

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 04-3503  
CHIEF OPERATING OFFICER TO EXECUTE )  
CONTRACT NO. 926063 FOR OPERATION OF ) Introduced by Chief Operating Officer  
THE METRO SOUTH AND METRO CENTRAL ) Michael J. Jordan, with the concurrence of  
TRANSFER STATIONS ) Council President David Bragdon  
)

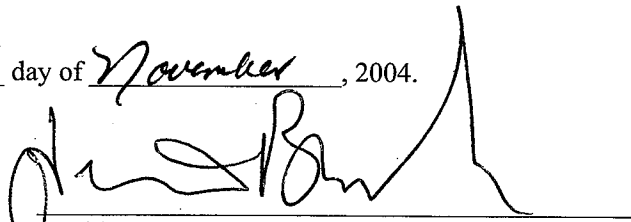
WHEREAS, The Metro Council authorized release of a request for proposals for the operation of the Metro South and/or Metro Central transfer stations (RFP #04-1091 SWR); and,

WHEREAS, Metro staff followed the process provided in the request for proposals for selecting a responsible proposer and negotiating a contract; and,

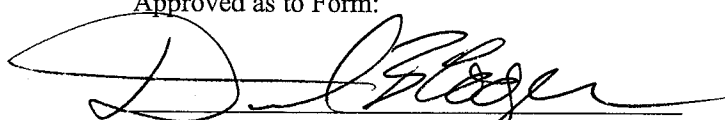
WHEREAS, Metro staff successfully negotiated a contract with Browning-Ferris Industries, Inc.; now therefore,

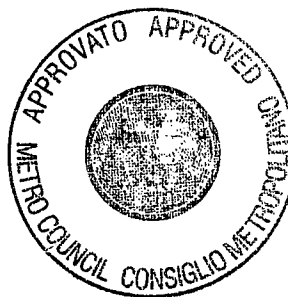
BE IT RESOLVED that the Metro Council, sitting as the Metro Contract Review Board, authorizes the Chief Operating Officer to execute Contract No. 926063, in a form substantially similar to that set forth as the attached Exhibit "A".

ADOPTED by the Metro Council this 4<sup>th</sup> day of November, 2004.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



**EXHIBIT A TO RESOLUTION NO. 04-3503**

Exhibit A includes the following documents:

- Agreement (including Agreement Exhibit #1 and Final Price Schedule),
- General Conditions,
- Specifications for Metro South Station, and
- Specifications for Metro Central Station.

## AGREEMENT

This Agreement is made by and between Browning-Ferris Industries, Inc. hereinafter called Contractor, and Metro, a regional government organized under the laws of the State of Oregon and the Metro Charter.

Contractor and Metro agree as follows:

### 1. Contract

The Contract consists of this Agreement, the Performance and the Labor and Materials Payment Bonds (and/or Letter(s) of Credit), the General Conditions, the Specifications, any and all Appendices, amendments, change orders, or extensions of the foregoing documents which the parties have agreed to or which Metro has approved in the manner prescribed in the Contract, and Contractor's proposal as modified in Agreement Exhibit #1, attached to this Agreement. No amendment of, or change order made to, this Contract shall be construed to release either party from any obligation contained in the Contract except as specifically provided in any such amendment or change order.

### 2. Contractor's Performance of Work

In consideration of Metro's payments described in Section 3 of this Agreement, Contractor agrees to perform the Work described in the Contract and to provide all labor, tools, equipment, machinery, supervision, transportation, disposal, permits, and every other item and service necessary to perform the Work described in the Contract. Contractor further agrees to fully comply with each and every term, condition, and provision of the Contract.

### 3. Metro's Payment of Contract Amount

In consideration of Contractor's performance of the Work described in the Contract, Metro agrees to pay contractor the amount provided, and in the manner described, in the Contract.

### 4. Additional or Deleted Work

Contractor shall, when so instructed by Metro under the procedures of the Contract, perform additional Work or delete Work in accordance with the Contract. The amount of any increase or decrease in payments by Metro to the Contractor as a result of additional or deleted Work shall be determined pursuant to the applicable provisions of the Contract.

### 5. Term

The Contract shall take effect on April 1, 2005, and remain in full force and effect through and including March 31, 2010, as more fully described in the Contract. The initial term of the Contract may be extended only by a written change order signed by Metro and Contractor.

### 6. Remedies for Default

If Contractor fails to perform as specified in the Contract, Metro shall be entitled to all the rights and remedies which this Contract provides, as well as all remedies provided by law. This Contract shall not be construed as limiting or reducing the legal remedies that Metro would have in the absence of any provision of the Contract.

7. Laws of Oregon Apply

The law of Oregon shall govern the interpretation and construction of this Agreement and of the Contract.

8. Entire Agreement

The Contract constitutes the final written expression of all of the terms of this Agreement and is a complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by either party that differ in any way from the terms of the written Contract shall be given no force and effect. This Contract shall be changed, amended, or modified only by written instrument signed by both Metro and Contractor. This Contract shall not be modified or altered by any course of performance by either party.

**CONTRACTOR**

**METRO**

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

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

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

Michael Jordan  
Chief Operating Officer

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**Agreement Exhibit #1**

**Modifications to Contractor's Proposal**

1. Contractor's Price Schedule for this Agreement shall be the attached "Final Price Schedule" dated 9/10/04.
2. Contractor shall not be required to provide the densifier proposed for Bay #3 at Metro South Station as contained in its Proposal.
3. Clean Exhaust Program- Subject to Metro's review and approval, Contractor shall install Diesel Particulate Filters (or Diesel Oxidation Catalysts or other pollution control devices if filters are deemed inappropriate) on all new onsite rolling stock utilizing diesel fuel. Contractor shall use ultra low sulfur diesel fuel (ULSD) for all onsite rolling stock using diesel fuel. Metro shall reimburse Contractor for the additional direct costs for installation and maintenance of the diesel particulate filters (or Diesel Oxidation Catalysts or other pollution control devices if filters are deemed inappropriate) and the additional cost of ULSD over the cost of low sulfur diesel, subject to the following limitations:
  - Metro shall not be obligated to reimburse the Contractor for an amount greater than \$100,000 for the fiscal year ending June 30, 2005;
  - Metro shall not be obligated to reimburse the Contractor for an amount greater than \$15,000 for any subsequent Metro fiscal year (Metro's fiscal year is July 1st through June 30<sup>th</sup>) for subsidizing the ULSD.
  - Metro may, at its sole discretion, make additional funds available to replace diesel particulate filters (or Diesel Oxidation Catalysts or other pollution control devices if filters are deemed inappropriate) that reach their useful life and to install diesel particulate filters (or Diesel Oxidation Catalysts or other pollution control devices if filters are deemed inappropriate) in new or old equipment.

**Final Price Schedule  
9/10/04**

**METRO SOUTH ONLY ITEMS**

1. Fixed Annual Payment for Waste Transfer	\$1,815,600
2. Per Ton Price for each ton in excess of 17,000 tons per Month	\$8.46
3. Per Ton Price for each ton of source separated yard debris/wood	\$35.62
4. Per Ton Price for each ton of source separated clean drywall	NA
5. Per Ton Price for each ton of source separated asphalt roofing material	NA
6. Contractor's Recovery Guarantee	15%
7. Fixed Annual Payment for Waste Recovery	<b><u>\$344,556</u></b>

**METRO CENTRAL ONLY ITEMS**

1. Fixed Annual Payment for Waste Transfer	\$2,030,400
2. Per Ton Price for each ton in excess of 18,000 tons per Month	\$8.93
3. Per Ton Price for each ton of source separated yard debris/wood	\$35.62
4. Per Ton Price for each ton of source separated clean dry wall	NA
5. Per Ton Price for each ton of source separated asphalt roofing material	NA
6. Per Ton Price for each ton of source separated organics	\$8.50
7. Contractor's Recovery Guarantee	17%
8. Fixed Annual Payment for Waste Recovery	<b><u>\$344,556</u></b>

**Items for Both Stations**

1. Per Ton Bonus Recovery Credit	\$13.72
2. Percentage of CPI proposed (cannot exceed 75%)	75%

Other Payments

A. Per Ton Compaction Bonus	\$ 8.01
B. Per Ton Compaction Deduction	\$16.02
C. Per Load Overload Adjustment	\$19.58
D. Per Ton Recovery Credit/(Disposal Cost Reimbursement)	\$33.78

## **GENERAL CONDITIONS**

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## GENERAL CONDITIONS

### ARTICLE 1 -- DEFINITIONS

For the purposes of this Contract the following terms shall have the meanings hereinafter set forth:

**“Acceptable Waste”** means solid waste, as defined in ORS 459.005, as amended, except solid waste that is:

1. Prohibited at a Metro transfer station pursuant to a solid waste disposal permit issued by the DEQ;
2. Prohibited from disposal at a sanitary landfill by local, state or federal law;
3. Special Waste, as defined in Metro Code Chapter 5.02 (including, without limitation, asbestos and asbestos-containing materials), unless the person in possession of such waste has a special waste permit approved by Metro;
4. Conditionally Exempt Generator Waste, as defined in 40 CFR 261.5 as amended or replaced, except for certain types of such waste that Metro specifically identifies in writing as acceptable; or
5. Waste that Metro has identified as unacceptable because it will disrupt transfer station operations, such as, for example, telephone poles.

**“Annual Base Recovery Level”** means the number of tons of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) that the Contractor is required to recover each year. The Annual Base Recovery Level at Metro Central Station shall be 10,200 tons. The Annual Base Recovery Level at Metro South Station shall be 10,200 tons.

**“Annual Base Transfer Level”** means the number of tons of Acceptable Waste that the Contractor is expected to transfer for disposal each year. The Annual Base Transfer Level at Metro Central Station shall be 216,000 tons. The Annual Base Transfer Level at Metro South Station shall be 204,000 tons.

**“Bonus Recovery Credit”** means the amount to be paid to Contractor for each ton of material that Contractor recovers above Contractor’s Recovery Guarantee and shall be annually adjusted as provided in Article 12B of these General Conditions. Payment of the Bonus Recovery Credit is contingent on the availability of budgeted funds.

**“Code”** means the Metro Code, including any amendments thereto.

**“Columbia Ridge Landfill or CRL”** means that landfill located in Gilliam County, OR operated by the company with which Metro has contracted for waste disposal.

**“Container or Trailer”** means the receptacle used to transport waste from the transfer station to a disposal site. The receptacle shall include intermodal containers and transfer trailers. Performance specifications are included within this Contract.

**“Contract”** and **“Contract Documents”** include the following:

1. The Agreement signed by both parties thereto, and the Performance and Labor and Materials Bonds, or Letter(s) of Credit,
2. The Specifications, including Metro's *Transfer Station Contractor's Procedures Manual* attached thereto,
3. The General Conditions,
4. Any and all Addenda to the Contract,
5. Any and all Appendices, Amendments, Change Orders or extensions of the foregoing documents which the parties have agreed to or which Metro has approved in the manner prescribed by the Contract,
6. The Request for Proposals,
7. The Contractor's proposal, including the Price Schedule, the Proposal Questionnaire, and all other commitments made therein regarding customer service and material recovery levels, unless otherwise provided in the Agreement; provided, however, that appendices and attachments to Contractor's proposal shall not be considered part of the Contract Documents unless specifically agreed to by Metro in the Agreement.

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

**“Contract Change Order”** or **“Change Order”** means a document prepared pursuant to applicable provisions of the Metro Code and Article 14 of these General Conditions as a change, amendment or modification to the Contract, incorporating approved Contractor's proposals for changes in the Contract. Change Orders shall be numbered consecutively in chronological order.

**“Contract Manager”** means Metro's representative for all purposes of this Contract, designated as such by Metro. The Contract Manager is also the liaison between Contractor and Metro's consultants. The Contract Manager has no authority to approve increases in the cost of the Contract; all such changes must be approved under the procedures in this Contract and by Metro pursuant to applicable provisions of the Metro Code.

**“Contractor”** means the person, firm, corporation or other entity that executes the Contract with Metro.

**“Contractor's Proposal”** means all material submitted by Contractor to Metro in response to Metro's original RFP for the Contract.

**“Contractor's Recovery Guarantee”** means the Material Recovery Level that the Contractor guarantees that it will achieve each month.

**“Contractor's Surety”** means the holder(s) of the performance and labor and materials bonds, or the letter(s) of credit, as required by Article 17 of the Contract.

**“Default”** means any failure to perform or breach of any provision of this Contract.

**“DEQ”** means the Department of Environmental Quality of the State of Oregon.

**“Disposal Cost Reimbursement”** means the monthly payment that Contractor shall pay to Metro if Contractor recovers less material than Contractor’s Recovery Guarantee. The per ton amount of the Disposal Cost Reimbursement shall be equal to the per ton amount of the Recovery Credit.

**“Disposal Site”** means the landfill to which Acceptable Waste is transported and disposed.

**“Fixed Annual Payment for Waste Recovery”** means the fixed amount paid to the Contractor each year for material recovery as provided in the Price Schedule and as annually adjusted as provided in Article 12B of these General Conditions.

**“Fixed Annual Payment for Waste Transfer”** means the fixed amount paid to the Contractor each year for the transfer of Acceptable Waste received at the transfer station as provided in the Price Schedule and as annually adjusted as provided in Article 12B of these General Conditions.

**“Fixed Payments”** means the Fixed Annual Payment for Waste Transfer and the Fixed Annual Payment for Waste Recovery.

**“Force Majeure”** means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics and federal or state government orders, any of which is beyond the reasonable anticipation of the applicable party and which prevents performance of the Contract, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time. Both parties agree that no other events, however catastrophic or uncontrollable, including, but not limited to, changes in laws or regulations, strikes, lockouts, other labor disturbances, breakage or accidents to machinery, equipment or plants, or inclement weather, shall be considered forces majeure.

**“Load of Waste”** means the quantity of waste transported by a container during each trip from a transfer station to the Disposal Site.

**“Material Recovery”** means any process of obtaining from solid waste, by presegregation or otherwise, material that has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or another purpose.

**“Material Recovery Level”** means the percentage amount of material recovery achieved by the Contractor at a transfer station. The Material Recovery Level shall be computed each month at each transfer station by dividing the total number of tons of Recovered Material in that month, excluding source separated materials for which a separate tip fee applies (such as yard debris, wood waste, and compostable organic waste), by the total number of tons of Recoverable Waste in that month.

**“Metro”** means its officers, employees, other contractors, authorized agents and servants. For purposes of this Contract, “Metro” does not include the Contractor or the Contractor’s officers, employees, subcontractors, agents or servants.

**“Metro Central Station” or “MCS”** means the solid waste transfer station owned by Metro and located in Northwest Portland, Oregon.



**“Metro South Station” or “MSS”** means the solid waste transfer station owned by Metro and located in Oregon City, Oregon.

**“Recoverable Waste”** means the number of tons of Acceptable Waste received at a transfer station less the sum of (1) the number of tons of waste delivered in loader-type vehicles, compacted drop boxes, transfer trailers, truck tractors, transfer trucks, and tankers, and (2) the number of tons of source separated materials for which a separate tip fee applies, such as yard debris and wood.

**“Recovered Material”** means material removed from incoming Acceptable Waste at the transfer station, including source separated material, provided that such removed or source separated material is diverted for reuse, recycling, or use as a fuel. Material shall not be counted as Recovered Material until it has been transported off-site.

**“Recovery Credit”** means the payment to the Contractor by Metro for each ton of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) above the Annual Base Recovery Level. The Recovery Credit represents Metro’s avoided cost of disposal for recovered material and shall be annually adjusted as provided in Article 12B of these General Conditions.

**“Recycle”** means the transformation of material into new products in such a manner that the original material or product loses its identity.

**“Request for Proposal” or “RFP”** means a request by Metro for a proposal to perform work, including Metro’s original request for proposals for the Contract as well as future requests for proposals on contemplated changes in the Contract.

**“Reuse”** means the return of material to the economic stream for use in the same kind of application as before without change in the material’s identity.

**“Scalehouse”** means those facilities the purpose of which is to determine and collect charges from public, commercial and industrial users of Metro transfer stations. The term “scalehouse” shall include both the buildings used for this purpose and the weighing system.

**“Separate Contract”** means a contract between Metro and a party other than the Contractor.

**“Staging Area”** is the area located at the transfer stations on which containers are staged prior to and after loading.

**“Suspicious Waste”** is waste that the Contractor reasonably suspects or should suspect to be Unacceptable Waste.

**“Tip Fee”** means the dollar amount customers are charged per ton to deposit waste at a transfer station.

**“Transfer Station”** means a facility primarily designed and operated to accept incoming loads of solid waste from collection vehicles and to transfer such waste to larger vehicles for disposal in an approved, general purpose, sanitary landfill.

**“Unacceptable Waste”** means any waste that is not Acceptable Waste.

**“Variable Compaction Maximization Adjustment”** means an addition or deduction from Metro’s payment to Contractor based on (1) whether the average weight of each payload of waste compacted for transfer to a Disposal Site is greater than, or less than, 29 tons, and (2) the number of compacted waste payloads that require load redistribution or partial unloading to achieve a road legal payload. If the average weight of each payload of waste compacted for transfer to a Disposal Site is greater than 29 tons, then Contractor shall receive additional per ton payments for the additional waste compacted into each load. If the average weight of each payload of waste compacted for transfer to a Disposal Site is less than 29 tons, then Metro shall make a per ton deduction in its payment to Contractor for the number of additional tons of waste that Contractor would have transported had its loads averaged exactly 29 tons per payload. Metro shall also make a per incident deduction for each payload that requires load redistribution or partial unloading to achieve a road legal payload. The per ton or per incident amounts of the Variable Compaction Maximization Adjustment shall be annually adjusted as provided in Article 12B of these General Conditions.

**“Variable Payments”** means Variable Proceeds from the Sale of Recovered Material and all payments from Metro to the Contractor other than the Fixed Payments.

**“Variable Payment for Processing Source Separated Materials”** means the per ton payments from Metro to the Contractor for accepting and processing source separated materials such as yard debris, wood, asphalt roofing, and clean drywall, for which a separate tip fee applies. The per ton Variable Payment for Processing Source Separated Materials shall be annually adjusted as provided in Article 12B of these General Conditions.

**“Variable Payment for Waste Recovery”** means Recovery Credits paid by Metro to the Contractor or Disposal Cost Reimbursements paid by Contractor to Metro.

**“Variable Payment for Waste Transfer”** means the per ton payment from Metro to Contractor for the transfer of Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) above the Annual Base Transfer Level, and shall be annually adjusted as provided in Article 12B of these General Conditions.

**“Variable Proceeds from the Sale of Recovered Material”** means the Contractor’s revenues from the sale of recovered material to third parties.

**“Waste”** means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

**“Work”** shall mean, unless the context requires otherwise, all labor, materials, equipment and services required or necessarily implied by the Contract Documents to be provided by Contractor.

## **ARTICLE 2 -- GENERAL PROVISIONS**

- A. Contractor shall comply with each and every provision of the Contract Documents.
- B. The Contract shall be deemed to have been made in and shall be construed under the laws of the state of Oregon. Any and all disputes arising under this Contract shall be decided under Oregon law.

- C. Contractor shall address all correspondence for Metro to Metro's designated Contract Manager.
- D. Contractor and its officers, employees, agents and subcontractors shall perform each and every service to be performed under this Contract in a skillful and competent manner in accordance with the highest standards of the solid waste and transportation industries. Contractor shall be liable to Metro for any and all errors or omissions in the performance of this Contract and for any and all failures to perform this Contract.
- E. Contractor warrants that the personnel and equipment used in the performance of this Contract shall conform with the representations made in Contractor's proposal and shall otherwise be of the highest quality.
- F. In performing each and every service to be performed under this Contract, Contractor and Contractor's officers, employees, agents and subcontractors shall comply with all applicable laws, regulations, ordinances, orders and all other requirements of federal, state, regional, county and local government authorities (for purposes of this Article, collectively "applicable legal requirements") and agencies having jurisdiction over the relevant activities, including all applicable legal requirements concerning minimum wage rates, fair or living wage rates, non-discrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees and similar requirements. Contractor shall also give all notices and obtain all licenses and permits pursuant to all applicable legal requirements.

At Metro's monthly meetings with Contractor, Contractor shall inform Metro of all correspondence or any other documents sent from, or received by, the Contractor, its officers, employees, agents or subcontractors to any federal, state, regional, county or local government agency, relative to any and all applicable legal requirements. Examples of such correspondence include, but are not limited to, citations received from any regulatory authority. Copies of all such correspondence shall be retained by Contractor and subcontractors as provided in Section K of this Article.

All agreements between Contractor and persons, firms or corporations employed by Contractor for performance of this Contract shall contain this Section's requirements.

- G. Any written notice required or allowed under the Contract shall be deemed to have been duly served if delivered in person to the individual, member of the firm, entity or an officer of the corporation for which or for whom it was intended, or if sent by registered or certified mail to the last business address of the relevant person or party known to the person who gives the notice. The date or time of service for purposes of all notices required or allowed under the Contract shall be the time or date the relevant document was (1) sent by mail in the manner prescribed in this Section, or (2) personally delivered to the proper address if not mailed in the manner prescribed in this Section.
- H. Time limits stated in this Contract are of the essence. No waiver of the Contract time limits or schedule dates may occur by Metro's failure to object to untimely performance under the Contract. In any event, any waiver of such time limits or schedules shall not be construed as a waiver of any future time limits or schedules.
- I. Metro shall have the right to interview any person in Contractor's employ or under Contractor's control, including without limitation, any person in a subcontractor's employ, and to inspect, review and copy all records, documents and evidence in Contractor's custody, possession or control, or in the custody possession or control of any subcontractor, in order to assist Metro in determining whether:

1. Contractor is entitled to reimbursement or increased payment under any applicable provision of this Contract, and, if so, by what amount;
  2. Metro is entitled to credits or to make reduced payments to Contractor under any provision of this Contract, and, if so, by what amount; or
  3. Contractor has performed or is performing its operations consistent with all applicable health and safety laws, regulations and requirements.
- J. Metro may reasonably request any information it deems necessary to determine Contractor's ability to perform or to continue to perform this Contract. Contractor shall provide any such requested information by written reply to Metro within ten (10) days of receipt of such requests.
- K. Records Retention, Audits, and Inspections.
1. Contractor and subcontractors shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:
    - a. The performance of the Contractor, including but not limited to the Contractor's compliance with the Contract, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions, and compliance with any and all requirements imposed on the Contractor, or on a subcontractor, under the terms of the Contract or a subcontract;
    - b. Any claims arising from or relating to the performance of the Contractor or a subcontractor under the Contract or a subcontract;
    - c. Any cost and pricing data relating to the Contract; and
    - d. Payments made to all suppliers and subcontractors.
  2. Contractor and subcontractors shall maintain records for the longer period of (a) six years from the date of final completion of the Contract, or (b) until the conclusion of any audit, controversy or litigation arising out of or related to the Contract. All agreements between Contractor and persons, firms or corporations employed by Contractor for performance of this Contract shall contain the requirements of this Section K of this Article. The document retention requirements of this Section shall survive the expiration of the Contract for the longer period of (a) six years from the date of final completion of the Contract, or (b) until the conclusion of any audit, controversy or litigation arising out of or related to the Contract.
  3. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the

Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining, and copying those records shall not be recoverable costs in any legal proceeding.

4. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy, and audit the books and records of Contractor or a subcontractor, including tax returns, financial statements, other financial documents, and any documents that may be placed in escrow according to any Contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject the provisions of subsection K.5 of this Article.
  5. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or any subcontractor, including, but not limited to, a court proceeding, arbitration, mediation, or any other dispute resolution process.
  6. Contractor and subcontractors agree that if a Metro audit or records inspection reveals records that disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Metro may withhold such costs from any sum that is due or that becomes due from Metro to Contractor.
  7. The failure of Contractor or a subcontractor to keep or disclose records as required in this Section K of this Article, or any solicitation document, may result in the disqualification of Contractor or any such subcontractor as bidders or proposers for future Metro contracts, as provided in ORS 279.037 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or any such subcontractor is not a responsible bidder or proposer, as provided in ORS 279.029 and Metro Code Section 2.04.052.
- L. Contractor agrees to promptly pay all subcontractors, material persons, suppliers and laborers engaged for purposes of this Contract in accordance with any and all contracts between any such persons or entities and Contractor, but in no event later than 45 days after such persons or entities have completed the work. Contractor shall immediately remove any liens or encumbrances that, because of any act or default of Contractor or its officers, employees or agents, or of Contractor's subcontractors or material suppliers, (1) are filed against any property, real or personal, of either Metro or Contractor, or (2) interfere with the performance of this Contract. Contractor shall defend, indemnify and hold Metro harmless with respect to any charges, amounts, claims or liens described in or encompassed within this paragraph, as required by Article 16 of these General Conditions.
- M. No provision(s) of this Contract, nor any authority granted by the Contract, is intended to create or result in any personal liability for any public official or employee or agent of Metro, nor shall any provision(s) of the Contract be construed to create any such liability. No approval given by Metro pursuant to this Contract shall be construed to relieve Contractor of any of its obligations to perform this Contract.
- N. In the event any provision or clause of this Contract is held or determined to be void, invalid or unenforceable under any federal, state, regional or local laws, regulations or ordinances, such

provision or clause shall be treated as having been excised from the Contract from the Contract's inception, and in such a manner as to allow the remainder of the Contract to be fully binding and enforceable on the parties hereto.

- O. A waiver by either party of any default shall not be taken or held to be a waiver of any succeeding default or as waiver of any provision of this Contract. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. Where the condition to be waived is a material part of the Contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of a Change Order as provided for in Article 14 of these General Conditions.
- P. The parties agree that proper and exclusive venue for any and all actions or proceedings to enforce this Contract, or to enforce any subcontracts made pursuant to this Contract, shall be in the county of Multnomah, the state of Oregon, or, if in federal court (and if jurisdiction and venue otherwise obtains), in the United States District Court for the District of Oregon.
- Q. Contractor shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.
- R. Contractor and its respective subsidiary corporations, parent corporations, and any corporations owned or operated by its parent or subsidiary corporations, whether in existence at the time of this Contract or later created, agree not to dispute, contest, or challenge in any way the exercise by Metro of any flow control authority as described in its ordinances, regulations, and bond covenants unless the exercise of such flow control authority has been judicially declared or affirmed to be legally invalid by the highest court of law or equity having jurisdiction to consider the legality or illegality of Metro's exercise of flow control authority. Any breach of this provision, as determined by the sole opinion of Metro, shall constitute a default subject to the remedies contained in Article 11B of these General Conditions.

### **ARTICLE 3 -- INTENT OF THE CONTRACT DOCUMENTS**

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

of, or conflicts between, any provisions of the Contract after the Contract has been executed, the following priority of documents shall be used to resolve such duplications or conflicts (from highest to lowest):

1. Agreement;
2. Specifications, including Metro's *Transfer Station Contractor's Procedures Manual* attached thereto;
3. General Conditions;
4. Contractor's Price Schedule;
5. Contractor's Proposal Questionnaire; and
6. Request for Proposals.

For purposes of the above priority list, any appendices, addenda, amendments or changes to the above documents which are agreed to by the parties hereto shall be given the same priority as the documents to which they apply, unless otherwise provided in the Agreement. Detailed information shall take precedence over general information and words shall take precedence over numbers unless obviously incorrect. A duplication of services or items to be performed is not intended by any provision(s) of the Contract, and any such duplication specified by the Contract shall not become a basis for extra cost to Metro.

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

#### **ARTICLE 4 -- METRO'S RESPONSIBILITY**

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

#### **ARTICLE 5 -- CONTRACTOR'S REPRESENTATIVE AND CONTRACTOR SPOKESPERSON**

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

- D. Contractor shall also provide the services of a competent spokesperson for the term of this Contract as provided in Article 19 of these General Conditions. Prior to performing services under this Contract, Contractor shall notify Metro in writing of the name, title, address and telephone number of Contractor's Spokesperson.

#### **ARTICLE 6 -- INDEPENDENT CONTRACTOR**

- A. Contractor shall perform all work under this Contract as an independent contractor. Contractor is not and shall not be considered an employee, agent or servant of Metro for any purposes, under this Contract or otherwise; nor shall any of Contractor's subcontractors, employees or agents be, nor shall they be considered, employees, agents, subagents or servants of Metro for any purposes under this Contract or otherwise.
- B. Consistent with the provisions of this Contract, Contractor shall have exclusive control of, and the exclusive right to control, the details of the services and work performed hereunder and all persons performing such work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Contract shall be construed as creating a partnership or joint venture between Metro and Contractor.
- C. Nothing in the Contract shall be construed as giving Metro any duty to supervise or control any acts or omissions of any person, entity or party, which acts or omissions are in any way connected with the performance of services under the Contract.

