

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 93-1732
ISSUANCE OF A REQUEST FOR BIDS FOR)
THE CONSTRUCTION OF AN IMPROVED)
COVER SYSTEM, GAS COLLECTION) Introduced by Rena Cusma,
SYSTEM, MOTOR BLOWER FLARE) Executive Officer
FACILITY, AND STORMWATER COL-)
LECTION SYSTEM ON A PORTION OF)
ST. JOHNS LANDFILL)

WHEREAS, It is in the public interest that the St. Johns Landfill closure process move forward in an expeditious manner; and

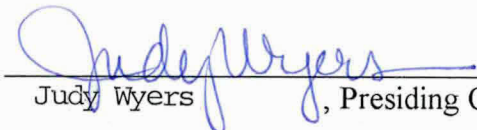
WHEREAS, Work associated with and including the construction of an improved multi-layered cover system, gas collection system, motor blower flare facility, and stormwater collection system on a portion of St. Johns Landfill will carry forward the closure process; and

WHEREAS, This resolution along with the Request for Bids and contract form for the work described above were submitted to the Executive Officer for consideration and all were forwarded to the Council for approval; now, therefore,

BE IT RESOLVED,

That the Metro Council authorize issuance of a Request for Bids for work associated with and including the construction of an improved multi-layered cover system, gas collection system, motor blower flare facility, and storm water collection system on a portion of St. Johns Landfill.

ADOPTED by the Metro Council this 14th day of January, 1993.



Judy Wyers, Presiding Officer

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 93-1732 FOR THE PURPOSE OF AUTHORIZING THE ISSUANCE OF A REQUEST FOR BIDS FOR THE CONSTRUCTION OF AN IMPROVED COVER SYSTEM, GAS COLLECTION SYSTEM, MOTOR BLOWER FLARE FACILITY, AND STORMWATER COLLECTION SYSTEM ON A PORTION OF ST. JOHNS LANDFILL

Date: December 18, 1992

Presented by: Jim Watkins
Dennis O'Neil

PROPOSED ACTION

Adoption of Resolution No. 93-1732, authorizing the issuance of a Request for Bids (RFB) for the construction of an improved cover system, gas collection system, motor blower flare facility, and stormwater collection system in order to close a second portion of St. Johns Landfill.

FACTUAL BACKGROUND AND ANALYSIS

According to the 1989 St. Johns Landfill Closure and Financial Assurance Plan, the primary method to control groundwater and surface water contamination from St. Johns Landfill is to construct a waterproof roof over the solid waste. During 1992, Metro constructed a greatly improved multi-layered cover system and associated gas and stormwater systems on a 35-acre area of St. Johns Landfill. Metro also drilled gas wells in other areas of the landfill to prepare for future cover construction and to test the quality and quantity of landfill gas.

Because Metro gained construction experience and has not encountered major problems so far, it seems feasible to take on a more ambitious construction effort spanning 2-years. RFB 92B-42-SW is for closure improvements covering approximately 105 acres of St. Johns Landfill over a 2-year period. In 1993, a 65 acre portion would receive an improved cover system and associated gas and stormwater collection system. Also in 1993, Metro would construct a permanent motor blower flare station which burns the gas to destroy air pollutants until the gas can be used for energy recovery. In 1994, a 40-acre portion of the St. Johns Landfill would receive the cover system, gas collection system and stormwater collection system.

Metro's minority and woman owned business program requires that Metro and bidders make good-faith efforts to maximize business opportunities for MBEs and WBEs for this project. Metro will identify and contact appropriate MBEs and WBEs about potential subcontracting opportunities for this project. For bidders, good faith efforts include the requirements that bidders identify specific subcontracting opportunities for these groups in their general subcontracting plans for this project, and that all MBEs and WBEs attending

the pre-bid meeting be contacted by bidders. Negotiations must be conducted with MBEs and WBEs for which appropriate subcontracting opportunities exist.

For this contract, Metro is requiring that at least 30% of the labor be performed by (non-management) employees of the prime contractor. This requirement insures tighter control and coordination by the prime contractor. Tighter control and coordination allows the prime contractor to take advantage of unpredictable periods of good weather and reduces the risk that the work will fall behind schedule with erosion prevention and other critical activities incomplete when they are needed. The contract also includes penalties such as liquidated damages and withholding payments if the contractor does not meet certain milestones and complete work on time. These precautions are based on the fact that the landfill is located in a sensitive wetland area.

Finally, the RFB requires that bidders have experience in the installation of a minimum of 50 acres of low permeable soil or a membrane for a landfill cover or liner in areas with weather conditions similar to those at St. Johns Landfill. This works out to one or two years of experience. The intent of this requirement is to avoid problems caused by an inexperience, overly low bidder while not significantly restricting competition. This RFB continues an earlier contract requirement that geomembrane manufacturers and installers have experience with the critical component of the cover structure.

BUDGET IMPACT

The estimated total cost for all work listed in this RFB is \$11.5 million dollars. It is expected that the work will begin in May, 1993 and end in late 1994. In the FY 1992-1993 budget, \$2 million dollars is allocated to be performed up to June 30, 1993. The remaining funds would come from the FY 1993-1994 and FY 1994-1995 budgets after they are approved by the Metro Council. The Landfill Closure Account contains \$19.4 million dollars as of October 31, 1992.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 93-1732.

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METRO

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

Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: December 29, 1992

Re: Resolution No. 93-1732, For the Purpose of Authorizing the Issuance of a Request for Bids for the Construction of an Improved Cover System, Gas Collection System, Motor Blower Flare Facility, and Stormwater Collection System on a Portion of the St. Johns Landfill

Resolution No. 93-1732 is scheduled for consideration by the Committee at the January 5 meeting.

Background

This resolution authorizes the issuance of a RFB for closure work on 105 acres at the St. Johns Landfill over a two-year period. The work would include the cover system, and gas and stormwater collection systems. About 65 acres would be completed in 1993 and 40 acres in 1994. The total estimated cost is \$11.5 million, of which \$2 million would be spent during the current fiscal year.

The RFB contains certain minimum experience requirements for the principal contractor. Metro would also require that the prime contractor directly perform at least 30% of the work with their own employees.

Issues and Questions

The committee may wish to consider the following issues and questions during its consideration of this resolution:

- 1) How does the current estimated cost of the proposed work compare with any original cost estimates when the closure fund was established?
- 2) The committee may wish to ask staff what effect the 50-acre experience requirement will have on the number of contractors qualified to respond to the RFB?
- 3) A great deal of diverse types of closure work have been combined into a single RFB. Different subcontractors with differing areas of expertise will be needed. Did staff explore any potential monetary or administrative cost savings that might accrue if the major components of the work (cover system, gas collection system, stormwater collection system) were bid separately?

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 93-1732, FOR THE PURPOSE OF AUTHORIZING ISSUANCE OF A REQUEST FOR BIDS FOR THE CONSTRUCTION OF AN IMPROVED COVER SYSTEM, GAS COLLECTION SYSTEM, MOTOR BLOWER FLARE FACILITY, AND STORMWATER COLLECTION SYSTEM ON A PORTION OF THE ST. JOHNS LANDFILL

Date: January 7, 1993

Presented by: Councilor Washington

Committee Recommendation: At the January 5 meeting, the Committee voted 3-0 to recommend Council adoption of Resolution No. 93-1732. Voting in favor: Councilors Buchanan, McLain, and Washington. Councilors McFarland and Wyers were excused.

Committee Issues/Discussion: The purpose of this resolution is to release an RFB for additional closure work in subareas 2 and 3 of the St. Johns Landfill. The estimated cost of this work is \$11.5 million. These funds will come from the St. Johns Closure Fund.

Jim Watkins and Dennis O'Neil, Solid Waste Staff, presented the resolution. O'Neil reviews the nature of the cover system that is being installed at the landfill. He reviewed the status of current work in subarea 1, noting that this work had served as a laboratory that allowed both Metro and its contractors to "work out the bugs" in installing the cover, gas collection and stormwater systems at the landfill.

O'Neil noted that the work proposed in the resolution will include most of subarea 2 and all of subarea 3, about 105 acres. The work will be conducted over a two-year period, beginning in May 1993 and ending in October 1994. O'Neil explained that about 65 acres will be completed in 1993 and the remaining 40 acres in 1994. The motor blower gas flaring facility will be built in 1993.

Councilor McLain asked whether Metro will be receiving a royalty for the sale of gas from the landfill. O'Neil indicated that a small royalty would be received. McLain asked why we were not selling the gas directly to customers. Watkins replied that Metro currently does not have the staff expertise to manage such a sales program.

Councilors Van Bergen and McLain asked whether the gas was contaminated and whether Metro was required to certify that the gas was clean. Staff was asked to return at a future meeting with this information.

O'Neil responded to Council staff questions. He noted that the estimated cost was about the same as originally projected, although Metro has already purchased additional embankment material to meet DEQ requirements. Watkins noted that Metro is currently negotiating with DEQ to change certain requirements related to the placement of the geonet and the degree of slope that will be

permitted after settlement. Metro has recommended changes in these requirements which would reduce overall closure costs.

Councilor Van Bergen asked if DEQ approved these changes, would the proposed RFB need to be rebid. Watkins responded that such changes would only affect the amount of certain bid items that will need to be provided under the RFB.

O'Neil explained that the department does not believe that the requirement that bidders have completed 50 acres of similar work will restrict the number of potential bidders. He had contacted each of the four bidders on subarea 1 and found that all four would meet this qualification.

O'Neil indicated that the department chose to procure this work through a single contract for several reasons. These include: 1) economies of scale, 2) having a single contractor that can coordinate the highly interdependent work of the other contractors, and 3) reducing Metro's contract management costs. He noted that Parametrix will provide management services under its existing contract and that Metro will have two employees on-site.

Councilor Washington expressed concern about the potential contamination of nearby sloughs and lakes.

EXHIBIT A
ST. JOHNS LANDFILL

CLOSURE OF SUBAREAS 2 & 3
AND THE MOTOR BLOWER FLARE

RFB #92B-42-SW

Métro
Solid Waste Department
2000 S.W. First Avenue
Portland, Oregon 978201-5398

JANUARY 1993

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SECTION 00030

INVITATION TO BID

Sealed Bids for the St. Johns Landfill Closure of Subareas 2 & 3 and the Motor Blower Flare facility (MBF), RFB #92B-42-SW, must be delivered to Metro, 2000 S.W. First Avenue, Portland, OR 97201-5398, to the attention of Mr. Rob Smoot, Senior Engineer, no later than 3:00 p.m., Pacific Standard Time (PST), Monday, February 22, 1993. At that time, the Bids will be opened and publicly read in the Metro Council Chambers.

The St. Johns Landfill is located at 9363 N. Columbia Blvd., Portland, OR. The work contemplated is the second phase of the construction of final cover for the closure of the 230-acre St. Johns Landfill. Final cover will be constructed over a 105 acre portion of the site during 1993 and 1994 which includes Subareas 2 & 3, the southern portion of the Powerline Corridor (PLC), the western portion of Subarea 4, and the southern portion of Subarea 5A. The work elements for this Request for Bids (RFB) includes stripping and stockpiling of existing topsoil and low permeable soil; placement of subgrade embankment material currently stockpiled on site; placement of a low permeable soil barrier; procurement and installation of 40 mil VLDPE geomembrane and geonet composite, placement of Type I sand currently stockpiled on site, placement of topsoil and revegetation of the final cover area, installation of surface water control measures including ditches and sedimentation basins, and installation of gas collection control facilities including wells, trenches, piping, a condensate pump station and a motor blower flare facility.

Drawings and Specifications may be examined at the Metro Solid Waste Department, Room 320, 2000 S.W. First Avenue, Portland, OR 97201-5398. Sets of the documents may be purchased from Metro at the above address for \$75 per set (includes both Drawings and written Specifications) or by calling Metro's Solid Waste Department at (503) 221-1646, ext. 168. The fee for the document sets will be non refundable.

Each Bid must be submitted on the prescribed form and accompanied by a certified check or cashier's check or Bid Bond executed on the prescribed form, payable to Metro in the amount of \$100,000. The Bid and bid security should be delivered in a sealed envelope marked "St. Johns Landfill Closure of Subareas 2 & 3, and MBF, RFB #92B-42-SW" to the attention of Mr. Rob Smoot.

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

The apparent low Bidder shall be required to furnish sufficient data to demonstrate the following qualifications: a) the Bidder has equipment available (or can obtain such equipment) to perform the contract; b) the Bidder has key personnel available (or can obtain such personnel) of sufficient experience to perform the contract; c) that at least 30% of the labor required to complete the work will be performed by non management (i.e. subject to prevailing wage) personnel directly employed by the Bidder, rather than by subcontractors; d) the Bidder has the experience of preparing a minimum of 50 acres of low permeable soil for a landfill liner or cover in areas with rainfall and weather conditions similar to the St. Johns Landfill; and e) the Bidder has not repeatedly breached contractual obligations to public and private contracting agencies.

Bidders shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

This project is a public works project. By signing and submitting a Bid for this project, Bidders certify that ORS 279.350, requiring payment of prevailing wage rates, will be complied with.

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

Bidders or Subcontractors shall be licensed under ORS 468.883 (regarding licensing of the contractors on projects involving asbestos abatement), in the event the soils may be contaminated.

Bidders and Subcontractors must be registered with the Oregon Construction Contractor's Board pursuant to ORS 701.035-900.

Bidders must comply with Metro's Minority and Women-Owned Business Enterprise Program. The purpose of the program is to establish and implement a program to encourage the utilization by Metro of minority and women-owned businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally-funded Metro contracting activities. All Bidders must certify and document compliance with the Minority and Women-Owned Business Enterprise Program. Failure to complete and submit the Program Compliance Forms, Utilization Forms, and adequately document good faith efforts will constitute a nonresponsive Bid. See "Instructions to Bidders" for references to applicable procedures and further details concerning this program. Any questions regarding MBE/WBE requirements should be addressed to the Metro Contracts Administrator, Mr. Amha Hazen at (503) 221-1646, x116.

A Pre-Bid Conference for prospective Bidders will be conducted at 10:00, PST, on Monday, February 1, 1993, at Metro, in the Council Chambers, 2000 S.W. First Avenue, Portland, Oregon. Attendance is mandatory to comply with Metro's Minority and Women-Owned Business Enterprise Program. A Site visit is planned following the meeting.

Metro reserves the right to reject all Bids or any Bids not conforming to the intent and purpose of the Contract Documents, to reject for good cause any and all Bids upon a finding of Metro

that it is in the public interest to do so or to waive any informality or irregularity in any Bid or Bids. Metro further reserves the right to award the Contract at any time within sixty (60) days following the Bid opening date.

For information concerning the proposed work, or to make an appointment to visit the sites of the proposed work, contact Mr. Rob Smoot, Senior Engineer, or Mr. Pete Hillmann, Construction Coordinator at Metro, (503) 221-1646.

Dated on this ____ day of _____, 1993.

METRO

By: _____
Bob Martin, Director
Solid Waste Department

SECTION 00110

INSTRUCTIONS TO BIDDERS

1. DESCRIPTION OF WORK

The work contemplated is the second phase of the construction of final cover for the closure of the 230-acre St. Johns Landfill. Final cover will be constructed over a 105 acre portion of the site during 1993 and 1994 which includes Subareas 2 & 3, the southern portion of the Powerline Corridor (PLC), the western portion of Subarea 4, and the southern portion of Subarea 5A. The work elements for this Request for Bids (RFB) includes stripping and stockpiling of existing topsoil and low permeable soil; placement of subgrade embankment material currently stockpiled on site; placement of a low permeable soil barrier; procurement and installation of 40 mil VLDPE geomembrane and geonet composite, placement of Type I sand currently stockpiled on site, placement of topsoil and revegetation of the final cover area, installation of surface water control measures including ditches and sedimentation basins, and installation of gas collection control facilities including wells, trenches, piping, a condensate pump station and a motor blower flare facility.

2. DEFINITIONS

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

3. DOCUMENT INTERPRETATION

The Contract Documents are intended to be complementary and to provide all details reasonably required for the execution of the proposed Work. Any person contemplating the submission of a Bid shall have thoroughly examined all of the various parts of these Contract Documents. If the Bidder has any doubt as to the meaning or the intent of the Contract Documents or finds any inconsistency or discrepancy within the Contract Documents, the Bidder must request Metro's interpretation, in writing at least ten (10) working days prior to Bid opening. Such requests for interpretation shall be mailed or delivered to Metro at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, Attention: Mr. Rob Smoot. Any interpretations or changes in the Contract Documents will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all Bidders receiving a set of the Bidding Documents and which shall be binding upon all Bidders as if set forth in the original Contract Documents. Bidders shall indicate receipt of all Addenda on their Bids. Metro will not be responsible for any other explanation or interpretation of the Bidding Documents. Bidders shall have no right to rely on any oral interpretation or instructions made by Metro or the Engineer, unless it is also committed to writing and issued as an Addendum.

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

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

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

Information derived from inspection of the Contract Documents and any specific sections thereof showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the Site and making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents. Investigation of Site and soil conditions have been conducted for Metro. Bidders may inspect the records of such investigations at locations specified in Section 00200.

