



METRO

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

Agenda

Meeting: **METRO COUNCIL**
Date: **June 8, 1989**
Day: **Thursday**
Time: **6:30 p.m.**
Place: **Council Chamber**

Approx.
Time*

Presented By

6:30 p.m. **CALL TO ORDER/ROLL CALL**

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS**
3. **EXECUTIVE OFFICER COMMUNICATIONS**
4. **CONSIDERATION OF MINUTES OF March 23 and April 13, 1989**
(Action Requested: Motion to Approve the Minutes)
5. **ORDINANCES FIRST READINGS**

6:45
(5 min.) 5.1 **Ordinance No. 89-299, Amending Ordinance**
No. 88-247 Revising the FY 1988-89 Budget
and Appropriations Schedule for Zoo
Visitor Services Operations (Action
Requested: Referral to Finance Committee)

5.2 **Ordinance No. 89-298, Amending Ordinance**
No. 88-247 Revising the FY 1988-89 Budget
and Appropriations Schedule for Convention
Center Capital Fund Project Costs (Action
Requested: Referral to Finance Committee)

6. **RESOLUTIONS**

6:50
(15 min.) **BEFORE THE CONTRACT REVIEW BOARD OF THE**
METROPOLITAN SERVICE DISTRICT

REFERRED BY THE SOLID WASTE COMMITTEE

6.1 **Resolution No. 89-1104, For the Purpose of**
Exempting Proposals for the Metro East
Station from Competitive Bidding Procedures
(Action Requested: Motion for Contract Review
Board to Adopt the Resolution)

Cusma

7:05 8. **COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS**

7:15 9. **ADJOURN**

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

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

March 23, 1989
Regular Meeting

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

Councilors Absent: Roger Buchanan

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

1. INTRODUCTIONS

None.

2. CITIZENS COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

3.1 Presentation of the Executive Officer's Recommended Budget for FY 1989-90

Executive Officer Cusma presented her budget message which was printed in the document entitled "Proposed Budget 1989-1990." She explained the focus of the proposed budget was to implement projects that had been initiated the previous year. Implementing projects, she said, would include construction of the Oregon Convention Center, starting the operations phase of the Convention Center, closing the St. Johns Landfill, opening the new landfill in Gilliam County, aggressive solid waste reduction programs, constructing a solid waste composting facility, operating the new Metro Zoo Africa Exhibit, planning new Zoo exhibits, managing the Urban Growth Boundary and development of an Urban Growth Management Plan, providing transportation planning services to local governments, operating the Regional Land Information System, and expanding financial and program capabilities provided by a newly installed computer system. Finally, Executive Officer Cusma explained that Ordinance No. 89-294, scheduled to receive a first reading at this Council meeting, was the formal vehicle for consideration and adoption the FY 1988-89 budget.

EXECUTIVE SESSION

at 5:45 p.m., Presiding officer Ragsdale called the meeting into executive session under the authority of ORS 192.660(1)(h) to discuss litigation matters with legal counsel. All Councilors were present at the executive session except Councilor Buchanan who was absent. Executive Officer Cusma, Ray Phelps and Andy Cotugno were also present. Presiding Officer Ragsdale called the meeting back into regular session at 6:00 p.m.

4. CONSENT AGENDA

Motion: Councilor DeJardin moved, seconded by Councilor Bauer, to approve items 4.1, 4.2 and 4.3 of the consent agenda.

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

The motion carried and the following items were approved:

4.1 Minutes of February 23, 1989

4.2 Resolution No. 89-1063, Amending the Transportation Improvement Program to Allocate Interstate Transfer Funds for the King-Harrison 42nd Avenue Project

4.3 Resolution No. 89-1064, Allocating Federal-Aid Urban Funds for FY 1989-90

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 89-291, Amending Ordinance No. 88-247, Revising the FY 1988-89 Budget and Appropriations Schedule for Computer Purchases and System Reconfiguration for the Public Affairs Department

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

5.2 Ordinance No. 89-292, Amending Ordinance No. 88-247, Revising the FY 1988-89 Budget and Appropriations Schedule for Zoo Operations and AfriCafe Basement Improvements

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

5.3 Ordinance No. 89-294, Adopting the Annual Budget for Fiscal Year 1989-90, Making Appropriations and Levying Ad Valorem Taxes

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

6. ORDINANCES, SECOND READINGS

6.1 Consideration of Ordinance No. 89-284, Amending the Urban Growth Boundary for Contested Case No. 88-1: Zurcher Property

The Clerk read the Ordinance by title only for a second time. Presiding Officer Ragsdale announced the Council would consider the ordinance in its capacity as a quasi-judicial body and that the ordinance had first been read before the Council on January 26, 1989. Dan Cooper, General Counsel, then reviewed the history of the Zurcher case. He explained the Council had previously adopted Resolution No. 88-987 on September 22, 1988, which expressed the Council's intent to amend the Urban Growth Boundary (UGB) for the petition. Prior to acting on this ordinance the applicants had successfully annexed their property to Metro, a process which had required Boundary Commission approval. Finally, Mr. Cooper advised the Council that the legal description of the property had changed due to the annexation process and the Council was now considering Ordinance No. 89-284 as amended.

Motion: Councilor Devlin moved, seconded by Councilor Knowles, to adopt Ordinance No. 89-184 to included the amended property description (Attachment A).

Councilor Knowles declared staff had responded to his information request of January 26 and he was now prepared to vote.

Vote: A roll call vote on the motion resulted in:

Ayes: Councilors Bauer, Devlin, DeJardin, Hansen, Kelley, Knowles, Van Bergen and Ragsdale

Nays: Councilors Collier, Gardner and Wyers

Absent: Councilor Buchanan

The motion carried and the ordinance was adopted as amended.

6.2 Consideration of Ordinance No. 89-290, Amending the 1986 Waste Reduction Program and the Regional Solid Waste Management Plan

The Clerk read the ordinance by title only a second time. The Presiding Officer explained the ordinance had been introduced by the Solid Waste Committee and received a first reading before the Council on March 9, 1989, after which it was referred to the Solid Waste Committee. The Committee conducted a public hearing on March 14.

Councilor Hansen, Chair of the Solid Waste Committee, summarized the Committee's written report and recommendation to the Council. The Committee, he explained, recommended the Council adopt the ordinance and that no action be taken to secure a stipulated order with the Environmental Quality Commission (EQC) regarding the Waste Reduction Program. He said both the Council Solid Waste and Finance Committees had recognized the importance of regional waste reduction efforts by recommending allocation of additional resources to implement an aggressive waste reduction program. Adoption of Ordinance No. 89-290 would amend the 1986 Waste Reduction Program as shown in Exhibit A of the Ordinance. It would also amend the Waste Reduction Chapter of the 1988 Solid Waste Management Plan, he said.

Motion: Councilor Hansen moved, seconded by Councilor Bauer, to adopt Ordinance No. 89-290.

In response to Councilor Knowles' question, Councilor Hansen explained the Waste Reduction Work Program would remain essentially the same regardless whether the EQC issued a stipulated or unilateral order to Metro. It was understood that if the Council took no formal action to adopt the stipulated order, the EQC would issue a unilateral order. Bob Martin, Solid Waste Director, concurred that the differences between the two types of orders were more form than substance.

Councilor Van Bergen supported the amended Waste Reduction Plan although he was concerned staff not repeat mistakes made by not carrying out the initial, 1986 version of the plan. He requested that progress on the Plan be tracked.

Councilor Hansen acknowledged that Councilor Van Bergen's concerns were warranted and he had asked Council staff to prepare a chart of specific dates where action and project completion would be required. He said he would consider the Waste Reduction Program schedule a top priority.

Peter Spendilow of the Department of Environmental Quality commented that the Department would have preferred the Council

approve the stipulated order. However, he said, he looked forward to moving on and working with Metro to accomplish the work plan.

Vote: A roll call vote on the motion to adopt the ordinance resulted in all eleven Councilors present voting aye. Councilor Buchanan was absent.

The motion carried and the ordinance was unanimously adopted.

Because the Council was ahead of the printed meeting schedule, Presiding Officer Ragsdale determined that item 7.2 would be considered ahead of Item 7.3, the hearing on Resolution No. 89-1053.

7. RESOLUTIONS

7.2 Consideration of Resolution No. 89-1040, Supporting the Establishment of the Oregon Convention Center Urban Renewal District and Development of a Convention Headquarters Hotel Near the Oregon Convention Center

Convention Center Committee Chair, Councilor Knowles, reported the Committee had recommended adoption of the resolution Councilor Kelley, however, had voted against that recommendation. He summarized the resolution would encourage the City of Portland to form an urban renewal district and plan a headquarters hotel in a designated area surrounding the Convention Center.

Motion: Councilor Knowles moved, seconded by Councilor Van Bergen, to adopt the resolution.

Councilor Kelley said she had originally intended to file a minority report but had concluded it was in the Council's best interests to support the urban renewal district. She explained she had several reservations about the plan including using hotel/motel tax funds to subsidize the proposed headquarters hotel which could be perceived by the hotel/motel industry as creating unfair competition. The Councilor declared she would abstain from voting on the motion.

Councilor Van Bergen said he endorsed the resolution because a headquarters hotel was needed. He further explained he was not an advocate of tax increment financing so he supported this action which would place a lid on increased valuation.

Councilor Gardner said was convinced a headquarters hotel was needed after reading a report recently prepared by the Portland/Oregon Visitors' Association. He was concerned that the report had not addressed why a subsidy of the project was

necessary. He said he would support the resolution, however, and leave the subsidy issue for the City of Portland to deliberate.

Councilor Knowles concurred it was the City's proper role to decide if a subsidy was needed for the proposed headquarters hotel.

Vote: A vote on the motion resulted in all Councilors voting aye except for Councilor Kelley who abstained from voting. Councilor Buchanan was absent.

The motion carried.

7.3 Consideration of Resolution No. 89-1066, Opposing Senate Bill 455 and House Bill 3401 Relating to Metro Governance

Councilor Gardner, Chair of the Legislative Task Force and the Intergovernmental Relations Committee, reported that at its February 17 meeting, the Task Force voted unanimously to recommend the Council take a formal position against SB 445 and HB 3401. He said the two bills were identical and addressed Metro governance issues including: 1) reducing the Council from 12 to 7 members; 2) requiring the Secretary of State to reapportion subdistricts for six Councilors; 3) electing the Council Presiding Officer from the District at large; 4) requiring the appointment of a Metro "advisory committee" to serve at the budget committee; and 5) appointing the Metro Administrative Officer. He reported that the above positions were all contrary to the Council's stated position on governance issues.

Motion: Councilor Gardner moved, seconded by Councilor Devlin, to adopt Resolution No. 89-1066.

In response to Councilor Devlin's question, Councilor Gardner briefly discussed the evolution of the two bills.

Vote: A vote on the motion to adopt the resolution resulted in all nine Councilors present voting aye. Councilors Buchanan, Knowles and Wyers were absent.

The motion carried and the resolution was adopted.

Presiding Officer Ragsdale called a recess at 6:55 p.m. The meeting reconvened at 7:05 p.m.

7.1 Consideration of Resolution No. 89-1053, Awarding a Contract for Waste Transport Services to Jack Gray Transport Services, Inc. (Public Hearing)

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

Solid Waste Committee's Report and Recommendation

Councilor Hansen, Chair of the Council Solid Waste Committee, emphasized that the central feature in bidding the project was to keep all transportation options open in order to achieve the lowest possible disposal rates for the public. He then read the entire written report and recommendation of the Committee, dated March 15, 1989, which had been printed in the meeting agenda packet. The report discussed a brief history of the project, the dates of Committee discussion and hearings, key questions and issues raised by Committee members and the public during hearings, and the Committee's formal recommendation concerning Resolution No. 89-1053. The Committee had voted 4 to 1 to recommend Council adoption of the resolution, Councilor Wyers casing the no vote.