#### **ARTICLE 7 -- SUBCONTRACTORS**

- A. Contractor shall submit to Metro the names and addresses of proposed subcontractors and suppliers for each subcontract of the Contract that is for payment of more than \$50,000 per year. Contractor shall provide copies of any subcontracts Contractor enters into to perform this Contract within three (3) business days of receiving a request for such contracts from Metro.
- B. All applicable provisions of the Contract, including, without limitation, Sections F and I of Article 2 and Section C of Article 24 of these General Conditions, and all applicable local, state and federal laws and regulations shall apply to all (1) subcontracts entered into by Contractor in connection with the Contract, and (2) leases, purchase agreements, or finance agreements for equipment or other material used in connection with the Contract.
- C. All subcontracts of whatever nature, including, but not limited to, leases and purchase and finance agreements, shall contain a clause which provides that if Contractor, in Metro's sole opinion, defaults in performance of this Contract and Metro accepts assignment of the subcontract, then subcontractor shall enter into a novation of the subcontract with Metro and, for purposes of interpretation of the subcontract, shall recognize Metro or its assignee as Contractor and shall further recognize that Metro or its assignee shall have all the rights, remedies and responsibilities of the Contractor under the relevant subcontract. Upon written notice from Metro, Contractor agrees to assign all of its rights in all such subcontracts to Metro upon Metro's determination that Contractor has defaulted under the terms of this Contract.



- D. Contractor shall be as fully responsible to Metro for the acts and omissions of the subcontractors and suppliers, and of the subcontractors' and suppliers' employees, firms, agents and servants, as Contractor is for the acts and omissions of its own employees and agents. No provision(s) of this Contract, nor of any contract between the Contractor and its subcontractors, shall be construed as creating any contractual relation between those subcontractors and Metro.

**ARTICLE 8 -- SEPARATE CONTRACTS**

- A. Metro reserves the right to let separate contracts in connection with the transportation, transfer, recovery or disposal of waste received, processed or transferred at any facility controlled by Metro, except as limited by Metro's obligations under this Contract.
- B. Contractor shall cooperate with Metro, and with other separate contractors engaged by Metro for the transportation, transfer, recovery or disposal of waste, the operation of transfer stations, resource recovery facilities or compost facilities, or any related projects, so that all portions of the Contract may be completed in the most efficient and timely manner, without any interference with work on related projects and contracts.
- C. Metro shall be the arbitrator of all disputes between the Contractor and separate contractors concerning performance of the work and interpretation of the Contract or other contract(s) and Metro's decisions shall be final. Metro must be notified of any such disputes within ten (10) working days of their occurrence. Metro will not be liable for any damages resulting from or related to disputes between the Contractor and separate contractors, and Contractor hereby waives any claims attendant to, or derived from, Metro's resolution of such disputes.

**ARTICLE 9 -- ALLOCATION OF RISK/FORCE MAJEURE**

- A. Representations of Parties
  - 1. Prior to submitting any Proposals, Contractor is required to acquaint itself with all transfer and disposal sites and all other conditions relevant to the performance of this Contract, and to make all investigations essential to a full understanding of the difficulties that may be encountered in performing the Contract.
  - 2. Contractor represents that prior to submitting its Proposal for the Contract, it has examined carefully the Request for Proposals and related documents, acquainted itself with all other conditions and regulations relevant to the Contract, and made all investigations essential to a full understanding of any and all difficulties which may be encountered in performing the Contract.
  - 3. By awarding the Contract to Contractor, Metro does not warrant or admit the correctness of any investigation, interpretation, deduction or conclusion relative to any condition or conditions of the transfer stations or any other condition related to this Contract. Contractor has made and shall make its own deductions and conclusions as to any and all problems which may arise from such site conditions as they relate to this Contract and any other condition or requirement of this Contract, and shall accept solely for itself full legal responsibility and liability for its deductions and conclusions.
- B. Effect of Force Majeure on Obligations
  - 1. Metro's Obligations: In the event that Metro is rendered unable, wholly or in part, by the occurrence of a force majeure to carry out any of its obligations under this Contract, then Metro's

obligations, to the extent affected by such occurrence, shall be suspended during the continuance of such inability.

2. Contractor's Obligations: In the event that Contractor is rendered unable, wholly or in part, by the occurrence of a force majeure to carry out any of its obligations under this Contract, then Contractor's obligations, to the extent affected by such occurrence, shall be suspended during the continuance of such inability.
3. Notice of Force Majeure: In the event that either party intends to rely upon the occurrence of a force majeure to suspend or to modify its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible, and in no event later than 30 days after the initial occurrence of any force majeure, setting forth the particulars of the circumstances. Notices shall likewise be given after the effect of such occurrence has ceased.
4. Limitations: Nothing in this Article shall limit or preclude Metro's ability, pursuant to Article 14, to request that the Contractor perform work, whether emergency or otherwise, that Metro deems necessary during or following the occurrence of a force majeure in order to prevent damage or to preserve the integrity of the facility.

#### **ARTICLE 10 -- LIQUIDATED DAMAGES**

- A. In the event of any default of this Contract by Contractor which default, in the sole opinion of Metro, substantially impedes the normal operations of MSS or MCS, Contractor shall have one hour to remedy the situation such that, in Metro's sole opinion, operations at the transfer station have returned to normal. If Contractor fails, in Metro's sole opinion, to do that which the previous sentence requires, then Contractor shall pay Metro liquidated damages at the rate of \$6,000 per hour or portion thereof until Contractor has, in Metro's sole opinion, returned the transfer station operations to normal. For purposes of this Contract, the phrase "substantially impedes the normal operations of MSS or MCS" shall mean the inability of customers to unload waste within twenty minutes of arrival at a facility or Contractor's failure to load a container within one half hour of its availability and the presence of sufficient waste.
- B. If a default as described in the preceding paragraph continues for a period in excess of twenty-four (24) hours, Metro shall not recover liquidated damages for periods beyond the initial twenty-four (24) hour period, but Metro shall be entitled to all other remedies for Contractor's continued default that this Contract or the law provides or permits.
- C. It is expressly understood and agreed that any liquidated damages are not to be considered in the nature of a penalty, but, due to the difficulties of proof of loss, the parties have determined that such amounts represent a reasonable forecast of just compensation in light of the anticipated or actual harm suffered by Metro and caused by a breach or default on Contractor's part. Metro may deduct such damages from any amount due or which may become due, or, if not so deducted, the amount of such liquidated damages shall be due and collectible from the Contractor or the Contractor's Surety, from the variable portion of the compensation due, within fifteen (15) days of service of notice by Metro that liquidated damages have been imposed. This remedy shall be in addition to, and not a waiver or surrender of, any other rights or remedies Metro may have under this Contract or any provision or provisions of law.

## **ARTICLE 11 -- METRO'S RIGHTS AND REMEDIES FOR DEFAULTS IN PERFORMANCE**

- A. Metro's Rights and Remedies for Contractor's Default which results in Liquidated Damages: For each default by Contractor that results in liquidated damages pursuant to Article 10A of these General Conditions Metro shall have the unconditional right to all of the following remedies, unless within twenty-four (24) hours after written notice of such default has been served upon both Contractor and Contractor's Surety, Contractor or Contractor's Surety, cures or remedies such default or gives Metro reasonable assurances that the default will be promptly cured or remedied and Metro, in its sole discretion, deems such assurances as satisfactory:
1. Equitable Remedies: For each default under Article 11A, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or material used by Contractor in the performance of this Contract.
  2. Liquidated Damages: As an additional remedy for each default under Article 11A, Metro is entitled to liquidated damages, as provided in Article 10.
  3. Actual Damages: For each event of default under Article 11A which lasts more than twenty-four (24) hours, Metro shall be entitled to recover its actual damages for the period of default extending beyond the twenty-four (24) hour period. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 25.
  4. Immediate Termination or Suspension of Contract: For each default under Article 11A that extends beyond seventy-two (72) hours, Metro shall be entitled to terminate or suspend the Contract immediately and without the necessity of further prior notice to Contractor. In such a case, Metro shall provide Contractor and Contractor's Surety with written notice that it has terminated or suspended the Contract pursuant to this Section.
- B. Metro's Remedies for Defaults Other than Defaults in Article 11A: For each default other than a default under Article 11A of these General Conditions, Metro shall have the unconditional right to one or more of the following remedies to the extent permitted by law, unless, within thirty (30) days after written notice of such default has been served upon both Contractor and Contractor's Surety, Contractor or Contractor's Surety cures or remedies such default, or gives Metro reasonable assurances that the default will be promptly cured or remedied and Metro, in its sole discretion, deems such assurances as satisfactory:
1. Equitable Remedies: For each default under Article 11B, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or material in the custody, possession or control of Contractor.
  2. Actual Damages: As an additional remedy for each default under Article 11B, Metro shall be entitled to recover its actual damages during all periods of default. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 25. No liquidated damages remedy shall apply to defaults under this Section.
  3. Termination or Suspension of Contractor's Performance of the Contract: For each default under Article 11B that extends beyond thirty (30) days, Metro shall be entitled to terminate or suspend Contractor's performance of the Contract in accordance with Section C of this Article.

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

1. To terminate or suspend the Contract other than in the case of immediate termination or suspension pursuant to Section A(4) of Article 11 of these General Conditions, Metro must notify in writing both Contractor and Contractor's Surety of Metro's intent to terminate or suspend the Contract. Within ten (10) days after service upon Contractor and Contractor's Surety of Metro's notice of intent to terminate or suspend the Contract, Contractor or Contractor's Surety shall either:
  - (a) Cure or remedy any default; or
  - (b) Discontinue its work on the Contract or such part thereof as Metro shall designate.
2. If Contractor does not cure or remedy each default after it has received Metro's service of notice of intent to terminate or suspend the Contract, Contractor's Surety may, at its option, assume full and complete performance of the Contract or the portion thereof that Metro has ordered Contractor to discontinue, and Contractor's Surety may perform the same or may subcontract such work to a contractor or contractors acting on behalf of Surety; provided, however, that Contractor's Surety shall exercise its option and begin performance of the work, if at all, within ten (10) days after Contractor's Surety is served with a copy of the written notice of termination or suspension. Contractor's Surety shall be paid by Metro for all work performed in accordance with and subject to each and every term of the Contract and Contractor's Surety shall be subject to each and every term and condition of the Contract.
3. If Contractor does not cure or remedy each default within the time allowed herein, and if Contractor either does not have a surety or the Contractor's Surety elects not to exercise its option under this Section C of this Article, then this Contract shall terminate at the point in time that Contractor's Surety fails to begin performance pursuant to this Section C of this Article. For one hundred twenty (120) days from the date Contractor ceases to provide service Contractor or Contractor's Surety shall make available and provide to Metro all tractors, trailers, front end loaders, other rolling stock, drop boxes, containers and other attendant equipment used or available for use in carrying out the Contract at the time Contractor ceased or ceases to provide service. In such a case, Metro shall pay Contractor for use of all such equipment at average local market lease rates for substantially equivalent used equipment. This provision shall survive termination of the Contract.

D. Metro's Remedies If Contractor Becomes Insolvent, Dissolved, Bankrupt, Files For Bankruptcy Or Makes A General Assignment For Creditors: The parties agree that if Contractor becomes insolvent, is dissolved, files for bankruptcy, is adjudged bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such an event could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Metro shall be entitled to make written request of Contractor, Contractor's successor in interest and Contractor's Surety for adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor, Contractor's Surety or Contractor's successor in interest to comply with such request within ten (10) calendar days of its service shall entitle Metro to terminate or suspend Contractor's performance of the Contract pursuant to Section C of Article 11 of these General Conditions. This Contract shall not survive, but instead shall be immediately terminated by, the appointment of any trustee or receiver for Contractor, which appointment rests upon the insolvency of Contractor.

E. Procedures and Remedies for Termination Under Force Majeure:

1. In the event that any force majeure event results in the closure of the facility for more ten (10) days, Metro shall have the right, in its sole discretion, to immediately terminate this Contract. In the event that Metro chooses to terminate the Contract under this Section, Metro shall serve Contractor with written notice of such intent and shall reimburse Contractor for all actual costs which Metro determines Contractor has incurred in performing the Contract prior to service upon Contractor of the notice to terminate plus an amount equal to ten percent (10%) of such costs less the total payments which Metro has paid Contractor prior to service of the notice of termination upon Contractor.
2. It shall also be a condition precedent to any payments under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the notice of termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) that it will make to Contractor, which payment(s) may include installment payments over an extended period of time that may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

F. Procedures and Remedies for Metro Termination for the Convenience of the Government: Metro shall have the option, exercisable in its sole discretion, to terminate this Contract without cause on the third anniversary of the start of this Contract upon sixty (60) days prior written notice. Upon such termination, Metro shall only be obligated for payments due under this Contract for work performed up to the effective date of such termination.

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

**ARTICLE 12 -- BASIS AND METHOD OF PAYMENT**

A. Payments:

1. On or prior to the tenth day of each month, Contractor will submit to Metro a billing that indicates the number of tons of Acceptable Waste received, waste transferred for disposal, and Recovered Material at the transfer station(s) pursuant to the Contract in the previous month. Contractor's monthly billing shall also indicate the tonnage and dollar amounts, as appropriate, for all items described in this Article based on the information available to Contractor at the time of such billing and in a format approved by Metro. For each calendar month just completed, the number of tons of Acceptable Waste received at the transfer station, the number of tons of Recoverable Waste, and the number of tons of Recovered Material shall be determined by the Metro scalehouses and calculated pursuant to the Contract Documents. Based on such calculations and the provisions of this Article, Metro shall adjust Contractor's billing, as appropriate, prior to making payment to Contractor.
2. The Contractor shall furnish to Metro such additional detailed information as set forth in these Contract Documents (including records from the Contractor) and as Metro may request to aid in the preparation of monthly payments. No later than the 25<sup>th</sup> day of each month, Metro will pay Contractor for the Metro-approved value of the work less any previous payments.

3. The parties acknowledge that no more than fifty (50) percent of annual payments received by Contractor under this Agreement shall be Variable Payments. On a quarterly basis, and at its sole discretion, Metro shall reconcile the amount of Fixed Payments and Variable Payments that Contractor has received during that contract year. If the Variable Payments received by Contractor to date in the contract year exceed the amount of Fixed Payments received by Contractor, Metro may withhold a portion of the Variable Payments otherwise due to Contractor in such amount as is necessary to ensure that Variable Payments do not exceed Fixed Payments. If Metro has withheld any such Variable Payments from Contractor and thereafter finds, at a subsequent reconciliation, that Fixed Payments exceed Variable Payments and that Metro does not have to make any further reduction in Variable Payments, then Metro shall make additional Variable Payments to Contractor in an amount not to exceed the amount of Variable Payments previously withheld by Metro; provided, that in no event shall total annual Variable Payments exceed total annual Fixed Payments.
4. If, pursuant to Section A(3) of this Article, Metro withholds a portion of the Variable Payments otherwise due to Contractor, then either Party may immediately initiate negotiations to amend this Contract as needed to ensure that future Variable Payments not exceed future Fixed Payments. If either Party requests such negotiations, both Parties shall conduct such negotiations in good faith.

**B. Percentage Price Adjustment:**

1. The Fixed Payments, the per ton price for the Variable Payment for Waste Transfer, the Recovery Credit, the Bonus Recovery Credit, the per ton prices for the Variable Payments for Processing Source Separated Materials, and the per ton and per overload amounts of the Variable Compaction Maximization Adjustment shall be adjusted up or down on an annual basis beginning on July 1, 2006, to reflect changes in the cost of doing business as measured by the percentage price adjustment.
2. The following formula will be used to calculate the percentage price adjustment:

$$AI = ((CPI_X - CPI_B) / CPI_B) \times PA\%$$

AI = Percentage price adjustment  
CPI<sub>X</sub> = Consumer Price Index average for the current year  
CPI<sub>B</sub> = Consumer Price Index average for the previous year  
PA% = Percentage price adjustment proposed by the Contractor in its Proposal, not to exceed 75%

The Consumer Price Index (CPI) will be based on the index entitled "Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, all items index; West urban, Size A" published by the United States Bureau of Labor Statistics (BLS). The CPI average for a given year will be a twelve (12) month average from January through December. For example, to calculate the first percentage price adjustment, which will be effective on July 1, 2006, CPI<sub>X</sub> shall be calculated by adding the published monthly CPI for January through December 2005, dividing by twelve (12), and rounding the result to the third decimal place (i.e., 0.1 percent); and CPI<sub>B</sub> will be calculated by adding the published monthly CPI for January through December 2004, dividing by twelve (12), and rounding the result to the third decimal place (i.e., 0.1 percent).

3. Percent changes in the CPI shall be calculated using 1982–84 as the base year until the BLS publishes data on a new base period. Calculations shall be made from data on the new base from that time forward.

4. If the BLS series specified above is discontinued, the contracting parties shall agree upon a substitute series by November 1 of any calendar year. If BLS designates an index with a new title and/or code number or table number as being the continuation of the index cited above, the new index will be used. If the specific index "West urban, Size A" is discontinued but the "All Urban Consumers" index remains, this latter index will be used. Otherwise, the parties shall agree upon a substitute.
- C. Fixed Annual Payment for Waste Transfer: Each year, Metro shall pay Contractor a fixed amount for providing basic waste transfer services for the entire year. The amount of such payment shall be as provided on the Price Schedule. The Fixed Annual Payment for Waste Transfer shall be made in twelve equal monthly disbursements.
- D. Fixed Annual Payment for Waste Recovery: Each year, Metro shall pay Contractor a fixed amount for providing basic waste recovery services for the entire year. The amount of such payment shall be as provided on the Price Schedule. The Fixed Annual Payment for Waste Recovery shall be made in twelve equal monthly disbursements.
- E. Variable Payment for Waste Transfer:
1. Each month, Metro shall pay Contractor a variable payment for each additional ton of Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) accepted at MCS from the start of the contract year through the end of that month that exceeds the sum of (1) 18,000 times the number of months that have passed since the start of the contract year, and (2) the number of tons of Acceptable Waste accepted at MCS for which a variable payment has been made in a previous month of the contract year. The per ton amount of such payment shall be as provided on the Price Schedule.
  2. Each month, Metro shall pay Contractor a variable payment for each additional ton of Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris and wood waste) accepted at MSS from the start of the contract year through the end of that month that exceeds the sum of (1) 17,000 times the number of months that have passed since the start of the contract year, and (2) the number of tons of Acceptable Waste accepted at MSS for which a variable payment has been made in a previous month of the contract year. The per ton amount of such payment shall be as provided on the Price Schedule.
- F. The Variable Payment for Waste Recovery, or Alternatively, the Disposal Cost Reimbursement:
1. Recovery Credit: For each ton of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) above the Annual Base Recovery Level, Metro shall pay Contractor a Recovery Credit of \$33.78. The per ton amount of the Recovery Credit shall be annually adjusted pursuant to Section B of this Article. Monthly disbursement of Recovery Credits, if any, shall be as follows:
    - a. Each month, Metro shall pay Contractor a variable payment for each ton of material that Contractor recovers from incoming Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable

- organic waste) from the start of the contract year through the end of that month that exceeds the sum of (1) 850 times the number of months that have passed since the start of the contract year, and (2) the number of tons of material at MCS for which a variable Recovery Credit payment has been made in a previous month of the contract year.:
- b. Each month, Metro shall pay Contractor a variable payment for each ton of material that Contractor recovers from incoming Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris and wood waste) from the start of the contract year through the end of that month that exceeds the sum of (1) 850 times the number of months that have passed since the start of the contract year, and (2) the number of tons of material at MSS for which a variable Recovery Credit payment has been made in a previous month of the contract year.
  - c. Additional Credit for Reuse: Metro shall pay Contractor an additional 10% of the Recovery Credit for each ton of material delivered to a third party for reuse, as opposed to material delivered to third parties for recycling or use as fuel. For the purpose of this subparagraph, material salvaged by employees of Contractor or Metro shall not be considered material delivered for reuse.
2. Bonus Recovery Credits: Each month, subject to the availability of funds as described later in this paragraph, Contractor shall be eligible to receive a Bonus Recovery Credit for each ton of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) for which the Contractor has received a Recovery Credit payment pursuant to section F(1) of this Article. For such tons, if the Material Recovery Level exceeds Contractor's Recovery Guarantee, then Metro shall pay to Contractor a Bonus Recovery Credit for each ton of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) above the number of tons of Recovered Material needed to meet Contractor's Recovery Guarantee in that month. The per ton amount of the Bonus Recovery Credit shall be as provided in the Price Schedule, and as annually adjusted pursuant to Section B of this Article. Each Metro fiscal year, Metro shall include in its operating budget a total amount of funds available for the payment of Bonus Recovery Credits and shall inform the Contractor of the amount so budgeted on July 1 of each year of the Contract. Each Metro fiscal year, Metro shall only be obligated to pay Bonus Recovery Credits until such budgeted funds have been exhausted.
  3. Disposal Cost Reimbursement: Each month, if the Material Recovery Level is less than Contractor's Recovery Guarantee, then Contractor shall pay Metro a Disposal Cost Reimbursement for each additional ton of material that Contractor would have recovered had it achieved Contractor's Recovery Guarantee. The per ton amount of the Disposal Cost Reimbursement shall be equal to the per ton amount of the Recovery Credit. Any reimbursements made by Contractor under this subsection shall be deposited into the Metro account provided for payment of Recovery Credits, and the Contractor shall thereby have the opportunity to earn back such payments in future months.

Example: Contractor's Recovery Guarantee is 25%. Total incoming Recoverable Waste is 5,000 tons. Contractor must recover 1,250 tons of material. If Contractor recovers only 1,200 tons,



Metro will deduct from its monthly payment to the Contractor an amount equal to 50 (the number of guaranteed tons not recovered) times the Recovery Credit.

- G. The Variable Payment for Processing Source Separated Materials: Each month, Metro shall pay Contractor for each ton of source separated materials received at the transfer station for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste. The per ton amount of such payments shall be as provided on the Price Schedule, and as annually adjusted pursuant to Section B of this Article.
- H. The Variable Proceeds from the Sale of Recovered Material: Each month, Contractor shall be entitled to retain all proceeds from its sale of Recovered Material to third parties. Contractor shall report the amount of such proceeds as part of Contractor's monthly billing required under Section A of this Article.
- I. The Variable Compaction Maximization Adjustment:
1. Calculation of Compaction Bonus or Deduction. Metro shall adjust the Contractor's monthly payment based on average outgoing disposal waste payloads produced during the month as provided by the following formula:  
  
Base Tonnage (BT) = 29 tons x (Number of loads of waste transported for disposal at the Disposal Site in the previous month)  
Tons Transported (TT) = (Number of tons of waste transported for disposal in the previous month)  
Adjustment Tons (AT) = TT – BT  
If AT is greater than zero, Contractor shall receive a bonus adjustment equal to AT times \$8.01. If AT is less than zero, Metro shall deduct from its payment to Contractor a deduction adjustment equal to AT times \$16.02.
  2. Calculation of Overload Deduction. Metro shall make an additional deduction to its monthly payment to Contractor based on the number of outgoing disposal waste payload overloads during the previous month. "Overloads" are defined as those trailers that require load redistribution or partial unloading to achieve a road legal payload. The overload deduction shall be equal to the number of overloads per month times \$19.58.
- J. The Variable Payment for Maintenance Costs.
1. Routine Maintenance of Metro Equipment and Facilities.
    - a. Compactor Parts. Contractor shall be reimbursed for 50% of the costs of the parts necessary to perform routine maintenance of all preload compactors used to prepare a load of waste, including oil used for complete oil replacement. This subsection shall not apply to labor costs associated with compactor maintenance, which costs shall be the responsibility of the Contractor under subsection J(1)(b) of this Article.
    - b. All Other Parts and All Labor Costs. Routine maintenance of all equipment and facilities shall be the responsibility of the Contractor. Contractor shall not be reimbursed for the cost of parts and labor, including all associated costs, necessary to perform such routine maintenance, other than as provided in subsection J(1)(a) of this Article. For purposes of this Contract, routine maintenance shall mean the service and activities generally associated with normal care of the equipment and

facilities as suggested by the manufacturer, including but not limited to cleaning, calibrating, oiling, lubricating, replacing filters and drive belts, welding, adjusting, inspecting, preventative maintenance, maintenance tracking and record keeping, and providing and maintaining spare parts inventories.

2. Other Repair and Replacement Costs for Metro Equipment and Facilities: This section describes the responsibilities for the costs of the repair and replacement of parts necessary to keep the equipment and facilities operating or to return the equipment and facilities to an operational state, including the costs of replacing parts of the equipment and facilities that have become unusable as a result of normal wear and tear, except parts necessary in the course of routine maintenance as described in Section J(1)(b) of this Article, for which the Contractor shall be responsible for 100% of the cost.
  - a. Material Recovery Equipment. Contractor shall be responsible for 65% of all costs associated with the repair or replacement of parts necessary to keep the material recovery equipment operating or to return the equipment to an operational state, up to a maximum of \$20,000. Metro shall reimburse Contractor for 35% of such costs, until the amount for which Contractor is responsible has reached \$20,000, at which point Metro shall reimburse Contractor for 100% of the remaining costs.
  - b. All Other Equipment and Facilities. Contractor shall be responsible for 50% of all costs associated with the repair or replacement of parts necessary to keep the transfer equipment and facility operating or to return the equipment and facilities to an operational state, up to a maximum of \$20,000. Metro shall reimburse Contractor for 50% of such costs, until the amount for which Contractor is responsible has reached \$20,000, at which point Metro shall reimburse Contractor for 100% of the remaining costs.
  - c. All reimbursements under this Section J(2) of this Article shall be made pursuant to, and in accordance with, all of the force account procedures in Section C of Article 14, but excluding the costs permitted in Section C(3) of Article 14.
3. Metro's Option to Effect Repair or Replacement If Costs Likely to Exceed \$20,000: If the repair or replacement of parts necessary to keep Metro's transfer equipment and facilities operating or to return the equipment to an operational state has, or is likely to, cost more than \$20,000 for a single repair or replacement, then Metro reserves the right to effect such repairs through a third party or the Contractor. If Metro uses a third party, Contractor shall reimburse Metro for Contractor's share due pursuant to Section J(2) of this Article. If Metro uses Contractor, repair costs (excluding Contractor's share) shall be reimbursed pursuant to and in accordance with all of the force account procedures in Section C of Article 14, but excluding the costs permitted in Section C(3) of Article 14.
4. Metro shall not be responsible for any repair or equipment replacement costs resulting from Contractor's negligence, misuse or abuse of the equipment and facilities provided by Metro, including but not limited to any damage caused by Unacceptable Waste being received at the facility.
5. Capital Improvement: In the event that any capital improvements to a transfer station are required for any reason other than Contractor's fault, Contractor, with the approval of Metro's Contract Manager, shall effect the same if the cost thereof is less than \$25,000 and Contractor shall be reimbursed for such costs pursuant to and in accordance with all of the force account procedures of Article 14C of these General Conditions except for item #3 of Article 14C.

K. Petition for Increased Costs Due to Change in Law:

1. For purposes of this Article and Article 14 of these General Conditions, the term “change in law” means any new or revised laws, statutes, rules, regulations and ordinances, including, without limitation, a final judicial determination of any law, statute, rule, regulation or ordinance rendered by a court of competent jurisdiction in the state of Oregon.
2. Upon petition of Contractor and subject to approval of Metro as described in this Section, Metro shall pay, subject to the limitations, conditions and procedures stated below, one hundred percent (100%) of Contractor’s reasonable, actual increased costs of performing the Contract if such increased costs are directly attributable to a change in law which increases the cost of Contractor’s performance of the Contract, and if such change in law becomes effective at any time after the deadline for submission of Proposals.
  - (a) Local and County Law — Limitations: Metro shall reimburse Contractor, subject to the terms and conditions of this Section K of this Article, for reasonable, actual increased costs due to changes in local and county laws if and only if such changes are applicable to all businesses in the relevant county or local area. Metro shall not compensate Contractor for any increased costs due to changes in local or county laws to the extent that such laws are applicable only to Contractor, Contractor’s activities in connection with this Contract or persons or entities engaged in the waste management or transportation industries.
  - (b) Federal, State or Local Taxes, Fees or Surcharges: Metro shall not be obligated to reimburse Contractor for any cost increases or expenses Contractor may incur due to any increase in the rates of federal, state or local taxes, fees or surcharges of whatever nature. Metro shall not reimburse Contractor for any increases in state weight and mile taxes or fees.
3. General Conditions and Limitations on Reimbursement: Reimbursement shall be allowed under this Section K of this Article only for any costs incurred which are the least costly means of ensuring full compliance with, and which are directly necessitated by, the relevant change in law. Contractor must fully demonstrate and document the need for the requested reimbursement to Metro’s satisfaction and approval as a condition precedent to Contractor’s right to any payment under this Section.
4. Cancellation of Reimbursement: Metro may at any time cancel any reimbursement made under this Section K of this Article that was made in error. Contractor shall at all times keep Metro informed as to whether any reimbursement remains necessary. Also, upon Metro’s request, Contractor shall immediately provide Metro with all documents or information or other evidence in Contractor’s possession or control which Metro requests to determine whether there is a continuing need for any and all reimbursements made under this Section.
5. Schedule of Payment of Reimbursement: Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s), which may include installment payments over an extended period of time that may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor’s reasonable and actual financing costs.

