

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING)	RESOLUTION NO. 89-1112
EXECUTION OF A SERVICE AGREEMENT)	
FOR DESIGN, CONSTRUCTION AND)	Introduced by Rena Cusma,
OPERATION OF A MASS COMPOSTING)	Executive Officer
FACILITY WITH RIEDEL ENVIRONMENTAL)	
TECHNOLOGIES, INC.)	

WHEREAS, The Metropolitan Service District has determined, as part of its Solid Waste Reduction Program adopted in Resolution No. 85-611, that up to 48 percent of the municipal solid waste in the Portland tri-county area could be allocated to alternative technology; and

WHEREAS, The two-part Request for Qualifications and Request for Proposals solicitation and selection process yielded mass composting as a feasible technology, and Riedel Environmental Technologies, Inc. as the systems contractor with which to negotiate a Memorandum of Understanding for a mass composting facility; and

WHEREAS, Riedel Environmental Technologies, Inc. successfully negotiated a Memorandum of Understanding with Metro in June 1988 that set down how the facility would be financed, what services it would provide Metro, and how risk would be managed by both parties; and

WHEREAS, Riedel Environmental Technologies, Inc. has successfully negotiated all terms, both technical and contractual, for a long-term 20-year contract called the Service Agreement with Metro; and

WHEREAS, Riedel Environmental Technologies, Inc. has guaranteed their facility will process 185,000 tons per year of - municipal solid waste, remove 70 percent of the ferrous metals,

50 percent of the aluminum, 25 percent of the glass, produce no more than 35 percent residue, and yield approximately 75,000 tons of finished compost product; and

WHEREAS, Riedel Environmental Technologies, Inc. has guaranteed a facility price of \$19,916,000.00, inclusive of the facility site cost of \$1.2 million, 15 percent of which Riedel Environmental Technologies, Inc. will contribute as equity; and

WHEREAS, Riedel Environmental Technologies, Inc. has developed marketing plans for the municipal solid waste compost product that will not impinge upon local yard debris or sewage sludge compost markets; and

WHEREAS, Riedel Environmental Technologies, Inc. has secured markets, all of which are outside the tri-county area, for 100 percent of the first year's compost production; and

WHEREAS, Riedel Environmental Technologies, Inc. has agreed to make its Killingsworth Fast Disposal Landfill site available for contract years one (1) through five (5) to store up to 100,000 tons of compost, should markets not accept the compost, and to provide property to accommodate storage of the compost in later years if needed; and

WHEREAS, Riedel Environmental Technologies, Inc. will secure a Letter of Credit from Credit Suisse to enable the project to achieve a AAA rating for the issuance of variable demand obligation private activity bonds, and to act as the "deep pocket" in the transaction; and


WHEREAS, Riedel Environmental Technologies, Inc. has purchased an 18+ acre site located at 5437 N.E. Columbia Boulevard in Portland, Oregon, and secured a Conditional Use permit to use the site for a mass composting facility; and

WHEREAS, The Tip Fee achieved through Service Agreement negotiations is \$41.93 for the first year of operation, in 1988 dollars, which is less than the Tip Fee negotiated in the Memorandum of Understanding and, does not exceed the landfill-based system cost represented by Metro's contract with Oregon Waste Systems, Inc. for services of an out-of-region landfill; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District authorizes the Executive Officer to execute the Service Agreement, in a form substantially similar to Exhibit A attached to the original only hereof, and hereby incorporated by reference.

ADOPTED by the Council of the Metropolitan Service District
this 27th day of July, 1989.


Mike Ragsdale, Presiding Officer

STAFF REPORT

Agenda Item _____
Meeting Date _____

CONSIDERATION OF APPROVAL OF THE SERVICE AGREEMENT FOR THE DESIGN, CONSTRUCTION AND OPERATION OF A MASS COMPOSTING FACILITY BY RIEDEL ENVIRONMENTAL TECHNOLOGIES, INC.

Date: July 3, 1989

Presented by: Bob Martin
Debbie Gorham

FACTUAL BACKGROUND AND ANALYSIS

Background

In June, 1988 Metro's negotiating team successfully concluded negotiation with Riedel Environmental Technologies, Inc. (RET) for a 185,000 ton per year municipal solid waste (MSW) composting facility. Approval of Resolution No, 89-1112 would authorize the Executive Officer to approve a long-term service agreement, a 20-year contract, with RET.

These negotiations represent the culmination of Metro's Resource Recovery Project which began in 1985. This important achievement, prerequisite to construction and operation of the facility, is noteworthy nationally as it will bring about the first private/public service agreement in the nation for a mass compost facility. It will also be the largest such facility in the nation. Other compost facilities of similar size are called "co-composters" and compost sewage sludge with waste.

Since Council adoption of Metro's Waste Reduction Program in December 1985, the agency has pushed ahead to procure alternative technologies as a component of a balanced waste reduction and management program. In August 1985 Metro held a Resource Recovery Symposium at which three technologies stood out as most viable, namely mass incineration, refuse-derived fuel, and mass composting. Metro Council authorized staff to begin procurement planning for an incineration and composting technology.

A Request for Qualifications was issued for suppliers of mass composting systems in March 1986, followed by a Request for Proposals October 24, 1986. Proposals were received January 8, 1987 from Riedel, using the DANO technology; Reuter, using Buhler-Miag and McClaren using vermiculture technology. Riedel was selected as the firm most qualified with which to negotiate a memorandum of understanding (MOU). Negotiations began in June 1987 to memorialize basic technical and contractual agreements that would later be fully detailed in a long-term service agreement.

Metro concluded MOU negotiations with Riedel on May 25, 1988. On June 2, 1988 the Metro Council authorized Metro's negotiation team to begin Service Agreement negotiations. The results of this 12-month long negotiation process is a service agreement that covers how the

facility will be operated, how risk will be shared between Metro and Riedel, and how the facility will be financed and debt service covered. It is a complex, legal contract into which both negotiating teams put considerable thought.

Analysis

Project Description

The service agreement negotiated with RET provides that RET will design, construct, and operate a composting system for 185,000 tons of MSW per year and convert the majority of it into a usable product. RET will use technology pioneered, developed and licensed by DANO, Ltd., Zurich, Switzerland. The process recovers materials for recycling and produces compost suitable for agriculture, landscape, and nursery use.

It is estimated that the system will reduce the quantity of MSW that would otherwise be landfilled by approximately 70%. It is anticipated that for every 100 pounds of incoming waste, 10 pounds will be recycled, 30 will require landfilling and 60 will become finished compost. This composting process meets state and Metro priorities to maximize recycling, and to convert waste into a reusable material.

Metro's primary responsibility will be to deliver 185,000 tons of waste annually to the compost facility. Metro will also operate the scalehouse to insure fair and equitable treatment to all waste haulers.

Risk will be shared by Metro and RET. The provisions associated with risk that were negotiated in the MOU are carried forward in the service agreement. RET will bear the cost of RET fault and Metro will bear the cost of Metro fault and uncontrollable circumstances.

RET

Riedel Environmental Technologies, Inc. is a publicly traded corporation engaged in municipal waste processing, hazardous waste cleanup, and utilization of rubber by-products for railroad crossings. The company has assumed overall responsibility for the project and guarantees the operation of the facility. Other firms contributing to the project include:

Riedel International, Inc.	Prime Construction Manager
Resource Systems Corporation	DANO Licensee
Talbott Engineers, Inc.	Project Engineers
Cogan Sharpe Cogan	Government Relations
Motherwell Bridge, Ltd.	DANO Design and Start-Up
Donald M. Drake Company	Plant Construction
Credit Suisse	Plant Financing Guarantor
Riedel Waste Disposal Systems, Inc.	Plant Operations

Facility Site

The composting facility will be built on an 18 acre parcel of land at 5437 N.E. Columbia Boulevard in Portland, Oregon owned by Riedel Waste Disposal Systems, Inc. It is in the heart of an industrial area on a major four lane highway, approximately halfway between the I-5 and I-205 freeways. The site is ideally situated to minimize the transportation costs of solid waste vehicles in the area and will accept waste from all areas of Multnomah County and eastern Washington County.

The facility is designed to be compatible with the surrounding industrial community. All structures will be painted in earth tones and the property will be landscaped. The facility consists of three major components: receiving and processing building approximately 84,000 square feet, two aeration buildings 54,000 square feet each, and two maturation buildings 27,000 square feet each. The facility, including 17 receiving stalls, will be totally enclosed.

Mass Composting Process

A hand picking operation removes metals, glass, paper products, plastics and other recyclables from a conveyor belt. The remaining material enters the DANO drums where it revolves slowly for approximately eight hours. Air and water are added to hasten the process and maintain aerobic conditions.

The unique DANO drum is 12 feet in diameter and 80 feet long. It rotates at approximately three rpm. The drum pulverizes and homogenizes the waste material. After leaving the drum, the waste material is screened into fine and oversized material. The latter is returned by conveyor to the reject area for transportation to a landfill. The pulverized "fines", uniform, compostable material, are moved by conveyor to the aeration buildings and deposited in composting beds. Air is forced upward through the material from a distribution system underneath the floor that fosters rapid aerobic fermentation.

In approximately three weeks 90% of the material has been composted. It is then transferred to static piles in the maturation buildings for an additional three weeks where the final aging and maturation process occurs. At the end of the six week process, the mature compost is processed through a final screening and air separation process to remove any other impurities.

The composted material is tested at various intervals to ensure its chemical consistency and pathogenic stability. After the product has received its final testing and processing, it is stored and ready for customers.

Facility Financing

The facility will cost \$19,916,000 to construct and will be financed through the sale of tax-exempt, private activity bonds issued by Metro. The total financing cost, approximately \$25,000,000, includes the cost to construct the facility plus \$3,000,000 in reserves to guarantee future payments, capitalized interest and other financing costs. RET will contribute approximately \$2.7 million of its own money as part of the financing, \$1.2 million of which was spent on the facility site.

This project qualifies as a transitioned project under the 1986 Tax Reform Act. Metro will issue tax-exempt bonds that will be paid off through the proceeds from the project over 20 years. Credit Suisse will provide a Letter of Credit (LOC) to guarantee that the bonds will be paid off. The bonds backed by Credit Suisse, a AAA rated bank, will carry low interest rates making the tip fee as low as possible.

Credit Suisse, one of the top three, LOC banks in the world, regards composting as the wave of the future. The bank's interest in this project is fortuitous for both Metro and Riedel as it guarantees the bonds will be paid off, and that interest rates will be as low as possible.

Tip Fee

Metro will pay RET a tip fee for every ton of waste processed at the facility. The tip fee is comprised of several components including debt service on the tax-exempt bonds, RET's operation and maintenance costs, and certain prescribed pass-through costs. The tip fee will be reduced by a percentage of the revenues that RET receives from the sale of compost and recovered materials.

Metro will be responsible to pay the tip fee only for waste actually processed at the facility, unless failure to process is due to Metro fault or uncontrollable circumstances. Furthermore, Metro must pay the tip fee on a guaranteed annual tonnage whether Metro delivers such tonnage to the plant or not.

The tip fee for processing a ton of waste at the facility in 1988 dollars is projected to be \$41.93. This figure is within 120% of the landfill-based system cost, based on the analysis performed prior to Council approval of the MOU. The tip fee negotiated in the MOU was \$41.20 per ton, in 1988 dollars.

Term of Agreement and Renewal Options

The initial term of the agreement is 20 years. Metro has the option to extend the agreement four separate times, each for five year periods. If Metro elects not to renew the contract then it is terminated on the expiration date and Metro has the right to purchase the facility; if RET elects not to extend then Metro has the right to

purchase the facility or to terminate the agreement. Metro has the first right of refusal to purchase the facility at any time on the same terms and conditions as contained in the purchase agreement.

Facility Construction

RET has agreed to construct and performance test the facility in 20 months. During construction RET must provide Metro with written, monthly progress reports. An extension of the schedule will be allowed only if a delay is caused by Metro fault or an uncontrollable circumstance.

RET is responsible for all aspects of plant construction including preparation of the facility site, construction and maintenance of all roads within the site, and expansion or renovation of utility lines.

Waste Delivery

Metro will deliver a minimum weekly amount of 2,500 tons of MSW and a maximum amount of 5,000 tons. RET must accept and process this waste unless the facility is shutdown due to Metro fault or uncontrollable circumstances. Metro may request that RET accept more waste than that which they are obligated to take, and RET must use all reasonable means to accommodate such requests. RET cannot accept waste from any other party without the written consent of Metro.

Metro must take all reasonable steps to insure that hazardous waste is not brought to the facility. If hazardous waste is discovered, RET must arrange for its safe removal and disposal. Metro will reimburse RET for costs involved. If, however, hazardous waste enters the processing drum and becomes part of the compost, RET must indemnify Metro for any liability associated thereto.

Performance Standards

The facility must meet at least 95% of the throughput performance standard in order to be accepted by Metro. If the plant is not at the 95% level by the scheduled completion date, Riedel is granted an extension period of eighteen months within which to bring the plant up to the 95% level. During this extension period Metro would only pay for each ton of waste processed.

If by the end of the extension period throughput is less than 95% but greater than 75% RET would have to make an appropriate damage payment. If throughput were less than 75% then RET would be in default under the agreement. If residue exceeds 50% per ton of waste processed then RET would also be in default.

Performance Guarantees

RET has guaranteed to remove a minimum of 5% of the waste delivered to the plant for recycling. RET has agreed to remove 70% of the ferrous metal, 50% of the non-ferrous metal (aluminum), and 25% of the glass.

The facility must process 185,000 tons of MSW per year, receive 1,200 tons per day and process a minimum of 600 tons of acceptable waste per day. The facility must comply with all noise and odor standards. The compost must meet maximum requirements for heavy metals, pesticides and other chemicals and pathogens.

Marketing the Compost Product

RET is solely responsible for the sale and distribution of compost. RET may market the compost to the Christmas tree, forest seedling, hydro-mulch and bare root nursery industries without prior approval by Metro. It is anticipated that these markets will be most suited to development by MSW compost.

RET is restricted from marketing compost to the commercial and residential landscape industries without matching existing prices. These are the best markets for sewage sludge compost and yard debris compost.

RET is further restricted from marketing more than 5% of its product to any other user or location within a 50 mile radius of the Burnside Bridge in downtown Portland without prior consent of Metro. RET is free to market its compost for any use in areas beyond this radius.

Metro will play an important regulatory role in the marketing of MSW compost. Oversight is needed to ensure that adequate markets are preserved and developed for sewage sludge compost and yard debris compost.

EXECUTIVE OFFICER'S RECOMMENDATION

Executive Officer recommends adoption of Resolution No. 89-1112.

COMMITTEE REPORT

RESOLUTION NO. 89-1112, FOR THE PURPOSE OF AUTHORIZING EXECUTION OF A SERVICE AGREEMENT FOR DESIGN, CONSTRUCTION AND OPERATION OF A MASS COMPOSTING FACILITY WITH RIEDEL ENVIRONMENTAL TECHNOLOGIES, INC.

Date: July 12, 1989

Presented by: Councilor
Hansen

Committee Recommendation: The Solid Waste Committee voted 4 to 0 to recommend Council adoption of Resolution No. 89-1112. Councilors voting: Hansen, Buchanan, Ragsdale and Wyers. Committee members absent: None (one vacancy currently exists). This action taken July 11, 1989.

Committee Discussion/Issues: On June 27, 1989, the Solid Waste Committee reviewed and discussed at length the proposed service agreement for the design, construction and operation of a mass composting facility with Riedel Environmental Technologies, Inc.

On July 11, 1989, the Solid Waste Committee held a public hearing on the proposed service agreement. Representatives of Grimm's Fuel and McFarlane's Bark expressed concern that the sale of compost materials from the proposed composting facility would have a negative impact on the yard debris composting market in the area. They stated that they may be forced to reduce the fees for yard debris compost or to give it away if compost materials from the Riedel facility were marketed within 100 miles. Gary Newbore of Riedel Environmental Technologies, Inc., stated that they have contracted with six compost users that will take all of the compost produced by the compost facility for several months. He said that surveys indicate that their compost will not harm the local yard debris compost market.

Gordon Hunter of the Cully Association of Neighbors stated that they support the proposed project.

Main Issue: The major issue discussed by the Solid Waste Committee was the impact of the compost from the Riedel facility on the local yard debris compost market and other compost markets.

The Solid Waste Department staff and Mr. Newbore of Riedel pointed out that Section 10.2 of the proposed service agreement provides that the contractor's sales and disposal of compost product will be subject to Metro's regulatory powers and authority. Compost product sales will be subject to the following restrictions:

1. Sales for pick up by customers at the facility will be at a price equal to or greater than the lowest price for a compost product made from waste material within Metro's boundaries on similar terms all as determined by Metro.
2. Sales or deliveries for residential, commercial, industrial or governmental landscaping uses may be made only if Metro determines that:

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July 12, 1989

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(a) The price to be charged by contractor is equal to or greater than the prevailing price for any compost products produced from waste material at facilities within Metro's boundaries; and

(b) The sale of the compost product will not have an adverse impact on sales of other compost products.

The Committee instructed staff to include in the service agreement a definition of "prevailing price" and to revise the wording in Section 10.2 to more clearly state the intent.

GH:RB:pa

A:\RAYB.097

**MASS COMPOSTING FACILITY
SERVICE AGREEMENT**

*METROPOLITAN SERVICE DISTRICT
AND
RIEDEL ENVIRONMENTAL TECHNOLOGIES, INC.*

July 1989

MASS COMPOSTING SERVICE AGREEMENT

This Agreement is made and entered into this _____ day of _____ 1989, by and between the Metropolitan Service District of Portland, Oregon, a service district organized under Chapter 268 of the Oregon Revised Statutes and a municipal corporation and public body, corporate and politic, of the State of Oregon, and Riedel Oregon Compost Company, Inc., an Oregon Corporation with its home office in Portland, Oregon, each such party being hereinafter sometimes referred to as a "Party" and collectively as the "Parties."

RECITALS

(a) Metro has selected the Contractor to design, construct, own, shakedown, performance test and operate for the term provided for herein the Facility to recover Compost Product from Municipal Solid Waste and to market and distribute the Compost Product.

(b) The Contractor has agreed to design, construct, own, shakedown, performance test and operate for the term provided for herein the Facility to recover Compost Product from Municipal Solid Waste and to market and distribute the Compost Product. Actual design, construction, financing and operation of the Facility will be done by the Contractor, a wholly owned subsidiary of the Contractor, or by such affiliates of the Contractor as may be acceptable to Metro.

(c) The Contractor's authority to enter into this Agreement is evidenced by a corporate resolution of the Contractor duly adopted on _____, 19____, by the Board of Directors of the Contractor and certified by the Secretary of the Contractor, a certified copy of which is set forth as Exhibit A to this Agreement.

(d) Metro's authority to enter into this Agreement is evidenced by Resolution No. 89 - _____ duly adopted by the Metro Council on _____, 19____, a conformed copy of which is set forth as Exhibit B to this Agreement.

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ARTICLE I.

DEFINITIONS

As used in this Agreement, including the Exhibits hereto, the following terms shall have the respective meanings set forth in this Article I unless another meaning is expressly provided for a particular term elsewhere in this Agreement.

"AAA" shall mean the American Arbitration Association.

"Acceptable Waste" shall mean all Municipal Solid Waste except that portion of Municipal Solid Waste which is specifically defined as Unacceptable Waste, provided that Unacceptable Waste (excluding Hazardous Waste) delivered to the Facility and accepted by Contractor as provided herein shall be considered Acceptable Waste.

"Act of God" means an unanticipated grave natural disaster or other natural phenomenon, the effects of which could not have been prevented by the Party hereto claiming excuse of performance or relief from performance of the obligations of such Party under this Agreement or voided by the exercise of due care or foresight by such Party.

"Additional Bonds" shall mean any one or more series of bonds issued by Metro as part of Additional Financing required in connection with financing a Capital Improvement pursuant to and in accordance with the provisions of Section 6.16 hereof which are secured by any of the pledges, mortgages, properties, assets or revenues which are security for the Bonds pursuant to Section 4.1(c).

"Additional Equity Contribution" shall mean the equity contribution required or permitted to be made by the Contractor as part of the Additional Financing necessary to finance a Capital Improvement, all as contemplated by Section 6.16 hereof.

"Additional Financing" shall mean any combination of Additional Bonds, Additional Interim Debt, and Additional Equity Contribution provided pursuant to and in accordance with the provisions of Section 6.16 hereof for the purpose of financing the costs of acquiring, constructing and installing a Capital Improvement.

"Additional Interim Debt" shall mean such Interim Debt issued as part of Additional Financing required in connection with financing a Capital Improvement pursuant to and in accordance with the provisions of Section 6.16 hereof.

"Additional Performance Test" shall mean a performance test in accordance with the requirements and procedures set forth in Exhibit C hereto which is undertaken by the Contractor at the

request of Metro as provided in and pursuant to Section 8.12 hereof.

"Aeration Slabs" means beds where the Compostable Fraction is aerated for a period of approximately three (3) weeks.

"Aerobic Composting" means decomposition of organic matter in the presence of air.

"Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. Provided, however, no Credit Provider shall be considered an Affiliate of Metro or Contractor under this Agreement.

"Agreement" means this Mass Composting Service Agreement as the same may be amended, modified and supplemented from time to time in accordance with the provisions of Section 16.6 hereof.

"Anaerobic Composting" means the decomposition of organic matter in the absence of air.

"Annual Billing Period" shall mean for each Annual Billing Period other than the first, the twelve calendar month period commencing on the first Day of July following the calendar year in which the first Billing Month occurs and ending on the thirtieth 30th Day of June, and each twelve calendar month period thereafter. The first Annual Billing Period shall commence on the first Day of the Billing Month following the Commercial Operation Date and shall end on the thirtieth (30th) Day of June following the first Billing Month. The last Annual Billing Period shall end concurrently with the end of this Agreement.

"Applicable Law" shall mean all statutes, rules or regulations of the United States, State of Oregon, City of Portland, Multnomah County or Metro that apply to or govern the Facility.

"Arbitration Request" shall mean a written request to submit a dispute between the parties to binding arbitration pursuant to Section 13.1 hereof.

"ASP" shall mean the Arbitration Service of Portland.

"Authorized Representative" shall mean: (i) when used with respect to Metro, any person or persons designated from time to time by the Executive Officer by means of a writing signed by the Executive Officer and delivered to the Contractor; and (ii) when used with respect to the Contractor or RET, any person or persons designated from time to time by a resolution of the Governing Body of the Contractor or RET (as appropriate), a certified copy of which resolution is delivered to the Metro Authorized

Representative. Metro and the Contractor shall each have at least one and not more than three Authorized Representatives at any given time.

"Batch" means the Acceptable Waste loaded into the DANO drum at the Facility on a given day, tracked as it is repositioned and moved within the drum, and removed from the drum as Compostable Fraction.

"Bond Counsel" shall mean: (i) Stoel Rives Boley Jones & Grey, attorneys of Portland, Oregon; (ii) one of the law firms listed on Exhibit D and selected by Metro or any other qualified law firm agreed to by Metro, the Contractor and the Credit Provider.

"Bond Documents" shall mean the bond ordinance, the Loan Agreement, the Bond Purchase Agreement and any other document, instrument or agreement (other than this Agreement) executed and delivered in connection with the issuance and sale of the Bonds or as security therefor.

"Bonds" shall mean the limited obligation revenue bonds to be issued by Metro, at the request of the Contractor, for the purpose of providing part of the funds necessary to acquire, construct and install the Facility, which bonds may be issued in one or more series and which, to the full extent permissible under applicable law, shall be issued such that the interest thereon shall be excludable for federal income tax purposes from the gross incomes of the owners thereof and, to the extent not so permissible under applicable law, shall be issued such that the interest thereon shall be subject to federal income taxation. In addition, Bonds shall include the Term Loan as provided for in the Reimbursement Agreement.

"Business Day" means any day other than a Saturday, Sunday or holiday for state governmental employees in the State of Oregon.

"By-Pass Waste" shall mean Acceptable Waste other than Rejected Waste that Metro delivers or is prepared to deliver to the Facility, which the Contractor does not or cannot Process.

"Capital Improvement" shall mean any repair, replacement, improvement, alteration, or addition to the Facility or any part thereof (other than any repair, replacement, improvement, alteration, or addition constituting normal maintenance of the Facility).

"Certificate of Completion" shall mean a certificate of the Contractor's Authorized Representative in the form attached hereto as Exhibit E to be executed and delivered to Metro upon

the completion of the acquisition, construction, installation and Performance Test of the Facility.

"Change in Law" means the occurrence of any event or change in law specifically set forth below:

(a) the adoption, promulgation, modification, or change in administrative interpretation occurring after the date of this Agreement, which adoption, promulgation, modification, or change in administrative interpretation relates to:

- (i) any federal statute, regulation, ruling or executive order;
- (ii) any state, city, county, special district, Metro, or other local government statute, ordinance, regulation or executive order; or
- (iii) any substantially adverse judicial interpretation of such laws entered as a matter of record by court of competent jurisdiction; or

(b) any order or judgment of any federal, state or local court, administrative agency or governmental body issued after the date of this Agreement, if:

- (i) such order or judgment is not also the result of the willful or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and
- (ii) the Party relying thereon, unless excused in writing from so doing by the other Party, shall take or have taken, or shall cause or have caused to be taken, all reasonable actions in good faith to contest such order or judgment (it being understood that the contesting in good faith of an such order or judgment shall not constitute or be construed as a willful or negligent action of such Party); or

(c) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any official permit, license, or approval after the date of this Agreement; provided that if any matter described in (a), (b) or (c) of this definition establishes requirements increasing: (I) the cost to Contractor of acquiring and preparing the Facility Site, or designing, constructing, starting-up, operating or maintaining the Facility, or conducting the Performance Test; or (II) the Facility Price; then such matter shall only constitute a "Change

in Law" for purposes of this Agreement if such increase is in an amount greater than one (1) percent of the Facility Price; and provided further that no matter described in (a), (b) or (c) of this definition shall constitute a "Change in Law" for purposes of this Agreement unless the changes resulting therefrom exceed the most stringent legal requirements applicable to Contractor or the Facility which were:

- (A) in effect as of the date of this Agreement;
- (B) agreed to by Contractor in any applications of the Contractor for official permits, licenses or approvals pending as of the date of this Agreement; or
- (C) contained in any official permits, licenses, or approvals provided to the Contractor with respect to the Facility which are obtained by the Contractor as of the date of this Agreement;

and provided further that the adoption of or change, amendment or modification to any federal tax, state tax, local tax, or any other tax law shall not be considered a "Change in Law" for purposes of this Agreement, and an increase in Contractor's cost shall not include any impairment of the tax position of the Contractor or any lessor of the Facility under federal, state or local tax law or any other tax law.

"Change Order" shall mean any change in the Facility made during the course of construction of the Facility in the Facility Specifications or the Work, including any change requiring a Capital Improvement, which change is made pursuant to the provisions of Sections 6.12, 6.13, 6.14 or 6.15 hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Commencement Date" shall mean the day next succeeding the date the Notice to Proceed is received by the Contractor.

"Commercial Operation Date" shall mean the date specified as such by Metro and the Contractor pursuant to Section 7.7(b) hereof.

"Compostable Fraction" means the fine fraction of the material immediately leaving the DANO Drum from which Compost Product will be produced. After removal from drums this fraction is then placed on the Aeration Slabs and processed for a period of approximately three (3) weeks.

"Composting" means a controlled or engineered method of Municipal Solid Waste treatment in which the organic component of

the solid waste stream is biologically decomposed under aerobic conditions to a state in which it can be easily and safely handled, stored and applied.

"Compost Contracts" means any agreement or agreements for the transfer for a beneficial use to third parties of Compost Product.

"Compost Product" means a highly stabilized marketable or usable organic product which has resulted from the Processing and Composting of Acceptable Waste by using a combination of mechanized equipment and Aerobic Composting. It is the result of a final screening and glass processing of Mature Compost.

"Compost Product Revenues" shall mean the gross revenues derived from the sale of Compost Product.

"Composted Waste Product" means material that results from the controlled decomposition of Municipal Solid Waste, municipal sewage sludges or residues, or yard debris, grass clippings, and other similar wastes into a useable compost or humus-like product for soil enhancement, ground cover or other horticultural or agricultural uses by allowing for a Thermophilic and Aerobic Composting of the material. Composted Waste Product does not include: (1) mixtures or blends containing other waste material or chemical additives, or (2) products produced from by-products of the forest industry including composted barks or sawdust.

"Construction Period" shall mean the period beginning on the Commencement Date and ending on the Commercial Operation Date.

"Construction Period Insurance" means the Facility insurance coverage maintained by Contractor from the Commencement Date until the Commercial Operation Date with generally recognized, financially responsible insurers reasonably acceptable to Metro and qualified and licensed to insure risks in the State of Oregon.

"Construction Schedule" shall mean the overall schedule for the acquisition, construction, installation and Performance Testing of the Facility required to be developed by the Contractor, submitted to Metro and periodically updated as provided in Section 6.3 hereof.

"Consulting Engineer" shall mean a nationally recognized consulting engineer or firm knowledgeable in the design, construction, acceptance, operation, and maintenance of solid waste disposal and resource recovery facilities, selected by Metro for the purpose of the feasibility report to be used in connection with the marketing of the Bonds, and monitoring on behalf of Metro the construction of the Facility, Performance Testing and the operations of the Facility.

"Consulting Engineer's Report" means the report detailing the Consulting Engineer's findings regarding the Performance Test of the facility as provided for in Section 7.7.

"Consumer Price Index" or "CPI" shall mean the Consumer Price Index for all Urban Consumers for the Portland, Oregon, Standard Metropolitan Statistical Area [~~1967-1980~~] (1982-1984 = 100), as published from time to time by the United States Department of Labor, Bureau of Labor Statistics, or any other appropriate index as may be mutually agreed upon by the parties.

"Contract Year" shall mean for each Contract Year other than the first, the Annual Billing Period. The first Contract Year shall commence on the Commercial Operation Date and shall end on the thirtieth (30th) Day of June following the Commercial Operation Date if the Commercial Operation Date occurs on or between July 1 through December 31. Otherwise the first Contract Year shall commence on the Commercial Operation Date and shall end on last day of the second Annual Billing Period.

"Contractor" shall mean Riedel Oregon Compost Company, Inc., a subsidiary of Riedel Environmental Technologies, Inc., an Oregon corporation, and, to the extent permitted by the express terms of this Agreement, its successors and assigns.

"Contractor Event of Default" shall mean the occurrence of any one or more of the events described in Section 15.1 hereof.

"Contractor Fault" shall mean any occurrence or event of any nature whatsoever other than an Uncontrollable Circumstance or Metro Fault.

"Cost Substantiation" shall mean:

(a) with respect to any cost incurred by the Contractor for which Cost Substantiation is required by this Agreement for the purpose of the Financing or any increases in the Tip Fee, delivery to Metro of a certificate signed by the principal engineering officer and the principal financial officer of the Contractor setting forth the amount of such cost and the reason why such costs is properly chargeable to Metro, and stating that such cost is an arm's length and competitive price for the service or materials supplied; and

(b) with respect to any cost incurred by Metro for which Cost Substantiation is required by this Agreement (other than any cost described in (a) of this definition), delivery to the Contractor of a certificate signed by the Consulting Engineer and the Authorized Officer of Metro or his/her designee, setting forth the amount of such cost and the reason why such cost is properly chargeable to the Contractor, and stating that such cost

is an arm's length and competitive price for the service or materials supplied;

provided that, with respect to either (a) and (b) above, any direct cost or expense of overhead or administrative need not be substantiated by inclusion in the required certificate but a written statement that such cost or expense is to be allocated in accordance with the standard practice of the Contractor or Metro, as the case may be, pursuant to standard accounting principles without exception; and

provided further that if the Party receiving Cost Substantiation requests, the Party providing Cost Substantiation will provide copies of such additional back-up documentation as may be available to reasonably demonstrate the incurrence of the cost as to which Cost Substantiation is required for the purposes of the Cost Substantiation described in (a) above.

"Credit Enhancement" shall mean one or more letters of credit, lines of credit, municipal bond insurance policies, surety bonds or other similar credit enhancement devices issued to or in favor of the Trustee as security for the payment when due of the principal of and interest on the Bonds of a particular series, which credit enhancement device: (i) shall be in form and substance, and shall be obtained for such price, as shall be reasonable satisfactory to Metro; (ii) shall have an initial term of not less than five years from the date of issuance thereof; and (iii) be issued by such Credit Provider and have such other terms and conditions as will result in the Bonds secured thereby being assigned a long-term rating of "A" or higher by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Credit Provider" shall mean Credit Suisse, a bank organized and existing under the laws of Switzerland, acting through its New York branch ("Credit Suisse"), as issuer of the Credit Enhancement, and any assignees thereof or participants therewith under the Credit Enhancement or any other issuer or issuers of the Credit Enhancement.

"Credit Provider's Engineer" shall mean the engineer or engineers so designated by the Credit Provider.

"DANO Drums" means the horizontal rotating vessels of proprietary design which perform initial processing of Acceptable Waste as part of the Composting process.

"DANO Technology" shall mean the technology utilized for Processing waste into Compost described in Exhibit F hereto.

"Day" means a 24-hour period from 12:00 midnight on one (1) calendar day until the same time on the following day.

"Debt Service" for any given period of time shall mean all amounts of: (i) interest accruing on the outstanding Bonds (including Additional Bonds if any) during such period; and (ii) if any portion of the period in question falls within the twelve month period preceding a Principal Payment Date, an amount equal to the principal on all outstanding Bonds coming due on such Principal Payment Date (whether by maturity, mandatory redemption or otherwise) multiplied by a fraction, the numerator of which shall be the number of days of the period in question which fall within such twelve-month period and the denominator of which shall be 365.

"Delivery Hours" shall mean from 7:00 a.m. to 6:00 p.m., each Monday through Saturday (except January 1, Memorial Day, July 4th, Labor Day, Thanksgiving and December 25th).

"Delivery Schedule" shall mean the schedule to be established by the Contractor and Metro subject to and in accordance with the provisions of Section 8.2 hereof pursuant to which Metro shall deliver, or cause to be delivered, to the Facility, Acceptable Waste from and after the Commercial Operation Date.

"DEQ" means the State of Oregon Department of Environmental Quality.

"Deration Payment" means the payment made by Contractor to pay principal and interest on a portion of the Bonds pursuant to Section 7.5(a) hereof.

"Detailed Plans" means working drawings required for the construction of the Facility.

"Direct Costs" shall mean, in connection with any cost or expense incurred by either Party for which Cost Substantiation is required pursuant to the terms of this Agreement, 1.10 multiplied by the sum of (i) the costs of the Party's payroll directly related to the performance or supervision of any obligation of a Party pursuant to the terms of this Agreement, consisting of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Workers' Compensation Insurance, federal and state unemployment taxes and all medical and health insurance benefits, plus (ii) the costs of materials, services, direct rental costs and supplies purchased by such Party, plus (iii) the costs of travel and subsistence as authorized by State law, plus (iv) the reasonable costs of any payments to subcontractors necessary to and in connection with the performance of such obligation, plus (v) any other cost or expense incurred by the Contractor which is directly or normally associated with the task performed by the Contractor.

"Dispute" shall mean any controversy or difference between the Parties hereto arising out of or in connection with or concerning the meaning, application, performance or breach of the Agreement.

"Dispute Notice" shall mean a written notice given by one Party to the other pursuant to the provisions of Section 13.1(b) hereof or pursuant to any other provision of this Agreement which sets forth procedures for initiating the resolution of any Dispute, which notice shall: (i) state that the Party giving such notice desires to initiate the dispute resolution process provided for in Article XIII hereof; and (ii) briefly describe the matter to be submitted to such dispute resolution.

"Drawdown Schedule" means the schedule for payment of funds to Contractor set forth in Exhibit G hereto.

"Equity Contribution" shall mean that sum of money contributed by Contractor, in the manner contemplated by the Reimbursement Agreement, equal to 15 percent of the Facility Price.

"Executive Officer" shall mean the Executive Officer of Metro.

"Exercise Notice" means a notice delivered by Metro to the Contractor specifying Metro's exercise of its right of first refusal in accordance with Section 3.4.

"Extended Term" shall mean a period: (i) beginning on the Day following the last Day of the Initial Term or the Extended Term then in effect (as the case may be); and (ii) ending on the fifth anniversary of the date described in (i) of this sentence.

"Extension Offer" means a written offer by Metro to the Contractor to extend the Initial Term or any Extended Term as provided for in Section 3.2.

"Extension Period" means the period of 547 Days that follows the Scheduled Completion Date plus any extension thereof pursuant to a Time Extension as provided in Section 6.1.

"Facility" shall mean the improvements constructed at the Facility Site by the Contractor designed to accept and Process Acceptable Waste into Compost Product. For the purpose of Article III and Section 15.3 Facility includes the Facility Site.

"Facility Price" shall mean the sum of NINETEEN MILLION [TW0] NINE HUNDRED [FIFTY] FIFTEEN THOUSAND NINE HUNDRED AND 00/100 DOLLARS [~~(\$19,250,000)~~] (\$19,915,900) multiplied by the Facility Price Adjustment Factor calculated as of the Commencement Date.

"Facility Price Adjustment Factor" means a fraction the numerator of which is the Chemical Engineering Plant Cost Index as of the date for which an adjustment is to be made and the denominator of which is such index as of July 1, 1988, where the Chemical Engineering Plant Cost Index means the index published by Chemical Engineering News (McGraw-Hill) or such other index as may be agreed to by the parties if that index is no longer available.

"Facility Site" shall mean the real property and all appurtenances thereto described in Exhibit H hereto.

"Facility Specifications" shall mean those specifications for the design, construction and operational capabilities of the Facility as set forth in Exhibit I hereto.

"Fair Market Value" shall mean the price that a willing buyer would pay to a willing seller of the Facility in an arm's-length transaction wherein neither the buyer nor the seller is acting under duress or compulsion, taking into account all factors relevant to the market value of a property such as the Facility.

"Fiscal Year" shall mean Metro's fiscal year as established from time to time by its Governing Body in accordance with Applicable Law, currently being each one year period commencing on July 1 of each year.

"Fresh Compost" means the material removed from the Aeration Slabs after approximately three weeks to be placed on Maturation Slabs for an additional three weeks of processing, such material being organic matter that has gone through the Thermophilic stage of Composting and has achieved sanitization and has undergone partial decomposition but has not yet been stabilized.

"Governing Body" shall mean: (i) when used with respect to Metro, the Metro Council; and (ii) when used with respect to the Contractor, RET or any other private corporation, the board of directors thereof.

"Guaranteed Annual Tonnage" shall mean 185,000 Tons for each Contract Year. If the initial or final year of a Term is less than a full year, the Guaranteed Annual Tonnage for such year shall be reduced proportionately based on the number of days in such shorter period.

"Guaranteed Daily Processing Capacity" shall mean 600 Tons of Acceptable Waste per Day.

"Hazardous Waste" means materials or residues which are classified as hazardous pursuant to federal or Oregon law.

"Independent Auditors" shall mean a firm of nationally recognized independent certified public accountants selected by Metro and reasonably acceptable to the Contractor.

"Independent Engineer" shall mean one of the independent engineers or firms listed on Exhibit [F] J and selected by Metro.

"Initial Term" shall mean the term commencing on the date hereof and, unless sooner terminated as provided herein, expiring on the twentieth anniversary of the Commercial Operation Date.

"Intercreditor Agreement" means that certain Intercreditor Agreement respecting the Facility to be executed by and among Metro, the Trustee and Credit Suisse as the Credit Provider.

"Interim Debt" means debt, the proceeds of which are used to provide the Equity Contribution.

"Leachate" means liquid that has come into direct contact with solid waste and contains dissolved and/or suspended contaminants as a result of such contact, which liquid is also known as the liquid generated from composting piles.

"Loan Agreement" shall mean the loan agreement or loan agreements to be entered into between the Contractor and Metro pursuant to which Metro agrees to loan the proceeds of a particular series of Bonds to the Contractor for the purpose of providing funds to finance a portion of the costs of acquiring, constructing and installing the Facility.

"Manufacturer's Warranties" shall mean any and all warranties, express or implied, given or made by a manufacturer and/or seller or any component of the Facility, or a licensor of any technology or process used in the operation or maintenance of the Facility, relating to the performance, merchantability, fitness for a particular purpose, useful life, mean time between failure or otherwise relating to the usefulness or efficacy of such component or technology.

"Maturation Slab" means beds where Fresh Compost is stabilized into Mature Compost.

"Mature Compost" means the stabilized organic material removed from Maturation Slabs to be processed into a final Compost Product.

"Maximum Daily Volume" shall mean the delivery of 800 Tons of Acceptable Waste.

"Maximum Residue Guarantee" shall mean an amount of Residue which does not exceed thirty-five percent (35%) per Wet Ton of Acceptable Waste delivered.

"Metro" shall mean the Metropolitan Service District, Portland, Oregon, a municipal corporation, political subdivision and public body, corporate and politic, organized and existing under the laws of the State of Oregon, and its successors and, to the extent expressly permitted by the terms of this Agreement or otherwise required by law (whether now existing or hereinafter enacted), its assigns.

"Metro Event of Default" shall mean the occurrence of any one or more of the events described in Section 15.2 hereof.

"Metro Fault" shall mean: (a) any act or omission by Metro, including a modification or improvement to the Facility initiated, requested or caused by Metro, that results in or significantly contributes to a cost increase, delay, failure to meet Performance Standards or other adverse event, and (b) any Metro Event of Default.

"Midpoint Month" for a particular Annual Billing Period shall mean: (i) with respect to an Annual Billing Period of twelve (12) months, the sixth (6th) month of such Annual Billing Period; and (ii) for an Annual Billing Period of less than twelve (12) months, the month containing the Day that falls one-half way through such Annual Billing Period.

"Minimum Annual Throughput Guarantee" shall mean 185,000 Tons of Acceptable Waste per year.

"Monthly Work Schedule" shall mean the updated work schedules to be provided by the contractor to Metro on a monthly basis during the Construction Period pursuant to and meeting the requirements of Section [6-2] 6.3 hereof.

"Municipal Solid Waste" shall mean a heterogeneous mixture of residential and commercial waste.

"Notice to Proceed" shall mean the written notice given by Metro to the Contractor pursuant to and in accordance with the provisions of Section 6.1 hereof authorizing the Contractor to commence the acquisition, construction and installation of the Facility.

"Official Certificate" shall mean a written certificate delivered by one Party to the other as required or permitted under this Agreement representing, warranting and certifying the matters required or permitted to be addressed therein and signed by the delivering Party's Authorized Representative.

"Operation and Maintenance Charge" shall mean [\$2,800,000] \$2,977,320, as adjusted and as more fully defined in Exhibit K hereto.

"Operation and Maintenance Manual" shall mean the manual which the Contractor is required to prepare in accordance with and pursuant to the provisions of Section 8.16(b) hereof.

"Pass Through Costs" shall mean the amount of certain costs and extraordinary expenses incurred during operation of the Facility, as more particularly specified in Exhibit [F] K hereto.

"Payment/Performance Bond" shall mean the payment and performance bonds required to be provided by the Contractor during and in connection with the acquisition, construction and installation of the Facility pursuant to and in accordance with the requirements of Section [6-16] 6.11 hereof.

"Performance Shakedown" shall mean that period of time preceding the Performance Test, during which the essential mechanical operation of the Facility systems will be tested and refined (as contrasted with the comprehensive testing of the Facility to determine whether the Facility meets the Throughput Performance Standards and the Residue Performance Standards).

"Performance Standards" shall mean those Facility performance specifications set forth in Exhibit [K] L hereto.

"Performance Test" shall mean the testing of the Facility for its ability to Process Acceptable Waste, including the amounts of Recovered Materials, Compost Product and Residue generated during such Processing, which testing shall be conducted in accordance with the Performance Test Procedures.

"Performance Test Date" means the date(s) recorded in the Performance Test Log Book with respect to the particular Performance Test recorded.

