

BEFORE THE METRO COUNCIL CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN)	RESOLUTION NO. 05-3645
EXEMPTION FROM COMPETITIVE BIDDING)	
REQUIREMENTS AND AUTHORIZING THE)	
CHIEF OPERATING OFFICER TO ISSUE A)	
DESIGN / BUILD REQUEST FOR PROPOSALS)	
(RFP), FOR THE DESIGN, ENGINEERING AND)	
CONSTRUCTION OF A WATER PLAY)	
FACILITY FOR BLUE LAKE REGIONAL PARK)	Introduced by Michael J. Jordan, Chief
AND ENTER INTO A CONTRACT WITH THE)	Operating Officer, with the concurrence of
SELECTED CONTRACTOR)	Council President David Bragdon

WHEREAS, the Metro Council approved Resolution No. 01-3101B (“For the Purpose of Approving the Blue Lake Regional Park Economic Feasibility Study and Facility Design Concept”) on December 6, 2001; and

WHEREAS, the Blue Lake Regional Park Economic Feasibility Study and Facility Design Concept includes provisions for the development of a water play facility “Spray Park” adjacent to the existing swim beach. This “Spray Park” development is intended to provide an option for water play for young children who are not allowed to swim in the lake or those individuals who prefer a non-lake water experience; and

WHEREAS, the adopted Regional Parks and Greenspaces budget for FY 05/06 includes budgeted funds for the design and development of a water play facility; and

WHEREAS, the Metro Code requires that this contract be subject to competitive bidding, unless an exemption is obtained from the Metro Contract Review Board; and

WHEREAS, Metro Code Section 2.04.054(c) authorizes, where appropriate, the use of alternative contracting practices that take account of market realities and modern and innovative contracting methods, which are consistent with the public policy of encouraging competition; and

WHEREAS, Metro Regional Parks and Greenspaces Department proposes to issue a Design/Build Request for Proposals and a subsequent Contract, not-to-exceed a maximum-price of \$190,000; and

WHEREAS, combining design and construction into one contract creates a cost savings by focusing design efforts only on a play facility that can be constructed within available budgeted funds, and allows construction to begin while subsequent project details are concurrently designed (expediting the work); and

WHEREAS, this proposed Design/Build RFP (attached as Exhibit A), encourages competition through the use of multiple evaluation criteria, including contractor fees, professional qualifications and experience, and schedule control; now therefore

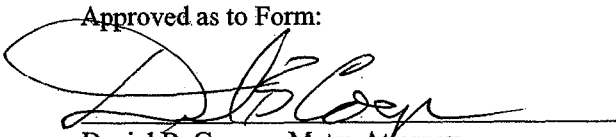
BE IT RESOLVED:

1. That the Metro Contract Review Board exempts the Blue Lake Regional Park Water Play Facility contract from competitive bidding requirements, and authorizes the Chief Operating Officer to employ an RFP process, using the evaluation criteria included as part of the accompanying Staff Report.

2. That the Metro Council Contract Review Board authorizes the Chief Operating Officer to execute a contract for the design, engineering and construction of a Water Play Facility at Blue Lake Regional Park with the selected proposer.

ADOPTED by the Metro Council this 1st day of December, 2005.


David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

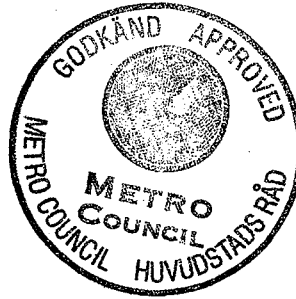


EXHIBIT A
Resolution 05-3645

DESIGN/BUILD
REQUEST FOR PROPOSALS

RFP#06-1165-PKS

FOR

WATER PLAY FACILITY

AT

BLUE LAKE REGIONAL PARK

December 2005

Glenn Taylor, Project Manager
taylorg@metro.dst.or.us
(503) 797-1716

**PROPOSALS DUE: January 5, 2006, NOT LATER THAN 2:00 PM
LATE PROPOSALS WILL NOT BE ACCEPTED**

EXHIBIT A

WATER PLAY FACILITY for BLUE LAKE REGIONAL PARK REQUEST FOR PROPOSAL

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EXHIBIT A

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SECTION ONE – OVERVIEW

1. INVITATION TO SUBMIT A PROPOSAL

1.1 METRO is issuing this Request for Proposals (RFP) for a Contractor-Led Design/Build team to provide the design and construction of equipment for an interactive water-play facility, a.k.a “Spray Park”, “Spray Ground”, or “Splash Pad” in Blue Lake Regional Park located at 20500 NE Marine Drive, Troutdale, OR. Contractors are to engage all design consultants and subcontractors required to design and perform the work, as described in this RFP. This is a single-phase RFP with established selection criteria (defined in Section Two). The selection of the design/build team will be based on the quality of responses to all selection and evaluation criteria, and determination of how Metro can best be served. The contract will be a lump sum for all design work, labor and materials. The budget for this project is \$190,000. All work is to be complete by June 15, 2006. **Sealed proposals must be delivered to Metro, Regional Parks and Greenspaces Department, 600 NE Grand Ave, Portland, OR 97232 to the attention of Glenn Taylor, Project Manager, no later than 2:00 PM on Thursday, January 5, 2006.**

1.2 INFORMATION AVAILABLE:

This Request for Proposals may be examined at Metro Regional Center in the Regional Parks and Greenspaces Department and is available on-line at metro-region.org. All known holders of these documents will be on the Proposal Holder list and will receive any addenda issued.

1.3 PRE-PROPOSAL CONFERENCE:

A Pre-Proposal Conference, for prospective Contractors and designers, will be conducted at The Blue Lake Regional Park Curry Building located at 20500 NE Marine Drive, Troutdale, OR on December 13, 2005 at 10:00 am. Attendance at this meeting is not mandatory. A site visit is planned, following the meeting.

1.4 RIGHT TO REJECT PROPOSALS:

Metro reserves the right to reject all Proposals or any Proposals not conforming to the intent and purpose of the Request for Proposals, to reject for good cause any and all Proposals upon a finding of Metro that it is in the public interest to do so or to waive any informality or irregularity in any Proposal or Proposals. Metro further reserves the right to award the Contract at any time within sixty (60) days following the Proposal opening date.

1.5 CONTACT INFORMATION:

For information concerning the proposed work contact Glenn Taylor at (503) 797-1716.

2. OVERALL SCOPE OF WORK

2.1 Background:

Metro completed an Economic Feasibility Study and Facility Design Concept in December 2001, which recommended the addition of a 5,000 square foot water play area. This new child-adult water feature will be an additional attraction that will relieve some pressure on the swim beach and provide an attractive option for young ones not allowed in the lake or those that prefer a non-lake water experience.

2.2 Scope of Work:

2.2.1 Provide Design and Construction for all aspects of the water play facility. Design and construction shall include all design, equipment, labor and materials for a complete and operational facility. Designs shall be done by professional engineers/architects registered in the State of Oregon as required by state law and all local jurisdictions having authority.