Asbestos fill areas shown on the Drawings are known controlled disposal areas in operation since 1985. Contractor may encounter asbestos contaminated waste in other areas.

Metro does not in any way warrant the accuracy of any information in such investigations and Bidders shall have no right to rely on the information contained in such records or investigations. Furthermore, if the Bidder determines that additional investigations of site and/or soil conditions are necessary or desirable, Bidder shall cause such additional investigations to be made, at Bidder's expense, prior to submitting a Bid and subject to coordination with Metro.

Any failure of a Bidder to acquaint itself with all of the available information concerning conditions or having such additional investigations of Site and soil conditions conducted, as may be necessary, will not relieve it from responsibility for estimating properly the difficulties or cost of the Work and the Bidder shall, regardless of such failure, be bound to its Bid.

Each Bidder shall inform itself of, and the Bidder awarded a Contract shall comply with, federal, state, and local laws, codes, statutes, ordinances, and regulations, as amended, relative to the execution of the Work. Each Bidder shall prepare its Bid in accordance with, and all Bid prices shall assume compliance with, such laws, codes, statutes, ordinances and regulations. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, prevailing wage rates, nondiscrimination in the employment of labor, protection of public

and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and nonburning requirements, permits, fees, and similar subjects.

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

Each Bidder, in submitting its Bid, certifies that the Bidder is eligible to receive a contract for a public work, as set forth in ORS 279.361 and agrees, if awarded the Contract, that each of its Subcontractors will be required to certify such compliance, and certification will be filed with Metro prior to such Subcontractor commencing any work under the Contract. A copy of "PREVAILING WAGE RATES for Public Works Contracts in Oregon" is enclosed herein and applies to the work performed under the Contract.

5. MINORITY AND WOMEN-OWNED BUSINESS PROGRAM COMPLIANCE

Metro has made a strong commitment to provide maximum opportunities to Minority and Women-Owned Businesses in contracting. Bidders must demonstrate that they have made good faith efforts at maximizing opportunities for minority business enterprise (MBE) and women business enterprise (WBE) prior to the time bids are opened. Metro's MBE and WBE program requirements are contained in Metro Code sections 2.04.100-290, a copy of which is contained in the APPENDIX.

Bidders' special attention is directed to sections 2.04.160 (b) and 2.04.260 (b) which contain good faith efforts requirements for bidders. As part of these requirements, Bidders must identify and incorporate into their subcontracting plans, "economically feasible units" which may be performed by MBEs and WBEs. Metro has established potential project elements or "targeted units", for which Metro believes MBE and WBE subcontracting opportunities may exist. The list of potential project elements Metro has identified for this project are the Bid Items contained in the SCHEDULE OF BID PRICES and described in the TECHNICAL SPECIFICATIONS. Bidders may identify project elements other than those identified by Metro.

Four (4) forms, contained in the FORMS section of these contract documents, must be submitted with the Bid. The MBE and WBE COMPLIANCE FORMS certify that the bidder has complied with the good faith effort requirements of the MBE/WBE program. Bidders should refer to the appropriate section of the Metro Code to determine these requirements. Within two (2) working days of bid submittal, the apparent low Bidder must submit written evidence of such efforts. Completion of the Compliance Forms and Documents of all actions outlined therein is mandatory to become the successful Bidder.

The MBE and WBE UTILIZATION FORMS, which also must be submitted with the Bid, list the names of the MBEs and WBEs who will be utilized and the nature and dollar amount of their participation. Within five (5) working days of bid opening, the apparent low Bidder shall submit to Metro signed Letters of Agreement between the Bidder and MBE/WBE subcontractors and suppliers to be utilized in performance of the Contract. Sample Letters of Agreement are available from Metro. Completion of the Utilization Forms and submission of the Letters of Agreement is mandatory to become the successful Bidder.

Bidders should review the MBE/WBE program requirements as specified in the Metro Code included in the APPENDIX. Questions concerning the MBE/WBE program requirements should be directed to Amha Hazen, Metro Contracts Administrator at (503) 221-1646, extension 116.

6. PREPARATION OF BIDS

All blank spaces in the Bid Forms must be completed either by typing or in ink. Amounts shall be shown in both words and figures. Any Bids which do not include prices on all Bid Items will be considered non-responsive and will be rejected. No changes shall be made in the phraseology of the forms.

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

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

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

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

Failure to fulfill any of the above requirements may render the Bid non-responsive.

7. SUBMISSION OF BIDS

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

8. MODIFICATION OR WITHDRAWAL OF BIDS

Any Bid may be modified after delivery to the location specified in the Invitation to Bid by delivering to the same location before the time fixed for the Bid opening, a written sealed supplement to the original Bid, marked "Supplement to Bid of (Name of Bidder) for the St. Johns Landfill Closure of Subareas 2 & 3, and MBF, RFB #92B-42-SW." A supplement shall clearly identify the Bid item(s) that are changed by setting forth the original Bid item(s), and the modified item(s). Metro may reject any Bid supplement that, in its opinion, does not set forth the proposed modifications clearly enough to determine the definiteness and certainty of the item(s) offered by the Bidder. No Bidder shall be allowed to submit more than one (1) Bid for this Contract.

Bids may be withdrawn by the Bidder prior to the time fixed for the receipt of Bids by having an authorized representative of the Bidder with sufficient identification personally pick up the Bid. Bids may not be withdrawn for a period of sixty (60) days from and after the opening of Bids or on or prior to the last date of any extension of such time as may be agreed upon between Metro and the Bidder.

9. BID SECURITY

Bids must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a Bid Bond on the form provided herein by Metro, issued by a surety authorized to issue such bonds in Oregon, named on the current list of approved surety companies acceptable on federal bonds, and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department, in the amount of not less than \$100,000. This bid security shall be given as a guarantee that the Bidder will not withdraw its Bid for a period of sixty (60) days after Bid opening, and that if awarded the Contract, the successful Bidder will execute the attached Agreement and furnish a properly executed Performance Bond and a properly executed Labor and Materials Payment Bond, each in the full amount of the Bid, within the time specified. Bid security deposited in the form of a certified check or cashier's check shall be subject to the same requirements as a Bid Bond.

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

10. EXPERIENCE AND ABILITY TO PERFORM THE WORK

Within twenty-four (24) hours following request by Metro, the apparent low Bidder shall be required to furnish sufficient data to demonstrate the following qualifications: a) the Bidder has equipment available (or can obtain such equipment) to perform the contract; b) the Bidder has key personnel available (or can obtain such personnel) of sufficient experience to perform the contract; c) that at least 30% of the labor required to complete the work will be performed by personnel directly employed by the Bidder, rather than by subcontractors; d) the Bidder has the experience of preparing a minimum of 50 acres of low permeable soil for a landfill liner or cover in areas with rainfall and weather conditions similar to the St. Johns Landfill; and e) the Bidder has not repeatedly breached contractual obligations to public and private contracting agencies. In determining the award of this Contract, such information will be considered, and the Bidder is cautioned to make complete and comprehensive presentation of its abilities and resources. Failure of the apparent low Bidder to comply fully and in a timely manner with a request for information under this section, or to demonstrate compliance with the above qualifications, shall be grounds for rejection of that Bid. Experience (item e) will be deemed satisfactory if the references indicate that the quality of work was good and the construction was completed on time.

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

11. REJECTION OF BIDS

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

12. BASIS OF AWARD

Metro reserves the right to make award of this Contract to the lowest responsive, responsible Bidder, based on the lowest total Bid amount. Any Bid which does not include bid prices for all Bid items may be considered non-responsive and will therefore be rejected.

Under Oregon Law ORS 279.570 (included in an Appendix to the bid documents), public agencies, including Metro, must give preference to the purchase of materials and supplies manufactured from recycled materials. All Bidders are required to specify the minimum, if not exact, percentage of recycled product in each product offered, and both the post-consumer and secondary waste content of each product offered. A Bidder may also specify that none of the products offered contain any recycled product. The definitions of "recycled product," "post-consumer waste," and "secondary waste material," as well as other explanatory materials, are included in the Appendix.

A form is included for submittal of recycled product information. The form allows a bidder to specify that different portions of a single bid item contain different amounts of recycled product. If the recycling information form is not submitted with the bid, Metro will assume that none of the products offered contain any recycled product. In addition, Metro will assume that a bid item contains no recycled product if information submitted for the item is in Metro's opinion incomplete, incorrect, or unintelligible. Bidders should not include the compost portion of the imported topsoil as describe in the TECHNICAL SPECIFICATIONS on the form.

Metro will calculate the recycled product preference as follows: If any Bidder submits a bid price for an item that (1) meets the definition of "Recycled Product" (see Oregon Laws 1991, Chapter 385, Section 59, in Appendix), (2) meets applicable standards, and (3) can be substituted for a comparable non-recycled product, Metro will subtract 5 percent from the Bid Item for the purpose of comparing bids. In all circumstances, the Bidder shall submit the actual proposed cost of the Bid Item. It is Metro's responsibility to calculate any preferences required under Oregon law. A Bidder who claims a recycled product preference shall utilize in this Work, all of the recycled product claimed.

In determining the lowest responsive, responsible Bidder, Metro shall, for the purpose of awarding the Contract, add a percent increase on the Bid of a nonresident Bidder, as that term is defined in ORS 279.029(6)(c), equal to the percent, if any, of the preference given to that nonresident Bidder in the state in which that Bidder resides. For purposes of determining the percent increases to be applied pursuant to this section, Metro shall rely on the list published by the Oregon Department of General Services pursuant to ORS 279.029(3), and Metro shall not incur any liability to any Bidder by relying on such list.

13. ALTERNATES

There is no Alternate to be bid.

14. LIST OF PROPOSED SUBCONTRACTORS

Metro will require all Bidders to furnish in writing to Metro the names of all Subcontractors and Suppliers which Bidder proposes to use in completing the Work along with a brief description of the subcontract or supply work involved and the subcontract or supply work dollar amount by the close of the next working day following Bid opening. Metro will notify the Bidder in writing

within ten (10) days following receipt from Bidder of the above-described information if Metro has any reasonable objection to any such proposed Subcontractor or Supplier. The Bidder shall not subcontract with any proposed Subcontractor or Supplier to whom Metro has made a reasonable objection. In the event of such objection, Bidder shall propose another entity to whom Metro has no reasonable objection. No amounts or prices bid by the Bidder shall be increased by any difference occasioned by such substitution. Failure of Metro to reply within the above-described time period shall be construed to mean that Metro has no objection at that time. Failure of the Bidder to comply with this section shall be cause for rejection of Bidder's Bid and, in such event, the bid security submitted by Bidder shall be taken by Metro and considered as liquidated damages.

Prospective Bidders are encouraged to verify the qualifications of proposed subcontractors/suppliers and be prepared to furnish Metro with a list of similar projects performed by the proposed subcontractors/suppliers.

15. AWARD AND EXECUTION OF CONTRACT

Within sixty (60) days after the opening of bids, Metro will accept one of the Bids or reject all of the bids. The acceptance of the Bid will be by written Notice of Award, mailed or delivered to the office designated in the Bid. The Notice of Award shall not entitle the party to whom it is delivered to any rights whatsoever.

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

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

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

16. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND

The successful Bidder shall file with Metro a Performance Bond on the form bound herewith and in the amount described below, as security for the faithful performance of this Contract and to cover all guarantees against defective workmanship or materials, or both. The successful Bidder shall additionally file a Labor and Materials Payment Bond on the form bound herewith and in the amount described below, as security for the payment of all persons supplying labor and materials for the construction of the Work. The surety furnishing these bonds shall have a sound financial

standing and a record of service satisfactory to Metro, shall be authorized to do business in the state of Oregon, and shall be named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and U.S. Treasury Department. If more than one surety is on a bond, then each surety must agree that it is jointly and severally liable on the bond for all obligations on the bond. A Letter of Credit, in a form suitable to Metro and otherwise in conformance with the Contract, may be substituted for a bond.

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

17. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS

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

18. BID BACK-UP

Within six (6) days after Metro's request and as a condition precedent to the award of the Contract, the apparent low responsive and responsible Bidder shall submit to Metro in a sealed envelope their complete bid summary, along with corresponding back-up including, but not limited to: quantity take-off sheets, pricing sheets and information/data substantiating the Total Bid amount. The back-up data provided will include that of all Subcontractors listed in the Bid, as well as all lower-tier Subcontractors. This bid summary and back-up data will be held in strict confidence by Metro in its original sealed envelope and will not be opened except in the event of dispute between Metro and Contractor. Bid Back-Up shall be delivered to Metro, 2000 S.W. First Avenue, Portland, OR 97201-5398, Attention: Mr. Rob Smoot, enclosed in a double envelope to prevent accidental opening. The envelope shall be marked "Bid Back-up Documents of (Name of Bidder) for the St. Johns Landfill Closure of Subareas 2 & 3, and MBF."

SECTION 00200

INFORMATION AVAILABLE TO BIDDERS

A copy of the following permits and reports are available for review at the Metro Solid Waste Department Office:

PERMITS

Solid Waste Disposal Site Closure Permit- #116
NPDES Storm Water Discharge General Permit #1200-G

REPORTS

1. "Final Report, St. Johns Landfill National Dioxin Study, Portland Oregon, EPA Contract No. 68-01-6692" 1986, CH2M Hill.
2. "Contract Documents for Operation of the St. Johns Landfill", June 1985.
3. "Natural Resources Management Plan for Smith and Bybee Lakes", November 8, 1990, City of Portland, Oregon.
4. "Erosion Control Plans Technical Guidance Handbook," November 1989, City of Portland & WA. Co.
5. "Geotechnical Investigation, Subareas 2 & 3, Interim Soil Cover, St. Johns Landfill", October 2, 1992, Cornforth Consultants, Inc.
6. "Technical Memorandum for Leachate Migration, Perimeter Dike, St. Johns Landfill", October 1990, Cornforth Consultants, Inc.
7. "Geotechnical Investigation for Proposed Motor Blower/Flare Facility, St. Johns Landfill,": October 1990, Cornforth Consultants, Inc.
8. "St. Johns Landfill Storm Water Pollution Control Plan"; November 1992; EMCON Northwest, Inc.
9. "St. Johns Landfill, Water Quality Impact Investigation and Environmental Management Options"; May 31, 1989; Vol.I & II; Environmental Management Options, Vol.III; Additional Tasks, Vol.IV - Water Quality Impact Investigations and Appendix, Sweet-Edwards/EMCON, Inc.

10. "Revised Closure and Financial Assurance Plan of the St. Johns Landfill", September 1989, Metro.
11. Radiation Test Results of April, 1991; Radiation Control Section, State of Oregon Dept. of Human Resources, Health Division.
12. "St. Johns Landfill Closure Improvements, Engineering Report," August 1990, and "Addendum to the Engineering Report," December 1990, Parametrix, Inc.
13. "St. Johns Landfill Closure Improvements, 100% Review," December 1991, Parametrix, Inc., includes plan and specifications.
14. "Construction Quality Assurance (CQA) Plan", Parametrix, November 1992
15. "St. Johns Landfill Gas Investigation", Parametrix, October 1992
16. - Lab Analysis of Landfill Gas, November 1992
17. - Water Level Measurement of Gas Wells, November 1992
18. "Leachate Sampling of Interior Wells (H-1, H-2, H-3, and H-5)", May 1991, Parametrix, Inc.
19. "Leachate Sampling of Interior Monitoring Well (H-4)", August 1991, Parametrix, Inc.

MAPS

Various topographic maps of the Site from 1979 to 1990 are available for review in the Metro Solid Waste Department.

- As built for 1991 Soil Procurement Contract
- As built for 1992 St. Johns Landfill Closure of Subarea #1

***** END OF SECTION *****

SECTION 00300

BID FORMS

NOTE TO BIDDER: Bidders must provide all of the information requested in this Bid. Bidder should preferably type or use **BLACK** ink for completing this Bid.

To: Metro
Address: 2000 S.W. First Avenue, Portland, OR 97201-5398
Contract: St. Johns Landfill Closure of Subarea 2 & 3 and MBF
Bidder: _____
Address: _____
Bidder's Contact: _____
Date: _____ Telephone () _____

BIDDER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Bid are those named herein, that this Bid is, in all respects, fair and without fraud, that it is made without collusion with any official of Metro, and that the Bid is made without any connection or collusion with any person submitting another Bid on this Contract.

The Bidder further declares that it has carefully examined the Contract Documents for the completion of the Work, has personally inspected the Site, has satisfied itself as to the Work involved, and that this Bid is made in accordance with the provisions and under the terms of the Contract Documents which are hereby made a part of this Bid.

Any printed matter on any letter or paper enclosed herewith which is not part of the Bidding Documents or which was not requested by Metro is not to be considered a part of this Bid, and the undersigned agrees that such printed matter shall be entirely disregarded and, notwithstanding such printed matter, that the Bid is a bid to do the Work and furnish the labor and materials and all other things required by the Contract Documents strictly within the time and in accordance with such Specifications. This Bid is irrevocable for sixty (60) days following the date of the opening of Bids.