L. Deductions from Payments for Reduced Costs due to Changes in Law:

1. Subject to the conditions stated below, Metro shall be entitled to reduce payments to Contractor to reflect one hundred percent (100%) of the reduced costs of Contractor’s performance under the Contract attributable to any change in law for which Contractor would be entitled to

reimbursement of increased costs under Section K of this Article if such a change in law resulted in increased costs.

2. Metro may at any time serve Contractor with notice and explanation of Metro's intent to reduce payments pursuant to this Section L of this Article. Within thirty (30) days of service of such notice, Contractor shall respond in writing to such notice and such written response shall state whether or not Contractor believes that any deductions from payments due Contractor are justified by the change in law and shall specify any reductions in the costs of performing the Contract as a result of the relevant change in law. Contractor shall fully document and otherwise support its response to Metro's notice under this Section.
  3. Upon written petition of Contractor, Metro may at any time cancel reductions made under this Section L of this Article if Metro determines that the need for the reduction has expired or that a reduction was made in error. Contractor shall at all times keep Metro informed as to both when any reduction due to a change in law is appropriate, and as to when any reduction is no longer appropriate.
- M. No waiver: Partial payments shall not constitute acceptance by Metro of Contractor's work nor be construed as a waiver or surrender of any right or claim by Metro in connection with the work.
- N. Submittal of documentation: Contractor shall submit its invoices with a detailed cost breakdown in accordance with procedures approved by Metro.
- O. Conditions Precedent to Payment: It is a condition precedent to Contractor's right to any payments under the Contract that all bills for labor and materials, including labor and materials supplied by or to Contractor, are paid in full; and, if requested by Metro, Contractor shall submit receipted invoices and lien waivers as evidence of payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Contract, if requested by Metro, Contractor shall submit a lien waiver before any payment and a final lien waiver stating Contractor has been paid in full prior to the final payment.
- P. Final payment:
1. Final payment shall fall due only after Contractor shall:
    - (a) Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales and employee withholding taxes;
    - (b) Pay and obtain release of record of all liens and all other encumbrances which relate to the services performed under this Contract;
    - (c) Deliver to Metro written releases of all rights to file liens against any sites, signed by each subcontractor and material provider who performed labor or furnished material in connection with the work; and
    - (d) Deliver to Metro its written undertaking, with sureties acceptable to Metro, to:
      - (i) Promptly pay and obtain a release of record as to liens in connection with the work covered by this Contract; and
      - (ii) Defend, indemnify and save Metro harmless from any liability or expense because of any such lien or the enforcement thereof.
  2. Final payment shall be deemed to occur when Contractor negotiates an instrument from Metro which instrument Metro has designated as final payment.

3. When final payment occurs, Contractor warrants that it has received payment in full for its performance of the Contract and waives all further claims against Metro in connection with the Contract. Contractor's acceptance of final payment by Metro shall be conclusive proof of Metro's full and complete performance of the Contract.
- Q. Nothing in this Article is meant to establish an exhaustive list of all the conditions precedent to payment in this Contract. Any and all conditions precedent to payment established by this Contract but not contained in this Article remain valid.

### **ARTICLE 13 -- RETAINAGE**

- A. Metro shall retain five percent (5%) of all unit price payments and fixed payments to Contractor until the total amount of such retainage equals \$50,000 per transfer station. In the alternative, at Contractor's option, Contractor may provide Metro with all or part of the total \$50,000 in retainage for one or both transfer stations in a lump sum. If Contractor elects to pay only part of the retainage in a lump sum, Metro shall retain five percent (5%) of all unit price payments and fixed payments to Contractor until the total amount of retainage equals \$50,000 per transfer station.
- B. This retainage shall not be returned to Contractor until completion of the performance of this Contract, including all extensions to its term. The retainage will be placed in an interest-bearing account, pursuant to ORS 279.420. Interest shall accrue to the Contractor and be returned once the balance of the account reaches the limits stated herein.
- C. If at any time the total amount of retainage ever falls below \$50,000 per transfer station due to deductions from retainage allowed by the Contract, Metro shall be entitled to retain five percent (5%) of all unit price payments and fixed payments to Contractor until the total amount of such retainage equals \$50,000 per transfer station.

### **ARTICLE 14 -- CHANGE ORDERS AND ADDITIONAL OR DELETED WORK**

- A. Change Orders and Payment or Credit for Additional Work:
  1. For purposes of this Article, the term "additional work" means work which is in addition to the work required to be performed under the original Contract or any Change Orders thereto, but does not include any work required to comply with any change in law or any change in a permit or permit condition.
  2. All requests for payment for additional work shall be made under the conditions and procedures of this Article, except to the extent that the Contract Manager finds that such work is reimbursable pursuant to Article 12J of these General Conditions.
  3. No Change Order to this Contract shall be enforceable unless made in writing and signed by Contractor and Metro. All Change Orders shall be numbered consecutively in chronological order.
  4. Nothing in this Article is intended to negate or lessen any other preconditions or procedures for payment or reimbursement as provided by any other provisions of the Contract.
- B. Request for Proposal for Additional Work:
  1. Within fourteen (14) calendar days after receipt of a RFP for additional work from Metro, Contractor shall submit to Metro an itemized proposal stating the actual and reasonable costs to

Contractor for performing such additional work, a schedule for performing such work, and the effect, if any, on Contractor's performance of the existing Contract work by reason of the additional work. Contractor's proposal shall be based on the least costly method for performing the additional work in accordance with all provisions of the Contract.

2. No RFP by Metro shall be construed as authorization for Contractor to perform the additional work covered by such RFP. To obtain authorization to perform any additional work, Contractor must be notified in writing by Metro that Contractor is ordered to proceed with the relevant additional work. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro accepts Contractor's proposal then the parties shall enter into a written Change Order signed by both parties to document the amendment or modification of the Contract. If Metro rejects Contractor's proposal but orders the additional work to be performed, Contractor shall perform the additional work pursuant to the force account procedures provided in Section C of this Article. If Metro does not order Contractor to perform the relevant work, Contractor shall not be entitled to any reimbursement for the work in Contractor's proposal.

C. Amount of Payment for Force Account Work:

1. If Metro and Contractor cannot agree on the amount of payment that Contractor should receive to perform additional work prior to the Contractor beginning the work, and Metro directs in writing that the work be done on a force account basis, then the Contractor shall furnish labor, equipment and material necessary to complete the work in a satisfactory manner and within a reasonable period of time.
2. For such additional work performed (the "force account work"), payment will be made for the documented actual cost of the following:
  - (a) Labor, including forepersons who are directly assigned to the force account work (actual payroll cost, including wages, customary fringe benefits, labor insurance and labor taxes as established by law). No other fixed labor burdens will be considered unless approved in writing by Metro;
  - (b) Material delivered and used on the force account work, including sales tax, if paid for by the Contractor or its subcontractor;
  - (c) Equipment rental, or equivalent equipment rental, including necessary transportation for items having a value in excess of \$100;
  - (d) Additional bond, as required and approved by Metro; and
  - (e) Additional insurance (other than labor insurance) as required and approved by Metro.
3. Payment to the Contractor for force account work shall also include a fixed fee of ten percent (10%) of the cost of the items in Section C(2)(a), (b) and (c), of this Article and a fixed fee of five percent (5%) to the cost of the items in Section C(2)(d) and (e) of this Article.
4. Payment to the Contractor for force account work shall also include an additional fixed fee of ten percent (10%) for the administrative handling of portions of the work that are required to be performed by an approved subcontractor, however, no additional fixed fee will be allowed for the administrative handling of work performed by a subcontractor of a subcontractor, unless by written approval of Metro.

5. The additional fixed fees described in Sections C(3) and (4) of this Article shall be considered to be full compensation for the force account work, covering the cost of general supervision, overhead, profit and any other general expense. In addition, if the force account work permits the Contractor to achieve increased material recovery (in the sole opinion of Metro), Contractor shall not be entitled to additional recovery credits pursuant to Article 12 of these General Conditions for Recovered Material in excess of the average monthly recovered tonnage levels over the previous five (5) months. In such a case, however, Contractor may keep the revenue from the sale of any such additional Recovered Material as an incentive to increase material recovery.
6. Metro reserves the right to furnish to Contractor such material and equipment as it deems expedient for completion of any force account work, and the Contractor shall have no claims for profit or added fees on the cost of such material and equipment.
7. For the purpose of calculating payment for use of equipment as provided in Section C(2)(c) of this Article, rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs and renewals, and no further allowances will be made for those items, unless specific agreement to that effect is made.
8. The Contractor shall maintain records in such a manner as to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations. The Contractor shall furnish Metro report sheets in duplicate of each day's force account work no later than the working day following the performance of said work. The daily report sheets shall itemize the material used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor or others. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked and the size, type and identification number of equipment and hours operated.
9. For the purpose of calculating payment for material as provided in Section C(2)(b) of this Article, such material charges shall be substantiated by valid copies of vendors' invoices and such invoices shall be submitted with the daily report sheets, or, if not available, then with subsequent daily report sheets. The Contractor or its authorized agent shall sign said daily report sheets.
10. To receive partial payments and final payment for force account work, the Contractor shall submit, in a manner approved by Metro, detailed, completed and documented verification of the Contractor's and its subcontractors' actual current costs involved in the force account work. Such costs shall be submitted within thirty (30) days after said work has been performed. No payment will be made for work billed and submitted to Metro after the 30-day period has expired.
11. Except in an emergency that endangers life or property, no extra or additional work shall be performed by the Contractor unless the parties have agreed to a written Change Order.

D. Deductions from Payments for Deleted Work:

1. All deductions from payment for deleted work shall be made under the conditions and procedures of this Article.
2. For purposes of this Article, the term "deleted work" means work which is deleted from the work required to be performed under the original Contract or any Change Order thereto, but does not include any work which need not be performed due to any change in law or change in a permit condition.

E. Request for Proposal for Deleted Work:

1. Within fourteen (14) calendar days after receipt of a RFP for deleted work from Metro, Contractor shall submit to Metro an itemized proposal stating the actual and reasonable costs which would be avoided by deleting work called for in the Contract, a schedule for deleting the relevant work and the effect, if any, on Contractor's performance of the remaining Contract work by reason of the deleted work. Contractor's proposal shall be based on all current and future avoided costs to Contractor for deleting the work and any profit margins or markups that Contractor's proposal includes for such work.
2. No RFP by Metro shall be construed as authorization for Contractor to delete the work covered by such RFP. Contractor shall not delete any work unless and until a written order from Metro authorizing such deletion is served upon Contractor. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro accepts Contractor's proposal then the parties shall enter into a written Change Order signed by both parties to document the amendment or modification of the Contract. If Metro rejects Contractor's proposal but orders the work to be deleted, Contractor shall delete the work and Metro may make all appropriate deductions from payments according to the formula below regardless of whether Contractor has complied with Metro's order.

F. Amount of Deductions for Deleted Work:

1. The amount of any deductions from payments for deleted work shall be equal to all current and future avoided costs resulting from the deleted work plus any profit margin or markups which Contractor's proposal includes for such work. If the latter profit margin or markup figures are unavailable, the parties hereby agree that Contractor's profit margin on all work shall be deemed to be ten percent (10%) of the actual cost of performing the work.
2. At Metro's request, Contractor shall submit to Metro for review complete records of material and labor usage prior to and following Metro's order that work be deleted. If Contractor and Metro cannot agree on the amount of the deduction for the relevant deleted work, that matter shall be submitted to arbitration pursuant to Article 25 of these General Conditions.

G. Schedule of Payments: Metro shall make any payments due to the Contractor under this Article as soon as reasonably possible after the work is performed.

H. Modifications to MSS or MCS:

1. Metro's Modifications: Metro shall have the right to make changes to MSS or MCS, including changes to transfer station equipment. If any such modification affects, or will affect, Contractor's costs of operation and maintenance of the affected transfer station, Contractor shall identify such costs and the parties shall negotiate how such change will increase or decrease Metro's payment to Contractor and shall document such changes in a Change Order. If the parties are unable to agree on such changes, then Metro may proceed with such changes and shall increase its payments to Contractor in accordance with Section C of this Article or shall decrease its payments to Contractor in accordance with Section F of this Article. If Contractor is dissatisfied with the amount that Metro increases or decreases such payments then Contractor shall submit such dispute to arbitration pursuant to Article 25 of these General Conditions.



2. Contractor's Modifications: Contractor shall not remove or modify any part of MSS, MCS or transfer station equipment without the prior written consent of Metro. Contractor is encouraged to suggest improvements to the transfer stations and transfer station equipment that will result in cost savings or increased recovery, particularly during Metro's annual Capital Improvement Plan review. Upon the implementation of any cost-saving improvement first recommended by Contractor, Metro will favorably consider Contractor's contribution in the course of any negotiations undertaken pursuant to Section H(1) of this Article.

**ARTICLE 15 -- METRO'S RIGHT TO WITHHOLD PAYMENT AND TO WITHDRAW FUNDS FROM RETAINAGE**

- A. Metro shall have the right to withhold payments due Contractor and to withdraw from funds held in retainage such sums as necessary to protect Metro against, and compensate Metro for, any loss or damage which may result from (1) negligence or unsatisfactory work by Contractor, (2) the failure by Contractor to perform or abide by any of Contractor's obligations under this Contract, or (3) claims against Contractor or Metro relating to Contractor's performance or work.
- B. Metro shall further have the right to withhold payments due Contractor and to withdraw from funds held in retainage for (1) damages caused by Contractor that have yet to be adjusted or resolved, (2) the failure of Contractor to make proper payment to Contractor's employees, material suppliers and subcontractors, or (3) the filing of any claim against Metro or Contractor.
- C. In no event shall amounts withheld from payment under this Article be construed to be amounts attributable to retainage. Metro's right to retain five percent (5%) of Contract payments under Article 13 of these General Conditions is in addition to Metro's right to withhold payments under this Article.
- D. Metro shall provide at least ten (10) days' written notice of its intent to withhold payments under this Article, and Contractor shall have the right to dispute such actions as provided in these Contract Documents.
- E. No action taken by Metro under this Article shall affect any of the other rights or remedies of Metro granted by any other provision or provisions of this Contract or by law, nor shall it relieve Contractor from any consequences or liabilities arising from Contractor's acts or omissions.

**ARTICLE 16 -- INDEMNIFICATION**

- A. Contractor agrees that for purposes of the Oregon Tort Claims Act (ORS 30.260 through 30.300) neither Contractor nor Contractor's officers, agents and employees, nor any of Contractor's subcontractors of any tier or their officers, agents and employees, are agents of Metro. Contractor for itself and its officers, agents, employees and its subcontractors of any tier and their officers, agents and employees will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300 and Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.
- B. Contractor shall indemnify and hold Metro harmless from and against any and all claims, causes of action, demands, suits, damages, penalties, charges, judgments, liabilities and losses of whatsoever character or kind (all hereinafter referred to as "claims") and all expenses arising from such claims including, but not limited to, attorneys' fees upon trial and upon appeal and any and all costs, if such

claims or expenses allegedly or actually arise or result from, directly or indirectly, or are in any way connected with:

1. The performance or nonperformance of any provision or requirement of this Contract by Contractor, its officers, employees, subcontractors of any tier, agents or servants;
  2. Any of the acts or omissions of Contractor, its officers, employees, subcontractors of any tier, agents or servants; or
  3. The failure of Contractor, its officers, employees, subcontractors of any tier, agents or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by Article 2F of the General Conditions.
- C. Contractor shall, upon demand of Metro and at Contractor's sole cost and expense, defend and provide qualified attorneys approved by Metro under service contracts acceptable to Metro to defend Metro, its officers, employees, agents and servants against any and all claims, causes of actions, suits, demands, damages, penalties, charges, liabilities, losses, awards of damages or judgments of whatsoever character or kind, arising or resulting from, directly or indirectly, or in any way connected with:
1. The performance or nonperformance of any provision or requirement of this Contract by Contractor, its officers, employees, subcontractors of any tier, agents or servants;
  2. Any of the acts or omissions of Contractor, its officers, employees, subcontractors of any tier, agents or servants at or in connection with the Work; or
  3. The failure of Contractor, its officers, employees, subcontractors of any tier, agents or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by Article 2F of the General Conditions.
- D. In any and all claims against Metro, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of insurance obtained by Contractor.

**ARTICLE 17 – PERFORMANCE AND LABOR AND MATERIALS BONDS, OR LETTER(S) OF CREDIT**

- A. The initial term of the Performance and Labor and Materials Bonds or Letter(s) of Credit shall commence upon the execution of the Contract. The amount of the Performance and Labor and Materials Bonds or Letter of Credit(s) shall be in the amount of \$1,000,000 per transfer station.
- B. Not later than sixty (60) days prior to each irrevocable Letter of Credit or Performance and Labor and Materials Bonds expiration, Contractor shall execute and deliver to Metro Performance and Labor and Materials Bonds on the forms bound herewith, or an equivalent irrevocable Letter(s) of Credit acceptable to Metro, which shall secure and be conditioned upon the full, faithful and complete performance of the Contract and prompt payment of all persons supplying labor and material for the performance of the Contract and other protection to Metro, as provided in such Bonds or Letter(s) of Credit.
- C. The surety or banking institution furnishing these Bonds or Letter(s) of Credit shall have a sound financial standing and a record of service satisfactory to Metro and shall have a rating of at least A

and be of the appropriate class for the relevant bond amount under Best’s Rating System and shall be authorized to do business in the state of Oregon. The Attorney-in-Fact (Resident Agent) who executes these Bonds on behalf of the Surety must attach a notarized copy of her or his Power of Attorney as evidence of her or his authority to bind the Surety on the date of execution of each Bond.

- D. Pursuant to the Contractor’s commitments under Article 25 of these General Conditions, Contractor shall also enter into an agreement with its surety, and shall provide Metro with a copy of such agreement at any time that it must provide Metro with any bonds or letter(s) of credit pursuant to Section B of this Article, in which Contractor’s Surety shall consent:
  - 1. To accept jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing arbitration proceeding pursuant to Article 25 of these General Conditions.
  - 2. To accept service of notice of the other party’s intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party and Contractor’s Surety, and such notice shall have the same effect as if the party had been personally served within the state of Oregon.
  - 3. That any decision of an arbitrator pursuant to Article 25 of these General Conditions shall be final, binding and enforceable upon the Contractor’s Surety and that proper venue for any judicial proceeding to enforce any decision or award made by such an arbitrator shall be exclusively in the county of Multnomah in the state of Oregon.
  
- E. Contractor shall from time to time take such additional actions and furnish to Metro such additional documents and instruments which Metro reasonably requests to secure performance of Contractor’s obligations under this Agreement. None of the requirements contained in this Article are intended to, nor shall they in any manner, limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

**ARTICLE 18 -- CONTRACTOR’S AND METRO’S LIABILITY INSURANCE**

- A. The Contractor shall provide and pay all costs for the insurance coverage designated in the table below by insurers subject to the approval of Metro. Insurance requirements may be met in whole by a qualified self-insurance plan. If Contractor is self insured, Metro shall enjoy all the rights and privileges of an additional insured.

**Designated Insurance Requirements**

**Limits**

1.	(a) Workers’ Compensation covering all employees who are engaged in any work under the Contract (State/Federal) (including subcontractors’ employees)	Statutory
	(b) The Contractor shall require its Workers’ Compensation carrier to provide Metro with an endorsement for waiver of subrogation.	Statutory
	(c) Employers’ Liability including bodily injury caused by disease.	Not less than \$1,000,000

2.	Commercial General Liability, and Protection and Indemnity, if applicable:	
	<p>(a) Contractors' Public Liability:</p> <p>(i) Bodily injury (inc. death) and Personal Injury</p> <p>(ii) Broad Form Property Damage and Broad Form Property Damage including Completed Operations, and shall include coverage for Explosion, Collapse and Underground.</p> <p>This insurance shall include contractual liability to cover the liability assumed by the Contractor under Article 16 of the General Conditions.</p>	\$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage
	<p>(b) Metro's and Contractors' Protective Liability:</p> <p>(i) Bodily injury (inc. death)</p> <p>(ii) Broad Form Property Damage and Broad Form Property Damage including Completed Operations, and shall include coverage for Explosion, Collapse and Underground.</p>	\$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage
3.	<p>Comprehensive Automobile Liability including Owned, Nonowned and Hired Vehicles and including MCS90, (if applicable) endorsement.</p> <p>(a) Bodily injury (inc. death)</p> <p>(b) Property damage</p>	\$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage
4.	Umbrella Coverage	to achieve a total coverage of \$10 million

- B. Before commencing work under this Contract, Contractor shall furnish Metro with certificates of insurance specified herein naming Metro as an additional named insured and showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and each such policy shall contain substantially the following statements:
1. This policy shall be considered as primary insurance and exclusive of any insurance carried by Metro and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that Metro may have other valid and collectible insurance covering the same risk;
  2. This policy shall not be canceled, reduced in coverage nor materially altered until after sixty (60) days' written notice of such cancellation, reduction or alteration in coverage shall have been received by Metro;

3. No act on the part of the insured shall affect the coverage afforded to Metro under the insurance covered by this certificate; and
  4. This policy consists only of insurance on an occurrence basis, not on a claims made basis.
  5. Additional insured status and 60 day cancellation must be physically endorsed to respective policies.
- C. Contractor shall immediately increase the amounts of insurance required by this Article to reflect any changes in Oregon Law so as to ensure that the insurance provided shall cover, at a minimum, the designated insurance requirements listed below, the maximum limits under the Oregon Tort Claims Act and any other applicable tort claims act.
- D. In case of any breach of any provision of this Article, Metro, at its option, may obtain and maintain, at the expense of the Contractor, such insurance as Metro may deem proper and may deduct the cost of such insurance from any monies that may be due or become due to the Contractor under this Contract.
- E. When activities of the Contractor are to be accomplished within a public or private right-of-way requiring special insurance coverage, Contractor shall conform to the particular requirements and provide the required insurance. Contractor shall include in its liability policy all endorsements that such an authority may require for the protection of the authority, its officers, agents and employees. Contractor also shall provide insurance coverage for special conditions, when required.
- F. Contractor shall maintain the above insurance at all times until completion of the Contract or until the termination date of the Contract, whichever is later.
- G. Maintenance of insurance by Contractor as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of Contractor under this Contract and Contractor may carry, at its own expense, such additional insurance as it deems necessary.
- H. Pursuant to Article 12 of these General Conditions, and to the extent allowed by that Article, Metro shall reimburse Contractor only for the actual increased cost of premiums that Contractor must pay to comply with insurance requirements not specified above which become effective after the deadline for submission of proposals. No other reimbursement for costs associated with increased insurance requirements will be allowed under Article 12 of these General Conditions.

#### **ARTICLE 19 – NEWS RELEASES AND MEDIA RELATIONS**

- A. Any and all news releases and interviews with news media representatives concerning the operations or facilities at MSS or MCS shall be scheduled and conducted by and through Metro.
- B. Contractor shall not issue news releases, conduct interviews with news media representatives or otherwise release or disclose to news media representatives any information concerning the operations or facilities at MSS or MCS without the prior consent of Metro. Contractor shall promptly notify Metro of the identity of any news media representative who requests disclosure of such information, and in no event shall such notice be provided more than one business hour after Contractor has received such a request. Metro, in its sole discretion, shall determine the response to any such request for disclosure of information in accordance with applicable law.
- C. Contractor's Spokesperson shall be available at Metro's request for interviews scheduled by Metro with news media representatives.

**ARTICLE 20 -- PERMITS AND REGULATIONS**

- A. Contractor shall obtain, maintain and pay for all permits, licenses, certificates, inspection fees and surcharges and other approvals required by law, both temporary and permanent. Any such fees shall be included in the prices proposed in Contractor's Proposal. The Contractor shall obtain any necessary business license required by law. Metro will cooperate fully in securing all permits that by law may be secured in the name of the property owner.
- B. Contractor shall be liable for all fines or civil penalties imposed by any regulatory agency for violations of permits, laws or regulations caused or allowed by Contractor. Metro shall not be liable for and shall not reimburse Contractor for payment of any such fines or civil penalties.

**ARTICLE 21 -- ROYALTIES AND PATENTS**

- A. Contractor shall pay all royalties and license fees related to the performance of this Contract.
- B. Contractor shall defend all suits or claims for any and all infringements of any patents which may occur in the performance of this Contract and shall save and hold Metro harmless from loss on account thereof; provided, however, that Metro shall be responsible for all such loss related to a particular process or product that is particularly specified for use by Metro unless Contractor had knowledge or information that such particular process or product might infringe a patent, in which event Contractor shall be responsible for loss on account thereof unless Contractor promptly and immediately provided such information to Metro.

**ARTICLE 22 -- TAXES AND FEES**

As between Metro and Contractor, Contractor shall be responsible and liable for payment of all federal, state, regional, county and local taxes, fees and surcharges of every form that apply to any and all persons, entities, property, income, equipment, material, supplies, structures or activities related to performance of the Contract including, but not limited to, any and all income taxes, real property taxes, excise taxes, sales and use taxes and highway reconstruction fees arising from or connected with the Contract. Any such taxes and fees, or any increases in such taxes and fees, shall be the responsibility of the Contractor with no increase in compensation from Metro.

**ARTICLE 23 -- TITLE TO WASTE**

Title to waste shall immediately pass to the Contractor once it has been accepted at the facility pursuant to the procedures contained in the specifications for MSS and MCS. Upon discovery of Unacceptable Waste other than recoverable materials, as listed in Section 9.0 of the specifications for both MSS and MCS, and medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, title to such waste shall immediately revert to the original generator/transporter, if identifiable.

Title to waste transfers from Contractor when either (a) the transport contractor breaks the seal on a trailer that has been loaded with waste after the seal has been affixed at the transfer station and before the trailer has been unloaded at the disposal site, at which time title to waste transfers to the transport contractor; or (b) the disposal contractor fails to indicate, in writing on the manifest accompanying the waste shipment and within 60 minutes after the load of waste is dumped at the disposal site, that the load of waste is suspicious waste or unacceptable waste, at which time title to waste transfers to the disposal contractor.

After any testing is performed on suspicious waste, title to such waste passes to the disposal contractor unless the results of such testing indicate that the waste is unacceptable.

#### **ARTICLE 24 -- MATERIAL, WORKMANSHIP, AND EMPLOYEES**

- A. All workmanship and material provided by Contractor shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. Contractor shall furnish evidence of the skill of their employees, subcontractors and agents upon the request of Metro.
- B. Contractor shall at all times enforce strict discipline and good order among its employees and all subcontractors. Contractor shall ensure that none of its employees, subcontractors or agents, nor any of its subcontractors' employees or agents, are permitted to participate in the performance of the work required under this Contract if any such person has recently consumed or is under the influence of alcohol or other drugs, nor shall Contractor's employees, subcontractors or agents, nor any of its subcontractors' employees or agents, be permitted to bring alcohol, drugs or firearms onto the premises of a transfer station.
- C. Contractor shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document. Contractor shall comply with Section 2.04.520 of the Metro Code regarding the use of recycled materials and products, particularly in the purchase of motor oil, antifreeze, and tires.

#### **ARTICLE 25 -- ARBITRATION**

- A. Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Contract.
- B. Subject to the conditions and limitations of this paragraph, any controversy or claim arising out of or relating to this Contract which remains unresolved after negotiations under Section A of this Article shall be exclusively settled by arbitration under the laws of the state of Oregon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All disputes shall be heard and decided by one arbitrator and all arbitration proceedings shall be held in Portland, Oregon. However, all disputes concerning Metro's right to the equitable remedy of specific performance shall not be subject to arbitration, but shall be decided exclusively by a court of competent jurisdiction in Multnomah County, Oregon, under the laws of the state of Oregon.
- C. Contractor agrees to consolidation of any arbitration between Metro and Contractor with any other arbitration involving, arising from or relating to this Contract or otherwise involving the transfer, transport, collection or disposal of waste by Metro. In the event that Metro determines, in its sole opinion, that the public interest requires a speedy resolution of any controversy or claim regardless of the amount, Metro shall have the option of electing resolution of the controversy or claim by the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association (Rules E-1 through E-10).
- D. Each party hereto and the Contractor's Surety accept jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing an arbitration proceeding pursuant to this Article. Each party hereto and the Contractor's Surety further agree to accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party and

Contractor's Surety, and such notice shall have the same effect as if the party had been personally served within the state of Oregon.

