

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING ) RESOLUTION NO. 92-1641  
A CONTRACT BETWEEN METRO AND )  
TRI-MET FOR METRO'S PARTICI- ) Introduced by  
PATION ON THE WESTSIDE CORRIDOR) Councilor Richard Devlin  
HIGH CAPACITY TRANSIT PROJECT )

WHEREAS, The Westside Corridor Project is the highest transportation priority for the region; and

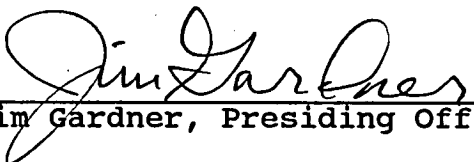
WHEREAS, The project is now in final design and Tri-Met expects to commence construction in the spring of 1993; and

WHEREAS, Tri-Met wishes to contract with Metro through a Design Services Agreement to provide technical data and analyses for the project including the Washington Park station; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District authorizes the Executive Officer to enter into a Design Services Agreement (Attachment A) with Tri-Met for Metro's continued participation in the Westside LRT project.

ADOPTED by the Council of the Metropolitan Service District this 25th day of June, 1992.

  
Jim Gardner, Presiding Officer

92-1641.RES  
KT:lmk  
6-11-92

## EXHIBIT A

### FEDERAL REQUIREMENTS

#### 1. Disadvantaged Business Enterprises

##### Disadvantaged Business Enterprise (DBE)

The DBE goal for this contract is ~~0~~ percent (~~0~~%). If the DBE goal is zero percent (0%), only subparagraph (A) below applies. If the DBE goal exceeds zero percent (0%), subparagraphs (A) and (B) below apply.

##### A. Policy

Pursuant to 49 CFR 23.43(a), the following provisions are made a part of this Contract:

1. Policy. It is the policy of the U.S. Department of Transportation (DOT) and Tri-Met that DBEs as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of 49 CFR Part 23 apply to this contract.
2. DBE Obligation. Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT-assisted contracts.
3. Contractor's failure to carry out the requirements set forth herein shall constitute a breach of contract, and may result in termination of the contract by Tri-Met or such other remedy as Tri-Met deems appropriate.

B. DBE Contract Reporting Requirements

1. Within ten (10) calendar days after this contract is signed by both parties, Contractor shall execute a written subcontract with each DBE that will participate in contract work, and submit a true and complete copy of each of those subcontracts to Tri-Met's DBE Officer, Tri-Met, 4012 SE 17th Avenue, Portland, Oregon 97202.
2. Upon execution of the contract, Tri-Met's DBE Officer shall provide Contractor with DBE Participation Report forms which must be submitted by Contractor with each invoice during the term of the contract. The DBE Participation Report form must be submitted even if no DBE participation is included in the work for which an invoice is submitted.
3. Within five (5) calendar days after final completion of contract work and final acceptance by Tri-Met, Contractor shall submit a final report to Tri-Met's DBE Officer stating the total amount owed to each DBE subcontractor and the amount actually paid to each as of the date of the report. The final report shall clearly identify any retainage being withheld.
4. Failure to comply with this paragraph shall constitute a material breach of this contract warranting Tri-Met's withholding of further payments to Contractor until the breach has been cured.
5. If for any reason a DBE subcontractor becomes unable to perform its obligation under its subcontract with Contractor, Contractor shall immediately notify Tri-Met's DBE Officer. Contractor shall exercise good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE. Contractor shall not unilaterally make any substitution for a DBE subcontractor without prior approval of Tri-Met's DBE Officer, and the Project Manager.

2. Equal Employment Opportunity

In connection with the execution of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including

apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

3. Title VI Compliance

During the performance of this contract, Contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as "Contractor"), agrees as follows:

- A. Compliance with Regulations: Contractor shall comply with the Regulations relative to nondiscrimination in federally- assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination: Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.
- D. Information and Reports: Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Tri-Met or the Urban Mass Transportation Administration (UMTA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish

this information, Contractor shall so certify to Tri-Met, or the Urban Mass Transportation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, Tri-Met shall impose such contract sanctions as it or the Urban Mass Transportation Administration may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to Contractor under the contract until Contractor complies, and/or,
- (2) Cancellation, termination or suspension of the contract, in whole or in part.