2.2.2 The Scope of Work by the design/build team shall include (but are not limited to):

- A. All water play facility features, site improvements, utilities, plumbing, electrical, etc. engineering design.
- B. Design Document Submittals for Owner review and approval at 30%, 80% and 100% completion.
- C. Construction Document preparation, including, drawings and specifications, for review and approval.
- D. Building Permit submittals.
- E. Site survey
- F. Demolition
- G. Excavation
- H. Utilities
- I. Plumbing
- J. Electrical
- K. Concrete work
- L. Painting
- M. Equipment installation
- N. Construction supervision/management.

2.2.4 Schedule: Work must be complete by June 15, 2006 (to be verified by Owner).

3. Existing Conditions

3.1 Existing Site Conditions:

The water play facility will be located on the site of a current basketball court north and east of the existing swim beach center. The removal and disposal of the existing asphalt paving and basketball standards will be the responsibility of the Design/Build Contractor.

3.2 Site Utilities:

Metro will be adding a new 6" diameter water main that will terminate just to the north of the new facility. An 8" diameter sanitary sewer line manhole is located to the north and east of the facility just east of an existing restroom building. The existing swim beach center building has a 225 amp electrical panel with eight spare breakers that may be used to power the water play structure equipment. There are no storm water drainage lines in the park. The City may require that some sort of drainage facility be installed for winter storm water runoff rather than allow it to be discharged into the sanitary sewer system. It will be the Design/Build Contractors responsibility to determine all the utility requirements and include them in the design and construction cost of the facility.

4. SUPPLEMENTARY CONDITIONS

4.1 CONTRACT TIME:

4.1.1 Time is a basic consideration of this Contract. Pursuant to the provisions of the Time of Completion and Schedule for the Work (Article 5 of the General Conditions of these Contract Documents), work shall commence within five (5) calendar days after issuance of written Notice to Proceed from Metro and **shall be Substantially Completed by June 15, 2006 (to**

be verified by Owner). Completion within this time period is contingent on immediate availability of the site to the Contractor.

4.1.2 LIQUIDATED DAMAGES:

Due to the impact of the work on attendance and access to other public areas of the park, failure to complete work within the established Contract Time (above) is critical. If Contractor exceeds this time, the actual damage to Metro for the delay will be substantial but will be difficult or impractical to determine. **It is therefore agreed that Contractor will pay to Metro, not as a penalty but as Liquidated Damages, the per diem amount of \$600 per day for each and every day that the work is incomplete, after the approved substantial completion date.** A determination of Liquidated Damages liability will be based on the Notice-to-Proceed and the issuance of the Certificate of Substantial Completion. Liquidated Damages may be held from any release of Contract Retainage.

Payment of liquidated damages shall not release Contractor from obligations in respect to the complete performance of the Work, nor shall the payment of such liquidated damages constitute a waiver of Metro's right to collect any additional damages which it may sustain by failure of contractor to fully perform the Work, it being the intent of the parties that the aforesaid liquidated damages 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 Contractors failure to perform in strict accordance with this Contract.

4.2 PERMITS AND LICENSES

4.2.1 Contractor shall acquire and pay for all building permits such as electrical permits, mechanical permits, sewer and water connection permits, transportation permits, street closure permits, wage and hour regulations permits, and all other permits of a temporary nature relating to the construction of the project.

4.3 SITE CONDITIONS:

4.3.1 UTILITIES:

Consult with Owner and other private and public utility companies, departments or districts as required for locations, extent, and disposition of all required services related to same. The Owner will assist with locating utilities; however the contractor is responsible for locating light and power poles, sewer, gas, irrigation lines, water piping, and gas and water "shut off" boxes and covers. Notify the project manager and all known potentially affected utility companies, departments of districts at least 48 hours in advance of intended excavation in the approximate locations of underground active utilities. Carefully probe and/or hand dig when excavations approach approximate locations of such utilities. Arrange for and pay cost of disconnecting, removing, relocating, capping, replacing or abandoning all public and private utilities impeding construction operations, all per servicing utilities' regulations and governing Codes. Cap abandoned utilities. Provide maintenance of all on-site active above-grade and below-grade services to others than Owner. Any damaged utilities shall be repaired immediately to Owner's satisfaction.

4.4 SAFETY AND HEALTH PRECAUTION:

4.4.1 Provide warning signs, flagger(s), and other safety and health precautions which may become necessary or required for protection of work already in place or for protection of the public, Owner's personnel, and construction personnel, including Owner's Representatives engaged on the Project. State of Oregon Workmen's Compensation Board Safety Codes for Construction Work and Federal Occupational Safety and Health Standards of the Occupational Safety and Health Act of 1970 (OSHA), all as applicable, form a part of these Specifications. See Article 10 of the General Conditions.

4.4.2 SPECIAL PRECAUTIONS:

Construction work in and around such areas of the Owner's building occupied by operations personnel or frequented by the public and to remain in continued operation shall be conducted in such manner as to permit such operation without jeopardy and with absolute minimum of inconvenience to occupants and public. Take every precaution to minimize noise, spreading of dust and debris, causing undue vibrations or impacts, and other nuisances. Do no structural or other damage to any in-place improvements to remain. Access to the site will occur through public areas so special caution is advised. Any damage done to existing grounds or facilities must be replaced to pre-construction status.

4.5 **DEFINITIONS:**

4.5.1 Owner, Owner's Representative, Project Manager - All such references, in this document, refer to the Metro's designated Project Manager, or a designee of Metro's Project Manager.

5. GENERAL REQUIREMENTS

5.1 **CONTRACTOR USE OF PREMISES:**

5.1.1 General:

- A. Except as otherwise stipulated, Contractor will have use of the Project Premises for the execution of the Work.
- A. Contractor shall conduct his operations as to insure the least reasonable inconvenience to the General Public. The project work shall be coordinated with the operation of the park staff so as to minimize traffic congestion and other problems during events. Utility location and connections shall be coordinated with the proper utility companies.
- B. If and where necessary and when directed, move any stored Products, Equipment, or Vehicles which are under contractor's control, and which interfere with operations of Owner.
- C. Obtain and pay for any necessary additional Storage or Work Areas.
- D. The Owner reserves the right to stipulate specific days / times when work cannot occur in an area of the park.

5.1.2 Site Access:

- A. The site will be available Monday through Friday, 7:00 a.m. through 5:00 p.m. Requests to conduct work on the park grounds during any other period must be coordinated with and approved by the Project Manager. Restrictions on the hours of work may occur from time to time to accommodate park activities or special events, etc. Access and parking locations shall be designated by the Project Manager. Park staff and visitors must be allowed safe and adequate access to all areas at all times during construction, unless closure has been scheduled in advance.
- B. While transiting through the park, construction vehicles shall not exceed the 10 mph speed limit.
- C. Remove ignition keys from parked vehicles.
- D. Allow for Owner occupancy of the site and nearby facilities.
- E. Owner Project Manager will identify / approve adequate staging area for contractor parking/ mobilization.

5.1.3 Product Deliveries:

- A. The Contractor shall deliver between the hours of 7:00 a.m. and 5:30 p.m. Unloading must be completed by 5:30 p.m. unless approved in advance by the project manager or park staff. Requests for such approval must be received by the Project Manager at least one (1) day prior to delivery. Contractor shall assume all risk of deliveries during hours beyond those listed above.

- B. Instruct subcontractors and suppliers where deliveries are to be made. Park Personnel will not accept deliveries at Main Park Entry Gate.

