

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING A)
MULTI-YEAR INTERGOVERNMENTAL)
AGREEMENT WITH TRI-MET FOR)
CONSTRUCTION MANAGEMENT)
SERVICES FOR THE WESTSIDE LIGHT)
RAIL PROJECT)

RESOLUTION NO. 94-1951

Introduced by
Rena Cusma
Executive Officer

WHEREAS, Tri-Met is responsible for construction of the Westside Light Rail Project, including a train station located at the Metro Washington Park Zoo; and

WHEREAS, Metro has construction management expertise which is available to be assigned to Tri-Met to assist with the Westside Light Rail Project in general and the Zoo Light Rail Station specifically; and

WHEREAS, An Intergovernmental Agreement, included as Attachment A, has been prepared in which Metro provides such construction management services to Tri-Met; and

WHEREAS, Tri-Met has agreed to compensate Metro at a rate of \$56.04 per hour for the period from May 1, 1994 to June 30, 1997 for such services, such rate subject to annual review and adjustment; now, therefore;

BE IT RESOLVED, Pursuant to Metro Code Section 2.04.033 (a) (1), that the Metro Contract Council authorizes the Executive Officer to execute the attached Intergovernmental Agreement in which Metro provides construction management services to Tri-Met in their efforts to construct the Westside Light Rail Project.

ADOPTED by the Metro Council this 28th day of April, 1994.


Judy Wyers
Presiding Officer

EXHIBIT A

FEDERAL REQUIREMENTS

1. Disadvantaged Business Enterprises

Disadvantaged Business Enterprise (DBE)

The DBE goal for this contract is zero percent (0%). Pursuant to 49 CFR 23.43(a), the following provisions are made a part of this Contract:

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

2. Equal Employment Opportunity

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

rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

3. Title VI Compliance

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

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

Regulations, orders, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to Tri-Met, or the Federal Transportation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, Tri-Met shall impose such contract sanctions as it or the Federal Transportation Administration may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to Contractor under the contract until Contractor complies, and/or,
 - (2) Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: Contractor shall include the provisions of subparagraphs A through E of this Paragraph in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Tri-Met or the Federal Transportation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Tri-Met to enter into such litigation to protect the interests of Tri-Met, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. Labor Provisions

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

excess of eight hours in any calendar day or in excess of forty hours in such work week, whichever is greater.

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

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

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

5. Cargo Preference

Contractor agrees:

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

6. Conservation

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

7. Buy America

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

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

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

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

9. Prohibited Interest

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

10. Debarred Bidders

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

11. Air Pollution

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

12. Maintenance and Inspection of Records

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

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

13. Lobbying Prohibitions/Certifications/Disclosures

- A. Definitions. As used in this clause,

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

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

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

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

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

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

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

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

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

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government. "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector. "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

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

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

B. Prohibition

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

- (c) For purposes of paragraph B (2) (i) (A) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:
 - (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) For purposes of paragraph B (2) (i) (A) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).
- (ii) Professional and technical services by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or

employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B (2) (ii) (A) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as

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

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

(iii) Reporting for Own Employees.

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

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

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

(b) For purposes of paragraph B (2) (iv) (A) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of

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

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade

associations.

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

C. Disclosure

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

- (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement

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

E. Penalties

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

F. Cost Allowability

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

END OF EXHIBIT A - FEDERAL REQUIREMENTS

(CERTIFICATES FOLLOW)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of ANY Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with THIS Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Date: _____

Signature: _____

Name: _____

(print)

Title: _____

NOTE: CONTRACTORS ARE REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

EXHIBIT B

SCOPE OF WORK/PERSONAL SERVICES

Metro shall provide the services of Glen Taylor to Tri-Met's Westside light rail construction management team.

Metro shall provide a minimum of .50 FTE starting May 1, 1994, and a minimum of .80 FTE starting July 1, 1994 and continuing through June 30, 1997.

Services shall be focused on final design, bidding, and construction of Westside Light Rail facilities, which may include the Washington Park light rail station and adjacent facilities included in Tri-Met contracts, the Elmonica Maintenance Facility, and the Sunset Transit Center.

Metro shall not replace Mr. Taylor in this assignment without prior approval of Tri-Met.

Tri-Met and Metro shall review this contract on an annual basis at the beginning of each Fiscal year. Either party may terminate this agreement at the end of the Fiscal year by giving the other party thirty days notice of such intent.

