

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING ISSUANCE.) - RESOLUTION-NO. 90-1100  
OF A REQUEST FOR BIDS FOR CONSTRUCTION )  
OF METRO SOUTH STATION MODIFICATIONS ) Introduced by Rena Cusma,  
AND ENTERING INTO A CONTRACT WITH THE ) Executive Officer  
LOW, RESPONSIVE, RESPONSIBLE BIDDER )

WHEREAS, It is necessary to construct modifications at the  
Metro South Station contained in Exhibit 1; and

WHEREAS, The labor and materials necessary to execute such  
modifications can be acquired through issuance of the Request for Bids  
attached as Exhibit 1.; and

WHEREAS, It is in the best interest of Metro to execute these  
modifications as soon as possible to minimize risk to Metro; and

WHEREAS, Pursuant to Section 2.04.033 of the Metro Code, the  
Metro Council may, at the time it approves a Request for Bids, waive  
the requirement of Council approval of a contract prior to execution  
of the contract by the Executive Officer; now, therefore,

BE IT RESOLVED,


1. That the Council of the Metropolitan Service District  
approves the form and substance of the Request for Bids for  
Construction of Modifications at the Metro South Station prepared by  
the Solid Waste Department attached as Exhibit 1.

2. That the Director of the Solid Waste Department is  
requested to advertise for bids and do all other things necessary to  
solicit bids for construction of modifications at the Metro South  
Station.

3. That the Council of the Metropolitan Service District,  
pursuant to Section 2.04.033 (b) of the Metro Code, waives the

requirement of Council approval of the contract resulting from the bid process, and authorizes the Executive Officer to execute a contract for construction of modifications at the Metro South Station with the low, responsible, responsive bidder in accordance with the requirements of the Metro Code.

ADOPTED by the Council of the Metropolitan Service District  
this 25th day of January, 1990.

  
\_\_\_\_\_  
, Presiding Officer

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EXHIBIT 1

Contract Documents  
for  
Construction  
of  
Metro South Modifications

(Drawings and Specifications available upon request)

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<Section 00020 Advertisement for Bids 01-08-90>

ADVERTISEMENT FOR BIDS  
FOR METRO SOUTH TRANSFER STATION MODIFICATIONS

The Portland Metropolitan Service District (Metro) is soliciting bids for construction of Modifications to the Metro South Transfer Station, located at the intersection of Highway 213 and Washington Street in the City of Oregon City. Sealed bids must be delivered to Metro at 2000 S.W. First Avenue, Portland OR 97201-5398, to the attention of Rob Smoot, no later than 3:00 p.m. PST, Tuesday March 13, 1990, in the Council Chambers, at which time they will be publicly opened and read.

The Work contemplated consists of constructing a building to house a solid waste conveyor and two compactors (supplied by others); mechanical and electrical systems; roads, bridge, landscaping, stormwater and sewage lift stations and piping, parking areas, and landscaping.

Contract Documents, including Drawings and Specifications depicting the Work, may be examined after Monday, February 12, 1990 at Metro's offices, room 315, Monday through Friday, from 8:00 A.M. to 4:30 P.M. Documents will also be available at plan centers. Copies of the Contract documents can be obtained from Metro for a non-refundable fee of \$50.00 per set. Checks or money orders must be made payable to the Metropolitan Service District. If mailing of the material is desired, the prospective Bidder must provide a street address and a telephone number, in addition to a Post Office box number, if any, and must include a non-refundable first class mail fee of \$\_\_\_\_\_.

No Bid shall be received or considered by Metro unless the Bid contains a statement by the Bidder as a part of its Bid that the provisions of ORS 279.350, regarding prevailing wage rates, are to be complied with.

Metro has adopted a Disadvantaged Business Program for its contracting expenditures. Bidders are required to comply with Metro's Program, copies of which are included in the Contract Documents. The specific requirements of the Program are detailed in the Contract Documents. The goals for this Contract are that ten (10) percent of the Contract Amount be subcontracted to Disadvantaged Business Enterprises, and that three (3) percent of the Contract Amount be subcontracted to Women-Owned Business Enterprises. Bidders must either meet these goals or demonstrate their good faith efforts, as defined in the Program, to meet the goals or their Bids will be deemed nonresponsive.

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Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279.029.

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

A Pre-Bid Conference for Bidders will be conducted Monday, February 19, 1990 at 10:00 A.M. PST at Metro's offices, room \_\_\_ at 2000 S.W. First Avenue in Portland.

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<Section 00030 Invitation to Bid 01-08-90>

INVITATION TO BID  
FOR METRO SOUTH TRANSFER STATION MODIFICATIONS

Sealed bids for Modifications to the Metro South Transfer Station, located at the intersection of Highway 213 and Washington Street in the City of Oregon City, Oregon, will be received at the offices of the Portland Metropolitan Service District (Metro) at 2000 S.W. First Avenue, Portland, OR 97201-5398, to the attention of Robin Smoot, until 3:00 p.m. PST, Tuesday, March 13, 1990, in the Council Chambers, at which time they will be publicly opened and read.

The Work contemplated consists of constructing a building to house a solid waste conveyor and two compactors (supplied by others), roads, bridge, landscaping, stormwater and sewage lift stations and piping, parking areas, and landscaping.

Contract Documents, including Drawings and Specifications depicting the Work, may be examined after Monday, February 12, 1990 at Metro's offices, room 315, Monday through Friday, from 8:00 A.M. to 4:30 P.M. Documents will also be available at plan centers. Copies of the Contract documents can be obtained from Metro for a non-refundable fee of \$50.00 per set. Checks or money orders must be made payable to the Metropolitan Service District. If mailing of the material is desired, the prospective Bidder must provide a street address and a telephone number, in addition to a Post Office box number, if any, and must include a non-refundable first class mail fee of \$\_\_\_\_\_.

Each bid must be submitted on the prescribed form and accompanied by a certified or cashier's check, or a bid bond, payable to the Metropolitan Service District of Portland, Oregon, in an amount not less than 10 percent of the total Base Bid amount.

Metro will issue a Notice of Conditional Award within thirty (30) days of the date of the Bid opening. Within seven (7) days of the Notice of Conditional Award, the successful Bidder shall furnish the necessary Performance Bond and Labor and Materials Payment Bond, as prescribed in the Contract Documents.

As authorized in ORS Chapter 279, before a Contract will be awarded for the Work contemplated herein, Metro will conduct such investigation as is necessary to determine the Bidder's qualifications including the performance record and ability of the apparent low Bidder to perform the size and type of work specified under this Contract. Upon request, the apparent low Bidder shall submit such information as deemed necessary by Metro to evaluate the Bidder's qualifications to do the Work.

Section 00030 Invitation to Bid

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Metro has adopted a Disadvantaged Business Program for its contracting expenditures. Bidders are required to comply with Metro's Program, copies of which are included in the Contract Documents. The specific requirements of the Program are detailed in the Contract Documents. The goals for this Contract are that ten (10) percent of the Contract Amount be subcontracted to Disadvantaged Business Enterprises, and that three (3) percent of the Contract Amount be subcontracted to Women-Owned Business Enterprises. Bidders must either meet these goals or demonstrate their good faith efforts, as defined in the Program, to meet the goals or their Bids will be deemed nonresponsive.

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

No Bid shall be received or considered by Metro unless the Bid contains a statement by the Bidder as a part of its Bid that the provisions of ORS 279.350, regarding prevailing wage rates, are to be complied with.

A Pre-Bid Conference for Bidders will be conducted Monday, February 19, 1990 at 10:00 A.M. PST at Metro's offices, room \_\_\_ at 2000 S.W. First Avenue in Portland. A portion of the Pre-Bid Conference will address subcontracting opportunities for Disadvantaged and Women-Owned Business Enterprises. Bidder's attendance at this portion of the Pre-Bid Conference is one of the actions required to demonstrate good faith efforts under Metro's Disadvantaged Business Program, a copy of which is included in the Appendix to these Contract Documents.

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<Section 001010 Instructions to Bidders 01-08-90>

INSTRUCTIONS TO BIDDERS

1. DESCRIPTION OF WORK

The work contemplated consists of construction of modifications to the Metro South Transfer Station located at the intersection of Highway 213 and Washington Street in the City of Oregon City, Oregon. The elements of the work include constructing a building to house a solid waste conveyor and two compactors (supplied by others), roads, bridge, landscaping, stormwater and sewage lift stations and piping, parking areas, and landscaping, as indicated in the Drawings and Specifications.

2. DEFINITIONS

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

3. DOCUMENT INTERPRETATION

The Contract Documents are intended to be complementary and to provide all details reasonably required for the execution of the proposed Work. Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of these Contract Documents. Should there be any doubt as to the meaning or the intent of said Contract Documents or should any inconsistency or discrepancy be found within such Contract Documents, the Bidder shall request of Metro, in writing at least ten (10) days prior to Bid opening, an interpretation thereof. The Bidder may also request substitutions for materials, processes or equipment as described in the Contract Documents. Such requests for interpretation or substitution shall be mailed or delivered to Metro at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, Attention: Robin Smoot. Any interpretations or changes in the Contract Documents or approved substitutions will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all Bidders receiving a set of the Bidding Documents and which shall be binding upon all Bidders as if set forth in the original Contract Documents. Bidders shall indicate receipt of all Addenda on their Bids. Metro will not be responsible for any other explanation or interpretation of the Bidding Documents. Bidders shall have no right to rely on any oral interpretation or instructions made by



Metro or the Engineer, unless the same is also committed to writing and issued as an Addendum.

In the absence of any pre-bid request for clarification, as outlined above, or any interpretation of the Contract Documents, any subsequent interpretation shall be made by Metro and such interpretation shall be final and binding on the successful Bidder and Metro shall pay no extra costs or expenses to such Bidder resulting from such interpretation.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE AND COMPLIANCE WITH LAWS

Before submitting a Bid, Bidders shall fully examine and read the Contract Documents. They shall visit the site of the proposed Work, examine the Site and the surrounding areas. They shall fully inform themselves of all conditions on, in, at and around the Site, the surrounding areas, and any work that may have been done thereon. The Bidder acknowledges by the submission of its Bid that it has satisfied itself as to the nature and location of the Work, the general and local conditions, conditions of the Site, availability of labor, electric power, water, and the kind of surface materials on the Site, the kind of equipment needed, and all other matters which may in any way affect the Work or the cost, including utilities not identified in the Contract Documents.

Information derived from inspection of the Contract Documents and any specific sections thereof showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the Site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents.

Investigation of Site and soil conditions have been conducted for Metro. Bidders may inspect the records of such investigations at locations specified in Section 00220.

Metro does not in any way warrant the accuracy of any information in such investigations and Bidders shall have no right to rely on the information contained in such records or investigations.

Furthermore, should the Bidder determine that additional investigations of site and/or soil conditions are necessary or desirable, Bidder shall cause such additional investigations to be made, at Bidder's expense, prior to submitting a Bid and subject to coordination with Metro.

Any failure of a Bidder to acquaint itself with all of the available information concerning conditions or having such additional investigations of Site and soil conditions conducted,

as may be necessary, will not relieve it from responsibility for estimating properly the difficulties or cost of the Work and the Bidder shall, regardless of such failure, be bound to its Bid. Each Bidder shall inform itself of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, codes, statutes, ordinances, and regulations, as amended, relative to the execution of the Work. Each Bidder shall prepare its Bid in accordance with and all Bid prices shall assume compliance with such laws, codes, statutes, ordinances and regulations. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees, and similar subjects.

If any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations as amended, the Bidder shall so advise Metro in writing at least ten (10) days before Bids are due. If it is shown that the Contractor, as Bidder, knew or should have known that any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations and had failed to so advise Metro, it shall be liable for costs of making any deviation(s) required for compliance with such laws, codes, statutes, ordinances and regulations.

Each Bidder, in submitting its Bid, certifies that the Bidder is not ineligible to receive a contract for a public work, as set forth in ORS 279.361 and agrees, if awarded the Contract, that each of its Subcontractors will be required to certify such compliance, and certification will be filed with Metro prior to such Subcontractor commencing any work under the Contract.

#### 5. DISADVANTAGED BUSINESS PROGRAM COMPLIANCE

Metro has made a strong commitment to provide maximum opportunities to Disadvantaged and Women-Owned Businesses in contracting. The successful Bidder will be required to meet Metro's Disadvantaged Business Program goals or clearly demonstrate that a good faith effort has been made to meet the goals. The goals for this Contract are: Disadvantaged Business Enterprises (DBEs) -- ten (10) percent, and Women-Owned Business Enterprises (WBEs) -- three (3) percent of the Base Bid Amount. DBEs and WBEs must be certified by the state of Oregon as DBEs/WBEs to be counted toward the Contract goals.

The Bid submitted must contain a fully completed Disadvantaged Business Program Compliance form contained herein. Metro may

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require any or all Bidders to submit completed DBE and WBE Utilization forms (also contained herein) either by the close of the next working day following Bid opening or within twenty-four (24) hours of Metro's request. Detailed procedures for completing the forms and for demonstrating good faith efforts are contained in Metro Code 2.04 (Metro's Disadvantaged Business Program) contained in the Appendix. Bidder's special attention is directed to Section 2.04.155 Contract Award Criteria), and Section 2.04.160 (Determination of Good Faith Efforts). Bidders should note the following requirement of the latter section:

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

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

The El Hispanic,

The Skanner, 2337 N. Williams Avenue, Portland, OR 97211

(503) 287-3562.

The Portland Observer, P.O. Box 3137, Portland, OR 97208

(503) 283-2486

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

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

**6. PREPARATION OF BIDS**

All blank spaces in the Bid Forms must be completed either by typing or in ink. Amounts shall be shown in both words and figures. Any Bids which do not include Bids on the Alternates and any Unit Prices may be considered nonresponsive and may be rejected. No changes shall be made in the phraseology of the forms.

Any Bid may be deemed nonresponsive which contains omissions, erasures, alterations, or additions of any kind, or prices uncalled for, or in which any of the prices are obviously

unbalanced, conditioned or which in any manner shall fail to conform to the conditions of the Contract Documents.

Each Bid shall give the full business address of the Bidder and be signed by it with its legal signature.

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

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

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

#### 7. SUBMISSION OF BIDS

All Bids must be submitted not later than the time prescribed, at the place, and in the manner set forth in the INVITATION TO BID. Bids must be made on the forms for the Bid provided herein. Each Bid and all other documentation required to be submitted with the Bid must be submitted in a sealed envelope, so marked as to indicate its contents without being opened, and addressed in conformance with the instructions in the INVITATION TO BID and the ADVERTISEMENT FOR BIDS.

#### 8. MODIFICATION OR WITHDRAWAL OF BIDS

Any Bid may be modified after delivery to the location specified in the Invitation to Bid by delivering to the same location

before the time fixed for the Bid opening, a written sealed supplement to the original Bid, marked "Supplement to Bid of (Name of Bidder) for Metro South Transfer Station Modifications." Such supplement shall clearly identify the Bid item(s) which are changed by setting forth the original Bid item(s), and the modified item(s). Metro may reject any supplemental Bid which, in its opinion, does not set forth the proposed modifications clearly enough to determine the definiteness and certainty of the item(s) offered by the Bidder. No Bidder shall be allowed to submit more than one (1) Bid for this Contract.

Bids may be withdrawn by the Bidder prior to the time fixed for the receipt of Bids by having an authorized representative of the Bidder with sufficient identification personally pick up the Bid. Bids may not be withdrawn for a period of forty-five (45) days from and after the opening of Bids and on or prior to the last date of any extension of such time as may be agreed upon between Metro and the Bidder.

9. BID SECURITY

Bids must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a bid bond on the form bound herewith issued by a surety authorized to issue such bonds in Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U. S. Treasury Department, in the amount of not less than 10 percent of the total amount of the Base Bid. This bid security shall be given as a guarantee that the Bidder will not withdraw its Bid for a period of forty-five (45) days after Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Construction Agreement and furnish a properly executed Performance Bond and a properly executed Labor and Materials Payment Bond in the full amount of the Base Bid within the time specified. Bid security deposited in the form of a certified or cashier's check shall be subject to the same requirements as a bid bond.

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

10. EXPERIENCE AND ABILITY TO PERFORM THE WORK

Within twenty-four (24) hours following request by Metro, any bidder may be required to present information indicating that the

Bidder has the necessary experience and qualifications in the class of Work to be performed, and the ability, equipment, key personnel and financial resources to perform the Work satisfactorily within the time specified. In determining the award of this Contract, such information will be considered, and the Bidder is cautioned to make complete and comprehensive presentation of its abilities and resources. Failure of any Bidder to comply fully and timely with a request for information under this section shall be grounds for rejection of that Bid.