- E. Any decision of an arbitrator engaged under this Article shall be final, binding and enforceable upon both parties and the Contractor's Surety. The parties agree that proper venue for any judicial proceeding to enforce any decision or award made by an arbitrator under this Section shall be exclusively in the county of Multnomah in the state of Oregon.

#### **ARTICLE 26 -- ATTORNEYS' FEES**

In the event suit, action or arbitration is instituted to enforce any right granted herein or to interpret any provision of this Contract, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, reasonable attorneys' fees to be fixed by the trial court or in the arbitration. In the event of any appeal, the prevailing party shall, to the extent permitted by law, be entitled to attorneys' fees on appeal in like manner.

#### **ARTICLE 27 -- ASSIGNMENT**

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

#### **ARTICLE 28 -- CHANGE OF OWNERSHIP**

- A. Any change in control of Contractor or the transfer of a controlling interest of Contractor shall require the prior written consent of Metro.
- B. For purposes of this Article, the phrase "transfer of a controlling interest of Contractor" shall be interpreted to include, but not be limited to, the transfer of ten percent (10%) or more of the beneficial ownership of Contractor to or from a single entity. However, intracompany transfers, such as transfers between different subsidiaries or branches of the parent corporation of Contractor, shall not be construed as transfers of a controlling interest in Contractor, nor shall transfers required by operation of law be so construed.
- C. If Metro approves a change in control of Contractor or a transfer of a controlling interest of Contractor, then Metro and the new ownership of Contractor shall execute a novation, requiring the new ownership of Contractor to assume all of the rights and duties of this Contract and releasing the previous ownership of Contractor of all obligation and liability.

#### **ARTICLE 29 -- PUBLIC CONTRACTS**

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



requirements of certain of these ORS Sections are set out below. These provisions are applicable to this Contract unless or until they are superseded by federal law. If any of the specific State law requirements set out below in this Article are amended or superseded, then Metro may, at its option, notify Contractor that such a change has occurred and that the new or amended provision is thereafter applicable to all work performed pursuant to this Agreement. In such event, Metro may, to the extent applicable, reduce payments to Contractor as provided Article 12L of these General Conditions.

- B. Pursuant to ORS 279.312, Contractor shall make payment promptly, as due, to all persons supplying Contractor labor or material for the performance of the work as provided in this Contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund (IAF) from Contractor or any subcontractor incurred in the performance of the Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or material furnished. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- C. Pursuant to ORS 279.314, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Contract. Metro's payment of such a claim in the manner authorized by ORS 279.314 shall not relieve Contractor or Contractor's Surety from obligation with respect to any unpaid claims.
- D. Pursuant to ORS 279.316(4) and ORS 279.334(8), Contractor must give written notice to employees who perform work under this Contract of the number of hours per day and per week that employees may be required to work, as specified in this Section D of this Article. Such notice must be provided either at the time of hire, before commencement of work, or by posting a notice in a location frequented by employees. Except as permitted by federal law or other state statutes or regulations:
  - 1. No person shall be employed under this Contract for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay for all time worked in excess of ten (10) hours a day or in excess of forty (40) hours in any one week, whichever is greater; and
  - 2. All persons shall be paid at least time and a half pay for all work performed under this Contract on the legal holidays specified in a collective bargaining agreement, if applicable, or on the following annual legal holidays: New Year's Day on January 1, Memorial Day on the last Monday in May, Independence Day on July 4, Labor Day on the first Monday in September, Thanksgiving Day on the fourth Thursday in November, and Christmas Day on December 25. For purposes of this provision, each time a holiday falls on a Sunday, the succeeding Monday shall be recognized as a legal holiday, and each time a holiday falls on a Saturday, the preceding Friday shall be recognized as a legal holiday.
- E. Pursuant to ORS 279.320, Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for such services and all moneys and sums that Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services. Contractor shall ensure that all subject employers

working under this Contract shall either comply with ORS 656.017 or be exempt employers under ORS 656.126.

### **ARTICLE 30 -- ASSIGNMENT OF ANTITRUST RIGHTS**

- A. Contractor, for consideration paid to the Contractor under the Contract, does irrevocably assign to Metro an interest in any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at Metro's option, the right to control any such litigation on such claim for relief or cause of action, if Metro's interest, so assigned, exceeds fifty percent (50%) of the total claim in a cause of action by reason of any violation of 15 USC 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Contract. Metro's interest shall be a proportion of the total claim or cause of action equal to the percentage of the total claim proportional to the performance of this Contract as measured against the total of Contractor's business affected by the violation.
- B. In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the Contract, the Contractor shall require the subcontractor to irrevocably assign to Metro, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC 1-15, ORS 646.725 or ORS 646.730, including, at Metro's option, the rights to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the Contract, in a like manner as provided in Section A above.
- C. In connection with the assignments in this Article, it is an express obligation of the Contractor that it will take no action that will in any way diminish the value of the rights conveyed or assigned hereunder to Metro. It is an express obligation of the Contractor to advise the Metro Attorney:
  - 1. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
  - 2. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
  - 3. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.
- D. It is understood and agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro hereunder.

### **ARTICLE 31 -- START OF CONTRACT AND CONTRACT COMPLETION**

The Contractor agrees to begin services on April 1, 2005, and to terminate such services on March 31, 2010 subject to the provisions of Article 11(F) of these General Conditions.

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# **SPECIFICATIONS FOR METRO SOUTH STATION**

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## 1.0 INTRODUCTION

The purpose of the SPECIFICATIONS is to provide the Contractor with its operating and maintenance responsibilities for the Metro South Transfer Station (MSS) located at 2001 Washington, Oregon City, OR, as well as portions of the surrounding roadways. These responsibilities are detailed in the sections below. An overview is provided in this introduction.

Generally, the Contractor is responsible for all portions of the 11.5-acre site except for the hazardous waste facility and scalehouses, which are operated by Metro (see figure 1). This includes the supervision of customers while they are on the site. Note: the “Latex Building” in figure 1 should be available as a maintenance facility by the start of operations.

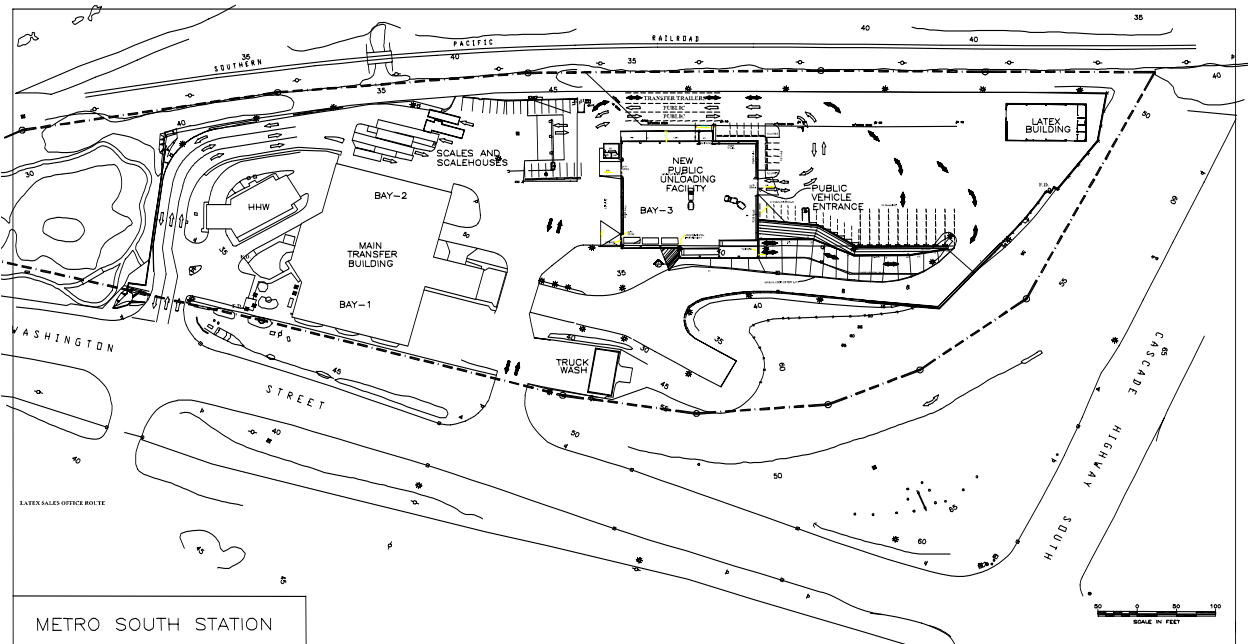


Fig. 1

The Metro South Station receives mixed solid waste and some source separated recyclables from both commercial haulers and the general public. Customers enter the facility through the entrance of the site on Washington Street where the developed portion of the site meets the wetlands portion of the site.

Commercial customers (generally those with packer or drop box size loads) will utilize the scalehouse closest to the transfer building to weigh in. After weighing, the Contractor is responsible for directing the customer to the appropriate area for unloading in Bays #1 or #2 depending on the type of waste and how the Contractor chooses to utilize the facility. The bays are divided by a pit (40' wide by 15' deep by 100'

long) into which waste for disposal is dumped. The floor of Bay #2 has been used to sort dry waste for recoverable material. After waste is unloaded into the pit, a bulldozer mixes and pushes the waste into the hoppers of the compactors. Waste must be inspected for unacceptable waste and managed efficiently to facilitate customer throughput. After unloading, commercial customers requiring re-weighing proceed to the scalehouse adjacent to that used for weighing in. Customers with established tare weights leave the site via the exit near the truck wash.

Public customers proceed to third scale near the main transfer building for weighing. After leaving the scalehouse they are under the direction of the Contractor, and shall be directed to the public unloading area at Bay #3. Waste must be inspected for unacceptable waste, materials recovered and the remaining waste managed efficiently to facilitate customer throughput. Contractor may utilize other portions of the facility other than Bay 3 for the public when separation from commercial haulers can be maintained, such as on the weekends.

Contractor is responsible for providing all rolling stock to accomplish the requirements of the contract as detailed herein. This includes rolling stock necessary to receive waste and recoverable materials unloaded at the public area (Bay #3) and move to the main transfer building for compaction, or if recoverable, to markets.

The site is equipped with 2 compactors, truck scales and a wash rack. These systems, as well as the other parts of the facility are the responsibility of the Contractor except as noted. Contractor shall utilize any manuals, manufacturer's recommendations, drawings and directions available to operate and maintain the facility properly.

Contractor is responsible for loading the waste into Metro's Waste Transport Contractor's (Transporter's) trailers. Contractor shall coordinate its activities with the Transporter as well as with any other Metro contractors to maximize transfer efficiencies. The services provided by the Contractor shall be conducted in accordance with all state, federal and local regulations. Operating priorities shall be safety, efficiency, material recovery, protection of the environment and customer service. The Contractor shall make efforts to maintain positive public and community relations.

## **2.0 PROJECT DESCRIPTION/REQUIREMENTS**

Metro will provide the Contractor use of the facilities located at 2001 Washington Street, Oregon City, Oregon, and known as Metro South Station (MSS) for performing the work under this Contract. All equipment and facilities provided at that site shall remain the property of Metro, except as specified herein, and shall be returned to Metro in good working order upon termination or completion of this Contract.

The Contractor shall be responsible for the security, proper operation, maintenance, repair, and condition of all equipment and facilities furnished by Metro. The equipment shall be used exclusively to conduct waste transfer and material recovery operations and shall not be removed from the premises except for purposes of repair or maintenance unless approved by Metro.

Contractor shall provide Metro with a full service transfer station serving the disposal and recycling needs of the public, commercial collectors and industrial accounts, as designated by Metro. While the INTRODUCTION provides an overview of the work to be provided by the Contractor, below is listed the major components and responsibilities of the Contractor for this Contract.

Components of this project include:

- A. Mobilization of equipment and personnel onto the site.
- B. Providing safety equipment and safety/operations training.
- C. Emergency and contingency planning and preparedness.

- D. Maintenance of safe and healthy operating conditions for all customers and employees.
- E. Receiving waste and recyclables on-site from the public, commercial haulers, and industrial accounts.
- F. Conducting Load Check Program and handling Unacceptable Waste in accordance with these Specifications and Metro's *Transfer Station Contractor's Procedures Manual* (referred to as *Contractor's Procedures Manual*).
- G. Traffic control.
- H. The removal of recyclables from public loads by assisting customers and processing of waste.
- I. Operation and provision of a Recycling Center for source separated recyclables.
- J. Movement of waste and recyclables from the Hazardous Waste Facility on-site.
- K. Materials Recovery processing of a portion of the solid waste delivered by commercial customers.
- L. Locating markets for recyclables and providing vehicles and personnel to transport the Source-Separated and Recovered Materials.
- M. Handling, compacting and loading solid waste on-site, including movement from the public area to the main transfer building.
- N. Operation and maintenance of Contractor-furnished equipment and Metro-furnished equipment and facilities except weighing system and Hazardous Waste Facility.
- O. Furnishing of all supplies, materials, equipment and services for performance of the Contract.
- P. Litter control on-site and in designated areas on roadways approaching the facility. Use of a magnet daily for on site cleanup. Site security during all hours.
- Q. Insect, vermin, dust and odor control.
- R. At least monthly meetings with Metro to report on progress achieved and any special problems encountered.
- S. Coordination with other contractors.
- T. Demobilization of equipment and personnel from the site upon completion or termination of this Contract, and return of the site to its original condition as at the start of this Contract, normal wear and tear excepted.
- U. Provision of uniforms for all non-office staff.

### **3.0 WASTE FLOW AND HOURS OF OPERATION**

The facility will be open for the general public from 7:00 a.m. to 7:00 p.m. during PDT and from 7:00 a.m. to 6:00 p.m. during PST, seven days a week. The facility will be open four hours earlier for commercial and industrial accounts with automation tags, except on Sundays when it will open at 7:00 a.m. for all customers. The facility will be closed for all business on Christmas and New Year's Days.

Metro reserves the right to prohibit or limit the type or types of accounts which may use the facility. Metro reserves the right to increase or decrease the hours and days that the facility is open.

The Contractor shall not be entitled to any reimbursement, under any provisions of these Specifications or the General Conditions, for costs or revenue losses due to changes by Metro in the type of accounts that may use the facility, or in a decrease in the number of hours the facility is open. Metro shall be entitled to a reduction in payment for any decrease in hours of operation in accordance with the deletion of work provisions of the General Conditions. For any increase in the hours of operation, Contractor shall be entitled to an increase in compensation in accordance with the additional work provisions of the General



Conditions. Metro shall provide the Contractor with 24 hours written notice of any change in hours of operation or types of accounts that may use the facility.

Waste volumes will fluctuate daily, weekly, monthly and annually. The Contractor must be capable of handling these variations such that the operations at the transfer station are not impeded. For a detailed analysis of projected waste flow on an hourly, weekly, monthly and yearly basis, refer to the Appendix in this document. These projections are estimates only and shall not be regarded as guaranteed flows.

#### **4.0 WEIGHING AND BILLING SYSTEM**

After entering the facility, customers will be processed through the weighing and billing system. Metro will be responsible for the operation of the weighing and billing system located at the scalehouses, and for admitting public, commercial haulers and industrial accounts into the facility. Each vehicle shall be weighed by Metro upon entering the facility. Metro employees, operating the scalehouse, shall make all determinations regarding fees to be paid by haulers using the facility and determining what waste shall be categorized as Recoverable Waste.

After unloading, the vehicle shall be reweighed to determine the net weight of the load. If a vehicle contains a large amount of recyclables that qualify for a reduced charge, Metro may require the vehicle to unload the recyclables and reweigh prior to unloading the waste.

The empty or tare weight of commercial vehicles may be established by Metro and recorded so that the vehicles will not be required to re-weigh each time after unloading and so commercial haulers may utilize the automatic weighing system. This system utilizes a tag reader system to identify the vehicle and its tare weight, and then weighs the vehicle and generates a receipt.

The Contractor will not be allowed to operate the weighing and billing system, and will not be responsible for maintenance of the system's equipment, except for cleaning of the scale pits monthly. Maintenance of the scalehouse structures and the provision of janitorial services will be the responsibility of the Contractor.

All Recovered Materials, compacted waste, and Unacceptable Waste shall be weighed by Metro prior to removal from the Facility. This data will provide checks on the facility efficiency and known quantities for Material Recovery and disposal. The Contractor shall be paid based on the incoming weights established at Metro scalehouses for waste and source separated materials for which individual prices have been established. Payment for Recovered Materials shall be established based on outgoing weights as established at the scalehouses.

The Contractor will coordinate its activities with Metro's scalehouse personnel. The Contractor shall provide and maintain a three channel (one of which will be reserved solely for emergency communications on-site), alternate radio communication link between all work areas (Contractor's and Metro's and any other contractors on-site) and the Contractor's spotters in the transfer station.

#### **5.0 TRAFFIC CONTROL**

The Contractor shall have responsibility for controlling the movement of traffic onsite and off-site if needed. This shall include the optimal use of queuing lanes and unloading spaces, and the provision of personnel to direct traffic.

Contractor shall provide at least one spotter located in the vicinity of the scalehouse to initially direct customers to the appropriate unloading areas. For commercial customers, the spotter's responsibilities shall include making a prompt determination of the appropriate bay to which to direct the load. The spotter(s) shall be equipped with a radio that shall be used to alert personnel in the unloading areas of the arrival of a load of waste. As the Contractor's initial point of contact with customers, the spotter(s) shall be courteous and be thoroughly trained in evacuation procedures. Any disputes between the spotter(s)

and customers shall be immediately reported to Metro. Contractor shall provide a mobile shelter for the spotter(s).

Once a load of waste arrives at the appropriate unloading area, additional spotters shall direct the load into the appropriate bay and to the appropriate spot for unloading of the vehicle. These personnel shall be appropriately attired to be visible in all lighting conditions, be equipped with flashlights or other signaling devices of sufficient brightness to be seen by customers and be equipped with radios. These spotters shall ensure that the unloading area over which the customers travels and unloads is free of debris and that there is sufficient space for unloading to proceed in a safe and efficient manner. Spotters shall assist customers as needed. Spotters shall be trained in the unloading and load check procedures of *Contractor's Procedures Manual*. Upon completion of unloading, spotters shall coordinate the exiting of vehicles to ensure a safe exit from the facility and remove any debris from the unloading area including around the stanchions at the edge of the pit.

The Contractor shall assist all disabled vehicles and remove them from the traffic ways if necessary.

Contractor shall obtain Metro's approval for proposed on-site traffic patterns and such approval shall not be unreasonably withheld. Metro may direct the flow of traffic at any time for any purpose.

If, in the sole opinion of Metro, the Contractor is providing insufficient personnel to alleviate traffic problems, the Contractor will have one hour to remedy the situation. If Contractor fails to remedy the situation within an hour of notice by Metro, liquidated damages may be assessed.

## **6.0 ACCEPTANCE OF WASTE**

The Contractor shall operate the facility to receive regular deliveries of mixed solid waste on a seven-day per week basis from drop box trucks, compactor-type vehicles, large dump trucks, transfer vehicles, private citizen vehicles and other vehicle types approved by Metro.

Contractor must ensure that unloading operations are done in a safe manner in accordance with Section 12 of these Specification and *Contractor's Procedures Manual*. Contractor shall visually monitor actions taken and equipment used by commercial and public users of the facility, and shall immediately correct any hazards detected during the course of normal operations. Ongoing safety activities include inspecting incoming loads for Unacceptable Waste or hazardous materials, investigating all reported hazards and near miss situations, identifying vehicles with safety deficiencies and notifying Metro immediately.

Contractor shall keep an ongoing log of incidents, inspection activities and follow-up actions, and shall submit this log to Metro each month. Reporting forms and logs are included in the *Contractor's Procedures Manual*.

The Contractor shall accept all of the following types of solid waste that are delivered to the Metro South Station: (1) Acceptable Waste, as defined in this Contract, (2) recoverable materials that are listed in Section 9.0 of these Specifications, and (3) medical infectious waste delivered to the Metro South Station in accordance with Metro's *Medical Waste Acceptance Procedures*, which are part of *Contractor's Procedures Manual*. Unacceptable Waste shall be handled in accordance with Section 12 of these Specifications and *Contractor's Procedures Manual*. Contractor shall be responsible for implementing Metro's load checking program as described in Section 12.

## **7.0 REFUSAL OF WASTE BY THE CONTRACTOR**

The Contractor may refuse to accept any waste at the facility if: (1) the Contractor can demonstrate that current state or federal regulations or the facility's solid waste permit prohibit Contractor from accepting such waste, or (2) such waste is Unacceptable Waste as defined in this contract and is not a recoverable material listed in Section 9.0 of these Specifications or medical infectious waste delivered to the Metro South Station in accordance with Metro's *Medical Waste Acceptance Procedures*, which are part of

*Contractor's Procedures Manual.* The Contractor shall immediately notify Metro's Operations Supervisor in writing of its refusal of any waste and shall provide a written justification for such refusal. The Contractor shall recover from mixed solid waste any Unacceptable Waste that is a recoverable material listed in Section 9.0 of these Specifications, including tires and white goods. For any portion of Unacceptable Waste that has been accepted and unloaded at the facility, the Contractor shall follow the procedures specified under Section 12 of these Specifications. Contractor must keep records of the following information regarding any such waste that has been unloaded: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste with such company representative or individual, pictures and approximate volume and weight of such waste. Contractor shall be deemed to have taken title to any waste it accepts without complying with this section.

## **8.0 MANAGEMENT OF WASTE AFTER UNLOADING**

After unloading, waste shall be managed in a manner to maximize the dual goals of materials recovery and efficient movement of the waste. Sufficient equipment and personnel shall be available to ensure targeted materials are recovered and that the waste is moved efficiently and safely to the compaction systems. This includes sufficient equipment and personnel to move waste from the public unloading area to the compaction system in a timely manner.

Movement of the waste shall be coordinated with incoming loads such that a clean and unimpeded area is available for unloading at all times, in a safe manner. Unloading vehicles shall not be made to back over or unload onto waste. Particular attention shall be paid to the removal of items on the floor that may puncture tires or otherwise damage customers' equipment or jeopardize their safety.

Contractor shall alter operations as directed by Metro to ensure compliance with this section.

## **9.0 MATERIALS RECOVERY - GENERAL**

Metro's goal is to maximize material recovery at its transfer stations. To this end, the Contractor is required to conduct materials recovery operations for both the public and commercial segments of the waste stream, in a manner consistent with the Contractor's proposal and as necessary to achieve the Base Recovery Rate, Contractor's Recovery Guarantee and any Bonus Recovery Credit proposed. Contractor shall also provide the following:

- A. Staffing:** Operator must have a designated, qualified and skilled staff person to oversee the materials recovery operations at all times. Skills include experience with and knowledge of markets, marketing and material recovery facility operations. Contractor must demonstrate that it has the corporate resources to support this activity and this position including appropriate training and applicable professional certifications. Metro reserves the right to review and approve the employee that is designated to fill this position.
  
- B. Markets:** The Contractor will be responsible for selecting the markets/brokers for recovered materials except organics, as well as for all activities related to transporting the materials to market. Metro reserves the right to disapprove the Contractor's choice of vendors for the sale and other distribution of all recovered materials. Vendors must meet the following basic criteria:
  - Vendors must be fully permitted and in compliance with applicable federal, state and local laws, regulations, standards and conditions;
  - Recovered materials that meet vendor specifications may not be disposed in a landfill; and
  - Vendors' operations must be environmentally sound and must not have a detrimental impact on air, land, or water quality, or on their surrounding neighbors.

When selecting vendors, the Contractor shall give preference to vendors based on the end use of the recovered materials the vendors receive, according to the following priority (in order from most preferred to least preferred): reuse, recycling, composting (yard trimmings and food) and, finally, energy recovery and other beneficial use. If the Contractor has a choice between multiple, comparable vendors that are not distinguishable on the basis of the end use of the recovered materials, then the Contractor shall give preference to the vendor located closest to the Metro region.

Disposal of source-separated recyclable materials (materials accepted under a separate posted price, brought to the facility by self-haul customers receiving a discount, or contained on the list in this section in uncontaminated form) is strictly prohibited. Contractor will arrange for and be responsible for all costs associated with removing tires, oil filters, anti-freeze and yard debris from the entire site, as well as any other material listed in this section that may have a negative market value.

Historical patterns of materials recovery are discussed in the background section of the RFP for this project and in the Appendix, as well as in the operations manual for the facility.

The Contractor shall not be entitled to additional compensation for the loss of, or fluctuations in, recycling revenues due to actions taken by Metro. Contractor shall be allowed to keep the revenues from all recovered materials.

**C. Reuse:** Metro’s Regional Solid Waste Management Plan as well as the state recycling hierarchy [ORS 459.015(a)] places a priority on reuse and recycling over energy recovery or disposal. Contractor shall remove reusables from the wastestream for reuse by an approved third party. Metro will pay Contractor an additional 10% of the Recovery Credit for each ton of materials delivered to a third party for reuse.

**D. Reporting:** The Contractor will report monthly the weight of materials recovered and recovered for reuse by type as measured at Metro scalehouses, the amount by receiving end-markets, and the revenue received by materials. Contractor must develop satisfactory recovery and reuse reporting methods that include an analysis of the cost-effectiveness of recovering materials. For accounting purposes, material recovery must be treated as separate journal entries and must include cost estimates for labor and equipment.

**9.1 PUBLIC RECYCLING STATION**

Unless otherwise approved by Metro, Contractor shall be required to provide a recycling station, with Metro approved signage in the area and on the bins Contractor provides to receive source-separated recyclable materials from the general public at a location near the area for public unloading designated on the transfer station drawing contained in the Appendix. The purpose of the recycling station is to provide public customers with the opportunity to recycle materials. The recycling station will handle the following materials:

Newsprint	Glass containers	Mixed non-ferrous
Steel (tin) cans	Mixed ferrous	Tires
White goods	Corrugated cardboard	Car batteries
Used motor oil	Oil filters	Plastic bottles/milk jugs
Anti-freeze	Yard debris/wood	Magazines
Scrap paper	Phone books	Plastic film
Lawnmowers	Window glass	Non-halon fire extinguishers
Carpet padding	Aluminum	

Metro shall have the right to add or delete materials from this list at any time.

All source-separated materials will be stored in containers furnished by the Contractor. The Contractor shall:

- Make a good faith effort to recover materials from public loads by
  - a) keeping materials that are delivered as source separated materials from being mixed;
  - b) pulling recoverables from the mixed waste stream; and,
  - c) recovering materials for reuse.
- Assure the materials are properly prepared for market;
- Assure sufficient containers are available for use and have clear signage posted for the public in the public recycling area;
- Transfer materials to markets and/or processing centers in fully covered containers;
- Keep the recycling station free from litter and contaminated material at all times;
- Maintain the entire recycling area in a neat and clean manner;
- Schedule sufficient pick-ups of recyclable materials to prevent excessive accumulation;
- Maintain warning signs, spill kits and safety equipment;
- Maintain operating safety shower and eyewash in the public recycling area at all times; and
- Collect from Metro’s on-site household hazardous waste facility, at no additional charge, any of the materials listed above.

Employees assigned to handle recyclable hazardous materials shall be properly trained and equipped.

**9.2 COMMERCIAL MATERIALS RECOVERY**

The Contractor shall recover materials from incoming commercial loads of mixed solid waste, including all loads originating at construction/demolition sites (guidelines for identifying C&D loads are contained in the Appendix), in accordance with the terms of Contractor’s Recovery Guarantee to the extent that such activities do not interfere with the loading of waste in a timely manner as determined by Metro. Contractor may provide incentives to haulers to deliver high-grade loads rich in recoverable materials.

Targeted materials to be recovered from high grade loads:

PAPER	MISC.	METAL	PORCELAIN	PLASTIC
• newspaper	• roofing	• steel cans	• toilets	• plastic bottles
• telephone books	• tires	• aluminum	• sinks	• plastic film
• magazines	• window glass	• nonferrous	• other	
• cardboard	• car batteries	• ferrous scrap		WOOD
• paperboard	• carpet padding	• white goods	DRYWALL	• unpainted lumber
• scrap paper	• carpet		• unpainted	• pallets
	• mattresses		• painted	• yard debris
				• painted lumber

Except for materials that are prohibited from disposal in a landfill under state or federal law, such as whole tires and white goods, Contractor shall not be required to recover these materials if it is unable to locate markets for them.

### **9.3 RECYCLED PRODUCTS PROCUREMENT**

Contractor shall adhere to Metro procurement guidelines for recycled products in the operation of the facility. Recycled products include but are not limited to the following: office paper and general office supplies, latex paint, re-refined oil, compost products, retread tires, and building materials. Vendors that supply recycled products are listed in an online database maintained by Metro at [www.metro-region.org/buyersguide](http://www.metro-region.org/buyersguide). Contractor shall abide by recycled products procurement standards of Chapter 2.04 of the Metro Code, as amended (a copy is contained in the Appendix). Contractor shall provide an annual report to Metro that itemizes the type of recycled products that they purchased and their dollar amount.

