



**METRO**

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

# Memorandum

**DATE:** December 18, 1992

**TO:** Metro Council  
Executive Officer  
Interested Parties

**FROM:** Paulette Allen, Clerk of the Council *PA*

**RE:** AGENDA ITEM NO. 4.4; RESOLUTION NO. 92-1720 SUPPLEMENTAL  
PACKET

The Committee report, resolution, and staff's report were printed in the agenda packet only. Exhibits A and B are being provided under separate cover due to their volume. This packet will also be available at the Council meeting December 22, 1992.

## TRANSPORTATION AND PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1720, ESTABLISHING THE METROPOLITAN GREENSPACES ENVIRONMENTAL EDUCATION SMALL GRANTS PROGRAM GUIDELINES AND FUNDING CRITERIA

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Date: December 10, 1992

Presented by: Councilor Washington

Committee Recommendation: At the December 8 meeting, the Transportation and Planning Committee voted unanimously to recommend Council adoption of Resolution No. 92-1720. Voting in favor: Councilors Devlin, McLain, Buchanan, and Washington. Excused: Councilor Moore.

Committee Issues/Discussion: Ellen Lanier-Phelps, Senior Regional Planner, briefed the committee on the education portion of the Metropolitan Greenspaces Program. To acknowledge the community education component of the Master Plan, Metro, through a grant from U.S. Fish and Wildlife, has allocated \$60,000 dedicated to educational activities, under the Contract A designation. \$20,000 of these funds were previously earmarked to the GreenCity Data Project. Discussions are underway to determine the distribution of the remaining \$40,000 to allow the greatest impact on the community. The Smith and Bybee Lakes area educational interpretive center, so far, is the only site that could qualify.

In July, 1991 a report on "Environmental Education in the Metropolitan Area", was completed by Metro. This report is being used to help determine the use of the remaining funds. In addition, there is a Public Involvement and Education Committee that is providing assistance in moving ahead to the next phase of the program.

Finally, a small grants program that is competitively based was selected, to act as a catalyst to help fund programs based on urban natural sites that can be replicated by other groups. That is the purpose of this resolution.

This resolution establishes the program, outlines its guidelines, and authorizes the awarding of the grants, according to specified guidelines and criteria. Each proposal will be evaluated by a steering committee. Councilor Hanson will represent the Metro Council.

Each project being considered must be relevant to the Metropolitan Greenspaces Program, be creatively compiled, utilizing actual hands-on site use of a natural area. Grounds should be cooperative and interdisciplinary, reaching diverse audiences. The maximum size of grants will be \$8,000, but most grants will be considerably smaller. Eligible recipients will be government agencies, schools and non-profit groups. Each project must involve a minimum of two

cooperating community partners. Funds must be matched by the applicants and all projects must be completed by January 15, 1994.

Councilor McLain asked how we could assure that matching funds would be available in the present budget climate. Ms. Lanier-Phelps explained that this question will be asked during the selection process and evaluated according to the level of security of funds. Councilor McLain expressed her concern for school districts where the budgeting process is not complete until after February 1 of each year. She felt the timing would not coincide easily and that schools might be disadvantaged. Ms. Lanier-Phelps said in such cases schools would be encouraged to cooperate with a partner that was able to provide the financial guarantee that could be paid back following the budget cycle.

Councilor Devlin cited examples from the Greenspaces Restoration Grant process. Based on difficulties experienced with that process, he felt it important to expect some guarantees from applicants.

Ms. Lanier-Phelps continued that because this project will be dealing with federal funds within two fiscal years, the contracts to be signed will need to appear as multi-year contracts. Also, the project is scheduled to begin contracting in March, 1993. The solicitation will include the Environmental Education Association of Oregon, the Oregon Science Teachers Association, a mailing list of principals and administrators for all schools, and the FAUNA groups.

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ESTABLISHING THE	)	RESOLUTION 92-1720
METROPOLITAN GREENSPACES	)	
ENVIRONMENTAL EDUCATION SMALL	)	
GRANTS PROGRAM GUIDELINES AND	)	Introduced by Rena Cusma,
FUNDING CRITERIA	)	Executive Officer

WHEREAS, on July 23, 1992, through Resolution No. 92-1637, the Council of the Metropolitan Service District adopted the Metropolitan Greenspaces Master Plan; and

WHEREAS, the Metropolitan Greenspaces Master Plan outlines a commitment to coordinating, interpreting and expanding community knowledge about urban natural resources and sites by working with local school districts, conservation and resource agencies, citizens groups and other providers of environmental education programs; and

WHEREAS, the U.S. Fish & Wildlife Service has awarded METRO grant funding to carry out programs in support of community education about urban natural areas; and

WHEREAS, METRO has the opportunity to make \$40,000 of these federal funds available in small grants in support of environmental education programs that encourage use of local natural areas as living laboratories and by doing so further the understanding of the goals and objectives of the Metropolitan Greenspaces System; and

WHEREAS, the federal funding available for this program spans two METRO fiscal years and the small grants funds will be contracted for expenditure from both the 1992-93 and the 1993-94 METRO budgets; and

WHEREAS, a small grants program will enable METRO to distribute funds through a competitive process that will challenge applicants to secure community partnerships in the delivery of a proposed environmental education project; and

WHEREAS, a small grants program will ensure a balanced rating of applicants that will



lead to a fair distribution of Metropolitan Greenspaces grant funding; and

WHEREAS, the Metropolitan Greenspaces Environmental Education Small Grants Program will be used as a catalyst for pulling together cooperative efforts to understand, appreciate, and protect urban natural areas and thereby increase public awareness of the Metropolitan Greenspaces Program;

BE IT RESOLVED,

1) That the Council of the Metropolitan Service District hereby approves the establishment of the Metropolitan Greenspaces Environmental Education Small Grants Program Guidelines and Funding Criteria in Exhibit "B" attached; review committee membership in Exhibit "A" attached, and the form of intergovernmental agreement in Exhibit "C" attached or other form of agreement approved by General Counsel; and

2) That the Council hereby authorize the Executive Officer to execute agreements consistent with the Metropolitan Greenspaces Environmental Education Small Grants Program including any of the small grants with portions of the scope of work completed in FY 93-94.

Adopted by the Council of the Metropolitan Service District this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

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Jim Gardner, Presiding Officer

## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 92-1720, TO ESTABLISH THE METROPOLITAN GREENSPACES ENVIRONMENTAL EDUCATION SMALL GRANTS PROGRAM GUIDELINES AND FUNDING CRITERIA

Date: 8 December 1992

Presented by: Ellen Lanier-Phelps

## PROPOSED ACTION

Resolution No. 92-1720 establishes guidelines and selection criteria for a Metropolitan Greenspaces environmental education small grants program that will provide up to \$40,000 in competitive grant funding for educational programs in support of and relevant to the goals of the Greenspaces effort.

## BACKGROUND AND ANALYSIS

Two of the eight goals in the Metropolitan Greenspaces Master Plan adopted by the METRO Council on July 23, 1992 through Resolution No. 92-1637, relate directly to education and community interaction:

- Encourage environmental awareness so that citizens will become active and involved stewards of natural areas.
- Educate citizens about the regional system of greenspaces through coordinated programs of information, technical advice, interpretation, and assistance.

Through the Greenspaces master plan, METRO is committed to coordinating, interpreting and expanding community knowledge about urban natural resources by working with local school districts, nonschool-based environmental education providers, neighborhood and citizen groups, and other resource agencies.

A maximum of \$40,000 is available to provide small grants for environmental education and community involvement. The purpose in awarding these small grants is to fund environmental education efforts that support the Metropolitan Greenspaces system, its goals and objectives. Proposals that have long-term potential for sustainability and/or transferability will be sought, so that groups not a part of the proposed grant projects may duplicate or benefit from these efforts.

The proposed grant period will end January 15, 1994. At its conclusion, a compilation of environmental education programs based on urban greenspaces will be created by METRO staff that will become the nucleus of a larger, more comprehensive environmental education program accessible by students of all ages throughout the region. Each funded project will become an important "chapter" in Metropolitan Greenspaces efforts to support and enhance environmental education programs in the metropolitan region.

Cities, counties, schools, and special districts within the boundaries of METRO's service district

or within Clark County, Washington will be eligible to apply for the grant funds. Within these same geographic boundaries, nonprofit organizations that are recognized by the Internal Revenue Service (IRS) as 501(c)3 tax-exempt charitable entities will also be eligible. Individuals will not be eligible.

Each application will be rated for the following:

- support of and relevance to goals of the Metropolitan Greenspaces program
- creativity and innovation in designing new approaches to environmental education related to urban greenspaces and ecosystems
- ecological concepts and focus of the project
- cooperative and/or interdisciplinary nature of the project
- the quality of the "hands-on" application of learning materials or processes at an urban greenspace site
- ability of program to reach diverse audiences
- long-term sustainability or transferability of project
- qualifications of partners to carry out the project
- cost-effectiveness of the project
- realistic budget
- ability to match grant funds
- ability to provide successful program within timeframe of grant period
- geographic location and focus of lead applicant.

METRO and federal contracting procedures and policies will be followed, and METRO will enter into contracts and/or intergovernmental agreements with nonprofit groups or agencies awarded grants. All potential grantees must plan and implement the proposed project with support from at least two (2) public or private community partners.

As many qualified projects as possible will be funded, including at least one project in each of the four metropolitan counties (Multnomah, Clackamas, Washington and Clark). The maximum grant size available will be \$8,000. Grant funds must be matched, on at least a 1:1 value ratio. A cash match will not be required. All grants will be paid on a reimbursement basis, and all projects that receive funds will be subject to METRO and federal performance standards and audits.

METRO staff will work with a committee of advisors, educators and other resource people in the review of applications, allocation of awards and project oversight. Members of the selection committee will represent METRO staff and council, Greenspaces advisory committees, local and federal agencies, citizens and the environmental community. A list of proposed committee members is Exhibit A.

The proposed Metropolitan Greenspaces Environmental Education Small Grants Program application packet is attached as Exhibit B.

An intergovernmental agreement proposed for use with agencies selected by the review committee to win small grant awards is attached as Exhibit C. A contract for use with

successful 501(c)3 applicants, if an award is recommended by the review committee, will be approved by METRO's General Counsel.

A list of projects recommended for funding will be submitted by the Executive Officer to the METRO council for final approval.

#### **BUDGET IMPACT**

Educational grant funds in the amount of \$60,000 were approved by the METRO council with a "A" contract designation in the FY '92-93 budget. The revenue source is the U.S. Fish & Wildlife Service Metropolitan Greenspaces grant. Via Resolution 92-1704A, \$20,000 of this amount has been allocated by the council toward the second year of the GreenCity Data Project. The remaining \$40,000 are recommended for allocation to this small grants program. Because the federal funding available for this program spans two METRO fiscal years, the small grants funds will be contracted for expenditure from both the 1992-93 and the 1993-94 METRO budgets.

#### **EXECUTIVE OFFICER RECOMMENDATION**

The Executive Officer recommends adoption of Resolution No. 92-1720.

## METROPOLITAN GREENSPACES ENVIRONMENTAL EDUCATION SMALL GRANTS PROGRAM

### REVIEW COMMITTEE

Sandi Hansen (tentative)  
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Ellen Lanier-Phelps  
Planning Department  
METRO  
2000 SW First  
Portland, OR 97201  
221-1646, ext 118

**METRO**

Planning Department  
2000 S.W. First Avenue  
Portland, OR 97201-5398  
(503) 22-GREEN

*Greenspaces*

DATE:

TO: Potential Grant Applicants

FROM: Ellen Lanier-Phelps

SUB: Metropolitan Greenspaces Environmental Education Small Grants Program

Attached is information on small environmental education grants available from METRO. Included is information on:

- The Background of the Metropolitan Greenspaces program
- Purpose of the Environmental Education Small Grants Program
- Eligible applicants and projects
- Requirement that all projects be cooperative projects
- Allocation of funds
- Criteria and process for review
- Applicant proposal information.

Please note the following:

The maximum grant size through this program will be \$8,000; there is no minimum grant size. The maximum amount of funds available for this grant program are \$40,000.

The deadline for submission of grant proposal requests is February 15, 1993. Proposals sent by fax will not be accepted.

All project-related activities (including evaluation of the project) should be completed no later than January 15, 1994.

Funds for the Metropolitan Greenspaces Environmental Education Small Grants Program are part of a larger grant to METRO for the Greenspaces program by the US Fish and Wildlife Service. Support of METRO in coordinating environmental education and community involvement surrounding the Greenspaces program is meant to serve as a catalyst for cooperative efforts focused on expanding awareness, knowledge, and appreciation of this region's urban natural areas.

If you have any questions, please contact Ellen Lanier-Phelps by calling 221-1646, ext. 118 or at 22-GREEN.

## **The Metropolitan Greenspaces Environmental Education Small Grants Program**

### **Background**

The Metropolitan Greenspaces program is one of two national planning models focused on regional coordination of protection of natural areas in the urban environment. As coordinator of the program, METRO has developed a master plan for this four-county, bi-state effort, working cooperatively with multiple political jurisdictions, conservation organizations, neighborhood groups, businesses and citizens. Together, these groups and individuals are creating a regional system of natural areas, open space, trails and greenways for wildlife and for people.

Two of the eight Metropolitan Greenspaces master plan goals relate directly to education and community interaction:

- Encourage environmental awareness so that citizens will become active and involved stewards of natural areas.
- Educate citizens about the regional system of greenspaces through coordinated programs of information, technical advice, interpretation, and assistance.

METRO is committed to coordinating, interpreting and expanding community knowledge about urban natural resources by working with local school districts, nonschool-based environmental education providers, neighborhood and citizen groups, and other resource agencies. As a result, it is providing a small grants program that will fund environmental education models that can be used at greenspace sites by students of all ages and abilities in the Portland - Vancouver area. Funds are available to METRO for these public awareness and education activities through a grant from the U.S. Fish and Wildlife Services (USFWS).

### **Purpose of the Environmental Education Small Grants Program**

The Metropolitan Greenspaces program has the opportunity to make \$40,000 available in small grants in support of environmental education programs. The purpose in providing these small grants is to fund environmental education excellence, not simply recognize need, and to:

- Support the Metropolitan Greenspaces system, its goals and objectives in meaningful ways that build a comprehensive environmental education effort around urban natural areas;
- Encourage field experiences and hands-on learning experiences for learners of all ages, using local greenspaces as examples and models of "living" laboratories;
- Teach about the ecological systems and watersheds that make up the urban environment;

- Develop a knowledgeable citizenry that has the tools to properly care for greenspaces on both public and private lands in the metropolitan area;
- Provide funding support for environmental education projects to organizations that may have a limited ability to carry these out on their own.

Proposals that have long-term potential for sustainability and/or transferability will be sought, so that other groups not a part of the proposed, original project may duplicate or benefit from these efforts. At the conclusion of this grant period (January 1994), a compilation of environmental education programs based on urban greenspaces will be created that will become the nucleus of a larger, more comprehensive environmental education program accessible by students of all ages throughout the region. Each funded project will become an important "chapter" in Metropolitan Greenspaces efforts to support and enhance environmental education programs in the metropolitan region.

### **Eligible applicants and projects**

The following groups are eligible to apply:

- Cities, counties, schools, and special districts within the boundaries of METRO's service district or within Clark County, Washington.
- Nonprofit organizations that are recognized by the Internal Revenue Service (IRS) as 501(c)3 tax-exempt charitable entities.
- Organizations located in or providing services primarily within the boundaries of METRO's service district or within Clark County, Washington.

Funds must go through an agency in public ownership or a nonprofit group. METRO and federal contracting procedures and policies will be followed, and METRO will enter into contracts and/or intergovernmental agreements with nonprofit groups or agencies awarded grants. Individuals will not be eligible. Only one application per organization or school will be funded.

In the event that any subcontracts are to be utilized in the performance of the grant agreement, the applicant's attention is directed to the federal funding requirements included in this packet and to METRO Ordinance 92-466A, effective December 24, 1992, which establishes the language of METRO Code provision 2.04.300. Copies of the METRO document are available from the Procurement and Contracts Division of Regional Facilities.

METRO extends equal opportunity to all persons and specifically encourages Minority, Women-Owned and Disadvantaged Businesses to access and participate in this and all METRO projects, programs and services. METRO prohibits discrimination against any person or firm based upon race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

METRO reserves the right, at all times during the subsequent course of any awarded grant, to monitor compliance with the terms of this grant program, require additional written



documentation or proof of good faith efforts, and depend upon the grant contractor's immediate compliance.

Grant funds should be used as a catalyst for pulling together cooperative efforts to understand, appreciate, and protect urban greenspaces. In some way, projects should help teach the importance of stewardship of lands, along with sharing insights into the urban ecosystem, its plant, fish, and wildlife habitat characteristics, and its other ecological values. Interdisciplinary ecology programs that promote public responsibility, involvement, stewardship, and civic action are encouraged.

The development, testing and training for use of environmental education materials will be allowed. As an applicant, you may propose, for example, a written interpretive guide or site-specific curriculum materials, but the project must result in direct contact with a greenspace and hands-on applications that emphasize on-site activities as well as concepts. A balance of projects that are sensitive to learning styles, diverse in their activities, and good platforms for cooperative learning is a desirable outcome of this grant program.

Funds are intended to support small projects, not be a small part of ongoing or significantly larger, budgeted projects. The project must be realistic, and the budget must match staff and volunteer capabilities and skills. If the project cannot be carried out soon after the grant is made, the grant request will not be approved. Successful applicants will present a realistic timeline for implementation of the project, with completion (including the evaluation of the project) by January 15, 1994.

#### **Requirement that all projects be cooperative projects**

The Metropolitan Greenspaces Environmental Education Small Grants Program is based on challenging applicants to secure partnerships with other government agencies, schools, nonprofit organizations, "friends" and neighborhood groups, businesses, and the general public. All potential grantees must plan and implement the proposed project with support from at least two (2) public or private community partners. These cooperating partners may provide materials, cash, staff hours, training, outreach, public relations, fund raising, or any other appropriate kind of involvement on the applicant team. Cooperating partners must verify their support and intended participation in this project by providing a letter of commitment to the project with the application.

#### **Allocation of funds**

\$40,000 in grant funds are available. All projects that receive funds will be subject to METRO and federal performance standards and audits. The maximum grant size available is \$8,000. There is no average or minimum grant size established. While there is a relatively small amount of funds available, as many qualified projects as possible will be funded, including at least one project in each of the four metropolitan counties (Multnomah, Clackamas, Washington and Clark).

Grant funds must be matched, on at least a 1:1 value ratio. METRO encourages applicants to seek other sources of funds and donated services and materials to leverage the federal funds used for these grants. A cash match is not required. Allowable in-kind support includes staff time (wages) and volunteer efforts dedicated to the project. Volunteer hours should be computed at the rate of one hour times the federal hourly minimum wage of \$4.75. Direct costs of additional labor, materials, supplies, transportation, and equipment rental needed to develop and implement the project are also eligible as a part of the match. Applicants may begin accounting for their local match only after the grant is awarded.

**NOTE:** All grants will be paid on a reimbursement basis. No money will be advanced to projects. If this is a hardship, for example as a nonprofit or neighborhood group, it is hoped that coalitions might be formed with other interested parties to share this temporary burden. A billing procedure will be established on a bi-monthly, quarterly or project completion basis. METRO does not receive any advances from the USFWS; METRO must also apply for reimbursement of funds from the federal government.

### **Criteria and process for review**

METRO staff, working with a committee of advisors, educators and other resource people, will be responsible for reviewing applications, as well as making the awards and carrying out project oversight. In carrying out the competitive review process, each applicant's ability to meet the grant criteria will be weighed and recorded on a standard evaluation form by each committee member. Members of the selection committee will be familiar with the Greenspaces program and represent METRO, its advisory committees, local and federal agencies, and the environmental community. Members will have experience in education, natural resources protection, project management, citizen advocacy, grants funding, and the business community.

Each application will be rated for the following:

- support of and relevance to goals of the Metropolitan Greenspaces program
- creativity and innovation in designing new approaches to environmental education related to urban greenspaces and ecosystems
- ecological concepts and focus of the project
- cooperative and/or interdisciplinary nature of the project
- the quality of the "hands-on" application of learning materials or processes at an urban greenspace site
- ability of program to reach diverse audiences
- long-term sustainability or transferability of project
- qualifications of partners to carry out the project
- cost-effectiveness of the project
- realistic budget
- ability to match grant funds
- ability to provide successful program within timeframe of grant period
- geographic location and focus of lead applicant.

## **Applicant proposal information**

In addition to completing the application cover sheet found in this packet, please provide answers to these questions in no more than five pages of explanation:

- 1. What is the description of the project, its goals and intended results? Why is it important to undertake this effort at this time?**

What is the significance of the project? Who is the targeted audience? What is the need for the project? How do the proposed activities meet this need? What is the project's relationship to urban natural areas and the Metropolitan Greenspaces program? Describe the public - private partnership and why the committed cooperating partners are the appropriate ones to carry out this project?

- 2. How will the goals be accomplished? What methods and criteria will be used for measuring the project's effectiveness and success?**

Provide milestones and objectives that are measurable. How does this project relate to the mission and goals of the applicant's organization? Describe the significance of this project to the organization. What is its experience as an environmental education provider?

- 3. Are there any long-term outgrowths or community impacts that might come from successful completion of this project?**

How can other students, teachers, and other members of the general public be involved and learn from this project? How might public awareness of Greenspaces-related issues be developed from this project (for example, from knowledge gained about resources at a particular site)? Since the project is being built as a cooperative effort, can sustained public participation carry on some aspect of the project begun in this project?

In addition to the narrative responses to the above questions, please fill out the financial fact sheet and provide the following:

- 1. The implementation plan of action and timetable, the workplan and schedule, including specific tasks and dates.**

Is this reasonable and workable? Are there any additional approvals needed (and related dates) that might keep this project from happening? [Remember: Projects must be completed by January 15, 1994.]

**2. Qualifications of key staff and/or volunteers.**

Please provide the names, roles, qualifications and level of commitment of key people involved in implementing the project.

**3. A detailed budget for the project.**

How will the match of the grant amount be provided, in dollars or in kind? Include the commitment of the cooperating partners, the request to METRO, and the total cost of the project.

**4. Letters of cooperation and support.**

Evidence of support from at least two (2) public or private community partners is required. Letters should clearly state the commitments of the partner to the project and be signed by an individual authorized to make such a commitment on behalf of the organization.

Please attach a copy of the applicant's letter from the IRS determining 501(c)3 status for tax exemption.

All completed application materials must be in the Metropolitan Greenspaces office at METRO, 2000 SW First Ave., no later than 5 p.m. on February 15, 1993.

# Metropolitan Greenspaces Education Grant Application Summary Sheet

This cover sheet, along with a proposal and the other items described in the grant application packet, should be sent to: Metropolitan Greenspaces Program, METRO, 2000 S.W. First Ave., Portland, Oregon 97201-5398.

Organization \_\_\_\_\_ Founding Date \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Project Contact Person \_\_\_\_\_ Phone \_\_\_\_\_

Chief Executive Officer \_\_\_\_\_ Phone \_\_\_\_\_

Chairperson of the Board \_\_\_\_\_ Phone \_\_\_\_\_

Mission of Organization \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Objectives and description of project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Total project cost \_\_\_\_\_ Amount requested from Metro \_\_\_\_\_

Specifically, how will Metropolitan Greenspaces funds be used: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Amount and sources of matching contributions committed to project to date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Other funding sources from which support is requested \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Project period: \_\_\_\_\_ (number of months) beginning \_\_\_\_\_

Why is the project important? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Who and how many will be served? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Metropolitan Greenspaces  
Education Grant Application Financial Fact Sheet**

Page 2

**Information About Applicant Organization**

**Tax-exempt status** (If exempt under another organization, send evidence from IRS of that exemption and explain the relationship between the exempt organization and the applicant organization.)

☐ 501(c)(3) Organization name on IRS letter \_\_\_\_\_

Other ? (explain) \_\_\_\_\_ Is tax-exempt status currently valid? \_\_\_\_\_

**Organization financial information** (Do not include in-kind contributions.)

Ending date of fiscal year \_\_\_\_\_

**Budget for current fiscal year:** Income \_\_\_\_\_ Expenditures \_\_\_\_\_

Major sources of support (and amounts):

Already committed: \_\_\_\_\_

\_\_\_\_\_

Expected: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Financial statement for last fiscal year:** Income \_\_\_\_\_ Expenditures \_\_\_\_\_

Major sources of support (and amounts): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If a grant is awarded, what is the organization name to which checks should be paid, if different from above?

\_\_\_\_\_

I certify that the above information is correct and that I am authorized by the governing board of this organization to submit this grant application to the Metropolitan Greenspaces Program.

**Signature of Chief Executive Officer:** Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_

**FOR OFFICE USE ONLY**

\_\_\_\_\_ Proof of 501(c)3 and IRS letter

\_\_\_\_\_ Narrative response

\_\_\_\_\_ qualification of key individuals

\_\_\_\_\_ Two (2) letters of cooperation

\_\_\_\_\_ Project Budget

## **Metropolitan Greenspaces Education Grant Application**

### **Project Budget**

<b><u>Category</u></b>	<b><u>Request</u></b>	<b><u>Match</u></b>	<b><u>Total</u></b>
a) <b>Personnel</b>			
b) <b>Material and Supplies</b>			
c) <b>Rental Fees</b>			
d) <b>Professional Services</b>			
e) <b>Volunteer Labor Hours @\$4.75</b>			
f) <b>Indirect Costs/Overhead (not grant eligible)</b>			
g) <b>Contingency (not grant eligible)</b>			
h) <b>Other</b>			

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**TOTAL FUNDS**

# DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM

Name of Metro Project \_\_\_\_\_

Name of Bidder \_\_\_\_\_

Address of Bidder \_\_\_\_\_

Phone Number (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

## THE ABOVE PARTICIPANT:

- A. \_\_\_\_\_ Has fully met the contract goals.
- B. \_\_\_\_\_ Has partially met the contract goals, but has made and documented good faith efforts prior to bid opening or proposal submission.
- C. \_\_\_\_\_ Does not anticipate any subcontracting or supplier relationships, but will utilize or make and document good faith efforts to utilize DBE/MBE/WBEs should any opportunities arise.

## BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING DISADVANTAGED BUSINESS ENTERPRISE(S) (DBES), SUBCONTRACTORS OR SUPPLIERS

FIRM/ADDRESS	NATURE OF WORK (COMMODITY CODE)	DOLLAR VALUE OF PARTICIPATION

Amount of DBE Utilization \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Total Bid/Proposal Amount \_\_\_\_\_

Percentage DBE Utilization \_\_\_\_\_

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

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



*Copy of Original*

Cooperative Agreement  
14-16-0001-91551  
TIDS # 10120-1-0235  
10120-1120  
\$567,000

COOPERATIVE AGREEMENT  
between  
FISH AND WILDLIFE SERVICE  
UNITED STATES DEPARTMENT OF THE INTERIOR  
and the  
METROPOLITAN SERVICE DISTRICT

I. Introduction

Natural habitats within our nation's expanding metropolitan areas are rapidly disappearing. There is an urgent need to develop programs which can be quickly implemented to preserve wetlands, stream corridors and similar remaining natural areas within metropolitan settings. The Fish and Wildlife Service is the principal agency through which the Federal government carries out its responsibility to conserve, protect and enhance wildlife and their habitats in urban areas as well as throughout the United States. The Metropolitan Service District is initiating a Greenspaces Program which seeks to develop a regional plan for the preservation, protection, and public acquisition of natural areas, urban wetlands, and stream corridors. Most of the natural areas in the region have been inventoried by the Metropolitan Service District. Demonstration projects, challenge grants, public outreach, and education activities are important components of the Greenspaces Program. Technical and planning studies, and management and finance studies will also be included in the program. To date, the Metropolitan Service District has committed over \$300,000 in funding and in-kind services to development of the Greenspaces Program, and is expected to play a lead role in implementing the program upon completion of plan development.

II. Authorities

The Service enters this agreement pursuant to the authority provided by the Fish and Wildlife Coordination Act (FWCA) of 1958, as amended, 16 U.S.C. Section 661.

III. Purpose

The purpose of this agreement is to complete the inventory of natural resources remaining within the four county Portland Metropolitan area and develop a Regional Plan for the preservation, protection, enhancement, and (where appropriate) the public acquisition of these areas. It will include the development of a Public Outreach and Education Program, Management and Operation Plan for natural areas, and a Financing and Acquisition Plan for implementation. Opportunities will also be sought to cooperatively implement demonstration projects involving the restoration and/or enhancement of important wetland and wildlife habitat areas, streams and riparian corridors.

#### IV. Term of Agreement

This agreement is to cover the development of the Greenspace Program as described above, including demonstration projects, and restoration and enhancement grants from January 1, 1991 through September 30, 1992.