F. Incorporation of Provisions: Contractor shall include the provisions of subparagraphs A through E of this Paragraph in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Tri-Met or the Urban Mass Transportation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Tri-Met to enter into such litigation to protect the interests of Tri-Met, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### 4. Labor Provisions

A. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such work week, whichever is greater.

- B. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5.
- C. Withholding for Unpaid Wages and Liquidated Damages. DOT or Tri-Met shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b)(2) of 29 CFR Section 5.5.
- D. Nonconstruction Grants. Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, Tri-Met shall require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this Paragraph shall be made

available by Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of DOT and the Department of Labor, and Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

- E. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs A through E of this Paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs A through E of this Paragraph.

5. Cargo Preference

Contractor agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 30 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in subparagraph A of this Paragraph to Tri-Met (through Contractor in the case of sub-contractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh St. S.W., Washington, D.C. 20550, marked with appropriate identification of the Project.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

6. Conservation

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

7. Buy America

This procurement is subject to the Urban Mass Transportation Buy America Requirements in 49 CFR Part 661.

Section 165a of the Surface Transportation Assistance Act of 1982, as amended, permits UMTA participation in this contract only if steel and manufactured products used in the contract are produced in the United States. By signing this contract, Contractor certifies that it will comply with the requirements of section 165a of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR Part 661.

8. Interest of Members of, or Delegates to, Congress

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising therefrom.

9. Prohibited Interest

Tri-Met's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements.

10. Debarred Bidders

Neither Contractor, nor any officer or controlling interest holders of Contractor, is currently, or has been previously, on any debarred bidders list maintained by the United States Government or by the State of Oregon.

11. Air Pollution

Contractor and suppliers must submit evidence to Tri-Met that the governing air pollution criteria will be met. This evidence and related documents will be retained by Tri-Met for on-site examination by UMTA. This Paragraph applies only to procurements for which governing air pollution criteria exist.

12. Maintenance and Inspection of Records

A. Contractor shall maintain comprehensive records and documentation relating to this contract, and shall permit the authorized representatives of Tri-Met, the U.S. Comptroller General, or the U.S. Department of Transportation to inspect and audit all records and documentation for a period of three (3) years after Tri-Met has made final payment to Contractor.



- B. Contractor shall include in all of its subcontracts hereunder a provision to the effect that the subcontractor agrees that Tri-Met, the U.S. Comptroller General, or the U.S. Department of Transportation shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- C. The period of access and examination for records that relate to (1) litigation of the settlement of claims arising out of the performance of this Contract, or (2) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until such litigation, claims, or exceptions have been disposed of.

### 13. Lobbying Prohibitions/Certifications/Disclosures

A. Definitions. As used in this clause,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibition

- (1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) The prohibition does not apply as follows:
  - (i) Agency and legislative liaison by Own Employees.
    - (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or

employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

- (b) For purposes of paragraph B (2) (i) (A) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.
- (c) For purposes of paragraph B (2) (i) (A) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:
  - (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
  - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) For purposes of paragraph B (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
  - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
  - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,
  - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

- (e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).
- (ii) Professional and technical services by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
- (b) For purposes of paragraph B (2) (ii) (A) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the

lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B (2) (iv) (A) of this section, "professional and technical

services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation,

or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

(1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.

(2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.

(3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,



- (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

END OF EXHIBIT A - FEDERAL REQUIREMENTS

## TRANSPORTATION AND PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1641, APPROVING A CONTRACT BETWEEN METRO AND TRI-MET FOR METRO'S PARTICIPATION ON THE WESTSIDE CORRIDOR HIGH CAPACITY TRANSIT PROJECT

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Date: June 24, 1992

Presented by: Councilor Washington

Committee Recommendation: At the June 24 meeting, the Transportation and Planning Committee voted unanimously to recommend Council adoption of Resolution No. 92-1641. Voting in favor: Councilors McLain, Buchanan, and Washington. Absent: Councilors Devlin and Bauer.

Committee Issues/Discussion: Richard Brandman, Transportation Planning Manager, presented the staff report. He gave a brief historical overview of the Westside Corridor Project and explained that this resolution is one of the final remaining pieces of the project that links Metro and Tri-Met's participation. Metro's Transportation Department has been involved with this project from the beginning and has been under contract from Tri-Met to provide technical support in the areas of traffic forecasts, ridership forecasts and environmental analyses.

