resources											
Fund Balance-Beginning		4,861,711		4,745,704		2,683,334		1,190,196			
Interest on Investments		291,783		284,742		161,000		71,892			
Donations & Bequests		75,000		675,000		225,000		225,000			

ZOO 5 YEAR PROJECTIONS, 1989

5YR8893.WK1

12/27/89

PROJECTED ATTENDANCE

970,000

985,000

1,000,000

1,015,000

	FY89-90		FY90-91		FY91-92		FY92-93		FY90-91	FY91-92	FY92-
	PROJECTED		PROJECTED		PROJECTED		PROJECTED		WITHOUT	WITHOUT	WITHC
	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT	INFLATION	INFLATION	INFLATI
Other Miscellaneous Revenue											
Trans. Resources from Zoo Oper. Fund		1,889,794									
Taxes-Current Year				1,360,781		1,360,781		1,360,782			
Taxes-Prior Year						68,039		81,647			
TOTAL RESOURCES		7,038,208		7,066,227		4,498,154		2,937,517			

5YRNAR

12/28/89

EXHIBIT B

CAPTION: SERIAL LEVY FOR CAPITAL CONSTRUCTION AT THE ZOO

QUESTION: SHALL METROPOLITAN SERVICE DISTRICT LEVY \$1,512,000 EACH YEAR FOR NEXT THREE YEARS FOR CAPITAL CONSTRUCTION AT METRO WASHINGTON PARK ZOO?

EXPLANATION: THIS MEASURE ALLOWS THE DISTRICT TO LEVY \$1,512,000 EACH YEAR FOR THREE YEARS STARTING JULY 1, 1990. THE TOTAL LEVY IS \$4,536,000. IN 1986 DISTRICT VOTERS APPROVED A THREE-YEAR SERIAL LEVY OF \$5,500,000 FOR ZOO OPERATIONS AND CONSTRUCTION. THE 1986 LEVY EXPIRES JUNE 30, 1990. THIS NEW LEVY WILL PROVIDE FUNDS TO RENOVATE THE CHILDREN'S ZOO (ANIMALS AROUND US EXHIBIT) AND MAKE OTHER IMPROVEMENTS TO ZOO FACILITIES AND EQUIPMENT. THE LEVY IS OUTSIDE THE 6 PERCENT LIMITATION SPECIFIED IN THE OREGON CONSTITUTION.

jpmtwo b:\zoolevy.res
01-18-90

Agenda Item No. 6.2
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1100

SOLID WASTE COMMITTEE REPORT

RESOLUTION NO. 90-1100, FOR THE PURPOSE OF AUTHORIZING ISSUANCE OF A REQUEST FOR BIDS FOR CONSTRUCTION OF METRO SOUTH STATION MODIFICATIONS

Date: January 17, 1990

Presented by: Councilor
Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 4 to 1 to recommend Council adoption of Resolution No. 90-1100. Voting aye: Councilors Hansen, Bauer, Buchanan and DeJardin. Voting nay: Councilor Wyers. This action taken January 16, 1990.

Committee Discussion/Issues: Adoption of Resolution No. 90-1100 would authorize the Solid Waste Department to issue a Request for Bids (RFB) for the construction of Metro South Station modifications, and authorize the Executive Officer to execute a contract with the low, responsive, responsible bidder.

The proposed construction at Metro South Station includes a building to house a dual compactor system, a staging area for transport vehicles, a new entrance to the facility for transport vehicle use, a trailer storage area for Jack Gray Transport, a public parking area, landscaping, and an irrigation system.

The estimated cost for construction of the modifications is \$3,000,000.

The Solid Waste staff stated that Oregon City prefers the trailer storage area on the Metro South Station site and has approved the plan.

The Committee asked who will use the new access to the Metro South Station? The staff answered that it would be used by Jack Gray Transport only. The public and the haulers will continue to use the original entrance.

The Committee asked if the building modifications would prevent Metro from making other necessary changes to the site in the future. Staff indicated that it may prevent some modifications but should not create a problem regarding volume handled since the existing capacity is expected to be sufficient for future needs.

One Committee member pointed out that the original contract did not require a large trailer storage area as is now being proposed. By approving the storage area, we are aiding the contractor to the point it is unfair to others who bid on the transport services contract.

SOLID WASTE COMMITTEE REPORT
Resolution No. 90-1100
January 17, 1990
Page 2

Another Committee member stated that the proposed work is necessary and desirable regardless of the mode of transportation used.

GH:RB:pa

A:\RB.138

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING ISSUANCE)	RESOLUTION-NO. 90-1100
OF A REQUEST FOR BIDS FOR CONSTRUCTION)	
OF METRO SOUTH STATION MODIFICATIONS)	Introduced by Rena Cusma,
AND ENTERING INTO A CONTRACT WITH THE)	Executive Officer
LOW, RESPONSIVE, RESPONSIBLE BIDDER)	

WHEREAS, It is necessary to construct modifications at the Metro South Station contained in Exhibit 1; and

WHEREAS, The labor and materials necessary to execute such modifications can be acquired through issuance of the Request for Bids attached as Exhibit 1.; and

WHEREAS, It is in the best interest of Metro to execute these modifications as soon as possible to minimize risk to Metro; and

WHEREAS, Pursuant to Section 2.04.033 of the Metro Code, the Metro Council may, at the time it approves a Request for Bids, waive the requirement of Council approval of a contract prior to execution of the contract by the Executive Officer; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District approves the form and substance of the Request for Bids for Construction of Modifications at the Metro South Station prepared by the Solid Waste Department attached as Exhibit 1.

2. That the Director of the Solid Waste Department is requested to advertise for bids and do all other things necessary to solicit bids for construction of modifications at the Metro South Station.

3. That the Council of the Metropolitan Service District, pursuant to Section 2.04.033 (b) of the Metro Code, waives the

requirement of Council approval of the contract resulting from the bid process, and authorizes the Executive Officer to execute a contract for construction of modifications at the Metro South Station with the low, responsible, responsive bidder in accordance with the requirements of the Metro Code.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1990.

, Presiding Officer

DRAFT

EXHIBIT 1

Contract Documents
for
Construction
of
Metro South Modifications

(Drawings and Specifications available upon request)

DRAFT

<Section 00020 Advertisement for Bids 01-08-90>

ADVERTISEMENT FOR BIDS
FOR METRO SOUTH TRANSFER STATION MODIFICATIONS

The Portland Metropolitan Service District (Metro) is soliciting bids for construction of Modifications to the Metro South Transfer Station, located at the intersection of Highway 213 and Washington Street in the City of Oregon City. Sealed bids must be delivered to Metro at 2000 S.W. First Avenue, Portland OR 97201-5398, to the attention of Rob Smoot, no later than 3:00 p.m. PST, Tuesday March 13, 1990, in the Council Chambers, at which time they will be publicly opened and read.

The Work contemplated consists of constructing a building to house a solid waste conveyor and two compactors (supplied by others); mechanical and electrical systems; roads, bridge, landscaping, stormwater and sewage lift stations and piping, parking areas, and landscaping.

Contract Documents, including Drawings and Specifications depicting the Work, may be examined after Monday, February 12, 1990 at Metro's offices, room 315, Monday through Friday, from 8:00 A.M. to 4:30 P.M. Documents will also be available at plan centers. Copies of the Contract documents can be obtained from Metro for a non-refundable fee of \$50.00 per set. Checks or money orders must be made payable to the Metropolitan Service District. If mailing of the material is desired, the prospective Bidder must provide a street address and a telephone number, in addition to a Post Office box number, if any, and must include a non-refundable first class mail fee of \$_____.

No Bid shall be received or considered by Metro unless the Bid contains a statement by the Bidder as a part of its Bid that the provisions of ORS 279.350, regarding prevailing wage rates, are to be complied with.

Metro has adopted a Disadvantaged Business Program for its contracting expenditures. Bidders are required to comply with Metro's Program, copies of which are included in the Contract Documents. The specific requirements of the Program are detailed in the Contract Documents. The goals for this Contract are that ten (10) percent of the Contract Amount be subcontracted to Disadvantaged Business Enterprises, and that three (3) percent of the Contract Amount be subcontracted to Women-Owned Business Enterprises. Bidders must either meet these goals or demonstrate their good faith efforts, as defined in the Program, to meet the goals or their Bids will be deemed nonresponsive.

DRAFT

Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279.029.

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purposes of the Contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements, and to, for good cause, reject any and all Bids upon a finding by Metro that it is in the public interest to do so.

A Pre-Bid Conference for Bidders will be conducted Monday, February 19, 1990 at 10:00 A.M. PST at Metro's offices, room ____ at 2000 S.W. First Avenue in Portland.

RS:ay
00020.wp5

DRAFT

<Section 00030 Invitation to Bid 01-08-90>

INVITATION TO BID
FOR METRO SOUTH TRANSFER STATION MODIFICATIONS

Sealed bids for Modifications to the Metro South Transfer Station, located at the intersection of Highway 213 and Washington Street in the City of Oregon City, Oregon, will be received at the offices of the Portland Metropolitan Service District (Metro) at 2000 S.W. First Avenue, Portland, OR 97201-5398, to the attention of Robin Smoot, until 3:00 p.m. PST, Tuesday, March 13, 1990, in the Council Chambers, at which time they will be publicly opened and read.

The Work contemplated consists of constructing a building to house a solid waste conveyor and two compactors (supplied by others), roads, bridge, landscaping, stormwater and sewage lift stations and piping, parking areas, and landscaping.

Contract Documents, including Drawings and Specifications depicting the Work, may be examined after Monday, February 12, 1990 at Metro's offices, room 315, Monday through Friday, from 8:00 A.M. to 4:30 P.M. Documents will also be available at plan centers. Copies of the Contract documents can be obtained from Metro for a non-refundable fee of \$50.00 per set. Checks or money orders must be made payable to the Metropolitan Service District. If mailing of the material is desired, the prospective Bidder must provide a street address and a telephone number, in addition to a Post Office box number, if any, and must include a non-refundable first class mail fee of \$____.

Each bid must be submitted on the prescribed form and accompanied by a certified or cashier's check, or a bid bond, payable to the Metropolitan Service District of Portland, Oregon, in an amount not less than 10 percent of the total Base Bid amount.

Metro will issue a Notice of Conditional Award within thirty (30) days of the date of the Bid opening. Within seven (7) days of the Notice of Conditional Award, the successful Bidder shall furnish the necessary Performance Bond and Labor and Materials Payment Bond, as prescribed in the Contract Documents.

As authorized in ORS Chapter 279, before a Contract will be awarded for the Work contemplated herein, Metro will conduct such investigation as is necessary to determine the Bidder's qualifications including the performance record and ability of the apparent low Bidder to perform the size and type of work specified under this Contract. Upon request, the apparent low Bidder shall submit such information as deemed necessary by Metro to evaluate the Bidder's qualifications to do the Work.

DRAFT

Metro has adopted a Disadvantaged Business Program for its contracting expenditures. Bidders are required to comply with Metro's Program, copies of which are included in the Contract Documents. The specific requirements of the Program are detailed in the Contract Documents. The goals for this Contract are that ten (10) percent of the Contract Amount be subcontracted to Disadvantaged Business Enterprises, and that three (3) percent of the Contract Amount be subcontracted to Women-Owned Business Enterprises. Bidders must either meet these goals or demonstrate their good faith efforts, as defined in the Program, to meet the goals or their Bids will be deemed nonresponsive.

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purposes of the Contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements, and to, for good cause, reject any and all Bids upon a finding by Metro that it is in the public interest to do so.

No Bid shall be received or considered by Metro unless the Bid contains a statement by the Bidder as a part of its Bid that the provisions of ORS 279.350, regarding prevailing wage rates, are to be complied with.

A Pre-Bid Conference for Bidders will be conducted Monday, February 19, 1990 at 10:00 A.M. PST at Metro's offices, room ____ at 2000 S.W. First Avenue in Portland. A portion of the Pre-Bid Conference will address subcontracting opportunities for Disadvantaged and Women-Owned Business Enterprises. Bidder's attendance at this portion of the Pre-Bid Conference is one of the actions required to demonstrate good faith efforts under Metro's Disadvantaged Business Program, a copy of which is included in the Appendix to these Contract Documents.

RS:ay
invit-1.wp5

<Section 001010 Instructions to Bidders 01-08-90>

INSTRUCTIONS TO BIDDERS

1. DESCRIPTION OF WORK

The work contemplated consists of construction of modifications to the Metro South Transfer Station located at the intersection of Highway 213 and Washington Street in the City of Oregon City, Oregon. The elements of the work include constructing a building to house a solid waste conveyor and two compactors (supplied by others), roads, bridge, landscaping, stormwater and sewage lift stations and piping, parking areas, and landscaping, as indicated in the Drawings and Specifications.

2. DEFINITIONS

Except as otherwise specifically provided herein, all words and phrases defined in the General Conditions shall have the same meaning and intent in these Instructions to Bidders. Bidders should refer to those definitions as they read these Instructions.

3. DOCUMENT INTERPRETATION

The Contract Documents are intended to be complementary and to provide all details reasonably required for the execution of the proposed Work. Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of these Contract Documents. Should there be any doubt as to the meaning or the intent of said Contract Documents or should any inconsistency or discrepancy be found within such Contract Documents, the Bidder shall request of Metro, in writing at least ten (10) days prior to Bid opening, an interpretation thereof. The Bidder may also request substitutions for materials, processes or equipment as described in the Contract Documents. Such requests for interpretation or substitution shall be mailed or delivered to Metro at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, Attention: Robin Smoot. Any interpretations or changes in the Contract Documents or approved substitutions will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all Bidders receiving a set of the Bidding Documents and which shall be binding upon all Bidders as if set forth in the original Contract Documents. Bidders shall indicate receipt of all Addenda on their Bids. Metro will not be responsible for any other explanation or interpretation of the Bidding Documents. Bidders shall have no right to rely on any oral interpretation or instructions made by

Metro or the Engineer, unless the same is also committed to writing and issued as an Addendum.

In the absence of any pre-bid request for clarification, as outlined above, or any interpretation of the Contract Documents, any subsequent interpretation shall be made by Metro and such interpretation shall be final and binding on the successful Bidder and Metro shall pay no extra costs or expenses to such Bidder resulting from such interpretation.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE AND COMPLIANCE WITH LAWS

Before submitting a Bid, Bidders shall fully examine and read the Contract Documents. They shall visit the site of the proposed Work, examine the Site and the surrounding areas. They shall fully inform themselves of all conditions on, in, at and around the Site, the surrounding areas, and any work that may have been done thereon. The Bidder acknowledges by the submission of its Bid that it has satisfied itself as to the nature and location of the Work, the general and local conditions, conditions of the Site, availability of labor, electric power, water, and the kind of surface materials on the Site, the kind of equipment needed, and all other matters which may in any way affect the Work or the cost, including utilities not identified in the Contract Documents.

Information derived from inspection of the Contract Documents and any specific sections thereof showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the Site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents. Investigation of Site and soil conditions have been conducted for Metro. Bidders may inspect the records of such investigations at locations specified in Section 00220.

Metro does not in any way warrant the accuracy of any information in such investigations and Bidders shall have no right to rely on the information contained in such records or investigations. Furthermore, should the Bidder determine that additional investigations of site and/or soil conditions are necessary or desirable, Bidder shall cause such additional investigations to be made, at Bidder's expense, prior to submitting a Bid and subject to coordination with Metro.

Any failure of a Bidder to acquaint itself with all of the available information concerning conditions or having such additional investigations of Site and soil conditions conducted,

DRAFT

as may be necessary, will not relieve it from responsibility for estimating properly the difficulties or cost of the Work and the Bidder shall, regardless of such failure, be bound to its Bid. Each Bidder shall inform itself of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, codes, statutes, ordinances, and regulations, as amended, relative to the execution of the Work. Each Bidder shall prepare its Bid in accordance with and all Bid prices shall assume compliance with such laws, codes, statutes, ordinances and regulations. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees, and similar subjects.

If any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations as amended, the Bidder shall so advise Metro in writing at least ten (10) days before Bids are due. If it is shown that the Contractor, as Bidder, knew or should have known that any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations and had failed to so advise Metro, it shall be liable for costs of making any deviation(s) required for compliance with such laws, codes, statutes, ordinances and regulations.

Each Bidder, in submitting its Bid, certifies that the Bidder is not ineligible to receive a contract for a public work, as set forth in ORS 279.361 and agrees, if awarded the Contract, that each of its Subcontractors will be required to certify such compliance, and certification will be filed with Metro prior to such Subcontractor commencing any work under the Contract.

5. DISADVANTAGED BUSINESS PROGRAM COMPLIANCE

Metro has made a strong commitment to provide maximum opportunities to Disadvantaged and Women-Owned Businesses in contracting. The successful Bidder will be required to meet Metro's Disadvantaged Business Program goals or clearly demonstrate that a good faith effort has been made to meet the goals. The goals for this Contract are: Disadvantaged Business Enterprises (DBEs) -- ten (10) percent, and Women-Owned Business Enterprises (WBEs) -- three (3) percent of the Base Bid Amount. DBEs and WBEs must be certified by the state of Oregon as DBEs/WBEs to be counted toward the Contract goals.

The Bid submitted must contain a fully completed Disadvantaged Business Program Compliance form contained herein. Metro may

DRAFT

require any or all Bidders to submit completed DBE and WBE Utilization forms (also contained herein) either by the close of the next working day following Bid opening or within twenty-four (24) hours of Metro's request. Detailed procedures for completing the forms and for demonstrating good faith efforts are contained in Metro Code 2.04 (Metro's Disadvantaged Business Program) contained in the Appendix. Bidder's special attention is directed to Section 2.04.155 Contract Award Criteria), and Section 2.04.160 (Determination of Good Faith Efforts). Bidders should note the following requirement of the latter section:

Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade-oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before Bids or proposals are due.

The following are minority-oriented newspapers published in the Portland metropolitan area:

The El Hispanic,

The Skanner, 2337 N. Williams Avenue, Portland, OR 97211

(503) 287-3562.

The Portland Observer, P.O. Box 3137, Portland, OR 97208

(503) 283-2486

The requirement to advertise is but one of the actions necessary to demonstrate good faith efforts under this program.

Failure of the Bidder to comply with all of the requirements of the Disadvantaged Business Program will result in the Bid being deemed nonresponsive.

6. PREPARATION OF BIDS

All blank spaces in the Bid Forms must be completed either by typing or in ink. Amounts shall be shown in both words and figures. Any Bids which do not include Bids on the Alternates and any Unit Prices may be considered nonresponsive and may be rejected. No changes shall be made in the phraseology of the forms.

Any Bid may be deemed nonresponsive which contains omissions, erasures, alterations, or additions of any kind, or prices uncalled for, or in which any of the prices are obviously

DRAFT

unbalanced, conditioned or which in any manner shall fail to conform to the conditions of the Contract Documents.

Each Bid shall give the full business address of the Bidder and be signed by it with its legal signature.

- a. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership authorized to sign contracts on behalf of the partnership, or by an authorized representative, followed by the printed name and title of the person signing.
- b. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. When requested by Metro, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
- c. In the event that a Bid is submitted by a joint venture, then a certified copy of the legal agreement constituting such joint venture shall be attached to the Bid.

The name of each person signing shall also be typed or printed below the signature. Signatures of all individuals must be in longhand.

Failure to fulfill any of the above requirements may render the Bid nonresponsive.

7. SUBMISSION OF BIDS

All Bids must be submitted not later than the time prescribed, at the place, and in the manner set forth in the INVITATION TO BID. Bids must be made on the forms for the Bid provided herein. Each Bid and all other documentation required to be submitted with the Bid must be submitted in a sealed envelope, so marked as to indicate its contents without being opened, and addressed in conformance with the instructions in the INVITATION TO BID and the ADVERTISEMENT FOR BIDS.

8. MODIFICATION OR WITHDRAWAL OF BIDS

Any Bid may be modified after delivery to the location specified in the Invitation to Bid by delivering to the same location

DRAFT

before the time fixed for the Bid opening, a written sealed supplement to the original Bid, marked "Supplement to Bid of (Name of Bidder) for Metro South Transfer Station Modifications." Such supplement shall clearly identify the Bid item(s) which are changed by setting forth the original Bid item(s), and the modified item(s). Metro may reject any supplemental Bid which, in its opinion, does not set forth the proposed modifications clearly enough to determine the definiteness and certainty of the item(s) offered by the Bidder. No Bidder shall be allowed to submit more than one (1) Bid for this Contract.

Bids may be withdrawn by the Bidder prior to the time fixed for the receipt of Bids by having an authorized representative of the Bidder with sufficient identification personally pick up the Bid. Bids may not be withdrawn for a period of forty-five (45) days from and after the opening of Bids and on or prior to the last date of any extension of such time as may be agreed upon between Metro and the Bidder.

9. BID SECURITY

Bids must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a bid bond on the form bound herewith issued by a surety authorized to issue such bonds in Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U. S. Treasury Department, in the amount of not less than 10 percent of the total amount of the Base Bid. This bid security shall be given as a guarantee that the Bidder will not withdraw its Bid for a period of forty-five (45) days after Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Construction Agreement and furnish a properly executed Performance Bond and a properly executed Labor and Materials Payment Bond in the full amount of the Base Bid within the time specified. Bid security deposited in the form of a certified or cashier's check shall be subject to the same requirements as a bid bond.

The Attorney-in-Fact (Resident Agent) who executes these bonds on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

10. EXPERIENCE AND ABILITY TO PERFORM THE WORK

Within twenty-four (24) hours following request by Metro, any bidder may be required to present information indicating that the

DRAFT

Bidder has the necessary experience and qualifications in the class of Work to be performed, and the ability, equipment, key personnel and financial resources to perform the Work satisfactorily within the time specified. In determining the award of this Contract, such information will be considered, and the Bidder is cautioned to make complete and comprehensive presentation of its abilities and resources. Failure of any Bidder to comply fully and timely with a request for information under this section shall be grounds for rejection of that Bid.