#### V. Specific Obligations of the Parties

##### A. Service's Obligations.

1. The Service will reimburse the Metropolitan Service District in the amount of \$567,000 for the accomplishment of the tasks identified herein as the responsibility of the Metropolitan Service District.
2. The Service will participate on technical and advisory committees, and will provide a staff biologist to participate in the identification of natural areas and the development of recommendations for the conservation, protection and enhancement of those natural areas.
3. The Service will actively seek opportunities to carry out actions in support of the Greenspaces Program through its ongoing activities, including the review of various Federal programs and plans, and the operation and management of the National Wildlife Refuge System.

##### B. Metropolitan Service District's Obligations.

1. Metropolitan Service District will furnish materials, equipment, supplies and labor necessary to complete the List of Projects and Activities to be funded as described in Attachment 1.
2. Furnish the Service with quarterly accomplishment reports describing major activities, proposed actions, and problems.
3. Metropolitan Service District may contract with other organizations to conduct specific studies, prepare brochures and maps, design signs, implement demonstration/restoration/enhancement projects, etc. as necessary to complete the tasks described in Attachment 1.

#### VI. Project Officers

Project Officer for the Service is:

Russell D. Peterson  
U.S. Fish and Wildlife Service  
2600 S.E. 98th Avenue, Suite 100  
Portland, Oregon 97266  
(503) 231-6179

Project Officer for the Metropolitan Service District is:

Mel Huie  
Metropolitan Service District  
2000 S.W. First Avenue  
Portland, Oregon 97201-5398  
(503) 220-1186

#### VII. Deliverables and Milestones

Provide quarterly reports and draft and final products to the Service.

#### VIII. Funding

A. The Service will reimburse Metro in the amount of \$567,000 for the work identified in this agreement in accordance with the budget attached hereto and identified as Attachment 1.

Monthly billings and reports should be submitted to the Fish and Wildlife Service as follows:

U.S. Fish and Wildlife Service  
Portland Field Station  
2600 S.E. 98th Avenue, Suite 100  
Portland, Oregon 97266

Each billing must reference Agreement No. 14-16-0001-99551 and TID # 10120-1-0235

#### IX. Special Terms and Conditions

None

#### X. General Provisions

The U.S. Fish and Wildlife Service's General Provisions for Grants and Cooperative Agreements, dated August 1, 1985, are applicable to this agreement and are incorporated herein as Attachment 2.

#### XI. Amendments

Amendments to this agreement may be proposed by either party and shall become effective upon being reduced to a written instrument executed by both parties.

#### XII. Termination

This project may be terminated under the following conditions:

##### A. Termination for Cause

The Service may terminate this agreement in full, or in part, at any time before the date of completion, whenever it is determined that the other party has failed to comply with the conditions of this agreement. The Service shall promptly notify the other party in writing of this

determination and the reasons for the termination, together with the effective date. Payments made to any party, or recovery by the Service, under agreements terminated for cause shall be in accord with the legal rights and liabilities of the parties.

**B. Termination for Convenience**

This agreement may be terminated in whole, or in part, when all parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The parties shall agree upon the termination conditions including the effective date and, in the case of partial terminations, the portion to be terminated. The parties shall not incur new obligations after the effective date of termination, and shall cancel as many outstanding obligations as possible. The Service shall allow full credit to the other parties for the Federal share of non-cancellable obligations, properly incurred by the other parties prior to termination.

**XIII. Certification Regarding A Drug-Free Workplace**

**(a) Definitions. As used in this provision,**

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substance Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

- (b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will -**

- (1) publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession,**

or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- (2) establish a drug-free awareness program to inform such employees about -
  - (i) the dangers of drug abuse in the workplace;
  - (ii) the Contractor's policy of maintaining a drug-free workplace;
  - (iii) any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) the penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision:
- (4) Notify such employees in the statement required by subparagraph (b)(1) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the employee will --
  - (i) abide by the terms of the statement; and
  - (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- (5) Notify the Contracting Officer within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction; and
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:
  - (i) Take appropriate personnel action against such employee, up to and including termination; or,
  - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.

- (c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.
- (d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) or this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a)(2)(i).).
- (e) In addition to other remedies available to the Government, the certification in paragraphs (b) and (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the make subject to prosecution under Title 18, United States Code, Section 1001.

#### XIV. Certification Regarding Lobbying Activities

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 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.

IN WITNESS WHEREOF, each party hereto has caused this Cooperative Agreement to be executed by an authorized official on the day and year set forth opposite their signature.

FISH AND WILDLIFE SERVICE

By: Martin L. Olmsted Date: March 22, 1991

Title: Regional Director

OTHER PARTY

By: Rena Cerna Date: 3/22/91  
Metropolitan Service District

Title: Executive Officer

SUFFICIENCY REVIEW

By: Lila J. Hanson Date: March 20, 1991

Title: Contracting Officer

THIS AGREEMENT IS MADE THIS 22nd day of March 1991, between the Fish and Wildlife Service, U.S. Department of the Interior, and the Metropolitan Service District, a public utility district organized under the laws of the State of Washington. The Fish and Wildlife Service is hereinafter referred to as the "Service" and the Metropolitan Service District is hereinafter referred to as the "District".

ATTACHMENT 1

List of Projects and Activities to be Funded

1. Restoration and Enhancement Challenge Grants  
(Demonstration Projects) \$200,000

Fund at least five local demonstration projects to local jurisdictions and/or nonprofit organizations. Funds could be used for restoration and enhancement of urban wetlands, streams, riparian corridors, and wildlife habitat. The demonstration projects will leverage additional funds for enhancement and restoration of wetlands, streams, and riparian corridors. A 50 percent local match is required. The match may be in cash or in-kind. At least one project should be in each of the four metropolitan counties and the city of Portland.

While the amount of funds is not large, the demonstration projects will increase public awareness and generate support for the Greenspaces Program, as well as increase its credibility as a cooperative regional program.

Metro will develop funding guidelines and a complete selection process on how the funds would be expended. The advice of local park planners and Metro's Greenspaces Policy Advisory Committee of elected officials and citizens will be solicited prior to funding any demonstration projects. Final funding decisions will be made by the Metro Council.

2. Public Awareness/Environmental Education \$120,000

In cooperation with the Portland Audubon Society's Metropolitan Wildlife Refuge System, local jurisdictions, state and federal agencies, and other groups, Metro will carry-out an extensive public awareness and environmental education program to promote the Greenspaces Program and to protect and preserve urban wetlands and wildlife habitat.

Specific activities will include:

- o Development of an overall public awareness strategy
- o Brochures/Maps/Flyers/Fact Sheets
- o Advertisements in Newspapers about the program
- o Newsletter
- o Digitized Maps of Urban Wetlands
- o Telephone Hotline/Nature Network
- o 25 Things You Can Do to Preserve Natural Areas Brochure



- o Coordination activities with the Portland Audubon Society's Metropolitan Wildlife Refuge Project
- o Design and Fabricate Uniform Signs at Natural Areas throughout the region as approved by Metro and local jurisdictions
- o Greenspaces Tours
- o Slide Show
- o Video
- o Movie prepared by a high school biology class
- o Public Service Announcements
- o Speakers' Bureau
- o Local Workshops/Conferences
- o Special Outreach Efforts, Meetings and Workshops for the Business Community and Developers
- o Develop a pilot environmental education program in the public schools related to urban natural areas, wetlands, wildlife habitat protection and preservation. The pilot developed should be transferable to any school in the region. Local educators, curriculum specialists, planners, parents and students, and outdoor education staff would help develop the program under Metro's coordination.
- o Hire a person or consultant to coordinate and develop the program, a curriculum, and to carry-out the program in one school district. A curriculum guidebook will be developed. Funds may also be use for field trips and transportation for students.
- o Develop and print a "Wildlife Habitat/Naturescaping in Your Backyard" booklet for the region. This innovative program would show how each individual and family can make a difference in protecting and increasing urban wildlife habitat.

Funds would be used for Metro staff, intergovernmental agreements with other local and state agencies, contracts with nonprofit organizations, and private consultants to carry-out the public awareness program. Funds would also be expended for production costs, printing/publication, purchase of supplies and materials, purchase of space in newspapers and air time on television and radio, and distribution/mailing costs.

3. Master Plan for the Greenspaces Program \$90,000

Develop an overall plan for natural areas, urban wetlands and wildlife habitat, rivers and streams, and riparian corridors that addresses the need to identify, map, protect, preserve, and potentially acquire and manage these areas in a regional system. The plan will also incorporate the public awareness and environmental education aspects of the Greenspaces Program.

Specific activities will include:

- o Master Plan document which will be adopted as a functional plan by the Metro Council.
- o Determine values and significance of natural areas; conduct natural areas analysis;
- o Determine which natural areas are of regional significance and thus should be protected and/or acquired
- o Research existing conservation and protection mechanisms and recommend new ones which may be needed
- o Review existing local comprehensive plans and natural resource inventories
- o Management Study to determine local, regional, state, federal and nonprofit organizational roles and responsibilities. Who should own and operate natural areas in the region?
- o Finance Study to determine how lands and conservation easements can be purchased. Research financing options for the operations of natural areas. Develop a list of options to be reviewed by the local jurisdictions and the Metro Council. Impact of Ballot Measure 5 research.
- o Draft model ordinance for local jurisdictions which would enhance and protect urban wetlands, wildlife habitat, and natural areas prior to development of these lands or adjacent lands. Tree preservation ordinances may also be drafted.
- o Additional inventories and mapping of wetlands, stream and riparian corridors. Digitize National Wetlands Inventory (NWI)
- o Complete the in-depth natural areas analysis of areas within Metro's boundaries
- o Plan for a Regional Trails and Greenways System which would connect parks and natural areas
- o Produce maps and photo mosaics

4. Complete Natural Areas Inventory & Mapping Project \$50,000

Provide challenge grants to Clackamas and Washington counties to complete the natural areas inventory in the geographic areas outside of the Metro boundary. Provide a challenge grant to Multnomah County to conduct a natural areas management plan.

5. Staff Planners at Metro

\$102,000

Fund one senior level planner at Metro from Feb. 16, 1991 through June 30, 1991 to work on the Greenspaces Program. The staff person will work primarily on public awareness and environmental education aspects, and urban wetlands and wildlife habitat protection. This cost includes salary and fringe benefits. The position is currently being filled by a planner on loan from Portland. Funds would be contracted with the city of Portland Parks Bureau to retain the planner's time through June 30, 1991.

Hire one senior planner (including fringe and overhead costs) from July 1, 1991 through September 30, 1992. Planner would work on the Greenspaces Master Plan and work activities listed above.

6. Travel/Workshops/Conferences

\$ 5,000

TOTAL BUDGET

\$567,000

BUDGET SUMMARY

- |   |           |
|---|-----------|
| 1. RESTORATION & ENHANCEMENT GRANTS<br>(Demonstration Projects) | \$200,000 |
| 2. PUBLIC AWARENESS/<br>ENVIRONMENTAL EDUCATION                 | \$120,000 |
| 3. MASTER PLAN  | \$ 90,000 |
| 4. COMPLETE NATURAL AREAS INVENTORY/<br>SPECIAL STUDIES         | \$ 50,000 |
| 5. STAFF PLANNERS AT METRO<br>to work on the Master Plan        | \$102,000 |
| 6. TRAVEL/WORKSHOPS/CONFERENCES                                 | \$ 5,000  |

TOTAL

\$567,000

Attachment 2

U.S. FISH AND WILDLIFE SERVICE  
GENERAL PROVISIONS  
FOR  
GRANTS AND COOPERATIVE AGREEMENTS

1. Definitions
2. Allowable Costs
3. Payment Requirements
4. Bonding and Insurance
5. Cash Depositories
6. Retention and Custodial Requirements for Records
7. Program Income
8. Cost Sharing and Matching
9. Standards for Financial Management Systems
10. Financial Reporting Requirements
11. Monitoring and Reporting Program Performance
12. Revision of Financial Plans
13. Closeout Procedures
14. Suspension and Termination Procedures
15. Property Management Standards
16. Procurement Standards
- 17A. Audit Requirements - [Educational Institutions, Hospitals and Other  
Non-Profit Organizations]
- 17B. Audit Requirements - [State and Local Governments]
- 17C. Audit Requirements - [Commercial Organizations]
18. Standard Patent Rights
19. Data Collection
20. Rights in Technical Data and Computer Software
21. Restrictions on Printing
22. Other Administrative Provisions and Assurances
23. Order of Precedence

AUG 1 1985

## GENERAL PROVISIONS

### 1. DEFINITIONS

Throughout the assistance agreement, the following terms, in so far as they are used, shall have the meanings set forth below:

- a. The term "Head of the Agency" or "Secretary" means the Secretary, or any Assistant Secretary of the United States Department of the Interior; and the term "his duly authorized representative" means any person or persons or Board authorized to act for the head of the Agency or the Secretary.
- b. The term "Department" means the United States Department of the Interior (USDI).
- c. The terms "Agency" or "Service" means the U.S. Fish and Wildlife Service (FWS).
- d. The term "Signing Official" or "SO" means any person authorized to execute the agreement on behalf of the Service and includes, except as otherwise provided in the agreement, the authorized representative of the Signing Official acting within the limits of his authority.
- e. The term "FWS Project Officer" means the SO's authorized representative responsible for the technical administration of the agreement, the evaluation of performance under the agreement, the acceptance of technical reports, and for such other specific responsibilities as may be stipulated in various provisions of the agreement.
- f. The term "Recipient" includes the following:
  - (1) States, local governments or Federally recognized Indian tribal governments as defined in OMB Circular A-102.
  - (2) Nonprofit organizations including public and private institutions of higher education, public and private hospitals and other quasi public and private nonprofit organizations as further described in OMB Circular A-110.
  - (3) Commercial organizations are organizations which are not otherwise included among those specified in OMB Circulars A-102 or A-110; international organizations; or businesses organized for profit.
- g. The term "Grant Agreement" means the legal instrument between the Service and the recipient which provides for the transfer of Federal resources to the recipient to accomplish a public purpose activity for which no substantial involvement between the parties is anticipated during performance.
- h. The term "Cooperative Agreement" means the legal instrument between the Service and the recipient which provides for the transfer of Federal resources to the recipient to accomplish a public purpose activity for which substantial involvement between the parties is anticipated during performance.
- i. The acronym "OMB" means Office of Management and Budget.
- j. The acronym "FAR" means Federal Acquisition Regulations.

### 2. ALLOWABLE COSTS - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. Payments up to the amount specified in the assistance agreement shall be made only for costs determined by the SO to be allowable, allocable and reasonable in conducting the work under the agreement in accordance with its terms and with the following cost principles:

- (1) OMB Circular A-21 shall be applicable to educational institutions.
- (2) OMB Circular A-87 shall be applicable to state and local governments and federally recognized Indian tribal governments.
- (3) OMB Circular A-122 shall be applicable to other non-profit organizations.
- (4) Federal Acquisition Regulations (FAR) 31.2 shall be applicable to all other recipients.

b. Expenditures requiring prior written approval from the SO are found in the applicable Federal cost principles & FWS policy and are summarized below:

- (1) Purchase or rental of any item of general purpose equipment having a unit cost of \$300 or more; and all items of office equipment, regardless of cost, if not itemized in the approved budget.

- (2) Purchase or rental of any item of special purpose equipment having a unit cost of \$1,000 or more if not itemized in the approved budget.
- (3) Insurance on Federal government-owned equipment unless required or approved and maintained under the terms of the agreement.
- (4) Personnel movement of a special or mass nature not itemized in the approved budget.
- (5) Foreign travel (each separate trip).
- (6) Domestic travel when not included in the approved budget and when the cumulative travel expenditures will exceed the approved travel budget by \$500 or 25 percent, whichever is greater.
- (7) Expenditures for consultant services not itemized in the approved budget.
- (8) Subcontracts not itemized in the approved budget.
- (9) Expenditures for the purchase or lease of any interest in real property.

c. The FWS may provide in advance for scheduled apparent allowable costs to be incurred or will reimburse apparent allowable costs accrued by the recipient up to the maximum amount of the Federal assistance payable for the period of performance. However, such provision of any cost pursuant to the clause shall not constitute a final determination by FWS of the allowability of such cost and shall not constitute a waiver of any violation of the terms of the assistance agreement committed by the recipient. FWS shall make a final determination as to allowability only after final audit is completed, if required, or at the time of final payment.

### 3. PAYMENT REQUIREMENTS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. Payments can be made to recipients through a letter-of-credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this clause:

(1) Letter-of Credit - A letter-of-credit is an instrument certified by an authorized official of a Federal sponsoring agency that authorizes a recipient to draw funds when needed from the Treasury, through a Federal Reserve bank and the recipient's commercial bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.

(2) Advance by Treasury check - An advance by Treasury check is a payment made by a Treasury check to a recipient upon its request before outlays are made by the recipient, or through the use of predetermined payment schedules.

(3) Reimbursement by Treasury check - A reimbursement by Treasury check is a Treasury check paid to a recipient upon request for reimbursement from the recipient.

b. Except for construction grants and other construction agreements for which optional payment methods are authorized, as described in paragraph d, the letter-of-credit method shall be used by FWS if all of the following conditions exist:

(1) If there is or will be a continuing relationship between a recipient and FWS for at least a 12-month period and the total amount of advance payments expected to be received within that period from FWS is \$120,000 or more as prescribed by Treasury Circular No. 1075.

(2) If the recipient has established or demonstrated to FWS the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the recipient.

(3) If the recipient's financial management system meets the prescribed standards for fund control and accountability.

c. The method of advancing funds by Treasury check shall be used in accordance with the provisions of Treasury Circular No. 1075, when the recipient meets all of the requirements specified in paragraph b, above, except those in subparagraph b.1.

d. The reimbursement by Treasury check method shall be the preferred method if the recipient does not meet the requirements specified in subparagraphs b.2. and b.3. above. FWS may require that this method be used on any construction project, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, FWS shall make payment within 30 days after receipt of the billing, unless the billing is improper. With respect to subcontractors, recipients shall not be reimbursed for amounts that are to be withheld to assure satisfactory completion of the work. These amounts will be paid when recipients make final payment including amounts withheld.

e. When the letter-of-credit procedure is used, the recipient shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants and other agreements awarded by FWS. Likewise, to the extent possible, when the advance by Treasury check method is used, advances should be consolidated (pooled) for all grants and other agreements made by FWS.

f. FWS shall not withhold payments for proper charges made by recipients at any time during the project or program period unless (a) a recipient has failed to comply with the program objectives, award conditions, or Federal reporting requirements; or (b) the recipient is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States.

Under such conditions, FWS may, upon reasonable notice, inform the recipient that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

**4. BONDING AND INSURANCE** - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the performance of construction or facility improvements]

a. Except as otherwise required by law, a grant or other agreement that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, FWS may accept the bonding policy and requirements of the grantee provided FWS has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to the percent of the bid price - The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price - A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price - A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

b. Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, FWS, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

c. FWS may require adequate fidelity bond coverage where the recipient has no coverage and the bond is needed to protect the Government's interest.

d. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

**5. CASH DEPOSITORIES** - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the advancement of Federal funds]

a. If funds are to be advanced under a letter-of-credit agreement with the recipient which provides that draw downs will be made when the recipient's checks are presented to the bank for payment, the recipient shall establish a separate bank account as the depository for such funds.

b. Any moneys advanced to a recipient which are subject to the control or regulation of the United States or any of its officers, agents or employees (public moneys as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

c. Consistent with the national goal of expanding the opportunities for minority business enterprises, recipients and subrecipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

**6. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS** - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements with primary recipients and to grants or other agreements awarded by the primary recipients to subrecipients performing substantive work].

a. Financial records, supporting documents, statistical records, and all other records pertinent to an agreement shall be retained for a period of 3 years, with the following qualifications:

- (1) If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.
- (2) Records for nonexpendable property, acquired with Federal funds shall be retained for 3 years after its final disposition.
- (3) When records are transferred to or maintained by FWS, the 3-year retention requirement is not applicable to the recipient.

b. The retention period starts from the date of the submission of the final expenditure report or final payment, whichever occurs last.

c. Recipient organizations may be authorized by FWS, to substitute microfilm copies in lieu of original records.

d. FWS shall request transfer of certain records to its custody from recipient organizations when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, FWS may make arrangements with recipient organizations to retain any records that are continuously needed for joint use.

e. The Director of FWS and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient organization and their subrecipients to make audits, examinations, excerpts and transcripts.

**7. PROGRAM INCOME - (OMB Circulars A-102/A110) - [This clause is applicable if program income, as defined below, is anticipated from projects financed in whole or in part with Federal funds]**

a. Recipient organizations shall account for program income resulting from projects financed in whole or in part with Federal funds. Program income represents gross income earned by the recipient from the federally supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

b. Interest earned on advances of Federal funds shall be remitted to FWS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577) and tribal organizations pursuant to sections 102, 103, or 104 of the Indian Self Determination Act (Public Law 93-638).

c. Proceeds from the sale of real and personal property either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the clause entitled Property Management Standards.

d. Unless the agreement provides otherwise, recipients shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents produced under the grant or other agreement.

e. All other program income earned during the project period shall be retained by the recipient and, in accordance with the grant or other agreement, shall be:

- (1) Added to funds committed to the project by FWS and recipient organization and be used to further eligible program objectives;
- (2) Used to finance the non-Federal share of the project when approved by FWS; or
- (3) Deducted from the total project costs in determining the net costs on which the Federal share of costs will be based.

f. State, local or Federally recognized Indian tribal governments shall record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of project transactions when such revenues are specifically earmarked for a project in accordance with assistance agreements.

**8. COST SHARING AND MATCHING - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements if the recipient, subrecipient or third parties are required to make cash or in-kind contributions to satisfy cost sharing and matching requirements of the FWS]**

a. The following definitions apply for the purpose of this clause:

(1) Project costs - Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a recipient and the value of the in-kind contributions made by the recipient or third parties in accomplishing the objectives of the grant or other agreement during the project or program period.

(2) Cost sharing and matching - In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government. Any minimum percentage for matching share provided by program legislation and matching share requirements are included in the assistance agreement.



(3) Cash contributions - Cash contributions represent the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties. When authorized by Federal legislation, Federal funds received from other grants or other agreements may be considered as grantees' cash contributions.

(4) In-kind contributions - In-kind contributions represent the value of noncash contributions provided by the recipient and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the recipient's in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

b. General guidelines for computing cost sharing or matching are as follows:

(1) Cost sharing or matching may consist of:

- (a) Charges incurred by the recipient as project costs. (Not all charges require cash outlays by the recipient during the project period; examples are depreciation and use charges for buildings and equipment.)
- (b) Project costs financed with cash contributed or donated to the recipient by other non-Federal public agencies and institutions, and private organizations and individuals, and
- (c) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.

(2) All contributions, both cash and in-kind shall be accepted as part of the recipient's cost sharing and matching when such contributions meet all of the following criteria:

- (a) Are verifiable from the recipient's records;
- (b) Are not included as contributions for any other Federally-assisted program;
- (c) Are necessary and reasonable for proper and efficient accomplishment of project objectives;
- (d) Are types of charges that would be allowable under the applicable cost principles;
- (e) Are not paid by the Federal Government under another assistance agreement (unless the agreement is authorized by Federal law to be used for cost sharing or matching);
- (f) Are provided for in the approved budget when required by the Federal agency; and
- (g) Conform to other provisions of this clause.

c. Values for recipient in-kind contributions will be established in accordance with the applicable cost principles.

d. Specific procedures for the recipients in establishing the value of in-kind contributions from non-Federal third parties are set forth below.

(1) Valuation of volunteer services - Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(a) Rates for volunteer services - Rates for volunteers should be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates should be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved.

(b) Volunteers employed by other organizations - When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

(2) Valuation of donated, expendable personal property - Donated, expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(3) Valuation of donated, nonexpendable personal property, buildings, and land or use thereof.

(a) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant or other agreement as follows:

(i) If the purpose of the grant or other agreement is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(ii) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land, depreciation or use charges to charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the FWS has approved the charges.

(b) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:

- (i) Land and buildings - The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the recipient.
- (ii) Nonexpendable personal property - The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.
- (iii) Use of space - The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal or comparable space and facilities in a privately-owned building in the same locality.
- (iv) Loaned equipment - The value of loaned equipment shall not exceed its fair rental value.

e. The following requirements pertain to the recipient's supporting records for in-kind contributions from non-Federal third parties:

- (1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its employees.
- (2) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented.

9. STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. Recipient's financial management systems shall provide for:

- (1) Accurate, current and complete disclosure of the financial results of each Federally sponsored project or program in accordance with the reporting requirements set forth in the clause entitled Financial Reporting Requirements.
- (2) Records that identify adequately the source and application of funds for Federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays and income.
- (3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
- (4) Comparison of actual outlays with budget amounts for each grant or other agreement.
- (5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by FWS. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Advances made by primary recipient organizations (those which receive payments directly from FWS) to subrecipients shall conform substantially to the same standards of timing and amount as apply to advances by FWS to primary recipient organizations.
- (6) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.
- (7) Accounting records that are supported by source documentation.
- (8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

b. Primary recipients shall require subrecipients to adopt the standards in paragraph a. above except for the requirement in paragraph a.(1) regarding reporting forms and frequencies prescribed in the clause entitled Financial Reporting Requirements.

10. FINANCIAL REPORTING REQUIREMENT - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. The following definitions apply for purposes of this clause:

- (1) Accrued expenditures - Accrued expenditures are the charges incurred by the recipient during a given period requiring the provision of funds for: (a) goods and other tangible property received; (b) services performed by employees, contractors, subrecipients, and other payees; and (c) other amounts becoming owed under programs for which no current services or performance is required.

(2) Accrued income - Accrued income is the sum of (a) earnings during a given period from (i) services performed by the recipient; and (ii) goods and other tangible property delivered to purchasers; and (b) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(3) Federal funds authorized - Federal funds authorized are the total amount of Federal funds obligated by FWS for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or FWS regulation.

(4) In-kind contributions - In-kind contributions are defined in the clause entitled Cost Sharing and Matching.

(5) Obligations - Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period that will require payment by the recipient during the same or a future period.

(6) Outlays - Outlays or expenditures represent charges made to the project or program. They are to be reported on an accrual basis. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(7) Program income - Program income is defined in the clause entitled Program Income. It is to be reported on an accrual basis.

(8) Unobligated balance - The unobligated balance is the portion of the funds authorized by FWS that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(9) Unliquidated obligations - For reports prepared on an accrued expenditure basis, unliquidated obligations represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

b. The recipient shall utilize the following forms for reporting financial information:

(1) Financial Status Report (SF-269) - For all non-construction projects, the recipient shall submit an original and two copies of this report 30 days after the completion of each quarter of the project with the exception that the final Financial Status Report shall be due 90 days after project completion. Extensions to reporting due dates may be granted upon request. The report shall be on an accrual basis; however, if the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such information through best estimates based on an analysis of the documentation on hand.

(2) Federal Transactions Report (SF-272) - In the event funds are advanced to recipients, the recipient shall submit an original and two copies of a Federal Cash Transaction Report 15 days following the end of each quarter.

c. The recipient shall utilize the following forms for requesting advances and reimbursements:

(1) Request for Advance or Reimbursement (SF-270) - For all non-construction projects when a letter of credit is not used, the recipient shall submit an original and two copies of this form on a monthly basis.

(2) Outlay Report and Request for Reimbursement for Construction Programs (SF-271) - For all construction projects when a letter of credit has not been authorized, the recipient shall submit an original and two copies of this form on a monthly basis.

d. When the FWS needs additional information in using these forms or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, FWS shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When necessary to meet specific program needs, FWS shall submit the proposed reporting requirements to the Financial Management Branch, Budget Review Division, Office of Management and Budget for approval prior to submission of the reports for clearance under the provisions of 5 CFR Part 1320.

(3) When FWS has determined that a recipient's accounting system does not meet the requirements contained in the clause entitled Standards for Financial Management Systems, additional pertinent information to further monitor grants and other agreements may be obtained upon written notice to the recipient until such time as the system is brought up to standard.

e. FWS shall reserve the option of shading out any line item on any report that is unnecessary for decision-making purposes.

f. FWS shall accept the identical information from the recipients in machine useable format or computer printouts in lieu of prescribed formats.

g. FWS may provide computer outputs to recipients when it will expedite or contribute to the accuracy of reporting.

**11. MONITORING AND REPORTING PROGRAM PERFORMANCE - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements]**

a. Recipients shall monitor the performance under grants and other agreements and, where appropriate, ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each agreement as set forth in the approved application or award document.

b. Recipients shall submit a performance report (technical report) for each agreement that briefly presents the following information for each program, function, or activity involved:

(1) A comparison of actual accomplishments with the goals established for the period, the findings of the investigator, or both. If the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

c. Recipients shall submit the performance or technical reports quarterly with the Financial Status Report (or Request for Advance or Reimbursement if used in lieu of the Financial Status Report); the final technical or performance report shall be submitted 90 days after completion of the project.

d. Between the required performance reporting dates, events may occur that have significant impact upon the project or program. In such instances, the recipient shall inform the SO as soon as the following types of conditions become known.