This \$200,000 contract will allow Metro to provide the technical expertise to see the project through to completion. The final steps of negotiation are now underway with the Federal government to complete the "full-funding" agreement for the project.

Committee discussion centered on local funding needed to complete the project and the progress being made on the underground Washington Park Zoo Station.

Councilor Buchanan voiced concern about the recent working relationship between Tri-Met and Metro, citing some apparent animosity between the two groups. Mr. Brandman stated that the working relationship, at least on the staff level, was a very good relationship and that he would forward the Councilor's comment. Councilor McLain expressed her desire for a future better working relationship between the two groups.

Following the meeting, Neil McFarlane of Tri-Met gave the committee a complete status report on the Westside Corridor Project.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1641 FOR THE PURPOSE OF APPROVING A CONTRACT BETWEEN METRO AND TRI-MET FOR METRO'S PARTICIPATION ON THE WESTSIDE CORRIDOR HIGH CAPACITY TRANSIT PROJECT

Date: June 11, 1992

Presented by: Richard Brandman

PROPOSED ACTION

Adopt Resolution No. 92-1641 which approves a contract for Metro's work and compensation for the Westside Corridor Light Rail Project including the Washington Park Station.

FACTUAL BACKGROUND AND ANALYSIS

The Westside Corridor Project is being designed as a combined highway/light rail project and is the region's highest priority transportation project. Part of the final design is an underground station which will serve the Metro Washington Park Zoo, World Forestry Center, the Vietnam Veterans Memorial and the Hoyt Arboretum.

Metro's Transportation Department has been involved in the Westside project since inception. During the last three years, Tri-Met has contracted with Metro to provide traffic forecasts, ridership forecasts and environmental analyses.

This \$200,000 contract will continue provision of technical expertise through forecasts and analyses as may be required to complete the final design, including development of the project's traffic management plan, environmental impact requirements, financial analyses for Metro's local match contribution, and design issues related to the construction of the Washington Park LRT station. Participation on the Washington Park Area Advisory Committee (WPAC) by both the Planning Director and Zoo Director will include oversight of major issues such as construction mitigation, station issues, financial issues, and the long-term traffic management plan.

Approval of Resolution No. 92-1641 will authorize Metro's Executive Officer to enter into the contract and accept funds for Metro's participation in the final design of the Westside Light Rail Project.

Executive Officer's Recommendation

The Executive Officer recommends approval of Resolution No. 92-1641.

**DESIGN SERVICES AGREEMENT  
3/26/92**

This agreement is between the Tri-County Metropolitan Transportation District of Oregon (Tri-Met) and the Metropolitan Service District (Metro).

**ARTICLE I - RECITALS**

Metro and Tri-Met agree:

1. The Westside Corridor Project (Project) is a combined highway and light rail project designed to accommodate transportation needs in the Westside Corridor, as fully described in the Westside Corridor Project Final Environmental Impact Statement (August, 1991).
2. The Metro Council has identified the Westside Corridor Project as the region's number one priority transportation project and has confirmed its support through Resolution's No. 91-1424 (April 11, 1990), 90-1300 (July 26, 1990).
3. Under the authority of Senate Bill 573 (Oregon Laws 1991, Chapter 3), the Tri-Met Board adopted a final order on April 12, 1991 for the Westside Corridor Project, which includes an underground station serving Metro's Washington Park Zoo, OMSI, World Forestry Center, and Vietnam Veteran's, and Hoyt Arboretum.
4. Senate Bill 573 defines the relationship between Tri-Met and other governmental entities following adoption of the final order for the Project, and states "The State and all counties, cities, special districts and political subdivisions shall:
  - (a) Amend comprehensive or function plans, including public facility plans and their land use regulations to the extent necessary to make them consistent with a final order, and;
  - (b) Issue the appropriate permits, licenses and certificates necessary for the construction of the Project or Project extension consistent with a final order. Permits, licenses and certificates may be subject to reasonable and necessary conditions of approval, but may not, either by themselves or cumulatively, prevent implementation of the final order."