No Bidder will be considered for contract award unless such Bidder is authorized by law to execute the Contract or perform the Work for which such Bid is received. Should it appear, at any time, that any Bidder is not or might not be authorized by law to execute the Contract or perform such Work, then such Bidder may at any time be rejected and Metro may refuse to execute any contract with such Bidder regardless of whether or not the contract had been previously awarded by the Metro Council and without any liability whatever on the part of the Metropolitan Service District, its Council, or any member of its Council, or Metro's officer, employees, or its agents, either as individuals or in official capacities.

#### 11. REJECTION OF BIDS

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

#### 12. BASIS OF AWARD

Metro reserves the right to make Award of this Contract to the lowest responsive, responsible Bidder, based on either the lowest Base Bid Amount or the lowest total of the Base Bid Amount plus any combination of Alternate price(s), whichever basis Metro at its sole discretion may select. Any Bid which does not include pricing for the Alternates or Unit Prices may be considered non-responsive and may therefore be rejected. Metro also reserves the right to reject bids in which the Alternate Price(s) are obviously unbalanced as well as waive any or all technical deficiencies.

In determining the lowest responsive, responsible Bidder, Metro shall, for the purpose of awarding the Contract, add a percent increase on the Bid of a nonresident Bidder, as that term is

defined in ORS 279.029(6)(c), equal to the percent, if any, of the preference given to that nonresident Bidder in the state in which that Bidder resides. For purposes of determining the percent increases to be applied pursuant to this section, Metro shall rely on the list published by the Oregon Department of General Services pursuant to ORS 279.029(3), and Metro shall not incur any liability to any Bidder by relying on such list.

13. ALTERNATES

The Bidder is required to bid on the accelerated schedule, as described in the specifications, stipulating the amount to be added to the Base Bid Amount for the work specified (including overhead and profit as defined in these Contract Documents). The Alternate shall conform exactly to all appropriate terms, conditions and requirements of the Contract Documents.

Failure to bid on the Alternate is grounds for Metro to reject a Bid, however, Metro reserves the right to accept a Bid if it elects not to utilize any particular Alternate for which the bidder has not submitted an Alternate Price.

No time extension will be granted to the General Contractor due to Alternate work as selected by Metro. Therefore, all work including any Alternate selected by Metro must be brought to Substantial Completion on or before the number of calendar days specified.

14. LIST OF PROPOSED SUBCONTRACTORS

Metro may require any or all Bidders to furnish in writing to Metro the names of all Subcontractors and Suppliers which Bidder proposes to use in completing the Work along with a brief description of the subcontract or supply work involved and the subcontract or supply work dollar amount, either by the close of the next working day following Bid opening or within twenty-four (24) hours of Metro's request. Metro will notify the Bidder in writing within ten (10) days following receipt from Bidder of the above-described information if Metro has any reasonable objection to any such proposed Subcontractor or Supplier. The Bidder shall not subcontract with any proposed Subcontractor or Supplier to whom Metro has made a reasonable objection. In the event of such objection, Bidder shall propose another entity to whom Metro has no reasonable objection. No amounts or prices bid by the Bidder shall be increased by any difference occasioned by such substitution. Failure of Metro to reply within the above-described time period shall be construed to mean that Metro has no objection at that time. Failure of the Bidder to comply with this section shall be cause for rejection of Bidder's bid and, in

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such event, the bid security submitted by Bidder shall be taken by Metro and considered as liquidated damages.

15. AWARD AND EXECUTION OF CONTRACT

Within forty-five (45) days after the opening of bids, Metro will accept one of the Bids or will act in accordance with BASIS OF AWARD, above. The acceptance of the Bid will be by written Notice of Conditional Award, mailed or delivered to the office designated in the Bid. The award, if made, will be made within forty-five (45) days after the opening of Bids. The Notice of Conditional Award shall not entitle the party to whom it is delivered to any rights whatsoever.

The successful Bidder shall within seven (7) days after receiving Notice of Conditional Award, sign and deliver to Metro the Construction Agreement attached hereto together with an acceptable Performance Bond and a Labor and Materials Payment Bond and certificates of insurance and certified copies of insurance policies as required in these Contract Documents.

Upon receipt of the signed Construction Agreement and all other documents required to be submitted by the successful Bidder, as prescribed herein, Metro shall sign the Construction Agreement and issue a written Notice to Proceed to Contractor. Contractor shall commence work within ten (10) days of issuance of the Notice to Proceed.

In the event of failure of the lowest responsive, responsible Bidder to sign and return the construction Agreement and all other documents required to be submitted, as prescribed herein, Metro may award the Contract to the next lowest responsive, responsible Bidder.

16. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND

The successful Bidder shall file with Metro a Performance Bond on the form bound herewith and in the amount described below, as security for the faithful performance of this Contract and to cover all guarantees against defective workmanship or materials, or both, for a period of one (1) year after the date of Final Completion and Acceptance of the Work by Metro. The successful Bidder shall additionally file a Labor and Materials Payment Bond on the form bound herewith and in the amount described below as security for the payment of all persons supplying labor and materials for the construction of the Work. The surety furnishing these bonds shall have a sound financial standing and a record of service satisfactory to Metro, shall be authorized to do business in the state of Oregon, and shall be named on the



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current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and U.S. Treasury Department. If more than one surety is on a bond, then each surety must agree that it is jointly and severally liable on the bond for all obligations on the bond.

The amount of each bond described above shall be a sum not less than 100 percent of the Contract Amount. The Attorney-in-Fact (Resident Agent) who executes the Performance Bond and the Labor and Materials Payment Bond on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

**17. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS**

The Bidder which has a Contract awarded to it and which fails to promptly and properly execute this Contract and furnish the required bonds, certificates of insurance and certified copies of insurance policies shall forfeit the bid security that accompanied its Bid and the bid security shall be retained as liquidated damages by Metro. It is agreed that this sum is a fair estimate of the amount of damages Metro will sustain in case the Bidder fails to enter into a Contract and furnish the bonds, certificates of insurance and certified copies of insurance policies as hereinbefore provided.

**18. BID BACK-UP (Bid Preparation Documents)**

Within six (6) days after Metro's request and as a condition precedent to the award of the Contract, the apparent low responsive and responsible Bidder shall submit to Metro in a sealed envelope their complete bid summary, along with corresponding back-up including, but not limited to: quantity take-off sheets, pricing sheets and information/data substantiating the Base Bid Amount. The back-up data provided will include that of all Subcontractors listed in the Bid, as well as all lower-tier Subcontractors. This bid summary and back-up data will be held in strict confidence by Metro in its original sealed envelope and will not be opened except in the event of dispute between Metro and Contractor. Bid Back-Up shall be delivered to Metro, 2000 S. W. First Avenue, Portland, OR 97201-5398, Attention: Robin Smoot, enclosed in a double envelope to prevent accidental opening.

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<Section 00700 General Conditions 01-09-90>

ARTICLE 1. GENERAL PROVISIONS.

1.01 Definitions. Unless otherwise defined or specified in the Contract Documents, the following terms shall have the meanings indicated:

1.01.01 Act of God -- means an earthquake, flood, typhoon, cyclone or other natural phenomenon of catastrophic proportions or intensity.

1.01.02 Addendum (Plural: Addenda) -- means a document issued by Metro during the bidding period which modifies, interprets, supercedes or supplements the Contract Documents and becomes a part of the Contract Documents. It is the Bidder's responsibility to determine how addenda impact the Work. All Bids submitted shall include the cost of the Work included in any addenda issued prior to Award.

1.01.03 Alternates -- are portions of the Work for which a Bidder must submit a separate lump sum Bid.

1.01.04 "As-Builts" or Record Documents -- are those drawings made, revised or annotated by the Contractor and approved by Metro during the performance of the Contract, fully illustrating how all elements of the work were actually installed and completed.

1.01.05 Authorized Representative -- is a person, corporation, partnership or other legal entity acting on behalf of another through expressly delegated authority as specified in these Contract Documents.

1.01.06 Base Bid -- is the written offer of a Bidder to perform all of the Work except the Alternates and Unit Prices.

1.01.07 Construction Schedule or Schedule -- is the timeline described in Section 01010 of the Specifications.

1.01.08 Bid -- is the written offer of a Bidder to perform the work as defined in these Contract Documents, when made out in accordance with all of the Contract Documents and submitted on the appropriate Bid Forms.

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1.01.09 Bidder -- is any individual, partnership, corporation, or joint venture, acting directly or through a duly and legally authorized representative, submitting or intending to submit a Bid for the Work as described in these Contract Documents.

1.01.10 Bidding Documents -- See "Contract Documents."

1.01.11 Bid Forms -- include the following: the Bid, including Schedule of Bid Prices, Disadvantaged Business Program Compliance Form, Resident/Non-Resident Bidder Status form, and Signature Page, the Non-Collusion Affidavit, Bid Bond, Disadvantaged Business Enterprise Utilization Form and the Women Business Enterprise Utilization Form.

1.01.12 City -- means the City of Oregon City, Oregon.

1.01.13 Change Order -- is a written document signed by Metro and the Contractor stating their agreement upon all of the following:

1. a change in the Work;
2. the amount of the increase or decrease in the Contract Amount, if any; and
3. the extent of the adjustment to the Contract Time, if any.

1.01.14 Clarification -- is a written document consisting of supplementary details, instruction or information issued by Metro after the award of Contract which clarifies, or supplements the Contract Documents and becomes a part of the Contract Documents.

1.01.15 Completion -- See "Substantial Completion" and "Final Completion and Acceptance."

1.01.16 Construction Coordinator -- The Metro representative on the construction site. The Construction Coordinator will be Mr. Maurice Neyman, an employee of Metro, who will represent Metro to the extent of his authority as delegated by the Executive Officer.

1.01.17 Construction Manager -- The Construction Manager will be SCS Engineers' agent who is with the firm of W.R. Gamble Engineering and is the interface with the Contractor and will be the conduit for all Change Orders, correspondence, Requests for Information, Clarifications and negotiations.

1.01.18 Contract Amount -- is the total amount shown in the Construction Agreement as revised by Change Orders.

1.01.19 Contract Documents or Contract or Bidding Documents -- consist of the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms, the Construction Agreement, the Performance Bond, the Labor and Materials Payment Bond, the General Conditions, the Supplementary Conditions, the Specifications, the Drawings, the approved and updated Construction Schedule, and any modifications of any of the foregoing in the form of Addenda, Clarifications, Change Orders or Force Account Work.

1.01.20 Contractor -- is the party which has entered into this Contract with Metro and who is responsible for the complete performance of the Work contemplated by the Contract Documents and for the payment of all legal debts pertaining to the Work, including its officers, agents, employees and representatives.

1.01.21 Contract Time -- is the period of time, including adjustments approved by Metro, which is allowed in the Contract Documents for the Contractor to substantially complete the Work.

1.01.22 Critical Path Method or CPM -- means the critical path method of scheduling as understood and interpreted by standard industry practice.

1.01.23 Days -- means calendar day including Saturdays, Sundays and legal holidays.

1.01.24 Direct Costs -- are those costs of labor (including benefits), material and equipment incurred by the person, corporation, partnership or joint venture whose employees are actually performing the task.

1.01.25 Disadvantaged Business Program -- is Metro's program to provide maximum opportunities to

Disadvantaged and Women-Owned Business Enterprises in contracts, which is contained in Metro Code 2.04.

1.01.26 Drawings -- means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.01.27 Engineer -- is the firm of SCS Engineers and its agents, representatives, employees and consultants or such other firm as Metro may appoint. The Engineer will have authority to act on behalf of Metro only to the extent provided in these Contract Documents.

1.01.28 Equal, Approved, Approved Equal -- is used to indicate that the material or product to be supplied or installed must be equal to or better than that named in function, performance, reliability, quality and general configuration and that the substitute must be approved by Engineer. Equality in reference to the Project design requirements shall be determined by Engineer prior to installation of any material or product in the Project.

1.01.29 Final Completion and Acceptance -- means the completion by Contractor of all of the Work called for under the Contract, whether expressly or impliedly required, including but not limited to, satisfactory operation of all equipment, completion and correction of all punch list items to the satisfaction of Metro, settlement of all claims, delivery of all warranties and agreements to correct Work, equipment operation and maintenance manuals, as-built drawings, required approvals and acceptances by federal, state or local governments or other authorities having jurisdiction over the Work, and removal of all rubbish, tools, scaffolding and surplus materials and equipment from the Site.

1.01.30 Final Payment -- is the balance of the Contract Amount to be paid to the Contractor upon Final Completion and Acceptance of the Work.

1.01.31 Force Account Work -- is work, ordered in writing by Metro, for which Contractor must report its actual costs in accordance with Paragraph 8.04 of the General Conditions.

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1.01.32 Furnish -- means, unless the context requires otherwise, supply and deliver materials, systems and equipment to the Site, ready for unpacking, assembly, installation, etc., as applicable in each instance.

1.01.33 Inclement Weather -- is a meteorological condition or conditions, abnormal to the Portland metropolitan area for the time of year in question, which cannot be reasonably anticipated and which has a significantly adverse effect on the Construction Schedule. Contractor shall provide for occurrence of routine or average weather conditions in the scheduling of its work.

1.01.34 General Contractor -- is the party which enters into the Contract with Metro. See also "Contractor".

1.01.35 Geotechnical Engineer -- The Geotechnical Engineer will be SCS Engineers' agent who is with the firm of Applied Geotechnology Inc.

1.01.36 Install -- includes, unless the context requires otherwise, unload, unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, protect, clean, connect to electrical power and/or piping, and similar operations at the Site, as applicable in each instance.

1.01.37 Lump Sum -- means all costs and expenses of whatever nature, including Overhead and Profit, associated with the Work involved.

1.01.38 Material or Materials -- shall be construed to include machinery, equipment, manufactured articles, materials of construction such as formwork, fasteners, etc., and any other classes of items to be provided in connection with the Contract, except where a more limited meaning is indicated by the context.

1.01.39 Metro -- means the Metropolitan Service District of the Portland metropolitan area, a municipal corporation established and existing under the laws of the State of Oregon, ORS Chapter 268.

1.01.40 Metro Executive Officer or Executive Officer -- means the Executive Officer of Metro.

1.01.41 Metro Council or Council -- means the elected Council of Metro.

1.01.42 Miscellaneous Phrases -- in the Contract Documents shall be interpreted as follows:

Wherever the words "as directed," "as instructed," "as required," "as permitted," or words of like effect are used, it shall be understood that the direction, requirement, or permission of Metro is intended.

The words "sufficient," "necessary," "proper," and the like shall mean sufficient, necessary or proper in the judgement of Metro.

The words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to, Metro.

1.01.43 Notice of Conditional Award -- is the document issued by Metro to the lowest responsive, responsible bidder whose Bid complies with all the requirements prescribed by the Contract Documents. The Notice of Conditional Award shall be given pursuant to the provisions of the Instructions to Bidders. It shall not entitle the party to whom it is given to any payment under the Contract, nor shall Metro be liable to such party or to any person for any alleged damages for any action taken in reliance upon such notice.

1.01.44 Notice to Proceed -- is the written notice given the Contractor to commence the prosecution of its Work as defined in the Contract Documents. The Notice to Proceed will also establish the date and time of a preconstruction conference.

1.01.45 Other Metro Contractors -- are all individuals, corporations, partnerships, or joint ventures (except the Contractor or Engineer) with whom Metro has a contract to perform work on the Project.

1.01.46 Overhead -- when applied to the cost of the work, shall include the following items, when reasonable and necessary for completion of the work:

1. All on-site payroll costs, taxes, insurance fringe benefits and bonuses of same, for supervising, estimating, expediting, purchasing, drafting and clerical/secretarial services where directly incurred in the performance of the Contract.

2. Small tools (less than \$250 capital cost per item).
3. Equipment maintenance and repairs.
4. Temporary construction, utilities, and safety requirements, other than falsework, forming and necessary scaffolding.
5. Transportation of materials other than direct identifiable cost of specific deliveries, or as included in price of material.
6. Parking fees for workers (if applicable).
7. Permit fees.
8. Cost of reproduction.
9. Field office costs.

Home or branch office overhead shall not be included, but shall be part of the Contractor's profit and shall include, but is not limited to, the following:

1. Accounting functions of the Contractor's Home and Branch Office.
2. General expenses of the Contractor's Home and Branch Office.
3. Interest on capital.
4. Salaries of any home and branch office estimators and administration.

1.01.47 Owner -- means Metro.

1.01.48 Profit -- means that portion of the Contractor's Bid, proposal, price, or Unit Price that is not Direct Costs or Overhead.

1.01.49 Project -- means the Modifications to the Metro South Transfer Station in Oregon City. However, if so required by the context, it shall be understood to refer to the work of this Contract only.

1.01.50 Provide -- means furnish and install complete and in place and ready for operation and use.



1.01.51 Punch List -- is the list prepared by the Construction Manager at the time of Substantial Completion which reflects the Contractor's incomplete, nonconforming work.