"Performance Test Log Book" or "Log Book" means the written record(s) of all data and measurements taken during Performance Test as specified in Exhibit [B] C hereto.

"Performance Test Procedures" shall mean those procedures for the conduct of the Performance Test as set forth in Exhibit [B] C hereto.

"Person" means any natural person, partnership, joint venture, corporation or other entity or organization, public or private, and any unit of government or agency thereof.

"Plant Manager" shall mean the person or persons selected and trained by the Contractor to oversee and run the operations of the Facility during Processing, as contemplated by, in accordance with and meeting the requirements of Section 8.16(a) hereof.

"Prevailing Price" means the average current market price as determined by Metro's Director of Solid Waste for Composted Waste Products other than Compost Product produced at the Facility. In determining prevailing price, Metro shall not consider prices found by Metro to be the result of the sale of Composted Waste Product below cost or as the result of a liquidation or other similar proceeding.

"Prime Rate" shall mean that rate of interest publicly announced from time to time by the U. S. National Bank of Oregon, Main Branch, Portland, Oregon, as being its "prime rate" or "reference rate" of interest, as the same shall change from time to time. With respect to interest on any amounts required to be paid by one Party to the other Party hereunder, as to which interest is to be calculated by reference to the Prime Rate, any change in the Prime Rate during the period in which such interest is accruing shall be effective as of the date of such change.

"Process" and "Processing" shall mean the treatment of Acceptable Waste at the Facility commencing with the placement of Acceptable Waste on a conveyor belt where manual separation of recoverable materials occurs, followed by the use of a magnet to remove ferrous materials, the subsequent introduction of the remaining waste into the DANO Drum for a period of at least six (6) hours while the Drum rotates and water is added, the separation of the output of the DANO Drum into Residue and a Compostable Fraction, the placement of the Compostable Fraction on the Aeration Slabs for a period of approximately twenty-one (21) days to produce Fresh Compost, the placement of the Fresh Compost on the Maturation Slabs for an additional period of approximately twenty-one (21) days to produce Mature Compost and a final screening of the Mature Compost to produce Compost Product.

"Processing Capacity" shall mean the capacity (measured in Tons per day, Tons per week, Tons per month or Tons per year, as appropriate) of the Facility to Process Acceptable Waste.

"Process Water" means the water used to process Acceptable Waste into Compost Product.

"Progress Reports" shall mean the various reports described in Exhibit L hereto which the Contractor is required to prepare and deliver during the course of the construction of the Facility as provided in Section 6.3 hereof.

"Purchase Contract" shall mean a written agreement to sell the Facility in accordance with Section 3.4 hereof.

"Project Manager" shall mean the person selected by the Contractor to oversee the construction of the Facility.

"Purchase Offer" shall mean a bona fide, arm's-length written offer to purchase the Facility as provided in Section 3.4.

"Recoverable Materials" shall mean materials in the Acceptable Waste stream potentially available for recycling or resale.

"Recovered Materials" shall mean materials in the Acceptable Waste stream actually recovered for recycling or resale.

"Recovered Materials Performance Standards" shall mean those standards set forth in Exhibit L.

"Recovered Materials Revenues" shall mean the gross revenues derived from the sale of Recovered Materials.

"Recycling Center" means area within the Facility where the public can drop off source-separated materials.

"Reference Waste Analysis" shall mean the December 1987 study prepared by SCS Engineers for Metro entitled "Waste Stream Composition Study."

"Reference Waste Composition" shall mean the composition of the waste set forth below as determined pursuant to the Reference Waste Analysis:

Waste Composition:	Percent:
Paper.	34.8
Yard Debris.	9.9
Wood	8.0
Food Waste	8.8
Diapers.	1.5
Miscellaneous Organics	6.7
Textiles	3.8
Fines.	2.0
Plastics	7.8
Aluminum	0.9
Miscellaneous Organics	5.5
Ferrous Metals	6.0
Nonferrous Metals.	0.2
Glass (recyclable)	3.6
Others	0.5
TOTAL	100.0
Moisture Content	28.4

"Reimbursement Agreement" means that certain credit and reimbursement agreement to be executed by and between Contractor and Credit Suisse as Credit Provider, including without

limitations any deed of trust, security agreement, fixture filing or any other security document executed in connection therewith, pursuant to which Credit Suisse agrees to issue the Credit Enhancement.

"Rejected Waste" shall mean Acceptable Waste delivered or sought to be delivered to the Facility which is not accepted or not Processed for the reasons set forth in Section 8.2(d).

"Required Insurance" shall mean the various types of insurance coverage described in Exhibit M hereto which the Contractor is required to obtain and maintain pursuant to and in accordance with Article II hereof, with each such type of insurance being in form satisfactory to Metro.

"Required Permits" shall mean all permits, orders, licenses and approvals of any governmental unit or agency which, under Applicable Law, are required to be obtained in connection with the acquisition, construction, installation and operation of the Facility and the sale or other distribution of Compost Product or Recovered Materials, including without limitation those described in Exhibit N hereto.

"Requisition Certificate" shall mean a certificate prepared by the Contractor, and meeting the applicable requirements of the Intercreditor Agreement, requesting and directing the Trustee to disburse moneys on deposit in the Construction Fund for the purpose of paying the costs of acquiring, constructing and installing the Facility.

"Reserve" shall mean any reserve fund established under any Bond Document for the purpose of paying when due Debt Service on the related financing in the event other moneys are not available for such purpose.

"Residue" shall mean residual material(s) remaining after the Processing of Acceptable Waste and designated for disposal in a landfill or alternate disposal site or any By-Pass Waste that is designated by Metro for disposal in the same manner as such residual materials; provided however that Residue does not include Rejected Waste.

"RET" shall mean Riedel Environmental Technologies, Inc., an Oregon corporation and, to the extent permitted by this Agreement, its successors and assigns.

"Scheduled Completion Date" shall mean the later of (i) the date occurring 593 days following the Commencement Date, or (ii) the date occurring after the date set forth in clause (i) as the same may be extended from time to time as provided in this Agreement, by any Time Extension.

"Scheduled Maintenance" shall mean those periods of time when the Facility has a planned partial or full shutdown of Processing of Acceptable Waste as provided in Section 8.11(a) hereof.

"Subcontractor(s)" shall mean any Person with whom Contractor contracts for the purpose of having such Person provide labor, materials or services for the construction or operation of the Facility.

"Technical Dispute" shall mean a dispute regarding the conformity of the Facility or its performance to the Facility Specifications or Performance Standards set forth herein, which is capable of prompt resolution by the Independent Engineer based on an examination or inspection of the Facility, the relevant standards and specifications, and relevant data concerning performance.

"Term" shall mean: (i) the Initial Term; and (ii) each Extended Term.

"Term Loan" shall mean the loan extended by the Credit Provider in the event of termination of the Credit Enhancement as more particularly defined in the Reimbursement Agreement.

"Thermophilic" means the stage of Composting where a series of micro-organisms develops over a period of time, providing elevated temperatures in the composting pile.

"Throughput" shall mean the Processing of Acceptable Waste by the Facility.

"Throughput Performance Standard" shall mean the standard Throughput of Acceptable Waste as specified in Exhibit [K] L hereto.

"Time Extension" shall mean an extension of time of the Scheduled Completion Date or the Extension Period due to Metro Fault, or Uncontrollable Circumstances as provided in Section 6.1(e).

"Tip Fee" shall mean the payments required to be made by Metro to the Contractor in consideration of the Processing of Acceptable Waste, which payments are to be made in the amounts and at the times and subject to adjustment in the manner provided in Exhibit K hereof.

"Ton" means 2,000 pounds.

"TPY" means Tons Per Year.

"Trustee" shall mean the Person appointed to act as trustee with respect to the Bonds.

"Unacceptable Waste" shall mean:

- (i) Hazardous Waste;
- (ii) Radioactive waste or materials;
- (iii) Masonry, brick, concrete, stone, or any other non-combustible industrial, construction or demolition waste, except as Contractor may elect to accept;
- (iv) All wastes requiring special handling to comply with applicable federal, state or local law regarding (A) pathological, infectious, or explosive materials; (B) oil sludge; (C) cesspool or human waste; and (D) dead animals or animal remains or waste;
- (v) Any item of waste exceeding four (4) feet in any one dimension or exceeding one hundred (100) pounds in weight;
- (vi) Any item of waste either smoldering or on fire or at its kindling point or in the process of initiating combustion;
- (vii) Sewage sludge, septic tank and cesspool pumpings or other sludge from air or water pollution control facilities or water supply treatment facilities;
- (viii) Tires, plastics, or leather in quantities in excess of those normally collected from residential units except as Contractor may elect to accept;
- (ix) Any item posing a reasonable likelihood of damaging the Project, or the processing of which would be likely to impose a threat to health or safety in violation of any judicial decision, or order, or action of any federal, state or local government or any agency thereof, or any other regulatory authority or applicable law or regulation;
- (x) White Goods and other discarded home and industrial appliances; and

- (xi) Any other wastes which Metro and the Contractor may at any time agree in writing to designate as "Unacceptable Waste."

"Uncontrollable Circumstance" shall mean any act, event or condition described in clauses (a) through (h) of this definition which has a material adverse effect on the ability of any Party to obtain the benefits of its rights or to perform its obligations under this Agreement, or that materially increases the cost to such Party to obtain the benefits of such right or to perform such obligations, but only if such act, event or condition and its effect: (i) are beyond the reasonable control of the Party relying thereon (or any third party for whom the Party relying thereon is directly responsible) as justification for not performing any obligation or complying with any condition required of such Party under this Agreement; and (ii) could not have been reasonably anticipated and avoided by the Party relying thereon:

(a) An Act of God;

(b) Any of the following, whether or not an Act of God: landslide, lightning, fire, explosion, hurricane, tornado, very high wind, blizzard, earthquake, ice storm, volcanic eruption, drought, flood;

(c) Acts of a public enemy, war (whether or not declared) or governmental intervention resulting therefrom, blockade, 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 design, construction, startup, conduct of Acceptance Tests or operation of the Facility, but not including the license or consent of the licensor of the technology, if such act or event shall not be the result of the wilful or negligent action or inaction of the party relying thereon or of any third party for whom the party relying thereon is directly responsible, and if the party relying thereon, unless excused from so doing by the other party, shall be taking or have taken or shall cause to 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 action of such party);

(e) A Change in Law;

(f) The failure of any appropriate federal, state, municipal, county or other public agency or authority or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services,

water and sewer lines and power transmission lines to the Facility Site, which are required for and essential to the construction, startup, shakedown, conducting of Performance Tests, maintenance, or operation of the Facility;

(g) Contamination of the Facility by Hazardous Waste but only if such contamination occurs as the result of the delivery of Hazardous Waste by others not under Contractors control and only if such contamination occurs prior to the time such Hazardous Waste enters the DANO Drum provided further that Section 8.9 hereof shall govern the respective obligations of Metro and the Contractor if such an event occurs; or

(h) Strikes, work stoppages or other labor disputes or disturbances (except any such occurrence caused by the failure of the affected party to bargain in good faith or to comply with a collective agreement or applicable labor laws).

"Waste Composition Test" shall mean the tests of the Acceptable Waste stream composition conducted from time to time by the Contractor pursuant to and in accordance with the provisions of Section 8.13(b) hereof, which tests shall each be conducted in accordance with the methods of waste stream analysis described in the Waste Survey Protocol.

"Waste Survey Protocol" shall mean the waste stream composition analysis methods described in "Municipal Solid Waste Survey Protocol", Section 7, US EPA Contract No. 68-03-2486, prepared by SCS Engineers.

"Week" means a period of seven consecutive Days commencing at 12:01 a.m. on Sunday.

"White Goods" means discarded kitchen and other large, enameled appliances.

"Yard Waste" or "Yard Debris" means plant clippings, prunings, grass clippings, leaves and other discarded materials from yards and gardens.

ARTICLE II.

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Contractor

The Contractor hereby makes the following representations and warranties to and for the benefit of Metro:

(a) The Contractor is duly organized and validly existing as a corporation in good standing under the laws of the state of

Oregon, and it is duly qualified to do business in the State of Oregon.

(b) The Contractor has full legal right, power and authority to execute and deliver, and perform its obligations under, this Agreement, and has duly authorized the execution and delivery of this Agreement by proper corporate action of its Governing Body. This Agreement has been duly executed and delivered by the Contractor in accordance with the authorization of its Governing Body and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

(c) Neither the execution or delivery by the Contractor of this Agreement, the performance by the Contractor of its obligations hereunder, nor the fulfillment by the Contractor of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of any Applicable Law; (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument, to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor, except as expressly contemplated by the Bond Documents.

(d) No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with, any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the Contractor, except such as have been duly obtained or made.

(e) There is no action, suit, proceeding or, to the best of the Contractor's knowledge, investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of the Contractor's knowledge, threatened, against the Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

(f) The Contractor holds, or is expressly licensed to use, all patent rights, licenses and franchises necessary or

appropriate to construct, operate and maintain the Facility pursuant to and in accordance with the terms of this Agreement.

(g) There has been no material adverse change in the Contractor's financial condition since June 29, 1988.

Section 2.2 Representations and Warranties of Metro

Metro hereby makes the following representations and warranties to and for the benefit of the Contractor:

(a) Metro is a municipal corporation, political subdivision and public body, corporate and politic, of the State of Oregon duly organized and validly existing under the Constitution and laws of the State of Oregon, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) Metro has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of Metro, enforceable against Metro in accordance with its terms.

(c) Neither the execution and delivery by Metro of this Agreement, Metro's performance of its obligations hereunder nor its fulfillment of the terms or conditions hereof: (i) conflicts with, violates or results in a breach of any Applicable Law; (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument, to which Metro is a party or by which Metro or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with, any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery by Metro of this Agreement except those that have been duly obtained or made.

(e) There is no action, suit, proceeding or, to the best of Metro's knowledge, investigation, at law or in equity, before or by any court or governmental or administrative authority, commission, board, agency or instrumentality pending or, to the best of Metro's knowledge, threatened, against Metro, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance of Metro's obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement

or any agreement or instrument entered into by Metro in connection with the transactions contemplated hereby.

**ARTICLE III. TERM; OPTION TO RENEW; SALE OF FACILITY;
SUBCONTRACTS**

Section 3.1 Initial Term of the Agreement

The Initial Term of this Agreement shall commence on the date hereof and, unless sooner terminated as provided herein, shall expire on the twentieth (20th) anniversary of the Commercial Operation Date.

Section 3.2 Option to Renew

(a) This Agreement may be extended for a maximum of four (4) five-year Extended Terms, subject to the terms of this Section 3.2. During the final year of the Initial Term or any Extended Term, the Parties shall determine whether or not to extend the Agreement for an Extended Term, as set forth below.

(b) Metro's Option to Renew. If Metro determines to renew the Agreement after the expiration of the Initial Term (or after the expiration of the first, second or third Extended Term, as the case may be), Metro, at least two hundred seventy (270) days prior to the expiration of the Term then in effect, shall provide the Contractor with an Extension Offer. Contractor shall accept or reject the Extension Offer within thirty (30) days of Contractor's receipt thereof, by delivering to Metro a written notice of acceptance or rejection. Contractor's failure to respond timely to the Extension Offer shall be deemed an acceptance thereof.

(c) Terms and Conditions Upon Election to Renew. If the parties mutually agree to renew the Agreement, all terms and conditions of this Agreement shall remain in effect, except that the parties shall engage in good faith negotiations to determine the Tip Fee during the Extended Term. In the event the parties are not able to reach an agreement within one hundred eighty (180) days prior to the Expiration of the Term then in effect regarding the Tip Fee, the matter shall be submitted to arbitration pursuant to Article XIII of this Agreement. In the event the Tip Fee is referred to arbitration the decision of the arbitrators shall be rendered no later than sixty (60) days prior to the end of the Term then in effect. After the decision of the arbitrators is made each party may reject the determination by giving written notice thereof no later than thirty (30) days prior to the end of the Term then in effect. If Metro shall reject the determination of the Arbitrators then the provisions of Section 3.2(d) and Section 3.5 shall apply. If Contractor

shall reject the determination of the Tip Fee then Section 3.2(d) shall apply.

If the arbitrators fail to render a decision within the time provided then the Term then in effect will be extended by an amount of time equal to the delay in rendering the decision but such extension shall not exceed ninety (90) days.

(d) In the event Contractor rejects an Extension Offer from Metro, Metro may exercise its option to purchase according to the procedures set out in Section 3.5 of this Article III.

(e) Election by Metro to Terminate Agreement. If Metro does not timely deliver an Extension Offer at least two hundred seventy (270) days prior to the expiration of the Initial Term or the first through third Extended Terms, then the following shall apply:

- (i) Metro shall forfeit (A) all rights to extend this Agreement for additional Terms pursuant to this Section 3.2 and (B) all rights of first refusal under Section 3.3.
- (ii) This Agreement shall terminate at the end of the then-current Term.
- (iii) Metro may exercise its right to purchase the Facility pursuant to Section 3.5.

(f) No Implied Agreement to Extend. The giving or acceptance of any Extension Offer by either Party shall impose no obligation on either Party to give or accept any future Extension Offer.

Section 3.3 Request by Contractor to Sell the Facility

(a) Subsections 3.3(b), 3.3(c) and 3.3(d) shall apply in the event Contractor enters into any Purchase Contract or solicits or receives a Purchase Offer or otherwise enters into any transaction by which beneficial ownership of the Facility, a controlling interest in the Contractor or a controlling interest in any subsidiary of RET which possesses a controlling interest in Contractor other than RET is transferred to any entity that is not a subsidiary of RET; provided that this subsection shall not be construed to include any transaction in which a controlling interest in RET or a parent of RET changes ownership. For the purpose of this section a controlling interest shall constitute the right to vote fifty percent (50%) or more of the voting rights held by stockholders of Contractor; and provided that Section 3.3 shall not apply to any sale of the Facility by the Credit Provider pursuant to Section 4.5(h).

(b) If at any time during the first seven (7) years of operation following the Commercial Operation Date, Contractor wishes to enter into a transaction described in Section 3.3(a) above, it shall provide Metro with a written request for approval of the proposed transaction and the identity of the purchaser. Metro shall have sole discretion to either approve or disapprove the Contractor's request to enter into the transaction. Metro shall reach its determination on whether to approve or disapprove the Contractor's request within ninety (90) days of receipt of notice of the intent to enter into the transaction. In the event Metro approves the requested transaction, the parties, including the purchaser, shall execute a novation of this Agreement. In the event Metro disapproves the Contractor's request to enter into the transaction, said disapproval shall be final. Failure of Metro to reach a determination within ninety (90) days shall constitute a disapproval of the transaction. In addition, Metro shall have either the right to purchase the Facility pursuant to the rights of first refusal granted in Section 3.4 if Contractor is seeking to sell only the Facility or the right to purchase the Facility at Fair Market Value pursuant to Section 3.5 if Contractor is seeking to enter into a transaction described in Section 3.3(a) above other than a sale of the Facility.

(c) If at any time subsequent to the first seven (7) years of operation following the Commercial Operation Date, Contractor wishes to solicit purchase offers or solicit offers to enter into any transaction described in Section 3.3(a) above, it shall provide Metro with a written request for approval of the proposed transaction and state the terms and conditions it is willing to accept. Metro shall in such event have either the right to purchase the Facility pursuant to the rights of first refusal granted in Section 3.4 if Contractor is seeking to sell only the Facility or the right to purchase the Facility at Fair Market Value pursuant to Section 3.5 if Contractor is seeking to enter into a transaction described in Section 3.3(a) above other than a sale of the Facility.

(d) If Contractor shall have provided Metro the notice provided for in Section 3.3(c) above, and if Metro shall have not exercised its right of first refusal pursuant to Section 3.4 below within the one hundred eighty (180) day time period provided for in Section 3.4, Contractor shall be free to seek buyers. If a written offer is received that Contractor desires to accept Contractor shall submit such offer to Metro. Metro shall have forty-five (45) days to exercise its right of first refusal pursuant to Section 3.4 or right to purchase pursuant to Section 3.5 as may be appropriate under the criteria established in Section 3.3(c) above. If Metro does not elect to exercise its rights pursuant to Section 3.4 or 3.5 Contractor may enter into the transaction providing Metro shall have approved of the transaction pursuant to Section 3.3(e) below.

(e) If at any time subsequent to the first seven (7) years of operation following the Commercial Operation date, Contractor wishes to enter into any transaction described in Section 3.3(a) above, such transaction in addition to being subject to Metro's exercise of its rights of first refusal or right to purchase as provided for in Section 3.3(c) and Section 3.3(d) above, shall also be subject to Metro's right to approve or disapprove the transaction. Metro shall within sixty (60) days of receipt of a request to enter into the transaction either approve or disapprove the request, provided such approval shall not be unreasonably withheld. In determining whether to approve a request by the Contractor to sell the Facility, Metro may take the following criteria into consideration:

- (i) whether the proposed purchaser is of sufficient size to perform the obligations required in the Agreement;
- (ii) whether the proposed purchaser has sufficient financial resources to fulfill the operational and financial guarantees specified in the Agreement;
- (iii) whether the proposed purchaser has sufficient favorable experience providing services similar to those required in the Agreement;
- (iv) the nature of any other commitments which the proposed purchaser may have in related solid waste disposal services either nationally or within the Metro service area.

(f) In the event a controlling interest in RET is transferred to another entity which is providing solid waste disposal services to Metro pursuant to an agreement or franchise agreement including but not limited to transfer station, solid waste resource recovery (waste-to-energy) facilities, landfill services, or similar services, then Contractor shall immediately give Metro notice of such transaction and Metro may within one hundred eighty (180) days of receipt of such notice exercise its right to purchase the Facility at fair market value pursuant to Section 3.5 notwithstanding that transfer of a controlling interest in RET may have occurred at a time other than at the end of the initial term or the end of any extended term hereof.

Section 3.4 Right of First Refusal

(a) Metro is hereby granted the right of first refusal to purchase the Facility, which right may be exercised in the circumstances and upon the terms and conditions set forth in Section 3.3 and in this Section 3.4.

(b) If, at any time during the Term or any Extended Term, the Contractor receives a Purchase Offer or Purchase Contract other than a Purchase Offer or Purchase Contract subject to Section 3.3(d) above, such Purchase Offer or Purchase Contract shall be in all respects subject to Metro right of first refusal to purchase the Facility as hereinafter set forth, and the prospective purchaser of the Facility shall acknowledge in writing Metro's right of first refusal as set forth in this Section 3.4. Immediately upon receipt of any Purchase Offer which the Contractor desires to accept or the execution of any Purchase Contract, the Contractor shall give Metro written notice thereof accompanied by a duplicate original of such Purchase Offer or Purchase Contract.

(c) In the event the Contractor receives a Purchase Offer or enters into a Purchase Contract as aforesaid, Metro shall have the right, to be exercised within ninety (90) days after the receipt by Metro of the written notice thereof, to purchase the Facility on the same terms and conditions as are set forth in such Purchase Offer or Purchase Contract, which right shall be exercised by Metro delivering to the Contractor an Exercise Notice. Within thirty (30) days following the delivery of an Exercise Notice to the Contractor, Metro and the Contractor shall enter into a contract providing for the purchase of the Facility by Metro from the Contractor, and the sale of the Facility by the Contractor to Metro, on the same terms and conditions as are set forth in such Purchase Offer or Purchase Contract. Following the execution and delivery of such contract, Metro shall purchase the Facility from the Contractor, and the Contractor shall sell the Facility to Metro, in accordance with the terms and conditions of such contract.

(d) In the event that Metro does not exercise such right of first refusal within ninety (90) days after the receipt of notice by Metro, the Contractor subject to the conditions set forth in Section 3.3, may sell the Facility to the person, and only to the person, making such Purchase Offer or Purchase Contract for a price equal to or greater than the price established in the Purchase Offer or Purchase Contract on the terms and conditions, and only on the terms and conditions, set forth in such Purchase Offer or Purchase Contract. The Contractor's right to sell the Facility after a determination by Metro not to exercise its right of first refusal shall be valid for a period of one (1) year from the date of the Purchase Offer or Purchase Contract.

(e) Notwithstanding any failure of Metro to exercise such right of first refusal in connection with any particular Purchase Offer or Purchase Contract or any sale of the Facility to a third party following such failure by Metro to exercise such right, such right of first refusal shall be a continuing right of Metro as against all subsequent Contractors during the Term of this Agreement, it being the intent of this Section 3.4 that the right

of first refusal granted to Metro herein shall be a valid, binding and continuing right of Metro at all times during the Term regardless of who the Contractor may be and regardless of how many times during the Term the Facility may be sold from one Contractor to another or how many times Metro may have failed to exercise such right of first refusal.

(f) In connection with any such failure of Metro to exercise such right and the subsequent sale of the Facility by the Contractor, the selling Contractor shall cause to be included in all operative sale documents, instruments and agreements, Metro's right of first refusal as set forth in this Section 3.4.

(g) The right of first refusal granted to Metro under this Section 3.4 shall be specifically enforceable.

(h) The right of first refusal granted to Metro under this Section 3.4 shall not apply to any sale of the Facility by the Credit Provider pursuant to Section 4.5(h) except that subsections 3.4(e) and 3.4(f) shall be applicable.

Section 3.5 Metro's Option to Purchase the Facility at the End of A Term

(a) Metro is hereby granted an option to purchase the Facility at the end of the Initial Term or at the end of any Extended Term, which purchase option shall be exercised in the manner and at the price provided for in this Section 3.5.

(b) In order to exercise the purchase option provided for in this Section 3.5, Metro must give written notice thereof to the Contractor not less than one hundred eighty (180) days prior to the expiration of the Initial Term or the then current Extended Term, as the case may be. In the event Metro elects to exercise the purchase option granted under this Section 3.5, the Contractor shall sell the Facility to Metro, and Metro shall purchase the Facility from the Contractor, at the Fair Market Value thereof at the time of exercise of such option, and the Contractor and Metro shall enter into a contract providing for such sale and purchase, which sale and purchase shall be consummated not later than the last day of the Initial Term or the then current Extended Term, as the case may be. Provided that if the arbitrators fail to render a decision within the time provided then the Term then in effect will be extended by an amount of time equal to the delay in rendering the decision but such extension shall not exceed ninety (90) days.

(c) If, within thirty (30) days after Metro gives to the Contractor written notice of the exercise of such purchase option, Metro and the Contractor cannot mutually agree on the Fair Market Value of the Facility, either Party shall thereafter have the right to have such Fair Market Value determined pursuant

to an independent appraisal by giving written notice thereof to the other Party.

(d) The independent appraisal shall be determined according to the following process:

- (i) Upon either Party electing to have the Fair Market Value of the Facility determined pursuant to an independent appraisal, the Parties shall attempt in good faith to agree upon a single independent appraiser to make a written determination thereof. If the Parties so agree upon a single appraiser, such appraiser shall determine the Fair Market Value of the Facility.
- (ii) If, within fifteen (15) days after notice from one Party to the other electing to have the Fair Market Value of the Facility determined pursuant to an independent appraisal, the Parties cannot agree upon a single independent appraiser to determine such Fair Market Value, either Party may at any time thereafter give the other Party a written notice calling for the appointment of an appraisal panel. Said notice shall designate an individual to serve on the appraisal panel. Upon receipt of such notice, the recipient shall have ten (10) days in which to designate a disinterested independent appraiser selected by the recipient to serve on such appraisal panel.
- (iii) Upon the designation of the two appraisers, they shall designate a third appraiser within seven (7) days. If the two appraisers cannot so agree upon a third appraiser, each of them shall submit the name of two candidates to serve in such capacity and, in the presence of the Authorized Representatives of the Parties, the third appraiser shall be selected by lot from among the four candidates so submitted.
- (iv) Upon the selection of the third appraiser, each of the appraisers shall make a written determination of the Fair Market Value of the Facility within sixty (60) days of the selection of the third appraiser and shall submit such written determinations to the Parties.
- (vi) The Fair Market Value of the Facility shall be the average of the two closest determinations of Fair Market Value of the three appraisers.

(e) In the event the Fair Market Value of the Facility is determined pursuant to an independent appraisal as provided above, the Fair Market Value of the Facility shall be final, conclusive and binding upon the Parties.

(f) Notwithstanding any failure of Metro to exercise such purchase option at the end of the Initial Term or any Extended Term or any sale of the Facility to a third party as contemplated by Section 3.5 hereof, such purchase option shall be a continuing right of Metro as against all subsequent Contractors during the Term of this Agreement, it being the intent of this Section 3.5 that the purchase option granted to Metro herein shall be a valid, binding and continuing right of Metro at all times during the Term regardless of who the Contractors may be and regardless of how many times during the Term the Facility may be sold from one Contractor to another or how many times Metro may have failed to exercise such purchase option granted under Section 3.5 hereof. In connection with any failure of Metro to exercise the right of first refusal granted under Section 3.5 hereof and the subsequent sale of the Facility from one Contractor to another, the selling Contractor shall cause to be included in all operative sale documents, instruments and agreements, Metro's purchase option as set forth in this Section 3.5.

(g) The right to purchase granted to Metro under this Section 3.5 shall be specifically enforceable.

Section 3.6 Contractor Subcontracts and Assignment

(a) During the Initial Term of this Agreement, or during any Extended Term, Contractor shall have the right to request approval from Metro to subcontract all or part of Contractor's obligation to operate the Facility to a third party. Contractor's written request for approval of a proposed subcontract shall be forwarded to Metro no later than ninety (90) days prior to the date on which the proposed subcontract is to take effect. Metro reserves the right to approve a request for subcontracting of Facility operations by the Contractor, provided such approval shall not be unreasonably withheld.

(b) In no event shall the Contractor's subcontracting, or Metro's approval of Contractor's subcontracting of its obligations to operate the Facility, in any way relieve the Contractor of its responsibilities under this Agreement.

(c) Except as otherwise specifically authorized by this Agreement, Contractor shall not enter into any transaction which transfers any interest of Contractor in the Facility or any right or obligation of Contractor pursuant to the term and conditions of this Agreement.

ARTICLE IV. FINANCING OF FACILITY

Section 4.1 Financing Structure

(a) Issuance of Bonds. Subject to fulfillment of the conditions precedent set forth in Section 4.1(b) hereof, Metro will issue the Bonds in one or more series in an aggregate principal amount which, together with or the Equity Contribution, will be equal to:

- (i) the Facility Price; and
- (ii) the costs incurred in connection with the issuance and sale of the Bonds including but not limited to Credit Enhancement fees; and
- (iii) interest due and payable on the Bonds during the Construction Period and for such additional period of time as may be mutually agreed upon between the Parties; and
- (iv) any reserves necessary or appropriate to be funded out of Bond proceeds; less
- (v) estimated investment earnings on the unexpended Bond proceeds during the Construction Period (but only to the extent such estimated investment earnings are not required to be rebated to the United States of America pursuant to Section 148 of the Code).

(b) Conditions Precedent to Issuance of Bonds. Notwithstanding anything expressed or implied herein to the contrary, Metro shall be under no obligation to issue the Bonds or any series thereof unless each of the following conditions shall have been satisfied:

- (i) the Contractor shall have provided Metro with a Credit Enhancement for each series of Bonds required to be issued in connection with the financing of the Facility, which Credit Enhancement shall be issued and delivered to the Trustee on the Closing Date for such series;
- (ii) the Contractor shall have duly authorized, executed and delivered all Bond Documents required to be executed and delivered thereby in connection with such series of Bonds and has provided or caused to be provided to Metro and Bond Counsel:
 - (A) all instruments, certificates, opinions of counsel and other materials as shall

reasonably be required by such persons in connection with the issuance and sale of the Bonds; and

- (B) information concerning the Facility and the costs thereof necessary or appropriate in connection with the opinions required to be rendered by Bond Counsel in connection with the issuance and sale of the Bonds, information concerning the Contractor, RET, the Credit Provider, the Facility and the Contractor's licenses, patents and/or technology or with respect to the Facility necessary or appropriate for inclusion in the official statement or official statements pertaining to the Bonds.
 - (C) Agreed to hold Metro harmless and indemnify Metro against any and all liability, actions, damages, claims, demands, judgment, losses, cost expenses and suits as required by the Bond Documents.
- (iii) No Change in Law shall have occurred after the date of this Agreement and on or before the Commencement Date that would make the execution or delivery by Metro or the Contractor of this Agreement, compliance by Metro or the Contractor with the terms and conditions of this Agreement or the consummation of the transactions contemplated hereby, invalid, unenforceable or a violation of Applicable Law;
 - (iv) All applicable environmental and other governmental permits, licenses, approvals, determinations, authorizations and requirements that are necessary for the acquisition, construction and installation of the Facility (other than construction and building permits obtainable as construction of the Facility progress) shall have been obtained by the Contractor and the Contractor shall have certified in writing to Metro that the same have been duly obtained, which certification shall be accompanied by copies of all such permits, licenses, approvals, determinations, authorizations and requirements;
 - (v) Metro shall have received certified copies of all policies or certificates of all Required Insurance necessary in connection with the acquisition, construction and installation of the Facility as

specified in Exhibit M hereto and as required by the Bond Documents;

- (vi) The Contractor shall have furnished Metro the Performance/Payment Bond in the form and amount set forth in Exhibit P hereto;
- (vii) The Contractor shall have completed the design pursuant to and in accordance with the provisions of Section 5.1 hereof;
- (viii) The Contractor shall have delivered to Metro a certificate of an Authorized Representative of the Contractor, dated as of the date the last of the foregoing conditions precedent have been fulfilled, to the effect that each of the representations of the Contractor set forth in Section 2.1 hereof are true and correct as if made on such date; and
- (ix) Metro shall have delivered to the Contractor a certificate of an Authorized Representative of Metro, dated as of the date the last of the foregoing conditions precedent have been fulfilled, to the effect that each of the representations of Metro set forth in Section 2.2 hereof are true and correct as if made on such date.
- (x) DANO A.G. Zurich Switzerland and all other relevant parties have given assurance that Metro can enforce the requirements of Section 15.3 providing for a limited license to Metro to utilize the technology and other rights necessary to operate the Facility in the event of a default by Contractor.
- (xi) The Contractor shall have delivered to Metro the guarantee by RET in the form set forth in Exhibit R.

The Contractor shall exercise good faith and due diligence in fulfilling the foregoing conditions precedent which are the obligation of the Contractor to fulfill. Metro shall exercise good faith and due diligence in fulfilling the foregoing conditions precedent which are the obligation of Metro to fulfill. Each party shall cooperate with the other Party in fulfilling the foregoing conditions precedent.

Notwithstanding anything expressed or implied herein to the contrary, neither Party shall be relieved of its obligations hereunder by the failure to fulfill any of the foregoing

conditions precedent to the extent that the fulfillment of such condition is within such Party's control.

(c) Nature and Term of Bonds. Each series of Bonds shall be issued as revenue bonds in accordance with the applicable provisions of Chapter 268 of Oregon Revised Statutes, as amended. The Bonds shall be secured by the following:

- (i) the Credit Enhancement;
- (ii) by a pledge of the loan repayments required to be made by the Contractor under the Loan Agreement;
- (iii) a pledge and assignment by the Contractor of its right to receive the Tip Fee payable by Metro under this Agreement;
- (iv) a mortgage on and security interest in the items of real and personal property comprising the Facility;
- (v) a pledge and assignment by the Contractor of any revenues generated by the sale of Compost Product;
- (vi) a pledge and assignment of any revenues generated from the sale of Recovered Materials; and
- (vii) such other properties, assets and revenues of the Contractor as shall be required by the Credit Provider as set forth in the Credit Enhancement or mutually agreed upon by the Parties and which, under applicable law, may be pledged as security for the payment of the Bonds.

Section 4.2 Equity Contribution of Contractor

In accordance with the Reimbursement Agreement, the Contractor agrees to provide an "Equity Contribution."

Section 4.3 Availability of Leveraged Lease

Notwithstanding the provisions of Article III hereof Metro will permit the Contractor to arrange for a leveraged lease of the Facility provided that all of the obligations of the Contractor under this Agreement pertaining to the operation of the Facility are retained by the Contractor. In furtherance of the foregoing, Contractor will be permitted, with the consent of Metro, to assign its appropriate rights and obligations under this Agreement to an appropriate entity, but no such assignment nor any leveraged leasing of the Facility shall relieve the Contractor from its liability for the performance of all of the

Contractor's obligations hereunder or result in any increased obligation of Metro without the consent of Metro.

Section 4.4 Loss of Tax Benefits

The Contractor shall not be entitled to reimbursement by Metro for the unavailability, loss (whether in whole or in part) or diminution in value of any anticipated tax benefits (whether federal, state or local) and/or tax planning contemplated by Contractor (whether federal, state or local) in connection with the acquisition, construction, installation, ownership or operation of the Facility or the financing thereof.

Section 4.5 Rights and Protection of Credit Provider

Notwithstanding anything which might be construed to the contrary herein:

(a) Pledge to Credit Provider. Contractor may, from time to time, without obtaining the consent of Metro, assign, hypothecate, mortgage, pledge or otherwise alienate Contractor's interest in this Agreement, or the Facility to one or more Credit Providers for purposes of financing the Facility. Contractor shall give notice to Metro of (i) its entering into (A) the Credit Enhancement or (B) a credit agreement evidencing any loan from a Credit Provider, and the total amount of funds available thereunder or of the nature of the transaction, (ii) any amendments to the Credit Enhancement or other credit agreements, and (iii) any such Credit Provider's address for notices hereunder; provided, however, that any failure by Contractor to give such notice shall not give rise to any right of Metro to terminate or otherwise alter any provision hereof, including but not limited to the rights and protection provided to Credit Providers in this Section 4.5. However, Metro shall have no obligation to provide any notice pursuant to subsection 4.5(g), 4.5(d) and 4.5(i) to any Credit Provider unless it shall have received actual notice of the identity of such Credit Providers.

(b) Consent of Credit Provider. Metro shall not accept any abandonment of this Agreement, the Bond Documents or the Facility, nor shall Metro consent to or authorize any material, amendment, waiver, Capital Improvement, modification or termination of or request for consent under this Agreement or the Bond Documents or any amendment or modification which affects the payment of Debt Service by either contractor or Metro, unless and until Contractor presents evidence to Metro that Contractor has obtained the prior written consent of each Credit Provider.

(c) Rights to Cure. In the event Metro shall give notice of default pursuant to Article XV hereof, any Credit Provider shall have the right, but not the obligation, at any time prior to termination of this Agreement or the Bond Documents, and

without payment of any penalty, to make any payments due hereunder, and to do any other act or thing required of Contractor hereunder, and to do any act or thing that may be necessary and proper to be done in the performance and observance of the terms hereof to prevent any default under or termination of this Agreement or the Bond Documents. All payments so made and all things so done and performed by any such Credit Provider shall be as effective to prevent any default under or termination of this Agreement or the Bond Documents, as they would have been if made, done and performed by Contractor instead of by such Credit Provider.

(d) Defaults. During any time when a Credit Provider is providing a Credit Enhancement, Contractor shall not be in default under this Agreement or the Bond Documents unless Contractor fails to perform the obligations required of it hereunder within the time periods set forth herein, and after receiving written notice thereof, fails to cure such default within ninety (90) days. If Contractor fails to cure a default within the time provided for herein, then, upon written notice from Metro to the Credit Providers, the Credit Providers shall have an additional ninety (90) days to cure such default; Provided, however, that if such default cannot reasonably be cured within such additional ninety (90) day period, then the Credit Providers shall have such additional time to cure the default as is reasonably necessary under the circumstances, so long as (A) the Credit Providers shall have fully cured within such ninety (90) day period any default in which payment and performance of any monetary or other obligations of Contractor that can be reasonably performed by the Credit Provider within such ninety (90) day period and shall thereafter continue faithfully to perform all such monetary and other obligations, and (B) the Credit Providers shall take all reasonable measures within its control (including steps to obtain control) to continue Contractor's operation of the Facility as contemplated herein. All rights of Metro to terminate this Agreement (or the Bond Documents), if any, as a result of the occurrence of any default by Contractor shall be subject to, and expressly conditioned upon, (i) the Credit Providers having received the notice specified above in this Section 4.5(d) except as provided in 4.5(a) above, and (ii) the Credit Providers having failed to remedy such default or acquire Contractor's interest in the Facility or to commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Section 4.5(d). Provided further that nothing in this Section 4.5 shall have the effect of reducing the periods required for notice of default as available for cure of any default provided for Contractor and Metro in Article XV.

(e) Further Action. Any default by Contractor under this Agreement or the Bond Documents that cannot be remedied by any Credit Provider without possession of the Facility shall

nevertheless be deemed to have been remedied with respect to the Credit Provider if (A) within ninety (90) days after receiving written notice from Metro setting forth the nature of such default, or prior thereto, any Credit Provider shall have acquired Contractor's interest in the Facility, or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (B) such Credit Provider shall diligently prosecute any such proceedings to completion, (C) such Credit Provider shall have taken reasonable measures within its control (including steps to obtain control) to continue Contractor's operation of the Facility, as contemplated herein, (D) such Credit Provider shall have fully cured within such ninety (90) day period any default in the payment and performance of any monetary or other obligations of Contractor hereunder that do not require possession of the Facility, and shall thereafter continue to faithfully perform all such monetary and other obligations that do not require possession of the Facility, and (E) after gaining possession of the Facility, such Credit Provider shall perform all obligations of Contractor hereunder and which arise thereafter.

(f) Legal Process. If any Credit Provider is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy, reorganization, insolvency or other debtor-relief proceeding involving Contractor from commencing or prosecuting foreclosure or other appropriate proceeding in the nature thereof, then the times specified in Sections 4.5(d) and 4.5(e) hereof for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; Provided, however, that such Credit Provider shall have fully cured any default in the payment or performance of any monetary or other obligations of Contractor under this Agreement or the Bond Documents that do not require possession of the Facility, and shall continue to pay and perform such monetary and other obligations as and when they fall due and shall have taken reasonable measures within its control (including steps to obtain control and to seek relief from such process or injunction where relief may be obtained through recognized legal procedures) to continue the operations of Contractor at the Facility as contemplated herein.

(g) Notices. Metro shall mail or deliver to the Credit Providers a duplicate copy of any and all written notices that Metro may from time to time give to or serve upon Contractor pursuant to the provisions of Section 12.3 hereof, and such copies shall be mailed or delivered to the Credit Providers at, or as near as possible to, the same time such notices are given to or served upon Contractor. No such notice by Metro to Contractor hereunder shall be deemed to have been given unless and until a copy thereof shall have been deposited as first class

mail addressed to the Credit Providers or delivered to the Credit Providers.

(h) Foreclosure. Foreclosure of any Credit Providers' lien or any sale thereunder, whether by judicial proceedings or otherwise, or any conveyance or transfer of the interest of Contractor in the Facility, under this Agreement or under the Bond Documents from Contractor to such Credit Provider through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Metro or constitute a breach of any provision of or a default under this Agreement or the Bond Documents, and upon such foreclosure, sale or conveyance Metro shall recognize such Credit Provider, or any other foreclosure sale purchaser, as Contractor hereunder, provided that the Credit Provider has cured or is taking all reasonable measures to cure any existing default of Contractor within the time period provided in subsection 4.5(d) above. In the event any Credit Provider assumes Contractor's position under this Agreement or the Bond Documents, by reason of such Credit Provider's foreclosure on its Credit Provider's lien, as provided herein, then such Credit Provider shall be personally liable for the obligations of Contractor under this Agreement or the Bond Documents only for any acts or omissions of such Credit Provider during the period of time that such Credit Provider remains in such position hereunder, and the Credit Provider shall have the right to assign any interest it may have in this Agreement, the Bond Documents or the Facility thereafter without any restriction otherwise imposed on it hereunder. Provided, however, that the assignee of such Credit Provider shall have expressly assumed all of the obligations of Contractor hereunder. Notwithstanding any other provision of this Agreement, in the event that any Credit Provider (A) performs any monetary or other obligation of Contractor under this Agreement or the Bond Documents, (B) acquires any portion of the right, title or interest in the Facility (C) continues Contractor's operations of the Facility and/or (D) becomes personally liable to Metro hereunder, then such Credit Provider's obligations and liability to Metro hereunder shall be limited by and to such Credit Provider's right, title and interest, if any, in the Facility and Metro shall have no recourse against such Credit Provider in excess of, and other than to proceed against, such right, title and interest. This limitation on the liability of the Credit Providers shall not in any way limit the Credit Providers obligation to make payments in respect of the Bonds pursuant to the terms of the Credit Enhancement.