5. The Project is subject to budgetary limitations imposed by the U.S. Department of Transportation, local Tri-Met bonds, Regional Compact funds including \$2 million from Metro, and State funding. The Westside Corridor Project is subject to all terms and conditions of the FTA grant Agreement in so far as Federal participation in costs of the Project.
6. The Project includes a light rail station and associated siteworks, utilities and structures at Washington Park and will serve the Metro Washington Park Zoo, OMSI, the World Forestry Center, and the Vietnam Vet Memorial, Washington Park, and Hoyt Arboretum.
7. A committee known as the Washington Park Area Advisory Committee hereafter referred to as WPAC made up of representatives of the City of Portland, Metro, Tri-Met, and affected institutions will be formed to address the design of the station, mitigation issues, traffic management issues, and Metro's funding share.

The Committee will have as a subset a Technical Advisory Committee known hereafter referred to as the TAC.

## ARTICLE II - PROJECT DIRECTION, COORDINATION AND MANAGEMENT

1. The Westside Regional Steering Group and Project Management Group (PMG) with membership from all affected jurisdictions will be retained through the design phase to address issues of regional significance.
2. Formation of WPAC: Metro and Tri-Met agree to form a committee as mentioned in Article 1, #7. The Committee will be formed to address issues of significance regarding the Zoo station, funding, mitigation plans traffic management, and other related factors. The Westside Project Management Group will appoint the Policy committee members (or their representatives) to include:

Director, Portland Office of Transportation  
Director, Metro Washington Park Zoo  
Director, Portland Parks Bureau  
Transportation Director, Metro  
Director, OMSI  
Westside Project Director, Tri-Met  
Representative, Vietnam Vets  
Representative, World Forestry Center  
Representative, Hoyt Arboretum  
Regional Engineer, ODOT

The committee will be administered and coordinated by Tri-Met. The WPAC will shepherd all information gathering and analysis through to its completion. The role of the committee will be to provide advice on policy, political and constituency based issues that will arise as a part of the analysis.

3. **Project Coordinator:** Tri-Met and Metro shall each designate a Project Coordinator who shall be responsible for coordinating all aspects of their respective employer's work on the Project. The Project Coordinators shall ensure that the Project and tasks related thereto are completed expeditiously and economically, shall be contact persons through whom Tri-Met and Metro officially shall communicate, and shall have the authority to make decisions and resolve disputes relating to the Project. Project Coordinator for Metro will be Richard Brandman and for Tri-Met, Neil McFarlane. Changes to the designated project coordinators may be made by Metro's Transportation Director or Tri-Met's Westside Light Rail Project Director, respectively.

### ARTICLE III - TRI-MET OBLIGATIONS

1. Except as otherwise provided herein, Tri-Met shall design, construct, operate and pay all costs for the Project. In the execution of the design and construction, except as otherwise provided herein, Tri-Met shall provide for the public's health, safety, and welfare by providing the proper construction, reconstruction to existing or better levels of improvement, and modifications to those existing public facilities in the right-of-way which are affected by the project.
2. Tri-Met agrees to enter into an intergovernmental agreement or agreements in which Metro obligates itself to pay for any work requested by Metro to be completed Tri-Met or its contractors that is not included in the Project Scope of Work.
3. **Development of Final Plans and Specifications.** Tri-Met shall work in close cooperation with Metro and the WPAC during preparation of final plans for the Station and will submit plans and specifications (hereafter plans) for official Metro review at the 50%, 85% and 100% completion points. Input will be sought from WPAC prior to those completion points through the creation of a Zoo Station Committee.

The Design Development (50%) stage is the first draft of final design drawings and specifications. The Detail Design (85%) stage represents the identification and specification of all major construction work. The Final Design (100%) stage is defined as the completion of all required changes and revisions identified at the 85% stage.

Except as noted above, Tri-Met shall allow Metro 15 calendar days after the receipt of plans at the 50% and 85% stages to complete its review and return the plans with required revisions to Tri-Met. All comments will flow through the project coordinators.