No Bidder will be considered for contract award unless such Bidder is authorized by law to execute the Contract or perform the Work for which such Bid is received. Should it appear, at any time, that any Bidder is not or might not be authorized by law to execute the Contract or perform such Work, then such Bidder may at any time be rejected and Metro may refuse to execute any contract with such Bidder regardless of whether or not the contract had been previously awarded by the Metro Council and without any liability whatever on the part of the Metropolitan Service District, its Council, or any member of its Council, or Metro's officer, employees, or its agents, either as individuals or in official capacities.

11. REJECTION OF BIDS

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements, and to, for good cause, reject any or all Bids upon a finding by Metro that it is in the public interest to do so.

12. BASIS OF AWARD

Metro reserves the right to make Award of this Contract to the lowest responsive, responsible Bidder, based on either the lowest Base Bid Amount or the lowest total of the Base Bid Amount plus any combination of Alternate price(s), whichever basis Metro at its sole discretion may select. Any Bid which does not include pricing for the Alternates or Unit Prices may be considered non-responsive and may therefore be rejected. Metro also reserves the right to reject bids in which the Alternate Price(s) are obviously unbalanced as well as waive any or all technical deficiencies.

In determining the lowest responsive, responsible Bidder, Metro shall, for the purpose of awarding the Contract, add a percent increase on the Bid of a nonresident Bidder, as that term is

defined in ORS 279.029(6)(c), equal to the percent, if any, of the preference given to that nonresident Bidder in the state in which that Bidder resides. For purposes of determining the percent increases to be applied pursuant to this section, Metro shall rely on the list published by the Oregon Department of General Services pursuant to ORS 279.029(3), and Metro shall not incur any liability to any Bidder by relying on such list.

13. ALTERNATES

The Bidder is required to bid on the accelerated schedule, as described in the specifications, stipulating the amount to be added to the Base Bid Amount for the work specified (including overhead and profit as defined in these Contract Documents). The Alternate shall conform exactly to all appropriate terms, conditions and requirements of the Contract Documents.

Failure to bid on the Alternate is grounds for Metro to reject a Bid, however, Metro reserves the right to accept a Bid if it elects not to utilize any particular Alternate for which the bidder has not submitted an Alternate Price.

No time extension will be granted to the General Contractor due to Alternate work as selected by Metro. Therefore, all work including any Alternate selected by Metro must be brought to Substantial Completion on or before the number of calendar days specified.

14. LIST OF PROPOSED SUBCONTRACTORS

Metro may require any or all Bidders to furnish in writing to Metro the names of all Subcontractors and Suppliers which Bidder proposes to use in completing the Work along with a brief description of the subcontract or supply work involved and the subcontract or supply work dollar amount, either by the close of the next working day following Bid opening or within twenty-four (24) hours of Metro's request. Metro will notify the Bidder in writing within ten (10) days following receipt from Bidder of the above-described information if Metro has any reasonable objection to any such proposed Subcontractor or Supplier. The Bidder shall not subcontract with any proposed Subcontractor or Supplier to whom Metro has made a reasonable objection. In the event of such objection, Bidder shall propose another entity to whom Metro has no reasonable objection. No amounts or prices bid by the Bidder shall be increased by any difference occasioned by such substitution. Failure of Metro to reply within the above-described time period shall be construed to mean that Metro has no objection at that time. Failure of the Bidder to comply with this section shall be cause for rejection of Bidder's bid and, in

DRAFT

such event, the bid security submitted by Bidder shall be taken by Metro and considered as liquidated damages.

15. AWARD AND EXECUTION OF CONTRACT

Within forty-five (45) days after the opening of bids, Metro will accept one of the Bids or will act in accordance with BASIS OF AWARD, above. The acceptance of the Bid will be by written Notice of Conditional Award, mailed or delivered to the office designated in the Bid. The award, if made, will be made within forty-five (45) days after the opening of Bids. The Notice of Conditional Award shall not entitle the party to whom it is delivered to any rights whatsoever.

The successful Bidder shall within seven (7) days after receiving Notice of Conditional Award, sign and deliver to Metro the Construction Agreement attached hereto together with an acceptable Performance Bond and a Labor and Materials Payment Bond and certificates of insurance and certified copies of insurance policies as required in these Contract Documents.

Upon receipt of the signed Construction Agreement and all other documents required to be submitted by the successful Bidder, as prescribed herein, Metro shall sign the Construction Agreement and issue a written Notice to Proceed to Contractor. Contractor shall commence work within ten (10) days of issuance of the Notice to Proceed.

In the event of failure of the lowest responsive, responsible Bidder to sign and return the construction Agreement and all other documents required to be submitted, as prescribed herein, Metro may award the Contract to the next lowest responsive, responsible Bidder.

16. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND

The successful Bidder shall file with Metro a Performance Bond on the form bound herewith and in the amount described below, as security for the faithful performance of this Contract and to cover all guarantees against defective workmanship or materials, or both, for a period of one (1) year after the date of Final Completion and Acceptance of the Work by Metro. The successful Bidder shall additionally file a Labor and Materials Payment Bond on the form bound herewith and in the amount described below as security for the payment of all persons supplying labor and materials for the construction of the Work. The surety furnishing these bonds shall have a sound financial standing and a record of service satisfactory to Metro, shall be authorized to do business in the state of Oregon, and shall be named on the

DRAFT

current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and U.S. Treasury Department. If more than one surety is on a bond, then each surety must agree that it is jointly and severally liable on the bond for all obligations on the bond.

The amount of each bond described above shall be a sum not less than 100 percent of the Contract Amount. The Attorney-in-Fact (Resident Agent) who executes the Performance Bond and the Labor and Materials Payment Bond on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

17. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS

The Bidder which has a Contract awarded to it and which fails to promptly and properly execute this Contract and furnish the required bonds, certificates of insurance and certified copies of insurance policies shall forfeit the bid security that accompanied its Bid and the bid security shall be retained as liquidated damages by Metro. It is agreed that this sum is a fair estimate of the amount of damages Metro will sustain in case the Bidder fails to enter into a Contract and furnish the bonds, certificates of insurance and certified copies of insurance policies as hereinbefore provided.

18. BID BACK-UP (Bid Preparation Documents)

Within six (6) days after Metro's request and as a condition precedent to the award of the Contract, the apparent low responsive and responsible Bidder shall submit to Metro in a sealed envelope their complete bid summary, along with corresponding back-up including, but not limited to: quantity take-off sheets, pricing sheets and information/data substantiating the Base Bid Amount. The back-up data provided will include that of all Subcontractors listed in the Bid, as well as all lower-tier Subcontractors. This bid summary and back-up data will be held in strict confidence by Metro in its original sealed envelope and will not be opened except in the event of dispute between Metro and Contractor. Bid Back-Up shall be delivered to Metro, 2000 S. W. First Avenue, Portland, OR 97201-5398, Attention: Robin Smoot, enclosed in a double envelope to prevent accidental opening.

RS:jc
instruct.wp5

<Section 00700 General Conditions 01-09-90>

ARTICLE 1. GENERAL PROVISIONS.

1.01 Definitions. Unless otherwise defined or specified in the Contract Documents, the following terms shall have the meanings indicated:

1.01.01 Act of God -- means an earthquake, flood, typhoon, cyclone or other natural phenomenon of catastrophic proportions or intensity.

1.01.02 Addendum (Plural: Addenda) -- means a document issued by Metro during the bidding period which modifies, interprets, supercedes or supplements the Contract Documents and becomes a part of the Contract Documents. It is the Bidder's responsibility to determine how addenda impact the Work. All Bids submitted shall include the cost of the Work included in any addenda issued prior to Award.

1.01.03 Alternates -- are portions of the Work for which a Bidder must submit a separate lump sum Bid.

1.01.04 "As-Builts" or Record Documents -- are those drawings made, revised or annotated by the Contractor and approved by Metro during the performance of the Contract, fully illustrating how all elements of the work were actually installed and completed.

1.01.05 Authorized Representative -- is a person, corporation, partnership or other legal entity acting on behalf of another through expressly delegated authority as specified in these Contract Documents.

1.01.06 Base Bid -- is the written offer of a Bidder to perform all of the Work except the Alternates and Unit Prices.

1.01.07 Construction Schedule or Schedule -- is the timeline described in Section 01010 of the Specifications.

1.01.08 Bid -- is the written offer of a Bidder to perform the work as defined in these Contract Documents, when made out in accordance with all of the Contract Documents and submitted on the appropriate Bid Forms.

1.01.09 Bidder -- is any individual, partnership, corporation, or joint venture, acting directly or through a duly and legally authorized representative, submitting or intending to submit a Bid for the Work as described in these Contract Documents.

1.01.10 Bidding Documents -- See "Contract Documents."

1.01.11 Bid Forms -- include the following: the Bid, including Schedule of Bid Prices, Disadvantaged Business Program Compliance Form, Resident/Non-Resident Bidder Status form, and Signature Page, the Non-Collusion Affidavit, Bid Bond, Disadvantaged Business Enterprise Utilization Form and the Women Business Enterprise Utilization Form.

1.01.12 City -- means the City of Oregon City, Oregon.

1.01.13 Change Order -- is a written document signed by Metro and the Contractor stating their agreement upon all of the following:

1. a change in the Work;
2. the amount of the increase or decrease in the Contract Amount, if any; and
3. the extent of the adjustment to the Contract Time, if any.

1.01.14 Clarification -- is a written document consisting of supplementary details, instruction or information issued by Metro after the award of Contract which clarifies, or supplements the Contract Documents and becomes a part of the Contract Documents.

1.01.15 Completion -- See "Substantial Completion" and "Final Completion and Acceptance."

1.01.16 Construction Coordinator -- The Metro representative on the construction site. The Construction Coordinator will be Mr. Maurice Neyman, an employee of Metro, who will represent Metro to the extent of his authority as delegated by the Executive Officer.

DRAFT

1.01.17 Construction Manager -- The Construction Manager will be SCS Engineers' agent who is with the firm of W.R. Gamble Engineering and is the interface with the Contractor and will be the conduit for all Change Orders, correspondence, Requests for Information, Clarifications and negotiations.

1.01.18 Contract Amount -- is the total amount shown in the Construction Agreement as revised by Change Orders.

1.01.19 Contract Documents or Contract or Bidding Documents -- consist of the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms, the Construction Agreement, the Performance Bond, the Labor and Materials Payment Bond, the General Conditions, the Supplementary Conditions, the Specifications, the Drawings, the approved and updated Construction Schedule, and any modifications of any of the foregoing in the form of Addenda, Clarifications, Change Orders or Force Account Work.

1.01.20 Contractor -- is the party which has entered into this Contract with Metro and who is responsible for the complete performance of the Work contemplated by the Contract Documents and for the payment of all legal debts pertaining to the Work, including its officers, agents, employees and representatives.

1.01.21 Contract Time -- is the period of time, including adjustments approved by Metro, which is allowed in the Contract Documents for the Contractor to substantially complete the Work.

1.01.22 Critical Path Method or CPM -- means the critical path method of scheduling as understood and interpreted by standard industry practice.

1.01.23 Days -- means calendar day including Saturdays, Sundays and legal holidays.

1.01.24 Direct Costs -- are those costs of labor (including benefits), material and equipment incurred by the person, corporation, partnership or joint venture whose employees are actually performing the task.

1.01.25 Disadvantaged Business Program -- is Metro's program to provide maximum opportunities to

DRAFT

Disadvantaged and Women-Owned Business Enterprises in contracts, which is contained in Metro Code 2.04.

1.01.26 Drawings -- means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.01.27 Engineer -- is the firm of SCS Engineers and its agents, representatives, employees and consultants or such other firm as Metro may appoint. The Engineer will have authority to act on behalf of Metro only to the extent provided in these Contract Documents.

1.01.28 Equal, Approved, Approved Equal -- is used to indicate that the material or product to be supplied or installed must be equal to or better than that named in function, performance, reliability, quality and general configuration and that the substitute must be approved by Engineer. Equality in reference to the Project design requirements shall be determined by Engineer prior to installation of any material or product in the Project.

1.01.29 Final Completion and Acceptance -- means the completion by Contractor of all of the Work called for under the Contract, whether expressly or impliedly required, including but not limited to, satisfactory operation of all equipment, completion and correction of all punch list items to the satisfaction of Metro, settlement of all claims, delivery of all warranties and agreements to correct Work, equipment operation and maintenance manuals, as-built drawings, required approvals and acceptances by federal, state or local governments or other authorities having jurisdiction over the Work, and removal of all rubbish, tools, scaffolding and surplus materials and equipment from the Site.

1.01.30 Final Payment -- is the balance of the Contract Amount to be paid to the Contractor upon Final Completion and Acceptance of the Work.

1.01.31 Force Account Work -- is work, ordered in writing by Metro, for which Contractor must report its actual costs in accordance with Paragraph 8.04 of the General Conditions.

DRAFT

1.01.32 Furnish -- means, unless the context requires otherwise, supply and deliver materials, systems and equipment to the Site, ready for unpacking, assembly, installation, etc., as applicable in each instance.

1.01.33 Inclement Weather -- is a meteorological condition or conditions, abnormal to the Portland metropolitan area for the time of year in question, which cannot be reasonably anticipated and which has a significantly adverse effect on the Construction Schedule. Contractor shall provide for occurrence of routine or average weather conditions in the scheduling of its work.

1.01.34 General Contractor -- is the party which enters into the Contract with Metro. See also "Contractor".

1.01.35 Geotechnical Engineer -- The Geotechnical Engineer will be SCS Engineers' agent who is with the firm of Applied Geotechnology Inc.

1.01.36 Install -- includes, unless the context requires otherwise, unload, unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, protect, clean, connect to electrical power and/or piping, and similar operations at the Site, as applicable in each instance.

1.01.37 Lump Sum -- means all costs and expenses of whatever nature, including Overhead and Profit, associated with the Work involved.

1.01.38 Material or Materials -- shall be construed to include machinery, equipment, manufactured articles, materials of construction such as formwork, fasteners, etc., and any other classes of items to be provided in connection with the Contract, except where a more limited meaning is indicated by the context.

1.01.39 Metro -- means the Metropolitan Service District of the Portland metropolitan area, a municipal corporation established and existing under the laws of the State of Oregon, ORS Chapter 268.

1.01.40 Metro Executive Officer or Executive Officer -- means the Executive Officer of Metro.

1.01.41 Metro Council or Council -- means the elected Council of Metro.

1.01.42 Miscellaneous Phrases -- in the Contract Documents shall be interpreted as follows:

Wherever the words "as directed," "as instructed," "as required," "as permitted," or words of like effect are used, it shall be understood that the direction, requirement, or permission of Metro is intended.

The words "sufficient," "necessary," "proper," and the like shall mean sufficient, necessary or proper in the judgement of Metro.

The words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to, Metro.

1.01.43 Notice of Conditional Award -- is the document issued by Metro to the lowest responsive, responsible bidder whose Bid complies with all the requirements prescribed by the Contract Documents. The Notice of Conditional Award shall be given pursuant to the provisions of the Instructions to Bidders. It shall not entitle the party to whom it is given to any payment under the Contract, nor shall Metro be liable to such party or to any person for any alleged damages for any action taken in reliance upon such notice.

1.01.44 Notice to Proceed -- is the written notice given the Contractor to commence the prosecution of its Work as defined in the Contract Documents. The Notice to Proceed will also establish the date and time of a preconstruction conference.

1.01.45 Other Metro Contractors -- are all individuals, corporations, partnerships, or joint ventures (except the Contractor or Engineer) with whom Metro has a contract to perform work on the Project.

1.01.46 Overhead -- when applied to the cost of the work, shall include the following items, when reasonable and necessary for completion of the work:

1. All on-site payroll costs, taxes, insurance fringe benefits and bonuses of same, for supervising, estimating, expediting, purchasing, drafting and clerical/secretarial services where directly incurred in the performance of the Contract.

DRAFT

2. Small tools (less than \$250 capital cost per item).
3. Equipment maintenance and repairs.
4. Temporary construction, utilities, and safety requirements, other than falsework, forming and necessary scaffolding.
5. Transportation of materials other than direct identifiable cost of specific deliveries, or as included in price of material.
6. Parking fees for workers (if applicable).
7. Permit fees.
8. Cost of reproduction.
9. Field office costs.

Home or branch office overhead shall not be included, but shall be part of the Contractor's profit and shall include, but is not limited to, the following:

1. Accounting functions of the Contractor's Home and Branch Office.
2. General expenses of the Contractor's Home and Branch Office.
3. Interest on capital.
4. Salaries of any home and branch office estimators and administration.

1.01.47 Owner -- means Metro.

1.01.48 Profit -- means that portion of the Contractor's Bid, proposal, price, or Unit Price that is not Direct Costs or Overhead.

1.01.49 Project -- means the Modifications to the Metro South Transfer Station in Oregon City. However, if so required by the context, it shall be understood to refer to the work of this Contract only.

1.01.50 Provide -- means furnish and install complete and in place and ready for operation and use.

DRAFT

1.01.51 Punch List -- is the list prepared by the Construction Manager at the time of Substantial Completion which reflects the Contractor's incomplete, nonconforming work.

1.01.52 Retainage or Retention -- is the difference between the amount earned by Contractor on the Contract and the amount paid on the Contract by Metro.

1.01.53 Schedule of Values -- is the detailed breakdown of the contract amount by scheduled work item or network activity. Each work item or network activity as required in Section 01300 of the Specifications shall be assigned a dollar value.

1.01.54 Separate Contract -- is a contract between Metro and a party other than the Contractor for the construction or furnishing of a portion of the Project.

1.01.55 Shown, As Shown -- work shown on the Drawings which is a part of the Contract Documents.

1.01.56 Site -- is the real property upon which the Project is located.

1.01.57 Special Inspector -- is the inspector defined in the applicable building code.

1.01.58 Specifications -- are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.01.59 Subcontractor -- means a person, partnership, corporation or joint venture which has a direct contract with the Contractor to perform a portion of the Work which requires use of labor at the Site, other than common carriers.

1.01.60 Submittals -- include shop drawings, samples, manufacturer's brochures, pamphlets, catalog cuts, color charts or other descriptive data, clearly defining the article, material, equipment or device proposed by the Contractor for use in the Work. "Shop drawings" are the drawings and diagrams showing details of fabrication and erection which the Contractor is required to submit to the Engineer.

DRAFT

1.01.61 Substantial Completion -- is the stage in the progress of the Work, as determined by Metro, when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City of Oregon City has issued an occupancy permit and Metro can occupy or use the Work for its intended use.

1.01.62 Supplier -- means an individual, partnership, corporation or joint venture entering into an agreement with Metro or Contractor for furnishing a portion of the Work which requires no labor at the Site, other than common carriers.

1.01.63 Unit Prices -- are the costs for specific units of work as defined in the Bid and Supplementary Conditions and include all costs, including, but not limited to, equipment, labor, materials, incidentals, Overhead and Profit, for the unit of work described.

1.01.64 Work -- means, unless the context requires otherwise, the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute all or a portion of the Project as the context requires.

1.02 Intent and Interpretation of Contract Documents

1.02.01 Intent -- The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the Contract Documents is to include in the Contract price the cost of all labor and materials, water, fuel, tools, plant, scaffolding, equipment, power, light, transportation, and all other facilities, services and expense as may be necessary for the proper execution of the Work, unless otherwise indicated in these Contract Documents. In interpreting the Contract Documents, words describing materials or work which have a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning recognized by Engineer and Metro.

1.02.02 Divisions and Headings -- Titles and headings are for the convenience of organizing the Contract

Documents and shall not be construed to limit Contractor's obligations hereunder. The General Conditions are divided into fifteen (15) Articles. The first-tier subheadings of each Article shall be referred to as Paragraphs; the second-tier subheadings shall be referred to as Subparagraphs; and the third-tier subheadings shall be referred to as Clauses.

1.02.03 Mandatory Nature of Specifications and Drawings -- mention in the Specifications or indication on the drawings of articles, materials, operations or methods requires the Contractor to furnish and install (i.e., provide) each article mentioned or indicated, of quality or according to qualifications noted, to perform each operation called for, and to provide therefor, all necessary labor, equipment and incidentals. The determination of the type of operations and methods to be utilized in the performance of the Work shall be the responsibility of Contractor unless the Contract Documents prescribe a specific type of operation or method, in which case Contractor shall comply with the prescribed operation or method. Sentences in the imperative tense or command format in these Contract Documents shall be deemed to be directed to Contractor and to require the Contractor to perform the services and/or provide the materials described.

1.02.04 Precedence of Contract Documents -- all determination of the precedence of or discrepancy in the Contract Documents shall be made by Metro, but, in general, precedence will be in accordance with the following list with the highest precedence item at the top:

1. Signed Construction Agreement.
2. Supplementary Conditions.
3. General Conditions, Advertisement for Bids, Instructions to Bidders, Invitation to Bid, Bid Forms, Performance Bond and Labor and Materials Payment Bond.
4. Specifications
5. Drawings.

DRAFT

Detailed information takes precedence over general information and words take precedence over numbers unless obviously incorrect.

Addenda, Clarifications and all Change Orders to the Contract Documents take the same order of precedence as the specific sections that they are amending.