### **9.4 RECYCLING**

Contractor will also be required to collect recyclable and recoverable materials, including all recyclable paper, glass containers, plastic bottles and cans, in its day-to-day office and on-site general business operations.

### **9.5 SUSTAINABLE PRACTICES**

Contractor shall maximize sustainable practices in conducting its activities. Examples of activities to add for the transfer station:

- use of re-refined oil, lubricants and hydraulic fluids in equipment and rolling stock
- use of bio-based fuel for diesel operated equipment and vehicles or other low polluting fuels and/or pollution control equipment minimizing emissions
- purchase of reused wood and other materials from Rebuilding Center or use of Forest Stewardship Council-certified wood
- plastic lumber or Forest Stewardship Council-certified wood in place of treated wood
- minimum 30% post-consumer content recycled paper for all office use
- toilet tissue, paper towels, and napkins that meet minimum EPA post-consumer fiber standards
- reusable dishware, cups and utensils
- Metro latex paint
- recycling system for paper, containers and other office activities
- duplexing where possible
- energy-efficient lighting (use of compact fluorescents)
- Use of remanufactured toner cartridges
- use of environmentally preferable cleaners (see Appendix)
- use of storage containers, plastic and paper bags, traffic management equipment with recycled content

Contractor shall supply information during Metro’s annual audit demonstrating compliance with these practices or upon request. Required sustainable practices shall be established through the proposal process.

## **10.0 TRANSFER INTO TRANSPORTER’S TRAILERS - GENERAL**

After materials recovery, the remaining waste shall then be loaded into the compactors. The Contractor is responsible for the compaction and extrusion, into the Transporter's trailers of a road legal payload of waste (also referred to as a bale). The Transporter is responsible for positioning its trailers to the compactors for receiving the loads, removing the loaded trailers, and positioning the next.

The Contractor shall provide bales for loading in a timely manner during pre-arranged compaction hours. For purposes of this section, a “timely manner” shall mean six bales of waste per hour. Metro, the Contractor and Transporter shall meet as needed to establish the compaction hours for which this standard applies. Generally such hours will coincide with peak weekday delivery periods for the facility.

Contractor shall attempt to maximize payloads transferred in the Transporter’s trailers while minimizing overloads. Contractor will receive bonuses or deductions based on average payloads. The monthly

payment will also be adjusted for overloads incurred during the month. Payload and overload adjustments shall be made in accordance with Article 12(I) of the General Conditions of this Contract.

A log shall be kept at each compactor to record the information required below. The format shall be approved by Metro.

Prior to extruding a bale of waste into the Transporter's trailer, Contractor is required to do a pre-load inspection of each trailer. The purpose of the inspection is to determine the condition of the trailer. Contractor shall record the time, trailer number, inspector and any comments concerning the trailer's condition for every inspection. If the inspector believes the condition of a trailer is unsatisfactory for loading, Contractor shall inform the Transporter's representative and Metro to decide whether a replacement trailer should be provided.

At the completion of extruding the waste into the trailer, the Contractor is responsible for installing a lock seal on the trailer, such as a flat metal seal that prohibits removal by hand. Each seal shall be marked with the letters *MSS*, three letters identifying the Contractor and a sequentially increasing set of at least four digits.

Example: *MSS-CON-0000*

The Contractor shall record the time the bale was ready for extrusion, the time a trailer was available for loading, the seal number, and the weight of the load from the compactor readout into the log. Contractor shall also note whether the load contained special or suspicious waste.

It is the responsibility of the Transporter to ensure that the seal was properly installed before the trailer leaves the staging/storage area. Once the Transporter has verified that the seal is properly installed, the waste contained within the trailer is the responsibility of the Transporter until the seal is broken in accordance with the "ENTRANCE POLICY" contained in the Appendix.

If the Contractor improperly installs the seal, the Transporter is required to notify the Contractor prior to leaving the Facility and request a new seal. The Contractor shall comply with any such requests. Failure to request a new seal will preclude Transporter from any recovery for damages arising out of any improperly installed seal. In addition, the Transporter can request removal of the seal to inspect the interior of the transfer trailer, its contents, and request and receive a new seal from the Contractor.

Each load sealed into the Transporter's trailer will be weighed at the on-site Transporter scale system to determine the payload and whether the load is road legal. The weight of each load extruded into transfer trailers will be printed on a manifest. This manifest will become the official weight record of the load and serve as the basis of payment for the Transporter, the Disposal Site operator as well as for the Contractor's Variable Compaction Maximization Adjustment. It will contain the date, time, container number, container tare weight, the seal number, as well as the weight of the load. A copy of the manifest will be given to the Contractor.

## **11.0 COMPACTOR OPERATIONS – GENERAL**

Contractor shall operate and maintain the compactors in accordance with the manufacturer's recommendations, all applicable regulations and Metro's recommended practices specified below. Contractor shall prepare waste for loading consistent with the manufacturer's recommended practices and shall remove material that is inappropriate for compaction or that become lodged in the compactors. Contractor shall load only Acceptable Waste into the compactors.

### **11.1 SAFETY**

It is the Contractors responsibility to provide all operator training, equipment and operating procedures to protect personnel. Emergency stops shall be visible (red), unobstructed, and easily accessible to the

compactor operator during operations. The Contractor shall maintain all warnings and decals attached to any equipment and will not alter any E-stop or manufacturers' safety equipment without written approval of Metro. Contractor is responsible for ensuring that all operation and maintenance personnel receive appropriate training and certification (including manufacturer's certification).

A written lockout / tag-out program for all equipment must be in place and strictly enforced at all times. A written confined space program describing safe entry procedures for all hoppers, pits and chambers must be implemented. Contractor shall provide and maintain all safety equipment needed to implement these programs. Guarding must be maintained on all rotating / moving parts and conveyors. Guardrails (top rail, mid-rail and toe boards) on elevated surfaces must remain in place at all times. Contractor shall maintain all warnings and decals attached to the machine. Contractor shall ensure that all hazards in the compactor area are clearly marked.

The Contractor Compactor Operators are the assigned Emergency Coordinator for the compactors and loading area at the site for purposes of *Contractor's Procedures Manual*. Compactor operators must receive 40 hours of OSHA Emergency Response Training and medical surveillance and be able to participate in incident response in the event that the compactor is involved in a hazardous materials emergency.

Equipment must be readily available to contain and block any spills from the compactor load or equipment. Equipment and procedures to block storm and sewer drains from contamination must be in place at all times. Immediate actions to take in the event of a hydraulic fluid release from the compactor shall be posted in the compactor area. Contractor shall ensure that safety equipment including respiratory protection, emergency eyewash and fire extinguishers are available at all times in the compactor area.

## **11.2 LOADING THE COMPACTOR**

Compactors are SSI models 4500SPH. They are equipped with remote controls that operate the compactors. These compactors build a single bale. Contractor shall follow the steps for building the bale as described in the operator's manual.

It is the responsibility of the Contractor to load the compactor so it will function properly without jamming, puncturing the compactor or trailer walls, causing fire, explosion, or any other damage. Contractor should follow the operator's manual in selecting materials for compaction.

Waste loaded into the compactors should be well mixed such that consistent density and lengths of maximized payloads are produced. This includes mixing dry garbage with very wet loads to avoid short dense payloads. Loosely packed garbage loads that may produce loads of less than 30 tons should also be avoided.

A reader board for each compactor is visible to equipment operator in the pit loading waste into each hopper. The board displays the weight and length of the bale. Similar information is available at the control panels. Weights are determined by load cells located on the compactor. It is the responsibility of the Contractor to check and maintain each of the compactor load cells, such that overloads do not occur. It is the Contractor's responsibility to repair the load cell as soon as possible in order to continue operating without overloads.

The compactor shall be operated in such a manner as to reduce spillage of garbage and moisture when ejecting the bale. All waste spilled must be cleaned up after each bale is ejected.

## **12.0 LOAD CHECKING PROGRAM AND MANAGEMENT OF UNACCEPTABLE WASTE**

The requirements of this section are more fully explained in *Contractor's Procedures Manual*, which includes Metro's *Load Check Program* and *Medical Waste Acceptance Procedures*. The requirements of



the manual shall be binding on the Contractor and are incorporated in this Contract by reference. Contractor shall familiarize itself with the manual and its requirements, and shall avail itself of the training opportunities available from Metro's safety and emergency response programs as described in the manual. Contractor shall follow Metro's waste acceptance protocol and procedures for conducting load checks and managing unacceptable and hazardous waste as contained in *Contractor's Procedures Manual*. Contractor shall be bound by the requirements of the manual and any updates thereto.

Below is a summary of the responsibilities of the Contractor and Metro regarding load checking and managing Unacceptable Waste at the facility.

### **12.1 SERVICES PROVIDED BY CONTRACTOR.**

- A. Contractor shall inspect all waste received in a manner which is reasonably necessary to determine whether or not such waste is Unacceptable Waste. Waste that is received at the transfer station shall be visually inspected before and while it is tipped onto the floor. Visual inspection shall be done by at least one person, whose **primary** duty is to monitor the tipping of waste. Contractor shall provide at least one trained hazardous materials employee (HazMat Technician) to be available during all hours of waste acceptance, seven days per week, who's primary responsibility is to carry out the duties of these programs. At the conclusion of the visual inspection, if waste is not refused, title to the waste shall transfer to Contractor.
- B. HazMat technicians shall conduct required load checks and follow up activities in accordance with Metro's Load Check Program and Medical Waste Acceptance Procedures. Contractor shall provide to Metro a log of this activity along with documentation concerning Unacceptable Waste on a monthly basis.
- C. Contractor shall be responsible for all costs associated with incidents or accidents created by movement or loading of Unacceptable Waste that was not spotted during tipping and was later discovered within the facility or loaded into a transport vehicle. This includes, but is not limited to, cleanup and decontamination costs of the facility floor, compactors and Transporter's trailers.

### **12.2 SERVICES PROVIDED BY METRO.**

- A. Metro will provide proper disposal of Unacceptable Wastes, other than recoverable materials listed in Section 9.0 of these Specifications or medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, if discovered prior to loading into a compactor conveyor, compactor or trailer, subject to Contractor's compliance with *Contractor's Procedures Manual*.
- B. Metro shall provide space for collection of hazardous materials and shall purchase any necessary secondary containers for its collection.
- C. Metro personnel will contact generators of any Unacceptable Waste found by the Contractor, other than recoverable materials listed in Section 9.0 of these Specifications or medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, and Metro personnel will make arrangements for the removal and proper disposal of such waste.

### **12.3 GENERAL LIMITATION ON METRO'S LIABILITY**

Except as otherwise provided in Section 7 of these Specifications, Metro shall have no duty to reimburse the Contractor for, nor to hold harmless, indemnify, nor defend the Contractor against, any claims, demands, suits, damages, penalties, charges, judgments, liabilities, or losses of whatsoever character or kind, which may arise directly or indirectly from or are in any way connected with any negligent acts or omissions of the Contractor which relate to the management or disposal of Unacceptable Waste.

## **12.4 CONTRACTOR'S RESPONSIBILITY FOR SHIPPED UNACCEPTABLE WASTE**

Contractor shall be responsible for all costs associated with the proper handling and disposal of Unacceptable Waste that has been loaded into a transfer trailer.

## **13.0 CONTINGENCY PLANS. GENERAL**

The Contractor will submit to Metro for approval, within thirty (30) days of signing this Contract, comprehensive contingency plans for protecting life safety, the environment and property while maximizing continued operations under the following conditions:

- A. Emergency bad weather operating procedures, including but not limited to flooding, ice storms and high winds.
- B. Equipment failure at Metro South Station. Plans must include time frame for the implementation of the plan, and the sources for, and description of replacement equipment.
- C. A work stoppage by any of the Contractor's employees.
- D. Local or regional events that requires additional solid waste collection and transport activity such as flooding or earthquakes.

### **13.1 CONTINGENCY PLANS - EMERGENCY**

- A. Contractor shall use the Incident Command System as outlined by Metro's Emergency Action Plan (EAP) and Emergency Response Plan (ERP) contained in the *Contractor's Procedures Manual* to coordinate all emergency response activities. Contractor shall implement and follow Metro's Emergency Action Plan and Emergency Response Plan as specified by Metro's Response Levels Chart, ICS Checklists, ERTeam Procedures and site evacuation procedures for all potential emergency incidents.
- B. In addition to Metro's EAP and ERP, Contractor shall develop and provide to Metro coordinated plans to minimize hazards to human health and the environment, damage to buildings and the site, and the interruption of normal transfer station operations due to:
  - 1. Fires: including alarm system information, fire protection systems and monitoring, and fire prevention programs;
  - 2. Releases of hazardous substances beyond the scope of site responders: including arrangements with emergency responders and outside contractors;
  - 3. Explosions;
  - 4. Power outages;
  - 5. Hostile, violent or threatening persons on the site; and
  - 6. Flooding, Earthquake, or other serious local or regional emergency.
- C. Contractor shall ensure that a trained and certified Incident Commander who has the authority to implement the Site Emergency Action Plan is available at the site at all times. Contractor shall provide to Metro the names and telephone numbers of all personnel designated as Incident Commanders. Incident Commanders must be thoroughly familiar with the Site Emergency Action Plan (EAP), Emergency Response Plan (ERP), and other established contingency plans.
- D. Contractor's on-site Incident Commander shall serve as Incident Commander in all potential emergency situations, and shall protect life safety by initiating evacuation procedures as per Metro's Response Levels Chart. Contractor shall unify or transfer command to Metro and/or emergency response agencies as appropriate once evacuation procedures are completed. Contractor shall notify Metro Management Support Team by pager immediately in all incidents that requires any partial or full transfer station

evacuation, whenever 9-1-1 is called to the site, and whenever operations are halted for emergency response.

### **13.2 HEALTH AND SAFETY PROGRAM, ACCIDENT PREVENTION**

- A. The Contractor shall establish a formal Safety Program for employees and supervisors, and shall document safety activities in order to identify, reduce and control potential hazards to workers and other personnel at the site. Contractor shall respond promptly to hazard reports, complaints and accidents to determine the cause of the hazard and to take corrective action in order to reduce or eliminate the reported hazard. Contractor will develop site-specific safety manuals. *Contractor's Procedures Manual*, Emergency Action Plan, and Emergency Response Plan are provided by Metro.
- B. Contractor shall ensure compliance with all applicable Oregon OSHA standards, including but not limited to written programs, training, equipment, and standard operating procedures. All applicable Or-OSHA standards shall be observed including but not limited to: hazard communication, blood borne pathogens, confined spaces, personal protective equipment, respiratory protection, hearing protection, lock-out tag-out, medical surveillance, asbestos, radiation, fire prevention, vehicle and equipment operations, welding, machine guarding, fall protection, safety committees, accident prevention and Hazardous Waste Operations and Emergency Response, and Oregon OSHA documentation and reporting requirements. All safety program policies, procedures, investigations, site inspections and records of training shall be made available to Metro upon request. Contractor is responsible for the occupational health and safety of all personnel employed by the Contractor and it's subcontractors working on site.
- C. Contractor shall ensure compliance with the General Safety Program requirements listed in the *Contractor's Procedures Manual*

### **13.3 SAFETY AND EMERGENCY RESPONSE TRAINING PROGRAM**

- A. Contractor personnel training requirements are specified in the *Contractor's Procedures Manual*.
- B. Contractor shall ensure that all training requirements are met on an on-going basis, ensuring that personnel are trained to appropriate levels based on job duties, task assignments, changes in equipment, programs or policies, and on expected actions in emergency situations. Contractor is required to provide all employees with safety and health information and appropriate training as required by Or-OSHA and this Contract.
- C. An employee safety orientation and training program will be implemented by the Contractor prior to the start of the Contract, and will continue throughout the term of the Contract.
- D. Training and warning signs must be presented in a format and language understood by all employees. Contractor shall provide safety orientation, hazard communication, job-specific training, and basic personal safety instruction to all staff. Contractor shall regularly evaluate employees' on-going understanding of safety procedures and concepts.

## **14.0 PARKING**

Parking is available for use by the Contractor's employees in areas designated by Metro. All other parking areas shall be approved by Metro prior to use. Metro reserves the right to change parking areas as necessary.

## **15.0 SECURITY**

Contractor shall provide personnel for mobile/foot patrol for the site, 24 hours per day to prevent unauthorized site entry and/or facility misuse. Contractor shall have in place 24 hour staffed communication coverage including emergency communications equipment to include both required radio and cellular services. Security patrol backup and emergency situation response shall be available in addition to on-site personnel and shall be on-site no more than fifteen minutes from the time of the original request for security assistance to come to the site. Provision of these additional personnel shall be reimbursed in accordance with Article 14 of the General Conditions.

On-site security personnel's supervisors shall perform and document at least two unscheduled on-site inspections of such personnel (at least one of which will be between the hours of 11:00 p.m. and 4:00 a.m.) monthly and the inspections shall be noted and signed by the supervisor on a shift report kept by on-site security personnel and available to Metro.

Contractor shall provide back up and/or additional security personnel for Metro special events or meetings as requested by Metro within two hours of such request. Such additional personnel shall be reimbursed in accordance with Article 14 of the General Conditions.

Contractor shall replace any on-site security personnel requested by Metro.

Contractor shall document and provide copies to Metro ensuring that all security personnel assigned to the site shall:

- have recent and regularly scheduled background checks;
- be free from all felony and misdemeanor convictions deemed unacceptable under the Oregon Department of Public Safety Standards and Training requirements pursuant to ORS 181.870-879;
- not be a user of illegal drugs or an abuser of alcohol; and
- be certified as a private security officer under the Oregon Department of Public Safety Standards and Training requirements pursuant to ORS 181.870-889.

All services provided under this specification shall be performed in accordance with the highest industry standards as determined by Metro. Said performance shall include but not be limited to the reasonable handling of sensitive public and emergency situations. Contractor shall be liable for all damages resulting from its failure to provide adequate security.

## **16.0 LAND FOR STORAGE PURPOSES**

On-site storage of equipment, rolling stock and supplies, for the use in performance of the Contract, shall be permitted as space is available. Upon notice, Metro will have the right of access to all storage areas occupied by the Contractor.

## **17.0 TRANSFER TRAILER STORAGE**

A transfer trailer staging/storage area is provided at Metro South Station such that the Transporter can store up to ten transfer trailers on-site, near the entrance to Bay 3. The Transporter is responsible for shuttling (via a "yard goat" vehicle) an empty transfer trailer to the compactor, and returning it to the staging area when loaded.

## **18.0 INSPECTION**

Notwithstanding the annual review and inspection, the Contractor shall permit inspection of the Work by Metro, its representatives, and governmental authorities having jurisdiction over the Work, at all times.

Metro will inform the Contractor which of Metro's employees will be responsible for routine inspections, and what authority such inspectors will have.

In conjunction with the review of the Contractor's annual report, Metro, at its own expense, will review records of Facility performance over the previous contract year and inspect the Facility. The primary objective of this annual review and inspection will be to verify that the Facility is operating at its design level.

The annual performance review will consist of an audit of all Facility operating records for the previous contract year. The annual inspection will consist of: (1) an inspection of the physical plant and the Contractor's operating history with emphasis on facility condition, safety and hazard mitigation; (2) a review of plant and equipment maintenance and replacement records; (3) a review of on-site or offsite accounting or bookkeeping data related to the receipt, recovery and disposal of all waste brought to the Facility; and (4) determination of continued efficiency and optimal operation of the Facility.

Prior to the start of work and prior to termination or completion of this Contract, Metro, accompanied by the Contractor, will inspect all items of Metro-furnished equipment and facilities and shall jointly prepare a list of items requiring repair as a result of the Contractor's use. Final payment will not be made until the required repairs have been completed. Equipment and facilities that have deteriorated due to normal usage need not be repaired to a like-new condition.

#### **19.0 PREFERENTIAL TREATMENT**

The Contractor shall not, by act or omission, discriminate against, treat unequally, or prefer any user of the facility in the operation of the transfer station. Preferential treatment within the site will be considered a default by the Contractor and a breach of this Contract.

#### **20.0 FIRE CONTROL**

The site is provided with fire control equipment. The fire control equipment now on-site shall remain for the Contractor's use. Contractor will ensure inspections and recharging of all fire extinguishers within all buildings on site per applicable law. Any additional or replacement equipment required for fire protection, and any maintenance of existing, additional or replacement equipment shall be the responsibility of the Contractor. The equipment shall be tested in accordance with manufacturer's guidelines, Metro's insurance provider and any applicable legal requirements. The Contractor shall provide 24 hour monitored alarm service for the Facility, including the Hazardous Waste Facility.

#### **21.0 VECTOR CONTROL**

The Contractor shall conduct the operation of the transfer station in a manner considered unfavorable for attracting or breeding rodents, birds and insects and that complies with Metro's Integrated Pest Management mandate. An annual report shall be written and provided to Metro that details pest related activity, action taken and results experienced.

Strict adherence to these specifications and operation procedures will reduce the potential problems to a minimum. In the event that rodent, bird or insect activity becomes apparent to Metro or the Contractor, the Contractor shall initiate supplemental vector control measures at its expense, including removal of dead animals. Semi-annual inspections by a certified exterminator shall be conducted at Metro's direction and expense, and a copy of the findings will be forwarded to Contractor. Metro may direct the Contractor to undertake any recommended actions by the exterminator, at the Contractor's expense.

#### **22.0 ODOR, DUST AND NOISE CONTROL**

The Contractor shall control odor and dust on the site using proper waste handling methods. Contractor may perform alternative dust and odor control measures with the approval of Metro. Equipment will be operated within limits of noise regulations.

Contractor must meet or exceed OSHA or ACGIH recommended Threshold Limits Values for all regulated hazards. Contractor shall monitor all work areas for hazards including toxic substances, dust and noise at least annually.

Contractor shall not allow dust levels in customer areas to exceed 2.0 mg/m<sup>3</sup> at any time.

If in the sole opinion of Metro, odor, dust, noise or other hazards are not adequately controlled, then Contractor shall immediately correct the hazards at Metro's direction.

### **23.0 HAZARDOUS WASTE FACILITY**

Metro operates an on-site Hazardous Waste Facility that accepts household and commercially exempt generator hazardous materials. It is the responsibility of the Contractor to provide traffic control to and from the Hazardous Waste Facility, and shall obey any emergency orders given by Metro personnel in connection with that facility. Contractor may use the Hazardous Waste Facility to dispose of hazardous Unacceptable Waste accumulated from incoming waste in conformance with the *Hazardous Waste Handling Procedures Manual*. Contractor shall remove all recyclables recovered at the Hazardous Waste Facility for no charge, and shall remove and dispose of Acceptable Waste generated at that facility. Contractor shall receive only its normal per ton rate for removal and disposal of such Acceptable Waste.

### **24.0 LITTER CONTROL**

The Contractor shall conduct at least two daily litter cleanup activities, once before 10:00 a.m. and once after 5:00 p.m. each day. Covered areas are to include the entire site (including, the Hazardous Waste Facility area, Transporter's parking area, landscape areas), and both sides of Hwy 213 between the I-205 interchange and Washington St., and both sides of Washington St. between Hwy213 and the Abernethy Creek Bridge.

### **25.0 ON-SITE PERSONNEL**

The Contractor shall provide sufficient on-site personnel to ensure efficient operation, maintenance and management of the facility (including separate operating areas for self-haul and commercial customers). During peak periods, or when some personnel are unavailable for whatever reasons, additional personnel shall be provided as necessary for the continued and uninterrupted operation and maintenance of the facility in the most efficient manner. The Contractor is responsible for identifying such trends and adjusting the number of personnel as required at no additional cost to Metro.

If Metro determines that additional personnel are needed, Metro shall direct the Contractor to provide additional personnel and Contractor shall supply the additional personnel as directed within 2 hours of receiving the directive.

To ensure proper staffing, Contractor shall submit a staffing plan for Metro's approval every three months. The Contractor shall follow the staffing minimums listed below.

#### **During all hours of Commercial Waste Acceptance - Acceptable Minimum**

The Contractor shall meet the following minimum personnel requirements during Commercial Waste Acceptance hours:

- A. One spotter per operating area to assist in the control of traffic, unloading of refuse, control of debris, maintenance of the site, recovery of recyclables from public loads, and the checking of receipts from all customers (minimum 40 hour hazwaste-trained).
- B. On-site security.

### **During all hours of Self-Haul Waste Acceptance - Acceptable Minimum**

In addition to the requirements listed above, the Contractor shall meet the following minimum personnel requirements during all hours of Self-haul Waste Acceptance:

- C. One Superintendent or Foreman who shall be considered the representative of the Contractor in charge of the work.
- D. One inspector whose primary duty is to monitor for suspicious waste and unacceptable waste, ensure compliance with Special Waste Conditions, conduct the load-checking program and ensure compliance with the *Contractor's Procedures Manual*.
- E. One loader/equipment operator per operating area (exclusive of compactor operators).
- F. Two traffic control laborers.
- G. One laborer, per operating area that is accepting self-haul waste to control traffic and to assist with the recovery of recyclable materials from loads, the processing of recovered materials for shipment to markets including the stripping of appliances, the high grading or processing of commercial loads if required.
- H. One laborer dedicated to provide litter patrol and cleanup on and off site (8 hours per day).

During the peak periods of 10 a.m. to 2 p.m. weekdays and 8 a.m. to 5 p.m. weekends, the Contractor shall provide twice as many personnel in operating areas accepting self-haul waste for items A and G above, as well as twice the number of traffic control laborers (F above).

The Contractor shall be required to train all personnel directly involved in performing the Work described in the Contract. All employees operating equipment shall receive documented training and acquisition of certificates as recommended by the manufacturer, on all equipment they are authorized to operate. All employees shall receive sexual harassment and diversity training annually. Supervisory personnel shall be familiar with the Contract Documents. At least one supervisor shall have read Metro's Regional Solid Waste Management Plan.

The Contractor shall ensure that, only to the extent that their essential job responsibilities require it, personnel are sufficiently proficient in speaking, understanding, reading, and writing English to enable them to perform their essential job responsibilities. For example: (1) Supervisory personnel must be able to read, understand, and explain the Contract Documents and other written materials such as OSHA rules and safety manuals, must frequently communicate with public customers, and must occasionally write reports, letters and other documents; (2) Equipment operators must be able to communicate orally with the other staff and customers concerning proper tipping operations, unacceptable wastes and emergency procedures; and (3) Spotters and traffic control personnel must be able to communicate orally with public customers, with whom they will be in constant contact, concerning proper parking and tipping activities, to answer operation questions concerning recycling rules and unacceptable wastes, and to provide safety information in an emergency. This requirement shall not be implemented in a manner that illegally discriminates on the basis of national origin, and in no event shall the requirements of this paragraph be interpreted to permit, condone, or encourage illegal discrimination against any person on the basis of national origin. If the Contractor determines that it is unable to comply with this paragraph without engaging in illegal discrimination on the basis of national origin, then Contractor shall not comply with this provision. If Contractor makes such a determination, then Contractor shall immediately inform Metro of its conclusion to that effect in writing, and Contractor shall work with Metro, at Metro's request, to address this issue in a non-discriminatory way.

## **26.0 TRANSFER STATION EQUIPMENT**

Contractor shall use adequate equipment, suitable for heavy-duty service in connection with a solid waste transfer station and materials recovery operation. The equipment proposed by the Contractor (and modified in any subsequent negotiation) shall be used in the performance of the work. It is the responsibility of the Contractor to supply additional equipment or make substitutions as appropriate, at no additional cost, to accomplish the work as described in the Contract in an efficient manner.

All rolling stock must, at a minimum, use low sulfur diesel and be equipped with the latest apparatus to minimize discharge of particulates and other contaminants to the air, or more stringent pollution control measures as negotiated in finalizing this Contract. The equipment utilized must be specifically designed for the use intended. Modified or "built-up" equipment will not be acceptable without Metro approval. The Contractor shall properly protect the equipment and place it in the charge of competent operators.

All major pieces of rolling stock such as front end and track loaders, and skid loaders furnished by Contractor shall be new and unused as of the beginning of this Contract, and all equipment shall be suitable in design and construction for arduous, heavy duty service in a solid waste transfer station operation. All equipment shall comply with all applicable laws and regulations.

Metro shall have the right, but not the duty, to purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Contract, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall provide to Metro, upon request, properly signed Financing Statements and all other necessary documents for Metro to secure its purchase options.

Contractor shall use blade guards and rubber tires on all mobile equipment operated in and around the facility and shall use due care in their operation to avoid damaging the tipping floors and other facilities.

### **26.1 FUEL STORAGE**

A Metro-approved fuel storage area is available on-site for a Contractor-supplied tank. The Contractor shall ensure compliance with all regulations if an on-site storage tank is utilized.

### **26.2 COMPACTORS**

Two Metro-owned SSI Model 4500 compactors are to be used in the compaction of waste.