BID SECURITY

Bid security in the form of a certified check, cashier's check or bid bond as further described in the Instructions for Bidders and in the amount of \$100,000 is enclosed herewith and is subject to all the conditions stated in the Instructions for Bidders.

CONTRACT EXECUTION, BONDS AND INSURANCE

The Bidder agrees that if this Bid is accepted, it will, within seven (7) days after award of the Contract by the Metro Council, sign the Construction Agreement in the form annexed hereto, and will at that time deliver to Metro the Performance Bond and the Labor and Materials Payment Bond required herein and in the form annexed hereto, along with all certificates of insurance and certified copies of insurance policies specified and required in these Contract Documents, and will, to the extent of its Bid, furnish all machinery, tools, apparatus, and other means of operation and construction and do the Work and furnish all the materials necessary to complete all Work as specified or indicated in the Contract Documents.

COMMENCEMENT OF WORK AND CONTRACT COMPLETION TIME

The time frame for the award and execution of this Contract shall be as described in the Instructions for Bidders and other Contract Documents. The Successful Bidder further agrees to commence the Work within ten (10) days of issuance of the Notice to Proceed and to diligently prosecute the Work to its final completion in accordance with the Contract Documents.

ADJUSTED PAYMENTS

In the event the Bidder is awarded the Contract and fails to complete the Work in compliance with the time required by the Contract Documents, adjusted payments shall be paid to Metro as described in the General Conditions.

SALES AND USE TAXES

The Bidder agrees that all applicable federal, state and local sales and use taxes are included in the stated bid prices for the Work.

LUMP SUM AND UNIT PRICE WORK

The Bidder further proposes to accept as full payment for the Work proposed herein the amounts computed under the provisions of the Contract Documents and based on the listed lump sum and unit price amounts. The amounts shall be shown in both words and figures. In case of a discrepancy, the amount shown in words shall govern.

PREVAILING WAGES FOR PUBLIC WORK

Bidder hereby certifies that the provisions of ORS 279.350, regarding prevailing wages, shall be complied with on this project.

SCHEDULE OF BID PRICES

The Bidder, whose legal signature binding the Bidder to the bid prices indicated on these pages is found on the signature page, hereby bids as follows:

NOTE: If any of the items listed on the Bid Schedule contain "recycled product" (See Appendix), the Bidder shall specify the amounts of such product in an attachment to the Bid Form. If no attachment is included, the amount of "recycled product" in the items listed will be considered to be zero for the purpose of this Bid. Metro reserves the right to reject any or all Bids.

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
1.	1 L.S.	Mobilization		
<u>(Per Lump Sum)</u>			\$	\$
		(Words)	(Figures)	
2.	1 L.S.	Site Safety and Health Program		
<u>(Per Lump Sum)</u>			\$	\$
3.	1 L.S.	Building Demolition		
<u>(Per Lump Sum)</u>			\$	\$
4.	100,000 C.Y.	Remove Existing Topsoil		
<u>(Per Cubic Yard)</u>			\$	\$
5.	106,000 C.Y.	Remove Existing Low Permeable Soil		
<u>(Per Cubic Yard)</u>			\$	\$
6.	40,000 C.Y.	Remove Unsuitable Soil Material		
<u>(Per Cubic Yard)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
7.	120,000 S.Y.	Place Existing Topsoil, 6" Depth		
<u>(Per Square Yard)</u>			\$	\$
8.	270,000 S.Y.	Place Existing Topsoil, 8" Depth		
<u>(Per Square Yard)</u>			\$	\$
9.	105,000 C.Y.	Imported Topsoil		
<u>(Per Cubic Yard)</u>			\$	\$
10.	60,000 Tons	Procure and Deliver Imported Low Permeable Soil		
<u>(Per Tons)</u>			\$	\$
11.	170,000 S.Y.	Construction of Existing Low Permeable Soil for Type 'A' Cover		
<u>(Per Square Yard)</u>			\$	\$
12.	200,000 S.Y.	Place and Compact Existing Low Permeable Soil, 12" Depth, Type 'B' Cover		
<u>(Per Square Yard)</u>			\$	\$
13.	125,000 S.Y.	Construction of Existing Low Permeable Soil for Type 'C' Cover		
<u>(Per Square Yard)</u>			\$	\$
14.	51,000 S.Y.	Place and Compact Additional Low Permeable Soil in Type 'A' Cover Areas		
<u>(Per Square Yard)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
15.	100,000 S.Y.	Place and Compact Imported Low Permeable Soil in Type 'B' Cover Areas		
<u>(Per Square Yard)</u>			<u>\$</u>	<u>\$</u>
16.	38,000 S.Y.	Place and Compact Additional Low Permeable Soil in Type 'C' Cover Areas		
<u>(Per Square Yard)</u>			<u>\$</u>	<u>\$</u>
17.	595,000 S.Y.	Place Type 1 Sand		
<u>(Per Square Yard)</u>			<u>\$</u>	<u>\$</u>
18.	170,000 S.Y.	Geonet Composite, Type A		
<u>(Per Square Yard)</u>			<u>\$</u>	<u>\$</u>
19.	5,000 S.Y.	Bentonite Mat		
<u>(Per Square Yard)</u>			<u>\$</u>	<u>\$</u>
20.	595,000 S.Y.	Geomembrane, 40 mil, Textured		
<u>(Per Square Yard)</u>			<u>\$</u>	<u>\$</u>
21.	20,000 S.Y.	Geotextile Type 3		
<u>(Per Square Yard)</u>			<u>\$</u>	<u>\$</u>
22.	2,500 S.Y	Geogrid		
<u>(Per Square Yard)</u>			<u>\$</u>	<u>\$</u>

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
23.	85 Acre	Cover Crop, Type 1		
<u>(Per Acre)</u>			\$	\$
24.	36 Acre	Cover Crop, Type 2		
<u>(Per Acre)</u>			\$	\$
25.	10 Acre	Temporary Erosion Control Cover Crop		
<u>(Per Acre)</u>			\$	\$
26.	300,000 C.Y.	Place and Compact Existing Subgrade Embankment		
<u>(Per Cubic Yard)</u>			\$	\$
27.	16,000 C.Y.	Roadway Embankment		
<u>(Per Cubic Yard)</u>			\$	\$
28.	1,200 C.Y.	Crushed Surfacing Base Course		
<u>(Per Cubic Yard)</u>			\$	\$
29.	18 EA.	Remove Existing Culverts		
<u>(Per Each)</u>			\$	\$
30.	3,000 C.Y.	Excavation for Sedimentation Basin		
<u>(Per Cubic Yard)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
31.	200 HR	Leachate Control		
<u>(Per Hour)</u>			\$	\$
32.	500 L.F.	12-Inch CMP Culvert		
<u>(Per Lineal Foot)</u>			\$	\$
33.	180 L.F.	18-Inch CMP Culvert		
<u>(Per Lineal Foot)</u>			\$	\$
34.	180 L.F.	24-Inch CMP Culvert		
<u>(Per Lineal Foot)</u>			\$	\$
35.	10,500 L.F.	4-Inch PVC Perforated Underdrain Pipe		
<u>(Per Lineal Foot)</u>			\$	\$
36.	9,200 L.F.	6-Inch PVC Perforated Underdrain Pipe		
<u>(Per Lineal Foot)</u>			\$	\$
37.	1,400 L.F.	8-Inch PVC Perforated Underdrain Pipe		
<u>(Per Lineal Foot)</u>			\$	\$
38.	3 EA.	Outlet Structure		
<u>(Per Each)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
39.	3 EA.	12" Parshall Flume w/Access Manhole		
<u>(Per Each)</u>			\$	\$
40.	500 L.F.	Fence		
<u>(Per Lineal Foot)</u>			\$	\$
41.	800 C.Y.	Quarry Spalls		
<u>(Per Cubic Yard)</u>			\$	\$
42.	30,000 S.Y.	Erosion Control Blanket		
<u>(Per Square Yard)</u>			\$	\$
43.	400 EA.	Sedimentation Barriers		
<u>(Per Each)</u>			\$	\$
44.	4,000 L.F.	Sediment Fencing		
<u>(Per Lineal Foot)</u>			\$	\$
45.	900 V.F.	Gas Extraction Well, Single Completion		
<u>(Per Vertical Foot)</u>			\$	\$
46.	600 V.F.	Gas Extraction Well, Double Completion		
<u>(Per Vertical Foot)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
47.	7,200 L.F.	Perimeter Gas Trenches		
<u>(Per Lineal Foot)</u>			\$	\$
48.	6 EA.	Wellhead Completions, Type 1		
<u>(Per Each)</u>			\$	\$
49.	24 EA.	Wellhead Completions, Type 2		
<u>(Per Each)</u>			\$	\$
50.	18 EA.	Wellhead Completions, Type 3		
<u>(Per Each)</u>			\$	\$
51.	41 EA.	Wellhead Completions, Type 4		
<u>(Per Each)</u>			\$	\$
52.	1,600 L.F.	3" HDPE-LFG		
<u>(Per Lineal Foot)</u>			\$	\$
53.	1,500 L.F.	4" HDPE-LFG		
<u>(Per Lineal Foot)</u>			\$	\$
54.	3,500 L.F.	6" HDPE-LFG		
<u>(Per Lineal Foot)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
55.	3,300 L.F.	8" HDPE - LFG		
<u>(Per Lineal Foot)</u>			\$	\$
56.	4,500 L.F.	10" HDPE - LFG		
<u>(Per Lineal Foot)</u>			\$	\$
57.	1,300 L.F.	12" HDPE - LFG		
<u>(Per Lineal Foot)</u>			\$	\$
58.	1,700 L.F.	16" HDPE - LFG		
<u>(Per Lineal Foot)</u>			\$	\$
59.	6,600 L.F.	3" HDPE - LFG, Buried		
<u>(Per Lineal Foot)</u>			\$	\$
60.	9,300 L.F.	4" HDPE-C, Buried		
<u>(Per Lineal Foot)</u>			\$	\$
61.	2,300 L.F.	1" PVC-V, Buried		
<u>(Per Lineal Foot)</u>			\$	\$
62.	4,800 L.F.	2" PVC-D, Buried		
<u>(Per Lineal Foot)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
63.	100 L.F.	6" D.I. Casing		
<u>(Per Lineal Foot)</u>			\$	\$
64.	30 L.F.	8" D.I. Casing		
<u>(Per Lineal Foot)</u>			\$	\$
65.	30 L.F.	10" D.I. Casing		
<u>(Per Lineal Foot)</u>			\$	\$
66.	60 L.F.	12" D.I. Casing		
<u>(Per Lineal Foot)</u>			\$	\$
67.	30 L.F.	14" D.I. Casing		
<u>(Per Lineal Foot)</u>			\$	\$
68.	40 L.F.	20" D.I. Casing		
<u>(Per Lineal Foot)</u>			\$	\$
69.	30 EA.	Adjustable Pipe Supports		
<u>(Per Each)</u>			\$	\$
70.	5 EA.	Adjustable Pipe Supports w/ Guide (G1)		
<u>(Per Each)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
71.	540 EA.	Pipe Guides (G2)		
(Per Each)			\$	\$
72.	50 EA.	Pipe Anchor		
(Per Each)			\$	\$
73.	5 EA.	Bollards		
(Per Each)			\$	\$
74.	3 EA.	4" Butterfly Valve		
(Per Each)			\$	\$
75.	3 EA.	6" Butterfly Valve		
(Per Each)			\$	\$
76.	4 EA.	8" Butterfly Valve		
(Per Each)			\$	\$
77.	6 EA.	10" Butterfly Valve		
(Per Each)			\$	\$
78.	1 EA.	12" Butterfly Valve		
(Per Each)			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
79.	2 EA.	16" Butterfly Valve		
<u>(Per Each)</u>			\$	\$
80.	17 EA.	Vacuum Valve Stations		
<u>(Per Each)</u>			\$	\$
81.	1 EA.	Remote Condensate Pump Station		
<u>(Per Each)</u>			\$	\$
82.	4 EA.	4" Condensate Drip Leg Fitting		
<u>(Per Each)</u>			\$	\$
83.	3 EA.	6" Condensate Drip Leg Fitting		
<u>(Per Each)</u>			\$	\$
84.	2 EA.	8" Condensate Drip Leg Fitting		
<u>(Per Each)</u>			\$	\$
85.	7 EA.	10" Condensate Drip Leg Fitting		
<u>(Per Each)</u>			\$	\$
86.	3 EA.	12" Condensate Drip Leg Fitting		
<u>(Per Each)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
87.	2 EA.	16" Condensate Drip Leg Fitting		
<u>(Per Each)</u>			\$	\$
88.	55 EA.	Condensate Cleanouts		
<u>(Per Each)</u>			\$	\$
89.	320 L.F.	Electrical Ductbank, Type 1		
<u>(Per Lineal Foot)</u>			\$	\$
90.	2,400 L.F.	Electrical Ductbank, Type 2		
<u>(Per Lineal Foot)</u>			\$	\$
91.	1,900 L.F.	Electrical Ductbank, Type 3		
<u>(Per Lineal Foot)</u>			\$	\$
92.	1 L.S.	Motor Blower/Flare Facility		
<u>(Per Lump Sum)</u>			\$	\$
93.	1 L.S.	Temporary Gas System		
<u>(Per Lump Sum)</u>			\$	\$
94.	3,000 HR	Labor for Temporary Gas System Construction & Maintenance		
<u>(Per Hour)</u>			\$	\$

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Cost</u>
95.	1,500 HR	Operator & Equipment for Temporary Gas System Construction & Maintenance		
<u>(Per Hour)</u>			\$	\$

TOTAL BID AMOUNT \$ _____

**RECYCLED PRODUCT* ATTACHMENT TO
SCHEDULE OF BID PRICES**

BID ITEM NO. & DESCRIPTION	SUPPLIER	QUANTITY OF RECYCLED PRODUCT IN BID ITEM	RECYCLED PRODUCT (%)	POST- CONSUMER CONTENT (%)	2NDARY WASTE CONTENT (%)	BID AMOUNT OF RECYCLED PRODUCT (\$)

- * NOTES:**
1. For definitions refer to Appendix, Oregon Law 1991, Chapter 385, Section 59 and 61.
 2. It is the Bidder's responsibility to determine if the recycled product meets the Contract specifications. Metro reserves the right to confirm information submitted by contacting the manufacturer.

ADDENDA

The Bidder is presumed to have read and hereby acknowledges receipt and acceptance of Addenda Numbers:

(Insert No. and Date of Each Addendum Received)

SURETY

If the Bidder is awarded a Contract on this Bid, the surety or sureties who provide(s) the Performance Bond and Labor and Materials Payment Bond will be:

SURETY

ADDRESS

- | | | |
|----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |

**MINORITY BUSINESS ENTERPRISE (MBE)
PROGRAM COMPLIANCE FORM**

Project Name _____

Bidder/Proposer _____

Address _____

Telephone Business () _____

Fax () _____

BIDDER/PROPOSER HEREBY CERTIFIES and it has made good faith efforts to maximize MBE opportunities and comply with METRO Code Sections 2.04.100-190 by performing and documenting the following actions:

1. **Identifying and Incorporating** in the subcontracting plan *specific Economically Feasible Units* which may be performed by MBEs to increase the likelihood of participation by such enterprises;

Minimum Documentation Required: Identification of selected economically feasible units (EFUs) in the Bidder's/ Proposer's subcontracting plan, utilizing at a minimum, project elements targeted by METRO.

2. **Attendance at any Pre-solicitation or Prebid Meetings** that were scheduled by METRO to inform MBEs of contracting and subcontracting or material supply opportunities available on the project;

Minimum Documentation Required: Signature of representative of Bidder/Proposer on prebid meeting attendance sheet.

3. **Placing follow-up Phone Calls** not later than five (5) days prior to Bid opening or Proposal submission *to all MBEs* who attended any METRO sponsored prebid or presolicitation meeting with the specific purpose of inquiring as to their intent to participate and encouraging their involvement.

Minimum Documentation Required:

Telephone Log providing the following information:

Dates and Times of Call(s) including the names of the individuals placing and receiving them;

Results Attained (Submitted, Will Submit, Declined to Submit or Failed to Respond)

If Bid(s)/Proposal(s) from MBEs were rejected an *itemization of the dollar amount(s) and reason(s) for rejection*, plus the dollar amount of the Bid accepted.

4. Providing Project Information or referring interested MBEs to the appropriate plan centers for identification of the subcontract or material supply work.
5. Negotiating with Interested, Capable and Competitive MBE Bidders; Not Rejecting any MBE Bid without Justification; Observing Bid Shopping Prohibition.
6. Notifying MBEs if Bonding is Required and referring them to a potential bond source.

By signing this document Bidder/Proposer hereby certifies that:

It has not discriminated against any MBEs in obtaining any subcontracts for this project, and the good faith efforts documented herein were reasonably expected to result in participation of MBEs in this project in compliance with the above cited METRO program.