1.01.52 Retainage or Retention -- is the difference between the amount earned by Contractor on the Contract and the amount paid on the Contract by Metro.

1.01.53 Schedule of Values -- is the detailed breakdown of the contract amount by scheduled work item or network activity. Each work item or network activity as required in Section 01300 of the Specifications shall be assigned a dollar value.

1.01.54 Separate Contract -- is a contract between Metro and a party other than the Contractor for the construction or furnishing of a portion of the Project.

1.01.55 Shown, As Shown -- work shown on the Drawings which is a part of the Contract Documents.

1.01.56 Site -- is the real property upon which the Project is located.

1.01.57 Special Inspector -- is the inspector defined in the applicable building code.

1.01.58 Specifications -- are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.01.59 Subcontractor -- means a person, partnership, corporation or joint venture which has a direct contract with the Contractor to perform a portion of the Work which requires use of labor at the Site, other than common carriers.

1.01.60 Submittals -- include shop drawings, samples, manufacturer's brochures, pamphlets, catalog cuts, color charts or other descriptive data, clearly defining the article, material, equipment or device proposed by the Contractor for use in the Work. "Shop drawings" are the drawings and diagrams showing details of fabrication and erection which the Contractor is required to submit to the Engineer.

1.01.61 Substantial Completion -- is the stage in the progress of the Work, as determined by Metro, when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City of Oregon City has issued an occupancy permit and Metro can occupy or use the Work for its intended use.

1.01.62 Supplier -- means an individual, partnership, corporation or joint venture entering into an agreement with Metro or Contractor for furnishing a portion of the Work which requires no labor at the Site, other than common carriers.

1.01.63 Unit Prices -- are the costs for specific units of work as defined in the Bid and Supplementary Conditions and include all costs, including, but not limited to, equipment, labor, materials, incidentals, Overhead and Profit, for the unit of work described.

1.01.64 Work -- means, unless the context requires otherwise, the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute all or a portion of the Project as the context requires.

1.02 Intent and Interpretation of Contract Documents

1.02.01 Intent -- The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the Contract Documents is to include in the Contract price the cost of all labor and materials, water, fuel, tools, plant, scaffolding, equipment, power, light, transportation, and all other facilities, services and expense as may be necessary for the proper execution of the Work, unless otherwise indicated in these Contract Documents. In interpreting the Contract Documents, words describing materials or work which have a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning recognized by Engineer and Metro.

1.02.02 Divisions and Headings -- Titles and headings are for the convenience of organizing the Contract

Documents and shall not be construed to limit Contractor's obligations hereunder. The General Conditions are divided into fifteen (15) Articles. The first-tier subheadings of each Article shall be referred to as Paragraphs; the second-tier subheadings shall be referred to as Subparagraphs; and the third-tier subheadings shall be referred to as Clauses.

**1.02.03 Mandatory Nature of Specifications and Drawings** -- mention in the Specifications or indication on the drawings of articles, materials, operations or methods requires the Contractor to furnish and install (i.e., provide) each article mentioned or indicated, of quality or according to qualifications noted, to perform each operation called for, and to provide therefor, all necessary labor, equipment and incidentals. The determination of the type of operations and methods to be utilized in the performance of the Work shall be the responsibility of Contractor unless the Contract Documents prescribe a specific type of operation or method, in which case Contractor shall comply with the prescribed operation or method. Sentences in the imperative tense or command format in these Contract Documents shall be deemed to be directed to Contractor and to require the Contractor to perform the services and/or provide the materials described.

**1.02.04 Precedence of Contract Documents** -- all determination of the precedence of or discrepancy in the Contract Documents shall be made by Metro, but, in general, precedence will be in accordance with the following list with the highest precedence item at the top:

1. Signed Construction Agreement.
2. Supplementary Conditions.
3. General Conditions, Advertisement for Bids, Instructions to Bidders, Invitation to Bid, Bid Forms, Performance Bond and Labor and Materials Payment Bond.
4. Specifications
5. Drawings.

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

Addenda, Clarifications and all Change Orders to the Contract Documents take the same order of precedence as the specific sections that they are amending.

1.02.05 Discrepancies, Errors and Omissions -- the intent of the Contract Documents is to require Contractor to perform and provide every detail and item necessary for completion of the Project. The Contract Documents are not complete in every detail, however, and the Contractor shall comply with their intent and meaning, taken as a whole, and shall not avail itself of any manifest errors or omissions to the detriment of the Work. Should any error, omission, discrepancy or ambiguity appear in the Contract Documents, instructions or work done by others, the Contractor shall immediately upon discovery submit a Request for Information to Metro pursuant to Paragraph 3.02. If the Contractor proceeds with any such work without receiving a Clarification, Contractor shall be responsible for all resulting damage and defects, and shall perform any work necessary to comply with Metro's Clarifications at no cost to Metro. Any work or material not indicated in the Contract Documents, which is manifestly necessary for full and faithful performance of the Work in accordance with the intent of the Contract Documents shall be indicated by the Contractor on the shop drawings and provided by the Contractor to the same extent as if both indicated and specified. Any work indicated on the drawings but not specified, or vice versa, shall be furnished in the manner specified above as though fully set forth in both. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. In case of discrepancy or ambiguity, in quantity or quality, the greater quantity or better quality as determined by Metro, shall be provided at no extra cost to Metro.

1.02.06 Standards to Apply Where Detailed Specifications Are Not Furnished -- wherever in these Contract Documents or in any directions given by Metro pursuant to or supplementing these Contract Documents, it is provided that the Contractor shall furnish materials or manufactured articles or shall do work for which no detailed Specifications are set forth,

the materials or manufactured articles shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed Drawings or Specifications are set forth herein shall conform to the usual standards for first-class work of the kind required.

1.03 Supply of Contract Documents -- Metro shall supply Contractor, without charge, a maximum of ten (10) sets of Contract Documents. Contractor shall contact Metro for additional sets of documents for which Contractor shall be charged the cost of printing. All sets of Contract Documents supplied to Contractor, with the exception of one signed set and those supplied at Contractor's cost, are the property of Metro and shall be returned to Metro upon final completion of the Work.

1.04 Use of Contract Documents -- the Contract Documents were prepared for use in the construction of this Project only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of Metro. Any unauthorized use of the Contract Documents is at the sole responsibility of the user and such unauthorized use shall be deemed an activity in the performance of the Contract for purposes of Contractor's duty to indemnify under Article 11.

1.05 Copyright -- all submittals, record documents and any other products or documents produced by Contractor pursuant to this Contract are the property of Metro and it is agreed by the parties hereto that such documents are works made for hire. Contractor does hereby convey, transfer and grant to Metro all rights of reproduction and the copyright to all such documents.

1.06 Severability Clause -- should any provision of this Contract at any time be in conflict with any law, regulation or ruling, or be legally unenforceable for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event that any provision of this Contract shall become legally unenforceable, in whole or in part, the remaining provisions of this Contract shall nevertheless remain in full force and effect.

1.07 Notice or Service -- any written notice required or allowed under the Contract shall be deemed to have been communicated to the other party and service thereof shall be deemed to have been made if such notice is delivered in person to the individual, a member of the partnership or

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joint venture, or an officer of the corporation for whom it was intended or if delivered at or sent by regular, registered or certified mail to the last business address of the relevant person or party known to the person or party giving the notice or to Contractor's Site office if the notice is directed to the Contractor. The date or time of service for purposes of all notices required or allowed under the Contract shall be the date and/or time upon which the relevant document was mailed or delivered as above-described.

The address given in the Bid is hereby designated as the legal business address of the Contractor, but such address may be changed at any time by ten (10) days prior notice in writing, delivered to Metro.

## ARTICLE 2. CONTRACTOR'S ORGANIZATION

2.01 Contractor's Authorized Representatives -- prior to commencing any work under this Contract, Contractor shall submit in writing to Metro a list of Contractor's authorized representatives. Such list shall include the name and title of each representative along with the extent to which each representative is authorized to represent, bind and act for Contractor. The description of extent of representation shall include, but not be limited to, the maximum dollar value of Change Orders which the individual may authorize, whether the individual may respond to Request for Proposals and for what maximum dollar amount and whether the individual may submit a claim pursuant to Paragraph 3.03. The Contractor shall be fully liable for the acts, omissions and decisions of such representatives to the extent stipulated in the written list submitted to Metro.

The Contractor shall at all times be represented at the Site by one or more of such authorized representatives, who, cumulatively, shall have complete authority to represent, bind and act for Contractor in all matters pertaining or related to this Contract. In the event that Contractor does not comply with this paragraph and, consequently, is not fully represented at the Site at all times, Contractor shall be deemed to acquiesce in all actions taken by Metro which pertain or relate to this Contract.

2.02 Contractor's Office at the Site -- prior to commencement of work at the site, the Contractor shall establish a field office at the site acceptable to the Construction Coordinator. This office shall be located in a job trailer or temporary building. This office shall be the headquarters of the Contractor's representatives authorized

to receive notices, instructions, drawings or other communications from the Construction Manager on behalf of Metro or the Engineer and to act on Change Orders or other actions. Such notices, instructions, drawings or other communications given to such a representative or delivered to the Contractor's site office in his/her absence shall be deemed to have been given to the Contractor.

2.03 Key Personnel -- The Contractor shall submit, in writing, to Metro a list of the names, addresses, and telephone numbers of its key personnel who are to be contacted in case of emergencies on the job during non-working hours, including Saturdays, Sundays and holidays and all other key personnel such as the Submittal Coordinator and the Quality Control Manager as may be required.

2.04 Contractor's Employees -- Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

Whenever Metro shall notify the Contractor that any employee on the Work is, in the judgment of Metro, incompetent, unfaithful, disorderly or refuses to carry out the provisions of the Contract, such employee shall be discharged or transferred from the Work.

The Contractor shall give Metro, at its request at any time, full and correct information as to the number of workers employed in connection with each subdivision of the Work, the classification and rate of pay of each worker, the cost to the Contractor of each class of materials, tools and appliances used by it in the Work, and the amount of each class of materials used in each subdivision of the Work.

2.05 Daily Construction Reports -- each day Contractor shall deliver to the Construction Manager a daily construction report which shall include as a minimum the following information:

- A. Name of Contractor and Project.
- B. Weather, temperature and any unusual Site conditions for the day in question.
- C. A brief description and location of the day's work activities and any special problems and/or serious accidents (including work of Subcontractors).

D. A description of significant progress in construction for that day as well as any problems encountered that might affect the progress of the Project as they relate to the Construction Schedule.

2.06 Contractor to Supply Sufficient Material and Workers -  
- the Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to substantially complete the Work herein required within the time specified in the Contract and in accordance with the Construction Schedule. The Contractor shall coordinate the Work of its Subcontractors so that information required by one will be provided by others involved in time for incorporation in the Work in proper sequence and without delay of any materials, devices or provisions for future work.

2.07 Construction Plant, Equipment and Methods --the  
construction plant and equipment provided by the Contractor, and Contractor's methods and organization for handling the Work shall be such as will secure a good quality of work and rate of progress which will ensure the completion of the Work within the time specified and in accordance with the Construction Schedule.

The Contractor shall give Metro full information in advance as to Contractor's plans for carrying on any part of the Work. If at any time before the commencement or during the progress of the Work, any part of the Contractor's plant or equipment, or any of Contractor's methods of executing the Work, appears to Metro to be inadequate to ensure the required quality or rate of progress of the Work, Metro may order the Contractor to increase or improve its facilities or methods, and the Contractor shall promptly comply with such orders. Neither compliance with such orders nor failure of Metro to issue such orders shall relieve the Contractor from obligation or liability to secure the quality of work and the rate of progress required by the Contract. The Contractor shall be responsible for overload of any part or parts of structures beyond their safe calculated carrying capacities during and after erection by placing of materials, equipment, machinery, tools or any other item thereon. Unless authorized by Metro in writing, no loads shall be placed on floors or roofs before they have attained their design strength without the provision of adequate temporary support.



The Contractor shall provide temporary utilities pursuant to the Specifications and shall be responsible for the safety and adequacy of its plant, equipment and methods.

2.08 Contractor's Temporary Structures -- the Contractor shall obtain all necessary permits for and shall erect and maintain at its own expense, and remove upon completion of the Work or as ordered by Metro temporary structures, sheds, barriers, walks, hoisting equipment, scaffolds, etc., as are necessary for the Work pursuant to these Contract Documents.

The Contractor's temporary structures, equipment, stored materials, stored equipment, etc., shall be located so as not to interfere with the prosecution of the Work. If not so located, they shall be moved by the Contractor, as directed by Metro, at no cost to Metro. The Contractor's temporary structures, equipment or materials that obstruct progress of any portion of the work shall be removed or relocated by the Contractor at the Contractor's expense.

### ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.01 Authority and Relationships of Metro and Engineer -- the following provisions shall govern the authority of the various officers, agents, representatives, consultants and employees of Metro, and Engineer. Except as specifically provided in this section, no individual acting or purporting to act as an officer, agent, representative, consultant or employee of Metro or Engineer shall have any authority to make representations, statements or decisions of whatever nature binding Metro or Engineer regarding any aspect of this Contract. Except as specifically provided in this Article, Contractor shall have no right to, and shall not rely on any such representation, statement or decision. Any reference to action by Metro in this Contract requires the written approval of the Metro Executive Officer or a person who is designated in writing by the Metro Executive Officer as having authority to act for Metro but only to the extent that such authority is expressly delegated in writing.

3.01.01 Authority of Metro -- except as otherwise provided herein, Metro shall determine the amount, quality, acceptability, fitness, and progress of the Work covered by the Contract. Metro and Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and they will

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not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Metro and Engineer will not be responsible for or have control over the acts or omissions of the Contractor, Subcontractors, or any their agents or employees, or any other persons performing any of the Work. Nothing contained in this Contract is intended nor shall be construed to create any third-party beneficiary relationship between Metro and Contractor's subcontracting agents or employees.

It shall be the duty of the Contractor to comply with all procedures established and/or implemented by Metro as stated above. In the event any such procedures are at variance with other provisions of these Documents, such procedures shall prevail.

Metro may call for meetings of the Contractor, the Contractor's Subcontractors and Suppliers as Metro deems necessary for the proper supervision and inspection of the Work. Such meetings shall be held at the Site on regular working days during regular working hours, unless otherwise directed by Metro. Attendance shall be mandatory for all parties notified to attend.

The Contractor shall immediately comply with any and all orders and instructions given in accordance with the terms of this Contract by Metro.

Contractor has no right to, and shall not, rely on representations of whatever nature made by any individual, whether or not employed by or purporting to represent Metro or Engineer, unless such individual has been specifically and expressly delegated authority to make such representations pursuant to these Contract Documents. Likewise Contractor has no right, and shall not rely on any representations of authorized changes in the contract of whatever size or nature unless such change is in writing and signed by Metro.

Nothing contained in this Paragraph shall obligate Metro or Engineer to supervise Contractor's work under this Contract and Contractor shall remain fully responsible for the complete and proper supervision of all of the Work.

3.02 Clarifications -- should it appear that the Work to be done or any of the matters relative to the Contract

Documents are not sufficiently detailed or explained in the Contract Documents, or should there be any questions which may arise as to the meaning or intent of the Contract Documents, the Contractor shall immediately submit to Metro a written Request for Clarifications which shall fully describe the information sought. It is Contractor's responsibility to request information under this Paragraph in sufficient time for review by Engineer and Metro so that the orderly progress and prosecution of the Work is not delayed.

The Engineer, in consultation with Metro, shall interpret the meaning and intent of the Contract Documents and shall issue, within ten (10) days of receiving a request for information from Contractor, a written Clarification describing such meaning and intent. Additionally, the Engineer, after consulting with Metro, may at any time issue written Clarifications as deemed necessary to carry out the Work included in the Contract Documents. Notwithstanding any dispute or disagreement which Contractor may have concerning any such Clarifications, the Contractor shall perform the Work as prescribed and in accordance with all such Clarifications.

If notified by Metro that a Clarification is forthcoming, any related work done before the receipt of the Clarification shall be coordinated with Metro so as to minimize the effect of the Clarification on work in progress. Any related work not coordinated with Metro done before receipt of the Clarification shall be at the Contractor's risk and at no cost to Metro if that work does not conform to the Clarification.

If the Contractor proceeds with work which is not sufficiently detailed or explained in the Contract Documents without requesting and obtaining a Clarification pursuant to this Paragraph, Contractor shall do so at its own risk and shall, at no cost to Metro, perform any additional work which may be required by Metro to bring the work into conformance with the intent of the Contract Documents.