Staff's Report and Recommendation

Bob Martin, Solid Waste Director, summarized staff's written reports dated February 6 and 17, 1989, which were printed in the meeting agenda packet. He also pointed out that all phases of the transportation project had been carried out in an open, public forum beginning with hearings before the Department of Environmental Quality (DEQ) in 1987. Hearings had also been conducted in Gilliam County as part of the process for granting a conditional use permit for the Arlington Landfill. Mr. Martin was concerned the local media were under the mistaken impression that Metro would entertain the single option of rail transport to the Arlington Landfill. He said Metro had never stated any preference for rail transportation and had always discussed options for rail, barge and trucking modes.

Mr. Martin then reviewed the process by which staff had developed bid documents, advertised for bids, conducted public hearings, and analyzed the five bids received. He also explained staff had recommended the transportation contract be awarded to Jack Grey Transport, Inc. (JGT) because it had bid the lowest fixed price element and the lowest price per load.

Mr. Martin described key features of the 20-year transportation contract. He explained that most elements had been developed to tie in with the 20-year landfill operations contract. Waste would be compacted and loaded into totally sealed transport truck trailers. Mr. Martin then presented graphics to illustrate the configuration of the transport trucks and trailers proposed to be used for the project. Although the contract had specified a maximum 32 tons per load, average weights per load would more likely be about 28 tons. He deemed JGT's proposed equipment and plans safe and explained the contractor was required to provide a specific operations plan upon execution of the agreement.

Mr. Martin pointed out that Addendum No. 4 (the "fuel price adjustment factor") to the request for bids had been issued in order to separate out the cost of fuel costs from other factors. This action had been taken because of the volatile nature of fuel prices, especially over the 20-year term of the agreement. Staff had determined the fuel price adjustment factor would create a more competitive bidding situation between rail, barge and truck transportation modes.

Mr. Martin said staff had conducted a background check on JGT and had determined the company was in sound financial condition and had an excellent safety and deliver record.

Gary Goldberg, Executive Vice President of JGT, discussed the company's background and the fact it had ample experience carrying solid waste over long distances with no problems. He said if JGT were awarded the contract, a transport schedule would be worked out so that waste could be hauled at times other than during rush hours. If I-84 were closed during periods of inclement weather, waste could be stored in containers, although he did not think such delays would pose serious problems based on research of road closures. Mr. Goldberg noted that during the term of the contract, JGT would be contributing approximately \$35 million for the maintenance of I-84 and I-205 via taxes. He also thought if his company were awarded a contract for hauling waste from the Seattle area to Eastern Oregon, it would be hauled over I-90 rather than along I-84. The contract with Metro, he said, would contribute to Oregon's economy by creating more than 100 new jobs, which was a "win-win" situation for Eastern Oregon.

Concluding staff's report, Mr. Martin said staff had analyzed the impact of truck traffic related to this project on the total traffic load along I-84. Staff had concluded that traffic would increase about 3-1/2 percent a year and, given JGT's commitment to haul waste during off-peak hours, I-84 could easily handle the additional traffic.

Responding to Councilor DeJardin's questions, Mr. Goldberg explained that with Metro's authority, JGT could arrange to haul back other types of loads when returning from Gilliam County to Portland.

In response to Councilor Hansen's question, Mr. Martin said he was not aware of any local government councilors in the Columbia River Gorge area taking formal action against Metro's recommendation. He had attended some hearings in The Dalles area and was aware that Cascade Locks had not adopted a resolution against the project, that The Dalles was split on a recommendation and that Rufus and Gilliam County supported the project.

Councilor Bauer asked the price difference over the 20-year life of the contract between JGT's bid and the second lowest bidder, Knappton Barge. Mr. Martin reported that Knappton's bid was about \$21.7 million higher than JGT's.

Public Hearing

Don Clark, representing the Columbia River Gorge Commission, testified the bi-state commission thought it poor public policy to truck garbage through the Columbia River Gorge to the Gilliam County Landfill. Metro's recommendation, he said, would "fly in the face" of other public policies. He urged Metro to pursue a transportation option that would reserve the Gorge area for tourism, conserve energy, de-emphasize automotive vehicles, and reduce air pollution. He challenged the Council to change its policy and to look into the future.

Richard Benner, Executive Director of the Columbia River Gorge Commission, asked the Council to consider factors other than contract price into its decision. He asked the Council to make a unique choice by selecting rail or barge as the transportation option. He explained that both those options would allow for one daily shipment versus many truckloads. He also cautioned that Metro's decision would have an influence on how other communities would choose to transport waste to Eastern Oregon landfills.

Jack Mills, Commissioner, Hood River County, testified the Commission had sent a letter to Metro requesting the trucking option not be used to transport Waste to Eastern Oregon and that Metro rebid the contract. Acknowledging that rail and barge bids had come in much higher and truck bids, he explained that recent discussions with rail and barge people had led him to believe if the project were rebid, rail and barge bids would be lower.

Ken Rosemont, Commissioner, Hood River County, explained the Commission had unanimously opposed Metro's proposal to truck solid

waste through the Gorge area. He said the Commission was against that option because transport trucks would be detrimental to the experiences of tourists traveling through that area. Commissioner Rosemont discussed the hazards of trucks through the Gorge in inclement weather, the fact that trucks were prone to accidents, and that Portland's garbage trucks would encourage Seattle to transport its waste to Eastern Oregon landfills in the same way. He strongly encouraged the Council to reject all bids and to employ safer and more environmentally sound transport modes.

Adele Newton, 7700 S.W. Alden, Portland, President, Columbia River League of Women Voters, reported her organization had adopted a position paper in support of the most efficient transportation mode. She thought that trucking would be the most inefficient mode over the long term due to high oil and highway maintenance costs, creation of air pollution, and the fact that tourists would be deterred by transport trucks on I-84. Ms. Newton suggested the Council shorten the term of the contract and dispose of waste in landfills that were closer to Portland until alternative transportation modes could be arranged.

Ken Jenstedt, Mayor, Hood River, said he agreed with Ms. Newton's testimony.

Kate Mills, a member of the boards of the Friends of the Columbia River Gorge and the Hood River Residents Committee, urged the Council to consider transportation modes other than transport trucks.

Nancy Moller, representing the Friends of the Columbia River Gorge and the Hood River Residents Committee, asked the Council not to use trucks to transport waste through to Eastern Oregon because she was concerned that increased use of fossil fuels would have an effect of global warming.

John Smalley, a resident of Arlington, said he favored trucking waste to Eastern Oregon because of the beneficial economic impact on the Arlington area.

Nancy N. Russell, 4921 S. W. Hewett Boulevard, Portland, founder of the Friends of the Columbia River Gorge, testified she had been a tour guide in the Gorge area for a number of years and considered herself an expert on travel conditions in that area. She then discussed specific safety statistics for the three modes of transportation. In the same three year period, 8 trains had derailed, no barge accidents had occurred, but 192 truck accidents had been reported in the Gorge area. She was concerned about the special, large loads of waste that JGT would be hauling and pointed out they had not yet received special permits from the state for

this project. She thought it could be a potential problem for Metro if a PUC hearing would be required as part of that permit process.

Ms. Russell pointed out that barges could be scheduled to haul waste in a way that would not interfere with wind surfing activity. Trucks, however, would be subject to hazardous road conditions such as high winds, ice and rain. She noted that I-84 had recently been closed to mobile homes due to black ice conditions. She also said I-84 had been intermittently closed on March 2, the day the Council Solid Waste Committee conducted its hearing on the transport project. Road closures and safety considerations would not be an issue if the transport contract were awarded to a barge or rail company, she said.

Ms. Russell said she was concerned that no one had yet seen JGT's proposed trucking plan and that no direct answers had been given to her questions. She questioned where truck stops would be located.

In summary, Ms. Russell thought the Council's argument of saving money by awarding the contract to JGT was weak. She thought if each citizen paid just a little more money for garbage disposal, the region would benefit in many ways. Advocating that the project be rebid, she said it was her understanding that Knappton could be on line within six months after a contract were awarded. Finally, she pointed out the public was overwhelmingly opposed to trucking waste from Portland to Eastern Oregon, citing recent media polls.

Rick Hayden, 222 S. W. Columbia, 1400 KOIN Center, Portland, representing Trans-Industries, the second low bidder for the transportation project, asked the Council not to approve the JGT contract because of legal, economic and environmental aspects. He pointed out Metro's bid specifications were potentially unconstitutional. He thought money could be saved by rebidding the project and removing the unconstitutional elements from the bid requirements. He also thought if the project were rebid, more weight could be given to fewer trips per day. Finally, Mr. Hayden said that if Metro decided to rebid the contract, his company could be prepared to submit a bid within two weeks of receiving the bid invitation and could commence the project by January 1, 1990. He said the Council would be foreclosing any future environmental options and would be taking a lot of major risks by not rebidding the project.

Steve Hadley, 12405 S.E. Schiller, Portland, asked the Council to postpone its decision and to conduct hearings in the effected communities along the Gorge. He thought an oversight committee could be established to resolve some of the problems discussed at

this meeting. He suggested JGT could pay mitigation fees which could be used to enhance tourism in the Columbia River Gorge. Mr. Hadley submitted a letter for the record.

Dick Grup, 6116 N. Detroit, Portland, said he agreed with Don Clark's earlier testimony and asked Metro to make a decision based on what the general public wanted. The public, he said, wanted traffic off roads along the Columbia River Gorge.

John Thornton, 1416 Dodge Street, Omaha, Nebraska, an attorney for Union Pacific Railroad, testified he was of the opinion that JGT's bid came in lowest because of the last minute provisions of Addendum No. 4 ("fuel cost escalator"). He cautioned that those provisions could result in higher costs over the long run and that Metro should therefore rebid the contract.

Mr. Thornton explained he had prepared Union Pacific's bid Metro for the transport project. He said when the fuel cost escalator had first been discussed, he had submitted a written protest to Metro because he thought the escalator would pose a disadvantage to rail and barge transportation modes. He said his objections received little response from Metro staff. Mr. Thornton testified it was unfair of Metro to change the bidding rules after he and others had done their initial bid calculations. He also thought it unfair to Metro taxpayers because the fuel escalator provision would result in a higher contract sum due to fuel cost increases.

Joseph Wraber, Mayor, City of Cascade Locks, 207 4th Avenue, Box 308, Cascade Locks, said the City of Cascade Locks was not taking a position for or against a particular transportation mode. The City wanted to be involved, however, in Metro's plans for transporting waste to Eastern Oregon because the plans would have an impact on the Cascade Locks area. Mayor Wraber pointed out that many serious traffic accidents had occurred in the Cascade Locks area and the City wanted to know how Metro planned to minimize and mitigate potential problems. He recommended Metro establish a telephone hotline and a steering committee comprised of impacted communities to oversee transport project activities. He suggested Metro also develop contingency plans in case roads were closed due to inclement weather or other conditions.

Estle Harlan, 222 Lake Road, Milwaukie, representing the Tri-County Council of haulers, read a statement which she submitted for the record. The Tri-County Council, she testified, supported Council adoption of Resolution No. 89-1053 for two reasons: 1) awarding the contract to the lowest bidder, JGT, would keep disposal costs at a minimum; and 2) any major delay in awarding the contract would have the likely effect of increasing disposal costs and creating

significant disposal problems because St. Johns Landfill would be closed.

Tom Mallory, 7308 S. W. LaView Drive, representing the Teamsters Union, testified in support of trucking waste to Eastern Oregon. He said trucking would generate jobs and would tax revenue for improving state highways.

John Howell, representing the Association of Citizens for Better Transit, testified in support of transporting waste by rail. He said that railways paid taxes to government and paid their share for the fixed infrastructure while trucking companies did not. He advised Councilors to get a copy of the pamphlet entitled "Why Our Highways Wear Out and Who Should Pay for the Upkeep" and quoted from the booklet. Referring to another pamphlet on highway safety, Mr. Howell discussed the potential hazards of road transport, saying that trucking accidents caused about three times as many deaths as did automobiles in a year. In summary, he said that by voting to approve the JGT contract, the Council would be voting to kill 15 people a year.

David Utzinger, 2237 S. ER. 32nd Place, Portland, explained that Don Clark's earlier comments echoed his concerns. He was also concerned that empty transport trucks returning from Eastern Oregon would pose a traffic hazard due to high winds along the Columbia Gorge area.

