

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A)
REQUEST FOR BIDS FOR WASTE)
TRANSPORT SERVICES)

RESOLUTION NO. 88-971

WHEREAS, Pursuant to Resolution No. 88-832, adopted by this Council on January 28, 1988, all Request for Bids for long-term waste transportation agreements must receive Council approval before a call for bids is issued; and

WHEREAS, The Solid Waste Department has developed recommended bidding documents for a 20-year contract to transport waste from the Metro region to the Gilliam County landfill; and


WHEREAS, The Council of the Metropolitan Service District has reviewed the proposed bidding documents and finds them to be acceptable and consistent with the Council's long-term solid waste management policies; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District approves the form and substance of the Request for Bids for waste transport services prepared by the Solid Waste Department.

2. That the Director of the Solid Waste Department is requested to advertise for bids and do all other things necessary to solicit competitive bids for waste transport services.

ADOPTED by the Council of the Metropolitan Service District
this 13th day of October, 1988.


Mike Ragsdale, Presiding Officer



METRO

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

Memorandum

Agenda Item No. 7.2

Date: October 5, 1988

Meeting Date Oct. 13, 1988

To: Metro Councilors

From: Councilor Gary Hansen
Chair, Council Solid Waste Committee

Regarding: SOLID WASTE COMMITTEE REPORT ON OCTOBER 13, 1988,
COUNCIL MEETING AGENDA ITEM

Agenda Item 7.2 Consideration of Resolution No. 88-971,
for the Purpose of Approving a Request for
Bids for Waste Transport Services (to the
Gilliam County Landfill)

Committee Recommendation

The Solid Waste Committee recommends Council substitute Draft No. 3 (September 30, 1988) for Draft No. 2 (September 14, 1988) of the Contract documents for waste transport services. This action taken October 4, 1988.

Discussion

General Counsel Dan Cooper presented recommended changes to the September 14, 1988, draft (Draft No. 2) of the waste transport services RFB. Most of the changes are nonsubstantive in nature and are recommended to clarify the intent of the affected items. The one substantive change is the addition of Item F to Article 10 of the General Conditions. This item allows Metro to terminate the contract for convenience in the event the disposal contract with Oregon Waste Systems is terminated prior to expiration of that agreement.

Councilor Ragsdale stated that he wants Metro to pursue outside funding sources for highway mitigation measures in Gilliam County.

The Committee voted 3 to 1 to recommend the Council substitute Draft No. 3 (September 30, 1988) for Draft No. 2 (September 14, 1988) of the contract documents for waste transport services. Voting aye: Councilors Hansen, Kelley and Ragsdale. Voting nay: Councilor Kirkpatrick. Councilor Kirkpatrick indicated she and Councilor Gardner were submitting a minority report to the Council on October 13, 1988. (Note: the minority report is included in this agenda packet.)

amr.



METRO

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

Memorandum

Date: September 21, 1988

To: Metro Council

From: Councilor Gary Hansen
Chair, Council Solid Waste Committee

Regarding: COUNCIL SOLID WASTE COMMITTEE REPORT ON SEPTEMBER 22,
1988, COUNCIL MEETING AGENDA ITEM

Agenda Item 7.3 Consideration of Resolution No. 88-971, for the
Purpose of Approving a Request for Bids for
Waste Transport Services

Committee Recommendation

The Council Solid Waste Committee recommends Council adoption of Resolution No. 88-971. This action taken September 20, 1988.

Discussion

A public hearing was held on August 16, 1988. Judge Prior of Gilliam County stated that they may have to construct some new highway because of additional truck traffic. She suggested that the contract for transportation services be for a longer period than 10 years or that some other method be used to assist them in meeting the costs of highway construction. Two transportation consultants testified. One suggested that the contract include language that would prevent disputes should containers be damaged. The other consultant stated that the liquidated damages penalty of \$6,000/hour was excessive. The Committee requested that the Solid Waste staff add language to the contract regarding damage to containers.

The Council Solid Waste Committee considered Resolution No. 88-971 again on August 30, 1988. Another public hearing was held and one individual testified.

Staff had prepared a list of comments made by vendors regarding the proposed waste transport contract. Committee asked Solid Waste staff to make language changes in contract to reflect recommendations.

On September 6, 1988, the Committee discussed the issue of the length of the waste transport contract. A shorter term contract may provide more flexibility but a longer term contract may provide cost savings.

Memo
September 21, 1988
Page 2

The Committee asked staff to be prepared with language for 10-year and 20-year contracts.

On September 20, 1988, the Council Solid Waste Committee again considered Resolution No. 88-971. The main issue was the length of the contract. The majority of the Committee members favor a 20-year contract because it has the potential for greater cost savings and because the city of Arlington and Gilliam County have requested a 20-year contract to match the disposal contract in order to mitigate any effects a particular transport mode will cause to the communities and to arrange adequate financial mechanisms to pay for mitigation costs.

The minority of the Committee members support a 10-year contract because of the potential of receiving a greater number of bids and because of the flexibility of being able to bid the contract again in 10 years.

The Committee voted three to two to recommend Council adoption of Resolution No. 88-971. Voting aye: Councilors Hansen, Kelley and Ragsdale. Voting nay: Councilors Gardner and Kirkpatrick.

RB/sm/bfg
0186D/D2



METRO

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

Memorandum

Date: October 4, 1988
To: Metro Council
From: Councilors Kirkpatrick and Gardner
Regarding: COUNCIL SOLID WASTE COMMITTEE MINORITY REPORT ON
OCTOBER 13, 1988, COUNCIL MEETING AGENDA ITEM

Agenda Item 7.2 Consideration of Resolution No. 88-971, for the Purpose of Approving a Request for Bids for Waste Transport Services

Minority Report

Two members of the Council Solid Waste Committee recommend that the Council approve a Request for Bids (RFB) that provides for a 10-year contract for waste transport services from the Metro district to the Gilliam County Landfill.

Advantages of 10-Year Contract

A 10-year transport contract is recommended for two major reasons:

1. Provides for more competition and a greater number of bids.
2. Provides the flexibility and opportunity to rebid the contract with potential savings to the region.

More Competition and Bids

We want to receive as many bids as possible. It should be noted that this was one of the reasons the Solid Waste staff gave for not including transportation services in the landfill bid.

With a 10-year contract there will be more competition and more bids from the trucking industry. A 20-year contract places trucking firms at a substantial disadvantage. According to one trucking firm, the proposed mitigation costs for highway improvements could cost a trucking company an additional \$3.6 million over a 20-year period.

Council received a letter from Gresham Transfer, Inc. (copy attached) stating that a "20-year contract would favor other organizations to the disadvantage of trucking organization. As a result, it is almost certain that few, if any, trucking organizations will be inclined to bid."

The first draft of the RFB provided for a 10-year contract. It was recommended by the Solid Waste staff and the Evaluation Committee as a middle ground when considering a range from five years to 20 years. The 10-year contract allows all modes of transportation the ability to depreciate capital. A contract length over 10 years provides little additional efficiencies since financing is not generally available beyond 10 years.

The majority of vendors contacted by the Solid Waste staff agreed that a 10-year length was adequate, while a lesser amount of time would be inadequate to depreciate capital expenditures.

Flexibility and Savings

A 10-year contract provides the flexibility and opportunity to rebid the contract with potential savings for the region. Linking the contract to that of the landfill contract (20 years) does not provide the chance to rebid.

There is the potential for an economic advantage in rebidding the contract in 10 years and switching to another mode of transportation. For example, Metro may enter into an initial 10-year contract with the railroad. At the end of 10 years Metro could enter into a contract with a trucking company that may already be transporting large quantities of solid waste from Clark County to the Gilliam County Landfill, thereby taking advantage of the economies of scale and providing a savings to the region.

Cost Analysis

The Solid Waste staff, at the committee level, presented an analysis of the cost impacts of 10-year and 20-year contracts. Their figures indicated a cost savings with a 20-year contract. Although staff prefaced their presentation by saying their figures were largely hypothetical and based on a number of assumptions, the figures once on paper may gain a credibility and validity beyond the staff's intention. Unless we ask for both 10- and 20-year contract costs, we cannot actually know which offers the greatest savings.

RB/sm-0212D/D1

Attachment

STAN ADAMS
ATTORNEY-AT-LAW
2053 East Burnside
Suite 100
GRESHAM, OREGON 97030
(503) 665-9182

September 19, 1988

Re: Draft - Request for Bid For Waste Transportation
Services

TO THE MEMBERS OF COUNCIL SOLID WASTE COMMITTEE AND STAFF:

On behalf of Gresham Transfer, Inc. I have had the opportunity to briefly review the recommended changes and revisions in the Waste Transport Services Request for Bids.

Considering that the redrafted information was not available until late Thursday, September 15, 1988 and that you will be giving it consideration on Tuesday, September 20th I am sure that you will understand that Gresham Transfer would like the opportunity to comment upon the proposed documents beyond what is set out in this letter.

The primary concern of Gresham Transfer is the proposal to extend the length of the contract to match the OWS Contract. In effect this would make the contract continue for a period of twenty (20) years or at such time as the total tonnage of waste has been transported. The staff recommends such a change. The letter to the Council Members and interested parties dated September 15th suggests this change among others. The justification given for increasing the length of the contract suggests that it will allow the host community to implement and design mitigation measures. The staffs' recommendation, and I would assume its rationale, apparently appear in an "Attached Discussion". No discussion was attached to that letter so the reasoning behind it is not clear.

The net result of changing the contract to a twenty year contract is simply that trucking firms are placed at a substantial disadvantage. You may recall that there was a proposal to change the term of the contract to five years as opposed to ten. The staff recommended against that change based

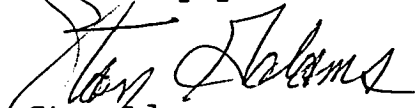
The Members of the Council
Solid Waste Committee and
Staff
September 19, 1988
Page 2

upon the fact that it would favor trucking organizations. By the same token a twenty year contract would favor other organizations to the disadvantage of trucking organizations. As a result it is almost certain that few if any trucking organizations will be inclined to bid. A ten year contract is clearly a middle-of-the-road approach which places all potential bidders on a common footing.

Article 19 C is not clear as to the reasons for such payments. However, it is clear that over a contract of twenty (20) years it will cost the contractor an additional sum of \$3.6 million if he transports by truck. This appears to be a penalty upon all bidders except railroads. Again, as a result it is almost certain that few, if any, trucking organizations will be inclined to bid. It should be reviewed carefully to see if it can be modified.

In other areas the staff appears to have agreed with comments and has made some effort to rewrite or reword certain provisions. Until Gresham Transfer has had the opportunity to review such rewriting and rewording in detail it is not in a position to comment upon those changes.

Sincerely yours,



Stan Adams

SA:ks

cc: Mr. Chuck Geyer
Ms. Rena Cusma, Executive Officer
Mr. Ray Barker
Mr. Gary Hansen
Mr. Jim Gardner
Ms. Sharron Kelley
Mr. Corky Kirkpatrick
Mr. Mike Ragsdale
Mr. Richard Walker
Mr. Tom DeJardin
Mr. George Van Bergen
Ms. Elsa Coleman
Ms. Tanya Collier
Mr. Larry Cooper
Mr. David Knowles

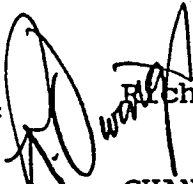


METRO

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

Memorandum

Date: September 15, 1988
To: Council Members/Interested Parties

From:  Rich Owings, Solid Waste Director

Regarding: CHANGES TO DRAFT RFB FOR WASTE TRANSPORT SERVICES OF
AUGUST 10, 1988

In response to vendors' and Council Solid Waste Committee (CSWC) members' suggestions, staff has revised the draft Waste Transport Services RFB. Attached are two keys to aid reviewers in identifying changes. First, is a Table of Contents which shows new page and section numbers and the corresponding numbers in the previous draft. Staff has rearranged the sections, moving the Bid Forms to the appendix and reversing the order of the specifications and general conditions. Other changes include incorporating the definitions into the specifications from the general conditions and deleting old article 20 from the general conditions which dealt with security interests in contractor's equipment.

The second attachment is the list of vendors' comments and staff reactions which includes the location of changes in the revised draft.

RDO:mk

Attachments

cc: Rena Cusma, Executive Officer

Agenda Item No. 3 for Council Solid Waste Committee Meeting of September 20, 1988

Agenda Item No. 7.3 for Council Meeting of September 22, 1988.

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Metro East Adjustment Boundaries
 City of Arlington Routing Plan
 Flow Data
 Total Bid Price Calculation Example
 Metro Disadvantaged Business Program
 Bid Forms

Comments Received & Staff Reaction
Regarding Draft RFB for Waste Transport Services
(as of 8-30-88)

<u>Comment</u>	<u>Reaction</u>	<u>Page#</u> <u>New</u> <u>Draft</u>
Vendors (general comments)		
-Allow vendor to specify loading equipment	No, need to standardize system	
-"Leakproof container" too restrictive, substitute "substantially leakproof"	No, unless vendor provides definition & Metro accepts	
-Ban the use of tippers for unloading	No, vendor need not use them	
-Change the criteria for awarding the versatility of trailers rather than low bid criteria to award bid	Vendor will need backup, this provides versatility, no change	
-Bonding amounts excessive, reduce by half	See staff recommendations	V-25
-Change contract length to five years to increase flexibility	No, 5 years favors trucks and provides no longterm solution	
-Hours the landfill will accept waste	7am to 7pm	IV-11
-Will unit price adjustment factor for Metro South be subject to the CPI	No, only bid unit price adjustment added to	
-Are questions confidential ?	No, only if deemed a trade secret	
-Are intermodal containers required	No, vendor can use anything which meets specifications	
-Will Blalock Canyon Road be available	No, nor do plans exist to improve	
-Need more precise landfill access specs	Rewrite	IV-11
-Clarification of storage at facilities	Rewrite	IV-10
-Will preference be given to bidders who own their equipment as opposed to those whose equipment is encumbered	No, the criteria for award is limited to those stated in the Invitation to Bid	
-Define "wind and water tight"	Rewrite specification	N/C
-Will backup system have to meet the wind and water tight specification	Yes.	IV-14
-Is the contract a USDOT assisted Contract	No, WBE not included in DBE	

category

-10% of the project must be subcontracted to DBE/WBE's. What is the base figure?

Total Bid Price

II-8

-Clarify method for calculating price per load and role of 790 lbs/yd vs 900 lbs/yd

Rewrite

II-3

-When does vendor need depot permits, vs an acceptable schedule for permits

Permits, approvals etc are needed by 7/1/89, acceptable schedules are submitted with the bid
Inv.
t o
Bid

-Suggest installation of axle scales at facilities

Will consider, however space limited at Metro South

-Unclear if all insurance requirements applicable to each mode

Will clarify, generally they do
N/C

-Use Uniform Interchange Agreement between transfer station operators and transporter, and landfill operator and transporter

Will require such an agreement between station operator & transporter, landfill operator & transporter establish own agreements
IV-4

-Vendors will only increase prices to offset retainage. Suggest Metro create its own retainage fund and withhold payments to replenish

No, this removes an incentive for vendor to comply with contract provisions

-all weather access to unloading area 363 days a year, 7am to 7pm

Agree IV-11

-movement of any tipper responsibility of transport vendor, as well as any structural supports needed beyond 50 psi

Agree IV-12

-OWS will provide 30 days notice before moving unloading area

Agree IV-11

-All transport equipment will be equipped with automatic fire suppression equipment

Except for over the road vehicles IV-12,14

-In the bid forms it requires that the vendor furnish all equipment, personnel etc. within 10 days of award. This is not possible

Agree, rewrite to indicate vendor will furnish "descriptions" of these items

Bid Forms- 2

GENERAL CONDITIONS

-1(B) definition of backup system implies that it must be a different mode than the primary system. Must it be?

No, will clarify

IV-1

-1(H) force majeure definition should include changes in law

Disagree, contractor is entitled to additional compensation for such changes

-2(F) requires contractor to copy Metro on correspondence to and from any agency for an unlimited time period. This will be a burdensome requirement.

Agree, will limit scope & provide examples

V-1

-2(G) requires written notice to use alternate transport system, and Metro approval. Emergencies may require immediate implementation to keep on schedule. Change to allow use of backup in emergency with written notification ASAP.

Agree, change to allow use of backup upon verbal approval from Metro, with written notice to follow in non force majeure emergencies

V-2

-2(L) prohibits contractor from using property to finance the purchase of additional property or equipment

Not Metro's intent, rewrite

V-3

-2(M) last sentence allows Metro to approve changes to contract and not be liable for the consequences. Word more clearly

Clarify

V-3

-2(Q) requires contractor to perform acts or execute instruments reasonably requested by Metro to give full effect to contract. Too vague, delete or make more specific

Make more specific

DELETED

-7(B) makes agreements with lenders and others subject to the terms of the contract. These parties will not extend credit if subject to these terms.

Agree that this is excessive, rewrite

V-6

the same paragraph requires contractor to assign its rights in subcontracts to Metro upon determination of default by Metro. Could lead to abuse.

The conditions of default are contained in the document and disputes are subject to arbitration or litigation. No change.

-8(A) allows Metro to let other contracts for the transport of waste thus creating the potential for effectively cancelling the contract

As referenced in 8(A) and stated in the specifications, contractor is guaranteed 90% of waste going to a general purpose landfill. Reinforce in 8(A)

V-7

-8(c) unclear as to the damages which might occur between 2 contractors involved in the system, and it is unacceptable to have Metro resolve disputes. There are other means to resolve disputes between businesses. Eliminate Metro arbitration.

Metro will not relinquish its role as arbitrator since it is a party to the multiple contracts involved and must maintain the disposal system. Clarify damages.

V-7

-12 security interest requirement overly broad, prohibits the use of property to obtain credit

Agree, delete

-14 insurance section should allow vendor to self-insure, upon providing Metro whatever proof it requires

Agree, vendor must provide indemnity letter, certificated copy of self insurance bond/or \$15,000,000 letter of credit V-26

-Expand to ensure that subcontractors employees are covered by Workers Compensation

We will so clarify

V-27

-18(G) permits Metro to schedule payments for force account work over any time period could be burdensome to contractor

Insert language ensuring reasonableness

V-23

-19(C) invites local communities to enact legislation to increase costs to contractor

Disagree, local increases which effect contractor only are not a pass through decreasing their likelihood

-20 unclear who gets interest from retainage

Clarify, interest stays in account until satisfied, then to vendor
IN ACCOUNT UNTIL END OF CONTRACT

V-19

-21 Allows Metro to withhold payments without notice or opportunity for vendor to be heard

Add notification requirement and vendor's right to contest

V-20

-22 liquidated damages should be subject to arbitration and amounts should be on a graduated scale in relation to actual damages

Will not be subject to arbitration
Change to actual damages incurred until pit is full at which time liquidated damages assessed V-9

Liability for liquidated damages should be limited to time service restored

Agree, will clarify

V-10

If terminated, Metro should be required to use best efforts to initiate replacement in order to cut off liquidated damages

Agree, but reserve right to any actual damages incurred
Required by law- no change

-24(A) allows Metro to determine default and then confiscate equipment based on its "sole opinion". It is a lawsuit waiting to

Clarify confiscation is contingent upon injunctive relief (in 19B as well)

happen. Recommend injunctive relief.

No change

-25 allows contractor to terminate for cause but limits reimburse to 7 days. Should allow for collection of actual damages

Agree, rewrite

V-14

-26 makes arbitration contingent upon Metro's "sole opinion"

Disagree, Metro's opinion determines whether it will be arbitrated, expeditiously arbitrated, or litigated. Contractor always can dispute

-29 limit definition of change of ownership to "10% or more" transfer of interest and exclude transfers by operation of law.

Agree, rewrite

V-33

-31(D) Recognize the supremacy of federal law regarding hours of work per day/week

Agree, add the phrase "Except as allowed by federal law" V-34

limits the number of hours worked in any one day to 8 hours or 40 hours in any one week except in cases of necessity, emergency, or where required by public policy. What is Metro's position?

It is in Metro's interest to exempt the contract from this provision.

-32 Re: antitrust claims, limit to the effects on this contract, and only if vendor has received a settlement or award

Agree, change language

V-35

-33 Increase notice of intent to extend contract from 90 to 180 days

Agree, gives vendor chance to renew leases etc. 120 DAYS V-36

No extension for less than one year
Make "lump sum payments" during extensions, otherwise vendor will incorporate into unit prices or build into original term

Agree, rewrite V-36
Disagree, initial term long enough to pay off capital expenses

Define "fair market value" during extension as being at least the existing unit price at time of extension, subject to the annual adjustments in the contract

Agree, rewrite

V-37

SPECIFICATIONS

-8.3 the words "...any relevant unit price or lump sum payments ..." is confusing

Eliminate "relevant" and change "or" to "and" IV-7

clarify right to decrease flows with notice to still be subject to guarantee

Will clarify

IV-7

-20.1 Allow trains to pass through Arlington Agree, this should lessen impacts
at any hours on the City who agrees with vendor
IV-17

Host Community Concerns

-Change truck route from Beech to Locust St.	Agree	APPENDIX
-State that transportation vendor cannot change modes without Metro, City & County approval	Agree, except in emergencies which are temporary in nature, however Metro approval & consulting w/City & County.	V-2
-If the successful bidder is a barge firm, waste must be offloaded at Arlington, if adequate facilities available	Agree, will add this requirement	IV-16
-Increase contract length to twenty years to allow host community to implement and design mitigation measures	Recommend matching OWS contract length, see attached discussion	V-36

Staff

-Recommend that contract length be changed to match OWS contract length (see attached discussion)

-Reorganize & rewrite document to improve readability

-Combine Performance and Labor & Materials bond, decrease the amount to \$2.5 million to allow smaller firms to obtain, and exempt bond company from default if bond not renewed (only contractor), increase notification requirement to 120 days
V-25

-Provide mechanism for Metro collection of mitigation fee in the amount of \$7 per load, will require modification of existing language. Distribute funds directly to agencies implementing mitigation measures. Facilitate construction of mitigation measures with state agencies.
V-30

Due to the length of the document, the Request for Bids document has not been printed in this packet. The document had been distributed to Councilors. Other parties wanting a copy of the document may contact Marie Nelson, Council Clerk, 221-1646, extension 206.



METRO


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

Memorandum

Resol. #88-971

Date: August 9, 1988

To: Metro Council

From:  Rich Owings, Solid Waste Director

Regarding: Waste Transport Services Request for Bids

Enclosed is a copy of the draft Waste Transport Services RFB for your review. The tentative schedule for the project is as follows:

	<u>Requested Action</u>
August 16, 1988 Council Solid Waste Committee Public Hearing	Resolution to full Council approving issuance of RFB
August 25, 1988 Full Council	Adoption of Resolution
September 1, 1988	Issue RFB
September 27, 1988	Prebid Conference
November 1, 1988	Bids Due

Comments regarding the draft RFB may be forwarded to Rich Owings or Ray Barker.

RDO:aeY

attachment

cc: Rena Cusma, Executive Officer
Ray Barker, Council Analyst

3. EXECUTIVE OFFICER COMMUNICATIONS

3.1 Consideration of Resolution No. 88-898, for the Purpose of Designating the Week of October 3, 1988, as United Way Campaign Week

Presiding Officer Ragsdale reported the Internal Affairs Committee had considered the resolution at its meeting earlier in the evening and had recommended Council adoption.

Executive Officer Cusma invited Jim Shoemake, Metro United Way Campaign Chair, to address the Council concerning the resolution. Mr. Shoemake discussed campaign plans with the goal of increasing the level of staff contributions to the United Way Fund.

Motion: Councilor Kirkpatrick moved to adopt the resolution and Councilor Gardner seconded the motion.

Councilor Kirkpatrick expressed her strong support for the United Way agency and commended Mr. Shoemake on his ambitious efforts. She was pleased the Council to participate in the campaign.

Vote: A vote on the motion resulted in:

Ayes: Councilors Coleman, Collier, DeJardin, Gardner, Hansen, Kelley, Kirkpatrick, Knowles and Van Bergen

Nays: Councilors Waker and Ragsdale

Absent: Councilor Cooper

The motion carried and the resolution was adopted.

4. COUNCILOR COMMUNICATIONS

Consideration of Deferring Resolution No. 88-971, a resolution Approving a Request for Bids for Waste Transport Services to the Gilliam County Landfill

The Presiding Officer announced the above resolution, Item No. 7.3 on this meeting's agenda, had been considered by the Solid Waste Committee on September 20. The Committee had recommended Council adoption. Per the Council's procedures, Councilor Kirkpatrick had announced her intent at that meeting to file a minority report with the Council. Presiding Officer Ragsdale requested the Council defer consideration of the resolution until October 13 in order to give Councilor Kirkpatrick time to prepare and file the minority report.