(1) Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.

e. If any performance review conducted by the recipient discloses the need for change in the budget estimates, the recipient shall submit a request for budget revision.

**12. REVISION OF FINANCIAL PLANS (OMB Circulars A-102/A-110) [This clause is applicable to all assistance agreements involving the transfer of Federal funds]**

a. The financial plan is the financial expression of the project or program as approved during the application and/or award process. It may include both the Federal and non-Federal share. It should be related to performance for program evaluation purposes whenever appropriate and required.

b. For nonconstruction awards, recipients shall immediately request approvals from Federal sponsoring agencies when there is reason to believe that a revision will be necessary for the following reasons:

(1) Changes in the scope or the objective of the project or program.

(2) The need for additional Federal funding.

(3) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa.

(4) The expenditures require approval in accordance with the applicable provisions of OMB Circular A-21, "Cost Principles for Educational Institutions;" OMB Circular A-87, "Cost Principles for State and Local Governments;" OMB Circular A-122, "Cost Principles for Non-Profit Organizations;" or Federal Acquisition Regulations (FAR), 31.2, "Cost Principles...with Commercial Organizations."

(5) Recipients plan to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.

c. None of the substantive programmatic work under a grant or other agreement may be subcontracted or transferred without prior approval of FWS. This provision does not apply to the purchase of supplies, material, equipment, or general support services.

d. The recipient may not transfer funds among direct cost categories for awards in which the Federal share exceeds \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed 5 percent of the total budget as last approved. The same criteria shall apply to the cumulative amount of transfer among programs, functions, and activities when budgeted separately for an award, except that the FWS shall permit no transfer that would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

e. For construction awards, recipients shall request prior approvals promptly from FWS for budget revisions wherever:

(1) The revision results from changes in the scope or the objective of the project or program, and

(2) The revision increases the budget amounts of Federal funds needed to complete the project.

f. When a grant or other agreement provides support for both construction and nonconstruction work, the recipient shall request approval from FWS prior to making any fund or budget transfers between the two types of work supported.

g. For both construction and nonconstruction awards, the recipients shall notify the FWS promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient by more than \$5,000 or 5 percent of the Federal award, whichever is greater.

h. When requesting approval for budget revisions, recipients shall use either the budget forms that were used in the application or a letter detailing the revisions.

i. Within 30 calendar days from the date of receipt of the request for budget revisions, FWS shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, FWS shall inform the recipient in writing of the date when the recipient may expect the decision.

j. FWS shall not be obligated to reimburse the recipient for outlays (costs) in excess of the Federally funded amount of the assistance agreement unless and until the SO executes a modification which increases the Federally funded amount. The Federally funded amount is the amount obligated under the agreement which may be less than or equal to the budgeted Federal share of the agreement.

### 13. CLOSEOUT PROCEDURES - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements]

a. The following definitions shall apply for the purpose of this clause.

(1) Closeout - The closeout of a grant or other agreement is the process by which a FWS determines that all applicable administrative actions and all required work of the agreement have been completed by the recipient and the FWS.

(2) Date of completion - The date of completion is the date on which all work under the grant or other agreement is completed or the date on the award document, or any supplement or amendment thereto, on which FWS sponsorship ends.

(3) Disallowed costs - Disallowed costs are those charges to a grant or other agreement that the FWS or its representative determines to be unallowable, in accordance with the applicable Federal cost principles or other conditions contained in the agreements.

b. The parties shall close out assistance agreements in accordance with the following procedures:

(1) Upon request, FWS shall make prompt payments to a recipient for allowable reimbursable costs under the grant or other agreement being closed out.

(2) The recipient shall immediately refund any balance of unobligated (unencumbered) cash that FWS advanced or paid and that is not authorized to be retained by the recipient.

(3) The FWS shall obtain from the recipient within 90 calendar days after the date of completion of the agreement all financial, performance, and other reports required as the condition of the agreement. The agency may grant extensions when requested by the recipient.

(4) When authorized by the grant or other agreement, FWS shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

(5) The recipient shall account for any property acquired with Federal funds, or received from the Government in accordance with the provisions of the clause entitled Property Management Standards.

(6) In the event a final audit has not been performed prior to the closeout of the grant or other agreement, FWS shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(7) The recipient shall complete and submit a final report in compliance with the clause entitled Standard Patent Rights within 90 calendar days after the date of completion. The form used shall be Department of the Interior (OI) Form 1216, entitled "Summary Report of Inventions and Subcontracts".

**14. SUSPENSION AND TERMINATION PROCEDURES - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements]**

a. The following definitions shall apply for the purpose of this clause.

(1) Termination - The termination of a grant or other agreement means the cancellation of Federal sponsorship, in whole or in part under an agreement at any time prior to the date of completion.

(2) Suspension - The suspension of a grant or other agreement is an action by FWS that temporarily suspends Federal sponsorship, pending corrective action by the recipient or pending a decision to terminate the grant or other agreement by FWS.

b. If the recipient fails to comply with the terms of the grant or other agreement, the SO may, on reasonable notice to the recipient, suspend the grant or other agreement, and withhold further payments and prohibit the recipient from incurring additional obligations of funds, pending corrective action by the recipient; or decide to terminate in accordance with paragraph c. All necessary and proper costs that the recipient could not reasonably avoid during the period of suspension shall be allowed provided that they meet the provisions of the applicable cost principles.

c. This grant or other agreement may be terminated as follows:

(1) Termination for cause - The SO may terminate any grant or other agreement in whole or in part at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The SO shall promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date. The recipient shall not incur new obligations after the effective date of the termination notice and shall cancel as many outstanding obligations as possible. Payments made to recipients or recoveries by FWS under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

(2) Termination for convenience - Grants and other agreements may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. In the event that both parties cannot agree, the SO reserves the right to unilaterally terminate the assistance agreement for the Government's convenience. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The SO shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

d. The parties shall promptly settle the terminated agreement in accordance with the applicable requirements of the clause entitled Close Out Procedures. In addition, the parties shall execute a modification setting forth the terms and conditions of the final settlement as a result of the termination of the agreement.

**15. PROPERTY MANAGEMENT STANDARDS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving government-furnished property or recipient-acquired property for which the costs will be reimbursed by the FWS]**

a. The recipient and approved subrecipients shall observe the standards governing the management of property prescribed by this clause. The recipient may use its own property management standards and procedures provided it observes the provisions of this clause.

b. The following definitions apply for the purpose of this clause:

(1) Real property - Real property means land, including land improvements, structures, and appurtenances thereto, but excluding movable machinery and equipment.

(2) Personal property - Personal property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions and copyrights.

(3) Nonexpendable personal property - Nonexpendable personal property means tangible personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit except that recipients subject

to Cost Accounting Standards Board regulations may use the CASB standard of \$500 per unit and useful life of 2 years. A recipient may use its own definition of nonexpendable personal property provided that the definition would at least include all tangible personal property as defined above.

(4) Expendable personal property - Expendable personal property refers to all tangible personal property other than nonexpendable property.

(5) Excess property - Excess property means property under the control of an Federal agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(6) Acquisition cost of purchased nonexpendable personal property - Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property useable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(7) Exempt property - Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph f.(1) below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides FWS with adequate authority.

c. If real property is acquired as a requirement of this grant or other agreement, the following shall apply:

(1) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project, as long as it is needed.

(2) The recipient shall obtain FWS approval for the use of real property in other projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under other Federally sponsored projects (i.e., grants or other agreements) or programs that have purposes consistent with those authorized for support by FWS.

(3) When the real property is no longer needed as provided in (1) and (2) above, the recipient shall request disposition instructions from FWS or its successor Federal sponsoring agency.

d. Federally-owned nonexpendable personal property - Title to Federally-owned property remains vested in the Federal government. Recipients shall submit annually an inventory listing of Federally-owned property in their custody to FWS. Upon completion of the agreement or when the property is no longer needed, the recipient shall report the property to FWS for further agency utilization.

e. Exempt property - When statutory authority exists, (e.g., P.L. 95-224) title to nonexpendable personal property acquired with project funds, shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of the FWS. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal government for its use or disposition except as provided in f.(1) below.

f. Other nonexpendable property - When other nonexpendable tangible personal property is acquired by a recipient with project funds, title shall not be taken by the Federal government but shall vest in the recipient subject to the following conditions:

(1) Right to transfer title - For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, FWS reserves the right to transfer the title to the Federal government or to a third party.

(2) Use of other tangible nonexpendable property for which the recipient has title.

(a) The recipient shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the property in connection with its other Federally sponsored activities, in the following order of priority: (i) activities sponsored by the FWS; and (ii) activities sponsored by other Federal agencies.

(b) Shared use - During the time that nonexempt nonexpendable personal property is held for use on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FWS; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal government, use on other activities not sponsored by the Federal government shall be permissible if authorized by FWS. User charges shall be considered if appropriate.

(3) Disposition of other nonexpendable property - When the recipient no longer needs the property as provided in f(2) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than \$1,000 - The recipient may use the property for other activities without reimbursement to the Federal government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more - The recipient may retain the property for other uses provided that compensation is made to FWS. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the recipient has no need for the property and the property has further use value, the recipient shall request disposition instructions from FWS.

(4) Property management standards for nonexpendable property - The recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:

(a) Property records shall be maintained accurately and shall include:

- (i) A description of the property.
- (ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- (iii) Source of the property, including grant or other agreement number.
- (iv) Whether title vests in the recipient or the FWS;
- (v) Acquisition date (or date received, if the property was furnished by the FWS) and cost.
- (vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the FWS).
- (vii) Location, use and condition of the property and the date the information was reported.
- (viii) Unit acquisition cost.
- (ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the FWS for its share.

(b) Property owned by the FWS must be marked to indicate Federal ownership.

(c) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify FWS.

(e) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(f) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

g. Expendable personal property - Title to expendable personal property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant or other agreement, and the property is not needed for any other Federally sponsored project or program, the recipient shall retain the property for use on non Federally sponsored activities, or sell it, but must in either case, compensate FWS for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

h. Intangible property.

(1) Inventions and patents - If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal government, such fact shall be promptly and fully reported to FWS. Unless there is a prior agreement between the recipient and FWS on disposition of such items, the FWS shall determine whether protection on the invention or discovery shall be sought. FWS will also determine how the rights in the invention or discovery--including rights under any patent issued thereon--shall be allocated and administered in order to protect the public interest consistent with current Government Patent Policy.

(2) Copyrights - Except as otherwise provided in the terms and conditions of the agreement, the author or the recipient organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but FWS shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

i. Excess personal property - When title to excess property is vested in recipients, such property shall be accounted for and disposed of in accordance with disposition instructions from FWS.



**16. PROCUREMENT STANDARDS** - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving recipient procurement of supplies, equipment, construction or other services and reimbursement with Federal funds]

a. The standards contained in this clause do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to FMS regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant or other agreement. These include disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have property jurisdiction.

b. Recipients may use their own procurement policies and procedures. However, all recipients shall adhere to the standards set forth in this clause and applicable Federal law.

c. Code of conduct - The recipient shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using Federal funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which Federal funds are used, where, to his knowledge, he or his immediate family, partners, or organization in which he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment. The recipients' officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

d. Procurement transactions - All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeree whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeree must fulfill in order for his bid/offer to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

e. Procurement procedures - All recipients shall establish procurement procedures that provide for, at a minimum, the following procedural requirements.

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerees shall be clearly specified.

(3) Positive efforts shall be made by the recipients to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.

(4) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(6) Review and approval by the SO of the recipient's proposed contracts and related procurement documents is required when the procurement is: (a) expected to exceed \$10,000 and is to be awarded without competition or only one offer is received, (b) expected to exceed \$10,000 and specifies a "brand name" product, or (c) the recipient's procurement procedures or operations fail to comply with this clause. The provisions of this subparagraph are waived in the event the recipient's procurement system has been certified in accordance with the Office of Federal Procurement Policy.

(7) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. Costs or prices based on estimated costs for subcontract under the grant or other agreement shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with applicable cost principles.

(8) Procurement records and files for purchases in excess of \$10,000 shall include the following:

- (a) Basis for contractor selection;
- (b) Justification for lack of competition when competitive bids or offers are not obtained;
- (c) Basis for award cost or price.

(9) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

**8. Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.**

(1) It is national policy to award a fair share of contracts to small and minority business firms, women-owned businesses and labor surplus area firms. The recipient agrees to use its best efforts to carry out this policy in the award of subcontracts or other agreements to the fullest extent consistent with the efficient performance of this assistance agreement.

**(2) Definitions**

(a) The term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and in relevant regulations promulgated pursuant thereto.

(b) The term minority firm ("small business concern owned and controlled by socially and economically disadvantaged individuals") shall mean a small business concern:

- (i) which is a least 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and
- (ii) whose management and daily business operations are controlled by one or more of such individuals.

The recipient shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(c) A "woman-owned business" concern means a business that is a least 51 percent owned by a woman or women that also control and operate it. "Control" in this context means being actively involved in the day-to-day management. "Women" mean all women business owners.

(d) The term "labor surplus area concern" means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

(3) Accordingly, recipients shall take steps to assure that such preference firms are utilized when possible as sources of suppliers, equipment, construction and services. Affirmative steps shall include the following:

(a) Including qualified small and minority businesses on solicitation lists.

(b) Assuring that small and minority businesses are solicited whenever they are potential sources.

(c) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum small and minority business participation.

(d) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(e) Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, the Community Services Administration, the Office of Small and Disadvantaged Business Utilization of the Department of the Interior, and Business Utilization and Development Specialists of the U.S. Fish and Wildlife Service.

If any subcontracts are to be let, requiring the prime contractor to also take the affirmative steps in a through e above.

- (4) Recipients shall take similar appropriate affirmative action in support of women's business enterprises.
- (5) Recipient's are encouraged to procure goods and services from labor surplus areas.
- (6) Where opportunities for subcontracting or other subagreements exist, the recipient shall submit a completed Department of the Interior (OI-1925) Minority Business Utilization Report within 10 days after the end of each fiscal year quarter. One copy shall be provided to each of the following addresses:

Business Utilization Development Specialist  
 Division of Contracting and General Services (CGS)  
 U.S. Fish and Wildlife Service  
 Room 821, Riddell Building  
 18th & C Streets, NW  
 Washington, D. C. 20240

Director, Office of Small and Disadvantaged Business Utilization  
 Office of the Secretary  
 U.S. Department of the Interior  
 18th & C Streets, NW  
 Washington, D. C. 20240

The requirement for submission of this form is a result of the U.S. Department of the Interior's implementation of Executive Order 12432, dated July 14, 1983, entitled "Minority Business Enterprise Development."

- g. Contract provisions - The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of \$10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the recipient including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded for more than \$100,000, recipients shall observe the bonding requirements provided in the clause entitled Bonding and Insurance.

(4) All contracts awarded by recipients and their contractors or subgrantees having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).

(5) All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to FWS.

(6) When required by the Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the SO.

(7) When required by the Federal program legislation, recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous

or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by FWS and the recipient.

(9) All negotiated contracts (except those of \$10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FWS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. Recipients shall require contractors to maintain all required records for 3 years after the recipient makes final payment and all pending matters are closed.

(10) Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to FWS and the regional office of the Environmental Protection Agency.

(11) Contracts 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 (P.L. 94-163).

h. If the recipient is a State or local government or other entity as defined in OMB Circular A-102, it shall adhere to the following additional provisions:

In order to foster greater economy and efficiency, recipients are encouraged to enter into State and local intergovernmental agreements for procurements or use of common goods and services.

Procurements shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

(1) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. Recipients shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(a) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

- (i) A complete, adequate and realistic specification or purchase description is available.
- (ii) Two or more responsible suppliers are willing and able to compete effectively for the recipient's business.
- (iii) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(b) If formal advertising is used for a procurement under a grant or other agreement, the following requirements shall apply:

- (i) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.
- (ii) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.
- (iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.
- (iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.
- (v) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

(3) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant or other agreement, the following requirements shall apply:

(a) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(b) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(c) The recipient shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(d) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(e) Recipients may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

(4) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising), or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- (a) The item is available only from a single source;
- (b) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;
- (c) FWS authorizes noncompetitive negotiation; or
- (d) After solicitation of a number of sources, competition is determined inadequate.

**17A. AUDIT REQUIREMENTS - (OMB Circular A-110) - [This clause is applicable to all assistance agreements with institutions of higher education, hospitals and other nonprofit organizations involving the transfer of Federal funds]**

a. Recipients' financial management systems shall provide for examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the recipient be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grants and other agreements. Such tests would include an appropriate sampling of Federal agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every 2 years. The frequency of these examinations shall depend upon the nature, size and the complexity of the activity. These examinations do not relieve Federal agencies of their audit responsibilities, but may affect the frequency and scope of such audits.

b. The primary recipient shall require its subrecipients to adapt the above standards.

**17B. AUDIT REQUIREMENTS - (OMB Circular A-128) - [This clause is applicable to all assistance agreements with State and local governments and Federally recognized Indian tribal governments]**

a. Definitions - For the purposes of this clause the following definitions from the Single Audit Act apply:

(1) "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out their audit responsibilities.

(2) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

(3) "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

(4) "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(5) "Generally accepted government auditing standards" means the Standards for Audit of Government Organizations, Program, Activities, and Functions, developed by the Comptroller General dated February 27, 1981.

(6) "Independent auditor" means:

- (a) An external State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or
- (b) A public accountant who meets such independence standards.

(7) "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

- (a) Resource use is consistent with laws, regulations, and policies;
- (b) Resources are safeguarded against waste, loss, and misuse; and
- (c) Reliable data are obtained, maintained and fairly disclosed in reports.

(8) "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(9) "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(10) "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

(11) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State regional, or interstate entity that has governmental functions and any Indian tribe.

(12) "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal Financial Assistance.

**b. Scope of audit - The Single Audit Act provides that:**

(1) The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(2) Each audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives over \$25,000 in General Revenue Sharing funds in a fiscal year, it shall have an audit of the entire organization. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

(3) Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this clause. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of OMB Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospital(s) and Other Nonprofit Organizations."

(4) The auditor shall determine whether:

- (a) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;
- (b) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and
- (c) The organization has complied with laws and regulations that may have a material effect upon each major Federal assistance program.

c. Frequency of audit - Audits shall be made annually unless the State or local government has by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, concerning both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

d. Internal control and compliance reviews. The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

(1) Internal control review. In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(a) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(b) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

(2) Compliance review - The law also requires the auditor to determine whether the organization has complied with laws and regulations that have a material effect upon each major Federal assistance program.

(a) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(b) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(i) In making these tests of transactions, the auditor shall determine whether:

--the amounts reported as expenditures were for allowable services, and

--the records show that those who received services or benefits were eligible to receive them.

(ii) In addition to transaction testing, the auditor shall determine whether:

--matching requirements, levels of effort and earmarking limitations were met,

--Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

--amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost Principles for State and Local Governments" and OMB Circular A-102, "Uniform Requirements for Grants and Agreements with State and Local Governments."

(iii) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the Compliance Supplement for Single Audits of State and Local Governments, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(c) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

e. Subrecipients - State or local governments that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subrecipient shall:

(1) Determine whether State or local subrecipients have met the audit requirements of this clause and whether subrecipients covered by OMB Circular A-110, "Uniform Requirements for Grants and Agreements with Universities, Hospitals, and Other Non-Profit Organizations," have met that requirement;

(2) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this clause, OMB Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after issuance of the audit report in instances of noncompliance with laws and regulations;

(4) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

(5) Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this clause.

**f. Relation to other audit requirements.**

(1) The provisions of this clause do not limit the authority of FWS to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

(2) FWS shall make any additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this clause do not authorize any State or local government (or subrecipient thereof) to constrain, in any manner, FWS from carrying out such additional audits.

(3) If FWS makes or contracts for audits in addition to the audits made by recipients pursuant to this clause, it shall, consistent with other applicable laws and regulations, provide for the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

**g. Illegal acts or irregularities** - If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

**h. Audit Reports** - Audit reports must be prepared at the completion of the audit and shall include the following:

(1) The audit report shall state that the audit was made in accordance with the provisions of this clause. The report shall be made up of at least:

(a) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance showing the total expenditures for each Federal assistance program as identified in the Catalog of Federal Domestic Assistance. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal Assistance."

(b) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(c) The auditor's report on compliance containing:

(i) A statement of positive assurance with respect to those items tested for compliance including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(ii) Negative assurance on those items not tested;

(iii) A summary of all instances of noncompliance; and

(iv) An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

(2) The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

(3) All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report.

(4) In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report including a plan for corrective actions taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.



(5) The reports shall be made available by the State or local government for public inspection within 30 days after completion of the audit.

(6) In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

(7) Recipients of more than \$100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

(8) Recipients shall keep audit reports on file for three years from their issuance.

**i. Audit Resolution** - The cognizant agency shall be responsible for overseeing the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate solely to the programs of FWS will be the responsibility of the recipient and FWS. Alternate arrangements may be made on a case-by-case basis by agreement between the agencies concerned.

Resolution shall be made within six months after receipt of the report by the departments and agencies. Corrective action should proceed as rapidly as possible.

**j. Audit workpaper and reports** - Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

**k. Audit Costs** - The cost of audits made in accordance with the provisions of this clause are allowable charges to Federal assistance programs.

(1) The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-87, "Cost Principles for State and Local Governments."

(2) Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds represent of total expenditures of the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

**l. Sanctions** - No cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this clause. In cases of continued inability or unwillingness to have a proper audit, FWS may consider other appropriate sanctions including:

(1) withholding a percentage of assistance payments until the audit is completed satisfactorily.

(2) withholding or disallowing overhead costs, or

(3) suspending the Federal assistance agreement until the audit is made.

**m. Auditor Selection** - In arranging for audit services State and local governments shall follow the procurement standards prescribed in Clause 16. The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

**n. Small and Minority Audit Firms** - Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this clause. Recipients of Federal assistance shall take the following steps to further this goal:

(1) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned by socially and economically disadvantaged individuals.

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

(5) Encourage contracting with consortiums of small audit firms as described in paragraph (1) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

**17C. AUDIT REQUIREMENTS - (April 1984, Deviations, FAR 52.215.2) - [This clause is applicable to all assistance agreements with commercial organizations involving the transfer of Federal funds]**

a. Examination of Costs - The recipient shall maintain--and the SO or representatives of the SO shall have the right to examine and audit--books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this agreement. This right of examination shall include inspection at all reasonable times of the recipient's facilities or parts of them, engaged in the performance of the agreement.

b. Cost or Pricing Data - The SO or representatives of the SO shall have the right to examine and audit all books, records, documents and other data of the recipient (including computations and projections) related to pricing or performing the initial agreement or subsequent modifications in order to evaluate the accuracy, completeness and currency of the cost or pricing data.

c. Reports - If the recipient is required to furnish cost, funding, or performance reports, the SO or representatives of the SO shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the recipient's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

d. Availability - The recipient shall make available at its office at all reasonable times the materials described in paragraphs a and b above, for examination, audit, or reproduction, as specified in the clause entitled Retention and Custodial Requirements for Records.

In addition, the recipient shall insert a clause containing all the terms of this clause, including this paragraph, in all subcontracts over \$100,000 under this agreement, altering the clause only as necessary to identify properly the contracting parties and the SO under the Government prime agreement.

**18. STANDARD PATENTS RIGHTS - (OMB Circular A-124) - [This clause is applicable to all assistance agreements for the performance of research and development work unless otherwise superseded in the Special Provisions of the individual assistance agreement]**

**a. Definitions**

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Subject Invention" means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a domestic small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size, standards for small business concerns, involved in Government procurement and subcontracting at 13 CFR 121.3-12, respectively, shall be used.

(6) "Nonprofit Organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

b. Allocation of Principal Rights - The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The recipient shall disclose each subject invention to FKS within 2 months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to FKS shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the FKS, the recipient shall promptly notify FKS of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient.

(2) The recipient shall elect in writing whether or not to retain title to any such invention by notifying the FKS within 12 months of disclosure to the recipient, provided that in any case where publication, on sale, or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by FKS to a date that is no more than 60 days prior to the end of the statutory period.

(3) The recipient shall file its initial patent application on an elected invention within 2 years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient shall file patent applications in additional countries within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to FKS, election, and filing may, at the discretion of FKS, be granted.

d. Conditions When the Government May Obtain Title - The recipient shall convey to FKS, upon written request, title to any subject invention:

(1) If the recipient fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title. FKS may only request title within 60 days after learning of the recipient's failure to report or elect within the specified times.

(2) In those countries in which the recipient fails to file patent applications with the times specified in c. above; provided, however, that if the recipient has filed a patent application in a country after the times specified in c. above, but prior to its receipt of the written request of FKS, the recipient shall continue to retain title in that country.

(3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding, on a patent on a subject invention.

e. Minimum Rights to Recipient

(1) The recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the recipient fails to disclose the subject invention within the times specified in c. above. The recipient's license extends to its domestic subsidiaries and affiliates, if any, within the organizational structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of FKS except when transferred to the successor of that party of the recipient's business to which the invention pertains.

(2) The recipient's domestic license may be revoked or modified by FKS to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and FKS licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of FKS to the extent the recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in the foreign country.

(3) Before revocation or modification of the license, FWS shall furnish the recipient a written notice of its intention to revoke or modify the license, and the recipient shall be allowed 30 days (or such other time as may be authorized by the FWS for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable FWS licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

**f. Recipient Action to Protect the Government's Interest**

(1) The recipient agrees to execute or to have executed and promptly deliver to FWS all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to FWS when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient each subject invention made under agreement in order that the recipient can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by c.(1) above. The recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The recipient shall notify FWS of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The recipient agrees to include, within the specification any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the agreement awarded by the U.S. Fish and Wildlife Service). The Government has certain rights in this invention."

**g. Subcontracts** - The recipient shall include this clause suitably modified to identify the parties, in all subagreements, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subrecipient shall retain all rights provided for the recipient in this clause, and the recipient shall not, as part of the consideration for awarding the subagreement obtain rights in the subrecipient's subject inventions.

**h. Reporting Utilization of Subject Inventions** - The recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the recipient, and such other data and information as the agency may reasonably specify. The recipient also agrees to provide additional reports as may be requested by FWS in connection with any march-in proceedings undertaken by FWS in accordance with paragraph j. of this clause. To the extent data or information supplied under this section is considered by the recipient, its licensee or assignee to be privileged and confidential and is so marked, FWS agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

**i. Preference for United States Industry** - Notwithstanding any other provision of this clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the FWS upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**j. March-in-Rights** - The recipient agrees that with respect to any subject invention in which it has acquired title, FWS has the right in accordance with the procedures in OMB Circular A-124 to require the recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the recipient, assignee, or exclusive licensee refuses such a request, FWS has the right to grant such a license itself if FWS determines that:

(1) Such action is necessary because the recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph 1. of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**k. Special Provisions for Agreements with Nonprofit Organizations - If the recipient is a nonprofit organization, it agrees that:**

- (1) Rights to a subject invention in the United States may not be assigned without the approval of FWS, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee shall be subject to the same provisions as the recipient;
- (2) The recipient may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:
  - (i) Five years from first commercial sale or use of the invention; or
  - (ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, FWS approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention.
- (3) The recipient shall share royalties collected on a subject invention with the inventor; and
- (4) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, shall be utilized for the support of scientific research or education.

**19. DATA COLLECTION - (Paperwork Reduction Act of 1980) - [This clause shall be applicable to all assistance agreements through which FWS sponsors the collection of information as defined in 5 CFR §1320.7]**

a. OMB requires review and approval of plans and reports used to collect identical information from 10 or more persons (other than Federal employees) under assistance agreements sponsored by FWS. A collection of information undertaken by a recipient is considered to be "sponsored" by FWS only if:

- (1) The recipient is collecting information at the specific request of FWS; or
- (2) The terms and conditions of the agreement require specific approval by FWS of the collection of information or the collection procedures.

b. Unless otherwise specified, data collection conducted under the assistance agreement is the responsibility of the recipient, and FWS support of the project does not constitute FWS approval of the survey design, questionnaire content, or data collection procedures. The recipient shall not represent to respondents that such data is being collected for, or in association with, the FWS or any Federal agency without the specific written approval of such data collection plan or device by the FWS. However, this requirement is not intended to preclude mention of FWS support of the project in response to any inquiry or acknowledgement of such support in any publication of this data.

**20. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE - [This clause shall be applicable to all assistance agreements involving the accumulation of technical data or the development of computer software financed in whole or in part with Federal funds]**

**a. Definitions**

(1) The term "technical data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. Technical data does not include computer software, and it does not include financial, administrative, cost pricing, and management data, or other information incidental to contract administration.