COMPENSATION

- 1. Metro compensation for services to be provided under this Agreement shall not exceed the amount listed below, without prior written approval by Tri-Met.
- 2. Method of Payment.
 - A. Tri-Met shall pay Metro a maximum of \$249,000 for Metro's actual costs of performance of the construction management services as described in Attachment A. Actual costs consist of direct costs to be determined as follows:

Direct Salary	\$30.00 per hour
Fringe @ 40%	12.00
Leave @ 16%	4.80
Subtotal	\$46.80
Overhead @ 19.75%	<u>\$ 9.24</u>
Total hourly rate	\$56.04

Direct salary shown is as of May, 1994. Direct salary rate may change as allowed in Metro's salary plan, and hence calculated fringe, leave and overhead values may similarly be adjusted. Overhead rate is based on proposed FY 94-95 Budget, and may be adjusted based on adopted budgets.

- B. Metro shall submit monthly invoices for its actual costs directly to Anna Marie Lucas, Westside Project Control. All invoices shall document the services for which the invoices are submitted and shall be in conformance with this paragraph. Tri-Met shall make payment to Metro for the invoiced amount within 30 days of Tri-Met's receipt of Tri-Met approved invoices.
- C. Metro shall notify Tri-Met in writing when approximately \$225,000 of actual costs will be accrued. Tri-Met may initiate an amendment to this agreement if the project will require continued Metro services exceeding the \$249,000 for Metro's actual costs. Such Metro notice shall be sufficient notice that Metro will not provide additional services after \$249,000 of actual costs have accrued if Tri-Met has not initiated an amendment to this agreement.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NUMBER 94-1951 WHICH AUTHORIZES AN INTERGOVERNMENTAL AGREEMENT BETWEEN METRO AND TRI-MET WHEREBY METRO PROVIDES CONSTRUCTION MANAGEMENT SERVICES FOR THE WESTSIDE LIGHT RAIL FACILITIES

Date: April 1, 1994

Presented by: Doug Butler

FACTUAL BACKGROUND AND ANALYSIS

Recently, discussions have taken place between Metro Regional Facilities staff and Tri-Met Westside Light Rail Project staff concerning the "loan" of some of Metro's construction management expertise to assist with the Westside Light Rail Project. Specifically, the proposal has been to assign Glenn Taylor, Metro's Construction Manager, to Tri-Met to manage the final design and construction of the Westside Light Rail station which will be located at the Metro Washington Park Zoo.

An Intergovernmental Agreement has been prepared and is attached as Attachment A. The Agreement provides that beginning May 1, 1994, Metro will provide .50 FTE of construction management services. Beginning July 1, 1994, the level of services steps up to not less than .80 FTE through June 30, 1997. The FTE to be assigned this work is identified as Glenn Taylor; Metro cannot replace Mr. Taylor without Tri-Met's prior approval. Metro will be compensated for actual costs of services provided at a rate of \$56.04 per hour with a contract maximum of \$249,000. The \$56.04 figure includes amounts to cover direct salary, fringe and overhead. All office space and office support will be provided by Tri-Met.

Metro benefits by retaining construction management expertise during periods when Metro has no large construction projects ongoing. In addition, all expenses to Metro are reimbursed by Tri-met. In the event Metro does require the services of Mr. Taylor during the three year term of the agreement, Metro can re-assign up to 20% of Mr. Taylor's time to Metro activities. This level should cover smaller construction projects or supervisory requirements of larger construction projects.

BUDGET IMPACT

The hourly rate which is included in the Intergovernmental Agreement covers all expenses associated with the continued employment by Metro of Mr. Taylor, including direct salary and fringe costs. In addition, the Agreement provides for adjustment of these expenses if they increase in the future.

RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 94-1951.

TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON

INTERGOVERNMENTAL AGREEMENT

FOR

CONSTRUCTION MANAGEMENT PERSONNEL

This contract is by and between Tri-County Metropolitan Transportation District of Oregon ("Tri-Met") and Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter ("Metro").

1. Term

The term of this contract shall be from May 1, 1994, through June 30, 1997, unless terminated sooner under the provisions of this contract.

2. Scope of Services

Metro shall perform the tasks specified in Exhibit B, which is attached to, and made a part of, this contract.

3. Compensation

Tri-Met agrees to pay Metro a maximum of \$249,000.00 for performance of those services provided pursuant to this contract. Payment shall be in accordance with Exhibit B, which is attached to, and made a part of, this contract. All of Metro's invoices shall be sent directly to Tri-Met's Finance Department care of the Westside Project Control, and shall contain a reference to the Contract Number. Metro shall receive payment within thirty (30) days after Tri-Met's receipt of an approved invoice.