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

September 22, 1988

Councilors Present: Mike Ragsdale (Presiding Officer), Corky Kirkpatrick (Deputy Presiding Officer), Elsa Coleman, Tanya Collier, Tom DeJardin, Jim Gardner, Gary Hansen, Sharron Kelley, David Knowles, George Van Bergen and Richard Waker

Councilors Absent: Larry Cooper

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

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

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS ON NON-AGENDA ITEMS

Robert J. Buelow, Vice President of Industrial Acoustics Company, Inc. (IAC), addressed the Council on behalf of IAC and another company, G.V.A. He explained his purpose was to state his concerns regarding the Council's adoption of Resolution No. 88-977 on September 8, 1988, which had awarded a general construction contract for the Convention Center Project to Hoffman (Oregon) - Marmolejo, a Joint Venture. In taking that action, the Council had adopted the Convention Center Committee's recommendation to go against the Metro Advisory Committee on Design & Construction's (ACDC) advice and Executive Officer Cusma's recommendation to select IAC as the provider of operable partitions for the Convention Center. He pointed out the recommendation to go with IAC had been made after extensive, knowledgeable review. IAC was prequalified as an acceptable bidder on the project and as a result, a great deal of time and expense had been incurred could prepare pricing on the operable partitions, he explained. Mr. Buelow discussed his company's extensive reputation as a provider of partitions to other, major facilities. In conclusion, he stated the Council's decision to award the contract to Hoffman-Marmolejo and to name IAC as the provider of operable partitions per alternates 9B and 10B would save the Metro taxpayers \$36,000. Mr. Buelow submitted a written copy of his testimony for the record.

Motion: Councilor Waker moved to defer consideration of Resolution No. 88-971 to October 13, 1988. Councilor Kirkpatrick seconded the motion.

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

The motion carried.

4.1 Report on the Status of the Performance Auditing Program

Councilor Collier, Chair of the Council Finance Committee, briefly reviewed the history of the need for performance auditing and the contractor selection process. She explained the firm of Talbot & Korvala had been selected to assist Councilors and Council staff in developing a work program and schedule for performance auditing. She then introduced Jack Talbot who explained the project in more detail.

Mr. Talbot discussed the benefits of a performance auditing program including dollar savings, efficiency and clarification of agency goals. He intended to complete his work within 90 days which would include interviews with all Councilors and key staff. He also planned to distribute bi-weekly reports on project progress to Councilors.

5. CONSENT AGENDA

Motion: Councilor DeJardin moved, seconded by Councilor Kirkpatrick, to approve items 5.1 and 5.2 of the Consent Agenda.

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

The motion carried and the following items were approved:

5.1 Minutes of August 25, 1988

5.2 Resolution No. 88-986, Approving the Tri-Met Section 9 Portion of the FY 1990 Unified Work Program

6. ORDINANCES

6.1 Consideration of Ordinance No. 88-265, Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 87-4: Brennt Property (Public Hearing)

The Clerk read the ordinance a first time by title only. Dan Cooper, General Counsel, explained that the matter before the

Council was a major amendment to the Urban Growth Boundary (UGB) and must be decided according to state land use goals. He also reviewed a letter from himself to Presiding Officer Ragsdale, dated September 14, 1988, which outlined options and procedures for Council decisions relating to the case. He said because timelines for preparing alternative findings were substantial and because of expense and uncertainty to the parties, it could be desirable for the Council to indicate at this meeting its intentions regarding the case, even though a final vote for approval could not occur until after the second reading of the ordinance on October 13.

Hearings Officer's Report

Chris Thomas, Hearings Officer for the case, summarized the "Report and Recommendations of Hearings Officer" document which was included in the agenda packet. He explained this case was similar to the Blazer Homes case recently before the Council except that less acreage was involved. The applicant therefore had a lesser responsibility to prove the need for urbanization, he said. Mr. Thomas then discussed specific ways in which the applicant had proven that need. Water, sewer, and transportation services would all improve. No changes would result in storm water, fire and police protection services. Some overcrowding could result in schools (he pointed out the record relating to schools for this case was identical to the Blazer Homes case record). The Hearings Officer had also concluded that most of the Brennt property could be served by a gravity sewer system with the exception of a small portion which was not suitable for development. Contiguous land could also be served by a gravity system but some of the land was not suitable for development due to uneven topography, he said. Mr. Thomas concluded that an overall improvement in urban services would result by the land being included in the UGB and he recommended the Council approve the Petitioner's request.

Testimony of the Petitioner

John Shonkwiler, an attorney representing Willy and Thea Brennt, reviewed the opponents' objections to his client's application. He discussed problems with the opponents' arguments relating to the issues of road improvements, traffic, public services, sewers and schools. He thought proposed road improvements were sufficient to handle projected traffic on Riven Dell and Barton Roads. He also explained the applicant had clearly demonstrated the property would support a gravity flow sewer system. Regarding the impact of the application on nearby schools, Mr. Shonkwiler explained the development could result in the addition of as few of seven to ten students of various ages to local schools. He concluded the applicant had fully substantiated the need for the Boundary amendment and requested the Council's approval of the application.

Resolution 88-971



*Waste
Transport
Services*

Contract Documents
December 1988

METRO



METRO

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

Memorandum

DATE: October 20, 1988

TO: Vendors and Interested Parties

FROM: *Bob Martin* Bob Martin, Interim Solid Waste Director

RE: WASTE TRANSPORT SERVICES BID DOCUMENT

Enclosed are the Bid Documents for the Waste Transport Services Metro is in the process of procuring. Additional copies may be obtained from Chuck Geyer in the Solid Waste Department. There will be a limit of three copies per firm without charge; additional copies will be available at a cost of \$20.00 each.

The following dates are important, and bidders are requested to make arrangements to participate.

Metro South Transfer Station Tours

November 9, 1988 10:00 a.m. - 12:00 noon
November 23, 1988 1:00 p.m. - 4:00 p.m.
December 8, 1988 10:00 a.m. - 12:00 noon

(Please call Chuck Geyer at 221-1646 to schedule a tour.)

DBE/WBE Workshop

November 16, 1988 9:00 a.m. - 11:00 a.m.
Metro Council Chambers

Purpose: To acquaint vendors with Metro's DBE/WBE (Disadvantage Business Enterprise/Women-Owned Business Enterprise) requirements.

Prebid Conference

November 22, 1988 10:00 a.m.
Metro Council Chambers

Bid Opening

December 21, 1988 4:00 p.m.
Metro Council Chambers

(over)

Vendors and Interested Parties
October 20, 1988
Page Two

Please direct questions regarding these events to Chuck Geyer.

For a tour of the Gilliam County Landfill, contact Linda Marshall of Oregon Waste Systems, Inc. at 503-281-2722.

Metro is also making available a computerized version of the Total Bid Calculation Formulae. This version requires Lotus 1-2-3 (Version 2.01 or later) software. Copies may be obtained by contacting Chuck Geyer.

RM:mk

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METROPOLITAN SERVICE DISTRICT

PORTLAND, OREGON

CONTRACT DOCUMENTS

for

WASTE TRANSPORT SERVICES

(From the Metro District to the Gilliam County Landfill)

CONSISTING OF:

BIDDING REQUIREMENTS

BID AND CONTRACT FORMS

SPECIFICATIONS

GENERAL CONDITIONS

APPENDIX

October 1988

INVITATION TO BID

INVITATION TO BID

Sealed Bids for Waste Transport Services, addressed to the Metropolitan Service District (Metro), will be received at the office of the Director, Solid Waste Department, 2000 S.W. First Avenue, Portland, OR 97201-5398, until 4:00 p.m., PST, on the 21st day of December, 1988, and then will be publicly opened and read.

The work contemplated consists of the transportation of 16,923,000 tons of mixed (residential, commercial and industrial) solid waste from the Metro South Station and a transfer station(s) to be located in Multnomah County, Oregon; to the Gilliam County Landfill located near Arlington, Oregon. The successful Bidder will also be required to pick up and transport waste from any future facilities designated by Metro. The successful Bidder will be required to supply all the equipment, personnel and facilities necessary to transport the waste from Metro-designated facilities to the landfill where he/she will unload the waste.

As detailed in these Contract Documents, the successful Bidder will be responsible for providing empty containers (intermodal containers and chassis, or transfer trailers, etc.) at the transfer stations. The transfer station operators will load the containers using a compactor located at the transfer stations. The operators will then move the loaded containers to a temporary staging area at the transfer stations, using a "yard goat." The successful Bidder will be responsible for removing the loaded containers from the staging area in a timely manner, and for providing adequate empty containers to the transfer station operator. The successful Bidder will be paid for each loaded container (hereinafter referred to as a "load" of waste) removed from the transfer station and transported to, and unloaded at, the Gilliam County Landfill. The successful Bidder will be permitted to utilize the equipment for this Contract for purposes other than performance of the Contract, with the prior approval of Metro. Such approval shall not be unreasonably withheld.

Services shall commence on January 1, 1990 and continue through December 31, 2009, or until 16,923,000 tons of waste have been transported, whichever occurs first. Metro may, in its sole discretion, elect to extend the Contract for up to an additional five years, if necessary to transport the total amount of waste.

All Bidders shall submit a completely executed Questionnaire with their Bid to allow Metro to determine whether the Bidders are qualified. The Questionnaire is bound within the Bid Forms of the Contract Documents. Additional Bid Forms may be obtained from Metro. Failure to submit a completed Questionnaire, or to submit any additional information requested by Metro, shall be

grounds for rejection of the Bid. Each Bidder must provide data sufficient to demonstrate to Metro that: a) the Bidder has equipment available (or can obtain such equipment) to perform the Contract; b) the Bidder has key personnel available (or can obtain such personnel) of sufficient experience to perform the Contract; and c) the Bidder has not repeatedly breached contractual obligations to public and private contracting agencies. In addition, Bidders will be required to demonstrate that they have obtained the necessary contractual agreements, regulatory approvals and/or permits for any Bidder-provided transport sites for the duration of this Contract; or a schedule acceptable to Metro for obtaining any such agreements, approvals or permits by July 1, 1989.

Before a Contract is awarded, Metro may conduct such additional investigation as is necessary to determine whether a Bidder is qualified. Upon request, the Bidder shall promptly submit such additional information as deemed necessary by Metro to evaluate the Bidder's qualifications.

Any information voluntarily submitted by a Bidder in the Questionnaire, or as part of any investigation to determine a Bidder's qualifications, shall be deemed a trade secret pursuant to ORS 192.500 (1) (b) and (e) if requested in the appropriate place in the Questionnaire or in writing by the person submitting the information.

Each Bid must be submitted on the prescribed form and accompanied by a certified or cashier's check or Bid Bond executed on the prescribed form, payable to the Metropolitan Service District in the amount of \$350,000.

The successful Bidder will be required to furnish the necessary additional Bond, or Letter of Credit, for the faithful performance of the Contract and for the payment of all persons supplying labor and materials as prescribed in the Contract Documents.

Bidders are required to comply with Metro's Disadvantaged Business Program. Goals for this Program are:

Disadvantaged Business Enterprises	7 percent
Women-Owned Business Enterprises	3 percent

Failure to meet these goals or to demonstrate good faith efforts to do so will constitute a nonresponsive bid. See Instructions to Bidders for references to applicable procedures.

For any task or portion of a task to be undertaken by a subcontractor or materials supplier, the Contractor shall not sign up a subcontractor or materials supplier on an exclusive basis prior to Contract Award.

Metro reserves the right to reject all Bids or any Bids not conforming to the intent and purpose of the Contract Documents, to reject for good cause any and all Bids upon a finding of Metro that it is in the public interest to do so or to waive any informality or irregularity in any Bid or Bids. Metro further reserves the right to award the Contract at any time within ninety (90) days following the Bid opening date.

For information concerning the proposed work, or to make an appointment to visit the sites of the proposed work, contact Mr. Chuck Geyer, Senior Solid Waste Planner, Metropolitan Service District, (503) 221-1646. A prebid conference will be held at 10:00 a.m. on Tuesday, November 22nd, 1988 at Metro.

Dated on this 21st day of October, 1988.

METROPOLITAN SERVICE DISTRICT

By: _____
Bob Martin, Interim Director
Solid Waste Department

INSTRUCTIONS TO BIDDERS

INSTRUCTIONS TO BIDDERS

1. Description of Services and/or Goods Covered by Bid

The services and/or goods covered by this Bid are described generally in the Invitation to Bid. A more detailed description of services and/or items covered by this Bid is contained in the Specifications.

2. Definitions

Except as otherwise specifically provided herein, all words and phrases defined in the Specifications shall have the same meaning and intent in these Instructions to Bidders. Bidders shall refer to those definitions as they read these Instructions.

3. Interpretation of Contract Documents

Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of the Contract Documents. If there is any doubt as to the meaning or intent of the Contract Documents, the Bidder shall request in writing any interpretation thereof. Such request shall be delivered to Mr. Chuck Geyer at Metro at least fifteen (15) working days prior to Bid opening. Any interpretation or change in the Contract Documents will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all Bidders receiving a set of the Contract Documents. Bidders shall submit with their Bids, or indicate receipt of, all Addenda. Metro will not be responsible for any other explanation or interpretation of the Contract Documents.

4. Bidder's Understanding

Before submitting a Bid, Bidders shall fully examine and read the Contract Documents. They shall visit all transport sites, examine such sites and surrounding areas, and fully inform themselves of all conditions on, in, at and around such sites and surrounding areas and of all other conditions relating to the execution of the work to be performed under the Contract. Failure to do so will not relieve the successful Bidder(s) of his/her obligation to enter into a Contract and to completely perform the Contract in strict accordance with the Contract Documents.

Bidder acknowledges by the submission of its Bid that it has satisfied itself as to the nature of the work involved, the general and local conditions of all transport sites and

transportation routes, availability of labor, electric power, water, equipment and all other matters which may in any way affect the work or the cost of the performance of this Contract, whether or not the same is specifically mentioned herein.

Each Bidder shall inform himself/herself of, and the Bidder awarded a Contract shall comply with, federal, state, regional and local laws, statutes, regulations, ordinances, orders and all other requirements of law relative to performance of the Contract. This requirement includes, but is not limited to, applicable requirements concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, permits, fees and other legal requirements.

5. Type of Bid

Three types of bids are called for in the Bid:

A. Unit Price

Unit prices are to be given in the item labeled "Price per Load" on the Bid Form. This item refers to the unit costs associated with the transport of a load of waste pursuant to the Contract Documents, and should be submitted in 1988 dollars. As defined in the Specifications: "a load shall be considered the amount of waste transported per trip from a transfer station and may include multiple containers or transfer trailers." The unit prices bid by Contractor shall assume that Gilliam County will enact a maximum weight variance permit or similar fee of \$7 per load of waste.

The estimate of quantities of waste to be transported is presented in the Appendix and, although stated with as much accuracy as possible, is approximate only and is assumed solely for the basis of calculation upon which the award of the Contract(s) shall be made. Payment to the Contractor will be made on the basis of loads of waste actually transported by the Contractor as specified in the Contract Documents. Metro reserves the right to increase or diminish the amount of any waste to be transported as may be deemed necessary, except that the Contractor shall be guaranteed at least ninety percent (90%) of all waste from the Metro region going to a general purpose landfill and that the total amount of waste transported shall not exceed 16,923,000 tons.

B. Lump Sum

Lump sum prices are to be given in the item labeled "Fixed Costs" on the Bid Schedule. This item refers to the fixed costs associated with the work to be performed pursuant to the Contract Documents. If awarded a Contract, the Bidder will be paid this lump sum price in monthly installments over a 20-year period.

Metro shall be under no obligation to continue monthly lump sum payments beyond the 20-year period.

C. Percent Adjustment

Annual price adjustments shall be allowed on unit prices as more fully described in the General Conditions. Bidders must propose a percentage of the change in the Consumer Price Index which they will accept as the annual price adjustment. The impact of this price adjustment on the basis of award is described in more detail in the Basis of Award section.

6. Additional Bid Information

In the place designated in the Questionnaire (Item No. 6), each Bidder shall indicate the number of tons per load of waste which Bidder will be able to transport, assuming a density of 790 pounds per cubic yard. Seven hundred ninety (790) pounds per cubic yard is the average density Metro expects the compacting equipment to achieve and will be used in evaluating the Bid as further described in the Basis of Award below. Contractor's equipment must be capable of transporting densities up to 900 pounds per cubic yard, without reducing the volume of waste.

In addition, Bidders must demonstrate in the Questionnaire that they have obtained the necessary contractual agreements, regulatory approvals and/or permits for any Bidder-provided transport sites for the duration of this Contract; or a schedule acceptable to Metro for obtaining any such agreements, approvals or permits by July 1, 1989.

The above Additional Bid Information is given to clarify the submittal of Bids and in no way relieves the Bidder from providing all information called for in the Bid Forms.

7. Basis of Award

Metro staff will examine the Bid information submitted to determine whether the Bid is responsive. Bidders will be required to submit any additional information requested by Metro, and to conduct any necessary site visits. If the Bid is deemed responsive, Metro will then calculate each Bidder's Total Bid Price.

Total Bid Price will be calculated using the "Price per Load," "Fixed Costs" and the "Percent Adjustment" from the Bid Schedule; the "Tons per Load" from the Questionnaire; an assumed four (4) percent annual increase in the CPI; and by using the estimated annual flows in the Appendix. The following steps are used to calculate the Total Bid Price. An example is provided in the Appendix.

- A. An annual fixed cost "f" will be computed by dividing the total fixed costs bid "F" by the number of years of the Contract (20).

$$\text{formula: } f = \frac{F}{20}$$

- B. Each year's variable cost "V" will be computed using the Bid items submitted on the Bid Schedule for Percent Adjustment and Price per Load, the Tons per Load from the Questionnaire, and the estimated annual flows from the Appendix. In detail, the percent adjustment bid "A" times the assumed increase in CPI (four (4) percent), repeated for each year "Y" beyond 1988 ($Y = \text{current year} - 1988$) will be multiplied by the annual total load expense "P." The annual total load expense "P," for each year of the Contract, is calculated by dividing the annual estimated tonnage "X" by the tons per load "L" and multiplying by the price per load "Z."

$$\text{formulae: } P = \frac{X}{L} * Z$$

$$V = (1 + (\frac{A}{100} * 0.04))^Y * P$$

- C. Each year's annual expense "E" will then be computed by adding the fixed and variable costs.

$$\text{formula: } E = f + V$$

- D. The Total Bid Price "T" is the sum of the adjusted annual expenses and will be the basis for establishing the low bid. Then each year's annual expense will be adjusted to

1990 dollars by discounting the annual expense by four percent (4%) for each year beyond 1990.

$$\text{formula: } T = E_{\text{for 1990}} + \frac{E_{\text{1991}}}{1.04} + \frac{E_{\text{1992}}}{1.04^2} + \dots + \frac{E_{\text{2009}}}{1.04^{19}}$$

Based on the information submitted along with the Bid, any additional information gathered by Metro, and the calculated Total Bid Price, Metro will determine the lowest responsive, responsible Bidder.

Metro reserves the right to waive any informality or irregularity in any Bid received and to reject any Bid not in compliance with all prescribed public bidding procedures and requirements or the Contract Documents and may reject for good cause any or all Bids upon a finding of the agency that it is in the public interest to do so. Metro reserves the right not to award any contract at all.

8. Preparation of Bids

All blank spaces in the Bid Forms must be completed either by typing or in ink. Amounts shall be shown in both words and figures. No changes shall be made in the phraseology of the forms.

Any Bid may be deemed nonresponsive which contains omissions, erasures, alterations, or additions of any kind, or prices uncalled for, or in which any of the prices are obviously unbalanced, or which in any manner shall fail to conform to the conditions of the Documents.

Each Bid shall give the full business address of the Bidder and be signed with the Bidder's legal signature.

- A. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership authorized to sign contracts on behalf of the partnership, or by an authorized representative, followed by the printed name and title of the person signing.
- B. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. When requested by Metro, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished.
- C. In the event that a Bid is submitted by a joint venture, then a certified copy of the legal agreement

constituting such joint venture shall be attached to the Bid.

The name of each person signing shall also be typed or printed below the signature. Signatures of all individuals must be in longhand.

Failure to fulfill any of the above requirements may render the Bid nonresponsive.

9. Submission of Bids

All Bids must be submitted not later than the time prescribed, at the place, and in the manner set forth in the Invitation to Bid. Bids must be made on the Bid Forms provided in the Appendix of the Contract Documents (additional forms are available from Metro). Each Bid must be submitted in a sealed envelope, along with the attachments described herein, so marked as to indicate its contents without being opened, and addressed in conformance with the instructions in the Invitation to Bid.

10. Modification or Withdrawal of Bid

Any Bid may be modified after delivery to the location specified in the Invitation to Bid by physically delivering to the same location before the time fixed for the Bid opening, a written sealed supplement to the original Bid, marked "Supplement to Bid of (Name of Bidder) to Waste Transport Services." Such supplement shall clearly identify the Bid item(s) which are changed by setting forth the original Bid item(s), and the modified item(s). Metro may reject any supplemental Bid which, in its opinion, does not set forth the proposed modifications clearly enough to determine the definiteness and certainty of the item(s) offered by the Bidder. No Bidder shall be allowed to submit more than one (1) Bid for this Contract. Verbal telephone or telegraphic modifications are invalid and will not receive consideration.

Bids may be withdrawn by the Bidder prior to the time fixed for the receipt of Bids by having an authorized representative of the Bidder, with sufficient identification, personally pick up the Bid. Bids may not be withdrawn for a period of ninety (90) days after the opening of Bids nor may they be withdrawn on or prior to the last date of any extension of such time as may be agreed upon between Metro and the Bidder.

11. Bid Security

Bids must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a Bid Bond issued by a Surety authorized to issue such bonds in Oregon and having a rating of at least A and being the appropriate class for the bond amount according to Best's Key Rating Guide, and must be in the amount of \$350,000. This bid security shall be given as a guarantee that the Bidder will not withdraw his/her Bid for a period of ninety (90) days after the Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Contract and furnish the Bonds or Letters of Credit required by the Contract Documents.

The Attorney-in-Fact (Resident Agent) who executes any bond on behalf of the Surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the Surety on the date of execution of the Bond.

12. Return of Bid Security

Bid securities will be held until the Contract has been finally executed or the ninety (90) day period described above has elapsed, whichever shall first occur, after which all bid securities, other than those which have been forfeited, will be returned to the respective bidders whose Bids they accompanied.

13. Performance and Labor and Material Bond

Within ten (10) days of Notice of Conditional Award and not later than one hundred and twenty (120) days prior to each anniversary date of this Contract, the successful Bidder shall execute and deliver to Metro an annually renewable Performance and Labor and Materials Bond on the form bound herewith or a Letter of Credit conditioned upon the faithful performance of the Contract and the payment of all labor and materials. Except that the term of the initial Bond or Letter of Credit shall be for a period from the execution of the Contract up to and including December 31, 1989; and that the subsequent Bond or Letter of Credit shall be for a period beginning January 1, 1990, up to and including December 31, 1991. The Performance and Labor and Materials Bond or the Letter of Credit shall be in the amount of \$2,500,000.

Each such Bond or Letter of Credit shall be in effect for the term commencing with the applicable Contract anniversary date until the following anniversary date. Failure to execute and deliver the required annual Bonds or Letters of Credit to Metro at least one hundred and twenty (120) days

prior to the Contract anniversary date shall constitute a default by the Contractor under the terms of this Contract, but such failure shall not constitute a default under the Bond or Letter of Credit.

The Surety or Banking Institution furnishing this Bond or Letter of Credit shall have a rating of at least A and be of the appropriate class for the relevant bond amount according to Best's Key Rating System and shall otherwise have a sound financial standing and a record of service satisfactory to Metro and shall be authorized to do business in the state of Oregon. The Attorney-in-Fact (Resident Agent) who executes this Bond or Letter of Credit on behalf of the Surety or Banking Institution must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the Surety or Banking Institution on the date of execution of each Bond or Letter of Credit.

14. Award of Contract

Within ninety (90) calendar days after the opening of Bids, Metro will accept one of the Bids or reject all Bids in accordance with the Basis of Award. The acceptance of the Bid will be by written notice of conditional award, mailed or delivered to the office designated in the Bid. The Notice of Conditional Award shall not entitle the party to whom it is delivered to any rights whatsoever.

In the event of failure of the lowest responsive, responsible, qualified Bidder to sign and return the Contract with an acceptable Bond or Letter of Credit, as prescribed herein, Metro may award the Contract to the next lowest responsive, responsible qualified Bidder. Such award if made, will be made within ninety (90) days after the opening of Bids.

Metro reserves the right to reject all Bids or any Bid not conforming to the intent and purpose of the Contract Documents, to waive any informality or irregularity in any Bid or Bids, to reject any Bid not in compliance with all prescribed public bidding procedures and requirements, and to reject, for good cause, any or all Bids upon a finding by Metro that it is in the public interest to do so.

15. Execution of Contract

The successful Bidder shall, within ten (10) days, not including Sundays and legal holidays, after receiving Notice of Conditional Award, sign and deliver to Metro the Contract attached hereto together with any Bond, Letter of Credit or other documents required by these Documents. Upon receipt

of the signed Contract and all other documents required to be submitted by the successful Bidder, as prescribed herein, Metro shall sign the Contract.

16. Failure to Execute Contract and Furnish Bonds/Letters of Credit

The Bidder who has a Contract awarded to him/her and who fails to promptly and properly execute the Contract and furnish any required Bond or Letter of Credit shall forfeit the bid security that accompanied his/her Bid, and the bid security shall be retained as liquidated damages by Metro, and it is agreed that this sum is a fair estimate of the amount of damages Metro will sustain in case the Bidder fails to enter into a Contract and furnish the Bond as hereinbefore provided. Bid security deposited in the form of a certified check or cashier's check shall be subject to the same requirements as a Bid Bond.