## **27.0 MAINTENANCE REQUIREMENTS**

Unless otherwise specified, the Contractor shall be responsible for the maintenance and repair of the facility, all Contractor-furnished equipment, and all Metro-furnished equipment and facilities, including all plumbing, mechanical, and electrical systems and components, drainage structures, fixtures and devices related thereto, or which form a part of, or are installed therein.

### **27.1 METRO-FURNISHED EQUIPMENT**

- A. The Contractor shall maintain Metro-furnished equipment in good working condition at all times. Maintenance shall conform to the recommendations of the manufacturer. The Contractor shall not alter or remodel Metro furnished equipment without advance written approval from Metro.
- B. Equipment covered by a manufacturer's warranty shall be maintained in accordance with the terms of the warranty. All repairs or adjustments covered by the manufacturer's warranty shall be referred to an authorized representative of the manufacturer.



- C. Contractor shall make all necessary repairs that are not covered by the terms of the manufacturer's warranty, for whatever reason, shall be made by the Contractor. The Contractor will use manufacturer-recommended parts in preventative or repair maintenance, unless Metro approves substitutions.
- D. The Contractor shall be responsible for replacement/repair of any Metro-owned equipment or facilities lost, damaged, destroyed, worn out, stolen, or rendered inoperable, due to Contractor's negligence, including but not limited to Contractor's failure to operate or maintain the equipment in accordance with the manufacturer's recommendations as contained in the appropriate manual (a list of which is contained in the Appendix) or these Specifications.
- E. Contractor shall maintain an inventory of spare parts as recommended by the manufacturer and as necessary to minimize down time.
- F. All stationary equipment shall be suitably painted and/or finished so as to present an acceptable appearance in the opinion of Metro.
- G. Upon completion of the Contract, Contractor shall return to Metro the Metro-furnished equipment in a condition that reflects normal wear and tear.

### **27.2 CONTRACTOR-FURNISHED EQUIPMENT**

- A. Contractor-Furnished equipment shall be properly maintained in a safe working condition at all times. The Contractor shall be responsible for all costs associated with Contractor-furnished equipment.
- B. The Contractor shall furnish, at its expense, whatever backup or substitute equipment for Contractor-supplied equipment which may be required to continue operation in accordance with Contract requirements during the period when equipment is inoperable. Provisions must be made, and approved by Metro, for a replacement dozer to be available.
- C. Contractor shall ensure all equipment complies with Metro's Clean Exhaust Program as negotiated as part of the proposal process.

### **27.3 BUILDINGS**

- A. The buildings shall be maintained in good condition at all times. Contractor shall repaint all painted surfaces on the interior and exterior of the scalehouses, Contractor's offices, all breakrooms and restrooms (excluding facilities associated with the onsite hazardous waste facility), and interior concrete walls in Bay 1 every 24 months. Metro will supply latex paint for non-specialty applications (for example, safety yellow cannot be provided) at no cost to the Contractor. Factory-finished metal wall panels of the buildings shall not be repainted. Contractor shall repaint all safety devices in the transfer station bays and wash rack such as bollards, entrances and exits, traffic dividers, etc. every 24 months or as needed (in Metro's sole determination and at its direction). The type of paint, color, and method of application shall be subject to review and approval by Metro prior to commencement of repainting work.
- B. The Contractor shall be responsible for inspection, lubrication, adjustment, repair and maintenance of all building systems (including scalehouses) to include, but not necessarily be limited to, plumbing, sumps, degreasers, fixtures, heating, ventilating, and air conditioning systems, components, and devices; fire and dust suppression systems; radio communications equipment. Contractor shall replace any item, component, or device that is lost, damaged, destroyed, or which fails during the contract period shall be replaced by the Contractor.
- C. The Contractor will be required to clean storm water sumps as needed.. Contractor will ensure compliance with all permits and be responsible for all costs associated with permit compliance.

## **27.4 WEIGHING SYSTEMS**

- A. Maintenance and repair of weighing system scales and associated equipment will be performed by Metro at no expense to the Contractor. The Contractor will be required to clean the scale pits and decks monthly at no cost to Metro and during times that are not disruptive to traffic flow.
- B. Maintenance of the compactor weighing systems shall be the responsibility of the Contractor.

## **27.5 COMMERCIAL AND INDUSTRIAL VEHICLES WASH RACK**

- A. The Contractor shall operate and maintain twice daily, or as needed, the existing commercial and industrial vehicle wash rack. Contractor shall restrict use of the wash rack to commercial and industrial customers.
- B. Daily maintenance will include the inspection of the truck wash sump, and cleaning as needed or at least weekly. Contractor shall conduct a general cleanup of the wash rack area *at least* twice daily. Weekly removal of all accumulated solids from catch basins shall be performed. Hoses must be maintained in operable condition and nozzles must be attached to hoses at all times. The operating pressure shall be such that commercial collection vehicles that use the facility can be cleaned adequately. The Contractor will be responsible for maintaining the sewer lines from the wash rack, and for all other parts of the wash rack as well, including their replacement.
- C. Contractor shall supply shovels and brooms for users of the washrack.

## **27.6 DRIVES AND PAVEMENTS**

- A. Repair, patching, sealing and remarking of drives and pavements inside and outside of structures, but within the site's boundaries, shall be the responsibility of the Contractor, as needed or directed by Metro, at no additional cost to Metro.
- B. The Contractor shall be responsible for painting and maintaining traffic direction lines on the roadways (including staging/storage area).
- C. Replacement of the pavement shall be done as needed, with either the Contractor acting as Metro's agent or through Metro contracting directly for this service.
- D. Additional or replacement signage shall be provided by the Contractor. All signs must be professionally prepared and mounted.

## **27.7 STREET CLEANING AND MAINTENANCE**

- A. The Contractor shall pull a mobile magnet capable of removing all ferrous metal daily, to collect all ferrous objects from the truck wash facility, transfer station area, Transporter's parking area on-site, the entrance and any and all other paved areas on the site.
- B. At no time will customers be directed to back or drive over debris anywhere on or in the facility.
- C. All areas will be kept clean using a power broom or other street cleaning equipment approved by Metro. These areas must be cleaned at least one time per week or as often as necessary, as determined by Metro.

## **28.0 HOUSEKEEPING**

### **28.1 TRANSFER BUILDING**

Contractor shall:

- Clean exterior of all onsite buildings (except for the hazardous waste area) by pressure washing annually walls, roofs and gutters from the time operation commences, and at one month prior to completion of the Contract;
- Steam clean exterior of the buildings as needed to remove stains in conjunction with the pressure washing of the exterior;
- Clean interior of transfer buildings and truck wash and (excluding rafters, other metal structural supports and ceilings) by pressure washing annually;
- Sweep and hose work, vehicle maneuvering and maintenance areas within the transfer station area daily at a minimum and wash with environmentally preferred detergent if necessary;
- Immediately address and clean all spills when they occur;
- Daily remove wastes from the cleaning process and not dispose of such wastes in storm drains or sanitary sewers.

The Contractor shall supply all equipment, supplies and labor for cleaning. Contractor shall use environmentally safe cleaning agents as determined in cooperation with Metro.

## **28.2 JANITORIAL SERVICES**

The following services will be provided a minimum of three (3) days per week, for the transfer station operations' offices, (including but not limited to the conference and break rooms) all scalehouses, Metro office building, and an on-site trailer used by household hazardous waste personnel, unless otherwise indicated:

- Vacuum mats and carpets;
- Dust desks, chairs, cabinets, etc.;
- Spot clean fingerprints from walls and doors;
- Empty trash, replace liners as needed;
- Dust off counters, desks and tables;
- Dust-mop any tile floors and stairwells; Wet-mop any tile floors and stairwells;
- Spot clean fingerprints from bathroom cabinets;
- Clean bathroom sinks, toilets and counters;
- Replace toilet tissue, paper towels as needed;
- Strip and wax floors once a month;
- Clean all windows weekly;
- Buff floors weekly;
- Carpets shall be scrubbed bimonthly;
- Provide doormats at each entry to the offices and scalehouse, replace with clean mats weekly;
- Provide working mats in the offices, scalehouses, hazardous waste facility as requested; and,
- Provide all janitorial and cleaning supplies as needed (non-toxic). All cleaning supplies shall comply with the environmentally preferred specifications for such products in the Appendix.

## **29.0 LANDSCAPE MAINTENANCE**

Metro will be responsible for the landscaping at the site. Contractor will be responsible for utility billings, such as water related to landscaping activities. Contractor will be responsible for the repair and replacement of all structures such as drainage structures and fences. Cleaning of drainage structures and filters shall be considered routine maintenance.

## **30.0 PERMIT COMPLIANCE**

The Contractor will be required to operate the transfer station in complete compliance with all permits issued to Metro by regulatory agencies. The Contractor will be responsible for making any improvements or modifications in operating procedures necessary to stay in compliance with all such permits. Contractor shall pay any penalties levied by regulatory agencies for Permit noncompliance due to negligent operation or omission by the Contractor.

Penalties will be in addition to any liquidated damages assessed according to the Contract Documents.

### **30.1 OPERATING PERMITS**

Metro has the necessary permits to operate the facility. These include:

- Solid Waste Disposal Permit from the Oregon Department of Environmental Quality
- Industrial Wastewater Discharge Permit
- Storm Water Discharge Permit
- Scale Permits

Other required permits are the responsibility of the Contractor. Likely examples include city business licenses and radio frequency permits.

### **30.2 IMPLEMENTATION OF PERMITS**

It is the responsibility of the Contractor to perform any testing required by the permits listed in Section 30.1 and to pay for all associated costs with the exception of industrial wastewater and storm water permits. For those two permits, Metro will perform and pay for all required testing (i.e., sampling and analysis) and reporting of test results, and will be the regulatory agency's contact for routine communications. The responsibilities of the Contractor for industrial wastewater permit shall be all the responsibilities for permit compliance described in Section 30.0.

## **31.0 UTILITIES**

All utility charges, including water/sewer, electricity and telephone will be the responsibility of the Contractor, except the telephone charges for Metro personnel and the electricity for the Hazardous Waste Facility. The Contractor shall forward copies of utility bills to Metro as requested.

Contractor shall participate in the electrical supplier's Clean Wind Program at the *Patron Level* at which 15% of the electricity purchased is generated by wind turbines. Metro shall be listed as the program participant for purposes of participating in the utility's recognition program and shall direct where the clean energy originates through *Green Tags* designations or other similar available mechanisms.

## **32.0 COORDINATION**

The Contractor will be responsible for coordinating its activities with the waste Transporter. Metro will act as the arbitrator of any disputes between any and all contractors and/or disposal site operators connected with their work, regarding their performance of the work and the interpretation of the contracts involved. It will be the responsibility of the Contractor to prepare for and respond to complaints, charges, and allegations brought against the Contractor prior to any such arbitration meeting. The Contractor will also be required to present a monthly report summarizing activities during the prior month and plans and schedules for future activities. The organization of and invitation to any such meeting will be the responsibility of Metro.

## **33.0 OPERATIONS REPORTING REQUIREMENTS**

The Contractor shall establish and maintain an information system to provide storage and ready retrieval of Facility operating data and all financial information.

The Contractor shall prepare and maintain proper, accurate, and complete records and accounts of all transactions related to the Facility (except for Scalehouse functions). The Contractor shall maintain records of its costs in a manner that will permit, to the extent possible, the separate determination of the

cost of providing service to (1) the general public, and (2) commercial customers. These records shall include, but not be limited to (as applicable): maintenance records, equipment replacement records and schedules, and safety and accident reports; quantity of Acceptable Waste delivered to the Facility; quantity of Source-Separated recyclable materials received and sold; quantity of Recovered Materials produced and sold; quantity of compacted waste loaded for transport to disposal; and quantity and type of Unacceptable Waste handled. Metro shall have complete access to all such records.

The Contractor shall provide Metro with monthly reports within ten (10) calendar days of the end of each month, including, but not limited to, the following operating data (as applicable):

- (1) Complaint forms, recommended actions, and/or actions taken;
- (2) Any extraordinary occurrences affecting Metro;
- (3) Status of operating equipment;
- (4) Any correspondence between the Contractor and governmental bodies relevant to the Contract;
- (5) Reports on accidents and their status;
- (6) Monthly sales of Recovered Materials (by material and price);
- (7) Monthly quantity of waste compacted and loaded for transport to disposal (by facility);
- (8) Quantity and type of Unacceptable Waste; and,
- (9) Financial data and utility consumption as deemed appropriate by Metro.

The Contractor shall prepare an annual report subject to independent audit that incorporates a summary of the monthly operations reports for the preceding 12-month period summarizing all required data and records. This report shall be submitted to Metro within ninety (90) days after the end of each Contract year.

The Contractor shall prepare an operating and maintenance manual for the facility. The manual shall include waste handling procedures, the number and type of positions and equipment, routine maintenance requirements, and the contingency plans required above. The manuals shall be updated at least annually, or sooner if major changes to the operations occur.

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# **SPECIFICATIONS FOR METRO CENTRAL STATION**

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## 1.0 INTRODUCTION

The purpose of the SPECIFICATIONS is to provide the Contractor with its operating and maintenance responsibilities for the Metro Central Transfer Station (MCS) located at 6161 NW 61<sup>st</sup> Ave., Portland, OR, as well as portions of the surrounding roadways. These responsibilities are detailed in the sections below. An overview is provided in this introduction.

Generally, the Contractor is responsible for all portions of the six-acre site except for the hazardous waste facility, Metro Office and scalehouses, which are operated by Metro (see figure 1). This includes the supervision of customers while they are on the site.

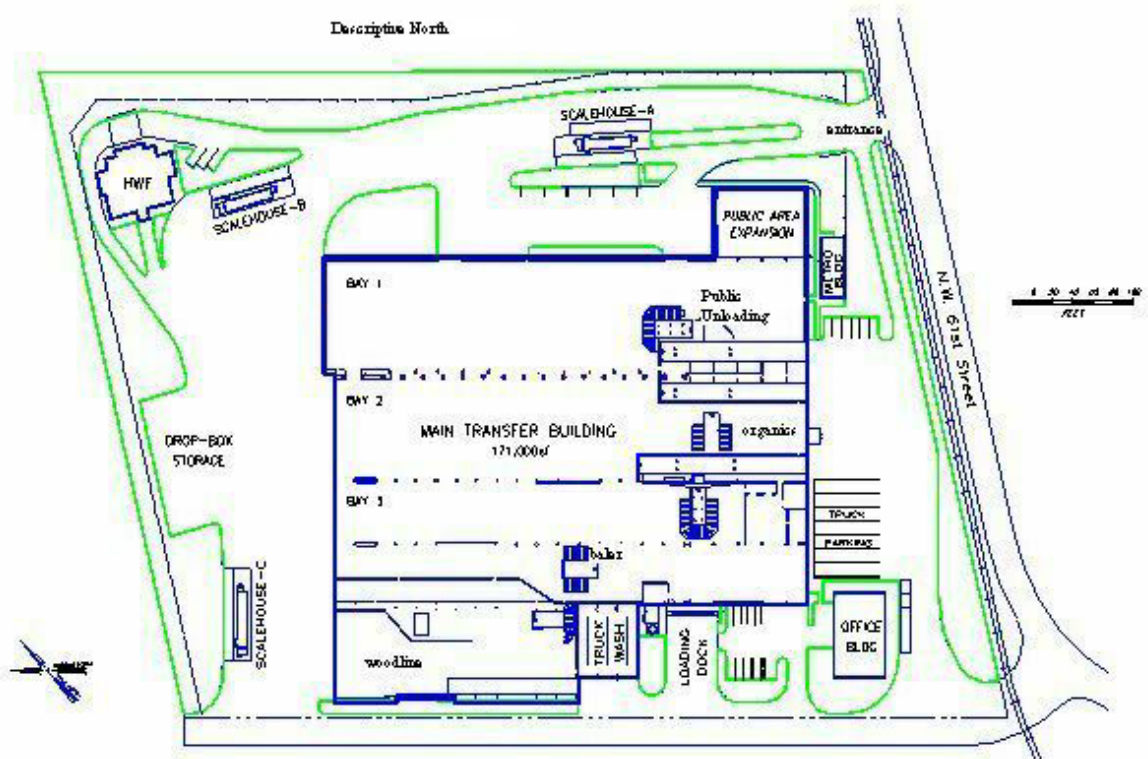


Fig. 1

The Metro Central Station receives mixed solid waste and some source separated recyclables from both commercial haulers and the general public. Customers enter the facility through the northeast entrance of the site. Public customers proceed to scalehouse *A* for weighing. After leaving the scalehouse they are under the direction of the Contractor, which is responsible for ensuring the waste is properly unloaded in a manner emphasizing good customer service. Waste must be inspected for unacceptable waste, materials recovered and the remaining waste managed efficiently to facilitate customer throughput. Waste from these customers shall be unloaded in the *public area*. Contractor may utilize other portions of the facility for the public when separation from commercial haulers can be maintained, such as on the weekends.

Commercial customers (generally those with packer or drop box size loads) will utilize either scalehouse *A* or *B*. Scalehouse *B* is used if queuing problems develop or if the customer participates in the automatic transaction system located at scalehouse *B*. After weighing, the Contractor is responsible for directing the customer to the appropriate area for unloading in Bays #1-3 or at the woodline or organics area depending on the type of waste and how the Contractor chooses to utilize the facility. Waste must be inspected for unacceptable waste, materials recovered and the remaining waste managed efficiently to facilitate customer throughput in a courteous and customer service-oriented manner.

Contractor is responsible for providing all rolling stock to accomplish the requirements of the contract as detailed herein. The site is equipped with some major systems for use by the Contractor; these include 3 compactors, a woodline, mobile grapple, truck scales and a washrack. These systems, as well as the other parts of the facility are the responsibility of the Contractor except as noted. Contractor shall utilize any manuals, manufacturer's recommendations, drawings and directions available to operate and maintain the facility properly.

Contractor is responsible for loading the waste into Metro's Waste Transport Contractor's (Transporter's) trailers. Contractor shall coordinate its activities with the Transporter as well as with any other Metro contractors to maximize transfer efficiencies. The services provided by the Contractor shall be conducted in accordance with all state, federal and local regulations. Operating priorities shall be safety, efficiency, material recovery, protection of the environment and customer service. The Contractor shall make efforts to maintain positive public and community relations.

## **2.0 PROJECT DESCRIPTION/REQUIREMENTS**

Metro will provide the Contractor use of the facilities located at 6161 NW 61<sup>st</sup> Street, Portland, Oregon, and known as Metro Central Station for performing the work under this Contract. All equipment and facilities provided at that site shall remain the property of Metro, except as specified herein, and shall be returned to Metro in good working order upon termination or completion of this Contract.

The Contractor shall be responsible for the security, proper operation, maintenance, repair, and condition of all equipment and facilities furnished by Metro. The equipment shall be used exclusively to conduct waste transfer and material recovery operations and shall not be removed from the premises except for purposes of repair or maintenance unless approved by Metro.

Contractor shall provide Metro with a full service transfer station serving the disposal and recycling needs of the public, commercial collectors and industrial accounts, as designated by Metro. While the INTRODUCTION provides an overview of the work to be provided by the Contractor, below is listed the major components and responsibilities of the Contractor for this Contract.

Components of this project include:

- A. Mobilization of equipment and personnel onto the site.
- B. Providing safety equipment and safety/operations training.
- C. Emergency and contingency planning and preparedness.
- D. Maintenance of safe and healthy operating conditions for all customers and employees.
- E. Receiving waste and recyclables on-site from the public, commercial haulers, and industrial accounts.
- F. Conducting Load Check Program and handling Unacceptable Waste in accordance with these Specifications and Metro's *Transfer Station Contractor's Procedures Manual* (referred to as *Contractor's Procedures Manual*).
- G. Traffic control.
- H. The removal of recyclables from public loads by assisting customers and processing of waste.
- I. Operation and provision of a Recycling Center for source separated recyclables.
- J. Movement of waste and recyclables from the Hazardous Waste Facility on-site.
- K. Materials Recovery processing of a portion of the solid waste delivered by commercial customers.
- L. Locating markets for recyclables and providing vehicles and personnel to transport the Source-Separated and Recovered Materials.
- M. Handling, compacting and loading solid waste on-site.
- N. Operation and maintenance of Contractor-furnished equipment and Metro-furnished equipment and facilities except weighing system and the Hazardous Waste Facility.
- O. Furnishing of all supplies, materials, equipment and services for performance of the Contract.
- P. Litter control on-site and in designated areas on roadways approaching the facility. Use of a magnet daily for on site cleanup. Site security during all hours.
- Q. Insect, vermin, dust and odor control.
- R. At least monthly meetings with Metro to report on progress achieved and any special problems encountered.
- S. Coordination with other contractors.
- T. Demobilization of equipment and personnel from the site upon completion or termination of this Contract, and return of the site to its original condition as at the start of this Contract, normal wear and tear excepted.
- U. Provision of uniforms for all non-office staff.

### **3.0 WASTE FLOW AND HOURS OF OPERATION**

The facility will be open for the general public from 8:00 a.m. to 7:00 p.m. during PDT and from 8:00 a.m. to 6:00 p.m. during PST, seven days a week. The facility will be open for commercial and industrial accounts with automation tags five hours earlier, except on Sundays when it will open at 8:00 a.m. for all customers. The facility will be closed for all business on Christmas and New Year's Days.

Metro reserves the right to prohibit or limit the type or types of accounts which may use the facility. Metro reserves the right to increase or decrease the hours and days that the facility is open.

The Contractor shall not be entitled to any reimbursement, under any provisions of these Specifications or the General Conditions, for costs or revenue losses due to changes by Metro in the type of accounts that may use the facility, or in a decrease in the number of hours the facility is open. Metro shall be entitled to a reduction in payment for any decrease in hours of operation in accordance with the deletion of work provisions of the General Conditions. For any increase in the hours of operation, Contractor shall be entitled to an increase in compensation in accordance with the additional work provisions of the General Conditions. Metro shall provide the Contractor with 24 hours written notice of any change in hours of operation or types of accounts that may use the facility.

Waste volumes will fluctuate daily, weekly, monthly and annually. The Contractor must be capable of handling these variations such that the operations at the transfer station are not impeded. For a detailed analysis of projected waste flow on an hourly, weekly, monthly and yearly basis, refer to the Appendix in this document. These projections are estimates only and shall not be regarded as guaranteed flows.

#### **4.0 WEIGHING AND BILLING SYSTEM**

After entering the facility, customers will be processed through the weighing and billing system. Metro will be responsible for the operation of the weighing and billing system located at the scalehouses, and for admitting public, commercial haulers and industrial accounts into the facility. Each vehicle shall be weighed by Metro upon entering the facility. Metro employees, operating the scalehouse, shall make all determinations regarding fees to be paid by haulers using the facility and determining what waste shall be categorized as Recoverable Waste.

After unloading, the vehicle shall be reweighed to determine the net weight of the load. If a vehicle contains a large amount of recyclables that qualify for a reduced charge, Metro may require the vehicle to unload the recyclables and reweigh prior to unloading the waste.

The empty or tare weight of commercial vehicles may be established by Metro and recorded so that the vehicles will not be required to re-weigh each time after unloading and so commercial haulers may utilize the automatic weighing system. This system utilizes a tag reader system to identify the vehicle and its tare weight, and then weighs the vehicle and generates a receipt.

The Contractor will not be allowed to operate the weighing and billing system, and will not be responsible for maintenance of the system's equipment, except for cleaning of the scale pits monthly. Maintenance of the scalehouse structures and the provision of janitorial services will be the responsibility of the Contractor.

All Recovered Materials, compacted waste, and Unacceptable Waste shall be weighed by Metro prior to removal from the Facility. This data will provide checks on the facility efficiency and known quantities for Material Recovery and disposal. The Contractor shall be paid based on the incoming weights established at Metro scalehouses for waste and source separated materials for which individual prices have been established. Payment for Recovered Materials shall be established based on outgoing weights as established at the scalehouses.

The Contractor will coordinate its activities with Metro's scalehouse personnel. The Contractor shall provide and maintain a three channel (one of which will be reserved solely for emergency communications on-site), alternate radio communication link between all work areas (Contractor's and Metro's and any other contractors on-site) and the Contractor's spotters in the transfer station.

## **5.0 TRAFFIC CONTROL**

The Contractor shall have responsibility for controlling the movement of traffic onsite and off-site if needed. This shall include the optimal use of queuing lanes and unloading spaces, and the provision of personnel to direct traffic.

Contractor shall provide at least one spotter located in the vicinity of Scalehouse "A" to initially direct customers to the appropriate unloading areas. For commercial customers, the spotter's responsibilities shall include making a prompt determination of the appropriate bay to which to direct the load. The spotter(s) shall be equipped with a radio that shall be used to alert personnel in the unloading areas of the arrival of a load of waste. As the Contractor's initial point of contact with customers, the spotter(s) shall be courteous and be thoroughly trained in evacuation procedures. Any disputes between the spotter(s) and customers shall be immediately reported to Metro. Contractor shall provide a mobile shelter for the spotter(s).

Once a load of waste arrives at the appropriate unloading area, additional spotters shall direct the load into the building and to the appropriate spot for unloading of the vehicle. These personnel shall be appropriately attired to be visible in all lighting conditions, be equipped with flashlights or other signaling devices of sufficient brightness to be seen by customers and be equipped with radios. These spotters shall ensure that the unloading area over which the customers travels and unloads is free of debris and that there is sufficient space for unloading to proceed in a safe and efficient manner. Spotters shall assist customers as needed. Spotters shall be trained in the unloading and load check procedures of *Contractor's Procedures Manual*. Upon completion of unloading, spotters shall coordinate the exiting of vehicles to ensure a safe exit from the facility.

The Contractor shall assist all disabled vehicles and remove them from the traffic ways if necessary.

Contractor shall obtain Metro's approval for proposed on-site traffic patterns and such approval shall not be unreasonably withheld. Metro may direct the flow of traffic at any time for any purpose.

If, in the sole opinion of Metro, the Contractor is providing insufficient personnel to alleviate traffic problems, the Contractor will have one hour to remedy the situation. If Contractor fails to remedy the situation within an hour of notice by Metro, liquidated damages may be assessed.

## **6.0 ACCEPTANCE OF WASTE**

The Contractor shall operate the facility to receive regular deliveries of mixed solid waste on a seven-day per week basis from drop box trucks, compactor-type vehicles, large dump trucks, transfer vehicles, private citizen vehicles and other vehicle types approved by Metro.

Contractor must ensure that unloading operations are done in a safe manner in accordance with Section 12 of these Specifications and *Contractor's Procedures Manual*. Contractor shall

visually monitor actions taken and equipment used by commercial and public users of the facility, and shall immediately correct any hazards detected during the course of normal operations. Ongoing safety activities include inspecting incoming loads for Unacceptable Waste or hazardous materials, investigating all reported hazards and near miss situations, identifying vehicles with safety deficiencies and notifying Metro immediately.

Contractor shall keep an ongoing log of incidents, inspection activities and follow-up actions, and shall submit this log to Metro each month. Reporting forms and logs are included in *Contractor's Procedures Manual*.

The Contractor shall accept all of the following types of solid waste that are delivered to the Metro Central Station: (1) Acceptable Waste, as defined in this Contract, (2) recoverable materials that are listed in Section 9.0 of these Specifications, and (3) medical infectious waste delivered to the Metro Central Station in accordance with Metro's *Medical Waste Acceptance Procedures*, which are part of *Contractor's Procedures Manual*. Unacceptable Waste shall be handled in accordance with Section 12 of these Specifications and *Contractor's Procedures Manual*. Contractor shall be responsible for implementing Metro's load checking program as described in Section 12.

## **7.0 REFUSAL OF WASTE BY THE CONTRACTOR**

The Contractor may refuse to accept any waste at the facility if: (1) the Contractor can demonstrate that current state or federal regulations or the facility's solid waste permit prohibit Contractor from accepting such waste, or (2) such waste is Unacceptable Waste as defined in this contract and is not a recoverable material listed in Section 9.0 of these Specifications or medical infectious waste delivered to the Metro Central Station in accordance with Metro's *Medical Waste Acceptance Procedures*, which are part of *Contractor's Procedures Manual*. The Contractor shall immediately notify Metro's Operations Supervisor in writing of its refusal of any waste and shall provide a written justification for such refusal. The Contractor shall recover from mixed solid waste any Unacceptable Waste that is a recoverable material listed in Section 9.0 of these Specifications, including tires and white goods. For any portion of Unacceptable Waste that has been accepted and unloaded at the facility, the Contractor shall follow the procedures specified under Section 12 of these Specifications. Contractor must keep records of the following information regarding any such waste that has been unloaded: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste with such company representative or individual, pictures and approximate volume and weight of such waste. Contractor shall be deemed to have taken title to any waste it accepts without complying with this section.