(2) Computer Software - Computer programs and computer data bases.

(3) Computer Software Documentation - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(4) Unlimited Rights means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(5) Limited Rights means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for emergency repairs or release to a foreign government as the interest of the United States may require.

(6) Restricted Rights apply only to computer software and include, as a minimum, the right to: (i) use computer software with the computer (or if inoperative, a backup) for which it was acquired at any Government installation; (ii) copy computer programs for safekeeping (archives) or backup purposes; (iii) modify computer software or combine it with other software, subject to continuation of the existing restricted rights provisions.

b. Government Rights

(1) Unlimited Rights - The Government shall have unlimited rights in:

(a) Technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government assistance agreement or contract, at any tier;

(b) Computer software required to be originated or developed or generated as a necessary part performance under this or any other Government assistance agreement or contract, at any tier;

(c) Computer data bases prepared under this or any other Government assistance agreement or contract at any tier consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(d) Technical data or computer software, constituting corrections or changes to Government-furnished data or computer software, prepared or required to be delivered under this or any other Government assistance agreement or contract at any tier;

(e) Technical data or computer software which is in the public domain or has been or is normally released or disclosed by the recipient or subrecipients without restriction or further disclosure;

(f) Technical data or computer software listed or described elsewhere in this assistance agreement which the parties have predetermined and agreed will be furnished with unlimited rights.

(2) Limited Rights - The Government shall have limited rights in:

(a) Technical data, listed or described elsewhere in this assistance agreement which the parties have agreed will be furnished with limited rights;

(b) Unpublished technical data developed at private expense and unpublished computer software, documentation related to computer software that is acquired with restricted rights provided that the data to which the Government's rights are limited is identified.

(3) Restricted Rights - The Government shall have restricted rights in computer software, listed or described elsewhere in this assistance agreement, which the parties have agreed will be furnished with restricted rights, provided further that:

(a) The recipient clearly marks the computer software with a restricted rights legend and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. Failure of the recipient to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(b) The recipient may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth elsewhere in this assistance agreement and agreed to by the parties prior to the delivery data of the software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use to any data or computer software which the recipient has previously delivered to the Government, without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

c. Indemnification - The recipient shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the recipient of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this assistance agreement.

d. Acquisition of Technical Data and Computer Software from Subcontractors

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this agreement, the recipient shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the recipient's rights in that subcontractor data or computer software which is required for the Government.

(2) The recipient and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

e. Relation to Patents - Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

21. RESTRICTIONS ON PRINTING - (Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States) - [This clause is applicable to all assistance agreements except those in which the entire cost of printing is not borne by the FWS or the printing is not exclusively for the FWS' use]

a. This assistance agreement is not made primarily or substantially for the purpose of typesetting or having material printed for FWS use.

b. Recipients may reproduce without further authorization, reports, data, or other written material required under the terms of the agreement for the use of FWS, provided that the material duplicated does not exceed 5,000 units of only one page, or that items consisting of multiple pages do not exceed 25,000 units in the aggregate. Recipients must advise the SO if the estimated quantities will exceed these ceilings so that Departmental/Committee approval can be obtained.

c. These restrictions do not preclude the writing, editing, preparation of manuscript copy and related illustrative material, or the publication of findings by recipients; or the administrative printing requirements of the recipient required for its own use to respond to the terms of the agreement.

22. OTHER ADMINISTRATIVE PROVISIONS AND ASSURANCES - [The following provisions and assurances are applicable to all assistance agreements]

The recipient hereby assures and certifies that:

a. It possesses legal authority to apply for and accept this Agreement; that any necessary resolution, motion or similar action has been duly adopted or passed as an official act of its governing body, authorizing the filing of any application, including all understandings and assurances contained therein and directing and authorizing any person identified as its official representative to act in connection with any application or acceptance and to provide such information as may be required.

b. It shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which recipient receives Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement.

c. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (i) the primary purpose of an agreement is to provide employment or (ii) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the assistance-aided activity.

d. It shall comply with the provisions of the Age Discrimination Act of 1975 (P.L. 94-135; 42 U.S.C. 6101, et. seq.) and in accordance with that Act, shall prohibit discrimination on the basis of age.

e. It shall comply, to the extent applicable, with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et. seq.) which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

f. It shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education and Welfare (45 CFR Parts 80, 81 and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.

g. It shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646; 42 U.S.C. 4601, et. seq.) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.

h. It shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 500, et. seq.) requiring the payment of the minimum wage for all covered employees and the payment of overtime.

i. It shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

j. It shall assure that no member of or delegate to Congress, or resident Commissioner, will be admitted to any share or part of this assistance agreement, or to any benefit that may arise from it. And further, it shall comply with the provisions of 18 U.S.C. 1913 which prohibits the direct or indirect use of any funds appropriated by Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence a member of Congress, to favor or oppose, any legislation or appropriation, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation. Finally, it warrants that it has not paid and agrees not to pay any bonus, commission or fee for the purpose of obtaining approval of its application for the financial assistance agreement.

k. It shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234, 87 Stat. 975, approved December 13, 1975) which call for the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

l. It shall ensure, pursuant to Executive Order 11738, that the facilities under its ownership, lease, or supervision, which shall be utilized in the accomplishment of the agreement are not listed on the Environmental Protection Agency (EPA) list of violating facilities and that it shall notify FWS of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

m. It shall comply with the provisions of the National Environmental Policy Act of 1969, (P.L. 91-190) and Executive Order 11514, as amended by Executive Order 11991, which promotes efforts to prevent or eliminate damage to the environment and biosphere and requires an Environmental Impact Statement when plans and programs may affect the quality of the environment.

n. It shall comply, to the extent applicable, with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et. seq., as amended by P.L. 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended by P.L. 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder.

o. It will comply with the provisions of Executive Order 11288, relating to the prevention, control and abatement of water pollution.

p. It shall assist FWS in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et. seq.) by (1) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying FWS of the existence of any such properties, and by (b) complying with all requirements established by FWS to avoid or mitigate adverse effects upon such properties.

q. It shall comply with the provisions of the Cargo Preference Act of 1958 (46 U.S.C. 1241(b)(1)) as it relates to ensuring fair and reasonable participation by privately owned U.S. Flag commercial vessels in transporting cargos and the requirements of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 11596) for preferential use of U.S. Flag air carriers for the international transportation of persons, personal effects and other cargo.

r. It shall comply with the provisions of Section 176 (c) of the Clean Air Act (42 U.S.C. 7401, et. seq.) to assure that Federal assistance activities do not detrimentally affect State efforts to attain and maintain the national ambient air quality standards and protect air quality cleaner than the standards.



s. It shall comply with the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et. seq.) to assure that Federal assistance activities are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species.

t. It shall comply with the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, et. seq.) as it relates to restriction on the taking and use of marine mammals.

u. It shall comply with the requirements of the Laboratory Animal Welfare Act of 1966, as amended (7 U.S.C. 2131, et. seq.) and the regulations promulgated by the U.S. Department of Agriculture pertaining to the care, handling and treatment of warm-blooded animals held or used for research, teaching or other activities supported by Federal funds.

v. It shall comply with the requirements of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, et. seq.) as it relates to the application of any pesticide.

w. It shall comply with the requirements of the National Research Act of 1974, as amended, [42 U.S.C. 289 (1)(3)] and regulations issued by the U.S. Department of Health and Human Services (45 CFR, Part 46) as they relate to safeguarding the rights and welfare of any human subjects involved in research, development and related activities supported by Federal assistance funding.

x. It shall comply with the requirements of the Privacy Act of 1984 [5 U.S.C. 552(a)], OMB Circular A-108 and the Freedom of Information Act (5 U.S.C. 552) as amended, as they relate to the design, development or operation of any system of records on individuals performed by the Federal assistance recipient or subrecipient involving the performance of the government function, including the collection, use, and dissemination of records.

y. It shall comply with the provisions of Executive Order 12372, as implemented by Department of the Interior regulations [43 CFR Part 9; 48 FR 29224, June 24, 1983] as they relate to Intergovernmental Review of Federal Programs.

z. It shall comply with all requirements imposed by a Federal agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with applicable OMB Circulars.

[The following additional administrative provisions and recipient assurances are applicable to assistance agreements with State and local governments.]

aa. It shall comply with the provisions of the Hatch Political Act of 1940 (5 U.S.C. 1501) which limits the political activity of State and local government employees whose salaries are paid from Federal assistance funds.

bb. It shall comply with the requirements of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et. seq.) to assure that Federal assistance activities are consistent with Federally-approved State coastal management programs designed to preserve, protect, develop and, where possible, restore or enhance the nation's coastal resources.

[The following additional administrative provisions and recipient assurances are applicable to assistance agreements involving construction and improvements.]

cc. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.

dd. It will require the facility to be designed to comply with the "American Standard Specializations for making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified, (41 CFR 101-19.603). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

ee. It will obtain approval by FWS of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to FWS for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

ff. It will cause work on the project to be commenced within a reasonable time after receipt of notification from FWS that funds have been approved and that the project will be prosecuted to completion with reasonable diligence.

gg. It will dispose of or encumber its title or other interests in the site and facilitate during the period of Federal interest or while the Government holds bonds, whichever is the longer.

hh. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as FWS may require.

ii. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.

jj. It shall assist in compliance with Executive Order 11988, Flood Plain Management which requires avoidance, to the extent possible, of the long- and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid the direct or indirect support of flood plain development whenever there is a practicable alternative.

kk. It shall assist in compliance with Executive Order 11990, "Protection of Wetlands" which requires minimizing the destruction, loss or degradation of wetlands and efforts to preserve and enhance their natural and beneficial values.

23. ORDER OF PRECEDENCE - [This clause shall be applicable to all assistance agreements]

In the event of any inconsistency between any provisions of this agreement, the following order of precedence shall apply:

- a. Statement of Work (excluding the recipient's proposal, if incorporated).
- b. Special Provisions.
- c. General Provisions.
- d. Recipient's Proposal (if incorporated).

**INTERGOVERNMENTAL AGREEMENT**

This Agreement is made between the Metropolitan Service District (hereinafter referred to as "METRO") and \_\_\_\_\_ (hereinafter referred to as "RECIPIENT") this \_\_\_\_ day of \_\_\_\_\_ 199\_, for the period \_\_\_\_\_ to \_\_\_\_\_.

**W I T N E S S E T H:**

WHEREAS, METRO and RECIPIENT have mutual interest in accomplishment of an environmental education project related to the Metropolitan Greenspaces Program (hereinafter referred to as "PROJECT"), and desire to jointly participate in the PROJECT. The Scope of Work of said PROJECT is listed in Exhibit "A" attached hereto; and

WHEREAS, METRO has received a grant from the U.S. Fish and Wildlife Service and a portion of said grant was set aside for environmental education grants. This PROJECT will be funded by no more than fifty percent (50%) by METRO from these funds and at least fifty percent (50%) funded by the recipient, either in cash or in-kind donations; and

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the parties hereto as follows:

1. METRO hereby approves the project proposal and authorizes RECIPIENT to proceed with the PROJECT in accordance with the Scope of Work attached as Exhibit "A."
2. The estimated total cost of the PROJECT is \$ \_\_\_\_\_ DOLLARS. The RECIPIENT shall in the first instance, pay all the costs of the PROJECT and then request reimbursement upon completion of the PROJECT. Upon receipt of an invoice from RECIPIENT, METRO shall submit said costs to U.S. Fish and Wildlife Service for reimbursement. Upon receipt of said funds, METRO will issue payment to RECIPIENT. Detailed terms of arrangements are set forth in Attachment "B" of this Agreement.
3. Upon completion of the PROJECT, there will be no further obligations on the part of METRO and U.S. Fish and Wildlife Service.

4. RECIPIENT agrees to comply at all times with provisions of the Cooperative Agreement between Fish and Wildlife Service, U.S. Department of the Interior and METRO, which appear as Attachment "C" of this Agreement and by this reference made a part hereof.
5. This contract is entered into within the State of Oregon, and the law of said state, whether substantive or procedural, shall apply to this contract, and that all statutory, charter and ordinance provisions that are applicable to the public contracts in the City of Portland, Multnomah, Washington and Clackamas Counties, and the State of Oregon shall be followed with respect to this contract.
6. RECIPIENT will document on final products and/or visual presentations that partial funding came from the Greenspaces Program of METRO and the U.S. Fish and Wildlife Service.
7. RECIPIENT shall indemnify, protect, defend and hold harmless METRO and its officers, agents, employees and members from any and all claims, suits or actions of any nature, including, but not limited to, costs and attorney fees, arising out of or related to the activities of RECIPIENT, its officers, subcontractors, agents or employees under this contract. If RECIPIENT fails to defend or indemnify, METRO may, at its option, bring an action to compel same or undertake its own defense. In either event, RECIPIENT shall be responsible for all of METRO's costs, expenses and attorney fees including the reasonable market value of any services provided by METRO's employees.
8. Termination for Cause: METRO may terminate this Agreement in full, or in part, at any time before the date of completion, whenever METRO determines, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement. METRO shall promptly notify RECIPIENT in writing of this determination and the reasons for the termination, together with the effective date. METRO shall only be responsible to RECIPIENT to the extent, if any, of federal reimbursement.
9. Termination for Convenience: This Agreement may be terminated in whole, or in part, when all parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The parties shall agree upon the termination conditions including the effective date and, in the case of partial terminations, the portion or portions to be terminated. The parties shall not incur new obligations after the effective date of termination, and shall cancel as many outstanding obligations as possible. METRO shall only be responsible to RECIPIENT to the extent, if any, of federal reimbursement.
10. This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. RECIPIENT, by the signature below of its authorized representative, hereby

acknowledges that **RECIPIENT** has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth below.

**RECIPIENT**

**METROPOLITAN SERVICE DISTRICT**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

s:\pd\cont\elp

Council  
12/22/92  
7.4

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ENDORSING )	RESOLUTION NO. 92-1706
ALTERNATIVES FOR EVALUATION IN )	
THE DRAFT ENVIRONMENTAL IMPACT )	Introduced by
STATEMENT (DEIS) PHASE OF THE )	Councilor Richard Devlin
WESTERN BYPASS STUDY )	

WHEREAS, The Metropolitan Service District (Metro) is a signatory to the Western Bypass Study Planning Coordination Agreement to seek solutions to north-south and circumferential travel congestion in southeast Washington County; and

WHEREAS, The Coordination Agreement, as amended by Resolution No. 92-1550 commits the Joint Policy Advisory Committee on Transportation (JPACT) and Metro to consider the Oregon Department of Transportation (ODOT) recommendation on the alternatives to be evaluated in the Draft Environmental Impact Statement; and

WHEREAS, ODOT has evaluated six strategies plus the LUTRAQ alternative; and

WHEREAS, ODOT has recommended the inclusion of the LUTRAQ alternative along with four other alternatives developed from the strategy analysis; now, therefore,

BE IT RESOLVED,

1. That the five alternatives recommended by ODOT and its Technical, Citizens and Steering Committees, and described in the "Evaluation of Alternatives Evaluation Summary" dated October 5, 1992 and included as Exhibit A, namely: the No-Build, the Planned Projects/TSM, the LUTRAQ, the Arterials Expansion/HOV Express and the Bypass Alternatives, be carried forward for analysis in the Draft Environmental Impact Statement.

2. That no element of any of the alternatives be included in such a way as to preclude the eventual inclusion of LRT as the Highway 217 High-Capacity Transit element at a later date.

3. That further consideration be given to financing the major elements of the alternatives.

4. That further evaluation of components related to parking charges, dial-a-ride transit, and transit fare subsidy be reflected in the DEIS.

ADOPTED by the Council of the Metropolitan Service District  
this \_\_\_\_ day of \_\_\_\_\_, 1992.

Jim Gardner, Presiding Officer

TKL:lmk  
92-1706.RES  
11-2-92

Council  
12/22/92  
7.7

## BICYCLE EXCISE TAX: ISSUE PAPER

Prepared by Rex Burkholder, Bicycle Transportation Alliance

Imposing a sales tax on bicycles and bicycle accessories is poor transportation policy and questionable fiscal policy.

1) **Higher Costs Lead to Decreased Demand:** Raising the cost of bicycle transportation will have an undesirable negative effect on bicycle use. Basic economic theory tells us that increasing the cost of a good or service reduces demand for that good or service: this is the idea behind taxing items like cigarettes and alcohol (for this reason higher gas taxes and parking fees have been proposed as a way of lowering automobile use). State and local goals and policies look to increased bicycle use as one means of relieving congestion on Oregon roadways: any action that makes this mode less attractive will make these goals more difficult to attain.

2) **Poor Source of Revenue:** The proposed excise tax on bicycles and bicycle accessories is a poor source of revenue. Projected to generate approximately one million dollars annually, the cost of collection and administering a stand-alone sales tax of this type will be high in relation to revenues and would be an undue burden on one segment of Oregon's retail community. In addition, earmarking these funds for off-road bicycle facilities will not relieve congestion, as off-road facilities serve mostly recreational purpose. Off-road facilities are also notoriously expensive to build: the I-205 bicycle path cost close to \$250,000 a mile; yet, still has many hazardous sections due to lack of sufficient funds.

3) **Equity:** Many people use bicycles out of economic necessity, including children and the elderly. While society heavily subsidizes automobile and transit use, bicycle transportation receives very little in public support. (The whole State budget for bicycle facilities amounts to less than the damage done to highways by studded tires!) While 85% of bicycle riders also own and drive automobiles, even those without cars pay highway fees included in the cost of goods delivered by motor vehicle. Their property taxes also pay for road building, emergency services and some road maintenance.

4) **Gas Taxes are Not User Fees:** Even conservative estimates of the true cost to society of automobile use set these costs at many times current gasoline tax rates. The argument that bicyclists should "pay their fair share" doesn't make sense when we consider the immense subsidies lavished on the automobile.

5) **Bicycle Use Produces a Net Gain to Society:** Bicycle riding produces many social benefits and avoided costs and thus government action should do everything to encourage, not discourage, ridership.

### CALCULATED SAVINGS PER BICYCLE MILE TRAVELLED (BMT) (substituted for car travel)

Out of Pocket savings to individual consumers:	\$0.18 - \$0.58/BMT
Highway capital investment savings potential:	\$0.19 - \$0.84/BMT
Tax and other general public savings:	\$0.05 - \$0.22/BMT
Grand Total Documented Savings Potential:	\$0.42 - \$1.64/BMT

(source: Economic Benefits of Bicycling: Appendix D, Minnesota Bicycle Plan)



REGIONAL FACILITIES COMMITTEE REPORT

Council  
12/22/92  
7.1

RESOLUTION NO. 92-1730B, EXEMPTING AN AGREEMENT WITH ENVIRONETICS, INC. FROM FORMAL BIDDING REQUIREMENTS.

Date: December 22, 1992

Presented by: Councilor McLain

**COMMITTEE RECOMMENDATION:** At its December 22, 1992 meeting the Regional Facilities Committee voted 4-0 to substitute Resolution No. 92-1730B for Resolution No. 92-1730A, and to recommend Council adoption of Resolution No. 92-1730B. Voting were Councilors McLain, Gronke, McFarland, and Washington. Councilor Collier was absent.

**COMMITTEE DISCUSSION/ISSUES:** Metro Regional Center Project Manager Berit Stevenson presented the staff report. She said that after Committee discussion of Resolution No. 92-1730A, she had heard from potential vendors of office equipment that they were on government lists for providing equipment similar to that requested in Resolution No. 92-1730A. They requested an opportunity to bid on Metro's request for office panels and other equipment. Ms. Stevenson consulted with General Counsel Dan Cooper, and they advised the five vendors who had responded to earlier requests for information that Metro would accept bids until 12:00 noon on December 22, 1992.

Four vendors submitted bids by the deadline. The low bidder was Environetics, Inc. to provide Herman Miller product, for \$147,846. The estimated cost under the provisions of Resolution No. 92-1730A was approximately \$199,000. Ms. Stevenson added that Environetics is on the State of Oregon procurement list, from which Metro Code permits purchase.

Committee discussion focused on whether the Herman Miller product would meet Metro specifications. Ms. Stevenson said it would. Further discussion centered on the amount of savings to the project budget that would accrue from deferral of furniture purchases.

Mr. Cooper advised that, in order to adopt this resolution at Council, Resolution No. 92-1730B would have to be substituted for the "A" version of the resolution, and a subsequent vote taken on the substituted resolution.

FINANCE COMMITTEE REPORT

---

ORDINANCE NO. 92-478 AMENDING THE FY 92-93 BUDGET AND SCHEDULE OF APPROPRIATIONS TO FULLY FUND THE PORTLAND/OREGON VISITOR ASSOCIATION (POVA) MARKETING PLAN FOR THE OREGON CONVENTION CENTER

---

Date: December 18, 1992

Presented By: Councilor Wyers

COMMITTEE RECOMMENDATION: At it's December 17, 1992 meeting the Committee voted unanimously to recommend Council adoption of Ordinance No. 92-478. Present and voting were Councilors Devlin, Gardner, Van Bergen and Wyers. Councilor Hansen was excused.

COMMITTEE DISCUSSION/ISSUES: Jeff Blosser, Acting MERC General Manager gave the Staff Report. He stated that during the Council deliberations on the FY 92-93 Convention Center Operating Fund budget an issue arose about the level of funding to POVA for marketing services. At that time the Council included \$320,000 in the OCC Operating Fund Contingency potentially for this purpose and instructed the MERC and POVA to reach an agreement. The two parties have agreed to raise POVA's budget by \$193,085 to a total of \$1,276,500 for FY 92-93. The proposed ordinance transfers \$193,085 from the Fund Contingency to the Materials and Services category for the purpose of increasing the marketing services provided by POVA.

In response to a question from the Committee, Mr. Blosser said POVA will be much more specific about the billing for services under the contract identifying the actual services provided for the amount billed. In response to a question from Council Staff, Mr. Kowamoto stated that the agreement with POVA is not for a percentage of the hotel/motel tax receipts but for specific services to be provided to the MERC.

BEFORE THE CONTRACT REVIEW BOARD OF THE  
METROPOLITAN SERVICE DISTRICT

*Council*  
*12/22/92*  
*7.1*

FOR THE PURPOSE OF EXEMPTING AN )  
AGREEMENT WITH ENVIRONETICS, INC. )  
FROM FORMAL BIDDING )  
REQUIREMENTS )

RESOLUTION NO. 92-1730 -B

Introduced by Rena Cusma  
Executive Officer

WHEREAS, the Metro Regional Center Project includes the procurement of some systems office furnishings for the open office area of the new building; and

WHEREAS, Metro has conducted a modified bid process to determine what is the lowest cost source of systems office furnishings for both its immediate needs and for future orders, and;

WHEREAS, Environetics, Inc of Lake Oswego ( Herman Miller product) has submitted the lowest bid for Metro's immediate needs for systems office furniture in the amount of \$147,846.54, and;

WHEREAS, the State of Oregon has established a Requirements Contract with Environetics, Inc. to provide Herman Miller product; and

WHEREAS, the Requirements Contract provides for other government agencies to take advantage of the discounted pricing reflected in the Contract by way of a standard Intergovernmental Agreement which Metro has previously authorized pursuant to Metro Code 2.04.040 (a); and

WHEREAS, Metro has conducted a fiscal analysis which identifies the Herman Miller product as the least costly alternative and has determined that the Herman Miller product is a widely used, quality product; now therefore,

**BE IT RESOLVED,**

(1) that the Contract Review Board of the Metropolitan Service District hereby exempts from the formal bidding requirement an agreement with Environetics, Inc. in an amount not to exceed \$147,846.54 for the purposes of purchasing systems furniture;

(2) that the Contract Review Board finds that the agreement has been established through alternative competitive procedures that did not reduce competition or encourage favoritism, saved time and resulted in minimized product pricing and increased savings to Metro because Metro has the ability to purchase its immediate needs at the lowest possible price and has the ability to make future purchases as needed through the State of Oregon as authorized by Metro Code 2.04.040 (a);

ADOPTED by the Contract Review Board of the Metropolitan Service District this \_\_\_\_\_ day of December, 1992.

\_\_\_\_\_  
Jim Gardner  
Presiding Officer

BID SUMMARY  
DECEMBER 22, 1992  
PANEL SYSTEM

OFFICE INTERIORS

Product - Haworth

Unigroup Standard (.70 NRC)

\$159,934.76

Unigroup High Performance (.85 NRC)

\$164,159.68

SMITH BROTHERS

Product - Steelcase

64-11/16" High; 72" Binder Binds

\$157,149.86

Optional Backer Boards

\$1386.00

CORPORATE ENVIRONMENTS

Product - Knoll

\$172,106.00

ENVIRONETICS

Product - Herman-Miller

Option A:

Series 1 Panel & Connectors; Flipper Door  
Units; Task Lights

\$133,184.76

total product

\$ 14,661.78

total install

\$147,846.54

total

Option B:

Series 2 Panels; Flipper Door Units; Task  
Lights

\$141,541.52

total product

\$ 15,330.32

total install

\$156,871.84

total



**METRO**

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

# Memorandum

**DATE:** January 13, 1993

**TO:** Metro Council  
Executive Officer  
Interested Parties

**FROM:** Paulette Allen, Clerk of the Council

**RE:** AGENDA ITEM NO. 6.4 SUPPLEMENTAL PACKET *PA*

Exhibit A, Request for Bids, was printed separately from the Council agenda packet due to its volume.

**EXHIBIT A**  
**ST. JOHNS LANDFILL**

**CLOSURE OF SUBAREAS 2 & 3**  
**AND THE MOTOR BLOWER FLARE**

**RFB #92B-42-SW**

**Metro**  
**Solid Waste Department**  
**2000 S.W. First Avenue**  
**Portland, Oregon 97201-5398**

**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		
(Per Square Yard)			\$	\$
8.	270,000 S.Y.	Place Existing Topsoil, 8" Depth		
(Per Square Yard)			\$	\$
9.	105,000 C.Y.	Imported Topsoil		
(Per Cubic Yard)			\$	\$
10.	60,000 Tons	Procure and Deliver Imported Low Permeable Soil		
(Per Tons)			\$	\$
11.	170,000 S.Y.	Construction of Existing Low Permeable Soil for Type 'A' Cover		
(Per Square Yard)			\$	\$
12.	200,000 S.Y.	Place and Compact Existing Low Permeable Soil, 12" Depth, Type 'B' Cover		
(Per Square Yard)			\$	\$
13.	125,000 S.Y.	Construction of Existing Low Permeable Soil for Type 'C' Cover		
(Per Square Yard)			\$	\$
14.	51,000 S.Y.	Place and Compact Additional Low Permeable Soil in Type 'A' Cover Areas		
(Per Square Yard)			\$	\$

<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>			\$	\$
16.	38,000 S.Y.	Place and Compact Additional Low Permeable Soil in Type 'C' Cover Areas		
<u>(Per Square Yard)</u>			\$	\$
17.	595,000 S.Y.	Place Type 1 Sand		
<u>(Per Square Yard)</u>			\$	\$
18.	170,000 S.Y.	Geonet Composite, Type A		
<u>(Per Square Yard)</u>			\$	\$
19.	5,000 S.Y.	Bentonite Mat		
<u>(Per Square Yard)</u>			\$	\$
20.	595,000 S.Y.	Geomembrane, 40 mil, Textured		
<u>(Per Square Yard)</u>			\$	\$
21.	20,000 S.Y.	Geotextile Type 3		
<u>(Per Square Yard)</u>			\$	\$
22.	2,500 S.Y.	Geogrid		
<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>
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		
(Per Lineal Foot)			\$	\$
64.	30 L.F.	8" D.I. Casing		
(Per Lineal Foot)			\$	\$
65.	30 L.F.	10" D.I. Casing		
(Per Lineal Foot)			\$	\$
66.	60 L.F.	12" D.I. Casing		
(Per Lineal Foot)			\$	\$
67.	30 L.F.	14" D.I. Casing		
(Per Lineal Foot)			\$	\$
68.	40 L.F.	20" D.I. Casing		
(Per Lineal Foot)			\$	\$
69.	30 EA.	Adjustable Pipe Supports		
(Per Each)			\$	\$
70.	5 EA.	Adjustable Pipe Supports w/ Guide (G1)		
(Per Each)			\$	\$



<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		
(Per Each)			\$	\$
80.	17 EA.	Vacuum Valve Stations		
(Per Each)			\$	\$
81.	1 EA.	Remote Condensate Pump Station		
(Per Each)			\$	\$
82.	4 EA.	4" Condensate Drip Leg Fitting		
(Per Each)			\$	\$
83.	3 EA.	6" Condensate Drip Leg Fitting		
(Per Each)			\$	\$
84.	2 EA.	8" Condensate Drip Leg Fitting		
(Per Each)			\$	\$
85.	7 EA.	10" Condensate Drip Leg Fitting		
(Per Each)			\$	\$
86.	3 EA.	12" Condensate Drip Leg Fitting		
(Per Each)			\$	\$

<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		

(Per Hour)			\$	\$
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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)

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**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

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

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

\_\_\_\_\_  
CONTRACTOR

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

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

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**SECTION 00700  
GENERAL CONDITIONS**

**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 Contractor's 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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## **APPENDICES**

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

## **APPENDICES**

<b>APPENDIX A</b>	<b>SITE ACCESS PLAN</b>
<b>APPENDIX B</b>	<b>LANDFILL BRIDGE - ALLOWABLE LOADS LETTER REPORT</b>
<b>APPENDIX C</b>	<b>SITE CHARACTERIZATION/HEALTH &amp; SAFETY HAZARDS REPORT</b>
<b>APPENDIX D</b>	<b>SITE EVALUATION OF LOW LEVEL RADIATION LETTER REPORT</b>
<b>APPENDIX E</b>	<b>METHODOLOGY FOR DETERMINING NORMAL ADVERSE WEATHER DAYS FOR CONSTRUCTION</b>
<b>APPENDIX F</b>	<b>PREVAILING WAGE RATES</b>
<b>APPENDIX G</b>	<b>METRO MINORITY AND WOMEN-OWNED BUSINESS PROGRAM</b>
<b>APPENDIX H</b>	<b>OREGON LAWS 1991, CHAPTER 385, SECTION 59 &amp; 61</b>
<b>APPENDIX I</b>	<b>ST. JOHNS LANDFILL SUBAREA 1 CLAY STUDY</b>
<b>APPENDIX J</b>	<b>GROUNDWATER QUALITY SAMPLES H-WELLS, CHEMICAL TEST RESULTS, SUMMARY CONVENTIONAL PARAMETERS AND METALS AND SUMMARY OF VOLATILE ORGANIC COMPOUNDS</b>

# Landfill will blossom into wildlife habitat

By BOB MARTIN

What once held this region's unwanted possessions soon will be home to a much-prized array of plants, birds and other wildlife indigenous to the area.