Jerry Blake, 1625 N.W. 27th, Portland, 97210, concurred with the previous testimony of Don Clark, Richard Benner, Nancy Russell and Jack Mills. He said the Columbia River Gorge was a natural resource and the back road to the dump. He asked Metro to take time and examine the big picture, keeping national interests in mind.

Michael Santacroce, 9943 S.E. Woodstock Court, Portland, testified he had lived in Hood River County 15 years and thought County residents did not want waste transport trucks in their area. He said roads were already unsafe and Metro's project would make a bad situation worse. He asked the Council to reconsider awarding the contract to a rail or barge company.

Carla Van Cleave, P.O. Box 2282, Portland, President, Transit Riders' Association, said the Association favored other transit alternatives to trucking. She thought it odd that Metro, the region's transportation planner, should select trucking as the mode of transporting solid waste to Eastern Oregon. She said many taxpayers were willing to pay more for the transport project and that the extra money would be recovered by an improved environment.

Senator Wayne Fawbush, 5000 Clear Lake Road, representing himself, said he could not recall any discussion at early landfill hearings about which mode of transportation would be used. He said Don Clark had spoken to the issue earlier when he had discussed how train transport would be much safer for the environment, equipment and people. He also noted that truck transport contained hidden costs to taxpayers. Senator Fawbush challenged the Council to show leadership by making the hard decision.

In response to JGT's earlier claim that truck transport would create new jobs in the Arlington, Oregon area, the Senator said only half of those jobs would be for Arlington residents due to truck turn-arounds. He said if the waste were transported by rail, more local jobs would be created due to the need to transfer waste from the train to the landfill.

In conclusion he asked the Council to question whether awarding the contract to JGT would be a good policy given the traffic and environmental impacts of that decision.

Lennart Swenson, 38909 E. Crown Point Highway, Corbett, testified he had moved from Brooklyn, New York, and had seen "the best and the worst." Any impact on the Columbia River Gorge was a factor to consider, he said. He cautioned it had been over 20 years since the last real blizzard in the Gorge area and traffic problems could be significant. Hidden costs such as road maintenance also had to be taken into consideration in the cost of the truck transport bid. Based on his engineering experience with the Bonneville Power Administration and experience in procuring major equipment, he advised that the contract could be rebid at a lower price.

Sam McKinney, 0302 S.W. Nebraska, Portland, Executive Director, Columbia River Heritage Association, testified he had not been paying close attention to the transport project because he had assumed Metro would pursue a rail or barge transport option. He noted that many communities were starting to pay a high price in damage to the environment because they had opted for the cheapest disposal solution. He also noted that tourism would bring in more dollars in one year than the trucking contract would cost for 20 years. Finally, Mr. McKinney questioned the risk of trucking garbage through the Gorge area when many weather and road hazards could cause problems.

Jim Dutoit, 600 S.W. Market, Portland, representing motorist members of the Oregon Automobile Association of America (AAA), thought the weight of the trucks proposed for use by JGT had been underplayed. He was concerned that truck weights would pose a hazard to bridges and would cause road damage. The State of Oregon could not keep up with road repairs, he said.

William Robinson, 6404 S.E. 40th, Portland, testified his ancestors had arrived in Oregon in 1844 by way of the Columbia River. He discussed the hazards of traveling through the Gorge area and thought that transporting waste by truck was neither safe nor wise.

George Starr, 909 N.E. 114th, Portland, a retired railroad employee, recalled times when his train had stopped to pick up truckers in the Gorge area who had been stranded due to inclement weather. He asked the Council to refer back to the Solid Waste Committee records when the Committee had discussed the option of Metro owning its own rail cars.

Barbara Robinson, 16861 Hattan Road, Oregon City, had to leave the meeting early but left her written testimony for the meeting record.

Robert C. Smith, 5856 N.E. 57th, Portland, Chair, Columbia Group of the Sierra Club, testified he was concerned about the aesthetics of awarding the contract to a trucking company, was concerned about the impact of truck traffic on small towns along the Gorge, and was concerned that trucks caused pollution, were less safe than other transportation modes, and less reliable. He was also concerned about the hidden costs of trucking waste. Mr. Smith thought it unfair that the railroad bid had factor in the cost of a transfer facility while trucking companies did not have to factor in that expense. He strongly urged the Council to reject all bids and to award the contract to a rail or barge company which would be in keeping with the overwhelming public sentiment. In conclusion, he said if Metro did accept bids from trucking companies, they should be made to include the cost of a transfer facility in their bids.

Bruce Amsbary, 522 S.W. 5th, Suite 1050, Portland, representing the Oregon Natural Resources Council, said the ONRC's position was that Metro should not truck waste through the Columbia River Gorge. The increased potential for truck traffic was significant, he explained, when compared to the fact that the same amount of waste could be hauled by one barge per day. He was also concerned about the negative impacts of truck traffic on tourism. The additional cost per household for barge or train transport was insignificant when detrimental factors were considered, he said. He said the ONRC recommended Metro eliminate trucking from all further consideration.

Presiding Officer Ragsdale called a recess of the Council at 9:40 p.m. The meeting was reconvened at 9:50 p.m.

Paul Tolhofer, P. O. Box 177, Troutdale, a member of the Troutdale City Council representing himself, testified the city council had

adopted a neutral position on the trucking/transport issue. He was concerned there was a lot of misinformation and lack of information about the facts. He urged Metro to conduct meetings with all communities along the Gorge, and with the City of Troutdale because of its proximity to Burns Brothers Truck Stop. He supported the testimony of Mayor Wraber from the City of Cascade Locks that citizen involvement was needed and that the transport contract should include mitigation clauses before the contract was signed.

Janet Tobkin, 2637 S.W. Water, Portland, founder of the Friends of Mount Hood and speaking for herself, said she was concerned about the effects of transport trucks on traffic in the Gorge area. She was also concerned that I-26 and I-30 were being considered as a transport route for trucking waste from the Seattle area to Eastern Oregon. That activity, she explained, would compete with recreational interests. Ms. Tobkin thought scenic areas needed to be preserved to maintain the area's status as magnets for attracting tourists. She asked the Council to listen the public and to learn from them. She favored rail for transporting waste to Eastern Oregon.

Marie Holeman, asked the Council to transport waste by train rather than by truck.

Trudie Wilson, P.O. Box 544, Arlington, 97812, member of the Arlington Chamber of Commerce, said she favored trucking waste to Eastern Oregon and supported Metro's contractor selection process. She asked the Council not to set the precedent of limiting the use of a public roadway. The Arlington area needed the jobs the JGT contract would bring, she testified.

Hazel Seavey, Route 4, Box 580, Woodland, Washington, said she and her friends were very surprised Metro had considered trucking as an option for waste transport. She had assumed other modes would be used. Ms. Seavey said she travelled through the Gorge often and was concerned about bad conditions truckers would have to encounter. She did not believe trains and barges would cost more than trucks in the long term. She said, however, even if the cost were higher, it would be worth it if the beauty of the Gorge were preserved.

Judge Laura Pryor, representing the Gilliam County Commission, introduced the following people who addressed the Council in support of awarding the transport contract to JGT: City of Arlington Mayor Dennis Gronquist; Gilliam County Commissioner Alfred B. Clough; and Jeff Bachrach, attorney for Gilliam County.

Mayor Dennis Gronquist, City of Arlington, pointed out that the transport component of the landfill project had been discussed in

detail and Metro had now achieved what it had set out to do. He said the City had spent a lot of time with Gary Goldberg of JGT and was confident Mr. Goldberg was interested in working things out with the community. He thought it "crazy" that citizens were asking Metro to regulate traffic on an interstate highway.

Judge Alfred B. Clough, Gilliam County Commissioner, testified that the County had worked long and hard on the project and was protective of its land. He said Gilliam County residents had also heard a lot about tourism but to them it had turned out to be a cruel hoax that only amounted to minimum wage jobs. JGT, however, would bring in 100 new jobs and \$3.5 million in wages a year. He said that amounted to real economic development and Metro's solid waste had become Oregon's comeback.

Judge Clough reminded the Council that I-84 was selected as an interstate transport route because it was a feasible, all-weather route. It was also built to serve as a commercial highway and anyone with a properly licensed vehicle was free to use that road.

Jeff Bachrach, attorney for Gilliam County, urged the Council to take a more prudent course by following its contract procedures versus the dramatic new step advised by those testifying earlier. He commended Metro's staff for responding to Gilliam County's concerns and said there had been plenty of public forums to debate the issues. He then discussed the two-year public decision-making process and the fact that truck transport had never been excluded as an option for transporting waste to Eastern Oregon. Time was too short, he said, for Metro to back-track now. He also questioned how anyone other than the Governor could request the major east-west vehicle transport corridor be closed to business.

Judge Laura Pryor concluded the group's testimony by suggesting that another east-west highway was needed. She reminded the audience that I-84 was built by the Federal Government for national defense and commerce. She questioned whether Oregon would really be open for business if citizens successfully convinced the Council to restrict truck transport along I-84. Finally, she commended Metro for coming to grips with the important issue of solid waste disposal and supported its decision-making process.

David Chambers, speaking for the Democratic Central Committee, said the Committee had adopted a resolution supporting rail transport earlier in the evening. He applauded the leadership of Councilor Wyers and said that trains were clearly cheaper when all costs were considered. He submitted a copy of the Committee's resolution for the record and urged the Council to reject all transport bids.

Charles Ahlers, 26 S.W. Salmon, Portland, Executive Director, Portland/Oregon Visitors Association, said the P/OVA Executive Committee was concerned about the impact of increased truck traffic in the Columbia River Gorge and that traffic could compete with Metro's other interest of attracting visitors to its new Convention Center. He thanked the Council for its support of a headquarters hotel for the Convention Center by adoption of Resolution No. 89-1040 earlier in the evening.

Dan Whitter, The Dalles resident, pointed out that many trucks traveled on I-84 and people did not know the contents of those trucks. Garbage, however, was a known commodity produced in people's homes and yet citizens were alarmed about the effects of transporting that material on the roads. He also noted that tourists traveling in cars through the Gorge would cause the same types of pollution problems as trucks and they created trash along the roads. Trucks, he said, had more stringent safety standards than cars. He did not think road closures due to inclement weather would be a significant factor and he thought that the ratio of truck accidents to cars was probably very low. He favored trucking, saying it would have a positive economic impact on the City of Arlington.

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

Council Deliberation

Motion: Councilor Kelley moved, seconded by Councilor Devlin, the Council meet in executive session to consult with legal counsel about whether the proposed contract with JGT could be successfully challenged in a court of law as unconstitutional.

Vote: A vote on the motion resulted in:

Ayes: Councilors Collier, Devlin, Hansen, Kelley, Knowles, Wyers and Ragsdale

Nays: Councilors Bauer, DeJardin, Gardner and Van Bergen

Absent: Councilor Buchanan

The motion carried.

EXECUTIVE SESSION

The Presiding Officer called the meeting into executive session under the authority of ORS 192.660(1)(h) at 10:35 p.m. All

Councilors were present at the session except for Councilor Buchanan who was absent. Other persons present included Executive Officer Cusma, Dan Cooper, Vickie Rocker, Jessica Marlitt, and Don Carlson. Presiding Officer Ragsdale called the meeting back into regular session at 10:40 p.m.

Council Deliberation, Regular Session

At Councilor Kelley's request, Bob Martin, Solid Waste Director, reviewed how the fuel price adjustment factor (Addendum No. 4) would effect the long-term price of the JGT transport contract. Mr. Martin concluded that staff had carefully analyzed all bids and determined, using extreme conditions to Metro's disadvantage, that JGT's bid was still the lowest responsive bid.

Referring to Mr. Martin's memo to Councilor Gardner regarding the fuel escalator clause, Councilor Devlin asked Mr. Martin to explain staff's fuel assumptions. Mr. Martin responded that staff had used numbers supplied by transportation consultants.

In response to Councilor Collier's question, Dan Cooper, General Counsel, said that the issuance of Addendum No. 4 did not pose a legal impediment to awarding the contract to JGT.

Councilor Collier asked Mr. Goldberg to respond to citizen concerns about day versus night truck transport and asked if any decisions had been made regarding trucking schedules. Mr. Goldberg said JGT was exploring the best option that would have the least impact on Gorge communities and I-84 traffic. He said the operations plan would probably involve spreading out traffic between day and nights.