(i) Notice of Default. Upon Metro's receipt of any notice in the nature of a notice of default with respect to any obligation of Metro secured by any lien upon the Facility, Metro shall promptly deliver a copy of such notice to Contractor and to each Credit Provider or successor-in-interest of which Metro has received notice. If and whenever Contractor, a Credit Provider

or a successor-in-interest shall deem it necessary or appropriate to do so in order to protect its rights under this Agreement or the Bond Documents, it may, at its option, pay and discharge any mortgage or other lien (including, without limitation, the lien of general or special property taxes or special assessments) attached to the Facility or any portion thereof, and in such event it shall be subrogated to all the rights of the mortgagee, beneficiary, owner or holder of such mortgage or other lien. If Contractor pays or discharges any such mortgage or other lien, then in addition to and cumulative with its rights of subrogation as hereinabove set forth, Contractor shall be entitled to apply to the payment or discharge of any such mortgage or other lien, or to the reimbursement to Contractor for any amount so paid or discharged by it, any sums accruing or payable by Contractor to Metro hereunder or under the Bond Documents.

(j) Cooperation With Lenders. Contractor and Metro shall cooperate by, from time to time, negotiating amendments hereto which any Credit Provider or proposed Credit Provider reasonably requests for the purpose of implementing the Credit Provider protective provisions contained in this Section 4.5 and affording any Credit Provider or proposed Credit Provider reasonable protection of its Credit Provider's lien in the event of a default by Contractor. Neither Metro nor Contractor shall have any obligation to agree to any amendment which would adversely affect their respective obligations to make payments or adversely impact their respective liabilities to each other or to the Credit Provider under this Agreement. Contractor and Metro each agree to execute and deliver (and to acknowledge if necessary for recording purposes) any document or instrument necessary to give effect to any such negotiated provision.

(k) Certificates. Either party hereto (the "Responding Party") shall at any time upon not less than ten (10) days' prior written notice from any other party hereto or from any Credit Provider (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing (a) certifying, as applicable, that this Agreement and the Bond Documents are unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement and the Bond Documents, as so modified, are in full force and effect) and the date to which any payments due thereunder are paid in advance, if any, and (b) acknowledging that there are not, to the Responding Party's knowledge, any uncured defaults hereunder on the part of the other party hereto, or specifying such defaults if any are claimed. Any such statements may be conclusively relied upon by any prospective purchaser or encumbrancer of the Facility or the other rights of Contractor under this Agreement or the Bond Documents. The failure of the Responding Party to deliver such statement within such time shall be conclusive upon such Responding Party that (i) this Agreement and the Bond Documents are in full force and

effect and has not been modified and (ii) there are no uncured defaults in the performance of the other party thereto.

(l) Bank Holidays. Notwithstanding the definition of Business Day contained in this Agreement, the Credit Provider shall not be required to take any action on any day that is a bank holiday pursuant to New York law nor shall the expiration of any time period directly affecting the Credit Provider occur on any such bank holiday.

(m) Miscellaneous. The provisions of Section 13.2 and Article XIV shall not apply to Credit Suisse but shall apply to any purchaser from Credit Suisse or to any purchaser at any foreclosure sale.

(n) Waiver of Jury Trial. Metro and Credit Suisse hereby knowingly, voluntarily, and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this agreement. Such waiver is effective only in the event of litigation between Metro and Credit Suisse as adverse parties and shall not effect either Metro's or Credit Suisse's right to a trial by jury in any litigation with any third party including Contractor.

ARTICLE V. DESIGN OF FACILITY

Section 5.1 Facility Design

The Contractor shall have the responsibility for design of the Facility such that it conforms to the Performance Standards and the Facility Specifications. The Contractor shall perform all design work in accordance with established engineering principles and practices and all applicable code requirements.

(a) The Contractor shall be solely responsible for determining whether it is necessary to modify the Facility design to meet the Performance Standards and provisions of this Agreement. Upon a determination by the Contractor that the Facility design should be modified, Contractor shall provide Metro with written notice of the proposed modification. The notice shall include:

- (i) a detailed description of the problem which necessitates the proposed change;
- (ii) the anticipated result of the proposed change;

- (iii) a statement certifying that the proposed change will not have an adverse impact on the ability of the Facility to meet the Performance Standards.

(b) The Contractor shall be fully responsible for any and all costs related to design modifications made pursuant to this section unless caused by Uncontrollable Circumstances or Metro Fault, in which event Metro shall bear the costs of such changes as provided in Section 6.16(b) and 6.16(c).

Section 5.2 Metro Review of Facility Design Plans

(a) The Contractor, at reasonably appropriate intervals during construction of the Facility, shall make available for review by Metro or its Consulting Engineer, all plans, drawings, specification, schedules and other materials related to the design and construction of the Facility.

(b) It is mutually understood by the Parties that Metro's review of the materials referenced in section (a) above shall not constitute a determination as to the sufficiency or adequacy or the design plans, specifications, or engineering or construction judgments made by the Contractor, nor shall the review act as a waiver of liability or relieve the Contractor of its obligations to design, construct, and operate the Facility in a manner which conforms to the Performance Standards.

ARTICLE VI. CONSTRUCTION OF FACILITY; FACILITY PRICE; METHOD OF PAYMENT

Section 6.1 Notice to Proceed; Scheduled Completion Date; Commencement Date

(a) Conditions Precedent to Issuance of Notice to Proceed.
On the date upon which each of the following conditions precedent have been fulfilled, Metro shall issue the Notice to Proceed:

- (i) There shall have been issued by Metro pursuant to the Bond Documents one or more series of Bonds in the aggregate principal amount determined in accordance with Section 4.1(a) hereof.
- (ii) The Contractor shall have obtained financing of the Interim Debt or otherwise demonstrated to Metro that it has sufficient funds to make the required Equity Contribution.

The Contractor shall exercise good faith and due diligence in fulfilling the foregoing conditions precedent which are the obligation of the Contractor to fulfill. Metro shall exercise

good faith and due diligence in fulfilling the foregoing conditions precedent which are the obligation of Metro to fulfill. Each party shall cooperate with the other Party in fulfilling the foregoing conditions precedent.

Notwithstanding anything expressed or implied herein to the contrary, neither Party shall be relieved of its obligations hereunder by the failure to fulfill any of the foregoing conditions precedent to the extent that the fulfillment of such condition is within such Party's control.

(b) Termination of Agreement before Issuance of Bonds. Either Party may terminate this Agreement by giving thirty (30) days written notice if the date of issuance of the Bonds shall not have occurred by one (1) year from the effective date of this Agreement.

If this Agreement is terminated pursuant to this Section 6.1(b) and a Party has proceeded in good faith and with due diligence to fulfill the conditions precedent set forth in this Agreement to the issuance of the Bonds, such Party shall not be liable to the other Party for any costs, expenses, charges or fees incurred by such other Party in connection with or in any way related to this Agreement, the Facility or the Facility Site.

(c) Commencement. On the Commencement Date, the Contractor shall immediately commence the acquisition, construction and installation of the Facility.

(d) Contractor Responsible for Acquisition, Construction, Installation and Performance Test of Facility. The Contractor shall complete the acquisition, construction, installation and Performance Test of the Facility in accordance with the terms of this Agreement.

Neither approval by Metro of any disbursement, the failure to object to the Certificate of Completion, any payment by Metro to the Contractor under this Agreement, any use or occupancy of the Facility or any part thereof by Metro, any failure to do so, nor any correction of defective Work by Metro, shall constitute an acceptance of any Work which is not completed or accomplished in accord with the Agreement nor a waiver by Metro of any of the obligations or liabilities of the Contractor under this Agreement.

(e) Construction and Performance Test to be Completed on or before Scheduled Completion Date; Extension Period:

- (i) The Contractor hereby covenants and agrees to complete the acquisition, construction, installation and Performance Test of the Facility on or before the latter of either (a) the

Scheduled Completion Date as that date may be extended by any Time Extension, or (b) the last day of the Extension Period as that period may be extended by any Time Extension.

- (ii) If, at any time after the Commencement Date, Contractor, for any reason, determines that it will not be possible to complete the acquisition, construction, installation and Performance Test of the Facility on or before the Scheduled Completion Date, or if applicable, the last day of the Extension Period, the Contractor shall provide Metro with written notice specifying the reason or reasons therefor. In the event that the Contractor believes that the reason that the acquisition, construction, installation and Performance Test will not be completed on or before the Scheduled Completion Date or Extension Period is due to Metro Fault or Uncontrollable Circumstances, the notice required by this Section 6.1(e)(ii) may include a request for a Time Extension. In the event that the notice required by this Section 6.1(e)(ii) does not include a request for a Time Extension, Contractor shall be deemed to have waived any right to additional time for the event of Metro Fault or Uncontrollable Circumstance leading to the notice. The notice required by this Section 6.1(e)(ii) shall be served on Metro within ten (10) days of the start of the latter of either (a) the event of Metro Fault or Uncontrollable Circumstance, or (b) the date Contractor knew or reasonably should have known of the event of Metro Fault or Uncontrollable Circumstance which is the basis of the notice.
- (iii) Within ten (10) days of receipt of a request from the Contractor for a Time Extension pursuant to Section 6.1(e)(ii), Metro shall provide the Contractor with a written approval or disapproval of the request for a Time Extension. In the event that Metro disapproves the request on the grounds the delay was not caused by a Metro Fault or an Uncontrollable Circumstance, or the Contractor disagrees with the amount of Time Extension approved by Metro, the parties shall make a good faith effort to negotiate a mutually acceptable Time Extension. If the parties are not able to reach a mutually acceptable agreement regarding a requested Time Extension, the matter shall be submitted for resolution pursuant to Article XIII.

- (iv) If prior to the Scheduled completion Date, Metro approves a request for a Time Extension, or pursuant to Article XIII, a determination is made that the Contractor is entitled to a Time Extension, the Scheduled Completion Date shall be extended by the length of the Time Extension and Metro shall be responsible to pay Debt Service due during the period that the Time Extension extends the Scheduled Completion Date. If during the Extension Period, Metro approves a request for a Time Extension, or pursuant to Article XIII, a determination is made that the Contractor is entitled to a Time Extension, the Extension Period shall be extended by the length of the Time Extension.
- (v) If, at any time after the Commencement Date and prior to the Scheduled Completion Date without regard to the Extension Period), the Contractor determines that it will not be possible to complete the acquisition, construction, installation and Performance Test of the Facility on or before the Scheduled Completion Date, the Contractor may notify Metro of its intent to enter into the Extension Period and shall specify the reason or reasons that the acquisition, construction, installation and Performance Test of the Facility will not be completed on or before the Scheduled Completion Date. The Contractor shall be allowed only one Extension Period.

Section 6.2 Facility Price

The Contractor agrees to acquire, construct and install the Facility and perform the Performance Test for the Facility Price.

Section 6.3 Provision of Construction Schedule; Construction Progress Reports

(a) No later than ten (10) days after issuance of the Notice to Proceed, Contractor shall provide Metro, the Credit Provider and the Credit Provider's Engineer with a detailed Construction Schedule based on the critical path method (CPM) or comparable scheduling methodology. At a minimum, the Construction Schedule shall identify the major work elements required to complete construction of the Facility and show the order of work, the anticipated start dates for all major work elements as well as the anticipated number of days required to complete each major work element. The Construction Schedule shall provide for the completion of all work by the Scheduled Completion Date.

(b) No later than the 25th day of each calendar month, the Contractor shall provide Metro, the Credit Provider and the Credit Provider's Engineer with written Progress Reports describing:

- (i) the percentages of each major work element completed up to and including the 20th day of the calendar month in which the report is being issued;
- (ii) any significant problems encountered in the scheduled work.

(c) In connection with the delivery of each Progress Report, the Contractor shall provide Metro, Credit Provider and the Credit Provider's Engineer with an updated Construction Schedule which reflects actual work progress and any adjustments to scheduled work activities identified in the original Work Schedule, and any adjustments to scheduled work activities due to any Time Extensions approved pursuant to Section 6.1(e).

(d) The Contractor acknowledges that Metro may retain the services of a Consulting Engineer to:

- (i) review and monitor engineering, equipment installation and construction progress;
- (ii) assist Metro in its review of Contractor requests for payment;
- (iii) review and advise Metro with respect to proposed changes to the Facility design or proposed Capital Improvements;
- (iv) review and advise Metro regarding the validity of any written notice from the Contractor that an Uncontrollable Circumstance event has occurred;
- (v) assist Metro in its review and approval of the Performance Test plan for the Facility;
- (vi) review the results of any Performance Test made in accordance with such plan; and
- (vii) advise Metro whether the results of any Performance Test demonstrate that the Facility meets the Performance Standards set forth in the Facility Specifications; and
- (viii) perform such other services and reviews related to this Agreement as Metro, in its sole discretion, may deem necessary or desirable.

(e) It is hereby understood and agreed to by the Parties that the Consulting Engineer may do and perform, for and on behalf of Metro, any and all functions and review such matters and render such advice to Metro as Metro may from time to time request regardless of whether or not the same are listed in section (d) above. The Contractor agrees to cooperate with all reasonable requests made by the Consulting Engineer in connection with the performance of such duties on behalf of Metro.

(f) In no event shall any monitoring or review activities as described in Section 6.4, by Metro or its Consulting Engineer, be construed as relieving the Contractor of any of its obligations, responsibilities or liabilities under this Agreement. The Contractor shall at all times remain solely responsible for performance of its obligations pursuant to the Agreement. Any and all monitoring or review activities undertaken by Metro or anyone acting on its behalf shall be at Metro's sole discretion, and the undertaking of such activities shall not constitute a basis for a claim by the Contractor for a Time Extension or additional compensation due to delay.

(g) The Contractor shall at all times remain fully responsible and liable to carry out and fulfill all of its obligations and duties under this Agreement. Neither the review nor comment upon by Metro or the Consulting Engineer, nor the failure of Metro or the Consulting Engineer to comment upon, Detailed Plans, the Construction Schedule or Facility Specifications, shall relieve the Contractor of any of its responsibilities under this Agreement. No review or comment by Metro or the Consulting Engineer shall constitute representation by Metro that the Detailed Plans, or the Construction Schedule or Facility Specifications are in accordance with the requirements of this Agreement or Applicable Law, or impose any liability upon Metro.

Section 6.4 The Consulting Engineer's Monitoring of Construction

(a) Maintenance of Facility Specifications and Detailed Plans at Facility Site; Review. During the course of the construction of the Facility, the Contractor shall:

- (i) maintain at the Facility Site for inspection by Metro a copy of the Facility Specifications and all Detailed Plans in good order and marked to show all changes made during construction; and
- (ii) review the design and construction of the Facility with Metro so that Metro may verify that the Detailed Plans do not materially deviate from the Facility Specifications.

The Contractor will not be obligated by this Section to delay any Work (including, but not limited to, procurement and construction activities) it has undertaken or plans to undertake pursuant to the terms and provisions of this Agreement; provided, however, that if the Contractor proceeds with any Work under this Agreement not identified in the most recent Construction Schedule without allowing Metro at least ten (10) prior Days notice consistent with the provisions of Section 5.1(a) for its Consulting Engineer to perform monitoring activities, then the Contractor proceeds with any such Work solely at its own risk and expense.

(b) Contractor to Cooperate with Consulting Engineer.
During the course of construction of the Facility, the Contractor shall fully cooperate with the Consulting Engineer so that the Consulting Engineer may monitor on behalf of Metro all aspects of the acquisition, construction and installation of the Facility. Metro and the Contractor agree to mutually review and, in good faith attempt to resolve, any disputes arising out of the Consulting Engineer's monitoring activities within fifteen (15) Days of the deliver by one Party to the other of a written statement describing such dispute. In the event any such dispute cannot be resolved within ten (10) days, the matter shall be submitted for dispute resolution pursuant to the provisions of Section 13.1 hereof.

Section 6.5 Required Permits and Royalties, Fees, Insurance Payment

The Contractor shall obtain and maintain all Required Permits necessary to fulfill its obligations under this Agreement, including without limitation those set forth in Exhibit N hereto, and shall pay all costs, royalties, fees, license payments, insurance and similar expenses required with respect to the Contractor's performance under this Agreement. To the extent permitted by Applicable Law, Metro shall provide the Contractor with any information or documents in its control that the Contractor reasonably requests in order to obtain or maintain the Required Permits. Metro agrees to use its reasonable efforts to assist the Contractor in obtaining and maintaining all Required Permits.

Section 6.6 Labor, Material and Equipment; Subcontractors

(a) The Contractor shall furnish directly, through RET, or Subcontractors all work, labor, materials, testing, supervision and equipment required for the performance of its obligations set forth in this Article VI.

(b) In selecting Subcontractors and in otherwise acquiring goods, materials and services for use in the construction of the Facility, the Contractor shall give preference to goods,

materials or services that have been manufactured or produced in the state of Oregon, if the price, fitness, availability and quality are otherwise equal, in the opinion of the Contractor, to the goods, materials and services that have been manufactured or produced outside the state of Oregon.

Section 6.7 The Facility Site

The Contractor shall be solely responsible for the preparation of the Facility Site for the acquisition, construction and installation of the Facility.

The Contractor acknowledges and agrees that with respect to subsurface conditions at the Facility Site encountered during construction of the Facility, no such condition shall be deemed to be an Uncontrollable Circumstance pursuant to this Agreement; except to the extent such subsurface condition is caused in whole or in part by an Uncontrollable Circumstance which occurs subsequent to the date of this Agreement, the subsurface condition may be deemed to be an Uncontrollable Circumstance pursuant to this Agreement.

The Contractor shall be responsible for the construction and maintenance of all roads within the Facility Site necessary to connect it to existing roads. The Contractor shall also be responsible for extending, expanding or renovating any existing utility lines within the Facility Site in order to meet the utility requirements for the performance by the Contractor of its obligations under this Agreement.

The Contractor shall be responsible for all security at the Facility Site during the term of this Agreement and shall maintain such protective measures at the Facility Site during the construction period and thereafter as shall meet appropriate safety standards in light of conditions at the Facility Site.

The Contractor shall erect on the Facility Site a sign satisfactory to Metro identifying the Facility.

Section 6.8 Construction Staff

The Contractor shall maintain an adequate staff which shall be responsible for all aspects of the design, construction, equipping, testing, and starting-up of the Facility in accord with this Agreement. Each individual on the staff shall have appropriate knowledge, experience and training in the type of work he or she is to perform. The full-time staff shall include the Project Manager who shall be present at the Facility Site during the construction of the Facility. The Contractor shall keep Metro informed of the identity of each person serving from time to time as the Project Manager, and the telephone number and

other means by which such person may be contacted at the Facility Site.

Section 6.9 Prevailing Wages

Contractor and Metro agree that ORS 279.348 to 279.363 are not applicable to this Agreement. However, if a determination is made that this Agreement is subject to the provisions of ORS 279.348 to 279.363, (1) such determination shall not constitute a change of law, (2) Contractor shall pay the existing prevailing rate of wage as so required, and as set forth in Exhibit O, and (3) this paragraph shall be construed as meeting the requirements of ORS 279.352.

Section 6.10 Liens and Encumbrances

The Contractor shall, at its expense:

- (i) discharge any valid liens of any sort that attach to the Facility or the Facility Site arising out of the activities of the Contractor or approved Subcontractors under this Agreement;
- (ii) discharge of record by bond or otherwise, any lien or encumbrance that may be filed against the Facility or the Facility Site by any Subcontractor; and
- (iii) indemnify Metro for any injury or expense, including reasonable attorneys' fees, incurred by Metro due to the filing or any such lien or the Contractor's failure to have such lien discharged.

Section 6.11 Performance/Payment Bonds

Prior to the commencement of the acquisition, construction and installation of the Facility, the Contractor shall supply Metro with Payment/Performance Bonds in the form and amount set forth in Exhibit P and otherwise in accordance with Oregon law. Metro may require additional Payment/Performance Bonds from time to time during construction as circumstances, including Uncontrollable Circumstances, may dictate.

Section 6.12 Notice of Required Capital Improvements

Prior to initiating a Capital Improvement Contractor shall provide Metro with a minimum of at least ten (10) days' written notice of the proposed Capital Improvement. The notice shall specify:

1. The reasons which necessitate implementation of the Capital Improvement;

2. The nature and extent of the required Capital Improvement;
3. The impact of implementation of the Capital Improvement on the Scheduled Completion Date if the Capital Improvement is required prior to the Commercial Operation Date, and the impact on continued operations if the Capital Improvement is required subsequent to the Commercial Operation Date;
4. A description and estimated cost of the required Capital Improvement;
5. The effect, if any, the Capital Improvement will have on the ability of the Facility to meet the Performance Standards.

Section 6.13 Review of Capital Improvements Proposed For Reasons Other Than Uncontrollable Circumstances or Metro Fault

(a) The Contractor, at any time, at no additional cost to Metro, may propose Capital Improvements for reasons other than Uncontrollable Circumstances or Metro Fault. Capital Improvements proposed by the Contractor pursuant to this section shall be deemed effective unless Metro, within fifteen (15) Business Days after receipt of written notice of the proposed Capital Improvement, gives written notice of an objection to the proposed Capital Improvement. Metro may object to the proposed Capital Improvement if:

- (i) Metro determines that the proposed Capital Improvement will adversely affect the ability of the Contractor to comply with the Performance Standards; or
- (ii) Metro determines that the proposed Capital Improvement will adversely affect the ability of the Contractor to complete the acquisition, construction, equipment installation and Performance Test of the Facility on or before the end of the Extension Period; or
- (iii) in the written opinion of Bond Counsel, the proposed Capital Improvement will adversely affect the federal tax-exempt status of the interest on any Bonds which were intended to be excludable for Federal income tax purposes from the gross incomes of the owners thereof.

(b) If Metro, for reasons other than those specified in Section 6.13(a)(iii), objects to the proposed Capital Improvement

pursuant to (a) above, either party may, within fifteen (15) Business Days after receipt of the objection, (A) prior to the Commercial Operation Date, refer the matter to the Credit Provider's Engineer for binding resolution, and (B) on or after the Commercial Operation Date, refer the matter to the Independent Engineer for binding resolution.

(c) Nothing in this section shall prevent or delay the Contractor from, at its own risk, implementing a proposed Capital Improvement as described in this section prior to a final determination by the Credit Provider's Engineer. However, under no circumstance shall Contractor proceed with a Capital Improvement if Contractor has notice that Bond Counsel has advised that the Capital Improvement should not be made for the reasons stated in (a)iii above.

Section 6.14 Review of Proposed Capital Improvements Due to Uncontrollable Circumstances or Metro Fault

(a) In the event an Uncontrollable Circumstance or Metro Fault requires implementation of a Capital Improvement either before or after the Scheduled Completion Date, the Contractor, as soon as practicable after the occurrence of the Uncontrollable Circumstance event or Metro Fault, shall provide Metro with written notice as specified in Section 6.12. In addition, Contractor shall separately request a Time Extension pursuant to Section 6.1(e) if appropriate.

(b) Upon receipt of notice from the Contractor that a Capital Improvement is required due to an Uncontrollable Circumstance or Metro Fault, Metro shall have thirty (30) days to review the Contractor's proposed Capital Improvement. Metro, within the 30-day review period, may object in writing to the Contractor's proposed Capital Improvement if:

- (i) Metro determines that the proposed Capital Improvement is not the result of or necessitated by an Uncontrollable Circumstance or Metro Fault; or
- (ii) Metro determines that the proposed Capital Improvement will, in the opinion of Metro, not be the least-costly or most effective method of resolving the problem which requires the Capital Improvement, in which case Metro shall propose a more cost-effective method; or
- (iii) in the written opinion of Bond Counsel, the proposed Capital Improvement will adversely affect the Federal tax-exempt status of the interest on any Bonds which were intended to be excludable for

Federal income tax purposes from the gross incomes of the owners thereof.

(c) In the event Metro, for reasons specified in (b) (i) and (ii) above, objects to the Contractor's proposed Capital Improvement, either party may refer the matter to the Independent Engineer for binding resolution.

(d) In addition, Metro may object to the Contractor's proposed Capital Improvement for the reasons stated in Section 6.13(a)(i) and (ii). In such event the Metro objection shall be resolved pursuant to Section 6.13(b).

Section 6.15 Review of Capital Improvement Change Orders Proposed By Metro

(a) All Metro proposed Capital Improvements shall be initiated by written Change Order designated as such by Metro. No comment by Metro or its Consulting Engineer, either in writing or orally, regarding Contractor's design, construction or operation of the Facility shall, in any way, constitute an authorization or directive to implement a Capital Improvement or other change to the Facility or its operations, unless submitted to the Contractor in the form of a Change Order.

(b) Upon receipt of a written Change Order from Metro, Contractor shall have thirty (30) days to review the proposed Capital Improvement and prepare a detailed proposal for implementation of the Change Order. The detailed proposal shall describe:

- (i) the necessary design revisions to the Facility Plans and Specifications;
- (ii) the estimated effect of the proposed Change Order on the Facility, including any increase or decrease in the Operation and Maintenance Charge, Pass Through Costs, Facility Price, the Scheduled Completion Date, the Performance Standards, the Guaranteed Annual Tonnage, or any other modification to any obligation of either Party under this Agreement; and
- (iii) a revised Drawdown Schedule which reflects the costs and timing of implementing the proposed Change Order.

(c) If Metro disagrees with any aspect of the Contractor's detailed proposal, it shall notify the Contractor in writing as soon as possible, but not later than fifteen business days, after receipt of the proposal. The Parties shall make a good faith effort to negotiate any disagreements regarding the impact of the

proposed Change Order. If Metro and the Contractor cannot agree to the cost of implementing the proposed Change Order, Metro shall have the right to issue a Notice to Proceed requiring the Contractor to implement the proposed change for an amount equal to the Contractor's Direct Costs, as that term is defined in this agreement, to the extent of Cost Substantiation. If Metro and the Contractor cannot agree to the impact of a Change Order, if any, on the Pass Through Cost, the Scheduled Completion Date, the Performance Standards or the Guaranteed Annual Tonnage, such dispute shall be resolved in accordance with Article XIII. Any increases or decreases in the Operation and Maintenance Charge due to a Metro Change Order shall be limited to an amount equal to the increase or decrease in the Contractor's Direct Costs to the extent of Cost Substantiation.

(d) The Contractor, within the thirty (30) days review period set out in (b) above, shall have the right to object in writing to any Change Orders initiated by Metro if Contractor determines that the proposed change will:

- (i) have an adverse affect on the ability of the Facility to comply with the Performance Standards or any legal requirements which govern construction or operation of the Facility; or
- (ii) render the Facility less efficient operationally; or
- (iii) render the Facility less commercially viable; or
- (iv) adversely impact the Scheduled Completion Date or the ability of the Contractor achieving the Commercial Operation Date prior to the end of the Extension Period.

(e) In the event Metro does not agree with the Contractor's objection, or if the Credit Provider's consent has not been granted pursuant to Section 4.5(b) the matter shall be submitted to the Independent Engineer for binding resolution pursuant to Article XIII.

(f) If in the opinion of Bond Counsel approval of the change order will adversely affect the Federal tax-exempt status of the interest on any Bonds which were intended to be excludable for Federal income tax purposes from the gross incomes of the owners thereof then the change order shall not be approved.

Section 6.16 Financing Capital Improvements

(a) Capital Improvements Due to Uncontrollable Circumstances.

- (i) In the event that a Capital Improvement is required due to an Uncontrollable Circumstance, the Contractor may request a Time Extension subject to the provisions of Section 6.1 and the cost of said improvement shall be paid for from the following sources of funds in the following order of priority:
 - 1. first, all applicable insurance or condemnation proceeds; and
 - 2. second, funds available in any reserves that are required or expressly permitted by the terms of the Bond Documents to be used for Capital Improvements to the Facility.
- (ii) If the sources of funds specified in (a)(i) above are not available or are insufficient to cover the cost of the required Capital Improvement, Metro shall be responsible for funding the cost of the Capital Improvement subject to its right to require the Contractor to contribute an Additional Equity Contribution. Metro may obtain Additional Financing through the issuance and sale of Additional Bonds or Metro may finance the improvement for other sources as determined appropriate by Metro. The Contractor may be required by Metro to contribute an Additional Equity Contribution equal to fifteen percent (15%) of the costs of the required Capital Improvement.
- (iii) Any Additional Financing, Additional Bonds or Additional Interim Debt, issued or otherwise assumed by Metro or the Contractor as the case may be shall be subordinate in right of payment and with respect to common collateral to the Bonds unless the Credit Provider agrees to the contrary in the exercise of its sole discretion provided that this section shall not restrict Metro's ability to issue debt to finance other facilities as long as such debt is not secured by any of the collateral for the Bonds.
- (iv) In the event that the Uncontrollable Circumstance which requires a Capital Improvement is an insured event, the Contractor shall take any and all actions necessary to obtain recovery from the appropriate insurer. The Contractor shall provide Metro with copies of all correspondence between the Contractor and any insurers from whom recovery is sought. As soon as practicable after the occurrence of an insured event, Contractor shall

notify Metro, in writing, of the estimated time period for recovery of insurance proceeds. If, in the opinion of Metro and the Contractor, the time period for recovery of insurance proceeds will unduly jeopardize completion of the Facility, or constitute an unreasonable disruption to the region's overall waste disposal system, Metro may finance the Capital Improvement and at its option issue Additional Bonds to finance the required Capital Improvement and all insurance proceeds recovered due to an Insured Event shall be first used to pay the debt service for any Additional Bonds which were issued to finance the required Capital Improvement or to repay any sums otherwise advanced by Metro.

- (iv) If Metro issues Additional Bonds, the additional Debt Service will be paid through an increase in the Tip Fee.
- (v) If the Capital Improvement results in an increase in the cost of operations and maintenance of the Facility, the operations and maintenance fee shall be increased by an amount equal to the Direct Costs attributable to the increased costs resulting from the Capital Improvement subject to Cost Substantiation. If Contractor has made an Additional Equity Contribution, Contractor shall receive an increase in the operations and maintenance component of the Tip Fee in an amount equal to a reasonable return on Contractor's equity taking into account any tax benefits received by Contractor as well as other factors. Metro may object to any increase requested by Contractor and if the parties cannot resolve any dispute after good faith negotiations the matter shall be referred to Dispute Resolution pursuant to Article XIII.
- (vi) If Metro fails or is unable to finance any required Capital Improvement, Contractor at its option, may finance the entire Capital Improvement with an Additional Equity Contribution. If Contractor so finances any required Capital Improvement, there shall be no Metro Default as a result of the failure of Metro to finance the Capital Improvement and Contractor shall be entitled to an increase in the operations and maintenance portion of the Tip Fee as provided for above.

- (vii) If as a result of an Uncontrollable Circumstance, the Tip Fee payable by Metro shall be required to increase by an amount greater than the amount provided for in Section 15.4 then Metro may terminate this Agreement pursuant to Section 15.4 unless Contractor agrees to forgo that amount of the Tip Fee increase that is greater than the amount provided for in Section 15.4 and to pay any increase in Debt Service caused by the issuance of Additional Bonds if such is necessary to prevent the Tip Fee increase to Metro from exceeding the amount provided for in Section 15.4.

(b) Capital Improvements Due To Metro Fault or Metro Change Order. In the event a Capital Improvement is required due to Metro Fault or a written Change Order by Metro as described in Section 6.15 above, then:

(i) the Capital Improvement shall be financed from:

1. first, funds available in any reserves that are required or expressly permitted by the terms of the Bond Documents to be used for Capital Improvements to the Facility;
2. other sources as determined appropriate by Metro;
3. the proceeds from the issuance of Additional Bonds; or,
4. at the Contractor's option and sole discretion, from an Additional Equity Contribution.

(ii) Contractor shall be entitled to an increase in the Tip Fee as provided in Section 6.16(a)(v) above; and

(iii) Contractor may request a Time Extension pursuant to Section 6.1(e).

(c) Financing of Capital Improvements Due to Reasons Other Than Uncontrollable Circumstances, Metro Change Orders or Metro Fault. The Contractor shall be solely responsible for any and all financing of Capital Improvements due to reasons other than Uncontrollable Circumstances, Metro Change Orders, or Metro Fault, including but not limited to any cost overruns, the insufficiency of any equity contribution intended to be provide by the Contractor, or any other contingency.

Section 6.17 Disbursements to Pay Construction Costs

(a) Disbursements Prior to Completion. Subject to the applicable provisions of the Bond Documents and compliance with the provisions of this Section 6.17, monies shall be disbursed to the Contractor from time to time to pay the costs of acquiring, constructing, installing and performance testing the Facility in accordance with the Bond Documents and the Drawdown Schedule.

On or before the twenty-fifth day of each month during the Construction Period, the Contractor shall submit to Metro, in duplicate, a copy of a completed Requisition Certificate relating to the costs incurred in connection with the acquisition, construction and installation of the Facility during the preceding month.

Each Requisition Certificate shall contain an itemized and sworn application for payment supported by such data substantiating the Contractor's right to the requested disbursement as the Trustee may reasonably require and shall be accompanied by a certificate from the Contractor's Authorized Representative which shall certify, represent and warrant the following:

The amount of the disbursement requested pursuant to the attached Requisition Certificate, when added to the amounts previously disbursed and any payments made from the proceeds of Interim Debt or Equity Contribution, in accordance with the Bond Documents, does not exceed the total amount expended by the Contractor for Work, materials, overhead, profit and other qualified costs and expenses under this Agreement and the Bond Documents to the date of such Requisition Certificate.

(b) Final Inspection and Application for Final Disbursement. Notwithstanding anything expressed or implied herein to the contrary, the final disbursement following completion of the Facility and the Performance Test shall be made only after Metro has accepted the Facility as provided in Section 7.7(b) hereof.

Section 6.18 Intercreditor Agreement

To the extent the provisions of the Intercreditor Agreement provide for Metro or Credit Suisse to have powers, duties or authority relating to the provisions of this Article VI that differ from the specific provisions of this Article VI the provisions of the Intercreditor Agreement shall be controlling.

ARTICLE VII.

PERFORMANCE TESTING

Section 7.1 Conduct of Performance Test

(a) Prior Notice of Commencement of Performance Test; Review of Performance Test Procedures by Metro. The Contractor shall give the Metro Authorized Representative and Credit Provider's Engineer at least fifteen (15) days' written notice of the date on which first the Performance Test will begin. The Contractor shall deliver at least 24 hours prior written notice of any subsequent Performance Test. The notice shall include a schedule of the Performance Test in conformity with Exhibit [B] C hereto. The Performance Test Procedures shall be submitted to Metro and the Credit Provider at least ninety (90) days prior to the start of the first Performance Test.

Metro shall have thirty (30) days after receipt of the Performance Test Procedures for review and comment in writing delivered to the Contractor. In the event that the Contractor objects to any of Metro's written comments on such Performance Test Procedures, the Contractor shall notify Metro in writing of such objections within ten days of receipt of Metro's comments, which notice shall state such objections and the reasons therefor, and the Parties shall promptly enter into discussions to resolve any differences regarding the Performance Test Procedures. Any Metro or Credit Provider comments on the preliminary plan which are not objected to by the Contractor shall be incorporated into the final Performance Test Procedures.

At least thirty (30) days prior to the start of the Performance Test, the Contractor shall deliver to the Metro Authorized Representative and Credit Provider's Engineer a final test plan incorporating such changes to the Performance Test Procedures plan as have been agreed upon by the Parties.

(b) Commencement of Performance Test. The Contractor shall not commence the Performance Test until (i) all applicable environmental and other governmental permits, licenses, approvals, determinations, authorizations and requirements that are necessary for the Performance Test have been obtained by the Contractor and the Contractor has certified in writing to Metro and the Credit Provider that the same have been duly obtained, which certification shall be accompanied by copies of all such permits, licenses, approvals, determinations, authorizations and requirements, and (ii) the Contractor shall have certified to Metro and the Credit Provider that the construction of the Facility has been completed. The Contractor may run concurrent Performance Tests, provided that the notice requirements of Section 7.1(a) are duly met and provided further that no portion of any Batch utilized in one Performance Test shall be utilized in any other Performance Test.

(c) Conduct of the Performance Test at Contractor's Expense. The Performance Test shall be conducted by the Contractor, at its sole expense. Metro, the Credit Provider, their officials, agents the Consulting Engineer and the Credit Provider's Engineer shall have the right to be present at all times during the Performance Test. During the Performance Test (but not during the Performance Shakedown), Metro shall pay to Contractor a Tip Fee for each Ton of Acceptable Waste, other than Rejected Waste, that Metro delivers or causes to be delivered to the Facility for Processing. Such Tip Fee shall be calculated as provided in Exhibit [F] K hereto.

Section 7.2 Delivery and Acceptance of Acceptable Waste

(a) During the Performance Test, Metro shall deliver Acceptable Waste in an amount equal to the quantity, and substantially conforming to the Reference Waste Composition, of Acceptable Waste specified in the final test plan. Such Acceptable Waste, the amounts thereof and the manner and timing of delivery thereof to the Facility shall be specified in the final Performance Test plan furnished to Metro and the Credit Provider in accord with Section 7.1 hereof, provided that the amount of such Acceptable Waste and the manner and timing of delivery thereof to the Facility shall be subject to modification from time to time on reasonable prior notice to Metro and the Credit Provider to increase or decrease the amount of Acceptable Waste required to be delivered by Metro or to postpone deliveries thereof.

In addition to the Acceptable Waste to be delivered by Metro to the Facility for purposes of conducting the Performance Test, prior to the Commercial Operation Date, Metro may offer to deliver to the Facility, and the Contractor may accept for Processing at the Facility, Acceptable Waste in such amounts as Metro and the Contractor may agree. Metro shall pay the Contractor a Tip Fee for each such Ton of Acceptable Waste delivered by Metro which Contractor processes after the Performance Shakedown and prior to the Commercial Operation Date, which Tip Fee shall be calculated as provided in Exhibit K hereto. Provided further that if Metro delivers and Contractor processes or commences to process more than 15,416 Tons of Acceptable Waste during any single month prior to the establishment of the Commercial Operation Date then Metro shall only pay the incremental tonnage fee then in effect as provided in Exhibit K for all Tons delivered in excess of 15,416 Tons during that month.

Section 7.3 The Throughput Performance Standard

(a) Achievement of 95% of Throughput Performance Standard. If, prior to the Scheduled Completion Date, the Contractor establishes to the satisfaction of Metro that the Performance

Tests have been completed, that the Performance Tests establish that the Facility has complied with all of the Performance Standards except for the residue standard provided for in Section 7.4 during the Performance Test period, that the Facility has been completed in substantial compliance with the requirements of this Agreement, and that the Facility achieves ninety-five percent (95%) or more of the Throughput Performance Standard, the Throughput Performance Standard will be deemed to have been met; provided that notwithstanding the foregoing, from and after the Commercial Operation Date the Contractor shall nevertheless be obligated to meet the Minimum Annual Throughput Guarantee.

(b) If, prior to the Scheduled Completion Date, the Facility does not achieve at least ninety-five percent (95%) of the Throughput Performance Standard, for reasons other than Uncontrollable Circumstances or Metro Fault, then the Contractor shall have the Extension Period to bring the Facility up to ninety-five percent (95%) of the Throughput Performance Standard. Provided that Metro shall pay a Tip Fee on a monthly basis only for each ton of waste processed such Tip Fee to be calculated as provided for in Exhibit K. If, by the end of the Extension Period, the Facility achieves less than ninety-five percent (95%), but not less than seventy-five percent (75%), of the Throughput Performance Standard because of Contractor Fault, then the Contractor shall derate the Bonds in accordance with the provisions of Section 7.5. In addition, the Operations and Maintenance component of the Tip Fee shall be reduced [~~one-eighth~~] eight-tenths of 1 percent (0.8%) for each one percent (1%) of the shortfall in Facility Operations. If the Facility achieves less than ninety-five percent (95%), but not less than seventy-five percent (75%), of the Throughput Performance Standard because of Uncontrollable Circumstance or Metro Fault then no Deration Payment shall be required.

(c) Failure to Achieve 75% of Throughput Performance Standard. Failure of the Contractor to achieve Throughput of seventy-five percent (75%) of the Throughput Performance Standard on or before the last day of the Extension Period because of Contractor Fault shall be a Contractor Event of Default hereunder.

Section 7.4 The Residue Performance Standards

(a) Residue in Excess of Maximum Residue Guarantee But Not in Excess of 40% per Wet Ton of Acceptable Waste. If after the Scheduled Completion Date the Facility is producing Residue in excess of the Maximum Residue Guarantee, but such Residue does not exceed forty percent (40%) per Wet Ton of Acceptable Waste delivered to the Facility, then the Contractor shall pay to Metro all of the costs associated with disposal of the amount of Residue that is in excess of the Maximum Residue Guarantee.

(b) Residue in Excess of Forty Percent (40%) After the Scheduled Completion Date. If after the Scheduled Completion Date but prior to the Commercial Operation Date:

in any one month the Facility is producing Residue greater than forty percent (40%) per Ton of Acceptable Waste then:

(A) the Contractor shall pay to Metro all of the costs associated with disposal of the Residue that is in excess of the Maximum Residue Guarantee; and

(B) the Contractor shall further pay Metro, as liquidated damages to compensate Metro for lost landfill capacity and other expenses that cannot be readily calculated, an amount equal to

- (i) ten percent (10%) of the cost of transporting and disposal of all such Residue in excess of the Maximum Residue Guarantee if such excess Residue shall exceed forty percent (40%) per ton of Acceptable Waste processed but is less than forty-three percent (43%);
- (ii) twenty percent (20%) of the cost of transporting and disposal of all such Residue in excess of the Maximum Residue Guarantee if such excess Residue shall exceed forty-three percent (43%) per ton of Acceptable Waste processed but is less than forty-six percent (46%);
- (iii) thirty percent (30%) of the cost of transporting and disposal of all such Residue in excess of the Maximum Residue Guarantee if such excess Residue shall exceed forty-six percent (46%) per ton of Acceptable Waste processed.

(c) Residue in Excess of Forty Percent (40%) But Less Than Fifty Percent (50%) per Wet Ton of Acceptable Waste. If after the end of the Extension Period as may be adjusted by any Time Extension

the Facility is producing Residue greater than forty percent (40%) but less than fifty percent (50%) per Wet Ton of Acceptable Waste then:

(A) the Contractor shall pay Metro for all costs associated with the disposal of all Residue in excess of the Maximum Residue Guarantee; and

(B) the Contractor shall further pay Metro, as liquidated damages to compensate Metro for lost landfill capacity and other expenses that cannot be readily calculated, an amount equal to

- (i) ten percent (10%) of the cost of transporting and disposal of all such Residue in excess of the Maximum Residue Guarantee if such excess Residue shall exceed forty percent (40%) per ton of Acceptable Waste processed but is less than forty-three percent (43%);
- (ii) twenty percent (20%) of the cost of transporting and disposal of all such Residue in excess of the Maximum Residue Guarantee if such excess Residue shall exceed forty-three percent (43%) per ton of Acceptable Waste processed but is less than forty-six percent (46%);
- (iii) thirty percent (30%) of the cost of transporting and disposal of all such Residue in excess of the Maximum Residue Guarantee if such excess Residue shall exceed forty-six percent (46%) per ton of Acceptable Waste processed but less than fifty percent (50%).

(d) Production of Residue in Excess of Fifty Percent (50%) per Wet Ton of Acceptable Waste. If after the end of the Extension Period as it may be adjusted by any Time Extensions, the Facility is producing Residue in excess of fifty percent (50%) per Ton of Acceptable Waste for a reason other than a Metro Fault or an Uncontrollable Circumstance, then a Contractor Event of Default shall be deemed to have occurred under this Agreement.