Acknowledges that: METRO reserves the right to verify the documentation of the lowest responsible Bidder and require additional written documentation of good faith efforts;

Failure to complete and submit this form at the time of the Bid opening/submission deadline will result in the Bidder's rejection as nonresponsive;

Replacement of a MBE subcontractor before contract award or during contract performance without prior METRO notice and subsequent good faith efforts in selection of a replacement, is prohibited.

And, Executes this Compliance Agreement as:

Bidder/Proposer _____

By _____
Name Title Date

**WOMEN-OWNED BUSINESS ENTERPRISE (WBE)
PROGRAM COMPLIANCE FORM**

Project Name _____

Bidder/Proposer _____

Address _____

Telephone Business () _____

Fax () _____

BIDDER/PROPOSER HEREBY CERTIFIES and it has made good faith efforts to maximize WBE opportunities and comply with METRO Code Sections 2.04.100-190 by performing and documenting the following actions:

1. Identifying and Incorporating in the subcontracting plan *specific Economically Feasible Units* which may be performed by WBEs to increase the likelihood of participation by such enterprises;

Minimum Documentation Required: Identification of selected economically feasible units (EFUs) in the Bidder's/ Proposer's subcontracting plan, utilizing at a minimum, project elements targeted by METRO.

2. Attendance at any Pre-solicitation or Prebid Meetings that were scheduled by METRO to inform WBEs of contracting and subcontracting or material supply opportunities available on the project;

Minimum Documentation Required: Signature of representative of Bidder/Proposer on prebid meeting attendance sheet.

3. Placing follow-up Phone Calls not later than five (5) days prior to Bid opening or Proposal submission *to all WBEs* who attended any METRO sponsored prebid or presolicitation meeting with the specific purpose of inquiring as to their intent to participate and encouraging their involvement.

Minimum Documentation Required:

Telephone Log providing the following information:

Dates and Times of Call(s) including the names of the individuals placing and receiving them;

Results Attained (Submitted, Will Submit, Declined to Submit or Failed to Respond)

If Bid(s)/Proposal(s) from WBEs were rejected an *itemization of the dollar amount(s) and reason(s) for rejection*, plus the dollar amount of the Bid accepted.

4. Providing Project Information or referring interested WBEs to the appropriate plan centers for identification of the subcontract or material supply work.
5. Negotiating with Interested, Capable and Competitive WBE Bidders; Not Rejecting any WBE Bid without Justification; Observing Bid Shopping Prohibition.
6. Notifying WBEs if Bonding is Required and referring them to a potential bond source.

By signing this document Bidder/Proposer hereby certifies that:

It has not discriminated against any WBEs in obtaining any subcontracts for this project, and the good faith efforts documented herein were reasonably expected to result in participation of WBEs in this project in compliance with the above cited METRO program.

Acknowledges that: METRO reserves the right to verify the documentation of the lowest responsible Bidder and require additional written documentation of good faith efforts;

Failure to complete and submit this form at the time of the Bid opening/submission deadline will result in the Bidder's rejection as nonresponsive;

Replacement of a WBE subcontractor before contract award or during contract performance without prior METRO notice and subsequent good faith efforts in selection of a replacement, is prohibited.

And, Executes this Compliance Agreement as:

Bidder/Proposer _____

By _____
Name Title Date

MINORITY BUSINESS ENTERPRISE UTILIZATION FORM

Name of Metro Project _____

Name of Bidder _____

Address of Bidder _____

Phone Number (____) _____ - _____

THE ABOVE PARTICIPANT:

- A. _____ Will subcontract with minority business enterprises. Please complete the form below.
- B. _____ Will not subcontract with minority business enterprises.

**BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING
MINORITY BUSINESS ENTERPRISE(S) (MBES)**

SUBCONTRACTOR/SUPPLIER	NATURE OF WORK BY COMMODITY CODE (SEE REVERSE)	DOLLAR VALUE OF PARTICIPATION

Amount of MBE Utilization _____

Authorized Signature _____

Total Bid/Proposal Amount _____

Percentage MBE Utilization _____ Date: _____

**THIS FORM MUST BE SUBMITTED
AT THE TIME OF BID OPENING OR PROPOSAL SUBMISSION**

COMMODITY CODES	
CONSTRUCTION	
1-01-00 Residential/Commercial General Contractor	1-02-00 Specialty Trades (Residential/ Commercial)
1-03-00 Highway/Road General Contractor	(Specify Below)
SPECIALTY TRADES	
1-04-02 Concrete Cutting	1-04-03 Concrete pumping
1-04-04 Demolition	1-04-05 Drainage
1-04-06 Drilling/Blasting	1-04-07 Electrical
1-04-08 Excavating	1-04-09 Fencing/Guardrail
1-04-10 Illumination	1-04-11 Irrigation
1-04-12 Landscaping	1-04-13 Masonry
1-04-14 Painting/Striping	1-04-15 Paving
1-04-16 Plumbing	1-04-17 Rebar Placement
1-04-18 Rock Crushing	1-04-19 Seeding
1-04-20 Signs	1-04-21 Site Preparation
1-04-22 Traffic Control/Flagging	1-04-22 Utilities
CONSULTANT/PROFESSIONAL SERVICES	
2-06-00 Engineering/Surveying	2-07-01 Architectural Design
2-07-02 Landscape Design	2-07-03 Interior Design
SUPPLIERS	
3-01-01 Asphalt	3-01-02 Cement
3-01-03 Concrete Pipe/Manholes	3-01-04 Crushed Rock/Gravel/Sand
3-01-05 Electrical	3-01-06 Flooring
3-01-07 Guard Rails	3-01-08 Irrigation
3-01-09 Lighting	3-01-10 Lumber
3-01-11 Masonry	3-01-12 Paint
3-01-13 Pipe (Steel)	3-01-14 Signs
3-01-15 Tools	3-01-16 Other Construction Suppliers
3-02-00 Construction Equipment (Lease/Rental/Sale)	3-04-00 Non-Construction Equipment (Lease/Rental/Sale)
3-06-00 Retail Sales	3-07-01 Automotive Supplies
3-07-02 Bus Parts	3-07-03 Truck Supplies
3-99-00 Other Suppliers:	
SERVICES	
4-02-00 Janitorial Services	4-03-00 Landscape/building/Facility Maintenance
4-04-01 Temporary Employment	4-04-02 Permanent Employment
4-05-00 Equipment Repair/Maintenance	4-06-00 Printing/Typesetting
4-08-00 Trucking/Hauling/Refuse	4-10-00 Newspapers
4-99-00 Other Services:	

WOMEN-OWNED BUSINESS ENTERPRISE UTILIZATION FORM

Name of Metro Project _____

Name of Bidder _____

Address of Bidder _____

Phone Number (____) _____ - _____

THE ABOVE PARTICIPANT:

- A. _____ Will subcontract with women-owned business enterprises. Please complete the form below.
- B. _____ Will not subcontract with women-owned business enterprises.

**BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING
WOMEN-OWNED BUSINESS ENTERPRISE(S) (WBES)**

SUBCONTRACTOR/SUPPLIER	NATURE OF WORK BY COMMODITY CODE (SEE REVERSE)	DOLLAR VALUE OF PARTICIPATION

Amount of WBE Utilization _____

Authorized Signature _____

Total Bid/Proposal Amount _____

Percentage WBE Utilization _____ Date: _____

**THIS FORM MUST BE SUBMITTED
AT THE TIME OF BID OPENING OR PROPOSAL SUBMISSION**

COMMODITY CODES	
CONSTRUCTION	
1-01-00 Residential/Commercial General Contractor	1-02-00 Specialty Trades (Residential/ Commercial)
1-03-00 Highway/Road General Contractor	(Specify Below)
SPECIALTY TRADES	
1-04-02 Concrete Cutting	1-04-03 Concrete pumping
1-04-04 Demolition	1-04-05 Drainage
1-04-06 Drilling/Blasting	1-04-07 Electrical
1-04-08 Excavating	1-04-09 Fencing/Guardrail
1-04-10 Illumination	1-04-11 Irrigation
1-04-12 Landscaping	1-04-13 Masonry
1-04-14 Painting/Striping	1-04-15 Paving
1-04-16 Plumbing	1-04-17 Rebar Placement
1-04-18 Rock Crushing	1-04-19 Seeding
1-04-20 Signs	1-04-21 Site Preparation
1-04-22 Traffic Control/Flagging	1-04-22 Utilities
CONSULTANT/PROFESSIONAL SERVICES	
2-06-00 Engineering/Surveying	2-07-01 Architectural Design
2-07-02 Landscape Design	2-07-03 Interior Design
SUPPLIERS	
3-01-01 Asphalt	3-01-02 Cement
3-01-03 Concrete Pipe/Manholes	3-01-04 Crushed Rock/Gravel/Sand
3-01-05 Electrical	3-01-06 Flooring
3-01-07 Guard Rails	3-01-08 Irrigation
3-01-09 Lighting	3-01-10 Lumber
3-01-11 Masonry	3-01-12 Paint
3-01-13 Pipe (Steel)	3-01-14 Signs
3-01-15 Tools	3-01-16 Other Construction Suppliers
3-02-00 Construction Equipment (Lease/Rental/Sale)	3-04-00 Non-Construction Equipment (Lease/Rental/Sale)
3-06-00 Retail Sales	3-07-01 Automotive Supplies
3-07-02 Bus Parts	3-07-03 Truck Supplies
3-99-00 Other Suppliers:	
SERVICES	
4-02-00 Janitorial Services	4-03-00 Landscape/building/Facility Maintenance
4-04-01 Temporary Employment	4-04-02 Permanent Employment
4-05-00 Equipment Repair/Maintenance	4-06-00 Printing/Typesetting
4-08-00 Trucking/Hauling/Refuse	4-10-00 Newspapers
4-99-00 Other Services:	

RESIDENT/NON-RESIDENT BIDDER STATUS

Oregon law requires that Metro, in determining the lowest responsive Bidder, must add a percent increase on the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides. Consequently, each Bidder must indicate whether it is a resident or non-resident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) calendar months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid that the Bidder is a "resident Bidder." A "non-resident Bidder" is a Bidder who is not a resident Bidder (ORS 279.029).

The undersigned Bidder states that it is: (check one)

1. _____ A resident Bidder
2. _____ A non-resident Bidder

Indicate state in which Bidder resides: _____

SIGNATURE PAGE

The name of the Bidder submitting this Bid is _____ doing business at

Street

City

State

Zip

which is the full business address to which all communications concerned with this Bid and with the Contract shall be sent.

The names of the principal officers of the corporation submitting this Bid, or of all of the partners, if the Bidder is a partnership or joint venture, or of all persons interested in this Bid as individuals are as follows:

_____	_____
_____	_____
_____	_____

If Individual

IN WITNESS hereto the undersigned has set his/her hand this ___ day of _____, 19 ____.

Signature of Bidder _____

Printed Name of Bidder _____

Title _____

If Partnership or Joint Venture

IN WITNESS hereto the undersigned has set his/her hand this ____ day of _____, 19__.

Name of Partnership or Joint Venture

By: _____

Printed Name of Person Signing

Title: _____

If Corporation

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this ____ day of _____, 19__.

Name of Corporation

State of Incorporation

By: _____

Printed Name of Person Signing

Title: _____

NON-COLLUSION AFFIDAVIT

STATE OF _____) County of _____)

I state that I am _____ (Title) of _____ (Name of Bidder) and that I am authorized to make this Affidavit on behalf of the Bidder. I am the person authorized by the Bidder and responsible for the price(s) and the amount of this Bid.

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

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

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

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

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

I state that I and _____ (Name of Bidder) understand and acknowledge that the above representations are material and important, and will be relied on by Metro in awarding the Contract for which this Bid is submitted. Any misstatement in this Affidavit will be treated as fraudulent concealment from Metro of the true facts relating to the submission of Bids for this Contract.

Signature of Affiant

Printed Name of Affiant

Sworn to and subscribed before me this ____ day of _____, 19 ____.

Notary Public for _____

My Commission Expires: ____ / ____ / ____

SECTION 00500

CONSTRUCTION AGREEMENT

This Construction Agreement is made by and between _____ hereinafter called Contractor and Metro, a political subdivision of the State of Oregon, hereinafter called Metro.

Contractor and Metro agree as follows:

1. Contract Documents

The Contract Documents consist of this Construction Agreement, the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms (including Schedule of Bid Prices, Surety, MBE/WBE Business Program Compliance, Prevailing Wage Rate Compliance, Resident/Non-resident Bidder Status, Signature Page, Non-Collusion Affidavit, Bid Bond, DBE and WBE Utilization), the Performance and the Labor and Materials Payment Bonds, the General Conditions, the Supplementary Conditions, the Technical Specifications, the Drawings, the approved and updated Construction Schedule, and other information and data as listed in the Supplementary Conditions, and any modifications of any of the foregoing in the form of Addenda or Change Orders in accordance with the terms of the Contract. Where applicable, reference to this Construction Agreement herein shall be deemed to refer to all of the Contract Documents.

These documents form the Contract and are, by this reference, expressly incorporated herein. All are as fully a part of the Contract as if attached to this Construction Agreement and repeated fully herein. No amendment made to this Contract nor Change Order issued shall be construed to release either party from any obligation contained in the Contract Documents except as specifically provided in any such amendment or Change Order.

2. Scope of Work

Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, permits, and every other item and service necessary to perform the Work described in the Contract Documents. Contractor agrees to fully comply with each and every term, condition and provision of the Contract Documents.

3. Contract Amount

As consideration for Contractor's performance hereunder, Metro agrees to pay contractor the Contract Amount as adjusted by approved Change Orders issued pursuant to the Contract Documents and subject to the availability of monies in the Construction Fund. Contractor agrees to accept the Contract Amount as full payment for contractor's performance of the above-described Work.

The Contract Amount is _____

Metro shall make payments to Contractor in the manner and at the times provided in the Contract Documents.

4. Additional or Deleted Work

Contractor shall, when so instructed by Metro under the procedures of the contract Documents, perform additional Work or delete Work in accordance with the Contract Documents. Any increase or decrease in the Contract Amount shall be determined pursuant to the applicable provisions of the Contract Documents.

5. Time of Completion; Adjusted Payments

Time is of the essence of this Construction Agreement. The Contract Time shall commence upon issuance of the Notice to Proceed. Contractor shall commence work under this Contract within ten (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the work to substantial completion no later than November 15, 1994. By executing this Construction Agreement, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work.

If Contractor fails to substantially complete the Work, within the Contract Time, as determined by Metro in accordance with the Contract Documents, Contractor shall be liable for adjusted payments to Metro as described in the Contract Documents.

6. Bonds

Contractor submits herewith a Performance Bond and a separate Labor and Materials Payment Bond, both in a form acceptable to Metro and otherwise in accordance with the Contract Documents and each in the Contract Amount to ensure full compliance, execution and performance of this Contract by Contractor and payment by Contractor of labor and material Suppliers as more fully described in the Contract Documents.

7. Remedies for Default

If Contractor fails to perform as specified in the Contract Documents, 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 remedies provided by law which Metro would have in the absence of any provision of the Contract.

8. Laws of Oregon Apply

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

9. Entire Agreement

The Contract Documents constitute the final written expression of all of the terms of this Construction Agreement and are 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 this written agreement 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: _____

Title: _____

Title: _____

Date: _____

Date: _____

SECTION 00600

PERFORMANCE BOND

(NOTE: CONTRACTORS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW BY ALL MEN BY THESE PRESENTS:

We the undersigned _____ as PRINCIPAL (hereinafter called CONTRACTOR), and _____, a corporation organized and existing under and by virtue of the laws of the state of _____, duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to Metro as OBLIGEE (hereinafter called Metro), the amount of _____ Dollars (\$ _____), in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with Metro dated _____, 19____, which contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: The St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare.

NOW, THEREFORE, the condition of this obligation is such that if the CONTRACTOR shall promptly, truly and faithfully perform all the undertakings, covenants, terms, conditions, and agreements of the aforesaid St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare, Metro having performed its obligations thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by Metro to be in default under the Contract Documents for the project described herein, the SURETY may promptly remedy the default, or shall promptly complete the St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare in accordance with the Contract Documents and the project Specifications. SURETY, for value received, further stipulates and agrees that all changes, extensions of time, alterations, or additions to the terms of the Contract or Specifications for the St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare are within the scope of the SURETY's undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that such increase shall not

exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Metro or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 19__.

SURETY

By: _____

Title: _____

CONTRACTOR

By: _____

Title: _____

SECTION 00650

LABOR AND MATERIALS PAYMENT BOND

(NOTE: CONTRACTOR MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENTS:

We the Undersigned _____ as PRINCIPAL and _____, a corporation organized and existing under and by virtue of the laws of the state of _____, and duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and which carries an "A" rating and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, unto Metro, as OBLIGEE, in the sum of _____ Dollars (\$ _____) in lawful money of the United States of America, for the payment of that sum for the use and benefit of claimants as defined below.

The condition of this obligation is such that whereas the PRINCIPAL entered into a contract with Metro dated _____, 19____, which contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: The St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare.