5.1.4 Construction Access Routes:

- A. Use only those routes previously identified by Owner.
- B. Repair or, when directed, replace paved surfaces which have been damaged by Contractor's use.
- C. Keep driveways and entrances serving premises clear and available to Owner, Owner's employees, and emergency vehicles at all times

5.1.5 Use of Owner's Property & Equipment:

- A. Do not use Owner's property, facilities, or equipment such as tools, ladders, furniture, janitorial equipment, supplies, etc.
- B. Any work taking place in planting areas will be coordinated with the park staff. Any moving, pruning or other alterations must have prior approval by the park staff.
- C. Do not disturb any trees outside area of work.

5.1.6 PROTECTING EXISTING UTILITIES

- A. Before starting work, Contractor shall determine exact location of any concealed Utility Lines, including Irrigation Lines that could be damaged by Contract Work.
- B. Contractor shall assume that unknown utility lines do exist, and Contractor shall proceed with caution when working in areas that could conceal unknown utilities. If such utility lines are encountered, immediately request disposition instructions from the Project Manager.
- C. If utility lines or irrigation lines are damaged, remove, repair, or replace lines as directed. Additional compensation and/or extensions of time, if any, caused by removing, repairing, or replacing lines will be determined in accordance with General Conditions.

5.1.7 ANIMALS PROHIBITED

- A. Neither Contractor, subcontractors, material suppliers, project workers, nor project visitors shall bring animals onto park property, nor shall animals be kept within vehicles while on or adjacent to property.

5.1.9 SHUTDOWN OF EXISTING UTILITIES

- A. Do not interrupt existing park utility services or programs without advance written-approval of Owner's Representative.
- B. Minimum Advance Notice:
 - 1. For minor (2 hours or less) interruptions: 3 working days.
 - 2. For major (more than 2 hours) interruptions impacting entire buildings or major areas within park property: 10 working days.

5.1.10 CORRECTION PERIOD FOR NON-COMPLYING WORK

- A. Contractor's response to notice of Work to be corrected shall be accomplished during the following time periods:
- B. Emergency Work:
 - 1. Failures or deficiencies constituting immediate danger or health hazard to people or likely damage to property.
 - 2. Response Time: Within three hours, 24 hours per day 7 days per week.

- C. Urgent Work:
 1. Failures or deficiencies which do not immediately endanger persons or property, but would soon do so if not corrected.
 2. Response Time: Between 7:00 a.m. and 4:00 a.m. on Mondays through Fridays and within three calendar days following receipt of Notice.
- D. Routine Work:
 1. Failures or deficiencies of less importance that do not meet criteria of Emergency or Urgent Work.
 2. Response Time: Between 7:00 a.m. and 4:00 p.m. on Mondays through Fridays and within five calendar days following receipt of Notice.

5.2 PROJECT COORDINATION

5.2.1 COORDINATION

Coordinate construction operations included in various Sections of these Specifications to assure efficient and orderly installation of each part of The Work.

- A. Schedule construction operations in sequence required to obtain best results where installation of one part of Work depends on installation of other components.
- B. Coordinate installation of different components to assure maximum accessibility for required maintenance, service, and repair.
- C. Coordinate storage or staging areas for all trades.
- D. When necessary, prepare memoranda for distribution to each party involved, outlining special procedures required for coordination. Include such items as required notices, reports, and attendance at meetings.
- E. Administrative Procedures:
 1. Coordinate scheduling and timing of required administrative procedures with other construction activities to avoid conflicts and assure orderly progress of Work.
 2. Administrative activities include, but are not limited to:
 - a. Preparation of Schedules.
 - b. Installation and removal of temporary facilities.
 - c. Delivery and processing of submittals.
 - d. Progress meetings.
 - e. Project closeout activities.
- F. Conservation: Coordinate construction operations to assure that operations are carried out with consideration given to conservation of energy, water, and materials.

5.2.2 SUBMITTALS

- A. Staff Names: Within 15 days of commencement of construction operations, submit a list of Contractor's principal staff assignments, including superintendent and other personnel in attendance at Project site.
 1. Identify individuals, their duties and responsibilities.
 2. List personnel addresses and telephone numbers.
- A. Post copies of list in Project meeting room, and temporary field office.
- B. All submittals in accordance with 5.3, including
 1. Design and construction documents @ 30%, 80% and 100% completion
 2. Shop drawings
 3. Product data
 4. Samples

5. Quality assurance
- E. Coordination Drawings: Prepare coordination drawings where careful coordination is needed for installation of products and materials fabricated by separate entities.
 1. Prepare coordination drawings where limited space availability necessitates maximum utilization of space for efficient installation of different components.
 2. Comply with Submittal Procedures, Section 1, Article 5.3.

5.2.3 PROJECT MEETINGS

- A. Preconstruction Conference:
Schedule a preconstruction conference prior to starting construction, at a time convenient to Owner, but not later than 15 days after execution of Agreement.
 1. Hold conference at Project site or other convenient location.
 2. Conduct meeting to review responsibilities and personnel assignments.
 - a. Attendees: Metro Project Manager, Blue Lake Park staff, and Owner consultants (as needed); Contractor and its superintendent; designers, subcontractors, suppliers, and manufacturers deemed necessary by Contractor and Owner.
 - b. Participants shall be familiar with Project and authorized to conclude matters relating to Work.
 - c. Agenda: Discuss items of significance that could affect progress, including following:
 - 1) Construction schedule.
 - 2) Critical work sequencing.
 - 3) Designation of responsible personnel, and emergency off-hour contacts.
 - 4) Procedures for processing field decisions and Change Orders.
 - 5) Procedures for processing Applications for Payment.
 - 6) Distribution of Contract Documents.
 - 7) Submittals and approvals.
 - 8) Routing of correspondence.
 - 9) Preparation of record documents.
 - 10) Use of premises.
 - 11) Site access, traffic, and parking rules.
 - 12) Office, work, and storage areas.
 - 13) Safety procedures, and first aid.
 - 14) Housekeeping.
 - 15) Security.
 - 16) Working hours.
 - 17) Inspection procedures.
 - 18) Insurance.
 - 19) Final inspection procedures.
- B. Pre-installation Conferences:
Conduct a pre-installation conference at Project site before each activity that requires coordination with other construction activities.
 1. Attendees: Contractor, subcontractor(s), manufacturer's representative if required by manufacturer or these Specifications, and fabricators involved or affected by construction activity under consideration. Include code enforcement personnel if required by local codes.
 2. Advise Owner of scheduled meeting dates.
 3. Review progress of other construction activities and preparations for particular activity under consideration, including requirements for following:
 - a. Contract Documents and related Change Orders.
 - b. Shop Drawings, Product Data, and quality control Samples.
 - c. Mockups.
 - d. Possible conflicts or compatibility problems.