Provided however at least thirty (30) days prior to declaring Contractor in default hereunder Metro shall give Contractor written notice that the Facility in Metro's opinion is producing Residue in excess of fifty (50%) percent per Ton of Acceptable Waste. Contractor may within thirty (30) days of said notice either deny that the Residue produced is in excess of the fifty (50%) percent per Ton or that the cause is due to Uncontrollable Circumstances or Metro Fault and state its reasons for so denying or admit that the amount of Residue is in excess of fifty (50%) percent per Ton and state the measures necessary to remedy the problem and the time reasonably necessary to effect the remedy.

If Metro agrees that Contractor should attempt to remedy the problem then Metro may not issue a notice of default pursuant to Section 15.3 until the time reasonably necessary to remedy as agreed to by the Parties has expired without the

problem being resolved. In no event may the time allowed to remedy the problem exceed ninety (90) days from the date that Metro furnishes notice of the deficiency to the Contractor.

If Metro and the Contractor cannot agree whether the Facility is producing Residue in excess of fifty (50%) percent per Ton or that the cause is do to Uncontrollable Circumstance or Metro Fault or that the problem can be remedied within a reasonable time not to exceed ninety (90) days Contractor may prior to the expiration of the thirty-day (30-day) period allowed for response refer the matter to the Independent Engineer for resolution pursuant to Article XIII and if appropriate immediately commence taking all measures necessary to remedy the problem.

If the Independent Engineer prior to the ninetieth (90th) day after the giving of notice finds that the Facility is not producing Residue in excess of fifty (50%) percent per Ton or that the cause is due to Uncontrollable Circumstance or Metro Fault, then Metro may not declare Contractor in default.

If the Independent Engineer finds that Contractor can reasonably remedy the problem in less than ninety (90) days the Contractor shall have such time as the Independent Engineer so finds as reasonable to remedy the problem.

Otherwise Metro may declare Contractor in default if the problem has not been corrected by the end of the ninetieth (90th) day after giving notice or the period found reasonably necessary to correct the problem whichever is soonest.

Section 7.5 The Deration Payment by Contractor; Contractor's Right to Reconduct the Performance Test

If, on the last day of the Extension Period as may be adjusted by a Time Extension, the Contractor has achieved at least seventy-five percent (75%) but less than ninety-five percent (95%) of the Throughput Performance Standards as provided in Section 7.3(b) then the Contractor shall pay the Trustee an amount (the "Deration Payment") which shall be the sum of (i) an amount determined by multiplying the aggregate principal amount of the Bonds then outstanding times the percentage of shortfall in the Throughput Performance Standard, and (ii) an amount determined to be necessary to cover all interest expense on such principal amount from the date on which the Extension Period ends until the date the Trustee applies the Deration Payment to redeem Bonds pursuant to the Bond Documents taking into account the estimated interest earnings on the Deration Payment. The Deration Payment shall be made no later than ten (10) days after the end of the Extension Period. In the event that interest earnings on this amount are not sufficient to cover the interest

expense of the proportionate Deration Payment, then within fifteen (15) days of each interest payment date, as established under the Bond Documents, the Contractor shall immediately pay to the Trustee an amount sufficient to cover the shortfall.

Redemption of Bonds from Deration Payment; Payment of Interest on Bonds Pending Redemption.

- (i) Payment of Interest Pending Redemption. The Trustee shall use the Deration Payment and the available investment earnings thereon to pay all interest accruing on the Bonds subject to redemption pursuant to Section 7.5(c)(ii) below and coming due during the period commencing on the date on which the Extension Period ends and ending on the date of redemption thereof.
- (ii) Date of Redemption. The Deration Payment together with all remaining investment earnings thereon shall be used to redeem Bonds on the first date permitted under the Bond Ordinance following the payment of the Deration Payment.

**Section 7.6 Payments Related to Delay in Commercial
Operation Date for Failure to Pass
Performance Tests**

(a) Failure Due to Metro Fault or Uncontrollable Circumstances. If the Facility fails to meet the Performance Standards by the Scheduled Completion Date or the end of the Extension Period due to Metro Fault or Uncontrollable Circumstances, the Contractor shall be entitled to a Time Extension and nevertheless shall continue to use its best efforts to cause the Facility to meet the Performance Standards at the earliest possible date during the Time Extension:

- (i) the provisions of Section 6.16 hereof shall govern any resulting increase in the Facility Price;
- (ii) Metro shall be responsible for payment of Debt Service;
- (iii) Metro shall be responsible for disposal of all Acceptable Waste that cannot be Processed and the costs thereof;
- (iv) neither Party shall be entitled to payment from the other Party for foregone Compost Product Revenues or Recovered Materials Revenues, or any other forms of foregone profits or revenues; and

- (v) the Scheduled Completion Date shall be extended by a Time Extension. The length of the Time Extension shall be established pursuant to Section 6.1(e)(iv).

(b) Failure Due to Reasons other than Metro Fault or Uncontrollable Circumstances. If the Facility fails to meet the Performance Standards by the Scheduled Completion Date for any reason other than Metro Fault or Uncontrollable Circumstances the Contractor shall be granted the Extension Period, during which Extension Period:

- (i) Metro shall continue to cause Acceptable Waste to be delivered to the Facility in such quantities as shall be requested by Contractor subject to the Delivery Schedule and other provisions of Section 8.2 and Metro shall pay a monthly Tip Fee equal to the Tip Fee for each ton of Acceptable Waste Processed as calculated pursuant to the provisions of Exhibit K.
- (ii) Contractor shall Process through the Facility all Acceptable Waste delivered by Metro and be responsible for the costs and disposal of excess Residue;
- (iii) the Contractor shall be responsible for all of its own costs and expenses, including debt service (if any) on its Equity Contribution and Debt Service on all outstanding Financing; and
- (iv) neither Party shall be entitled to payment from the other Party for foregone Compost Product Revenues or Recovered Materials Revenues, or any other forms of foregone profits or revenues.

Section 7.7 Certification of Performance Test Results; Final Disbursement

(a) Certification of Performance Test Results; Acceptance of Facility by Metro. Upon completion of the Performance Test, the Contractor shall deliver to Metro the Certificate of Completion. Upon delivery to Metro of the Certificate of Completion, Metro's Authorized Representative shall execute and deliver to the Contractor a dated receipt therefor, which receipt shall serve as conclusive evidence of the date of receipt by Metro of the Certificate of Completion.

If Metro shall, for any reason, be of the opinion that the Contractor did not have reasonable basis for certifying any matter covered by the Certificate of Completion or otherwise is, for any reason, of the opinion that any of the results of the

Performance Test set forth therein are inaccurate, incomplete or unreliable, Metro may, within ten (10) days of receipt thereof, refer such matter to the Consulting Engineer for review and comment and shall notify the Contractor in writing of the date upon which such referral was made.

Within fourteen (14) days after the date upon which Metro refers such matters to the Consulting Engineer for review, the Consulting Engineer shall provide Metro and the Contractor with a written report (the "Consulting Engineer's Report") setting forth in detail the Consulting Engineer's findings, conclusions and opinions with respect to the results of the Performance Test as set forth in the Certificate of Completion and, if the Consulting Engineer's Report indicates that the results of the Performance Test as set forth in the Certificate of Completion, for any reason, are inaccurate, incomplete or unreliable, or that the Contractor did not have a reasonable basis for its certification of any of such results, setting forth the Consulting Engineer's recommendations as to the steps that must be taken in order to correct the same and the extent to which all or any part of the Performance Test must be redone once such corrective actions have been taken.

In the event the Consulting Engineer's Report indicates that the results of the Performance Test as set forth in the Certificate of Completion, for any reason, are inaccurate, incomplete or unreliable, or that the Contractor did not have a reasonable basis for its certification of any of such results, the Contractor shall:

- (i) immediately proceed to take such action as shall have been recommended by the Consulting Engineer in order to correct the same;
- (ii) to the full extent necessary or appropriate in the opinion of the Consulting Engineer, reconduct the Performance Test; and
- (iii) provide Metro with a new Certificate of Completion once the Performance Test or relevant portions thereof has been redone, which new Certificate of Completion shall be subject to the same provisions for review by Metro and referral to the Consulting Engineer as are set forth above with respect to the original Certificate of Completion; or
- (iv) refer the matter for Dispute Resolution pursuant to Article XIII.

In the event the Consulting Engineer's Report indicates that the Certificate of Completion is accurate, complete and reliable and that the Contractor had a reasonable basis for its

certification of the Performance Test results as set forth therein, then and in such event the Contractor shall be deemed to have met the Performance Standards to the extent set forth in the Certificate of Completion.

(b) Acceptance of Facility by Metro; Selection of Commercial Operation Date. If on the basis of their observations, review of the Work, final inspection of the Facility and the results of the Performance Test of the Facility as evidenced by the information in the Certificate of Completion, Metro and the Consulting Engineer accept that the Facility has met all of the Performance Standards under this Agreement, Metro shall within ten (10) days so notify the Contractor, the Trustee, and the Credit Provider.

Upon the Acceptance of the Facility by Metro, the Commercial Operation Date, shall be the first calendar day of the month following the date of the Acceptance.

Section 7.8 Effect of Intercreditor Agreement on Performance Testing

To the extent the provisions of the Intercreditor Agreement provide for Metro or Credit Suisse to have powers, duties or authority relating to the provisions of this Article VII that differ from the specific provisions of this Article VII the provisions of the Intercreditor Agreement shall be controlling.

ARTICLE VIII. FACILITY OPERATION

Section 8.1 Continuing Compliance with Performance Standards and Applicable Law

The Contractor acknowledges that Metro is entering into this Agreement with the expectation that during the Term the Facility will meet all applicable Performance Standards and will comply with Applicable Law.

The Contractor hereby agrees, covenants and guarantees that during the Term the Facility will meet all Performance Standards and all requirements of Applicable Law unless such Performance Standards or requirements of Applicable Law cannot be met or complied with as a result of Metro Fault or Uncontrollable Circumstances.

The Contractor hereby acknowledges that the guaranty to meet all applicable Performance Standards as set forth herein and to comply with all requirements of Applicable Law as set forth herein is an absolute and unconditional obligation of the Contractor throughout the Term except as such performance may be

specifically excused pursuant to the provisions of this Agreement.

Section 8.2 Delivery and Acceptance of Acceptable Waste

(a) The Delivery Schedule. Beginning on the Commercial Operation Date and continuing throughout the Term of this Agreement, but subject to the provisions of this Section 8.2 and Sections 8.8 and 8.14, Metro shall deliver, or cause to be delivered, to the Facility Acceptable Waste in each Fiscal Year in an aggregate amount equal to or exceeding the Guaranteed Annual Tonnage.

The Contractor and Metro shall establish the Delivery Schedule to be effective as of the Commercial Operation Date consistent with the obligation of Metro to deliver the Guaranteed Annual Tonnage of Acceptable Waste. The Delivery Schedule may be adjusted on an annual basis or more frequently as the Parties may agree. The Delivery Schedule shall indicate periods of Scheduled Maintenance during which lesser Tonnages shall be delivered and make allowance for limited periods of anticipated but unscheduled maintenance not inconsistent with the minimum tonnages provided for below. Contractor shall give Metro notice of all unscheduled maintenance as soon as possible.

The Delivery Schedule shall be subject to the following weekly and monthly minimum and maximum tonnage:

Minimum Daily Tonnage:	0
Maximum Daily Tonnage:	800
Minimum Weekly Tonnage:	2,500
Maximum Weekly Tonnage:	5,000
Minimum Monthly Tonnage:	11,500
Maximum Monthly Tonnage:	18,000
Minimum Annual Tonnage:	185,000
Maximum Annual Tonnage:	200,000

The foregoing maximum tonnages may be exceeded with Contractor approval. Provided however in no event shall Metro have any obligation to deliver or cause to be delivered to the Facility more than 750 Tons of Acceptable Waste on any Monday, Tuesday, Wednesday, Thursday or Friday, 250 Tons of Acceptable Waste on any Saturday or any Acceptable Waste on any Sunday.

(b) Acceptable Waste Deemed to Be Delivered by Metro. Subject to the rights of the Contractor to refuse Rejected Waste pursuant to Section 8.2(d) hereof, the Contractor shall accept all Acceptable Waste, properly delivered during Delivery Hours by or on behalf of Metro, that Metro is entitled to deliver or cause to be delivered pursuant to this Article VIII. For the purpose of determining whether or not Metro has delivered the Guaranteed Annual Tonnage of Acceptable Waste to the Facility (but not for

the purpose of determining ownership of or responsibility for Acceptable Waste and Unacceptable Waste, which shall be governed by Sections 8.7 and 8.8 hereof), the following Acceptable Waste shall be deemed delivered:

- (i) All Acceptable Waste actually delivered, or caused to be delivered, to the tipping floor of the Facility, during Delivery Hours, by or on behalf of Metro in accordance with the provisions of this Agreement, less any Rejected Waste that the Contractor rightfully refuses to accept pursuant to Section 8.2(d) hereof; and
- (ii) All Acceptable Waste which Metro is prepared to deliver or cause to be delivered to the Facility during Delivery Hours, but which is not so delivered solely because the Facility is not capable of Processing such Acceptable Waste (unless Contractor may rightfully reject such waste pursuant to Section 8.2(d)), or because the Contractor has refused to accept delivery thereof in violation of the terms of this Agreement.

(c) Processing of Acceptable Waste. The Contractor shall Process all such Acceptable Waste delivered by Metro; provided, however, that during the period of any Processing Capacity reduction the Contractor may, to the extent and in the manner provided in Section 8.14, dispose of such Acceptable Waste by means other than Processing and pay the associated costs of such disposal as provided in Section 8.14 hereof if the Processing Capacity reduction is due to reasons other than Metro Fault or Uncontrollable Circumstance.

(d) Rejected Waste. Contractor may reject and refuse to accept delivery of or refuse to Process any Acceptable Waste delivered or sought to be delivered to the Facility if and to the extent that: (1) the volume of Acceptable Waste delivered to the Facility on that date exceeds the maximum tonnages set forth in Section 8.2(a); (2) the Facility cannot Process the Acceptable Waste due to Metro Fault; (3) the Facility cannot Process the Acceptable Waste due to Uncontrollable Circumstances; or (4) the volume of Acceptable Waste delivered or sought to be delivered to the Facility during Scheduled Maintenance or during an unscheduled maintenance period allowed for in the Delivery Schedule exceeds that tonnage consistent with the degree by which the Facility has diminished Processing Capacity as set forth in the Delivery Schedule.

Section 8.3 Emergency Deliveries

Metro may, due to events that jeopardize Metro's ability to assure the orderly flow of solid waste through Metro's other

facilities in order to properly dispose of all solid waste for which Metro is responsible, request the Contractor to accept more Acceptable Waste than the Contractor is obligated to accept under Section 8.2 or waste Contractor elects to accept in excess of the Guaranteed Annual Tonnage pursuant to Section 8.4. The Contractor shall use reasonable efforts to accommodate such requests; including electing to process such wastes through the composter plant or treating such wastes as Rejected Wastes and causing the wastes to be placed in containers as designated by Metro and causing the containers to be delivered to a landfill or other disposal site as designated by Metro; provided, however, that the Contractor's determination of its ability to do so shall be final. Additional charges for acceptance of Acceptable Waste under this Section 8.3 shall be determined in accordance with Section 8.4 for waste that Contractor elects to process and in an amount equal to 1.092 times Contractor's Direct Costs subject to Cost Substantiation for waste that is transferred directly from the Facility and not processed by Contractor.

Section 8.4 Excess Processing Capacity

The Contractor may from time to time notify Metro in writing that there is available at the Facility daily Processing Capacity in excess of the Guaranteed Daily Processing Capacity and request Metro to make available at the Facility during Delivery Hours for acceptance by the Contractor Acceptable Waste in an aggregate amount equal to all or a portion of such excess daily Processing Capacity. Such notice shall contain a schedule setting forth the amount of the excess daily Processing Capacity, the estimated period during which such excess daily Processing Capacity will exist and the estimated portion of such excess daily Processing Capacity which the Contractor desires Metro to use.

Metro shall within ten (10) Business Days of receipt of such notice notify the Contractor as to whether Metro chooses to utilize such excess daily Processing Capacity. In the event that Metro agrees to increased deliveries of Acceptable Waste to the Facility, an appropriate temporary modification of the Delivery Schedule shall be made in writing, which temporary Delivery Schedule shall specify:

- (i) the amounts of additional Acceptable Waste to be delivered;
- (ii) the duration of such increased deliveries;
- (iii) any adjustment in the Tip Fee; and
- (iv) any other adjustments to the Delivery Schedule necessary to accommodate such increased deliveries.

Metro shall pay the Contractor for processing such Excess Tonnage as provided in Exhibit K.

Section 8.5 Other Contracts for Acceptable Waste Delivery

The Contractor may not enter into agreements with any Person other than Metro for the Processing of Acceptable Waste except with the prior written consent of Metro, which consent may be refused by Metro without cause in its sole and absolute discretion.

Section 8.6 Scales and Weighing Records

Metro shall operate and maintain permanent motor truck scales at the Facility, calibrated to the accuracy required by Oregon law, and shall weigh all vehicles delivering Acceptable Waste to the Facility and record the weights thereof. The weight record shall contain gross weight, tare weight, the difference between gross weight and tare weight, date and time and vehicle identification. Metro shall give each vehicle operator written confirmation of such information at the time the vehicle is weighed.

Metro may require each vehicle operator delivering Acceptable Waste to present to the scale operator a card, permit, identification or license. Metro may require from time to time the revalidation of the tare weight of any vehicle or the reweighing of unloaded vehicles.

If the permanent scales at the Facility are not working properly or are being tested, Metro shall use portable scales at the Facility or scales located within one-half mile of the Facility. If none of the alternate weighing facilities meeting the requirements of Applicable Law are available, Metro shall estimate the quantity of Acceptable Waste delivered on the basis of truck volumes. These estimates shall take the place of actual weighing records during any such scale outage.

Metro, at its expense, shall inspect and test the scales at least every three (3) months. At the written request of the Contractor, Metro, in the presence of the Contractor's Authorized Representative, shall make additional tests of all scales. The cost of these additional tests shall be borne by the Contractor if the scales meet the accuracy requirements imposed by Oregon law.

If any test shows that a scale registers farther above or below the correct reading than permitted by Oregon law, the charges and calculations based on readings made (i) within thirty (30) days preceding the test or (ii) if the Contractor has requested a test as provided above, from the date of such request, shall be corrected by the percentage of the inaccuracy

found; provided, however, that if the Contractor has not requested a test and a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

Metro shall maintain daily records of the total tonnage of Acceptable Waste delivered to the Facility hereunder and the tonnages of Rejected Waste. Metro shall furnish the Contractor a compilation of such information for each month, within ten (10) days after the end of the month. Copies of all weight tickets shall be kept by Metro for at least six (6) years.

Section 8.7 Ownership of Acceptable Waste

Title to and responsibility for Processing and/or disposal of Acceptable Waste shall pass from Metro (or the party delivering Waste to the Facility) to the Contractor only when such Acceptable Waste has been accepted by Contractor under this Section 8.7. Acceptable Waste deposited on the tipping floor of the Facility shall be deemed accepted by Contractor, provided, however, that Contractor may reject Unacceptable Waste at any time up to one hour after such Unacceptable Waste is deposited on the tipping floor, and may reject any Hazardous Waste at any time before such Hazardous Waste is placed by Contractor into the DANO Drums. Unacceptable Waste that is timely rejected by Contractor shall be disposed of pursuant to Section 8.10.

Section 8.8 Right to Refuse Waste; Extent of Refusal Rights

(a) Right to Refuse. The Contractor may refuse to accept at the Facility for Processing hereunder:

- (i) any Unacceptable Waste;
- (ii) any Rejected Waste; and
- (iii) any Acceptable Waste which the Contractor has been requested to accept at the Facility inconsistent with the Delivery Hours or Delivery Schedule provided for in Section 8.2.

(b) Wrongful Refusal. Except for waste described in Section 8.8(a) above or Acceptable Waste in excess of the amounts described in Section 8.2(a) above and which the Contractor has not agreed to accept as provided in Section 8.4 above, all Acceptable Waste which the Contractor refuses to accept shall constitute By-pass Waste for purposes of this Agreement.

During any year which the Facility fails to process the Minimum Annual Throughput Guarantee due to reasons other than

Uncontrollable Circumstance or Metro Fault the Contractor shall pay Metro as Liquidated Damages to compensate Metro for lost landfill capacity and other expenses that cannot be readily calculated for each Ton of By-Pass Waste an amount equal to the cost (including transportation costs) to Metro of disposing of such By-Pass Waste.

Section 8.9 Disposal of Hazardous Waste

(a) The Parties recognize that certain materials that have been determined to be harmful to the environment by federal and state law may be delivered to the Facility by third parties beyond the control of Metro or the Contractor. The types of harmful materials contemplated are divided into three categories;

- (1) Regulated Hazardous Materials and Hazardous Waste;
- (2) Hazardous Materials and Hazardous Wastes that are not subject to regulation because while generated by industrial or commercial entities they are produced or delivered in quantities smaller than the minimums that would subject such materials or wastes to regulation; and
- (3) Materials and wastes which are available or have been sold in retail outlets for household uses that contain small quantities of materials or wastes which would be considered Hazardous Materials or Hazardous Waste if utilized by or generated by industrial or commercial concerns. For the purpose of this section, the above categories of materials shall be designated as Type 1, Type 2 and Type 3 Hazardous Materials.

(b) Type 1 Hazardous Materials: These materials are highly regulated. It is illegal to dispose of these materials by delivering them to the Facility or by placing them in containers containing municipal solid waste or otherwise causing, permitting, or allowing the material to be delivered to the Facility. Metro and Contractor agree that they will both take immediate action to minimize any environmental damage that may be caused by the delivery of Type 1 materials to the Facility, and take all necessary action to ensure that the persons responsible for such deliveries are held accountable to the fullest extent of the law for all costs incurred by the Parties.

Accordingly, Metro shall make reasonable efforts to exclude deliveries to the Facility that Metro knows or has reason to know contain Type 1 materials. If in despite of Metro's efforts, Type 1 materials are delivered to the Facility, then Contractor shall upon discovering such materials immediately notify Metro and the DEQ. Metro and Contractor shall take all

steps possible to assist DEQ in determining the source of such materials and the person or persons who delivered the materials and the person or persons who caused, allowed or facilitated the delivery. Contractor, shall, subject to the approval of the DEQ, take all measures necessary to cause the removal of the material from the facility and the disposal of the material in a manner consistent with Applicable Law. As between Metro and Contractor, Metro shall bear the financial responsibility for the costs of such investigation, clean-up, disposal and remediation of the Facility as necessary. Metro may pursue any remedy or funding source available to Metro to recover its costs or cause such third parties to directly pay Contractor the cost of such clean-up and disposal. Nothing in this Agreement shall create any liability of Metro or the Contractor to any third party for the failure to detect such materials or waste when they are brought to the Facility.

Metro shall pay the Contractor, as a Pass Through Cost, within thirty (30) days of receipt by Metro of a written invoice for such amounts, the amount reasonably necessary to permit the Contractor to provide handling, storage, transportation and disposal of such Hazardous Waste, provided that such amount shall be subject to Cost Substantiation and shall not exceed the reasonable amount for comparable hazardous material handling, storage, transportation and disposal services within a Metropolitan region comparable to the Portland metropolitan region.

The Contractor shall remove and dispose of, or cause to be removed and disposed of, such Hazardous Waste as soon as reasonably possible in accord with Applicable Law. Hazardous Waste shall be weighed on the scales provided for in Section 8.6 hereof, or on such other scales as are acceptable to the Contractor and Metro, and shall not count towards the Guaranteed Annual Tonnage.

(c) Type 2 Hazardous Materials. While these materials are identical to those materials that are considered Type 1 Hazardous Materials in content, composition and adverse consequences on the environment, they are not subject to regulation to the same degree by federal and state authorities. Metro has adopted policies and procedures and ordinances prohibiting the disposal of such materials at the Facility. Accordingly, it is appropriate for the Parties to agree that such materials will be subject to the same concerns and restrictions as exist for Type 1 Hazardous Materials. Metro and Contractor agree that they will both take immediate action to minimize any environmental damage that may be caused by the delivery of Type 2 materials to the Facility.

Accordingly, Metro shall make reasonable efforts to exclude deliveries to the Facility that Metro knows or has reason to know

contain Type 2 materials. If in despite of Metro's efforts, Type 2 materials are delivered to the Facility, then Contractor shall upon discovering such materials immediately notify Metro and the DEQ. Metro and Contractor shall take all steps possible to assist DEQ in determining the source of such materials and the person or persons who delivered the materials and the person or persons who caused, allowed or facilitated the delivery. Contractor, shall, subject to the approval of the DEQ, take all measures necessary to cause the removal of the material from the facility and the disposal of the material in a manner consistent with Applicable Law. As between Metro and Contractor, Metro shall bear the financial responsibility for the costs of such investigation, clean-up, disposal and remediation of the Facility as necessary. Metro may pursue any remedy or funding source available to Metro to recover its costs or cause such third parties to directly pay Contractor the cost of such clean-up and disposal. Nothing in this Agreement shall create any liability of Metro or the Contractor to any third party for the failure to detect such materials or waste when they are brought to the Facility.

Metro shall pay the Contractor, as a Pass Through Cost, within thirty (30) days of receipt by Metro of a written invoice for such amounts, the amount reasonably necessary to permit the Contractor to provide handling, storage, transportation and disposal of such Hazardous Waste, provided that such amount shall be subject to Cost Substantiation and shall not exceed the reasonable amount for comparable hazardous material handling, storage, transportation and disposal services within a Metropolitan region comparable to the Portland metropolitan region.

The Contractor shall remove and dispose of, or cause to be removed and disposed of, such Hazardous Waste as soon as reasonably possible in accord with Applicable Law. Hazardous Waste shall be weighed on the scales provided for in Section 8.6 hereof, or on such other scales as are acceptable to the Contractor and Metro, and shall not count towards the Guaranteed Annual Tonnage.

(d) Type 3 Hazardous Materials. These materials, while potentially being capable of causing adverse environmental impact, are presently legal for use by households. The materials may be disposed of in municipal solid waste. Metro agrees to take, consistent with its Solid Waste Management Plan, and Solid Waste Reduction Program, and other Applicable Law, reasonable efforts to reduce the volume of Type 3 Hazardous Materials introduced into the wastestream in the Metro region. However, Metro and Contractor recognize that despite Metro's best effort it is reasonable to assume that certain quantities of these materials will, in fact, be placed in the municipal solid wastestream and delivered to the Facility.

Contractor agrees to take reasonable efforts to attempt to remove such articles from the Acceptable Waste material delivered to the Facility by Metro, or caused to be delivered to the Facility by Metro, prior to the time that waste is delivered into the DANO drums. Contractor shall remove such materials and sort and separate these materials into separate containers and cause the materials so separated and sorted to be disposed of in a manner consistent with Applicable Law.

Metro shall pay the Contractor, as a Pass Through Cost, within thirty (30) days of receipt by Metro of a written invoice for such amounts, the amount reasonably necessary to permit the Contractor to provide handling, storage, transportation and disposal of such Hazardous Waste, provided that such amount shall be subject to Cost Substantiation and shall not exceed the reasonable amount for comparable hazardous material handling, storage, transportation and disposal services within a Metropolitan region comparable to the Portland metropolitan region.

The Contractor shall remove and dispose of, or cause to be removed and disposed of, such Hazardous Waste as soon as reasonably possible in accord with Applicable Law. Hazardous Waste shall be weighed on the scales provided for in Section 8.6 hereof, or on such other scales as are acceptable to the Contractor and Metro, and shall not count towards the Guaranteed Annual Tonnage.

(e) Contractor's Responsibility. Contractor recognizes that Contractor is the party that has control and responsibility for the design, construction, operation and maintenance of the Facility. As such, Contractor agrees to bear the risk as between Metro and Contractor for the possibility that despite Contractor and Metro efforts, materials which are within the description of the Type 1, Type 2 or Type 3 Hazardous Materials described herein will in fact enter the DANO drum and become part of the residue or compost product. Accordingly, Contractor agrees to indemnify and hold harmless Metro from any claim or cause of action arising out of an occurrence in which any Type Hazardous Material has entered the DANO drum or is discovered in the residue or compost product. In addition, Contractor agrees to indemnify and hold Metro harmless from any claim of whatever nature arising from any release of hazardous materials into the environment if and when such materials are discovered to have been released into the environment at the Facility prior to the Notice to Proceed or have been released into the environment through the operation of the Facility by contaminating soil or groundwater or the air in and around the Facility as a result of Contractor's operation of the Facility other than as provided for in subsections 8.9(b), (c) and (d) for which Metro has responsibility.

(f) Other than for Hazardous Waste disposed of by Metro pursuant to this Section 8.9 and except as provided for herein as specifically agreed to between Contractor and Metro in paragraphs (b), (c) and (d) herein Metro shall have no further liability to Contractor and Contractor shall have no further remedies against Metro with respect to the release of any Hazardous Materials or Waste.

Section 8.10 Disposal of Residue and Unacceptable Waste

(a) Disposal Facilities. Metro shall make available to the Contractor a landfill or other disposal facility for the disposal of Unacceptable Waste (excluding Hazardous Waste) and Residue (other than any Residue in excess of the Maximum Residue Guarantee).

(b) Transportation of Residue. Metro shall be responsible for arranging for transportation of the Residue to the landfill or other disposal facility designated by Metro, and except as otherwise provided in Section 7.4 hereof, Metro shall be responsible for and shall pay the costs and expenses of such transportation and disposal. To the extent Metro determines that the Facility Specifications contained in Exhibit [X] I are not compatible with the mode of transportation to be utilized by Metro, Metro may request a Capital Improvement pursuant to Section 6.15.

Section 8.11 Repairs and Maintenance

(a) Repairs and Maintenance. The Contractor, at its own expense, shall maintain the Facility in good condition at all times and make all repairs and replacements required for the Facility to meet all applicable Performance Standards, to comply with Applicable Law and to maintain all Manufacturer's Warranties and Required Insurance in effect at all times. The Contractor shall maintain the Facility in safe condition at a level consistent with Applicable Law and normal practices for similar facilities. The Contractor shall perform the periodic maintenance required by the Operation and Maintenance Manual. The Contractor shall maintain the Facility Site in good repair and in a neat and orderly condition to protect the Facility and the Facility Site against deterioration and to maintain an aesthetic quality of the Facility and the Facility Site.

Upon the request of Metro, the Contractor shall permit the Consulting Engineer or other designee of Metro to inspect the Facility and the Contractor's maintenance and safety records.

At least ten (10) days prior to the Commercial Operation Date and at least ten (10) days prior to the beginning of each Annual Billing period, the Contractor shall provide Metro with a written time table setting forth the dates upon which Scheduled

Maintenance will occur during the next succeeding Annual Billing Period. Metro and the Contractor will take account of such time table of Scheduled Maintenance in establishing the Delivery Schedule for each Annual Billing Period as provided in Section 8.2 hereof. In the event of any change in any time table of Schedule Maintenance, the Contractor shall give Metro at least ten (10) days' written notice thereof, unless such time is not available, in which case Contractor shall give Metro as much advance notice as is practicable.

(b) Repairs and Improvements Needed to Meet Performance Standards. The Contractor, at its own expense and regardless of the cost thereof, shall make all improvements and repairs to the Facility, other than those due to Metro Fault or Uncontrollable circumstances including but not limited to any Capital Improvements, necessary to meet the Performance Standards and comply with Applicable Law, and Metro shall not be directly or indirectly liable for the costs thereof. If the improvements or repairs are due to Metro Fault or Uncontrollable Circumstances, financing of the repairs or improvements will be in accordance with Section 6.16. It shall be the absolute and unconditional obligation of the Contractor to provide, consistent with the foregoing financing obligations of the parties, all labor, material and equipment necessary to operate and maintain the Facility in accord with the Performance Standards and Applicable Law.

Section 8.12 Additional Performance Tests

If at any time, but not more frequently than once every twelve (12) months, Metro believes, after consultation with appropriate professional consultants, that the Facility is not meeting the Performance Standards or is not complying with Applicable Law, Metro, without limiting any other rights it may have hereunder, may, by written notice thereof to the Contractor, require the Contractor to conduct an Additional Performance Test. Such notice shall set forth in reasonable detail those aspects of the Facility which Metro believes are not meeting the Performance Standards or complying with Applicable Law.

Upon the delivery of any such notice by Metro to the Contractor, the Contractor's Authorized Representative shall sign and deliver to Metro a dated receipt for such notice, which receipt shall constitute conclusive evidence of the date of delivery of such notice. Within twenty (20) days after receipt of such notice from Metro the Contractor shall commence the Additional Performance Test, and in accord with such notice, unless:

- (i) the Contractor agrees to take, as soon as practicable and on a schedule agreed upon by the Contractor and Metro, such actions as Metro shall

approve as being necessary to enable the Facility to meet the Performance Standards and comply with Applicable Law; or

- (ii) the Contractor believes, after consultation with appropriate professional consultants and without conducting the Additional Performance Test, that the Facility is meeting the Performance Standards and/or complying with Applicable Law, in which event it shall, within ten (10) days after receipt of such notice from Metro, refer the matter for dispute resolution pursuant to Section 13.1 hereof.

In the event any such matter is referred for dispute resolution pursuant to Section 13.1 hereof, the Consulting Engineer shall, in its determination of such matter, set forth all actions (including, but not limited to the conduct of an Additional Performance Test if the Consulting Engineer is of the opinion that such a test is necessary or appropriate in order to provide the information necessary to allow the Consulting Engineer to make a determination with respect to the matter or matters in dispute) which should be taken to enable the Facility to meet the Performance Standards and/or comply with Applicable Law and the Contractor shall take all such actions within a reasonable period of time following such determination on a schedule agreed upon by the Contractor and Metro.

If an Additional Performance Test is conducted, the Contractor shall deliver a test plan to the Metro Representative at least twenty (20) days prior to the start of the Additional Performance Test. Metro, its officials and agents, the Consulting Engineer and the Consulting Engineer shall have the right to be present during any such Additional Performance Test.

Upon completion of any such Additional Performance Test, the Contractor shall deliver to Metro an Official Certificate signed by the Contractor's Authorized Representative setting forth in detail the results of such Additional Performance Test and the data upon which such results are based. Upon delivery by the Contractor to Metro of any such Official Certificate, the Metro Authorized Representative shall deliver to the Contractor a signed and dated receipt therefor, which receipt shall serve as conclusive evidence of the date of receipt by Metro of such Official Certificate.

If Metro shall believe that the Contractor shall not have had a reasonable basis for certifying as to any matter covered by any Official Certificate delivered under this Section 8.12, or is, for any reason, otherwise of the opinion that any of the results of the Additional Performance Test pertaining thereto are inaccurate, incomplete or unreliable, Metro may within ten (10)

days of receipt thereof, refer such matter to the Consulting Engineer, in which event the procedures set forth in Section 7.7 hereof (relating to the Performance Test) shall apply as if the terms "Additional Performance Test" and "Official Certificate" were substituted for the terms "Performance Test" and "Certificate of Completion," respectively, in said Section 7.7. During the conduct of any Additional Performance Test, Contractor shall advance all funds necessary for the Additional Performance Test. If the results of any Additional Performance Test demonstrate that the Contractor is operating in compliance with the Performance Standards and the Applicable Law, Metro shall reimburse Contractor for the full cost and expenses of the Additional Performance Test. If the results of any Additional Performance Test demonstrate that the Contractor is not operating in material compliance with the Performance Standards and the Applicable Law, the Contractor shall pay the full cost and expenses of the Additional Performance Test.

Section 8.13 Changes in Waste Stream Composition

(a) Compliance With Performance Standards Based on Reference Waste Stream. The Parties agree that the Contractor's obligations to comply with the Performance Standards are predicated on an Acceptable Waste composition equivalent to the Reference Waste Composition. The Parties agree that changes in the Acceptable Waste composition can affect the Contractor's ability to comply with the Performance Standards or change the Contractor's cost of processing Acceptable Waste at the Facility, or both.

(b) Waste Composition Tests. The Contractor may at any time, and shall upon the written request of Metro, conduct Waste Composition Tests which will provide a statistically accurate representation of the annual average composition of Acceptable Waste entering the Facility. Metro will give the Contractor any such written request at least thirty (30) Business Days in advance of the date upon which Metro desires such test to begin, and Metro agrees to pay all costs of tests conducted at Metro's request. Metro will be notified in writing at least thirty (30) days in advance of all Waste Composition Tests conducted by the Contractor and may participate in them or observe them, at Metro's discretion.

If, based on the results of Waste Composition Tests conducted by the Contractor as provided above, the Contractor is of the opinion that:

- (i) the cost of processing Acceptable Waste at the Facility will be increased; or

- (ii) it will not be possible, in the Contractor's reasonable judgment, to comply with the Performance Standards;

then the Contractor may submit a detailed written report to Metro setting forth the reasons for such opinion and requesting an increase in the Tip Fee or changes in the Performance Standards, as the case may be. Upon the delivery by the Contractor to Metro of any such written report, the Metro Authorized Representative shall deliver to the Contractor a signed and dated receipt therefor, which receipt shall serve as conclusive evidence of the date of delivery of such report to Metro.

Unless Metro denies the Contractor's request in writing within sixty (60) days of receipt of the Contractor's report, the Contractor's request shall be deemed granted unless Contractor shall have agreed in writing to allow Metro a longer period to resolve the matter. If Metro denies the request, Metro's written communication to the Contractor shall set forth in detail Metro's reasons therefor.

If the Contractor, after reviewing Metro's reasons for the denial, disagrees with Metro, the matter shall be submitted for dispute resolution pursuant to Section 13.2 hereof. To the extent that the matter is resolved in the Contractor's favor, any resulting increase in Tip Fee or change in the Performance Standards shall be retroactive to the date of the Contractor's report to Metro.

(c) Contractor Tests of Waste Stream. Contractor may perform periodic random tests of the Acceptable Waste entering the Facility for its own internal use without notice to Metro, which tests shall not constitute the formal Waste Acceptance Tests described in Section 8.13(b) hereof.

Section 8.14 Notice of Reduction in Processing Capacity

The Contractor shall immediately advise Metro by telephone, to be confirmed in writing within twenty-four (24) hours, of any reduction in Processing Capacity and:

- (i) its effect on the Contractor's ability to perform its obligations hereunder;
- (ii) whether, in the Contractor's opinion, the cause for the reduction in Processing Capacity is Uncontrollable Circumstances, Contractor Fault or Metro Fault;
- (iii) its probable duration; and

- (iv) a schedule of the amount of Acceptable Waste that the Facility is capable of Processing during such reduction in Processing Capacity.

The Contractor shall use its best efforts to resume normal operation of the Facility as soon as reasonably possible.

In the event Contractor, due to a reduction in Processing Capacity, is unable to Process Acceptable Waste which was delivered to the Facility prior to Contractor giving Metro notice of the reduction in Processing Capacity, Contractor shall cause such Acceptable Waste to be transported to the solid waste transfer station or other suitable waste disposal facility reasonably designated by Metro. If the cause of the reduction in Processing Capacity is determined to be the result of an Uncontrollable Circumstance or Metro Fault, Metro shall bear the cost of such transportation. If the cause is other than an Uncontrollable Circumstance or Metro Fault then Contractor shall pay the cost of such transportation.

During the period of any reduction in Processing Capacity Metro shall deliver to the Contractor only such amount of Acceptable Waste as the Contractor shall request in the written schedule delivered to Metro as provided above. If the reduction in Processing Capacity is not the result of an Uncontrollable Circumstance or Metro Fault and the Facility fails to Process the Minimum Annual Throughput Guarantee in any Contract Year, then (i) the amount of Acceptable Waste not delivered by Metro (the difference between the amount of Acceptable Waste set forth in the Delivery Schedule established pursuant to Section 8.2 and the amount requested by Contractor pursuant to this Section 8.14) shall constitute By-Pass Waste pursuant to Section 8.8, and (ii) if the reduction in Processing Capacity endures for a period greater than thirty (30) days, then commencing with the next monthly Tip Fee payment otherwise due, Metro shall pay a Tip Fee based on the actual Tonnage of Acceptable Waste processed by Contractor during the monthly period computed as provided for in Section 7.6(b).

If the actual Tonnage of Acceptable Waste processed by Contractor during any Contract Year is less than seventy-five (75%) of the Throughput Performance Standard then a Contractor Event of Default shall have occurred. Provided however at least thirty (30) days prior to declaring Contractor in default hereunder Metro shall give Contractor written notice that the Facility in Metro's opinion has processed less than seventy-five percent (75%) of the Throughput Performance Standard. Contractor may within thirty (30) days of said notice either deny that the Facility has processed less than seventy-five percent (75%) of such standard or that the cause is due to Uncontrollable Circumstances or Metro Fault and state its reasons for so denying or admit that the amount Processed is less than seventy-five

percent (75%) of such standard and state the measures necessary to remedy the problem and the time reasonably necessary to effect the remedy.

If Metro agrees that Contractor should attempt to remedy the problem then Metro may not issue a notice of default pursuant to Section 15.3 until the time reasonably necessary to remedy as agreed to by the Parties has expired without the problem being resolved. In no event may the time allowed to remedy the problem exceed ninety (90) days from the date that Metro furnishes notice of the deficiency to the Contractor.

If Metro and the Contractor cannot agree whether the Facility has Processed less than seventy-five percent (75%) of the standard or that the cause is due to Uncontrollable Circumstance or Metro Fault or that the problem can be remedied within a reasonable time not to exceed ninety (90) days Contractor may prior to the expiration of the thirty-day (30-day) period allowed for response refer the matter to the Independent Engineer for resolution pursuant to Article XIII and if appropriate immediately commence taking all measures necessary to remedy the problem.

If the Independent Engineer prior to the ninetieth (90th) day after the giving of notice finds that the Facility has Processed more than seventy-five percent (75%) of the Throughput Performance Standard or that the cause is due to Uncontrollable Circumstance or Metro Fault, then Metro may not declare Contractor in default.

If the Independent Engineer finds that Contractor can reasonably remedy the problem in less than ninety (90) days the Contractor shall have such time as the Independent Engineer so finds as reasonable to remedy the problem.

Otherwise Metro may declare Contractor in default if the problem has not been corrected by the end of the ninetieth (90th) day after giving notice or the period found reasonably necessary to correct the problem whichever is soonest.

Section 8.15 Operation at Less than Performance Standards

(a) Due to Uncontrollable Circumstances. If, after the Facility has passed the Performance Test, the Facility is unable to operate at the Performance Standards because of Uncontrollable Circumstances, then:

- (i) the Tip Fee shall be adjusted as appropriate, including any adjustment to reflect actual changes in the Operation and Maintenance Charges provided for in Exhibit K;

- (ii) neither Party shall be entitled to payment from the other Party for foregone Compost Product Revenues or Recovered Materials Revenues or any other form of foregone revenues or direct or indirect damages;
- (iii) the Contractor shall Process Acceptable Waste at the highest level the Facility is capable of handling under the circumstances; and
- (iv) the Contractor will be excused from the Performance Standards for Recovered Materials to the extent necessary in light of the actual levels at which the Facility is capable of Processing Acceptable Waste for a reasonable time appropriate to the circumstances.

(b) Due to Metro Fault. If, after the Facility has passed the Performance Test, the Facility is unable to operate at the performance Standards because of Metro Fault, then:

- (i) the Tip Fee shall be adjusted as appropriate, including any adjustment to reflect actual changes in the Operation and Maintenance Charge;
- (ii) the Contractor shall Process Acceptable Waste at the highest levels the Facility is capable of handling under the circumstances;
- (iii) the Contractor will be excused from the Performance Standards for Recovered Materials to the extent necessary in light of the actual levels at which the Facility is capable of Processing Acceptable Waste for a reasonable time appropriate to the circumstances; and
- (iv) Metro shall reimburse the Contractor for the Contractor's lost Recovered Materials Revenues through an increase in the Tip Fee or any other method deemed suitable by Metro.