NOW THEREFORE, if the PRINCIPAL shall promptly make payments to all persons, firms, subcontractors, corporations and/or others furnishing materials for or performing labor in the prosecution of the Work provided for in the aforesaid St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare, and any authorized extension or modification thereof, including all amounts due for materials, equipment, mechanical repairs, transportation, tools and services consumed or used in connection with the performance of such Work, and for all labor performed in connection with such Work whether by subcontractor or otherwise, and all other requirements imposed by law, then this obligation shall become null and void; otherwise this obligation shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is as specified in ORS 279.526.
2. The above-named PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE and its assigns that every claimant as above-specified, who has not been paid in full, may sue on this bond for the use of such claimant, prosecute the suit to final judgment in accordance with ORS 279.536 for such sum or sums as may be justly due claimant, and have execution thereon. The OBLIGEE shall not be liable for the payment of any judgment, costs, expenses or attorneys' fees of any such suit.

PROVIDED, FURTHER, that SURETY for the value received, hereby stipulates and agrees that all changes, extensions of time, alterations to the terms of the St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare or to Work to be performed thereunder or the Specifications accompanying the same shall be within the scope of the SURETY's undertaking on this bond, and SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the St. Johns Landfill Closure of Subareas 2 and 3 and the Motor Blower Flare or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that the total of such increases shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted, or if the full amount of the obligation is not exhausted and no claim is pending resolution, until such time as no further claims can be made pursuant to law with regard to the above-described project, by any claimant specified in ORS 279.526.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for all obligations of this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 19__.

SURETY

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

SECTION 00700
GENERAL CONDITIONS
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**SECTION 00700
GENERAL CONDITIONS
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ARTICLE 1 GENERAL PROVISIONS

- 1.01 Definitions. Unless otherwise defined or specified in the Contract Documents, the following terms shall have the meanings indicated:
- 1.01.01 Act of God -- means an earthquake, flood, typhoon, cyclone or other natural phenomenon of catastrophic proportions or intensity.
 - 1.01.02 Addendum (Plural: Addenda) -- means a document issued by Metro during the bidding period which modifies, interprets, supersedes or supplements the Contract Documents and becomes a part of the Contract Documents. It is the Bidder's responsibility to determine how addenda impact the Work. All Bids submitted shall include the cost of the Work included in any addenda issued prior to award.
 - 1.01.03 Alternates Bids -- are portions of the Work for which a Bidder must submit a separate Bid amount. Alternate Bid items may or may not be awarded at Metro's discretion.
 - 1.01.04 "As-Builts" or Record Documents -- are those drawings made, revised or annotated by Contractor and approved by Metro during the performance of the Contract, fully illustrating how all elements of the work were actually installed and completed.
 - 1.01.05 Authorized Representative -- is a person, corporation, partnership or other legal entity acting on behalf of another through expressly delegated authority as specified in these Contract Documents.
 - 1.01.06 Bid -- is the written offer of a Bidder to perform the Work as defined in these Contract Documents, when made out in accordance with all of the Contract Documents and submitted on the appropriate Bid Forms.
 - 1.01.07 Bidder -- is any individual, partnership, corporation, or joint venture, acting directly or through a duly and legally authorized representative, submitting or intending to submit a Bid for the Work as described in these Contract Documents.
 - 1.01.08 Bidding Documents -- See "Contract Documents."
 - 1.01.09 Bid Forms -- include the following: the Bid proposal, including Schedule of Bid Prices, Surety, Disadvantaged Business Program Compliance Form, Resident/Non-Resident Bidder Status form, Signature Page, the Non-Collusion Affidavit, Bid Bond, Disadvantaged Business Enterprise Utilization Form and the Women Business Enterprise Utilization Form.

- 1.01.10 City -- means the City of Portland, Oregon.
- 1.01.11 Change Order -- is a written document signed by Metro and Contractor stating their agreement upon all of the following:
- 1.01.11.01 a change in the Work;
 - 1.01.11.02 the amount of the increase or decrease in the Contract Amount, if any;
and
 - 1.01.11.03 the extent of the adjustment to the Contract Time, if any.
- 1.01.12 Clarification -- is a written document consisting of supplementary details, instruction or information issued by Metro after the award of Contract which clarifies, or supplements the Contract Documents and becomes a part of the Contract Documents. A Clarification may or may not affect the scope of work.
- 1.01.13 Completion -- See "Substantial Completion" and "Final Completion and Acceptance."
- 1.01.14 Construction Coordinator -- is the Metro representative on the construction site. The Construction Coordinator will be an employee of Metro, who will represent Metro to the extent of his authority as delegated by the Executive Officer.
- 1.01.15 Construction Manager -- is a representative of Metro, and is the interface with Contractor and will be the conduit for all Change Orders, correspondence, Requests for Information, Clarifications and negotiations.
- 1.01.16 Construction Schedule or Schedule -- is the timeline described in Section 01310 of the Specifications.
- 1.01.17 Contract Amount -- is the total amount shown in the Construction Agreement as revised by Change Orders.
- 1.01.18 Contract Documents or Contract or Bidding Documents -- consist of the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms, the Construction Agreement, the Performance Bond, the Labor and Materials Payment Bond, the General Conditions, the Supplementary Conditions, the Specifications, the Drawings, the approved and updated Construction Schedule, and any modifications of any of the foregoing in the form of Addenda, Clarifications, Change Orders or Force Account Work.
- 1.01.19 Contractor -- is the party who has entered into this Contract with Metro and who is responsible for the complete performance of the Work contemplated by the

Contract Documents and for the payment of all legal debts pertaining to the Work, including its officers, agents, employees and representatives.

- 1.01.20 Contract Time -- is the period of time, including adjustments approved by Metro, which is allowed in the Contract Documents for Contractor to substantially complete the Work.
- 1.01.21 Critical Path Method or CPM -- means the critical path method of scheduling as understood and interpreted by standard industry practice.
- 1.01.22 Days -- means calendar day including Saturdays, Sundays and legal holidays.
- 1.01.23 Direct Costs -- are those costs of labor (including benefits), material and equipment incurred by the person, corporation, partnership or joint venture whose employees are actually performing the task.
- 1.01.24 Disadvantaged Business Program -- is Metro's program to provide maximum opportunities to Disadvantaged and Women-Owned Business Enterprises in contracts, which is contained in Metro Code 2.04.
- 1.01.25 Drawings -- means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.01.26 Engineer -- is a representative of Metro. The Engineer will have authority to act on behalf of Metro only to the extent provided in these Contract Documents.
- 1.01.27 Equal, Approved, Approved Equal -- is used to indicate that the material or product to be supplied or installed must be equal to or better than that named in function, performance, reliability, quality and general configuration and that the substitute must be approved by Engineer. Equality in reference to the Project design requirements shall be determined by Engineer prior to installation of any material or product in the Project.
- 1.01.28 Final Completion and Acceptance -- means the completion by Contractor of all of the Work called for under the Contract, whether expressly or impliedly required, including but not limited to, satisfactory operation of all equipment, completion and correction of all punch list items to the satisfaction of Metro, settlement of all claims, delivery of all warranties and agreements to correct Work, equipment operation and maintenance manuals, as-built drawings, required approvals and acceptances by federal, state or local governments or other authorities having jurisdiction over the Work, and removal of all rubbish, tools, scaffolding and surplus materials and equipment from the Site.

- 1.01.29 Final Payment -- is the balance of the Contract Amount to be paid to the Contractor upon Final Completion and Acceptance of the Work.
- 1.01.30 Force Account Work -- is work, ordered in writing by Metro, for which Contractor must report its actual costs in accordance with Paragraph 8.04 of the General Conditions.
- 1.01.31 Furnish -- means, unless the context requires otherwise, supply and deliver materials, systems and equipment to the Site, ready for unpacking, assembly, installation, etc., as applicable in each instance.
- 1.01.32 General Contractor -- is the party who enters into the Contract with Metro. See also "Contractor".
- 1.01.33 Geotechnical Engineer -- The Geotechnical Engineer is an agent of the Engineer.
- 1.01.34 Inclement Weather -- is a meteorological condition or conditions, abnormal to the Portland metropolitan area for the time of year in question, which cannot be reasonably anticipated and which has a significantly adverse effect on the Construction Schedule. Abnormality of the weather is defined as the number of days the weather parameters exceed the normal adverse weather days at the project.

For work under this contract, Metro defines adverse weather days as days on which Contractor is impacted by weather, normally defined as days with an average daily temperature of less than 32 F, significant daily precipitation or snow. Contractor will be cognizant of adverse weather days based upon long term averages when preparing project schedule, and shall refer to the annual publication of Local Climatological Data for Portland Oregon available at the Portland Weather Service Office.

- 1.01.35 Install -- includes, unless the context requires otherwise, unload, unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, protect, clean, connect to electrical power and/or piping, and similar operations at the Site, as applicable in each instance.
- 1.01.36 Lump Sum -- means all costs and expenses of whatever nature, including Overhead and Profit, associated with the Work involved.
- 1.01.37 Material or Materials -- shall be construed to include machinery, equipment, manufactured articles, materials of construction such as formwork, fasteners, etc., and any other classes of items to be provided in connection with the Contract, except where a more limited meaning is indicated by the context.

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

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

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

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

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

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

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

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

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

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

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

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

- 1.01.45.02 Small tools (less than \$250 capital cost per item).
- 1.01.45.03 Equipment maintenance and repairs.
- 1.01.45.04 Temporary construction, utilities, and safety requirements.
- 1.01.45.05 Transportation of materials other than direct identifiable cost of specific deliveries, or as included in price of material.
- 1.01.45.06 Parking fees for workers (if applicable).
- 1.01.45.07 Permit fees.
- 1.01.45.08 Cost of reproduction.
- 1.01.45.09 Field office costs.

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

1.01.45.09.01 Accounting functions of Contractor's Home and Branch Office.

1.01.45.09.02 General expenses of Contractor's Home and Branch Office.

1.01.45.09.03 Interest on capital.

1.01.45.09.04 Salaries of any home and branch office estimators and administration.

1.01.46 Owner -- means Metro.

1.01.47 Plans -- means Drawings.

1.01.48 Profit -- means that portion of Contractor's Bid price that is not Direct Costs or Overhead.

1.01.49 Project -- means the Work described in the Contract Documents.

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

- 1.01.51 Punch List -- is the list prepared by the Construction Manager at the time of Substantial Completion which reflects Contractor's incomplete, nonconforming work. Punch list items must be completed to the satisfaction of the Engineer and Metro in order for the Project to reach Final Completion and Acceptance.
- 1.01.52 Request for Clarification -- is a written request made by Contractor for additional information to clarify an ambiguity in the Contract Documents.
- 1.01.53 Retainage or Retention -- is the difference between the amount earned by Contractor on the Contract and the amount paid on the Contract by Metro.
- 1.01.54 Schedule of Values -- is the detailed breakdown of a lump sum contract amount as required in Section 01370 of the Specifications.
- 1.01.55 Separate Contract -- is a contract between Metro and a party other than Contractor for the construction or furnishing of a portion of the Project.
- 1.01.56 Shown, As Shown -- work shown on the Drawings which is a part of the Contract Documents.
- 1.01.57 Site -- is the real property upon which the Project is located.
- 1.01.58 Special Inspector -- is a representative of the Engineer or Geotechnical Engineer with specialized knowledge applicable to the installation of certain elements of the work.
- 1.01.59 Specifications -- are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 1.01.60 Subcontractor -- means a person, partnership, corporation or joint venture which has a direct contract with Contractor to perform a portion of the Work at the Site.
- 1.01.61 Submittals -- include shop drawings, samples, manufacturer's brochures, pamphlets, catalog cuts, color charts or other descriptive data, clearly defining the article, material, equipment or device proposed by Contractor for use in the Work. "Shop drawings" are the drawings and diagrams showing details of fabrication and erection which Contractor is required to submit to the Engineer.
- 1.01.62 Substantial Completion -- is the stage in the progress of the Work, as determined by Metro, when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Metro can occupy or use the Work for its intended use.

- 1.01.63 Supplier -- means an individual, partnership, corporation or joint venture entering into an agreement with Metro or Contractor for furnishing a portion of the Work which requires no labor at the Site, other than common carriers.
- 1.01.64 Unit Prices -- are the costs for specific units of work as defined in the Bid and Supplementary Conditions and include all costs, including, but not limited to, equipment, labor, materials, incidentals, Overhead and Profit, for the unit of work described.
- 1.01.65 Work -- means, unless the context requires otherwise, the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute all or a portion of the Project as the context requires.

1.02 Intent and Interpretation of Contract Documents

- 1.02.01 Intent -- The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the Contract Documents is to include in the Contract price the cost of all labor and materials, water, fuel, tools, plant, scaffolding, equipment, power, light, transportation, and all other facilities, services and expense as may be necessary for the proper execution of the Work, unless otherwise indicated in these Contract Documents. In interpreting the Contract Documents, words describing materials or work which have a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning recognized by Engineer and Metro.
- 1.02.02 Divisions and Headings -- Titles and headings are for the convenience of organizing the Contract Documents and shall not be construed to limit Contractor's obligations hereunder. The General Conditions are divided into fifteen (15) Articles. The first-tier subheadings of each Article shall be referred to as Paragraphs; the second-tier sub-headings shall be referred to as Subparagraphs; and the third-tier subheadings shall be referred to as Clauses.
- 1.02.03 Mandatory Nature of Specifications and Drawings -- mention in the Specifications or indication on the drawings of articles, materials, operations, sequence or methods requires Contractor to furnish and install (i.e., provide) each article mentioned or indicated, of quality or according to qualifications noted, to perform each operation called for, in the sequence called for, and to provide therefor, all necessary labor, equipment and incidentals. The determination of the type of operations and methods to be utilized in the performance of the Work shall be the responsibility of Contractor unless the Contract Documents prescribe a specific type of operation, sequence or method, in which case Contractor shall comply with the prescribed operation, sequence or method. Sentences in the imperative tense

or command format in these Contract Documents shall be deemed to be directed to Contractor and to require Contractor to perform the services and/or provide the materials described.

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

1.02.04.01 Signed Construction Agreement.

1.02.04.02 Supplementary Conditions.

1.02.04.03 General Conditions, Advertisement for Bids, Instructions to Bidders, Invitation to Bid, Bid Forms, Performance Bond and Labor and Materials Payment Bond.

1.02.04.04 Specifications

1.02.04.05 Drawings.

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

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

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

above as though fully set forth in both. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. In case of discrepancy or ambiguity, in quantity or quality, the greater quantity or better quality as determined by Metro, shall be provided at no extra cost to Metro.

- 1.02.06 Standards to Apply Where Detailed Specifications Are Not Furnished -- wherever in these Contract Documents or in any directions given by Metro pursuant to or supplementing these Contract Documents, it is provided that Contractor shall furnish materials or manufactured articles or shall do work for which no detailed Specifications are set forth, the materials or manufactured articles shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed Drawings or Specifications are set forth herein shall conform to the usual standards for first-class work of the kind required.
- 1.03 Supply of Contract Documents -- Metro shall supply Contractor, without charge, a maximum of twenty (20) sets of Contract Documents. Contractor shall contact Metro for additional sets of documents for which Contractor shall be charged the cost of printing.
- 1.04 Use of Contract Documents -- the Contract Documents were prepared for use in the construction of this Project only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of Metro. Any unauthorized use of the Contract Documents is at the sole responsibility of the user and such unauthorized use shall be deemed an activity in the performance of the Contract for purposes of Contractor's duty to indemnify under Article 11.
- 1.05 Copyright -- all submittals, record documents and any other products or documents produced by Contractor pursuant to this Contract are the property of Metro and it is agreed by the parties hereto that such documents are works made for hire. Contractor does hereby convey, transfer and grant to Metro all rights of reproduction and the copyright to all such documents.
- 1.06 Severability Clause -- should any provision of this Contract at any time be in conflict with any law, regulation or ruling, or be legally unenforceable for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event that any provision of this Contract shall become legally unenforceable, in whole or in part, the remaining provisions of this Contract shall nevertheless remain in full force and effect.
- 1.07 Notice or Service -- any written notice required or allowed under the Contract shall be deemed to have been communicated to the other party and service thereof shall be deemed to have been made if such notice is delivered in person to the individual, a member of the partnership or joint venture, or an officer of the corporation for whom it was intended or if delivered at or sent by regular, registered or certified mail to the last business address of the relevant person or party known to the person or party giving the notice or to Contractor's Site office if the notice is directed to Contractor. The date or time of service for purposes

of all notices required or allowed under the Contract shall be the date and/or time upon which the relevant document was mailed or delivered as above-described.

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

ARTICLE 2 CONTRACTOR'S ORGANIZATION

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

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

2.02 Contractor's Office at the Site -- prior to commencement of work at the site, Contractor shall establish a field office at the site acceptable to the Construction Coordinator. This office shall be located in a job trailer or temporary building. This office shall be the headquarters of Contractor's representatives authorized to receive notices, instructions, drawings or other communications from the Construction Manager on behalf of Metro or the Engineer and to act on Change Orders or other actions. Such notices, instructions, drawings or other communications given to such a representative or delivered to Contractor's site office in his/her absence shall be deemed to have been given to Contractor.