## **8.0 MANAGEMENT OF WASTE AFTER UNLOADING**

After unloading, waste shall be managed in a manner to maximize the dual goals of materials recovery and efficient movement of the waste. Sufficient equipment and personnel shall be available to ensure targeted materials are recovered and that the waste is moved efficiently and safely to the compaction systems.

Movement of the waste shall be coordinated with incoming loads such that a clean and unimpeded area is available for unloading at all times, in a safe manner. Unloading vehicles shall not be made to back over or unload onto waste. Particular attention shall be paid to the removal of items on the floor that may puncture tires or otherwise damage customers' equipment or jeopardize their safety.

Contractor shall alter operations as directed by Metro to ensure compliance with this section.

## **9.0 MATERIALS RECOVERY - General**

Metro's goal is to maximize material recovery at its transfer stations. To this end, the Contractor is required to conduct materials recovery operations for both the public and commercial segments of the waste stream, in a manner consistent with the Contractor's proposal and as necessary to achieve the Base Recovery Rate, Contractor's Recovery Guarantee and any Bonus Recovery Credit proposed. Contractor shall also provide the following:

- A. Staffing: Operator must have a designated, qualified and skilled staff person to oversee the materials recovery operations at all times. Skills include experience with and knowledge of markets, marketing and material recovery facility operations. Contractor must demonstrate that it has the corporate resources to support this activity and this position including appropriate training and applicable professional certifications. Metro reserves the right to review and approve the employee that is designated to fill this position.
- B. Markets: The Contractor will be responsible for selecting the markets/brokers for recovered materials except organics, as well as for all activities related to transporting the materials to market. Metro reserves the right to disapprove the Contractor's choice of vendors for the sale and other distribution of all recovered materials. Vendors must meet the following basic criteria:
- Vendors must be fully permitted and in compliance with applicable federal, state and local laws, regulations, standards and conditions;
  - Recovered materials that meet vendor specifications may not be disposed in a landfill; and
  - Vendors' operations must be environmentally sound and must not have a detrimental impact on air, land, or water quality, or on their surrounding neighbors.

When selecting vendors, the Contractor shall give preference to vendors based on the end use of the recovered materials the vendors receive, according to the following priority (in order from most preferred to least preferred): reuse, recycling, composting (yard trimmings and food) and, finally, energy recovery and other beneficial use. If the Contractor has a choice between multiple, comparable vendors that are not distinguishable on the basis of the end use of the recovered materials, then the Contractor shall give preference to the vendor located closest to the Metro region.

Disposal of source-separated recyclable materials (materials accepted under a separate posted price, brought to the facility by self-haul customers receiving a discount, or contained on the list in this section in uncontaminated form) is strictly prohibited. Contractor will arrange for and be responsible for all costs associated with removing tires, oil filters, anti-freeze and yard debris from the entire site, as well as any other material listed in this section that may have a negative market value.

Historical patterns of materials recovery are discussed in the background section of the RFP for this project and in the Appendix, as well as in the operations manual for the facility.

The Contractor shall not be entitled to additional compensation for the loss of, or fluctuations in, recycling revenues due to actions taken by Metro. Contractor shall be allowed to keep the revenues from all recovered materials.

- C. Reuse: Metro's Regional Solid Waste Management Plan as well as the state recycling hierarchy [ORS 459.015(a)] places a priority on reuse and recycling over energy recovery or disposal. Contractor shall remove reusables from the wastestream for reuse by an approved third party. Metro will pay Contractor an additional 10% of the Recovery Credit for each ton of materials delivered to a third party for reuse.
- D. Organic Waste Recovery: Contractor shall reload source-separated organics brought to MCS into organics drop boxes provided by Metro's organics processor. Contractor shall handle the material from unloading through reloading in a manner to prevent contamination. Contractor shall manage the material in a manner that includes the following:
- Receiving source-separated organic material at a location mutually-agreed to by the parties. Metro shall be responsible for appropriately preparing the location. Metro shall be responsible for any deterioration to the location due to the nature of the material, if the Contractor manages the material in compliance with Item #3 of this change order.
  - Remove any incidental contaminants from source-separated organic loads. "Incidental contaminants" as used herein are any contaminants larger than the size of a five-gallon container.
  - Inspection of the loads to determine that the material is Acceptable Waste and qualifies as a load of source-separated organics (i.e. contains no more than four incidental contaminants per ton or 25 per load, or total contaminants of 5% by volume). Contractor, Metro and Metro's Organics Processing Contractor shall mutually develop practical rules for making such determinations.
  - If material is not Acceptable Waste it shall be managed in conformance with Item 10.0 of the Specifications for Metro Central Station. If material is Acceptable Waste but does not qualify as source-separated organics, it shall be managed in conformance with Item 4.0 of the Specifications for Metro Central Station; and Metro and the hauler shall be notified so that appropriate fees may be charged. The notification to Metro shall include hauler name, Metro truck number, time of receipt, and date.
  - Manage the material in a manner to minimize odor.
  - Daily reloading of organic material into drop boxes provided by Metro's organics processor, including the staging of boxes to and from any storage area for pick up by a transporter.
  - Contractor shall supply equipment and an equipment operator for the operating area in which source-separated organic material is received. No additional personnel will be required. Used equipment may be provided for this work.
- E. Reporting: The Contractor will report monthly the weight of Recovered Material by type as measured at Metro scalehouses, the amount by receiving end-markets, and the revenue



received by material. Contractor must develop satisfactory recovery and reuse reporting methods that include an analysis of the cost-effectiveness of recovering materials. For accounting purposes, material recovery must be treated as separate journal entries and must include cost estimates for labor and equipment.

### 9.1 PUBLIC RECYCLING STATION

Unless otherwise approved by Metro, Contractor shall be required to provide a recycling station, with Metro-approved signage in the area and on the bins Contractor provides, to receive source-separated recyclable materials from the general public at a location near the area for public unloading designated on the transfer station drawing contained in the Appendix. The purpose of the recycling station is to provide public customers with the opportunity to recycle materials. The recycling station will handle the following materials:

Newsprint	Glass containers	Aluminum
Steel (tin) cans	Mixed ferrous	Mixed non-ferrous
White goods	Corrugated cardboard	Tires
Used motor oil	Oil filters	Car batteries
Anti-freeze	Yard debris/wood	Plastic bottles/milk jugs
Scrap paper	Phone books	Magazines
Plastic film	Non-halon fire extinguishers	Window glass
Lawnmowers	Carpet padding	

Metro shall have the right to add or delete materials from this list at any time.

All source-separated materials will be stored in containers furnished by the Contractor. The Contractor shall:

- Make a good faith effort to recover materials from public loads by
  - a) keeping materials that are delivered as source separated materials from being mixed;
  - b) pulling recoverables from the mixed waste stream; and,
  - c) recovering materials for reuse.
- Assure the materials are properly prepared for market;
- Assure sufficient containers are available for use and have clear signage posted for the public in the public recycling area;
- Transfer materials to markets and/or processing centers in fully covered containers;
- Keep the recycling station free from litter and contaminated material at all times;
- Maintain the entire recycling area in a neat and clean manner;
- Schedule sufficient pick-ups of recyclable materials to prevent excessive accumulation;
- Maintain warning signs, spill kits and safety equipment in the public recycling area;
- Maintain operating safety shower and eyewash in the public recycling area at all times; and
- Collect from Metro's on-site household hazardous waste facility, at no additional charge, any of the materials listed above.

Employees assigned to handle recyclable hazardous materials shall be properly trained and equipped.

## 9.2 COMMERCIAL MATERIALS RECOVERY

The Contractor shall recover materials from incoming commercial loads of mixed solid waste, including all loads originating at construction/demolition sites (guidelines for identifying C&D loads are contained in the Appendix), to the extent that such activities do not interfere with the loading of waste in a timely manner as determined by Metro. Contractor may provide incentives to haulers to deliver high-grade loads rich in recoverable materials.

Targeted materials to be recovered from high-grade loads:

PAPER	MISC.	METAL	PORCELAIN	PLASTIC
<ul style="list-style-type: none"><li>• newspaper</li><li>• telephone books</li><li>• magazines</li><li>• cardboard</li><li>• paperboard</li><li>• scrap paper</li></ul>	<ul style="list-style-type: none"><li>• roofing</li><li>• tires</li><li>• window glass</li><li>• car batteries</li><li>• carpet padding</li><li>• carpet</li><li>• mattresses</li></ul>	<ul style="list-style-type: none"><li>• steel cans</li><li>• aluminum</li><li>• nonferrous</li><li>• ferrous scrap</li><li>• white goods</li></ul>	<ul style="list-style-type: none"><li>• toilets</li><li>• sinks</li><li>• other</li></ul> <ul style="list-style-type: none"><li>• unpainted</li><li>• painted</li></ul>	<ul style="list-style-type: none"><li>• plastic bottles</li><li>• plastic film</li></ul> <p>WOOD</p> <ul style="list-style-type: none"><li>• unpainted lumber</li><li>• pallets</li><li>• yard debris</li><li>• painted lumber</li></ul>

Except for materials that are prohibited from disposal in a landfill under state or federal law, such as whole tires and white goods, Contractor shall not be required to recover these materials if it is unable to locate markets for them.

A wood waste material recovery system (woodline) is available for the Contractor's use. See Appendix for a description. Preprocessing for the woodline and other materials recovery is to be accomplished primarily on the floor using manual labor.

## 9.3 RECYCLED PRODUCTS PROCUREMENT

Contractor shall adhere to Metro procurement guidelines for recycled products in the operation of the facility. Recycled products include but are not limited to the following: office paper and general office supplies, latex paint, re-refined oil, compost products, retread tires, and building materials. Vendors that supply recycled products are listed in an online database maintained by Metro at [www.metro-region.org/buyersguide](http://www.metro-region.org/buyersguide). Contractor shall abide by recycled products procurement standards of Chapter 2.04 of the Metro Code, as amended (a copy is contained in the Appendix). Contractor shall provide an annual report to Metro that itemizes the type of recycled products that they purchased and their dollar amount.

## 9.4 RECYCLING

Contractor will also be required to collect recyclable and recoverable materials, including all recyclable paper, glass containers, plastic bottles and cans, in its day-to-day office and on-site general business operations.

## 9.5 SUSTAINABLE PRACTICES

Contractor shall maximize sustainable practices in conducting its activities. Examples of activities to add for the transfer station:

- use of re-refined oil, lubricants and hydraulic fluids in equipment and rolling stock
- use of bio-based fuel for diesel operated equipment and vehicles or other low polluting fuels and/or pollution control equipment minimizing emissions

- purchase of reused wood and other materials from Rebuilding Center or use of Forest Stewardship Council-certified wood
- plastic lumber or Forest Stewardship Council-certified wood in place of treated wood
- minimum 30% post-consumer content recycled paper for all office use
- toilet tissue, paper towels, and napkins that meet minimum EPA post-consumer fiber standards
- reusable dishware, cups and utensils
- Metro latex paint
- recycling system for paper, containers and other office activities
- duplexing where possible
- energy-efficient lighting (use of compact fluorescents)
- use of remanufactured toner cartridges
- use of environmentally preferable cleaners (see Appendix)
- use of storage containers, plastic and paper bags, traffic management equipment with recycled content

Contractor shall supply information during Metro’s annual audit demonstrating compliance with these practices or upon request. Required sustainable practices shall be established through the proposal process.

#### **10.0 TRANSFER INTO TRANSPORTER’S TRAILERS- GENERAL**

After materials recovery, the remaining Acceptable Waste shall then be loaded into the compactors. The Contractor is responsible for the compaction and extrusion, into the Transporter's trailers, of a road legal payload of waste (also referred to as a bale). The Transporter is responsible for positioning its trailers to the compactors for receiving the loads, removing the loaded trailers, and positioning the next.

The Contractor shall provide bales for loading in a timely manner during pre-arranged compaction hours. For purposes of this section, a “timely manner” shall mean six bales of waste per hour. Metro, the Contractor and Transporter shall meet as needed to establish the compaction hours for which this standard applies. Generally such hours will coincide with peak weekday delivery periods for the facility.

Contractor shall attempt to maximize payloads transferred in the Transporter’s trailers while minimizing overloads. Contractor will receive bonuses or deductions based on average payloads. The monthly payment will also be adjusted for overloads incurred during the month. Payload and overload adjustments shall be made in accordance with Article 12(I) of the General Conditions of this Contract.

A log shall be kept at each compactor to record the information required below. The format shall be approved by Metro.

Prior to extruding a bale of waste into the Transporter’s trailer, Contractor is required to do a pre-load inspection of each trailer. The purpose of the inspection is to determine the condition of the trailer. Contractor shall record the time, trailer number, inspector and any comments concerning the trailer’s condition for every inspection. If the inspector believes the condition of a trailer is unsatisfactory for loading, Contractor shall inform the Transporter’s representative and Metro to decide whether a replacement trailer should be provided.

At the completion of extruding the waste into the trailer, the Contractor is responsible for installing a lock seal on the trailer, such as a flat metal seal that prohibits removal by hand. Each seal shall be marked with the letters *MCS*, three letters identifying the Contractor and a sequentially increasing set of at least four digits.

Example:     *MCS-CON-0000*

The Contractor shall record the time the bale was ready for extrusion, the time a trailer was available for loading, the seal number, and the weight of the load from the compactor readout into log. Contractor shall also note whether the load contained special or suspicious waste.

It is the responsibility of the Transporter to ensure that the seal was properly installed before the trailer leaves the staging/storage area. Once the Transporter has verified that the seal is properly installed, the waste contained within the trailer is the responsibility of the Transporter until the seal is broken in accordance with the "ENTRANCE POLICY" contained in the Appendix.

If the Contractor improperly installs the seal, the Transporter is required to notify the Contractor prior to leaving the Facility and request a new seal. The Contractor shall comply with any such requests. Failure to request a new seal will preclude Transporter from any recovery for damages arising out of any improperly installed seal. In addition, the Transporter can request removal of the seal to inspect the interior of the transfer trailer, its contents, and request and receive a new seal from the Contractor.

Each load sealed into the Transporter's trailer will be weighed at the on-site Transporter scale system to determine the payload and whether the load is road legal. The weight of each load extruded into transfer trailers will be printed on a manifest. This manifest will become the official weight record of the load and serve as the basis of payment for the Transporter, the Disposal Site operator as well as for the Contractor's Variable Compaction Maximization Adjustment. It will contain the date, time, container number, container tare weight, the seal number, as well as the weight of the load. A copy of the manifest will be given to the Contractor.

## **11.0 COMPACTOR OPERATIONS – GENERAL**

Contractor shall operate and maintain the compactors in accordance with the manufacturer's recommendations, all applicable regulations and Metro's recommended practices specified below. Contractor shall prepare waste for loading consistent with the manufacturer's recommended practices and shall remove material that is inappropriate for compaction or that becomes lodged in the compactors. Contractor shall load only Acceptable Waste into the compactors.

### **11.1 SAFETY**

It is the Contractors responsibility to provide all operator training, equipment and operating procedures to protect personnel. Emergency stops shall be visible (red), unobstructed, and easily accessible to the compactor operator during operations. The Contractor shall maintain all warnings and decals attached to any equipment and will not alter any E-stop or manufacturers' safety equipment without written approval of Metro. Contractor is responsible for ensuring that all operation and maintenance personnel receive appropriate training and certification (including manufacturer's certification).

A written lock-out/tag-out program for all equipment must be in place and strictly enforced at all times. A written confined space program describing safe entry procedures for all hoppers, pits and chambers must be implemented. Contractor shall provide and maintain all safety equipment

needed to implement these programs. Guarding must be maintained on all rotating/moving parts and conveyors. Guardrails (top rail, mid-rail and toe boards) on elevated surfaces must remain in place at all times. Contractor shall maintain all warnings and decals attached to the machine. Contractor shall ensure that all hazards in the compactor area are clearly marked.

The Contractor's Compactor Operators are the assigned Emergency Coordinator for the compactors and loading areas at the site for purposes of Metro's *Contractor's Procedures Manual*. Compactor operators must receive 40 hours of OSHA Emergency Response Training and medical surveillance and be able to participate in incident response in the event that the compactor is involved in a hazardous materials emergency.

Equipment must be readily available to contain and block any spills from the compactor load or equipment. Equipment and procedures to block storm and sewer drains from contamination must be in place at all times. Immediate actions to take in the event of a hydraulic fluid release from the compactor shall be posted in the compactor area. Contractor shall ensure that safety equipment including respiratory protection, emergency eyewash and fire extinguishers are available at all times in the compactor areas.

## **11.2 LOADING THE COMPACTOR.**

Compactors located in bays 1 and 3 are SSI models 4500SPH. They are equipped with remote controls that operate both the conveyor loading systems as well as the compactors. These compactors build a single bale. The compactor located in bay 2 is a SSI model 4000 that builds half bales. Contractor shall follow the steps for building the bale as described in the operator's manual.

It is the responsibility of the Contractor to load the compactor so it will function properly without jamming, puncturing the compactor or trailer walls, causing fire, explosion, or any other damage. Contractor should follow the operator's manual in selecting materials for compaction.

Waste loaded into the compactors should be well mixed such that consistent density and lengths of maximized payloads are produced. This includes mixing dry garbage with very wet loads to avoid short dense payloads. Loosely packed garbage loads that may produce loads of less than 30 tons should also be avoided.

For SSI models 4500SPH, a reader board is visible to personnel loading waste onto the conveyor from the bay floor. The board displays the weight and length of the bale. Similar information is available at the control panels. Weights are determined by loads cells located on the compactor. It is the responsibility of the Contractor to check and maintain each of the compactor load cells, such that overloads do not occur. It is the Contractor's responsibility to repair the load cell as soon as possible in order to continue operating without overloads.

The compactor shall be operated in such a manner as to reduce spillage of garbage and moisture when ejecting the bale. All waste spilled must be cleaned up after each bale is ejected.

## **12.0 LOAD CHECKING PROGRAM AND MANAGEMENT OF UNACCEPTABLE WASTE**

The requirements of this section are more fully explained in *Contractor's Procedures Manual*, which includes Metro's *Load Check Program* and *Medical Waste Acceptance Procedures*. The

requirements of the manual shall be binding on the Contractor and are incorporated in this Contract by reference. Contractor shall familiarize itself with the manual and its requirements, and shall avail itself of the training opportunities available from Metro's safety and emergency response programs as described in the manual. Contractor shall follow Metro's waste acceptance protocol and procedures for conducting load checks and managing unacceptable and hazardous waste as contained in *Contractor's Procedures Manual*. Contractor shall be bound by the requirements of the manual and any updates thereto.

Below is a summary of the responsibilities of the Contractor and Metro regarding load checking and managing Unacceptable Waste at the facility.

#### **12.1 SERVICES PROVIDED BY CONTRACTOR**

- A. Contractor shall inspect all waste received in a manner which is reasonably necessary to determine whether or not such waste is Unacceptable Waste. Waste that is received at the transfer station shall be visually inspected before and while it is tipped onto the floor. Visual inspection shall be done by at least one person, whose **primary** duty is to monitor the tipping of waste. Contractor shall provide at least one trained hazardous materials employee (HazMat Technician) to be available during all hours of waste acceptance, seven days per week, who's primary responsibility is to carry out the duties of these programs. At the conclusion of the visual inspection, if waste is not refused, title to the waste shall transfer to Contractor.
- B. HazMat technicians shall conduct required load checks and follow up activities in accordance with Metro's Load Check Program and Medical Waste Acceptance Procedures. Contractor shall provide to Metro a log of this activity along with documentation concerning Unacceptable Waste on a monthly basis.
- C. Contractor shall be responsible for all costs associated with incidents or accidents created by movement or loading of Unacceptable Waste that was not spotted during tipping and was later discovered within the facility or loaded into a transport vehicle. This includes, but is not limited to, cleanup and decontamination costs of the facility floor, compactors and Transporter's trailers.

#### **12.2 SERVICES PROVIDED BY METRO**

- A. Metro will provide proper disposal of Unacceptable Wastes, other than recoverable materials listed in Section 9.0 of these Specifications or medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, if discovered prior to loading into a compactor conveyor, compactor or trailer, subject to Contractor's compliance with *Contractor's Procedures Manual*.
- B. Metro shall provide space for collection of hazardous materials and shall purchase any necessary secondary containers for its collection.
- C. Metro personnel will contact generators of any Unacceptable Waste found by the Contractor, other than recoverable materials listed in Section 9.0 of these Specifications or medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, and Metro personnel will make arrangements for the removal and proper disposal of such waste.

### **12.3 GENERAL LIMITATION ON METRO'S LIABILITY**

Except as otherwise provided in Section 7 of these Specifications, Metro shall have no duty to reimburse the Contractor for, nor to hold harmless, indemnify, nor defend the Contractor against, any claims, demands, suits, damages, penalties, charges, judgments, liabilities, or losses of whatsoever character or kind, which may arise directly or indirectly from or are in any way connected with any negligent acts or omissions of the Contractor which relate to the management or disposal of Unacceptable Waste.

### **12.4 CONTRACTOR'S RESPONSIBILITY FOR SHIPPED UNACCEPTABLE WASTE**

Contractor shall be responsible for all costs associated with the proper handling and disposal of Unacceptable Waste that has been loaded into a transfer trailer.

## **13.0 CONTINGENCY PLANS. GENERAL**

The Contractor will submit to Metro for approval, within thirty (30) days of signing this Contract, comprehensive contingency plans for protecting life safety, the environment and property while maximizing continued operations under the following conditions:

- A. Emergency bad weather operating procedures, including but not limited to flooding, ice storms and high winds.
- B. Equipment failure at Metro Central Station. Plans must include time frame for the implementation of the plan, and the sources for, and description of replacement equipment.
- C. A work stoppage by any of the Contractor's employees.
- D. Local or regional events that requires additional solid waste collection and transport activity such as flooding or earthquakes.

### **13.1 CONTINGENCY PLANS - EMERGENCY**

- A. Contractor shall use the Incident Command System as outlined by Metro's Emergency Action Plan (EAP) and Emergency Response Plan (ERP) contained in the *Contractor's Procedures Manual* to coordinate all emergency response activities. Contractor shall implement and follow Metro's Emergency Action Plan and Emergency Response Plan as specified by Metro's Response Levels Chart, ICS Checklists, ERTeam Procedures and site evacuation procedures for all potential emergency incidents.
- B. In addition to Metro's EAP and ERP, contractor shall develop and provide to Metro coordinated plans to minimize hazards to human health and the environment, damage to buildings and the site, and the interruption of normal transfer station operations due to:
  - 1. Fires: including alarm system information, fire protection systems and monitoring, and fire prevention programs;
  - 2. Releases of hazardous substances beyond the scope of site responders: including arrangements with emergency responders and outside contractors;
  - 3. Explosions;
  - 4. Power outages;
  - 5. Hostile, violent or threatening persons on the site; and
  - 6. Flooding, Earthquake, or other serious local or regional emergency.

- C. Contractor shall ensure that a trained and certified Incident Commander who has the authority to implement the Site Emergency Action Plan is available at the site at all times. Contractor shall provide to Metro the names and telephone numbers of all personnel designated as Incident Commanders. Incident Commanders must be thoroughly familiar with the Site Emergency Action Plan (EAP), Emergency Response Plan (ERP), and other established contingency plans.
- D. Contractor's on-site Incident Commander shall serve as Incident Commander in all potential emergency situations, and shall protect life safety by initiating evacuation procedures as per Metro's Response Levels Chart. Contractor shall unify or transfer command to Metro and/or emergency response agencies as appropriate once evacuation procedures are completed. Contractor shall notify Metro Management Support Team by pager immediately in all incidents that requires any partial or full transfer station evacuation, whenever 9-1-1 is called to the site, and whenever operations are halted for emergency response.

### **13.2 HEALTH AND SAFETY PROGRAM, ACCIDENT PREVENTION**

- A. The Contractor shall establish a formal Safety Program for employees and supervisors, and shall document safety activities in order to identify, reduce and control potential hazards to workers and other personnel at the site. Contractor shall respond promptly to hazard reports, complaints and accidents to determine the cause of the hazard and to take corrective action in order to reduce or eliminate the reported hazard. Contractor will develop site-specific safety manuals. *Contractor's Procedures Manual*, Emergency Action Plan, and Emergency Response Plan are provided by Metro.
- B. Contractor shall ensure compliance with all applicable Oregon OSHA standards, including but not limited to written programs, training, equipment, and standard operating procedures. All applicable Or-OSHA standards shall be observed including but not limited to: hazard communication, blood borne pathogens, confined spaces, personal protective equipment, respiratory protection, hearing protection, lock-out tag-out, medical surveillance, asbestos, radiation, fire prevention, vehicle and equipment operations, welding, machine guarding, fall protection, safety committees, accident prevention and Hazardous Waste Operations and Emergency Response, and Oregon OSHA documentation and reporting requirements. All safety program policies, procedures, investigations, site inspections and records of training shall be made available to Metro upon request. Contractor is responsible for the occupational health and safety of all personnel employed by the Contractor and its subcontractors working on site.
- C. Contractor shall ensure compliance with the General Safety Program requirements listed in the *Contractor's Procedures Manual*

### **13.3 SAFETY AND EMERGENCY RESPONSE TRAINING PROGRAM**

- A. Contractor personnel training requirements are specified in the *Contractor's Procedures Manual*.
- B. Contractor shall ensure that all training requirements are met on an on-going basis, ensuring that personnel are trained to appropriate levels based on job duties, task assignments, changes in equipment, programs or policies, and on expected actions in emergency situations. Contractor is required to provide all employees with safety and health information and appropriate training as required by Or-OSHA and this Contract.



- C. An employee safety orientation and training program will be implemented by the Contractor prior to the start of the Contract, and will continue throughout the term of the Contract.
- D. Training and warning signs must be presented in a format and language understood by all employees. Contractor shall provide safety orientation, hazard communication, job-specific training, and basic personal safety instruction to all staff. Contractor shall regularly evaluate employees' on-going understanding of safety procedures and concepts.

#### **14.0 PARKING**

Parking is available for use by the Contractor's employees behind the Contractor's transfer station offices and at the offsite parking area for the Transporter. All other parking areas shall be approved by Metro prior to use. Metro reserves the right to change parking areas as necessary.

#### **15.0 SECURITY**

Contractor shall provide personnel for mobile/foot patrol for the site, 24 hours per day to prevent unauthorized site entry and/or facility misuse. Contractor shall have in place 24 hour staffed communication coverage including emergency communications equipment to include both required radio and cellular services. Security patrol backup and emergency situation response shall be available in addition to on-site personnel and shall be on-site no more than fifteen minutes from the time of the original request for security assistance to come to the site. Provision of these additional personnel shall be reimbursed in accordance with Article 14 of the General Conditions.

On-site security personnel's supervisors shall perform and document at least two unscheduled on-site inspections of such personnel (at least one of which will be between the hours of 11:00 p.m. and 4:00 a.m.) monthly and the inspections shall be noted and signed by the supervisor on a shift report kept by on-site security personnel and available to Metro.

Contractor shall provide back up and/or additional security personnel for Metro special events or meetings as requested by Metro within two hours of such request. Such additional personnel shall be reimbursed in accordance with Article 14 of the General Conditions.

Contractor shall replace any on-site security personnel requested by Metro.

Contractor shall document and provide copies to Metro ensuring that all security personnel assigned to the site shall:

- have recent and regularly scheduled background checks;
- be free from all felony and misdemeanor convictions deemed unacceptable under the Oregon Department of Public Safety Standards and Training requirements pursuant to ORS 181.870-879;
- not be a user of illegal drugs or an abuser of alcohol; and
- be certified as a private security officer under the Oregon Department of Public Safety Standards and Training requirements pursuant to ORS 181.870-889.

All services provided under this specification shall be performed in accordance with the highest industry standards as determined by Metro. Said performance shall include but not be limited to the reasonable handling of sensitive public and emergency situations. Contractor shall be liable for all damages resulting from its failure to provide adequate security.

**16.0 LAND FOR STORAGE PURPOSES**

On-site storage of equipment, rolling stock and supplies, for the use in performance of the Contract, shall be permitted, as space is available. Upon notice, Metro will have the right of access to all storage areas occupied by the Contractor.

**17.0 TRANSFER TRAILER STORAGE**

A transfer trailer staging/storage area is provided at Metro Central Station such that the Transporter can store up to five transfer trailers on-site, on the east side of the building as shown on Figure 1. Offsite storage of additional containers is also available. The Transporter is responsible for shuttling (via a "yard goat" vehicle) an empty transfer trailer to the compactor, and returning it to the staging area when loaded.

**18.0 INSPECTION**

Notwithstanding the annual review and inspection, the Contractor shall permit inspection of the Work by Metro, its representatives, and governmental authorities having jurisdiction over the Work, at all times.

Metro will inform the Contractor which of Metro’s employees will be responsible for routine inspections, and what authority such inspectors will have.