(c) Due to Contractor Fault. If, after the Facility has passed the Performance Tests, the Facility is unable to operate at the Performance Standard due to any reason other than as set forth in Sections 8.15(a) or (b) above, then:

- (i) the Contractor shall Process Acceptable Waste at the highest levels the Facility is capable of handling under the circumstances, the provisions of Section 8.14 shall apply; and

- (ii) if the Facility produces more Residue than the Maximum Residue Guarantee the provisions of Section 7.4 shall apply; and
- (iii) if the Facility is not meeting the Material Recovery guarantee then Contractor shall be responsible for payment of the minimum Material Recovery payment as provided for in Exhibit K.
- (iv) if the Facility is not meeting any Performance Standard other than the Throughput Performance Standard or the Maximum Residue Guarantee then Metro shall have the right to declare the Contractor in default and pursue all available remedies Metro may have pursuant to Article XV. Provided however at least sixty (60) days prior to declaring Contractor in default hereunder Metro shall give Contractor written notice that the Facility in Metro's opinion is not meeting a Performance Standard and specifying the nature of the deficiency. Contractor may within thirty (30) days of said notice either deny that the Facility is not meeting the Performance Standard or that the cause is due to Uncontrollable Circumstances or Metro Fault and state its reasons for so denying or admit that the Facility is not meeting the Performance Standard and state the measures necessary to remedy the problem and the time reasonably necessary to effect the remedy.

If Metro agrees that Contractor should attempt to remedy the problem then Metro may not issue a notice of default pursuant to Section 15.3 until the time reasonably necessary to remedy as agreed to by the Parties has expired without the problem being resolved. In no event may the time allowed to remedy the problem exceed ninety (90) days from the date that Metro furnishes notice of the deficiency to the Contractor.

If Metro and the Contractor cannot agree whether the Facility is not meeting a Performance Standard or that the cause is due to Uncontrollable Circumstance or Metro Fault or that the problem can be remedied within a reasonable time not to exceed ninety (90) days Contractor may prior to the expiration of the thirty-day (30-day) period allowed for response refer the matter to the Independent Engineer for resolution pursuant to Article XIII and if appropriate immediately commence taking all measures necessary to remedy the problem.

If the Independent Engineer prior to the ninetieth (90th) day after the giving of notice finds that the Facility is meeting the Performance Standards or that the cause is due to

Uncontrollable Circumstance or Metro Fault then Metro may not declare Contractor in default.

If the Independent Engineer finds that Contractor can reasonably remedy the problem in less than ninety (90) days the Contractor shall have such time as the Independent Engineer so finds as reasonable to remedy the problem.

Otherwise Metro may declare Contractor in default if the problem has not been corrected by the end of the ninetieth (90th) day after giving notice or the period found reasonably necessary to correct the problem whichever is soonest.

Section 8.16 Operations Staff; Operation and Maintenance Manual

(a) Operations Staff. The Contractor shall, at its own expense, train the Plant Manager and other necessary operating staff of the Facility. The initial Plant Manager shall be hired at least sixty (60) days prior to the start of the Performance Test, and shall be trained in operations and maintenance of a facility utilizing the DANO Technology similar to the Facility, so as to be proficient in the operations of the Facility at least thirty (30) days prior to the start of the Performance Test. The Contractor shall inform Metro of the identity of the person or persons serving from time to time as Plant Manager, and of the telephone numbers or other means by which such person(s) may be contacted at the Facility Site. The Contractor shall also inform Metro of the identity of the official of RWDS with senior supervisory responsibility for the Facility, and of the telephone number or other means by which such person may be contacted.

(b) Operations and Maintenance Manual. At least sixty (60) days before the start of Performance Test, the Contractor shall provide a draft Operation and Maintenance Manual to Metro. The Contractor shall provide Metro with the final Operation and Maintenance Manual at least thirty (30) days before the scheduled date for the Performance Test. The Contractor shall discuss in good faith with Metro any aspect of the Operation and Maintenance Manual.

Metro shall have the right to approve all sampling, testing and measurement procedures contained in the Operation and Maintenance Manual, which approval shall not be unreasonably withheld or delayed. Notwithstanding any such review and approval or discussion with Metro, the Operation and Maintenance Manual shall remain the responsibility of the Contractor. Neither the review nor comment upon, nor the failure of Metro to comment upon, the Operation and Maintenance Manual shall relieve the Contractor of any of its responsibilities under this Agreement, nor shall any Metro review or comment or failure to comment be deemed to constitute representation by Metro that

operating the Facility pursuant to the Operation and Maintenance Manual will cause the Facility to be in compliance with the Agreement or Applicable Law, or impose any liability upon Metro.

If this Agreement is terminated due to a Contractor Event of Default, the Contractor shall deliver to Metro the Operation and Maintenance Manual, or any existing materials which would be included in the Operation and Maintenance Manual, for use in connection with the operation and maintenance of the Facility; provided, however, that Metro shall comply in all respects with the provisions of Section 8.19 of this Agreement, to the extent that such Section relates to the use of the Operation and Maintenance Manual.

Section 8.17 Regulatory Requirements

The Contractor shall not be deemed to have breached its obligation to at all times operate the Facility in compliance with and to otherwise comply in all respects with the requirements of Applicable Law if the Contractor is contesting the Applicable Law in good faith by appropriate proceedings conducted with due diligence and the Applicable Law permits continued operation pending a final resolution of such contest.

Section 8.18 Business of the Contractor

With respect to the Facility, the Contractor shall not engage in any business or enterprise at the Facility Site except the design, construction, equipping, testing, operation and management of the Facility, and activities reasonably ancillary thereto, including the sale or other disposition of Compost and Recovered Materials.

Section 8.19 Confidentiality; Covenants of Metro

(a) Metro recognizes and acknowledges the confidential and proprietary nature of the DANO Technology, including, but not limited to, the information contained in proposals, the information regarding the operation of the Facility, and the information set forth in the Operation and Maintenance Manual, and shall not disclose such confidential information to others. Metro agrees to execute and deliver the statement of confidentiality in the form set forth in Exhibit Q hereto, signed by an Authorized Representative of Metro, which shall state that (i) the confidential information being revealed will not be passed to parties outside of Metro, (ii) the confidential information will not be left in any place where unauthorized persons might have access to it, and (iii) the information will not be used to help or benefit anyone who will be in competition with the Contractor or the licensors of the DANO Technology to the Contractor.

(b) Except as provided in (C) below, at any time during and after the term of this Agreement, Metro shall not, in any manner whatsoever, either directly or indirectly, divulge, disclose, or communicate to any person, partnership, firm, association, corporation, or other entity, or use for the personal benefit of such party or otherwise, any information relating to the DANO Technology in the possession of, belonging, or concerning Metro. Upon the termination or expiration of this Agreement, Metro shall return to the Contractor all information relating to the DANO Technology, and all materials, documents, drawings, and copies relating thereto. Without regard to whether any or all the foregoing matters would be deemed confidential, material, or important, the parties hereto stipulate that as among them, the same are important, material, and confidential and gravely affect the goodwill and effective and successful conduct of the businesses of the Contractor and its subsidiaries and Affiliates. This provision shall not limit Metro's rights to have all DANO related rights of Contractor necessary to operate the Facility assigned to Metro pursuant to the terms of Article III or Article XV of this Agreement.

(c) Metro acknowledges and agrees that all materials, documents, drawings and copies relating to the DANO Technology, included, but not limited to, the Operation and Maintenance Manual, constitute trade secrets, as such term is defined in ORS 192.501(2), as now in effect or as hereinafter amended, and as such, are and should be exempt from public disclosure under ORS 192.401 to 192.505. Metro also acknowledges and agrees that all materials, documents, drawings and copies relating to the DANO Technology, included, but not limited to, the Operation and Maintenance Manual, have been submitted to Metro in confidence in accordance with ORS 192.502(3), as now in effect or as hereinafter amended, and as such, are and should be exempt from public disclosure under ORS 192.401 to 192.505. Metro shall mark all such materials as confidential, shall keep all such materials separate and apart from its other records and materials, and shall exert all other reasonable efforts required to exempt such materials from disclosure to the public under ORS 192.401 to 192.505.

(d) In furtherance of the foregoing, Metro agrees and acknowledges that (i) Metro shall acquire no ownership of the DANO trademark, the DANO design, the DANO patents, the DANO drawings, and the DANO know-how by or under this Agreement; and (ii) Metro will not contest or challenge the proprietorship by DANO to said rights. This provision shall not limit Metro's rights to have all DANO related rights of Contractor necessary to operate the Facility assigned to Metro pursuant to the terms of this Agreement.

(e) In the event the operation of the Facility by the Contractor is terminated pursuant to the terms of this Agreement,

and the operation of the Facility is continued by Metro, Metro shall pay all royalties due and payable under the terms of the applicable licensing agreement or agreements entered into by the Contractor for the use of the DANO Technology.

ARTICLE IX. PAYMENTS

Section 9.1 Tip Fee

Metro shall, unless this Agreement explicitly provides otherwise, pay to Contractor a Tip Fee for each Ton of Acceptable Waste, other than Rejected Waste, that Metro delivers or causes to be delivered to the Facility, and that is Processed at the Facility (or otherwise disposed of by the Contractor as expressly permitted under this Agreement). The Tip Fee shall be calculated and adjusted from time to time in accordance with the provisions of Exhibit K.

Section 9.2 Put or Pay Obligation After the Commercial Operation Date

(a) As long as the Facility is available to Process the Minimum Annual Throughput Guarantee of Acceptable Waste as provided in Article VIII, or the Facility is not Processing Acceptable Waste due to Metro Fault or Uncontrollable Circumstances, then, regardless of whether Metro has delivered or caused to be delivered to the Facility 185,000 Tons of Acceptable Waste, Metro shall be obligated to pay to the Contractor the Monthly Tip Fee as provided in Exhibit K.

(b) to the extent that the fees paid during a particular Annual Billing Period are less than the Tip Fee for such Annual Billing Period, Metro shall pay to Contractor the Tip Fee unless Metro shall be excused from making such payment do to failure of the Facility to process the Minimum Annual Tonnage for reasons other than Uncontrollable Circumstance or Metro Fault.

Metro hereby agrees that with respect to any Annual Billing Period during which the Facility has Processed less than 185,000 Tons of Acceptable Waste because of Metro Fault or Uncontrollable Circumstances, Metro shall pay to the Contractor the Tip Fee for such Annual Billing Period provided in Exhibit K hereto.

ARTICLE X. DISTRIBUTION OF COMPOST AND RECOVERED MATERIALS

Section 10.1 Compost Product and Recovered Materials Sales Contracts

The Contractor shall be solely responsible for the negotiation and implementation of all contracts, agreements and other arrangements necessary or appropriate to the sale and distribution of Compost Product and Recovered Materials.

The Contractor shall provide Metro with timely notice of the negotiations relating to each contract, agreement or arrangement relating to the sale to any one customer of more than five percent (5%) of the Compost Product produced during any one Contract Year or ten percent (10%) of the Recovered Materials from the Facility recovered during any one Contract Year, the parties thereto and the terms and conditions thereof. Promptly upon receipt thereof by the Contractor, the Contractor shall provide Metro, a copy of the final, definitive version of each such contract, agreement or arrangement in the form in which it was executed by the parties thereto.

In the event that any arrangement relating to the sale or distribution of more than five percent (5%) of Compost Product produced during any one Contract Year or ten percent (10%) of the Recovered Materials recovered during any one Contract Year does not take the form of a written contract or agreement, the Contractor shall provide Metro with a detailed memorandum describing such arrangement as the same is being negotiated or otherwise formulated and, not less than five days prior to the time such arrangement is to be implemented, a final detailed memorandum describing such arrangement and the terms upon which it will be implemented.

Section 10.2 Sales of Compost Product

The Contractor agrees to hire a compost sales person within six (6) months of the execution and delivery by the parties of this Agreement. Contractor agrees to use its best efforts to market and sell the Compost Products. The failure of Contractor to market, sell or otherwise dispose of Compost Product shall be Contractor's responsibility unless due to Metro Fault or Uncontrollable Circumstances.

Contractor's sales and disposal of Compost Product will be subject to Metro's regulatory powers and authority [~~provided-fer herein~~]. Metro's exercise of the compost marketing regulatory powers specified herein shall not constitute Metro Fault or an Uncontrollable Circumstance pursuant to the terms of this Agreement, but to the extent the compost marketing regulations adopted by Metro are more restrictive than those set forth in this Section 10.2, such Metro action shall constitute a Change in Law under this Agreement.

Compost Product sales or disposal will be subject to the following restrictions:

(a) Sales for pick up by customers at the Facility will be at a price equal to or greater than the ~~[lowest-price]~~ Prevailing Price for a ~~[compost-product-made-from-waste-material-within Metro's-boundaries-on-similar-terms]~~ Composted Waste Product all as determined by Metro.

(b) Sales or deliveries for bare root nursery, forest seedling nursery, hydro mulching or Christmas tree growing uses may be made by Contractor without prior Metro approval but shall otherwise be subject to the terms and conditions of Section 10.1 of this Agreement.

(c) Sales or deliveries for residential, commercial, industrial or governmental landscaping uses may be made only if Metro determines that: (i) the price to be charged by Contractor is equal to or greater than the Prevailing Price for any ~~[compost product-produced-from-waste-material-at-facilities-within-Metro's boundaries]~~ Composted Waste Product; and (ii) the sale of the Compost Product will not have an adverse impact on sales of other ~~[compost-products]~~ Composted Waste Products.

(d) All other sales, deliveries or agreements for sales or deliveries to any one user or location that will exceed five percent (5%) of the annual production of Compost Product of the Facility in any one contract year shall require the prior written consent of Metro. Metro shall approve such sales if the Director of Metro's Department of Solid Waste or other person designated by the Executive Officer shall determine that (i) such sales or deliveries will not have an adverse impact on Metro's provision of a system for the economical disposal of solid waste which includes other ~~[compost-products-produced-from-wastes]~~ Composted Waste Products, or (ii) ~~[such-sale-user-or-sale]~~ the location of the place of ultimate use of the Compost Product is located beyond a radius of fifty (50) miles from a point of origin located at the intersection of Burnside Street and Front Avenue in the City of Portland, Oregon.

(e) Contractor shall be allowed to include as a Pass Through cost the costs of transportation (up to the maximum amount provided for in Exhibit K for all sales or deliveries allowed pursuant to subsection 10.2(b) or as approved by Metro pursuant to subsection 10.2(d).

(f) Compost Product sold by the Contractor in bags for resale by third parties shall be subject to the same terms and conditions as sales and deliveries described in Section 10.2(d) of this Agreement.

(g) Contractor shall annually report to Metro its marketing plans. Metro shall review with Contractor the annual marketing plan. To the maximum extent possible Metro and Contractor shall

reach concurrence on targeted markets which Contractor shall attempt to utilize for the sale or disposal of Compost Product.

Any sales, deliveries or agreements which are subject to Metro approval pursuant to Section 10.2(d) shall be reviewed by Metro on an expedited basis to the extent they are consistent with the annual marketing plan concurred in by Metro. If Contractor requests approval of a sale, delivery or agreement pursuant to Section 10.2(d) Metro shall approve or disapprove within fifteen (15) days of notice thereof. Metro's action shall be taken by its Solid Waste Director or other official designated by the Metro Executive Officer. Failure of Metro to disapprove of any such sale, delivery or agreement within this fifteen (15) day period shall constitute approval.

Any information furnished by Contractor to Metro relating to the compost marketing shall to the maximum extent possible consistent with Applicable Law be treated as confidential records and shall not be disclosed to third parties without Contractor's consent.

(h) All contracts for the transfer of Compost Product entered into by Contractor prior to June 1, 1989, are deemed approved by Metro pursuant to Section 10.2(d) of this Agreement.

Section 10.3 Storage of Excess Compost Product

During the Term of this Agreement, the Contractor will provide storage for such undistributed Compost Product in accordance with Applicable Law at the Facility or other sites which are either owned or leased by the Contractor, or to which the Contractor has access. The storage capacity for undistributed Compost Product to be provided by the Contractor shall consist of the following:

(a) During the entire Term of this Agreement, the Contractor will make available on the Facility Site storage capacity for up to 32,000 Tons of Compost Product. The Contractor agrees not to store more than this amount of Compost Product on the Facility Site.

(b) In addition to the storage capacity at the Facility Site as provided in subsection (a) above and subsection (c) below, during the first (1st) through sixtieth (60th) months following the Commercial Operation Date (with the first such month beginning with the month following the Commercial Operation Date) the Contractor shall make its Killingsworth Fast Disposal Landfill site available to store 100,000 Tons of Compost Product in the aggregate.

(c) In addition to the storage capacity provided for in subsections (a) and (b) above, during the first through sixtieth

(60th) months following the Commercial Operation Date, the Contractor shall make the Waybo Pit, located at 7800 N.E. Killingsworth, Portland, Oregon, available to store 200,000 Tons of Compost Product in the aggregate; provided that storage capacity at such Waybo Pit shall only be required to be made available if the Contractor receives the necessary permits to operate such property as a solid waste landfill or if, in accordance with Applicable Law, such property can be used for the purpose of storing Compost Product without being permitted to operate as a solid waste landfill.

The Contractor, at its own expense, shall use its best efforts to obtain all permits required in order to operate said Waybo Pit as a solid waste landfill or to take such other actions as may be necessary or appropriate in order to utilize this property for the storage of Compost Product without such property being permitted to operate as a solid waste landfill. If Contractor is unable to utilize said Waybo Pit for the purpose of storing all or any portion of the Compost Product for which the Contractor is required to provide storage under this subsection (c), the Contractor shall provide, or obtain the right to use, other property suitable for storing Compost Product in the amounts and during the years provided for in this subsection (c).

(d) In addition to the storage capacity at the Facility Site as provided in subsection (a) above, during the sixty-first (61st) through the one hundred twentieth (120th) month following the Commercial Operation Date the Contractor shall provide property acceptable to Metro that will provide storage capacity for Compost Product as follows:

- (i) If during the first through sixtieth (60th) month following the Commercial Operation Date, the aggregate amount of Compost Product being stored at any one time pursuant to subsections (a), (b) and (c) above did not exceed 100,000 Tons, then the Contractor shall provide property with a storage capacity of 100,000 Tons of Compost Product.
- (ii) If during the first through sixtieth (60th) month following the Commercial Operation Date, the aggregate amount of Compost Product being stored at any one time pursuant to subsections (a), (b) and (c) above exceeded 100,000 Tons but did not exceed 200,000 Tons, then the Contractor shall provide property with a storage capacity of 200,000 Tons of Compost Product.
- (iii) If during the first through sixtieth (60th) month following the Commercial Operation Date, the aggregate amount of Compost Product being stored

at any one time pursuant to subsections (a), (b) and (c) above exceeded 200,000 Tons, then the Contractor shall provide property with a storage capacity of 500,000 Tons of Compost Product.

(e) During the one hundred twenty-first (121st) through the two hundred fortieth (240th) month following the Commercial Operation Date, the Contractor shall provide a sites for the storage of Compost Product in an amount equal to the maximum number of Tons of Compost Product which were stored at any one time during the first through tenth years following the Commercial Operation Date pursuant to subsections (a), (b), (c) and (d) above.

ARTICLE XI. INSURANCE AND INDEMNIFICATION

Section 11.1 Required Insurance

The Contractor shall obtain and maintain, or cause to be obtained and maintained, to the extent reasonably commercially available, all Required Insurance and with such coverage and deductible limits as are, in light of the various risks to be insured against, customary and prudent and reasonably commercially available for operations similar to those to be conducted at and in connection with the Facility and reasonably acceptable to the Contractor and Metro. The Contractor may, as an alternative, engage in a program of self-insurance, with reasonable reserves set aside by the Contractor. In the event Metro and the Contractor cannot agree on the types or amounts of coverage or the deductible limits of any Required Insurance, such dispute shall be resolved pursuant to the dispute resolution procedures set out in Article XIII.

Section 11.2 Delivery of Policies; Certain Required Provisions; Separate Insurance; Claims

(a) Delivery of Policies. The Contractor shall deliver to Metro copies of all policies and certificates of insurance for Required Insurance and any policy amendments and policy renewals. Each policy must provide for thirty (30) days' prior written notice of termination or cancellation or of any change in coverage or deductibles to be given by the insurer to Metro.

(b) Required Provisions. Except as may otherwise be provided in Section 11.1, all Required Insurance shall be carried with responsible insurance companies of recognized standing which are authorized to do business in Oregon and whose claims paying ability is rated not less than "A" by A.M. Best Company, Inc. Required Insurance may be effected by endorsement of blanket insurance and umbrella policies.

Section 11.3 Indemnification

(a) Contractor's Indemnification of Metro. Subject only to the limitations hereinafter set forth in Section 11.3(c) hereof, the Contractor covenants and agrees that, to the maximum extent permitted by law, it will indemnify Metro against and hold Metro harmless from any and all liabilities, actions, damages, claims, demands, judgement, losses, costs, expenses, suits and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from:

- (i) any injury to or death of any person or persons, or loss of or damage to property caused or alleged to be caused by the Contractor or any of its officers, agents, employees, Subcontractors (or any officer, agent or employee of any Subcontractor), or any person under the control of or alleged to be under the control of at acting at the direction of the Contractor or any Subcontractor, arising in connection with or as a result of:
 - (A) this Agreement;
 - (B) the performance by the Contractor of its obligations hereunder;
 - (C) the use or operation of the Facility by the Contractor;
 - (D) the marketing, sale, distribution, storage, transportation or use of Compost Product or Recovered Materials by the Contractor; or
 - (E) the condition of the Facility or the Facility Site under the management of the Contractor between the Notice to Proceed and the termination of the term of this Agreement;
- (ii) any breach of any expressed or implied warranty arising in connection with any sale of the Facility to a third party;
- (iii) any condition of the Facility Site, now existing or arising during the term of this Agreement, relating to hazardous or toxic substances (except to the extent such condition is caused by Hazardous Waste or Unacceptable Waste delivered to the Facility Site by waste haulers) or any other condition, now existing or arising during the term of this Agreement (except to the extent such condition is caused by Hazardous Waste or

Unacceptable Waste delivered to the Facility Site by waste haulers) which, under Applicable Law, in appropriate administrative or judicial proceedings, is determined to be unsafe;

- (iv) an allegation of infringement, violation or conversion of any patent, license, proprietary right or other similar interest, in connection with the operation of the Facility by the Contractor or the design, technology, processes, machinery or equipment used at the Facility by the Contractor; or
- (v) any loss of the federal tax-exempt status of the interest on any Bonds which were issued with the intent that the interest thereon be and remain excludable for federal income tax purposes from the gross incomes of the owners thereof.

Notwithstanding anything expressed or implied herein to the contrary and in addition to the indemnity and hold harmless agreements of the Contractor set forth above but without regard to any expressed or implied limits on the Contractor's indemnity and hold harmless agreement as set forth above, the Contractor will indemnify Metro against and hold Metro harmless from any and all penalties, fines and charges of any federal, state or local government having jurisdiction over the Facility, the operations at the Facility or the sale, distribution, storage or disposal of Compost Product or Recovered Materials and any and all liabilities, actions, damages, claims, demands, judgement, losses, costs, expenses, suits and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, arising from any violation or alleged violation of Applicable Law by the Contractor in connection with or as a result of the operations at the Facility or the sale, distribution, storage or disposal of Compost Product or Recovered Materials or otherwise relating to this Agreement or the performance of its obligations hereunder.

(b) Metro's Indemnification of Contractor. Subject only to the limitations hereinafter set forth in Section 11.3(c), Metro covenants that, to the maximum extent permitted by law, it will indemnify the Contractor against and hold the Contractor harmless from any and all liabilities, actions, damages, claims, demands, judgement, losses, costs, expenses, suits and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any injury to or death of any person or persons, or loss of or damage to property caused or alleged to be caused by Metro or any of its officers, agents, employees, or any person under the control of or alleged to be under the control of or acting at the direction of Metro, arising in connection with or as a result of the performance by Metro of

its obligations hereunder. Provided that Metro's liability pursuant to the foregoing indemnity and hold harmless provision shall be secondary to any insurance proceeds that may be recovered by Contractor from any insurance coverage:

(i) maintained by Metro; or

(ii) under which Metro is insured in connection with this Agreement.

(c) No Indemnification for Negligent Acts. No Party shall be required to indemnify the other Party or hold the other Party harmless pursuant to the provisions of this Section 11.3 with respect to any loss, damage or claim due to the negligence of such other Party.

(d) Contribution in Case of Joint or Concurrent Negligence. In case of joint or concurring negligence of the Parties giving rise to a loss or claim against either or both of them, each Party shall have full rights of contribution against the other.

(e) Notice of Claims; Defense and Settlement. Any party entitled to indemnification hereunder (the "Notifying Party") shall notify the indemnifying party (the "Responding Party") within ten (10) days of the Notifying Party's receipt of written notice from any third party of any act, omission or occurrence with respect to which the Notifying Party intends to seek indemnification in accordance with this Agreement and, if requested by the Responding Party, shall also supply to the Responding Party all records, data, contracts and documents reasonably related to such third party claim to enable the Responding Party to evaluate such claim for purposes hereof. If the Responding Party replies in writing to the Notifying Party within twenty (20) days from the date of such notice that it will undertake the defense of the Notifying Party and will hold the Notifying Party harmless with respect to such claims, then no additional attorneys' fees incurred by the Notifying Party in its own defense shall be compensable as a claim entitled to indemnity, unless (a) the Responding Party has agreed to pay such fees and expenses, (b) the Responding Party shall have failed to assume the defense of such claim or has failed to employ counsel reasonably satisfactory to the Notifying Party, or (c) the named parties in any action or proceeding relating to such claim (including any impleaded parties) include both the Responding Party and the Notifying Party, and such Notifying Party has been advised by its counsel that the Notifying Party has a conflicting interest from the Responding Party or that there may be one or more legal defenses available to the Notifying Party which are different from or additional to those available to the Responding Party. The Notifying Party will reasonably cooperate in providing information and testimony to assist in the defense of the matter, but all out-of-pocket costs thereof shall be a part

of the indemnified amounts for which the Responding Party shall hold the Notifying Party harmless. Control of the defense of the claims shall be the right and responsibility in this case of the Responding Party, which shall have authority to contest, compromise or settle the matter in its sole discretion.

In the event the Responding Party replies in writing within the said twenty (20) days that it accepts responsibility for the indemnified claim regarding the matter in question but does not desire to take an active role in the defense of said matter, then alternatively, the Responding Party may consent to the Notifying Party's selecting an attorney to defend the matter who is satisfactory to the Responding Party, such consent and such satisfaction with the selection of such attorney to be evidenced in writing. In such case, however, no matter will be settled or compromised without the written consent of the Responding Party; further, at any time the Responding Party may elect to assume the active control of the matter, including the replacement of the selected counsel by other counsel satisfactory solely to it, and thereafter may consent, settle or compromise the case in its sole discretion.

If, on the other hand, the Responding Party replies to the Notifying Party within twenty (20) days from the date of such notice, but denies its responsibility to indemnify and hold the Notifying Party harmless with respect to such claim, both parties shall attempt to agree upon a mutually satisfactory attorney to represent them and agree upon who shall control the defense of the claim and has the authority to approve any proposal, settlement or compromise. If no such agreement can be reached, or if the Responding Party does not reply to the Notifying Party within twenty (20) days from the date of such notice, each party may designate its own attorney, whose reasonable fees shall be compensable as an indemnified claim to the Notifying Party. Whether or not any such agreement can be reached or the Responding Party does or does not reply, each party shall reasonably cooperate in providing information and testimony to assist in the defense of the matter, and the costs thereof (including out-of-pocket expenses) shall be a part of the claims which shall be paid by the party who is later determined to be responsible therefor under the assumptions of liability and other provisions for indemnification under this Agreement. Any indemnification in this Agreement shall include an indemnification of the respective officers, directors, employees, agents, shareholders and successors and assigns of the Notifying Party.

(f) Beneficiaries of Indemnification Provisions. The foregoing indemnification and hold harmless provisions are for the sole and exclusive benefit and protection of Metro, the Contractor, and the Affiliates of the Contractor, and their respective officers, officials, agents and employees, and are not

intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than Metro and the Contractor and their respective officers, officials, agents and employees.

ARTICLE XII. CONTRACT ADMINISTRATION

Section 12.1 Books and Records; Reports

For the purpose of enabling Metro to determine the Contractor's compliance with the provisions of the Agreement:

(a) Books and Records. The Contractor shall maintain all books, records and accounts necessary to record all matters affecting the Tip Fees or other amounts payable by or to Metro under this Agreement, including all materials, machinery, equipment, labor and other additional matters for which adjustments to the Tip Fee are made pursuant to Exhibit K hereof or other provisions of this Agreement, and all records pertaining to the marketing, sale, distribution, storage or disposal of Compost Product and Recovered Materials.

All such books, records and accounts shall be maintained in accord with generally accepted accounting principles, shall accurately, fairly and in reasonable detail reflect all the Contractor's dealings and transactions under this Agreement and shall be sufficient to enable those dealings and transactions to be audited in accord with generally accepted auditing standards.

For purposes of enabling Metro to verify the computation of the Tip Fee and other amounts payable by or to Metro hereunder, Metro and any agent or agents of Metro selected by it for such purpose shall have the right, from time to time upon five days notice to the Contractor, to examine, inspect, audit and copy all such books, records and accounts that are related to the Facility. The Contractor shall fully cooperate with Metro and its agent or agents in the conduct of any and all such examinations, inspections, audits and copying of such books, records and accounts by promptly:

- (i) making such books, records and accounts available to Metro and its agent or agents;
- (ii) supplying Metro and its agent or agents with such supporting documentation as they shall request in connection therewith, including without limitation any audits, auditor's notes and audit letters whether in the possession of the Contractor or any auditor or accountant retained by or on behalf of the Contractor; and

- (iii) instructing and ensuring that all officers, agents (including without limitation any outside accountants or auditors retained by or on behalf of the Contractor) and employees of the Contractor are available to answer any questions concerning or discuss any information contained or referred to in or omitted from such books, records and accounts.

All such books, records and accounts shall be kept by the Contractor for at least seven years, except for drawings, plans and records relating to the physical plant of the Facility or the operation thereof, which Contractor shall keep for at least three years following the expiration of the Term (or any longer period required under Applicable Law).

(b) Contractor Reports to Metro. In addition to any reports or other documents, materials or information required to be provided from time to time by the Contractor to Metro pursuant to any other provisions of this Agreement, the Contractor shall provide Metro with the reports and information set forth in Exhibit P at the times required by Exhibit P.

Section 12.2 Metro and Consulting Engineer Access

Metro and its agents, licensees or invitees, the Consulting Engineer and representatives of governmental regulatory agencies may, upon proper identification, visit or inspect the Facility or Facility Site at any reasonable time during the period of acquisition, construction and installation and Performance Test of the Facility and during the Term of this Agreement after giving the Contractor reasonable advance notice; provided, however, that the Metro Authorized Representative and the Consulting Engineer may inspect the Facility and the Facility Site during regular business hours without notice. Any such visits shall be conducted in a manner that does not cause unreasonable interference with the Contractor's operations. The Contractor shall have reasonably available "as built" plans for the Facility for inspection by Metro and its Authorized Representatives and its Consulting Engineer. The Contractor may require any Person on the Facility Site, whether pursuant to this Section 12.2, in connection with the Performance Test or otherwise, to comply with its reasonable safety rules and regulations.

Section 12.3 Representatives and Notices

(a) Change of Authorized Representatives. Metro and the Contractor may change their respective Authorized Representatives upon five (5) Business Days' written notice to the other Party.

(b) Manner of Giving Notices. Except as may otherwise be expressly provided hereunder, all approvals, requests, reports, notices, communications or other materials or information required or permitted to be made or given by a Party to the other Party hereunder shall be deemed to have been given or made only if the same is reduced to writing and delivered, either personally or by means of the United States Postal Service (registered or certified mail, postage prepaid), to the Metro Authorized Representative or the Contractor Authorized Representative, as the case may be, at their respective addresses as set forth herein; provided that with respect to any notice or other communication required or permitted to be given hereunder and which, under the applicable provisions of this Agreement, the Authorized Representative of the recipient thereof is required to give a receipt therefor, such notice or other communication shall only be deemed to have been duly given or made if hand delivered to the recipient's Authorized Representative.

(c) When Notices Deemed Given. For all purposes of this Agreement, any such approval, request, report, notice, communication or other material or information which is delivered by means of the United States Postal Service as aforesaid shall be deemed to have been delivered as of the third Business Day next following the date of the postmark thereof (if mailed from Portland, Oregon), or as of the fifth Business Day following the date of the postmark thereof (if mailed outside of Portland, Oregon but inside the United States of America); provided that with respect to any notice or other communication required or permitted to be given hereunder and which, under the applicable provisions of this Agreement, the Authorized Representative of the recipient thereof is required to give a receipt therefor, such notice or other communication shall only be deemed to have been duly given or made when the same has been hand delivered to the recipient's Authorized Representative. Provided that any notice to Credit Provider shall be deemed delivered upon the receipt thereof by the Credit Provider.

(d) Notice Addresses. All notices, requests and other communications to either party hereunder shall be in writing and shall be given to such party at the following address, or such other address as such party may hereafter specify for the purpose by notice to the other party:

If to Metro, at:

Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201
Attention: Director of Solid Waste

and to

Credit Provider's Engineer

with copies of any notice, request or other communication regarding any (i) Dispute, (ii) Technical Dispute, (iii) request for any necessary consent or waiver, (iv) exercise of an option under this Agreement, (v) right of first refusal under this Agreement, (vi) occurrence or alleged occurrence of a Contractor Event of Default, or any event which with the passage of time would give rise to a Contractor Event of Default, or (vii) occurrence or alleged occurrence of a Metro Event of Default, or any event which with the passage of time would give rise to a Metro Event of Default, to:

Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201
Attention: General Counsel

and

Credit Suisse
100 Wall Street
New York, NY 10005
Attention: Public Finance Department

and

Latham and Watkins
Attorneys at Law
701 B Street, Suite 2100
San Diego, CA 92101
Attention: Kelley Gale

If to Contractor, at:

Riedel Environmental Technologies, Inc.
4611 N. Channel Avenue
P.O. Box 5007
Portland, OR 97208
Attention: Corporate Secretary

and to

Credit Provider's Engineer

with copies of any notice, request or other communication regarding any (i) Dispute, (ii) Technical Dispute, (iii) request for any necessary consent or waiver, (iv) exercise of an option under this Agreement, (v) right of first refusal under this Agreement, (vi) occurrence or alleged occurrence of a Contractor Event of Default, or any event which with the passage of time would give rise to a Contractor Event of Default, or (vii)

occurrence or alleged occurrence of a Metro Event of Default, or any event which with the passage of time would give rise to a Metro Event of Default, to:

Perkins Coie
111 SW Fifth Avenue, Suite 2500
Portland, Oregon 97204

and

Credit Suisse
100 Wall Street
New York, NY 10005
Attention: Public Finance Department

and

Latham and Watkins
Attorneys at Law
701 B Street, Suite 2100
San Diego, CA 92101
Attention: Kelley Gale

ARTICLE XIII. DISPUTE RESOLUTION

Section 13.1 Dispute Resolution

(a) Good Faith Efforts to Resolve Disputes. The Parties shall attempt to resolve any Dispute by good faith negotiations to resolve the same to the mutual satisfaction of both Parties.

(b) Procedure for Initiating Dispute Resolution Processes. Whenever a Party desires to initiate the dispute resolution process set forth in this Article XIII, it shall do so by giving a Dispute Notice to the other Party. Upon delivery of any Dispute Notice, the Authorized Representative of the recipient thereof shall deliver to the Party giving such Dispute Notice a signed and dated receipt therefor, which receipt shall serve as conclusive evidence of the date upon which such Dispute Notice was delivered. Within five (5) days after the delivery of a Dispute Notice, the parties shall meet for the purpose of negotiating a resolution of the related Dispute.

(c) Technical Disputes During Design and Construction. If, within twenty (20) days after the delivery of a Dispute Notice, the parties are unable to negotiate a mutually satisfactory resolution of the related Dispute and such Dispute:

- (i) is a Technical Dispute arising during the course of design, acquisition, construction and installation of the Facility;
- (ii) such Technical Dispute would result in an increase in the Facility Price of less than \$50,000; and
- (iii) the effect of such a change, when aggregated with all other changes made under this subsection (c), does not total more than \$50,000 in the aggregate; then the Contractor shall make such change; provided that should such change, when aggregated with all other changes made under this subsection (c), total less than \$50,000 in the aggregate, the Contractor shall be solely liable to pay such amount and shall not be entitled to directly or indirectly recover from Metro any such excess either through an increase in the Facility Price, the Tip Fee or otherwise.

If any change that is the subject of any Technical Dispute, when added to other changes made to the Facility Price pursuant to this subsection (c), would result in an aggregate total change in the Facility Price of more than \$50,000 but less than \$150,000, such Technical Dispute shall be submitted for resolution by a technical opinion of an Independent Engineer, selected from the predesignated list of engineers set forth in Exhibit J to this Agreement, or selected from time to time by the Parties in writing signed by the Authorized Representatives of both Parties. The decision of the Independent Engineer shall be conclusive and binding on the Parties and specifically enforceable in any court of competent jurisdiction.

If any change that is the subject of any Technical Dispute, when added to other changes made to the Facility Price pursuant to this subsection (c), would result in an aggregate total change in the Facility Price of more than \$150,000, such Technical Dispute shall be submitted for dispute resolution in accordance with the provisions set forth in Section 13.2 hereof.

Section 13.2 Arbitration

(a) If any Dispute (other than a Technical Dispute subject to the dispute resolution provisions of Section 13.1(c)) is not resolved by negotiations of the Parties within sixty (60) days after the date of delivery of the Dispute Notice, either Party shall have the option to submit such Dispute for resolution pursuant to arbitration as provided in this Section 13.2 by delivering a request for final and binding arbitration to the other Party (an "Arbitration Request").

(b) Each arbitration proceeding pursuant to this Section 13.2 shall be governed by and conducted in accordance with the following provisions:

- (i) The arbitration shall take place in Portland, Oregon, and shall be conducted in accordance with the Rules of Arbitration of the AAA. The appointing authority shall be such group as the Parties may mutually agree upon within five (5) days of the date of the Arbitration Request or, in the absence of such mutual agreement, the ASP, or if the ASP is not available, the appointing authority of the AAA.
- (ii) Each Party shall choose one arbitrator from a panel of persons qualified with ASP or AAA and knowledgeable in the area which is the subject of the dispute in question, such selection to be made within fifteen (15) days of the Arbitration Request. If the issue involves a question regarding insurance then the Parties agree that the Arbitrator or Arbitrators shall be chosen from those particularly experienced in such matters. The two arbitrators so chosen shall appoint the third. If the two arbitrators are unable to agree on the third arbitrator within fifteen (15) days following the selection of the second arbitrator, the third shall be appointed forthwith by the ASP.
- (iii) In arriving at their decision, the arbitrators shall consider the pertinent facts and circumstances and be guided by the terms and conditions of this Agreement, as applicable. If a resolution of the Dispute is not found in the terms and conditions of this Agreement, the arbitrators shall apply the principles of the laws of the State of Oregon. The arbitration award shall be considered an Oregon award. The decision and award of the arbitrators shall be final and binding.
- (iv) In making any award, the arbitrators shall, if possible, designate the Party which is the prevailing party (the "Prevailing Party") and the Party which is the non-prevailing party (the "Non-prevailing Party") with respect to the Dispute in question. The arbitration fees and costs, including reasonable attorneys' fees for the Prevailing Party, shall be borne by the Non-prevailing Party; provided that if the arbitrators do not or are unable to designate a single Prevailing Party with respect to the Dispute in

question, then and in such event the arbitrators, in making the award, shall determine the proportion of the costs, expenses and attorneys' fees incurred in connection with such arbitration which are to be borne by each Party.

- (v) Any award involving the payment of any sums by one Party to the other (other than any payments relating to the costs, expenses and attorneys' fees incurred in connection with such arbitration or any payments to be made in the future by one Party to the other pursuant to the terms of this Agreement) shall include interest from the date of any breach or other violation of this Agreement or, if the award does not specify the date of such breach or other violation, from the date of the award. The arbitrators shall also fix an appropriate rate of interest from the date of the breach or other violation to the date when the award is paid in full which rate shall be the prime commercial lending rate published by the United States National Bank of Oregon at its principal office in Portland, Oregon, for ninety (90) day loans for responsible and substantial commercial borrowers.
- (vi) In the course of arbitration, the terms and provisions of this Agreement which are then in effect shall be continuously executed by both parties, except to the extent that any such terms and provisions are the subject matter of the pending arbitration.
- (vii) All notices to be given in connection with the arbitration shall be in writing. All notices shall be sent by registered or certified mail, return receipt requested to the addresses of the parties as stated in the notice provisions of the Agreement as amended from time to time.

ARTICLE XIV. DISADVANTAGED BUSINESS PROGRAM

In performing its obligations under this Agreement, the Contractor shall at all times and in all respects comply, and cause all prime Subcontractors to comply, with the requirements of the Metro Disadvantaged Business Program under Section 2.04.150(c) of the Metro Code, unless exempted therefrom by its terms, by making good faith efforts as defined in Metro Code Section 2.04.160(b) to achieve DBE/WBE participation in the same goal amount as the current annual goal established by Metro for

that contract type for each subcontract let by Contractor or its prime Subcontractors after the date of this Agreement.

ARTICLE XV. DEFAULT AND TERMINATION

Section 15.1 Events of Default by the Contractor

Each of the following shall constitute a Contractor Event of Default for purposes of this Agreement:

(a) Due to reasons other than Metro Fault or Uncontrollable Circumstances, the Contractor fails to cause the Facility to pass the Performance Test and achieve the Commercial Operation Date by the last day of the Extension Period as may be extended by any Time Extension;

(b) Due to reasons other than Metro Fault or Uncontrollable Circumstances, after the Commercial Operation Date is established Annual Acceptable Waste Throughput, is less than seventy-five percent (75%) of the Throughput Performance Standard and Contractor shall have failed to remedy the deficiency within the Time period provided in Section 8.14 or the Residue produced by the Facility exceeds fifty percent (50%) of processed Acceptable Waste and Contractor shall have failed to remedy the deficiency within the Time period provided in Section 7.4;

(c) Due to reasons other than Metro Fault or Uncontrollable Circumstances, the Contractor after receiving sixty (60) days prior notice of deficiency as provided in Section 8.15 fails to meet any Performance Standard (other than the Throughput Performance Standard or the Performance Standard relating to Residue) after the Commercial Operation Date;

(d) The exercise by the Trustee of its rights to accelerate the maturity of the Bonds or to foreclose upon to enter into possession of the Facility in accordance with the Bond Documents as a result of any act or failure to act by the Contractor;

(e) The repeated or persistent failure or refusal by the Contractor to fulfill any of its other material obligations under the Agreement, provided that Metro shall have given Contractor sixty (60) days prior written notice with reasonable detail giving notice of the failure to meet a specific obligation and Contractor shall have failed to remedy the deficiency within said sixty (60) days unless such failure or refusal shall result from Metro Fault or Uncontrollable Circumstances;

(f) There shall be entered, without the consent of the Contractor, a decree or order under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency,

reorganization or similar law, or appointing a receiver, liquidator, trustee or similar official of Contractor or any substantial part of its properties, and such decree or order shall remain unstayed and in effect for sixty (60) consecutive days; or

(g) The Contractor shall file a petition or answer or consent seeking relief under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or other similar law, or shall consent to the institution of proceedings thereunder or to the filing of any such petition or to the appointment or taking possession of a receiver, liquidator, trustee, or other similar official of the Contractor or of any substantial part of the properties of the Contractor, or shall make a general assignment for the benefit of creditors.