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

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

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

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

- 2.05 Daily Construction Reports -- each day Contractor shall deliver to the Construction Manager a daily construction report which shall include, at a minimum, the following information:
- 2.05.01 Name of Contractor and Project.
 - 2.05.02 Weather, temperature and any unusual Site conditions for the day in question.
 - 2.05.03 A brief description and location of the day's work activities and any special problems and/or serious accidents or environmental releases, including preventative or mitigation measures taken. (including work of Subcontractors)
 - 2.05.04 A description of significant progress in construction for that day as well as any problems encountered that might affect the progress of the Project as they relate to the Construction Schedule.
 - 2.05.05 Any other information as requested by Metro or its representative.
- 2.06 Contractor to Supply Sufficient Material and Workers -- Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to substantially complete the Work herein required within the time specified in the Contract and in accordance with the Construction Schedule. Contractor shall coordinate the Work of its Subcontractors so that information required by one will be provided by others involved in time for incorporation in the Work in proper sequence and without delay of any materials, devices or provisions for future work.
- 2.07 Construction Plant, Equipment and Methods -- the construction plant and equipment provided by Contractor, and Contractor's methods and organization for handling the Work shall be such as will secure a good quality of work and rate of progress which will ensure the completion of the Work within the time specified, in accordance with the Construction Schedule, and without violating city, local, state or federal environmental regulation during construction.

Contractor shall give Metro full information in advance as to Contractor's plans for carrying on any part of the Work. If at any time before the commencement or during the progress of the Work, any part of Contractor's plant or equipment, or any of Contractor's methods of executing the Work, appears to Metro to be inadequate to ensure the required quality, environmental protection or rate of progress of the Work, Metro may order Contractor to increase or improve its facilities or methods, and Contractor shall promptly comply with such orders. Neither compliance with such orders nor failure of Metro to issue such orders shall relieve Contractor from obligation or liability to secure the quality of work and the rate of progress required by the Contract. Contractor shall be responsible for overload of any part or parts of structures beyond their safe calculated carrying capacities, and for release of pollutants into surrounding waters resulting from Contractor's activities on the Site.

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

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

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

ARTICLE 3 ADMINISTRATION OF THE CONTRACT

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

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

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

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

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

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

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

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

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

The Engineer, in consultation with Metro, shall interpret the meaning and intent of the Contract Documents and shall issue, within ten (10) days of receiving a Request for Clarification from Contractor, a written Clarification describing such meaning and intent.

Additionally, the Engineer, after consulting with Metro, may at any time issue written Clarifications as deemed necessary to carry out the Work included in the Contract Documents. Notwithstanding any dispute or disagreement which Contractor may have concerning any such Clarifications, Contractor shall perform the Work as prescribed and in accordance with all such Clarifications.

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

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

3.03 Contractor's Claims

3.03.01 Generally -- no claims of any sort whatsoever by Contractor shall be considered or allowed under this Contract except as specifically provided and prescribed under this Paragraph. Failure to make a claim as specifically prescribed by this Paragraph or failure to perform disputed work, if any, as directed by Metro shall bar Contractor from any recovery of any sort or extension of time resulting from the facts surrounding the claim. Contractor's full and complete compliance with this Paragraph shall be a condition precedent to any right of Contractor to further prosecute any claim against Metro arising out of or related to Work described in the Contract Documents. Every decision and action of Metro shall be considered final unless Contractor makes a claim concerning such decision or action pursuant to this Paragraph.

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

3.03.02.01 Claims based upon justifiable delays as described in Subparagraph 3.03.03;

3.03.02.02 Claims based upon differing Site conditions as described in Subparagraph 3.03.04;

3.03.02.03 Claims based upon Clarifications or Change Orders issued by Metro or any other decision, action or failure to act by Metro as described in subparagraph 3.03.05.

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

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

3.03.03 Claims For Justifiable Delays

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

"Justifiable Delay" shall mean, and is limited to, the acts, events or conditions described in sections (a) through (j) below, if such act, event or condition has a materially adverse effect on the ability of Contractor to obtain the benefits of its rights or to perform its obligations under this Contract or materially increases the cost to Contractor to obtain the benefits of such rights or to perform such obligations and if such act, event or condition and its effect:

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

3.03.03.01.02 do not arise out of (a) strikes, labor disputes or other labor difficulties involving Contractor or its Subcontractors or Suppliers or entities providing transportation to Contractor or its Subcontractors or Suppliers, (b) labor shortages, or (c) changing economic conditions; and

3.03.03.01.03 could not have been reasonably anticipated by Contractor.

The acts, events and conditions are:

(a) An Act of God.

- (b) Inclement Weather.**
- (c) Acts of a public enemy, war (whether or not declared) or governmental intervention resulting therefrom, blockage, embargo, insurrection, riot or civil disturbance.**
- (d) The failure to issue or renew, or the suspension, termination, interruption or denial of, any permit, license, consent, authorization or approval essential to the Work, if such act or event shall not be the result of the willful or negligent action or inaction of Contractor, or of any third party for whom Contractor is directly responsible, and if Contractor shall be taking or have taken or shall cause to or have caused to be taken, all reasonable actions in good faith to contest such action (it being understood that the contesting in good faith of any such action shall not constitute or be construed as a willful or negligent act of Contractor).**
- (e) The failure of any appropriate federal, state, municipal, county or other public agency or authority or private utility having operational jurisdiction over the Work or Site to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Site, which are required for and essential to the Work.**
- (f) Epidemics or quarantines.**
- (g) Material, equipment or fuel shortages or freight embargoes.**
- (h) Priorities or privileges established for the manufacture, assembly or allotment of material by order, decree, or otherwise of the U. S. or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority.**
- (i) Changes in the work ordered by Metro if they require additional time to complete the work and adversely impact the Critical Path.**
- (j) The prevention by Metro of Contractor from commencing or prosecuting the Work.**

Acts, events, or conditions outside the control of the Engineer, Construction Manager, Metro or Contractor which are found to be justifiable delay under 3.03.03.01.03 (a) through (h), may

result in a time extension but the risk for bearing the cost of extended overhead will remain with Contractor.

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

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

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

- 3.03.03.02 Justifiable Delay Claims Procedure -- Contractor shall, within twenty-four (24) hours of the start of the occurrence or Contractor's first knowledge of the occurrence which is the basis of the claim for justifiable delay, which ever is earlier, notify Metro in writing of such delay. The written notice by Contractor shall indicate the cause of the delay and shall estimate the possible time extension requested.

Within ten (10) days after the cause of the delay has been remedied, Contractor shall give written notice to the Construction Manager of any actual time extension and any increase in the Contract Amount requested as a result of the aforementioned occurrence in accordance with this Contract.

Within Twenty-one (21) days after Contractor submits to the Construction Manager such a written notice for an extension of time and/or increase in the Contract Amount, the Construction Manager will issue the decision on each request. If Contractor is dissatisfied with such decision, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.03.06.

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

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

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

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

Contractor shall, within twenty-four (24) hours following discovery of the facts which give rise to its claim, notify the Construction Manager in writing of its intent to make the claim. Within ten (10) days following discovery of the facts which give rise to its claim and prior to commencing the work or conforming to the Clarification on which the claim is based, if any, Contractor shall submit its formal written claim to the Construction Manager. Contractor's formal claim shall include a description of:

- 3.03.05.01 the factual occurrences upon which Contractor bases the claim including the decision, action or failure to act by Metro or its authorized representatives that allegedly give rise to the claim;
- 3.03.05.02 how Metro's decision, action or failure to act has affected Contractor's performance or otherwise affected Contractor;
- 3.03.05.03 whether the claim is for an extension in the Contract Time or increase in the Contract Amount or both and the specific extension or increase requested;
- 3.03.05.04 the provisions of the Contract upon which the claim is based.

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

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

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

- 3.03.06 Preservation of Claims -- Within forty-five (45) days after a rejection of claim, in whole or in part, by Metro under Subparagraphs 3.03.03, 3.03.04 or 3.03.05, Contractor may preserve its claim by submitting a fully documented claim package

to Metro. That package shall include substantiating documentation with an itemized breakdown of Contractor and Contractor's Subcontractor's costs on a daily basis which shall include, but not be limited to, labor, material, equipment, supplies, services, Overhead and Profit. All documentation that Contractor believes is relevant to the claim shall be provided in the claim package including without limitation, payroll records, purchase orders, quotations, invoices, estimates, correspondence, profit and loss statements, daily logs, ledgers and journals. Failure to submit the claim package in full compliance with this requirement, and/or maintain cost records as herein required, will constitute a waiver of the claim.

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

3.04 Metro's Right to Adjust Payments

3.04.01 Adjusted Payments for Delay -- Time is of the essence in this Contract. Metro and Contractor understand and agree that Metro will be damaged if Contractor fails to substantially complete the Work within the Contract Time, and that Metro will be vulnerable to further damages if Metro is obligated to continue paying Contractor for work performed after the Contract Time has expired. It is therefore agreed that after the Contract Time, Metro may adjust its payments to Contractor by either (1) making no further payments to Contractor until the Work is substantially complete, or (2) paying the Subcontractor costs incurred by Contractor without any overhead, profit or fee of any kind going to Contractor, or (3) by collection of liquidated damages of \$1,000.00, for each and every day that the date of Substantial Completion extends beyond the Contract Time.

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

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

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

Contractor agrees to consolidation of any arbitration between Metro and Contractor with any other arbitration involving, arising from, or relating to this Contract.

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

In no event shall submission of a dispute arising out of this Contract, by either party, relieve Contractor of its obligation to fully perform the requirements of the Contract as directed by Metro, pending resolution of the dispute pursuant to the procedures set forth in this Article. In the event Contractor, in Metro's opinion, fails to fully perform the requirements of the Contract pending resolution of a dispute, Metro shall be entitled to exercise its rights to impose adjusted payments pursuant to Subparagraph 3.04.01, or terminate the Contract pursuant to Article 15 of this Contract.

Each party hereto and Contractor's Surety accepts jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing such arbitration proceedings and agrees to accept notice in writing sent by certified letter addressed to said party of intention to proceed with arbitration and of any other step in connection therewith or enforcement thereof, with the same effect as though personally served therewith in the state of Oregon. The decision of the arbitrator shall be final and binding upon both parties and Contractor's Surety who hereby agree to comply therewith. The parties agree that proper venue for any judicial proceeding to enforce any decision or award made by an arbitrator under this section shall be exclusively in the county of Multnomah in the state of Oregon.

ARTICLE 4 SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

4.01 Contractor's Responsibility for the Work -- Contractor shall perform or cause to be performed all labor, services and work of whatever nature and shall provide or cause to be provided all materials, equipment, tools and other facilities of whatever nature necessary to complete the Work and shall otherwise cause the Work to be completed in accordance with the Contract Documents.

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

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

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

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

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

4.02.02 Substitution, Change or Addition of Subcontractors or Suppliers -- At any time that Contractor intends to substitute, change or add a Subcontractor or Supplier during the performance of the Contract, Contractor shall give Metro prior written notice of such intention. Contractor shall not substitute, change or add any such Subcontractor or Supplier if Metro gives Contractor reasonable objection in writing within ten (10) days after Metro receives such notice.

When any Subcontractor fails to prosecute a portion of the Work in a satisfactory manner, Metro may so notify Contractor. If the Subcontractor fails to cure the

unsatisfactory work promptly, Contractor shall remove such Subcontractor immediately upon written request of Metro and Contractor shall request approval from Metro of a new Subcontractor to perform this section of the Work at no increase in the Contract Amount, and with no change in the Contract Time.

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

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

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

All Subcontractor's and Supplier's agreements shall also provide that they are assignable to Metro at Metro's option, in the event that Metro terminates the Contract. Contractor will provide to Metro, a copy of all subcontracts and supply contracts for permanent materials.

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

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

ARTICLE 5 TIME OF COMPLETION AND SCHEDULE FOR THE WORK

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

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

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

Failure of Contractor to substantially complete the Work within the Contract Time and according to the provisions of these Contract Documents shall subject Contractor to damages pursuant to the applicable sections of these Contract Documents.

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

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

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

ARTICLE 6 COORDINATION WITH OTHER METRO CONTRACTORS

6.01 Other Metro Contractors Generally -- Metro reserves the right to award other contracts in connection with the work. Contractor shall afford all such Other Metro Contractors reasonable opportunity for storage of their materials and execution of their Work, shall provide that the execution of Contractor's Work properly connects and coordinates with work of all Other Metro Contractors, and shall cooperate with Other Metro Contractors to the end of facilitating the Work in such a manner as Metro may direct. Connection between the work of the Contractor and other Metro Contractors will be the responsibility of the party which is last in time to construct, unless otherwise directed in the Contract Documents.

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

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

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

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

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

6.04.01 Increase manpower in such quantities and crafts as will substantially eliminate the backlog of work.

6.04.02 Increase, when permitted, the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment or any combination of the foregoing, sufficient to eliminate the backlog of work.

6.04.03 Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

6.04.04 Expedite delivery of materials and equipment such as use of air freight.

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

Failure to maintain the construction schedule or to take action to regain the schedule or to furnish a schedule as outlined in the specifications may result in withholding of all or part of the monthly progress payments. Metro also reserves the right to direct others to perform work necessary to regain the Schedule and to charge the costs of such work against the Contract or deduct the cost from sums held in retainage.

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

- 6.05.01 Withhold any payment otherwise due hereunder until Contractor complies with Metro's directions.
- 6.05.02 Direct others to perform portions of the affected Work and charge the cost of such Work against the Contract Amount or deduct the cost from sums held in Retainage.
- 6.05.03 Terminate any or all portions of the Work for Contractor's failure to perform in accordance with the Contract.
- 6.06 Other Metro Contractors' Failure to Coordinate -- If Contractor determines that any Other Metro Contractor on this Project is failing to coordinate its work with the Work of Contractor, Contractor shall immediately and before performing any affected Work submit a Request for Clarification to Metro pursuant to Paragraph 3.02.
- 6.07 Conflicts Among Contractors -- Any difference or conflict that may arise between Contractor and Other Metro Contractors in regard to their work shall be adjusted as determined by Metro. If directed by Metro, Contractor shall suspend any part of the Work specified or shall carry on the same in such manner as may be prescribed by Metro when such suspension or prosecution is necessary to facilitate the work of Other Metro Contractors.
- 6.08 Coordination Drawings -- Contractor shall prepare coordination drawings as determined necessary by Metro, to satisfactorily coordinate and interface its Work with the work of all Other Metro Contractors, thereby avoiding conflicts which may arise.
- 6.09 Conferences -- At any time during the progress of the Work, Metro shall have authority to require Contractor to attend any conference of any or all of Contractors engaged in the Project or related projects:

ARTICLE 7 CONTROL AND QUALITY OF WORK AND MATERIAL

7.01 Quality Control

- 7.01.01 Generally -- Contractor has the primary responsibility for quality control. Contractor will provide continuous superintendence and inspection to insure that the work is completed in accordance with the plans and specifications, Additionally, during the performance of the Work, Metro, the Engineer, and Special Inspectors, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, including representatives of federal, state, and local agencies having jurisdiction over the Work, may at any time, and for any purpose, enter upon the Site, the shops where any part of such Work may be in preparation, or the factories or sites where any materials for use in the Work are being or are to be manufactured or derived. Contractor shall provide proper and safe facilities therefor, and shall make arrangements with manufacturers

or other suppliers to facilitate inspection of their processes and products to such extent as Metro's interest may require.

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

7.01.02 Quality Control Plan -- Contractor shall prepare and submit to the Construction Manager within thirty (30) days following Notice to Proceed a Quality Control Plan which describes Contractor's procedures for implementing the Quality Control Program. The Plan shall include, but not be limited to, the Quality Control Organization, inspection procedures, tests anticipated, materials control, contingency plans related to fire protection and remediation of contaminated releases or other environmental improvement, and reports. Metro reserves the right to accept or reject or modify the Quality Control Plan. Contractor will submit an interim Quality Control Plan prior to the start of work to cover the first thirty (30) days of construction.

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

7.02 Inspection -- Contractor has the primary responsibility for providing inspection and testing, except as otherwise set forth in the specifications. Metro and its agents will also inspect at their discretion or as outlined in the specifications.

7.02.01 Generally -- Contractor shall at all times commencing with the issuance of the Notice to Proceed until Final Completion and Acceptance of the Work, permit Metro, the Engineer, and Special Inspectors, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, including representatives of federal, state, and local agencies having jurisdiction over the Work, to visit and monitor the progress of the Work for conformance of the Work with the Contract Documents.