The St. Johns landfill for 50 years has been known as the region's garbage-disposal site, but gradually it will become a beautiful, peaceful natural area.

As the Metropolitan Service District progresses in its closure of the landfill, two things must be remembered:

First, closing an old landfill involves more than just throwing a tarp over it and walking away. And second, we need to focus on what the area can become.

The 250-acre landfill was built before current environmental standards existed. Therefore, many types of wastes were buried in the landfill that would not be allowed there today.

Metro began the task of closing the landfill in 1986. Since then, the agency has

## IN MY OPINION

worked extensively with technical experts from other municipal, regional, state and federal agencies.

The \$40 million closure will be completed in three or four years, but Metro will monitor the site for at least 30 years thereafter, even though state regulations call for only 10 years' monitoring after the closure.

We will keep an eye for leachate, or contaminated water, caused by seepage of rainwater through the solid waste. It is critical in our wet climate to prevent this seepage because spreading leachate could contaminate surrounding surface water.

Metro will cover the entire landfill area with several layers of compacted earth, plastic, sand, topsoil and vegetation. We also are building slopes into the landfill so rainwater can run off. We will collect, test and treat runoff as necessary before it leaves the site.

Because the landfill area is so large, the closure will be divided into sections. Metro has applied the final cover (plastic, topsoil and vegetation) to 35 acres.

The region is fortunate to have many people who take interest in the Smith and Bybee lakes, which surround the St. Johns landfill. Metro works closely with the Smith and Bybee Lakes Management Committee and other groups to ensure that the lakes are returned to as natural a state as possible.

There is some concern that the lakes have been contaminated by leachate from the landfill. In actuality, the lakes are not polluted. They are in a period of adjustment because their natural water flow has been disturbed.

While working to protect and restore the lakes and adjoining areas, we are installing a monitoring system to track the groundwater flow.

When the landfill closure is completed in the mid-1990s, observers will see open, native grasslands interspersed with low-lying shrubs and trees. The site will be home to birds and other animals indigenous to the area. Human activity will be limited.

The St. Johns landfill served a useful purpose to the human inhabitants of the region for more than 50 years. Now it's time for animal and plant life to reclaim the site.

Bob Martin is director of Metro's Solid Waste Department.

Oregonian 12/25/92

Metro cannot  
Jan. 14, 1993  
6.4

TRANSPORTATION AND PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 93-1743A, FOR THE PURPOSE OF ENDORSING THE REGION'S PROPOSAL TO PARTICIPATE IN THE FHWA CONGESTION PRICING PILOT PROGRAM

-----  
Date: January 13, 1993

Presented by: Councilor Moore

Committee Recommendation: At the January 12 meeting, the Transportation and Planning Committee voted 4-1 to recommend Council adoption of Resolution No. 93-1743A. Voting in favor: Councilors Van Bergen, Kvistad, Devlin, and Moore. Voting no: Councilor Gates. Excused: Councilor Monroe.

Committee Issues/Discussion: Andy Cotugno, Planning Director, presented the staff report. He explained that applications are being requested for demonstration congestion pricing pilot projects under the Intermodal Surface Transportation Efficiency Act (ISTEA).

The issue of congestion pricing has been heavily discussed since August, 1992. Based on the feed-back of those discussions, staff is recommending endorsement of the region's proposal. The actual application of the proposal is still being written but will be ready by the January 25 deadline of the Federal Highway Administration (FHWA). The approach is to not apply for a specific project but keep the request more general. There are a many different sites (e.g. bridge) as well as several transportation corridors that might be appropriate for such a project. We could even consider the entire region. All of these options will be examined if we receive the moneys. We also want to lay the ground work for future implementation moneys.

Councilor Moore voiced a concern about inclusion of a public involvement process during the evaluation. She suggested an amendment, which was approved, to resolve number 4 to read as follows:

"4. That the Metro Council and JPACT continue to participate in the process, particularly at key decision points, to pursue evaluate the feasibility of and potentially implement a congestion pricing pilot project."

Councilor Wyers asked whether Metro is required to implement this project if we receive the federal funding. Mr. Cotugno explained that the application will be written more broadly so that we do not imply such a requirement. However, the FHWA could place the requirement on the money as a condition, but he felt such a condition would be illegal. The FHWA's own environmental impact statement process requires a "no build" option. He suggested we deal with that possibility at that time, if it should occur.

In response to a question from Councilor Kvistad, Mr. Cotugno explained the recent history of discussions regarding congestion pricing and the Western Bypass Study. Ultimately, the five alternatives included in the draft environmental impact statement (DEIS) will not consider a congestion pricing option. The decision was to detach the issue and deal with it here in a pilot project, as a separate question.

Councilor McLain said she was impressed that the local jurisdictions within the area of consideration for the Western Bypass study took a vote expressing their interest in congestion pricing.

In response to a question from Councilor Devlin, Mr. Cotugno clarified that the two motions considered by JPACT on the Bypass issue were: 1) to end the discussion about linking congestion pricing to the Western Bypass question; and 2) that the region investigate and/or evaluate congestion pricing on a region-wide basis. His recommendation is that if we get the federal money we do the evaluation. If we don't get the money we should reevaluate the entire question considering whether we want to spend region money. The Oregon Department of Transportation (ODOT) has included congestion pricing as part of the Oregon Transportation Plan (OTP).

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING THE	)	RESOLUTION NO. 93-1743A
REGION'S PROPOSAL TO PARTICIPATE	)	
IN THE FHWA CONGESTION PRICING	)	Introduced by
PILOT PROGRAM	)	Councilor Van Bergen

WHEREAS, Section 1012 (b) of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 authorizes the Secretary of Transportation to create a Congestion Pricing Pilot Program by entering into an agreement with up to five State or local governments or other public authorities to establish, maintain, and monitor congestion pricing pilot projects; and

WHEREAS, The November 24, 1992 Federal Register includes notice and request for participation in the Pilot Program and applications are due by January 23, 1993 (and subsequently revised to January 25, 1993); and

WHEREAS, Congestion pricing as a concept is referenced in the Oregon Transportation Plan as an option to achieve statewide transportation objectives; that congestion pricing has been endorsed by the Governor's Task Force on Vehicle Emissions in the Portland Area as a contingency air quality strategy; and that the Joint Policy Advisory Committee on Transportation has endorsed investigation of congestion pricing as a transportation congestion strategy; now, therefore,

BE IT RESOLVED,

1. That the Metro Council endorses the region's three-step process, identified as items No. 1b, 1c, and 1d, on Exhibit A, for pursuing a congestion pricing pilot project for the Portland

metro area.

2. That the Metro Council endorses a scope of work for a regional congestion pricing pilot project as included in Exhibit A.

3. That the Metro Council directs staff to pursue ISTEA congestion pricing pilot program funds for the scope of work as contained in Exhibit A, particularly for items No. 1c and 1d.

4. That the Metro Council and JPACT continue to participate in the process, particularly at key decision points, to pursue evaluate feasibility of and potentially implement a congestion pricing pilot project.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_,  
1993.

Judy Wyers, Presiding Officer

MH:lmk  
93-1743A.RES  
1-13-93



## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 93-1743A FOR THE PURPOSE OF ENDORING THE REGION'S PROPOSAL TO PARTICIPATE IN THE FHWA CONGESTION PRICING PILOT PROGRAM

Date: January 4, 1993

Presented by: Andrew Cotugno

#### PROPOSED ACTION

This resolution endorses the region's participation in the Federal Highway Administration's (FHWA) congestion pricing pilot program. The resolution identifies a scope of work and establishes a process to determine appropriate congestion pricing alternatives within the Portland metropolitan area. The resolution also establishes a public decision-making process to determine: 1) whether to proceed with a demonstration project; and 2) if a decision is made to proceed, identify a Preferred Alternative for a congestion pricing demonstration project.

#### FACTUAL BACKGROUND AND ANALYSIS

Congestion pricing is the application of user surcharges on congested highway facilities during peak periods. Its goal is to relieve congestion by discouraging some trips and shifting others to alternate destinations, times or modes of travel. Revenue generated from congestion pricing can be used a number of ways, including construction of the transportation infrastructure or to offset an existing transportation user fee or tax.

Section 1012 (b) of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 authorized the Secretary of Transportation to create a Congestion Pricing Pilot Program by entering into an agreement with up to five state or local governments or other public authorities to establish, maintain, and monitor congestion pricing pilot projects. A maximum of \$25 million is authorized for each of the fiscal years 1992 through 1997 to carry out program requirements. Attachment A is a copy of the November 24, 1992 Federal Register notice and request for participation in the pilot program. Attachment B is a staff summary of the contents of the Federal Register.

In addition to its inclusion in ISTEA, congestion pricing as a concept is being discussed on a number of other fronts. The Oregon Transportation Plan includes references to pricing programs that charge road users commensurably with the total costs of operations and improvements. The Governor's Task Force on Motor Vehicle Emissions in the Portland Area endorsed the region pursuing a pilot program grant and included congestion pricing as part of its recommended contingency plan for maintaining air quality. JPACT has previously been briefed on the pilot program and has endorsed further investigation of a potential pilot project. Subsequently, JPACT has recommended that a regional congestion pricing study be conducted to learn

more about its potential and effects. That study and any development of a pilot project will share information and methodologies to the degree possible. Metro and ODOT are continuing discussions on the scope of the regional congestion pricing study and its relationship to the Western Bypass project.

The timeline for submitting applications is extremely short (Attachment C). TPAC's Ad Hoc Congestion Pricing Committee began meeting in mid-December to develop a proposal. With an understanding that selection of a specific proposal will require significant public discussion, the scope of work as contained in Exhibit A to the resolution is process-oriented. JPACT and the Metro Council are being asked to endorse this process for the region's pursuit of a congestion pricing pilot project. Essentially, the process has three steps:

1. Submit a process-oriented application by January 25 to meet the FHWA deadline.
2. Develop and implement a public planning process intended to reach a decision on whether or not to proceed with a pilot project for the region.
3. If a decision is reached to proceed with a pilot project, then the final step includes implementation, monitoring, and evaluation.

It is for steps two and three that ISTEA pilot program funds will be requested.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 93-1743A.

MH:lmk  
93-1743A.RES  
1-5-93

FINANCE COMMITTEE REPORT

RESOLUTION NO. 92-1728 AUTHORIZING AN EXEMPTION TO COMPETITIVE BIDDING PROCEDURES AND AUTHORIZING A SOLE SOURCE AGREEMENT WITH DUN AND BRADSTREET FOR CREDIT REPORTING SERVICES

Date: December 18, 1992 Presented By: Councilor Van Bergen

COMMITTEE RECOMMENDATION: At it's December 17, 1992 meeting the Committee voted unanimously to recommend Council adoption of Resolution No. 92-1728. Present and voting were Councilors Devlin, Gardner, Van Bergen and Wyers. Councilor Hansen was excused.

COMMITTEE DISCUSSION/ISSUES: Karen Feher, Assoc. Management Analyst, gave the Staff Report. Ms. Feher stated that credit reporting services are required by the Metro Code for persons disposing of solid waste at Metro disposal facilities on a credit basis. This is a sole source contract because no other firm provides the service. The contract is for a one year period starting January 1, 1993.

Chair Van Bergen expressed dissatisfaction with the work provided by Dun and Bradstreet and the situation of only having one service provider to consider.

December 22, 1992

Council  
12/22/93  
7.3

To: Metro Council  
From: Terry Moore  
Re: Report to Council on Willing Seller Policy at Sunset/217 LRT Station Area

- Our goal here is twofold: to see that Peterkort LUBA appeal of Greenspaces plan is dropped and at the same time to adopt a good policy applying Metro's greenspaces policies to this important parcel; to achieve these ends, we give up Metro's ability to use its power of eminent domain to acquire property owned by the Peterkort Company for a period lasting until two years after the Westside LRT is open.

- Essentially, we are committing to acquire property only from a willing seller in the 150-acre area now either owned by the Peterkorts, Tri-Met, or in public right-of-way for that time period (i.e. until the year 1999).

- Metro's interest in acquisition of property in this area is to preserve the significant greenspaces area not yet precisely defined but consisting of wetlands, water features (ponds, streams), forested upland areas — all providing natural resource values and wildlife habit areas.

- Metro's additional interest in the area relates to the public investment in light rail transit and in assuring that the intent of the RUGGO document is implemented within the station area specifically, and potentially in the larger surrounding area if it were to become one of the regional "activity centers" anticipated in the RUGGOs.

- The resolution intends, then, that Metro will play an integral role in all "planning activities and proposed development actions" on the Peterkort property in the station area, which encompasses an area approximately one-half mile in all directions from the Sunset LRT station. This will allow Metro (staff and council) to determine if any proposed actions might jeopardize the future of the natural resource area included in the adopted Greenspaces plan or underused development opportunities near the LRT station.

- The resolution, if adopted, will be a policy involving only Metro and the Peterkort Company; it does not directly involve the local jurisdictions (Washington County and/or Beaverton) or Tri-Met (or supposedly any entity to which some portion of the Peterkort property might be sold between now and 2 years following opening of the Westside line). However, the Peterkort Company will be acting on its behalf in the planning and development of the property, and as the agent of Washington County in the development of public rights-of-way through the property, and it must be assumed that this policy does mean that Washington County and any other entity undertaking to develop or plan for the land in the subject area must acknowledge the policy that Metro will have an informed role in all that planning and development.

•However, again, the policy is Metro's and it does not specifically guarantee that Washington County will acknowledge Metro's involvement as specified in the agreement.

•For the record in this matter, the Transportation and Planning Commission (at a minimum) and the Metro Council (ideally) should immediately request a briefing from Tri-Met, Washington County, and Metro staff on the status of station area planning, LRT station design, roadway and parking lot design, and other issues (such as existing zoning, natural resource protection, transportation plan designations, the Washington County proposed interim overlay zone, etc.) in order to evaluate the current status of the area vis-à-vis the public investment in LRT and the potential vulnerability of the Cedar Springs natural resource area.

•Following the briefing, the T/P committee should discuss with Metro staff any needed action on the part of Metro staff as to implementation of the policy.

•The resolution reiterates Metro's commitment to a cooperative planning approach with close interjurisdictional involvement in areas like that represented by the land around the Sunset/217 LRT station. Such an approach to planning will support the regional public infrastructure costs as well as coordinate the various private and public goals for our regional future. The resolution also clearly states Metro's recognition of the unique characteristics of the site and its existing policy of acquiring property from "willing sellers".

tshm

11 NOV 92

METRO TRANSPORTATION & PLANNING COMMITTEE  
METRO COUNCIL STAFF  
2000 FIRST AVE  
PORTLAND OR 97201

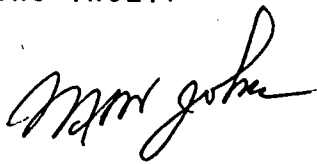
ATTENTION, COUNCIL STAFF:

I OPPOSE THE WESTERN BYPASS PROPOSAL FROM HILLSBORO TO  
TIGARD UNTIL AND IF OTHER OPTIONS ARE EXHAUSTED. OTHER  
OPTIONS AS I SEE THEM ARE:

EXPAND MAX  
INCREASE BUS SERVICE  
INSTALL MORE BIKE ROUTES. (THIS IS PROBABLY THE MOST  
COST EFFICIENT TRANSPORTATION THERE IS.)  
WIDEN ARTERIALS, SUCH AS FARMINGTON ROAD AND BASELINE  
(FARMINGTON IS NOW BEING SURVEYED, BUT ONLY FOR  
A TURNING LANE, AS I UNDERSTAND IT. WHY NOT DO  
IT ALL NOW?)

ANOTHER REASON FOR OPPOSITION IS THAT I DO NOT LIKE TO SEE  
GOOD FARM LAND PAVED OVER, NOR DO I WANT TO SEE THE  
RESULTING DEVELOPMENT ADJACENT TO THE PROPOSED FREEWAY.

YOURS TRULY,



MERV JOHNSON  
6150 S. W. 190th  
BEAVERTON, OR. 97007



**METRO**

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

# Memorandum

METRO COUNCIL  
December 22, 1992  
Agenda Item No. 7.5

DATE: December 18, 1992

TO: Metro Council  
Interested Parties

FROM: Gail Ryder, Council Analyst

RE: Resolution 92-1712B Amendment

I received a communication today from Bonnie Kraft, City Manager of the City of Gresham, regarding an amendment to Resolution 92-1712 that was omitted when the resolution was considered by the Transportation and Planning (T & P) Committee. The amendment was approved by both RPAC and JPACT but was inadvertently omitted by Planning Department staff in the version voted out of T & P on Monday night. Enclosed is a memorandum to that effect.

The amendment is within the wording of the Concept B description in the Attachment to the resolution. According to the City of Gresham, sentence 2 of paragraph 1 should read:

"LUTRAQ and the Livable City projects would provide more specific local models for how land use intensification could occur in this concept focused [on] along high capacity transit line [~~intersection~~] and transit "Main Streets."

Planning staff agrees the amendment was omitted following the RPAC and JPACT meetings and regrets the oversight. They do not consider the change substantive and believe there would be no objection by RPAC or JPACT either. They suggest the Council approve the new wording.

c: Bonnie Kraft, City of Gresham  
Andy Cotugno

## CITY OF GRESHAM

Community & Economic Development Department  
Building & Planning Division  
1333 N.W. Eastman Parkway  
Gresham, OR 97030-3813  
(503) 661-3000

December 18, 1992

Rena Cusma, Executive Officer  
METRO  
2000 SW 1st  
Portland, Oregon 97201

RE: RESOLUTION NO. 92-1712B - REGION 2040  
FOR METRO COUNCIL, DECEMBER 22, 1992, 5:30PM

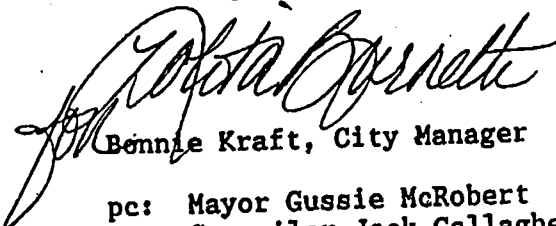
We understand that the final version of this resolution, approved by the Transportation and Planning Committee on December 14, 1992, does not include the complete wording of an amendment which was approved at RPAC on December 9th and again at JPACT on December 10th. The specific language affects our understanding of Concept B and how it relates to the City of Gresham's long range planning goals.

According to the amendment approved at RPAC and JPACT the description of Concept B in "Exhibit A" of this resolution should read as follows:

"LUTRAQ and the Livable City projects would provide more specific local models for how land use intensification could occur in this concept focused along high capacity transit lines and transit Main Streets." [Para. 1, Sentence 2]

We appreciate your assistance in bringing this concern to the METRO Council. It is important for future cooperative planning efforts that the Region 2040 Resolution accurately reflects the consensus of the region.

Sincerely,

  
Bonnie Kraft, City Manager

pc: Mayor Gussie McRobert  
Councilor Jack Gallagher  
Councilor Bernie Giusto  
Clay Moorhead, Community Development Director  
Gail Ryder, Council Analyst

Post-It™ brand fax transmittal memo 7671

# of pages > 1

To	Gail Ryder	From	Bonnie Kraft
Co.	Metro	Co.	City of Gresham
Dept.		Phone #	
Fax #	213-5589	Fax #	665-4553



Possible Refinements to Designated Regional Growth Concepts

For each concept there will be developed a further definition of detail sufficient to allow evaluation of impacts on liveability and economic vitality. Numerous variations of each concept are possible. The following are a minimum set that will be developed. During the development and further definition of the variations, it may be concluded that additional variations should be added. The following list is therefore a minimum that will be pursued, but is not intended to be an exclusive list which cannot be amended as deemed appropriate.

Concept "A" Continuing with Current Policies

The basic framework for Concept "A" is existing comprehensive land use plans and current urban growth boundary policies.

1. Concept "A" will be refined to determine the location for expansion of the urban growth boundary considering the following factors: a) contiguity with the existing boundary; b) a balanced consideration of factors 1 through 7 of Goal 14 and RUGGO, including accessibility of expansion areas to the jobs of the region, the ease of providing sanitary sewers and avoidance, where possible, of rural resource lands; and c) no expansion into floodplains or the Columbia Gorge Scenic area.
2. Two variations of the highway system would include: a) the Sunrise Corridor, Mt. Hood Parkway and Western Bypass as freeway/expressway level facilities; and b) the Sunrise Corridor, Mt. Hood and the Western Bypass as arterial, non-freeway improvements.
3. The Transit assumptions will include a basic radial transit system in which: a) the east-west light rail line from Gresham to Hillsboro will exist; b) there will be north-south light rail service connecting Milwaukie, Clackamas Town Center, Vancouver and Portland International Airport; c) there will be an additional radial light rail line to the southwest quadrant of the region; and d) the light rail and bus transit service level will be that described in the existing Regional Transportation Plan. A basic level of bicycle and pedestrian improvements would be included in this option.

Concept "B" Growing Inside the Urban Growth Boundary

A basic assumption of Concept "B" is that the current urban growth boundary would not be expanded.

1. Concept "B" will include accommodating the forecast growth for population and employment to the year 2040 inside the current urban growth boundary by a more intensive use of land focused on transit. LUTRAQ and the Livable City projects would provide more specific local models for how land use intensification could occur in this concept focused on high capacity transit lines and transit "Main Streets."
2. Transit would be assumed to: a) have the most extensive transit level of service of any concept; b) consist of a radial high capacity transit system with an east-west component from Forest Grove to Gresham and north-south lines which connect areas north of Vancouver, Washington, Portland International Airport, Clackamas Town Center, Milwaukie and Oregon City; c) include an additional radial light rail line to the southwest quadrant of the region; d) include a circumferential high capacity transit system on the southern end of the region; and e) have a level of transit service consistent with that described in Tri-Met's proposed Strategic Plan. The highest level of bicycle and pedestrian improvements would be reflected in this option.
3. Two variations of the highway system would include: a) the Sunrise Corridor, Mt. Hood Parkway and Western Bypass as freeway/expressway level facilities; and b) the Sunrise Corridor, Mt. Hood and the Western Bypass as arterial, non-freeway improvements.

#### Concept "C" Communities Growing at the Edge

A basic assumption of Concept "C" is that the current urban growth boundary would not be expanded in a contiguous manner. Rather, three satellite centers would be added as places to accommodate growth. An initial definition of satellite centers includes centers sized to accommodate 40-60,000 people, with alternative locations considered primarily on flatter, non-rural resource lands.

1. Approximately two-thirds of the forecast growth would be accommodated within the current urban growth boundary and the balance in satellite centers outside the current urban growth boundary as guided by forecasts of demand.
2. High capacity transit would be assumed to include both radial and circumferential lines, with service including: a) east-west from Forest Grove to Gresham, north-south from areas north of Vancouver Washington, to Portland International Airport, Clackamas Town Center, Milwaukie and Oregon City; b) a southern circumferential line; and c) an additional radial light rail line to the southwest quadrant of the region. Satellite centers would be provided high capacity transit service. The level of transit service would be less than that recommended in the Tri-Met proposed Strategic Plan, but higher than the current Regional Transportation Plan. A

moderate level of bicycle and pedestrian improvements would be included in this concept.

3. Two variations of the highway system would include: a) the Sunrise Corridor, Mt. Hood Parkway and Western Bypass as freeway/expressway level facilities; and b) the Sunrise Corridor, Mt. Hood and the Western Bypass as arterial, non-freeway improvements.

#### Base Case

This base case will reflect past practices. Recently adopted but not yet implemented policies such as the Transportation Rule, Clean Air Act or the Regional Urban Growth Goals and Objectives will not be included. The light rail system will be limited to an east-west line from Gresham to Hillsboro with a modest level of transit service. Investment in transportation expansion will continue to lag behind growth. The base case will also assume that underbuilding, or development at less than the maximum densities allowed by existing comprehensive plans, will occur consistent with historical experience. In addition, the base case will assume that infill and redevelopment will continue to occur at existing rates.

MT:lmk  
92-1712b.RES  
12-10-92

Council  
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## FINANCE COMMITTEE REPORT

RESOLUTION NO. 92-1722, ACCEPTING THE 1992 COMPREHENSIVE ANNUAL FINANCIAL REPORT AND LETTER TO MANAGEMENT PROVIDED BY KPMG PEAT MARWICK

Date: December 18, 1992

Presented By: Councilor Devlin

**COMMITTEE RECOMMENDATION:** At it's December 17, 1992 meeting the Committee voted unanimously to recommend Council adoption of Resolution No. 92-1722. Present and voting were Councilors Devlin, Gardner, Van Bergen and Wyers. Councilor Hansen was excused.

**COMMITTEE DISCUSSION/ISSUES:** The Committee considered this item at two meetings -- it's December 3 and December 17 meetings. At the December 3, 1992 meeting Don Cox, Accounting Manager presented the Staff Report. Mr. Cox briefly presented the highlights of the Audit document which was in draft form at that time because it was still being reviewed by the KPMG Peat Marwick office. Mr. Cox pointed out that the District has received an unqualified opinion in the Audit.

Mr. Joe Hoffman, KPMG Peat Marwick Partner in Charge of the Audit, presented the Letter to Management. He noted as did several Committee members that the number of comments appears to be lessening. Mr. Hoffman spent several minutes discussing the Management Letter comments on the consolidation of Metro and MERC accounting systems. He noted progress has been made in bringing this about but work still needs to be done. He noted there appeared to be a lack of cooperation in the sharing of information from MERC to Metro.

Council Staff presented a memo regarding performance indicators of the Metro financial management system (See Attachment 1 to this committee report). Information on expenditures in excess of Council approved appropriations and fund balances was taken from the Audit document. The Committee requested that the Metro and MERC financial staff respond in writing at the next meeting to the information presented by Council Staff. Because the Audit documents were in draft form the Committee decided to continue the matter to the next meeting.

At the December 17, 1992 meeting Don Cox, Accounting Manager, presented the Staff Report. He presented the final audit documents including the Letter to Management and the Single Audit Act Report on Federal Grants. He reviewed with the Committee the Administration responses to the Management Letter comments. Ms. Jennifer Sims, presented the Finance Department response to the Council Staff's performance indicator memo and Mr. Jeff Blosser and MERC Commissioner Ron Kowamoto did the same for MERC (See Attachments 2 and 3 to this Committee Report).

Chair Van Bergen told all present that the expenditure in excess of Council approved appropriations was a violation of state law. The

councilors and the entire Council have serious concerns about this practice and want it corrected. Everyone agreed to do their best to assure that efforts would be made to process budget and appropriation requests in a timely fashion.