- e. Time schedule.
 - f. Weather limitations.
 - g. Manufacturer's preparation and installation recommendations.
 - h. Warranty requirements.
 - i. Substrate acceptability.
 - j. Governing regulations.
 - k. Inspecting and testing requirements.
 - l. Safety.
 - m. Protection.
- 4. Record significant discussions, agreements, and disagreements of each conference.
 - a. Distribute record of meeting to concerned parties, including Owner, within 72 hours after meeting.
 - 5. Do not proceed with installation if conference cannot be successfully concluded.
 - a. Initiate whatever actions are necessary to resolve impediments to performance of Work and reconvene conference at earliest feasible date.
- C. Progress Meetings:
- 1. Conduct progress meetings at Project site at regular scheduled intervals.
 - a. Coordinate meeting dates with preparation of payment request.
 - 2. Contractor to write and distribute minutes of meeting to concerned parties within 72 hours after meeting.
 - 3. Attendees: Authorized representatives of Owner, Contractor, and subcontractors, suppliers, or other entities concerned with current progress or involved in planning, coordination, or performance of immediate future activities.
 - a. Participants shall be familiar with Project and authorized to conclude matters relating to The Work.
 - 4. Agenda: Review items of significance that affect construction progress, including following:
 - a. Construction Schedule.
 - b. Coordination of Work.
 - c. Status of Shop Drawing submittals and approvals.
 - d. Status of Proposal Requests.
 - e. Requests for information and clarification issues.
 - f. Project administration issues.
 - 5. Update Construction Schedule after each progress meeting.
 - a. Issue updated schedule concurrently with minutes of each meeting.

5.2.4 DESIGN/CONSTRUCTION SCHEDULE

- A. Format: Detailed precedence style Critical Path Method (CPM).
 - 1. Submit within 30 days after date established for commencement of Work.
- B. Provide a separate graphic representation for each significant construction activity and event.
 - 1. Include design submittals (@30%/80%/100% completion and reviews), construction start-up for each project element, finish, duration, slack time, approval dates, material ordering, delivery dates, anticipated shutdowns, partial occupancy and Owner use, Completion Date and other such information required to allow Owner's monitoring of progress of project and identifying critical path of events required to meet Completion Date.
 - 2. Use same breakdown of units of Work as indicated in Schedule of Values.
- C. Distribution: Following response to initial submittal, print and distribute copies to Owner, subcontractors, and other parties required to comply with scheduled dates.

- D. Schedule Updating: Revise schedule after each progress meeting, event, or activity where revisions have been recognized or made.
 - 1. Bring significant deviations from Schedule immediately to Owner's attention.

5.2.5 LAYOUT OF WORK

- A. Survey and verify conditions of project site.
- B. Record existing conditions prior to construction for comparison with Contract Documents.
 - 1. Report conflicts to Owner prior to start of Work.
 - 2. Owner will provide revisions to Contract Documents or issue instructions to deal with conflicts.
 - 3. Be responsible for remedying conflicts, which could have been prevented by timely reviews of existing conditions.
 - 4. Remedies, which vary from Contract Documents shall be approved by Owner's Representatives.

5.2.6 FIELD ENGINEERING

- A. Engineering Services:
 - 1. Provide field engineering services as required for construction.
- B. Existing Control Points:
 - 1. Protect control points prior to starting Work, and preserve permanent reference points during construction.
 - 2. Make no changes or relocations of control points without prior written notice to Owner's Representative.
 - 3. Report to Owner's Representative when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.
- C. Instrument Layout:
 - 1. Using site benchmarks and existing elevation control points, establish lines and levels, located and laid out by survey instrumentation.
 - 2. Locate water supply, storm and sanitary sewer lines.
 - 3. Locate edge and level of paving, curbs, walks, and sloping landscape.
 - 4. Locate building foundations, column locations, and floor levels.
 - 5. Locate controlling lines and levels required for plumbing, mechanical and electrical Work within 5 feet of building perimeter.
- D. Corrections:
 - 1. Record changes in elevations or location of Work on project record Documents.
 - 2. Report errors in horizontal and vertical dimensions and grades prior to starting Work.
- E. Verification:
 - 1. Verify dimensions of new and existing Work.
 - a. If field measurements differ slightly from Drawings, modify to accommodate. If field measurements differ significantly, notify Owner prior to commencing Work.
 - 2. Coordinate locations of openings through floors, roofs and walls with Architectural, Mechanical and Electrical Drawings.
- F. Documentation: Submit documentation to verify accuracy of field engineering Work when requested by Owner.
- G.

END OF SECTION

5.3 **SUBMITTAL PROCEDURES**

PART ONE – GENERAL

5.3.1. Coordination:

- A. Coordinate preparation and processing of submittals with performance of construction activities.
 - 1. Transmit each submittal sufficiently in advance of performance of related construction activities to avoid delay.
- B. Coordinate transmittal of submittals for related elements of Work so processing will not be delayed by need to review submittals concurrently for coordination.
 - 1. Owner reserves right to withhold action on a submittal requiring coordination with other submittals until all related submittals are received.
 - 2. Partial submittals may be rejected as not complying with these provisions of Contract.
- C. Contractor to certify that each item in submittal has been reviewed and is in accordance with specified requirements for that item, and that field dimensions, adjacent construction Work related to submittal items, have been verified.
 - 1. Apply Contractor's stamp, signed by Contractor, certifying Contractor's review of submittal.
 - 2. Owner will return submittals without action if Contractor has not coordinated submittal and applied signature prior to transmittal to Owner.
- D. Coordinate and ensure that no Work is preformed that is involved with submittal until receiving Owner's stamped and signed approval.

5.3.2. Processing:

- A. Identify each submittal with following:
 - 1. Identity of Project, Contractor, subcontractor or supplier.
 - 2. Reference to pertinent Contract Drawing sheet and detail number(s), and Contract Specification Section number.
- B. Submit items pertaining to only one Specification Section in each submittal.
- C. Number each submittal by Specification Section number and sequential item number.
 - 1. Retain numbering system throughout revisions with addition of sequential letters for each revision to initial submittal.
- D. Identify deviations from Contract Documents, and Product or system limitations, which may be detrimental to successful performance of completed Work.
- E. Transmit each submittal from Contractor to Owner using a transmittal form.
 - 1. Owner will not accept submittals received from sources other than Contractor.

5.3.3. Submittal Log:

- A. Submit submittal log listing all submittals and date to be submitted at first construction meeting.
- B. Submit log itemizing project submittals and project submission date one week prior to first submittal.
- C. Identify each submittal in accordance with Subparagraph 5.2.2.B.3.
- D. Maintain an accurate submittal log for duration of Work, showing current status of submittals at all times.
- E. Make log available to Owner for review upon request.

PART 2 PRODUCTS

5.3.4. DESIGN & CONSTRUCTION DOCUMENTS:

- A. Provide Design / Construction Documents at 30%, 80% and 100% completion.
 - 1. Make drawing accurate, to a scale sufficiently large to show pertinent aspects of the item and its method of construction.
 - 2. Provide engineering drawings/calculations, as required by the state law and local jurisdictions having authority, stamped by an engineer in the State of Oregon.
 - 3. Provide drawings in CADD and /or PDF electronic format.
- B. Make design Drawings accurately to a scale sufficiently large to show pertinent aspects of item and its method of connection to Work.
- C. Provide engineering calculations and drawings stamped by engineer(s)/architects registered in state work is being performed.