1.02.05 Discrepancies, Errors and Omissions -- the intent of the Contract Documents is to require Contractor to perform and provide every detail and item necessary for completion of the Project. The Contract Documents are not complete in every detail, however, and the Contractor shall comply with their intent and meaning, taken as a whole, and shall not avail itself of any manifest errors or omissions to the detriment of the Work. Should any error, omission, discrepancy or ambiguity appear in the Contract Documents, instructions or work done by others, the Contractor shall immediately upon discovery submit a Request for Information to Metro pursuant to Paragraph 3.02. If the Contractor proceeds with any such work without receiving a Clarification, Contractor shall be responsible for all resulting damage and defects, and shall perform any work necessary to comply with Metro's Clarifications at no cost to Metro. Any work or material not indicated in the Contract Documents, which is manifestly necessary for full and faithful performance of the Work in accordance with the intent of the Contract Documents shall be indicated by the Contractor on the shop drawings and provided by the Contractor to the same extent as if both indicated and specified. Any work indicated on the drawings but not specified, or vice versa, shall be furnished in the manner specified above as though fully set forth in both. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. In case of discrepancy or ambiguity, in quantity or quality, the greater quantity or better quality as determined by Metro, shall be provided at no extra cost to Metro.

1.02.06 Standards to Apply Where Detailed Specifications Are Not Furnished -- wherever in these Contract Documents or in any directions given by Metro pursuant to or supplementing these Contract Documents, it is provided that the Contractor shall furnish materials or manufactured articles or shall do work for which no detailed Specifications are set forth,

the materials or manufactured articles shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed Drawings or Specifications are set forth herein shall conform to the usual standards for first-class work of the kind required.

1.03 Supply of Contract Documents -- Metro shall supply Contractor, without charge, a maximum of ten (10) sets of Contract Documents. Contractor shall contact Metro for additional sets of documents for which Contractor shall be charged the cost of printing. All sets of Contract Documents supplied to Contractor, with the exception of one signed set and those supplied at Contractor's cost, are the property of Metro and shall be returned to Metro upon final completion of the Work.

1.04 Use of Contract Documents -- the Contract Documents were prepared for use in the construction of this Project only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of Metro. Any unauthorized use of the Contract Documents is at the sole responsibility of the user and such unauthorized use shall be deemed an activity in the performance of the Contract for purposes of Contractor's duty to indemnify under Article 11.

1.05 Copyright -- all submittals, record documents and any other products or documents produced by Contractor pursuant to this Contract are the property of Metro and it is agreed by the parties hereto that such documents are works made for hire. Contractor does hereby convey, transfer and grant to Metro all rights of reproduction and the copyright to all such documents.

1.06 Severability Clause -- should any provision of this Contract at any time be in conflict with any law, regulation or ruling, or be legally unenforceable for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event that any provision of this Contract shall become legally unenforceable, in whole or in part, the remaining provisions of this Contract shall nevertheless remain in full force and effect.

1.07 Notice or Service -- any written notice required or allowed under the Contract shall be deemed to have been communicated to the other party and service thereof shall be deemed to have been made if such notice is delivered in person to the individual, a member of the partnership or

DRAFT

joint venture, or an officer of the corporation for whom it was intended or if delivered at or sent by regular, registered or certified mail to the last business address of the relevant person or party known to the person or party giving the notice or to Contractor's Site office if the notice is directed to the Contractor. The date or time of service for purposes of all notices required or allowed under the Contract shall be the date and/or time upon which the relevant document was mailed or delivered as above-described.

The address given in the Bid is hereby designated as the legal business address of the Contractor, but such address may be changed at any time by ten (10) days prior notice in writing, delivered to Metro.

ARTICLE 2. CONTRACTOR'S ORGANIZATION

2.01 Contractor's Authorized Representatives -- prior to commencing any work under this Contract, Contractor shall submit in writing to Metro a list of Contractor's authorized representatives. Such list shall include the name and title of each representative along with the extent to which each representative is authorized to represent, bind and act for Contractor. The description of extent of representation shall include, but not be limited to, the maximum dollar value of Change Orders which the individual may authorize, whether the individual may respond to Request for Proposals and for what maximum dollar amount and whether the individual may submit a claim pursuant to Paragraph 3.03. The Contractor shall be fully liable for the acts, omissions and decisions of such representatives to the extent stipulated in the written list submitted to Metro.

The Contractor shall at all times be represented at the Site by one or more of such authorized representatives, who, cumulatively, shall have complete authority to represent, bind and act for Contractor in all matters pertaining or related to this Contract. In the event that Contractor does not comply with this paragraph and, consequently, is not fully represented at the Site at all times, Contractor shall be deemed to acquiesce in all actions taken by Metro which pertain or relate to this Contract.

2.02 Contractor's Office at the Site -- prior to commencement of work at the site, the Contractor shall establish a field office at the site acceptable to the Construction Coordinator. This office shall be located in a job trailer or temporary building. This office shall be the headquarters of the Contractor's representatives authorized

to receive notices, instructions, drawings or other communications from the Construction Manager on behalf of Metro or the Engineer and to act on Change Orders or other actions. Such notices, instructions, drawings or other communications given to such a representative or delivered to the Contractor's site office in his/her absence shall be deemed to have been given to the Contractor.

2.03 Key Personnel -- The Contractor shall submit, in writing, to Metro a list of the names, addresses, and telephone numbers of its key personnel who are to be contacted in case of emergencies on the job during non-working hours, including Saturdays, Sundays and holidays and all other key personnel such as the Submittal Coordinator and the Quality Control Manager as may be required.

2.04 Contractor's Employees -- Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

Whenever Metro shall notify the Contractor that any employee on the Work is, in the judgment of Metro, incompetent, unfaithful, disorderly or refuses to carry out the provisions of the Contract, such employee shall be discharged or transferred from the Work.

The Contractor shall give Metro, at its request at any time, full and correct information as to the number of workers employed in connection with each subdivision of the Work, the classification and rate of pay of each worker, the cost to the Contractor of each class of materials, tools and appliances used by it in the Work, and the amount of each class of materials used in each subdivision of the Work.

2.05 Daily Construction Reports -- each day Contractor shall deliver to the Construction Manager a daily construction report which shall include as a minimum the following information:

- A. Name of Contractor and Project.
- B. Weather, temperature and any unusual Site conditions for the day in question.
- C. A brief description and location of the day's work activities and any special problems and/or serious accidents (including work of Subcontractors).

D. A description of significant progress in construction for that day as well as any problems encountered that might affect the progress of the Project as they relate to the Construction Schedule.

2.06 Contractor to Supply Sufficient Material and Workers - the Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to substantially complete the Work herein required within the time specified in the Contract and in accordance with the Construction Schedule. The Contractor shall coordinate the Work of its Subcontractors so that information required by one will be provided by others involved in time for incorporation in the Work in proper sequence and without delay of any materials, devices or provisions for future work.

2.07 Construction Plant, Equipment and Methods --the construction plant and equipment provided by the Contractor, and Contractor's methods and organization for handling the Work shall be such as will secure a good quality of work and rate of progress which will ensure the completion of the Work within the time specified and in accordance with the Construction Schedule.

The Contractor shall give Metro full information in advance as to Contractor's plans for carrying on any part of the Work. If at any time before the commencement or during the progress of the Work, any part of the Contractor's plant or equipment, or any of Contractor's methods of executing the Work, appears to Metro to be inadequate to ensure the required quality or rate of progress of the Work, Metro may order the Contractor to increase or improve its facilities or methods, and the Contractor shall promptly comply with such orders. Neither compliance with such orders nor failure of Metro to issue such orders shall relieve the Contractor from obligation or liability to secure the quality of work and the rate of progress required by the Contract. The Contractor shall be responsible for overload of any part or parts of structures beyond their safe calculated carrying capacities during and after erection by placing of materials, equipment, machinery, tools or any other item thereon. Unless authorized by Metro in writing, no loads shall be placed on floors or roofs before they have attained their design strength without the provision of adequate temporary support.

DRAFT

The Contractor shall provide temporary utilities pursuant to the Specifications and shall be responsible for the safety and adequacy of its plant, equipment and methods.

2.08 Contractor's Temporary Structures -- the Contractor shall obtain all necessary permits for and shall erect and maintain at its own expense, and remove upon completion of the Work or as ordered by Metro temporary structures, sheds, barriers, walks, hoisting equipment, scaffolds, etc., as are necessary for the Work pursuant to these Contract Documents.

The Contractor's temporary structures, equipment, stored materials, stored equipment, etc., shall be located so as not to interfere with the prosecution of the Work. If not so located, they shall be moved by the Contractor, as directed by Metro, at no cost to Metro. The Contractor's temporary structures, equipment or materials that obstruct progress of any portion of the work shall be removed or relocated by the Contractor at the Contractor's expense.

ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.01 Authority and Relationships of Metro and Engineer -- the following provisions shall govern the authority of the various officers, agents, representatives, consultants and employees of Metro, and Engineer. Except as specifically provided in this section, no individual acting or purporting to act as an officer, agent, representative, consultant or employee of Metro or Engineer shall have any authority to make representations, statements or decisions of whatever nature binding Metro or Engineer regarding any aspect of this Contract. Except as specifically provided in this Article, Contractor shall have no right to, and shall not rely on any such representation, statement or decision. Any reference to action by Metro in this Contract requires the written approval of the Metro Executive Officer or a person who is designated in writing by the Metro Executive Officer as having authority to act for Metro but only to the extent that such authority is expressly delegated in writing.

3.01.01 Authority of Metro -- except as otherwise provided herein, Metro shall determine the amount, quality, acceptability, fitness, and progress of the Work covered by the Contract. Metro and Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and they will

DRAFT

not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Metro and Engineer will not be responsible for or have control over the acts or omissions of the Contractor, Subcontractors, or any their agents or employees, or any other persons performing any of the Work. Nothing contained in this Contract is intended nor shall be construed to create any third-party beneficiary relationship between Metro and Contractor's subcontracting agents or employees.

It shall be the duty of the Contractor to comply with all procedures established and/or implemented by Metro as stated above. In the event any such procedures are at variance with other provisions of these Documents, such procedures shall prevail.

Metro may call for meetings of the Contractor, the Contractor's Subcontractors and Suppliers as Metro deems necessary for the proper supervision and inspection of the Work. Such meetings shall be held at the Site on regular working days during regular working hours, unless otherwise directed by Metro. Attendance shall be mandatory for all parties notified to attend.

The Contractor shall immediately comply with any and all orders and instructions given in accordance with the terms of this Contract by Metro.

Contractor has no right to, and shall not, rely on representations of whatever nature made by any individual, whether or not employed by or purporting to represent Metro or Engineer, unless such individual has been specifically and expressly delegated authority to make such representations pursuant to these Contract Documents. Likewise Contractor has no right, and shall not rely on any representations of authorized changes in the contract of whatever size or nature unless such change is in writing and signed by Metro.

Nothing contained in this Paragraph shall obligate Metro or Engineer to supervise Contractor's work under this Contract and Contractor shall remain fully responsible for the complete and proper supervision of all of the Work.

3.02 Clarifications -- should it appear that the Work to be done or any of the matters relative to the Contract

DRAFT

Documents are not sufficiently detailed or explained in the Contract Documents, or should there be any questions which may arise as to the meaning or intent of the Contract Documents, the Contractor shall immediately submit to Metro a written Request for Clarifications which shall fully describe the information sought. It is Contractor's responsibility to request information under this Paragraph in sufficient time for review by Engineer and Metro so that the orderly progress and prosecution of the Work is not delayed.

The Engineer, in consultation with Metro, shall interpret the meaning and intent of the Contract Documents and shall issue, within ten (10) days of receiving a request for information from Contractor, a written Clarification describing such meaning and intent. Additionally, the Engineer, after consulting with Metro, may at any time issue written Clarifications as deemed necessary to carry out the Work included in the Contract Documents. Notwithstanding any dispute or disagreement which Contractor may have concerning any such Clarifications, the Contractor shall perform the Work as prescribed and in accordance with all such Clarifications.

If notified by Metro that a Clarification is forthcoming, any related work done before the receipt of the Clarification shall be coordinated with Metro so as to minimize the effect of the Clarification on work in progress. Any related work not coordinated with Metro done before receipt of the Clarification shall be at the Contractor's risk and at no cost to Metro if that work does not conform to the Clarification.

If the Contractor proceeds with work which is not sufficiently detailed or explained in the Contract Documents without requesting and obtaining a Clarification pursuant to this Paragraph, Contractor shall do so at its own risk and shall, at no cost to Metro, perform any additional work which may be required by Metro to bring the work into conformance with the intent of the Contract Documents.

3.03 Contractor's Claims

3.03.01 Generally -- no claims of any sort whatsoever by Contractor shall be considered or allowed under this Contract except as specifically provided and prescribed under this Paragraph. Failure to make a claim as specifically prescribed by this Paragraph or failure to perform disputed work, if any, as directed by Metro shall bar Contractor from any recovery of any

sort or extension of time resulting from the facts surrounding the claim. Contractor's full and complete compliance with this Paragraph shall be a condition precedent to any right of Contractor to further prosecute any claim against Metro arising out of or related to Work described in the Contract Documents. Every decision and action of Metro shall be considered final unless Contractor makes a claim concerning such decision or action pursuant to this Paragraph.

3.03.02 Types of Claims -- the types of claims which Contractor may make are limited to the following:

1. Claims based upon justifiable delays as described in Subparagraph 3.03.03;
2. Claims based upon differing Site conditions as described in Subparagraph 3.03.04;
3. Claims based upon Clarifications or Change Orders issued by Metro or any other decision, action or failure to act by Metro as described in subparagraph 3.03.05.

As a condition precedent to any such claim, Contractor shall comply with all applicable procedural and substantive requirements of this Contract.

Contractor may make claims which include requests for extensions of the Contract Time and/or requests for increases in the Contract Amount. If Contractor believes that a single circumstance or set of facts gives rise to both a claim for an extension to the Contract Time and an increase in the Contract Amount, Contractor must state both such allegations in one written claim or waive the unstated allegation.

3.03.03 Claims For Justifiable Delays

3.03.03.01 Definition of Justifiable Delay -- if the Contractor is significantly and justifiably delayed in the prosecution of the Work due to any of the acts, events or conditions described as justifiable delays below, the Contractor may make a claim for an increase in the Contract Time and/or Contract Amount pursuant to Clause 3.03.03.02.

"Justifiable Delay" shall mean, and is limited to, the acts, events or conditions described in

sections (a) through (i) below, if such act, event or condition has a materially adverse effect on the ability of Contractor to obtain the benefits of its rights or to perform its obligations under this Contract or materially increases the cost to Contractor to obtain the benefits of such rights or to perform such obligations and if such act, event or condition and its effect:

1. are beyond the reasonable control of Contractor (or any third party for whom Contractor is directly responsible);
2. do not arise out of (A) strikes, labor disputes or other labor difficulties involving Contractor or its Subcontractors or Suppliers or entities providing transportation to Contractor or its Subcontractors or Suppliers, (B) labor shortages, or (C) changing economic conditions; and,
3. could not have been reasonably anticipated by Contractor.

The acts, events and conditions are:

- (a) An Act of God.
- (b) Inclement Weather.
- (c) Acts of a public enemy, war (whether or not declared) or governmental intervention resulting therefrom, blockage, embargo, insurrection, riot or civil disturbance.
- (d) The failure to issue or renew, or the suspension, termination, interruption or denial of, any permit, license, consent, authorization or approval essential to the Work, if such act or event shall not be the result of the willful or negligent action or inaction of Contractor, or of any third party for whom Contractor is directly responsible, and if Contractor shall be taking or have taken or shall cause to or have caused to be taken, all reasonable actions in good faith to contest such action (it being understood that the contesting in good faith of any such

DRAFT

action shall not constitute or be construed as a willful or negligent act of Contractor).

(e) The failure of any appropriate federal, state, municipal, county or other public agency or authority or private utility having operational jurisdiction over the Work or Site to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Site, which are required for and essential to the Work.

(f) Epidemics or quarantines.

(g) Material, equipment or fuel shortages or freight embargoes.

(h) Priorities or privileges established for the manufacture, assembly or allotment of material by order, decree, or otherwise of the U. S. or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority.

(i) The prevention by Metro of Contractor from commencing or prosecuting the Work.

No claim for extension of the Contract Time or increase in the Contract Amount will be considered for Inclement Weather unless Contractor submits documentation that such weather conditions are abnormal for the area and period of time in question; that they could not have been reasonably anticipated; and that the Inclement Weather had a significantly adverse effect on the Construction Schedule.

Delays in delivery of equipment or material purchased by the Contractor or its Subcontractors or Suppliers (including Metro-selected equipment) shall not be considered as a just cause for delay if timely ordering would have made the equipment available. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

DRAFT

The term "delay" shall specifically not include and no extension of the Contract Time or increase in the Contract Amount shall be allowed for (i) any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor; (ii) any delay in the prosecution of parts of the Work, which may in itself be unavoidable but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor the Substantial Completion of the Work of this Contract within the time specified; (iii) any reasonable delay resulting from the time required by Metro for review of Submittals or Shop Drawings submitted by the Contractor and for the making of surveys, measurements and inspections; (v) any delay arising from an interruption in the prosecution of the Work on account of the reasonable interference from Other Metro Contractors which does not necessarily prevent the Substantial Completion of the Work of this Contract within the time specified; and (vi) any delay resulting in any manner from labor disputes, strikes or difficulties or any delay resulting in any manner from any labor-related event, act or condition whether or not Contractor has any control over such event, act or condition.

3.03.03.02 Justifiable Delay Claims Procedure - Contractor shall, within five (5) days of the Contractor's first knowledge of the occurrence which is the basis of the claim for justifiable delay, notify Metro in writing of such delay. The written notice by Contractor shall indicate the cause of the delay and shall estimate the possible time extension requested. Within ten (10) days after the cause of the delay has been remedied, the Contractor shall give written notice to Metro of any actual time extension and any increase in the Contract Amount requested as a result of the aforementioned occurrence in accordance with this Contract.

Within a reasonable period after the Contractor submits to Metro such a written notice for an extension of time and/or increase in the Contract Amount, Metro will make the decision on each

DRAFT

request. If Contractor is dissatisfied with such decision, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.03.06.

3.03.04 Claims for Differing Site Conditions -- The Contractor shall promptly, and before the conditions are disturbed, give a written notice to Metro of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Contract, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

Metro shall investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ as to cause an increase or decrease in the Contractor's cost of, or the time required for performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made and a Change Order issued.

If Contractor is dissatisfied with the decision of Metro under this Subparagraph, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.03.06.

3.03.05 Other Contractor Claims -- Contractor claims based upon Clarifications or Change Orders issued by Metro or any other decision, action or failure to act by Metro shall be made according to this Subparagraph.

Contractor shall immediately, and not more than five (5) days after discovering the facts which give rise to its claim and prior to commencing the work or conforming to the Clarification on which the claim is based, if any, notify Metro in writing of its intention to make a claim. Contractor's written notification shall include a description of:

1. the factual occurrences upon which the Contractor bases the claim including the decision, action or failure to act by Metro or its authorized representatives that allegedly give rise to the claim;
2. how Metro's decision, action or failure to act has affected Contractor's performance or otherwise affected Contractor;

3. whether the claim is for an extension in the Contract Time or increase in the Contract Amount or both and the specific extension or increase requested;

4. the provisions of the Contract upon which the claim is based.

Submission of written notice of claim as specified above shall be mandatory and failure to comply shall be a conclusive waiver to any claim by the Contractor. Oral notice or statement will not be sufficient nor will notice or statement after commencing the work in question.

After the written notification is submitted by Contractor (if the claim is not resolved or withdrawn in writing) and only upon written direction Metro, Contractor shall proceed without delay to perform the work pursuant to the direction of Metro. While the work on an unresolved claim is being performed, Contractor shall keep track of costs and maintain records in the manner set forth in section on Force Account Work, at no cost to Metro. Such notice by the Contractor and the fact that Contractor is keeping track of costs and maintaining records shall not in any way be construed as proving the validity of the claim nor the costs thereof.

Provided the claim or claims have been submitted in accordance with the requirements of this Article, Metro will consider and investigate the claim or claims of the Contractor. Within twenty-one (21) days of receipt of the above-described written notification of claim Metro will advise the Contractor of Metro's decision to accept or reject the claim or claims, in full or in part. If Contractor is dissatisfied with the decision of Metro under this Subparagraph, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.03.06.

3.03.06 Preservation of Claims -- Within forty-five (45) days after a rejection of claim, in whole or in part, by Metro under Sub-paragraphs 3.03.03, 3.03.04 or 3.03.05, Contractor may preserve its claim by submitting a fully documented claim package to Metro. That package shall include substantiating documentation with an itemized breakdown of Contractor and Contractor's Subcontractor's costs on a daily basis which shall include, but not be limited to,

labor, material, equipment, supplies, services, Overhead and Profit. All documentation that Contractor believes is relevant to the claim shall be provided in the claim package including without limitation, payroll records, purchase orders, quotations, invoices, estimates, correspondence, profit and loss statements, daily logs, ledgers and journals. Failure to submit the claim package in full compliance with this requirement, and/or maintain cost records as herein required, will constitute a waiver of the claim.

If Contractor elects to pursue any claims by filing a lawsuit against Metro, it must commence such lawsuit within six (6) months after the date of Substantial Completion. Failure to commence a lawsuit within this time limitation shall constitute a waiver of all such claims by Contractor.

3.03.07 Limitation of Damages for Delay

Except as provided below, an adjustment of Contract Time as herein provided shall be the Contractor's sole remedy for any delay in completion of the Project arising from justifiable delays under this Contract and Contractor shall not be entitled to collect or recover any damages, loss or expense of whatever nature incurred by reason of such delay.

Notwithstanding any other provision of this Contract, if any unreasonable delay described in this Paragraph is caused by acts or omissions of Metro or persons acting for Metro, Contractor shall retain any rights available to it by law to damages or an equitable adjustment for such Metro-caused delays. The preceding sentence shall not be interpreted to release Contractor from its obligations to give all notices and follow all procedures required by this Contract including, but not limited to, Subparagraph 3.03.03, and to otherwise attempt to resolve contract disputes as provided in this Contract or to pay liquidated damages as provided herein.