### 3.03 Contractor's Claims

3.03.01 Generally -- no claims of any sort whatsoever by Contractor shall be considered or allowed under this Contract except as specifically provided and prescribed under this Paragraph. Failure to make a claim as specifically prescribed by this Paragraph or failure to perform disputed work, if any, as directed by Metro shall bar Contractor from any recovery of any

sort or extension of time resulting from the facts surrounding the claim. Contractor's full and complete compliance with this Paragraph shall be a condition precedent to any right of Contractor to further prosecute any claim against Metro arising out of or related to Work described in the Contract Documents. Every decision and action of Metro shall be considered final unless Contractor makes a claim concerning such decision or action pursuant to this Paragraph.

3.03.02 Types of Claims -- the types of claims which Contractor may make are limited to the following:

1. Claims based upon justifiable delays as described in Subparagraph 3.03.03;
2. Claims based upon differing Site conditions as described in Subparagraph 3.03.04;
3. Claims based upon Clarifications or Change Orders issued by Metro or any other decision, action or failure to act by Metro as described in subparagraph 3.03.05.

As a condition precedent to any such claim, Contractor shall comply with all applicable procedural and substantive requirements of this Contract.

Contractor may make claims which include requests for extensions of the Contract Time and/or requests for increases in the Contract Amount. If Contractor believes that a single circumstance or set of facts gives rise to both a claim for an extension to the Contract Time and an increase in the Contract Amount, Contractor must state both such allegations in one written claim or waive the unstated allegation.

3.03.03 Claims For Justifiable Delays

3.03.03.01 Definition of Justifiable Delay -- if the Contractor is significantly and justifiably delayed in the prosecution of the Work due to any of the acts, events or conditions described as justifiable delays below, the Contractor may make a claim for an increase in the Contract Time and/or Contract Amount pursuant to Clause 3.03.03.02.

"Justifiable Delay" shall mean, and is limited to, the acts, events or conditions described in

sections (a) through (i) below, if such act, event or condition has a materially adverse effect on the ability of Contractor to obtain the benefits of its rights or to perform its obligations under this Contract or materially increases the cost to Contractor to obtain the benefits of such rights or to perform such obligations and if such act, event or condition and its effect:

1. are beyond the reasonable control of Contractor (or any third party for whom Contractor is directly responsible);

2. do not arise out of (A) strikes, labor disputes or other labor difficulties involving Contractor or its Subcontractors or Suppliers or entities providing transportation to Contractor or its Subcontractors or Suppliers, (B) labor shortages, or (C) changing economic conditions; and,

3. could not have been reasonably anticipated by Contractor.

The acts, events and conditions are:

(a) An Act of God.

(b) Inclement Weather.

(c) Acts of a public enemy, war (whether or not declared) or governmental intervention resulting therefrom, blockage, embargo, insurrection, riot or civil disturbance.

(d) The failure to issue or renew, or the suspension, termination, interruption or denial of, any permit, license, consent, authorization or approval essential to the Work, if such act or event shall not be the result of the willful or negligent action or inaction of Contractor, or of any third party for whom Contractor is directly responsible, and if Contractor shall be taking or have taken or shall cause to or have caused to be taken, all reasonable actions in good faith to contest such action (it being understood that the contesting in good faith of any such

action shall not constitute or be construed as a willful or negligent act of Contractor).

(e) The failure of any appropriate federal, state, municipal, county or other public agency or authority or private utility having operational jurisdiction over the Work or Site to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Site, which are required for and essential to the Work.

(f) Epidemics or quarantines.

(g) Material, equipment or fuel shortages or freight embargoes.

(h) Priorities or privileges established for the manufacture, assembly or allotment of material by order, decree, or otherwise of the U. S. or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority.

(i) The prevention by Metro of Contractor from commencing or prosecuting the Work.

No claim for extension of the Contract Time or increase in the Contract Amount will be considered for Inclement Weather unless Contractor submits documentation that such weather conditions are abnormal for the area and period of time in question; that they could not have been reasonably anticipated; and that the Inclement Weather had a significantly adverse effect on the Construction Schedule.

Delays in delivery of equipment or material purchased by the Contractor or its Subcontractors or Suppliers (including Metro-selected equipment) shall not be considered as a just cause for delay if timely ordering would have made the equipment available. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

The term "delay" shall specifically not include and no extension of the Contract Time or increase in the Contract Amount shall be allowed for (i) any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor; (ii) any delay in the prosecution of parts of the Work, which may in itself be unavoidable but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor the Substantial Completion of the Work of this Contract within the time specified; (iii) any reasonable delay resulting from the time required by Metro for review of Submittals or Shop Drawings submitted by the Contractor and for the making of surveys, measurements and inspections; (v) any delay arising from an interruption in the prosecution of the Work on account of the reasonable interference from Other Metro Contractors which does not necessarily prevent the Substantial Completion of the Work of this Contract within the time specified; and (vi) any delay resulting in any manner from labor disputes, strikes or difficulties or any delay resulting in any manner from any labor-related event, act or condition whether or not Contractor has any control over such event, act or condition.

3.03.03.02 Justifiable Delay Claims Procedure - Contractor shall, within five (5) days of the Contractor's first knowledge of the occurrence which is the basis of the claim for justifiable delay, notify Metro in writing of such delay. The written notice by Contractor shall indicate the cause of the delay and shall estimate the possible time extension requested. Within ten (10) days after the cause of the delay has been remedied, the Contractor shall give written notice to Metro of any actual time extension and any increase in the Contract Amount requested as a result of the aforementioned occurrence in accordance with this Contract.

Within a reasonable period after the Contractor submits to Metro such a written notice for an extension of time and/or increase in the Contract Amount, Metro will make the decision on each

request. If Contractor is dissatisfied with such decision, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.03.06.

3.03.04 Claims for Differing Site Conditions -- The Contractor shall promptly, and before the conditions are disturbed, give a written notice to Metro of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Contract, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

Metro shall investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ as to cause an increase or decrease in the Contractor's cost of, or the time required for performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made and a Change Order issued.

If Contractor is dissatisfied with the decision of Metro under this Subparagraph, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.03.06.

3.03.05 Other Contractor Claims -- Contractor claims based upon Clarifications or Change Orders issued by Metro or any other decision, action or failure to act by Metro shall be made according to this Subparagraph.

Contractor shall immediately, and not more than five (5) days after discovering the facts which give rise to its claim and prior to commencing the work or conforming to the Clarification on which the claim is based, if any, notify Metro in writing of its intention to make a claim. Contractor's written notification shall include a description of:

1. the factual occurrences upon which the Contractor bases the claim including the decision, action or failure to act by Metro or its authorized representatives that allegedly give rise to the claim;
2. how Metro's decision, action or failure to act has affected Contractor's performance or otherwise affected Contractor;



3. whether the claim is for an extension in the Contract Time or increase in the Contract Amount or both and the specific extension or increase requested;

4. the provisions of the Contract upon which the claim is based.

Submission of written notice of claim as specified above shall be mandatory and failure to comply shall be a conclusive waiver to any claim by the Contractor. Oral notice or statement will not be sufficient nor will notice or statement after commencing the work in question.

After the written notification is submitted by Contractor (if the claim is not resolved or withdrawn in writing) and only upon written direction Metro, Contractor shall proceed without delay to perform the work pursuant to the direction of Metro. While the work on an unresolved claim is being performed, Contractor shall keep track of costs and maintain records in the manner set forth in section on Force Account Work, at no cost to Metro. Such notice by the Contractor and the fact that Contractor is keeping track of costs and maintaining records shall not in any way be construed as proving the validity of the claim nor the costs thereof.

Provided the claim or claims have been submitted in accordance with the requirements of this Article, Metro will consider and investigate the claim or claims of the Contractor. Within twenty-one (21) days of receipt of the above-described written notification of claim Metro will advise the Contractor of Metro's decision to accept or reject the claim or claims, in full or in part. If Contractor is dissatisfied with the decision of Metro under this Subparagraph, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.03.06.

3.03.06 Preservation of Claims -- Within forty-five (45) days after a rejection of claim, in whole or in part, by Metro under Sub-paragraphs 3.03.03, 3.03.04 or 3.03.05, Contractor may preserve its claim by submitting a fully documented claim package to Metro. That package shall include substantiating documentation with an itemized breakdown of Contractor and Contractor's Subcontractor's costs on a daily basis which shall include, but not be limited to,

labor, material, equipment, supplies, services, Overhead and Profit. All documentation that Contractor believes is relevant to the claim shall be provided in the claim package including without limitation, payroll records, purchase orders, quotations, invoices, estimates, correspondence, profit and loss statements, daily logs, ledgers and journals. Failure to submit the claim package in full compliance with this requirement, and/or maintain cost records as herein required, will constitute a waiver of the claim.

If Contractor elects to pursue any claims by filing a lawsuit against Metro, it must commence such lawsuit within six (6) months after the date of Substantial Completion. Failure to commence a lawsuit within this time limitation shall constitute a waiver of all such claims by Contractor.

3.03.07 Limitation of Damages for Delay

Except as provided below, an adjustment of Contract Time as herein provided shall be the Contractor's sole remedy for any delay in completion of the Project arising from justifiable delays under this Contract and Contractor shall not be entitled to collect or recover any damages, loss or expense of whatever nature incurred by reason of such delay.

Notwithstanding any other provision of this Contract, if any unreasonable delay described in this Paragraph is caused by acts or omissions of Metro or persons acting for Metro, Contractor shall retain any rights available to it by law to damages or an equitable adjustment for such Metro-caused delays. The preceding sentence shall not be interpreted to release Contractor from its obligations to give all notices and follow all procedures required by this Contract including, but not limited to, Subparagraph 3.03.03, and to otherwise attempt to resolve contract disputes as provided in this Contract or to pay liquidated damages as provided herein.

3.04 Metro's Rights to Damages

3.04.01 Liquidated Damages for Delay -- Time is the essence of the performance of the Work under this Contract. If Contractor fails to substantially complete the Work within the Contract Time, the actual damage to Metro for the delay will be substantial but

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will be difficult or impractical to determine. It is therefore agreed that Contractor will pay to Metro, ~~not as a penalty but as liquidated damages,~~ the amount of one thousand (\$1,000.00) dollars, for each and every day that the date of Substantial Completion extends beyond the Contract Time.

Permitting Contractor to continue and finish the work or any part thereof after the Contract Time has expired shall in no way operate as a waiver on the part of Metro of any of its rights under this subparagraph or the balance of the Contract Documents.

3.04.02 Payment of Liquidated Damages Not a Bar to Metro's Right to Other Damages -- Payment of liquidated damages shall not release Contractor from obligations in respect to the complete performance of the Work, nor shall the payment of such liquidated damages constitute a waiver of Metro's right to collect any additional damages which it may sustain by failure of Contractor to fully perform the Work, it being the intent of the parties that the aforesaid liquidated damages be full and complete payment only for failure of Contractor to complete the Work on time. Metro expressly reserves the right to make claims for any and all other damages which Metro may incur due to Contractor's failure to perform in strict accordance with this Contract.

3.05 Resolution of Disputes -- It shall be a condition precedent to Contractor's right to litigate a claim that Contractor has fully complied with all pertinent claims procedures contained in this Article.

If any dispute shall arise between Metro and Contractor, either before or after the completion of this Contract, both parties shall attempt to negotiate a resolution of the dispute in good faith. Furthermore, if any dispute shall arise concerning any aspect of this Contract or the Project which involves Metro, Contractor and any other party or parties, Contractor agrees to attempt to negotiate a resolution of the dispute in good faith.

#### ARTICLE 4. SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

4.01 Contractor's Responsibility for the Work -- Contractor shall perform or cause to be performed all labor, services and work of whatever nature and shall provide or cause to be provided all materials, equipment, tools and other

facilities of whatever nature necessary to complete the Work and shall otherwise cause the Work to be completed in accordance with the Contract Documents.

Contractor shall take and assume all risk for all work and material involved in the Project until the entire Project has been finally accepted by Metro.

Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

4.02 Subcontracting -- Contractor shall arrange and delegate its work in conformance with trade practices and union regulations, if applicable, but shall remain responsible to Metro for performance of all work required or implied by the Contract Documents.

4.02.01 Objection to Subcontractors or Suppliers -- Metro reserves the right to make reasonable objection to any of Contractor's Subcontractors or Suppliers if Metro discovers any data or information at any time during the performance of the Contract which gives Metro a basis for such reasonable objection.

Metro will notify Contractor in writing if Metro has any reasonable objection to any of Contractor's Subcontractors or Suppliers. Contractor shall not subcontract with any Subcontractor or Supplier to which Metro has made a reasonable objection. In the event of Metro's reasonable objection to any Subcontractor or Supplier, Contractor shall propose another entity to which Metro has no reasonable objection. The Contract Amount shall not be increased by any difference in cost occasioned by such substitution, nor shall the Contract Time be extended.

4.02.02 Substitution, Change or Addition of Subcontractors or Suppliers -- At any time that Contractor intends to substitute, change or add a Subcontractor or Supplier during the performance of the Contract, Contractor shall give Metro prior written notice of such intention. Contractor shall not substitute, change or add any such Subcontractor or Supplier if Metro gives Contractor reasonable

objection in writing within ten (10) days after Metro receives such notice.

When any Subcontractor fails to prosecute a portion of the Work in a satisfactory manner, Metro may so notify the Contractor. If the Subcontractor fails to cure the unsatisfactory work promptly, the Contractor shall remove such Subcontractor immediately upon written request of Metro and Contractor shall request approval from Metro of a new Subcontractor to perform this section of the Work at no increase in the Contract Amount, and with no change in the Contract Time.

4.02.03 Metro Not Obligated to Detect Unsatisfactory Work -- Nothing contained in this Contract shall obligate Metro or place on Metro an affirmative duty to detect or discover unsatisfactory work of Contractor's Subcontractors or Suppliers. Failure of Metro to detect or discover such unsatisfactory work shall not relieve Contractor of any of its obligations under this Contract.

4.02.04 No Contractual Relationships Between Metro and Contractor's Subcontractors and Suppliers -- Nothing contained in this Contract is intended nor shall be construed to create any contractual or third-party beneficiary relationship between Metro and any of Contractor's Subcontractors, Suppliers or agents, save and except in relation to the Labor and Materials Payment Bond provided by Contractor.

4.02.05 Contractor's Agreements with Subcontractors - Contractor shall provide in all subcontract and supply agreements that the Subcontractor or Supplier will be bound by the terms and conditions of this Contract to be extent that they relate to the Subcontractor's or Supplier's work. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-tier Subcontractors and Suppliers. Contractor shall make available to each proposed Subcontractor and Supplier, prior to the execution of the subcontract or supply agreement, copies of the Contract Documents which apply to the work and materials to be provided by the Subcontractor or Supplier. Subcontractors and Suppliers shall similarly make copies of applicable portions of such documents available to their respective proposed sub-tier Subcontractors and Suppliers.

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All Subcontractor's and Supplier's agreements shall also provide that they are assignable to Metro at Metro's option, in the event that Metro terminates the Contract.

Nothing contained in this Subparagraph shall be construed as creating a direct or indirect contractual relationship between Metro and any of Contractor's Subcontractors or Suppliers. No such Subcontractor or Supplier shall have, or shall claim to have, any third-party beneficiary rights or status in relations to this Contract, save and except in relation to the Labor and Materials Payment Bond provided by Contractor.

4.03 Assignment -- The Contractor shall constantly give its personal attention to the faithful prosecution of the Work. Contractor shall keep the Work under its personal control and shall not assign any or all of the Contractor's rights, by power of attorney or otherwise, nor delegate any of its duties except with the prior written approval of the Metro Council.

#### ARTICLE 5. TIME OF COMPLETION AND SCHEDULE FOR THE WORK

5.01 Prosecution of Work Generally -- The Contractor shall commence the Work within ten (10) days after issuance of written Notice to Proceed from Metro and will diligently prosecute the Work to its Final Completion and Acceptance. The start of Work shall include attendance at preconstruction conferences, preparation and submittal of shop drawings, equipment lists, Schedule of Values, CPM construction schedules, requests for substitutions and other similar activities, as described by these Contract Documents.

5.02 Time of Completion -- Contractor shall bring the Work to Substantial Completion within the Contract Time as set forth in the Supplementary Conditions.

The time limits stated in these Contract Documents are of the essence of this Contract. By executing the Construction Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing all of the Work.

Failure of the Contractor to substantially complete the Work within the Contract Time and according to the provisions of these Contract Documents shall subject the Contractor to

damages pursuant to the applicable sections of these Contract Documents.

5.03 Extensions of Time -- Extensions of the Contract Time shall be made pursuant to the procedure and according to the provisions and requirements contained in Articles 3 and 8 of these Contract Documents.

5.04 Project Scheduling -- The Contractor shall submit to Metro a detailed Construction Schedule for completion of the work pursuant the Specifications. The Construction Schedule shall, when approved and as updated and approved by Metro, become a part of the Contract Documents.