17. Disadvantaged Business Program Compliance

Metro has made a strong commitment to provide maximum opportunities to Disadvantaged and Women-Owned Businesses in contracting. The successful Bidder will be required to meet Metro's Disadvantaged Business Program goals or clearly demonstrate that good faith efforts have been made to meet the goals. The goals for this Contract are: Disadvantaged Business Enterprises (DBEs) -- seven (7) percent, and Women-Owned Business Enterprises (WBEs) -- three (3) percent of the Total Bid Price. DBEs and WBEs must be certified by the state of Oregon prior to Bid opening as DBEs/WBEs to be counted toward the Contract goals.

The Bid submitted must contain a fully completed Disadvantaged Business Program Compliance form contained herein. The apparent low Bidder, and any other Bidders requested by Metro to do so, shall submit completed DBE and WBE Utilization forms (also contained herein) by the close of the next working day following Bid opening. Detailed procedures for completing the forms and for demonstrating good faith efforts are contained in Ordinance No. 87-231 (Metro's Disadvantaged Business Program) contained in the Appendix. Bidder's special attention is directed to Section 2.04.155 (Contract Award Criteria), and Section 2.04.160 (Determination of Good Faith Efforts). Bidders should note the following requirement of the latter section:

Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade-oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the

project at least ten (10) days before Bids or proposals are due.

The following are minority-oriented newspapers published in the Portland metropolitan area:

The Skanner, 2337 N. Williams Avenue, Portland, OR 97211
(503) 287-3562.

The Portland Observer, P.O. Box 3137, Portland, OR 97208
(503) 288-0033

The American Contractor, P.O. Box 11233, Portland, OR 97217
(503) 285-9000

The El Hispanic, 3302 S.E. 20th Avenue, Portland, OR 97202
(503) 232-5269

The requirement to advertise is but one of the actions necessary to demonstrate good faith efforts under this program.

Failure of the Bidder to substantially comply with all of the requirements of the Disadvantaged Business Program will result in the Bid being deemed nonresponsive.

CONTRACT FORMS

CONTRACT

THIS CONTRACT, Made and entered into by and between the Metropolitan Service District (hereinafter referred to as "Metro"), and _____ (hereinafter referred to as "Contractor").

WITNESSETH, That the Contractor and Metro, for consideration stated herein, agree as follows:

I. Term. This contract shall take effect on _____, 1989 and remain in full force and effect through and including December 31, 2009, as more fully described in the Contract Documents. The initial term of this Contract may be extended by Metro, in its sole discretion, for additional periods of time as further described in the Contract Documents, provided Metro sends Contractor a written expression of intent to extend the Contract no less than one hundred and twenty (120) days prior to the expiration of the initial term or any later term.

II. Scope of Work. The Contractor, in consideration of the sum to be paid him/her by Metro and of the covenants and agreements herein contained, hereby agrees, at his/her own cost and expense, to furnish all permits, personnel, labor, equipment, materials, sites, supplies, trucks, tools, appliances, machinery, appurtenances and other items necessary to provide the waste transport services as specified in the Contract Documents and to do, keep, perform, and furnish all matters and things called for and described in the Contract Documents or necessarily implied therefrom, in the manner and under the terms and conditions prescribed by the Contract Documents.

III. Component Parts of the Contract Documents. The Contract Documents shall include all of those documents and forms described in Item 2.0(D) of the Specifications, all of which are as fully a part of this Contract as if set out verbatim, and if not attached, as if hereto attached. All provisions of the Contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this Contract shall be made except upon the written consent of the parties. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided in such amendment.

IV. The Consideration. In consideration of Contractor's performance of the Contract as set forth in the Contract Documents, Metro agrees to pay to the Contractor the amount bid in the Bid as adjusted in accordance with the Contract Documents, or as otherwise herein provided, and to make such payments in the manner and at the times provided in the Contract Documents. In consideration of the latter payments, Contractor agrees to

perform the Contract at the times and in the manner specified herein and to accept as full payment hereunder the amounts computed as determined by the Contract Documents.

V. Remedies for Default. In the event Contractor shall fail to perform the Contract at the times and in the manner set forth in the Contract Documents, Metro shall be entitled to all the rights and remedies which this Contract provides as well as all of the remedies which are provided by law. Nothing in this Contract shall be construed as limiting or reducing the remedies provided by law which Metro would have in the absence of any provision or provisions of the Contract.

VI. Applicable Law. This Contract is intended to be governed by and to conform in all respects to the Oregon Revised Statutes and all other applicable law of the state of Oregon.

IN WITNESS WHEREOF, We, the contracting parties, by our duly authorized agents, hereto affix our signatures and seals at _____, _____, as of this _____ day of _____, _____.

METROPOLITAN SERVICE DISTRICT

By: _____

Title: _____

CONTRACTOR

By: _____

Title: _____

APPROVED AS TO FORM:

Title: _____

PERFORMANCE AND LABOR AND MATERIALS BOND

BOND NO. _____

AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, That _____,
CONTRACTOR (Principal), and _____,
a corporation, duly authorized to do a general surety business in
the state of Oregon, as SURETY, are jointly and severally held
and bound unto the METROPOLITAN SERVICE DISTRICT (METRO)
(Obligee) herein, in the sum of TWO MILLION FIVE HUNDRED THOUSAND
DOLLARS (\$2,500,000), for the payment of which we bind ourselves,
our heirs, executors, administrators, successors, and assigns,
jointly and severally, firmly by these presents.

THE PARTIES RECITE AND DECLARE THAT:

This Bond is executed under the authority of Oregon Revised
Statutes, Chapter 279 of the state of Oregon, the provisions of
which are hereby incorporated into this Bond and made a part
hereof.

The condition of this obligation is such that whereas PRINCIPAL
entered into a certain CONTRACT with METRO, for the provision of
Waste Transport Services, all of which Contract is hereby fully
made a part hereof as if set out fully verbatim herein, and if
not attached, as if hereto attached, and is hereinafter referred
to as Contract. Said Contract requires CONTRACTOR (PRINCIPAL) to
execute and deliver an annually renewable Performance and Labor
and Materials Bond with a qualified Surety acceptable to METRO at
least one hundred and twenty (120) days prior to each relevant
Contract anniversary date in order that such Bond shall be in
effect during all periods when the amount of retainage withheld
by METRO is less than \$2,500,000. This initial Bond shall be in
effect for the period beginning _____ through and
including December 31, 1989, and shall be subject to and governed
by each and every term and condition of the Contract, as defined
therein.

IN WITNESS:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS THAT if the
above bounden PRINCIPAL shall at the times and in the manner, and
under the terms and conditions prescribed by the Contract, well,
fully, completely, and faithfully do, keep, perform, and furnish
all matters and things which the Contract requires to be done,
kept, performed, and furnished by said PRINCIPAL, and promptly
pay all laborers, mechanics, materialpersons, and any other
persons supplying goods, equipment, vehicles, tools, appliances,
materials, work or services for use in the performance of the

Contract; then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

PROVIDED, HOWEVER:

1. Any payment or payments made by SURETY under this Bond shall reduce its penalty to the extent of any such payment or payments;
2. No suit or action may be maintained under this Bond unless it shall have been instituted within four (4) years from the date on which final payment, as defined in the General Conditions of the Contract, falls due or within four (4) years after the termination date of the Contract, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense under Oregon law shall be applicable;
3. In the event that METRO serves SURETY with a copy of a written notice of METRO'S intent to suspend or terminate CONTRACTOR'S performance of the Contract, SURETY shall, at SURETY'S expense, take one of the following actions within ten (10) days of service of such notice upon SURETY:
 - a. arrange for CONTRACTOR to cure any defaults in performance and to renew full and complete performance of the Contract;
 - b. take over and assume full and complete performance of the Contract, or that portion thereof which METRO has ordered CONTRACTOR to discontinue, and perform the same or sublet the work (or that portion of the work) taken over by a contractor or contractors acting on behalf of SURETY; provided, however, that SURETY shall exercise its option and begin performance of the work, if at all, within ten (10) days after METRO serves SURETY with a copy of the written notice of METRO'S intent to Terminate or Suspend CONTRACTOR'S Performance of the Contract. If SURETY exercises its option under this paragraph, SURETY shall be paid for all work performed by SURETY in accordance with and subject to each and every term and condition of the CONTRACT.
4. SURETY shall be subject to each and every term and condition of the Contract.
5. For each and every default in performance of the Contract by CONTRACTOR, METRO shall be entitled to each and every right and remedy against SURETY which METRO has against CONTRACTOR or SURETY.
6. Any notices required to be served upon SURETY, METRO or CONTRACTOR shall be mailed or delivered to the address shown on

the signature page of this Bond or the last business address of the relevant party known to him/her who gives the notice. The date of service for purposes of this Bond shall be the date on which the relevant document was sent by mail or personally delivered to the proper address.

7. In no event shall SURETY be liable for a greater sum than the penalty of this Bond.

The SURETY, for the value received, hereby agrees that no forbearance under the Contract or extension, alteration, deletion of or addition to the terms of the Contract shall in any way affect its obligations on this Bond and SURETY does hereby waive notice of any such forbearance under the Contract, or alteration, deletion, or extension of or addition to the terms of the Contract.

SIGNED AND SEALED this _____ day of _____, 19__.

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

Signature:_____

Name and Title:_____

Address:_____

SURETY
Company:

(Corporate Seal)

Signature:_____

Name and Title:_____

Address:_____

APPROVED AS TO FORM:

Title:_____

SPECIFICATIONS

WASTE TRANSPORT SPECIFICATIONS

1.0 GENERAL

These specifications cover the development and operation services necessary to transport mixed solid waste from Metro South Station (formerly known as Clackamas Transfer and Recycling Center) and a transfer station to be located in Multnomah County titled Metro East Station; to the Gilliam County Landfill operated by Oregon Waste Systems (OWS), near Arlington, Oregon.

In addition, Metro reserves the right to negotiate with the Contractor for the transportation of waste from or to any additional transport sites. Such negotiations shall be conducted according to Article 15 of the General Conditions.

A brief description of the services to be provided is stated in the Invitation to Bid. To determine the full scope of the work or any particular part of the work, the applicable information in the several parts of these Contract Documents must be read together.

2.0 DEFINITIONS

For the purposes of this Contract, and each and every one of the Contract Documents, the following terms shall have the meanings hereinafter set forth:

- A. The term "Acceptable Waste" means all waste which is sealed into Contractor's containers at Metro-designated transport sites.
- B. The term "Back-up Transport System" or "Back-up System" means that transportation system plan which Contractor has designated and Metro has accepted as the method Contractor will utilize if a force majeure under Article 8 precludes use of the primary system.
- C. The term "Container" means the receptacle used to transport waste from the transfer station to a depot or disposal site. The receptacle shall include intermodal containers and transfer trailers. Performance specifications are included within this document.
- D. The terms "Contract" and "Contract Documents" include the following:
 - (1) The Advertisement for Bids,
 - (2) The Invitation to Bid,
 - (3) The Instructions to Bidders,

- (4) The Contractor's Bid including:
 - (a) Cover Pages
 - (b) The Bid Schedule
 - (c) The Bid Bond
 - (d) The Disadvantaged Business Program Compliance Form
 - (e) The Contract Questionnaire and Site Location Form (herein referred to as the "Questionnaire")
 - (f) The Non-Collusion Affidavit
 - (g) Resident/Non-Resident Bidder Status Form
 - (h) Signature Page
- (5) The Contract Forms, including the Contract, signed by both parties thereto, the Performance and Labor and Materials Bond, or Letter of Credit,
- (6) The Specifications,
- (7) These General Conditions,
- (8) Any and all Addenda to the Contract,
- (9) Any and all Appendices, Amendments, Change Orders, or extensions of the foregoing documents which the parties have agreed to or which Metro has approved in the manner prescribed by the Contract; provided, however, that appendices and attachments to Contractor's Bid shall not be considered part of the Contract Documents unless specifically agreed to by Metro.

The terms "Contract," "Contract Documents" and "Documents" shall also mean any and all services, matters and things which the above-described documents require to be done, kept, performed or furnished.

- E. The term "Contract Change Order" means a document prepared pursuant to applicable provisions of the Metro Code and Article 15 of these General Conditions as a change to the Contract, incorporating approved Contractor's proposals for changes in the Contract. Change orders shall be numbered consecutively in chronological order.
- F. The term "Contract Manager" means Metro's representative for all purposes of this Contract, designated as such by Metro. The Contract Manager is also the liaison between Contractor and Metro's consultants. The Contract Manager has no authority to approve increases in the cost of the Contract; all such changes must be approved under the procedures in this Contract and by Metro pursuant to applicable provisions of the Metro Code.
- G. The term "Contractor" means the person, firm, corporation or other entity which executes the Contract with Metro.

- H. The term "disposal site" means the Metro-approved landfill which is located in Gilliam County to which "acceptable waste" is transferred and disposed.
- I. The term "force majeure" means riots, wars, civil disturbances, insurrections, acts of terrorism at a transport site, epidemics, landslides, volcanic eruptions, earthquakes, lightning, floods, washouts, explosions, fires, and federal or state government orders, any of which are beyond the reasonable control of the applicable party and which necessarily and unavoidably prevents performance of the Contract but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time. Both parties agree that no other events, however catastrophic or uncontrollable, including, but not limited to, changes in laws or regulations, strikes, lockouts, other labor disturbances, breakage or accidents to machinery, equipment or plants, or inclement weather shall be considered forces majeure.
- J. The term "scalehouse" means those facilities the purpose of which is to determine and collect charges from public, commercial and industrial users of a transport site. The term "scalehouse" shall include both the buildings used for this purpose and the weighing system.
- K. The term "Load of Waste" means the quantity of waste transported by container(s) during each trip from a transfer station.
- L. The term "lump sum price" refers to the fixed costs associated with the work to be performed.
- M. The term "Metro" means the Metropolitan Service District, its officers, employees, contractors, or authorized agents or servants; the term Metro does not include Contractor, Contractor's officers, employees, subcontractors, agents or servants.
- N. The term "or approved equal" is used to indicate that the material or product to be supplied or installed must be equal to that specified and approved as such by Metro.
- O. The term "primary transport system" or "primary system" means that mode of transportation which Contractor has designated and Metro has accepted as the transport method Contractor will utilize unless a force majeure described in Article 8 precludes such use.
- P. The term "Request for Proposal" or "RFP" means a request by Metro for a proposal on contemplated changes in the

Contract. Such Request(s) for Proposals shall be numbered consecutively in chronological order.

- Q. The term "separate contract" means a contract between Metro and a party other than the Contractor for the transfer, transport, disposal, management, recycling, composting or handling of waste.
- R. The term "transport site" means any site or facility at which Contractor picks up, accepts, transfers, delivers, or otherwise handles waste pursuant to this Contract and includes both Contractor-provided sites and other sites.
- S. The term "unit prices" refers to the unit costs associated with the transport of a load of waste.
- T. The term "waste" means "acceptable waste," as the latter term is defined in the Specifications, unless indicated otherwise.
- U. The term "work" shall mean, unless the context requires otherwise, all labor, materials, equipment and services required or necessarily implied by the Contract Documents to be provided by Contractor.

3.0 SEQUENCE OF EVENTS FOLLOWING AWARD

Within thirty (30) days of Contract award, the Contractor shall submit a report indicating the status of permits and major equipment and site acquisitions. Thereafter, Contractor shall submit written updates of acquisitions and site developments on a quarterly basis or at other intervals as requested by Metro. At any point in time Metro determines the Contractor is not making adequate and timely progress toward developing an acceptable transportation system or securing regulatory approvals, Metro may declare Contractor in default of the Contract and proceed to terminate according to the General Conditions.

Additionally, the Contractor will supply the following in writing within ninety (90) days of execution of Contract:

- Mobilization plans and schedule for equipment and personnel.
- Final list of supervisory personnel.
- Final list of equipment.
- Contingency plans.

- Safety and emergency response program including equipment operator training and standard operating procedures.
- Operations plan, including specific operating procedure for all unloading, storage and transport of the containerized waste.
- List of subcontractors for each subcontract over \$100,000 per year and copies of signed agreements.
- Compliance plans to mitigate transportation impacts on Gilliam County.

4.0 COORDINATION

The Contractor is responsible for coordinating with the transfer station operator(s) a timely schedule for the availability of empty containers used to receive a load of waste. The Contractor is also responsible for coordinating the unloading of the containerized waste with the landfill operator. Metro will act as the arbitrator of any disputes between Contractor and the transfer station or landfill operators. Commencing January 1, 1990, coordination meetings will be held monthly to review the progress of the work, discuss operational problems and procedures, and complaints. It will be the responsibility of the Contractor to prepare for and respond to complaints, charges, and allegations brought against him/her prior to this meeting. The Contractor will also be required to present a monthly report summarizing activities during the prior month and plans and schedules for future activities. The organization of and invitation to the meeting will be the responsibility of Metro.

The monthly summary report shall include at a minimum:

- Manifest of the tonnage by load from each transfer station.
- Complaint forms and recommended actions.
- Any extraordinary occurrences affecting Metro.
- Status of operating equipment.
- Any correspondence between Contractor and governmental bodies relevant to this Contract.

5.0 OPERATING PLAN - GENERAL

Metro will provide a staging area at transfer stations for the Contractor to temporarily store up to five containers. All containers shall be supplied by the Contractor complete with

chassis (if applicable) and be equipped such that the transfer station operator can move the containers using a "yard goat." Contractor shall, at all times, have at least one container available to receive waste at each transfer station.

The transfer station operator is responsible for moving an empty container from the staging area to the compactor, extruding the untied bale of waste into the container, installing a seal on the container door handle and returning the sealed container to the staging area.

The Contractor is responsible for inspecting the empty containers for damage before release to the transfer station operator, inspecting the loaded containers for damage and verifying that the seal was installed properly before removing the container from the transfer station, transporting the load of waste from the transfer station to the Gilliam County Landfill, and then unloading it. If Contractor's inspection of the seal indicates that the seal has been improperly installed, the Contractor shall immediately notify the transfer station operator and request a new seal. Failure to do so will preclude Contractor from any recovery for damages arising out of any improperly installed seal. Contractor and transfer station operator shall use an interchange agreement for inspection of containers, or a similar agreement as approved by Metro.

Unloading shall be at Contractor's expense and may be accomplished by the Contractor or through an unloading agreement with the landfill operator. Contractor is also responsible for any storage, maintenance, cleaning and replacement of containers. The Contractor is allowed to utilize his/her equipment for purposes other than those connected with this Contract, with the prior approval of Metro. Such approval shall not be unreasonably withheld by Metro.

The services provided by the Contractor shall be performed in accordance with all state, federal and local regulations. Any changes in operating procedures as described by these documents or submitted by the Contractor as part of his/her bid must be approved by Metro.

The Contractor will conduct his/her activities so as to maximize coordination with any Metro-designated party, and to minimize loading and unloading time spent at the transfer station and disposal site, respectively, in a cost effective manner.

6.0 OPERATING RECORDS

The Contractor shall keep accurate records of all transactions in connection with this Contract. This includes, but is not limited to, Metro Transaction Tickets received at transfer stations, any receipts or correspondence from transport sites and any

communication from public agencies. Copies of such records shall be forwarded to Metro as requested. Metro shall be informed of the existence of all such communications or correspondence at the monthly meeting.

Upon accepting the sealed load of waste the Contractor will receive three copies of a Metro Transaction Ticket from the scalehouse clerk. The ticket will include the time, date, seal number, and tare weight of the vehicle components and the weight of the containerized load.

After transporting the container to the landfill the landfill operator completes and signs the Metro Transaction Ticket indicating the time and date received, verifying the seal number of the container, and verifying that the seal is intact. The Contractor, landfill operator and Metro all receive a copy of the completed ticket.

7.0 PAYMENT

Payment for the transport of solid waste will be made based on the Contractor's per load of waste bid price multiplied by the number of loads transported per month as further described in the General Conditions.

8.0 ANNUAL WASTE QUANTITIES AND FLOW GUARANTEES

8.1 Metro Guarantee

For the period from January 1, 1990 to January 1, 1991, Metro agrees to provide, for transport to the Gilliam County Landfill, a minimum of ninety percent (90%) of the total tons of acceptable waste which Metro delivered to the St. Johns Landfill from Metro South Station for the previous calendar year. For the remainder of the Contract Metro agrees to provide for transport to the Gilliam County Landfill a minimum of ninety percent (90%) of the total tons of acceptable waste which Metro delivers to any general purpose landfill during that calendar year.

8.2 Contractor Guarantee

The Contractor, notwithstanding any other provision of this Contract, agrees to accept, transport to, and unload at the Gilliam County Landfill any and all loads of waste made available by Metro to the Contractor according to the terms of the Contract.

8.3 Limited Guarantee Against Waste Flow Fluctuation by Metro

Metro will guarantee that the total acceptable waste quantities made available for transport by Contractor during

any calendar year quarter will not vary by plus or minus twenty percent (20%) of the total quantity transported by the Contractor during the same quarter of the previous calendar year. If the total quantities are less than eighty percent (80%), or greater than one hundred and twenty percent (120%), of the total quantities for the same quarter of the previous calendar year, Metro will reimburse the Contractor as provided below.

For purposes of determining compliance with these limited guarantees against waste flow fluctuations for the year commencing on January 1, 1990 only, the phrase "the total quantity transported by the Contractor during the same quarter of the previous calendar year" shall refer to the total quantity of waste disposed of by Metro at St. Johns Landfill from Metro South Station during the same quarter of the 1989 calendar year. For the year commencing on January 1, 1991 only, the above phrase shall refer to the amount transported by the Contractor in 1990 plus the quantity of waste disposed of at the St. Johns Landfill.

Metro's obligation to provide reimbursement for any failure by Metro to abide by the above waste guarantee is determined as follows: Metro shall reimburse Contractor for any unit price and lump sum payments which would ordinarily be due Contractor plus any actual additional extraordinary costs incurred by Contractor as a result of Metro's varying from the flow guarantee plus ten percent (10%) of such additional extraordinary costs. If Metro provides one hundred eighty (180) days notice to Contractor that quantities for transport will vary from the terms of the above described guarantee, Metro shall be required to pay Contractor only according to existing unit prices for waste actually transported and shall not be required to pay any extraordinary costs as outlined above. Nothing in this section shall relieve Metro from its obligations contained in Item 8.1 (Metro Guarantee).

9.0 WASTE FLOW AND HOURS OF OPERATION

Contractor shall be responsible for transporting waste from the transfer stations as often as necessary to avoid impeding normal transfer station operations and shall maintain such hours as are necessary to achieve this purpose. Waste volumes at each facility will fluctuate daily, weekly and monthly. Peak periods generally occur daily between 10:00 a.m. and 2:00 p.m. The Contractor must be capable of handling these variations such that the operations of the transfer stations are not impeded.

Failure of the Contractor to provide a minimum of one empty container in the staging area at all times at each transfer station shall be considered impeding the transfer station

operations. If no empty containers are available in the staging area the Contractor has one hour to remedy the situation or liquidated damages will be imposed. See Article 9 of the General Conditions. Likewise, if more than a total of five containers (empty or loaded, in any combination) are left in the staging area, the Contractor has one hour to remedy the situation or liquidated damages will be imposed. See Article 9 of the General Conditions.

It is anticipated that the annual waste flow by facility, once the Metro East Station(s) is operational, will be approximately thirty percent (30%) for Metro South Station and seventy percent (70%) for Metro East Station(s). For a more detailed analysis of projected waste flow on an hourly, weekly, monthly, and yearly basis refer to the APPENDIX in this document. These projections are estimates only and shall not be regarded as guaranteed flows.

The following information is for general guidelines only. Typically transfer stations in the Metropolitan Service District will be open between the hours of 6:00 a.m. to 6:00 p.m., Monday through Saturday; and 8:00 a.m. to 4:00 p.m. on Sunday, as is the case for the Metro South Station. It is anticipated that the proposed Metro East Station will be open from 4:00 a.m. to 11:00 p.m. Once the transfer stations are closed each day the Contractor must continue to provide containers until all the waste has been removed from the transfer stations.

10.0 LOADING OF TRANSFER VEHICLES

10.1 Waste Pick-up Locations

For bid purposes Bidders shall assume thirty percent (30%) of all waste to be transported will be available at Metro South Station (2001 Washington Street in Oregon City) and seventy percent (70%) of all waste to be transported will be available at the Metro East Station(s) (Metro East), the assumed location of which is described below.

Bidders shall assume that the location of the Metro East Station(s) will be within the area enclosed by the dotted line shown on the map contained in the Appendix. No adjustment to the unit price will be made if the location is contained within the area nor will any adjustment be made if actual waste made available at Metro South and Metro East varies from the thirty percent (30%) and seventy percent (70%) respective estimates. An adjustment will, however, be allowed if the Metro East Station(s) is located outside the designated area as described below.

For the purposes of this section the term "depot" shall mean the Contractor's location for changing modes of transportation such as unloading a container from a truck to

a barge or rail. If Contractor does not utilize a depot in performing this agreement the intersection of I-84 and Marine Drive will be used in lieu of a depot location.

If the Metro East Station(s) is located outside the designated area, an adjustment will be made to the unit price per load for each load originating from the Metro East Station(s), if the distance and/or travel time from the Contractor's depot to the Metro East Station(s) is greater than the base case distance and travel time. The base case is the greatest round trip distance and travel time between the Contractor's depot to any point inside the designated area.

If the actual travel time or route distance increases compared to the base case, a unit price adjustment of \$30/hr. and \$0.60/mile will be allowed. No decrease to the Contractor's unit price will be required.