3.04 Metro's Rights to Damages

3.04.01 Liquidated Damages for Delay -- Time is the essence of the performance of the Work under this Contract. If Contractor fails to substantially complete the Work within the Contract Time, the actual damage to Metro for the delay will be substantial but

DRAFT

will be difficult or impractical to determine. It is therefore agreed that Contractor will pay to Metro, not as a penalty but as liquidated damages, the amount of one thousand (\$1,000.00) dollars, for each and every day that the date of Substantial Completion extends beyond the Contract Time.

Permitting Contractor to continue and finish the work or any part thereof after the Contract Time has expired shall in no way operate as a waiver on the part of Metro of any of its rights under this subparagraph or the balance of the Contract Documents.

3.04.02 Payment of Liquidated Damages Not a Bar to Metro's Right to Other Damages -- Payment of liquidated damages shall not release Contractor from obligations in respect to the complete performance of the Work, nor shall the payment of such liquidated damages constitute a waiver of Metro's right to collect any additional damages which it may sustain by failure of Contractor to fully perform the Work, it being the intent of the parties that the aforesaid liquidated damages be full and complete payment only for failure of Contractor to complete the Work on time. Metro expressly reserves the right to make claims for any and all other damages which Metro may incur due to Contractor's failure to perform in strict accordance with this Contract.

3.05 Resolution of Disputes -- It shall be a condition precedent to Contractor's right to litigate a claim that Contractor has fully complied with all pertinent claims procedures contained in this Article.

If any dispute shall arise between Metro and Contractor, either before or after the completion of this Contract, both parties shall attempt to negotiate a resolution of the dispute in good faith. Furthermore, if any dispute shall arise concerning any aspect of this Contract or the Project which involves Metro, Contractor and any other party or parties, Contractor agrees to attempt to negotiate a resolution of the dispute in good faith.

ARTICLE 4. SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

4.01 Contractor's Responsibility for the Work -- Contractor shall perform or cause to be performed all labor, services and work of whatever nature and shall provide or cause to be provided all materials, equipment, tools and other

facilities of whatever nature necessary to complete the Work and shall otherwise cause the Work to be completed in accordance with the Contract Documents.

Contractor shall take and assume all risk for all work and material involved in the Project until the entire Project has been finally accepted by Metro.

Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

4.02 Subcontracting -- Contractor shall arrange and delegate its work in conformance with trade practices and union regulations, if applicable, but shall remain responsible to Metro for performance of all work required or implied by the Contract Documents.

4.02.01 Objection to Subcontractors or Suppliers -- Metro reserves the right to make reasonable objection to any of Contractor's Subcontractors or Suppliers if Metro discovers any data or information at any time during the performance of the Contract which gives Metro a basis for such reasonable objection.

Metro will notify Contractor in writing if Metro has any reasonable objection to any of Contractor's Subcontractors or Suppliers. Contractor shall not subcontract with any Subcontractor or Supplier to which Metro has made a reasonable objection. In the event of Metro's reasonable objection to any Subcontractor or Supplier, Contractor shall propose another entity to which Metro has no reasonable objection. The Contract Amount shall not be increased by any difference in cost occasioned by such substitution, nor shall the Contract Time be extended.

4.02.02 Substitution, Change or Addition of Subcontractors or Suppliers -- At any time that Contractor intends to substitute, change or add a Subcontractor or Supplier during the performance of the Contract, Contractor shall give Metro prior written notice of such intention. Contractor shall not substitute, change or add any such Subcontractor or Supplier if Metro gives Contractor reasonable

DRAFT

objection in writing within ten (10) days after Metro receives such notice.

When any Subcontractor fails to prosecute a portion of the Work in a satisfactory manner, Metro may so notify the Contractor. If the Subcontractor fails to cure the unsatisfactory work promptly, the Contractor shall remove such Subcontractor immediately upon written request of Metro and Contractor shall request approval from Metro of a new Subcontractor to perform this section of the Work at no increase in the Contract Amount, and with no change in the Contract Time.

4.02.03 Metro Not Obligated to Detect Unsatisfactory Work -- Nothing contained in this Contract shall obligate Metro or place on Metro an affirmative duty to detect or discover unsatisfactory work of Contractor's Subcontractors or Suppliers. Failure of Metro to detect or discover such unsatisfactory work shall not relieve Contractor of any of its obligations under this Contract.

4.02.04 No Contractual Relationships Between Metro and Contractor's Subcontractors and Suppliers -- Nothing contained in this Contract is intended nor shall be construed to create any contractual or third-party beneficiary relationship between Metro and any of Contractor's Subcontractors, Suppliers or agents, save and except in relation to the Labor and Materials Payment Bond provided by Contractor.

4.02.05 Contractor's Agreements with Subcontractors - Contractor shall provide in all subcontract and supply agreements that the Subcontractor or Supplier will be bound by the terms and conditions of this Contract to be extent that they relate to the Subcontractor's or Supplier's work. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-tier Subcontractors and Suppliers. Contractor shall make available to each proposed Subcontractor and Supplier, prior to the execution of the subcontract or supply agreement, copies of the Contract Documents which apply to the work and materials to be provided by the Subcontractor or Supplier. Subcontractors and Suppliers shall similarly make copies of applicable portions of such documents available to their respective proposed sub-tier Subcontractors and Suppliers.

DRAFT

All Subcontractor's and Supplier's agreements shall also provide that they are assignable to Metro at Metro's option, in the event that Metro terminates the Contract.

Nothing contained in this Subparagraph shall be construed as creating a direct or indirect contractual relationship between Metro and any of Contractor's Subcontractors or Suppliers. No such Subcontractor or Supplier shall have, or shall claim to have, any third-party beneficiary rights or status in relations to this Contract, save and except in relation to the Labor and Materials Payment Bond provided by Contractor.

4.03 Assignment -- The Contractor shall constantly give its personal attention to the faithful prosecution of the Work. Contractor shall keep the Work under its personal control and shall not assign any or all of the Contractor's rights, by power of attorney or otherwise, nor delegate any of its duties except with the prior written approval of the Metro Council.

ARTICLE 5. TIME OF COMPLETION AND SCHEDULE FOR THE WORK

5.01 Prosecution of Work Generally -- The Contractor shall commence the Work within ten (10) days after issuance of written Notice to Proceed from Metro and will diligently prosecute the Work to its Final Completion and Acceptance. The start of Work shall include attendance at preconstruction conferences, preparation and submittal of shop drawings, equipment lists, Schedule of Values, CPM construction schedules, requests for substitutions and other similar activities, as described by these Contract Documents.

5.02 Time of Completion -- Contractor shall bring the Work to Substantial Completion within the Contract Time as set forth in the Supplementary Conditions.

The time limits stated in these Contract Documents are of the essence of this Contract. By executing the Construction Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing all of the Work.

Failure of the Contractor to substantially complete the Work within the Contract Time and according to the provisions of these Contract Documents shall subject the Contractor to

damages pursuant to the applicable sections of these Contract Documents.

5.03 Extensions of Time -- Extensions of the Contract Time shall be made pursuant to the procedure and according to the provisions and requirements contained in Articles 3 and 8 of these Contract Documents.

5.04 Project Scheduling -- The Contractor shall submit to Metro a detailed Construction Schedule for completion of the work pursuant the Specifications. The Construction Schedule shall, when approved and as updated and approved by Metro, become a part of the Contract Documents.

5.05 Use of Completed Parts of the Work Before Acceptance -
- Whenever, in the opinion of Metro, the Work or any part thereof is in a condition suitable for use and it is in the best interest of Metro to require such use, Metro may take possession of, connect to, open for public use, or use the Work or a part thereof. When so used, maintenance and repair due to ordinary wear and tear or vandalism will be made at Metro's expense and Metro will defend liability claims which may result from such use by Metro. The use by Metro of the Work or part thereof as contemplated in this Paragraph shall in no case be construed as constituting acceptance of the Work or any part thereof. Such use shall neither relieve the Contractor of any of its responsibilities under the Contract Documents, nor act as a waiver by Metro of any of the conditions thereof.

ARTICLE 6. COORDINATION WITH OTHER METRO CONTRACTORS

6.01 Other Metro Contractors Generally -- Metro reserves the right to award other contracts in connection with the work. The Contractor shall afford all such Other Metro Contractors reasonable opportunity for storage of their materials and execution of their Work, shall provide that the execution of Contractor's Work properly connects and coordinates with work of all Other Metro Contractors, and shall cooperate with Other Metro Contractors to the end of facilitating the Work in such a manner as Metro may direct.

6.02 Duty to Inspect Other Metro Contractors' Work -- Where Contractor's work is associated with that of Other Metro Contractors, or is to interface in any way with such Other Metro Contractor's work, Contractor shall examine, inspect and measure the adjacent or in-place work of such Other Metro Contractors. If Contractor determines that any defect

or condition of such adjacent or in-place work will impede or increase the cost of Contractor's performance or otherwise prevent the proper execution of Contractor's Work, Contractor shall immediately, and before performing any work affected by the Other Metro Contractors' work, submit a Request for Information to Metro pursuant to Paragraph 3.02. If the Contractor proceeds without examining or inspecting the work and submitting a Request for Information, Contractor shall be held to have accepted the Other Metro Contractors' work or material and the existing conditions, and shall be responsible for any defects in Contractor's Work resulting therefrom and shall not be relieved of any obligation or any warranty under this Contract because of any such condition or imperfection. This provision shall be included in any and all of Contractor's subcontracts for Work to be performed.

The foregoing does not apply to latent defects. The Contractor shall report latent defects in any Other Metro Contractors' work at any time such defects become known or Contractor should have known, and Metro shall promptly thereafter take such steps as may be appropriate. If Contractor in the exercise of reasonable care should have known of such defects but did not report them, such defects shall not be considered latent.

6.03 Duty to Maintain Schedule -- It shall be the responsibility of the Contractor to maintain its schedule so as not to delay the progress of the Project or the work of Other Metro Contractors. The Contractor is required to cooperate in every way possible with Other Metro Contractors. Except as otherwise specifically provided in this Contract, no additional compensation will be paid for such cooperation. If the Contractor delays the progress of the Project or the progress of Other Metro Contractors, it shall be the responsibility of the Contractor to take all of the steps necessary to bring the affected work into compliance with any affected schedules and to indemnify Metro from all liability for such delays pursuant to Article 11.

Metro shall be under no duty to monitor or detect any delays of Contractor or any Other Metro Contractor on the Project or any lack of coordination on the Project. Consequently, the failure of Metro to so monitor or detect shall not be construed as relieving Contractor of its duties to fully perform all of its obligations under the Contract.

6.04 Failure to Maintain Schedule -- If, in the opinion of Metro, the Contractor falls behind the Construction Schedule

DRAFT

or delays the progress of Other Metro Contractors and is not entitled to an extension of time pursuant to the Contract Documents, the Contractor shall perform all steps which are necessary, in the opinion of Metro, to bring Contractor's Work into compliance with the Construction Schedule or to remedy any delay to the progress of Other Metro Contractors. Contractor shall submit operation plans to Metro, which plans shall fully demonstrate the manner of intended compliance with this Paragraph. The steps referred to above shall include, but not be limited to:

1. Increase manpower in such quantities and crafts as will substantially eliminate the backlog of work.
2. Increase, when permitted, the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment or any combination of the foregoing, sufficient to eliminate the backlog of work.
3. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities.
4. Expedite delivery of materials and equipment such as use of air freight.

If Metro directs the Contractor to take measures described in this Paragraph, or if Contractor takes such measures without direction from Metro, the Contractor shall bear all costs of complying. Metro shall, however, reimburse the Contractor for reasonable costs of complying if such directive to accelerate from Metro was issued to overcome delay caused by the acts or omissions of Metro or persons acting for Metro, provided Contractor has complied with all applicable provisions of Articles 3 and 8 of this Contract.

6.05 Failure to Coordinate Work -- If Contractor fails to coordinate its work with the work of Other Metro Contractors as directed by Metro, Metro may, upon written notice to Contractor:

1. Withhold any payment otherwise due hereunder until the Contractor complies with Metro's directions.
2. Direct others to perform portions of the affected Work and charge the cost of such Work against the Contract Amount or deduct the cost from sums held in Retainage.
3. Terminate any or all portions of the Work for the Contractor's failure to perform in accordance with the Contract.

6.06 Other Metro Contractors' Failure to Coordinate -- If Contractor determines that any Other Metro Contractor on this Project is failing to coordinate its work with the Work of the Contractor, the Contractor shall immediately and before performing any affected Work submit a Request for Information to Metro pursuant to Paragraph 3.02.

6.07 Conflicts Among Contractors -- Any difference or conflict that may arise between the Contractor and Other Metro Contractors in regard to their work shall be adjusted as determined by Metro. If directed by Metro, the Contractor shall suspend any part of the Work specified or shall carry on the same in such manner as may be prescribed by Metro when such suspension or prosecution is necessary to facilitate the work of Other Metro Contractors.

6.08 Coordination Drawings -- The Contractor shall prepare coordination drawings as necessary, as determined by Metro, to satisfactorily coordinate and interface its Work with the work of all Other Metro Contractors, thereby avoiding conflicts which may arise.

6.09 Conferences -- At any time during the progress of the Work, Metro shall have authority to require the Contractor to attend any conference of any or all of the contractors engaged in the Project.

ARTICLE 7. CONTROL AND QUALITY OF WORK AND MATERIAL

7.01 Access to the Work -- During the performance of the Work, Metro, the Engineer, and Special Inspectors, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, including representatives of federal, state, and local agencies having jurisdiction over the Work, may at any time, and for any purpose, enter upon the Site, the shops where any part of such Work may be in preparation, or the factories where any materials for use in the Work are being or are to be manufactured. Contractor shall provide proper and safe facilities therefor, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as Metro's interest may require.

Contractor shall allow Metro and others which Metro may designate to enter onto the Site at any time during the duration of the Work to conduct ceremonies and temporarily to occupy such portions of the Site as may be necessary for

such ceremonies. Contractor shall schedule its Work accordingly.

No claims for extension of the Contract Time or increase in the Contract Amount shall be allowed for any access allowed to Metro under this Paragraph.

7.01.01 Quality Control Manager -- Prior to initiation of construction the Contractor shall designate in writing a Quality Control Manager who shall be responsible for coordinating the Contractor's Quality Control Program. The individual so designated shall be the interface with the Construction Manager on matters relating to inspection, scheduling, unacceptable work product and corrective actions. Metro reserves the right to accept or reject the Quality Control Manager designated by the Contractor.

7.01.02 Quality Control Plan -- The Contractor shall prepare and submit to the Construction Manager within thirty (30) days following Notice to Proceed a Quality Control Plan which describes Contractor's procedures for implementing the Quality Control Program. The Plan shall include, but not be limited to, the Quality Control Organization, inspection procedures, tests anticipated, materials control and reports. Metro reserves the right to accept or reject or modify the Quality Control Plan.

7.02 Inspection

7.02.01 Generally -- Contractor shall at all times commencing with the issuance of the Notice to Proceed until Final Completion and Acceptance of the Work, permit Metro, its agents, and authorized representatives to visit and monitor the progress of the Work for conformance of the Work with the Contract Documents.

7.02.02 Special Inspections -- Contractor shall at all times commencing with the issuance of the Notice to Proceed until Final Completion and Acceptance of the Work, permit Special Inspectors and authorized representatives to visit and inspect the Work, the materials and the manufacture and preparation of such materials, and subject the Work and materials to inspection and testing to determine if the Work conforms to the requirements of the Contract Documents. Contractor shall maintain proper facilities and safe access for all such inspections.

Where the Contract requires work to be inspected or tested, it shall not be covered up until inspected, tested and approved by Metro. The Contractor shall be solely responsible for notifying Construction Manager at least two (2) working days prior to performing such work, so that necessary arrangements for inspection and testing can be made. Should any work be covered without such inspection or test and approval, it shall be uncovered and repaired at the Contractor's expense.

7.02.03 Notice to Metro for Certain Work Days -- Whenever the Contractor intends to perform work on Saturday, Sunday or any legal holiday, it shall give written notice to Metro of such intention at least two (2) working days prior to performing such work, or such other period as may be specified by Metro, so that Metro may make the necessary arrangement for testing and inspection.

7.02.04 Correction of Defective Work Before Acceptance -- Any defective work or work which otherwise fails to conform to the Contract Documents, which is discovered before Final Completion and Acceptance of the Work, shall be corrected immediately by the Contractor, and any unsatisfactory materials shall be rejected and replaced with satisfactory materials, notwithstanding that they may have been overlooked by the authorized inspector. The inspection of the Work shall not relieve the Contractor of any of its obligations to perform fully all of the terms and provisions of the Contract Documents.

7.02.05 Acceptance Not Implied by Failure to Object - Failure or neglect on the part of Metro or any of its authorized representatives to condemn or reject defective, improper or inferior work or materials shall not be construed to imply a final acceptance of such work or materials and shall not be construed as relieving Contractor of its duties to perform fully all requirements of the Contract Documents.

7.03 Unsatisfactory Materials and Workmanship

7.03.01 Generally -- Material, work or workmanship which, in the opinion of the Construction Manager, does not conform to the Contract Documents, or is not equal to the samples submitted to and approved by the Construction Manager, or is in any way unsatisfactory or unsuited to the purpose for which it is intended,

will be rejected. The Contractor shall bear the cost of correcting all non-conforming materials, work or workmanship. The Contractor shall make a close inspection of all materials as delivered, and shall promptly replace all defective materials with conforming materials without waiting for their rejection by Metro.

7.03.02 Removal of Rejected or Non-Conforming Work or Material -- All rejected material or work, and all defective or non-conforming work or material, shall be removed from the Site without delay. If the Contractor fails to do so within forty-eight (48) hours after having been so directed by Metro, the rejected material may be removed by Metro and the cost of removal charged against the Contractor and deducted from Retainage held by Metro or offset against payments due Contractor, at Metro's option.

If in the judgment of Metro it is undesirable or impracticable to replace any defective or non-conforming work or materials, the compensation to be paid to the Contractor shall be reduced by Change Order or Force Account, as applicable, by such amount as, in the judgment of Metro, shall be equitable.

7.04 General Warranty of Contractor -- Contractor warrants to Metro that materials and equipment provided under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Metro, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The warranty made by Contractor under this Paragraph shall be in addition to any other specific warranties required elsewhere in these Contract Documents.

7.05 Correction of Work by Contractor -- Contractor shall be responsible for and shall promptly correct or replace any defective Work, whether due to faulty materials or errors in

workmanship, or Work failing to conform to the requirements of the Contract Documents which may be discovered or which may develop within one (1) year after the date of Substantial Completion or within such longer period as is specified below or otherwise in these Contract Documents.

In the case of equipment manufactured by others and supplied and/or installed by Contractor, the one (1) year period shall commence upon the date of first beneficial operation of such equipment by Metro. In the case of Work which is corrected or replaced by Contractor, the one (1) year period shall commence again on the date of first beneficial operation by Metro of such corrected or replaced Work. Testing shall not be construed to mean beneficial operation.

If Metro does not require correction or replacement of defective Work or Work failing to conform to the Contract Documents, Contractor, if required by Metro, shall repay to Metro such portion of the Contract Amount as is equitable under the circumstances, as determined by Metro.

Contractor's responsibilities under this Paragraph shall not extend to correction or replacement of defects which are attributable to mistreatment by Metro or to normal wear and tear.

7.06 Warranty and Correction Agreements by Subcontractors

7.06.01 Generally -- In addition to any requirements for written warranties required by the Specifications, Contractor shall require all of its Subcontractors and Suppliers of any tier to make the same warranty to Metro as Contractor makes under Paragraph 7.04. Contractor shall also require all of its Subcontractors and Suppliers of any tier to agree to correct or replace defective Work or Work not conforming to the Contract Documents in the same manner as Contractor agrees to correct or replace such Work under Paragraph 7.05.

7.06.02 Form of Submissions -- Contractor shall require all of its Subcontractors and Suppliers of any tier to sign documents evidencing the promises made pursuant to Subparagraph 7.06.01 above and shall submit such documents to Metro with its request for Final Payment. Such documents shall be signed by both Contractor and the applicable Subcontractor or Supplier and shall be in the following form:

"We the undersigned hereby warrant that the

(described work performed and/or materials provided)

which we have provided for the construction of the Modifications to the Metro South Transfer Station, has been done in accordance with the Contract Documents and that the work as provided will fulfill the requirements of the warranty included in Article 7 of the Contract Documents.

"We agree to correct or replace any or all of our work, together with any other adjacent work which may be displaced or affected by so doing, that may be defective in its workmanship or materials or which may fail to conform to the requirements of the Contract Documents within a period of one (1) year following the applicable date described in Paragraph 7.05 without any expense whatsoever to Metro, normal wear and tear and mistreatment excepted.

"In the event of our failure to comply with the above-mentioned conditions within twenty (20) calendar days after Metro notifies the Contractor in writing, we collectively and separately do hereby authorize Metro to proceed to have said defects repaired and corrected at our expense and we will honor and pay the costs and charges therefore upon demand."

7.07 Remedies Not Restrictive -- The remedies provided for in this Article shall not be restrictive of but shall be cumulative and in addition to all other remedies of Metro in respect to latent defects, frauds or failure to perform all work as required by the Contract Documents.

7.08 Proof of Compliance with Contract Provisions -- For Metro to determine whether the Contractor has complied or is complying with the requirements of the Contract which are not readily enforceable by inspection and test of the Work, the Contractor shall, upon request, promptly submit to Metro such properly authenticated documents as may be necessary to demonstrate compliance with the Contract or other satisfactory proof of its compliance with such requirements.