5.05 Use of Completed Parts of the Work Before Acceptance -  
- Whenever, in the opinion of Metro, the Work or any part thereof is in a condition suitable for use and it is in the best interest of Metro to require such use, Metro may take possession of, connect to, open for public use, or use the Work or a part thereof. When so used, maintenance and repair due to ordinary wear and tear or vandalism will be made at Metro's expense and Metro will defend liability claims which may result from such use by Metro. The use by Metro of the Work or part thereof as contemplated in this Paragraph shall in no case be construed as constituting acceptance of the Work or any part thereof. Such use shall neither relieve the Contractor of any of its responsibilities under the Contract Documents, nor act as a waiver by Metro of any of the conditions thereof.

#### ARTICLE 6. COORDINATION WITH OTHER METRO CONTRACTORS

6.01 Other Metro Contractors Generally -- Metro reserves the right to award other contracts in connection with the work. The Contractor shall afford all such Other Metro Contractors reasonable opportunity for storage of their materials and execution of their Work, shall provide that the execution of Contractor's Work properly connects and coordinates with work of all Other Metro Contractors, and shall cooperate with Other Metro Contractors to the end of facilitating the Work in such a manner as Metro may direct.

6.02 Duty to Inspect Other Metro Contractors' Work -- Where Contractor's work is associated with that of Other Metro Contractors, or is to interface in any way with such Other Metro Contractor's work, Contractor shall examine, inspect and measure the adjacent or in-place work of such Other Metro Contractors. If Contractor determines that any defect

or condition of such adjacent or in-place work will impede or increase the cost of Contractor's performance or otherwise prevent the proper execution of Contractor's Work, Contractor shall immediately, and before performing any work affected by the Other Metro Contractors' work, submit a Request for Information to Metro pursuant to Paragraph 3.02. If the Contractor proceeds without examining or inspecting the work and submitting a Request for Information, Contractor shall be held to have accepted the Other Metro Contractors' work or material and the existing conditions, and shall be responsible for any defects in Contractor's Work resulting therefrom and shall not be relieved of any obligation or any warranty under this Contract because of any such condition or imperfection. This provision shall be included in any and all of Contractor's subcontracts for Work to be performed.

The foregoing does not apply to latent defects. The Contractor shall report latent defects in any Other Metro Contractors' work at any time such defects become known or Contractor should have known, and Metro shall promptly thereafter take such steps as may be appropriate. If Contractor in the exercise of reasonable care should have known of such defects but did not report them, such defects shall not be considered latent.

6.03 Duty to Maintain Schedule -- It shall be the responsibility of the Contractor to maintain its schedule so as not to delay the progress of the Project or the work of Other Metro Contractors. The Contractor is required to cooperate in every way possible with Other Metro Contractors. Except as otherwise specifically provided in this Contract, no additional compensation will be paid for such cooperation. If the Contractor delays the progress of the Project or the progress of Other Metro Contractors, it shall be the responsibility of the Contractor to take all of the steps necessary to bring the affected work into compliance with any affected schedules and to indemnify Metro from all liability for such delays pursuant to Article 11.

Metro shall be under no duty to monitor or detect any delays of Contractor or any Other Metro Contractor on the Project or any lack of coordination on the Project. Consequently, the failure of Metro to so monitor or detect shall not be construed as relieving Contractor of its duties to fully perform all of its obligations under the Contract.

6.04 Failure to Maintain Schedule -- If, in the opinion of Metro, the Contractor falls behind the Construction Schedule



or delays the progress of Other Metro Contractors and is not entitled to an extension of time pursuant to the Contract Documents, the Contractor shall perform all steps which are necessary, in the opinion of Metro, to bring Contractor's Work into compliance with the Construction Schedule or to remedy any delay to the progress of Other Metro Contractors. Contractor shall submit operation plans to Metro, which plans shall fully demonstrate the manner of intended compliance with this Paragraph. The steps referred to above shall include, but not be limited to:

1. Increase manpower in such quantities and crafts as will substantially eliminate the backlog of work.
2. Increase, when permitted, the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment or any combination of the foregoing, sufficient to eliminate the backlog of work.
3. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities.
4. Expedite delivery of materials and equipment such as use of air freight.

If Metro directs the Contractor to take measures described in this Paragraph, or if Contractor takes such measures without direction from Metro, the Contractor shall bear all costs of complying. Metro shall, however, reimburse the Contractor for reasonable costs of complying if such directive to accelerate from Metro was issued to overcome delay caused by the acts or omissions of Metro or persons acting for Metro, provided Contractor has complied with all applicable provisions of Articles 3 and 8 of this Contract.

6.05 Failure to Coordinate Work -- If Contractor fails to coordinate its work with the work of Other Metro Contractors as directed by Metro, Metro may, upon written notice to Contractor:

1. Withhold any payment otherwise due hereunder until the Contractor complies with Metro's directions.
2. Direct others to perform portions of the affected Work and charge the cost of such Work against the Contract Amount or deduct the cost from sums held in Retainage.
3. Terminate any or all portions of the Work for the Contractor's failure to perform in accordance with the Contract.

6.06 Other Metro Contractors' Failure to Coordinate -- If Contractor determines that any Other Metro Contractor on this Project is failing to coordinate its work with the Work of the Contractor, the Contractor shall immediately and before performing any affected Work submit a Request for Information to Metro pursuant to Paragraph 3.02.

6.07 Conflicts Among Contractors -- Any difference or conflict that may arise between the Contractor and Other Metro Contractors in regard to their work shall be adjusted as determined by Metro. If directed by Metro, the Contractor shall suspend any part of the Work specified or shall carry on the same in such manner as may be prescribed by Metro when such suspension or prosecution is necessary to facilitate the work of Other Metro Contractors.

6.08 Coordination Drawings -- The Contractor shall prepare coordination drawings as necessary, as determined by Metro, to satisfactorily coordinate and interface its Work with the work of all Other Metro Contractors, thereby avoiding conflicts which may arise.

6.09 Conferences -- At any time during the progress of the Work, Metro shall have authority to require the Contractor to attend any conference of any or all of the contractors engaged in the Project.

ARTICLE 7. CONTROL AND QUALITY OF WORK AND MATERIAL

7.01 Access to the Work -- During the performance of the Work, Metro, the Engineer, and Special Inspectors, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, including representatives of federal, state, and local agencies having jurisdiction over the Work, may at any time, and for any purpose, enter upon the Site, the shops where any part of such Work may be in preparation, or the factories where any materials for use in the Work are being or are to be manufactured. Contractor shall provide proper and safe facilities therefor, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as Metro's interest may require.

Contractor shall allow Metro and others which Metro may designate to enter onto the Site at any time during the duration of the Work to conduct ceremonies and temporarily to occupy such portions of the Site as may be necessary for.

such ceremonies. Contractor shall schedule its Work accordingly.

No claims for extension of the Contract Time or increase in the Contract Amount shall be allowed for any access allowed to Metro under this Paragraph.

7.01.01 Quality Control Manager -- Prior to initiation of construction the Contractor shall designate in writing a Quality Control Manager who shall be responsible for coordinating the Contractor's Quality Control Program. The individual so designated shall be the interface with the Construction Manager on matters relating to inspection, scheduling, unacceptable work product and corrective actions. Metro reserves the right to accept or reject the Quality Control Manager designated by the Contractor.

7.01.02 Quality Control Plan -- The Contractor shall prepare and submit to the Construction Manager within thirty (30) days following Notice to Proceed a Quality Control Plan which describes Contractor's procedures for implementing the Quality Control Program. The Plan shall include, but not be limited to, the Quality Control Organization, inspection procedures, tests anticipated, materials control and reports. Metro reserves the right to accept or reject or modify the Quality Control Plan.

## 7.02 Inspection

7.02.01 Generally -- Contractor shall at all times commencing with the issuance of the Notice to Proceed until Final Completion and Acceptance of the Work, permit Metro, its agents, and authorized representatives to visit and monitor the progress of the Work for conformance of the Work with the Contract Documents.

7.02.02 Special Inspections -- Contractor shall at all times commencing with the issuance of the Notice to Proceed until Final Completion and Acceptance of the Work, permit Special Inspectors and authorized representatives to visit and inspect the Work, the materials and the manufacture and preparation of such materials, and subject the Work and materials to inspection and testing to determine if the Work conforms to the requirements of the Contract Documents. Contractor shall maintain proper facilities and safe access for all such inspections.

Where the Contract requires work to be inspected or tested, it shall not be covered up until inspected, tested and approved by Metro. The Contractor shall be solely responsible for notifying Construction Manager at least two (2) working days prior to performing such work, so that necessary arrangements for inspection and testing can be made. Should any work be covered without such inspection or test and approval, it shall be uncovered and repaired at the Contractor's expense.

7.02.03 Notice to Metro for Certain Work Days -- Whenever the Contractor intends to perform work on Saturday, Sunday or any legal holiday, it shall give written notice to Metro of such intention at least two (2) working days prior to performing such work, or such other period as may be specified by Metro, so that Metro may make the necessary arrangement for testing and inspection.

7.02.04 Correction of Defective Work Before Acceptance -- Any defective work or work which otherwise fails to conform to the Contract Documents, which is discovered before Final Completion and Acceptance of the Work, shall be corrected immediately by the Contractor, and any unsatisfactory materials shall be rejected and replaced with satisfactory materials, notwithstanding that they may have been overlooked by the authorized inspector. The inspection of the Work shall not relieve the Contractor of any of its obligations to perform fully all of the terms and provisions of the Contract Documents.

7.02.05 Acceptance Not Implied by Failure to Object - Failure or neglect on the part of Metro or any of its authorized representatives to condemn or reject defective, improper or inferior work or materials shall not be construed to imply a final acceptance of such work or materials and shall not be construed as relieving Contractor of its duties to perform fully all requirements of the Contract Documents.

7.03 Unsatisfactory Materials and Workmanship

7.03.01 Generally -- Material, work or workmanship which, in the opinion of the Construction Manager, does not conform to the Contract Documents, or is not equal to the samples submitted to and approved by the Construction Manager, or is in any way unsatisfactory or unsuited to the purpose for which it is intended,

will be rejected. The Contractor shall bear the cost of correcting all non-conforming materials, work or workmanship. The Contractor shall make a close inspection of all materials as delivered, and shall promptly replace all defective materials with conforming materials without waiting for their rejection by Metro.

7.03.02 Removal of Rejected or Non-Conforming Work or Material -- All rejected material or work, and all defective or non-conforming work or material, shall be removed from the Site without delay. If the Contractor fails to do so within forty-eight (48) hours after having been so directed by Metro, the rejected material may be removed by Metro and the cost of removal charged against the Contractor and deducted from Retainage held by Metro or offset against payments due Contractor, at Metro's option.

If in the judgment of Metro it is undesirable or impracticable to replace any defective or non-conforming work or materials, the compensation to be paid to the Contractor shall be reduced by Change Order or Force Account, as applicable, by such amount as, in the judgment of Metro, shall be equitable.

7.04 General Warranty of Contractor -- Contractor warrants to Metro that materials and equipment provided under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Metro, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The warranty made by Contractor under this Paragraph shall be in addition to any other specific warranties required elsewhere in these Contract Documents.

7.05 Correction of Work by Contractor -- Contractor shall be responsible for and shall promptly correct or replace any defective Work, whether due to faulty materials or errors in

workmanship, or Work failing to conform to the requirements of the Contract Documents which may be discovered or which may develop within one (1) year after the date of Substantial Completion or within such longer period as is specified below or otherwise in these Contract Documents.

In the case of equipment manufactured by others and supplied and/or installed by Contractor, the one (1) year period shall commence upon the date of first beneficial operation of such equipment by Metro. In the case of Work which is corrected or replaced by Contractor, the one (1) year period shall commence again on the date of first beneficial operation by Metro of such corrected or replaced Work. Testing shall not be construed to mean beneficial operation.

If Metro does not require correction or replacement of defective Work or Work failing to conform to the Contract Documents, Contractor, if required by Metro, shall repay to Metro such portion of the Contract Amount as is equitable under the circumstances, as determined by Metro.

Contractor's responsibilities under this Paragraph shall not extend to correction or replacement of defects which are attributable to mistreatment by Metro or to normal wear and tear.

7.06 Warranty and Correction Agreements by Subcontractors

7.06.01 Generally -- In addition to any requirements for written warranties required by the Specifications, Contractor shall require all of its Subcontractors and Suppliers of any tier to make the same warranty to Metro as Contractor makes under Paragraph 7.04. Contractor shall also require all of its Subcontractors and Suppliers of any tier to agree to correct or replace defective Work or Work not conforming to the Contract Documents in the same manner as Contractor agrees to correct or replace such Work under Paragraph 7.05.

7.06.02 Form of Submissions -- Contractor shall require all of its Subcontractors and Suppliers of any tier to sign documents evidencing the promises made pursuant to Subparagraph 7.06.01 above and shall submit such documents to Metro with its request for Final Payment. Such documents shall be signed by both Contractor and the applicable Subcontractor or Supplier and shall be in the following form:

"We the undersigned hereby warrant that the

(described work performed and/or materials provided)

which we have provided for the construction of the Modifications to the Metro South Transfer Station, has been done in accordance with the Contract Documents and that the work as provided will fulfill the requirements of the warranty included in Article 7 of the Contract Documents.

"We agree to correct or replace any or all of our work, together with any other adjacent work which may be displaced or affected by so doing, that may be defective in its workmanship or materials or which may fail to conform to the requirements of the Contract Documents within a period of one (1) year following the applicable date described in Paragraph 7.05 without any expense whatsoever to Metro, normal wear and tear and mistreatment excepted.

"In the event of our failure to comply with the above-mentioned conditions within twenty (20) calendar days after Metro notifies the Contractor in writing, we collectively and separately do hereby authorize Metro to proceed to have said defects repaired and corrected at our expense and we will honor and pay the costs and charges therefore upon demand."

7.07 Remedies Not Restrictive -- The remedies provided for in this Article shall not be restrictive of but shall be cumulative and in addition to all other remedies of Metro in respect to latent defects, frauds or failure to perform all work as required by the Contract Documents.

7.08 Proof of Compliance with Contract Provisions -- For Metro to determine whether the Contractor has complied or is complying with the requirements of the Contract which are not readily enforceable by inspection and test of the Work, the Contractor shall, upon request, promptly submit to Metro such properly authenticated documents as may be necessary to demonstrate compliance with the Contract or other satisfactory proof of its compliance with such requirements.

7.09 Patents, Copyrights, Trademarks -- All fees or costs of claims for any patented invention, article or arrangement or any copyrights or trademarks that may be used upon or in any manner connected with the performance of the Work or any part thereof, shall be included in the Bid for doing the Work. The Contractor shall save, keep, hold harmless, and fully indemnify Metro and Engineer from all damages, claims

for damage, lawsuits, costs, expenses or liabilities of whatever nature in law or equity, including attorney's fees and court costs, which may at any time arise or be set up for any infringement of the patent rights, copyrights or trademarks of any person or persons in consequence of the use by Metro of articles to be supplied under the Contract and of which the Contractor is not the patentee or assignee or has not the lawful right to sell the same. This is in addition to all other hold harmless and indemnification clauses in these Contract Documents.

7.10 Anti-Trust Claims -- By entering into this Contract, Contractor, for consideration paid to the Contractor under the Contract, does irrevocably assign to Metro any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at Metro's option, the right to control any such litigation on such claim for relief or cause of action, by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, in connection with any goods or services that are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Contract.

The Contractor shall require all Subcontractors and Suppliers to irrevocably assign to Metro, as a third party beneficiary any right, title or interest that has accrued or may accrue to the Subcontractors or Suppliers by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at Metro's option, the rights to control any litigation arising thereunder, in connection with any goods or services provided to the Subcontractors or Suppliers by any person, in whole or in part, for the purpose of carrying out the Subcontractors' or Suppliers' obligations as agreed to by the Contractor in pursuance of the completion of the Contract.

In connection with Contractor's, Subcontractors' or Suppliers' assignment, it is an express obligation of the Contractor, Subcontractor or Supplier that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to Metro. It is an express obligation of the Contractor, Subcontractor or Supplier to advise the General Counsel of Metro:

1. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;



2. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and

3. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.

Furthermore, it is understood and agreed that in the event that any payment under any such claim is made to the Contractor, Subcontractor or Supplier, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro hereunder.

ARTICLE 8. CHANGES IN THE WORK

8.01 Change Orders Generally -- Metro may order changes in the Work herein required, including deletions of work, and may order additional materials and work in connection with the performance of the Work.

If such changes in the Work increase or decrease the cost of any part of the Work or change the time necessary to complete the Work, the Contract Amount shall be increased or decreased by such amount and the Contract Time changed as the Contractor and Metro may agree upon as reasonable in a written Change Order. The Contractor shall promptly comply with such Change Orders and carry them out in accordance with the Contract Documents.