4. Metro is an Independent Contractor

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

5. Project Managers

Tri-Met's Project Manager is Al Harwood. Metro's Project Manager is Douglas E. Butler. All routine correspondence and communication regarding this contract shall be between the project managers.

6. Liability

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

7. Public Contract Provisions

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

8. Federal Requirements

This contract is funded in part under a financial assistance agreement between Tri-Met and the U. S. Department of Transportation, Urban Mass Transportation Administration ("UMTA"). This contract is subject to all provisions prescribed for third party contracts by that financial assistance agreement, including, but not necessarily limited to, the provisions in Exhibit A, which is attached to, and made a part of, this contract.

9. Assignment

Metro may not assign, delegate, or subcontract for performance of any of its responsibilities under this contract without Tri-Met's prior written consent.

10. Termination for Convenience

Tri-Met may terminate all or part of this contract upon determining that termination is in the public interest. Termination under this paragraph shall be effective upon delivery of written notice of termination to Metro. Upon termination under this paragraph, Metro shall be entitled to payment in accordance with the terms of the contract for contract work completed before termination, and to payment for all reasonable contract close-out costs actually incurred by Metro. Tri-Met shall not be liable for any costs invoiced later than thirty (30) days after termination unless Metro can show good cause beyond its control for the delay.

11. Termination for Default

If Metro fails to perform in the manner called for in this contract, or if Metro fails to comply with any other provisions of the contract, Tri-Met may terminate this

contract for default. Termination shall be effected by serving a notice of termination on Metro setting forth the manner in which Metro is in default. Metro shall be paid the contract price only for services performed in accordance with the manner of performance set forth in this contract. If it is later determined by Tri-Met that Metro had an excusable reason for not performing, such as a strike, fire, flood, or other event that is not the fault of, or is beyond the control of Metro, Tri-Met may allow Metro to continue work, or may treat the termination as a termination for convenience.

12. Nondiscrimination

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

13. Jurisdiction

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

14. Compliance with Laws and Regulations

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

15. Integration and Modification

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

16. Authority

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

METROPOLITAN SERVICE
DISTRICT

TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT
OF OREGON

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to Form:

Approved as to Form

By: _____

By: _____
Dana Anderson
Legal Services

FINANCE COMMITTEE REPORT

RESOLUTION NO. 94-1951 AUTHORIZING A MULTI-YEAR INTERGOVERNMENTAL AGREEMENT WITH TRI-MET FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE WESTSIDE LIGHT RAIL PROJECT

Date: April 19, 1994

Presented By: Councilor Buchanan

COMMITTEE RECOMMENDATION: At its April 13, 1994 meeting the Committee voted unanimously to recommend Council adoption of Resolution No. 94-1951. Committee members present and voting were Councilors Buchanan, Gardner, Kvistad, Monroe, Van Bergen and Washington. Councilors Devlin and McLain were absent.

COMMITTEE DISCUSSION/ISSUES: Doug Butler, Interim Regional Facilities Director, presented the Staff Report. He pointed out the purpose of the IGA is for Metro to provide construction management services to Tri-Met for the light rail station project at the Zoo. Under terms of the IGA Tri-Met will reimburse Metro for the costs of construction management services. This will enable Metro to assign Metro's Construction Manager, Glenn Taylor, to the project over the life of the multi-year agreement. The agreement also provides for Metro to use up to 20% of the Construction Managers time for other Metro work should such work become available. This agreement enables Metro to maintain a level of expertise which should be available for other projects as the need arises.

Council Staff pointed out that the FY 94-95 Proposed Budget for the Construction Support Program in the General Services Department has parts of four other positions in the Personal Services category (total of 1.40 FTE). He asked if the Tri-Met IGA provided funding for those additional positions. Mr. Butler stated that Tri-Met will be billed and pay for only the services it receives relating to the light rail station. If those persons do not work on the project they will not be paid for from Tri-Met funds. He also stated that the IGA did not anticipate many other charging to the light rail station project. Mr. Carlson pointed out that the Construction Services Proposed Budget needs to be changed because the Budget Committee has removed it as a cost to be allocated in the Cost Allocation Plan because of the lack of specific Metro construction projects.

In response to a question from Councilor Van Bergen regarding revenue, Mr. Carlson stated the Support Service Fund would include a revenue line item titled Intergovernmental Revenue to account for the funds to be received from Tri-Met.