In response to Councilor Collier's question, Mr. Goldberg said no plans had yet been developed to bring back trucks from the Gilliam County Landfill with loads of other materials ("back-hauling").

Mr. Martin reported the contract would require JGT to submit an operations plan within 90 days after execution of the agreement. He said the process for developing a plan would provide an opportunity for an open dialogue with communities along the Columbia River Gorge.

Councilor Van Bergen questioned Mr. Goldberg about a rumor that his company had filed for bankruptcy. Mr. Goldberg responded that JGT had filed in the late 1960's, had recovered financially and had not filed a bankruptcy claim since that time.

David Douthwaite, attorney for JGT, answered Councilor Van Bergen's question by explaining JGT would file papers to do business in the State of Oregon once the contract was executed.

Councilor Van Bergen asked questions concerning the ownership of JGT and its relationship to Oregon Waste Systems and Browning-Ferris Industries. Mr. Goldberg responded that JGT was in no way tied to OWS and B-FI and that he did not serve on the boards of either of those two companies.

Responding to Councilor Van Bergen's question, Mr. Cooper, Metro's counsel, said Metro's contract with JGT prohibited assigning the contract over to any other party without Metro's prior approval.

Councilor Van Bergen asked counsel about the legal consequences of rejecting the bid and rebidding the contract to exclude trucks from transporting waste to Gilliam County. Mr. Cooper said if the contract were rebid Metro would be about 60 percent likely to succeed in sustaining its ability to rebid the project.

Councilor Wyers asked JGT to explain how the proposed operations plan would address state and federal regulations regarding allowable driving time. Mr. Goldberg answered the regulations limited driving time to 10 hours a day which would require trucks to leave Arlington in the morning.

Councilor Wyers asked Mr. Goldberg to describe operations plans that would impact The Dalles. Mr. Goldberg said he could not reveal truck rest sites prior to negotiating contracts but he could say that the Port of The Dalles was promoting a 150 acre site. Other sites were also being considered. Mr. Cooper added that Metro had required all bidders to answer general questions about operations plans in order to determine if they were qualified to perform the work. That information, he said, had to be kept confidential until the contract negotiation phase was complete.

Councilor Wyers asked if the jobs created by JGT would be union jobs. Mr. Goldberg said that decision would be made by JGT at a later time.

Councilor Wyers asked what criteria would be used to determine when a community was impacted by Metro's solid waste activities and when mitigation fees would be appropriate. Mr. Martin explained the Council had adopted a host fee plan and rules for administering that plan. He said although the Gorge area would be effected by Metro's solid waste activities, the host fee program would probably not apply to that area.

Councilor Wyers asked if there was time to rebid the project. Mr. Martin responded he did not concur with the opinion of others who had testified that the project could be rebid at this time. He explained that before the initial bid opening, rail representative had told him it would take one year from the time a contract was awarded to start transporting waste. He said both barge and rail operations would require a loading facility. He also reminded the Council it took six months to bid the first transport contract and that failure to start transporting waste by January 1, 1990, would mean Metro could be in default of its contracts with Oregon Waste Systems for the operation of the Gilliam County Landfill and with the City of Portland for operation of the St. Johns Landfill.

Councilor Devlin asked staff to explain the specific type of truck proposed for use by JGT. Jim Watkins, Engineering Manager, said five-axle trucks would be used.

Councilor Devlin said he would not support Resolution No. 89-1053, explaining it was a major, 20-year policy decision and not a simple decision about awarding a bid. He had also received about 100 letters from citizens opposed to trucking waste to Eastern Oregon. He was concerned that many of the major issues had not been investigated and that the trucking option was not consistent with the environmental goals of the Regional Solid Waste Management Plan.

Councilor Hansen supported the integrity of Metro's bid process, saying it had been lengthy and thorough. He regretted that citizens had not commented earlier in the decision-making process. He was also concerned that two vendors who had bid on the project had told the Council if it rebid the project, they could submit lower bids. Councilor Hansen advised those bidders to submit their best bids the first time around. Finally, the Councilor said he was not convinced that traffic created by the transport trucks would have a major impact on Gorge area traffic. He thought it unfair that Metro's garbage was being singled out as the one commodity unfit to be transported on I-84. He also thought that was placing an unfair restriction of Eastern Oregon's economic growth.

Councilor Wyers challenged the Council to listen to what the public was telling them. Over 13,000 people had called KATU-TV to register their opinion about the proposed trucking contract and over two-thirds of those callers were against trucking, she reported. She also pointed out that most of the testimony received at this meeting was against the trucking option.

Councilor Kelley said she did not think any Councilor wished to pollute the environment. However, she explained, the cost

difference between the trucking and barge or rail options was a significant factor. That cost savings was need to close the St. Johns Landfill and to build the new Metro East Station. The Council had to carefully consider its priorities, given it had limited financial resources. She said there were no easy solutions to garbage and challenged the Council and citizens to meet Metro's 50 percent recycling goal by the year 2000 in order to reduce the quantity of waste landfilled. She agreed that meetings between JGT, Metro and Columbia River Gorge communities should be arranged in order to work out an operations plan.

Councilor DeJardin explained that I-205 went by West Linn, his home town, and trucks transporting waste to Metro South Station traveled on that highway with no problems. He said the testimony he had heard was part of a pattern of citing the worst possible cases which never actually happened.

Vote: A vote on the motion to adopt Resolution No. 89-1053 resulted in:

Ayes: Councilors Bauer, Collier, DeJardin, Gardner, Hansen, Kelley, Knowles, Van Bergen and Ragsdale

Nay: Councilors Devlin and Wyers

Absent: Councilor Buchanan

The motion carried and Resolution No. 89-1053 was adopted.

Motion: Councilor Hansen moved that Resolution No. 89-1053 be reconsidered. Councilor Devlin seconded the motion.

Councilor Hansen explained that if the motion failed, all further options of reconsidering the resolution would be precluded. Mr. Cooper, General Counsel, concurred.

Vote: A vote on the motion resulted in:

Aye: Councilor Wyers

Nays: Councilors Bauer, Collier, DeJardin, Gardner, Hansen, Kelley, Knowles, VanBergen and Ragsdale

Abstain: Councilor Devlin

Absent: Councilor Buchanan

The motion failed to carry.

Presiding Officer Ragsdale called a recess at 11:50 p.m. The Council reconvened at 11:55 p.m.

8. Consideration of Ordinance No. 89-271E, Amending Metro Code Chapter 2.04 Relating to Contracting Procedures

The Clerk read the ordinance a second time by title only. Presiding Officer Ragsdale gave a chronological history of the process by which the ordinance had been developed and referred to the Council. The original version of the ordinance had been introduced by the Council Finance Committee and read before the Council a first time on October 27, 1988. The ordinance was then referred to the Internal Affairs Committee (IAC) where a series of work sessions and hearings were conducted on December 7, 8 and 22, 1988. On December 22, the IAC recommended that consideration of the ordinance be deferred 30 days so that a task force could study specific issues and recommend a course of action to the Committee. Members of the task force had included Executive Officer Cusma and Councilors Ragsdale, Knowles, DeJardin and Bauer. The task force had presented its recommendation to the IAC on January 27, 1989, in the form of a revised version of Ordinance No. 89-271. The Committee continued consideration of the ordinance on February 7, February 21 and March 9.

The Presiding Officer referred Councilors to a version of the ordinance that had been recommended for Council adoption earlier in the evening by the IAC. Councilor Collier then explained that her minority report consisted on the IAC's recommendations plus the proposed amendments listed in her motion below. She said if the Council adopted those amendments, she would support adoption of Ordinance No. 89-271E. She still thought the ordinance would result in a convoluted contracting process but acknowledged the proposed legislation represented political compromise. She thought the ordinance would give the Council the fiscal and political oversight it needed.

Motion: Councilor Collier moved, seconded by Councilor Gardner, that the Council adopt the minority recommendation which consisted of Ordinance No. 89-271E as recommended by the Internal Affairs Committee and the following amendments:

- 1) Section 2.04.020(d) be changed to read: "The Executive Officer shall provide to the Council during the annual budget process a list of proposed contracts [for] to be entered into the ensuing fiscal year . . ."

2) Section 2.04.045(a)(5) be changed to read: "In addition to the requirements of this subsection, any contract amendment or extension exceeding [\$10,000] the amounts provided in subsection (2) shall not be approved unless . . ."

3) Section 2.04.045(a)(6) be changed to read: "In addition to the requirements of this subsection, individual change orders for a public improvement contract may be approved by the Executive Officer if they[:

[(A) do not exceed on a cumulative basis more than five (5) percent of the initial face value of the contract; and]

[(B)] do not materially add to or delete from the original scope of work included in the original contract.

Change orders exceeding [10,000] the amounts provided in subsection (2) which materially add to or delete from the original scope of work shall not be approved unless the Contract Review Board has specifically exempted the change order from the public bidding procedure. [Change orders exempted by the Contract Review Board shall not be considered part of the five (5) percent limit of this subsection.]"

Councilor Van Bergen said he would support the motion because agreement had been reached with the Executive Officer. He explained, however, he disagreed with General Counsel's legal opinion that the Council could not authorize contracts. He said the Council was Metro's Contract Review Board and could get another legal opinion if it so desired.

Vote: A roll call vote on the motion resulted in all ten Councilors present voting aye. Councilors Bauer and Buchanan were absent.

The motion carried the ordinance was amended.

Motion: Councilor Collier moved, seconded by Councilor Kelley, to substitute the minority report as amended for the majority report.

Councilor Devlin said he agreed with Councilors Van Bergen and Collier that Ordinance No. 89-271E as amended was far from perfect.

He thought, however, the ordinance was preferable to Ordinance No. 89-249.

Vote: A roll call vote on the motion resulted in all ten Councilors present voting aye. Councilors Bauer and Buchanan were absent.

The motion carried.

Motion: Councilor Collier moved, seconded by Councilor Devlin, to adopt Ordinance No. 89-271E as amended.

Vote: A roll call vote on the motion resulted in all ten Councilors present voting aye. Councilors Bauer and Buchanan were absent.

The motion carried and the ordinance was unanimously adopted as amended.

Councilor Devlin suggested the Council pursue legislation to clarify the Council's role in contracting. Councilor Collier agreed, explaining the new contracting rules were convoluted and the reporting process was complicated.

Councilor Knowles thought the matter should be referred to the Council Legislative Task Force so that a strategy and the implications of legislative intervention could be deliberated.

Motion: Councilor Knowles moved, seconded by Councilor Kelley, to have the Legislative Task Force recommend to the Council whether it should seek state intervention/legislation on the matter of Metro contracting authority.

Councilor Wyers was not in favor of referring the matter to the task force, calling the proposed action a "stalling tactic."

Executive Officer Cusma strongly recommended Metro avoid taking the matter to the legislature because it could jeopardize other issues. She also pointed out the staff lobbyist could not assist the Council with its effort if she did not support its position.

Councilor Gardner doubted Metro could resolve the contracting matter internally and thought Ordinance No. 89-271D dodged the fundamental issue of contracting authority. He supported taking the matter to the legislature because a definitive decision would finally be made and a resolution could be reached.

Vote: A vote on the motion to refer the matter to the
Legislative Task Force resulted in:

Ayes: Councilors DeJardin, Gardner, Hansen, Knowles and
Ragsdale

Nays: Councilors Collier, Devlin, Van Bergen and Wyers

Absent: Councilors Bauer, Buchanan and Kelley

The motion carried.

9. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

Councilor Collier, Chair of the Budget Committee, thanked the
Executive Officer and her staff for submitting the proposed budget
on time.

There was no other business and the meeting was adjourned at 12:35
a.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

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MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

April 13, 1989
Regular Meeting

Councilors Present: Mike Ragsdale (Presiding Officer),
Sharron Kelley (Deputy Presiding Officer),
Roger Buchanan, Richard Devlin, Tom
DeJardin, Jim Gardner,
Gary Hansen, Sharron Kelley, David
Knowles, George Van Bergen and Judy Wyers

Councilors Absent: Tanya Collier

Others Present: Rena Cusma, Executive Officer
Dan Cooper, General Counsel

Presiding Officer Ragsdale called the meeting to order at 5:35 p.m. He announced that items 6.4 and 6.5 had been added to the agenda and that an executive session concerning bargaining agreement negotiations might be conducted as part of item 6.5. He also explained that the consideration time for item 6.4 was incorrectly printed in the agenda and would actually occur about one hour earlier.