5.3.5. SHOP DRAWINGS

- A. Scale and Measurements: Make Shop Drawings accurately to a scale sufficiently large to show pertinent aspects of item and its method of connection to Work.
 - 1. Show in detail, materials, dimensions, thicknesses, methods of assembly, attachments, relation to adjoining Work, and other pertinent data and information.
- B. Coordination: Reference Shop Drawing details to Contract Drawing sheet and detail number(s).
- C. Shop Drawing Format and Submittals:
 - 1. 8 1/2 x 11 inch and 11 x 17 inch sheet size: Submit 5 copies.
 - 2. Larger than 11 x 17 inches: Submit five (5) bond copies of each sheet.
 - 3. Except for templates, patterns and similar full-size drawings, do not submit sheets larger than 36 x 60 inches.
- D. Copies will be returned, marked with Owner's action taken and corrections or modifications required, to Contractor for reproduction and distribution.
 - 1. Do not permit use of unmarked Shop Drawings in connection with construction.

5.3.6 PRODUCT DATA

- A. Collect Product Data into a single submittal for each element of construction or system.
- B. Mark each copy to show applicable choices and options. Where printed Product Data includes information on several products that are not required or proposed for Work, clearly mark copies to indicate applicable information.
- C. Include following information:
 - 1. Manufacturer's printed recommendations.
 - 2. Compliance with trade association standards.
 - 3. Compliance with recognized testing agency standards.
 - 4. Performance characteristics and capacities.
 - 5. Notation of dimensions verified by field measurement.
 - 6. Required clearances, wiring and piping diagrams, and controls.
 - 7. Manufacturer's standard schematic drawings and diagrams, modified as required to suit Project requirements.
 - 8. Notation of coordination requirements.
- D. Colors and Patterns: Except where specific color and pattern is indicated in Contract Documents, and whenever a choice of color or pattern is available in specified products, submit two (2) color and pattern charts to Owner for selection.

- E. Submit following for each required submittal:
 - 1. Two (2) copies for Owner.
 - 2. Number of copies as required for Maintenance manuals.
 - 3. Number of copies as required by Contractor for distribution.
- F. Owner will retain three (3) copies and return remainder, marked with action taken and corrections or modifications required, to Contractor for distribution.
 - 1. Contractor to retain number of copies required for maintenance manuals.
 - 2. Do not permit use of unmarked copies of Product Data in connection with construction.

5.3.7. SAMPLES

- A. Submit Samples for review of size, kind, color, pattern, and texture, and to illustrate functional and aesthetic characteristics of Product.
- B. Where variation in color, pattern, or texture, or other characteristic is inherent in material or product represented, submit at least 3 multiple units that show approximate limits of variations, or number of units indicated in individual specification Sections.
- C. Submit following for each required submittal:
 - 1. Three (3) samples for Owner.
 - 2. Number of samples as required by Contractor for distribution.
 - a. Prepare and distribute additional sets to subcontractors, manufacturers, fabricators, suppliers, installers, and others as required for performance of Work.
- D. Field Samples: Full-size examples erected on-site to illustrate finishes, coatings, or finish materials and to establish Project standard.

5.3.8. QUALITY ASSURANCE SUBMITTALS

- A. Submit quality control submittals, including:
 - 1. Design data
 - 2. Certifications
 - 3. Manufacturer's instructions
 - 4. Manufacturer's field reports
 - 5. Other quality control submittals required under individual Technical Specifications of Project Manual.
- B. Certifications: Where individual Technical Specifications Sections of Project Manual require certification that a product, material, or installation complies with specified requirements, submit a notarized certification from manufacturer certifying compliance with specified requirements.
 - 1. Certification to be signed by an officer of manufacturer or other individual authorized to sign documents on behalf of company.

PART 3 EXECUTION

5.3.10. OWNER REPRESENTATIVE'S ACTION

- A. Except for submittals for record or information, where action and return is required, Owner's Representative will review each submittal, mark to indicated action taken, and return to Contractor.
 - 1. Allow minimum 10 working days for Owner's Representative's review of each submittal following receipt of submittal.

- B. Action Stamp: Contractor's designer will stamp each submittal with an action stamp, and mark stamp appropriately to indicate action taken, as follows:
1. Final Unrestricted Release: When a submittal is marked NO EXCEPTION TAKEN, Work covered by submittal may proceed provided it complies with requirements of Contract Documents. Final payment depends on that compliance.
 2. Final-But-Restricted Release: When a submittal is marked MAKE CORRECTIONS NOTED, Work covered by submittal may proceed provided it complies with corrections on submittal and requirements of Contract Documents. Final payment depends on that compliance.
 3. Returned for Re-submittal: When a submittal is marked REVISE AND RESUBMIT, do not proceed with Work covered by submittal, including purchasing, fabrication, delivery, or other activity.
 - a. Revise or prepare a new submittal according to notations and resubmit. Repeat as necessary to obtain a mark releasing submittal.
 - b. Do not use, or allow others to use, submittals marked REVISE AND RESUBMIT, at Project site or elsewhere where Work is in progress.
 4. Rejected from use: When a submittal is marked REJECTED; work or product covered may **NOT** proceed or be used.
 5. Other Action: Where a submittal is for information or record purposes or special processing or other activity, Owner will return submittal marked RECORD DOCUMENT.
- C. Action stamp for design build: Owner's Representative will approve each submittal after Contractor's Designer has reviewed it.
- D. Unsolicited Submittals: Owner's Representative will return unsolicited submittals to sender without action.

END OF SECTION

5.4 **CUTTING AND PATCHING**

PART 1 GENERAL

5.4.1. SUBMITTALS

- A. Proposal for Cutting and Patching: Where cutting and patching involves structural elements, submit for approval a proposal describing procedures. Include the following information in the proposal:
1. Describe extent of cutting and patching required, how it will be performed, and why it cannot be avoided.
 2. Indicate changes to structural elements, and changes in appearance of visual elements. Include structural calculations.
 3. List products proposed for use and entities that will perform the Work.
 4. Indicate dates that work will be performed, duration of the Work, and when work will be uncovered for Owner's observation.
 5. List utilities that cutting and patching work will affect.
 6. Submit cost estimate and secure Owner's approval of cost estimate and type of reimbursement before proceeding with cutting and patching.

5.4.2. QUALITY ASSURANCE

- A. Structural Work: Do not cut and patch structural elements in a manner that would change their load carrying capacity of load deflection ratio.
1. Obtain approval before cutting and patching structural elements.

- B. Do not cut and patch operating elements in a manner that would reduce their capacity to perform as intended, cause increased maintenance, or decreased operational life or safety.
- C. Do not cut and patch exposed elements of construction that in Owner's opinion would reduce visual aesthetic qualities, or result in visual evidence of cutting and patching.
 - 1. Remove and replace construction cut and patched in a visually unacceptable manner.

5.4.3. WARRANTY

- A. Cut and patch construction using methods and with materials in such a manner as to not void any warranties required or existing.

PART 2 PRODUCTS

5.4.4. MATERIALS

- A. Use new materials identical to existing materials.
- B. Exposed surfaces: Where identical materials are not available, use materials that visually match existing adjacent surfaces as nearly as possible.
- C. Use materials whose installed performance is equal or better to that of existing materials.

PART 3 EXECUTION

5.4.5. INSPECTION

- A. Inspect existing conditions, including elements subject to movement or damage during cutting, excavating, patching, and backfilling.
- B. After uncovering Work, inspect conditions affecting installation of new Work.
- C. Discrepancies: If uncovered conditions are not as anticipated, immediately notify Owner and secure direction before proceeding further.
 - 1. Do not proceed until unsatisfactory conditions are corrected.