7.09 Patents, Copyrights, Trademarks -- All fees or costs of claims for any patented invention, article or arrangement or any copyrights or trademarks that may be used upon or in any manner connected with the performance of the Work or any part thereof, shall be included in the Bid for doing the Work. The Contractor shall save, keep, hold harmless, and fully indemnify Metro and Engineer from all damages, claims

for damage, lawsuits, costs, expenses or liabilities of whatever nature in law or equity, including attorney's fees and court costs, which may at any time arise or be set up for any infringement of the patent rights, copyrights or trademarks of any person or persons in consequence of the use by Metro of articles to be supplied under the Contract and of which the Contractor is not the patentee or assignee or has not the lawful right to sell the same. This is in addition to all other hold harmless and indemnification clauses in these Contract Documents.

7.10 Anti-Trust Claims -- By entering into this Contract, Contractor, for consideration paid to the Contractor under the Contract, does irrevocably assign to Metro any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at Metro's option, the right to control any such litigation on such claim for relief or cause of action, by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, in connection with any goods or services that are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Contract.

The Contractor shall require all Subcontractors and Suppliers to irrevocably assign to Metro, as a third party beneficiary any right, title or interest that has accrued or may accrue to the Subcontractors or Suppliers by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at Metro's option, the rights to control any litigation arising thereunder, in connection with any goods or services provided to the Subcontractors or Suppliers by any person, in whole or in part, for the purpose of carrying out the Subcontractors' or Suppliers' obligations as agreed to by the Contractor in pursuance of the completion of the Contract.

In connection with Contractor's, Subcontractors' or Suppliers' assignment, it is an express obligation of the Contractor, Subcontractor or Supplier that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to Metro. It is an express obligation of the Contractor, Subcontractor or Supplier to advise the General Counsel of Metro:

1. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;

2. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and

3. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.

Furthermore, it is understood and agreed that in the event that any payment under any such claim is made to the Contractor, Subcontractor or Supplier, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro hereunder.

ARTICLE 8. CHANGES IN THE WORK

8.01 Change Orders Generally -- Metro may order changes in the Work herein required, including deletions of work, and may order additional materials and work in connection with the performance of the Work.

If such changes in the Work increase or decrease the cost of any part of the Work or change the time necessary to complete the Work, the Contract Amount shall be increased or decreased by such amount and the Contract Time changed as the Contractor and Metro may agree upon as reasonable in a written Change Order. The Contractor shall promptly comply with such Change Orders and carry them out in accordance with the Contract Documents.

No order for any alteration, modification or additional work which shall increase or decrease the Contract Amount or change the Contract Time shall become part of the Contract unless the resulting Change Order shall have been agreed upon in writing and the Change Order signed by the Contractor and Metro, unless the work is Force Account work. Metro may, at its discretion, also require the signature of the Contractor's surety on the Change Order. Prior to the approval of such Change Order, the Engineer shall have approved any design modifications entailed thereby.

8.02 Procedure for Determining Impact of Change Orders on Contract Amount

8.02.01 Price before Proceeding -- If Metro intends to order changes in the Work, it may request a proposal by the Contractor for the proposed added or deleted work before directing the Contractor to commence work. Within fourteen (14) days after

DRAFT

issuance of such request by Metro, Contractor shall furnish three copies of a complete breakdown of costs of both credits and additions directly attributable to the change in the Work proposed, itemizing materials, labor, taxes, affect on Contract Time, if any, and Overhead and Profit on a form supplied by Metro and in accordance with the limitations described in the following Paragraph. Subcontract work shall be so indicated and written proposals from Subcontractors or Suppliers shall be included with similar breakdowns provided. Following submission of its cost breakdown, Contractor shall meet with Metro to discuss all aspects of scope, costs, scheduling and construction methods.

8.02.02 Proceed While Pricing -- If Metro finds it necessary to make changes in the Work in an expeditious manner, it may direct the Contractor to proceed with the change while preparing a proposal for the added or deleted Work. In such an instance, Metro may assign an estimated value to the change which the Contractor shall not exceed without further authorization by Metro. Within fourteen (14) days after issuance of such by Metro, Contractor shall furnish three copies of a complete breakdown of costs of both credits and additions directly attributable to the change in the Work proposed, itemizing materials, labor, taxes, affect on Contract Time, if any, and Overhead and Profit on a form supplied by Metro and in accordance with the limitations described in the following Paragraph. Subcontract work shall be so included with similar breakdowns provided. Following submission of its cost breakdown, Contractor shall meet with Metro to discuss all aspects of scope, costs, scheduling and construction methods.

8.02.03 Unit Prices -- The proposed additional or deleted work is the subject of Unit Prices stated in the Contract Documents or subsequently agreed upon, such Unit Prices shall be binding upon Contractor in calculating the increase or decrease in the Contract Amount attributable to the proposed additional or deleted work.

8.03 Limitations when Change Orders Impact Contract Amount
-- The following limitations shall apply in the calculation of the costs of changes in the Work:

8.03.01 Overhead and Profit -- Contractor will be permitted a reasonable allowance for Profit and

DRAFT

Overhead on its increased Direct Cost resulting from any changes in the Work ordered by Metro. Likewise, Profit and Overhead will be deducted for any portion of the Work which is deleted. In the case of a change involving both credits and extras, Overhead and Profit shall be applied to the net extra after subtraction of credits.

Overhead and Profit for the entity performing the work with its own crews shall not exceed 15 percent of the Direct Cost of the changed work.

Overhead and Profit for Contractor or Subcontractor who has had the work performed by a lower tier Subcontractor shall not exceed ten percent of the Direct Cost of the changed work.

If the Work is performed by a second-tier or inferior Subcontractor, the total Overhead and Profit for all tiers shall in no event exceed 25 percent of the Direct Cost of the changed work. Distribution of this Overhead and Profit among the tiers is the responsibility of the Contractor.

8.03.02 Taxes and Insurance -- Federal, state, regional, county and local taxes, including, but not limited to, income taxes, excise taxes, sales and use taxes and payroll taxes and insurance shall be shown separately and will be allowed on extras and shall be credited on credits. No Overhead and Profit will be allowed on taxes and insurance.

8.03.03 Bond Premiums -- The actual rate of bond premium as paid on the additional Direct Cost plus the cost of taxes defined in 8.03.02 will be allowed. No Overhead and Profit will be allowed on bond premiums.

8.03.04 Equipment Costs -- The allowance for equipment costs (both rental as well as Contractor-owned equipment) shall be limited to those rates in the Rental Rate Bluebook published by Dataquest Incorporated, 1290 Ridder Park Drive, San Jose, California 95131-2398, (800) 227-8444.

8.04 Force Account Work -- If the Contractor does not respond to Metro's RFP with a cost breakdown within the fourteen (14) day period as required above, or if Metro determines that Contractor's breakdown of costs is unreasonable in consideration of the work proposed to be added or deleted, or if Metro determines that the proposed

DRAFT

work must be commenced promptly to avoid delay to the Project, Metro may issue an order for Force Account work and Contractor shall promptly perform or delete the work described in such order. Change, if any, in the Contract Amount due to such Force Account work shall be the sum total of the following items:

1. Actual labor cost, including premium on compensation insurance and charge for social security taxes, and other taxes pertaining to labor.

2. The proportionate cost of premiums of public liability property damage and other insurance applicable to the extra work involved and required by these Contract Documents.

3. Actual cost of material, including applicable taxes pertaining to materials.

4. Actual cost of plant and equipment rental, at rates to be agreed upon in writing before the work is begun or at rates per Subparagraph 8.03.04 above. No charge for the cost of repairs to plant or equipment will be allowed. Equipment items having a capital cost of under \$250.00 are considered small tools and classified as Overhead.

5. Overhead and Profit as provided and limited in Paragraph 8.03.

6. The proportionate actual costs of premiums for bonds required by these Contract Documents.

Whenever any Force Account work is in progress, the Contractor shall furnish each working day to Metro a detailed written report signed by the Contractor of the amount and cost of all of the items listed in (1) through (6) above, and no claim for compensation for such extra work will be allowed unless such report shall have been made. Metro reserves the right to provide such materials as it may deem expedient and no compensation, overhead or profit will be allowed to Contractor for such materials.

8.05 Oral Modifications -- No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.

8.06 Contractor Proposals for Changes in the Work -- At any time during the performance of the Work, Contractor may propose to Metro changes in the Work which Contractor

DRAFT

believes will result in higher quality work, improve safety, shorten the Contract Time, decrease the Contract Amount, or otherwise result in better or more efficient work.

Metro may act or not act on such proposals as it deems appropriate and shall incur no liability whatsoever to Contractor for any failure to respond to any such proposal. If Metro determines that any such proposal is meritorious, it shall issue a Change Order or otherwise act in accordance with these Contract Documents.

8.07 Impact of Authorized Changes in the Contract -- Changes in the Work made pursuant to this Article and extensions of the Contract Time allowed by Metro due to such changes shall not in any way release any warranty or promises given by the Contractor pursuant to the provisions of the Contract Documents, nor shall such changes in the Work relieve or release the sureties of bonds executed pursuant to said provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of Contract Time made by reason thereof.

ARTICLE 9. PAYMENTS AND COMPLETION

9.01 Scope of Payment -- Payment to the Contractor of the Contract Amount for performing all Work required under the Contract, as adjusted for any Change Orders approved as hereinbefore specified, shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work, and for performing and completing, in accordance with these Contract Documents, all Work required under the Contract, and for all expenses incurred by the Contractor for any purpose in connection with the performance and completion of said Work.

Whenever it is specified herein that the Contractor is to do work or provide materials of any class for which no price is fixed in the Contract, it shall be understood that Contractor is to do such work or provide such materials without extra charge or allowance or direct payment of any sort, and that the cost of doing such work or providing such materials is included in its Bid.

9.02 Schedule of Values

9.02.01 Generally -- Within thirty (30) calendar days after issuance of Notice to Proceed and prior to the Contractor's application for the first progress

payment, the Contractor shall submit a detailed breakdown of its Bid by scheduled work items. The Contractor shall furnish this breakdown of the total Contract Amount by assigning dollar values (cost estimates) to each applicable Construction Schedule network activity, which cumulatively equals the total Contract Amount. The format and detail of the breakdown shall be as directed by Metro to facilitate and clarify future progress payments to the Contractor. This breakdown shall be referred to as the Schedule of Values.

The Contractor's Overhead, Profit and cost of bonds, insurance, etc., shall be prorated through all activities so that the sum of all line items on the Schedule of Values line items shall equal the Contract Amount.

9.02.02 Review of Schedule of Values -- Metro will review the Schedule of Values in conjunction with the approved Construction Schedule to ascertain that the dollar amounts of the Schedule of Values are in fact fair cost allocations for the work item listed. Upon concurrence by Metro, a formal approval of this Schedule of Values will be issued. Metro shall be the sole judge of fair cost allocations. Contractor's monthly progress payment requests shall reflect the cost figures included in the approved Schedule of Values and shall be based upon completed work items or percentages of work items completed prior to the end of the payment period as more fully described below.

9.03 Progress Payment Procedure

9.03.01 Generally -- Subject to the approval of Metro, disbursements shall be made by Metro of progress payments upon written request of the Contractor and pursuant to the Contract Documents as specified in Section 01025 of the Specifications.

Contractor shall be paid 95 percent of the value of the work as determined above. The remaining 5 percent shall be withheld by Metro as Retainage.

No inaccuracy or error in any monthly progress payment estimates shall operate to release the Contractor or its surety from damages arising from such work or from the enforcement of each and every provision of the Contract Documents, and Metro shall have the right

DRAFT

subsequently to correct any error made in any estimate for progress payments.

9.03.02 Retainage -- If, in Metro's opinion, work on the Project is progressing satisfactorily, Metro may eliminate additional Retainage on any remaining monthly progress payments after 50 percent of the Work under the Contract is, in Metro's opinion, completed. Elimination of additional Retainage under this Subparagraph shall be allowed by Metro only upon written application by Contractor, which application shall include written approval of the Contractor's surety.

If after Metro allows such an elimination of additional Retainage, Metro determines that progress of the Work is not satisfactory or that Contractor has breached any provision of the Contract, Metro may again retain and continue to retain, in addition to that Retainage already being held by Metro, 5 percent of any future progress payments made to Contractor.

When Metro determines that the Work is 97.5 percent complete, Metro may, at its discretion and without application by Contractor reduce the retained amount to 200 percent of the value of the Work remaining to be done.

All funds retained by Metro under this section shall be retained in a fund by Metro and paid in accordance with ORS 279.575.

The Contractor may elect to deposit bonds or securities of the type described below with Metro or in any bank or trust company to be held in lieu of the cash retainage described above and for the benefit of Metro. In such event, Metro shall reduce the Retainage in an amount equal the value of the bonds and securities and shall pay the amount of the reduction to Contractor in accordance with ORS 279.575. Interest on such bonds or securities shall accrue to Contractor.

Bonds and securities deposited or acquired as described above shall be of a character approved by the Director of Oregon's Department of General Services including, but not limited to:

1. Bills, certificates, notes or bonds of the United States.

2. Other obligations of the United States or its agencies.

3. Obligations of any corporation wholly owned by the federal government.

4. Indebtedness of the Federal National Mortgage Association.

The Contractor may elect to require Metro to deposit the accumulated Retainage in an interest bearing account in a bank, savings bank, trust company or savings association for the benefit of Metro. Interest on such an account shall accrue to Contractor.

If Metro incurs additional costs as a result of Contractor's exercise of any of the above-described options, Metro may recover such costs from Contractor by reduction of the Final Payment. Metro shall, upon demand by Contractor, inform Contractor of all such accrued costs.

9.03.03 Payment for Material Stored Off Site -- Payment for material stored off of the Site will not be allowed unless the payment for such material benefits Metro in terms of lead time, scarcity, schedule, etc. Metro has sole discretion as to what materials will be paid for in advance of delivery to or installation on Site. Proof of offsite material purchases (invoice or checks) and appropriate insurance coverage will be required for payment. Title to all equipment and materials shall pass to Metro upon payment therefor or incorporation in the Work, whichever shall first occur, and Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title. The Contractor must provide to Metro written consent from Contractor's surety approving the advanced payment for materials stored offsite.

The maximum prepayment allowed by Metro shall be 75 percent of the actual fair market value of the item being considered. Metro shall be the sole judges of fair market value. The Contractor shall protect stored materials from damage, and damaged materials, even though paid for, shall not be incorporated into the Work.

9.03.04 Other Conditions Precedent to Payment -- It is a condition precedent to Contractor's rights to any payments under the Contract that all bills for labor and materials, including labor and materials supplied by or to Contractor, shall have been paid in full and, if requested by Metro, Contractor shall submit receipted invoices and/or lien waivers, as evidence of payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Contract, if requested by Metro, Contractor shall submit a claims release before any payment, and a final claims release stating Contractor has been paid in full prior to the Final Payment.

Payments to Contractor shall be conditioned upon Contractor complying with all provisions of this Contract regarding scheduling and progress reports submissions and upon Contractor furnishing all other information and data necessary to ascertain actual progress. Metro's determination that Contractor has failed or refused to furnish the required information, data, schedules or other reports shall constitute a basis for withholding all payments until the required information, data, revised schedules and diagrams, if necessary, and other reports are furnished.

9.03.05 Payment Does Not Imply Acceptance of Work --

The granting of any progress payment, or the receipt thereof by the Contractor, shall not constitute acceptance of the Work or any portion thereof, and shall in no way lessen the liability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may or may not have been apparent or detected at the time such payment was made.

9.03.06 Offset of Sums Due Metro from Contractor --

In addition to any retention rights allowed Metro under this Contract, it is mutually understood and agreed that Metro may, upon prior written notice to Contractor, offset from any payment otherwise due the Contractor, as much as may be necessary to protect and compensate Metro from any costs or expenses it may incur due to any breach of the Contract by Contractor, including applicable liquidated damages. Any sums so offset shall become the property of Metro.

9.04 Substantial Completion -- When Contractor considers the Work to be substantially complete, Contractor shall submit to Metro a written notice that the Work is

DRAFT

substantially complete and a punch list of items to be completed or corrected. Within a reasonable time after receipt of such notice, Metro and Engineer will review the Work to include a physical inspection to determine the status of completion. Should the Engineer and Metro determine that the Work is not substantially complete:

1. Construction Manager will promptly notify the Contractor in writing, giving the reasons therefor and including Engineer's punch list.

2. Contractor shall remedy the deficiencies in the Work, and thereafter send a second written notice of Substantial Completion to Metro.

The above-described procedure shall be followed until the Work is, in the opinion of Metro and Engineer, substantially complete. At that point in time:

1. The Engineer will prepare a Certification of Substantial Completion on AIA Document G704, accompanied by the approved punch list of items to be completed or corrected as verified and amended by the Engineer.

2. Metro shall submit the Certificate of Substantial Completion to the Contractor for signature. The Contractor shall complete the items on the approved punch list.

9.05 Final Completion and Acceptance -- When Contractor considers the Work to be finally complete, Contractor shall submit written certification to Metro that:

1. Contract Documents have been reviewed.

2. Work has been inspected for compliance with Contract Documents.

3. Work has been completed in accordance with Contract Documents to include submission of record documents.

4. Equipment systems have been tested in presence of Metro and are operational.

5. Work is ready for final inspection.

Engineer and Metro will promptly review the Work and include a physical inspection to verify the status of completion and shall inform Metro of the conclusions. Metro shall, within fifteen (15) days after receipt of Contractor's certification, either accept the Work or notify the

DRAFT

Contractor of the work yet to be performed on the Contract as outlined below.

Should the Engineer and Metro consider that the work is incomplete or defective:

1. Construction Manager will promptly notify the Contractor in writing, listing the incomplete or defective work.

2. Contractor shall take immediate steps to remedy the stated deficiencies, and send a second written certification to Metro that the Work is complete. Metro will then advise the Engineer.

3. Engineer and Metro will review and reinspect the Work.

The above-described procedure shall be followed until the Work is, in the opinion of Metro and Engineer, finally complete. Contractor shall immediately thereafter prepare and submit Closeout Submittals as described below.

9.06 Closeout Submittals -- Contractor shall submit the following items, as applicable, with its request for Final Payment:

A. Evidence of Compliance with Requirements of Governing Authorities to include Certificate of Occupancy and Certificates of Insurance.

B. Project record documents in accordance with the Specifications.

C. Operation and maintenance data in accordance with the Specifications.

D. Warranties in accordance with requirements of various Specification sections and these General Conditions.

E. Keys and key schedule in accordance with requirements of Section 08710.

F. Extra stock and maintenance materials. Contractor shall submit receipts, signed by Metro, for the various specific items.

G. Evidence of payment and release of claims in accordance with the following section.

H. Consent of surety to Final Payment.

I. Certificates of insurance for products and completed operations in accordance with Supplementary Conditions.

J. If Contractor is a "foreign contractor" as that term is defined in Subparagraph 14.03.06, complete documentation of Contractor's compliance with ORS 279.021.

9.07 Releases -- The Contractor and each assignee under any assignment in effect at the time of Final Payment shall execute and deliver at the time of application for Final Payment as a condition precedent to Final Payment, a release in form and substance satisfactory to Metro, discharging and releasing Metro and the Engineer of and from all liabilities, obligations and claims arising under this Contract.

In addition to the above-described release, the Contractor shall:

A. Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales, and employee withholding taxes.

B. Deliver to Metro written releases of all rights to file claims against Metro or to file claims on any bonds in connection with the Contract, signed by each Subcontractor and Supplier who performed labor or furnished materials in connection with the work.

C. Deliver to Metro the Contractor's written undertaking, with sureties acceptable to Metro:

1. To promptly pay and obtain a release of claims on any bonds which may in the future affect the premises; and

2. To defend, indemnify and save Metro harmless from any liability or expense because of any claim on any bond or any other claim related to the Contract or the Work.

9.08 Final Payment -- Upon application of Contractor and Contractor's completion of and compliance with all of the provisions of the above Paragraphs, Metro shall pay Contractor the balance of the Contract Amount subject to the availability of monies in the Construction Fund as described in Paragraph 9.01 and less any previous payments, offsets and withholdings allowed Metro under this Contract and Retainage which has been returned to Contractor.

Acceptance of Final Payment by Contractor shall constitute a waiver of all claims of whatever nature which Contractor may have or allege to have against Metro arising out of or related to Work described in the Contract Documents.

9.09 No Waiver of Rights -- Neither the final review by Metro, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by Metro, nor any extension of time, nor any position taken by Metro shall operate as a waiver of any provision of this Contract or of any power herein reserved by Metro or any right to damage herein provided; nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. All of Metro's remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided; and Metro shall have any and all equitable and legal remedies which it would in any case have.

ARTICLE 10. SAFETY AND PROTECTION OF THE WORK

10.01 Safety Requirements

10.01.01 Safety Generally -- Contractor shall be solely and completely responsible for the safety of the Work and the Site, including, but not limited to, the safety of all persons and property involved in the Work or present at the Site at any time until Final Completion and Acceptance of the Work.

All Work shall be performed in full accordance with all applicable safety codes, laws, ordinances and requirements including, but not limited to, the Safety and Health Regulations for Construction, promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Safety Standards Act as set forth in Title 29 of the Code of Federal Regulations, federal and state OSHAs, Metro's insurance standards, and all other applicable safety codes. Where any of these are in conflict, the more stringent requirement shall be followed. Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from any requirements in the Contract Documents to comply with such safety provisions or from any penalties for failure to so comply.

DRAFT

Contractor shall inspect the Work and the Site daily and immediately correct any unsafe conditions. All job personnel shall be knowledgeable of and comply with the above safety requirements.

10.01.02 Safety Program -- Contractor shall develop, publish and implement the overall Safety Program for the Project. This Program shall conform to all applicable codes. Contractor shall submit the written Safety Program to Metro for review and comment within fifteen (15) days after the receipt of the written Notice To Proceed. The Program, as approved by Metro, shall subsequently be distributed to and implemented by Contractor's personnel as well as its Subcontractors and Suppliers. Contractor shall fully implement and comply with the approved Safety Program.