1. INTRODUCTIONS

None.

2. CITIZENS COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

Executive Officer Cusma reported she would serve on the National Association of Regional Councils' Nomination Committee and that Councilor Ragsdale would be a keynote speaker at the NARC Conference in Houston.

4. CONSENT AGENDA

The Presiding Officer explained that revisions to the minutes had been distributed and that a motion to approve the consent agenda would include the revised version of the minutes.

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

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

The motion carried and the following items were approved:

4.1 Minutes of March 9, 1989.

4.2 Resolution No. 89-1077, Authorizing Easement for Bureau of Water Works, City of Portland, for Construction and Inspection of Water Line on Site of the Oregon Convention Center

5. ORDINANCE, SECOND READING

5.1 Consideration of Ordinance No. 89-292, Amending Ordinance No. 88-247, Revising the FY 1988-89 Budget and Appropriations Schedule for Zoo Operations and AfriCafe Basement Improvements

The clerk read the ordinance a second time by title only. Presiding Officer Ragsdale announced that the ordinance had received a first reading before the Council on March 23, 1989. The ordinance was then referred to the Council Finance Committee and the committee conducted a hearing on April 6.

Councilor DeJardin presented the Committee's report and recommendation explaining support was unanimous for the budget amendment. The Committee agreed that by providing funding for more visitor services workers and improvements for the cafe basement, the Zoo would be in a position to generate additional revenue. He also said the Convention, Zoo and Visitor Facilities Committee had supported the budget amendment.

Motion: Councilor DeJardin moved, seconded by Councilor Knowles, to adopt Ordinance No. 89-292.

Councilor Knowles said the Convention, Zoo and Visitor Facilities Committee had reviewed the contract for improvements to the AfriCafe Basement and had unanimously approved that project.

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

The motion carried and the resolution was unanimously adopted.

6. RESOLUTIONS

6.1 Consideration of Resolution No. 89-1070, Approving a Contract for Construction of the AfriCafe Basement

Councilor Knowles reported earlier in the meeting that the contract had been unanimously recommended for approval by the Convention, Zoo and Visitor Facilities Committee.

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

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

The motion carried and the resolution was unanimously adopted.

6.2 Consideration of Resolution No. 89-906, Supporting the Renaming of Union Avenue as Dr. Martin Luther King, Jr. Boulevard

Councilor Knowles, reporting for the Convention, Zoo and Visitor Facilities Committee, said the Committee recommended adoption of the resolution because it would have a positive effect on the Union Avenue area and would be in keeping with the spirit of Dr. King.

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

Councilor DeJardin concurred with Councilor Knowles remarks and added it was especially important, due to several recent incidents of racially motivated violence, the community honor Dr. King for the big difference he made in bringing people together.

Councilor Devlin noted that in supporting the street name change the Council would also be sending a signal to those in power that it was time to revitalize the area long Union Avenue into a district of which all Portland residents could be proud.

Councilor Hansen agreed with Councilor Devlin that the name change could represent a new start for the Union Avenue area.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilors Collier and Van Bergen were absent.

The motion carried and the resolution was unanimously adopted.

6.3 Consideration of Resolution No. 89-1061, Approving a Request for Proposals (RFP) to Solicit Private Proposals to Design, Construct, Own and Operate the Metro East Station

The Council briefly discussed whether to proceed with consideration of this item since the Council was ahead of the estimated, printed meeting schedule. Presiding Officer Ragsdale determined the Council would proceed with the item because the agenda had stated that all consideration times were approximate and that the Council might not consider items in the order listed on the agenda.

For the record, Councilor Van Bergen disclosed he owned stock in Oregon Waste Management, Inc. and asked that the disclosure be considered permanent and as applying to all future deliberations of the Council.

Presiding Officer Ragsdale turned over the gavel to Councilor Kelley because he would be presenting a minority report on the item.

Bob Martin, Solid Waste Director, introduced Jim Watkins, Solid Waste Engineer, who reviewed staff's written report and the RFP document. He said proposals would be due to Metro June 13, 1989, after which staff would evaluate the proposals, recommend a contractor and draft contract documents. A recommendation was scheduled for August 23, he said, and the project could begin in November 1989.

Deputy Presiding Officer Kelley opened the public hearing.

Jeanne Robinette, representing Oregonians for Cost Effective Government (OCEG), P.O. Box 384, Lake Oswego, distributed written copies of her testimony which she presented to the Council. She said OCEG applauded Metro's efforts to seek a private enterprise solution for this project because it was the most cost effective way to go. She was concerned, however, that Resolution No. 89-1061A (the Solid Waste Committee's majority recommendation), would unnecessarily limit the number of competitive proposals Metro could receive. She said Metro had already prevented monopoly control of the solid waste system via the language in the RFP document and Resolution No. 89-1061A, by controlling the floor of the transfer station, by tying rates to the Consumer Price Index and by providing economic incentives which would counter any interest the franchise holder might have in shipping and landfilling more waste than necessary. She urged the Council to keep the door open to as many firms as possible and to judge proposals after they were received.

Phil Dreyer, representing Oregon Fair Share, 742 S.E. 39th Avenue, Portland, advised the Council to protect against vertical integration. He explained that if one organization operated both the transfer station and landfill, there would be incentives to increase tipping fees.

Councilor Ragsdale presented the minority report on the resolution. He supported the amendments to the RFP and resolution as recommended by the Solid Waste Committee:

1. A requirement that vendors show proposal costs with and without a purchase option for the facility;
2. Language stating that the standards in the Mitigation Agreement were minimum standards; and
3. Language providing incentives for the Metro East Station Operator, rather than penalties for failure to meet recycling goals.

Resolution No. 89-1061B included Councilor Ragsdale's recommended amendments.

Motion: Councilor Ragsdale moved, seconded by Councilor Devlin, to substitute Resolution No. 89-1061B for the majority recommendation.

Councilor Ragsdale further explained the Solid Waste Management Plan required Metro to avoid vertical integration. He thought it would pose a serious problem if, after carefully working out a solid waste functional plan, Metro then determined it was not in its own best interests to follow that adopted plan. Integrity, he said, was the central issue. Councilor Ragsdale compared the minority position to not letting Ben Johnson compete in the Olympic Games because it looked like he was using steroids. Metro had to receive and evaluate the proposals before eliminating them, he said.

Councilor Hansen addressed the Council regarding why it should not allow the vertical integration issue to dominate the solid waste disposal system. The Council's decision concerning this issue would have a major impact on future business, he said. He first defined vertical integration as "principal or partial involvement by a private industry in the three primary functions of the solid waste system -- collection, transfer/materials recovery, and land disposal." He explained the definition had been retrieved from Metro's solid waste system glossary. The Council, he said, must use that same definition because it represented adopted policy.

It would be unfair at this point to determine the definition was too broad or too narrow. Therefore, he explained, the transfer station RFP, the RFP evaluation criteria and the franchise award must reflect that adopted policy.

Councilor Hansen concluded that by any definition of vertical integration, Oregon Waste Management's ownership of the region's only landfill, largest transfer station and its role as a major collector/hauler was a vertical monopoly. Metro's proper role was to avoid the possible vertical monopoly rather than regulate it, massage it, condone it or help it. The Solid Waste Management Plan clearly stated that Metro must avoid a vertical monopoly, the Councilor said. He defined the term "avoid" as meaning "to make void, annul, invalidate or quash." He further pointed out that judges in Washington County and Oregon City had ruled Metro must follow its own Solid Waste Management Plan. He thought awarding a franchise that would complete a vertical monopoly would constitute a clear violation of the Plan. He then questioned why Metro would waste the time to accept a transfer station bid when a vertical monopoly would result.

Councilor Hansen then reviewed the 18-month process for developing the Solid Waste Management Plan which had involved many local government representatives. The key points of discussion during those meetings, he noted, were avoidance of monopoly, whether solid waste services should be privately or publicly owned, and enhancement fees for host communities. One of the major compromises by the Council was allowance of privately owned transfer stations, he recalled. The driving force was that Washington County and many Councilors would not have considered privatization without language in the Plan to prevent unregulated Portland haulers from a "monopolistic grab."

Referring to Councilor Hansen's earlier reference to Ben Johnson, Councilor Hansen said that allowing vendors to bid who would represent a vertical monopoly for the sake of inviting competition was analogous to inviting Ben Johnson to compete in the Olympic Games because Carl Lewis needed the competition. To allow questionable vendors to submit proposals would, at best, confuse the issue, confuse the public, and produce a meaningless RFP, he said. At worst, it would result in those vendors manipulating their opponents.

Councilor Hansen discussed how a vertical monopoly would result in an inherent conflict of interest between transfer station and landfill operations. Using Oregon Waste Management, Inc. (OWM) as a hypothetical example, he pointed out that OWM would be paid on the basis of actual waste disposed in the landfill. The premise of Metro's Waste Reduction Plan was to reduce the amount of waste

landfilled. The transfer station, then, had to serve as a waste reduction tool if the reduction plan was to work. The inherent conflict between the transfer station and landfill had to be avoided. A conflict of interest also existed between the hauler and transfer station operator, he said. He explained it was in Metro's best interest to landfill as little as possible while it would be in OWM's best economic interest to landfill as much as possible. He questioned how -- given the above model -- OWM could serve two masters with two conflicting needs.

In conclusion, Councilor Hansen said that in his last six years as a Councilor, his main consideration in evaluating issues was to determine whether an action was necessary to get a solid waste system on line in a timely manner. In this case, he explained, a monopoly was not needed to complete the solid waste system. Vendors other than OWM were qualified to bid the transfer station project. Metro must keep faith with its regional partners and itself, he said, and he urged Councilors to "just say no" to the possibility of vertical integration.

Councilor Gardner said he shared many of Councilor Hansen's concerns regarding the potential for a monopoly of the District's disposal system. He did not think, however, the minority recommendation would put Metro in jeopardy. He also pointed out that the vertical integration issue was just one of ten unweighted criteria to be taken into consideration when evaluating proposals. He urged the Council to not take a position that would limit companies from submitting proposals and pointed out that proposals from companies already operating or owning disposal sites or transfer stations would be subject to very close scrutiny.

Councilor Devlin agreed with Councilor Ragsdale that the Solid Waste Committee had forwarded a recommendation to the Council that was contrary to the Solid Waste Management Plan. He also thought the Council should debate the issue of potential for vertical integration when proposals were being evaluated. The minority report, he said, reflected the Council's adopted policy.

Councilor Buchanan supported the minority position, explaining it was more equitable to proposers.

Councilor Knowles also supported the minority position because of the fairness of the process. He noted that Metro's evaluation process would be carefully examined and the burden of proof would be with the proposer to demonstrate a monopoly would not exist.

Councilor Kelley did not support the motion, explaining the vertical integration policy had been adopted by the Council to protect a very unique solid waste system. If the minority

recommendation were adopted, the Council would be forced to deal with the issue again, she said.

Vote: A vote on the motion to substitute Resolution No. 89-1061B for the majority recommendation resulted in:

Ayes: Councilors Bauer, Buchanan, Devlin, DeJardin, Gardner, Knowles and Ragsdale

Nays: Councilors Hansen, Kelley, Van Bergen and Wyers

Absent: Councilor Collier

The motion carried.

Motion: Councilor Knowles moved, seconded by Councilor Devlin, to adopt Resolution No. 89-1061B.

Councilors Van Bergen and Wyers declared that their affirmative votes on the motion did not signify total concurrence with the minority position.

Vote: A vote on the motion resulted in all Councilors present voting aye except for Councilor Hansen and Kelley who voted no. Councilor Collier was absent.

Deputy Presiding Officer Kelley turned the gavel over Councilor Ragsdale.

6.4 Consideration of Resolution No. 89-1073A, Authorizing an Exemption from Competitive Bidding for a Contract Extension with Safety Specialists, Inc.