Section 15.2 Events of Default by Metro

Each of the following shall constitute a Metro Event of Default for purposes of this Agreement:

(a) Due to reasons other than Contractor Fault, Metro shall fail to perform obligations under Section 9.2 hereof and such failure shall continue for a period of one hundred twenty (120) days;

(b) The repeated or persistent failure or refusal by Metro to fulfill any of its other material obligations under this Agreements, provided that Contractor shall have given Metro sixty (60) days prior written notice with reasonable detail giving notice of the failure to meet a specific obligation unless such failure or refusal shall result from Contractor Fault or Uncontrollable Circumstances;

(c) The exercise by the Trustee of its rights to accelerate the maturity of the Bonds or to foreclose upon or enter into possession of the Facility in accordance with the Bond Documents as a result of any act or failure to act of Metro.

(d) There shall be entered, without the consent of Metro, a decree or order under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or similar law, or appointing a receiver, liquidator, trustee or similar official of Contractor or any substantial part of its properties, and such decree or order shall remain unstayed and in effect for sixty (60) consecutive days; or

(e) Metro shall file a petition or answer or consent seeking relief under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or other similar law, or shall consent to the institution of proceedings thereunder or to the filing of any such petition or to the

appointment or taking possession of a receiver, liquidator, trustee, or other similar official of Metro or of any substantial part of the properties of Metro, or shall make a general assignment for the benefit of creditors.

Section 15.3 Remedies for Default

(a) Metro Remedies. Upon the occurrence of any of the events described in 15.1 above, Metro shall provide the Contractor with a written notice (a "Default Notice") specifying the Contractor Event of Default that has occurred.

In addition to its monetary damages, specific performance (if applicable) and other remedies provided by this Agreement or available under applicable law upon the occurrence of a Contractor Event of Default, Metro shall have the right to terminate this Agreement:

- (i) if any of the Contractor Events of Default referred to in Section 15.1(b), (c) or (e) above shall occur and be continuing for ninety (90) days beyond the date that the Contractor receives the Default Notice;
- (ii) if any Contractor Event of Default referred to in Section 15.1(a), (d), (f) or (g) shall occur;

If this Agreement is terminated by Metro due to a Contractor Event of Default:

- (A) the Contractor shall pay Metro an amount sufficient to defease the Bonds, which amount shall take into account funds from Bond proceeds which are available for the redemption of the Bonds;
- (B) the Contractor shall, in a timely manner to permit the continued operation of the Facility:
- (I) grant to Metro a nonexclusive sublicense (which shall be fully paid through the date of Termination of this Agreement, but otherwise be subject to the obligation of Metro to make payments for the DANO Technology) to any patents, trademarks, copyrights and trade secrets and "shop rights" as necessary for, and limited to, the operation of the Facility;

- (II) supply at their fair market price any proprietary components needed for continuing the operation of the Facility;
- (III) assign for the benefit of Metro all maintenance and supply contracts and all contracts relating to the sale or other distribution of Compost Product and Recovered Materials and supply Metro with the names, addresses and other records of the Contractor relating to the sale or other distribution of Compost Product and Recovered Materials;
- (IV) assist Metro by providing initial training of personnel as may be reasonably necessary to enable Metro to continue with operation of the Facility and Metro shall pay the Contractor for its Direct Costs, to the extent of Cost Substantiation, incurred by the Contractor in the performance of such services;
- (V) provide non-technical and technical design, construction and operational information, whether or not proprietary, including technical specifications and as-built reproducible plans of the Facility and assign or provide any other license, permit or consent which is necessary for the operation, maintenance and repair of the Facility;
- (VI) subject only to the rights of the Trustee under the Bond Documents and Credit Provider, at Metro's request and sole option sell the Facility to Metro. Metro may acquire the Facility pursuant to the provisions of Section 3.5 except that if Metro shall exercise its right to purchase as a consequence of this Agreement being terminated for Contractor Default the Fair Market Value of the Facility shall be determined by excluding any value attributed to the Facility by reason of the Facility being capable of being used as a solid waste disposal or transfer facility. Metro may offset against the purchase price as so determined any sums due and owing to Metro from the Contractor.

In the event of any such termination, the Contractor shall be entitled to payment of any Tip Fee payments due prior to the effective date of Metro's notice of termination of this

Agreement, but only to the extent the amount such Tip Fee payments exceeds amounts owed to Metro. Metro shall retain the right to pursue any cause of action or assert any claim or remedy it may have against Contractor.

(b) Contractor Remedies. Upon the occurrence of any of the events described in Section 15.2 above, the Contractor shall provide Metro with a written notice (a "Default Notice") specifying the Metro Event of Default that has occurred and, if such Metro Event of Default is described in Section 15.2(b) above, specifying a reasonable time to be permitted (which shall in no event be less than thirty (30) days) for Metro to cure such Metro Event of Default.

In addition to its monetary damages, specific performance (if applicable) and other remedies provided by this Agreement or available under applicable law upon the occurrence of a Metro Event of Default, the Contractor shall have the right to terminate this Agreement:

- (i) if a Metro Event of Default referred to in Section 15.2(a) or (c) shall occur;
- (ii) if any Metro Event of Default referred to in Section 15.2(d) or (e) shall occur; or
- (iii) if any Event of Default referred to in Section 15.2(b) shall occur and be continuing beyond the cure period provided in the Default Notice.

If this Agreement is terminated by the Contractor due to a Metro Event of Default, Metro shall pay the Contractor an amount equal to:

(A) the Tipping Fee payable up to the effective date of termination; plus

(B) all Direct Costs incurred by the Contractor in connection with such termination, including cancellation charges, if any, from contractors, subcontractors, or suppliers, for which the Contractor shall provide Cost Substantiation; plus

(C) amounts expended by the Contractor in connection with Capital Improvements, if any, to the extent not otherwise recovered by the Contractor under this Agreement; plus

(D) amounts that the Contractor is required to expend to retire the Bonds or the Term Loan as provided for in the Reimbursement Agreement; provided that the full amount of such amounts shall be paid directly by Metro to the Trustee; minus

(E) the amount of any adjustments favorable to Metro.

Upon termination by Contractor for Metro Default, Contractor shall retain the Facility.

Section 15.4 Termination Due to Uncontrollable Circumstances

Upon the occurrence of an Uncontrollable Circumstance, Metro shall calculate any increase in the Facility Tip Fee as a result of such event. Metro shall compare the Tip Fee as increased by a result of such event to the tipping Fee which would have been if such event had not occurred. Such comparison shall be computed on a Tip Fee per ton basis after adjustment for other increases provided for in this Agreement and for Exhibit K. For purposes of this Section 15.4 Metro shall take into account the aggregate of any such increases in the Tipping Fee occurring since the Construction Date. Upon the occurrence of any Uncontrollable Circumstance which:

(a) prevents the Facility from Processing any Acceptable Waste for a period of one hundred twenty (120) consecutive days or one hundred twenty (120) days (whether or not consecutive) out of any one hundred eighty (180) day period;

(b) If the cumulative increase in the Tip Fee as a result of any and all Uncontrollable Circumstances is greater than twenty-five percent (25%), excluding all adjustments to the Tip Fee otherwise authorized by this Agreement, (including without limitation inflationary adjustments and adjustments due to Metro Change Orders or Metro Fault); or

(c) If the Uncontrollable Circumstance and its expected effect on the Facility would prevent operation of the Facility at least at seventy-five percent (75%) of the throughput Performance Standard for at least nineteen (19) months Metro shall have the right to terminate this Agreement, any such termination to be effective upon ninety (90) days' prior written notice of such termination to the Contractor is given by Metro within ninety (90) days of Metro receiving notice of specific Uncontrollable Circumstances which causes an increase in the Tip Fee in excess of the amount provided in 15.4(b) above. If Metro fails to terminate within said time period Metro may terminate pursuant to this Section only if a separate Uncontrollable Circumstance causes a further increase in the Tip Fee. Upon such termination, Metro shall pay the Contractor the amount provided for in Section 15.3(b).

The foregoing to the contrary notwithstanding, if Metro provides the Contractor with written notice of its intention to terminate this Agreement pursuant to Section 15.4(b), then, if the Contractor elects to pay for any increase in the Tip Fee in excess of twenty-five percent (25%) Metro's right of termination may not be exercised.

Section 15.5 Survival of Certain Rights and Obligations

The rights and obligations of the Parties under Section 8.19 and any claims for damages shall survive any termination of this Agreement.

ARTICLE XVI. MISCELLANEOUS

Section 16.1 Entire and Complete Agreement

This Agreement constitutes the entire and complete agreement of the parties with respect to the subject matter it contains, and supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments and representations, whether oral or written; provided however, that in the event of any conflict between the language set forth in this Agreement and any of the Exhibits hereto, the language in this Agreement shall prevail over any such conflicting language in the Exhibits and this Agreement shall be interpreted as if such conflicting language in the Exhibit were not a part of the agreement between the parties hereto.

Section 16.2 Binding Effect

This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any successors thereto, whether by merger, consolidation, or transfer of the assets relating to the Facility.

Section 16.3 Applicable Law

This Agreement shall be governed and construed by, under and in accordance with the laws of the State of Oregon.

Section 16.4 Headings

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 16.5 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

Section 16.6 Amendment or Waiver

Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by a written instrument signed by the Parties.

Section 16.7 Severability

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement, that to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action remain in full force and effect.

Section 16.8 Contracts or Approvals

Except as otherwise expressly provided herein, in any instance where the consent or approval of Metro or the Contractor is required hereunder or under any agreements in connection with any transaction contemplated hereby, such consent or approval shall not be unreasonably withheld.

Section 16.9 Estoppel Certificates

Each party, upon not less than thirty (30) days' prior written notice from the other but not more than once each Fiscal Year, shall execute, acknowledge and deliver a statement in writing:

- (i) certifying that this Agreement is unmodified and is in full force and effect (or if there have been modifications, that the Agreement is in full force and effect as modified and stating the modifications); and
- (ii) stating whether or not to the best knowledge of the signer of such certificate the requesting party is in default in performance of any material covenant, agreement or condition contained in this Agreement and, if so, specifying each such default of the other party which the signer may have knowledge.

Each party acknowledges and agrees that any such statement delivered under this Agreement may be relied upon by third parties not a party to this Agreement.

Section 16.10 Limitation of Liability of Metro

The obligations of Metro under this Agreement are limited obligations payable solely from such amounts as may lawfully be paid by Metro for services of the type required to be rendered by the Contractor under this Agreement. The obligations of Metro hereunder shall not be payable from the general funds of Metro and the incurrence or non-performance of such obligations shall not constitute or create a legal or equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of Metro or upon any of its income, receipts, or revenues other than upon its income receipts and revenues derived from its regulation and operation of a system for the disposal of solid waste within its boundaries. Metro shall in establishing rates for solid waste disposal comply with all material requirements of the Bond Documents.

The execution and delivery of this Agreement by Metro shall not impose any personal liability on the members, officers, employees or agents of Metro. No recourse shall be had by the Contractor for any claims based on this Agreement against any member, officer, employee or other agent of Metro in his individual capacity, all such liability, if any, being expressly waived by the Contractor by the execution of this Agreement.

Section 16.11 Assignment; Release

This Agreement may not be assigned or encumbered by either Party without the prior written consent of the other Party (which consent shall not be unreasonably withheld), except that, without such consent, (a) either Party (or any permitted assignee thereof) may make such assignments as security as may be required in connection with any financing or refinancing in respect of all or part of the Facility or any modification thereof or addition thereto, (b) the Contractor (or any permitted assignee thereof) may assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any other entity with which or into which the Contractor (or such permitted assignee) shall merge or consolidate or to which the Contractor (or such permitted assignee) shall transfer all or substantially all of the assets related to the Facility, and (c) the Contractor (or such permitted assignee) may assign its rights and obligations hereunder to any of its Affiliates, provided that no such assignment may be accomplished unless (i) the Contractor (or such permitted assignee) shall simultaneously assign or otherwise transfer to all of the Contractor's (or such assignee's) rights and obligations under the Agreement. After the effective date of the assignment of the rights and obligations of the Contractor

under the terms of this provision, the Contractor shall have no continuing rights or obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date first set forth above.

METROPOLITAN SERVICE DISTRICT

By: _____

Its:

RIEDEL ENVIRONMENTAL TECHNOLOGIES, INC.

By: _____

Its:

DBC/gl

LIST OF EXHIBITS TO
RIEDEL-METRO SERVICE AGREEMENT
July 27, 1989

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>SECTION</u>
A	Resolutions of the Board of Directors of Contractor	Recitals
B	Resolutions of the Metro Council	Recitals
C	Performance Test Procedures	Definitions
D	List of Bond Counsel	Definitions
E	Form of Certificate of Completion	Definitions
F	Description of DANO Technology	Definitions
G	Drawdown Schedule	Definitions
H	Legal Description of Facility Site	Definitions
I	Facility Specifications	Definitions
J	List of Qualified Independent Engineers	Definitions
K	Calculation of Tip Fee	Definitions
L	Performance Standards	Definitions
M	Required Insurance	Definitions
N	Required Permits	Definitions
O	Prevailing Wage Lists	Section 6.9
P	Form of Performance/Payment Bond	Section 6.11
Q	Statement of Confidentiality	Section 8.19
R	Riedel Environmental Technology Guarantee	Section 4.1

EXHIBIT A

Proposed Authorizing Resolutions

Riedel Oregon Compost Company

RESOLVED, that the form of Mass Composting Service Agreement presented to this meeting (draft dated _____, 1989) (the "Service Agreement"), pursuant to which the Company will act as contractor for construction and operation of a composting facility for the Metropolitan Service District of Portland, Oregon, is hereby approved;

RESOLVED FURTHER, that the President or any Vice President of the Company is hereby authorized and empowered, without further approval by the Board, to execute and deliver the Service Agreement, in said form or substantially in said form, with such changes and amendments as such officer may approve, such approval to be evidenced conclusively by execution and delivery of the Service Agreement;

RESOLVED FURTHER, that officers of the Company are hereby authorized and empowered to do or cause to be done all such further acts and things and to execute and deliver such documents as may be necessary to perform the obligations of the Company pursuant to the Service Agreement and otherwise to carry into effect the purposes and intent of the foregoing resolutions; and

RESOLVED FURTHER, that the Secretary is hereby directed to file a copy of the Service Agreement with the minutes of this meeting.

RIEDEL ENVIRONMENTAL TECHNOLOGIES, INC.

Proposed Resolutions

GUARANTEE OF PERFORMANCE UNDER MASS COMPOSTING SERVICE AGREEMENT

WHEREAS, Riedel Oregon Compost Company, an Oregon corporation, a wholly-owned subsidiary of the Company ("ROCC"), has negotiated a Mass Composting Service Agreement (the "Service Agreement") with the Metropolitan Service District of Portland, Oregon ("Metro"), a draft of which (dated _____, 1989) has been presented to this meeting; and

WHEREAS, Metro has conditioned its obligations under the Agreement on receipt of a written guarantee by the Company of ROCC's performance under the Agreement; now therefore be it:

RESOLVED, that this Company is hereby authorized to guarantee ROCC's performance under the Service Agreement;

RESOLVED FURTHER, that the form of guarantee presented to this meeting to evidence such guarantee is hereby approved;

RESOLVED FURTHER, that the President or any Vice President of the Company is hereby authorized and empowered, without further approval of the Board, to execute and deliver said guarantee in said form, with such changes and amendments as any such officer may approve, such approval to be evidenced conclusively by execution and delivery of said guarantee;

RESOLVED FURTHER, that the officers of the Company are hereby authorized and directed to do or cause to be done all such further acts or things as may be necessary to perform the obligations of the Company pursuant to the Guarantee and otherwise to carry into effect the purposes and intent of the foregoing resolutions; and

RESOLVED FURTHER, that the Secretary is hereby directed to file a copy of said form of guarantee with the minutes of this meeting.

EXHIBIT C

PERFORMANCE TEST PROCEDURES

1.0 General

The Contractor shall conduct the Performance Test in accordance with Article 7. The Contractor, as part of its obligation pursuant to such article, shall make all preparations and furnish all operating personnel, materials, fuel, and utilities required for the Performance Test. The Contractor shall furnish, at its expense, the necessary service representatives and test engineers required for all such tests and the necessary test instrumentation.

Metro Authorized Representatives and their designees shall have full access to all portions of the Facility during the Performance Test.

Definitions of test procedures are given in Appendix 2

1.0.1. Scope of Performance Testing

This Exhibit defines the Performance Test Procedures to be used by the Contractor to verify that the Facility meets the Performance Standards set forth in Exhibit L.

The Performance Tests are designed to ensure that the Facility meets the contractual Performance Standards in the following general areas:

- 1) Capacity - Acceptable Waste Throughput
- 2) Recovered Materials recovery rates
- 3) Residue quantity
- 4) Compliance with all applicable environmental standards
- 5) Compost Product Quality/Specifications

1.1 Consulting Engineer

The Consulting Engineer shall monitor the conduct of the Performance Test.

The Engineer shall:

- 1) Review and approve the detailed procedures for conduct of the Performance Test.
- 2) Witness the Performance Test to assure that such tests are performed in accordance with the Performance Test Procedures set forth herein.
- 3) Review the Contractor's Certificate of Completion and Performance Test report and make recommendations to Metro, if requested to do so by Metro's Authorized Representative, regarding the Certification of Completion.

1.2 Performance Test - General Specifications

Any environmental compliance testing required by the U.S. Environmental Protection Agency (EPA) and the Oregon Department of Environmental Quality (DEQ), but not covered in the Contract, shall be conducted in accordance with procedures stipulated by these and other agencies and shall be performed in coordination with these agencies.

During the Performance Test, the Contractor shall use its best efforts to: (1) cause the Facility to operate in a normal mode with regard to operating hours and staffing; (2) cause all operating parameters to be within normal operating limits; and (3) operate the Facility in compliance with Applicable Law.

The Performance Test shall be composed of individual tests which will determine the ability of the Facility to perform in accordance with the Performance Standards described in Exhibit L. Each test will be comprised of three parts: (1) a Measurement Procedure; (2) the recording of measurements obtained in accordance with the Measurement Procedure in the Performance Test Logbook; and (3) a comparison of the measurements recorded in the Performance Test Logbook to the applicable Performance Standard to determine Facility compliance.

1.3 Performance Test - Time Period and Data Requirements

The Performance Test shall be designed to measure the throughput capacity of twenty-one (21) consecutive days acceptance of waste at the Facility through completion as Compost Product. One day's acceptance requires 42 days to completion of the Compost Maturation stage. Thus, the Performance Test must be conducted for a total period of sixty-three (63) days in order to measure a total of twenty one (21) days waste acceptance by the Facility.

The first twenty-one (21) days of testing will measure the performance of the receiving and processing stages of the Facility, including amount of waste accepted, material recovery rates from the picking lines, residue from the DANO Drum discharge screen, and ferrous recovery rates from both the screened Compostable Fraction and DANO Drum discharge Residue.

The first 63 day period of the Performance Test will monitor the performance of the actual Composting and Compost processing operations of the waste received during initial 21 days.

During the Composting Operation (Aeration Slab - 21 days, Maturation Slab - 21 days), temperature elevation and duration on the Aeration Slab will be recorded on a daily basis. Total residence time for the Composting process will be measured.

During the final processing of the Compost Product, Residue production from final screening and, ferrous material recovery from final magnetic separation shall be recorded.

The weight of Compost Product from each day's production batch, the particle size distribution, glass content and size distribution, and final moisture content of the Compost will be measured. The Compost Product shall be tested for stability using the respiration process and seed germination viability test, pH, presence of pathogenic organisms, heavy metal content and any additional chemical tests required by Applicable Law.

Procedures during the Performance Test which are designed to measure recovery of aluminum, glass and ferrous metals Section 3.3, Logbook Form D as a percentage of the Acceptable Waste, are based on the Reference Waste Composition.

Odor and noise levels shall be monitored during Performance Test period as required by Applicable Law.

1.4 Performance Test Logbook

The Performance Test Logbook (the "Logbook") shall be used to record all data and measurements taken during the Performance Test. The Logbook shall consist of the pages shown in the Appendices to this Exhibit. The tabular format of the Appendices (the "Logsheets") provides

specified spaces for recording the appropriate data from measurements to be taken during each step of the tests.

Each Logbook page has an entry for the "Day", meaning day 1 through 21 of the Performance Test. This entry will track each batch of compost from the day of acceptance of the Acceptable Waste by the Facility through removal from the Maturation Slab.

The "Dates" entry is used to record the dates on which samples are taken and/or tests run on the material.

Following pulverization in the Dano Drum, each day's production of Compostable Fraction will be given a "Batch Marker I.D.". These I.D. numbers, placed on marker stakes are used to track the Compostable Fraction throughout the composting process on a daily production basis (see Section 2.5 - Compost Residence Time), and shall also be entered into the Logbook pages where required.

One page of the Logbook forms shall be used to enter each days required measurement. Thus, upon completion of the Performance Test, each required test or measurement shall consist of twenty-one (21) separate pages of records. An additional sixth page shall then be used to record mean values, standard deviation and variance for each set of tests and shall be marked "MEAN VALUES" in the "Dates" entry line.

All supplemental or intermediate data (including strip charts, computer printout of automated data collection, truck weigh tickets, etc.) and computations used to complete the Logsheets must be arranged in good order and be kept with the Logbook. Data entries shall be made in the Logbook at the time such data becomes available. The Logbook shall be kept at the Facility, available for inspection by Metro and the Consulting Engineer.

2.0 Performance Test Procedures - Facility Design Criteria

2.1 Acceptable Waste Throughput

2.1.1 Test Objective

The objective of the Acceptable Waste Throughput Test is to determine if the Facility is capable of complying with the Throughput Performance Standard described in Exhibit L of the Service Agreement.

2.1.2 Test Procedures and Measurements

The net weight of each load of waste delivered to the Facility shall be recorded from the truck scale tickets, along with the time of each delivery. The net weights (gross weight minus truck tare weight) shall be totaled at the end of each Performance Test Date and entered in Performance Test Logbook, Form A as Total Waste received. In addition the time of arrival of the first and last waste delivery shall be recorded for each Performance Test Date on Test Logbook Form A.

Unacceptable Wastes (white goods, tires, hazardous wastes, etc.), which are separated out on the tipping floor, shall be placed in a separate container. At the end of each test day, these containers shall be weighed and the net weight of Unacceptable Waste (total weight minus container tare weight) entered in Performance Test Logbook, Form A. Subtracting the Unacceptable Waste weight from the Total Waste received weight shall give the weight of Acceptable Waste to be processed for each day.

All scale records must be attached to Form A for each day's activity.

2.1.3 Evaluation of Test Data

2.1.3.1 Daily Throughput Performance

Daily throughput performance shall be computed as follows:

$$\frac{\text{Total of Acceptable Waste for the test period (from Test Logbook, Form A)}}{\text{Total number of days of input to DANO Drums}} = \text{Daily throughput performance in tons per day}$$

If the daily throughput performance is equal to or greater than 600 tons per day the performance requirement with respect to daily throughput shall have been met provided that no single day throughput exceeds 800 tons per day for more than two days.

2.1.3.2 Materials Processing Capacity

The materials processing performance will be determined based on the demonstrated ability of the Facility to convey and process the daily waste throughput through the DANO drums within specified operating time limits. The materials processing capacity shall have been met if the daily throughput capacity has been met as defined in 2.1.3.1 and the hours of operation of the total operating time of the two drum feed conveyors does not exceed an average of 19 hours per day.

2.1.3.3 Receiving Capacity

The waste receiving performance shall be based on the demonstrated ability of the Facility to receive the required waste quantity. The waste receiving capacity shall have been met if on any two days during the test period the facility receives 800 tons or greater of waste provided that:

- (1) The first and last waste delivery as recorded on Test Logbook Form A does not fall outside of the normal waste receiving hours as defined in the Agreements.
- (2) Waste deliveries do not cause excessive delays, vehicle congestion, or otherwise disrupt the normal operation of the facility.

2.2 Total Materials Recovery Rates

2.2.1 Test Objective

The objective of the total materials recovery rate test is to determine if the Facility is capable of recovering a minimum quantity of Recovered Materials from the Acceptable Waste delivered to the Facility, which is equal to or greater than the Recovered Materials standard in Exhibit L.

2.2.2 Test Procedures and Measurements

Materials recovery takes place at several points in the process train. For example, ferrous metals are recovered, by means of magnetic separation of the Compostable Fraction and the DANO Drum Residue, and during finished Compost Product final processing. At the Contractor's option, oversized ferrous items may be segregated on the picking line.

During each separation process, the Recovered Materials will be placed in individually marked bins, segregating each material. Ferrous material recovered from each point in the process train will be weighed at the end of each test date and the individual weights entered in Performance Test Logbook, Form B and totaled. Total net weight of ferrous metal from Form B shall then be entered in Form C.

Net weights of all other Recovered Materials shall also be measured and entered at the end of each test date and the Performance Test Logbook, Form C. Addition of these individual material weights shall give the Total Recovered Materials. The total materials recovery shall then be calculated as a percentage of the Acceptable Waste (Form A) as shown in Form C.

2.2.3 Evaluation of Test Data

The Recovered Materials performance shall be computed as follows:

$$\frac{\text{Total of materials recovered (Test Logbook Form C)}}{\text{Total of Acceptable Waste for the Test Period (Test Logbook Form A)}} \times 100 = \text{Recovered Materials Performance (\%)}$$

If the Recovered Materials performance is equal to or greater than 5%, the Recovered Materials Performance Standard shall have been met.

2.3 Minimum Recovered Materials Rates

2.3.1 Test Objective

The objective of the minimum recovered materials rate Performance Test is to determine if the Facility is capable of achieving the minimum recovery rates for ferrous metals, aluminum, and glass specified in Exhibit L.

2.3.2 Test Procedures and Measurements

The amount of each of these Recoverable Materials in the incoming Acceptable Waste is estimated on the basis of the Reference Waste Analysis data obtained in the 1987 SCS Engineers Metro Waste Stream Characterization Study (Appendix 1) which gives the average percent composition of the ferrous metals (6%), aluminum (0.9%), and glass (3.6%).

The weights of ferrous metals, aluminum, and glass recovered for each test date are taken from the Performance Test Logbook, Form C. The amount of Acceptable Waste processed for each test date is taken from the Performance Test Logbook, Form A.

The minimum materials recovery rates for ferrous metals, aluminum, and glass for each test date shall be calculated and entered as shown in Form D.

2.3.3 Evaluation of Test Results

The material recovery rate for each material shall be computed as follows:

(1) Ferrous Metals

$$\frac{\text{Total Ferrous Metals Recovered during Test Period - Form C}}{\text{(Total Acceptable Waste - Form A) x (0.06)}} \times 100 = \text{\% Ferrous Metal Recovered}$$

(2) Aluminum

Total Aluminum
Recovered during Test
Period - Form C _____ % Aluminum
(Total Acceptable x 100 = _____ Recovered
Waste - Form A) x (0.009)

(3) Glass

Total Glass
Recovered during Test
Period - Form C _____ % Glass
(Total Acceptable x 100 = _____ Recovered
Waste - Form A) x (0.036)

The performance required for minimum Recovered Materials rate guarantees shall have been met if for each material the recovery rate is greater than or equal to the following:

Ferrous Metals	70%
Aluminum	50%
Glass	25%

If the recovery rate for any material is less than the required amount the Facility will not have satisfied the minimum Materials Recovery Rate Guarantee.

2.4 Residue Generation

2.4.1 Test Objective

The objective of the residue generation test is to determine if the Facility is capable of operating at or below the maximum Process Residue generation guarantee when the Facility is processing the daily throughput of Acceptable Waste.

2.4.2 Test Procedures and Measurements

Residue is generated from the picking lines, the DANO Drum screen reject and final Compost Product processing operations. Residue from each operation shall be placed in specifically marked bins and weighed during each test day. The data shall be entered in Form E and summed to give total Residue.

The percent Residue, based on the Acceptable Waste weight for each test date (Form A) shall be calculated and entered as shown on Form E.

2.4.3 Evaluation of Test Data

The residue generation shall be computed as follows:

Total Residue Generated
for Test Period (Form E)
Total of Acceptable _____ % Residue Generated
Waste during Test Period
(Form A) x 100 =

The residue generation standard shall have been met if the residue generated is equal to or less than 35% and if the Acceptable Waste Throughput Standard has been met.

2.5 Compost Residence Time

2.5.1 Test Objective

The objective of the compost residence time Performance Test is to determine if the facility is capable of meeting the minimum compost residence times as required in Exhibit L.

2.5.2 Test Procedures and Measurements

To determine the Compost Residence Time and track the Compostable Fraction throughout the Composting process, five (5) marker stakes shall be placed in a visible position in each day's Compostable Fraction production as soon as it is placed on the Aeration Slab. Each marker shall be labeled with the following information:

- (1) Date when placed on Aeration Slab
- (2) Batch marker I.D. Number
- (3) Test day number
- (4) Date to be removed from Aeration Slab

When the 21 day residence period on the Aeration Slab is completed, and the material is moved to the Maturation Slab, the markers shall be moved with the batch and the following shall be indicated on each marker:

- (1) Date of transfer to the Maturation Slab.

After the additional 21 day period on the Maturation Slab, when the Compost Product is removed for final processing, each marker shall be marked with the date of removal from the Maturation Slab.

2.5.3 Evaluation of Test Results

All information on the batch markers shall also be entered on Form F and the total Compost Residence Time calculated.

If the residence time on the Aeration Slab in 21 days, and on the Maturation Slab in 21 days, for a total of 42 days, the compost residence time Performance Test shall have been met.

2.6 Temperature Elevation and Duration

2.6.1 Test Objective

Temperature records shall be maintained for the Composting material on the Aeration Slab to ensure that the Composting process meets temperature elevation and duration requirements as set forth in the Agreement and by the State of Oregon DEQ permit.

2.6.2 Test Procedures and Measurements

The temperature of each day's batch of Compostable Fraction shall be measured in ten (10) different locations within the pile on the Aeration Slab. Five readings shall be "Interior" and shall be taken with the probe tip approximately two (2) feet from the base of the Aeration Slab. Five readings shall be "Surface" and shall be taken with the probe tip approximately one (1) foot below the surface of the Compost pile.

2.6.3 Evaluation/Test Results

Daily readings of the temperature from each set of five probes (5 Interior, 5 Surface) shall be made and recorded on Form G-1. The mean temperature of each set shall be calculated and recorded on Form G. At the end of the aeration period, the maximum temperature achieved and the duration shall be summarized as required in Form G.

If the temperature measured throughout the pile on the Aeration Slab achieves a minimum of 55°C for three consecutive days, the temperature elevation and duration standard shall have been met.

3. Compost Product Tests

3.1 Finished Compost Product Physical Tests

3.1.1 Test Objective

The objective of the Finished Compost Product physical tests are to ensure that the compost product meets physical specifications for percent moisture, particle size distribution, and glass particle content as required in Exhibit M.

3.1.2 Test Procedures and Measurements

Tests shall be made on subsamples of composite grab samples taken as specified in Appendix 2.

Moisture levels in the Finished Compost Product shall be measured using the microwave method as set forth in ASA Publication - Methods of Soil Analysis, Method 21-23.

Compost Product particle size distribution will be determined by graded soil sieves using standard soil laboratory analysis procedures as set forth in ASA Publication - Methods of Soil Analysis.

Glass particle size analysis will be made by hand picking a dried sample(s) under a widefield microscope. The microscope will be provided with a measuring eyepiece for determining size of glass particles.

The above tests will be run in the Facility laboratory by Facility personnel.

3.1.3 Evaluation of Test Data

Results of Compost Product physical tests shall be recorded in the Performance Test Logbook Form H.

The performance required for physical characteristics of the Compost are (Exhibit L):

- 1) The Finished Compost Product shall have a particle size not larger than of a 3/8 inch square.
- 2) The moisture content of the Finished Compost Product shall be no greater than forty (40) percent.

- 3) Glass particles 2mm or larger in the Finished Compost Product shall not exceed three (3) percent of the dry weight.

If the physical characteristics of the Finished Compost Product meet or exceed these standards, the Performance Test Standard for Finished Compost Product physical tests shall have been met.

4.0 Finished Compost Product - Environmental Compliance Test

4.1 Test Objectives

The objective of the environmental compliance tests is to determine if the Finished Compost Product meets chemical, microbiological and biological standards required to ensure safe and environmentally acceptable reuse by the public.

4.1.2 Test Procedures and Measurements

All tests shall be ran on subsamples from composite grab samples taken as specified in Appendix 2.

Material to be tested for microbiological and chemical compliance shall be delivered to a State of Oregon licensed commercial testing labaratory. Analysis shall be in accordance with State of Oregon accepted procedures.

Results for microbiological tests shall be entered in Performance Test Logbook Form I. Results for chemical tests shall be entered as shown in Performance Test Logbook Form K.

Tests for wet respiration rate, seed germination, and pH shall be run in the Facility laboratory by Facility personnel.

The seed germination test is used to measure phytotoxicity of a Compost sample. The seed germination test is run by placing a known quantity of cress or timothy seeds in a tissue culture dish on a layer of the Compost Product to be tested, and incubating this, together with a blotter-media control, for 7 days. The percentage of seeds germinated, in comparison to the control, provides an indication of the suitability of the compost for use in plant propagation, and can warn of any residue toxic effects.

The wet respiration test measures the direct uptake of oxygen by microbial activity. The test thus give an indirect measurement of the amount of food (or undecomposed and unstable organic material) available to support mcrobial activity. The test requires a 0.2 to 0.4 kg sample of Compost Product, which is finely ground, diluted with water, and placed in the respirometer chamber where direct uptake of oxygen by microbial activity is determined. The test shall be performed using an Arthur Respirometer or equivalent.

pH readings give an additional check on compost stability by determining if organic acid content is sufficiently reduced. PH is measured by EPA Method 150.1.

Results for seed germination, wet respiration, and pH tests shall be entered as shown in Performance Test Logbook Form J.

4.1.3 Evaluation of Test Results

The Performance Test for microbial and chemical test shall have been passed if the results are in compliance with standards published by the State of Oregon DEQ permit.

The Performance Test for pH, wet respiration rate, and seed germination shall have been passed if the results meet the following specifications:

pH	-	6.5 or higher
Wet Respiration	-	1000 mg O ₂ /kg/hr or less
Seed germination	-	± 5% of control germination rate.

5.0 Odor Measurements

Odor Measurement tests shall be taken as required by State or Local permit requirements.

Odor scentometer readings shall be entered as shown in Logbook Form L.

6.0 Noise Levels

Noise Levels shall be in compliance with Oregon noise control regulations, as currently set forth in OAR 340-35-035, and with the City of Portland Noise Control Ordinance. Noise level measurement shall be recorded as required by permit requirements using an Octave Band Analyzer and results entered in Form M.

7.0 Certificate of Completion

Upon completion of the Performance Test, the Contractor shall submit the Performance Test results to Metro. The Contractor's performance of its obligations under Section _ of this Agreement and this Exhibit D shall be evidenced by a Certificate of Completion to Metro (accompanied by the data and calculations relating to the Performance Test).

Appendix I
MSW/Reference Waste Analysis

MSW/Reference Waste Analysis

Acceptable Waste Composition¹

	<u>Percent</u>
Paper	34.8
Yard Debris	9.9
Wood	8.0
Food Wastes	8.8
Diapers	1.5
Miscellaneous Organics	6.7
Textiles	3.8
Fines	2.0
Plastics	7.8
Aluminum	0.9
Miscellaneous Inorganics	5.5
Ferrous Metals	6.0
Nonferrous Metals	0.2
Glass (recyclable)	3.6
Others	<u>0.5</u>
Total	100.0
<u>Moisture Content²</u>	34.1

¹ Source SCS Engineers, 1987. Waste Stream Characterization Study

² Source: Ibid. Page 4-2. This refers to the moisture content of combustible materials only. The moisture content of the entire wastestream has been interpolated as 28.4%.

Appendix 2 Sampling and Testing Methods

1. Sampling

Sampling procedure will be designed to provide a statistically valid data base as required for both operational and regulatory requirements.

Sampling will be from conveyor belts using grab samples taken on a random basis. Sequential samples taken during a sampling day are combined to produce a composite sample. Minimum sampling period will be one per hour.

At the completion of a sampling period, usually one working day, the composite sample is thoroughly mixed and representative subsamples taken for analyses using a soil sample splitter.

Additional samples, particularly operational moisture analysis samples, will be taken as required from various depths of the Compost piles using standard soil sampling tubes and augers.

2. Test Protocol

All sampling, sample preparation and analysis procedures will follow American Society for Testing and Materials (ASTM), United States Environmental Protection Agency (EPA), American Society of Agronomy (ASA), Standard Materials (SM), or other procedures approved by the Oregon Department of Environmental Quality (DEQ).

Routine tests, particularly for operational requirements and some regulatory tests, will be performed by plant personnel on site. These include temperature monitoring, wet respiratory rate testing, pH, and moisture content. All other tests will be performed by contract testing laboratories approved and licensed by the Oregon DEQ.

Form A

Performance Test Logbook

Acceptable Waste Throughput

Day _____

Dates _____

Time of Delivery - First Truck _____ a.m.

Time of Delivery - Last Truck _____ p.m.

Total Waste Received _____ Tons

Unacceptable Waste (White Goods, etc.) (Subtract) _____ Tons

Acceptable Waste _____ Tons

Wood Removed _____ Tons

Tipping Floor Cleaned Yes _____ No _____

Notes:

Form B
Performance Test Logbook

Ferrous Metals Recovery

Day _____

Dates _____

		<u>Date</u>
Picking Line	_____ Tons	_____
Magnetic Separation - Compostable Fraction	_____ Tons	_____
Magnetic Separation - Drum Screen Residue	_____ Tons	_____
Magnetic Separation - Compost <u>Product</u>	_____ Tons	_____
Total Ferrous Recovery (Sum)	_____ Tons	_____

Notes:

Form C
Performance Test Logbook

Materials Recovery Rates

Day _____

Dates _____

Ferrous Metals (Form B)	_____	Tons
Aluminum	_____	Tons
Glass	_____	Tons
Plastics	_____	Tons
Newspaper	_____	Tons
Cardboard	_____	Tons
Other Materials Recovered	_____	Tons
Total Materials Recovery (Sum)	_____	Tons

$\frac{\text{Materials Recovery}}{\text{Acceptable Waste}} \times 100 = \text{_____} \% \text{ Materials Recovery}$

Notes:

Form D
Performance Test Logbook

Minimum Materials Recovery Rate Guarantees

Day _____

Dates _____

1. Ferrous Metals

Ferrous Metals Recovered (Form C) = _____ Tons

$\frac{\text{Weight Ferrous Metals Recovered}}{(\text{Acceptable Waste})^1 (0.06)^2} \times 100 = \text{_____} \% \text{ Ferrous Metals Recovery}$

2. Aluminum

Aluminum Recovered (Form C) = _____ Tons

$\frac{\text{Weight Aluminum Recovered}}{(\text{Acceptable Waste})^1 (0.009)^2} \times 100 = \text{_____} \% \text{ Aluminum Recovery}$

3. Glass

Glass Recovered (Form C) = _____ Tons

$\frac{\text{Weight Glass Recovered}}{(\text{Acceptable Waste})^1 (0.036)^2} \times 100 = \text{_____} \% \text{ Glass Recovery}$

¹ Weight of Acceptable Waste from Form A

² Based on SCS Engineers Waste Composition Study - Appendix 1

Notes:

Form E
Performance Test Logbook

Residue Generation

Day _____

Dates _____

Residue - Picking Lines _____ Tons

Residue - Drum Screen _____ Tons

Residue - Final Compost Product Processing _____ Tons

Total Residue (Sum) _____ Tons

$\frac{\text{Total Residue}}{\text{Acceptable Waste}} \times 100 = \text{_____} \% \text{ Residue Generation}$

Notes:

Form F

Performance Test Logbook

Compost Residence Time Measurement

Day _____

Dates _____

Batch Marker I.D. Number

Aeration Slab

Date placed on Aeration Slab

Date removed from Aeration Slab

Number days on Aeration Slab

Maturation Slab

Date placed on Maturation Slab

Date removed from Maturation Slab

Number of days on Maturation Slab

Compost Residence Time

Days on Aeration Slab

Days on Maturation Slab

Compost Residence Time (Sum)

Notes:

Form G
Performance Test Logbook

Temperature Elevation and Duration

Day _____

Dates _____

Batch Marker I.D. Number _____

Date placed on Aeration Slab _____

Date removed from Aeration Slab _____

<u>Day</u>	<u>Mean Temperature °C</u>	
	<u>Surface</u>	<u>Interior</u>
1	_____	_____
2	_____	_____
3	_____	_____
4	_____	_____
5	_____	_____
6	_____	_____
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
13	_____	_____
14	_____	_____
15	_____	_____
16	_____	_____
17	_____	_____

18	_____	_____
19	_____	_____
20	_____	_____
21	_____	_____

Surface

Interior

Maximum Temperature (° C)

Duration (Days)

Notes:

Form G-1

Performance Test Logbook

Temperature Elevation and Duration - Daily Records

Day _____

Dates _____

Batch Marker I.D. _____

Date placed on Aeration Slab _____

Day of aeration(1 through 21) _____

Temperature °C

<u>Probe</u>	<u>Surface</u>	<u>Interior</u>
1	_____	_____
2	_____	_____
3	_____	_____
4	_____	_____
5	_____	_____
Mean Temperature °C	_____	_____

Notes:

Form H
Performance Test Logbook

Finished Compost Product Tests - Physical Tests

Day _____

Dates _____

Batch Marker I.D. _____

1. Percent Moisture _____ %

2. Particle Size Distribution
 Greater than 3/8 inch square _____ %
 Less than 3/8 inch square _____ %

3. Glass Particle Content
 Percent greater than 2 mm _____ %

Notes:

Form I
Performance Test Logbook

Finished Compost Product - Microbial Tests

Day _____

Dates _____

Batch Marker I.D. _____

Fecal Coliform _____

Fecal Streptocci _____

Notes:

Form J

Performance test Logbook

Finished Compost Product - Stability Tests

Day _____

Dates _____

Batch Marker I.D. _____

Mean Wet Respiration Rate _____ $\text{mgO}_2/\text{g/hr}$

Mean Seeding Viability _____ %

pH _____

Notes:

Form K
Performance Test Logbook

Finished Compost Product - Chemical Test Results

Day _____

Dates _____

Batch Marker I.D. _____

Inorganic Pollutants

Arsenic	_____ mg/kg
Cadmium	_____ mg/kg
Chromium	_____ mg/kg
Copper	_____ mg/kg
Lead	_____ mg/kg
Mercury	_____ mg/kg
Molybdenum	_____ mg/kg
Nickel	_____ mg/kg
Selenium	_____ mg/kg
Zinc	_____ mg/kg

Organic Pollutant

Aldrin/dieldrin (Total)	_____ mg/kg
Benzo(a)pyrene	_____ mg/kg
Chlordane	_____ mg/kg
DDT/DDE/DDD (Total)	_____ mg/kg
Dimethyl nitrosamine	_____ mg/kg
Heptachlor	_____ mg/kg
Hexachlorobenzene	_____ mg/kg

Hexachlorobutadiene	_____ mg/kg
Lindane	_____ mg/kg
Pentachlorophenols	_____ mg/kg
Polychlorinated biphenyls	_____ mg/kg
Toxaphene	_____ mg/kg
Trichloroethylene	_____ mg/kg

Notes:

FORM L

Performance Test Logbook

Odor Measurement

Day: _____

Dates: _____

<u>Time</u>	<u>Upwind Station</u>	<u>Downwind Station</u>
0		
1		
2		
3		
4		
5		

Odor Scale

- 0 None
- 1 Slight
- 2 Identifiable
- 3 Strong

Notes:

FORM M
Performance Test Logbook

Noise Levels

Day: _____

Date: _____

Decibels

Onsite

Offsite

Frequency

31.5 hz
63 hz
125 hz
500 hz
1000 hz
2000 hz
4000 hz
8000 hz

Notes:

References

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EXHIBIT D - LIST OF BOND COUNSEL

Stoel Rives Boley Jones & Gray
Portland, Oregon

Lindsay Hart Neil & Weigler
Portland, Oregon

Rankin VavRosky Doherty MacColl & Mersereau
Portland, Oregon

Schwabe Williamson & Wyatt
Portland, Oregon

EXHIBIT E

RIEDEL OREGON COMPOST COMPANY

Certificate of Completion

The undersigned, the Authorized Representative of Riedel Oregon Compost Company, Inc., an Oregon corporation ("Riedel"), hereby provides this certificate pursuant to the terms of the Mass Composting Service Agreement, dated _____, 1989, by and between the Metropolitan Service District of Oregon and Riedel, as follows:

1. On _____, 19____, the acquisition, construction, and installation of the Facility (as defined in the Agreement) was completed.