5.4.6. PREPARATION

- A. Provide temporary support of work to be cut, including shoring and bracing as required to maintain structural integrity of Work.
- B. Protect existing construction during cutting and patching to prevent damage.

5.4.7. GENERAL PERFORMANCE

- A. Use skilled workers trained and experienced in necessary crafts and familiar with requirements and methods required to restore surfaces to their original condition.
- B. Where required perform excavating and backfilling in accordance with applicable requirements of Division 2 Sections of these Specifications.
- C. Provide dust proof barriers where necessary to protect existing surfaces.

5.4.8. CUTTING

- A. Perform cutting and demolition by methods, which will provide least damage to other portions of Work.

- B. Prior to cutting existing work, locate concealed utilities to eliminate possibility of service interruption or damage.
- C. Cut through concrete or masonry with a carborundum masonry saw or diamond-core drill.
- D. When masonry construction must be pierced, furnish and install a steel pipe sleeve in opening and grout in place neatly.
 - 1. Leave grout surface to match existing finish.
 - 2. Fabricate sleeve one inch in diameter larger than pipe or insulation.
 - 3. Back and caulk between sleeve and pipe with waterproof sealant.
 - 4. At penetrations of fire-resistant rated walls, partitions, ceiling, or floor construction: Seal voids with fire-resistant rated materials as require to maintain assembly of fire-resistant rating of penetrated element, or as required by Building Code.

5.4.9. PATCHING

- A. Perform fitting and adjusting of products to provide a finished installation complying with tolerances and finishes specified for type of construction involved.
- B. Where replacement of equipment and fixtures is required, restore existing plumbing, heating, ventilation, air-conditioning, electrical, and similar systems to full operational condition.
- C. Refinish surfaces to match existing adjacent finish, patching with seams that are durable and as invisible as possible.
 - 1. Where possible, inspect and test patched area to demonstrate integrity of seam.
 - 2. For continuous surfaces, refinish to nearest intersection or natural break.
 - 3. For assembly, refinish entire unit.
 - 4. Restore exposed finishes of patched areas and extend finish restoration into retained adjoining work in manner that will eliminate evidence of patching and refinishing.
- D. When finished surfaces are cut so that smooth transition with existing or new work is not possible, submit to Owner, for approval, recommendation for terminating surface along straight line at natural line of division.
 - 1. Where change of plane of 1/4 inch or more occurs, submit to Owner, for approval, recommendation for providing smooth transition.

5.4.10. CLEANING

- A. Clean areas and spaces where cutting and patching work is performed.

END OF SECTION

5.5. CONSTRUCTION WASTE MANAGMENT

PART 1 GENERAL

5.5.1 WASTE MANAGEMENT GOALS

- B. Reuse or recycle waste materials produced as a result of Project to minimize impact of construction waste on landfills and to minimize expenditure of energy and cost fabricating new materials.
- C. Implementation of Contractor's waste management plan for work performed on Project.

5.5.2 WASTE MANAGEMENT PLAN

- A. Indicate waste materials that will be reused or recycled as a result of work performed on Project when practicable and cost effective.
- B. Documentation of Materials to be reused or recycled.
 - 1. Frequency: Monthly
- D. List types of waste materials produced as a result of work performed on site on form at end of this section.
- D. Weight tickets for waste materials removed from site during demolition and construction.

5.5.3 SUBMITTALS

- A. Construction Waste Management Plan.

5.5.4. ON-SITE MATERIALS SORTING AND STORAGE DURING CONSTRUCTION

- A. Verify requirements of recycle or waste processor facilities for preparation of materials they will receive, and what levels of contamination in materials is acceptable.
 - 1. Document in management plan.
- B. Coordinate with local hauler to provide separate containers for materials to be recycled.
- C. Follow source separation requirements for each waste and use appropriate on-site container for each waste.
- D. Provide separate containers for non-recyclable materials.
- E. Rebates: Paid or credited by hauler or recycling facility to be distributed as follows:
 - 1. One hundred percent to Contractor.
- F. Hazardous Waste: Hazardous wastes shall be separated, stored, and disposed of according to local regulations.
 - 1. Do not dispose of any chemicals or other materials (paint, etc.) in skink, landscape areas or in storm drains.
- G. On-site burning of waste shall not be allowed.
- H. Inform field personnel and subcontractors of recycling program.
- I. Continuously monitor program to verify proper source separation and avoidance of recyclable materials contamination.
 - 1. Provide on-site container to facilitate recycling.
- J. Track materials and quantities of recycled materials on form at end of this section.
- K. Recycling Processors and Facilities: Comprehensive list of recycling facilities in Portland Metro area is available from local building permit office or by contacting Metro at (503) 234-3000.

END OF SECTION

5.6 EXISTING TREE PROTECTION

5.6.1 PROTECTION

- A. Temporary fencing, barricades, and guards as necessary or required to protect trees, which are to remain from, damage above and below grade.
 - 1. Erect as directed by Owner, the Oregon .
 - 2. Use galvanized 6-foot chain link fencing and 4-foot orange plastic safety fencing.
- B. Protection of root systems from smothering and compaction.
 - 1. Do not store construction materials or permit vehicles to drive or park within drip line area of any tree to remain.
- C. Protection of plant growth, including root systems of trees, from dumping of refuse or chemically injurious material or liquids, and continual puddling of running water.
- D. This specification shall be applied concurrently and in conjunction with other plant material protection measures herein described and specified.

5.6.2. INSPECTION

- A. Inspect trees shown on plans to be protected, prior to start of construction.
 - 1. Document and photograph unusual conditions.
 - 2. Submit copies of documentation to Owner prior to beginning work.
 - 3. Verify conditions regarding tree protection prior to site disturbance.
- B. Owner must be present during demolition of existing conditions within drip line of trees to remain.
- C. Notify Owner 24 hours prior to inspection and / or tagging of protected trees.

5.6.3. GENERAL

- A. Install barricades at drip lines of trees designated to remain prior to commencement of construction.
 - 1. Designate protected trees to be clear of any material storage, personnel, or vehicular movement.
 - 2. Barricades to occur for any trees within 30 feet of construction or vehicular movement.
- B. Protect root systems of trees to remain from damage due to noxious materials in solution caused by runoff or spillage during mixing and placement of construction materials.
- C. Protect root systems of trees to remain from flooding, erosion, or excessive wetting resulting from dewatering operations and compaction.
- D. Protect existing trees to remain against unauthorized cutting, breaking, or skinning roots and branches, skinning, and bruising of bark.
- E. Fires on project site are not allowed.
- F. Where cutting seems necessary, review conditions with Owner before proceeding, and comply with directives of the Owner.

5.6.4. EXCAVATION AROUND TREES

- A. Excavate within drip line of trees only as approved by Owner.
- B. Where trenching for utilities is required within drip lines, tunnel under or around roots by hand digging or boring.
 - 1. Do not cut main lateral roots or tap roots over one inch diameter.