Presiding Officer Ragsdale declared the Council would deliberate the resolution in its capacity as the Metro Contract Review Board.

Solid Waste Committee Chair Hansen briefly reported that the Committee had reviewed the cost of the proposed contract extension and supported its adoption.

Motion: Councilor Hansen moved, seconded by Councilor DeJardin, to adopt Resolution No. 89-1073A.

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

The motion carried and the resolution was approved.

The Presiding Officer called a recess at 6:55 p.m. and the Council reconvened at 7:05 p.m.

6.5 Consideration of Resolution No. 89-1081, Ratifying the 1988-91 Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees (AFSCME)

The Presiding Officer presented the Council Internal Affairs Committee's report and recommendation. He first explained that the resolution had been added to the Council agenda one day before the meeting because he had just been made aware that one of the contract negotiation conditions was that the Council would consider the agreement within 14 days after its ratification by the union. He asked the Council to remove the resolution from the Internal Affairs Committee (IAC) and to place it on the Council agenda for consideration at this meeting.

Motion: Councilor DeJardin moved, seconded by Councilor Van Bergen, to removed Resolution No. 89-1081 from the Internal Affairs Committee agenda and to place it on the Council agenda for consideration at this time.

Vote: A vote on the motion resulted in all nine Councilors present voting aye. Councilors Collier, Hansen and Wyers were absent.

The motion carried.

Presiding Officer Ragsdale reported that Councilor Collier had called him earlier in the day to explain she could not attend this meeting because of work conflicts. She had carefully reviewed the agreement and urged Council adoption of the resolution.

Ray Phelps, Finance & Administration Director, presented staff's report and recommendation. He reported that negotiations with the union had concluded on March 30, the employees had approved the agreement, and the Council had until April 14 to ratify it. The contract, he said, included personnel policies previously adopted by the Council in the form of the Local 483 union contract, Metro Personnel Rules, or the Pay and Classification Plan. The agreement would result in a 6.1 percent cost increase to Metro during the first fiscal year. It would also hold the line on health benefits costs due to a "cost containment" clause. Money had been budgeted in the current fiscal year for the proposed 4.09 percent cost of living increase, he said.

Councilor Buchanan raised numerous questions about the meaning of specific contract language and all questions were answered to his satisfaction by either Larry Shaw, Legal Counsel, or by Mr. Phelps.

Councilor Gardner asked Mr. Phelps to review how the new agreement would relate to the current Metro Personnel Rules. Mr. Phelps responded that he and Personnel staff were currently reviewing the Personnel Rules to determine if they were consistent with the proposed agreement. Recommended Rules revisions would be submitted to the Council for review and adoption, he said.

Executive Officer Cusma urged Council approval of the agreement and commended Metro's management and employee negotiating teams for working out an agreeable contract. Mr. Phelps then introduced members of the teams who were present at the meeting.

In response to Councilor Hansen's and Gardner's questions, Mr. Phelps explained that the agreement would not prohibit a supervisor from hiring an employee at higher than the beginning pay range or from advancing an employee several steps at a time under special circumstances.

Presiding Officer Ragsdale called the meeting into executive session at 7:40 p.m. under the authority of ORS 192.660(1)(d) for the purpose of discussing bargaining agreement negotiations with management. All Councilors except Collier and DeJardin were present at the executive session. Dan Cooper, Larry Shaw, Ray Phelps, Andy Cotugno, Joan Saroka, Dick Engstrom, Don Carlson and Maya Blackmun were also present.

The Presiding Officer called the meeting back into regular session at 8:35 p.m.

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

Councilor Van Bergen requested Mr. Phelps provide Councilors with a report that would indicate instances where the new contract would conflict with the existing Personnel Rules or any other ordinance currently in force.

Councilor Devlin thanked the management negotiation team and Mr. Phelps for their excellent work and for the analysis regarding the economic impact of the agreement. He was concerned, however, the Council had only learned that day it would be taking action on the resolution to approve the contract.

Metro Council
April 13, 1989
Page 11

Vote: A vote on the motion resulted in all nine Councilors present voting aye. Councilors Collier, DeJardin and Kelley were absent.

The motion carried and the resolution was adopted.

COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

Councilor Knowles noted that this would be the last meeting for Marie Nelson, Clerk of the Council, because she had been promoted to the position of Assistant Management Analyst in the Solid Waste Department.

Motion: Councilor Knowles moved, seconded by Councilor Buchanan, to direct the Presiding Officer to commemorate Ms. Nelson's service to the Council Department in some appropriate way.

Vote: A vote on the motion resulted in all nine Councilors present voting aye. Councilors Collier, DeJardin and Kelley were absent.

The motion carried.

There was no other business and the meeting was adjourned at 8:45 p.m.

Respectfully submitted,



A. Marie Nelson
Clerk of the Council

Agenda Item No: 5.1
Meeting Date: June 8, 1989

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING ORDINANCE NO.)
88-247 REVISING THE FY 1988-89)
BUDGET AND APPROPRIATIONS SCHEDULE)
FOR ZOO VISITOR SERVICES OPERATIONS)

ORDINANCE NO. 89-299
Introduced by Rena Cusma,
Executive Officer

WHEREAS, The Council of the Metropolitan Service District has reviewed and considered the need to modify the FY 1988-89 Budget; and

WHEREAS, The need for a modified budget plan has been justified; and

WHEREAS, Adequate funds exist for identified needs; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

That Ordinance No. 88-247, Exhibit B, FY 1988-89 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in Exhibits A and B to this Ordinance for the purpose of revising Zoo Visior Services Operations.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1989.

Mike Ragsdale, Presiding Officer

ATTEST:

Clerk of the Council

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EXHIBIT A
ORDINANCE NO. 89-299

FISCAL YEAR 1988-89		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCOUNT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
ZOO OPERATING FUND:Visitor Services							
Personal Services							
6030	Managers (B&G, Const, VS, Ed,	1.00	39,628			1.00	39,628
6035	Food Service Supervisor	1.00	36,117			1.00	36,117
6045	Retail Supervisor	1.00	29,637			1.00	29,637
6060	Administrative Secretary	1.00	22,500			1.00	22,500
6125	Safety/Security Supervisor	1.00	24,850			1.00	24,850
6128	Security 1-reg	3.94	55,500			3.24	55,500
6128	Security 1-temp	1.22	17,893			1.22	17,893
6145	Storekeeper	1.00	22,500			1.00	22,500
6150	Food Service Coordinator	3.50	69,000			3.50	69,000
6185	Visitor Service Worker 3-reg	1.00	11,816			1.00	11,816
6185	Visitor Service Worker 3-temp	1.30	13,499			1.00	13,499
6190	Visitor Service Worker 2-reg	0.50	5,180			0.50	5,180
6190	Visitor Service Worker 2-temp	4.00	36,122			3.50	36,122
6195	Visitor Service Worker 1-reg	1.50	13,292			1.50	13,292
6195	Visitor Service Worker 1-temp	30.40	261,745	3.10	25,500	33.50	287,245
6205	Typist/Receptionist-reg	3.00	46,122			3.00	46,122
6205	Typist/Receptionist-temp	1.60	17,244			1.20	17,244
6215	Stationmaster-temp	2.00	38,981			2.00	38,981
6500	Overtime		17,000				17,000
6700	Fringe		192,156				192,156
Total Personal Services		59.96	970,782	3.10	25,500	61.16	996,282
Materials & Services							
7100	Travel		4,350				4,350
7110	Meetings & Conferences		715				715
7120	Training & Tuition		1,300				1,300
7130	Dues & Subscriptions		660				660
7330	Maintenance & Repair-Equipment		22,000				22,000
7360	Equipment Rental		2,300				2,300
7390	Merchandise for Resale-Food		372,560		6,500		379,060
7400	Merchandise for Resale-Non Food		248,228		5,000		253,228
7410	Supplies- Office		500				500
7445	Supplies-Paper		66,000				66,000
7450	Supplies-Other		32,500				32,500
7500	Misc. Professional Services		15,000				15,000
7510	Payments to Other Agencies		18,000				18,000
7900	Miscellaneous		5,000				5,000
Total Materials & Services			789,113		11,500		800,613
Total Capital Outlay			34,100		0		34,100
TOTAL EXPENDITURES		59.96	1,793,995	3.10	37,000	61.16	1,830,995

EXHIBIT A
ORDINANCE NO. 89-299

FISCAL YEAR 1988-89		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCOUNT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
ZOO OPERATING FUND:General Expenses							
Transfers, Contingency, Unappropriated Balance							
9100	Transfer to General Fund		817,803				817,803
9150	Transfer to Insurance Fund		169,684				169,684
9200	Transfer to Zoo Capital Fund		1,987,662				1,987,662
9700	Contingency		52,265		(37,000)		15,265
	Unappropriated Fund Balance		1,146,350				1,146,350
	Total Trans., Contin., Unappr. Fund Bal.		4,173,764		(37,000)		4,136,764
	TOTAL EXPENDITURES	163.44	11,594,776	3.10	0	164.64	11,594,776

EXHIBIT B
 ORDINANCE NO. 89-299
 SCHEDULE OF APPROPRIATIONS FY 1988-89

	Current Appropriation	Revision	Proposed Appropriation
ZOO OPERATING FUND			
Administration			
Personal Services	365,860		365,860
Materials & Services:	149,892		149,892
Capital Outlay:	13,224		13,224
Subtotal	528,976	0	528,976
Animal Management			
Personal Services	1,356,599		1,356,599
Materials & Services:	323,675		323,675
Capital Outlay:	22,550		22,550
Subtotal	1,702,824	0	1,702,824
Facilities Management			
Personal Services	1,091,867		1,091,867
Materials & Services:	1,018,771		1,018,771
Capital Outlay:	371,160		371,160
Subtotal	2,481,798	0	2,481,798
Education Services			
Personal Services	472,694		472,694
Materials & Services:	107,711		107,711
Capital Outlay:	15,430		15,430
Subtotal	595,835	0	595,835
Marketing			
Personal Services	134,862		134,862
Materials & Services:	177,409		177,409
Capital Outlay:	5,313		5,313
Subtotal	317,584	0	317,584
Visitor Services			
Personal Services	970,782	25,500	996,282
Materials & Services:	789,113	11,500	800,613
Capital Outlay:	34,100		34,100
Subtotal	1,793,995	37,000	1,830,995

EXHIBIT B
 ORDINANCE NO. 89-299
 SCHEDULE OF APPROPRIATIONS FY 1988-89

	Current Appropriation	Revision	Proposed Appropriation
<hr style="border-top: 1px dashed black;"/>			
General Expenses			
Contingency	52,265	(37,000)	15,265
Transfers	2,975,149		2,975,149
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Subtotal	3,027,414	(37,000)	2,990,414
Unappropriated Balance	1,146,350		1,146,350
Total Zoo Operating Fund Requirements	11,594,776	0	11,594,776

ALL OTHER APPROPRIATIONS REMAIN AS PREVIOUSLY ADOPTED

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 89-299 AMENDING
ORDINANCE NO. 88-247 REVISING THE FY 1988-89 BUDGET AND
APPROPRIATIONS SCHEDULE FOR ZOO VISITOR SERVICES
OPERATIONS

Date: May 24, 1989

Presented by: Ray Phelps

FACTUAL BACKGROUND AND ANALYSIS

The opening of the Africa Exhibit has had a dramatic impact on attendance at the Zoo. April, 1989 attendance figures were the highest for any month of April since the Zoo opened. This trend is continuing for May and is expected to continue through June. As attendance figures increase, so also does the need to provide services to these visitors. Therefore, in order to continue to serve the visitors in a quality manner, adjustments to the Visitor Services Division are requested.

This proposed request would transfer \$37,000 from Zoo Operating Fund Contingency to the following line items within the Visitor Services Division.

Visitor Service Worker 1	\$25,500	3.10 FTE
Merchandise for Resale - Food	6,500	
Merchandise for Resale - Gifts	<u>5,000</u>	
	\$37,000	

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 89-299.