2. On _____, 19____, the Performance Test (as defined in the Agreement) relating to the Facility was completed.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____ day of _____, 19____.

RIEDEL OREGON COMPOST COMPANY, INC.

By: _____
Authorized Representative

EXHIBIT "F"

DEFINITION OF DANO TECHNOLOGY

The DANO Technology means the integrated, modular, systems process approach developed by and exclusively licensed by DANO AG of Sorengo, Switzerland for the processing and composting of Municipal Solid Wastes.

The DANO Technology includes, but is not limited to the DANO Drum - meaning the horizontal rotating vessels of proprietary design which perform the initial processing of Acceptable Waste as part of the Composting process.

The DANO Technology includes the design, design specifications, appurtenances, and operational strategy for the Facility, and constitutes integration of the following subsystems or process components:

- 1) Reception area and tipping floor
- 2) Apron conveyors
- 3) Picking Lines
- 4) DANO Drum charging chambers
- 5) DANO Drums, including drive and control systems
- 6) DANO Drum discharge screens
- 7) Residue conveyors and Residue processing trains
- 8) Compostable Fraction distribution bridge and conveyors
- 9) Aeration Slab design and control system
- 10) Maturation Slab design
- 11) Compost Product final processing train
- 12) Leachate collection and treatment/disposal system
- 13) Odor control and aeration supply system

EXHIBIT G - DRAWDOWN SCHEDULE

During the Construction Period, the Contractor shall issue and deliver to the Credit Provider and to the Trustee monthly Requisition Certificates pursuant to Section 6.17 of the Agreement. Contractor shall submit such Requisition Certificates within five (5) days after the end of each month. The Requisition Certificates will be subject to the approval of the Credit Provider, which will not be unreasonably withheld. The Credit Provider shall, within ten (10) days after receipt of an invoice, deliver a notice of approval or disapproval to the Trustee and to the Contractor. The Trustee will pay the amounts requested on all approved Requisition Certificates within five (5) days of receipt of the Credit Provider's notice of approval, provided that aggregate payments made under all approved Requisition Certificates shall not exceed the aggregate total of the amounts specified in the Drawdown Schedule set forth below (i.e., aggregate payments for months 0-1 shall not exceed \$2,807,000, aggregate payments for months 0-2 shall not exceed \$3,456,000, etc.).

MONTH	DRAWDOWN SCHEDULE (in thousands of Dollars)
0	\$ 2,655
1	152
2	649
3	589
4	1,555
5	1,168
6	1,398
7	2,087
8	2,154
9	1,850
10	1,215
11	1,629
12	824
13	353

<u>MONTH</u>	<u>DRAWDOWN SCHEDULE</u> <u>(in thousands of Dollars)</u>
14	51
15	612
16	340
17	330
18	205
19	<u>100</u>
	\$19,916

7-7-89

EXHIBIT H

PARCEL I

The following described real property in Section 18, Township 1 North, Range 2 East of the Willamette Meridian, in the Anthony Wittaker D.L.C., in the County of Multnomah and State of Oregon:

Commencing at the Southeast corner of the Anthony Wittaker D.L.C.; thence North 0°07' East on the East line of said D.L.C. 1273.08 feet to a point in the center line of N.E. Columbia Boulevard; thence North 78°21' West on the center line of N.E. Columbia Boulevard 20.70 feet to Road Angle No. 10; thence North 77°30' West on the center line of N.E. Columbia Boulevard 2143.90 feet to a point; thence North 0°07' East 847.91 feet to a 1 by 30 inch iron rod driven 30 inches into the ground for a period of beginning of the true tract to be described; running thence North 89°53' West 378.14 feet to a 3/4 by 30 inch iron pipe driven 30 inches into the ground; thence North 0°07' East at 718.90 feet passing over a 3/4 by 30 inch iron pipe driven 28 inches into the ground at 805.09 feet to the center line of a branch of the Columbia Slough; thence South 78°00' East following the center of said branch of Columbia Slough 208.49 feet; thence South 79°00' East following the center line of said branch of the Columbia Slough 177.31 feet to a point from which a 1 by 30 inch iron rod driven into the ground 30 inches bears South 0°7' West 74.09 feet distant; thence South 0°07' West 728.69 feet to the true place of beginning.

PARCEL II

Beginning at the Southeast corner of the A. Whittaker D.L.C.; thence North 0°07' East on the East line of said D.L.C., 1273.08 feet to the center line of Columbia Blvd.; thence North 78°21' West on the center line 20.70 feet to Road Angel #10; thence North 77°30' West on the center line of Columbia Blvd., 2531.04 feet to the point of beginning; thence North 0°07' East 1569.98 feet to the center line of a branch of Columbia Slough; thence North 78° West following the center of said slough, 233.05 feet more or less to the division line of the Whittaker D.L.C.; thence South on said division line, 1568.01 feet to the center line of Columbia Blvd.; thence South 77°30' East on the center line of Columbia Blvd. 230.22 feet more or less to the point of beginning; EXCEPTING that portion lying within the boundaries of N.E. Columbia Blvd., and ALSO EXCEPTING therefrom that portion conveyed to Joseph Calcagno, et ux, by deed recorded MARCH 5, 1956, in Book 1772, Page 141, Deed Records, County of Multnomah and State of Oregon.

PARCEL III

A tract of land in Section 18, Township 1 North and Range 2 East of the Willamette Meridian, described as follows:

Beginning at a point where the North line of Columbia Boulevard intersects the division line between the East one-half and the West one-half of the A. Whittaker Donation Land Claim, in Section 18, Township 1 North and Range 2 East of the Willamette Meridian, said point being also the Southeast corner of that 2 Acre tract conveyed to Onorato Calcagno by Cecil R. Montgomery, by deed recorded SEPTEMBER 1, 1944, in Book 864, Page 370, deed Records of Multnomah County.

From the point of beginning so located, running thence South 79°26' East along the North line of said Columbia Boulevard a distance of 3.96 feet, thence running South 77°26' East along the North side of said Columbia Boulevard, a distance of 26.89 feet, thence North 0°51'20" East a distance of 103.0 feet, thence running North 89°08'40" West 130.0 feet more or less to the West line of said 2.0 Acre tract conveyed to Onorato Calcagno by Cecil R. Montgomery; running thence South 0°51'20" West along the West line of said 2 Acre tract 79.66 feet more or less to the North line of said Columbia Boulevard, running thence along the North line of said Columbia Boulevard 101.35 feet more or less to point of beginning. Excepting therefrom that portion taken for roadway as referenced by that document recorded JUNE 4, 1969, in Book 680, Page 1318, Records of Multnomah County.

PARCEL IV

Beginning at the intersection of the Oregon-Washington Railway & Navigation Co.'s North line of right of way with the division of the East and West halves of the Anthony Whittaker D.L.C. in Section 18, Township 1 North, Range 2 East of the Willamette Meridian; thence on said line North 0°51'20" East 1180 feet to a point; thence North 79°49' West 101.35 feet to a point; thence South 0°51'20" West 1180 feet to a point in the North line of the Oregon-Washington Railway and Navigation Co.'s right of way; thence following said right of way South 79°49'2" East 101.35 feet to the place of beginning; EXCEPT that portion lying within the boundaries of Columbia Slough Co. Road; ALSO EXCEPT the following described premises; beginning at an iron pipe in the intersection of the Oregon-Washington Railway & Navigation Co.'s North line of right of way with the old division line fence of the Anthony Whittaker D.L.C. in Section 18, Township 1 North, Range 2 East of the Willamette Meridian; thence on the old division line North 0°51'20" East to the South line of the Columbia Slough County Rd.; thence North 79°49'20" West 101.35 feet; thence South 0°51'20" West to an iron pipe in the North line of the Oregon-Washington Railway & Navigation Co.'s right of way; thence following the right of way South 79°49'20" East 101.35 feet to the point of beginning; and ALSO EXCEPTING that portion conveyed to Joseph Calcagno, Jr., et ux, by deed recorded March 5, 1956 in Book 1772, Page 141, Deed Records, County of Multnomah and State of Oregon.

PARCEL V

A tract of land in the Anthony Whittaker D.L.C. in Section 18, Township 1 North, Range 2 East of the Willamette Meridian:

Beginning at the Northwest corner of the former Wolfe 1-3/4 acre tract being 2805.09 feet North and 96.47 feet West of the South end of the division line of the Anthony Whittaker D.L.C. in Section 18, Township 1 North, Range 2 East of the Willamette Meridian; thence South 79°44' East 101.35 feet to the Northeast corner of said Wolfe 1-3/4 acre tract; thence North along the division line of the Anthony Whittaker D.L.C. 314 feet more or less to the center line of a slough; thence Northwesterly along the center line of said slough 112 feet more or less to the East line of the John Bencich tract; thence Southerly along the East line of said Bencich tract 324 feet more or less to a point which bears North 79°44' West from the point of beginning; thence South 79°44' West from the point of beginning; thence South 79°44' East 7.9 feet more or less to the point of beginning, County of Multnomah and State of Oregon.

PARCEL VI

Commencing at the Southeast corner of the Anthony Whittaker Donation Land Claim, in Section 17, Township 1 North, Range 2 East of the Willamette Meridian; thence North 0°07' East on the East line of said Whittaker Donation Land Claim, 1273.08 feet to a point in the center line of Columbia Boulevard; thence North 78°21' West on said center line of Columbia Boulevard 20.70 feet to a road angle No. 10; thence North 77°30' West on the center line of Columbia Boulevard 2143.90 feet to a point; thence North 0°07' East 847.91 feet to a 1" by 30" iron rod driven 30" into the ground for the point of beginning of tract to be described and conveyed; running thence North 89°53' West 378.14 feet to a 3/4" x 30" iron pipe driven 30" into the ground; thence South 0°07' West 115.20 feet to a 1/2" x 46" iron pipe driven 44 inches into the ground; thence South 89°53' East 378.14 feet to a 3/4" x 40" iron pipe driven 38" into the ground; thence North 024807' East 115.20 feet to the point of beginning; all in Section 18, Township 1 North, Range 2 East of the Willamette Meridian, in the County of Multnomah and State of Oregon.

EXHIBIT I
FACILITY SPECIFICATIONS

A. GENERAL

Riedel Waste Disposal Systems, Inc. (RWDS) or, with the consent of Metro, RWDS assignee, will design, construct, finance and operate a facility (the Facility) that will:

- Accept and process Acceptable Waste;
- Accept source separated recyclable materials delivered by the Public;
- Recover recyclable materials;
- Process soiled paper, food wastes, grass clippings and other wastes of biological origin into a humus-like Compost Product;
- Prepare unacceptable wastes and process residue for disposal.

The Facility will be a complete installation for the receiving and processing of Acceptable Waste and will be constructed and operated in accordance with Applicable Law. Figure No. 1 is an artist's rendering of the Facility.

1. Technology

The Facility will feature technology pioneered and developed by DANO, AG, Sorengo, Switzerland. The facility will recover usable materials; produce a Compost Product from unusable materials of biological origin and separate wood and woody material for shipping and sale to secondary markets.

Recovered Materials such as metals, glass and plastics will be sold to regional secondary markets. The Compost Product will be distributed to local agricultural users such as Christmas tree farms, commercial nurseries, tree root stock farms and soil amendment distributors. Materials without potential for reuse or sale will be disposed of in a disposal site such as a landfill.

2. System Capacity

The Facility will have the capacity to receive and process the following quantities of Acceptable Waste:

Minimum tonnage per week: 2,500
Maximum tonnage per week: 5,000
Minimum tonnage per month: 11,500
Maximum tonnage per month: 18,000

The Facility will nominally process a minimum of 185,000 tons (wet weight) per year of Acceptable Waste as provided by Metro. Approximately sixty-five (65) percent of the Acceptable Waste will be recovered or processed for reuse; 101,800 tons (wet weight) will be processed to produce a Compost Product and 18,500 tons (wet weight) will be recovered as Recyclable Materials. The remaining thirty-five (35) percent or 64,700 tons (wet weight) will require disposal in a landfill. The moisture content of the incoming waste will vary and will necessarily affect the actual weight distributions of the above materials. The most probable representation of actual operating conditions is illustrated in Figure 16.

Performance Standards for the Facility are contained in Exhibit L.

B. SITE DESCRIPTION

1. Location

The site for the Facility is the property at 5437 N.E. Columbia Boulevard, extending from Columbia Boulevard to the Columbia Slough. It is identified as Tax Lots 104, 24, 289, 82, and 49 in Quarter Section Map 2336 in the N.E. One-Quarter of Section 18, Township One North, Range Two East of the Willamette Meridian in Multnomah County and the City of Portland.

This location lies between the I-5 and I-205 freeways and is ideally situated to accept waste from all areas of Multnomah County. The part of the property planned for development is outside the 100-year floodplain. The property is zoned General Industrial (GI-2) which allows the contemplated use. A conditional land use permit for the facility has been secured. Proposed structures, the general facility site layout, traffic flow patterns, tipping arrangements, landscaping and aesthetic treatments are shown in Figure 1.

The property fronts on N.E. Columbia Boulevard, a paved, four-lane highway with a left turn median. Property to the east and west is well developed for industrial uses such as warehousing, manufacturing, equipment yards, truck farming, and similar activities. To the north is rural property, some industrial development and the Portland Airport.

Adequate utilities are available to the site with the exception of sanitary sewers. A new septic tank system will be installed for Facility use until sanitary sewers are extended to the area. Potable water will be supplied from existing utilities, and process water will be supplied from the Columbia Slough.

2. Site Conditions

The site is approximately 18 acres in size. The property is "L" shaped with the base reversed at the north end. The site slopes moderately northward from elevation 50 at the southwest corner to elevation 16 on the swale, a distance of about 730 feet, or about 4.6 percent slope.

A small hill of about 40-foot elevation located in the northwest corner of the site slopes to the south at about thirty-three (33) percent, and to the east at about eight (8) percent. A slough about 100 feet wide located just north of the hill extends eastward to just past the middle of the property. The site was used primarily for truck farming except for the northeast arm which appears to have been used for heavy truck storage.

3. Site Geology

Geotechnical site investigations have been performed before commencement of site work, and a detailed engineering report is available. The site is located just south of the Columbia River floodplain on a gentle north sloping surface. The area is underlain by medium to fine sandy soils up to about 20 feet thick.

Portland Terrace gravel and sand is present at about 20 foot depth or less except beneath the hill in the northwest corner of the site.

The upper sandy soil is coarsely stratified but generally horizontal. The underlying gravel, where exposed, exhibits crossbedding as a result of torrential flood emplacement. The gravel is generally poorly graded with little or no fines. Occasionally, a boulder of several feet in diameter may be present in the subsurface.

Test borings encountered the following general subsurface conditions as the locations as described below:

- a. Processing Building (Boring B1, B2, B3, B4 and B10) - An interbedded layer of loose to medium dense silty sand, loose sandy silt and stiff silty clay was encountered up to about 19 feet deep. Underlying the interbedded layer, a stratum of gravel in sandy clay matrix or gravel was encountered to the depth explored. However, a layer of medium dense sand was encountered in depth of 14 to 20-1/2 feet in Boring B2, depths of 17-1/2 to 21 feet in Boring B3 and depths of 7-1/2 to 20 feet in Boring B4.
- b. Composite Aeration and Maturation Building (Borings B5, B6, B7, B8, B9 and B11) - A surface layer of loose to medium dense silty sand and sandy silt was encountered up to about 10-1/2 feet. However, this surface layer was not encountered in Boring B9. Underlying the silty sand and sandy silt layer, a layer of medium dense sand was encountered up to about 56-1/2 feet deep. The sand layer was then underlain by a stratum of gravel to the depth explored.

The groundwater elevations measured February 10, 1988, in the piezometers found water in all but Borings B5 and B6. These two borings are located in the extreme south end of the project. The water level, in general, slopes to the north at about 6 inches in 100 feet. The depth to water from the top of the hill in the northwest part of the area was understandably deeper than lower areas. The elevation of the water table measured from mean sea level ranged 11 to 15 feet in the area of the processing unit to 9 to 11 feet in the composting area.

The reports conclude that buildings can be supported on spread footings bottomed on either properly compacted select fill, or directly on firm natural soil. If building areas are improved by deep dynamic compaction, an allowable soil bearing pressure for dead plus all live loads of 3500 psf can be used in the design. An allowable soil bearing pressure for dead plus all live loads of 2000 psf can be used in the design if no deep dynamic compaction is performed. Deep dynamic compaction is also recommended to minimize the probability of soil liquefaction in the event of an earthquake. The natural frequency of equipment foundations should be greater than two times the equipment operation frequency.

C. FACILITY LAYOUT

1. Site Plan

The layout of the plan will be in substantial accordance with Figure No. 2, Facility Site Plan. The plant consists of a scale house and two scales, a receiving/processing building, composting buildings, * and a truck wash rack (Figure Nos. 3 through 7 and 9 through 13).

2. Roadways

Ingress and egress will be through a new dual lane access roadway which intersects Columbia Boulevard. Asphalt- based pavement or acceptable alternate will be used for the access road and auxiliary areas between the various buildings. Asphaltic pavement will consist of 1-1/2" Class C-AR4000 asphaltic concrete compacted to 91% maximum density per AASHTO T209 * on 7-1/2" plant mix bituminous base per O.D.O.T. Section 301 on 2" of 1" minus crushed gravel compacted to 98% maximum dry density per AASHTO T99 on a subgrade compacted to 95% maximum density per AASHTO.

All asphaltic roadways will be provided with curbs.

3. Perimeter Fence

A site perimeter fence with access gate will be constructed of 8-foot high galvanized chain link fence.

4. Landscaping

The site will be selectively landscaped to create an attractive facility. Earthen berms, shrubs, trees, ground cover and grass will be used as appropriate. A detailed landscaping plan will be provided as part of the construction plans.

D. PROCESS DESCRIPTION

1. Process Flow

1.1 A simplified process flow diagram is shown as Figure No. 8. All incoming waste is received at the entry/exit scales.

1.2 The two scales will have a capacity of 120,000 lbs. each. Vehicles will be weighed upon entering and exiting the Facility. Vehicles with preregistered tare weights will only be weighed upon entry. Vehicles proceed directly to the receiving area and deposit their loads onto the tipping floor. Twenty seven thousand (27,000) square feet of storage space is provided which will accomodate approximately 1800 tons of waste at an assumed density of 13.5 pounds per cubic foot. The receiving area has space for simultaneous use by 15 vehicles. In addition, two bay spaces are provided for use by transfer trailers. The facility has been modified to include an Am Fab compactor and suitable access for the long-haul transfer operators vehicles as shown Figure 1-A.

1.3 The tipping floor is serviced by a rubber-tired front-end loader which removes large items. Large recyclable items are segregated if possible and transported by the loader to the recycling storage area. Reject items too big or impractical to process through the DANO Drum also are segregated and transported to the reject storage area. Wood and woody material may be diverted for chipping and sale to secondary markets. The balance of the material is pushed by the loader onto one of two apron conveyors which

move the material to the picking conveyors. Prior to entering the picking conveyor, the material will pass through a bag breaker to facilitate observation and removal of designated items on the picking line.

- 1.4 The two picking conveyors are 4-foot wide conveyors where manual picking extracts glass, plastics, paper, cardboard, aluminum, and non-ferrous metals. This material is dropped into the appropriate drop boxes below the picking conveyors. Full boxes are exchanged as needed and delivered to the appropriate material purchaser.
- 1.5 The two picking belts discharge material remaining after hand sorting into the charging chambers of the two DANO Bio-stabilizer Drums. Redundancy is provided by the two picking lines and by the capacity to operate either drum independently of the other and for up to 168 hours per week. After material recovery, the plant can process for each DANO drum 92,500 tons of Acceptable Waste per year based on operating ninety-six (96) hours per week.* The drums rotate at 1 to 4 rpm. Water is added to bring the moisture content up to the forty to sixty (40-60) percent required for optimum conditioning. Convective air flow through the Dano Drums ensures that aerobic conditions prevail.
- 1.6 The DANO Drums discharge through screens (1-3/4 inch) which separate coarser material unsuitable for composting. The coarse residue material is transferred by conveyor through a magnetic separator which separates the carryover iron-bearing material from the other Residue. The Residue is transported to a landfill.
- 1.7 The fine material (Compostable Fraction) discharged from the DANO drums is conveyed under a magnetic separator where ferrous metal is removed. Water is added to bring the moisture content to fifty-five to sixty (55 to 60) percent for composting. The Compostable Fraction is then conveyed to a distributor bridge which places the material to a height of approximately six feet on Aeration Slabs. An insulating layer of finished compost can be added as a cover over the compost pile as required. Air is drawn from the receiving building and is used as a supply for air which is forced through the Aeration Slabs to maintain aerobic conditions within the piles. Temperature of the fermenting Compostable Fraction is monitored by thermometers inserted into the piles. Moisture content will be determined by periodic sampling and testing. Water will be added as needed, either by atomizing it into the air distribution system or by sprinkling with overhead injectors, to maintain the desired moisture content. The materials deposited on the Aeration Slabs are identified by day of deposit by marker stakes.
- 1.8 After three weeks (21 days), a front end loader moves the fermented Compostable Fraction (Fresh Compost) from the Aeration Slabs to Maturation Slabs where it will continue to mature for an additional three weeks (21 days). Moisture content and temperature of the maturing compost is also monitored, and water is added by sprinkling as needed.
- 1.9 The Mature Compost is moved from the Maturation Slabs by front end loader to a conveyor which transfers the Mature Compost through another magnetic separator. Additional ferrous material is removed and recycled. The Mature Compost undergoes a final processing where small particles of glass, stone, and metal are removed by use of an air classifier. The Compost Product is separated into a coarse and fine Compost Product by screens. Each is available for distribution to the appropriate end use.

- 1.10 Quality assurance and control will be provided by first sampling and testing the Compostable Fraction as it is delivered to the aeration buildings and secondly, by sampling and testing the Compost Product prior to shipment. Each day's production will be sampled and tested. The first sampling and testing will be used to assure Daily Production lots have the potential to meet finished Compost Product standards. The second sampling and testing will assure that all finished Compost Product meets quality standards. During the first year, or until such time as the Contractor has satisfied itself with the consistency of the first and second samples, the Contractor will take additional samples of the Fresh and Mature Composts from the Aeration and Maturation Slabs.
- 1.11 The Compost Product shall be tested as required by the Oregon Department of Environmental Quality (DEQ) Permit to assure that the Compost meets quality standards as required by DEQ and the U.S. Environmental Protection Agency (EPA). Additional tests as required for sale of the Compost Product shall be carried out as specified in Exhibit L.
- 1.12 Compost Product that does not meet the requirements will be treated to correct deficiencies. Acceptable treatments may include rerunning the material through the DANO drum, blending product which does not meet specifications with product that does meet specifications, adding suitable amendments, chemical treatment, etc. In the event of failure to meet requirements, disposal in a suitable landfill may be required.
- 1.13 The finished Compost Product is loaded by an out-loading conveyor or front-end loader into trucks for distribution to users or to transport to storage areas.

2. Mass Balance

Figure 15 is a typical mass balance which quantifies all inputs and outputs. The mass balance uses the results of the December 1987 study conducted by SCS Engineers for the Portland Metro area. An average moisture content of 34.1% of the combustible fraction or 28.4% of the total is assumed. Figure 16 is a detailed mass balance of the process showing expected distribution of materials.

*Source: SCS Engineers. 1987. Waste Stream Characterization Study, p. 4-2 and A-9.

E. CONSTRUCTION

1. Standards

The Facility will be designed and constructed in accordance with Applicable Law, codes, standards and regulations including, but not limited to, the following:

- a. American Chain Association (ACA)
- b. American Gear Manufacturers Association (AGMA)
- c. American Institute of Steel Construction (AISC)
- d. American Iron and Steel Institute (AISI)
- e. American Society of Mechanical Engineers (ASME)
- f. American National Standards Institute (ANSI)
- g. American Society for Testing Materials (ASTM)
- h. American Welding Society (AWS)
- i. Anti-Friction Bearing Manufacturers Association (AFBMA).
- j. Conveyor Equipment Manufacturers Association (CEMA)

- k. National Electric Code (NEC)
- l. National Electric Manufacturers Association (NEMA)
- m. Occupational Safety and Health Administration (OSHA)
- n. State and Local Codes, as applicable
- o. Steel Structures Painting Council (SSPC)
- p. Underwriters Laboratories, Inc. (UL)
- q. Factory Mutual System, Inc. (FM)

2. Foundations

All foundations will be on piling or on reinforced concrete footings founded on undisturbed soil, or on select fill compacted to the required density in accordance with current ASTM specifications.

The geotechnical analysis based on soil borings taken at the site in accordance with Section B.2 above recommends the allowable soil bearing capacity for the design of the various structures. The foundations will be designed so that the allowable bearing capacity is not exceeded under the combined dead load and live load reactions.

3. Structures

The scale house will be a metal clad structure supported on concrete foundations. It will be approximately 8 feet wide and will be large enough to contain weight computing equipment associated with the scale, ticketing equipment, built-in counter space, a storage area and restroom facilities. It will have reflective or tinted windows and air conditioning.

The receiving building will be a pre-engineered, metal structure supported on concrete foundations. It will have the approximate dimensions of 290 feet by 230 feet. The roof will also be made of metal panels with interspersed translucent plastic panels to provide natural lighting and thereby reduce energy requirements.

This is in lieu of the clerestory windows contemplated earlier.

The receiving building will contain two (2) DANO Drums, various conveyors, fans, air ducts, a motor control center, a process control room and material screening equipment.

Individual or combined footings will be used to support equipment loads inside the receiving building. Floors inside will be concrete slab resting on a compacted gravel base. Floor drains or channels in the concrete floor will be provided in appropriate locations to allow adequate cleaning of floor areas.

The aeration and maturation buildings will be of the pre-engineered type, metal structures on concrete foundation. The two aeration buildings are approximately 150 by 312 feet, spanning the bridge conveyor system and the aeration block floor. The contractor will review slab sizing and aeration system requirements during final design and will provide a readily implementable backup system in the event design assumptions or actual test during the performance test show the building size to be insufficient. The backup system will consist of either a permanently installed aeration system for one or both of the Maturation Slabs or a portable aeration consisting of drainage piping and portable blowers similar to those used at many sludge composting facilities. If preliminary actual test show that the size of the Aeration Beds are insufficient, the Contractor will convert a Maturation Bed into an Aeration Bed and construct an additional non-enclosed Maturation Slab with a leachate collection system

on either the adjacent Contractor owned property to the east, on Contractor owned property presently designated for Compost storage, or on Contractor purchased property adjacent to the Facility Site to the west. The interior sides and one end of each building are substantially open to promote convective air flow that is aided by numerous roof ventilators.

The two maturation buildings are similar to the aeration buildings, but smaller, with approximate dimensions of 80 by 336 feet. Roof venting is supplied. Both the aeration and maturation buildings are protected by dry pipe type fire sprinkler systems.

4. Materials

Concrete for structures and foundations will have a minimum compressive strength of 3000 psi, with reinforcing steel conforming to ASTM A615, A706, and A185. All structural steel will be ASTM-A36 or better.

5. Control Center

The receiving building will include a control center consisting of a mechanical room, parts storage, control room, laboratory, restroom areas for men and women with lockers and showers, and a lunch room.

The control center will be a three story structure, approximately 2500 sq. ft. constructed in accordance with Applicable Law.

6. Office/Reception Area

The office/reception area will be integrated into the receiving building. It will include offices for operations and administrative staff, a lobby and a reception/conference room. The area will be approximately 2000 sq. ft. An area for viewing of operations in the receiving building will be provided.

7. Lighting

Exterior lighting will be provided for the Facility sign at the site entrance from Columbia Boulevard. The site will be lighted to meet operation and security needs.

8. Odor Control System

The primary odor control system will be the capability of the composting system to maintain aerobic conditions throughout the process, thus preventing the generation of noxious gases. Air will be withdrawn from the receiving building at a rate sufficient to capture odors produced from the unprocessed Municipal Solid Waste. This air will then be used to aerate the fermenting compost and in the process be deodorized. Venting and fans will be used to remove the deodorized air from the composting buildings.

Production of malodors from the Facility will be closely monitored. If odor problems occur the Contractor will take one or more of the following steps:

1. Add roof scrubbers
2. Reduce the pile height

3. Turn the Compost on a more frequent basis
4. Add a Compost blanket to insure insulation of the outer layer of the pile.
5. Increase moisture levels on the Aeration or Maturation Slabs.
6. Add a Compost base filter for temperature control at the inlet air ducts.

9. Equipment Description

- 9.1 A detailed equipment list for the Facility is attached as Appendix 1.
- 9.2 There are two independent, parallel trains for preprocessing the incoming solid waste each train feeding one of the two DANO Drums.
- 9.3 In the processing system, the first item of equipment encountered is the truck scale which is a pit type electronic truck scale, 70 ft. by 10 ft. with a concrete deck 120,000 lb. capacity in 10 lb. increments, a single display indicator, an intermediate ticket printer to print weight, time, and date and a Cap-check load cell rated NEMA 6 (submersible).
- 9.4 The next piece of equipment in the processing system are the two front-end loaders used to charge Acceptable Waste onto the receiving conveyors. This will be a rubber-tired loader with a four-way bucket of four yards capacity. Similar machines will be used for outloading rejects, to move Fresh compost from the Aeration Slabs to the Maturation Slabs and to move Mature Compost to the Mature Compost conveyors. There will be a total of four (4) front-end loaders and at least two (2) will be equipped with quick change buckets.
- 9.5 The two tipping area conveyors are "steel apron" type conveyors. They are electrically powered by their own hydraulic power unit. Each conveyor will have a minimum capacity of 40 tons per hour. Surface speeds are adjustable. The tipping area conveyors elevate the waste and deposit it on the picking conveyors.
- 9.6 The picking conveyors (minimum capacity 40 TPH) are 4 foot wide rubber belt conveyors which operate on a steel pan. They are provided with guards on the sides to protect the pickers from mechanical injury, and safety stop buttons are placed at each work station. They operate at a variable speed of 30 to 100 feet per minute and are electric motor driven. The picking conveyors discharge directly into the DANO drum charging hoppers.
- 9.7 The DANO Bio-stabilizer Drums are of proprietary design. Each is equipped with an hydraulic charging ram whose chamber is under the charging hopper. Actuation of the charging ram closes the hopper bottom as the charge is pushed into the DANO Drum. Water is metered through the stationary charging end of each DANO Drum near the charging ram. The interior of each DANO Drum is fitted with structures which macerate and mix the materials charged. The DANO Drum(s) are nominally 12 feet in diameter and 80 feet long. Natural drafting supplies adequate air to the DANO Drum(s) to maintain aerobic conditions within the DANO Drums. Each DANO Drum is supported on two ring beams which are supported on two nests of rollers and in turn mounted on concrete foundations. Rotation of the DANO Drum(s) is accomplished with a ring gear meshed to the output pinions of the hydraulic motors which drive the DANO Drum. Each DANO Drum is powered by hydraulic motors

and central hydraulic power units. A spare drive assembly will be maintained for the DANO Drum drives. Discharge from each DANO Drum is controlled by an hydraulic operated discharge gate. The end of each DANO Drum supports a rotary screen which separates the material passing a 1-3/4 inch screen from the coarser fraction. Each DANO rum has a minimum capacity rating of 18.75 tons per hour.

- 9.8 All conveyors will be of custom design but will use standard belts, troughing rollers and bearings. The coarser fraction from the drum discharge is directed to a coarse Residue conveyor, which is a belt conveyor with a minimum capacity rating of 40 tons per hour.
- 9.9 The residue conveyor discharges upon the residue incline conveyor (minimum capacity of 40 TPH), which raises the residue material.
- 9.10 At the upper end of the residue incline conveyor is an over-belt magnetic separator which includes a 4.1 KG electromagnet.
- 9.11 The residue incline conveyor discharges into the residue outload area of the receiving building.
- 9.12 The Compostable Fraction conveyor receives the fine materials from the DANO Drum screens. It is a belt conveyor with a minimum capacity of 40 tons per hour.
- 9.13 This conveyor discharges upon a Compostable Fraction transfer conveyor which is a troughing conveyor having a minimum capacity of 40 tons per hour. This conveyor transfers the Compostable Fraction from the receiving building to the Compostable Fraction tripping conveyor.
- 9.14 The Compostable Fraction tripping conveyors extend along the full length of the Aeration Slabs. They are belt conveyors and include a belt tripper which moves along the belt, maintaining alignment with the conveyor bridge to which it discharges. Belts will have a capacity of 40 TPH minimum capacity.
- 9.15 A major feature of the Aeration Slabs is the conveyor bridge assembly which distributes the Compostable Fraction uniformly across the Aeration Slabs. It is comprised of a conveyor bridge that spans the Aeration Slabs and operates on tracks which cover the full length of the Aeration Slabs. The conveyor bridge supports a bridge conveyor which carries the Compostable Fraction from the belt tripper to the center of its span. This conveyor has a capacity of 40 TPH minimum capacity rating. This conveyor deposits the Compostable Fraction on the bridge shuttle conveyor.
- 9.16 The bridge shuttle conveyor is specially programmed. The operation begins with the bridge at one end of the track.. The bridge conveyor conveys the Compostable Fraction to the center of the bridge where it is deposited on the bridge shuttle conveyor which is positioned to discharge the Compostable Fraction at one side of the Aeration Slab. As the Compostable Fraction builds up to a height of about six feet on the Aeration Slab at the point of discharge of the shuttle conveyor, the shuttle conveyor moves toward the other side of the Aeration Slab, depositing the Compostable Fraction to the specified height as it passes. When the end of the shuttle conveyor reaches a point near the center of the bridge, it reverses and begins to deposit the Compostable Fraction from the opposite end back toward the middle. When the shuttle conveyor again reaches the midpoint, the shuttle conveyor reverses and the bridge moves to the adjacent pass where it begins to deposit the Compostable Fraction again repeating the process. When the bridge reaches the far end of the Aeration Slab, which will occur once every three weeks, the conveyors which feed the

tripping conveyor are stopped. The tripping conveyor continues to run for the time necessary for it to empty onto the bridge conveyor. At that point, the bridge conveyor and bridge shuttle conveyor are stopped. The bridge together with the belt tripper moves back to the starting position. When they reach the starting position, the conveyors are again started, and the process is repeated. This is a custom design assembly using standard components. Electric power is carried to the bridge by 440 volt overhead trolley wires and collectors.

- 9.17 The air supply to each batch of Compostable Fraction is individually regulated by means of manually operated damper valves. A visual mechanism indicates whether the valve is in the open or closed position.
- 9.18 The Compostable Fraction spends 3 weeks on the Aeration Slabs. At this point, it is called Fresh Compost and has undergone about 90% of its fermentation. The Fresh Compost is moved from the Aeration Slabs to the Maturation Slabs by front-end loaders. After 3 weeks on the Maturation Bed, the Fresh Compost has been fully composted into Mature Compost and is moved by front-end loader to the final processing area.
- 9.19 Final processing of the mature Compost is accomplished in several steps. A magnetic separator removes any remaining ferrous metals. A vibratory screen removes small pieces of hard plastic and any oversize particles. An air classifier removes glass, stones and small pieces of metal.

The vibrating screen is approximately 6 feet wide by 12 feet long and has a capacity to discharge 45 tons per hour of Mature Compost through a 3/8" mesh. The fine compost conveyor, which carries the Mature Compost after screening, has a minimum capacity of 40 TPH.

- 9.20 Residue removed by the screen and air classifier is moved by front-end loader to the Residue load out area of the receiving building for transfer to a landfill. Residue which is reprocessable will be reprocessed through the DANO Drum.
- 9.21 Gray Water is collected from various areas of the facility and is stored in the Gray Water reservoir. This water is supplemented by water from the adjacent pond to provide Process Water.

10. Fire Protection

The fire protection system will be fed from an underground pipe eight (8) inches in diameter connected to the City of Portland's water main on Columbia Boulevard. Fire hydrants, spaced approximately 300 feet apart will be provided. Automatic fire control (sprinklers) systems, manual hose stations and portable fire extinguishers will be installed throughout all important structures.

11. Environmental Data

- 11.1 The plant operation will comply with all environmental requirements and will be maintained at that compliance level by appropriate testing, management supervision, and continuing staff training.
- 11.2 The Acceptable Waste will be delivered to the receiving floor where any Unacceptable Waste will be removed by the Contractor and sent, if necessary, to alternate disposal sites. When dusty waste is dumped, the load will be sprayed with water as needed to control the dust. The air in the receiving building will be collected to minimize escape of odors from the Facility. Air to the DANO Drums will be supplied by natural

drafting. Air flowing through the drums is also collected by the air handling system. Air from the receiving and processing areas and the DANO Drums will be delivered to the aeration building where it will be used in the Composting process. The air, as it passes through the piles of the fermenting Compostable Fraction, will be cleaned of particulates and odors.

- 11.3 Once every twenty four (24) hours, the receiving floor will be emptied and cleaned to the maximum extent possible. The collected wash water and organics will drain into the Gray Water reservoir. From there the Gray Water will be pumped to the DANO Drums as Process Water to maintain desirable moisture levels.
- 11.4 The rejects from the DANO biostabilizer screens will be conveyed to the outload area. This material includes inorganics, some plastics, oversize items and a small quantity of the Compostable Fraction, mostly adhering to surfaces. The Residue material from the Facility will be prepared promptly each operating day for transport to a landfill.
- 11.5 Monthly odor sampling with HiVOL Anderson units or similar will be made at site perimeter points upwind and downwind to insure compliance with applicable standards.
- 11.6 Water drainage from Aeration and Maturation Slabs, if any, will also be collected and used as Process Water for the DANO Drums.
- 11.7 Noise levels will comply with the Oregon Department of Environmental Quality and City of Portland regulations. The revolving DANO Drums are enclosed within the building and are not expected to be noticeable beyond the property line. Experience with noise surveys of similar compost plants indicate noise levels at plant boundaries will be well within acceptable limits.
- 11.8 The Compost Product will be tested to assure it meets applicable EPA and DEQ standards. In addition, physical, chemical and other characteristics will be measured prior to customer use as identified in Exhibit L. The results of these tests will be recorded and retained on site for three (3) years.
- 11.9 The Facility is designed to receive and process Acceptable Waste. Should Hazardous Waste inadvertently be received, it will be segregated and packaged for shipment to an appropriate disposal facility. Any spills of hazardous materials or materials contaminated by Hazardous Waste will also be promptly isolated, packaged and shipped.

F. PROCESS CONTROL AND INSTRUMENTATION

A process control and instrumentation diagram is given in Figure 14.

A microprocessor-based control system is proposed for the Facility to control the vital functions. This system will utilize electronic controllers, recorders, monitors, and field transmitters.

The control system logic for the Composting process is straight-forward. All equipment is either on or off and most variables such as water injection and drum speed are manually set by an operator. The control system will provide supervision of conveyors via slow speed switches and interlocking of equipment for immediate and safe shutdown. Auxiliary systems will be monitored for alarm and shutdown conditions such as low pressure on hydraulic systems.

The control system will provide automatic starting and stopping sequences for proper plant processing operations and to establish interlocking.

The process will be controlled by an industrial programmable logic controller (PLC). Primary operator interface will be via [an] IBM (or equal) type processor with a color terminal. CRT's will display all plant status and alarms including graphics of the process. Operator's consoles will provide for operator input to the control system to affect plant operations and include recorders where required for monitored plant variables such as conveyor and drum speeds. If records are not required plant, variables will be logged on floppy disks and/or printed immediately at operator's choice.

The control room will be located near the drums in the processing building. > < Continuous read-outs will be available where required for all major pieces of equipment. All situations which could make any part of the system inoperable will have alarms which will sound inside the control office. Video monitors will observe various portions of the operation out of sight of the control room.

Safety interlocks and trips will be furnished in all areas to start and stop equipment in proper sequences. This will include the elevating conveyors, picking belts, Drums and the Residue and Compost distribution conveyors.

A graphic display of the Acceptable Waste handling, processing and Compost and materials recovery process will be provided in the control room for monitoring the status of all functions. Trend recorders also will be provided for the facility where required. The composting and materials recovery systems will be controlled in accordance with functional requirements of the Facility.

Status lights will be indicated for each water and hydraulic pump, and the Drum water supply pressure will be indicated in the control room. Flow meters will be provided in the drum water supply to each drum.

During normal operation, the control system for the DANO Drums depends upon the Drum discharge conveyors. When these conveyors stop, the discharge gate of the DANO Drum will close. After the discharge gate of the DANO Drum closes, the charging ram is deactivated. When the charging ram is deactivated, the picking belt will stop. In each conveyor stream, the stopping of any downstream conveyor will stop all the conveyors which feed into it. This prevents the accumulation of piles of Residue, Compostable Fraction, Fresh or Mature Compost, or Acceptable Waste at any of the conveyor transfer points.

Control switches, status lights, ammeters, and volt meters for common facilities for all required water and air services will be provided.

G. REPORTING AND DOCUMENTATION

Complete records of all operational parameters and test results will be maintained by means of the facility computing network. Printouts of data, summarized on a daily, weekly, monthly or annual basis will be made available as required for operational use and to fulfill contractual and permitting requirements.

H. ON-SITE UTILITIES

Utilities to be installed within the Facility Site proper consist of the following:

- Potable water system to serve all potable water needs, such as fire protection, drinking, washrooms, showers, kitchen facilities, etc., will be connected to the City of Portland's water system on Columbia Boulevard.

- Septic system for all sanitary drains. The Facility will have one septic system capable of treating all of the sanitary wastewater.
- Gray water system process wastewater from equipment washing, truck rinsing and floor drains or channels in areas where uncomposted waste is handled will be collected in the Gray Water reservoir and used in the process.
- Telephone and intercom systems for communication both within and out of the Facility, including control building, composting area and receiving building, to provide an efficient working arrangement.
- Electrical service to the Facility from the utility transmission lines located along Columbia Boulevard. Historically, utility power interruptions are infrequent and of short duration and will not adversely affect the composting process. In the event of a prolonged outage, portable emergency generators will be rented.
- Fuel storage tanks for diesel fuel for the operation of mobile equipment and for the emergency generator.
- A stormwater collection system designed to handle the 5 minute, 24-hour storm event. Stormwater will be collected from all paved areas of the Facility. Discharge from the basin will be at a controlled rate into DANO Drums as process water.

I. FIRST AID CENTER

There will be an area designated as a First Aid Center in the receiving building.

Equipment and supplies to be provided will include, but not be limited to, the following:

Oxygen Supply

First aid cabinet with supplies such as gauze, bandages, and tapes, smelling salts, litter, ointments, and disinfecting agents.

J. RELIABILITY

The Facility is designed to provide service on a continual basis. This high level of reliability is accomplished by design and use of simple, durable and performance tested components and excess processing capacity.

With the exception of mobile equipment, equipment provided shall be of utility grade where utility grade represents premium functional quality which normally results in an expected life equal to the economic life of the facility (normally 20 to 25 years) with consideration given to normal maintenance and component replacement as compared to "industrial grade" which normally results in lesser expected life (normally three to five years for shorter term industrial applications).

All equipment with the exception of the DANO Drums are made of components of standard manufacture. Components selected are in common usage in similar applications. Spare components are readily available from local suppliers so extensive stocks of replacement parts will not need to be stored on site. A supply of items consumed on a regular basis will be maintained. Belt repair kits, welders and a normal complement of maintenance tools will be provided.

The DANO Drums are of simple and extremely rugged construction and design. Hydraulic power supplies, motors and drive assemblies are of common manufacture. Spare parts and patterns are readily available. Patterns for fabricated components such as drive gears will be maintained so replacement parts can be fabricated on short notice.