2. Trench toward trunk of tree and tunnel under central root mass to avoid severing lateral roots on side of trench.
 3. Temporarily support and protect from damage until permanently covered with approved backfill.
- C. Do not allow exposed roots to dry out before permanent backfill is placed. Provide temporary earth or burlap cover.
1. Water roots daily when exposed and maintain in a moist condition.
- D. Backfill roots after inspection approval from Owner.
1. Backfill around root excavations only with clean import topsoil free from materials deleterious to root growth.
 2. Backfill to eliminate voids, compact only by means of manual tamping at root areas.
 3. Water sufficient to settle topsoil and eliminate voids or air pockets around roots.
 4. Allow for natural settlement of soil surface, and furnish and apply topsoil sufficient to bring to original finish grade after backfill settlement.
- E. Conditions that threaten survivability of protected tree or that affects stability or integrity of root system, notify Owner.

5.6.5. GRADING AND FILLING AROUND TREES

- A. Maintain existing grade within drip line of trees unless otherwise indicated on Drawings.

5.6.6. MAINTENANCE OF PROTECTIVE MEASURES

- A. Maintain protective measures throughout construction process.
1. Repair any alteration to protection measures throughout construction process.
 2. Repair or reinstall protective measures upon alteration.
 3. Monitor protective measures daily.
 4. Pruning and/or repairs must be approved in advance and at completion by Horticulture Supervisor.
 5. Contractor responsible for cost of repair caused by his actions or by actions of his/her subcontractors.

5.6.7. CLEANING AND ADJUSTING

- A. Remove fencing, barricades, and guards.
- B. Remove debris and dispose of in a legal manner.

END OF SECTION

5.7 CLOSEOUT PROCEDURES

5.7.1. SUBSTANTIAL COMPLETION

- A. Prior to requesting inspection for certification of Substantial Completion, complete following.
1. In Application for Payment that coincides with, or first follows, date of Substantial Completion is claimed, show 100 percent completion for portion of Work claimed as substantially complete.
 - a. Include supporting documentation for completion as indicated in these Contract Documents.

- b. If 100 percent cannot be shown, include a list of incomplete items, value of incomplete construction, and reasons Work is not complete.
 2. Advise Owner of pending insurance changeover requirements.
 3. Submit warranties, workmanship bonds, maintenance agreements, final certifications, and similar documents.
 4. Obtain and submit releases enabling Owner unrestricted use of Work and access to services and utilities.
 - a. Include occupancy permits.
 5. Submit:
 - a. Record Drawings
 - b. Record Specifications
 - c. Maintenance manuals
 - d. Final project photographs
 - e. Damage or settlement surveys
 - f. Property surveys
 - g. Other final record information.
 6. Deliver tools, spare parts, extra stock, and similar items.
 7. Make final changeover of permanent locks and transmit keys to Owner.
 - a. Advise Owner's personnel of changeover in security provisions.
 8. Complete startup testing of systems and instruction to Owner's operation and maintenance personnel.
 9. Discontinue and remove temporary facilities from site, along with mockups, construction tools, and similar elements.
 10. Complete final cleanup requirements.
 11. Touch up and otherwise repair and restore marred, exposed finishes, including touchup painting.
- B. Inspection Procedures:
1. On receipt from contractor a written request for inspection with certification the project is substantially complete and a punch list, Owner will proceed with an inspection or advise Contractor of unfilled requirements.
 2. Owner will prepare Certificate of Substantial Completion following inspection or advise Contractor of construction that must be completed or corrected before certificate can be issued.
 - a. Owner will re-inspect once when requested with assurance that punch list and Work is substantially complete.
 - b. Results of completed inspection will form basis of requirements for Final Acceptance.
 3. Owner will allow Contractor no longer than 30 calendar days from Date of Substantial Completion to remedy deficiencies.

5.7.2. FINAL ACCEPTANCE

- A. Prior to requesting final inspection for certification of final acceptance and final payment, submit following:
1. Final payment request with releases, including insurance certificates for products and systems where applicable.
 2. Updated final statement accounting for final additional changes to Contract Sum.

- a. Owner will prepare a final Change Order after final acceptance showing adjustments to Contract Sum, which were not made previously by Change Orders.
 - 3. Certified copy of Owner's final inspection list of items to be completed or corrected, endorsed and dated by Owner.
 - a. Certification to state each item has been completed or corrected or otherwise resolved for acceptance.
 - 4. Consent of Surety to Final Payment.
 - 5. Evidence of final, continuing insurance coverage complying with insurance requirements.
- B. Re-inspection Procedure:
 - 1. Owner will re-inspect to verify status of completion upon receipt of notice that Work, including list of items from earlier inspection, has been completed.
 - a. Indicate items for which completion is delayed under circumstances acceptable to Owner.
 - 2. If Work is found to be complete following final inspection, Owner will issue a certificate of final acceptance.
 - 3. Should Owner and Owner determine that Work is incomplete or defective:
 - a. Owner will promptly notify Contractor, in writing, listing incomplete or defective Work.
 - b. Contractor to remedy deficiencies promptly, and notify Owner when ready for re-inspection.

5.7.3. RECORD DOCUMENT SUBMITTALS

- A. Project Record Drawings:
 - 1. Maintain a clean, undamaged set of Contract Drawings and Shop Drawings, and identify as RECORD DRAWINGS - PROJECT SET.
 - 2. Mark Drawings to show actual installation and construction where construction varies substantially from Work as shown.
 - a. Using an erasable colored pencil (not ink or indelible pencil), clearly describe change by graphic line and note.
 - b. Date entries, and note related Change Order numbers where applicable.
 - c. Call attention to entries by a "cloud" drawn around areas affected.
 - d. Where overlapping changes occur, mark with different colors.
 - 3. Conversion of Schematic Layouts:
 - a. Design of future modifications of facility may require accurate information as to final physical layout of items, which are shown, schematically on Drawings.
 - b. Show on Project set of Record Drawings, by dimension accurate to within one inch, centerline of each run of items shown schematically on Drawings. Clearly identify item by accurate note such as "cast iron drain", "galv. water", and like. Show, by symbol or note, vertical location of item ("under slab", "in ceiling plenum", "exposed", and like). Relate by identification descriptive to Specifications.
 - 4. Final Record Documents: Prior to request for Substantial Completion, provide Owner with Record Documents on Autocad (or compatible electronic file) and on a printed set of drawings.
 - a. Carefully transfer change data shown on Project set of Record Drawings to the electronic file, coordinating changes as required.
 - b. Clearly indicate at each affected detail and other drawings a full description of changes made during construction, and actual location of items.