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Agenda Item No: 5.2
Meeting Date: June 8, 1989

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING ORDINANCE NO.)	ORDINANCE NO. 89-298
88-247 REVISING THE FY 1988-89)	
BUDGET AND APPROPRIATIONS SCHEDULE)	Introduced by Rena Cusma,
FOR CONVENTION CENTER CAPITAL FUND)	Executive Officer
PROJECT COSTS)	

WHEREAS, The Council of the Metropolitan Service District has reviewed and considered the need to modify the FY 1988-89 Budget; and

WHEREAS, The need for a modified budget plan has been justified; and

WHEREAS, Adequate funds exist for identified needs; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

That Ordinance No. 88-247, Exhibit B, FY 1988-89 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in Exhibits A and B to this Ordinance for the purpose of revising Convention Center Project Capital Fund costs.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1989.

Mike Ragsdale, Presiding Officer

ATTEST:

Clerk of the Council

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5/23/89

EXHIBIT A
ORDINANCE NO. 89-298

FISCAL YEAR 1988-89		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCOUNT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
CONVENTION CENTER CAPITAL FUND							
Personal Services							
6010	Conv. Center Project Director	0.80	53,824		(15,000)	0.80	38,824
6058	Administrative Secretary	0.70	14,654			0.70	14,654
6080	Senior Management Analyst	2.30	90,833			2.30	90,833
6180	Administrative Assistant	0.70	19,393			0.70	19,393
6700	Fringe		60,920				60,920
	Total Personal Services	4.50	239,624	0.00	(15,000)	4.50	224,624
Materials & Services							
7100	Travel		6,500				6,500
7110	Meetings & Conferences		2,800				2,800
7130	Dues & Subscriptions		1,500				1,500
7140	Ads & Legal Notices		8,500				8,500
7150	Printing		9,000		4,000		13,000
7160	Typesetting		1,000				1,000
7230	Telephone		500				500
7300	Postage		750		6,000		6,750
7360	Equipment Rental		4,920				4,920
7410	Supplies-Office		4,000				4,000
7440	Supplies-Graphics		750				750
7500	Misc. Professional Services		9,000		5,000		14,000
	Total Materials & Services		49,220		15,000		64,220
Capital Outlay							
8500	Land		750,000				750,000
8550	Equipment		1,000				1,000
8510	Buildings and Exhibits		475,000				475,000
8570	Furniture		500				500
8610	Construction Management		1,195,000				1,195,000
8620	Construction in Progress		30,697,460				30,697,460
8630	Engineering Services		1,449,000				1,449,000
	Total Capital Outlay		34,567,960		0		34,567,960
Transfers, Contingency, Unappropriated Balance							
9100	Transfer to General Fund		534,592				534,592
9130	Transfer to Building Fund		14,419				14,419
9150	Transfer to Insurance Fund		57,119				57,119
9700	Contingency		3,669,409				3,669,409
	Unappropriated Balance		23,938,337				23,938,337
	Total Trans., Contin., Unappr. Fund Balance		28,213,876		0		28,213,876
	TOTAL EXPENDITURES	4.50	63,070,680	0.00	0	4.50	63,070,680

EXHIBIT B
 ORDINANCE NO. 89-298
 SCHEDULE OF APPROPRIATIONS FY 1988-89

	Current Appropriation	Revision	Proposed Appropriation
<hr style="border-top: 1px dashed black;"/>			
CONVENTION CENTER PROJECT CAPITAL FUND			
<hr style="border-top: 1px dashed black;"/>			
Personal Services	239,624	(15,000)	224,624
Materials & Services:	49,220	15,000	64,220
Capital Outlay:	34,567,960		34,567,960
Transfers	606,130		606,130
Contingency	3,669,409		3,669,409
Unappropriated Balance	23,938,337		23,938,337
	<hr style="border-top: 1px dashed black;"/>	<hr style="border-top: 1px dashed black;"/>	<hr style="border-top: 1px dashed black;"/>
Total Convention Center Project Capital Fund Requirements	63,070,680	0	63,070,680

ALL OTHER APPROPRIATIONS REMAIN AS PREVIOUSLY ADOPTED

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 89-298 AMENDING
ORDINANCE NO. 88-247 REVISING THE FY 1988-89 BUDGET AND
APPROPRIATIONS SCHEDULE FOR CONVENTION CENTER CAPITAL
FUND PROJECT COSTS

Date: May 24, 1989

Presented by: Ray Phelps

FACTUAL BACKGROUND AND ANALYSIS

The Convention Center Capital Fund supports a portion of project staff costs, materials and services associated with the project and all the capital expenses. At the time of budget preparation for FY 1988-89, the schedule assumed that the printing, postage and legal fees associated with the general construction contract bidding process would occur prior to July 1, 1988. Because of changes in the schedule, the bulk of those costs were incurred in FY 1988-89 instead of at the end of FY 1987-88. As a result, the Materials and Services category will be overspent by approximately \$15,000 for FY 1988-89.

Due to changes in the project's organization since the 1988-89 budget was prepared, some savings will be realized in the Personal Services category. These savings are sufficient to cover the deficit estimated in Materials and Services.

This proposed adjustment would transfer \$15,000 from Personal Services, Convention Center Project Director to Materials and Services in the following line items:

Misc. Professional Services	\$ 5,000
Printing	4,000
Postage	<u>6,000</u>
	\$15,000

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 89-298.

Agenda Item No: 6.1
Meeting Date: June 8, 1989



METRO

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

Memorandum

Date: May 31, 1989

To: Metro Council

From: Gwen Ware-Barrett, Clerk of the Council

Regarding: AGENDA ITEM NO. 6.1: RESOLUTION NO. 89-1104 (For the Purpose of Exempting Proposals for the Metro East Station from Competitive Bidding Procedures)

The Solid Waste Committee will consider Resolution No. 89-1104 at a special meeting on June 8, 1989. The Committee's report will be distributed to Councilors at the Council meeting.

gpwb
891104.mem



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

May 31, 1989

The Honorable Gary Hansen
Chair, Council Solid Waste Committee
4216 No. Overlook Boulevard
Portland, Oregon 97217

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Sharron Kelley
Deputy Presiding
Officer
District 7

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Judy Wyers
District 8

Tanya Collier
District 9

Roger Buchanan
District 10

David Knowles
District 11

Gary Hansen
District 12

Dear Councilor Hansen:

Re: Metro East Station

Enclosed for consideration by the Council Solid Waste Committee is a resolution which exempts the Metro East Station from the competitive bidding procedures. Both the Metro Code and State statutory provisions require that public agencies make specific findings when public contracts are solicited other than through competitive bidding.

It is the opinion of the Office of General Counsel that the private ownership option involves the solicitation of franchise application proposals and is not subject to public contract procedures. The public ownership option may be construed as a public contract and thus must be granted an exemption if procedures other than competitive bidding are used.

The proposed resolution exempts the public ownership option from competitive bidding procedures. It also exempts the private ownership option from competitive bidding procedures in the event that it is subsequently determined that franchise application proposals are subject to public contracting procedures.

Sincerely,

Daniel B. Cooper
General Counsel

DBC/MML/gl

cc: Rena Cusma

BEFORE THE CONTRACT REVIEW BOARD OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXEMPTING)	RESOLUTION NO. 89-1104
PROPOSALS FOR THE METRO EAST)	
STATION FROM COMPETITIVE)	Introduced by Rena Cusma,
BIDDING PROCEDURES)	Executive Officer

WHEREAS, On April 13, 1989, the Council of the Metropolitan Service District adopted Resolution No. 89-1061B authorizing issuance of a Request for Proposals to solicit private proposals for a franchise to provide a site and to design, construct, own and operate the Metro East Station; and

WHEREAS, At its meeting of May 25, 1989, the Council reviewed and adopted Addendum No. 1 of the Metro East Station Request for Proposals; and

WHEREAS, Section 2 of Addendum No. 1 requires that two proposals, one each for public and private ownership of the proposed facility, be submitted by entities that submit private ownership proposals; and

WHEREAS, Addition of a requirement that a public ownership option be submitted by proposers in response to the solicitation for franchise proposals may be construed as a request for a public contract proposal; and

WHEREAS, ORS 279.015 authorizes the exemption of certain contracts from the competitive bidding requirement; and

WHEREAS, Metro Code Section 2.04.010 (1) requires that the Council exempt public contracts which utilize a request for

proposal process from competitive bidding pursuant to the standards set forth in Section 2.04.041 of the Metro Code; and

WHEREAS, Section 2.04.041 (c) allows the Council to exempt specific contracts from competitive bidding subject to ORS 279.015, and authorizes the Council to direct the use of alternative contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition; and

WHEREAS, The solicitation process adopted by the Council in Resolution No. 89-1061B, as refined and approved by the Council at its May 25, 1989 meeting is in accordance with the requirements of the Metro Code and the applicable State statutory provisions; now, therefore,

BE IT RESOLVED,

1. That based on the information provided in the Staff Report to Resolution No. 89-1061B, and the information presented to the Council at its May 25, 1989 meeting, the Contract Review Board of the Metropolitan Service District finds that:

- a. It is unlikely that exempting the public option for ownership and operation of the Metro East Station will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts in that the RFP process invites competitive proposals from any applicant who can deliver a completed transfer station in the time period required by the District to provide a replacement facility for the St. Johns Landfill; and
- b. The contract, if awarded pursuant to the exemption, will result in substantial cost

savings to the Metropolitan Service District, considering quality and cost because a replacement facility for the St. Johns Landfill must be found prior to February 1991 or else the District will suffer great additional expense.

2. That based on these findings, the Contract Review Board of the Metropolitan Service District directs that the public option portion of the request for proposals for a franchise to provide a site and to design, construct, own and operate the Metro East Station be exempted from the competitive bid process and that the Executive Officer is authorized to utilize a request for proposal process for the public option.

3. While private proposals for a franchise are not subject to the Metro Code contract provisions of Chapter 2.04 or ORS Chapter 279, the Contract Review Board finds that the factors set forth above in section 1 of these findings are equally applicable and true to franchise proposals and if franchise proposals are subject to the exemption requirements of the Metro Code and ORS Chapter 279, then the Contract Review Board of the Metropolitan Service District finds that:

- a. It is unlikely that exempting franchise proposals for the Metro East Station will encourage favoritism in awarding of public contracts or substantially diminish competition for public contracts, in that the request for franchise proposals invites competitive proposals from any applicant who can deliver a completed transfer station in the time period required by the District to provide a replacement facility for the St. Johns Landfill; and
- b. The franchise, if award pursuant to an exemption from competitive bidding will result in substantial cost savings to the

District, considering quality and cost because a replacement facility for the St. Johns Landfill must be found prior to February 1991 or else the District will suffer great additional expense.

ADOPTED by the Contract Review Board of the Metropolitan Service District this _____ day of _____, 1989.

Mike Ragsdale, Presiding Officer

DBC/gl

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 Architect -- shall have the same meaning as Construction Manager and Architect's Representative and is the firm of Guthrie, Slusarenko & Associates and its agents, representatives, employees and consultants or such other firm as Metro may appoint. The Architect will have authority to act on behalf of Metro only to the extent provided in these Contract Documents.
- 1.01.05 "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.
- 1.01.06 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.
- 1.01.07 Base Bid -- is the written offer of a Bidder to perform all of the Work except the Alternates and Unit Prices.

- 1.01.08 Construction Schedule or Schedule -- is the timeline described in Section 01010 of the Specifications.
- 1.01.09 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.
- 1.01.10 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.
- 1.01.11 Bidding Documents -- See "Contract Documents."
- 1.01.12 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.
- 1.01.13 City -- means the City of Portland, Oregon.
- 1.01.14 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.
- 1.01.15 Clarification -- is a written document consisting of supplementary details, instruction or information issued by Metro after the award of Contract which modifies, interprets, clarifies, supercedes or supplements the Contract Documents and becomes a part of the Contract Documents. It is the Contractor's responsibility to determine how Clarifications impact the Work.