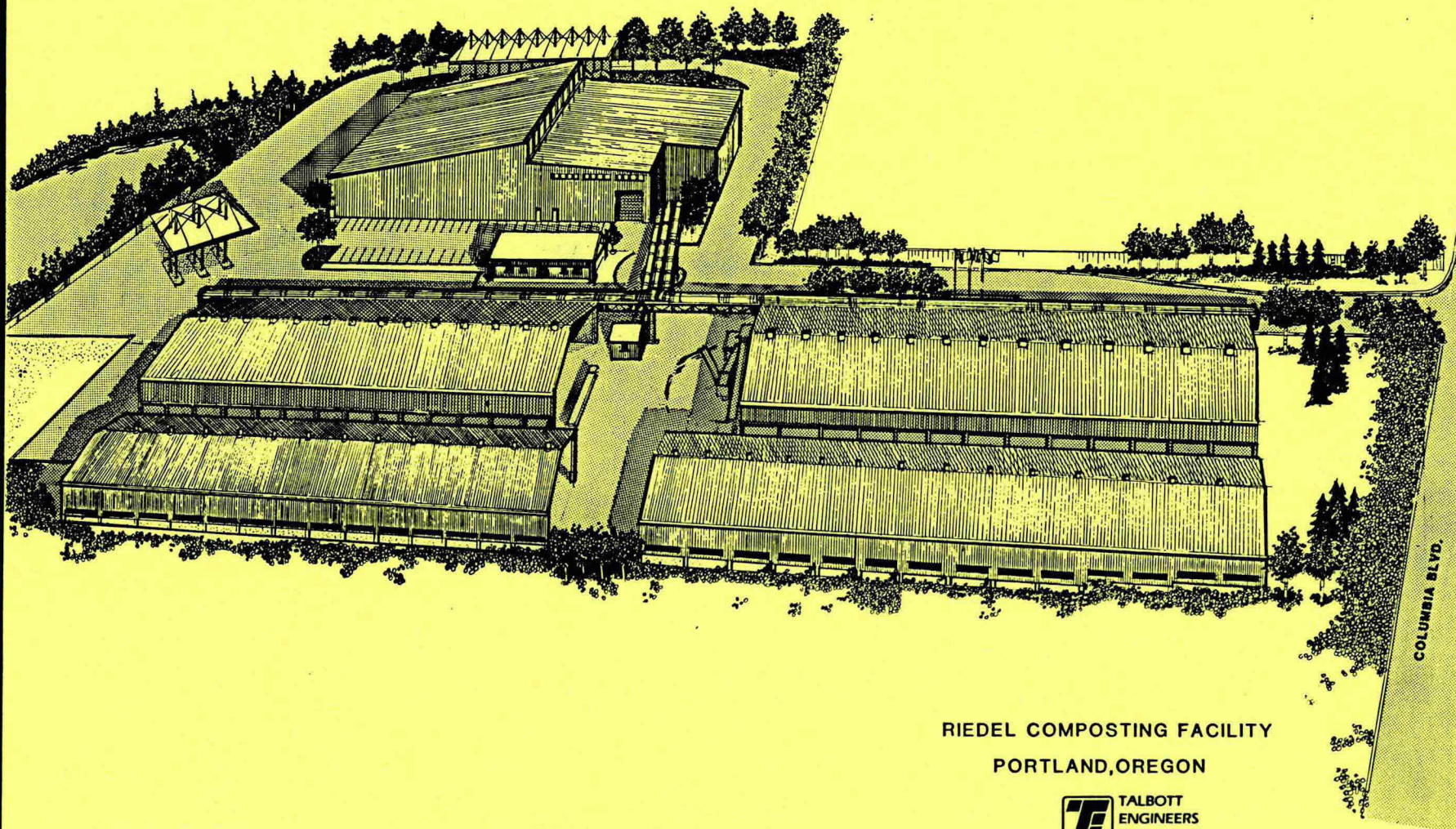
A preventive maintenance program will be established to detect and prevent conditions that might cause unscheduled shutdowns of a process line.

Two independent Drum process feed lines are provided. The single final processing line will not affect the Facility's ability to receive and process Acceptable Waste as it may be by-passed or final processing may be delayed in the event of unscheduled maintenance.

In addition to component design/selection and independent process trains, the ability of the system to provide reliable service is enhanced by the system's reserve process capacity. This reserve capacity is defined by the scheduled hours of operation and process capacity of the DANO Drums. The plant is currently scheduled to process waste approximately 16 hours per day and 6 days per week. It is possible and practical, at least for a limited period of time, to increase the hours of operation to 24 hours per day and 7 days per week.

K. VISITORS

The Facility can accommodate group tours. Parking for visitor automobiles and tour buses is available. Guided plant tours will be available each Wednesday at 9:00 a.m. and 2:00 p.m. Special tours are available by appointment.



RIEDEL COMPOSTING FACILITY
PORTLAND, OREGON

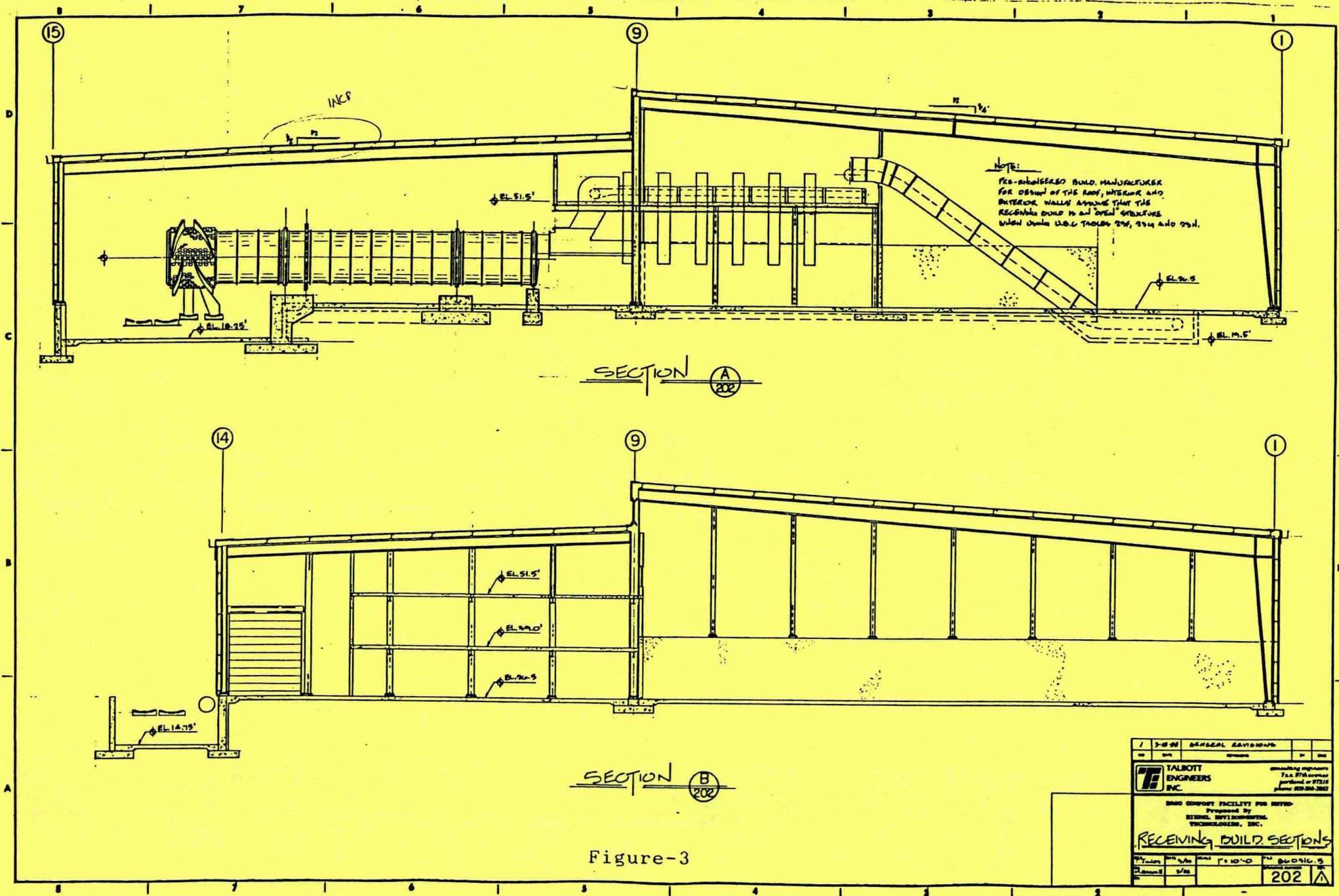


TALBOTT
ENGINEERS
INC.

Figure-1

REVISIONS	BY

DRAWN <i>RENEE SMITH</i>
CHECKED
DATE APRIL 1988
SCALE PERSPECTIVE
JOB NO. RIEDEL ENVIRONMENTAL TRUCK
SHEET 1
OF 1 SHEETS



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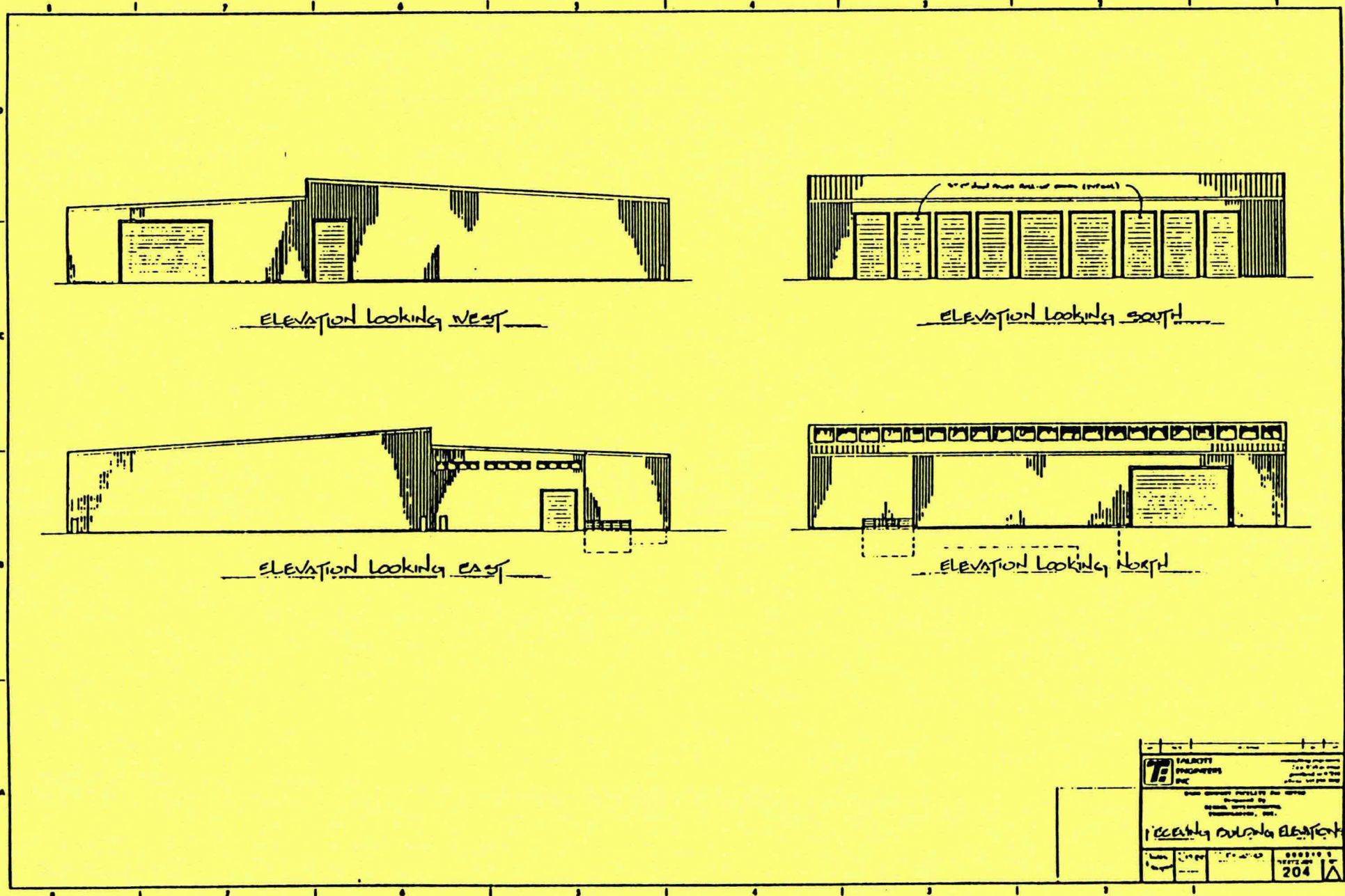


Figure-5

7 TALBOT ENGINEERS INC.		Consulting Engineers 1000 15th St. N.W. Washington, D.C. 20005
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Title: 1000 15th St. N.W.		Scale: 1/4" = 1'-0"
Sheet: 204		Total: 204

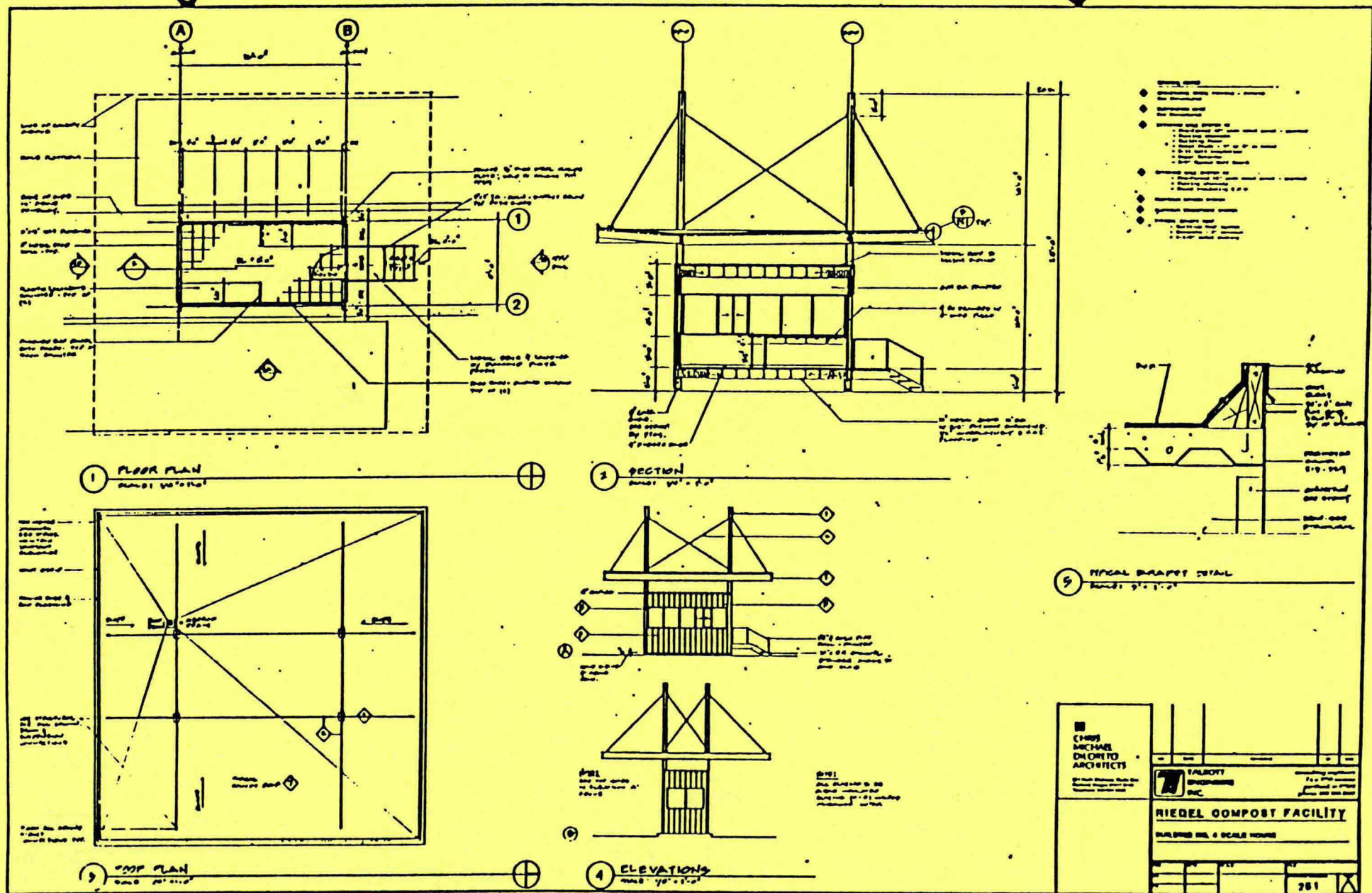
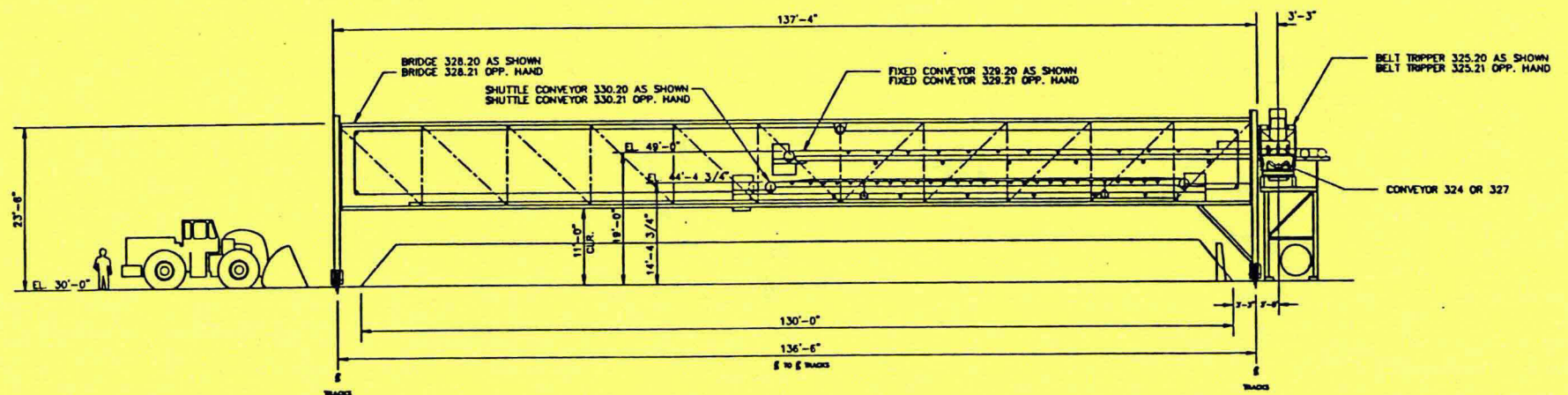


Figure-6



ELEVATION OF THE TRAVELING CONVEYOR GALLERY - ONE RECD AS SHOWN & ONE RECD OPP. HAND
 SCALE: 1/8"=1'-0"

Figure-7

SMITH & MONROE & GRAY ENGINEERS INC.
 PARK PLAZA WEST, SUITE 210
 5000 S.W. OLNEYTON HWY., OLNEYTON, OH 43055

	TALBOT ENGINEERS INC. <small>Professional Engineers and Surveyors State of Ohio License No. 9486 Exp. Date 12/31/99</small>
DANO COMPOST FACILITY FOR RIEDEL ENVIRONMENTAL TECHNOLOGIES INC. TRAVELING CONVEYOR GALLERY	
RD 328.01	1/8"=1'-0" 328.01

SIMPLIFIED PROCESS FLOW DIAGRAM METRO COLUMBIA BLVD COMPOSTING PLANT

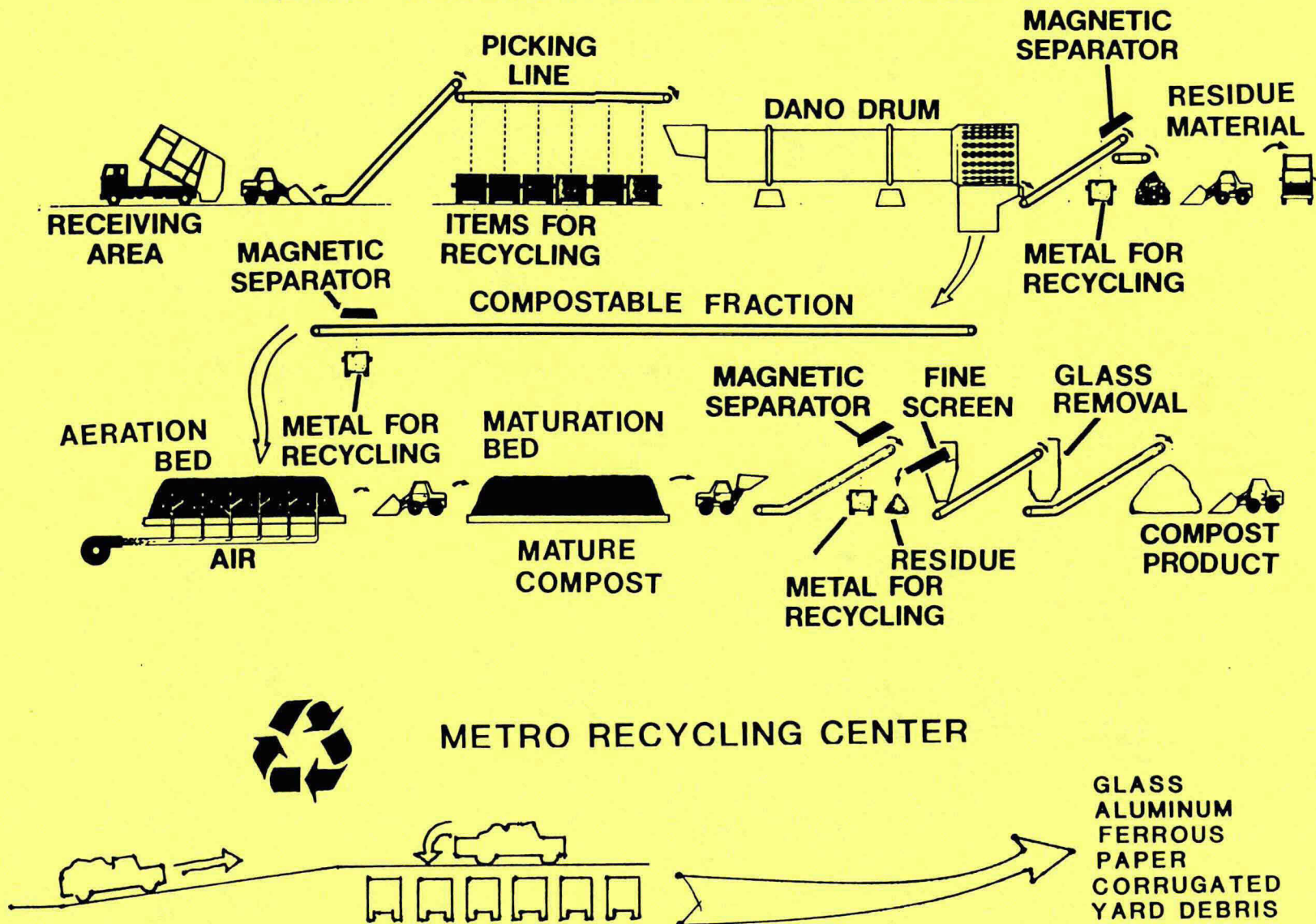


Figure-8

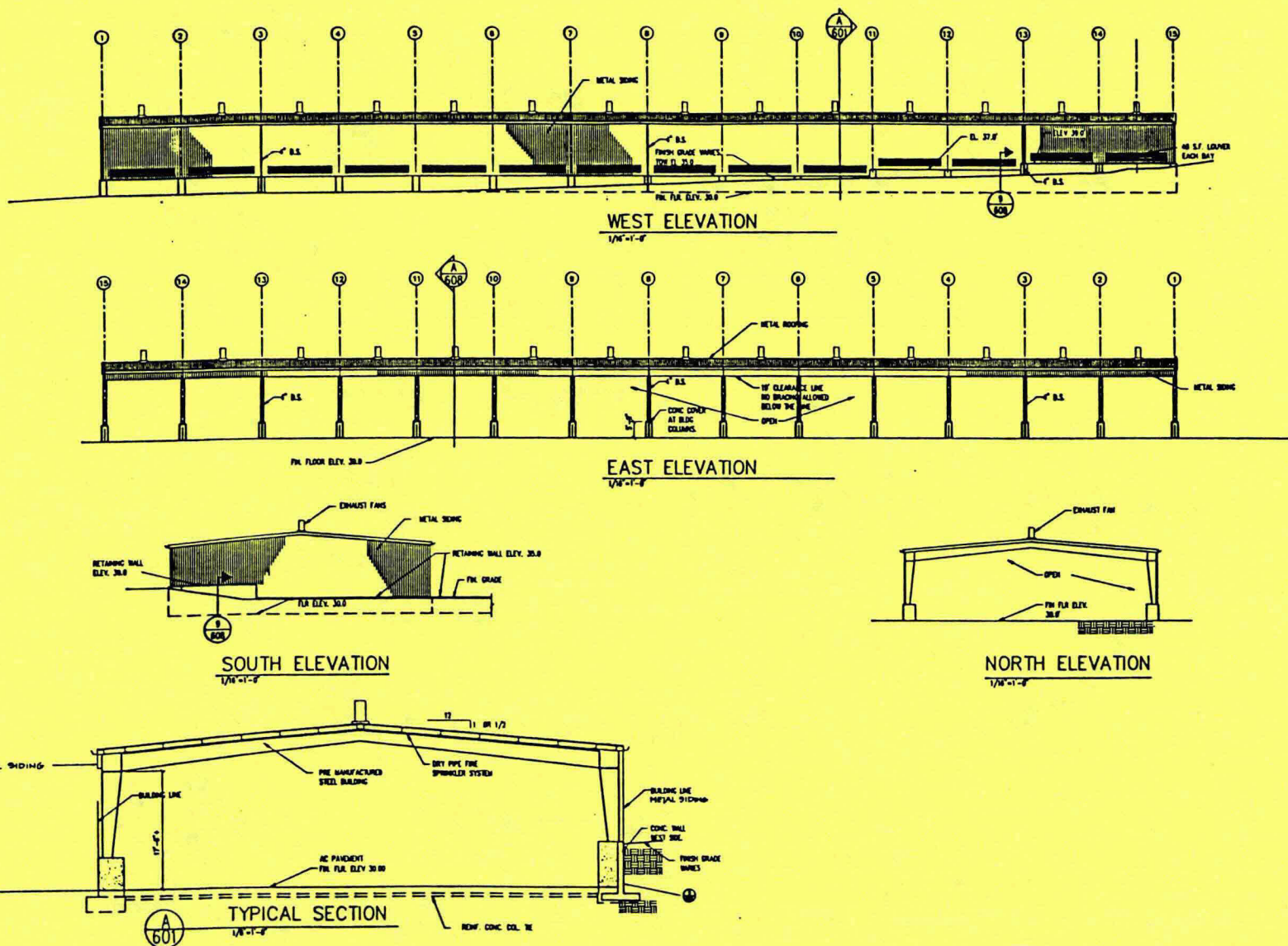


Figure-9



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10/1/88	JTM	3-1-88	601

TALBOTT ENGINEERS INC.
 Consulting Engineers
 744 97th Avenue
 Portland, OR 97216
 Phone: 503-255-2823

RIEDEL COMPOST FACILITY
ELEVATIONS
MATURATION BUILDING 8A

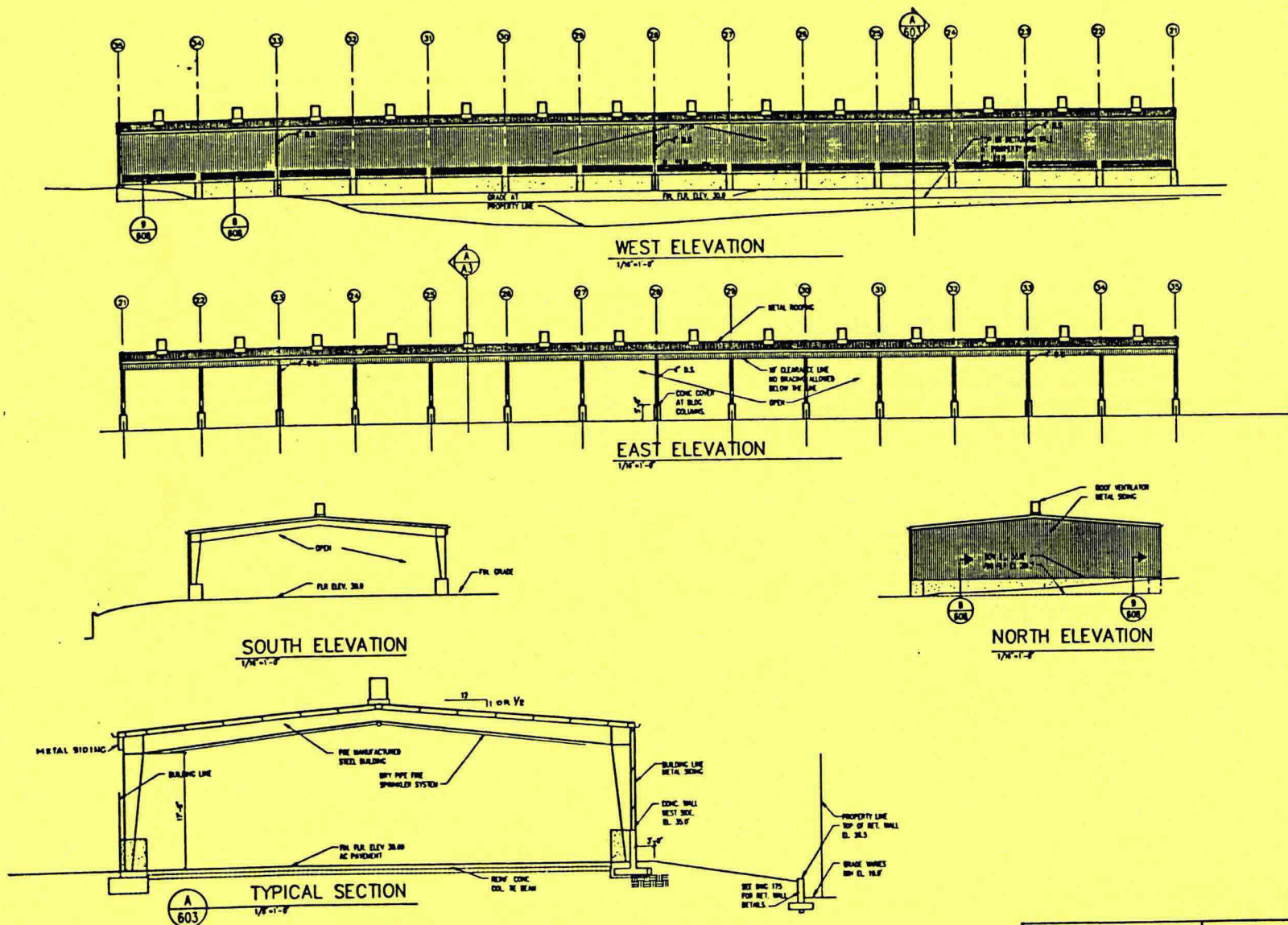


Figure-10



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RIEDEL COMPOST FACILITY ELEVATIONS AERATION BUILDING 7A																			
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Figure-11

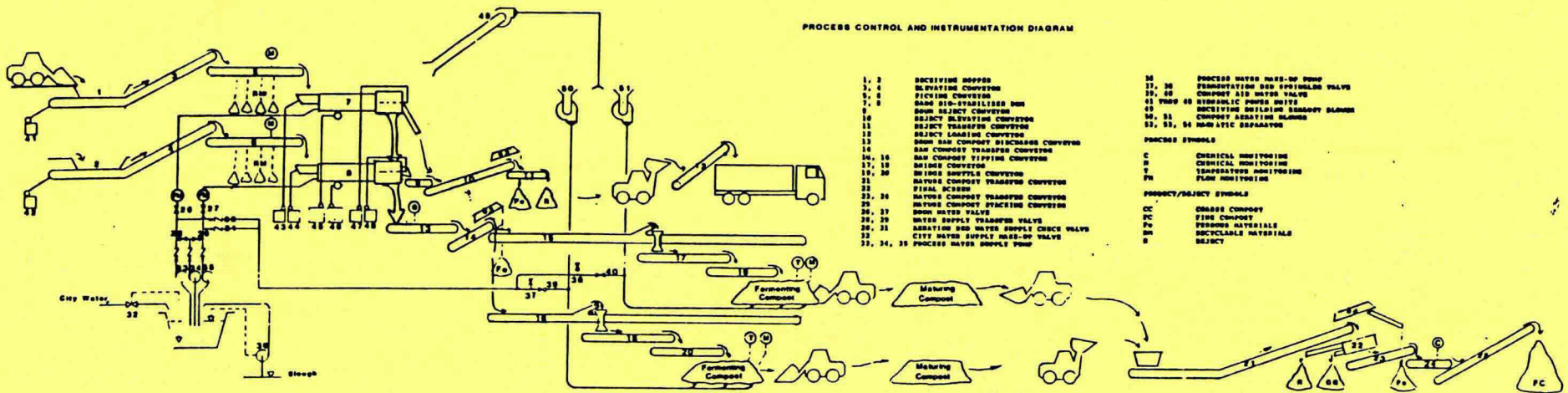
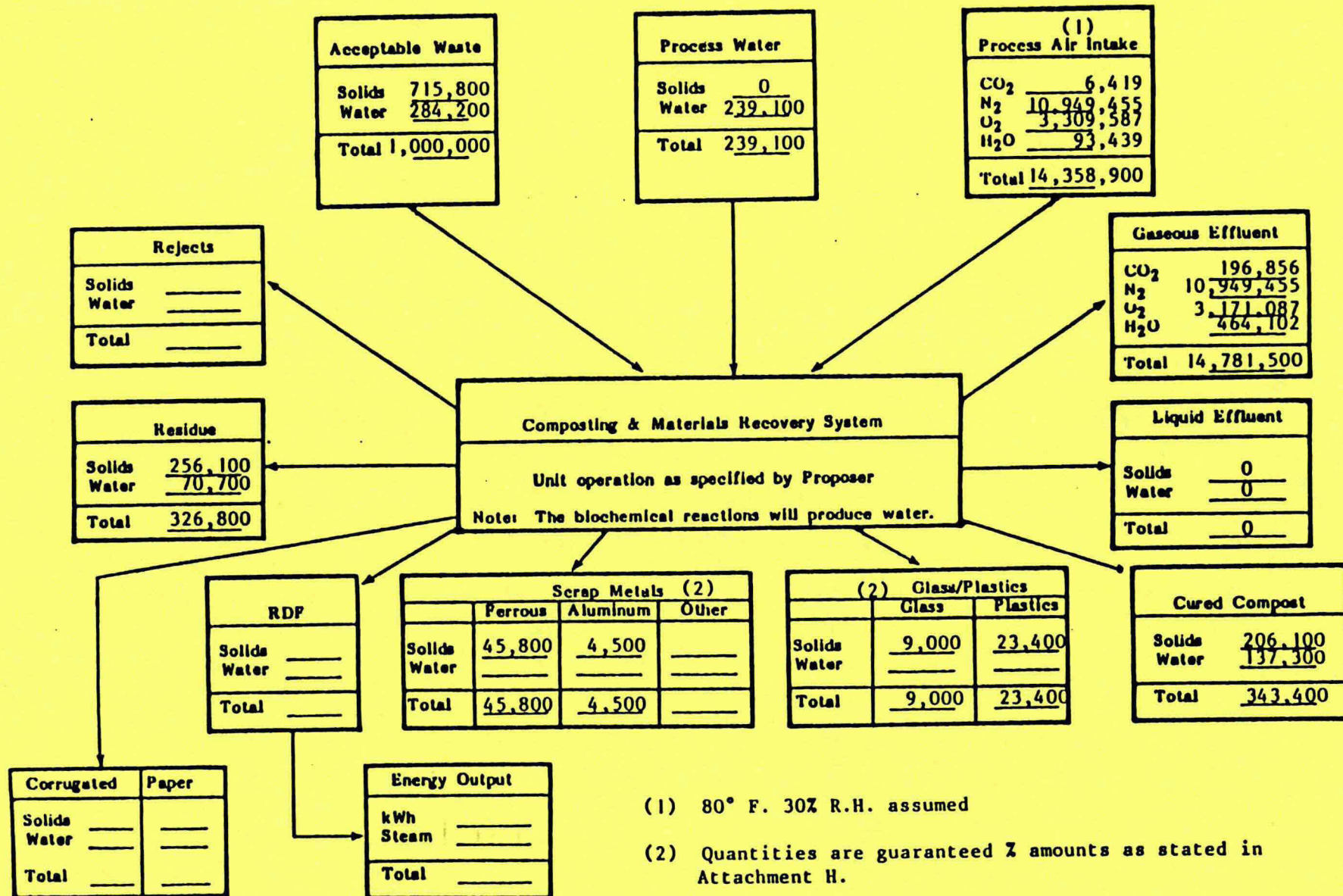


Figure-14

EXHIBIT 3.4

SIMPLIFIED PROCESS MASS BALANCE FOR AVERAGE OPERATING DAY



(1) 80° F. 30% R.H. assumed

(2) Quantities are guaranteed ± amounts as stated in Attachment H.

Basis: 1,000,000 pound throughput of Acceptable Waste. All mass quantities to be stated in pounds.

PORTLAND WASTE CHARACTERIZATION

DETAILED MASS BALANCE DIAGRAM
185,000 TPY COLUMBIA BLVD. PLANT
(ALL VALUES IN TONS PER YEAR UNLESS NOTED)

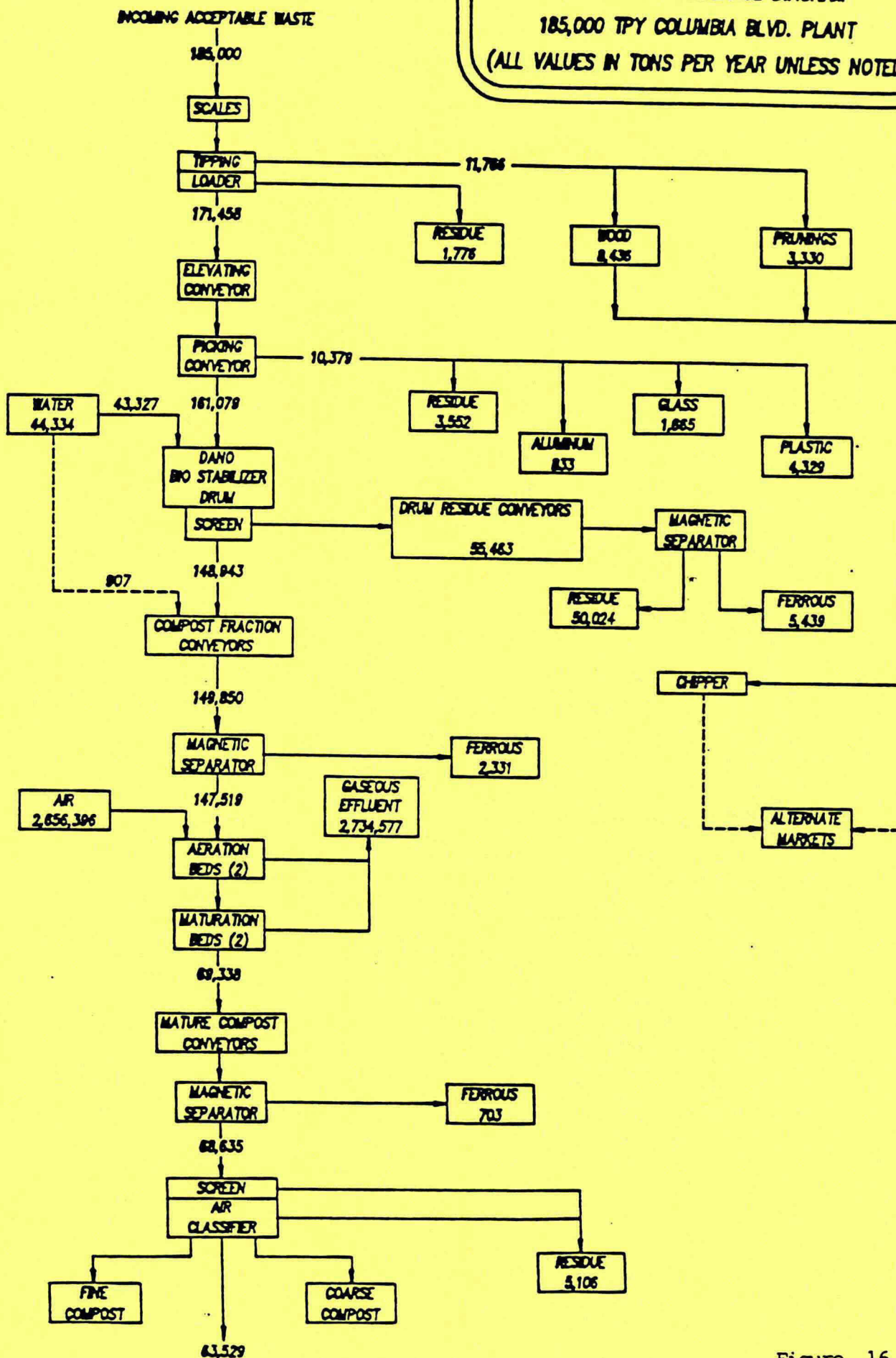


Figure 16

Exhibit J
Appendix 1

EQUIPMENT LIST

Equip. No.	Description	Size Capacity	Vendor	H.P.	Remarks
1	Dano drums (2)	100K TPY	Resource Systems Corp.		
2	Truck scales (3)	60T	Toledo 9520 system		Spec 10880
3	Fuel station	1000 gal - diesel 550 gal - gas	Tokheim		Spec 11700
4	Apron feeder (2) - 309.01/309.01	40 TPH	Rexnord or equivalent		
5	Picking conveyor (2) - 310.01/312.01	40 TPH	Transco		
6	Coarse reject con- veyor - 301.01		Transco		
7	Coarse reject incline conveyor - 303.01		Transco		
8	Ferrous metal reject conveyor - 311.01		Transco		
9	Raw compost conveyor - 306.01	40 TPH	Transco		
10	Transfer conveyor - 321	40 TPH	Transco		
11	Tripper conveyor - 324 & 327	40 TPH	Transco		
12	Bridge transfer conveyors - 329.20 & 329.21	40 TPH	Transco		
13	Bridge shuttle con- veyors - 330.20 & 33021	40 TPH	Transco		
14	Screen feed conveyor - 332	40 TPH	Transco		
15	Infeed conveyor - 337	40 TPH	Transco		

Equip. No.	Description	Size Capacity	Vendor	H.P.	Remarks
16	Radial stacker conveyor - 339 & 340	40 TPH	Transco		
17	Truck load conveyor - 341	40 TPH	Transco		
18	Air classifier & vibrating screen				
19	In-line magnet				
20	Cross-belt magnet - 334				
21	In-line magnet - 334				
22	Jib crane	1 ton		2	15' reach 15' height
23	Axial fans - compost aeration	70,000 cfm	Chicago or equiv.	200	Spec 15865
24	Axial fans - roof ventilators	Varies	Chicago or equiv.	3/4 & 5	Spec 15865
25	Process pumps (2)	50 gpm	PACO	5	P1A & P1B Re: 362.01
26	Process pumps (2)	50 gpm	PACO	3/4	P2A & P2B Re: 362.01
27	Process pumps (2)	50 gpm	PACO	7.5	P3A & P3B Re: 362.01
28	Sewage lift pumps (2)	240 gpm	Flygt	2	Re: 349.01
29	Air compressor	80 gal - 150 psi	Quincy		Re: 349.01
30	Front end loaders	4 c.y. bucket	Caterpillar 1T-2B		or equal
31	Lift truck	5000 lb.	Caterpillar V50D		or equal