10.02 First Aid -- Contractor shall maintain on the Site during work operations, a member of its work force who is qualified in administering first aid to its personnel and shall have available in its job office the first aid equipment as required to meet all applicable safety codes.

10.03 Protection of Work, Persons and Property Against Damages -- Contractor shall protect the Work from damage due to construction operations, the action of the elements, the carelessness of other contractors, vandalism, or any other cause whatever until Final Completion and Acceptance of the Work.

Contractor shall protect all public and private property insofar as it may be endangered by operations of Contractor and shall be fully responsible for taking proper precautions for the prevention of accidents to persons and/or damage to such property at, on or near the Site.

All federal, state and local safety laws, rules and orders including fire codes, applicable to the Work to be done under the Contract, shall be obeyed, complied with and enforced by the Contractor.

The Contractor shall provide and maintain such guards, fences, barriers, signs, regulatory and warning lights, and other traffic control and safety devices adjacent to and on the Site as may be necessary to prevent accidents to the public and damage to property. The Contractor shall also provide, place and maintain such lights as may be necessary for illuminating the said signs, guards, fences, barriers and other traffic and safety control devices.

Upon Final Completion and Acceptance of the Work, Contractor shall remove all temporary signs, lights, barriers, etc., from the Site and leave the entire Site clean and orderly.

ARTICLE 11. INDEMNIFICATION AND INSURANCE

11.01 Indemnification -- Contractor agrees that for purposes of the Oregon Tort Claims Act (ORS 30.260 through 30.300) that neither Contractor, its officers, agents and employees nor any Subcontractor or Supplier of Contractor of any tier and its officers, agents and employees are agents of Metro. Contractor for itself and its officers, agents, employees and its Subcontractors and Suppliers of any tier and their officers, agents and employees will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300 and Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.

Contractor shall assume all responsibility for the Work and shall bear all losses and damages directly or indirectly resulting to Contractor, Metro, Engineer, their officers, agents and employees, or to others on account of the character or performance of the Work, unforeseen difficulties, accidents or any other cause whatsoever, unless such cause is due to the sole negligence of Metro or Engineer.

Contractor shall assume the defense, if requested, indemnify and hold harmless Metro and Engineer from all claims, liability, loss, damage, consequential or otherwise, and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Contract, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any Subcontractor or Supplier under the Contract or in any way arising out of the Contract, irrespective of whether fault is the basis of the liability or claim, and irrespective of whether act, omission or conduct of the Contractor, Subcontractor or Supplier is merely a condition rather than a cause of the claim, liability, loss, damage or injury.

Any specific duty or liability imposed or assumed by the Contractor, as may be otherwise set forth in the Contract Documents, shall not be construed as a limitation or restriction of the general liability or duty imposed upon the Contractor by this Paragraph.

DRAFT

Such liabilities and losses from which Contractor shall indemnify and hold harmless the above-described indemnitees shall include, but not be limited to:

1. Special activities by Metro to verify and/or expedite delivery of materials which are fabricated offsite, and those losses incurred by Metro as a result of any delays to Other Metro Contractors resulting from acts of the Contractor or its failure to act.

2. Acceleration payments to Other Metro Contractors on the project resulting from Contractor falling behind the Construction Schedule for causes not entitling it to an extension of time under any provisions of the Contract Documents which cause other Metro Contractors to fall behind the Construction Schedule and who must then accelerate the performance of the work, as directed by Metro, in order to maintain progress.

3. Violations of the ordinances or regulations of Metro, any federal, state, county and city laws or order of any properly constituted authority in any manner affecting this Contract, in addition to any laws or regulations which might affect this Contract.

4. Any and all suits, actions, damages or claims of every name and description to which the above indemnified may be subjected or put by reason of injury to persons or property arising out of, in connection with, or incident to the execution of the work or resulting from acts or omissions on the part of the Contractor, its Subcontractors, officers, employees or agents and all attorney's fees and court costs incident thereto.

11.02 Insurance

11.02.01 Public Liability and Property Damage Insurance

11.02.01.01 Contractor's Insurance -- Contractor shall obtain, pay for and maintain, until 365 days after the date of Final Completion and Acceptance of the Work, public liability and property damage insurance policy or policies as shall protect Contractor in performing the Work covered by this Contract from claims for bodily and personal injury and property damage which may arise because of the nature of the Work or from operations under these Contract Documents. Such operations shall include, but not be limited to,

DRAFT

use of owned, non-owned or hired automobiles, aircraft and watercraft, whether such operations be by Contractor or by any Subcontractor or Supplier of any tier or anyone directly or indirectly employed by Contractor or any Subcontractor or Supplier of any tier.

Such insurance covering the work shall include, but not be limited to, Blanket Contractual Liability (covering liability assumed by the Contractor under Paragraph 11.01 on indemnification); Broad Form Property Damage Liability (including coverage for explosion, collapse, underground and completed operations), Personal Injury Liability, and Products-Completed Operations Liability for two (2) years after Final Completion and Acceptance of the Work by Metro.

11.02.01.02 Insurance for Others -- Contractor shall include as additional insureds under the above policy or policies Metro and Engineer.

Such insurance shall provide coverage for the above-described parties against direct or contingent loss or liability for damages for bodily and personal injury or death, or property damage, arising out of, in connection with, or incident to the execution of the Work until its Final Completion and Acceptance and Final Payment, and shall cover all Work performed by, for or on behalf of the Contractor, each of Contractor's Subcontractors of any tier, Suppliers of any tier, and shall cover the supervisory acts of these insureds with respect to the Work. Both bodily and personal injury and property damage must be on an occurrence basis; and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any existing valid and collectable insurance) to the full limit of liability stated in the declaration, and that if the insureds have other insurance against the loss covered by said insurance, then such other insurance shall be excess insurance only. Said policy or policies shall also include a "cross-liability" clause.

11.02.01.03 Policy Limits -- The policy or policies of insurance described in Clauses

DRAFT

11.02.01.01 and 11.02.01.02 shall provide a combined single limit of coverage, for bodily injury, personal injury and property damage of not less than \$1,000,000 per occurrence and in the aggregate for Products and Completed Operations Liability and Contractual Liability. Contractor shall additionally provide Automobile Liability coverage, including Non-owned and Hired autos, in an amount not less than a combined single limit of \$1,000,000 per occurrence. In the event that Contractor hires or operates any aircraft or watercraft, Contractor shall provide aircraft liability coverage for Bodily Injury, Personal Injury and Property Damage in an amount not less than a combined single limit of \$1,000,000 per occurrence.

11.02.01.04 Subcontractor's Insurance -- Contractor shall require that all of its Subcontractors and Suppliers of any tier provide insurance coverage and conditions identical to Contractor's insurance coverage, except that the policy limits of all Subcontractors' insurance coverage shall be at least \$1,000,000 combined single limit for each occurrence and in the aggregate.

11.02.02 Workers' Compensation and Employer's Liability Insurance -- Contractor shall obtain, pay for and maintain until 365 days after the date of Final Completion and Acceptance of the Work full Workers' Compensation Insurance in amounts necessary to provide statutory State of Oregon coverage; and Employer's Liability Insurance coverage with limits of not less than \$1,000,000 per occurrence all to cover any compensation that Metro might be liable to pay. Contractor shall require that all of its Subcontractors and Suppliers of any tier provide such coverage also. In the event that Contractor is self-insured, Contractor shall furnish a Certificate to self-insure issued by the Director of Oregon's Department of Insurance and Finance. If the Contractor fails to maintain such insurance, Metro may obtain Worker's Compensation Insurance to cover any compensation which Metro might be liable to pay by reason of any employee of the Contractor being injured or killed, and may deduct the amount of the premium for such insurance from any sums due the Contractor. Furthermore, if Metro is compelled to pay any compensation pursuant to ORS chapter 656 due to

DRAFT

Contractor's failure or the failure of any of Contractor's Subcontractors or Suppliers of any tier to comply with this Subparagraph, Metro may deduct and retain from any sums due Contractor under this Contract an amount sufficient to cover such compensation and any other cost Metro may incur in paying such compensation.

If any injury occurs to any employee of Contractor or Contractor's Subcontractor or Supplier of any tier for which compensation is claimed from Metro, to the extent that the claim is not covered by insurance, Metro may retain sums due Contractor under this Contract in an amount sufficient to cover such claim or claims. If it is determined that no compensation is due such employee, the retained amount will be paid Contractor. If Metro is required to pay such compensation, the amount paid shall be charged to the Contractor.

Contractor shall not commence work until it has provided to Metro two (2) copies of Certificates of Insurance evidencing the above-described coverage.

11.02.03 Forms of Policies and Other Insurance Requirements -- In addition to filing any other insurance certificates specified elsewhere in these Contract Documents, the Contractor shall, within ten (10) days following Notice of Conditional Award of Contract, provide Metro two (2) certified copies of the policies of all insurance herein required to be obtained by Contractor except that Worker's Compensation Insurance may be evidenced by a Certificate of Insurance. At Metro's request, Contractor shall immediately deliver to Metro the receipts for payment of premiums on any or all such policies.

All policies of insurance and Certificates of Insurance shall be satisfactory to Metro. Approval of the insurance by Metro shall not relieve or decrease the extent to which the Contractor or Contractor's Subcontractors and Suppliers of any tier may be held responsible for payment of any and all damages resulting from performance of the Work.

Each such policy or Certificate of Insurance shall bear an endorsement precluding its cancellation, expiration or any reduction in its coverage without giving to Metro at least sixty (60) days prior written

notice. Contractor shall file with Metro two certified copies of the required new or renewed policy or two Certificates of Insurance for each such policy, as applicable, at least fifteen (15) days before the effective date of such cancellation, change or expiration.

Should the Contractor neglect to obtain or maintain in force any such insurance or to deliver such policy or policies, certificates and receipts to Metro, then Metro may, at its option, obtain and maintain such insurance. Contractor hereby appoints Metro its true and lawful attorney, to do all things necessary to obtain and maintain such insurance. All monies expended by Metro for such insurance shall be charged to Contractor and Metro may offset its costs in obtaining and/or maintaining such policies from sums due or to become due Contractor under the Contract or otherwise collect such sums from Contractor. Failure of Metro to obtain or maintain such insurance shall in no way relieve the Contractor of any of its responsibilities under this Contract.

Contractor's failure to maintain any item of the required insurance shall be sufficient cause for termination or suspension of this Contract.

All insurance required shall be obtained through a company or companies having a policyholders surplus of at least ten (10) times the amount or limit of liability afforded by such insurance company on policies issued for this Contract. Such company shall be duly and legally licensed to transact business in the state of Oregon and shall be acceptable to Metro. Said insurance shall be primary over any insurance or self-insurance of Metro.

11.03 Builder's All Risk Insurance

11.03.01 Contractor, for the life of this Contract, shall effect and maintain Builders All Risk Insurance and fire insurance with extended coverage and malicious mischief coverage upon the structures on which the work of this Contract is to be done to 100 percent (100%) of the insurable value thereof, protecting: (1) Owner's interest; (2) Contractor's interest; and (3) the subcontractor's interests in the work. Contractor's interest and the subcontractors' interests, as used herein, mean their property interests and the property interests of others for

which they are responsible in the Project, in all materials and supplies entering into or used or destined for use therein, and in all expendable items of equipment which are used in or are incidental to but which do not become a part of the finished Project, located at the job site at the time of loss or damage. Such insurance shall not exclude coverage for earthquake, landslide, flood, collapse, explosion or loss due to the result of faulty workmanship.

11.03.02 Contractor and all subcontractors shall be responsible for any loss or damage to their machinery and apparatus and nonexpendable items of their equipment.

11.03.03 Contractor shall provide adequate fire protection equipment and safeguards to protect Owner's and Contractor's interests in accordance with Owner's insurance carrier's requirements.

ARTICLE 12. DISADVANTAGED BUSINESS PROGRAM

Contractor shall comply with all pertinent provisions of Metro's Disadvantaged Business Program which are contained in Metro Code 2.04 and which are contained in full in the Appendix to these Contract Documents and which are by this reference expressly incorporated herein and made a part of this Contract.

Contractor shall not replace a disadvantaged or women-owned business enterprise Subcontractor with another Subcontractor, either before Contract award or during Contract performance, without prior written approval of Metro. In replacing a disadvantaged or women-owned business Subcontractor, Contractor shall replace such disadvantaged or women-owned business Subcontractor with another certified disadvantaged or women-owned business Subcontractor or make good faith efforts to do so. Failure to do so shall constitute Contractor's default of this Contract, and Metro, at its option, may terminate this Contract under the procedures set out in Article 14.

Metro reserves the right, at all times during the period of this Contract, to monitor Contractor's compliance with the terms of the Disadvantaged Business Program and enforce the program if Contractor should fail to so comply. Contractor shall be bound by any and all representations made concerning its compliance with the program prior to Contract award and any and all

representations made by Contractor concerning the replacement of a disadvantaged or women-owned business Subcontractor during the performance of this Contract.

ARTICLE 13. EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION REQUIREMENT

Contractor shall be certified as Equal Employment Opportunity Affirmative Action Employers by the City of Portland, Oregon, for the entire term of the Contract. Contractor's Subcontractors and Suppliers shall be certified prior to commencement of any of their Work on the Project and shall remain certified for the entire duration of the Contract.

ARTICLE 14. MISCELLANEOUS STATUTORY RESPONSIBILITIES OF CONTRACTOR

14.01 Generally -- The Contractor shall keep itself fully informed of and shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances and orders pertaining in any manner, to this Contract and those rules, regulations and orders of any agency or authority having jurisdiction over the work or those persons employed or engaged therein. Contractor shall pay all taxes, including federal, state, regional, county, city or taxes of any other governmental entity applicable to the work performed or materials provided under this Contract.

14.02 Environmental Laws -- Contractor shall fully comply with all federal, state and local laws, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources and all amendments thereto. Contractor shall also fully comply with all rules, regulations and ordinances enacted or to be enacted by any federal, state or local agency dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the Contract. Such statutes, rules, regulations and ordinances shall include, but are not limited to those in 7 USCA Sections 136 to 136Y, 15 USCA Sections 2601 to 2629, 33 USCA Sections 1251 to 1376, 33 USCA Sections 1401 to 1445, 42 USCA Sections 300f to 300j-11, 42 USCA Sections 4321 to 4370a, 42 USCA Sections 4901 to 4918, 42 USCA Sections 6901 to 6991i, 42 USCA Sections 7401 to 7642, 42 USCA Sections 9601 to 9675, 29 USCA Sections 651 et seq., Oregon Administrative Rules Chapter 61, and Title 18 of the Code of the City of Portland Code.

Such agencies shall include, but not be limited to, the following:

FEDERAL AGENCIES

Agriculture, Department of

Forest Service

Soil Conservation Service

Defense, Department of

Army Corps of Engineers

Energy, Department of

Environmental Protection Agency

Health and Human Services, Department of

Interior, Department of

Fish and Wildlife Service

Heritage Conservation and Recreation

Service

Bureau of Land Management

Bureau of Indian Affairs

Water and Power Resource Service

Office of Surface Mining

Labor, Department of

Occupational Safety and Health Administration

Mine Safety and Health Administration

Transportation, Department of

Coast Guard

Federal Highway Administration

STATE AGENCIES

Agriculture, Department of

Energy, Department of

Environmental Quality, Department of

Fish and Wildlife, Department of

Forestry, Department of

Geology and Mineral Industries, Department of

Human Resources, Department of

Land Conservation and Development Commission

Soil and Water Conservation Commission

State Engineer

State Land Board

Water Resources Board

LOCAL AGENCIES

City of Oregon City
Clackamas County
Metropolitan Service District
Planning Commissions

14.03 Other Provisions of Oregon Law

14.03.01 Generally -- The provisions set out in Oregon Revised Statutes Chapters 187 and 279, as amended or superseded, including the latest additions and revisions, are incorporated by reference as part of these Contract Documents. Such sections include, but are not necessarily limited to, ORS 279.021, 279.312, 279.314, 279.316, 279.318, 279.320, 279.334, 279.338, 279.348, 279.350, 279.352, 279.354, 279.355, 279.356, 279.359, 279.361, 279.365, 279.400 through 279.430 and 279.575. Contractor shall fully comply with all applicable provisions of these statutes. The specific requirements of certain of these sections are set out below.

14.03.02 Payment to Subcontractors and Laborers -- Pursuant to ORS 279.312, Contractor shall make payment promptly, as due, to all persons supplying such Contractor labor or material for the prosecution of the Work provided in this Contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund (IAF) from such Contractor, Subcontractor or Supplier incurred in the performance of the Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against Metro, the State, County, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

14.03.03 Failure to Make Payment for Labor or Services -- Pursuant to ORS 279.314, if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with this Contract as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of such Contract. Metro's payment of such a

DRAFT

claim in the manner authorized by ORS 279.314 shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

14.03.04 Hours of Work -- Except as provided in ORS 279.334, no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279.334. Contractor shall furthermore comply with any applicable provisions of ORS 279.316, 279.334, 279.336 and 279.338.

14.03.05 Payment for Medical Care -- Pursuant to ORS 279.320, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying such service.

14.03.06 Requirements for Foreign Contractors -- Pursuant to ORS 279.021, any "foreign contractor" awarded a public contract with a price exceeding \$10,000, shall promptly report to the Department of Revenue, on forms to be provided by the Oregon Department of Revenue, the total contract price, terms of payment, length of contract and such other information as may be required before Final Payment can be received on the public contract. Final Payment shall not be made until this provisions has been complied with.

For purposes of this paragraph, a "foreign contractor" is one who is not domiciled in or registered to do business in the state of Oregon.

14.03.07 Prevailing Wage -- Except as limited by Oregon Revised Statutes, Contractor shall pay his/her workers and require his/her Subcontractors to pay its workers the prevailing rate of wage as required in ORS 279.350, and shall comply with all other requirements

contained therein. The Appendix to this Contract contains a provision stating the existing prevailing rate of wage which may be paid to workers in each trade or occupation required to perform the Work, either by Contractor or its Subcontractors or any other person doing or contracting to do the whole or any part of the Work contemplated by this Contract, and such workers shall be paid not less than such specified minimum hourly rate of wage.

14.03.08 Sanitary Facilities -- Contractor shall be responsible for all costs that may be incurred in complying with ORS 654.150 and the rules adopted pursuant thereto including, but not limited to, securing exemption or partial exemption from the requirements of ORS 654.150, (sanitary facilities at construction projects; standards, exemptions).

14.04 Work to Comply with Codes -- All Work shall be in full compliance with any and all codes specified in the Contract Documents and all federal, state and local laws, ordinances, rules, regulations and orders and all amendments to such codes, laws, ordinances, rules, regulations and orders. If Contractor observes or discovers that any portion or portions of the Contract Documents are at variance with any such requirements, Contractor shall promptly submit a written Request for Information to Metro pursuant to Paragraph 3.02 which shall fully describe the variance. If Contractor performs Work contrary to codes, laws, ordinances, rules, regulations or orders without submitting such Request to Metro, Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

Persons authorized by Metro or any governmental body having jurisdiction over the Project may at any time enter upon any part of the work to ascertain whether Contractor is complying with such laws, ordinances, regulations or orders.

14.05 No Additional Compensation Allowed for Compliance with Laws -- The Contract Amount includes full compensation for compliance with all applicable laws, rule, regulations, ordinances and orders and all amendments thereto and Contractor shall not make claim for nor be allowed any additional compensation for such compliance.

ARTICLE 15.

TERMINATION OR SUSPENSION OF THE WORK

DRAFT

15.01 For Default of Contractor -- If the Contractor should be adjudged bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of insolvency, or if the Contractor should refuse to or fail to supply enough properly skilled workers or proper materials for the efficient prosecution of the Work, disregard laws, ordinances or the instructions of Metro, or otherwise be in violation of any provision of the Contract, Metro may, without prejudice to any other right or remedy and after giving Contractor and Contractor's surety on the Performance Bond prior written notice, terminate the Contract or any portion of the Contract, which termination shall be effective ten (10) days after service of such notice. Such notice shall contain the reasons for the termination and shall state that unless, within ten (10) calendar days of service of the termination notice on Contractor, Contractor or its surety on the Performance Bond shall have cured or shall have made, in Metro's opinion, appropriate arrangements for prompt cure of all of the cause(s) for termination cited in the notice of termination, the Contract shall terminate.

Upon termination, Metro may take possession of the premises and of all materials, tools and appliances thereon as well as all other materials whether on the premises or not, for which the Contractor has received partial payment, and finish the Work or the portion terminated by whatever method it may deem expedient.

In the event action as above indicated is taken by Metro, the Contractor, or Contractor's surety, shall provide Metro with immediate and peaceful possession of all of the materials, tools and appliances located on the premises as well as all other materials whether on the premises or not, for which the Contractor has received any progress payment. Upon termination, in the event that the surety does not complete the Contract, at the election of Metro, Contractor shall assign any and all subcontracts and material contracts to Metro or Metro's designee. Further, the Contractor shall not be entitled to receive any further payment until the Work is completed. On completion of the Work, determination shall be made by Metro of the total amount the Contractor would have been entitled to receive for the Work, under the terms of the Contract, had Contractor completed the Work. If the difference between said total amount and the sum of all amounts previously paid to the Contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by Metro in completing the Work, including expense for additional managerial and

administrative service, and all other costs, damages and expenses incurred by Metro due to Contractor's failure to complete the Contract, such excess will be paid to the Contractor, with the consent of the surety. If, instead, the described expenses incurred by Metro exceed the unpaid balance, the amount of the excess shall be paid to Metro by the Contractor or his/her surety. If only a portion of the Contract is terminated, this paragraph shall be deemed to apply to that portion of the Work only.