**METRO**2000 S.W. First Avenue  
Portland, OR 97201-5398  
503.221-1646

# Memorandum

Date: December 3, 1992

To: Finance Committee

From: Donald E. Carlson, <sup>cc</sup> Council Administrator

Re: Performance Indicators for Metro's Financial Management System

The purpose of this memo is to address two performance indicators which give some indication of the effectiveness of Metro's financial management system. The indicators are 1) expenditures in excess of Council approved appropriations, and 2) the accuracy of budgeted fund balances as compared to actual fund balances. Based on information from the Draft Comprehensive Annual Financial Report for 1992 and the FY 1992-93 Adopted Budget the following information is provided.

## EXPENDITURES IN EXCESS OF APPROPRIATIONS

The following departments or organizational units overspent their Council approved appropriations in FY 1991-92 as follows:

<u>FUND/DEPARTMENT</u>	<u>APPROPRIATION</u>	<u>ACTUAL EXP.</u>	<u>VARIANCE</u>	<u>PAGE</u>
<b>General Fund</b>				
Regional Facilities				
M & S	\$23,120	\$23,276	(156)	63
<b>Zoo Oper. Fund</b>				
Animal Management				
M & S	379,244	399,715	(20,471)	70
Visitor Services				
PS	1,170,294	1,178,815	(8,521)	71
<b>Spectator Fac. Fund</b>				
Memorial Coliseum				
PS	3,441,001	3,465,946	(24,945)	73
M & S	6,328,392	6,821,867	(493,475)	73
CO	132,400	186,499	(54,099)	73
Civic Stadium				
M & S	1,164,464	1,252,537	(88,073)	73
CO	11,200	11,539	(339)	73
<b>Con. Center Op. Fund</b>				
PS	2,139,292	2,150,119	(10,729)	92
M & S	4,173,700	4,608,194	(434,494)	92
CO	102,000	120,238	(18,238)	92

approximately three to four months before the end of the fiscal year; and 2) the activities and purposes of each fund vary. Funds dealing with expenditures for capital projects such as the General Revenue Bond Fund (Sears Bldg. project) are subject to the pace of the project so the fund balance can vary substantial based on the expenditures during the last three months of the fiscal year.

As a general rule, however, the more accurate the projections are to the reality the better the fiscal management system. Council Staff knows of no general "rule of thumb" as to how close the projections should be. We would recommend that prior to the receipt of the next Proposed Budget, the Finance Office return with "accuracy targets" for each fund. Also, the Finance Office should report at the next Finance Committee meeting whether or not the large deviation in the Planning Fund fund balance will necessitate expenditure reductions in the fund. Is the reduced fund balance real or "funny" money?

cc: Metro Council  
Dick Engstrom



**METRO**

2000 S.W. First Avenue  
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503/221-1646

# Memorandum

Date: December 4, 1992

To: Finance Committee

From: Donald E. Carlson, Council Administrator

Re: Revised Financial Management System Performance Indicators Information

Please find attached a revised chart comparing the budgeted to actual fund balances for FY 92-93.

The information provided in my December 3, 1992 memorandum was taken from the FY 1992-93 Proposed Budget rather than the FY 1992-93 Adopted Budget. The Budget figures are revised for the following funds: General; Solid Waste Revenue; Planning; OCC Capital; OCC Debt; and Support Services.

These revised budget figures do not materially affect the comparative difference with the exception of the General Fund and the OCC Debt Fund. In the case of the General Fund the percentage difference was reduced from 69% to 36%, and in the case of the OCC Debt Fund the difference was reduced from an uncalculated number to 36%.

The differences in these Proposed and Adopted budget figures illustrates how changes can and should occur during the budget process from submission of the budget in March to adoption of the budget in June.

cc: Metro Council  
Dick Engstrom  
Jennifer Sims

Don Cox  
Ben Middleton  
Ron Kawamoto



# REVISED COMPARISON OF BUDGETED TO ACTUAL FUND BALANCES

Based on the FY 92-93 Adopted Budget and the FY 92 Financial Audit the following information is provided on the accuracy of fund balance estimates for selected Funds.

<u>Fund</u>	<u>Budget</u>	<u>Actual</u>	<u>Diff.</u>	<u>%Diff.</u>
General	\$495,676	\$676,575	\$ 180,899	36%
Zoo Operating	4,694,322	5,558,568	864,246	18%
Zoo Capital	2,953,338	3,262,825	309,487	10%
SW Revenue	27,549,179	28,115,583	566,404	2%
Planning	701,886	175,517	(526,369)	(75%)
MERC Management	6,950	0	(6,950)	( - )
OCC Operating	4,005,889	6,469,663	2,463,774	62%
OCC Capital	4,203,925	4,522,822	318,897	8%
OCC Debt	1,173,024	1,594,247	421,223	36%
Spec. Facilities	3,539,635	4,901,496	1,361,861	38%
Support Services	91,860	168,136	76,276	83%
Risk Management	4,665,737	4,663,045	(2,692)	(0%)
Building Mgmt.	104,186	185,748	81,562	78%
Gen. Rev. Bond	16,741,717	15,409,033	(1,332,684)	(8%)



**METRO**

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

# Memorandum

DATE: December 17, 1992

TO: Councilor George Van Bergen  
Chair, Metro Council Finance Committee

FROM: Jennifer Sims, Director of Finance & Management Information *JS*

RE: FINANCIAL MANAGEMENT SYSTEM PERFORMANCE INDICATORS

This report is prepared in response to a memo from Don Carlson, dated December 3, 1992. It addresses concerns expressed by the Finance Committee and Mr. Carlson regarding FY 1991-92 expenditures in excess of appropriations and comparison of fund balances from budget to actual.

## Proposed Management Actions

Management aims to maintain expenditures within appropriation levels and to accurately budget fund balances.

To better inform Council of the status of expenditures, two reports will be provided. At the second January meeting of the Finance Committee, an appropriations level expenditure report will be submitted. At the second April meeting the same report with projected annual expenditures will be provided. This will serve as notice to the Council and reminders to the departments as to needed budget actions.

Regarding fund balances, a target accuracy level of plus 20% or minus 10% will be established for operating funds. Capital funds will not have targets as they are often unpredictable.

Finally, we will continue to provide a written explanation of over expenditures and deviations from targeted fund balances with submittal of the annual financial report.

Each department has prepared a response to their particular areas. Responses have been organized by fund.

## Zoo Operating and Capital Funds

The Animal Management division overran their materials and services budget by \$20,471 because an opportunity arose to purchase a hard to get female giraffe. This acquisition was

so late in the year that a budget adjustment was not possible. They also overran their medical supplies budget due to problems associated with aging animals, particularly elephants and hippos.

The Visitor Services division overran their personal services budget by \$8,521 because late spring attendance exceed projections and seasonal employee staffing was necessary to provide service to record attendance levels. A budget amendment was adopted at the end of April, 1992. The amendment anticipated increased attendance and staffing needs, however, actual attendance exceeded even these projections.

The Zoo Operating Fund ending balance exceeded our projections by \$864,246. This occurred for two primary reasons. Attendance was projected at 1,000,000 visitors and actually achieved a Zoo high attendance of 1,162,078. In addition, all of the divisions under spent their total budgets even though two had exceeded their appropriations in specific categories. An Institute of Museum Services grant did not materialize and the associated project was not done. Fringe benefit costs were over budgeted by \$276,000, a significant part of the difference.

The ending Zoo Capital Fund balance for FY 1991-92 exceeded projections by \$309,487. The Zoo had two projects, the Center for Species Survival and a People Mover, that were delayed. The Center for Species Survival was delayed for further fund raising to occur, and the People Mover was delayed because suitable machinery had not been located.

### **Support Service Fund**

The Support Service Fund beginning fund balance is comprised of two components: Business License Program and general Support Service Fund. Each component will be discussed separately.

**Business License Program:** The budgeted beginning fund balance shown in the Support Service Fund is entirely related to the Business License Program. The amount budgeted was \$91,860. The actual beginning fund balance related to the program is \$104,147. The increase of \$12,287 is a result of both increased sales of business licenses and reduced expenditures from the amount projected. The beginning balance was updated in the last week of April to reflect an assumption of 1,050 total licenses sold during the fiscal year. The actual number of licenses sold was 1,151. A large number of licenses are sold during the last quarter of each fiscal year making it difficult to accurately predict program revenues. In addition, there is a tendency to be conservative in estimating the number of licenses to be sold. For the last two years the Business License Program has been self-supporting. However, the profit margin is very small. For this reason and until the program further expands, it is fiscally prudent to be conservative in the estimate of resources, thereby placing a tighter constraint on overall planned expenditures.

Support Service Fund: The Support Service Fund is funded through a series of transfers from the operating departments. At the beginning of each year, the cost allocation plan is developed using adopted budget amounts for expenditures. At the end of each year, as part of the fiscal year close and audit process, the cost allocation plan is run again, this time using actual costs for the year.

The final run of the cost allocation plan determines the actual transfers needed from departments. Adjustments are made at that time to the Support Service Fund resources. The actual transfer amounts feed into the department's actual costs. This determines the amount of resource transfers needed for those departments from other areas (i.e. excise tax, solid waste fees, etc.). The final cost allocation run also determines the final indirect cost rate (overhead percentage) to be used in the final grant billing of the year. In addition, it determines the amount of disallowed costs for the Planning Fund and hence plays an important factor in the resource and expenditure matrix of the Planning Fund and the amount of excise tax required for the Fund. Any time there is an adjustment to the actual expenditures of the Support Service Fund, the cost allocation should be re-run thereby adjusting all department's transfer amounts, their resource amounts, the final grant billing and the amount of disallowed costs.

Timing is the critical factor in the final run of the cost allocation plan. Theoretically, the final cost allocation plan should not be run until the financial audit is complete thereby assuring that all possible adjustments have been made to the Support Service Fund actual expenditures. However, the final run of the cost allocation plan is integral to the preliminary work that must be completed by the Accounting Division for the audit and to the financial audit itself. It must be performed as early in the process as possible. The earlier in the process it is performed, the higher the possibility there is for adjustment. As mentioned above, any adjustment to Support Service expenditures requires the adjustment of the cost allocation plan which requires the adjustment to almost all of the departments in the agency and would include an adjustment to the final grant billing, which may not be possible.

Prior to FY 1990-91, the support services were included in the General Fund. All transfers, except for the Planning Fund, were made effective July 1 of each fiscal year. The agency did not adjust the transfers at year end to reflect actual costs. The General Fund carried a fund balance each year of approximately \$250,000 to \$300,000. The fund balance was used to fund the general expenses of the agency during the year including any transfers from the General Fund contingency. The agency also used to cap the overhead rate for the Planning Fund at year end. If the final cost allocation plan calculated an overhead rate above the cap, the fund balance was used to fund the difference. In FY 1990-91, with the beginning of the excise tax, the support services were segregated from the General Fund and placed in their own fund. The intention at that time was to maintain the Support Service Fund with a zero fund balance. This decision, however, required numerous changes to the year end process. It required that all transfers be adjusted at year end to actual costs. Since the fund would no

longer have a beginning balance, we could no longer cap the overhead rate as previously done. It required the completion of a final grant billing which would adjust all previous billings for the year to the actual final rate. The circular process and the problems associated with the year end close as discussed above began with the decision in FY 1990-91 to create the Support Service Fund.

During the FY 1990-91 financial audit, a solution to the problems identified above was developed. The Support Service Fund accrues a small amount of miscellaneous revenue during each fiscal year. During the final run of the cost allocation plan, this revenue is not used to offset department transfers but is held in reserve to fund any potential adjustments to the Support Service expenditures that may occur after the final run of the cost allocation plan and during the audit. Any remaining balance to the miscellaneous revenue after all adjustments are taken into account will roll over to the next year and be used to offset that year's final cost allocation plan.

This process was first used in FY 1990-91. Approximately \$30,000 in miscellaneous revenue was held in reserve to fund audit adjustments to the Support Service Fund. By the end of the audit, all but approximately \$200 had been used to fund adjustments. For FY 1991-92, approximately \$63,000 in miscellaneous revenue was held in reserve to fund audit adjustments to the Support Service Fund. No adjustments were necessary during the process. The entire \$63,000 has been carried forward into FY 1992-93 and will be used to offset the FY 1992-93 final cost allocation plan.

It might have been possible to identify a portion if not all of the actual fund balance for the Support Service Fund at the time the FY 1992-93 budget was being prepared. However, following the intention of keeping the Support Service Fund at a zero fund balance, if a beginning fund balance had been identified it would have been used to offset department transfers during the development of the FY 1992-93 budget. If, then, adjustments had been necessary to the Support Service Fund during the FY 1991-92 audit and the miscellaneous revenue held in reserve had been needed for this purpose, the fund balance would have been less than projected. We would still be explaining why the fund balance was different than projected, but this time we would be explaining why it was less than projected instead of more than projected. In addition, there would be a potential impact on expenditures of the fund since the projected beginning balance had been used to offset budgeted department transfers.

### **Building Management Fund**

The Building Management Fund ending balance is comprised of two components: Metro Center Operations/Debt Service and the Headquarters Project Management. Each component will be discussed separately.

Metro Center Operations and Debt Service - FY 1993-94 will be the first year that debt service on the revenue bonds issued for the construction of the new office building will be allocated to departments. The bond ordinance requires that each year we allocate 110% of our actual debt service requirements. The additional 10% allocated will roll over into the subsequent year and be used as a credit against the 110% that is required to be allocated that year. The departments will realize a substantial increase to their Building Management Fund transfers in FY 1993-94 as a result of the debt service requirement.

During the last half of FY 1991-92, the Financial Planning division analyzed the future financial impact of the debt service allocations on the departments. We looked for ways to mitigate the immediate financial impact to be realized in FY 1993-94 given existing budgetary constraints and resource limitations and still meet the requirements of the bond ordinance. The analysis took into consideration department cash flows, the immediate and future impact on the excise tax, and the federal regulations required in the preparation of the indirect cost rate proposal (overhead rate). The focus was narrowed to the additional 10% debt service allocation requirement of the bond ordinance. It was decided to fund in advance over a period of two years the 10% coverage amount needed for FY 1993-94. The following is a summary of the major reasons for this decision and the method by which this was done.

The Building Management costs are allocated to departments through the cost allocation plan. The cost allocation plan is prepared initially at the beginning of each year using adopted budget numbers. It is re-run at the end of each fiscal year using actual expenditure costs. All department transfers are adjusted to reflect actual costs at the end of the year. In order to fund the 10% debt coverage in advance, it was decided not to adjust Building Management transfers to actual costs for FY 1991-92. Departments were charged the amount identified in the budget. This did not place an additional burden on departments since the budget already assumed and funded the level of spending identified in the budget. This method used existing appropriation and did not increase or create new appropriations. This process will be utilized again during the final run of the FY 1992-93 cost allocation plan. It must be stressed that the FY 1992-93 Building Management budget was not developed with the intention of realizing excess appropriations. All costs for the building were kept at a minimum.

The impact on the excise tax was of prime concern in this decision. The excise tax funds not only the General Fund transfers but also any disallowed costs charged to the Planning Fund. Federal regulations will allow the allocation of debt service to grant funded programs. There is, however, a question as to whether the additional 10% coverage required in the ordinance would be considered an allowable cost. If a cost is questionable it must be disallowed in the preparation of the cost allocation plan. The total amount of the FY 1993-94 10% coverage is \$120,905. Of that amount the excise tax would be required to fund approximately \$56,000 or 46.3% of the total. By funding the 10% coverage in advance using the method described above, we were able to spread this cost over a two year period without placing an additional undue burden on the excise tax.

The final decision to fund the debt coverage in advance using the method described above was made only after the final cost allocation plan was run and the results were analyzed to determine the impact on the departments and the excise tax. This decision realized an additional \$61,630 of ending balance in the Building Management Fund. Because of the timing of the decision, this amount could not have been recognized in the adopted budget. This amount will be carried forward into FY 1993-94 and used to offset the 110% debt service requirement of the bond ordinance.

Headquarters Project Management - The FY 1991-92 budget included a transfer of \$100,000 in excise tax to the Building Management Fund to cover costs associated with the management of the headquarters project which could not be funded through bond proceeds. As of June 30, 1992, the headquarters project had expended approximately \$81,000 of costs which could not be charged against the bond proceeds. However, it was still possible that further adjustments to this amount could be made during the audit. All projections of the General Fund's ending balance for FY 1991-92 assumed the entire \$100,000 would be needed to fund project management costs. It was decided to transfer the entire \$100,000 to the Building Management Fund for that fiscal year. Adjustments made during the audit would be funded through this amount. Any excess would be carried forward into FY 1992-93 and would be used to either support the parking structure operations, assist in the advanced funding of the 10% debt coverage or be used as a credit against the General Fund's building transfer for FY 1992-93. With the delay in the construction of the Blazer arena, the parking structure's projections for special event parking revenues are considerably less than anticipated. The \$19,000 in additional fund balance will be required to offset operations costs of the parking structure for FY 1992-93.

All projections for the headquarters project management costs assumed the full \$100,000 would be needed during FY 1991-92. The decision to transfer the entire amount was not made until after the end of the fiscal year. Because of the timing, it was impossible to include this amount in the projections of the adopted budget.

### **Risk Management Fund**

The Risk Management Fund ending balance was within 0.06% of projections. The ending balance is comprised entirely of reserves for its liability, worker compensation and environmental impairment liability programs.

### **Convention Center Debt Service Fund**

The Convention Center Debt Service Fund's ending balance was projected at the end of March, 1992, to be \$1,173,024. The actual ending balance was \$1,594,247, a difference of \$421,223. This amount can be broken into two amounts -- \$200,927 related to the bond

defeasance and sale of the Convention Center refunding bonds, and \$220,296 attributable to a variance from projections in the amount of property taxes received.

As part of the sale of the Convention Center refunding bonds, \$106,723 of bond proceeds accrued to the debt service fund to pay various issuance costs of the bonds. All assumptions assumed this entire amount would be spent. However, only \$90,323 was expended during the year leaving a balance of \$16,400. In addition, \$184,527 in accrued interest related to the sale of bonds was reflected as a resource to the debt service fund. This amount was not identified at the time the projections were prepared and was not reflected in the financial system until June, 1992. The total balance related to the sale of bonds is \$200,927. This balance was used to pay the July 1, 1992, debt service payment on the refunding bonds.

The remaining balance of \$220,296 is attributable to variances in the collections of property taxes. A revised fund balance projection was made in March of 1992. Tax collections received to date at the time the analysis was prepared were as of the end of February. Analysis of the two previous full fiscal years showed significant variances in collection rates at different points in time. As of the end of February for the FY 1989-90 we had received approximately 85% of total current year tax collections with an actual total collectable rate for the year of 91.6% of the total levy. For FY 1990-91 at the end of February we had received only 74% of total current tax collections with an actual total collectable rate for the year of 93.2% of the total levy. We were unsure if the variances shown from FY 1989-90 to FY 1990-91 were an aberration for that one year or if this trend would continue. If we were to assume the collection rates of FY 1990-91, and the rates were actually closer to those of previous years, we would have undervalued the amount of the property tax levy required to pay debt service.

For estimating the FY 1991-92 final ending balance we developed a compromise to the problem. We assumed the amount collected as of the end of February, 1992, was equal to approximately 85% of total estimated collections. We also assumed total collections would be 92% of the total levy. These estimates are very similar to actual collection rates from FY 1989-90 and prior. However, to provide a buffer in the event the collection rates seen in FY 1990-91 were not simply an aberration for that one year, we discounted the estimated amount we would receive from prior years taxes. By purposefully lowering the amount of estimated prior years taxes, we provided a cushion should the actual current year tax collections for FY 1991-92 be significantly lower than projected. In the final analysis of FY 1991-92, the actual collection rate as of the end of February was 86.4% of total collections and the actual collectable rate for the year was 91% of the levy. We had slightly overestimated the amount of current years taxes to be received but had also underestimated the prior year tax collections. The net result is an increase in the fund balance of \$220,000.

There is no financial impact on the FY 1992-93 debt service budget as a result of the higher fund balance. The increased balance will be carried forward into FY 1993-94, and be used to reduce the property tax levy amount for that fiscal year.



### **Solid Waste Revenue Fund**

The Solid Waste Revenue Fund ending balance came within 2.0% of projections. The department will continue to closely monitor its budget throughout the year.

### **General Revenue Bond Fund**

The Metro Headquarters construction project is budgeted in the General Revenue Bond fund. To provide for possible delays in the construction schedule near the end of FY 1991-92, the budget assumed a one month delay in construction. If this delay occurred, the budget would allow for expenditures without the need for a supplemental budget. As it turns out, the draw down on the construction bond proceeds occurred faster than projected in the budget. The possible delays did not occur. The project is being monitored very closely. The amount of bond proceeds remaining, and not the amount of resources identified in the budget, will determine the expenditure towards construction.

### **General Fund**

Facilities Planning Division - The Facilities Planning division of the General Fund was closely monitored and managed in FY 1991-92. A financial report dated July 19, 1992, for the period as of the end of June, 1992, indicated the division had a positive balance of \$228.76. On July 27, 1992, the Department requested a journal entry adjustment in the amount of \$212.69, to bring the account balance to \$16.07. A subsequent report dated August 14, 1992, indicated an account balance which was \$156 in excess of appropriations. The first report run in July was either in error or did not reflect pending expenditures which were recorded after the generation of the report.

The incident points up the need for the department to more closely track obligations or encumbrances as well as expenditures when attempting to intensively manage accounts. The accounting reports reflect purchase orders issued and invoices submitted by the departments for processing as of the closing date of the report run, and therefore are only as accurate as the information received by the departments from the vendors and the Accounting division from the departments.. Actual disbursements may lag obligations by as much as 60 days due to timing of vendors billing cycles. Although the Regional Facilities department has in the past kept a running tally of obligations, a more formal and intensive effort is required in the future.

Fund Balance Projections - The General Fund's fiscal year 1991-92 ending balance was projected at the end of March 1992, to be \$495,676. The actual ending balance was \$676,575. This was a favorable variance of \$180,899. There were several contributing variances.

The excise tax revenue was 1.9% above the March forecast. This contributed an additional \$70,797. The Zoo contributed \$39,665 more than budget. Outstanding weather continued after March and allowed Zoo revenues to be above expectations. The Convention Center contributed \$26,222 more than forecast. There was very limited historical experience with the Convention Center on which to base a forecast. The month of May was outstanding for the facility. Solid Waste contributed only 84% of its excise tax budget, but reduced tonnage occurred throughout the year and was considered in the March forecast.

The largest favorable spending variance in expenditures was the Council which was \$42,902 under the forecast. The second largest favorable spending variance was the Government relations which was \$36,106 under the forecast. The third largest favorable spending variance was Facilities Planning which was \$30,653 below the forecast.

### Planning Fund

The Planning Fund's ending balance anticipated the receipt prior to the end of FY 1991-92 of the local jurisdiction's match for three large projects (I205/Milwaukie, I-5/Vancouver and the Hillsboro AA/DIES). The contracting process between the numerous jurisdictions was not completed by the end of the year as expected. The changing circumstances were not known in sufficient time to include in the budget projections. These funds will be received during FY 1992-93 upon completion of the contracting process. There is no financial impact, either favorable or unfavorable, as a result. In addition, many of these funds were budgeted as fund balances and should have actually been reflected as unearned revenue.

### Comparison of Fund Balance Components

	<u>Budget</u>	<u>Actual</u>
Transportation General and Discretionary	\$143,200	\$25,201
General Fund Discretionary	\$32,664	\$39,790
Solid Waste Transfer	\$0	\$37,454
ODOT	\$31,250	\$0
Tri-Met	\$31,250	\$0
Bike Map Sales	\$10,000	\$0
Local Match I-205/Milwaukie	\$116,187	\$0
Local Match I-5/Vancouver	\$230,125	\$0
Local Match Hillsboro AA/DEIS	\$87,210	\$0
Residual transfer from former Planning & Development Fund	<u>\$20,000</u>	<u>\$73,072</u>
<b>TOTAL</b>	<b>\$701,886</b>	<b>\$175,517</b>

Memorandum  
December 17, 1992  
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**Oregon Convention Center Operating Fund  
Spectator Facilities Operating Fund  
MERC Management Pool**

A response has been provided to the Finance Committee from the Metro Exposition-Recreation Commission under separate cover.

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# Metropolitan Exposition-Recreation Commission

P.O. Box 2746 • Portland, Oregon 97208 • 503/731-7800 • Fax #731-7870 • 777 NE Martin Luther King Jr. Blvd.

FOR 12/17/92  
FINANCE COMMITTEE  
MEETING

DATE: December 15, 1992

TO: Councilor George Van Bergen  
Chair, Council Finance Committee

FROM: Metropolitan Exposition-Recreation Commission  
Finance/Budget Committee

SUBJECT: Performance Indicators for Metro's Financial Management  
System

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Please refer to Donald E. Carlson's memorandum dated December 3, 1992 addressed to Metro's Finance Committee, above subject. His memo states that Council Staff recommends that the Finance and Management Information Office return to the next Finance Committee meeting to report on how they plan to insure that there be no expenditures in excess of Council approved appropriations.

The following information provided is based on the Draft Comprehensive Annual Financial Report for the year ended June 30, 1992 (FY 1991-92), attached. A more detailed explanation is provided after the attached pages of the Draft Comprehensive Financial Report.

## Convention Center Operating Fund (Page 92)

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	Budget	Actual	Variance
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A. Revenues:			
(4) Total Revenues and other financing sources	\$ 6,945,497	\$ 9,812,109	\$ 2,866,612
Major Swings:			
(1) Hotel/Motel Tax	3,000,000	3,555,380	. 555,380
(2) Food Services	1,500,000	3,334,376	1,834,376
(3) Utility Services	336,000	612,096	276,096

Convention Center bookings did much better than original projections with event days coming in at 742 and attendance at 658,894, our budget was based on 714 events and attendance of 487,000.

	Budget	Actual	Variance
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B. Expenditures:			
(8) Total Expenditures	\$ 6,415,092	\$ 6,878,551	(\$ 463,459)
Major Swings:			
(5) Personal Services	2,139,392	2,150,119	( 10,727)
(6) Materials & Services	4,173,700	4,608,194	( 434,494)
(7) Capital Outlay	102,000	120,238	( 18,238)

The increase in events and attendance also resulted in actual expenditures in excess of Council approved appropriations. i.e. part-time labor, food service costs, operating supplies. Capital Outlay overage was due to the purchase of a Espresso Machine and for Video equipment.

	Budget	Actual	Variance
	-----	-----	-----
C. Fund Balance:			
(9) Beginning Fund Balance	\$ 1,800,000	\$ 4,228,537	\$ 2,428,537
(10) Ending Fund Balance	\$ 1,577,353	\$ 6,469,663	\$ 4,892,310

This increase is due to the positive acceptance of the convention center, within the industry, resulting in bookings and attendance exceeding original projections for the last two fiscal years.

D. Since a lot of the revenues generated in FY 1991-92 came near the end of the fiscal year, we did not have time to make the deadline for a supplemental budget.

#### Spectator Facilities Fund (Pages 72 and 73)

	Budget	Actual	Variance
	-----	-----	-----
A. Revenues (Page 72):			
(4) Total Revenues	\$16,447,000	\$17,596,190	\$ 1,149,190
(1) Coliseum	10,731,000	12,353,973	1,622,973
Increase was due to events not budgeted, i. e. NBA Draft, Tournament of the America's, six more Blazer play-off games, three large food functions.			
(2) Stadium	\$ 1,725,000	\$ 2,103,238	\$ 378,238

Unbudgeted events, i.e. seven Beaver play-off games, Kenny G. concert, NFL football pre-season scrimmage game, CFL football.

	Budget	Actual	Variance
	-----	-----	-----
(3) PCPA	\$ 3,991,000	\$ 3,138,979	\$ ( 852,021)

Decrease due to lower events and attendance than budgeted, resulted in User's Fees and Concessions revenue below what was budgeted. Drop in Commissions Revenue was due to the telephone sales, that was included in our budget, but was turned over to the Ticketing Agents under the Automated Ticketing Service Agreement signed in December, 1991. Also, the adjustment in rental fees to the Arts Groups resulted in Rental Revenues coming in \$331,496 below budget.

#### B. Expenditures (Page 73):

(4) Coliseum	\$ 9,901,793	\$10,474,312	\$ ( 572,519)
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##### Major Swings:

(1) Personal Services	\$ 3,441,001	\$ 3,465,946	\$ ( 24,945)
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Increase was due to additional usage of part-time labor re increase in events and attendance

(2) Material & Services	\$ 6,328,392	\$ 6,821,867	\$ ( 493,475)
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Increase was due mainly to actual food costs of \$4,676,186 vs. \$4,294,175 budgeted.