The following formula will be used to calculate the price increase:

$$\text{UPI} = (\text{ATT}-\text{BCTT})(\$30) + (\text{ARD}-\text{BCD})(\$0.60)$$

UPI = Unit Price Increase, greater than or equal to \$0.00
ATT = Actual Travel Time in round trip hours
BCTT = Base Case Travel Time in round trip hours
ARD = Actual Route Distance in round trip miles
BCD = Base Case Distance in round trip miles

10.2 Container Performance Requirements

Waste will be compacted at transfer stations by compacting equipment such as an AMFAB Transpak Model 500, or equal, designed to produce efficient payloads. Containers shall be of the rear-load design capable of receiving an extruded load from the compactor.

Containers shall be of a leak-proof design considered "wind and water tight" as spillage of either waste or liquids from the container while in transit or storage is prohibited. Consideration in the design should also be given to minimizing odor.

It is the intent of these Specifications to ensure that Contractor equipment is suitable for the arduous, heavy-duty service connected with solid waste transport. Containers shall be of standard construction with smooth interior walls and floor capable of withstanding the extreme abuse expected from receiving compacted solid waste. No compaction will occur inside the container that would require designing for internal bursting forces. Contractor shall be fully

responsible for replacing any container equipment which does not meet these standards.

All contractor-furnished equipment shall be properly maintained in a safe working condition at all times. Transfer tractors and containers shall be suitably painted and/or furbished so that they present an acceptable appearance in the opinion of Metro.

10.3 Packaging Densities

The transfer station operator is responsible for the compaction and extrusion, into the Contractor's container, of an untied bale of waste that, when extruded, measures seven feet by seven feet up to 39 feet. Typically the compactor averages between a density of 680 lbs/Cu yd and 790 lbs/Cu yd based on the composition of the waste. The Contractor's transportation system shall be capable of transporting densities up to 900 lbs/Cu yd, without decreasing the bale volume.

10.4 Container Seals

At the completion of extruding the waste into the container, the transfer station operator shall install a lock seal on the container such as a flat metal seal that prohibits removal by hand. Each seal shall be marked with three letters (e.g., MSS for Metro South Station) identifying the facility, Contractor and a sequentially increasing set of at least four digits.

Example: MSS-CON-0000

It is the responsibility of Contractor to ensure that the seal was properly installed before the container leaves the transfer station. Once the Contractor has verified that the seal is properly installed the waste contained within the container is the responsibility of the Contractor until the seal is broken by the disposal site operator. If the seal is broken by other than disposal site personnel, the Contractor will be responsible for all associated costs and liabilities involved with managing any waste contained within the container, above and beyond normal disposal costs.

10.5 Container Cleaning

The Contractor shall clean containers as often as necessary to prevent malodor, unsightliness, or attraction of vectors.

11.0 CONTAINER STORAGE

A container staging area will be provided at Metro transfer stations such that the Contractor can temporarily store up to five containers on-site at any one time. It is possible that more than five containers will be permitted at the Metro East transfer station, but Bidders should assume a maximum of five until that facility is constructed. At least one of the five containers must be empty. The transfer station operator will shuttle (via a "yard goat") the empty container to the compactor, load it and return it to the staging area. The transfer station operator shall supply the "yard goat" and personnel to perform the shuttle operation. The purpose of the staging area is to provide the Contractor with a transportation buffer such that peak flow periods or short-term Contractor equipment problems do not impede the operation of the transfer station. No loaded containers shall remain overnight at the transfer stations except for an occurrence of a force majeure.

Subject to DEQ requirements, loaded container storage will be allowed at a Contractor-provided storage yard (this does not include transfer stations) on an emergency short-term basis, under the following circumstances:

- A. All waste containerized on Sunday or holidays can, at the Contractor's option, be stored until the following day if the waste flow does not exceed 500 tons/day.
- B. In the event that a force majeure or inclement weather precludes the use by the Contractor of its primary transport system in carrying out this Contract, the Contractor may, as a temporary "back-up system," store containerized waste for a period of up to 96 hours from the time it was sealed subject to DEQ requirements. The storage option shall remain in effect only until normal operating conditions can be restored, but not more than 96 hours. After 96 hours the "back-up system" must begin operation.

12.0 TYPES OF WASTES ACCEPTED/REFUSED

The Contractor shall accept and transport to the Gilliam County Landfill all waste which is sealed into Contractor's containers at Metro's designated transfer stations. It will be the transfer station operator's responsibility to provide loads of acceptable solid waste for transport by the Contractor.

13.0 UNLOADING CONTAINERIZED WASTE AT DISPOSAL FACILITY

Contractor is responsible for unloading all waste transported pursuant to this Contract at the Gilliam County Landfill. Upon arrival at the disposal site, Contractor and disposal site

operator will mutually inspect the container seal. The disposal site operator will indicate on all copies of the Metro Transaction Ticket whether the seal is intact and then sign for receipt of the load. If the seal is not intact Contractor shall notify Metro immediately and the load shall be unloaded per instructions from the disposal site operator.

If the seal is intact, Contractor shall proceed to the unloading area. The landfill operator will provide all weather access to an unloading area 363 days per year between 7:00 a.m. and 7:00 p.m. The unloading area will be constructed by the landfill operator such that the area will reasonably support and provide maneuverability for the Contractor's transfer vehicles, and be of sufficient size to locate the Contractor's tipper(s) or allow for efficient unloading by self-unloading vehicles if this type of unloading system is used. Metro will act as the arbitrator of any disputes between the parties.

13.1 Tipper Unloading

The Contractor shall locate the tipper(s) in the unloading area and expect to move the tipper(s) to a new location in the unloading area approximately once per week in order to minimize the distance from the tipper to the working face of the landfill. In the event of thirty (30) days' notice from the landfill operator the Contractor will be required to relocate the tipper(s) to a new unloading area. It is anticipated that the unloading area will change approximately once per month.

The Contractor shall bear all costs associated with the operation, maintenance and movement of the tipper, and any modifications to the unloading area that the Contractor requires in order to operate a tipper, above and beyond the unloading area provided by the landfill operator.

Tipper operation shall be by suitably trained personnel, follow proper safety procedures, with equipment that meets applicable local/state and federal requirements, taking particular care to minimize exposure to crosswinds and to reduce windblown litter to the greatest extent practical. All equipment liquids shall be contained at all times and the Contractor shall notify the landfill operator as soon as possible of any significant spills of equipment liquids.

The tipper foundation shall not place a pressure greater than 50 pounds per square inch on the underlying material in the unloading area. The tipper (if used) shall be located so as to provide sufficient clearance for efficient removal of unloaded waste to the working face.

The tipper shall be equipped with an automatic fire suppression system.

13.2 Non-Tipper Unloading

The Contractor may utilize an unloading system other than tippers. Any such system shall be entitled to the access outlined above and must follow proper safety procedures, using trained personnel, with equipment that meets applicable local/state and federal requirements, taking particular care to minimize exposure to crosswinds and to reduce windblown litter to the greatest extent practical.

Contingent upon Metro approval the Contractor may change the unloading system at any time during the life of the contract. If the Contractor changes the unloading system the deleted work section in Article 15 of the General Conditions will be imposed, except that only fifty percent (50%) of the savings will accrue to Metro.

Bidders are required to fully describe their unloading systems and any arrangements with subcontractors in the Bid Forms submitted at time of Bid opening. The successful Bidder must develop an acceptable, detailed unloading operations plan to be submitted within ninety (90) days of contract execution. Such plan shall be developed, consistent with above general provisions, in coordination with Metro and the landfill operator.

14.0 INSPECTION

The Contractor shall permit inspection of all facets of the work by Metro, its representatives, and governmental authorities having jurisdiction over any parts of the work at all times. The inspectors for Metro will have all rights and duties granted to Metro.

Directions from such inspectors shall not relieve the Contractor of any responsibility or liability associated with his/her operations. Contractor shall remain fully responsible for all injuries, accidents, and other mishaps associated with his/her operations.

Metro will inform the Contractor at the premobilization meeting and at subsequent meetings as to which of Metro's employees will be responsible for routine inspections, and what authority such inspectors will have.

15.0 TRANSPORT SYSTEM REGULATIONS

15.1 General

The Contractor shall be responsible for obtaining all necessary approvals and permits for the services rendered under this Contract including, but not limited to, complying with all applicable regulations. Copies of all current permits and conditions shall be submitted with the Bid, together with a timetable for obtaining necessary permits not yet approved.

15.2 Trucking

All truck equipment shall comply with applicable local codes, state laws, and applicable federal requirements including, but not limited to, the following:

DEPARTMENT OF TRANSPORTATION
Federal Motor Vehicle Safety Standards (FMVSS)
Federal Motor Carrier Safety Regulations (FMCSR)
Interstate Motor Carrier Noise Emission Standards

PUBLIC UTILITY COMMISSION OF OREGON REQUIREMENTS

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Control of Air Pollution from New Motor Vehicles and
New Motor Vehicle Engines

Interstate Motor Carrier Noise Emission Standards

Trucks shall be uniform in appearance. Each truck shall be equipped with a two-way radio capable of communicating with the Contractor's office and the appropriate personnel at the transport sites. All trucks that will be operating in the unloading area at the Gilliam County Landfill shall be equipped with a 10-pound ABC fire extinguisher with a 4A 60BC UL rating.

15.3 Rail

Contractors that include the use of rail to transport Metro's solid waste shall comply with all applicable rules and regulations of the Oregon Public Utility Commission including, but not limited to, OAR CHAPTER 860, DIVISION 42, "RAILROAD-HIGHWAY CROSSINGS" and DIVISION 44, "RAILROAD EMPLOYEE SAFETY."

16.0 CONTINGENCY PLANS

16.1 General

The Contractor will submit to Metro comprehensive plans for dealing with the following:

- A. Emergency operating procedures in the event of a work stoppage by any of the Contractor's employees or subcontractors. Such plan must provide for removal of waste from the transfer stations without significantly impeding the operation of the transfer stations.
- B. Emergency procedures in the event of breakdown or accident of any of the major equipment components directly involved in the transport of waste controlled by the Contractor.
- C. Emergency procedures in the event of a breakdown in the unloading operation.
- D. Emergency inclement weather operating procedures to avoid any interruption of service.

Plans must include time frame, sources for the implementation of the plan, and a description of replacement equipment. Contingency plans must be approved by Metro but such approval shall not be construed as a limitation on Contractor's obligation to transport waste in a timely manner as described elsewhere in this contract.

16.2 Back-Up System

The Contractor shall submit to Metro for approval a comprehensive plan detailing the transportation back-up system which the Contractor will activate if a force majeure precludes the use of the primary system. The plan shall include, but not be limited to, the mode of transport, method of unloading and the length of time necessary to activate. Equipment used in this back-up system must comply with the requirements contained in these Specifications.

16.3 Emergency

Contractor will provide to Metro a comprehensive plan designed to minimize hazards (during storage and transit) to human health and the environment; damage to property; the interruption of waste transfer and/or traffic along transportation routes due to:

- A. Fires and explosions

- B. Release of hazardous/unacceptable waste constituents
- C. Release of any solid waste constituents

The contingency plan must include:

1. A description of actions which transport personnel must take in response to A, B, and C above.
2. Evidence of arrangements with local emergency response agencies setting forth what services will be rendered by each agency in the event of an emergency.

The Emergency Contingency Plan in no way lessens the Contractor's full responsibility to comply with all applicable regulatory provisions for transporting solid waste.

17.0 SAFETY AND EMERGENCY RESPONSE TRAINING PROGRAM

Contractor is responsible for the safety of his/her employees. At a minimum an employee safety orientation and training program will be implemented prior to January 1, 1990 and will continue throughout the Contract term. The Contractor will designate a staff member to serve as the transportation system safety coordinator. The coordinator will be responsible for the implementation of the following program requirements:

- A. Newly hired employees will be provided with an orientation of the safety program, instructions regarding personal safety and the emergency and general contingency plan.
- B. A thorough investigation of all accidents to ascertain the cause and methods of preventing a reoccurrence of similar accidents.

If death or serious injuries or serious damages are caused by an accident related to this Contract the accident shall be reported immediately by telephone or messenger to Metro Solid Waste Department. In addition, the Contractor must promptly report in writing to Metro all accidents whatsoever arising out of, or in connection with the performance of the work, giving full details and statements of witnesses.

If a claim is made by anyone against the Contractor or any subcontractor as a result of any accident related to this Contract, the Contractor shall promptly report the facts in writing to Metro, giving details of the claim.

18.0 CONTRACTOR LIABILITY

The Contractor will be held responsible for any damage attributed to his/her operations caused to Metro-owned or privately-owned facilities including, but not limited to, equipment used in the loading and unloading of the containerized waste. The Contractor shall repair or replace any such damage at no additional charge to Metro in a timely manner.

The Contractor will be responsible for all costs incurred from any release of solid waste or liquids during transport and storage.

19.0 GILLIAM COUNTY ECONOMIC DEVELOPMENT ENHANCEMENT

19.1 Gilliam County Local Hire

Contractor shall use best efforts to ensure that a minimum of thirty percent (30%) of his/her work force for this Contract resides in Gilliam County. For the purposes of this provision the work force shall be defined as the number of employees directly involved in the transport of waste and maintenance of the transportation system and shall not necessarily include employees involved in administrative or supervisory capacities.

If sufficiently skilled personnel are not available with regard to residents of Gilliam County, the Contractor must work with Gilliam County to establish local training programs that will meet the employment goal within two years of Contract award.

19.2 Investment Enhancement

The Contractor must establish a maintenance facility within Gilliam County capable of performing, at a minimum, routine annual maintenance on all locally based major equipment directly involved in the transportation system.

The Contractor will make best efforts to purchase supplies and equipment from local vendors.

If the Contractor utilizes a barge mode of transport, Contractor shall offload all waste destined for the Gilliam County Landfill at the Port of Arlington, pending approval by the Port Authority.

20.0 MITIGATION OF TRANSPORTATION IMPACTS ON GILLIAM COUNTY

Due to the potential impact of transporting waste through Gilliam County to the disposal site, the Contractor shall comply with the following mitigation requirements designed to reduce the transportation impacts on Gilliam County:

- All waste transported via roads within the city limits of Arlington, Oregon shall follow the recommended route plans that are contained within the Appendix.
- Truck parking in the City of Arlington shall only be in areas designated by the City of Arlington. It is the Contractor's responsibility to coordinate with the City if applicable.
- All waste transported by truck through the City of Arlington shall be conducted from 7:00 a.m. to 7:00 p.m. Monday through Saturday and 12:00 p.m. to 7:00 p.m. on Sunday.
- To minimize noise and air pollution and to enhance safety, the Contractor shall use equipment for transporting waste through the City of Arlington that meets all applicable state, local and federal regulations. The use of "Jake" brakes is prohibited.
- All modes of transportation, while moving through the City of Arlington, shall operate at low speeds and the use of horns or whistles will be minimized to the extent necessary by law.
- The overall length of trains transporting waste shall be such that lengthy congestion at grade crossings with local surface transportation is minimized. Lengthy congestion shall be as defined in OAR CHAPTER 860, DIVISIONS 42-310, except that in no case shall blockage exceed 10 minutes during the hours of 7 a.m. to 7 p.m. nor 15 minutes during the hours of 7 p.m. to 7 a.m. Contractor shall also make reasonable efforts to expeditiously clear crossings for emergency vehicles.

21.0 TRANSFER OF GILLIAM COUNTY RECYCLABLES

Gilliam County's Waste Reduction Program requires that the Gilliam County Landfill provide a recycling and loading station at the landfill. The Contractor, as a back haul, will provide transport of all recyclables collected at the Gilliam County Landfill to a recycling market of his/her choice. Transport frequency shall be a maximum of once every two months or at the written request of the landfill operator if quantities are such that less frequent trips are acceptable. All proceeds derived from the sale of the recyclables shall be the Contractor's.

Gilliam County estimates they will recover between 36 and 73 tons per year of newspaper, glass, cardboard, ferrous and nonferrous

materials. All recyclables will be source separated and stored in containers provided by OWS. OWS shall provide loading services for the recyclables and the unloading of recycling containers if necessary.

GENERAL CONDITIONS

GENERAL CONDITIONS

ARTICLE 1

General Provisions

- A. Contractor shall comply with each and every provision of the Contract Documents.
- B. The Contract shall be deemed to have been made in and shall be construed under the laws of the state of Oregon. Any and all disputes arising under this Contract shall be decided under Oregon law.
- C. Contractor shall address all correspondence for Metro to Metro's designated Contract Manager.
- D. Contractor and its officers, employees, agents and subcontractors shall perform each and every service to be performed under this Contract in a skillful and competent manner in accordance with the highest standards of the solid waste and transportation industries. Contractor shall be responsible to Metro for any and all errors or omissions in the performance of this Contract and for any and all failures to perform this Contract.
- E. Contractor warrants that the personnel and equipment used in the performance of this Contract shall conform with the representations made in Contractor's statement of qualifications and shall otherwise be of the highest quality.
- F. In performing each and every service to be performed under this Contract, Contractor, its officers, employees, agents and subcontractors shall comply with all applicable laws, regulations, ordinances, orders and all other requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities, and Contractor shall accordingly give all notices and obtain all licenses and permits so required by law. The latter requirements of law include, but are not limited to, all applicable statutes, regulations and orders concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees and similar subjects. Copies of all correspondence or any other documents sent from, or received by, the Contractor, its officers, employees, agents or subcontractors to any federal, state, regional, county or local government agency, relative to any and all of the requirements of law referred to by this paragraph shall be retained by the

Contractor for a period of two years, and be available for inspection by Metro. Metro shall be informed of such correspondence at the monthly meetings. Examples of such correspondence include, but are not limited to, citations received from the State Highway Division. All agreements between Contractor and persons, firms, and corporations employed for this Contract shall contain this paragraph's requirements. The requirements of this paragraph shall survive the expiration of the Contract for a period of two years.

- G. Except as provided in Article 8, Contractor shall use its primary transport system in performing this Contract unless Contractor has received prior written (or verbal in the event of an emergency) approval from Metro, in consultation with the City of Arlington and Gilliam County, to use an alternate transport system. Metro is under no obligation whatsoever to grant such approval. In the event that Metro approves Contractor's use of an alternate system and except as provided in Article 8, Contractor shall not be entitled to any additional compensation or consideration but shall continue to faithfully perform every provision of this Contract.
- H. Any written notice required or allowed under the Contract shall be deemed to have been duly served if delivered in person to the individual, member of the firm, entity or an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address of the relevant person or party known to him/her who gives the notice. The date or time of service for purposes of all notices required or allowed under the Contract shall be the time or date the relevant document was sent by mail or personally delivered to the proper address.
- I. Time limits stated in this Contract are of the essence. No waiver of the Contract time limits or schedule dates is to be construed by Metro's failure to object to untimely performance under the Contract. In any event, any waiver of such time limits or schedules shall not be construed as a waiver of any future time limits or schedules.
- J. Metro shall have the right to inspect and copy all records and documents, to interview any persons, and to review any evidence in Contractor's possession or control which may assist Metro in determining whether and by what amount:
 - 1. Contractor is entitled to reimbursement or increased payment under any applicable provision of this Contract; or
 - 2. Metro is entitled to credits or to make reduced payments to Contractor under any provision of this Contract.

Metro shall also have the right to reasonably request any information it deems necessary to determine Contractor's ability to perform or to continue to perform this Contract. Contractor shall comply with all such requests by Metro within ten (10) days of receipt of such requests.

- K. Contractor shall at all times maintain an accounting system which utilizes generally accepted accounting principles for all services rendered and materials supplied, including additional and deleted work, in connection with this Contract. Contractor's accounts and records covering these charges and all invoices and payments on account of the Contract, as adjusted for additional and deleted work, shall at all reasonable times during the term of this Contract, and for two (2) years thereafter, be open to inspection by Metro or its authorized representatives.
- L. Contractor agrees to promptly pay all subcontractors, materialpersons, suppliers, or laborers engaged for purposes of this Contract in accordance with any and all contracts between any such persons (or entities) and Contractor. Contractor agrees to immediately remove any liens or encumbrances which, because of any act or default of Contractor, its officers, employees, or agents, or of Contractor's subcontractors or material suppliers of any tier, are filed against any property, real or personal, which Contractor, its officers, employees, subcontractors and other agents, interferes with the performance of this Contract; and to defend, indemnify, and hold Metro harmless as required by Article 16, infra.
- M. No provision or provisions of this Contract nor any authority granted by the Contract is intended to create or result in any personal liability for any public official or employee or agent of Metro, nor shall any provision or provisions of the Contract be construed to create any such liability. No approval given by Metro pursuant to this Contract shall be construed to relieve Contractor of any of its obligations to perform this Contract.
- N. In the event any provision(s) or clause(s) of this Contract is/are void, invalid, or unenforceable under any federal, state, regional or local laws, regulations or ordinances, the balance of the Contract shall remain in effect and binding on the parties hereto.
- O. A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

Where the condition to be waived is a material part of the Contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and

take the form of a Contract modification as provided for elsewhere in this section.

- P. The parties agree that proper and exclusive venue for any and all actions under this Contract or any subcontracts of any tier made pursuant to this Contract shall be in the county of Multnomah, the state of Oregon, or if in federal court, the Federal District Court of Oregon.
- Q. Contractor shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

ARTICLE 2

Intent of the Contract Documents

- A. All services which are necessary to complete the Contract within the limits and in the manner established by these Contract Documents, shall be considered as a part of the Contract and such services shall be executed by Contractor without extra compensation in the same manner and with the same quality of material and services as required by other portions of the Contract.
- B. Unless expressly stipulated otherwise, Contractor shall provide and pay for all services, labor, overtime labor, standby labor, methods, materials, equipment, transportation, necessary maintenance, power, fuel, water, taxes and all other facilities and services, including operating costs of checking out equipment, and all other items and facilities of every kind necessary for performance of this Contract.
- C. Words describing material or work which have a well-known technical or trade meaning, unless otherwise specifically defined in this Contract, shall be construed in accordance with such well-known meaning, recognized by solid waste and transportation professionals, engineers and trades.
- D. The Contract and each of the Contract Documents are complementary, and they shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should Contractor observe any conflicts between or duplications of any provisions of the Contract, he/she shall bring them to Metro's attention for decision and revision immediately after originally observed. In the event of duplications of or conflicts between any provisions of the Contract after the Contract has been executed, the following priority of documents shall be used to resolve such duplications or conflicts:

- 1) Specifications,
- 2) General Conditions,
- 3) Contract Forms and Contractor's Bid,
- 4) Instructions to Bidders,
- 5) Invitation to Bid.

For purposes of the above priority list, any appendices, addenda, amendments or changes to the above documents which are agreed to by the parties hereto shall be given the same priority as the documents to which they apply; however, only those portions of appendices to Contractor's Bid which have been specifically approved by Metro shall be considered part of the Contract Documents.

A duplication of services or items to be performed is not intended by any provision or provisions of the Contract, and any such duplications specified by the Contract shall not become a basis for extra cost to Metro.

Detailed information takes precedence over general information and words take precedence over numbers unless obviously incorrect.

- E. Contractor shall secure written instructions from Metro's Contract Manager before proceeding with services affected by omissions, discrepancies, conflicts or duplications in the provisions of the Contract.
- F. It is understood and agreed that, by execution of this Contract, Metro does not waive or surrender any of its governmental powers.

ARTICLE 3

Metro's Responsibility

It is not incumbent upon Metro to notify Contractor when to begin, cease or resume services under this Contract, nor to give early notice of rejection of faulty services, nor in any way to superintend so as to relieve Contractor of any liability, any responsibility or any consequences for neglect, negligence or carelessness or for substandard or defective services or for use of substandard or defective materials or equipment by Contractor, his/her officers, employees, subcontractors or agents.

ARTICLE 4

Contractor's Representative

- A. Contractor shall provide the services of a competent Representative for the term of this Contract. Prior to performing services under this Contract, Contractor shall notify Metro in writing of the name, title, address and telephone number of Contractor's Representative.
- B. The Representative shall be readily available, shall have authority to furnish estimates on behalf of the Contractor and shall otherwise have full authority to bind the Contractor.
- C. The Representative shall represent Contractor for all purposes of this Contract, and all directions, instructions, or notices given to the Representative by Metro shall be as binding upon Contractor as if delivered personally to Contractor.

ARTICLE 5

Independent Contractor

Contractor shall perform all work under this Contract as an independent Contractor. Contractor is not and shall not be considered an employee, agent or servant of Metro for any purposes, under this Contract or otherwise; neither shall any of Contractor's subcontractors, employees or agents be, nor shall they be considered employees, agents, subagents or servants of Metro for any purposes under this Contract, or otherwise.

Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Contract shall be construed as creating a partnership or joint venture between Metro and Contractor. Nothing in the Contract shall be construed as giving Metro any duty to supervise or control any acts or omissions of any person, entity or party, which acts or omissions are in any way connected with the performance of services under the Contract.