In conjunction with the review of the Contractor's annual report, Metro, at its own expense, will review records of Facility performance over the previous contract year and inspect the Facility. The primary objective of this annual review and inspection will be to verify that the Facility is operating at its design level.

The annual performance review will consist of an audit of all Facility operating records for the previous contract year. The annual inspection will consist of: (1) an inspection of the physical plant and the Contractor’s operating history with emphasis on facility condition, safety and hazard mitigation; (2) a review of plant and equipment maintenance and replacement records; (3) a review of on-site or offsite accounting or bookkeeping data related to the receipt, recovery and disposal of all waste brought to the Facility; and (4) determination of continued efficiency and optimal operation of the Facility.

Prior to the start of work and prior to termination or completion of this Contract, Metro, accompanied by the Contractor, will inspect all items of Metro-furnished equipment and facilities and shall jointly prepare a list of items requiring repair as a result of the Contractor's use. Final payment will not be made until the required repairs have been completed. Equipment and facilities that have deteriorated due to normal usage need not be repaired to a like-new condition.

**19.0 PREFERENTIAL TREATMENT**

The Contractor shall not, by act or omission, discriminate against, treat unequally, or prefer any user of the facility in the operation of the transfer station. Preferential treatment within the site will be considered a default by the Contractor and a breach of this Contract.

**20.0 FIRE CONTROL**

The site is provided with fire control equipment. The fire control equipment now on-site shall remain for the Contractor's use. Contractor will ensure inspections and recharging of all fire extinguishers within all buildings on site per applicable law. Any additional or replacement

equipment required for fire protection, and any maintenance of existing, additional or replacement equipment shall be the responsibility of the Contractor. The equipment shall be tested in accordance with manufacturer's guidelines, Metro's insurance provider and any applicable legal requirements. The Contractor shall provide 24 hour monitored alarm service for the Facility, including the Hazardous Waste Facility.

#### **21.0 VECTOR CONTROL**

The Contractor shall conduct the operation of the transfer station in a manner considered unfavorable for attracting or breeding rodents, birds and insects and that complies with Metro's Integrated Pest Management mandate. An annual report shall be written and provided to Metro that details pest related activity, action taken and results experienced.

Strict adherence to these specifications and operation procedures will reduce the potential problems to a minimum. In the event that rodent, bird or insect activity becomes apparent to Metro or the Contractor, the Contractor shall initiate supplemental vector control measures at its expense, including removal of dead animals. Semi-annual inspections by a certified exterminator shall be conducted at Metro's direction and expense, and a copy of the findings will be forwarded to Contractor. Metro may direct the Contractor to undertake any recommended actions by the exterminator, at the Contractor's expense.

#### **22.0 ODOR, DUST AND NOISE CONTROL**

The Contractor shall control odor and dust on the site using proper waste handling methods. Contractor may perform alternative dust and odor control measures with the approval of Metro. Equipment will be operated within limits of noise regulations.

Contractor must meet or exceed OSHA or ACGIH recommended Threshold Limits Values for all regulated hazards. Contractor shall monitor all work areas for hazards including toxic substances, dust and noise at least annually.

Contractor shall not allow dust levels in customer areas to exceed 2.0 mg/m<sup>3</sup> at any time.

If in the sole opinion of Metro, odor, dust, noise or other hazards are not adequately controlled, then Contractor shall immediately correct the hazards at Metro's direction.

#### **23.0 HAZARDOUS WASTE FACILITY**

Metro operates an on-site Hazardous Waste Facility that accepts household and commercially exempt generator hazardous materials. It is the responsibility of the Contractor to provide traffic control to and from the Hazardous Waste Facility, and shall obey any emergency orders given by Metro personnel in connection with that facility. Contractor may use the Hazardous Waste Facility to dispose of hazardous Unacceptable Waste accumulated from incoming waste in conformance with the *Hazardous Waste Handling Procedures Manual*. Contractor shall remove all recyclables recovered at the Hazardous Waste Facility for no charge, and shall remove and dispose of Acceptable Waste generated at that facility. Contractor shall receive only its normal per ton rate for removal and disposal of such Acceptable Waste.

#### **24.0 LITTER CONTROL**

The Contractor shall conduct at least two litter cleanup activities each day, once before 10:00 a.m. and once after 5:00 p.m. The entire site shall be covered by such activities, including the

Hazardous Waste Facility area, Transporter's parking area, landscape areas, and both sides of Calebra/61<sup>st</sup> Street between Front Avenue and Highway 30.

## 25.0 ON-SITE PERSONNEL

The Contractor shall provide sufficient on-site personnel to ensure efficient operation, maintenance and management of the facility (including separate operating areas for self-haul and commercial customers). During peak periods, or when some personnel are unavailable for whatever reasons, additional personnel shall be provided as necessary for the continued and uninterrupted operation and maintenance of the facility in the most efficient manner. The Contractor is responsible for identifying such trends and adjusting the number of personnel as required at no additional cost to Metro.

If Metro determines that additional personnel are needed, Metro shall direct the Contractor to provide additional personnel and Contractor shall supply the additional personnel as directed within 2 hours of receiving the directive.

To ensure proper staffing, Contractor shall submit a staffing plan for Metro's approval every three months. The Contractor shall follow the staffing minimums listed below.

### **During all hours of Commercial Waste Acceptance - Acceptable Minimum**

The Contractor shall meet the following minimum personnel requirements during Commercial Waste Acceptance hours:

- A. One spotter per operating area to assist in the control of traffic, unloading of refuse, control of debris, maintenance of the site, recovery of recyclables from public loads, and the checking of receipts from all customers (minimum 40 hour hazwaste-trained).
- B. On-site security.

### **During all hours of Self-Haul Waste Acceptance - Acceptable Minimum**

In addition to the requirements listed above, the Contractor shall meet the following minimum personnel requirements during all hours of Self-haul Waste Acceptance:

- C. One Superintendent or Foreman who shall be considered the representative of the Contractor in charge of the work.
- D. One inspector whose primary duty is to monitor for suspicious waste and unacceptable waste, ensure compliance with Special Waste Conditions, conduct the load-checking program and ensure compliance with the *Contractor's Procedures Manual*.
- E. One loader/equipment operator per operating area accepting commercial waste (exclusive of compactor operators).
- F. One traffic control laborer.

G. One laborer, per operating area that is accepting self-haul waste to control traffic and assist with the recovery of recyclable materials from loads, the processing of recovered materials for shipment to markets including the stripping of appliances, the high grading or processing of commercial loads if required.

H. One laborer dedicated to provide litter patrol and cleanup on and off site (8 hours per day).

During the peak periods 10 a.m. to 5 p.m. weekends, the Contractor shall provide twice as many personnel in areas accepting self-haul waste for items A and G above, as well as twice the number of traffic control laborers (F above). This requirement does not apply to the months of November through February unless, in Metro's sole determination, transfer station operations have been unacceptably impaired by insufficient staffing. If Metro makes such a determination, Contractor will supply twice as many personnel for the months of November through February (or portion thereof as determined by Metro) in areas accepting self-haul waste for items A and G above, as well as twice the number of traffic control laborers (F above), at no additional expense to Metro.

The Contractor shall be required to train all personnel directly involved in performing the Work described in the Contract. All employees operating equipment shall receive documented training and acquisition of certificates as recommended by the manufacturer, on all equipment they are authorized to operate. All employees shall receive sexual harassment and diversity training annually. Supervisory personnel shall be familiar with the Contract Documents. At least one supervisor shall have read Metro's Regional Solid Waste Management Plan.

The Contractor shall ensure that, only to the extent that their essential job responsibilities require it, personnel are sufficiently proficient in speaking, understanding, reading, and writing English to enable them to perform their essential job responsibilities. For example: (1) Supervisory personnel must be able to read, understand, and explain the Contract Documents and other written materials such as OSHA rules and safety manuals, must frequently communicate with public customers, and must occasionally write reports, letters and other documents; (2) Equipment operators must be able to communicate orally with the other staff and customers concerning proper tipping operations, unacceptable wastes and emergency procedures; and (3) Spotters and traffic control personnel must be able to communicate orally with public customers, with whom they will be in constant contact, concerning proper parking and tipping activities, to answer operation questions concerning recycling rules and unacceptable wastes, and to provide safety information in an emergency. This requirement shall not be implemented in a manner that illegally discriminates on the basis of national origin, and in no event shall the requirements of this paragraph be interpreted to permit, condone, or encourage illegal discrimination against any person on the basis of national origin. If the Contractor determines that it is unable to comply with this paragraph without engaging in illegal discrimination on the basis of national origin, then Contractor shall not comply with this provision. If Contractor makes such a determination, then Contractor shall immediately inform Metro of its conclusion to that effect in writing, and Contractor shall work with Metro, at Metro's request, to address this issue in a non-discriminatory way.

## **26.0 TRANSFER STATION EQUIPMENT**

Contractor shall use adequate equipment, suitable for heavy-duty service in connection with a solid waste transfer station and materials recovery operation. The equipment proposed by the Contractor (and modified in any subsequent negotiation) shall be used in the performance of the work. It is the responsibility of the Contractor to supply additional equipment or make

substitutions as appropriate, at no additional cost, to accomplish the work as described in the Contract in an efficient manner.

All rolling stock must, at a minimum, use low sulfur diesel and be equipped with the latest apparatus to minimize discharge of particulates and other contaminants to the air, or more stringent pollution control measures as negotiated in finalizing this Contract. The equipment utilized must be specifically designed for the use intended. Modified or "built-up" equipment will not be acceptable without Metro approval. The Contractor shall properly protect the equipment and place it in the charge of competent operators.

All major pieces of rolling stock such as front end and track loaders, and skid loaders furnished by Contractor shall be new and unused as of the beginning of this Contract, and all equipment shall be suitable in design and construction for arduous, heavy duty service in a solid waste transfer station operation. All equipment shall comply with all applicable laws and regulations.

Metro shall have the right, but not the duty, to purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Contract, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall provide to Metro, upon request, properly signed Financing Statements and all other necessary documents for Metro to secure its purchase options.

Contractor shall use blade guards and rubber tires on all mobile equipment operated in and around the facility and shall use due care in their operation to avoid damaging the tipping floors and other facilities.

#### **26.1 FUEL STORAGE**

A Metro-approved fuel storage area is available on-site for a Contractor-supplied tank. The Contractor shall ensure compliance with all regulations if an on-site storage tank is utilized.

#### **26.2 COMPACTORS**

Two Metro-owned SSI Model 4500 compactors and one Metro- owned SSI Model 4000 are to be used in the compaction of waste.

### **27.0 MAINTENANCE REQUIREMENTS**

Unless otherwise specified, the Contractor shall be responsible for the maintenance and repair of the facility, all Contractor-furnished equipment, and all Metro-furnished equipment and facilities, including all plumbing, mechanical, and electrical systems and components, drainage structures, fixtures and devices related thereto, or which form a part of, or are installed therein.

#### **27.1 METRO-FURNISHED EQUIPMENT**

- A. The Contractor shall maintain Metro-furnished equipment in good working condition at all times. Maintenance shall conform to the recommendations of the manufacturer. The Contractor shall not alter or remodel Metro furnished equipment without advance written approval from Metro.
- B. Equipment covered by a manufacturer's warranty shall be maintained in accordance with the terms of the warranty. All repairs or adjustments covered by the manufacturer's warranty shall be referred to an authorized representative of the manufacturer.

- C. Contractor shall make all necessary repairs that are not covered by the terms of the manufacturer's warranty, for whatever reason, shall be made by the Contractor. The Contractor will use manufacturer-recommended parts in preventative or repair maintenance, unless Metro approves substitutions.
- D. The Contractor shall be responsible for replacement/repair of any Metro-owned equipment or facilities lost, damaged, destroyed, worn out, stolen, or rendered inoperable, due to Contractor's negligence, including but not limited to Contractor's failure to operate or maintain the equipment in accordance with the manufacturer's recommendations as contained in the appropriate manual (a list of which is contained in the Appendix) or these Specifications.
- E. Contractor shall maintain an inventory of spare parts as recommended by the manufacturer and as necessary to minimize down time.
- F. All stationary equipment shall be suitably painted and/or finished so as to present an acceptable appearance in the opinion of Metro.
- G. Upon completion of the Contract, Contractor shall return to Metro the Metro-furnished equipment in a condition that reflects normal wear and tear.

#### **27.2 CONTRACTOR-FURNISHED EQUIPMENT**

- A. Contractor-Furnished equipment shall be properly maintained in a safe working condition at all times. The Contractor shall be responsible for all costs associated with Contractor-furnished equipment.
- B. The Contractor shall furnish, at its expense, whatever backup or substitute equipment for Contractor-supplied equipment that may be required to continue operation in accordance with Contract requirements during the period when equipment is inoperable.
- C. Contractor shall ensure all equipment complies with Metro's Clean Exhaust Program as negotiated as part of the proposal process.

#### **27.3 BUILDINGS**

- A. The buildings shall be maintained in good condition at all times. Contractor shall repaint all painted surfaces on the interior and exterior of the scalehouses, Contractor's and Metro's offices, all breakrooms and restrooms (excluding facilities associated with the onsite hazardous waste facility) every 24 months. Metro will supply latex paint for non-specialty applications (for example, safety yellow cannot be provided) at no cost to the Contractor. Factory-finished metal wall panels of the buildings shall not be repainted. Contractor shall repaint all safety devices in the transfer station bays and wash rack such as bollards, entrances and exits, traffic dividers, etc. every 24 months or as needed (in Metro's sole determination and at its direction). The type of paint, color, and method of application shall be subject to review and approval by Metro prior to commencement of repainting work.
- B. The Contractor shall be responsible for inspection, lubrication, adjustment, repair and maintenance of all building systems (including scalehouses) to include, but not necessarily be limited to, plumbing, sumps, degreasers, fixtures, heating, ventilating, and air conditioning systems, components, and devices; fire and dust suppression systems; radio communications equipment. Contractor shall replace any item, component, or device that is lost, damaged, destroyed, or which fails during the contract period.

- C. Contractor will be required to clean storm water sumps as needed. Contractor will ensure compliance with all permits and be responsible for all costs associated with permit compliance.

#### **27.4 WEIGHING SYSTEMS**

- A. Maintenance and repair of weighing system scales and associated equipment will be performed by Metro at no expense to the Contractor. The Contractor will be required to clean the scale pits and decks monthly at no cost to Metro and during times that are not disruptive to traffic flow.
- B. Maintenance of the compactor weighing systems shall be the responsibility of the Contractor.

#### **27.5 COMMERCIAL AND INDUSTRIAL VEHICLES WASH RACK**

- A. The Contractor shall operate and maintain twice daily, or as needed, the existing commercial and industrial vehicle wash rack. Contractor shall restrict use of the wash rack to commercial and industrial customers.
- B. Daily maintenance will include the inspection of the truck wash sump, and cleaning as needed or at least weekly. Contractor shall conduct a general cleanup of the wash rack area *at least* twice daily. Weekly removal of all accumulated solids from catch basins shall be performed. Hoses must be maintained in operable condition and nozzles must be attached to hoses at all times. The operating pressure shall be such that commercial collection vehicles that use the facility can be cleaned adequately. The Contractor will be responsible for maintaining the sewer lines from the wash rack, and for all other parts of the wash rack as well, including their replacement.
- C. Contractor shall supply shovels and brooms for users of the washrack.

#### **27.6 DRIVES AND PAVEMENTS**

- A. Repair, patching, sealing and remarking of drives and pavements inside and outside of structures, but within the site's boundaries, shall be the responsibility of the Contractor, as needed or directed by Metro, at no additional cost to Metro.
- B. The Contractor shall be responsible for painting and maintaining traffic direction lines on the roadways (including staging/storage area).
- C. Replacement of the pavement shall be done as needed, with either the Contractor acting as Metro's agent or through Metro contracting directly for this service.
- D. Additional or replacement signage shall be provided by the Contractor. All signs must be professionally prepared and mounted.

#### **27.7 STREET CLEANING AND MAINTENANCE**

- A. The Contractor shall pull a mobile magnet capable of removing all ferrous metal daily, to collect all ferrous objects from the truck wash facility, transfer station area, Transporter's parking area on-site, the entrance and any and all other paved areas on the site.
- B. At no time will customers be directed to back or drive over debris anywhere on or in the facility.



- C. All areas will be kept clean using a power broom or other street cleaning equipment approved by Metro. These areas must be cleaned at least one time per week or as often as necessary, as determined by Metro.

## **28.0 HOUSEKEEPING**

### **28.1 TRANSFER BUILDING**

Contractor shall:

- Clean exterior of all onsite buildings (except for the hazardous waste area) by pressure washing annually walls, roofs and gutters from the time operation commences, and at one month prior to completion of the Contract;
- Steam clean exterior of the buildings as needed to remove stains in conjunction with the pressure washing of the exterior;
- Clean interior of transfer building and truck wash (excluding rafters, other metal structural supports and ceilings) by pressure washing annually;
- Sweep and hose work, vehicle maneuvering and maintenance areas within the transfer station area daily at a minimum and wash with environmentally preferred detergent if necessary;
- Immediately address and clean all spills when they occur;
- Daily remove wastes from the cleaning process and not dispose of such wastes in storm drains or sanitary sewers.

The Contractor shall supply all equipment, supplies and labor for cleaning. Contractor shall use environmentally safe cleaning agents as determined in cooperation with Metro.

### **28.2 JANITORIAL SERVICES**

The following services will be provided a minimum of three (3) days per week, for the transfer station operations' offices, (including but not limited to the conference and break rooms) all scalehouses, Metro office building, and an on-site trailer used by household hazardous waste personnel, unless otherwise indicated:

- Vacuum mats and carpets;
- Dust desks, chairs, cabinets, etc.;
- Spot clean fingerprints from walls and doors;
- Empty trash, replace liners as needed;
- Dust off counters, desks and tables;
- Dust-mop any tile floors and stairwells; Wet-mop any tile floors and stairwells;
- Spot clean fingerprints from bathroom cabinets;
- Clean bathroom sinks, toilets and counters;
- Replace toilet tissue, paper towels as needed;
- Strip and wax floors once a month;
- Clean all windows weekly;
- Buff floors weekly;
- Carpets shall be scrubbed bimonthly;
- Provide doormats at each entry to the offices and scalehouse, replace with clean mats weekly;
- Provide working mats in the offices, scalehouses, hazardous waste facility as requested; and,
- Provide all janitorial and cleaning supplies as needed (non-toxic). All cleaning supplies shall comply with the environmentally preferred specifications for such products in the Appendix.

## **29.0 LANDSCAPE MAINTENANCE**

Metro will be responsible for the landscaping at the site. Contractor will be responsible for utility billings, such as water related to landscaping activities. Contractor will be responsible for the repair and replacement of all structures such as drainage structures and fences. Cleaning of drainage structures and filters shall be considered routine maintenance.

## **30.0 PERMIT COMPLIANCE**

The Contractor will be required to operate the transfer station in complete compliance with all permits issued to Metro by regulatory agencies. The Contractor will be responsible for making any improvements or modifications in operating procedures necessary to stay in compliance with all such permits. Contractor shall pay any penalties levied by regulatory agencies for Permit noncompliance due to negligent operation or omission by the Contractor.

Penalties will be in addition to any liquidated damages assessed according to the Contract Documents.

### **30.1 OPERATING PERMITS**

Metro has the necessary permits to operate the facility. These include:

- Mitigation Agreement between Metro and the City of Portland
- Solid Waste Disposal Permit from the Oregon Department of Environmental Quality
- Industrial Wastewater Discharge Permit
- Storm Water Permit
- Scale Permits

Other required permits are the responsibility of the Contractor. Likely examples include city business licenses and radio frequency permits.

### **30.2 IMPLEMENTATION OF PERMITS**

It is the responsibility of the Contractor to perform any testing required by the permits listed in Section 30.1 and to pay for all associated costs with the exception of industrial wastewater and storm water permits. For those two permit types, Metro will perform and pay for all required testing (i.e., sampling and analysis) and reporting of test results, and will be the regulatory agencies' contact for routine communications. The responsibilities of the Contractor for industrial wastewater and storm water permits shall be all the responsibilities for permit compliance described in Section 30.0.

### **31.0 UTILITIES**

All utility charges, including water/sewer, electricity, natural gas and telephone will be the responsibility of the Contractor, except the telephone charges for Metro personnel. The Contractor shall forward copies of utility bills to Metro as requested.

Contractor shall participate in the electrical supplier's Clean Wind Program at the *Patron Level* at which 15% of the electricity purchased is generated by wind turbines. Metro shall be listed as the program participant for purposes of participating in the utility's recognition program and shall direct where the clean energy originates through *Green Tags* designations or other similar available mechanisms.

### **32.0 COORDINATION**

The Contractor will be responsible for coordinating its activities with the waste Transporter and organics contractor. Metro will act as the arbitrator of any disputes between any and all contractors and/or disposal site operators connected with their work, regarding their performance of the work and the interpretation of the contracts involved. It will be the responsibility of the Contractor to prepare for and respond to complaints, charges, and allegations brought against the Contractor prior to any such arbitration meeting. The Contractor will also be required to present a monthly report summarizing activities during the prior month and plans and schedules for future activities. The organization of and invitation to any such meeting will be the responsibility of Metro.

### **33.0 OPERATIONS REPORTING REQUIREMENTS**

The Contractor shall establish and maintain an information system to provide storage and ready retrieval of Facility operating data and all financial information.

The Contractor shall prepare and maintain proper, accurate, and complete records and accounts of all transactions related to the Facility (except for Scalehouse functions). The Contractor shall maintain records of its costs in a manner that will permit, to the extent possible, the separate determination of the cost of providing service to (1) the general public, and (2) commercial customers. These records shall include, but not be limited to (as applicable): maintenance records, equipment replacement records and schedules, and safety and accident reports; quantity of Acceptable Waste delivered to the Facility; quantity of Source-Separated recyclable materials received and sold; quantity of Recovered Materials produced and sold; quantity of compacted waste loaded for transport to disposal; and quantity and type of Unacceptable Waste handled. Metro shall have complete access to all such records.

The Contractor shall provide Metro with monthly reports within ten (10) calendar days of the end of each month, including, but not limited to, the following operating data (as applicable):

- (1) Complaint forms, recommended actions, and/or actions taken;
- (2) Any extraordinary occurrences affecting Metro;
- (3) Status of operating equipment;
- (4) Any correspondence between the Contractor and governmental bodies relevant to the Contract;
- (5) Reports on accidents and their status;
- (6) Monthly sales of Recovered Materials (by material and price);

- (7) Monthly quantity of source-separated organics received and reloaded for transport to a composting facility, including number and tons of loads rejected;
- (8) Monthly quantity of waste compacted and loaded for transport to disposal (by facility);
- (9) Quantity and type of Unacceptable Waste; and,
- (10) Financial data and utility consumption as deemed appropriate by Metro.

The Contractor shall prepare an annual report subject to independent audit that incorporates a summary of the monthly operations reports for the preceding 12-month period summarizing all required data and records. This report shall be submitted to Metro within ninety (90) days after the end of each Contract year.

The Contractor shall prepare an operating and maintenance manual for the facility. The manual shall include waste handling procedures, the number and type of positions and equipment, routine maintenance requirements, documentation requirements and the contingency plans required above. The manuals shall be updated at least annually, or sooner if major changes to the operations occur.

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## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3503, FOR THE PURPOSE OF  
AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE CONTRACT NO.  
926063 FOR OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER  
STATIONS

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Date: September 29, 2004

Prepared by: Chuck Geyer

### BACKGROUND

In March 2004, Metro released a request for proposals to operate Metro's transfer stations, as authorized in Resolution No. 04-3426, *For the Purpose of Authorizing an Exemption from Competitive Bidding Requirements and Authorizing Issuance of RFP #04-1091-SW&R for the Operation of the Metro South and/or Metro Central Transfer Stations*, adopted February 26, 2004. At the end of April, four proposals were received and evaluated per the process contained in the request for proposals. The evaluation of proposals was completed in June 2004 and Metro began negotiations with the highest-ranked firm (Oregon Resource Recovery, LLC).

Due to a variety of factors, Metro was unsuccessful in negotiating a contract with the highest-ranked firm and terminated negotiations in August. Per the process contained in the request for proposals, Metro initiated negotiations with the next highest-ranked firm (Browning-Ferris Industries, Inc.). Metro has successfully negotiated a contract with this firm as attached to Resolution No. 04-3503 as Exhibit "A".

Some of the major features of the final contract (that were contained or solicited in the request for proposals authorized for release) are as follows:

- The contract is for up to five years beginning April 1, 2005 and ending March 31, 2010. As required by IRS rules, Metro has the unconditional right to terminate the contract at the end of three years.
- The guaranteed recycling rate is 15% for Metro South Station and 17% for Metro Central Station. These rates are slightly better than the current recovery rates for the facilities. In addition, the Contractor will receive a bonus payment for exceeding the guaranteed rate.
- The contract provides for the replacement of rolling stock and includes a new material recovery line at Metro South to improve the recovery of dry waste.
- Staffing levels and training requirements are increased over the current contract to improve customer service, efficiency and safety.
- The contract provides for the reloading of source-separated organics received at Metro Central Station.
- The contract also provides a variety of sustainability features as solicited or required in the RFP including a reuse program, the purchase of 15% renewable energy, the use of recycled products and implementation of a clean exhaust program featuring the use of diesel particulate filters and ultra-low sulfur diesel fuel.

Negotiations resulted in two major changes to Browning-Ferris Industries (BFI) proposal submitted in April 2004. This initial proposal included the provision of a compactor for Bay 3 of Metro South where the majority of public customers dump its waste. The compactor would be used to directly load Metro's transport contractor's vehicles. Currently the waste is loaded into a walking floor trailer and dumped in the pit prior to compaction. The equipment BFI had proposed was surplus equipment from the corporate parent. When Metro initiated contract negotiations with Oregon Resource Recovery, BFI allowed the surplus equipment to go to another firm of the parent corporation. Installation of a compactor in Bay 3 is contained in the list of capital improvement projects approved by the Metro Council and was valued at approximately \$900,000.

In exchange for allowing the withdrawal of this offer, Metro negotiated a reduction in the organics reload rate proposed by BFI from \$19.50/ton to \$8.50/ton. The savings to Metro over the life of the contract from this reduced rate is approximately \$1.6 million. Metro will continue to evaluate the importance of the compactor for this area during our CIP process.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

Although no specific opposition has been voiced as of this writing, there is precedent for opposition to any solid waste rate increase that may occur as a result of this contract. The following are historical reactions from various user groups:

Haulers. Haulers' reactions to rate increases have been mixed. But generally, haulers tend to dislike rate increases because these costs are passed on to their customers, and the haulers are typically the first in line to field the resulting complaints and potential loss of business. In some local jurisdictions that regulate haulers' service charges, the allowed rate-of-return is based on the cost-of-sales; and in some of these cases, haulers may profit mildly from a rate increase because it increases the base on which their rate of return is calculated. However, historically, the majority of haulers have testified that negative customer relations issues outweigh any other advantages to rate increases, and therefore haulers have generally opposed such increases.

Ratepayers. Ratepayers' costs will go up. Ratepayers typically oppose rate increases, although increases of \$1 to \$2 per ton have historically not motivated significant opposition. However, the current economic climate may magnify the effect of any rate increase.

*Probable Support.*

Recycling Interests. Recycling interests have historically supported higher disposal fees, because that makes recycling relatively more attractive.

Private Facility Operators. Private solid waste facility operators have historically supported increases in Metro's tip fee because their own private tip fees can follow the public lead—so long as the increase is not due primarily to the Regional System Fee, which is a cost to these same operators.

### **2. Legal Antecedents**

The Metro Council (sitting as the Contract Review Board) adopted Res. No. 04-3426 on February 26, 2004 exempting this contract from public bidding requirements pursuant to Metro Code section 2.04.054, and authorizing the release of the RFP.

Metro Code 2.04.026 requires that the Chief Operating Officer must obtain authorization by the Metro Council prior to execution of a contract that has significant impact on Metro. Council identified this project as a significant impact contract in its FY 2004-05 budget ordinance.

### **3. Anticipated Effects**

Adoption of Resolution No. 04-3503 will authorize the Chief Operating Officer to execute Contract No. 926063 with Browning-Ferris Industries, Inc. for the operation of the Metro South and Metro Central transfer stations for a period of up to five years.

### **4. Budget Impacts**

The approximate value of the contract is \$30 million dollars. As compared to the current contract, costs will increase approximately \$1/ton. The fiscal impact of these increased costs may be reflected in future rate increases.

Budget impacts for FY 2004-05 are discussed under the staff report for Resolution No. 04-3502, *For the Purpose of Authorizing the Chief Operating Officer to Execute Change Order No. 6 to the Contract for Operation of the Metro South and Metro Central Transfer Stations*, to be considered by Council on October 28, 2004.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution No. 04-3503.

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