In addition to the above-mentioned right, Metro shall have the right, at its option, to suspend all or part of the Contractor's performance under the Contract should any of the events occur which give Metro the right to terminate the Contract as above-described. In such event Metro shall give Contractor and Contractor's surety prior written notice of such suspension and Contractor shall stop or cause to stop all such work under the Contract immediately on receipt of such notice and shall not commence such work under the Contract again unless and until Contractor shall receive written notice from Metro to proceed. Metro shall not be responsible or liable to Contractor or others for any costs or expenses of whatever nature related to Contractor's failure to stop work as directed by Metro.

After receipt of a notice of termination or suspension, and except as otherwise directed by Metro, the Contractor shall as regards those portions of the Contract terminated or suspended:

1. Stop work under the Contract on the date and to the extent specified in the notice of termination or suspension.
2. Place no further orders or subcontracts, or suspend the same, as applicable, for materials, services or facilities except as necessary to complete the portion of the work under the Contract which is not terminated or suspended.
3. Terminate or suspend, as applicable, all orders and subcontracts to the extent that they relate to the performance of such work terminated or suspended.

Metro may, at its discretion, avail itself of any or all of the above rights or remedies and its invoking of any one of the above rights or remedies will not prejudice or preclude Metro from subsequently invoking any other right or remedy set forth above or elsewhere in the Contract.

None of the foregoing provisions shall be construed to require Metro to complete the Work, nor to waive or in any

DRAFT

way limit or modify the provisions of the Contract relating to the fixed and liquidated damages suffered by Metro on account of failure to complete the Project within the time prescribed.

15.02 Termination in the Public Interest

It is hereby agreed that Metro has the right to terminate the Contract in whole or in part when Metro considers it to be in the public interest.

In the event the Contract is terminated as being in the public interest, the Contractor shall be entitled to a reasonable amount of compensation for preparatory work and for all reasonable costs and expenses arising out of the termination, excluding lost profits.

In the event of termination under this Paragraph, the amount to be paid to the Contractor shall be determined on the basis of the Schedule of Values in the case of any fully completed separate item or portion of the Work for which there is a separate or unit contract price and in respect to any other work under the Contract, the Contractor will be paid a percent of the Contract price equal to the percentage of the work completed.

RS:ay
genlcond.doc

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1100 FOR THE PURPOSE OF AUTHORIZING ISSUANCE OF A REQUEST FOR BIDS FOR CONSTRUCTION OF METRO SOUTH STATION MODIFICATIONS

Date: January 5, 1990

Presented by: Jim Watkins
Rob Smoot

FACTUAL BACKGROUND AND ANALYSIS

Approval of Resolution No. 90-1100 authorizes the Solid Waste Department to issue a Request For Bids (RFB) for Construction of Metro South Station Modifications (attached to Resolution No. 90-1100 as Exhibit #1); and authorizes the Executive Officer to execute a contract with the low, responsive, responsible bidder.

In March of 1989, Metro executed a contract for the transport of waste to the Gilliam County Landfill for a period of twenty years. Metro's contractual obligations under this contract include the provision of a staging area at Metro South Station where empty and full transport vehicles are stored before and after loading. In addition, Metro is required to compact waste prior to loading.

In May of 1989, Metro issued a RFB for a compaction system for Metro South Station which would be placed in the existing loading tunnel. In addition, Metro asked proposers to quote prices for a second compaction system which would be located at the west end of the pit once the proposed modifications are completed. Two compaction systems are desired in order to allow facility operation in the event of a single compaction system failure. The first compaction system was installed in the current loading tunnel during the weekend of November 25th, and will be moved to its permanent location after the second compactor is operational.

In August, 1989, Metro executed a Design Services contract to design the modifications at Metro South necessary to provide for a dual compactor system, staging area for transport vehicles and a new entrance to the facility for transport vehicle use. An additive alternate called for design of a storage area to accommodate the fleet of transport vehicles which would service the facility. This item was included for three reasons: 1) it would improve the overall efficiency of transport operations; 2) preliminary discussions with Oregon City staff indicated their desire to have the shuttling operation onsite to minimize impacts on the community; and, 3) the transporter had indicated a preference for locating the storage facility onsite. As with all design elements, the storage area phase would only be pursued if conditional use authorization was obtained from Oregon City. In

addition to design of the modifications, the Design Services Contractor is also responsible for preparing construction documents for the modifications, conducting the bid process and providing construction management during facility modifications.

In late August, 1989, the Planning Commission of Oregon City modified the Metro South Station conditional use permit to allow for the modifications described in the Design Services RFP. The permitted modifications specifically called for creation of a storage area for the fleet of transport vehicles servicing the facility.

Since construction of the permanent storage yard could not be executed until after the start of transport services, a temporary storage facility was required at Metro South Station. The temporary facility was constructed in December to accommodate approximately half of the JGT fleet which will be used at Metro South.

The Design Services Contractor has completed preparation of the construction documents for the Metro South modifications (Exhibit #1 of the attached resolution), and the Solid Waste Department wishes to issue a Request for Bids. The work contemplated in the documents consists of sitework; constructing a steel framed, concrete panel building to house a solid waste conveyor, as well as the two compactors; concrete, shotcrete; ventilation, heating, air conditioning, plumbing and electrical systems; road, bridge, retaining walls; landscaping and irrigation system; stormwater and sewage lift stations and piping; public parking area; and a trailer storage area for Jack Gray Transport. Bidders will be required to bid a normal construction period and an accelerated construction schedule that provides early access to the dual compaction system.

Due to the need to complete the modifications as expeditiously as possible, the Executive Officer requests Council authorization to award the contract to the low, responsive, responsible bidder; in accordance with the Metro Code and State of Oregon requirements. The expedited procedure is requested due to the risk Metro is exposed to with a single compactor at the facility (see Attachment #1). In addition, the temporary loading procedure is a hardship on JGT's operations due to the limited maneuvering space available when accessing the compactor and traffic congestion associated with the site's entrance.

BUDGET IMPACTS

The estimated cost for construction of these modifications is \$3,000,000 and is listed on the "FY1989-90 CONTRACTS LIST/New, Single Year Contracts" list under the SOLID WASTE CAPITAL FUND section, as well as the corresponding section in the FY1990-91 budget. Approximately one half of the total budget will be expended in FY1989-90, with the remainder expended in the first half of FY1990-91.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution 90-1100 which authorizes the issuance of an RFB for construction of modifications at the Metro South Station and authorizes the Executive Officer to execute a contract with the low, responsive, responsible bidder.

Attachment #1

TENTATIVE SCHEDULE FOR METRO SOUTH MODIFICATIONS

2/1/90	Announce intent to advertise
2/13/90	Advertise for Bids- Issue Contract Documents
3/1/90	Bid Opening
3/20/90	Notice of Conditional Award
3/27/90	Contractor signs contract, returns bonds
3/30/90	Metro issues Notice to Proceed
4/9/90	Contractor commences work
5/1/90	Contractor onsite
8/15/90	Relocate existing compactor to new building
10/1/90	Substantial Completion
10/15/90	Startup and Testing
12/15/90	Punchlist complete- acceptance

NOTE: If Council awards contract, add one month to schedule

Agenda Item No. 6.3
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1199

CONVENTION, ZOO & VISITORS
FACILITIES COMMITTEE REPORT

RESOLUTION NO. 90-1199, AUTHORIZING THE AWARD OF FURNISHINGS
CONTRACTS FOR THE OREGON CONVENTION CENTER TO KRUEGER, INC.
AND ENVIRONETICS, INC.

Date: January 16, 1990

Presented By: Councilor Knowles

COMMITTEE RECOMMENDATION: At the December 29, 1989, Convention, Zoo & Visitors Facilities Committee meeting, all members were present and voted unanimously to recommend Council adopt Resolution No. 90-1199 as amended. The Committee unanimously amended the resolution by adding a "Whereas" to positively reinforce Krueger, Inc. as the lowest, responsive bidder meeting Metro's DBE/WBE contract requirements.

COMMITTEE DISCUSSION/ISSUES: Convention Center Project staff Neil McFarlane and Berit Younie presented the resolution which authorizes award of the Convention Center furnishings contracts to the lowest, responsive, bidders -- Krueger Inc. for folding chairs, Environetics (the local Krueger representative) for folding tables. The apparent low bidder, Virco Mfg. Corporation, was not responsive in meeting Metro's DBE/WBE contract requirements and submitted bids based on product substitutes which had previously been rejected by the substitution review committee. Explaining why Virco's substitutes had not been approved, staff reviewed their December 11 memo (Exhibit B to the Resolution). Staff noted the contracts are part of the Convention Center "Furniture, Fixtures & Equipment" (FF&E) contracts identified in the FY89-90 Metro budget as "B" contracts. "B" contracts do not require Council approval, but because the proposed award is to other than the "apparent low bidder", Metro Contract Review Board approval is required. After Virco, Krueger is the lowest bidder for folding and stacking chairs and Environetics is likewise for folding tables. The total recommended award for the FF&E contracts, \$1.2 million, is approximately \$280,000 less than the projected amount in this year's budget.

Under Metro Code Section 2.04.031, Virco had five days from Metro's Notice of Conditional Award (12/18/89) to file a bid protest after which the Executive Officer would issue administration's final decision. Virco did file and the Executive Officer issued a decision January 4, 1990 maintaining the recommended award to Krueger and Environetics. Virco then had another five days to file an appeal with the Metro Council but no filing was made.

jpmthree
b:\901199.cr

BEFORE THE CONTRACT REVIEW BOARD OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING
EXECUTION OF CONTRACTS FOR
FOR FURNISHINGS FOR THE OREGON
CONVENTION CENTER TO KRUEGER
INC. AND ENVIRONETICS INC.

) RESOLUTION NO. 90-1199
)
) Introduced by
) Executive Officer Rena Cusma
)

WHEREAS, bid documents for the Furnishings for the Oregon Convention Center were prepared and advertised in accordance with the Metro Code; and

WHEREAS, bids for the furnishings for the Oregon Convention Center, were received by Metro on Thursday, December 14, 1989; and

WHEREAS, a bid was received from Virco Mfg. Corporation for folding and stacking chairs and folding tables manufactured by Virco; and

WHEREAS, the Virco products were neither the products specified in the bid documents nor an approved substitution; and

WHEREAS, the Virco bid did not comply with the District's Disadvantaged Business Program as required by the bidding documents; and

WHEREAS, bids were received from Krueger Inc. for folding and stacking chairs manufactured by Krueger and from Environetics for folding tables manufactured by Krueger; and

WHEREAS, the Krueger manufactured products were either specified in the bid documents or approved substitutions; and

WHEREAS, the Krueger and Environetics bids were both fully responsive, including compliance with the District's Disadvantaged Business Program; and

WHEREAS, Project Staff have recommended that the Virco bid be rejected for lack of responsiveness;

WHEREAS, Section 2.04.044 (e) of the Metro Code requires prior approval of the Contract Review Board to any but the apparent low bidder; now, therefore,

BE IT RESOLVED: That the Contract Review Board of the Metropolitan Service District hereby approves the award of Furnishing contracts for the Oregon Convention Center to both Krueger Inc. for folding and stacking chairs and to Environetics Inc. for folding tables.

ADOPTED by the Contract Review Board of the Metropolitan Service District this ____ day of January, 1990.

Presiding Officer

STAFF REPORT

FOR THE PURPOSES OF AUTHORIZING THE AWARD OF FURNISHINGS CONTRACTS FOR THE OREGON CONVENTION CENTER TO KRUEGER, INC. AND ENVIRONETICS, INC.

Date: January 17, 1990

Presented by: Berit Younie

Project Staff received and opened bids for Furnishings contracts for the Oregon Convention Center on Thursday, December 14, 1989. Bid results are detailed on the attached Exhibit A.

The determination was made to reject the Virco bid as non-responsive and to award the contract for folding and stacking chairs to Krueger and for folding tables to Environetics. A bid appeal of these awards was submitted by Virco on Tuesday, December 22, 1989.

In accordance with Metro Code 2.04.031(b)(2), the Executive Officer responded to the Virco appeal by sending a notice of rejection of appeal to Virco on Thursday, January 4, 1990. The notice detailed the Executive Officer's justification for rejection and also directed Virco in the event they wished to contest the Executive Officer's determination. The Metro Code at 2.04.031(b)(2) provides that the appellant's appeal of the rejection be submitted in writing within five working days of the postmark of the notice of rejection.

In the instant situation, Virco was required to respond by Thursday, January 11, 1990. As of January 17, 1990, no response whatsoever has been received by either Council staff, Convention Center staff, Office of General Counsel or the Executive Office. Virco's non-responsiveness implies the withdrawal by Virco of the bid appeal. As such, the Contract Review Board is not impeded to act upon Resolution 90-1199 which would authorize the award of the contract for folding and stacking chairs to Krueger and for folding tables to Environetics as the respective low, responsive bidders.

Recommendation:

The Executive Officer recommends approval by the Contract Review Board, as required by Metro Code Section 2.04.044(e), of the award of the stacking and folding chair contract to Krueger and the folding table contract to Environetics as the respective low responsive bidders.

Agenda Item No. 6.4
Meeting Date: January 25, 1990

RESOLUTION NO. 90-1201

FINANCE COMMITTEE REPORT

RESOLUTION NO. 90-1201, AUTHORIZING A SOLE SOURCE AGREEMENT
WITH DUN AND BRADSTREET CORP. FOR THE PURCHASE OF CREDIT
REPORTING SERVICES

Date: January 19, 1990

Presented by: Councilor
Wyers

Committee Recommendation: At its January 18, 1990 meeting, the Committee voted unanimously to recommend adoption of Resolution No. 90-1201. Voting yes were Councilors Gardner, Wyers and Van Bergen. Councilors Collier and Devlin were excused.

Committee Discussion/Issues: Jennifer Sims, Manager of Financial Services, presented the staff report. She indicated that these services are necessary for the District to properly manage the credit program and policies for the solid waste system. The District's current contract with Dun and Bradstreet expired in December 31, 1989, and the proposed contract is for a one year period starting on January 31, 1990. The cost of the contract will be \$4,210. She further indicated that the vendor is the nation's only source of comprehensive commercial credit information.

Councilor Van Bergen raised questions about the confidentiality of information obtained by the District in the credit reports provided by Dun and Bradstreet and Mr. Ray Phelps indicated he would discuss the matter with General Counsel and report back to the Committee at its next meeting.

DEC:pa

#1C:.90-1201.RPT

BEFORE THE CONTRACT REVIEW BOARD
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING AN	)	RESOLUTION NO. 90-1201
EXEMPTION TO METRO CODE CHAPTER)	
2.04.043 COMPETITIVE BIDDING)	
PROCEDURES AND AUTHORIZING A SOLE	)	Introduced by Rena Cusma,
SOURCE AGREEMENT WITH DUN &	)	Executive Officer
BRADSTREET CORP. FOR THE PURCHASE)	
OF CREDIT REPORTING SERVICES)	

WHEREAS, Metropolitan Service District Code 5.02.060(c) permits individuals to apply for a credit account with Metro for the purpose of disposal of solid waste on a credit basis; and

WHEREAS, To assist the Credit Manager in determining which credit applicants are able to pay Metro for their monthly accrued solid waste disposal charges a complete credit investigation is initiated; and

WHEREAS, Information from a credit reporting agency is a component of this credit investigation; and

WHEREAS, Dun & Bradstreet Corp. is the sole source for this type commercial credit information; now, therefore,

BE IT RESOLVED,

That based on the findings as stated in the Staff Report, the Contract Review Board hereby exempts the attached contract (Exhibit A hereto) with Dun & Bradstreet Corp. from the competitive bidding requirements under Metro Code Chapter 2.04.043 for the purchase of credit reporting services.

ADOPTED by the Contract Review Board of the Metropolitan Service District this _____ day of _____, 1990.

_____, Presiding Officer

NEW ☐ The undersigned subscriber hereby employs Dun & Bradstreet, Inc. to furnish the following services to the subscriber on businesses located within the geographic area covered by the Reference Books leased hereunder for the one year period beginning 1/31, 19 90. The subscriber agrees to pay, in advance, for these services. The services include the use of the Reference Books and the availability and use of up to the number of Units specified below.

RENEWAL ☒ Continue our Agreement for another year from date of expiration in the amount shown below.

SUPPLEMENT ☐ Supplement our current Agreement dated _____ 19 ____ to cover the services indicated below.

REGULAR SERVICE 100 Regular Response Units ☐ with Reference Books specified below \$ 2,510.00
DunsTransport Response Units @ \$21.10 each \$ _____
(Supplement not available on 50 and 100 unit Contract)

☐ **BASIC SERVICE**
☐ **CREDIT CLEARING HOUSE SERVICE**
☐ **SCHEDULE A**
☐ **SCHEDULE B**
☐ **WOMENS WEAR**
☐ **GENERAL & MALE APPAREL**
Additional Response Units at inception of this Agreement @\$30.00 each
less discount based on number purchased:
(Quantity pricing below does not apply to supplemental units)

Contract Size In Units	Incremental Price Per Unit	Incremental Dollars	Contract Size In Units	Incremental Price Per Unit	Incremental Dollars
101 - 500	\$17.00	<u>100</u>	5,001 - 10,000	\$16.50	
501 - 1,000	\$16.90		10,001 - 25,000	\$16.25	
1,001 - 2,500	\$16.80		25,001 - 50,000	\$16.00	
2,501 - 5,000	\$16.70		50,001 +	\$15.50	

☐ **DUNS TRANSPORT**
☐ **QUALIFIED SERVICE** (See below)
☐ **OTHER**
Subtotal Additional Units Purchased: # Units _____ \$ 1,700.00
Total units purchased at inception of this Agreement. Total Regular Service \$ 4,210.00

If the subscriber uses Units in excess of the number contracted for at a discounted rate, then the subscriber agrees to pay for them, on demand, at the base (undiscounted) rate of \$30.00 each (see paragraph 10).

Of amount shown, \$25 is for an annual subscription to the magazine *D&B Reports*, which, if not desired, may be deducted. Additional annual subscriptions, \$25 each.

As Supplement to Agreement:

Response Units @ \$30.00 each \$ _____
Less discount, @ \$1050.00 per hundred \$ _____ Total Supplement Service \$ _____

REFERENCE BOOKS

Area 19 and Number 3 ☒ Jan., 19 90 ☐ Mar., 19 ____ ☐ May, ____
☐ Puerto Rico Reference Book Edition ☐ July, 19 ____ ☒ Sept., 19 90 ☐ Nov., 19 ____
☐ Apparel Trades Book: ☐ Feb., 19 ____ ☒ May, 19 90 ☐ Aug. 19 ____ ☐ Nov. 19 ____
☐ Local Trading Area Service (Counties/States as shown): _____
☐ Reference Book of Manufacturers: ☐ Spring ☐ Fall
☐ Other _____

PREFERENCE SERVICES

By initialing here the subscriber elects to receive the preference services checked _____

☐ Credit Advisor (CAS) Preference
☒ BIPAR Service
☐ Bankers Advisor (BAS) Preference
☐ BAS Preference Plus Bankers Financial Report Option
☐ BAS Plus Bankers Financial Report Option
☐ Duns Underwriting Guide (DUG) Preference
☐ DUG Preference Plus Option C
☐ DUG Option C on designated "Careful Analysis" accounts

QUALIFIED SERVICES

Charges based on the understanding that the annual sales volume of subscriber does not exceed \$ _____

Subscriber's Initials _____ These units may only be used to obtain the service(s) designated.

☐ Local Trading Area Service
☐ Specialized Business Service
☐ Domestic or ☐ Puerto Rico (specify options below) _____
☐ DunsTransport (25 Unit Limited Service)
☐ Credit Clearing House - Full Requirement Apparel Service (Subscriber to be provided with the availability and use of up to 500 Recommendation Service Units. Supplemental rate is \$6.25 each (in blocks of 50). Base (undiscounted) rate is \$12.40.)

SOFTWARE

The subscriber elects to obtain a license to use the following software subject to the terms on the reverse side and agrees to pay D&B the licenses fees shown.

Title of Software: _____

Initial License Fee: \$ _____ Renewal License Fee: \$ _____

ACCESS SYSTEMS

The subscriber elects to use the access systems checked below and requests D&B to issue passwords therefor. The subscriber agrees to be responsible for all use of its passwords.

☐ DunsDial ☒ DunsPrint ☐ DunsVoice-Type I ☐ DunsVoice-Type II ☐ International
Subscriber's Initials _____

KEY ALERT PROFILE

☐ Public Record Filings ☐ Operational ☐ Rating ☐ PAYDEX
☐ Financial ☐ UCC ☐ _____ ☐ _____

IMPORTANT Dun & Bradstreet, Inc. and the undersigned subscriber, by signing this Agreement, agree and intend to be bound by the terms hereof, including the Terms of Agreement on the reverse side which are made a part of this Agreement. Subscriber acknowledges receipt of a Schedule of Charges For Services which sets forth the exchange values of Units purchased under this Agreement. TOTAL \$ 4,210.00

By
Dun & Bradstreet, Inc.

7E-24 (9001)

Manager _____

Date _____

Accepted By
Authorized Signature _____ Date _____

Name of Subscriber Metro _____ Title _____

Mailing Address 2000 SW 1st _____ Attn. Rick Ford _____

City Portland _____ State OR _____ Zip 97201 _____

Print Signer's Name _____ Title Function _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1201 FOR THE
PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE
CHAPTER 2.04.043 COMPETITIVE BIDDING PROCEDURES
AND AUTHORIZING A SOLE SOURCE AGREEMENT WITH DUN &
BRADSTREET CORP. FOR THE PURCHASE OF CREDIT
REPORTING SERVICES

DATE: December 20, 1989

Presented by: Rick Ford

PROPOSED ACTION

To approve the sole source contract with Dun & Bradstreet to provide credit reporting services to the Metropolitan Service District.