7.02.02 Special Inspections -- Contractor shall at all times, commencing with the issuance of the Notice to Proceed until Final Completion and Acceptance of the Work, permit Metro, the Engineer, and Special Inspectors, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, including representatives of federal, state, and local agencies having jurisdiction over the Work, to visit and inspect the Work, the materials and the manufacture and preparation of such materials, and subject the Work and materials to inspection and testing to determine if the Work conforms to the requirements of

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

- 7.02.03 Notice to Metro for Certain Work Days -- Whenever Contractor intends to perform work on Saturday, Sunday or any legal holiday, it shall give written notice to Metro of such intention at least two (2) working days prior to performing such work, or such other period as may be specified by Metro, so that Metro may make the necessary arrangement for testing and inspection.
- 7.02.04 Correction of Defective Work Before Acceptance -- Any defective work or work which otherwise fails to conform to the Contract Documents, which is discovered before Final Completion and Acceptance of the Work, shall be corrected immediately by Contractor, and any unsatisfactory materials shall be rejected and replaced with satisfactory materials, notwithstanding that they may have been overlooked by the authorized inspector. The inspection of the Work by Metro, the Engineer or any other agency shall not relieve Contractor of any of its obligations to perform fully all of the terms and provisions of the Contract Documents.
- 7.02.05 Acceptance Not Implied by Failure to Object -- Failure or neglect on the part of Metro or any of its authorized representatives to condemn or reject defective, improper or inferior work or materials shall not be construed to imply a final acceptance of such work or materials and shall not be construed as relieving Contractor of its duties to perform fully all requirements of the Contract Documents.

7.03 Unsatisfactory Materials and Workmanship

- 7.03.01 Generally -- Material, work or workmanship which, in the opinion of the Construction Manager, does not conform to the Contract Documents, or is not equal to the samples submitted to and approved by the Construction Manager, or is in any way unsatisfactory or unsuited to the purpose for which it is intended, will be rejected. Contractor shall bear the cost of correcting or removing as deemed necessary by Metro, all non-conforming materials, work or workmanship. Contractor shall make a close inspection of all materials as delivered, and shall promptly replace all defective materials with conforming materials without waiting for their rejection by Metro.
- 7.03.02 Removal of Rejected or Non-Conforming Work or Material -- All rejected material or work, and all defective or non-conforming work or material, shall be removed

from the Site without delay. If Contractor fails to do so within forty-eight (48) hours after having been so directed by Metro, the rejected material may be removed by Metro and the cost of removal charged against Contractor and deducted from Retainage held by Metro or offset against payments due Contractor, at Metro's option.

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

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

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

- 7.05 Correction of Work by Contractor -- Contractor shall be responsible for and shall promptly correct or replace any defective Work, whether due to faulty or contaminated materials or errors in workmanship, or Work failing to conform to the requirements of the Contract Documents which may be discovered or which may develop within one (1) year after the date of Substantial Completion or within such longer period as is specified below or otherwise in these Contract Documents.

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

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

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

7.06 Warranty and Correction Agreements by Subcontractors

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

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

"We the undersigned hereby warrant that the _____

(described work performed and/or materials provided)

which we have provided for the construction of the Closure of Subarea 1 for the St. Johns Landfill has been done in accordance with the Contract Documents and that the work as provided will fulfill the requirements of the warranty included in Article 7 of the Contract Documents.

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

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

- 7.07 Remedies Not Restrictive -- The remedies provided for in this Article shall not be restrictive of but shall be cumulative and in addition to all other remedies of Metro in respect to latent defects, frauds or failure to perform all work as required by the Contract Documents.
- 7.08 Proof of Compliance with Contract Provisions -- For Metro to determine whether Contractor has complied or is complying with the requirements of the Contract which are not readily enforceable by inspection and test of the Work, Contractor shall, upon request, promptly submit to Metro such properly authenticated documents as may be necessary to demonstrate compliance with the Contract or other satisfactory proof of its compliance with such requirements.
- 7.09 Patents, Copyrights, Trademarks -- All fees or costs of claims for any patented invention, article or arrangement or any copyrights or trademarks that may be used upon or in any manner connected with the performance of the Work or any part thereof, shall be included in the Bid for doing the Work. Contractor shall save, keep, hold harmless, and fully indemnify Metro and Engineer from all damages, claims for damage, lawsuits, costs, expenses or liabilities of whatever nature in law or equity, including attorney's fees and court costs, which may at any time arise or be set up for any infringement of the patent rights, copyrights or trademarks of any person or persons in consequence of the use by Metro of articles to be supplied under the Contract and of which Contractor is not the patentee or assignee or has not the lawful right to sell the same. This is in addition to all other hold harmless and indemnification clauses in these Contract Documents.
- 7.10 Anti-Trust Claims -- By entering into this Contract, Contractor, for consideration paid to Contractor under the Contract, does irrevocably assign to Metro any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future, including, at Metro's option, the right to control any such litigation on such claim for relief or cause of action, by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, in connection with any goods or services that are used, in whole or in part, for the purpose of carrying out Contractor's obligations under this Contract.

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

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

express obligation of Contractor, Subcontractor or Supplier to advise the General Counsel of Metro:

- 7.10.01 In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- 7.10.02 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
- 7.10.03 The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.

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

ARTICLE 8 CHANGES IN THE WORK

- 8.01 Change Orders Generally -- Metro may order changes in the Work herein required, including deletions of work, and may order additional materials and work in connection with the performance of the Work. In addition, if Metro determines, in its sole opinion, that the Contractor will be unable to complete the Work, or any portion thereof, in accordance with the Schedule submitted to and approved by Metro as required in Article 5 of these General Conditions, Metro may delete any portion of the Work herein required and make any other arrangements necessary to have the Work completed or to secure the Site.

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

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

8.02 Procedure for Determining Impact of Change Orders on Contract Amount

8.02.01 Price before Proceeding -- If Metro intends to order changes in the Work, it may request a proposal by Contractor for the proposed added or deleted work before directing Contractor to commence work. Within fourteen (14) days after issuance of such request by Metro, Contractor shall furnish three copies of a complete breakdown of costs of both credits and additions directly attributable to the change in the Work proposed, itemizing materials, labor, taxes, affect on Contract Time, if any, and Overhead and Profit on a form supplied by Metro and in accordance with the limitations described in the following Paragraph. Subcontract work shall be so indicated and written proposals from Subcontractors or Suppliers shall be included with similar breakdowns provided. Following submission of its cost breakdown, Contractor shall meet with Metro to discuss all aspects of scope, costs, scheduling and construction methods.

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

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

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

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

Overhead and Profit for the entity performing the work with its own crews shall not exceed 10 percent of the Direct Cost of the changed work.

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

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

- 8.03.02 Taxes and Insurance -- Federal, state, regional, county and local taxes, including, but not limited to, income taxes, excise taxes, sales and use taxes and payroll taxes and insurance shall be shown separately and will be allowed on extras and shall be credited on credits. No Overhead and Profit will be allowed on taxes and insurance.
- 8.03.03 Bond Premiums -- The actual rate of bond premium as paid on the additional Direct Cost plus the cost of taxes defined in 8.03.02 will be allowed. No Overhead and Profit will be allowed on such premiums.
- 8.03.04 Equipment Costs -- The allowance for equipment costs (both rental as well as Contractor-owned equipment) shall be limited to those rates in the Rental Rate Bluebook published by Dataquest Incorporated, 1290 Ridder Park Drive, San Jose, California 95131-2398, (800) 227-8444.
- 8.04 Force Account Work -- If Contractor does not respond to Metro's Request for Proposal with a cost breakdown within the fourteen (14) day period as required above, or if Metro determines that Contractor's breakdown of costs is unreasonable in consideration of the work proposed to be added or deleted, or if Metro determines that the proposed work must be commenced promptly to avoid delay to the Project, Metro may issue an order for Force Account work and Contractor shall promptly perform or delete the work described in such order. Change, if any, in the Contract Amount due to such work shall be the sum total of the following items:
- 8.04.01 Actual labor cost, including premium on compensation insurance and charge for social security taxes, and other taxes pertaining to labor.
- 8.04.02 The proportionate cost of premiums of public liability property damage and other insurance applicable to the extra work involved and required by these Contract Documents.
- 8.04.03 Actual cost of material, including applicable taxes pertaining to materials.

8.04.04 Actual cost of plant and equipment rental, at rates to be agreed upon in writing before the work is begun or at rates per Subparagraph 8.03.04 above. No charge for the cost of repairs to plant or equipment will be allowed. Equipment items having a capital cost of under \$250.00 are considered small tools and classified as Overhead.

8.04.05 Overhead and Profit as provided and limited in Paragraph 8.03.

8.04.06 The proportionate actual costs of premiums for bonds required by these Contract Documents.

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

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

8.06 Contractor Proposals for Changes in Work

8.06.01 Generally -- At any time during the performance of the Work, Contractor may propose to Metro changes in work which Contractor believes will result in higher quality work, improve safety, shorten the Contract Time, decrease the Contract Amount, or otherwise result in better or more efficient work.

8.06.02 Purpose -- Metro encourages Contractor to submit Value Engineering Change Proposals (VECPs) in order to avail Metro of potential cost saving that may result. Contractor and Metro will share any savings, computed in accordance with instructions herein. Contractor is encouraged to submit VECPs whenever he identifies an area which can be improved, using the format described herein.

8.06.03 Application -- This clause applies to a contractor developed and documented VECP which: (1) requires a change to this Agreement to implement the VECP; and (2) reduces the Contract Price without impairing essential functions or characteristics of the Work, provided it is not based solely on a change in specified quantities.

8.06.04 Documentation -- At a minimum, the following information shall be submitted by Contractor with each VECP: (1) description of the existing requirements of the Contract Documents which are involved in the proposed change; (2) description of the proposed change; (3) discussion of differences between existing requirements

and the proposed change, together with advantages and disadvantages of each changed item; (4) itemization of the requirements which must be changed if the VECP is accepted (e.g., Drawing numbers and Specifications); (5) justification for changes in function or characteristics of each such affected item and effect of the change on the performance of the end item; (6) effect of proposed change on life-cycle costs, including operation and maintenance, replacement costs, and life expectancy; (7) date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on Contract Time or delivery schedule; and (8) cost estimate for existing contract requirements correlated to his lump sum breakdown and proposed changed requirements. Costs of development and implementation by Contractor shall be identified. Estimated Metro costs (e.g., cost of testing and redesign) shall also be identified.

- 8.06.05 Submission -- To expedite a determination, VECPs shall be submitted directly to Engineer. Proposals will be processed expeditiously; however, Metro will not be liable for any delay in acting upon any proposal submitted pursuant to this clause. Contractor shall have the right to withdraw, in whole or in part, any VECP at any time prior to acceptance by Metro.
- 8.06.06 Acceptance -- Metro may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this clause. Until a Change Order is issued, Contractor shall remain obligated to perform in accordance with this Agreement. The decision as to acceptance or rejection of any VECP will be at the sole discretion of Metro and will be final and not subject to review by arbitration or otherwise.
- 8.06.07 Sharing -- If a VECP submitted by Contractor pursuant to this clause is accepted, Contractor shall proceed with the change and the Contract Price will be adjusted in accordance with the following provisions:

Definitions

- 8.06.07.01 **Estimated Gross Savings to Contractor (GS):** The difference between cost of performing the Work according to the existing requirement and the cost if performed according to the proposed change. In each instance, Contractor's profit shall not be considered part of the cost.
- 8.06.07.02 **Contractor Costs (CC):** Reasonable costs incurred by Contractor in preparing the VECP and making the change such as cancellation or restocking charges where required.
- 8.06.07.03 **Estimated Net Savings to Contractor (NS):** Gross savings (GS) less Contractor costs (CC).

8.06.07.04 Metro's Costs (OC): Reasonable costs incurred by Metro for evaluating and implementing the VECP, such as testing and redesign, where required.

Calculations

8.06.07.05 The Contract Price shall be reduced by an amount equal to 50 percent of (NS) plus 50 percent of (OC), expressed by the formula:
$$\text{Reduction} = 0.5 (\text{NS}) + 0.5 (\text{OC}).$$

8.06.07.06 Contractor's profit will not be reduced by application of the VECP.

8.06.08 Subcontracts -- Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$25,000 or greater. He may include such provisions in any Agreement. Subcontracts shall contain a provision that any benefits accruing to Contractor as a result of an accepted VECP initiated by a Subcontractor shall be shared by Contractor and Subcontractor. To compute any adjustment in the Contract Price under Paragraph 6.45 above, Contractor's costs of preparation and charge for a VECP shall include any preparation and change costs. Examples are cancellation or restocking charges when required.

8.06.09 Disclosure Restrictions -- Contractor may restrict Metro's right to use any sheet of a VECP or of the supporting data submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet:

Legend

To the extent allowed by law, data furnished pursuant to the value engineering incentive clause of the Agreement shall not be: (1) disclosed to any outside person or agency, (2) duplicated, or (3) used. Metro may disclose, duplicate, or use furnished data to evaluate a VECP submitted under said clause. This restriction does not limit Metro's right to use information that has been obtained, or is otherwise available, from Contractor or from another source without limitations. If such a VECP is accepted, Metro shall have the right to duplicate, use, and disclose any data reasonably necessary to the full utilization of such VECP as accepted, in any manner and for any purpose whatsoever, and have others so do.

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

ARTICLE 9 PAYMENTS AND COMPLETION

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

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

9.02 Schedule of Values

9.02.01 Generally -- At least 15 days prior to Contractor's application for the first progress payment, Contractor shall submit a detailed breakdown on its lump sum bid items. The format and detail of the breakdown shall be as directed by Metro and in accordance with Section 01370 of the Specifications to facilitate and clarify future progress payments to Contractor. This breakdown shall be referred to as the Schedule of Values.

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

9.03 Progress Payment Procedure

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

Before the end of each calendar month, Contractor shall file with the Construction Manager in duplicate on a form approved by Metro, a proposed payment estimate for the period commencing on the 26th day of the previous month through midnight on the 25th day of the calendar month in question. Metro and the

Construction Manger shall review Contractor's estimate and shall determine the value of Contractor's work based upon the Schedule of Values and incorporated labor and materials for the payment period. Contractor shall not be paid for any work which is, in Metro's opinion, defective or improper or for work needed to correct Contractor's defective or improper work. Contractor shall be paid 95 percent (95%) of the determined value of work accomplished less any offset or withholding of sums by Metro allowed under the Contract Documents within thirty (30) days after receipt by Metro of Contractor's payment estimate. Metro will routinely withhold five percent (5%) as Retainage.

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

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

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

When Metro determines that the Work is 97-½ percent (97-½%) complete, Metro may, at its discretion and without application by Contractor reduce the retained amount to 100 percent (100%) of the value of the Work remaining to be done.

All funds retained by Metro under this section shall be retained in a fund by Metro and paid in accordance with ORS 279.435.

Contractor may elect to deposit bonds or securities of the type described below with Metro or in any bank or trust company to be held in lieu of the cash retainage described above and for the benefit of Metro. In such event, Metro shall reduce the Retainage in an amount equal the value of the bonds and securities and shall pay the amount of the reduction to Contractor in accordance with ORS 279.435. Interest on such bonds or securities shall accrue to Contractor.

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

- 9.03.02.01 Bills, certificates, notes or bonds of the United States.
- 9.03.02.02 Other obligations of the United States or its agencies.
- 9.03.02.03 Obligations of any corporation wholly owned by the federal government.
- 9.03.02.04 Indebtedness of the Federal National Mortgage Association.

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

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

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

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

- 9.03.04 Other Conditions Precedent to Payment -- It is a condition precedent to Contractor's rights to any payments under the Contract that all bills for labor and materials, including labor and materials supplied by or to Contractor, shall have been paid in full and, if requested by Metro, Contractor shall submit receipted

invoices and/or lien waivers, as evidence of payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Contract, if requested by Metro, Contractor shall submit a claims release before any payment, and a final claims release stating Contractor has been paid in full prior to the Final Payment.

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

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

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

9.03.07 Incentive Payments -- Time is the essence for the performance of the Work under this Contract. Incentive Payments may be provided for in Supplementary Conditions.

9.04 Substantial Completion -- When Contractor considers the Work to be substantially complete, Contractor shall submit to Metro a written notice that the Work is substantially complete and a punch list of items to be completed or corrected. Within a reasonable time after receipt of such notice, Metro and Engineer will review the Work, including a physical inspection, to determine the status of completion. Should the Engineer and Metro determine that the Work is not substantially complete:

9.04.01 Construction Manager will promptly notify Contractor in writing, giving the reasons therefor and including Engineer's punch list.

9.04.02 Contractor shall remedy the deficiencies in the Work, and thereafter send a second written notice of Substantial Completion to Metro.

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

9.04.02.01 The Engineer will prepare a Certification of Substantial Completion on AIA Document G704, accompanied by the approved punch list of items to be completed or corrected as verified and amended by the Engineer.

9.04.02.02 Metro shall submit the Certificate of Substantial Completion to Contractor for signature. Contractor shall complete the items on the approved punch list.