ARTICLE 6

Subcontractors

- A. Contractor shall submit to Metro the names and addresses of proposed subcontractors and suppliers for each of the major subcontracts (over \$100,000 per year) of the Contract in accordance with the Specifications.
- B. All subcontracts in connection with the Contract entered into by Contractor with its subcontractors, officers, employees and agents including, but not limited to, all contracts relating to operation or ownership of transport sites, if any, and any and all related facilities, all leases of equipment or other materials and all purchase or finance agreements for equipment or other materials shall be subject to applicable state, federal and local laws, and the applicable conditions of this Contract. All subcontracts of whatever nature including, but not limited to, leases, purchase and finance agreements and transport site contracts, shall contain a clause which provides that if Contractor, in Metro's opinion, defaults in performance of this Contract and Metro accepts assignment of the subcontract, then subcontractor shall enter into a novation of the subcontract with Metro and shall recognize Metro or its assignee as Contractor and that Metro or its assignee shall have all the rights, remedies and responsibilities of the Contractor under the relevant subcontract. Upon written notice from Metro, Contractor agrees to assign all of its rights in all such subcontracts to Metro upon Metro's determination that Contractor has defaulted under the terms of this Contract.

Contractor shall be as fully responsible to Metro for the acts and omissions of his/her subcontractors and suppliers, and of the subcontractors, suppliers, employees, firms, agents or servants of each subcontractor as he/she is for the acts or omissions of his/her own employees or agents. No provisions of this Contract nor of any contract between the Contractor and his/her subcontractors shall be construed as creating any contractual relation between those subcontractors and Metro.

ARTICLE 7

Separate Contract

- A. Metro reserves the right to let separate contracts in connection with the transportation of waste within and beyond Metro's boundaries and to let any other separate contracts involving waste

transfer or disposal from any facilities controlled by Metro consistent with the provisions governing ninety percent (90%) flow guarantees contained in the Specifications.

- B. Contractor shall cooperate with Metro and with other separate contractors engaged by Metro for the transportation or disposal of waste or the operation of transfer stations or resource recovery or compost facilities or any related projects so that all portions of the Contract may be completed in the most efficient and timely manner, without any interference with work on related projects and contracts.
- C. Metro shall be the arbitrator of all disputes between the Contractor and separate contractors concerning performance of the work and interpretation of the Contract(s) and Metro's decisions shall be final. Metro must be notified of any such disputes within ten (10) working days of their occurrence. Metro will not be liable for any damages resulting from or related to disputes between the Contractor and separate contractors.

ARTICLE 8

Allocation of Risk/Force Majeure

A. Representations of Parties

Prior to submitting any Bids, Contractor is required to acquaint himself/herself with all transport sites and all other conditions relevant to the performance of this Contract, and make all investigations essential to a full understanding of the difficulties which may be encountered in performing the Contract.

Contractor represents that prior to submitting his/her Bid for the Contract, he/she has examined carefully all of the Specifications, acquainted himself/herself with all other conditions and regulations relevant to the Contract, and made all investigations essential to a full understanding of any and all difficulties which may be encountered in performing the Contract.

By awarding the Contract to Contractor, Metro does not warrant or admit the correctness of any investigation, interpretation, deduction or conclusion relative to any condition or conditions of any transport site or any other condition related to this Contract. Contractor has made and shall make his/her own deductions and conclusions as to any and all problems which may arise from such site conditions as they relate to this Contract and any other condition or requirement of this Contract, and shall accept solely for himself/herself full legal responsibility and liability.

B. Effect of Force Majeure on Obligations

1. Metro's Obligations

In the event that Metro is rendered unable, wholly or in part, by the occurrence of a force majeure to carry out any of its obligations under this Contract, then Metro's obligations, to the extent affected by such occurrence, shall be suspended during the continuance of such inability.

2. Contractor's Obligations

Contractor shall ensure that a back-up transport system is available for use in performing this Contract should a failure of its primary system occur due to the occurrence of a force majeure. The back-up system shall be that system proposed by Contractor and accepted by Metro.

In the event that a force majeure precludes the use by Contractor of its primary transport system in carrying out this Contract, Contractor shall put into active use its back-up transport system not more than 24 hours from the point in time that waste ceases to be transported by Contractor's primary system. In the event of any question as to precisely when waste ceases to be transported by Contractor's primary system, Metro's decision shall be final.

As consideration for putting its back-up system into active use in performing this Contract, Metro shall pay Contractor pursuant to Article 15(C); however, the amount of any reduced cost in not operating the primary system shall be calculated pursuant to Article 15(F) and shall be subtracted from the amount due Contractor.

For purposes of this Article, "active use" shall mean the extent of operation of the back-up system necessary to comply completely with these Contract Documents including, but not limited to, the transport of all waste required to be transported by Contractor pursuant to this Contract. Contractor's active use of the back-up system shall be for the period during which such force(s) majeure continues and shall then cease and be replaced by the primary system.

In the event that a force majeure or forces majeure preclude the use by Contractor of both its primary and back-up transport systems, Contractor shall, at Metro's request, use its best efforts to make available to Metro alternate transport arrangements which would allow full performance of this Contract. In the event that Metro requests an alternate system and Contractor makes available such a system,

Contractor shall be paid in the same manner as it would be paid for the active use of the back-up system as described above.

3. Notice of Force Majeure

In the event that either party intends to rely upon the occurrence of a force majeure to suspend or to modify its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible, setting forth the particulars of the circumstances. Notices shall likewise be given after the effect of such occurrence has ceased.

ARTICLE 9

Liquidated Damages

- A. In the event of any default of this Contract by Contractor which default, in the sole opinion of Metro, substantially impedes the normal operations of any transport sites, Contractor shall have one hour to remedy the situation such that, in Metro's sole opinion, operations at the relevant transport site have returned to normal. If Contractor fails, in Metro's sole opinion, to do so, Contractor shall pay Metro at the rate of \$400 per hour or portion thereof until Contractor has, in Metro's sole opinion, returned transport site operations to normal. For purposes of this Contract, the phrase "substantially impedes the normal operations of any transfer station" shall mean the failure of Contractor to supply at least one empty container or transfer trailer to the transfer station operator or to remove loaded containers or transfer trailers from the staging area, so that at no time are there more than a total of five (loaded or empty or any combination thereof) containers or transfer trailers in the staging area.
- B. In the event of any default of this Contract by Contractor which default, in the sole opinion of Metro, results in the filling of the pit or other type of holding area for waste at a Metro-designated transfer station to maximum capacity, the Contractor shall pay liquidated damages to Metro in the sum of \$6,000 per hour, or any portion thereof, until such time as Contractor remedies the default.

In the event that any single period of such default extends beyond fifteen (15) days, Metro shall recover no more liquidated damages for periods beyond such fifteen (15) day period, or beyond the period the liquidated damages situation exists, whichever is less. Metro shall, however, be entitled to all other remedies for Contractor's continued default which this Contract or the law provides.

- C. It is expressly understood and agreed that these amounts are not to be considered in the nature of a penalty, but because of the difficulties of proof of loss, the parties have determined that these amounts are a reasonable forecast of just compensation in light of the anticipated or actual harm which would be caused by a breach or default on Contractor's part. Metro may deduct such damages from any amount due or which may become due, or from funds held in retainage, or the amount of such damages shall be due and collectible from the Contractor or the Surety within fifteen (15) days of service of notice by Metro that liquidated damages have been imposed. This remedy shall be in addition to, and not a waiver or surrender of, any other rights or remedies Metro may have under this Contract or any provision or provisions of law.

ARTICLE 10

Metro's Rights and Remedies for Defaults in Performance of the Contract

Nothing in this Article, and no actions taken pursuant to this Article shall constitute a waiver or surrender of any rights, remedies, claims or causes of action Metro may have against Contractor or its Surety under any other provision of this Contract or any provision(s) of law.

A. Metro's Rights and Remedies for Contractor's Default which result in Liquidated Damages

For each and every event of default by Contractor which default, in Metro's sole opinion, results in liquidated damages and if neither Contractor nor Surety, within twenty-four (24) hours after written notice of such default has been served upon both Contractor and Surety, cures such default or gives Metro reasonable assurances that the default will be promptly cured, Metro shall have the unconditional right to all of the following remedies to the extent permitted by law.

1. Equitable Remedies

For each and every default under Article 10 A., Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or materials covered by Article 6 B.

2. Liquidated Damages

As an additional remedy for each and every default under Article 10 A., Metro is entitled to liquidated damages for the first fifteen (15) days of such default, as provided in Article 9.

3. Actual Damages

For each and every event of default under Article 10 A. which lasts more than fifteen (15) days, Metro shall be entitled to recover its actual damages for the period of default beyond the fifteen (15) day period. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 25.

4. Termination or Suspension of Contractor's Contract

For each and every event of default under Article 10 A. which lasts longer than twenty-four (24) hours, Metro shall be entitled to terminate or suspend the contract in accordance with Section C. of this Article. Alternatively, for each and every event of default under Article 10 A. which lasts longer than thirty (30) days, Metro shall be entitled to terminate or suspend the Contract immediately and without the necessity of notice to Contractor.

B. Metro's Remedies for Defaults Other than Defaults in Article 10 A.

For each and every event of default other than a default under Article 10 A., if neither Contractor nor Surety, within thirty (30) days after written notice of such default has been served upon both Contractor and Surety, cures such default or gives Metro reasonable assurances that the default will be promptly cured, Metro shall have the unconditional right to one or more of the following remedies to the extent permitted by law:

1. Equitable Remedies

For each and every default under Article 10 A., Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or materials covered by Article 6 B.

2. Actual Damages

As an additional remedy, for each and every default under Article 10 B., Metro shall be entitled to recover its actual damages during all periods of default. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 25. No liquidated damages remedy shall apply to defaults under this section.

3. Termination or Suspension of Contractor's Performance of the Contract

For each and every event of default under Article 10 B. which lasts longer than thirty (30) days, Metro shall be entitled to terminate or suspend Contractor's performance of the Contract in accordance with Section C. of this Article.

C. Procedure for Termination or Suspension of the Contract by Metro

To terminate or suspend the Contract, Metro must notify in writing both Contractor and Contractor's Surety of Metro's intent to terminate or suspend the Contract.

Within ten (10) days of service upon Contractor of Metro's notice of intent to terminate or suspend the Contract, Contractor shall either:

1. cure any defaults in performance; or
2. discontinue his/her work on the Contract or such part thereof as Metro shall designate.

If Contractor does not cure any defaults within ten (10) days after service of the notice of intent to terminate or suspend the Contract, Surety may, at its option, take over and assume full and complete performance of the Contract or that portion thereof which Metro has ordered Contractor to discontinue, and may perform the same or may sublet the work or that portion of the work taken over by a contractor or contractors acting on behalf of Surety; provided, however, that the Surety shall exercise its option and begin performance of the work, if at all, within ten (10) days after Surety is served with a copy of the written notice of termination or suspension. The Surety shall be paid by Metro for all work performed by Surety in accordance with and subject to each and every term of the Contract.

Surety shall be subject to each and every term and condition of the Contract.

D. Metro's Remedies if Contractor Becomes Insolvent, Dissolved, Bankrupt, Files for Bankruptcy, Makes a General Assignment for Creditors

The parties agree that if Contractor becomes insolvent, is dissolved, files for Bankruptcy, is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Metro shall be entitled to request of Contractor or its

successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor and Surety to comply with such request within ten (10) calendar days of service upon both Contractor and Surety of a written request from Metro for such assurances shall entitle Metro to terminate or suspend Contractor's performance of the Contract under Section C. of this Article. Metro shall not be bound to the Contract by an insolvent Contractor's trustee or receiver.

E. Procedures and Remedies for Termination Under Force Majeure

If an event or events of force majeure preclude the use of both Contractor's primary and back-up transport systems as described in Article 8 and Contractor is unable, after exerting its best efforts, to make available an alternate transport arrangement, then Metro shall have the right, in its sole discretion, to terminate this Contract. Additionally, in the event that any single event of force majeure lasts longer than ninety (90) days, Metro shall have the right, in its sole discretion, to immediately terminate this Contract. In the event that Metro chooses to terminate the Contract under this section, Metro shall serve Contractor with written notice of such intent and shall reimburse Contractor for either: (1) all actual costs which Metro determines Contractor has incurred in performing the Contract prior to service upon Contractor of the notice to terminate plus an amount equal to ten percent (10%) of such costs less the total payments which Metro has paid Contractor prior to service of the notice of termination upon Contractor; or (2) all remaining lump sum payments otherwise due Contractor under the Contract, whichever amount specified in (1) or (2) of this sentence is less. It shall also be a condition precedent to any payments under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the notice of termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

F. Procedures and Remedies for Metro Termination for the Convenience of the Government

In the event the agreement between Metro and Oregon Waste Systems, Inc. for operation of the Gilliam County Landfill is terminated, Metro shall have the right, in its sole discretion, to terminate this Contract. Metro shall provide the Contractor written Notice of Termination under this section. In the event Metro exercises its right to terminate the Contract under this section, Metro shall reimburse the Contractor for either: (1) all actual costs which Metro determines Contractor has incurred

in performing the Contract prior to issuance of the Notice of Termination, plus an amount equal to ten percent (10%) of such costs less the total payments which Metro has paid Contractor prior to service of the Notice of Termination; or (2) all remaining lump sum payments otherwise due the Contractor under the Contract, whichever amount specified in (1) or (2) is the lesser. It shall also be a condition precedent to any payment under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the Notice of Termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

ARTICLE 11

Contractor's Right to Terminate

Should Contractor be unable to perform this Contract by using either its primary or back-up transportation system for a period of sixty (60) days or more by 1) a public authority other than Metro; or 2) by Metro (if Metro is acting in violation of Contractor's rights under the Contract) and either inability is through no fault of Contractor, then Contractor, upon seven (7) days' written notice to Metro may stop the work or terminate the Contract and recover from Metro that portion of the Contract payments, less the aggregate of previous payments, allowable to the Contract completed as of the date of termination, plus his/her demonstrated actual damages; however, in such event, Metro will make no payments to Contractor for any work done on the Contract after the date of termination.

ARTICLE 12

Basis and Method of Payment

- A. Rates. For all work required under this Contract, Metro will make monthly payments to Contractor based on the rates set forth in the Contractor's Bid.

On or prior to the eighth day of each month, Contractor will submit to Metro a billing which indicates the quantity of waste transported from each transport site pursuant to the Contract. The value of unit price work shall be based upon the number of loads of waste actually transported according to the Contract Documents for the calendar month just completed.

For the item "Fixed Costs," monthly payments will be made by taking the lump sum submitted in the Bid and dividing that amount by 240 which resulting amount shall represent monthly payments.

The Contractor shall furnish to Metro such detailed information as set forth in these Contract Documents (including records from transport sites) and as Metro may request to aid in the preparation of monthly payments. After approval by Metro, Metro will pay to the Contractor by the 25th day of the following month ninety-five percent (95%) of the value of unit price work and lump sum work less any previous payments. The withholding of five percent (5%) of payments as retainage shall be subject to the provisions of Articles 13 and 17.

- B. Price Adjustment. Unit prices shall be adjusted up or down each year of this Contract, beginning one year from the first day of the month in which this Contract is signed, to reflect changes in the cost of doing business. The price adjustment change at the beginning of the second Contract year shall be in a percentage amount equal to the change of the index between the previous year and the current year times the percentage adjustment bid in Contractor's Bid, as described below.

The following formula will be used to calculate the price adjustment: $AI = ((CI_x - CI_B) / CI_B) \times \frac{\%}{100}$

AI = Percentage price adjustment
CI_x = Consumer Price Index in the current year
CI_B = Consumer Price Index in the previous year
% = Percent adjustment bid by the Contractor in the Proposal

The Consumer Price Index will be based on the index entitled "West-A" from the U. S. Department of Labor, Bureau of Labor Statistics' publication entitled "Consumer Price Indexes, Pacific Cities and U.S. City Average." The index will be a twelve (12) month average for the current year minus a twelve (12) month average for the previous year divided by the previous year's average.

Example

If the Contract began in January of 1990, then the current year index would be calculated by adding the West-A indices for January 1990 through December 1990 and dividing the result by 12 (round to one decimal place). The previous year index would be the sum of the West-A indices for January 1989 through December 1989 and dividing the result by 12 (round to one decimal place). Subtract the previous year index from the current year index

previous year index from the current year index and divide by the previous year index. Multiply the result by the percent bid in the Proposal. Round the result to the third decimal place.

Percent changes in the index shall be calculated using December 1977 as the base year until the Bureau of Labor Statistics publishes data on a new base period. Calculations shall be made from data on the new base from that time forward.

If the BLS series specified above is discontinued, the contracting parties shall agree upon a substitute series by November 1 of any calendar year. If BLS designates an index with a new title and/or code number or table number as being the continuation of the index cited above, the new index will be used. If the specific index "West-A" is discontinued but the "U.S. City Average" remains, this latter index will be used. Otherwise, a substitute shall be agreed upon by the parties.

The price adjustment shall take place as soon as data are available retroactive to the Contract anniversary date. No adjustment will be made to lump sum prices.

C. Petition for Increased Costs Due to Change in Law

For purposes of this section, and Section D of this Article, the term "change in law" means any new or revised laws, statutes, rules, regulations, ordinances. Upon petition of Contractor and subject to approval of Metro as described in this section, Metro shall pay, subject to the limitations, conditions and procedures stated below, one hundred percent (100%) of Contractor's reasonable, actual increased costs of performing the Contract if such increased costs are directly attributable to changes in law which increase the cost of Contractor's performance of the Contract, and if such changes in law become effective at any time after the deadline for submission of Bids.

1. Local and County Law -- Limitations: Metro shall reimburse Contractor, subject to the terms and conditions of this section, for reasonable, actual increased costs due to changes in local and county laws if and only if such changes are applicable to all businesses in the relevant county or local area. Metro shall not compensate Contractor for any increased costs due to changes in local or county laws to the extent that such laws are applicable only to Contractor, Contractor's activities in connection with this Contract, or to persons or entities engaged in the waste management or transportation industries. For purposes of this Article, however, any increase or decrease in the Gilliam County maximum weight variance permit fee or similar fee shall be deemed a "change in law."

2. Federal, State or Local Taxes, Fees or Surcharges: Metro shall not be obligated to reimburse Contractor for any cost increases or expenses Contractor may incur due to increase in the rates of federal, state or local taxes, fees or surcharges of whatever nature.
3. General Conditions and Limitations on Reimbursement: Reimbursement shall be allowed under this section only for any costs incurred which are the least costly means of ensuring full compliance with and which are directly necessitated by the relevant change in law. No reimbursement for cost increases shall be allowed for any cost increases which are in any way attributable to Contractor's operations or to Contractor provided transport sites or to conditions, operations, or activities at Contractor-provided transport site(s), or conditions, operations or activities which are caused by Contractor or his/her subcontractors, employees, agents, or servants, or which are otherwise within Contractor's control.

Contractor must fully demonstrate and document the need for the requested reimbursement to Metro's satisfaction and approval as a condition precedent to Contractor's right to any payment under this section.

4. Cancellation of Reimbursement: Metro may at any time cancel any reimbursement made under this section which was made in error. Contractor shall at all times keep Metro informed as to whether any reimbursement remains necessary. Also, upon Metro's request, Contractor shall immediately provide Metro with all documents or information or other evidence in Contractor's possession or control which Metro requests to determine whether there is a continuing need for any and all reimbursements made under this section.
 5. Schedule of Payment of Reimbursement: Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.
- D. Deductions from Payments for Reduced Costs due to Changes in Law
- Metro shall be entitled to reduce payments to Contractor subject to the conditions stated below, to reflect one hundred percent (100%) of the reduced costs of Contractor's performance under the Contract which reduced costs are attributable to any categories of changes in law for which Contractor is entitled to reimbursement of increased costs under the previous section. Metro may at any

time serve Contractor with notice and explanation of Metro's intent to reduce payments under this paragraph. Within thirty (30) days of service of such notice, Contractor shall respond in writing to such notice and such written response shall state whether or not Contractor believes that any deductions from payments due Contractor are justified by the change in law and shall state any reductions in the costs of performing the Contract due to the relevant change in law. Contractor shall fully document and otherwise support its response to Metro's notice under this section.

Upon written petition of Contractor, Metro may at any time cancel reductions made under this section if Metro determines that the need for the reduction has expired or that a reduction was made in error. Contractor shall at all times keep Metro informed as to both when any reduction due to change in law is appropriate, and as to when any reduction is no longer appropriate.

- E. Partial payments shall not constitute acceptance by Metro of Contractor's work nor be construed as a waiver or surrender of any right or claim by Metro in connection with the work.
- F. Contractor shall submit his/her invoices with a detailed cost breakdown in accordance with the procedures approved by Metro. In addition to the information provided to Metro in support of its monthly applications for payments, Contractor shall submit to Metro, concurrent with its monthly payment application, a detailed accounting of all sums paid to DBE and WBE subcontractors during the previous calendar month. This accounting shall reflect the type of work being performed by the DBE/WBE firms and the DBE/WBE firm's name, address, telephone and contact person, previous calendar month's payment and total payments made to the subcontractor.

If it is determined by Metro that the Contractor is not making satisfactory progress towards the DBE/WBE goals established at the time of the Contract award, the Contractor shall be required to adequately explain this failure and to demonstrate its full compliance with Metro's Disadvantaged Business Program or shall be deemed to be in default of the Contract.

- G. 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, are 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 lien waiver before any payment, and a final lien waiver stating Contractor has been paid in full prior to the final payment.

Nothing in this section is meant to establish an exhaustive list of all the conditions precedent to payment in this Contract. Any and all conditions precedent to payment established by this Contract but not contained in this section remain valid.

H. Final payment shall fall due only after Contractor shall:

1. Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales, and employee withholding taxes.
2. Submit to Metro an affidavit certifying that Contractor has met the DBE/WBE goals or that the Contractor made a good faith effort to do so and listing each DBE and WBE firm utilized along with the type of work performed and total payments made to each DBE and WBE subcontractor.
3. Pay and obtain release of record, of all liens and all other encumbrances which relate to the services performed under this Contract.
4. Deliver to Metro written releases of all rights to file liens against any transport sites, signed by each subcontractor and material provider who performed labor or furnished materials in connection with the work.
5. Deliver to Metro his/her written undertaking, with sureties acceptable to Metro:
 - a. To promptly pay and obtain a release of record as to liens in connection with the work covered by this Contract which may in the future affect the transport sites; and
 - b. To defend and indemnify and save Metro harmless from any liability or expense because of any such lien or the enforcement thereof.

I. Final payment shall be deemed to occur when Contractor negotiates an instrument from Metro which instrument Metro has designated as final payment.

J. When final payment occurs, Contractor warrants that he/she has received payment in full for his/her performance of the Contract and waives all further claims against Metro in connection with the Contract. Contractor's acceptance of final payment by Metro shall be conclusive proof of Metro's full and complete performance of the Contract.

ARTICLE 13

Retainage

Metro shall retain five percent (5%) of all unit price payments and lump sum payments to Contractor until the total amount of such retainage equals \$2,500,000 (the designated amount of the Bonds or Letters of Credit under Article 17). This retainage shall not be returned to Contractor until completion of the performance of this Contract, including all extensions to its term. The retainage will be placed in an interest bearing account, pursuant to ORS 279.420. Interest shall accrue to the Contractor, but shall be retained in the interest bearing account until completion of performance.

If at any time the total amount of retainage ever falls below five percent (5%) of the total contract payments made to Contractor or \$2,500,000, whichever amount is less, due to deductions from retainage allowed by the Contract, Metro shall be entitled to the remedies described in Article 17 of these General Conditions.

ARTICLE 14

Metro's Right to Withhold Payment and to Withdraw Funds from Retainage

- A. Metro shall have the right to withhold from payments due Contractor and to withdraw from funds held in retainage such sums as necessary, to protect Metro against any loss or damage which may result from negligence or unsatisfactory work by Contractor, failure by Contractor to perform or abide by any of his/her obligations under this Contract or claims against Contractor or Metro relating to Contractor's performance or work. In addition, Metro may withhold payments from Contractor and withdraw from funds held in retainage for damages by Contractor to others not adjusted or resolved, failure of Contractor to make proper payment to his/her employees, material suppliers and subcontractors, and where there is filing of any claim against Metro or Contractor. In no event shall amounts withheld from payment under this section be construed to mean amounts attributable to retainage. Metro's right to retain five percent (5%) of Contract payments under Article 13 of these General Conditions is in addition to Metro's right to withhold payments under this paragraph. Metro shall provide at least ten (10) days' notice of its intent to withhold payments or withdraw funds from retainage under this Article, and Contractor shall have the right to dispute such actions as provided in these Contract Documents.
- B. No action taken by Metro under this Article shall affect any of the other rights or remedies of Metro granted by any other

provision or provisions of this Contract or by law or relieve Contractor from any consequences or liabilities arising from his/her acts or omissions.

ARTICLE 15

Additional or Deleted Work

A. Payment or Credit for Additional Work

All requests for payment for additional work shall be made only under the conditions and procedures of this Article. For purposes of this Article, the term "additional work" means work which is in addition to the work required to be performed under the original Contract or any amendments thereof, but does not include any work required to comply with any changes in law, statutes, rules, regulations, ordinances, permit(s) or permit conditions. Nothing in this Article is intended to negate or lessen any other preconditions or procedures for such payment or reimbursement provided by any other provisions of the Contract.

B. Request for Proposal for Additional Work

Within fourteen (14) calendar days after receipt of an RFP for additional work from Metro, Contractor shall submit to Metro an itemized proposal stating the actual and reasonable costs to Contractor for performing such additional work, a schedule for performing such work, and the effect, if any, on Contractor's performance of the existing Contract work by reason of the additional work. Contractor's proposal shall be based on the least costly method for performing the additional work in accordance with all provisions of the Contract.