4. Tri-Met will coordinate the WPAC and TAC to work to ensure satisfactory resolution of issues including Metro's funding mechanism, station design, traffic and construction mitigation plans, and long-term traffic management plan.
5. Tri-Met will contract for and manage station design and construction mitigation tasks for the WPAC. Tri-Met will contract and Metro will manage the financial consultant for the finance task of the WPAC. Tri-Met will contract and the City of Portland will manage the traffic management task of the WPAC.
6. Tri-Met will participate in the WPAC to guide, help resolve issues and make recommendations regarding the work of the WPAC.

#### ARTICLE IV - METRO OBLIGATIONS

1. Metro agrees to use its best efforts to assist Tri-Met in maintaining the Project schedule.
2. Metro, through its Transportation Planning Department will provide:
  - (a.) ridership forecasts and analyses as necessary for final design and engineering phases of the Westside Corridor Project as may be requested by Tri-Met's Project Coordinator.
  - (b.) environmental analyses and expertise as may be required by the Project through development of final plans, specifications and issuance of permits. Such services may include assistance in reviewing final design changes, preparing environmental assessments, and other analysis as Tri-Met may request through its Project Coordinator.

- (c.) Participation in the WPAC and TAC.
- (d.) Coordination and management of the financial consultant for the WPAC financial analysis to include: working with the consultants to provide financial analysis, including definition of alternative funding mechanisms (alternative parking fee structures, others), provide evaluation criteria (including but not limited to, impact on attendance, equity, administration) determination of short and long-term financial implications.
- (e.) Metro will participate in the development of the Project's Traffic Management Plan (TMP).

3. Metro, through the Zoo Department will:

Participate in and coordinate with the WPAC and the TAC its work products, including:

- (a.) Background Information: Provide Master Plan information (include data on parking, attendance and projections, travel characteristics, etc.) Provide baseline plans and projections in order to help define the implications for the surrounding area.
- (b.) Construction Mitigation: Work with the consultants to identify the project's construction needs and issues of concern to the adjacent institutions and residents, and work through project-related issues in the overall Construction Mitigation Plan.
- (c.) Station Issues: Work with the consultant and the WPAC to address station issues such as station access and location, design of the station, and together with the City of Portland, a mechanism for continuing control (lease agreement, deed, or such a mechanism) of the station site by Tri-Met.
- (d.) Long Term Traffic Management Plan: Work with the Consultant and the Metro Transportation Department to define long-term projections of attendance, travel characteristics, impacts to city streets, and long-term use and management of parking. Result will be a transportation management plan for the area and the institutions. A portion of the plan will directly address the circulation immediately affecting Metro's Washington Park Zoo. This may require approval of the traffic management plan or sections thereof by the Metro Executive and Council.



## ARTICLE V. COMPENSATION

1. Metro's compensation for services to be provided under this Agreement shall not exceed the amounts listed in Subsection 2A below, without amendment of this agreement. The costs identified represent Metro's best effort at this date to estimate the costs for providing Metro services called for under this Agreement on a reimbursable cost basis.
2. Method of Payment.

A. Tri-Met shall pay Metro a maximum of \$200,000 for Metro's actual costs of performance of the projects as described heretofore. Actual costs consist of direct costs to be determined as follows:

1) Direct and Indirect Salary Costs and Fringe Benefits

Actual time computed at the applicable hourly payroll rate, fringe benefits earned with actual time and indirect costs as eligible under an approved cost allocation plan.

2) Direct Non-Salary Costs

Those costs directly incurred in fulfilling the terms of this Agreement, including, but not limited to reproduction, computer and communications expense, telephone, supplies, and transportation. Extraordinary costs must be approved by Tri-Met's Project Coordinator.

B. Metro shall submit monthly invoices for 100% of its actual costs directly to Westside Project Control. All invoices shall document the services for which the invoices are submitted and shall be in conformance with this paragraph. Tri-Met shall make payment to Metro for the invoiced amount within 30 days of Tri-Met's receipt of Tri-Met approved invoices.

C. Metro shall notify Tri-Met in writing when approximately \$190,000 of actual costs will be accrued. Consistent with Article VI, Tri-Met may initiate an amendment to this agreement if the project will require continued Metro services exceeding the maximum \$200,000 for Metro's actual costs. This Metro notice shall be sufficient notice that Metro will not provide additional services after \$200,000 of actual costs have accrued if Tri-Met has not initiated an amendment to this agreement.