No order for any alteration, modification or additional work which shall increase or decrease the Contract Amount or change the Contract Time shall become part of the Contract unless the resulting Change Order shall have been agreed upon in writing and the Change Order signed by the Contractor and Metro, unless the work is Force Account work. Metro may, at its discretion, also require the signature of the Contractor's surety on the Change Order. Prior to the approval of such Change Order, the Engineer shall have approved any design modifications entailed thereby.

8.02 Procedure for Determining Impact of Change Orders on Contract Amount

8.02.01 Price before Proceeding -- If Metro intends to order changes in the Work, it may request a proposal by the Contractor for the proposed added or deleted work before directing the Contractor to commence work. Within fourteen (14) days after

issuance of such request by Metro, Contractor shall furnish three copies of a complete breakdown of costs of both credits and additions directly attributable to the change in the Work proposed, itemizing materials, labor, taxes, affect on Contract Time, if any, and Overhead and Profit on a form supplied by Metro and in accordance with the limitations described in the following Paragraph. Subcontract work shall be so indicated and written proposals from Subcontractors or Suppliers shall be included with similar breakdowns provided. Following submission of its cost breakdown, Contractor shall meet with Metro to discuss all aspects of scope, costs, scheduling and construction methods.

8.02.02 Proceed While Pricing -- If Metro finds it necessary to make changes in the Work in an expeditious manner, it may direct the Contractor to proceed with the change while preparing a proposal for the added or deleted Work. In such an instance, Metro may assign an estimated value to the change which the Contractor shall not exceed without further authorization by Metro. Within fourteen (14) days after issuance of such by Metro, Contractor shall furnish three copies of a complete breakdown of costs of both credits and additions directly attributable to the change in the Work proposed, itemizing materials, labor, taxes, affect on Contract Time, if any, and Overhead and Profit on a form supplied by Metro and in accordance with the limitations described in the following Paragraph. Subcontract work shall be so included with similar breakdowns provided. Following submission of its cost breakdown, Contractor shall meet with Metro to discuss all aspects of scope, costs, scheduling and construction methods.

8.02.03 Unit Prices -- The proposed additional or deleted work is the subject of Unit Prices stated in the Contract Documents or subsequently agreed upon, such Unit Prices shall be binding upon Contractor in calculating the increase or decrease in the Contract Amount attributable to the proposed additional or deleted work.

8.03 Limitations when Change Orders Impact Contract Amount -- The following limitations shall apply in the calculation of the costs of changes in the Work:

8.03.01 Overhead and Profit -- Contractor will be permitted a reasonable allowance for Profit and

Overhead on its increased Direct Cost resulting from any changes in the Work ordered by Metro. Likewise, Profit and Overhead will be deducted for any portion of the Work which is deleted. In the case of a change involving both credits and extras, Overhead and Profit shall be applied to the net extra after subtraction of credits.

Overhead and Profit for the entity performing the work with its own crews shall not exceed 15 percent of the Direct Cost of the changed work.

Overhead and Profit for Contractor or Subcontractor who has had the work performed by a lower tier Subcontractor shall not exceed ten percent of the Direct Cost of the changed work.

If the Work is performed by a second-tier or inferior Subcontractor, the total Overhead and Profit for all tiers shall in no event exceed 25 percent of the Direct Cost of the changed work. Distribution of this Overhead and Profit among the tiers is the responsibility of the Contractor.

8.03.02 Taxes and Insurance -- Federal, state, regional, county and local taxes, including, but not limited to, income taxes, excise taxes, sales and use taxes and payroll taxes and insurance shall be shown separately and will be allowed on extras and shall be credited on credits. No Overhead and Profit will be allowed on taxes and insurance.

8.03.03 Bond Premiums -- The actual rate of bond premium as paid on the additional Direct Cost plus the cost of taxes defined in 8.03.02 will be allowed. No Overhead and Profit will be allowed on bond premiums.

8.03.04 Equipment Costs -- The allowance for equipment costs (both rental as well as Contractor-owned equipment) shall be limited to those rates in the Rental Rate Bluebook published by Dataquest Incorporated, 1290 Ridder Park Drive, San Jose, California 95131-2398, (800) 227-8444.

8.04 Force Account Work -- If the Contractor does not respond to Metro's RFP with a cost breakdown within the fourteen (14) day period as required above, or if Metro determines that Contractor's breakdown of costs is unreasonable in consideration of the work proposed to be added or deleted, or if Metro determines that the proposed

work must be commenced promptly to avoid delay to the Project, Metro may issue an order for Force Account work and Contractor shall promptly perform or delete the work described in such order. Change, if any, in the Contract Amount due to such Force Account work shall be the sum total of the following items:

1. Actual labor cost, including premium on compensation insurance and charge for social security taxes, and other taxes pertaining to labor.
2. The proportionate cost of premiums of public liability property damage and other insurance applicable to the extra work involved and required by these Contract Documents.
3. Actual cost of material, including applicable taxes pertaining to materials.
4. Actual cost of plant and equipment rental, at rates to be agreed upon in writing before the work is begun or at rates per Subparagraph 8.03.04 above. No charge for the cost of repairs to plant or equipment will be allowed. Equipment items having a capital cost of under \$250.00 are considered small tools and classified as Overhead.
5. Overhead and Profit as provided and limited in Paragraph 8.03.
6. The proportionate actual costs of premiums for bonds required by these Contract Documents.

Whenever any Force Account work is in progress, the Contractor shall furnish each working day to Metro a detailed written report signed by the Contractor of the amount and cost of all of the items listed in (1) through (6) above, and no claim for compensation for such extra work will be allowed unless such report shall have been made. Metro reserves the right to provide such materials as it may deem expedient and no compensation, overhead or profit will be allowed to Contractor for such materials.

8.05 Oral Modifications -- No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.

8.06 Contractor Proposals for Changes in the Work -- At any time during the performance of the Work, Contractor may propose to Metro changes in the Work which Contractor

believes will result in higher quality work, improve safety, shorten the Contract Time, decrease the Contract Amount, or otherwise result in better or more efficient work.

Metro may act or not act on such proposals as it deems appropriate and shall incur no liability whatsoever to Contractor for any failure to respond to any such proposal. If Metro determines that any such proposal is meritorious, it shall issue a Change Order or otherwise act in accordance with these Contract Documents.

8.07 Impact of Authorized Changes in the Contract -- Changes in the Work made pursuant to this Article and extensions of the Contract Time allowed by Metro due to such changes shall not in any way release any warranty or promises given by the Contractor pursuant to the provisions of the Contract Documents, nor shall such changes in the Work relieve or release the sureties of bonds executed pursuant to said provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of Contract Time made by reason thereof.

## ARTICLE 9. PAYMENTS AND COMPLETION

9.01 Scope of Payment -- Payment to the Contractor of the Contract Amount for performing all Work required under the Contract, as adjusted for any Change Orders approved as hereinbefore specified, shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work, and for performing and completing, in accordance with these Contract Documents, all Work required under the Contract, and for all expenses incurred by the Contractor for any purpose in connection with the performance and completion of said Work.

Whenever it is specified herein that the Contractor is to do work or provide materials of any class for which no price is fixed in the Contract, it shall be understood that Contractor is to do such work or provide such materials without extra charge or allowance or direct payment of any sort, and that the cost of doing such work or providing such materials is included in its Bid.

### 9.02 Schedule of Values

9.02.01 Generally -- Within thirty (30) calendar days after issuance of Notice to Proceed and prior to the Contractor's application for the first progress

payment, the Contractor shall submit a detailed breakdown of its Bid by scheduled work items. The Contractor shall furnish this breakdown of the total Contract Amount by assigning dollar values (cost estimates) to each applicable Construction Schedule network activity, which cumulatively equals the total Contract Amount. The format and detail of the breakdown shall be as directed by Metro to facilitate and clarify future progress payments to the Contractor. This breakdown shall be referred to as the Schedule of Values.

The Contractor's Overhead, Profit and cost of bonds, insurance, etc., shall be prorated through all activities so that the sum of all line items on the Schedule of Values line items shall equal the Contract Amount.

9.02.02 Review of Schedule of Values -- Metro will review the Schedule of Values in conjunction with the approved Construction Schedule to ascertain that the dollar amounts of the Schedule of Values are in fact fair cost allocations for the work item listed. Upon concurrence by Metro, a formal approval of this Schedule of Values will be issued. Metro shall be the sole judge of fair cost allocations. Contractor's monthly progress payment requests shall reflect the cost figures included in the approved Schedule of Values and shall be based upon completed work items or percentages of work items completed prior to the end of the payment period as more fully described below.

9.03 Progress Payment Procedure

9.03.01 Generally -- Subject to the approval of Metro, disbursements shall be made by Metro of progress payments upon written request of the Contractor and pursuant to the Contract Documents as specified in Section 01025 of the Specifications.

Contractor shall be paid 95 percent of the value of the work as determined above. The remaining 5 percent shall be withheld by Metro as Retainage.

No inaccuracy or error in any monthly progress payment estimates shall operate to release the Contractor or its surety from damages arising from such work or from the enforcement of each and every provision of the Contract Documents, and Metro shall have the right

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

9.03.02 Retainage -- If, in Metro's opinion, work on the Project is progressing satisfactorily, Metro may eliminate additional Retainage on any remaining monthly progress payments after 50 percent of the Work under the Contract is, in Metro's opinion, completed. Elimination of additional Retainage under this Subparagraph shall be allowed by Metro only upon written application by Contractor, which application shall include written approval of the Contractor's surety.

If after Metro allows such an elimination of additional Retainage, Metro determines that progress of the Work is not satisfactory or that Contractor has breached any provision of the Contract, Metro may again retain and continue to retain, in addition to that Retainage already being held by Metro, 5 percent of any future progress payments made to Contractor.

When Metro determines that the Work is 97.5 percent complete, Metro may, at its discretion and without application by Contractor reduce the retained amount to 200 percent of the value of the Work remaining to be done.

All funds retained by Metro under this section shall be retained in a fund by Metro and paid in accordance with ORS 279.575.

The Contractor may elect to deposit bonds or securities of the type described below with Metro or in any bank or trust company to be held in lieu of the cash retainage described above and for the benefit of Metro. In such event, Metro shall reduce the Retainage in an amount equal the value of the bonds and securities and shall pay the amount of the reduction to Contractor in accordance with ORS 279.575. Interest on such bonds or securities shall accrue to Contractor.

Bonds and securities deposited or acquired as described above shall be of a character approved by the Director of Oregon's Department of General Services including, but not limited to:

1. Bills, certificates, notes or bonds of the United States.

2. Other obligations of the United States or its agencies.
3. Obligations of any corporation wholly owned by the federal government.
4. Indebtedness of the Federal National Mortgage Association.

The Contractor may elect to require Metro to deposit the accumulated Retainage in an interest bearing account in a bank, savings bank, trust company or savings association for the benefit of Metro. Interest on such an account shall accrue to Contractor.

If Metro incurs additional costs as a result of Contractor's exercise of any of the above-described options, Metro may recover such costs from Contractor by reduction of the Final Payment. Metro shall, upon demand by Contractor, inform Contractor of all such accrued costs.

9.03.03 Payment for Material Stored Off Site --  
Payment for material stored off of the Site will not be allowed unless the payment for such material benefits Metro in terms of lead time, scarcity, schedule, etc. Metro has sole discretion as to what materials will be paid for in advance of delivery to or installation on Site. Proof of offsite material purchases (invoice or checks) and appropriate insurance coverage will be required for payment. Title to all equipment and materials shall pass to Metro upon payment therefor or incorporation in the Work, whichever shall first occur, and Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title. The Contractor must provide to Metro written consent from Contractor's surety approving the advanced payment for materials stored offsite.

The maximum prepayment allowed by Metro shall be 75 percent of the actual fair market value of the item being considered. Metro shall be the sole judges of fair market value. The Contractor shall protect stored materials from damage, and damaged materials, even though paid for, shall not be incorporated into the Work.



9.03.04 Other Conditions Precedent to Payment -- It is a condition precedent to Contractor's rights to any payments under the Contract that all bills for labor and materials, including labor and materials supplied by or to Contractor, shall have been paid in full and, if requested by Metro, Contractor shall submit receipted invoices and/or lien waivers, as evidence of payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Contract, if requested by Metro, Contractor shall submit a claims release before any payment, and a final claims release stating Contractor has been paid in full prior to the Final Payment.

Payments to Contractor shall be conditioned upon Contractor complying with all provisions of this Contract regarding scheduling and progress reports submissions and upon Contractor furnishing all other information and data necessary to ascertain actual progress. Metro's determination that Contractor has failed or refused to furnish the required information, data, schedules or other reports shall constitute a basis for withholding all payments until the required information, data, revised schedules and diagrams, if necessary, and other reports are furnished.

9.03.05 Payment Does Not Imply Acceptance of Work --

The granting of any progress payment, or the receipt thereof by the Contractor, shall not constitute acceptance of the Work or any portion thereof, and shall in no way lessen the liability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may or may not have been apparent or detected at the time such payment was made.

9.03.06 Offset of Sums Due Metro from Contractor --

In addition to any retention rights allowed Metro under this Contract, it is mutually understood and agreed that Metro may, upon prior written notice to Contractor, offset from any payment otherwise due the Contractor, as much as may be necessary to protect and compensate Metro from any costs or expenses it may incur due to any breach of the Contract by Contractor, including applicable liquidated damages. Any sums so offset shall become the property of Metro.

9.04 Substantial Completion -- When Contractor considers the Work to be substantially complete, Contractor shall submit to Metro a written notice that the Work is

substantially complete and a punch list of items to be completed or corrected. Within a reasonable time after receipt of such notice, Metro and Engineer will review the Work to include a physical inspection to determine the status of completion. Should the Engineer and Metro determine that the Work is not substantially complete:

1. Construction Manager will promptly notify the Contractor in writing, giving the reasons therefor and including Engineer's punch list.
2. Contractor shall remedy the deficiencies in the Work, and thereafter send a second written notice of Substantial Completion to Metro.

The above-described procedure shall be followed until the Work is, in the opinion of Metro and Engineer, substantially complete. At that point in time:

1. The Engineer will prepare a Certification of Substantial Completion on AIA Document G704, accompanied by the approved punch list of items to be completed or corrected as verified and amended by the Engineer.
2. Metro shall submit the Certificate of Substantial Completion to the Contractor for signature. The Contractor shall complete the items on the approved punch list.

9.05 Final Completion and Acceptance -- When Contractor considers the Work to be finally complete, Contractor shall submit written certification to Metro that:

1. Contract Documents have been reviewed.
2. Work has been inspected for compliance with Contract Documents.
3. Work has been completed in accordance with Contract Documents to include submission of record documents.
4. Equipment systems have been tested in presence of Metro and are operational.
5. Work is ready for final inspection.

Engineer and Metro will promptly review the Work and include a physical inspection to verify the status of completion and shall inform Metro of the conclusions. Metro shall, within fifteen (15) days after receipt of Contractor's certification, either accept the Work or notify the

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

Should the Engineer and Metro consider that the work is incomplete or defective:

1. Construction Manager will promptly notify the Contractor in writing, listing the incomplete or defective work.

2. Contractor shall take immediate steps to remedy the stated deficiencies, and send a second written certification to Metro that the Work is complete. Metro will then advise the Engineer.

3. Engineer and Metro will review and reinspect the Work.

The above-described procedure shall be followed until the Work is, in the opinion of Metro and Engineer, finally complete. Contractor shall immediately thereafter prepare and submit Closeout Submittals as described below.

9.06 Closeout Submittals -- Contractor shall submit the following items, as applicable, with its request for Final Payment:

A. Evidence of Compliance with Requirements of Governing Authorities to include Certificate of Occupancy and Certificates of Insurance.

B. Project record documents in accordance with the Specifications.

C. Operation and maintenance data in accordance with the Specifications.

D. Warranties in accordance with requirements of various Specification sections and these General Conditions.

E. Keys and key schedule in accordance with requirements of Section 08710.

F. Extra stock and maintenance materials. Contractor shall submit receipts, signed by Metro, for the various specific items.

G. Evidence of payment and release of claims in accordance with the following section.

H. Consent of surety to Final Payment.

I. Certificates of insurance for products and completed operations in accordance with Supplementary Conditions.

J. If Contractor is a "foreign contractor" as that term is defined in Subparagraph 14.03.06, complete documentation of Contractor's compliance with ORS 279.021.

9.07 Releases -- The Contractor and each assignee under any assignment in effect at the time of Final Payment shall execute and deliver at the time of application for Final Payment as a condition precedent to Final Payment, a release in form and substance satisfactory to Metro, discharging and releasing Metro and the Engineer of and from all liabilities, obligations and claims arising under this Contract.