No request for proposals by Metro shall be construed as authorization for Contractor to perform the additional work covered by such RFP. To obtain authorization to perform any additional work, Contractor must be notified in writing by Metro that Contractor is ordered to proceed with the relevant additional work. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro rejects Contractor's proposal but orders the additional work to be performed, Contractor shall perform the additional work. If Metro does not order Contractor to perform the relevant work, Contractor shall not be entitled to any reimbursement for the work in Contractor's proposal.

C. Force Account Work

If the amount of payment cannot be agreed upon prior to the beginning of the work, and Metro directs that the work be done by written Change Order on a force account basis, then the Contractor

shall furnish labor, equipment, and materials necessary to complete the work in a satisfactory manner and within a reasonable period of time. For the work performed, payment will be made for the documented actual cost of the following:

1. Labor, including forepersons who are directly assigned to the force account work (actual payroll cost, including wages, customary fringe benefits, labor insurance, and labor taxes as established by law). No other fixed labor burdens will be considered, unless approved in writing by Metro.
2. Material delivered and used on the designated work, including sales tax, if paid for by the Contractor or his/her subcontractor.
3. Rental, or equivalent rental cost of equipment, including necessary transportation for items having a value in excess of \$100.
4. Additional Bond, as required and approved by Metro.
5. Additional insurance (other than labor insurance, as required and approved by Metro).

To the costs above there shall be added a fixed fee of ten percent (10%) of the cost of Items 1, 2, and 3 and a fixed fee of five percent (5%) to the cost of Items 4 and 5.

An additional fixed fee of ten percent (10%) shall be allowed the Contractor for the administrative handling of portions of the work that are required to be performed by an approved subcontractor. No additional fixed fee will be allowed for the administrative handling of work performed by a subcontractor of a subcontractor, unless by written approval of Metro.

The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other general expense.

Metro reserves the right to furnish such materials and equipment as it deems expedient, and the Contractor shall have no claims for profit or added fees on the cost of such materials and equipment.

For equipment under Item 3 above, rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, and renewals, and no further allowances will be made for those items, unless specific agreement to that effect is made.

The Contractor shall maintain his/her records in such a manner as to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations. The Contractor shall furnish Metro report sheets in duplicate of each day's force account work no later than the working day following the performance of said work. The daily report sheets shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor, or other forces. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment and hours operated.

Material charges shall be substantiated by valid copies of vendors' invoices. Such invoices shall be submitted with the daily report sheets, or, if not available, they shall be submitted with subsequent daily report sheets. Said daily report sheets shall be signed by the Contractor or his/her authorized agent.

To receive partial payments and final payment for force account work, the Contractor shall submit in a manner approved by Metro, detailed and completed documented verification of the Contractor's and any of his/her subcontractors' actual current costs involved in the force account work pursuant to the issuance of an approved Change Order. Such costs shall be submitted within thirty (30) days after said work has been performed.

No payment will be made for work billed and submitted to Metro after the 30-day period has expired. No extra or additional work shall be performed by the Contractor, except in an emergency endangering life or property, unless in pursuance of a written Change Order.

D. Deductions from Payments for Deleted Work

All deductions from payment for deleted work shall be made under the conditions and procedures of this Article. For purposes of this Article, the term "deleted work" means work which is deleted from the work required to be performed under the original Contract, but does not include any work which need not be performed due to any changes in law, statutes, rules, regulations, ordinances, permit(s), permit conditions, or regulatory policies.

E. Request for Proposal for Deleted Work

Within fourteen (14) calendar days after receipt of an RFP for deleted work from Metro, Contractor shall submit an itemized proposal stating the actual and reasonable costs which would be avoided by deleting work called for in the Contract, a schedule for deleting the relevant work, and the effect, if any, on Contractor's performance of the remaining Contract work by reason

of the deleted work. Contractor's proposal shall be based on all current and future avoided costs to Contractor for deleting the work and any profit margins or markups which Contractor's proposal includes for such work.

No Request for Proposals by Metro shall be construed as authorization for Contractor to delete the work covered by an RFP for deleted work. Contractor shall not delete any work unless and until an order from Metro authorizing such deletion is served upon Contractor. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro rejects Contractor's proposal but orders the work to be deleted, Contractor shall delete the work. However, Metro may make all appropriate deductions from payments, according to the formula below, if Metro has ordered Contractor to delete work, regardless of whether Contractor has complied with such order.

F. Amount of Deductions for Deleted Work

The amount of any deductions from payments for deleted work shall be equal to all current and future avoided costs resulting from the deleted work plus any profit margin or markups which Contractor's proposal includes for such work. If the latter profit margin or markup figures are unavailable, the parties hereby agree that Contractor's profit margin on all work shall be deemed to be ten percent (10%) of the actual cost of performing the work. Contractor shall submit complete records of materials and labor usage to Metro for review. If Contractor and Metro cannot agree on the amount of the deduction for the relevant deleted work, that matter shall be submitted to arbitration under Article 26.

G. Schedule of Payments

Metro shall make any payments due the Contractor under this Article as soon as possible after the work is performed.

ARTICLE 16

Indemnification

- A. 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 of Contractor's subcontractors of any tier or their officers, agents and employees are agents of Metro. Contractor for itself and its officers, agents, employees and its subcontractors 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 indemnify, and hold Metro harmless from and against any and all claims, causes of action, demands, suits, damages, penalties, charges, judgments, liabilities, losses, of whatsoever character or kind (all hereinafter referred to as "claims") and all expenses arising from such claims including, but not limited to, attorneys' fees upon trial and upon appeal and any and all costs, if such claims or expenses allegedly or actually arise or result from, directly or indirectly, or are in any way connected with: 1) the performance or nonperformance of any provision or requirement of this Contract by Contractor, its officers, employees, subcontractors, agents or servants; 2) any of the acts or omissions of Contractor, its officers, employees, subcontractors, agents or servants at any transport site; or 3) the failure of Contractor, its officers, employees, subcontractors, agents, or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by Article 1. F. of the General Conditions; 4) any release(s) or emission(s), or threatened release(s) or emission(s) related to the waste occurring from the point in time that each load of waste is sealed until the disposal of such load of waste at the disposal site.

In addition, Contractor shall, upon demand of Metro, at Contractor's sole cost and expense, defend and provide qualified attorneys acceptable to Metro under service contracts acceptable to Metro to defend Metro, its officers, employees, agents and servants against any and all claims, causes of actions, suits, demands, damages, penalties, charges, liabilities, losses, awards of damages, or judgments, of whatsoever character or kind, arising or resulting from, directly or indirectly, or in any way connected with: 1) the performance or nonperformance of any provision or requirement of this Contract by Contractor, its officers, employees, subcontractors, agents or servants; 2) any of the acts or omissions of Contractor, its officers, employees, subcontractors, agents or servants at or in connection with the Project; or 3) the failure of Contractor, its officers, employees, subcontractors, agents, or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by Article 1. F. of the General Conditions; 4) any release(s) or emission(s), or threatened release(s) or emission(s) by any person(s), entity or entities occurring from the point in time that each load of waste is sealed until the disposal of such load of waste at the disposal site.

- B. In any and all claims against Metro, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of insurance obtained by Contractor.

ARTICLE 17

Performance and Labor and Materials Bonds

Not later than one hundred and twenty (120) days prior to each Contract anniversary date which occurs before Metro has retained, pursuant to Article 13, \$2,500,000, Contractor shall execute and deliver to Metro an irrevocable Letter of Credit or Performance and Labor and Materials Bond on the form bound herewith which shall secure and be conditioned upon the full, faithful and complete performance of the Contract and prompt payment of all persons supplying labor and materials for the performance of the Contract and other protection to Metro, as provided in such Bond or Letter of Credit. Except that, the initial term of the Performance and Labor and Materials Bond or Letter of Credit shall be for the period beginning with the execution of the Contract and continuing until December 31, 1989, inclusive, of the Contract term and shall be in the amount of \$2,500,000; and that, the second term of the Bond or Letter of Credit shall be for the period beginning January 1, 1990, inclusive, and continuing until December 31, 1991, inclusive of the Contract term and shall be in the amount of \$2,500,000.

There shall be annual reductions in the amount of the Bond or Letter of Credit which become due for all years following the bond or letter of credit term and such reductions shall be made effective on the Contract anniversary date. The amount of the annual reductions shall be equal to the amount of Contract payments which Metro has retained by the date on which the relevant Bond or Letter of Credit are due for renewal. No further Bond or Letter of Credit shall be due for any periods following the next Contract anniversary date after Metro has retained payments from Contractor equal to \$2,500,000 subject to the following paragraph. Failure to execute and deliver to Metro the Bond or Letter of Credit required above shall constitute a default by the Contractor under the terms of the Contract, but such a default shall not extend to the Surety or Banking Institution under the terms of the Bond or Letter of Credit.

It is possible that the total amount of retainage may reach \$2,500,000 and then fall below \$2,500,000 due to Metro's exercise of its rights to deduct funds from retainage. It is also possible that at any time the total amount of retainage may fall below five percent (5%) of the total Contract payments made to Contractor due to Metro's exercise of its rights to deduct funds from retainage. If either or both of these events occur(s), Metro shall have the right to require Contractor to execute and deliver a new Letter of Credit or Bond of the form described above, within ninety (90) days of service of written notice

of such intent from Metro. The amount of such Letter of Credit or Bond shall be the sum necessary, when added to the existing Bond or Letter of Credit, if any, and the amount of any existing retainage, to equal \$2,500,000. The term for such a Bond or Letter of Credit would extend until the succeeding Contract anniversary date or until the amount of retainage is equal to \$2,500,000, whichever occurs last.

Failure to execute and deliver to Metro such a Bond or Letter of Credit within the above-described ninety (90) day period shall constitute a default under this Contract. To remedy such default, Metro shall have the right to retain one hundred percent (100%) of any and all payments due Contractor under this Contract until the total amount of retainage when added to the amounts of existing Bond and Letter of Credit is restored to \$2,500,000. The latter remedy is in addition to any other remedies to which Metro is entitled for such default.

The Surety or Banking Institution furnishing this Bond or Letter of Credit shall have a sound financial standing and a record of service satisfactory to Metro and shall have a rating of at least A and be of the appropriate class for the relevant bond amount under Best's Rating System and shall be authorized to do business in the state of Oregon. The Attorney-in-Fact (Resident Agent) who executes this Bond on behalf of the Surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the Surety on the date of execution of each Bond.

Contractor shall from time to time take such additional actions and furnish to Metro such additional documents and instruments which Metro reasonably requests to secure performance of Contractor's obligations under this Agreement. None of the requirements contained in this Article are intended to, nor shall they in any manner, limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

ARTICLE 18

Contractor's and Metro's Liability Insurance

- A. General. The Contractor shall provide (from insurance companies acceptable to Metro, or through self insurance arrangements acceptable to Metro) the insurance coverage designated hereinafter and pay all costs therefor.

Before commencing work under this Contract, Contractor shall furnish Metro with certificates of insurance specified herein (or indemnity letter and 1) certificated copy of self-insurance Bond in the amount of \$15,000,000 or 2) \$15,000,000 Letter of Credit if self-insured) naming Metro as an additional named insured and

showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statements:

1. This/These policy(ies) shall be considered as primary insurance and exclusive of any insurance carried by Metro and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that Metro may have other valid and collectible insurance covering the same risk.
2. This/These policy(ies) shall not be cancelled, reduced in coverage, nor materially altered until after sixty (60) days' written notice of such cancellation, reduction or alteration in coverage shall have been received by Metro.
3. No act on the part of the insured shall affect the coverage afforded to Metro under the insurance covered by this certificate.
4. This/These policy(ies) consist only of insurance on an occurrence basis, not on a claims made basis.

Contractor shall immediately increase the amounts of insurance required to reflect any changes in Oregon Law to ensure that the insurance provided shall cover, at a minimum and in addition to, the designated insurance requirements listed below, the maximum limits under the Oregon Tort Claims Act, or any other applicable tort claims act.

In case of any breach of any provision of this Article, Metro, at its option, may take out and maintain, at the expense of the Contractor, such insurance as Metro may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Contract including funds held in retainage.

Designated Insurance Requirements

Limits

1. (a) Workers' Compensation covering all employees who are engaged in any work under the Contract (including subcontractors' employees).

Statutory (State/Federal)

The Contractor shall require its Workers' Compensation carrier to provide Metro with an endorsement for waiver of subrogation.

- (b) U.S. Longshoremen and the Harbor Workers Act (USL+H) coverage covering all employees who are engaged in any applicable work under the Contract.

Statutory

- (c) Federal Employees Liability Act (FELA) coverage, extended to include "Jones Act" -- i.e., captains and crews of vessels, covering all employees who are engaged in any applicable work under the Contract.

Not less than

\$5,000,000

- (d) Employers' Liability including bodily injury caused by disease.
Not less than

\$500,000

2. Comprehensive General Liability, and Protection and Indemnity, if applicable:

- (a) Contractors' Public Liability:
(i) Bodily injury (inc. death) and Personal Injury

- (ii) Broad Form Property Damage and Broad Form Property Damage including Completed Operations, and shall include coverage for Explosion, Collapse and Underground.

(i and ii coverage)

\$3,500,000 per occurrence/aggregate combined single limit bodily injury and property damage

This insurance shall include contractual liability to cover the liability assumed by the Contractor under Article 8 of the General Conditions.

- (b) Metro's and Contractors' Protective Liability:

- (i) Bodily injury (inc. death)
(ii) Broad Form Property Damage and Broad Form Property Damage including Completed Operations, and shall

include coverage for
Explosion, Collapse and
Underground.

(i and ii coverage)

\$3,500,000 per
occurrence/aggregate combined
single limit bodily injury and
property damage

3. Comprehensive Automobile Liability
including Owned, Nonowned and Hired Vehicles:

(i) Bodily injury (inc. death)

(ii) Property damage

(i and ii coverage)

\$3,500,000 per
occurrence/aggregate combined
single limit bodily injury and
property damage

4. Umbrella Coverage

to achieve a total coverage of
\$15 million

- B. When activities of the Contractor are to be accomplished within a public or private right-of-way requiring special insurance coverage, Contractor shall conform to the particular requirements and provide the required insurance. Contractor shall include in his/her liability policy all endorsements that the said authority may require for the protection of the authority, its officers, agents, and employees. Insurance coverage for special conditions, when required, shall be provided by Contractor.
- C. Contractor shall maintain the above insurance at all times until completion of the Contract or until the termination date of the Contract, whichever is later.
- D. Maintenance of insurance by Contractor as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of Contractor under this Contract and Contractor may carry, at his/her own expense, such additional insurance as he/she deems necessary.
- E. Metro shall have the right, at its sole option, to require Contractor to place all of the aforementioned insurance coverages through such Master Policy as Metro may obtain if such would reduce the premiums for such coverages and Contractor agrees that Metro may deduct from the Contract Sum the amount of the premiums payable thereon, or, at Metro's discretion, pay the same directly

to the insurance carrier, and Contractor further agrees to comply with such regulations as Metro may issue from time to time to improve the administration of the Master Policy.

- F. Pursuant to Article 12 C. and to the extent allowed by that section, Metro shall only reimburse Contractor for the actual increased cost of premiums which Contractor must pay to comply with insurance requirements not specified above which become effective after the deadline for submission of bids. No other reimbursement for costs associated with increased insurance requirements will be allowed under Article 12 C.

ARTICLE 19

Permits and Regulations

- A. Contractor shall obtain, maintain, and pay for all permits, licenses, certificates, inspection fees and surcharges and other approvals required by law, both temporary and permanent. Any such fees shall be included in the prices bid in Contractor's Bid except as provided by Article 12 C. of these General Conditions. The Contractor shall obtain any necessary business license required by law.
- B. Contractor shall be liable for all fines or civil penalties which may be imposed by any regulatory agency for Contractor-caused or allowed violations of permits, laws or regulations. Metro shall not be liable for and shall not reimburse Contractor for payment of any such fines or civil penalties.
- C. As detailed in this Article 21 of these General Conditions, Contractor is responsible for paying all federal, state and local permits, taxes, fees and charges. In accordance with those requirements, Contractor shall pay all taxes, fee charges, permits and licenses of whatever nature imposed by Gilliam County including, if Contractor transports waste by truck in or through Gilliam County, any maximum weight variance permit or similar permit required by Gilliam County pursuant to ORS 818.200. et. seq. The unit prices bid by Contractor shall assume that Gilliam County will enact a maximum weight variance permit fee or similar fee of \$7 per load of waste. Contractor shall not challenge, litigate or in any manner protest the adoption of such a permit fee or similar fee by Gilliam County.

In the event that Gilliam County does not enact such a fee or similar fee or in the event that such a fee or similar fee is enacted but is found to be unenforceable, such event shall be considered a change in law for which Metro shall be entitled to reduce payments to Contractor, if Contractor trucks waste in or through Gilliam County, pursuant to Article 12 of the General Conditions. For purposes only of the change in law

described in the preceding sentence, the reimbursement to Metro shall be deemed to be \$7 per load of waste transported and shall be effective immediately. Likewise, increases in the \$7 per load maximum weight variance fee or similar fee shall be considered changes in law for which Contractor is entitled to payment pursuant to Article 12 of the General Conditions. Except as provided above, the requirements of Article 12 shall apply to such changes in law.

ARTICLE 20

Royalties and Patents

Contractor shall pay all royalties and license fees related to the performance of this Contract. Contractor shall defend all suits or claims for any and all infringements of any patents which may occur in the performance of this Contract and shall save Metro harmless from loss on account thereof; provided, however, that Metro shall be responsible for all such loss when a particular process or product is specified by it unless Contractor shall have information that such particular process or product infringes a patent, in which event, he/she shall be responsible for loss on account thereof unless he/she promptly and immediately provides such information to Metro.

ARTICLE 21

Taxes and Fees

As between Metro and Contractor, Contractor shall be responsible and liable for payment of all federal, state, regional, county and local taxes and fees, and surcharges of every form, which apply to any and all persons, entities, property, income, equipment, materials, supplies, structures, or activities which are involved in the performance of the Contract including, but not limited to, any and all income taxes, real property taxes, excise taxes, sales and use taxes and fees which arise in connection with the Contract.

ARTICLE 22

Title to Waste

If the seal affixed to any load of waste in Contractor's possession shall be broken after being affixed at the transport site of origin or before unloading at the disposal site destination, title to that load of waste shall immediately pass to the Contractor. Nothing contained in this paragraph shall be construed to limit Contractor's responsibilities or liabilities as described elsewhere in these Contract Documents.

ARTICLE 23

Materials, Employees and Workmanship

- A. All workmanship and materials provided by Contractor shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. Contractor shall furnish evidence of the skill of his/her employees, subcontractors and agents upon the request of Metro.
- B. Contractor shall at all times enforce strict discipline and good order among his/her employees and all subcontractors.

ARTICLE 24

Arbitration

Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Contract. Subject to the conditions and limitations of this paragraph, any controversy or claim arising out of or relating to this Contract which remains unresolved after such negotiations shall be exclusively settled by arbitration under the laws of the state of Oregon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All disputes shall be heard and decided by one arbitrator and all arbitration proceedings shall be held in Portland, Oregon. However, all disputes concerning Metro's right to the equitable remedy of specific performance shall not be subject to arbitration, but shall be decided exclusively by a court of competent jurisdiction in Multnomah County, Oregon, under the laws of the state of Oregon.

Contractor agrees to consolidation of any arbitration between Metro and Contractor with any other arbitration involving, arising from, or relating to this Contract or otherwise involving the transfer, transport, collection, or disposal of waste by Metro.

In the event that Metro determines, in its sole opinion, that the public interest requires a speedy resolution of any controversy or claim regardless of the amount, Metro shall have the option of electing resolution of the controversy or claim by the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association (Rules 54 through 58).

Each party hereto and the Contractor's Surety accepts jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing such arbitration proceedings and agrees to accept notice in writing sent by certified letter addressed to said party of intention to proceed with arbitration and of any other step in connection therewith or enforcement thereof, with the same effect as though personally served therewith in the state of Oregon. The

decision of the arbitrator shall be final and binding upon both parties and the Contractor's Surety who hereby agree to comply therewith. The parties agree that proper venue for any judicial proceeding to enforce any decision or award made by an arbitrator under this section shall be exclusively in the county of Multnomah in the state of Oregon.

ARTICLE 25

Attorney's Fees

In the event suit or action or arbitration is instituted to enforce any right granted herein, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, a reasonable attorney's fee to be fixed by the trial court; and on appeal, if any, similar fees in the appellate court to be fixed by the appellate court.

ARTICLE 26

Assignment

- A. Contractor shall not assign any rights or obligations under or arising from this Contract without the prior written consent of Metro. Contractor shall not assign any amounts due or to become due under this Contract without prior written notice to Metro.
- B. This Contract is executed with a certain qualified party to perform the Contract. The delegation of any Contract duties will require the prior written consent of Metro and of the Surety. Any such delegation of duties will not relieve the Contractor or his/her Surety of any liability and/or obligation to perform. In the event of any delegation of a duty, the delegate shall assume full responsibility for performance of that duty without affecting Contractor's liability.

ARTICLE 27

Change of Ownership

Any change in control or the transfer of a controlling interest in the beneficial ownership of Contractor shall constitute a default under the terms of this Contract, unless Metro consents to such transfer. "The transfer of a controlling interest of Contractor" shall include, but is not limited to, the transfer of ten percent (10%) or more of the beneficial ownership of Contractor to or from a single entity, unless Metro, at Contractor's request, finds to the contrary. Intracompany transfers, such as transfers between different subsidiaries or branches of the parent corporation of Contractor,

shall not be construed as transfers of a controlling interest in Contractor, nor shall transfers by operation of law. If, however, Metro determines that the new ownership can adequately and faithfully render the services called for in this Contract for the remaining term of the Contract, then Metro may elect to execute a novation, allowing the new ownership to assume the rights and duties of this Contract and releasing the previous ownership of all obligation and liability.

ARTICLE 28

Disadvantaged Business Program

- A. Contractor agrees to follow the policies and rules set out in Metro's Disadvantaged Business Program contained in Metro Code Sections 2.04.100 through 2.04.180 which by this reference are hereby fully incorporated as if fully set forth herein.
- B. Contractor shall not replace a Disadvantaged or Women-Owned Business subcontractor with another subcontractor, either before Contract award or during Contract performance, without prior 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 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 10.
- C. Contractor shall provide monthly reports on its compliance with the DBE/WBE goals of this Contract and with Metro's Disadvantaged Business Program.
- D. Metro reserves the right, at all times during the period of this Contract, to monitor compliance with the terms of the Disadvantaged Business Program and this Contract, and with any representation made by Contractor prior to Contract award pertaining to Disadvantaged or Women-Owned Business participation in the Contract, and any representation made by Contractor regarding replacement of any Disadvantaged or Women-Owned Business subcontractor during the duration of this Contract.

ARTICLE 29

Public Contracts

- A. The provisions set out in Oregon Revised Statutes, Chapters 187 and 279, as amended or superseded, including the latest additions and revisions, and all applicable provisions of the Metro Code, are incorporated by reference as part of these Contract Documents. In addition, the specific requirements of certain of these

sections are set out below. These provisions are applicable to this Contract unless or until they are superseded by federal law.

- B. 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 as provided in this Contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund (IAF) from such Contractor or subcontractor incurred in the performance of the Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against 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.
- C. 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.
- D. Pursuant to ORS 279.316, except as permitted by federal law or other state statutes or regulations, 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 one-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.
- E. 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.

ARTICLE 30

Assignment of Antitrust Rights

- A. Contractor, for consideration paid to the Contractor under the Contract, does irrevocably assign to Metro an interest in 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, if Metro's interest, so assigned, exceeds fifty (50) percent of the total claim in a cause of action by reason of any violation of 15 USC 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Contract. Metro's interest shall be a proportion of the total claim or cause of action equal to the percentage of the total claim proportionable to the performance of this Contract as measured against the total of Contractor's business affected by the violation.
- B. In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the Contract, the Contractor shall require the subcontractor to irrevocably assign to Metro, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC 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 subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the Contract, in a like manner as provided in section A. above.
- C. In connection with this assignment, it is an express obligation of the Contractor 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 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, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro hereunder.

ARTICLE 31

Start of Contract, Contract Completion and Contract Extensions

The Contractor agrees to begin waste transport services on January 1, 1990, and to terminate such disposal services on December 31, 2009, subject to the provisions set forth below.

Completion of Contractor's services under the Contract shall occur when Contractor has, in accordance with all the terms and conditions of the Contract, properly transported the entire quantity of waste as designated in these Contract Documents. It is possible that Contractor may not complete such services by the end of the initial term of the Contract (December 31, 2009). If so, Metro may, in its sole discretion, decide not to extend the Contract beyond the end of the initial term and in such event, Metro shall not be obligated to make any further payments for fixed costs or unit costs incurred or attributable to any period beyond the initial term. However, if Contractor has not completed the services designated in the Contract Documents, Metro may, in its sole discretion, extend the initial term of the Contract by one amendment or a series of amendments to the Contract term as Metro shall determine, by serving Contractor with written notice of such extension at least one hundred and twenty (120) days prior to the end of the term then in force. However, in no event shall the term of the Contract extend beyond December 31, 2014, nor beyond the date on which Contractor has properly disposed of the entire quantity of waste designated in the Bid Schedule, whichever occurs first. No extension shall be for a period of less than one year. During any such extension period, Metro shall only be obligated to pay Contractor unit prices equal to the fair market value of the services being rendered during the extension period and shall not be obligated to make any fixed cost payments after December 31, 2009. For purposes of this Article, "fair market value of the services being rendered" shall be measured as of the date when Metro serves notice of that Contract extension upon the Contractor, and shall at a minimum be equal to the unit price at the time of extension, and be subject to annual price adjustments contained in these Contract Documents. Metro shall make no further fixed cost payments after December 31, 2009. If Contractor completes the transport services designated in these Contract Documents prior to December 31, 2009, Metro will continue to make the fixed cost payments stated in the Bid, but only through December 31, 2009.