(3) Capital Outlay	\$ 132,400	\$ 186,499	\$ ( 54,099)
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Overage due to unanticipated concessions/catering equipment purchases and emergency purchase of radios for security and operations

(5) Stadium:			
Material & Services	\$ 1,164,464	\$ 1,252,537	\$ ( 88,073)

Increase was due to the increase in events and attendance over budget resulting in an increase to food costs

	Budget	Actual	Variance
	-----	-----	-----
C. Fund Balance:			
(5) Beginning Fund Balance			
(Page 72)	\$ 2,005,,453	\$ 4,407,497	\$ 2,402,044
(6) Ending Fund Balance			
(Page 73)	\$ 1,137,591	\$ 4,901,496	\$ 3,763,905

This favorable variance is due to the successful operations at the Coliseum's in the last two fiscal years. In FY 1990-91 the Coliseum generated positive cash of about \$1.4 million and in FY 1991-92 it generated about \$1.2 million.

D. Since a lot of the revenues and additional expenditures came near the end of the fiscal year, we did not have time to meet the supplemental budget process deadline.

# METROPOLITAN SERVICE DISTRICT

## Convention Center Operating Fund

### Statement of Revenues and Expenditures – Budget (Non-GAAP Budgetary Basis) and Actual

For the year ended June 30, 1992

		<u>Budget</u>	<u>Actual</u>	Variance favorable (unfavorable)
Beginning fund balance available for appropriation – July 1, 1991	(9)	\$ <u>1,800,000</u>	<u>4,228,537</u>	<u>2,428,537</u>
Revenues:				
Inter governmental revenue	(1)	3,000,000	3,555,380	555,380
Rental fees		972,625	942,644	(29,981)
Food service	(2)	1,500,000	3,334,376	1,834,376
Utility services	(3)	336,000	612,096	276,096
Parking fees		433,689	497,041	63,352
Reimbursed – labor		268,320	191,811	(76,509)
Merchandising		–	7,335	7,335
Commissions		–	27,232	27,232
Interest		153,200	242,436	89,236
Miscellaneous		–	99,173	99,173
Total revenues		6,663,834	9,509,524	2,845,690
Other financing sources –				
Operating transfers –				
General Fund		<u>281,663</u>	<u>302,585</u>	<u>20,922</u>
Total revenues and other financing sources	(4)	<u>6,945,497</u>	<u>9,812,109</u>	<u>2,866,612</u>
		\$ <u>8,745,497</u>	<u>14,040,646</u>	<u>5,295,149</u>
Expenditures:				
Personal services	(5)	2,139,392	2,150,119	(10,727)
Materials and services	(6)	4,173,700	4,608,194	(434,494)
Capital outlay	(7)	<u>102,000</u>	<u>120,238</u>	<u>(18,238)</u>
Total expenditures	(8)	6,415,092	6,878,551	(463,459)
Other financing uses –				
Transfers		<u>753,052</u>	<u>692,432</u>	<u>60,620</u>
Total expenditures and other financing uses		7,168,144	7,570,983	(402,839)
Unappropriated ending fund balance – June 30, 1992	(10)	<u>1,577,353</u>	<u>6,469,663</u>	<u>4,892,310</u>
		\$ <u>8,745,497</u>	<u>14,040,646</u>	<u>5,295,149</u>



# METROPOLITAN SERVICE DISTRICT

## Spectator Facilities Fund

### Statement of Revenues and Expenditures Budget (Non-GAAP Budgetary Basis) and Actual

**DRAFT**

For the year ended June 30, 1992

		<u>Budget</u>	<u>Actual</u>	Variance favorable (unfavorable)
Beginning fund balance available for appropriation - July 1, 1991	(5) \$	<u>2,005,453</u>	<u>4,407,497</u>	<u>2,402,044</u>
Revenues:				
Memorial Coliseum:				
Admissions - user fees		950,000	1,436,195	486,195
Rental fees - building		1,581,700	1,250,204	(331,496)
Concessions and catering		4,600,000	6,410,607	1,810,607
Parking fees		1,675,000	1,489,610	(185,390)
Reimbursement - labor		761,000	836,591	75,591
Merchandising		475,000	391,997	(83,003)
Electrical contract		60,000	30,924	(29,076)
Commissions		120,000	135,581	15,581
Interest		358,300	248,263	(110,037)
Miscellaneous		<u>150,000</u>	<u>124,001</u>	<u>(25,999)</u>
	(1)	<u>10,731,000</u>	<u>12,353,973</u>	<u>1,622,973</u>
Civic Stadium:				
Admissions - user fees		170,000	187,354	17,354
Rental fees - building		185,000	251,311	66,311
Concessions and catering		1,200,000	1,429,132	229,132
Reimbursement - labor		90,000	125,122	35,122
Merchandising		40,000	5,156	(34,844)
Commissions		20,000	44,721	24,721
Interest		-	22,184	22,184
Miscellaneous		<u>20,000</u>	<u>38,258</u>	<u>18,258</u>
	(2)	<u>1,725,000</u>	<u>2,103,238</u>	<u>378,238</u>
Portland Center for Performing Arts:				
Admissions - user fees		750,000	702,855	(47,145)
Rental fees - building		980,000	593,470	(386,530)
Concessions and catering		165,000	133,172	(31,828)
Reimbursement - labor		1,304,000	1,245,299	(58,701)
Merchandising		75,000	42,919	(32,081)
Commissions		550,000	312,833	(237,167)
Interest		42,000	-	(42,000)
Miscellaneous		<u>125,000</u>	<u>108,431</u>	<u>(16,569)</u>
	(3)	<u>3,991,000</u>	<u>3,138,979</u>	<u>(852,021)</u>
Total revenues	(4)	<u>16,447,000</u>	<u>17,596,190</u>	<u>1,149,190</u>
	\$	<u>18,452,453</u>	<u>22,003,687</u>	<u>3,551,234</u>

(Continued)

# METROPOLITAN SERVICE DISTRICT

## Spectator Facilities Fund

### Statement of Expenditures, Other Financing Uses Budget (Non-GAAP Budgetary Basis) to Actual, Continued

For the year ended June 30, 1992

DRAFT

		<u>Budget</u>	<u>Actual</u>	Variance favorable (unfavorable)
Expenditures:				
Memorial Coliseum:				
Personal services	(1) \$	3,441,001	3,465,946	(24,945)
Materials and services	(2)	6,328,392	6,821,867	(493,475)
Capital outlay	(3)	<u>132,400</u>	<u>186,499</u>	<u>(54,099)</u>
	(4)	<u>9,901,793</u>	<u>10,474,312</u>	<u>(572,519)</u>
Civic Stadium:				
Personal services		607,148	513,915	93,233
Materials and services	(5)	1,164,464	1,252,537	(88,073)
Capital outlay		<u>11,200</u>	<u>11,539</u>	<u>(339)</u>
		<u>1,782,812</u>	<u>1,777,991</u>	<u>4,821</u>
Portland Center for Performing Arts:				
Personal services		3,207,808	2,718,826	488,982
Materials and services		941,400	834,208	107,192
Capital outlay		<u>136,150</u>	<u>68,329</u>	<u>67,821</u>
		<u>4,285,358</u>	<u>3,621,363</u>	<u>663,995</u>
Total expenditures		15,969,963	15,873,666	96,297
Other financing uses –				
Transfers		<u>1,344,899</u>	<u>1,228,525</u>	<u>116,374</u>
Total expenditures and other financing uses		17,314,862	17,102,191	212,671
Unappropriated ending fund balance – June 30, 1992	(6)	<u>1,137,591</u>	<u>4,901,496</u>	<u>(3,763,905)</u>
	\$	<u>18,452,453</u>	<u>22,003,687</u>	<u>3,551,234</u>

Note: Capital outlay becomes a fixed asset of the City of Portland under terms of an intergovernmental agreement, and therefore is recorded as "Contribution to other government" operations expenditure on a GAAP basis.

Additional information:

Convention Center Operating Fund (Page 92)

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Convention Center bookings did much better than original projections with event days coming in at 742 and attendance at 658,894, our budget was based on 714 events and attendance of 487,000.

Revenues: This activity increase resulted in Total Revenues and Other Sources of \$9,812,109, which is \$2,866,612 (41.3%) over the budgeted \$6,945,497. The major swings in Revenues/Resources was in Food Service which was \$1,834,376 (122.3%) over budget (\$3,334,376 vs. \$1,500,000); Intergovernmental Revenues of \$3,555,380, which was \$555,380 (18.5%) above the projected \$3,000,000; and Utility Services of \$612,096, which was \$276,096 (82.2% above projections of \$336,000.

Expenditures: This increase in events and attendance also resulted in actual expenditures in excess of Council approved appropriations. Personal Services of \$2,150,119 is \$10,727 (.05%) over budget, mainly in part-time labor. Material and Services was \$434,494 (10.4%) above approved appropriations, \$4,608,194 vs. \$4,173,700 due basically to two areas: Food Service costs of \$2,277,256 was \$366,189 (19.2%) above budgeted \$1,911,067 and Operating Supplies came in \$49,598 (76.2%) over budget, \$114,698 vs. \$65,100.

Capital Outlay: The \$18,238 (17.9%) over spending in this area, \$102,000 budget vs. \$120,238 actual, was due to the purchase of a Espresso Machine for food functions and for video equipment.

Fund Balance: The Convention Center Fund Balance had a \$4,892,310 (310.2%) favorable variance swing (June 30, 1992 actual balance of \$6,469,663 vs. June 30, 1992 budget of \$1,577,353). \$2,428,537 of this variance was due to the Beginning Fund Balance Available July 1, 1991 of \$4,228,537 vs. \$1,800,000 budgeted. The rest of the variance, \$2,463,773, was due to actual FY 1991-92 operations as stated above.

Summary: Since a lot of the revenues generated in FY 1991-92 came in near the end of the fiscal year, we did not have time to do a supplemental budget. In order to avoid similar occurrences, we will take a hard look at revenues and expenses in January, 1993 in order to meet the supplemental budget dead line. Also, since we now have more history and experience in relating events to revenues, we will be taking a more aggressive look at revenue projections for FY 1993-94.

Spectator Facilities Fund (Page 72 and 73)

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Revenues (Page 72): In FY 1991-92 the Spectator Facilities Fund actual Total Revenues were \$17,596,190 which is \$1,149,190 (7.0%) over the budgeted amount of \$16,447,000. Variances by facility are

as follows:

A. Coliseum:

The Coliseum generated \$1,622,973 (15.1%) more in revenues than what was budgeted (\$12,353,973 vs. \$10,731,000). This increase was due to events not included in our budget, i.e. the NBA Draft, Tournament of the America's, six more Trail Blazer play-off games and three very large food function events. The major variances in Actual vs. Budgeted Revenues were in Concessions/Catering, which was \$1,810,607 (39.4%) over budget (\$6,410,607 vs. \$4,600,000) and Admissions - User's Fees, which was \$486,195 (51.2%) over budget (\$1,436,195 vs. \$950,000).

B. Civic Stadium:

Total Revenues at the Stadium were \$2,103,238, which is \$378,238 (21.9%) above the budgeted \$1,725,000. The Civic Stadium hosted a number of unbudgeted events. i.e. seven Portland Beavers playoff games, Multnomah Athletic Club's 100 year anniversary featuring Kenny G, a NFL pre-season scrimmage game between the Seattle Seahawks and the Atlanta Falcons, and a CFL exhibition football game. The major swings in revenues for the Stadium are: User's Fee of \$187,354 which is \$17,354 (10.2%) above the budgeted \$170,000, Rental Fees of \$251,311 which is \$66,311 (35.8%) above the \$185,000 that was budgeted, and Concessions/Catering of \$1,429,132 actual vs. \$1,200,000 budget an increase of \$229,132.

C. Portland Center for the Performing Arts:

The PCPA Total Revenues are below budget by \$852,021 (21.3%), \$3,991,000 vs. \$3,138,979. PCPA's budget was based on 913 performances with a little over 1,000,000 in attendance. Actual was 880 performances and about 915,000 in attendance. This drop in attendance resulted in a \$47,145 unfavorable variance in User's Fees, \$31,828 in Concessions/Catering, etc. The reason for the large drop in Commissions Revenues of \$237,167 was that we included in our budget over \$200,000 in ticket services (service charges, credit card charges, handling charges) from the telephone sales room at PCPA. However, the Commission turned over telephone sales to our ticketing agents (Ticketmaster and Fastixx) under the new Automated Ticketing Service Agreements signed in December, 1991. The \$386,530 (39.4%) unfavorable variance in Rental Fees (\$980,000 budget vs. \$593,470) is due mainly to the unbudgeted rent adjustment of about \$397,000 to the Arts Group facility users.

Expenditures (Page 73): In FY 1991-92 Total Actual Expenditures for the Spectator Facilities Fund was \$212,671 (1.2%) below budget. Actual was \$17,102,191 and budget was \$17,314,862. Actual expenditures in excess of Council approved appropriations are as follows:

A. Coliseum:

As mentioned in Revenues, above, the Coliseum generated over \$1.6 million in Revenues above what was budgeted. Due, again, to unbudgeted events, i.e. NBA Draft, Tournament of the America's, etc. This increased activity resulted in some actual expenditures being in excess of Council approved appropriations. Personal Services came in \$24,945 (0.7%) over budget due mainly the part-time labor area (actual part-time labor was \$1,126,159 vs. \$1,105,770 budget).

Materials and Services of \$6,821,867 is \$493,475 (7.8%) over the budget of \$6,328,392. This was due mainly to the increase in actual Concessions/Catering Costs of \$382,011 (8.9%) (actual was \$4,676,186 vs. \$4,294,175 budget).

B. Stadium:

As mentioned previously, the Stadium revenues were \$378,238 over budget due to unbudgeted events, i.e. Multnomah Athletic Club celebrated their 100th year anniversary featuring Kenny G., NFL pre-season scrimmage between Seattle Seahawks and the Atlanta Falcons, and a CFL exhibition football game. This increase in activity resulted in Materials and Services coming in excess Council approved appropriations of \$88,073 (7.6%) (actual was \$1,252,537 vs. budget of \$1,164,464). This was due mainly to the increase to Concessions/Catering costs of \$111,371 (13.3%) (actual was \$947,391 vs. \$836,020 budgeted).

Capital Outlay: The overage in the Coliseum of \$54,099 was due to the purchase of \$38,509 in unanticipated concession/catering equipment and \$11,878 for an emergency purchase of radios for security. This was brought on by the heavy schedule the last months of the fiscal year in all facilities.

Fund Balance: The Spectator Facilities Fund had a \$3,763,905 favorable variance swing at June 30, 1992 actual vs. budget (\$4,901,496 vs. \$1,137,591). \$2,402,044 of this variance was due to the Beginning Fund Balance Available July 1, 1991 of \$4,407,497 vs. \$2,005,453 budgeted. The rest of the variance was due to FY 1991-92 operations.

Summary: Since a lot of the revenues and additional expenditures came near the end of the fiscal year, we did not have time to meet the supplemental budget process deadline. In order to avoid similar occurrences, we will take a hard look at revenues and expenses in January, 1993 in order to meet the supplemental budget deadline for this fiscal year, FY 1992-93. Also, we will be taking a more aggressive look at revenue projections for FY 1993-94 budget.

Copy: Metro Exposition-Recreation Commission  
Donald E. Carlson, Council Administrator  
Dick Engstrom, Deputy Executive Officer  
Jeff Blosser, Acting General Manager  
Dominic Buffetta, Finance/Administration Director

Council  
12/22/93

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXPRESSING	)	RESOLUTION NO. 92-1734
APPRECIATION TO LARRY BAUER FOR	)	
SERVICES RENDERED TO THE COUNCIL	)	Introduced by Presiding
OF THE METROPOLITAN SERVICE	)	Officer Jim Gardner
DISTRICT	)	

WHEREAS, Larry Bauer served as the elected Council representative for District 2 of the Metropolitan Service District from January 1989 through August 31, 1992; and

WHEREAS, Councilor Bauer provided valuable service to the Metro Council and the citizens of the region as Co-Chair of the Bi-State Policy Advisory Committee; Vice-Chair of the Solid Waste Committee; member of the Intergovernmental Relations, Internal Affairs, Transportation & Planning, Regional Facilities, and Governmental Affairs Committees; and Council representative on the Special Districts Association of Oregon Board of Directors, Urban Growth Management Policy Advisory Committee, Water Resources Policy Advisory Committee, and Building Relocation Task Force; and

WHEREAS, Councilor Bauer provided valuable leadership in establishing the Bi-State Policy Advisory Committee as a credible forum for the regular consideration of issues of concern to the four-county region, including Clark County, Washington, and in raising awareness that our region transcends state lines in many matters including air and water quality, communications, and economic viability; now, therefore

BE IT RESOLVED,

That the Council of the Metropolitan Service District expresses its appreciation to Larry Bauer for his service to the Council, Metro and the citizens of the region, and wishes him success in his future endeavors.

ADOPTED by the Council of the Metropolitan Service District this 22nd day of December, 1992.

Jim Gardner, Presiding Officer

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXPRESSING	)	RESOLUTION NO. 92-1735
APPRECIATION TO TANYA COLLIER FOR	)	
SERVICES RENDERED TO THE COUNCIL	)	Introduced by Presiding
OF THE METROPOLITAN SERVICE	)	Officer Jim Gardner
DISTRICT	)	

WHEREAS, Tanya Collier served as the appointed and elected Council representative for District 9 of the Metropolitan Service District from July 10, 1986 through January 3, 1993; and

WHEREAS, Councilor Collier served as an exemplary representative on the Metro Council, providing dedicated service and leadership as the Council's Presiding Officer for 1990 and 1991; Chair of the Legislative, Finance, and Governmental Affairs Committees; Vice-Chair of the Planning and Development, Intergovernmental Relations, and Regional Facilities Committees; and member of the Internal Affairs, Intergovernmental Relations, Finance, and Solid Waste Committees; and

WHEREAS, Councilor Collier has put her leadership skills to work in furthering the cause of regional government throughout the region as well as successfully working to establish effective and cooperative relationships between the legislative and executive branches of government at Metro;

WHEREAS, Tanya Collier is leaving the Metro Council to serve as the elected representative from District 3 on the Multnomah County Board of Commissioners; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District expresses its appreciation to Tanya Collier for her excellent service, leadership, and commitment to the Council, Metro, and the citizens of the region.

2. That the Council wishes Tanya continued success in all her future endeavors, and looks forward to working with her in her capacity as Multnomah County Commissioner to improve the partnership between regional and local government.

ADOPTED by the Council of the Metropolitan Service District this 22nd day of December, 1992.

Jim Gardner, Presiding Officer



BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXPRESSING	)	RESOLUTION NO. 92-1736
APPRECIATION TO EDWARD P. GRONKE	)	
FOR SERVICES RENDERED TO THE	)	Introduced by Presiding
COUNCIL OF THE METROPOLITAN	)	Officer Jim Gardner
SERVICE DISTRICT	)	

WHEREAS, Edward P. Gronke served as the appointed Council representative for District 5 of the Metropolitan Service District from April 9, 1992 through January 3, 1993; and

WHEREAS, Councilor Gronke provided valuable service to the Metro Council as a member of the Governmental Affairs and Regional Facilities Committees, where his experience in the civic affairs of Lisle, Illinois and in private business contributed to the deliberative process; and

WHEREAS, Councilor Gronke has exhibited a willingness to ask the simple questions that often led to complex answers; and

WHEREAS, Councilor Gronke showed in his tenure on the Council the ability to take unpopular positions, while retaining his sense of humor; and

WHEREAS, Councilor Gronke demonstrated his flexibility by making the rapid transition from Council newcomer to lame duck Councilor; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District expresses its appreciation to Ed Gronke for his dedicated service to the Metro Council, to regional government, and to the citizens of Clackamas County and the region.

2. That the Council wishes "Little Ed" continued success in all his future endeavors.

ADOPTED by the Council of the Metropolitan Service District this 22nd day of December, 1992.

Jim Gardner, Presiding Officer

Council  
12/22/93

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF CONTINUING	)	RESOLUTION NO. 92-1737
COUNCIL STANDING COMMITTEES AND	)	
MAKING COMMITTEE APPOINTMENTS	)	Introduced by Presiding
	)	Officer Jim Gardner

WHEREAS, The Council of the Metropolitan Service District (Metro Council) adopted Resolution No. 88-840 on January 14, 1988, For the Purpose of Creating Standing Committees of the Council; and

WHEREAS, The Metro Council subsequently adopted resolutions to reorganize Council standing committees and/or make appointments responding to Council needs; and

WHEREAS, Resolution No. 92-1553, adopted on January 9, 1992 For the Purpose of Reorganizing Council Standing Committees, Making Appointments for 1992 and Setting Meeting Schedules, is effective only for calendar year 1992; and

WHEREAS, Resolution No. 92-1642, adopted on June 25, 1992, and Resolution No. 92-1687, adopted on September 24, 1992, filled vacancies on Council standing committees created by the resignations of Councilors David Knowles, Tom DeJardin, and Larry Bauer; and

WHEREAS, The terms of Councilors Mike Gates, Jon Kvistad, and Rod Monroe begin on January 4, 1993; and

WHEREAS, The Council's first meeting in 1993 is scheduled for January 14; and

WHEREAS, The Council's standing committees have business to conduct prior to the January 14, 1993 meeting, which business will be most effectively conducted with a full complement of committee members; Now, Therefore,

BE IT RESOLVED, by the Council of the Metropolitan Service District:

1. That the five standing committees established for calendar year 1992, their purposes and their meeting schedules as contained in Resolution No. 92-1553 and its Exhibits A and D are continued until replaced by a subsequent resolution.

2. That the Presiding Officer's appointment of standing

committee members as contained in Exhibit A attached hereto is confirmed, and that said appointments are effective from January 4, 1993 until replaced by a subsequent resolution.

3. That the Presiding Officer's appointment of members to other Council-related committees or positions as described in Exhibit B attached hereto is confirmed.

ADOPTED by the Council of the Metropolitan Service District this 22nd day of December, 1992:

Jim Gardner, Presiding Officer

EXHIBIT A

COUNCIL STANDING COMMITTEE MEMBERSHIP  
(Effective January 4, 1993)

Finance Committee

Councilor Van Bergen, Chair  
Councilor Hansen, Vice Chair  
Councilor Devlin  
Councilor Gardner  
Councilor Wyers

Governmental Affairs Committee

Councilor McFarland, Chair  
Councilor Devlin, Vice Chair  
Councilor Monroe  
Councilor Moore  
Councilor Wyers

Regional Facilities Committee

Councilor McLain, Chair  
Councilor Washington, Vice Chair  
Councilor Gates  
Councilor Kvistad  
Councilor McFarland

Solid Waste Committee

Councilor Wyers, Chair  
Councilor McFarland, Vice Chair  
Councilor Buchanan  
Councilor Hansen  
Councilor Van Bergen

Transportation & Planning  
Committee

Councilor Devlin, Chair  
Councilor McLain, Vice Chair  
Councilor Buchanan  
Councilor Moore  
Councilor Washington

EXHIBIT B

<u>Bi-State Policy Advisory Committee:</u>	Councilor McFarland, Co-Chair
<u>Composter Community Enhancement Committee:</u>	Councilor Buchanan, Chair Councilor Washington
<u>Friends of the Washington Park Zoo Board of Directors:</u>	Councilor McFarland Councilor McLain
<u>Joint Policy Advisory Committee on Transportation:</u>	Councilor Devlin, Chair Councilor Gardner, Vice Chair Councilor McLain Councilor Van Bergen, Alternate
<u>Metropolitan Greenspaces Policy Advisory Committee:</u>	Councilor Devlin, Chair Councilor McFarland, V. Chair Councilor Hansen
<u>North Portland Enhancement Committee:</u>	Councilor Hansen, Chair
<u>Metro Central Enhancement Committee:</u>	Councilor Hansen, Chair
<u>One Percent for Art:</u>	Councilor Gardner
<u>One Percent for Recycling Committee:</u>	Councilor Buchanan, Chair Councilor Hansen, Alternate
<u>Oregon City Metro Enhancement Committee:</u>	Councilor Gates
<u>Oregon Regional Council Association Board of Directors:</u>	Councilor Devlin Councilor Wyers, Alternate
<u>Regional Policy Advisory Committee:</u>	Councilor Gardner, Chair Councilor McLain Councilor Devlin, Alternate
<u>Smith and Bybee Lakes Management Committee:</u>	Councilor McFarland, Chair
<u>Solid Waste Policy Advisory Committee:</u>	Councilor Wyers, Chair Councilor McFarland, V. Chair
<u>Southwest Washington (IRC) Transportation Policy Committee:</u>	Councilor Devlin
<u>Special Districts Association of Oregon Board of Directors:</u>	vacant
<u>Legislative Committee:</u>	Councilor Devlin
<u>Transportation Policy Advisory Committee:</u>	Richard Devlin, V. Chair
<u>Tri-Met Committee on Accessible Transportation:</u>	Councilor Buchanan

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF REORGANIZING )	RESOLUTION NO. 92-1553
COUNCIL STANDING COMMITTEES, )	
MAKING APPOINTMENTS FOR 1992 )	Introduced by Presiding
AND SETTING MEETING SCHEDULES )	Officer Jim Gardner

WHEREAS, The Council of the Metropolitan Service District (Metro Council) adopted Resolution No. 88-840 on January 14, 1988, for the Purpose of Creating Standing Committees of the Council; and

WHEREAS, The Metro Council subsequently adopted Resolution No. 88-964, Resolution No. 89-1038, Resolution No. 90-1207, and Resolution No. 91-1382 to reorganize Council standing committees and/or make appointments responding to Council needs; and

WHEREAS, There is a need to continue Committee oversight which responds to current policy and program issues, while setting an efficient, effective meeting schedule; now, therefore,

BE IT RESOLVED,

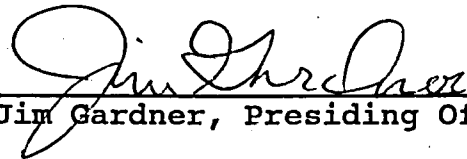
1. That the five standing 1991 committees--Finance, Governmental Affairs, Regional Facilities, Transportation and Planning and Solid Waste--are continued for calendar year 1992.

2. That the purpose of each standing committee shall be as described in Exhibit A attached hereto and that the Council confirms the Presiding Officer's appointment of standing committee members for calendar year 1992 as described in Exhibit B attached hereto.

3. That the Council acknowledges the Presiding Officer's appointment of members to other Council-related committees or positions as described in Exhibit C

4. That the meeting schedule for each standing committee shall be set as described in Exhibits D and E attached hereto, except for special meetings and changes necessary to respond to holiday scheduling and/or other needs as determined by each committee chair and/or the Presiding Officer.

Adopted by the Council of the Metropolitan Service District  
this 9th day of January, 1992.

  
\_\_\_\_\_  
Jim Gardner, Presiding Officer

## EXHIBIT A

### PURPOSE OF THE COUNCIL STANDING COMMITTEES

#### Finance Committee

The purpose of the Finance Committee shall be to:

1. Act as the annual Budget Committee which reviews and makes recommendations to the Council on the Executive Officer's proposed fiscal year budget and appropriations schedule; and
2. Review and make recommendations to the Council on periodic requests for amendments to the adopted budget and appropriation schedule; and
3. Review and make recommendations to the Council on the annual financial audit and investment and credit policies and practices of the District; and
4. Review and make recommendations to the Council on revenue proposals of the District including property tax measures, excise tax measures, other tax measures, bond issue measures, service charges and fees, etc.; and
5. Review and make recommendations to the Council on long-range financial plans and policies of the District and its various functions; and
6. Oversee the work of the Finance & Management Information Department and those programs of the Regional Facilities Department dealing with procurement (contracts), and building and office management functions and the Contractors Business License Program to ensure that adopted policies and program goals and objectives are carried out or met; and
7. Review and make recommendations to the Council on other matters referred to the Committee by the Presiding Officer.

#### Governmental Affairs Committee

The purpose of the Governmental Affairs Committee shall be to:

1. Review and make recommendations to the Council internal and external affairs of the District not under the purview of other committees; and
2. Develop recommendations for Council consideration on matters pertaining to the home rule charter; and



3. Review and make recommendations to the Council on internal operational matters including personnel rules, the performance audit program, the Disadvantaged Business Program, rules and procedures for the Council and its committees; Council per diem and expenditure guidelines, etc.; and
4. Monitor and develop recommendations for Council consideration which will foster and promote good relations with governmental agencies at the federal, state and local levels as well as with citizens, including state and federal legislative programs and citizen participation and involvement programs; and
5. Coordinate the nomination of Portland Metropolitan Area Local Government Boundary Commission members by Metro Councilors and make recommendations to the Council on all Executive Officer appointments to positions and committees not covered by other standing committees; and
6. Oversee the work of the following departments to ensure that adopted policies and program goals and objectives are carried out or met: Council, Executive Management, Office of Government Relations, Office of the General Counsel, and Public Affairs; and
7. Review and make recommendations on other matters referred to the committee by the Presiding Officer.