FACTUAL BACKGROUND AND ANALYSIS

Metro Code 5.02.060(c) states that individuals may apply for an account with Metro for the purpose of disposal of solid waste at the various solid waste sites on a credit basis.

In order to assist the Credit Manager in determining which credit applicants are able to pay Metro for their solid waste disposal charges, a complete credit investigation is initiated. This credit investigation includes confirmation of listed trade and banking references as well as receipt of information from a credit reporting agency.

Dun & Bradstreet Corp. is the nation's only source of comprehensive commercial credit information. Metro has used Dun & Bradstreet's services previously since Dun & Bradstreet is a sole source for this type of commercial credit information. Metro's current contract with Dun & Bradstreet expires December 31, 1989.

The expenses for this service have been included in the current budget by the Solid Waste Department. The new contract expenses for the calendar year ending December 31, 1990, will be \$4,210. The budgeted funds for these services is \$6,400.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 90-1201.

RFF/srs



GRANT/CONTRACT SUMMARY

METROPOLITAN SERVICE DISTRICT

530-312310-524190-75000 50%

GRANT/CONTRACT NO. _____

BUDGET CODE NO. _____

FUND: _____ DEPARTMENT: Solid Waste

(IF MORE THAN ONE) 530-312410-524190-75000 50%

SOURCE CODE (IF REVENUE) _____

INSTRUCTIONS

- OBTAIN GRANT/CONTRACT NUMBER FROM CONTRACTS MANAGER. CONTRACT NUMBER SHOULD APPEAR ON THE SUMMARY FORM AND ALL COPIES OF THE CONTRACT.
- COMPLETE SUMMARY FORM.
- IF CONTRACT IS —
 - SOLE SOURCE, ATTACH MEMO DETAILING JUSTIFICATION.
 - UNDER \$2,500, ATTACH MEMO DETAILING NEED FOR CONTRACT AND CONTRACTOR'S CAPABILITIES, BIDS, ETC.
 - OVER \$2,500, ATTACH QUOTES, EVAL. FORM, NOTIFICATION OF REJECTION, ETC.
 - OVER \$50,000, ATTACH AGENDA MANAGEMENT SUMMARY FROM COUNCIL PACKET, BIDS, RFP, ETC.
- PROVIDE PACKET TO CONTRACTS MANAGER FOR PROCESSING

1. PURPOSE OF GRANT/CONTRACT Sole Source Contract with Dun: Bradstreet Corp. for Credit Reporting Services

2. TYPE OF EXPENSE ☒ PERSONAL SERVICES ☐ LABOR AND MATERIALS ☐ PROCUREMENT
☐ PASS THROUGH AGREEMENT ☐ INTER-GOVERNMENTAL AGREEMENT ☐ CONSTRUCTION
☐ OTHER

OR

TYPE OF REVENUE ☐ GRANT ☐ CONTRACT ☐ OTHER

3. TYPE OF ACTION ☐ CHANGE IN COST ☐ CHANGE IN WORK SCOPE
☐ CHANGE IN TIMING ☒ NEW CONTRACT

4. PARTIES Dun: Bradstreet Corp.

5. EFFECTIVE DATE 1/31/90 TERMINATION DATE 12/31/90
 (THIS IS A CHANGE FROM _____)

6. EXTENT OF TOTAL COMMITMENT: ORIGINAL/NEW \$ 4,210.⁰⁰
 PREV. AMEND _____
 THIS AMEND _____

TOTAL

\$ 4,210.⁰⁰

7. BUDGET INFORMATION

A. AMOUNT OF GRANT/CONTRACT TO BE SPENT IN FISCAL YEAR 1989 8/90 \$ 4,210.⁰⁰

B. BUDGET LINE ITEM NAME Misc. Prof. Services AMOUNT APPROPRIATED FOR CONTRACT \$ 6,400.⁰⁰

C. ESTIMATED TOTAL LINE ITEM APPROPRIATION REMAINING AS OF 12/31/89, 1989 \$ 6,400.⁰⁰

8. SUMMARY OF BIDS OR QUOTES (PLEASE INDICATE IF A MINORITY BUSINESS ENTERPRISE)

SUBMITTED BY _____	\$ _____	<input type="checkbox"/> MBE
	AMOUNT	
SUBMITTED BY _____	\$ _____	<input type="checkbox"/> MBE
	AMOUNT	
SUBMITTED BY _____	\$ _____	<input type="checkbox"/> MBE
	AMOUNT	

9. NUMBER AND LOCATION OF ORIGINALS _____

- A. APPROVED BY STATE/FEDERAL AGENCIES? ☐ YES ☐ NO ☒ NOT APPLICABLE
 B. IS THIS A DOT/UMTA/FHWA ASSISTED CONTRACT ☐ YES ☒ NO
11. IS CONTRACT OR SUBCONTRACT WITH A MINORITY BUSINESS? ☐ YES ☒ NO
 IF YES, WHICH JURISDICTION HAS AWARDED CERTIFICATION _____
12. WILL INSURANCE CERTIFICATE BE REQUIRED? ☐ YES ☒ NO
13. WERE BID AND PERFORMANCE BONDS SUBMITTED? ☐ YES ☒ NOT APPLICABLE
 TYPE OF BOND _____ AMOUNT \$ _____
 TYPE OF BOND _____ AMOUNT \$ _____
14. LIST OF KNOWN SUBCONTRACTORS (IF APPLICABLE)
- | | | |
|------------|---------------|------------------------------|
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
| NAME _____ | SERVICE _____ | <input type="checkbox"/> MBE |
15. IF THE CONTRACT IS OVER \$10,000
 A. IS THE CONTRACTOR DOMICILED IN OR REGISTERED TO DO BUSINESS IN THE STATE OF OREGON?
☐ YES ☐ NO
 B. IF NO, HAS AN APPLICATION FOR FINAL PAYMENT RELEASE BEEN FORWARDED TO THE CONTRACTOR?
☐ YES DATE _____ INITIAL _____
16. COMMENTS:

GRANT/CONTRACT APPROVAL

INTERNAL REVIEW


 DEPARTMENT HEAD

CONTRACT REVIEW BOARD (IF REQUIRED) DATE _____

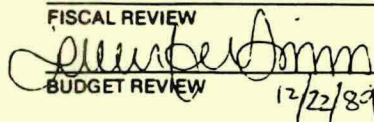
1. _____
 COUNCILOR
2. _____
 COUNCILOR
3. _____
 COUNCILOR

COUNCIL REVIEW (IF REQUIRED)

DATE _____

FISCAL REVIEW

BUDGET REVIEW


 12/22/89

LEGAL COUNSEL REVIEW AS NEEDED:

- A. DEVIATION TO CONTRACT FORM _____
 B. CONTRACTS OVER \$10,000 _____
 C. CONTRACTS BETWEEN GOVERNMENT AGENCIES _____

For Reference

contributed to the problem that the construction, acquisition or service is designed to correct.

(3) Where parcels of land, or portions thereof, are undeveloped, the governing body of the district may, in its discretion, defer assessing or imposing all or any portion of such special assessments for facilities or services on such parcels until the parcels are served by the facilities or services. [1981 c.641 §3]

268.470 Authority to join certain requirements in single ordinance; effect of response cards. A district, in its discretion, may adopt a single ordinance satisfying the requirements of ORS 268.460 and 268.465. When a district adopts an ordinance under this section, if the response cards returned to the district indicate opposition to the proposed facility or service, and the assessments therefor, by more than half of those owners returning response cards, who also own more than half of the land owned by those owners returning response cards, the facility or service shall not be established. [1981 c.641 §4]

268.475 Purposes of special assessment district. Special assessment districts authorized under ORS 268.460 to 268.490 may be established for, and limited to, financing the costs of planning and engineering required for the construction or acquisition of a facility or the furnishing of a service which the district is authorized to construct, acquire or furnish. [1981 c.641 §5]

268.480 Response cards; contents; deadline for return; effect. (1) A response card mailed by the district under ORS 268.460 to 268.490 shall contain on one side the printed mailing address of an office of the district. On the other side, the response card shall contain a simple and understandable statement of the district's proposed action for which the property owner's approval is sought, a question relating to approval or disapproval which is phrased so that an affirmative response to the question corresponds to an affirmative vote for the proposed district action and clear instructions for making an affirmative or negative response. Each response card shall be coded to identify the parcel of property owned and shall specify that it must bear the signature of the property owner in order to be counted.

(2) Response cards shall be returned by mail or otherwise to the district not later than the 14th day after the hearing held under ORS 268.460 to 268.490.

(3) Response cards shall be counted and the results tabulated at a district meeting open to the public.

(4) Response cards shall be retained by the district and made available for public inspection during usual business hours at an office of the district for not less than 90 days after the hearing held under ORS 268.460 to 268.470.

(5) For the purposes of ORS 268.460 to 268.490, "owner" or "property owner" means the legal owner as indicated in the records maintained by the appropriate county assessor. If there is multiple ownership in a parcel of land, the multiple owners of the parcel are entitled to only one joint vote under ORS 268.460 to 268.470. If one person is the owner of more than one parcel in the proposed assessment district, that person is entitled to only one vote under ORS 268.460 to 268.470. [1981 c.641 §6]

268.485 Instalment payment of assessment; rights pertaining to assessments. Any owner of property which has been assessed in the sum of \$100 or more for part of the cost of the construction or acquisition of a facility or the furnishing of a service which the district is authorized to furnish shall have the right to pay the assessment in instalments. The property owner and the district shall have the respective rights, duties and powers pertaining to assessments as are given to property owners and cities respectively under ORS 223.205 and 223.210 to 223.295. [1981 c.641 §7]

268.490 Reassessment. ORS 223.405 to 223.485, relating to reassessment, apply to the district, where applicable, in connection with assessments made for the construction or acquisition of a facility or the furnishing of a service which the district is authorized to furnish. [1981 c.641 §8]

268.495 Improvement warrant provisions applicable to special assessments. If the cost, or any portion of the cost, of a service or facility is to be assessed under ORS 268.460 to 268.490 against the property directly benefited, the provisions of ORS 287.502 to 287.515 relating to the issuance of improvement warrants by cities apply insofar as practicable. Such warrants may be issued only after an assessment district has been formed to pay part or all of the costs of the service or facility to be provided. [1981 c.353 §2; 1983 c.740 §70]

FINANCES

268.500 Levy, collection, enforcement of ad valorem taxes; limitation; classification of property; allocation of tax base to specific district functions. (1) A district may levy annually an ad valorem tax on all taxable property within its boundaries not to exceed in

(OVER)

any one year one-half percent (.005) of the true cash value of all taxable property within the boundaries of such district, computed in accordance with ORS 308.207. The district may also annually assess, levy and collect a special tax upon all such property in an amount sufficient to pay the yearly interest on bonds previously issued by the district and then outstanding, together with any portion of the principal of such bonds maturing within the year. The special tax shall be applied only in payment of the interest and principal of bonds issued by the corporation, but the corporation may apply any funds it may have towards the payment of principal and interest of any such bonds.

(2) Such taxes shall be levied in each year and returned to the county officer whose duty it is to extend the tax levy by the time required by law for city taxes to be levied and returned. All taxes levied by the district shall become payable at the same time and be collected by the same officer who collects county taxes and shall be turned over to the district according to law. The county officer whose duty it is to extend the county levy shall extend the levy of the district in the same manner as city taxes are extended. Property shall be subject to sale for nonpayment of taxes levied by the corporation in like manner and with like effect as in the case of county and state taxes.

(3) In taxation a district may classify property on the basis of services received from the district and prescribe different tax rates for the different classes of property.

(4) If the council proposes a tax base measure to the voters of the district, it may perpetually allocate the proposed base to functions or activities of the district. To be binding, the allocation must be stated both in the ordinance or resolution which submits the measure to the voters and in the ballot title. Any constitutionally authorized increase in the tax base subsequently levied by the council shall be apportioned to the functions or activities specified by the council in the ballot title in the same proportion as the original allocation. If the district reduces or ceases to provide a function or activity for which the tax base has been allocated, then the council may use that portion of the tax base for any lawful purpose of the district.

(5) If the statement in the resolution or ordinance and in the measure submitted includes an allocation of the proposed base to functions or activities of the district, the statement in the ballot title for the measure must include the following statement, which shall not be counted as part of the 150-word limit established under ORS 310.390 (1)(c):

Any constitutionally authorized increase in the tax base subsequently levied by the council shall be apportioned to the functions or activities specified by the council in the ballot title in the same proportion as the original allocation. If the district reduces or ceases to provide a function or activity for which the tax base has been allocated, then the council may use that portion of the tax base for any lawful purpose of the district.

[1969 c.700 §17; 1987 c.816 §1]

268.505 Income tax; rate limitation; elector approval required. (1) To carry out the purposes of this chapter, a district may by ordinance impose a tax:

(a) Upon the entire taxable income of every resident of the district subject to tax under ORS chapter 316 and upon the taxable income of every nonresident that is derived from sources within the district which income is subject to tax under ORS chapter 316; and

(b) On or measured by the net income of a mercantile, manufacturing, business, financial, centrally assessed, investment, insurance or other corporation or entity taxable as a corporation doing business, located, or having a place of business or office within or having income derived from sources within the district which income is subject to tax under ORS chapter 317 or 318.

(2) The rate of the tax imposed by ordinance adopted under authority of subsection (1) of this section shall not exceed one percent. The tax may be imposed and collected as a surtax upon the state income or excise tax.

(3) Any ordinance adopted pursuant to subsection (1) of this section may require a nonresident, corporation or other entity taxable as a corporation having income from activity both within and without the district taxable by the State of Oregon to allocate and apportion such net income to the district in the manner required for allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675.

(4) If a district adopts an ordinance under this section, the ordinance shall be consistent with any state law relating to the same subject, and with rules and regulations of the Department of Revenue prescribed under ORS 305.620.

(5) Any ordinance adopted by the district under subsection (1) of this section shall receive the approval of the electors of the district before taking effect. [1977 c.665 §22]

sary in the estimation of the governing body of a municipal corporation to increase the amount of the tax levy over the amount limited by the Constitution except on vote of the people, the governing body shall make and enter an order or resolution for a special election on the question and shall prepare and file a ballot title with the county clerk not later than the date specified in the election law applicable to the particular municipal corporation. The county clerk shall give notice of the election as provided in the general election laws.

(2) The election thus called shall be held on the date specified in the order or resolution and conducted in the same manner as other general or special elections are conducted for the municipal corporation.

(3) As used in this section, "municipal corporation" has the meaning given that term by ORS 294.311 (19). [Amended by 1953 c.311 §7; 1967 c.105 §9; 1977 c.301 §14; 1979 c.316 §15; 1981 c.173 §46; 1981 c.391 §5a; 1983 c.350 §137]

310.340 [Amended by 1953 c.311 §7; 1967 c.105 §10; 1979 c.316 §18; 1981 c.391 §6; repealed by 1981 c.173 §56]

310.350 [Amended by 1979 c.316 §16; repealed by 1981 c.391 §13]

310.360 [Amended by 1953 c.584 §2; 1965 c.100 §125; 1971 c.646 §2; 1975 c.770 §2; repealed by 1981 c.391 §13]

310.370 [Repealed by 1971 c.647 §149]

310.380 [Amended by 1953 c.311 §7; 1979 c.316 §17; repealed by 1981 c.391 §13]

310.385 [1971 c.646 §1; repealed by 1981 c.391 §13]

310.390 Ballot title for levy in excess of base; ballot title for metropolitan service district tax base election; oral statement in district not using printed ballot. (1) Notwithstanding ORS 250.035, the ballot title of any measure which authorizes a tax levy in addition to the tax base provided in section 11, Article XI of the Oregon Constitution or which establishes a new tax base shall consist of:

(a) A caption of not more than 10 words by which the measure is commonly referred;

(b) A question of not more than 20 words which plainly states the purpose of the measure, and is phrased so that an affirmative response to the question corresponds to an affirmative vote on the measure; and

(c) A concise and impartial statement of not more than 150 words, explaining the chief purpose of the measure and giving reasons for the measure.

(2) The statement in the ballot title required in this section shall be plainly worded and factual

and shall avoid as far as practicable the use of technical terms. The statement shall not advocate a yes or a no vote on the question.

(3) For a measure which establishes a new tax base for a metropolitan service district organized under ORS chapter 268, the caption shall state that the measure establishes a tax base. The caption may identify the functions or activities to be funded by the tax base and such identification shall not make the caption insufficient, not concise or unfair under ORS 255.155. The question shall include the name of the district, the dollar amount of the proposed tax base and the fiscal year in which the tax base will first be effective. Except as provided in this subsection, the remainder of this section applies to a measure which establishes a new tax base for a metropolitan service district.

(4) When the vote is taken by the electors of a road district or other district not using printed ballots in holding its elections, the oral statement of the question as shown by the records of the elections or the meetings at which they are held is sufficient. [Amended by 1953 c.311 §7; 1981 c.391 §7; 1987 c.732 §1]

310.395 Ballot statements; excluded levies. (1) Notwithstanding any other law and when not inconsistent with or otherwise provided for in the Oregon Constitution, whenever a proposed tax levy, whether a continuing fixed levy, continuing levy or levy for a single year, is submitted to a vote of the people by this state or any county, municipality, district or body to which the power to levy a tax has been delegated, the statement in the ballot title for the measure submitted shall state the total amount of money to be raised by the proposed levy, in dollars and cents. If the statement in the ballot title for the measure submitted includes an estimated tax impact, it shall be based on the most current estimate of assessed value from the county assessor. The measure shall bear the statement: "The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of estimate."

(2) Subsection (1) of this section does not apply to a levy described in ORS 280.060 (1)(b). For a levy described in ORS 280.060 (1)(b), an estimate of the total amount of money to be raised for each year of the proposed levy shall be stated in dollars and cents. If the levy described in ORS 280.060 (1)(b) raises more money than estimated, the excess collections above that estimate shall be considered a budget resource for the levy fund in the next fiscal year of the subdivi-



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: December 22, 1989

To: Mike Ragsdale, Presiding Officer
Tanya Collier, Finance Committee Chair

From: Councilors Jim Gardner and Judy Wyers

Regarding: Report of Council Building Space Task Force

This is the initial report of the Finance Committee Task Force on Council office space needs. The Task Force was appointed by the Finance Committee Chair at the December 21, 1989 Committee meeting, following Committee discussion of proposed building moves to accommodate space needs of various departments. The Task Force is charged to review Council Department space needs and communicate with the Director of Finance and Administration any proposed changes. The Task Force explored the need for more Council space and concluded that more space for Council Staff would be desirable at present and necessary at such time an additional Council analyst position is funded. The Task Force has also concluded it is desirable to:

- 1) keep the Council staff physically intact for an efficient and effective working environment; and
- 2) maintain office space adjacent to the Council Chamber.

Finance and Administration Director Ray Phelps informed the Committee his office in the Executive Management area is soon to be vacant. Based on this information, the Task Force's preliminary recommendation is to move the Presiding Officer's office across the Chamber to the space presently occupied by Executive Assistant Don Rocks, having Mr. Rocks assume Mr. Phelps' former office space. Mr. Rocks' office, being next to the Council Lounge, could have a connecting doorway installed to the Lounge with adequate sound-proofing added to the adjacent wall with the Executive Officer's office. This change would free up an office in the existing Council suite for current and future expansion of staff by one person.

It is the Task Force's conclusion that such a move will not impinge or disrupt the plans to move various Metro personnel. The Task Force also recognizes that this preliminary recommendation affects the Executive's office space. On December 29, the Task Force will meet with the Executive Officer to discuss this matter.

If you have any comments or questions, please let us know as soon as possible.

cc: Metro Council
Rena Cusma, Executive Officer
Ray Phelps, Finance & Administration
Don Rocks, Executive Assistant



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: December 29, 1989

To: Councilors Mike Ragsdale, Tanya Collier, Jim Gardner
and Judy Wyers

From: Rena Cusma, Executive Officer *[Signature]*

Regarding: Council Space Expansion

I am proposing an alternate expansion scenario for consideration which I believe meets the stated objectives of the task force and may have other advantages as well.

Ray's vacated office would become the Presiding Officer/Council space. It ties well to the Council lounge if you simply place the entry door directly across from the hallway entry door to the lounge.

The present door and glass on Ray's vacated office entry wall would become a solid wall.

The advantages are:

1. A better traffic pattern between P.O. office and lounge (left and right off the hallway instead of two cumbersome in-line offices.)
2. Better lounge utility (adding a third door to the lounge eliminates wall space and makes furniture arrangement difficult and limited.)
3. Eliminate need for potentially costly sound proofing (and who knows how effective it would be) between P. O. and E. O. offices.
4. Walling off the present entry to Ray's vacated office allows improved re-arrangement and enlargement of Executive Secretary work space.

kd

cc: Dick Engstrom
Ray Phelps
Don Rocks

SCS ENGINEERS

SHEET _____ OF _____

CLIENT	PROJECT <i>Metro South</i>	JOB NO.
SUBJECT <i>Cost Estimate Breakdown</i>	BY <i>G. Smith</i>	DATE <i>1/18/90</i>
	CHECKED	PAGE

Item	\$	Mobilization @ 10%	Totals
Building, Dozer Ramp & Piles	1,170,000	370,000 <i>117,000</i>	370,000 1,287,000
Control Room	60,000	6,000	66,000
Access Road for Compactors	160,000	16,000	176,000
Landscape	365,000	36,500	401,500
Trailer Storage	385,000	38,500	423,500
Misc. Site Work	165,000	16,500	181,500
Totals	2,305,000	230,500	2,535,500
15% Contingency + Contractor Profit			2,915,825

PRELIMINARY