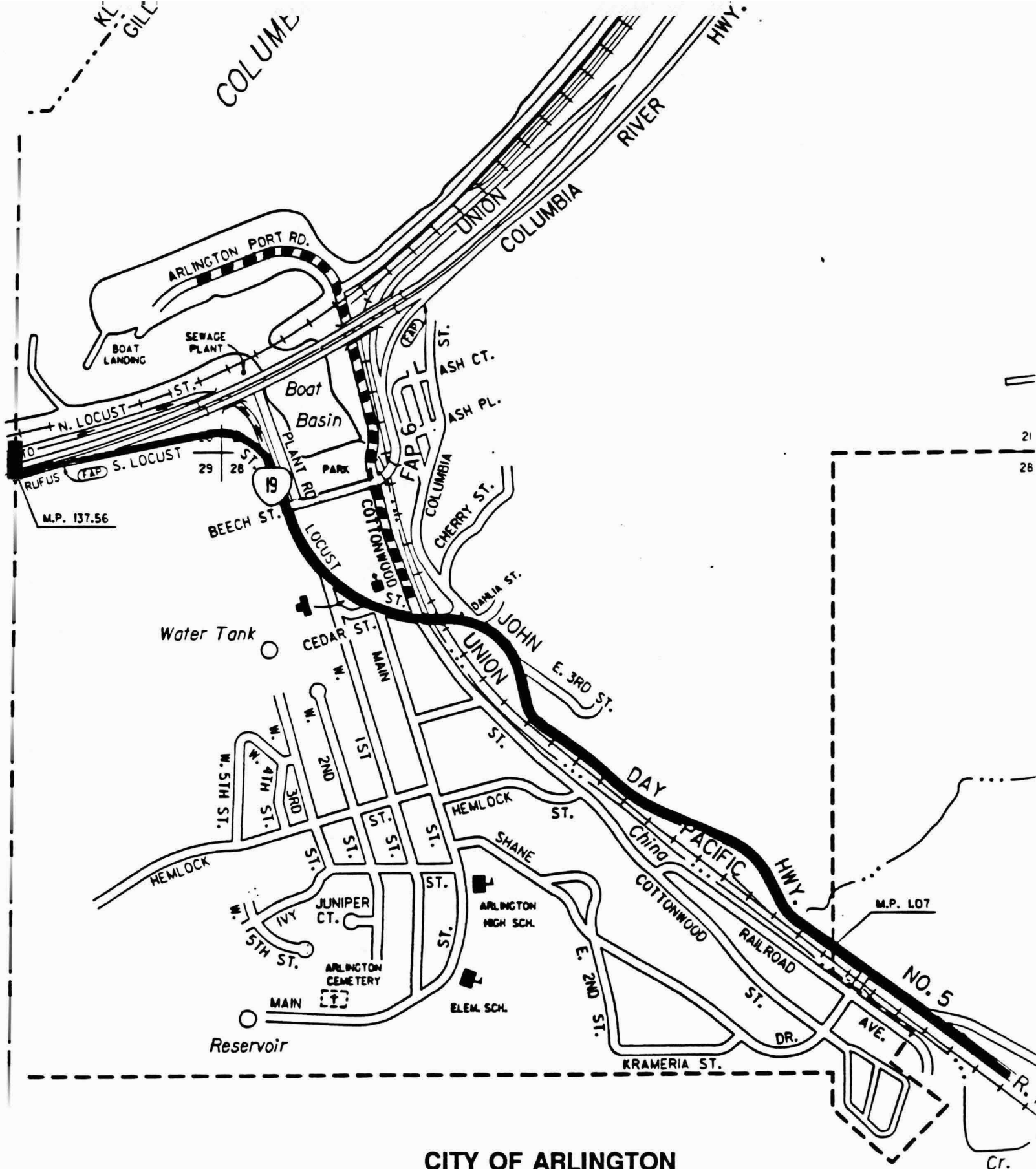
APPENDIX

Consisting of:

**Metro East Adjustment Boundaries
City of Arlington Routing Plan
Flow Data
Metro Disadvantaged Business Program
Total Bid Price Calculation Example
Bid Forms**

METRO EAST ADJUSTMENT BOUNDARIES

CITY OF ARLINGTON ROUTING PLAN



FLOW DATA

YEAR	Waste to be Transported		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Average
	Annual	Cumulative	7.10%	min 7.00%	8.10%	8.70%	8.80%	9.40%	max 9.40%	9.20%	8.90%	8.40%	7.50%	7.40%	avg 8.31
1990	300,000	300,000	21300	21000	24300	26100	26400	28200	28200	27600	26700	25200	22500	22200	24900
1991	654,000	954,000	46434	45780	52974	56898	57552	61476	61476	60168	58206	54936	49050	48396	54282
1992	680,000	1,634,000	48280	47600	55080	59160	59840	63920	63920	62560	60520	57120	51000	50320	56440
1993	705,000	2,339,000	50055	49350	57105	61335	62040	66270	66270	64860	62745	59220	52875	52170	58515
1994	731,000	3,070,000	51901	51170	59211	63597	64328	68714	68714	67252	65059	61404	54825	54094	60673
1995	757,000	3,827,000	53747	52990	61317	65859	66616	71158	71158	69644	67373	63588	56775	56018	62831
1996	782,000	4,609,000	55522	54740	63342	68034	68816	73508	73508	71944	69598	65688	58650	57868	64906
1997	808,000	5,417,000	57368	56560	65448	70296	71104	75952	75952	74336	71912	67872	60600	59792	67064
1998	833,000	6,250,000	59143	58310	67473	72471	73304	78302	78302	76636	74137	69972	62475	61642	69139
1999	859,000	7,109,000	60989	60130	69579	74733	75592	80746	80746	79028	76451	72156	64425	63566	71297
2000	885,000	7,994,000	62835	61950	71685	76995	77880	83190	83190	81420	78765	74340	66375	65490	73455
2001	910,000	8,904,000	64610	63700	73710	79170	80080	85540	85540	83720	80990	76440	68250	67340	75530
2002	936,000	9,840,000	66456	65520	75816	81432	82368	87984	87984	86112	83304	78624	70200	69264	77688
2003	961,000	10,801,000	68231	67270	77841	83607	84568	90334	90334	88412	85529	80724	72075	71114	79763
2004	987,000	11,788,000	70077	69090	79947	85869	86856	92778	92778	90804	87843	82908	74025	73038	81921
2005	1,012,000	12,800,000	71852	70840	81972	88044	89056	95128	95128	93104	90068	85008	75900	74888	83996
2006	1,037,000	13,837,000	73627	72590	83997	90219	91256	97478	97478	95404	92293	87108	77775	76738	86071
2007	1,062,000	14,899,000	75402	74340	86022	92394	93456	99828	99828	97704	94518	89208	79650	78588	88146
2008	1,086,000	15,985,000	77106	76020	87966	94482	95568	102084	102084	99912	96654	91224	81450	80364	90138
2009	938,000	16,923,000	78881	77770	89991	96657	97768	104434	104434	102212	98879	86974			92213

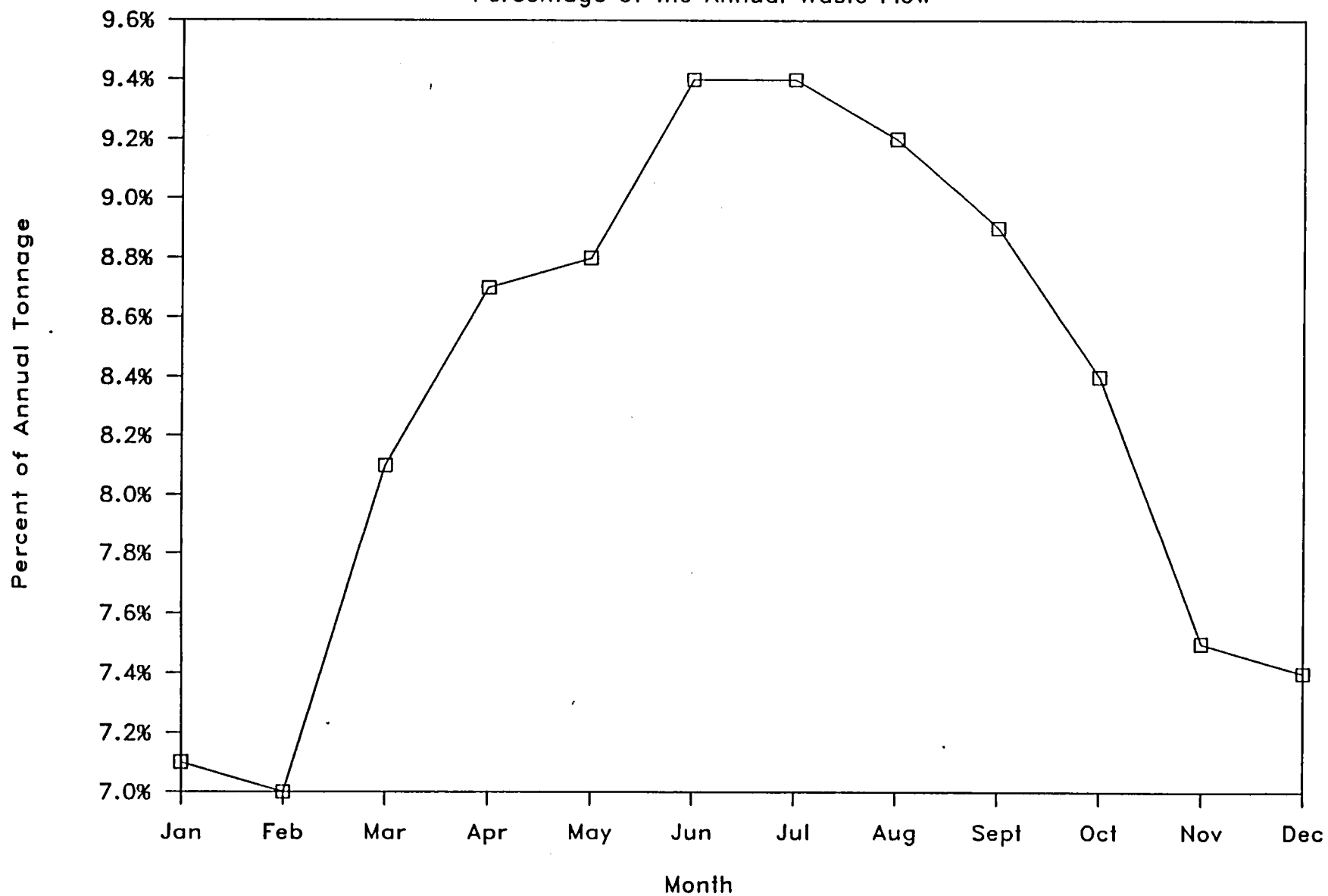
YEAR	WEEKLY TONNAGE AS A PERCENT OF THE AVERAGE MONTHLY TONNAGE			WEEKDAY TONNAGE AS A PERCENT OF THE AVERAGE WEEKLY TONNAGE			SATURDAY TONNAGE AS A PERCENT OF THE AVERAGE WEEKLY TONNAGE			SUNDAY TONNAGE AS A PERCENT OF THE AVERAGE WEEKLY TONNAGE		
	week			weekday			saturday			sunday		
	15.50%	26.30%	23.10%	5.30%	23.70%	18.60%	2.00%	8.00%	5.70%	0.90%	3.80%	1.90%
	min	max	avg	min	max	avg	min	max	avg	min	max	avg
1990	3860	6549	5752	305	1363	1070	115	460	328	10	41	20
1991	8414	14276	12539	665	2972	2332	251	1003	715	21	89	44
1992	8748	14844	13038	691	3090	2425	261	1043	743	22	92	46
1993	9070	15389	13517	716	3204	2514	270	1081	770	23	96	48
1994	9404	15957	14015	743	3322	2607	280	1121	799	23	99	50
1995	9739	16525	14514	769	3440	2700	290	1161	827	24	103	51
1996	10060	17070	14993	795	3553	2789	300	1199	855	25	106	53
1997	10395	17638	15492	821	3672	2881	310	1239	883	26	109	55
1998	10717	18184	15971	846	3785	2971	319	1278	910	27	113	56
1999	11051	18751	16470	873	3903	3063	329	1318	939	28	116	58
2000	11386	19319	16968	899	4021	3156	339	1357	967	28	120	60
2001	11707	19864	17447	925	4135	3245	349	1396	995	29	123	62
2002	12042	20432	17946	951	4253	3338	359	1436	1023	30	127	63
2003	12363	20978	18425	977	4367	3427	369	1474	1050	31	130	65
2004	12698	21545	18924	1003	4485	3520	378	1514	1079	32	134	67
2005	13019	22091	19403	1028	4599	3609	388	1552	1106	32	137	69
2006	13341	22637	19882	1054	4712	3698	398	1591	1133	33	141	70
2007	13663	23182	20362	1079	4826	3787	407	1629	1161	34	144	72
2008	13971	23706	20822	1104	4935	3873	416	1666	1187	35	147	74
2009	14293	24252	21301	1129	5048	3962	426	1704	1214	36	151	75

HOURLY WASTE FLOW AS A PERCENTAGE OF THE AVERAGE WASTE
FLOW FOR THE; AVERAGE WEEKDAY, AVERAGE SATURDAY, AVERAGE SUNDAY

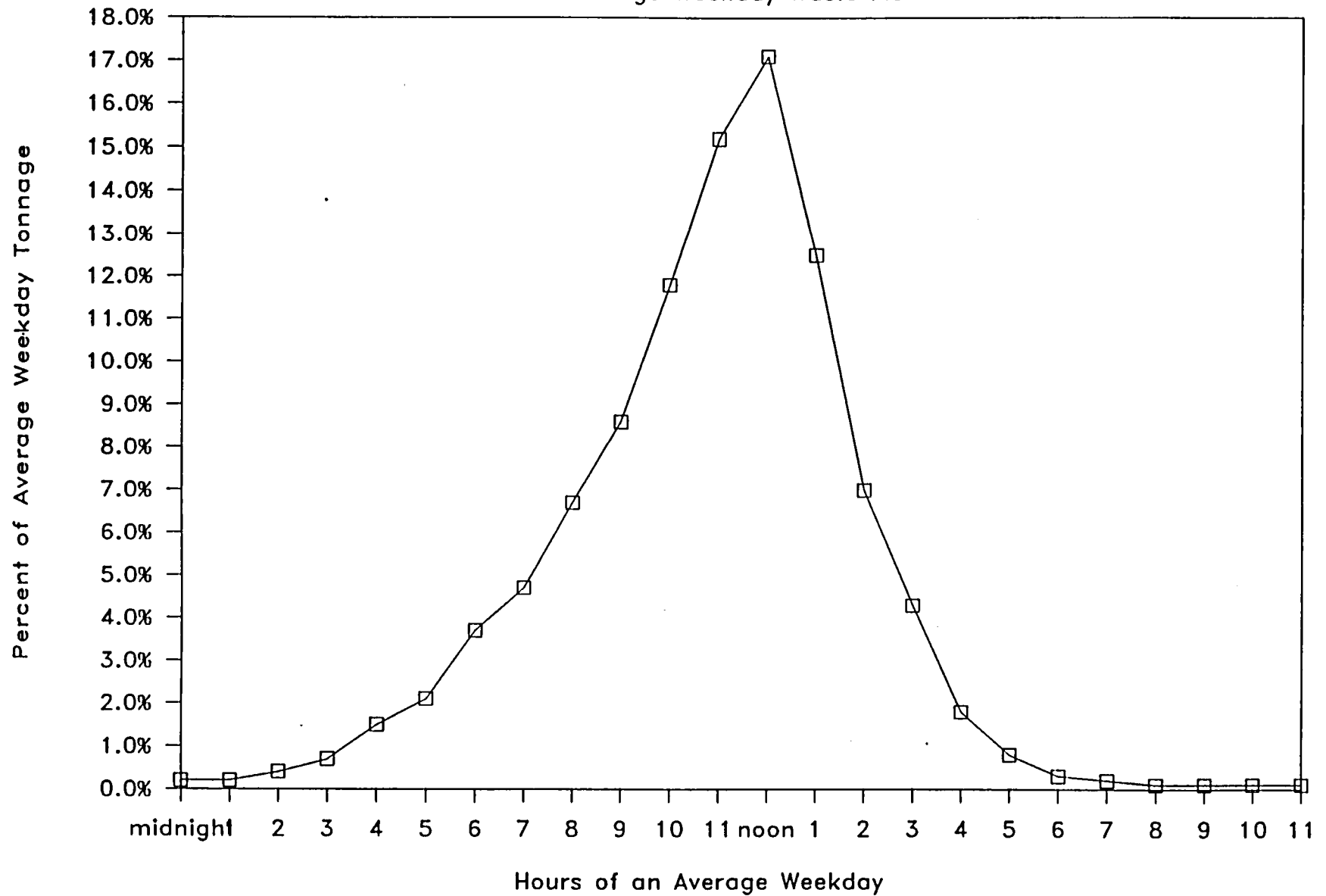
	Weekday	Saturday	Sunday
midnight - 1	0.20%	0.00%	0.00%
1 - 2	0.20%	0.30%	0.50%
2 - 3	0.40%	0.70%	0.00%
3 - 4	0.70%	0.70%	0.50%
4 - 5	1.50%	2.00%	0.40%
5 - 6	2.10%	3.10%	0.40%
6 - 7	3.70%	5.90%	1.30%
7 - 8	4.70%	9.20%	3.60%
8 - 9	6.70%	12.40%	12.80%
9 - 10	8.60%	17.30%	7.30%
10 - 11	11.80%	15.40%	12.00%
11 - noon	15.20%	9.90%	11.90%
noon - 1	17.10%	9.40%	13.60%
1 - 2	12.50%	4.90%	11.90%
2 - 3	7.00%	4.00%	7.50%
3 - 4	4.30%	2.40%	6.00%
4 - 5	1.80%	1.40%	2.90%
5 - 6	0.80%	0.70%	2.50%
6 - 7	0.30%	0.20%	1.30%
7 - 8	0.20%	0.20%	0.60%
8 - 9	0.10%	0.10%	0.70%
9 - 10	0.10%	0.10%	0.30%
10 - 11	0.10%	0.00%	0.50%
11 - midnight	0.10%	0.00%	1.50%
Average Daily Tonnage as a Percentage of the Average Week...	18.60%	5.70%	1.90%
	Average Weekday	Saturday	Sunday

Monthly Waste Flow as a

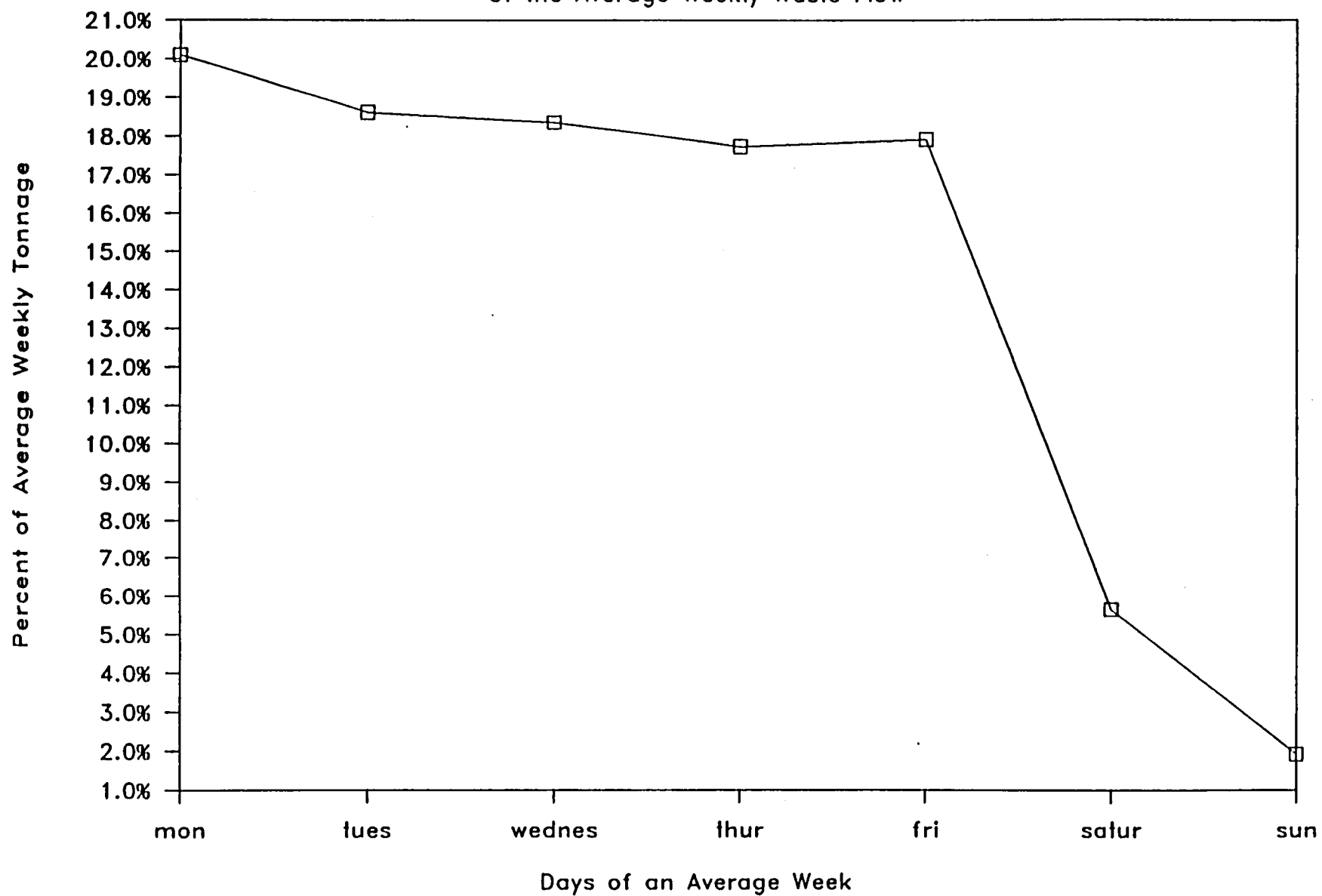
Percentage of the Annual Waste Flow



Hourly Waste Flow as a Percentage of the Average Weekday Waste Flow



Daily Waste Flow as a Percentage of the Average Weekly Waste Flow



METRO DISADVANTAGED BUSINESS PROGRAM

CODE OF THE METROPOLITAN SERVICE DISTRICT

Chapter 2.04, Metro Contract Procedures
Disadvantaged Business Program

Revised July 7, 1988

2.04.100 Disadvantaged Business Program, Purpose and Authority:

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.

(b) The portions of this ordinance which relate to federally funded contracts are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.105 Policy Statement:

(a) Through this Program, Metro:

(1) expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;

(2) informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and

(3) assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

(1) to assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors.

(2) to initiate and maintain efforts to increase program participation by disadvantaged and women businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT assisted contracts between Metro or USDOT subrecipients and any contractor.

(Ordinance No. 83-165, Sec. 2; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

(a) **APPLICANT** -- one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) **CONSTRUCTION CONTRACT** -- means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) **CONTRACT** -- means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay

for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.

(d) CONTRACTOR -- means the one who participates, through a contract or subcontract, in the Program and includes lessees.

(e) DEPARTMENT or "USDOT" -- means the United States Department of Transportation, including its operating elements.

(f) DISADVANTAGED BUSINESS ENTERPRISE or DBE -- means a small business concern which is certified by an authorized agency and:

- (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(g) EXECUTIVE DEPARTMENT -- means the State of Oregon's Executive Department.

(h) JOINT VENTURE -- is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE/WBE and non-DBE/WBE, the DBE/WBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE/WBE and a non-DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.

(i) LABOR AND MATERIALS CONTRACT -- is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) LESSEE -- means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) OREGON DEPARTMENT OF TRANSPORTATION OR "ODOT" -- means the State of Oregon's Department of Transportation.

(l) PERSONAL SERVICES CONTRACT -- means a contract for services of a personal or professional nature.

(m) PROCUREMENT CONTRACT -- means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) RECIPIENT -- means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) SMALL BUSINESS CONCERN -- means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR DISADVANTAGED INDIVIDUALS -- means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

(1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Portuguese-American, Spanish culture or origin, regardless of race;

(3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and

(5) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

(q) USDOT ASSISTED CONTRACT -- means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(c) USDOT FINANCIAL ASSISTANCE -- means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

(s) WOMEN-OWNED BUSINESS ENTERPRISE or WBE -- means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women.

For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.115 Notice to Contractors, Subcontractors and Subrecipients:

Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors of Metro accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate.

(Ordinance No. 83-165, Sec. 4; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.120 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program.