- 1.01.16 Completion -- See "Substantial Completion" and "Final Completion and Acceptance."
- 1.01.17 Construction Coordinator -- The Metro representative on the construction site. The Construction Coordinator will be Mr. Robert Porter, an employee of Metro, who will represent Metro to the extent of his authority as delegated by the Executive Officer.
- 1.01.18 Construction Manager -- is the interface with the Contractor and will be the conduit for all Change Orders, correspondence, Requests for Information, Clarifications and negotiations. The Construction Manager will be Mr. Norm Ellison, an employee of Guthrie, Slusarenko and Associates.
- 1.01.19 Contract Amount -- is the total amount shown in the Construction Agreement as revised by Change Orders.
- 1.01.20 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.
- 1.01.21 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.
- 1.01.22 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.

- 1.01.23 Critical Path Method or CPM -- means the critical path method of scheduling as understood and interpreted by standard industry practice.
- 1.01.24 Days -- means calendar day including Saturdays, Sundays and legal holidays.
- 1.01.25 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.
- 1.01.26 Disadvantaged Business Program -- is Metro's program to provide maximum opportunities to Disadvantaged and Women-Owned Business Enterprises in contracts, which is contained in Ordinance No. 87-231.
- 1.01.27 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.
- 1.01.28 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 Architect. Equality in reference to the Project design requirements shall be determined by Architect 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.
- 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 meteorological 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.
- 1.01.34 General Contractor -- is the party which enters into the Contract with Metro. See also "Contractor".
- 1.01.35 Geotechnical Engineer -- is the firm of L. R. Squier, its agents, employees and representatives.
- 1.01.36 Install -- includes, unless the context requires otherwise, unload, unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, protect, clean 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 Portland, Oregon.
- 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 Architect) 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.
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 African Rainforest for the Metro Washington Park Zoo. 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.
- 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 break down 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 Architect.
- 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 Portland 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 Architect 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 sub-headings 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 and Drawings.

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 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 Architect 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.
- E. A detailed listing of labor employed on the Work for that day. The listing shall include a description of both Contractor's and any Subcontractors' of any tier workers employed that day and shall have breakdowns for minority, female trade and worker classifications, hours worked, and pay received.
- F. Concrete quantities used for the day and a cumulative concrete total for the Work.
- G. Equipment in use that day (other than hand tools).
- H. Daily summary and accumulated quantity amounts of items listed above.

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.

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 Architect

The following provisions shall govern the authority of the various officers, agents, representatives, consultants and employees of Metro, and Architect. 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 Architect shall have any authority to make representations, statements or decisions of whatever nature binding Metro or Architect 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 of 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 Architect 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 not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Metro and Architect 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 Architect, 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 Architect 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 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 Information which shall fully describe the information sought. It is Contractor's responsibility to request information under this Paragraph in sufficient time for review by Architect and Metro so that the orderly progress and prosecution of the Work is not delayed.

The Architect, in consultation with Metro, shall interpret the meaning and intent of the Contract Documents and shall issue a written Clarification describing such meaning and intent. Additionally, the Architect, 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.

Should the content of any Clarification, in the opinion of the Contractor, require the Contractor to perform any work beyond the meaning and intent of the Contract Documents, Contractor shall notify the Architect in writing within five (5) calendar days of the receipt of the Clarification and before proceeding with the work affected thereby. Such notice shall include all data and information that Contractor relies upon in determining that the Clarification requires the Contractor to perform work beyond the scope of the Contract Documents. Failure of

Contractor to submit such notice, or the installation of any such work by Contractor prior to submitting such notice, shall constitute a waiver by Contractor of any claim either for added cost or for extension of Contract Time arising therefrom.

If Metro decides, based on Metro's or Architect's interpretation of the Contract Documents, that the Contractor is responsible under the Contract for the work in question, the Contractor shall do such work in accordance with the Clarification or as prescribed by Metro. If Contractor does not agree that the work in question is covered by the Contract Documents, the Contractor still must do the work in accordance with the Clarification or as prescribed by Metro, but Contractor may file a claim against Metro pursuant to Paragraph 3.03. If the Contractor perfects a claim pursuant to Paragraph 3.03, the performance of such work shall not constitute a waiver of, or in any way prejudice, such claim.

If Metro determines that the Clarification would require the Contractor to perform work that is beyond the scope of the Contract Documents, then Metro will either request a proposal from the contractor in accordance with Article 8 or issue a revised Clarification.

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 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 (j) 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 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.

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 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 and 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 decision by Metro under Subparagraphs 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 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 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.

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 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 Architect, 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 ninety (90) 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 African Rainforest Exhibit, Metro Washington Park Zoo, 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 Architect 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 Architect 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 issuance of such request by Metro, Contractor shall furnish three copies of a complete breakdown of costs of both credits and additionals 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

If 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 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 5 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 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 (if insurance is Contractor-furnished) 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 (if insurance is Contractor furnished).
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 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.

CONTINUING CONTRACT

9.01 General

This is a continuing contract in that payment of some portion of the Contract Price is dependent upon reservation of funds from future appropriations. Funds are not available at the inception of this contract to cover the entire contract price. The responsibility of Metro is limited by this clause notwithstanding any contrary provision of the "Payment to Contractor" clause or any other clause of this contract.

9.02 Funds Reserved

The term "Reservation" means monies that have been set aside and made available for payments under this contract. The sum of \$2,950,000 has been reserved for this contract and is available for payments to the Contractor during the current fiscal year. Metro may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. Metro will promptly notify the Contractor of any additional funds reserved for the contract. Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of this contract, and shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraph 13.03 below.

9.03 Exhaustion of Funds

9.03.01 No payment to the Contractor will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. If and when sufficient additional funds are reserved, the Contractor shall be entitled to simple interest on any payment that Metro determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public law 92-441, 85 Stat 97, for the Renegotiation Board, as in effect on the first day of the delay in such payment.

9.03.02 If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the Contractor shall give written notice to Metro of the

estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

9.03.03 If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, Metro has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the Executive Officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. To the extent that additional funds to make payment therefore are allocated to this contract, it may be treated as a termination for the convenience of Metro.

9.03.04 Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the Contractor to any price adjustment under a "Suspension of Work" or similar clause or in any other manner under this contract. An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

9.04 Excess Funds

If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the Contractor because of work performed and to be performed under the contract during the fiscal year, Metro reserves the right, after notice to the Contractor, to reduce said reservation by the amount of such excess.

ARTICLE 10.

PAYMENTS AND COMPLETION

10.01 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.

10.02 Schedule of Values

10.02.01 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.

10.02.02 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 judges 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.

10.03 Progress Payment Procedure

10.03.01 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 subsequently to correct any error made in any estimate for progress payments.

10.03.02 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 100 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 or, at the option of Contractor, paid to the Contractor or deposited in an interest bearing account pursuant to the following paragraphs and as authorized by the Director of Oregon's Department of General Services.

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.

10.03.03 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.

10.03.04 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.

10.03.05 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.

10.03.06 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.

10.04 Substantial Completion

When Contractor considers the Work to be substantially complete, Contractor shall submit to Metro a written notice that the Work is substantially complete and a punch list of items to be completed or corrected. Within a reasonable time after

receipt of such notice, Metro and Architect will review the Work to include a physical inspection to determine the status of completion. Should the Architect 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 Architect'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 Architect, substantially complete. At that point in time:

1. The Architect 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 Architect.
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.

10.05 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.

Architect 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 Contractor through Metro of the work yet to be performed on the Contract as outlined below.

Should the Architect 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 Architect.
3. Architect 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 Architect, finally complete. Contractor shall immediately thereafter prepare and submit Closeout Submittals as described below.

10.06 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.

- I. Consent of surety to Final Payment.
- J. Certificates of insurance for products and completed operations in accordance with Supplementary Conditions.
- K. 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.

10.07 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 Architect 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.
- D. 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.

10.08 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.

10.09 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 11. SAFETY AND PROTECTION OF THE WORK

11.01 Safety Requirements

11.01.01 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.

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.

11.01.02 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.

11.02 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.

11.03 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 12. INDEMNIFICATION AND INSURANCE

12.01 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, Architect, 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 Architect.

Contractor shall assume the defense, if requested, indemnify and hold harmless Metro and Architect 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.

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.

12.02 Insurance

12.02.01 Public Liability and Property Damage Insurance

12.02.01.01 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, 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.

12.02.01.02 Insurance for Others

Contractor shall include as additional named insureds under the above policy or policies Metro and Architect.

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.

12.02.01.03 Policy Limits

The policy or policies of insurance described in Clauses 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.

12.02.01.04 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.

12.02.02 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 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.

12.02.03 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.

12.03 Builder's All Risk Insurance

12.03.01 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.

12.03.02 Contractor and all subcontractors shall be responsible for any loss or damage to their machinery and apparatus and nonexpendable items of their equipment.

12.03.03 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 13. DISADVANTAGED BUSINESS PROGRAM

Contractor shall comply with all pertinent provisions of Metro's Disadvantaged Business Program which are contained in Ordinance No. 87-231 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 14. 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 15. MISCELLANEOUS STATUTORY RESPONSIBILITIES OF CONTRACTOR

15.01 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.

15.02 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 Portland
Multnomah County
Metropolitan Service District
Planning Commissions

15.03 Other Provisions of Oregon Law

15.03.01 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.

15.03.02 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.

15.03.03 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 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.

15.03.04 Hours of Work

Pursuant to ORS 279.316, 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 279.334, 279.336 and 279.338.

15.03.05 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.

15.03.06 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.

15.03.07 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.

15.03.08 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).

15.04 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.

15.05 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 16. TERMINATION OR SUSPENSION OF THE WORK

16.01 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 way limit or modify the provisions of the Contract relating to the

fixed an liquidated damages suffered by Metro on account of failure to complete the Project within the time prescribed.

16.02 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.

DBC/gl

a:gcafrica.dan
can 5/15/89



METRO

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

Memorandum

Date: June 8, 1989

To: Mike Ragsdale, Council Presiding Officer
Councilor David Knowles
Chair, Council Convention, Zoo & Visitor
Facilities Committee

From: Rena Cusma, Executive Officer *Rena Cusma*

Regarding: AFRICAN RAIN FOREST BID DOCUMENTS/CONTRACTING
PROCEDURES

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On March 23, 1989, the Council adopted amendments to the Metro Code affecting contracting procedures. I concurred then in both the letter and the spirit of the compromise that was reached between the Council and the Executive Officer on the contracting issue. I did so because it is far more important for this agency to operate effectively to carry out the public's business and do the things we need to do than it is for us to argue and battle over who has what specific rights or powers.

I believe it is important to carry out the spirit of that compromise without splitting hairs over the words used to describe it. I understand and believe that we agreed that:

1. The Council would review a list of proposed contracts presented by the administration on an annual basis and determine which contracts the Council felt had policy implications.
2. For those contracts identified by the Council as policy contracts, special procedures would apply. If the "policy" contract would extend into future fiscal years then formal Council approval of the bid or proposal documents as well as the execution of the contract is appropriate.
 - * If the "policy" contract would not require a commitment to a future appropriation then bid or proposal documents would be filed with the Council thirty-five days in advance of their release.
3. For non-policy contracts these procedures would not apply. Instead, the Council would receive copies of

Memorandum

June 8, 1989

Page 2

all relevant documents as well as extensive monthly reports on all contract information.

There were other details to the compromise as well that I don't think are at issue now, but may become issues in the future. My understanding and expectation of the agreement we reached was that we had reached a conclusion we would all try to live with and to see how it would work in practice. If the agreement we reached develops real, identifiable problems for either the administration or the Council we can revisit the matter to try and solve whatever problems actually exist. Until problems develop there is no need to worry about hypothetical issues.

The African Rain Forest contract clearly is that type of contract that has policy concerns and extends over more than one year and will need future appropriations by the Council. I have directed my staff to remove any language from the bid documents that would suggest otherwise.

I want the Council to approve the African Rain Forest bid documents now. I will bring the Council a resolution to approve the actual award of the contract at the appropriate time.

I continue to believe that we have no differences between us regarding the goal -- that is to act responsibly on both sides of the aisle to protect the public interest and to handle the public's business expeditiously and efficiently. While our agreement certainly begs the question regarding a true legislative/administrative model, it is in my view workable -- and allows us to stay focused on our primary purpose which is to go on with the Africa project in a responsible manner and deliver a first-rate zoo exhibit to our community.

RC/gl

cc: Metro Councilors