In addition to the above-described release, the Contractor shall:

A. Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales, and employee withholding taxes.

B. Deliver to Metro written releases of all rights to file claims against Metro or to file claims on any bonds in connection with the Contract, signed by each Subcontractor and Supplier who performed labor or furnished materials in connection with the work.

C. Deliver to Metro the Contractor's written undertaking, with sureties acceptable to Metro:

1. To promptly pay and obtain a release of claims on any bonds which may in the future affect the premises; and

2. To defend, indemnify and save Metro harmless from any liability or expense because of any claim on any bond or any other claim related to the Contract or the Work.

9.08 Final Payment -- Upon application of Contractor and Contractor's completion of and compliance with all of the provisions of the above Paragraphs, Metro shall pay Contractor the balance of the Contract Amount subject to the availability of monies in the Construction Fund as described in Paragraph 9.01 and less any previous payments, offsets and withholdings allowed Metro under this Contract and Retainage which has been returned to Contractor.

Acceptance of Final Payment by Contractor shall constitute a waiver of all claims of whatever nature which Contractor may have or allege to have against Metro arising out of or related to Work described in the Contract Documents.

9.09 No Waiver of Rights -- Neither the final review by Metro, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by Metro, nor any extension of time, nor any position taken by Metro shall operate as a waiver of any provision of this Contract or of any power herein reserved by Metro or any right to damage herein provided; nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. All of Metro's remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided; and Metro shall have any and all equitable and legal remedies which it would in any case have.

ARTICLE 10. SAFETY AND PROTECTION OF THE WORK

10.01 Safety Requirements

10.01.01 Safety Generally -- Contractor shall be solely and completely responsible for the safety of the Work and the Site, including, but not limited to, the safety of all persons and property involved in the Work or present at the Site at any time until Final Completion and Acceptance of the Work.

All Work shall be performed in full accordance with all applicable safety codes, laws, ordinances and requirements including, but not limited to, the Safety and Health Regulations for Construction, promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Safety Standards Act as set forth in Title 29 of the Code of Federal Regulations, federal and state OSHAs, Metro's insurance standards, and all other applicable safety codes. Where any of these are in conflict, the more stringent requirement shall be followed. Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from any requirements in the Contract Documents to comply with such safety provisions or from any penalties for failure to so comply.

Contractor shall inspect the Work and the Site daily and immediately correct any unsafe conditions. All job personnel shall be knowledgeable of and comply with the above safety requirements.

10.01.02 Safety Program -- Contractor shall develop, publish and implement the overall Safety Program for the Project. This Program shall conform to all applicable codes. Contractor shall submit the written Safety Program to Metro for review and comment within fifteen (15) days after the receipt of the written Notice To Proceed. The Program, as approved by Metro, shall subsequently be distributed to and implemented by Contractor's personnel as well as its Subcontractors and Suppliers. Contractor shall fully implement and comply with the approved Safety Program.

10.02 First Aid -- Contractor shall maintain on the Site during work operations, a member of its work force who is qualified in administering first aid to its personnel and shall have available in its job office the first aid equipment as required to meet all applicable safety codes.

10.03 Protection of Work, Persons and Property Against Damages -- Contractor shall protect the Work from damage due to construction operations, the action of the elements, the carelessness of other contractors, vandalism, or any other cause whatever until Final Completion and Acceptance of the Work.

Contractor shall protect all public and private property insofar as it may be endangered by operations of Contractor and shall be fully responsible for taking proper precautions for the prevention of accidents to persons and/or damage to such property at, on or near the Site.

All federal, state and local safety laws, rules and orders including fire codes, applicable to the Work to be done under the Contract, shall be obeyed, complied with and enforced by the Contractor.

The Contractor shall provide and maintain such guards, fences, barriers, signs, regulatory and warning lights, and other traffic control and safety devices adjacent to and on the Site as may be necessary to prevent accidents to the public and damage to property. The Contractor shall also provide, place and maintain such lights as may be necessary for illuminating the said signs, guards, fences, barriers and other traffic and safety control devices.

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Upon Final Completion and Acceptance of the Work, Contractor shall remove all temporary signs, lights, barriers, etc., from the Site and leave the entire Site clean and orderly.

ARTICLE 11. INDEMNIFICATION AND INSURANCE

11.01 Indemnification -- Contractor agrees that for purposes of the Oregon Tort Claims Act (ORS 30.260 through 30.300) that neither Contractor, its officers, agents and employees nor any Subcontractor or Supplier of Contractor of any tier and its officers, agents and employees are agents of Metro. Contractor for itself and its officers, agents, employees and its Subcontractors and Suppliers of any tier and their officers, agents and employees will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300 and Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.

Contractor shall assume all responsibility for the Work and shall bear all losses and damages directly or indirectly resulting to Contractor, Metro, Engineer, their officers, agents and employees, or to others on account of the character or performance of the Work, unforeseen difficulties, accidents or any other cause whatsoever, unless such cause is due to the sole negligence of Metro or Engineer.

Contractor shall assume the defense, if requested, indemnify and hold harmless Metro and Engineer from all claims, liability, loss, damage, consequential or otherwise, and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Contract, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any Subcontractor or Supplier under the Contract or in any way arising out of the Contract, irrespective of whether fault is the basis of the liability or claim, and irrespective of whether act, omission or conduct of the Contractor, Subcontractor or Supplier is merely a condition rather than a cause of the claim, liability, loss, damage or injury.

Any specific duty or liability imposed or assumed by the Contractor, as may be otherwise set forth in the Contract Documents, shall not be construed as a limitation or restriction of the general liability or duty imposed upon the Contractor by this Paragraph.

Such liabilities and losses from which Contractor shall indemnify and hold harmless the above-described indemnitees shall include, but not be limited to:

1. Special activities by Metro to verify and/or expedite delivery of materials which are fabricated offsite, and those losses incurred by Metro as a result of any delays to Other Metro Contractors resulting from acts of the Contractor or its failure to act.

2. Acceleration payments to Other Metro Contractors on the project resulting from Contractor falling behind the Construction Schedule for causes not entitling it to an extension of time under any provisions of the Contract Documents which cause other Metro Contractors to fall behind the Construction Schedule and who must then accelerate the performance of the work, as directed by Metro, in order to maintain progress.

3. Violations of the ordinances or regulations of Metro, any federal, state, county and city laws or order of any properly constituted authority in any manner affecting this Contract, in addition to any laws or regulations which might affect this Contract.

4. Any and all suits, actions, damages or claims of every name and description to which the above indemnified may be subjected or put by reason of injury to persons or property arising out of, in connection with, or incident to the execution of the work or resulting from acts or omissions on the part of the Contractor, its Subcontractors, officers, employees or agents and all attorney's fees and court costs incident thereto.

11.02 Insurance

11.02.01 Public Liability and Property Damage Insurance

11.02.01.01 Contractor's Insurance -- Contractor shall obtain, pay for and maintain, until 365 days after the date of Final Completion and Acceptance of the Work, public liability and property damage insurance policy or policies as shall protect Contractor in performing the Work covered by this Contract from claims for bodily and personal injury and property damage which may arise because of the nature of the Work or from operations under these Contract Documents. Such operations shall include, but not be limited to,



use of owned, non-owned or hired automobiles, aircraft and watercraft, whether such operations be by Contractor or by any Subcontractor or Supplier of any tier or anyone directly or indirectly employed by Contractor or any Subcontractor or Supplier of any tier.

Such insurance covering the work shall include, but not be limited to, Blanket Contractual Liability (covering liability assumed by the Contractor under Paragraph 11.01 on indemnification); Broad Form Property Damage Liability (including coverage for explosion, collapse, underground and completed operations), Personal Injury Liability, and Products-Completed Operations Liability for two (2) years after Final Completion and Acceptance of the Work by Metro.

11.02.01.02 Insurance for Others -- Contractor shall include as additional insureds under the above policy or policies Metro and Engineer.

Such insurance shall provide coverage for the above-described parties against direct or contingent loss or liability for damages for bodily and personal injury or death, or property damage, arising out of, in connection with, or incident to the execution of the Work until its Final Completion and Acceptance and Final Payment, and shall cover all Work performed by, for or on behalf of the Contractor, each of Contractor's Subcontractors of any tier, Suppliers of any tier, and shall cover the supervisory acts of these insureds with respect to the Work. Both bodily and personal injury and property damage must be on an occurrence basis; and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any existing valid and collectable insurance) to the full limit of liability stated in the declaration, and that if the insureds have other insurance against the loss covered by said insurance, then such other insurance shall be excess insurance only. Said policy or policies shall also include a "cross-liability" clause.

11.02.01.03 Policy Limits -- The policy or policies of insurance described in Clauses

11.02.01.01 and 11.02.01.02 shall provide a combined single limit of coverage, for bodily injury, personal injury and property damage of not less than \$1,000,000 per occurrence and in the aggregate for Products and Completed Operations Liability and Contractual Liability. Contractor shall additionally provide Automobile Liability coverage, including Non-owned and Hired autos, in an amount not less than a combined single limit of \$1,000,000 per occurrence. In the event that Contractor hires or operates any aircraft or watercraft, Contractor shall provide aircraft liability coverage for Bodily Injury, Personal Injury and Property Damage in an amount not less than a combined single limit of \$1,000,000 per occurrence.

11.02.01.04 Subcontractor's Insurance -- Contractor shall require that all of its Subcontractors and Suppliers of any tier provide insurance coverage and conditions identical to Contractor's insurance coverage, except that the policy limits of all Subcontractors' insurance coverage shall be at least \$1,000,000 combined single limit for each occurrence and in the aggregate.

11.02.02 Workers' Compensation and Employer's Liability Insurance -- Contractor shall obtain, pay for and maintain until 365 days after the date of Final Completion and Acceptance of the Work full Workers' Compensation Insurance in amounts necessary to provide statutory State of Oregon coverage; and Employer's Liability Insurance coverage with limits of not less than \$1,000,000 per occurrence all to cover any compensation that Metro might be liable to pay. Contractor shall require that all of its Subcontractors and Suppliers of any tier provide such coverage also. In the event that Contractor is self-insured, Contractor shall furnish a Certificate to self-insure issued by the Director of Oregon's Department of Insurance and Finance. If the Contractor fails to maintain such insurance, Metro may obtain Worker's Compensation Insurance to cover any compensation which Metro might be liable to pay by reason of any employee of the Contractor being injured or killed, and may deduct the amount of the premium for such insurance from any sums due the Contractor. Furthermore, if Metro is compelled to pay any compensation pursuant to ORS chapter 656 due to

Contractor's failure or the failure of any of Contractor's Subcontractors or Suppliers of any tier to comply with this Subparagraph, Metro may deduct and retain from any sums due Contractor under this Contract an amount sufficient to cover such compensation and any other cost Metro may incur in paying such compensation.

If any injury occurs to any employee of Contractor or Contractor's Subcontractor or Supplier of any tier for which compensation is claimed from Metro, to the extent that the claim is not covered by insurance, Metro may retain sums due Contractor under this Contract in an amount sufficient to cover such claim or claims. If it is determined that no compensation is due such employee, the retained amount will be paid Contractor. If Metro is required to pay such compensation, the amount paid shall be charged to the Contractor.

Contractor shall not commence work until it has provided to Metro two (2) copies of Certificates of Insurance evidencing the above-described coverage.

**11.02.03 Forms of Policies and Other Insurance Requirements** -- In addition to filing any other insurance certificates specified elsewhere in these Contract Documents, the Contractor shall, within ten (10) days following Notice of Conditional Award of Contract, provide Metro two (2) certified copies of the policies of all insurance herein required to be obtained by Contractor except that Worker's Compensation Insurance may be evidenced by a Certificate of Insurance. At Metro's request, Contractor shall immediately deliver to Metro the receipts for payment of premiums on any or all such policies.

All policies of insurance and Certificates of Insurance shall be satisfactory to Metro. Approval of the insurance by Metro shall not relieve or decrease the extent to which the Contractor or Contractor's Subcontractors and Suppliers of any tier may be held responsible for payment of any and all damages resulting from performance of the Work.

Each such policy or Certificate of Insurance shall bear an endorsement precluding its cancellation, expiration or any reduction in its coverage without giving to Metro at least sixty (60) days prior written

notice. Contractor shall file with Metro two certified copies of the required new or renewed policy or two Certificates of Insurance for each such policy, as applicable, at least fifteen (15) days before the effective date of such cancellation, change or expiration.

Should the Contractor neglect to obtain or maintain in force any such insurance or to deliver such policy or policies, certificates and receipts to Metro, then Metro may, at its option, obtain and maintain such insurance. Contractor hereby appoints Metro its true and lawful attorney, to do all things necessary to obtain and maintain such insurance. All monies expended by Metro for such insurance shall be charged to Contractor and Metro may offset its costs in obtaining and/or maintaining such policies from sums due or to become due Contractor under the Contract or otherwise collect such sums from Contractor. Failure of Metro to obtain or maintain such insurance shall in no way relieve the Contractor of any of its responsibilities under this Contract.

Contractor's failure to maintain any item of the required insurance shall be sufficient cause for termination or suspension of this Contract.

All insurance required shall be obtained through a company or companies having a policyholders surplus of at least ten (10) times the amount or limit of liability afforded by such insurance company on policies issued for this Contract. Such company shall be duly and legally licensed to transact business in the state of Oregon and shall be acceptable to Metro. Said insurance shall be primary over any insurance or self-insurance of Metro.

#### 11.03 Builder's All Risk Insurance

11.03.01 Contractor, for the life of this Contract, shall effect and maintain Builders All Risk Insurance and fire insurance with extended coverage and malicious mischief coverage upon the structures on which the work of this Contract is to be done to 100 percent (100%) of the insurable value thereof, protecting: (1) Owner's interest; (2) Contractor's interest; and (3) the subcontractor's interests in the work. Contractor's interest and the subcontractors' interests, as used herein, mean their property interests and the property interests of others for

which they are responsible in the Project, in all materials and supplies entering into or used or destined for use therein, and in all expendable items of equipment which are used in or are incidental to but which do not become a part of the finished Project, located at the job site at the time of loss or damage. Such insurance shall not exclude coverage for earthquake, landslide, flood, collapse, explosion or loss due to the result of faulty workmanship.

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

11.03.03 Contractor shall provide adequate fire protection equipment and safeguards to protect Owner's and Contractor's interests in accordance with Owner's insurance carrier's requirements.

## ARTICLE 12. DISADVANTAGED BUSINESS PROGRAM

Contractor shall comply with all pertinent provisions of Metro's Disadvantaged Business Program which are contained in Metro Code 2.04 and which are contained in full in the Appendix to these Contract Documents and which are by this reference expressly incorporated herein and made a part of this Contract.

Contractor shall not replace a disadvantaged or women-owned business enterprise Subcontractor with another Subcontractor, either before Contract award or during Contract performance, without prior written approval of Metro. In replacing a disadvantaged or women-owned business Subcontractor, Contractor shall replace such disadvantaged or women-owned business Subcontractor with another certified disadvantaged or women-owned business Subcontractor or make good faith efforts to do so. Failure to do so shall constitute Contractor's default of this Contract, and Metro, at its option, may terminate this Contract under the procedures set out in Article 14.

Metro reserves the right, at all times during the period of this Contract, to monitor Contractor's compliance with the terms of the Disadvantaged Business Program and enforce the program if Contractor should fail to so comply. Contractor shall be bound by any and all representations made concerning its compliance with the program prior to Contract award and any and all

representations made by Contractor concerning the replacement of a disadvantaged or women-owned business Subcontractor during the performance of this Contract.

**ARTICLE 13.           EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION REQUIREMENT**

Contractor shall be certified as Equal Employment Opportunity Affirmative Action Employers by the City of Portland, Oregon, for the entire term of the Contract. Contractor's Subcontractors and Suppliers shall be certified prior to commencement of any of their Work on the Project and shall remain certified for the entire duration of the Contract.

**ARTICLE 14.           MISCELLANEOUS STATUTORY RESPONSIBILITIES OF CONTRACTOR**

14.01 Generally -- The Contractor shall keep itself fully informed of and shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances and orders pertaining in any manner, to this Contract and those rules, regulations and orders of any agency or authority having jurisdiction over the work or those persons employed or engaged therein. Contractor shall pay all taxes, including federal, state, regional, county, city or taxes of any other governmental entity applicable to the work performed or materials provided under this Contract.