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

9.05.01 Contract Documents have been reviewed.

9.05.02 Work has been inspected for compliance with Contract Documents.

9.05.03 Work has been completed in accordance with Contract Documents to include submission of record documents.

9.05.04 Equipment systems have been tested in presence of Metro and are operational.

9.05.05 Work is ready for final inspection.

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

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

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

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

9.05.05.03 Engineer and Metro will review and reinspect the Work.

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

- 9.06 Closeout Submittals -- Contractor shall submit the following items, as applicable, with its request for Final Payment:
- 9.06.01 Evidence of Compliance with Requirements of Governing Authorities.
 - 9.06.02 Project record documents in accordance with the Specifications.
 - 9.06.03 Operation and maintenance data in accordance with the Specifications.
 - 9.06.04 Warranties in accordance with requirements of various Specification sections and these General Conditions.
 - 9.06.05 Extra stock and maintenance materials. Contractor shall submit receipts, signed by Metro, for the various specific items.
 - 9.06.06 Evidence of payment and release of claims in accordance with the following section.
 - 9.06.07 Consent of surety to Final Payment.
 - 9.06.08 Certificates of insurance for products and completed operations in accordance with Supplementary Conditions.
 - 9.06.09 If Contractor is a "foreign contractor" as that term is defined in Subparagraph 14.03.06, complete documentation of Contractor's compliance with ORS 279.021.
- 9.07 Releases -- Contractor and each assignee under any assignment in effect at the time of Final Payment shall execute and deliver, at the time of application for Final Payment, as a condition precedent to Final Payment, a release in form and substance satisfactory to Metro, discharging and releasing Metro and the Engineer of and from all liabilities, obligations and claims arising under this Contract.

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

- 9.07.01 Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales, and employee withholding taxes.
- 9.07.02 Deliver to Metro written releases of all rights to file claims against Metro or to file claims on any bonds in connection with the Contract, signed by each

Subcontractor and Supplier who performed labor or furnished materials in connection with the work.

9.07.03 Deliver to Metro Contractor's written undertaking, with sureties acceptable to Metro:

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

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

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

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

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

ARTICLE 10 SAFETY AND PROTECTION OF THE WORK

10.01 Safety Requirements

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

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

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

The site contains accumulations of potentially flammable gas and refuse. Contractor shall take all precautions to prevent the possibility of fire resulting from contract operations. Contractor shall provide properly maintained emergency fire extinguishing equipment of a readily available type and quantity as necessary to meet potential fire hazards.

10.01.02 Health and Safety Program -- Contractor shall develop, publish and implement the overall Health and Safety Program for the Project. Refer to Section 01100 of the Technical Specifications. This Program shall conform to all applicable codes including but not limited to OAR 340-25-469 which requires proper procurement for handling of material containing asbestos. Contractor shall submit the written Health and Safety Program to Metro for review and comment within fourteen (14) days after the receipt of the written Notice To Proceed. The Program, as approved by Metro, shall subsequently be distributed to and implemented by Contractor's personnel as well as its Subcontractors and Suppliers. Contractor shall fully implement and comply with the approved Safety Program. The Health and Safety Program will include provisions for submitting a hazard analysis in each new phase of work two weeks prior to starting that phase.

10.01.03 Health and Safety Officer -- Prior to initiation of construction, Contractor shall designate in writing a Site Health and Safety Officer who shall be responsible for coordinating Contractor's Health and Safety Program. The individual so designated shall be the interface with the Construction Manager on matters relating to safety, and Contractors compliance with the approved Safety Program. Metro reserves the right to accept or reject the Health and Safety Officer designated by Contractor.

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

Contractor shall require or provide adequate clothing and protective gear for all personnel working on the job site. This includes but is not limited to hard hats; substantial boots or shoes, shirts with sleeves at all times; eye and ear protection, gloves, face masks, welding hoods, safety belts as required for the type of work being done.

10.03 Protection of Work, Persons and Property Against Damages

10.03.01 Contractor shall protect the Work from damage due to construction operations, the action of the elements, including erosion due to normal and extraordinary weather conditions, the carelessness of other contractors, vandalism, or any other cause whatever until Final Completion and Acceptance of the Work.

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

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

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

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

10.03.06 The specifications for the Project include procedures for preventing release of pollutants from the site, including procedures to prevent erosion into waters adjacent to the site and to monitor materials brought onto the site. The parties recognize that such procedures cannot anticipate all circumstances that may lead to a release of soil, leachate, gases or other contaminants and emissions into the air or waters adjoining the site. Contractor shall make reasonable efforts to anticipate special circumstances in the course of construction that may lead to such releases, and plan accordingly. If, due to Contractor's activities on the site, such releases occur during the term of this agreement, Contractor shall respond immediately, take all steps determined necessary by the Engineer to prevent further release, and perform all necessary remedial action as specified by any jurisdictionally responsible state or federal agency. All measures necessary to prevent or remedy the release of soil, leachate, gases or other contaminants and emissions from the site resulting from Contractor's activities on the site during the term of this agreement shall be the responsibility of Contractor under this agreement, with no additional expenses for such release chargeable to Metro or the Engineer.

ARTICLE 11 INDEMNIFICATION AND INSURANCE

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

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

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

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

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

- 11.01.01 Special activities by Metro to verify and/or expedite delivery of materials and those losses incurred by Metro as a result of any delays to Other Metro Contractors resulting from acts of Contractor or its failure to act.
- 11.01.02 Acceleration payments to Other Metro Contractors on the project or related projects resulting from Contractor falling behind the Construction Schedule for causes not entitling it to an extension of time under any provisions of the Contract Documents which cause other Metro Contractors to fall behind the Construction Schedule and who must then accelerate the performance of the work, as directed by Metro, in order to maintain progress.
- 11.01.03 Violations of the ordinances or regulations of Metro, any federal, state, county or city laws or order of any properly constituted authority in any manner affecting this Contract, in addition to any laws or regulations which might affect this Contract.
- 11.01.04 Any and all suits, actions, damages or claims of every name and description to which the above indemnified may be subjected or put by reason of injury to persons or property arising out of, in connection with, or incident to the execution of the work or resulting from acts or omissions on the part of Contractor, its Subcontractors, officers, employees or agents and all attorney's fees and court costs incident thereto.
- 11.01.05 Any and all losses caused by pollution conditions that arise from the operations of the contractor described under the scope of work. Losses include but are not limited to emissions, discharges, dispersals, disposals, releases, escapes or seepages of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, irritants, noise, above and below ground fires, and contaminants that spoil the land, atmosphere, or water or that cause bodily injury, sickness, disease, mental anguish, property damage, clean up cost, remedial actions, fire suppression, investigation, and defense costs.

11.02 Insurance

11.02.01 Public Liability and Property Damage Insurance

Contractor shall purchase and maintain, at the Contractor's expense, the following types of insurance covering the Contractor, its employees and agents.

- A. Broad form comprehensive general liability insurance covering bodily injury, property damage, and personal injury with automatic coverage for

premises/completed operations and product liability. The policy must be endorsed with contractual liability coverage.

B. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be on an occurrence basis with an annual aggregate limit of \$5,000,000.

METRO, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.

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

11.02.02 Workers' Compensation and Employer's Liability Insurance

The Contractor, its subcontractors, and all employers working under this contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. The Contractor shall provide METRO with certification of workers' compensation insurance including employer's liability of \$1,000,000.

11.02.03 Environmental Impairment Liability Insurance

While Contractors Pollution Liability Insurance is not a requirement of this RFB, contractors will be responsible for pollution losses in accordance with 11.01.05.

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

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

Each such policy or Certificate of Insurance shall bear an endorsement precluding its cancellation, expiration or any reduction in its coverage without giving to Metro at least sixty (60) days prior written notice. Contractor shall file with Metro two (2) certified copies of the required new or renewed policy or two (2) Certificates of Insurance for each such policy, as applicable, before the effective date of such cancellation, change or expiration.

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

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

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

11.02.05 Property Insurance

Contractor shall be responsible for insuring the property purchased to complete operations described in the scope of work including but not limited to the synthetic liner.

11.03 Labor and Materials and Performance Bonds

11.03.01 Contractor shall provide continuous coverage of a separate Performance Bond and a Labor and Materials Bond for the duration of the Contract. The Bonds shall be in the forms provided in these Contract Documents.

11.03.02 As an alternative to providing either or both of the bonds specified in this section 11.03, Contractor may provide a Letter or Letters of Credit, issued by a sound financial institution satisfactory to Metro. Such Letter or Letters of Credit

shall be in a form acceptable to Metro. The Letter or Letters of Credit shall be in an amount equivalent to the bonds required under this section.

ARTICLE 12 MINORITY AND WOMEN-OWNED BUSINESS PROGRAM

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

Contractor shall not replace a minority or women-owned business enterprise Subcontractor with another Subcontractor, either before Contract award or during Contract performance, without prior written approval of Metro. In replacing a minority or women-owned business Subcontractor, Contractor shall replace such minority or women-owned business Subcontractor with another certified minority or women-owned business Subcontractor or make good faith efforts to do so. Failure to do so shall constitute Contractor's default of this Contract, and Metro, at its option, may terminate this Contract under the procedures set out in Article 15.

Metro reserves the right, at all times during the period of this Contract, to monitor Contractor's compliance with the terms of the Minority and Women-Owned Business Program and enforce the program if Contractor should fail to so comply. Contractor shall be bound by any and all representations made concerning its compliance with the program prior to Contract award and any and all representations made by Contractor concerning the replacement of a minority or women-owned business Subcontractor during the performance of this Contract.

ARTICLE 13 EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION REQUIREMENT

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

ARTICLE 14 MISCELLANEOUS STATUTORY RESPONSIBILITIES OF CONTRACTOR

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

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

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

FEDERAL AGENCIES

- Agriculture, Department of
 - Forest Service
 - Soil Conservation Service
- Defense, Department of
 - Army Corps of Engineers
- Energy, Department of
- Environmental Protection Agency
- Health and Human Services, Department of
- Interior, Department of
 - Fish and Wildlife Service
 - Heritage Conservation and Recreation Service
 - Bureau of Land Management
 - Bureau of Indian Affairs
 - Water and Power Resource Service
 - Office of Surface Mining
- Labor, Department of
 - Occupational Safety and Health Administration
 - Mine Safety and Health Administration
- Transportation, Department of
 - Coast Guard
 - Federal Highway Administration

STATE AGENCIES

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

LOCAL AGENCIES

City of Portland
Multnomah County
Metropolitan Service District
Planning Commissions (as applicable)

14.03 Other Provisions of Oregon Law

14.03.01 Generally -- The provisions set out in Oregon Revised Statutes Chapters 187 and 279, as amended or superseded, including the latest additions and revisions, are incorporated by reference as part of these Contract Documents. Such sections include, but are not necessarily limited to, ORS 187.010, 187.020, 279.021, 279.312, 279.314, 279.316, 279.318, 279.320, 279.334, 279.338, 279.348, 279.350, 279.352, 279.354, 279.355, 279.356, 279.359, 279.361, 279.365, and 279.400 through 279.435. Contractor shall fully comply with all applicable provisions of these statutes. The specific requirements of certain of these sections are set out below.

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

- 14.03.03 **Failure to Make Payment for Labor or Services** -- Pursuant to ORS 279.314, if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with this Contract as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of such Contract. Metro's payment of such a claim in the manner authorized by ORS 279.314 shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.
- 14.03.04 **Hours of Work** -- Except as provided in ORS 279.334, no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279.334. Contractor shall furthermore comply with any applicable provisions of ORS 279.316, 279.334, 279.336 and 279.338.
- 14.03.05 **Payment for Medical Care** -- Pursuant to ORS 279.320, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying such service.
- 14.03.06 **Requirements for Foreign Contractors** -- Pursuant to ORS 279.021, any "foreign contractor" awarded a public contract with a price exceeding \$10,000, shall promptly report to the Department of Revenue, on forms to be provided by the Oregon Department of Revenue, the total contract price, terms of payment, length of contract and such other information as may be required before Final Payment can be received on the public contract. Final Payment shall not be made until this provisions has been complied with.

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

- 14.03.07 **Prevailing Wage** -- Except as limited by Oregon Revised Statutes, Contractor shall pay his/her workers and require his/her Subcontractors to pay its workers the prevailing rate of wage as required in ORS 279.350, and shall comply with all other requirements contained therein. The Appendix to this Contract contains a schedule of the existing prevailing rate of wage which may be paid to workers in each trade or occupation required to perform the Work, either by Contractor or its

Subcontractors or any other person doing or contracting to do the whole or any part of the Work contemplated by this Contract, and such workers shall be paid not less than such specified minimum hourly rate of wage. The specifications for each subcontract shall include a copy of the prevailing wage schedule applicable to this project, and each subcontract shall include a clause regarding conformance to the schedule.

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

14.03.09 Royalty Payments -- Contractor shall promptly pay when due, all royalties owed to the State of Oregon or other governmental entity under ORS Chapter 274 or other provision of law.

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

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

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

ARTICLE 15 TERMINATION OR SUSPENSION OF THE WORK

15.01 For Default of Contractor -- If Contractor should be adjudged bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of insolvency, or if Contractor should refuse to or fail to supply enough properly skilled workers or proper materials for the efficient prosecution of the Work, disregard laws, ordinances or the instructions of Metro, or otherwise be in violation of any provision of the Contract, Metro may, without prejudice to any other right or

remedy and after giving Contractor and Contractor's surety on the Performance Bond prior written notice, terminate the Contract or any portion of the Contract, which termination shall be effective ten (10) days after service of such notice. Such notice shall contain the reasons for the termination and shall state that unless, within ten (10) calendar days of service of the termination notice on Contractor, Contractor or its surety on the Performance Bond shall have cured or shall have made, in Metro's opinion, appropriate arrangements for prompt cure of all of the cause(s) for termination cited in the notice of termination, the Contract shall terminate.

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

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

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

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

15.01.01 Stop work under the Contract on the date and to the extent specified in the notice of termination or suspension.

15.01.02 Place no further orders or subcontracts, or suspend the same, as applicable, for materials, services or facilities except as necessary to complete the portion of the work under the Contract which is not terminated or suspended.

15.01.03 Terminate or suspend, as applicable, all orders and subcontracts to the extent that they relate to the performance of such work terminated or suspended.

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

None of the foregoing provisions shall be construed to require Metro to complete the Work, nor to waive or in any way limit or modify the provisions of the Contract relating to the fixed and liquidated damages suffered by Metro on account of failure to complete the Project within the time prescribed.

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

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

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

* * * END OF SECTION * * *

**SECTION 00800
SUPPLEMENTARY CONDITIONS**

CONDITION: All conditions as set forth in the General Conditions and Division 1 are applicable to all contractors and shall apply to such extent that they are not in conflict with these Supplementary Condition. In the event of such conflict, these Supplementary Conditions shall take precedence.

1. In reference to 00700, 3.04.01:
Adjusted Payments for Delay -- Metro and Contractor agree that Metro will be damaged if Contractor fails to meet project milestones. Metro may collect liquidated damages of \$1,000 for each and every day that the completion of a project milestone extends beyond the date stated for that project milestone as contained in the **TECHNICAL SPECIFICATIONS**.
2. In reference to 00700, 9.03.07:
Incentive Payments -- No incentive payments are provided for Contractor's Substantial Completion of Work before the end of the Contract Time.
3. In reference to 00700, 14.03.07:
Prevailing Wage -- It is Metro's understanding that ORS 279.350, OAR chapter 839, Division 16 and section 14.03.07 of this contract require that Contractor pay the prevailing rate of wage to truck drivers delivering material to the site if those drivers are employed directly by the Contractor or if they are employed through a subcontract. In addition, workers employed at a borrow pit dedicated exclusively or nearly so to the work or established specifically for the work, and workers employed to supply material from such pits to the site must be paid the prevailing rate of wage. Metro requires notification of source of material supply (i.e. borrow pits) in order to make the determination whether a commercial source of supply. Metro reserves the right to approve commercial status of a borrow source.

If for any reason Contractor is not required by law to pay the prevailing rate of wage to any workers specified in the preceding paragraph, Metro shall be entitled to offset from sums owing to Contractor an amount equal to the difference between the prevailing wage and the amount of wages actually being paid to such workers. At Metro's request, Contractor shall provide the certified payroll required by state wage and hour law to Metro on a weekly basis.

4. In reference to 00700, 14.03.09:
Royalty Payments -- Contractor shall promptly pay when due, all royalties owed to the State of Oregon or other governmental entity under ORS Chapter 274 or other provision of law. It is Metro's understanding that a royalty will be due for materials taken from submerged or submersible lands and deposited at the Site. If for any reason royalties are not due for such materials, Metro shall be entitled to offset from sums owing to Contractor an amount equal to the difference between the amount of royalties required to be paid generally at the time of the bid, and the amount of royalties actually owed.
As of October, 1992, royalties due generally to the State of Oregon will be:

1. 60 cents per cubic yard for material taken from below River Mile 72 of the Willamette River and its tributaries;

2. 41 cents per cubic yard for material taken from above River Mile 72 of the Willamette River and its tributaries; and
3. 38 cents per cubic yard for material taken from other state-owned waterways.

***** END OF SECTION *****

TECHNICAL SPECIFICATIONS

NOTE ** A copy of the technical specifications is available from the Solid Waste Engineering & Analysis Division

DIVISION 1 - GENERAL CONSTRUCTION PROVISIONS

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NOTE ** A copy of the Appendices is available from the Solid Waste Engineering & Analysis Division

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- APPENDIX H OREGON LAWS 1991, CHAPTER 385, SECTION 59 & 61**
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