3. Metro agrees to provide all of the end products over which it has control, referred to in Article VI of this agreement, or by mutual agreement, reasonable substitutes therefore.

## ARTICLE VI - FINAL RESULTS OF THIS AGREEMENT

The purpose of this agreement is to enable Tri-Met with Metro assistance, to perform all tasks necessary to ensure the successful design, and subsequent construction and operation of the Project while at the same time integrating Project facilities into Metro's existing improvements in a manner which ensures the protection of the public health, safety, and welfare. To this end, Tri-Met and Metro acknowledge that amendments to reflect changing conditions and better knowledge of Project requirements are anticipated.

### 1. End Products

The lead agency designated for the following end products shall have primary responsibility for initiating and accomplishing those end products. It is understood, however, that the accomplishment of the end products for the station will require the cooperative efforts of both parties, and Tri-Met and Metro agree to utilize their best efforts to this end:

- |   |               |
|---|---------------|
| a. Detailed Final Plans and Specifications for Station  | Lead: Tri-Met |
| b. Review of Final Design   | Lead: Metro   |
| c. Construction Phasing/Scheduling Plan<br>Project Overall<br>Coordination with Sunset Highway improvements | Lead: Tri-Met |
| d. Public Information/property owner liaison plan   | Lead: Tri-Met |
| e. Construction Plan at Zoo:  | Lead: Tri-Met |
| 1) Protection of public and private property provisions   |               |
| 2) Dirt/debris mitigation provisions  |               |
| 3) Construction Drainage and Erosion Control provisions   |               |
| 4) Construction Zone Traffic Control Provisions   |               |

- a) Traffic Control
- b) Temporary street closures
- c) Emergency vehicle access
- d) Coordination with Sunset Highway improvements

**5) Construction Zone Private Property Access Provisions**

- a) Through pedestrian traffic
- b) Building-pedestrian access
- c) Driveway/Loading Zone Access

**6) Provisions for the protection of pedestrians and vehicles in the vicinity of LRT construction**

**7) Provisions for days of the week, hours of the day construction activity may proceed; focusing on minimizing impacts during the Zoo's busy season which extends from May 1 through Labor Day.**

**8) Provisions for construction restriction during special events and holidays.**

**9) Provisions that designate Contractor staging area and employee/vendor parking in the Washington Park area**

**10) Provisions for conflict resolution between Project contractors and contractors performing public or private work unrelated to the Project, if applicable.**

**11) Process to resolve claims for damage to Metro property resulting from construction and communication process for construction emergencies.**

**f. Liability Insurance Agreement Lead: Tri-Met**

- 1) During construction
- 2) During on-going operations

**g. Agreement for use of property and continuing control of property for Washington Park station by Metro and City of Portland. (3 party agreement) Lead: Tri-Met**

**h. Coordination of special "we're open for business" promotions for Washington Park attractions during Construction Lead: Tri-Met**

**i. Traffic Mitigation Plan Lead: Tri-Met**

- j. Long Term Traffic Management Plan Lead: City of Portland
- k. Financial Plan/analysis leading to funding of Metro Regional Compact Commitment Lead: Metro
- l. Amendment to agreement specifying roles, responsibilities and funding for a Station Area Development program. Lead: Joint

## ARTICLE VII- GENERAL PROVISIONS

### 1. Term

The term of this agreement shall be from February 2, 1992, to October 31, 1997, inclusive, unless terminated sooner under the provisions of this agreement.

### 2. Federal Requirements

This agreement is funded in part under a financial assistance agreement between Tri-Met and the U.S. Department of Transportation, Federal Transportation Administration ("FTA"). This agreement is subject to all provisions described for third party contracts by that financial assistance agreement, including, but not necessarily limited to, the provisions in Exhibit A, which is attached to, and made a part of, this agreement (and in which the term "contractor" shall include "Metro" under this agreement).

### 3. Metro is an Independent Contractor

Metro is an independent contractor for all purposes, and shall be entitled to no compensation other than the compensation provided for under this agreement.

### 4. Project Information

Metro agrees to share all Project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the project shall be made available to representatives of newspapers, magazines, television or radio stations, or any other news media without the prior authorization of the Tri-Met Project Coordinator.