14.02 Environmental Laws -- Contractor shall fully comply with all federal, state and local laws, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources and all amendments thereto. Contractor shall also fully comply with all rules, regulations and ordinances enacted or to be enacted by any federal, state or local agency dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the Contract. Such statutes, rules, regulations and ordinances shall include, but are not limited to those in 7 USCA Sections 136 to 136Y, 15 USCA Sections 2601 to 2629, 33 USCA Sections 1251 to 1376, 33 USCA Sections 1401 to 1445, 42 USCA Sections 300f to 300j-11, 42 USCA Sections 4321 to 4370a, 42 USCA Sections 4901 to 4918, 42 USCA Sections 6901 to 6991i, 42 USCA Sections 7401 to 7642, 42 USCA Sections 9601 to 9675, 29 USCA Sections 651 et seq., Oregon Administrative Rules Chapter 61, and Title 18 of the Code of the City of Portland Code.

Such agencies shall include, but not be limited to, the following:

FEDERAL AGENCIES

Agriculture, Department of  
Forest Service  
Soil Conservation Service

Defense, Department of  
Army Corps of Engineers

Energy, Department of

Environmental Protection Agency

Health and Human Services, Department of

Interior, Department of  
Fish and Wildlife Service  
Heritage Conservation and Recreation  
Service Bureau of Land Management  
Bureau of Indian Affairs  
Water and Power Resource Service  
Office of Surface Mining

Labor, Department of  
Occupational Safety and Health Administration  
Mine Safety and Health Administration

Transportation, Department of  
Coast Guard  
Federal Highway Administration

STATE AGENCIES

Agriculture, Department of  
Energy, Department of  
Environmental Quality, Department of  
Fish and Wildlife, Department of  
Forestry, Department of  
Geology and Mineral Industries, Department of  
Human Resources, Department of  
Land Conservation and Development Commission  
Soil and Water Conservation Commission  
State Engineer  
State Land Board  
Water Resources Board

LOCAL AGENCIES

City of Oregon City  
Clackamas County  
Metropolitan Service District  
Planning Commissions

14.03 Other Provisions of Oregon Law

14.03.01 Generally -- The provisions set out in Oregon Revised Statutes Chapters 187 and 279, as amended or superseded, including the latest additions and revisions, are incorporated by reference as part of these Contract Documents. Such sections include, but are not necessarily limited to, ORS 279.021, 279.312, 279.314, 279.316, 279.318, 279.320, 279.334, 279.338, 279.348, 279.350, 279.352, 279.354, 279.355, 279.356, 279.359, 279.361, 279.365, 279.400 through 279.430 and 279.575. Contractor shall fully comply with all applicable provisions of these statutes. The specific requirements of certain of these sections are set out below.

14.03.02 Payment to Subcontractors and Laborers -- Pursuant to ORS 279.312, Contractor shall make payment promptly, as due, to all persons supplying such Contractor labor or material for the prosecution of the Work provided in this Contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund (IAF) from such Contractor, Subcontractor or Supplier incurred in the performance of the Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against Metro, the State, County, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

14.03.03 Failure to Make Payment for Labor or Services -- Pursuant to ORS 279.314, if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with this Contract as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of such Contract. Metro's payment of such a



claim in the manner authorized by ORS 279.314 shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

14.03.04 Hours of Work -- Except as provided in ORS 279.334, no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279.334. Contractor shall furthermore comply with any applicable provisions of ORS 279.316, 279.334, 279.336 and 279.338.

14.03.05 Payment for Medical Care -- Pursuant to ORS 279.320, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying such service.

14.03.06 Requirements for Foreign Contractors -- Pursuant to ORS 279.021, any "foreign contractor" awarded a public contract with a price exceeding \$10,000, shall promptly report to the Department of Revenue, on forms to be provided by the Oregon Department of Revenue, the total contract price, terms of payment, length of contract and such other information as may be required before Final Payment can be received on the public contract. Final Payment shall not be made until this provisions has been complied with.

For purposes of this paragraph, a "foreign contractor" is one who is not domiciled in or registered to do business in the state of Oregon.

14.03.07 Prevailing Wage -- Except as limited by Oregon Revised Statutes, Contractor shall pay his/her workers and require his/her Subcontractors to pay its workers the prevailing rate of wage as required in ORS 279.350, and shall comply with all other requirements

contained therein. The Appendix to this Contract contains a provision stating the existing prevailing rate of wage which may be paid to workers in each trade or occupation required to perform the Work, either by Contractor or its Subcontractors or any other person doing or contracting to do the whole or any part of the Work contemplated by this Contract, and such workers shall be paid not less than such specified minimum hourly rate of wage.

14.03.08 Sanitary Facilities -- Contractor shall be responsible for all costs that may be incurred in complying with ORS 654.150 and the rules adopted pursuant thereto including, but not limited to, securing exemption or partial exemption from the requirements of ORS 654.150, (sanitary facilities at construction projects; standards, exemptions).

14.04 Work to Comply with Codes -- All Work shall be in full compliance with any and all codes specified in the Contract Documents and all federal, state and local laws, ordinances, rules, regulations and orders and all amendments to such codes, laws, ordinances, rules, regulations and orders. If Contractor observes or discovers that any portion or portions of the Contract Documents are at variance with any such requirements, Contractor shall promptly submit a written Request for Information to Metro pursuant to Paragraph 3.02 which shall fully describe the variance. If Contractor performs Work contrary to codes, laws, ordinances, rules, regulations or orders without submitting such Request to Metro, Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

Persons authorized by Metro or any governmental body having jurisdiction over the Project may at any time enter upon any part of the work to ascertain whether Contractor is complying with such laws, ordinances, regulations or orders.

14.05 No Additional Compensation Allowed for Compliance with Laws -- The Contract Amount includes full compensation for compliance with all applicable laws, rule, regulations, ordinances and orders and all amendments thereto and Contractor shall not make claim for nor be allowed any additional compensation for such compliance.

ARTICLE 15.

TERMINATION OR SUSPENSION OF THE WORK

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15.01 For Default of Contractor -- If the Contractor should be adjudged bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of insolvency, or if the Contractor should refuse to or fail to supply enough properly skilled workers or proper materials for the efficient prosecution of the Work, disregard laws, ordinances or the instructions of Metro, or otherwise be in violation of any provision of the Contract, Metro may, without prejudice to any other right or remedy and after giving Contractor and Contractor's surety on the Performance Bond prior written notice, terminate the Contract or any portion of the Contract, which termination shall be effective ten (10) days after service of such notice. Such notice shall contain the reasons for the termination and shall state that unless, within ten (10) calendar days of service of the termination notice on Contractor, Contractor or its surety on the Performance Bond shall have cured or shall have made, in Metro's opinion, appropriate arrangements for prompt cure of all of the cause(s) for termination cited in the notice of termination, the Contract shall terminate.

Upon termination, Metro may take possession of the premises and of all materials, tools and appliances thereon as well as all other materials whether on the premises or not, for which the Contractor has received partial payment, and finish the Work or the portion terminated by whatever method it may deem expedient.

In the event action as above indicated is taken by Metro, the Contractor, or Contractor's surety, shall provide Metro with immediate and peaceful possession of all of the materials, tools and appliances located on the premises as well as all other materials whether on the premises or not, for which the Contractor has received any progress payment. Upon termination, in the event that the surety does not complete the Contract, at the election of Metro, Contractor shall assign any and all subcontracts and material contracts to Metro or Metro's designee. Further, the Contractor shall not be entitled to receive any further payment until the Work is completed. On completion of the Work, determination shall be made by Metro of the total amount the Contractor would have been entitled to receive for the Work, under the terms of the Contract, had Contractor completed the Work. If the difference between said total amount and the sum of all amounts previously paid to the Contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by Metro in completing the Work, including expense for additional managerial and

administrative service, and all other costs, damages and expenses incurred by Metro due to Contractor's failure to complete the Contract, such excess will be paid to the Contractor, with the consent of the surety. If, instead, the described expenses incurred by Metro exceed the unpaid balance, the amount of the excess shall be paid to Metro by the Contractor or his/her surety. If only a portion of the Contract is terminated, this paragraph shall be deemed to apply to that portion of the Work only.

In addition to the above-mentioned right, Metro shall have the right, at its option, to suspend all or part of the Contractor's performance under the Contract should any of the events occur which give Metro the right to terminate the Contract as above-described. In such event Metro shall give Contractor and Contractor's surety prior written notice of such suspension and Contractor shall stop or cause to stop all such work under the Contract immediately on receipt of such notice and shall not commence such work under the Contract again unless and until Contractor shall receive written notice from Metro to proceed. Metro shall not be responsible or liable to Contractor or others for any costs or expenses of whatever nature related to Contractor's failure to stop work as directed by Metro.

After receipt of a notice of termination or suspension, and except as otherwise directed by Metro, the Contractor shall as regards those portions of the Contract terminated or suspended:

1. Stop work under the Contract on the date and to the extent specified in the notice of termination or suspension.
2. Place no further orders or subcontracts, or suspend the same, as applicable, for materials, services or facilities except as necessary to complete the portion of the work under the Contract which is not terminated or suspended.
3. Terminate or suspend, as applicable, all orders and subcontracts to the extent that they relate to the performance of such work terminated or suspended.

Metro may, at its discretion, avail itself of any or all of the above rights or remedies and its invoking of any one of the above rights or remedies will not prejudice or preclude Metro from subsequently invoking any other right or remedy set forth above or elsewhere in the Contract.

None of the foregoing provisions shall be construed to require Metro to complete the Work, nor to waive or in any

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way limit or modify the provisions of the Contract relating to the fixed and liquidated damages suffered by Metro on account of failure to complete the Project within the time prescribed.

15.02 Termination in the Public Interest

It is hereby agreed that Metro has the right to terminate the Contract in whole or in part when Metro considers it to be in the public interest.

In the event the Contract is terminated as being in the public interest, the Contractor shall be entitled to a reasonable amount of compensation for preparatory work and for all reasonable costs and expenses arising out of the termination, excluding lost profits.

In the event of termination under this Paragraph, the amount to be paid to the Contractor shall be determined on the basis of the Schedule of Values in the case of any fully completed separate item or portion of the Work for which there is a separate or unit contract price and in respect to any other work under the Contract, the Contractor will be paid a percent of the Contract price equal to the percentage of the work completed.

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## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 90-1100 FOR THE PURPOSE OF AUTHORIZING ISSUANCE OF A REQUEST FOR BIDS FOR CONSTRUCTION OF METRO SOUTH STATION MODIFICATIONS

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Date: January 5, 1990

Presented by: Jim Watkins  
Rob Smoot

#### FACTUAL BACKGROUND AND ANALYSIS

Approval of Resolution No. 90-1100 authorizes the Solid Waste Department to issue a Request For Bids (RFB) for Construction of Metro South Station Modifications (attached to Resolution No. 90-1100 as Exhibit #1); and authorizes the Executive Officer to execute a contract with the low, responsive, responsible bidder.

In March of 1989, Metro executed a contract for the transport of waste to the Gilliam County Landfill for a period of twenty years. Metro's contractual obligations under this contract include the provision of a staging area at Metro South Station where empty and full transport vehicles are stored before and after loading. In addition, Metro is required to compact waste prior to loading.

In May of 1989, Metro issued a RFB for a compaction system for Metro South Station which would be placed in the existing loading tunnel. In addition, Metro asked proposers to quote prices for a second compaction system which would be located at the west end of the pit once the proposed modifications are completed. Two compaction systems are desired in order to allow facility operation in the event of a single compaction system failure. The first compaction system was installed in the current loading tunnel during the weekend of November 25th, and will be moved to its permanent location after the second compactor is operational.

In August, 1989, Metro executed a Design Services contract to design the modifications at Metro South necessary to provide for a dual compactor system, staging area for transport vehicles and a new entrance to the facility for transport vehicle use. An additive alternate called for design of a storage area to accommodate the fleet of transport vehicles which would service the facility. This item was included for three reasons: 1) it would improve the overall efficiency of transport operations; 2) preliminary discussions with Oregon City staff indicated their desire to have the shuttling operation onsite to minimize impacts on the community; and, 3) the transporter had indicated a preference for locating the storage facility onsite. As with all design elements, the storage area phase would only be pursued if conditional use authorization was obtained from Oregon City. In

addition to design of the modifications, the Design Services Contractor is also responsible for preparing construction documents for the modifications, conducting the bid process and providing construction management during facility modifications.

In late August, 1989, the Planning Commission of Oregon City modified the Metro South Station conditional use permit to allow for the modifications described in the Design Services RFP. The permitted modifications specifically called for creation of a storage area for the fleet of transport vehicles servicing the facility.

Since construction of the permanent storage yard could not be executed until after the start of transport services, a temporary storage facility was required at Metro South Station. The temporary facility was constructed in December to accommodate approximately half of the JGT fleet which will be used at Metro South.

The Design Services Contractor has completed preparation of the construction documents for the Metro South modifications (Exhibit #1 of the attached resolution), and the Solid Waste Department wishes to issue a Request for Bids. The work contemplated in the documents consists of sitework; constructing a steel framed, concrete panel building to house a solid waste conveyor, as well as the two compactors; concrete, shotcrete; ventilation, heating, air conditioning, plumbing and electrical systems; road, bridge, retaining walls; landscaping and irrigation system; stormwater and sewage lift stations and piping; public parking area; and a trailer storage area for Jack Gray Transport. Bidders will be required to bid a normal construction period and an accelerated construction schedule that provides early access to the dual compaction system.

Due to the need to complete the modifications as expeditiously as possible, the Executive Officer requests Council authorization to award the contract to the low, responsive, responsible bidder; in accordance with the Metro Code and State of Oregon requirements. The expedited procedure is requested due to the risk Metro is exposed to with a single compactor at the facility (see Attachment #1). In addition, the temporary loading procedure is a hardship on JGT's operations due to the limited maneuvering space available when accessing the compactor and traffic congestion associated with the site's entrance.

#### BUDGET IMPACTS

The estimated cost for construction of these modifications is \$3,000,000 and is listed on the "FY1989-90 CONTRACTS LIST/New, Single Year Contracts" list under the SOLID WASTE CAPITAL FUND section, as well as the corresponding section in the FY1990-91 budget. Approximately one half of the total budget will be expended in FY1989-90, with the remainder expended in the first half of FY1990-91.

**EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends adoption of Resolution 90-1100 which authorizes the issuance of an RFB for construction of modifications at the Metro South Station and authorizes the Executive Officer to execute a contract with the low, responsive, responsible bidder.



Attachment #1

TENTATIVE SCHEDULE FOR METRO SOUTH MODIFICATIONS

2/1/90 Announce intent to advertise  
2/13/90 Advertise for Bids- Issue Contract Documents  
3/1/90 Bid Opening  
3/20/90 Notice of Conditional Award  
3/27/90 Contractor signs contract, returns bonds  
3/30/90 Metro issues Notice to Proceed  
4/9/90 Contractor commences work  
5/1/90 Contractor onsite  
8/15/90 Relocate existing compactor to new building  
10/1/90 Substantial Completion  
10/15/90 Startup and Testing  
12/15/90 Punchlist complete- acceptance

NOTE: If Council awards contract, add one month to schedule

## SOLID WASTE COMMITTEE REPORT

### RESOLUTION NO. 90-1100, FOR THE PURPOSE OF AUTHORIZING ISSUANCE OF A REQUEST FOR BIDS FOR CONSTRUCTION OF METRO SOUTH STATION MODIFICATIONS

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Date: January 17, 1990

Presented by: Councilor  
Gary Hansen

Committee Recommendation: The Solid Waste Committee voted 4 to 1 to recommend Council adoption of Resolution No. 90-1100. Voting aye: Councilors Hansen, Bauer, Buchanan and DeJardin. Voting nay: Councilor Wyers. This action taken January 16, 1990.

Committee Discussion/Issues: Adoption of Resolution No. 90-1100 would authorize the Solid Waste Department to issue a Request for Bids (RFB) for the construction of Metro South Station modifications, and authorize the Executive Officer to execute a contract with the low, responsive, responsible bidder.

The proposed construction at Metro South Station includes a building to house a dual compactor system, a staging area for transport vehicles, a new entrance to the facility for transport vehicle use, a trailer storage area for Jack Gray Transport, a public parking area, landscaping, and an irrigation system.

The estimated cost for construction of the modifications is \$3,000,000.

The Solid Waste staff stated that Oregon City prefers the trailer storage area on the Metro South Station site and has approved the plan.

The Committee asked who will use the new access to the Metro South Station? The staff answered that it would be used by Jack Gray Transport only. The public and the haulers will continue to use the original entrance.

The Committee asked if the building modifications would prevent Metro from making other necessary changes to the site in the future. Staff indicated that it may prevent some modifications but should not create a problem regarding volume handled since the existing capacity is expected to be sufficient for future needs.

One Committee member pointed out that the original contract did not require a large trailer storage area as is now being proposed. By approving the storage area, we are aiding the contractor to the point it is unfair to others who bid on the transport services contract.

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Resolution No. 90-1100  
January 17, 1990  
Page 2

Another Committee member stated that the proposed work is necessary and desirable regardless of the mode of transportation used.

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