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

(Ordinance No. 83-165, Sec. 5; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.125 Directory:

A directory of DBEs and WBEs certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements.

(Ordinance No. 83-165, Sec. 6; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.130 Minority-Owned Banks: Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks.

(Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.135 Affirmative Action and Equal Opportunity Procedures:

Metro shall use affirmative action techniques to facilitate DBE and WBE participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs and WBEs.

(b) Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.

(e) Periodic reviews with department heads to insure that they are aware of the program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE/WBE goals for department contracts shall be factors considered during annual performance evaluations of the department heads.

(f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE/WBE participation.

(Ordinance No. 83-165, Sec. 8, amended by Ordinance No. 84-181, Sec. 4)

(h) Distribution of lists to potential DBE/WBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

(l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs or WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBEs in Metro contracting activities.

(Ordinance No. 83-165, Sec. 8; amended by Ordinance No. 84-181, Sec. 4; Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.140 Certification of Disadvantaged Business Eligibility:

(a) To participate in the Program as a DBE or WBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE or WBE. A prospective contractor or subcontractor must be certified as a DBE or WBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of this Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

"(1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.

"(2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

"(3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

" (i) If the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.

"(ii) If the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.

"(4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.

"(5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

"(6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

"(7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.

"(8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69.

(Ordinance No. 83-165, Sec. 9; amended by Ordinance No. 84-181, Sec. 5; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.145 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual DBE goals and for locally-funded contracts, separate WBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and USDOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

(1) projection of the number and types of contracts to be awarded by Metro;

(2) projection of the number, expertise and types of DBEs and WBEs likely to be available to compete for the contracts;

(3) past results of Metro's efforts under the Program; and

(4) for USDOT-assisted contract goals, existing goals of other local USDOT recipients and their experience in meeting these goals.

(5) for locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice. (Ordinance No. 83-165, Sec. 10)

(e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

(Ordinance No. 83-165, Sec. 10; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.150 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE/WBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.160 and/or 2.04.175. The extent to which DBE/WBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 83-165, Sec. 11; repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.155 Contract Award Criteria:

(a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs and WBEs certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they

have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall by the close of the next working day following bid opening, (or proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 83-165, Sec. 12; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.160 Determination of Good Faith Efforts:

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

(1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform disadvantaged and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;

(2) Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the subcontracting or material supply opportunities at least 10 days before bids or proposals are due.

(3) Written notification to a reasonable number but no less than five (5) DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

(4) Evidence of follow-up to initial soliciations of interest, including the following:

- A. the names, addresses, telephone numbers of all DBE contacted;
- B. a description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and

C. a statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.

(5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms;

(6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;

(7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and

(8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

(1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

(2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

(3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade-oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

(4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five certified DBEs/WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of DBEs/WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all of the letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

(5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

(6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

(7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

(Ordinance No. 83-165, Sec. 13; amended by Ordinance No. 84-181, Sec. 6 and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.165 Replacement of DBE or WBE Subcontractors:

Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.170 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

(1) Awards to DBEs and WBEs by number, percentage and dollar amount.

(2) A description of the types of contracts awarded.

(3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE and WBE records will be separately maintained. Required DBE and WBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare reports, at least semi-annually, on DBE and WBE participation to include the following:

(1) the number of contracts awarded;

(2) categories of contracts awarded;

(3) dollar value of contracts awarded;

(4) percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and

(5) the extent to which goals have been met or exceeded.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:

(1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.

(2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

(3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.

(4) Metro shall count toward its goals only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract. A DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

(5) Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE or WBE shall be presumed not to be performing a commercially useful function. The DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.

(6) A DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE or WBE suppliers and manufacturers, provided that the DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.

(7) Metro shall count its entire expenditure to a DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

(8) Metro shall count against the goals 60 percent of its expenditures to DBE or WBE suppliers that are not manufacturers, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.

(9) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's

goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:

"(a) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

"(b) MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts."

(b) DBE or WBE participation shall be counted toward meeting annual goals as follows:

(1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE or WBE is counted toward meeting annual goals.

(2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, Sec. 16; amended by Ordinance No. 84-181, Sec. 8; and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.180 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE and WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE and WBE participation.

(Ordinance No. 83-165, Sec. 17; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

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TOTAL BID CALCULATION EXAMPLE

Example of Calculating the Total Bid Price "T".

Assumptions:

F = \$30,000,000 lump sum
 f = \$1,500,000 /year
 CPI = 4.00% increase
 A = 85.00%
 Z = \$294.00 /load
 L = 28 tons/load
 X = annual waste transported

Equations:

f = F/20 years
 P = (X/L)*Z
 Y = current year - 1988
 V = P*((CPI*A)+1)^Y
 E = f+V
 PW(E) = E/(1.04^(year-1990))
 T = sum of all PW(E)

						T = \$199,982,744
Year	Annual Waste Flow X	P	V	F	E	PW(E)
1990	300,000	\$3,150,000	\$3,367,841	\$1,500,000	\$4,867,841	\$4,867,841
1991	654,000	\$6,867,000	\$7,591,519	\$1,500,000	\$9,091,519	\$8,741,845
1992	680,000	\$7,140,000	\$8,161,695	\$1,500,000	\$9,661,695	\$8,932,780
1993	705,000	\$7,402,500	\$8,749,457	\$1,500,000	\$10,249,457	\$9,111,730
1994	731,000	\$7,675,500	\$9,380,585	\$1,500,000	\$10,880,585	\$9,300,769
1995	757,000	\$7,948,500	\$10,044,514	\$1,500,000	\$11,544,514	\$9,488,749
1996	782,000	\$8,211,000	\$10,729,028	\$1,500,000	\$12,229,028	\$9,664,778
1997	808,000	\$8,484,000	\$11,462,663	\$1,500,000	\$12,962,663	\$9,850,558
1998	833,000	\$8,746,500	\$12,219,113	\$1,500,000	\$13,719,113	\$10,024,422
1999	859,000	\$9,019,500	\$13,028,919	\$1,500,000	\$14,528,919	\$10,207,826
2000	885,000	\$9,292,500	\$13,879,667	\$1,500,000	\$15,379,667	\$10,389,952
2001	910,000	\$9,555,000	\$14,756,987	\$1,500,000	\$16,256,987	\$10,560,229
2002	936,000	\$9,828,000	\$15,694,688	\$1,500,000	\$17,194,688	\$10,739,751
2003	961,000	\$10,090,500	\$16,661,756	\$1,500,000	\$18,161,756	\$10,907,480
2004	987,000	\$10,363,500	\$17,694,369	\$1,500,000	\$19,194,369	\$11,084,270
2005	1,012,000	\$10,626,000	\$18,759,401	\$1,500,000	\$20,259,401	\$11,249,326
2006	1,037,000	\$10,888,500	\$19,876,401	\$1,500,000	\$21,376,401	\$11,413,035
2007	1,062,000	\$11,151,000	\$21,047,671	\$1,500,000	\$22,547,671	\$11,575,371
2008	1,086,000	\$11,403,000	\$22,255,118	\$1,500,000	\$23,755,118	\$11,726,194
2009	938,000	\$9,849,000	\$19,875,747	\$1,500,000	\$21,375,747	\$10,145,836

BID FORMS

(To be submitted at Bid Opening)

Forms separate from the Contract Documents will be provided for
submittal.

COVER PAGES

NOTE TO BIDDER: Please type or use ink for completing BID FORMS.

To: METROPOLITAN SERVICE DISTRICT - Solid Waste Department

Address: 2000 S.W. First Avenue, Portland, OR 97201-5398

Bid Title: WASTE TRANSPORT SERVICES

Bidder: _____

Address: _____

Date: _____

Bidder's Person to Contact for Additional Information on this Bid:

Name/Title: _____

Telephone No: _____

BIDDER'S DECLARATION AND UNDERSTANDING

The Bidder, whose lawful signature binding it to the terms of this Bid as found on the Signature Page, declares that the only persons or parties interested in this Bid are those named herein, that this Bid is, in all respects, fair and without fraud, that the prices bid are made without collusion with any official, agent or employee of Metro, and that the Proposal is made without any connection or collusion with any person submitting another Bid on this Contract.

The Bidder further declares that he/she has carefully examined all of the Contract Documents, that he/she has satisfied himself/herself as to the quantities and conditions of the work involved, and that this Bid is subject to and made in accordance with the provisions and under the terms of all of the Contract Documents, which Documents are hereby made a part of this Bid.

Any printed matter or any letter or paper enclosed herewith which is not part of the Bidding Documents prepared by Metro or which was not requested by Metro is not to be considered a part of this Bid, and the undersigned agrees that such matter shall be entirely disregarded and, notwithstanding such printed matter, that the Bid is an offer to do all of the work in strict accordance with the Contract Documents.

This Bid is irrevocable for ninety (90) days following opening of bids.

CONTRACT EXECUTION AND BONDS

The Bidder agrees that if this Bid is accepted, he/she will, within ten (10) days, not including Sundays and legal holidays, after Notice of Conditional Award, sign the Contract in the form annexed hereto, and will at that time, deliver to Metro any Bonds or Letters of Credit required herein, and will, to the extent of his/her Bid, furnish descriptions of all equipment, personnel, sites and other means necessary to do the work and descriptions of all materials necessary to complete all work as specified or indicated in the Contract Documents, as requested by Metro.

CERTIFICATES OF INSURANCE

The Bidder agrees to furnish to Metro, before commencing the work under this Contract, any certificates of insurance required by these Documents.

SALES AND USE TAXES

The Bidder agrees to accept as full payment for the goods and/or services covered by this Bid the lump sum and unit price amounts supplied by the Bidder. The Bidder agrees that the lump sum and unit prices represent a true measure of the labor and materials required to complete the Contract, including all allowances for overhead and profit.

START OF WASTE TRANSPORT OPERATIONS AND CONTRACT COMPLETION TIME

The Bidder further agrees to begin waste transport services as described in the Contract Documents on January 1, 1990, and to terminate such transport services on December 31, 2009, subject to the provisions set forth in Article 32 of the General Conditions.

The Bidder should be aware that it is Metro's intent to reduce the amount of waste landfilled, and that these efforts may significantly reduce the rate at which waste is transported for disposal.

BID SCHEDULE
(Fill in all blank spaces)

<u>ITEM</u>		<u>FIGURES</u>	<u>WORDS</u>
1. Price per load	=	\$ _____ (Unit Price)	_____
2. Fixed Costs	=	\$ _____ (Lump Sum)	_____
3. Percent Adjustment	=	_____ %	_____

ADDENDA

The Bidder hereby acknowledges that he/she has received Addenda Numbers _____ (Bidder: Insert number of each Addendum received) to these Specifications.

CONTRACT QUESTIONNAIRE

The following Questionnaire asks for information concerning the Contractor's organization, experience in projects similar to those described in the Contract Documents, and information relating to the equipment and operating plan the Contractor proposes to use during the Contract. If a partnership, firm, corporation or other entity owns a controlling interest in the Bidder, responses to each question in the Questionnaire must be submitted for both the Bidder and the parent entity. For purposes of this paragraph, "controlling interest" shall mean ownership of ten percent (10%) or more of the beneficial ownership of Bidder. Information submitted in response to this Questionnaire will be considered binding on the successful Bidder, and any substitutions or deviations shall be approved by Metro.

Manner of Preparing and Filling in Forms

Unless indicated otherwise, the Contractor shall include information for only the specific single business organization or entity which is submitting a Bid for the work described in the Contract Documents and which would be the signatory on the Contract.

All answers and other entries on the forms, except signatures, shall be filled in on a typewriter or legibly printed. It is the responsibility of the Contractor to return all pages. Failure to do so may be grounds for rejection.

All answers and entries shall be specific and complete in detail. Metro reserves the right to make independent inquiries concerning the information submitted herein, to conduct any additional investigation necessary to determine the Contractor's qualifications, and to require the Bidder to supply additional information.

Use of Attachments

Schedules, resumés, reports, diagrams, and other forms of information may be used as attachments to the prescribed form, provided that the information contained therein specifically includes the information required by this form and provided that the Bidder clearly references the attachments on this form. The purpose of this Questionnaire and any attachments is to supply information about the Bidder to Metro, so that Metro may determine the Bidder's qualifications to perform the work.

Submission

The Questionnaire shall be submitted along with the Contractor's Bid in accordance with the information contained in the INVITATION TO BID section of the Contract Documents.

ORGANIZATIONAL INFORMATION

TYPE OF FIRM () Corporation () Partnership () Individual

() Other - Describe _____

Please list parent organizations and their address and ownership percentages:

How many years has your firm used its present name? _____

What were your firm's previous names?

1. How many years experience has your firm had in the following type of work, in which the work listed was the primary task?

	<u>As a Contractor</u>	<u>As a Sub- Contractor</u>
a. Solid Waste Transfer Operations	_____	_____
b. Other Transfer Operations	_____	_____
c. Public Service related contracts	_____	_____
d. Solid Waste (non-transfer)	_____	_____
e. Other transportation operations	_____	_____

2. List the projects you have undertaken in the last 10 years which fall into the categories listed under Item No. 1. List the projects shown in categories a, b, and c of Item No. 1 first. If space permits, list the remaining projects chronologically.

Project Owner, City, State or Country	Name of Project	Contract Amount	Type - Enter Letter from #1
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			

3. List the following additional information for projects listed under Item No. 2 (use same line number as in Item No. 2).

Location of Project	Date\$ completed	*	**	Name of Surety if project bonded	Name & Phone# of Architect/ Engineer
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					

\$Completed means that the project was finished in accordance with the Contract. This does not include termination prior to completion. If the project was not completed, then leave blank and explain in the next item.

* Indicate whether: (P)rime Contractor, (JV) Joint Venture, (Sub)contractor
 ** Enter (Y) if you were involved in any litigation or breach of contract claims during the project, and explain in the following section.

4. For each project listed in Items No. 2 and No. 3, provide a brief description of the project and your firm's responsibilities.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.

5. Please describe the organizational structure under which you will manage this Contract. This should include, but not be limited to, the persons who are responsible for the following areas of expertise: direct supervision, overall project management, personnel, equipment maintenance and acquisition, training, safety, risk management, financial management, community relations. Describe the experience of or include resumés for persons in these positions.

- [illegible]

-
- This image shows a single sheet of white paper with horizontal black lines, resembling notebook paper. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

7a. Describe briefly, the backup transport system you will use if the primary system is incapacitated.

7b. List all permits, licenses and associated fees which will be required, including Public Utility Commission of Oregon requirements.

8. Describe your staffing plan and how you intend to comply with the Gilliam County local hire requirements.

9. What is the monetary percentage of work to be performed by subcontractors ? _____

9a. Describe the work to be performed by subcontractors.

-
-
-
-
-
-
-
10. Has your firm or any officer or partner of your organization, parent organization, affiliated organization, or persons listed under Item No. 5, ever been convicted of any criminal conduct or been found in violation of any state or local or federal statute or regulation, in connection with a solid waste or transportation contract? _____

If so, state the name of the individual and the circumstances:

11. Please attach the most recent financial statement for your firm.

Confidential Information

Information submitted in this Questionnaire will be treated as confidential, as permitted in ORS 192.500, if requested by the Contractor. Do you wish to have the information treated as confidential? __yes __no
(check one)

SITE LOCATION FORM

Manner of Preparing and Filling in Forms

Unless indicated otherwise, the Contractor shall include information for only the specific depot site(s) to be used in the work described in the Contract Documents. If a depot is not to be used, please indicate where equipment will be based. A depot is any site at which a load of waste changes modes of transportation. Also indicate the location(s) for cleaning trailers or containers, as well as where routine maintenance and storage will occur.

All answers and other entries on the forms, except signatures, should be filled in on a typewriter or printed. It is the responsibility of the Contractor to return all pages. Failure to do so may be grounds for rejection.

All answers and entries shall be specific and complete in detail. Metro reserves the right to make independent inquiries concerning the information submitted herein, to conduct any additional investigation necessary to determine the Contractor's qualifications, and to require the Bidder to supply additional information. Specific information provided will be considered binding on the successful Bidder and any changes must be approved by Metro.

Use of Attachments

Schedules, reports, diagrams, and other forms of information may be used as attachments to the prescribed form, provided that the information contained therein specifically includes the information required by this form and provided that the Bidder clearly references the attachments on this form. The purpose of this Questionnaire and any attachments is to supply information about the Bidder, to Metro, so that Metro may determine the Bidder's qualifications to perform the work.

Submission

This form shall be submitted along with the Contractor's Bid in accordance with the information contained in the INVITATION TO BID section of the Contract Documents.

1. Depot locations.

Provide name and address of proposed depot(s).

- [illegible]

3. List the permits granted (or applied for or to be applied for) to the site(s). Attach copies of the permits/applications as well. Describe the current zoning. Indicate whether there are any transportation restrictions.

4. List the local jurisdiction having solid waste and land use authority over each site. Please include a contact name and telephone number (if other than Metro).

5. List any pending litigation which may affect the site.

6. Attach a copy of all engineering work, including studies, investigations, reports, and designs completed or to be completed on the site which pertains to work contained in the Contract.
7. Attach schedules for: a) obtaining any necessary permit approvals; b) site development.
8. Please provide location of cleaning and maintenance (if applicable) and storage facilities, and the name of the owner if other than Bidder.

9. Describe your agreement(s) with each of the site(s) owners/operators listed above if Bidder is not owner of record. Attach any signed agreements. List current site owner.

10. Describe the status of permits for any cleaning, maintenance and storage facilities.

11. Describe schedules for development of maintenance facilities.

Confidential Information

Information submitted in this Site Form will be treated as confidential, as permitted in ORS 192.500, if requested by the Contractor. Do you wish to have the information treated as confidential? ☐yes ☐no

BID BOND

BOND NO. _____
AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENTS, that _____
hereinafter called the PRINCIPAL, and _____
a corporation duly organized under the laws of the state of _____
having its principal place of business at _____
_____, in the state of _____,
and authorized to do business in the state of Oregon, as SURETY, are
held and firmly bound unto _____

hereinafter called the OBLIGEE, in the penal sum of THREE HUNDRED AND
AND FIFTY THOUSAND DOLLARS (\$350,000), for the payment of which we bind
ourselves, our heirs, executors, administrators, successors, and
assigns, jointly and severally, firmly by these presents.

WHEREAS the PRINCIPAL is herewith submitting his/her or its Bid
for Waste Transport Services, said Bid, by reference thereto, being
hereby made a part hereof.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the Bid submitted by the PRINCIPAL is accepted, and the Contract
awarded to the PRINCIPAL, and if the PRINCIPAL shall execute the
proposed Contract and shall furnish such Bond or Letter of Credit and
other documents as required by the Contract Documents within the time
fixed by the Contract, then this obligation shall be null and void; if
the PRINCIPAL shall withdraw its Bid within ninety (90) days of the Bid
opening date or otherwise fail to execute the proposed Contract and
furnish such Bond, Letter of Credit or other documents, the SURETY
hereby agrees to pay to the OBLIGEE the penal sum as liquidated damages,
within ten (10) days of such failure.

Signed and sealed this _____ day of _____, 1988.

PRINCIPAL

By _____

SURETY

By _____
Attorney-in-Fact

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any Contract awarded pursuant to this Bid. According to the Oregon Public Contracts and Purchasing Laws, a public contracting agency may reject any or all bids upon a finding of the agency that it is in the public interest to do so (ORS 279.035). Metro finds that it is in the public interest to require the completion of this Affidavit by potential contractors.
2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the Bidder who makes the final decision on prices and the amount quoted in the Bid.
3. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of Bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Bidder with responsibilities for the preparation, approval or submission of the Bid.
4. In the case of a Bid submitted by a joint venture, each party to the venture must be identified in the Bid Documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term "complementary bid" as used in the Affidavit has the meaning commonly associated with that term in the bidding process, and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions will result in disqualification of the Bid.

NON-COLLUSION AFFIDAVIT

Contract Bid No. _____

STATE OF _____)
County of _____) ss.

I state that I am _____ (Title) of _____
(Name of Firm) and that I am authorized to make this Affidavit on behalf
of my firm, and its owners, directors, and officers. I am the person
responsible in my firm for the price(s) and the amount of this Bid.

I state that:

(1) The price(s) and amount of this Bid have been arrived at
independently and without consultation, communication or agreement with
any other contractor, Bidder or potential Bidder, except as disclosed on
the attached appendix.

(2) That neither the price(s) nor the amount of this Bid, and
neither the approximate price(s) nor approximate amount of this Bid,
have been disclosed to any other firm or person who is a Bidder or
potential Bidder, and they will not be disclosed before Bid opening.

(3) No attempt has been made or will be made to induce any firm or
person to refrain from bidding on this contract, or to submit a Bid
higher than this Bid, or to submit any intentionally high or
noncompetitive Bid or other form of complementary Bid.

(4) The Bid of my firm is made in good faith and not pursuant to
any agreement or discussion with, or inducement from, any firm or person
to submit a complementary or other noncompetitive Bid.

(5) _____ (Name of Firm), its affiliates,
subsidiaries, officers, directors and employees are not currently under
investigation by any governmental agency and have not in the last four
years been convicted of or found liable for any act prohibited by state
or federal law in any jurisdiction, involving conspiracy or collusion
with respect to bidding on any public contract, except as listed and
described on the attached sheet.

I state that _____ (Name of Firm) understands and
acknowledges that the above representations are material and important,
and will be relied on by _____
(Name of Public Entity) in awarding the contract(s) for which this Bid

is submitted. I understand and my firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from _____ (Name of Public Entity) of the true facts relating to the submission of Bids for this Contract.

Name of Company/Position

Sworn to and subscribed before me this _____ day of _____, 1988.

Notary Public for _____

My Commission Expires: / /

DISADVANTAGED BUSINESS PROGRAM COMPLIANCE FORM

(To be submitted with Bid or Proposal)

Name of Metro Project: Waste Transport Services Bid

Name of Bidder: _____

Address: _____

Telephone: _____

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

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

Authorized Signature

Date

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM

1. Name of Metro Project Waste Transport Services Bid
2. Name of Bidder _____
 Address of Bidder _____
3. The above-named bidder intends to subcontract _____ percent of the Total Bid Price to the following Disadvantaged Business Enterprises (DBEs):

Names, Contact Persons,
 Addresses and Telephone Numbers
 of DBE Firms Bidder
Anticipates Utilizing _____

Nature of
 Participation _____

Dollar
 Value of
 Participation _____

_____	_____	_____

_____	_____	_____

_____	_____	_____

	Total	_____
Amount of Total Bid Price		_____
DBE Percent of Total Bid Price		_____

 Authorized Signature

Date: _____

THIS FORM IS TO BE COMPLETED, SIGNED AND SUBMITTED
 BY THE CLOSE OF THE NEXT WORKING DAY FOLLOWING BID OPENING

WOMEN-OWNED BUSINESS ENTERPRISES UTILIZATION FORM

1. Name of Metro Project Waste Transport Services Bid

2. Name of Bidder _____

Address of Bidder _____

3. The above-named Bidder intends to subcontract _____ percent of the Total Bid Price to the following Women-Owned Business Enterprises (WBEs):

Names, Contact Persons,
Addresses and Telephone Numbers
of WBE Firms Bidder
Anticipates Utilizing _____

Nature of
Participation _____

Dollar
Value of
Participation _____

Total
Amount of Total Bid Price
WBE Percent of Total Bid Price

Authorized Signature

Date: _____

THIS FORM IS TO BE COMPLETED, SIGNED AND SUBMITTED
BY THE CLOSE OF THE NEXT WORKING DAY FOLLOWING BID OPENING

RESIDENT/NON-RESIDENT BIDDER STATUS

Oregon law requires that Metro, in determining the lowest responsive Bidder, must add a percent increase on the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides. Consequently, each Bidder must indicate whether it is a resident or non-resident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) calendar months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid whether the Bidder is a "resident Bidder." A "non-resident Bidder" is a Bidder who is not a resident Bidder.

The undersigned Bidder states that he/she is: (check one)

1. A resident Bidder _____
2. A non-resident Bidder _____

Indicate state in which Bidder resides: _____

Is the Bidder domiciled or registered to do business in the state of Oregon? Yes___ No ___

Bidders not domiciled or registered to do business in Oregon who are awarded a public Contract in excess of \$10,000 must report to the Oregon Department of Revenue as provided in ORS 279.021.

SURETY INFORMATION

If the Bidder is awarded a Contract on this Bid, the Surety who provides the Performance Bond and Labor and Materials Payment Bond will be

_____ whose address is

(Street) (City) (State) (Zip).

SIGNATURE PAGE

The name of the Bidder submitting this Bid is _____
_____ doing business at

(Street) (City) (State) (Zip)

which is the full business address to which all communications concerned with this Bid and with the Contract shall be sent.

The names of the principal officers of the corporation submitting this Bid, or of all of the partners, if the Bidder is a partnership or joint venture, or of all persons interested in this Bid as individuals are as follows:

If Individual

IN WITNESS hereto the undersigned has set his/her hand this _____ day
of _____, 1988.

Signature of Bidder

Printed Name of Bidder

Title

If Partnership or Joint Venture

IN WITNESS hereto the undersigned has set his/her hand this _____ day
of _____, 1988.

Name of Partnership or Joint Venture

By: _____

(Printed name of Person Signing)

Title: _____

SIGNATURE PAGE (continued)

If Corporation

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this _____ day of _____, 1988.

Name of Corporation

State of Incorporation

By: _____

Printed Name of Person Signing

Title: _____