5. Duty to Inform

Metro shall give prompt written notice to Tri-Met's contract coordinator if, at any time during the performance of this agreement or at any time in the future, Metro become aware of actual or potential problems, faults, or defects in the project, any nonconformance with the agreement, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by Tri-Met. Any delay or failure on the part of Tri-Met to provide a written response to Metro shall constitute neither agreement with nor acquiescence in Metro statement or claim, and shall not constitute a waiver of any of Tri-Met's rights.

6. Indemnity

Tri-Met shall hold harmless and indemnify Metro and its officers, agents, and employees against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim arising out of Tri-Met work under this Agreement within the maximum liability limits under the Oregon Tort Claims Act.

Metro shall hold harmless and indemnify Tri-Met and its officers, agents, and employees against any and all liability, settlements, loss, costs, and expenses in connection with any action, suite, or claim arising out of Metro's work under this Agreement within the maximum liability limits under the Oregon Tort Claims Act.

7. Insurance

Metro shall maintain commercial liability and automobile insurance or self-insurance to the maximum liability limits under the Oregon Tort Claims Act. If commercial insurance is maintained, Tri-Met, its directors, officers, agents, and employees shall be named as an additional insured. If self-insurance is maintained, Metro shall certify the reserves are actuarial appropriate.

8. Public Contract Provisions

All provisions required in Personal Services contracts under ORS Chapter 279 are incorporated by reference and shall be deemed a part of this agreement as if fully set forth.

9. Hours of Employment

Pursuant to ORS 279.316 and ORS 279.334, under this personal Services Contract all laborers shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, and for all work performed on legal holidays, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

10. Workers Compensation

Metro, its subconsultants, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.

Metro warrants that all persons engaged in contract work and subject to the Oregon workers' compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Metro shall indemnify Tri-Met for any liability incurred by Tri-Met as a result of Metro's breach of the warrant under this Paragraph.

11. Assignments and Subconsultants

- A. Each party binds itself, and any partner, successor, executor, administrator, or assign to this agreement.
- B. Neither Tri-Met nor Metro shall assign, or transfer any interest in or obligation under this contract without the prior written consent of the others.

12. Labor and Material

Metro shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Metro obligations under this agreement, all at no cost to Tri-Met other than the compensation provided in this agreement.

13. Termination for Convenience

Tri-Met or Metro may terminate all or part of this agreement upon determining that termination is in the public interest. Termination under this paragraph shall be effective upon delivery of written notice of termination to Metro or Tri-Met. Upon termination under this paragraph, Metro shall be entitled to payment in

accordance with the terms of the contract for contract work completed before termination, and to payment for all reasonable contract close-out costs. within thirty (30) days after termination pursuant to this paragraph, Metro shall submit an itemized invoice for all unreimbursed contract work completed before termination and all contract close-out costs actually incurred by Metro. Tri-Met shall not be liable for any costs invoiced later than thirty (30) days after termination unless Metro can show good cause beyond its control for the delay.

14. Nondiscrimination

During the term of this agreement, Metro shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

15. Jurisdiction

This contract shall be governed by the laws of the State of Oregon, and the parties agree to submit to the jurisdiction of the courts of the State of Oregon and to the venue of the Multnomah County circuit court.

16. Compliance with Laws and Regulations

Metro shall adhere to all applicable Federal, state, and local laws, regulations, and policies, including, but not limited to, those related to workers' compensation, those of the Contract Work Hours and Safety Standards Act, and those relating to equal employment opportunity, nondiscrimination, and affirmative action, including, but not limited to, those regulations implementing executive Order No. 11246 of the President of the United States and Section 402 of the Vietnam Readjustment Act of 1973. Metro shall adhere to all safety standards and regulations established by Tri-Met for work performed on its premises or under its auspices.

17. Integration and Modification

This contract includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding the same subject. This contract may be modified only by a written agreement signed by authorized representatives for the parties.

18. Mediation

Should any dispute arise between the parties concerning this agreement which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the parties.

19. Authority

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to make this contract.

METROPOLITAN SERVICE DISTRICT  
TRANSPORTATION

TRI-COUNTY METROPOLITAN  
DISTRICT OF OREGON

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

By: \_\_\_\_\_

By: \_\_\_\_\_

Federal Employer ID Number:  
\_\_\_\_\_