#### Regional Facilities Committee

1. Review and make recommendations to the Council on policies and programs relating to the development, construction, renovation and operation of district facilities including the Metro Washington Park Zoo, the Oregon Convention Center, and City of Portland facilities under District management responsibility according to the Phase I Consolidation Agreement with the City of Portland and existing or proposed District office facilities; and
2. Review and make recommendations to the Council on confirmation of Executive Officer appointments to: 1) the Metropolitan Exposition-Recreation Commission (MERC); 2) any other committee or task force created to advise the Council on matters pertaining to the purpose of this committee; and 3) appropriate administrative appointments; and
3. Act as a liaison with MERC, Friends of the Metro Washington Park Zoo (FOZ) and other organizations or committees which may be created related to the purpose of this committee; and

4. Review and make recommendations to the Council on plans or proposals including long-range financial plans for the continued development, operation and/or consolidation of convention, trade, performing arts and spectator facilities or programs in the region; and
5. Review and make recommendations to the Council on the update of the Zoo Master Plan and long range financial plans for the development and operation of the Zoo; and
6. Oversee the work of the Zoo Department, MERC and any other administrative unit which is established to work on the development of regional facilities to ensure that adopted policies and program goals and objectives are carried out or met; and
7. Review and make recommendations to the Council on other matters referred to the Committee by the Presiding Officer.

#### Solid Waste Committee

The purpose of the Solid Waste Committee shall be to:

1. Review and make recommendations to the Council on policies and programs relating to the preparation, adoption and implementation of the Regional Solid Waste Management Plan (RSWMP), the development and operation of solid waste disposal facilities, and the District's waste reduction responsibilities; and
2. Review and recommend confirmation of Executive Officer appointments to committees and appropriate positions relating to the District's solid waste responsibilities; and
3. Act as a liaison with the Solid Waste Policy Advisory and Technical Advisory Committees, the 1% for Recycling Advisory Committee, the community enhancement committees, and any other solid waste advisory committee which may be established; and
4. Oversee the work of the Solid Waste Department and any other administrative unit which is responsible for undertaking solid waste functions (such as planning and recycling activities) to ensure that adopted policies and program goals and objectives are carried out or met; and
5. Review and make recommendations to the Council on other matters referred to the Committee by the Presiding Officer.

### Transportation and Planning Committee

The purpose of the Transportation and Planning Committee shall be to:

1. Review and make recommendations to the Council on policies and programs relating to transportation and land use planning, urban growth management, economic development, data services, Metropolitan Greenspaces Program, water resource management, bi-state issues (Washington and Oregon), housing, earthquake preparedness planning and other matters relating to the District's planning activities; and
2. Review and make recommendations to the Council on confirmation of Executive Officer appointments to appropriate positions and committees relating to the purpose of this committee; and
3. Act as liaison with the Joint Policy Advisory Committee on Transportation (JPACT), the Metropolitan Greenspaces Policy Advisory Committee (MGPAC), the Regional Policy Advisory Committee (RPAC), the Regional Citizens Involvement Coordinating Committee (RCICC), the Bi-State Policy Advisory Committee (Bi-State), the Water Resources Policy Advisory Committee (WRPAC), and any other committee or task force which may be established related to the purposes of this committee; and
4. Oversee the work of the Transportation Department and the Planning & Development Department (except for Solid Waste Planning) to ensure that adopted policies and program goals and objectives are carried out or met; and
5. Review and make recommendations to the Council on other matters referred to the Committee by the Presiding Officer.

EXHIBIT B

COUNCIL STANDING COMMITTEE MEMBERSHIP\*  
(January 9, 1992)

Finance Committee

Councilor Van Bergen, Chair  
Councilor Hansen, Vice Chair  
Councilor Devlin  
Councilor Gardner  
Councilor Wyers

Solid Waste Committee

Councilor Wyers, Chair  
Councilor McFarland, Vice Chair  
Councilor Buchanan  
Councilor Hansen  
Councilor Van Bergen

Governmental Affairs Committee

Councilor Collier, Chair  
Councilor DeJardin, Vice Chair  
Councilor Bauer  
Councilor Devlin  
Councilor Wyers

Transportation & Planning Committee

Councilor Devlin, Chair  
Councilor McLain, Vice Chair  
Councilor Bauer  
Councilor (District 11)  
Councilor Buchanan

Regional Facilities Committee

Councilor McLain, Chair  
Councilor Collier, Vice Chair  
Councilor DeJardin  
Councilor McFarland  
Councilor (District 11)

\* The Presiding Officer may serve as a member of a committee for which there is a vacancy as a result of a vacancy on the Council.

EXHIBIT C

<u>Bi-State Policy Advisory Committee:</u>	Councilor Bauer, Co-Chair Councilor McFarland, Alternate
<u>Clackamas County Transportation Coordinating Committee, Liaison to:</u>	Councilor Devlin
<u>Composter Community Enhancement Committee:</u>	Councilor Buchanan, Chair Councilor (District 11)
<u>Friends of the Washington Park Zoo Board of Directors:</u>	Councilor DeJardin Councilor McFarland Councilor McLain, Alternate
<u>Joint Policy Advisory Committee on Transportation:</u>	Councilor Devlin, Chair Councilor Gardner, Vice Chair Councilor McLain Councilor Van Bergen, Alternate
<u>Metropolitan Greenspaces Policy Advisory Committee:</u>	Councilor Devlin, Chair Councilor McFarland, Vice Chair Councilor Hansen Councilor DeJardin, Alternate
<u>North Portland Enhancement Committee:</u>	Councilor Hansen
<u>Metro Central Enhancement Committee:</u>	Councilor Hansen
<u>One Percent for Art:</u>	Councilor DeJardin Councilor Gardner, Alternate
<u>One Percent for Recycling Committee:</u>	Councilor Buchanan, Chair Councilor Hansen, Alternate
<u>Oregon Regional Council Association Board of Directors:</u>	Councilor Devlin Councilor Wyers, Alternate
<u>Smith and Bybee Lakes Management Committee:</u>	Councilor McFarland
<u>Solid Waste Policy Advisory Committee:</u>	Councilor Wyers, Chair Councilor McFarland
<u>Southwest Washington (IRC) Transportation Policy Committees:</u>	Councilor Devlin
<u>Special Districts Association of Oregon Board of Directors:</u>	Councilor Bauer
<u>Legislative Committee:</u>	Councilor Devlin
<u>Tri-Met Handicapped Transportation Committee:</u>	Councilor Buchanan

EXHIBIT C (Continued)

Regional Policy Advisory Committee:

Councilor Gardner, Chair  
Councilor McLain  
Councilor Devlin, Alternate

Washington County Transportation  
Coordinating Committee, Liaison to:

Councilor McLain

#### EXHIBIT D

The Metro Council standing committee meetings shall be regularly scheduled as outlined below except when the Committee Chair and/or the Presiding Officer find a need to: 1) Convene special meetings; 2) Change meeting dates or times to respond to special scheduling needs, such as during holiday periods; or 3) cancel a meeting due to a lack of quorum or agenda items or other precipitating events.

Finance Committee - Shall meet the first and third Thursdays of each month beginning at 5:30 p.m.<sup>1</sup>

Governmental Affairs Committee - shall meet the first and third Thursdays of each month beginning at 4:00 p.m.

Regional Facilities Committee - Shall meet the second and fourth Tuesdays of each month beginning at 4:30 p.m.

Transportation and Planning Committee - shall meet the second and fourth Tuesdays of each month beginning at 6:00 p.m.

Solid Waste Committee - Shall meet the first and third Tuesdays of each month beginning at 5:30 p.m.

<sup>1</sup>Meeting call to order times subject to change at the discretion of the Committee Chair

EXHIBIT E

**1992 COUNCIL & COUNCIL COMMITTEE MEETING SCHEDULE  
(JANUARY 9, 1992)**

<u>DATE<sup>1</sup></u>	<u>DAY</u>	<u>TIME</u>	<u>COMMITTEE</u>
Jan 02	Thursday	4:30	Governmental Affairs
Jan 02	Thursday	6:00	Finance
Jan 07	Tuesday	5:30	Solid Waste
JAN 09	THURSDAY	5:30	COUNCIL
Jan 14	Tuesday	4:00	Regional Facilities
Jan 14	Tuesday	5:30	Transportation and Planning
Jan 16	Thursday	4:30	Governmental Affairs
Jan 16	Thursday	6:00	Finance
Jan 21	Tuesday	5:30	Solid Waste
JAN 23	THURSDAY	5:30	COUNCIL
Jan 28	Tuesday	4:00	Regional Facilities
Jan 28	Tuesday	5:30	Transportation & Planning
Feb 04	Tuesday	5:30	Solid Waste
Feb 06	Thursday	4:30	Governmental Affairs
Feb 06	Thursday	6:00	Finance
Feb 11	Tuesday	4:00	Regional Facilities
Feb 11	Tuesday	5:30	Transportation and Planning
FEB 13	THURSDAY	5:30	COUNCIL
Feb 18	Tuesday	5:30	Solid Waste
Feb 20	Thursday	5:30	Governmental Affairs
Feb 20	Thursday	6:00	Finance
Feb 25	Tuesday	5:30	Regional Facilities
Feb 25	Tuesday	5:30	Transportation and Planning
FEB 27	THURSDAY	5:30	COUNCIL
Mar 03	Tuesday	5:30	Solid Waste
Mar 05	Thursday	4:30	Governmental Affairs
Mar 05	Thursday	6:00	Finance
Mar 10	Tuesday	4:00	Regional Facilities
Mar 10	Tuesday	5:30	Transportation and Planning
MAR 12	THURSDAY	5:30	COUNCIL
Mar 17	Tuesday	5:30	Solid Waste
Mar 19	Thursday	4:30	Governmental Affairs
Mar 19	Thursday	6:00	Finance
Mar 24	Tuesday	4:00	Regional Facilities
Mar 24	Tuesday	5:30	Transportation and Planning
MAR 26	THURSDAY	5:30	COUNCIL

<sup>1</sup>All meeting dates subject to change.

<sup>2</sup>Denotes holiday; meeting date subject to change.



Apr 02	Thursday	4:30	Governmental Affairs
Apr 02	Thursday	6:00	Finance
Apr 07	Tuesday	5:30	Solid Waste
APR 09	THURSDAY	5:30	COUNCIL
Apr 14	Tuesday	4:00	Regional Facilities
Apr 14	Tuesday	5:30	Transportation and Planning
Apr 16	Thursday	4:30	Governmental Affairs
Apr 16	Thursday	6:00	Finance
Apr 21	Tuesday	5:30	Solid Waste
APR 23	THURSDAY	5:30	COUNCIL
Apr 28	Tuesday	4:00	Regional Facilities
Apr 28	Tuesday	5:30	Transportation and Planning
May 05	Tuesday	5:30	Solid Waste
May 07	Thursday	4:30	Governmental Affairs
May 07	Thursday	6:00	Finance
May 12	Tuesday	4:00	Regional Facilities
May 12	Tuesday	5:30	Transportation and Planning
MAY 14	THURSDAY	5:30	COUNCIL
May 19	Tuesday	5:30	Solid Waste
May 21	Thursday	4:30	Governmental Affairs
May 21	Thursday	6:00	Finance
May 26	Tuesday	4:00	Regional Facilities
May 26	Tuesday	5:30	Transportation and Planning
MAY 28	THURSDAY	5:30	COUNCIL
Jun 02	Tuesday	5:30	Solid Waste
Jun 04	Thursday	4:30	Governmental Affairs
Jun 04	Thursday	6:00	Finance
Jun 09	Tuesday	4:00	Regional Facilities
Jun 09	Tuesday	5:30	Transportation and Planning
JUN 11	THURSDAY	5:30	COUNCIL
Jun 16	Tuesday	5:30	Solid Waste
Jun 18	Thursday	4:30	Governmental Affairs
Jun 18	Thursday	6:00	Finance
Jun 23	Tuesday	4:00	Regional Facilities
Jun 23	Tuesday	5:30	Transportation and Planning
JUN 25	THURSDAY	5:30	COUNCIL

<sup>1</sup>All meeting dates subject to change.

<sup>2</sup>Denotes holiday; meeting date subject to change.

Jul 02	Thursday	4:30	Governmental Affairs
Jul 02	Thursday	6:00	Finance
Jul 07	Tuesday	5:30	Solid Waste
JUL 09	THURSDAY	5:30	COUNCIL
Jul 14	Tuesday	4:00	Regional Facilities
Jul 14	Tuesday	5:30	Transportation and Planning
Jul 16	Thursday	4:30	Governmental Affairs
Jul 16	Thursday	6:00	Finance
Jul 21	Tuesday	5:30	Solid Waste
JUL 23	THURSDAY	5:30	COUNCIL
Jul 28	Tuesday	4:00	Regional Facilities
Jul 28	Tuesday	5:30	Transportation and Planning
Aug 04	Tuesday	5:30	Solid Waste
Aug 06	Thursday	4:30	Governmental Affairs
Aug 06	Thursday	6:00	Finance
Aug 11	Tuesday	4:00	Regional Facilities
Aug 11	Tuesday	5:30	Transportation and Planning
AUG 13	THURSDAY	5:30	COUNCIL
Aug 18	Tuesday	5:30	Solid Waste
Aug 20	Thursday	4:30	Governmental Affairs
Aug 20	Thursday	6:00	Finance
Aug 25	Tuesday	4:00	Regional Facilities
Aug 25	Tuesday	5:30	Transportation and Planning
AUG 27	THURSDAY	5:30	COUNCIL
Sep 01	Tuesday	5:30	Solid Waste
Sep 03	Thursday	4:30	Governmental Affairs
Sep 03	Thursday	6:00	Finance
Sep 08	Tuesday	4:00	Regional Facilities
Sep 08	Tuesday	5:30	Transportation and Planning
SEP 10	THURSDAY	5:30	COUNCIL
Sep 15	Tuesday	5:30	Solid Waste
Sep 17	Thursday	4:30	Governmental Affairs
Sep 17	Thursday	6:00	Finance
Sep 22	Tuesday	4:00	Regional Facilities
Sep 22	Tuesday	5:30	Transportation and Planning
SEP 24	THURSDAY	5:30	COUNCIL

<sup>1</sup>All meeting dates subject to change.

<sup>2</sup>Denotes holiday; meeting date subject to change.

Oct 01	Thursday	4:30	Governmental Affairs
Oct 01	Thursday	6:00	Finance
Oct 06	Tuesday	5:30	Solid Waste
OCT 08	THURSDAY	5:30	COUNCIL
Oct 13	Tuesday	4:00	Regional Facilities
Oct 13	Tuesday	5:30	Transportation and Planning
Oct 15	Thursday	4:30	Governmental Affairs
Oct 15	Thursday	6:00	Finance
Oct 20	Tuesday	5:30	Solid Waste
OCT 22	THURSDAY	5:30	COUNCIL
Oct 27	Tuesday	4:00	Regional Facilities
Oct 27	Tuesday	5:30	Transportation and Planning
Nov 03	Tuesday	5:30	Solid Waste
Nov 05	Thursday	4:30	Governmental Affairs
Nov 05	Thursday	6:00	Finance
Nov 10	Tuesday	4:00	Regional Facilities
Nov 10	Tuesday	5:30	Transportation and Planning
NOV 12	THURSDAY	5:30	COUNCIL
Nov 17	Tuesday	5:30	Solid Waste
Nov 19	Thursday	4:30	Governmental Affairs
Nov 19	Thursday	6:00	Finance
Nov 24	Tuesday	4:00	Regional Facilities
Nov 24	Tuesday	5:30	Transportation and Planning
NOV 26 <sup>2</sup>	THURSDAY	5:30	COUNCIL
Dec 01	Tuesday	5:30	Solid Waste
Dec 03	Thursday	4:30	Governmental Affairs
Dec 03	Thursday	6:00	Finance
Dec 08	Tuesday	4:00	Regional Facilities
Dec 08	Tuesday	5:30	Transportation and Planning
DEC 10	THURSDAY	5:30	COUNCIL
Dec 15	Tuesday	5:30	Solid Waste
Dec 17	Thursday	4:30	Governmental Affairs
Dec 17	Thursday	6:00	Finance
Dec 22	Tuesday	4:00	Regional Facilities
Dec 22	Tuesday	5:30	Transportation and Planning
DEC 24 <sup>2</sup>	THURSDAY	5:30	COUNCIL

<sup>1</sup>All meeting dates subject to change.

<sup>2</sup>Denotes holiday; meeting date subject to change.



**METRO**

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

# Memorandum

*Council  
12/22/92  
#8*

DATE: December 22, 1992

TO: Metro Council  
Interested Parties

FROM: Councilor Judy Wyers

RE: Report - Task Force on Future Vision Commission

On December 14th a Task Force was appointed by the Presiding Officer to review the proposal from Councilor Devlin to create a Steering Committee of the Future Vision Commission. The proposal called for appointment of a Steering Committee, made up of between five and seven community leaders, who would assist the Council in completing the membership of the Future Vision Commission and become the Commission's first members. The proposal also made recommendations regarding additional work the Steering Committee might undertake in relationship to the Region 2040 Project.

The Task Force was appointed to review the proposal and make recommendations to the full Council regarding a process for selection of the Steering Committee. The Task Force membership includes: Councilor Wyers, Chair, Councilors Buchanan and McLain, and Councilors-elect Gates, Kvistad and Monroe. However, all Councilors and Councilors-elect were to be allowed participation.

The Task Force has met twice. The first meeting was December 16, 1992. It was attended by Councilor Wyers, Councilors-elect Gates, Kvistad and Monroe, and Don Carlson, Ken Gervais, Gail Ryder, and Larry Shaw. The second meeting was December 18. It was attended by Councilors Wyers, Buchanan, McLain and Devlin; Councilors-elect Gates, Kvistad and Monroe, and Don Carlson, Andy Cotugno, John Fregonese, Ken Gervais, and Gail Ryder.

The Task Force began by focusing on Steering Committee membership categories. There was agreement that there should be seven members nominated to represent the following categories: 1) political; 2) livability; 3) infrastructure/technical; 4) development; 5) financial; 6) arts; and 7) human services. The initial list also included futurist and academic interests which were later combined but then left off the final list.

An initial list of potential candidates that might fit these categories was begun, but the Task Force chose not to submit the list because it was very preliminary, used for discussion purposes only, and needed to be more inclusive of full Council participation before such a list should be made public.

Also discussed was the importance of making any potential candidates aware of the time commitment envisioned for this project and the sensitivity required of Councilors and staff in approaching candidates. It was determined that candidates should be approached only after full discussion and nomination by the Council. There was a lengthy discussion about the potential risks of elitism that could be caused by an improper selection process or by inarticulate instruction to the Steering Committee itself.

Several Task Force members expressed the concern that a normal selection process by application would not allow us to reach many individuals who would be extremely valuable in these positions; particularly the Chairperson position. Such individuals would need active and careful recruitment and would be unlikely to respond to a standard application process.

While there was no specific agreement on an initial selection process, it was generally agreed that the group should be considered "initial appointees", rather than be called a Steering Committee because the term has connotations beyond what was envisioned. One connotation was that the group would continue on after the selection process in some capacity, perhaps as an Executive Committee. While this was not completely discarded, the Task Force felt the question premature. Another implication was the possibility of the group commenting on or evaluating the present Region 2040 Program, as was suggested in the Devlin proposal. This too, was considered premature for decision.

The Task Force makes one recommendation regarding the duties of the initial appointees in selecting the remainder of the Commission. We suggest that the remaining positions on the Future Vision Commission should be accomplished through a four-level nomination process with nominations from the 1) Council, 2) initial appointees, 3) various interest groups, and 4) public at large.

Also agreed upon was the idea that a process for selection of the initial appointees could not be determined or undertaken until after the Council had opportunity to more fully discuss the question of integration of the Future Vision Commission with the Region 2040 Program. It was felt that decisions regarding the scope of work should be made first, before approaching any potential initial appointees, even in a preliminary way.

The remainder and most lengthy portion of task force discussion centered on the various policy alternatives to be considered regarding integration of the Future Vision Commission with the Region 2040 Project. Andy Cotugno provided the Task Force with an overview of the project to date. Following the overview, the general consensus was that the full Commission should be provided with a full orientation, rather than having two orientations; one for the initial members and another for the full Commission. The Task Force identified the following questions regarding integration:

- 1) Is 50 years long enough for a Future Vision? Should we be considering 75 or 100 years?
- 2) How does the Council protect the integrity of the Region 2040 Project while fully vesting the Future Vision Commission with its task? How does the Council find a balance point between fully controlling the process, thereby asking the Commission to be a "rubber-stamp", and handing the Commission a "carte blanche" which might result in starting over in a completely different direction with heavier budgetary implications?
- 3) What roles should the Commission play: a) within the present Phase II of the 2040 Project; b) with budget; c) with direction of Metro staff; d) with the Region 2040 Management Committee; and e) in determining their own scope of work?
- 4) What will be the role of the Management Committee after selection of the Commission?
- 5) Should the Commission be focused on "visionary" ideas versus information gathering, as is the Region 2040 project?
- 6) Should the same membership of the original Future Vision Commission remain in place for the entire duration of the project? Would there be benefit in the idea of changing the membership part way through or creating sub-committees with new members for specific tasks?
- 7) What is the appropriate role of the Council in oversight of the Commission? Should Metro Chair the Commission?
- 8) What is the role of the Executive Officer?

Because the Task Force did not believe it was within the scope of its task to make a recommendation on the subject of integration, we are asking the Council for 1) further clarification on the role of this Task Force; 2) further clarification on the timelines for completion of our task; and 3) a process for Council review to reach consensus on questions of integration of the Future Vision Commission with the Region 2040 Project.

Options for such a process include: 1) assigning the task to this Task Force; 2) assigning the task to the Council Planning Committee; 3) make the issues a subject for the next Council retreat; 4) provide for special meetings of the Council to work as a committee of the whole; or 5) some combination of any of the above. In any case, answers to these overall questions must be determined before we can comment further on a process for selection of the initial appointees of the Commission.

JW:GR





# METRO

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

# Memorandum

DATE: December 28, 1992

TO: Metro Council  
Executive Officer  
Interested Staff

FROM: Paulette Allen, Clerk of the Council *PA*

RE: METRO COUNCIL ACTIONS OF DECEMBER 22, 1992 (REGULAR MEETING  
HELD ON TUESDAY DUE TO HOLIDAY)

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COUNCILORS PRESENT: Presiding Officer Jim Gardner, Deputy Presiding Officer Judy Wyers, Roger Buchanan, Tanya Collier, Richard Devlin, Sandi Hansen, Ed Gronke, Ruth McFarland, Terry Moore, Susan McLain, George Van Bergen and Ed Washington.

## AGENDA ITEM

## ACTION TAKEN

- |   |  |
|---|--|
| 1. <u>INTRODUCTIONS</u>   | None.  |
| 2. <u>CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS</u>   | None.  |
| 3. <u>EXECUTIVE OFFICER COMMUNICATIONS</u>  | None.  |
| 4. <u>CONSENT AGENDA</u>  | Adopted (Devlin/McFarland; 12-0 vote).         |
| 4.1 Resolution No. 92-1716, For the Purpose of Confirming the Reappointment of Ben Middleton to the Metropolitan Exposition-Recreation Commission                     |  |
| 4.2 Resolution 92-1715, For the Purpose of Adopting the Revised Affirmative Action Policy and Program   |  |
| 4.3 Resolution No. 92-1725, For the Purpose of Accepting the November 3 General Election Abstract of Votes of the Metropolitan Service District                       |  |
| 4.4 Resolution No. 92-1720, For the Purpose of Establishing the Metropolitan Greenspaces Environmental Education Small Grants Program Guidelines and Funding Criteria |  |
| 5. <u>ORDINANCES, FIRST READINGS</u>  |  |
| 5.1 Ordinance No. 93-477, For the Purpose of Establishing Criteria for Council District Apportionment, and Declaring an Emergency                                     | Referred to the Governmental Affairs Committee |

(Continued)

**5. ORDINANCES, FIRST READINGS** (Continued)

- 5.2 Ordinance No. 92-479, An Ordinance  
Creating the Office of Citizen  
Involvement; Establishing a Citizen's  
Involvement Committee and a Citizen  
Involvement Process; and Declaring an  
Emergency

Referred to the  
Governmental Affairs  
Committee.

- 5.3 Ordinance No. 93-480, An Ordinance  
Amending Ordinance No. 92-449B Revising  
the FY 1992-93 Budget and Appropriations  
Schedule for the Purpose of Funding  
Councilor Salaries and Benefits and a  
Citizen Involvement Program; and Declaring  
an Emergency

Referred to the Finance  
Committee.

- 5.4 Ordinance No. 93-481, An Ordinance  
Amending Metro Code Section 2.01.170 to  
Repeal Councilor Per Diem Procedures;  
Establish Councilor Salary Procedures; and  
Declaring an Emergency

Referred to the Finance  
Committee.

**6. ORDINANCES, SECOND READINGS**

- 6.1 Ordinance No. 92-478, An Ordinance  
Amending Ordinance No. 92-449B Revising  
the FY 1992-93 Budget and Appropriations  
Schedule for the Purpose of Fully Funding  
the Portland/Oregon Visitor Association  
Marketing Plan for the Oregon Convention  
Center

Adopted (Wyers/Hansen;  
12-0 vote).

**7. RESOLUTIONS**

- 7.1 Resolution No. 92-1730A, For the Purpose  
of Authorizing an Agreement with Steelcase  
and Smith Brothers Office Environments,  
Inc. and an Intergovernmental Agreement  
with Washington County

Resolution No. 92-1730B,  
For the Purpose of  
Exempting an Agreement  
with Environetics, Inc.  
from Formal Bidding  
Requirements substituted  
for Resolution No. 92-  
1730B and adopted (McLain/  
McFarland; 12-0 vote).



**7. RESOLUTIONS (Continued)**

- 7.2 Resolution No. 92-1728, For the Purpose of Authorizing an Exemption to Metro Code Chapter 2.04.043 Competitive Bidding Procedures and Authorizing a Sole Source Agreement with Dun & Bradstreet Corp. for the Purchase of Credit Reporting Services Adopted (Van Bergen/Hansen; 12-0 vote).
- 7.3 Resolution No. 92-1673D, Greenspaces Willing Seller Policy at Sunset Light Rail Transit Station Public testimony taken. Adopted (Moore/McLain; 10-2 vote. Councilors Collier and Van Bergen voted nay).
- 7.4 Resolution No. 92-1706, For the Purpose of Endorsing Alternatives for Evaluation in the Draft Environmental Impact Statement (DEIS) Phase of the Western Bypass Study Adopted (Washington/Devlin; 12-0).
- 7.5 Resolution No. 92-1712B, For the Purpose of Designating the Regional Growth Concepts to Be Evaluated in Phase II of the Region 2040 Project Adopted as amended (Moore/Devlin; 12-0 vote).
- 7.6 Resolution No. 92-1718A, For the Purpose of Endorsing the Recommendations of the Governor's Task Force on Motor Vehicle Emissions Reduction in the Portland Metropolitan Area Adopted as amended (Buchanan/Wyers; 9-2 vote. Councilors Gronke and McFarland voted nay. Councilor Van Bergen was absent).
- 7.7 Resolution No. 92-1719A, For the Purpose of Endorsing the Oregon Transportation Financing Plan Adopted (Buchanan/Devlin; 11-0 vote; Councilor Van Bergen was absent).
- 7.8 Resolution No. 92-1722, For the Purpose of Accepting Metro's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 1992, the Schedule of Federal Financial Assistance for the Fiscal Year Ended June 30, 1992 and the Various Auditor Reports Thereon, and the Letter to Management Provided by KPMG Peat Marwick Adopted (Devlin/Hansen; 10-0 vote; Councilors Buchanan and Van Bergen were absent).

(Continued)

**ADDITIONAL AGENDA ITEMS**

**8. NON-REFERRED RESOLUTIONS**

- 8.1 Resolution No. 92-1734, For the Purpose of Adopted (11-0 vote;  
Expressing Appreciation to Larry Bauer for Councilor Van Bergen was  
Services Rendered to the Council of the absent).  
Metropolitan Service District
- 8.2 Resolution No. 92-1735, For the Purpose of Adopted (11-0 vote;  
Expressing Appreciation to Tanya Collier Councilor Van Bergen was  
for Services Rendered to the Council of absent).  
the Metropolitan Service District
- 8.3 Resolution No. 92-1736, For the Purpose of Adopted (11-0 vote;  
Expressing Appreciation to Edward P. Councilor Van Bergen was  
Gronke for Services Rendered to the absent).  
Council of the Metropolitan Service  
District
- 8.4 Resolution No. 92-1737, For the Purpose of Adopted (Devlin/Hansen;  
Continuing Council Standing Committees and 11-0 vote; Councilor Van  
Making Committee Appointments Bergen was absent).

**AGENDA ITEM RENUMBERED**

**9. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS**

- 1) Councilor Wyers distributed her December 22 memorandum, "Report - Task Force on Future Vision Commission" and discussed same; and 2) The Council discussed when the 1993 organizational Council meeting should be held.