- c. Show final location of electrical junction boxes and outlets, telephone and data outlets, supply and return registers, and like.
 - d. Call attention to entries by a "cloud" drawn around areas affected.
 - e. Make changes neatly, consistently, and with proper media to assure longevity and clear reproduction.
- B. Record Specifications:
- 1. Maintain one complete copy of Project Manual including Addenda, and other written construction documents, such as Change Orders and modifications issued during construction.
 - 2. Mark Specifications to show changes in actual Work performed in comparison with Specification text.
 - 3. Note substitutions in reference to items specified.
- C. Operation and Maintenance Manuals:
- 1. Submit 3 copies of maintenance manuals prior to system start-ups and instruction of operation and maintenance personnel.
 - 2. Provide manuals in 8-1/2 x 11 inch format with plastic/fiberboard covers and colored flysheets separating sections, to include following:
 - a. Cover labeled as "Operating and Maintenance Instructions" With name and address of Project, and names of Contractor and Subcontractors.
 - b. Typewritten index near front of manual, providing immediate information as to location within manual of emergency information regarding installation.
 - c. Complete instructions regarding operation and maintenance of equipment, including lubrication, disassembly, and reassembly.
 - d. Complete nomenclature of parts of equipment.
 - e. Complete nomenclature and part number of replacement parts, name and address of nearest vendor, and other data pertinent to procurement procedures.
 - f. Copy of guarantees and warranties issued.
 - g. Manufacturers' bulletins, cuts, and descriptive data, where applicable, clearly indicating precise items included in this installation and deleting, or otherwise clearly indicating, manufacturers' data with which this installation is not concerned.
 - h. Other data as required in applicable Sections of these Specifications.
- D. Other Documents:
- 1. One set of bonds.
 - 2. Spare parts and materials extra stock.
 - 3. One set of evidence of compliance with requirements of governmental agencies having jurisdiction including, but not necessarily limited to:
 - a. Certificates of Inspection.
 - b. Certificates of Occupancy.
 - 4. One set of certificates of insurance for products and completed operations.
 - 5. One set of evidence of payment and release of liens.
 - 6. One copy of list of Subcontractors, service organizations, and principal vendors, including names, addresses, and telephone numbers where they can be reached for emergency service at times including nights, weekends, and holidays.

5.7.4. INSTRUCTION

- A. Instruct Owner's personnel in proper operation and maintenance of systems, equipment, and similar items which were provided as part of Work.

END OF SECTION

SECTION TWO

PROPOSAL FORMAT, EVALUATION, AND SELECTION

I. PROPOSAL FORMAT/EVALUATION CRITERIA:

All proposals shall be scored on the following criteria:

- 1.1 Format (10 Points)
 - 1.1.1. Provide a cover letter, stating that the information provided is “true and complete”.
 - 1.1.2. Attach the Contractor Identification Form (enclosed)
 - 1.1.3. Attach the Resident Contractor Form (enclosed).
 - 1.1.4. Attach a Proposal Security Deposit (in the amount of \$ 14,000).
 - 1.1.5. Provide the requested information (Items 1.2 – 1.5) in a thorough manner; refer to Proposal Requirements (following this section).
 - 1.1.6. Submit seven (7) copies of the proposal.
- 1.2 Contractor Qualifications and Experience with Similar Projects (25 Points)
 - 1.2.1 How many years has your organization been in business as a Contractor?
Provide licensing information.
 - 1.2.2. Under what former names has your organization operated?
 - 1.2.3. Experience
 - A. List the type of work your organization normally performs with its own forces
 - B. Does your firm own or are you able to obtain the necessary equipment for this job?
 - C. Has your organization previously performed a design/build contract similar to this project?
 - D. List similar projects completed by your team
 - F. List any projects for public facilities
 - 1.2.4. Claims and Suits
 - A. Has your organization ever failed to complete any work awarded to it?
 - B. Are there any outstanding judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or officers?
 - C. Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?
 - D. Have any officers or employees been convicted of any crimes relative to a project such as this?
 - 1.2.5. References
 - A. List the major construction projects your organization has in progress: project, owner, contract amount, percent complete, scheduled completion date and contact person.
 - B. List the major construction projects your organization has completed in the last 3 years: project, owner, contract amount, percent complete, scheduled completion date, and contact person.
 - C. List three subcontractor references.
 - D. List three supplier references.
 - E. List a bank reference.
 - F. Prior to award of the Contract, the Contractor may be required to submit to Metro their latest balance sheet and income statement, with the last audit date and name of firm preparing the audit (if available).

1.3. Design Elements – Priority Listing of Desirable Features (25 points)

1.3.1 High Safety factor

- A. Cleanable non-slip deck surface
- B. No exposed sharp objects or pinch points
- C. Pressure diverter behind nozzles to prevent eye injury from high pressure, low pressure system, or pressure compensating nozzles
- D. No elevated climbing structures over concrete deck
- E. Layout allows full view of the entire area from a shaded bench

1.3.2 Environmentally and child friendly

- B. Recirculation and treatment of water
- C. Motion detector or automatically timed shutdown on each feature
- D. Timer for total shut-off at night
- E. Water management that avoids wasting water and energy
- F. At least one feature should encourage collaborative activity such as a central spray (fountain) that rises higher when several children place their feet over a ring of spray nozzles surrounding the central spray (or similar)
- G. Interactive controls (i.e. aim a water cannon at a friend, cause one nozzle to erupt by stepping on another, child adjustable flow rate, etc.)
- H. Variety of sprays including ground nozzles, over-head spray and mist, dueling water cannons, random dump buckets, etc.
- I. Basic operational signage in Spanish and English or preferably pictorial
- J. Provide adequate space on the splash pad, especially around a low flow ground bubbler for toddlers
- K. Aesthetically attractive to 2 to 12 year-old children and adult friendly
- L. Colorful water features in primary colors
- M. Mechanical equipment housed in a park-like structure
- N. Innovative design
- O. Layout and grading of site provides location for future perimeter park benches outside the spray zone and potentially shaded from sun
- P. Zoned for different ages

1.3.3 Low maintenance

- A. No permit-required confined entry areas as defined by Oregon Occupational Safety and Health Administration (OR-OSHA)
- B. No hazardous chemicals to mix
- C. Automated monitoring of disinfectant residual, turbidity, and ph
- D. Ozone treatment preferred over chemical disinfection
- E. Low maintenance coatings on water features
- F. Simple push button controls preferred over high-tech proximity switches
- G. Multi-stage filtration such as catch basins with removable basket filter, automatic wash-down y-screen and final sediment and particulate filter

1.3.4 Operational efficiency

- A. Individual features capable of operational isolation from each other; some equipment can be shut down while the rest operate
- B. System should function without staff supervision
- C. Features are re-locatable (interchangeable lay-out)
- D. Peak flows of all fixtures no greater than 200 gallons per minute (GPM)

1.3.5 Vandal resistant

- A. Tamper-proof nozzle attachments
- B. Lockable controls

- C. Above-ground features are removable in the off-season
- D. Painted surfaces resistant to paint tagging

1.3.6 Practical considerations

- A. Expandable in the future
- B. Buildings of fire resistive construction

1.4. Fees/Cost (20 points)

- 1.4.1. Describe the proposed methods (and computer programs) that will be utilized for controlling design/construction costs to stay within the \$190,000 cap.
- 1.4.2. Submit a not-to-exceed lump sum price to provide Design and Construction Services for this project if lower than the budget.

1.5. Schedule (20 points)

- 1.5.1. Describe the proposed method (and computer programs) that will be utilized for Schedule Control.
- 1.5.2. Submit a proposed project schedule, with an assumed Start Date of February 15, 2006 and a Completion Date of June 15 2006.
 - A. Show Design work, Reviews and Construction completion for each project element.
 - B. Identify Critical Path.

II. EVALUATION AND SELECTION PROCESS

The proposals shall be evaluated by an Evaluation Committee consisting of not less than five (5) knowledgeable individuals ("Evaluators"). Working independently with copies of the written proposals, the Evaluators will assign scores to each proposal for each of the five categories described under Proposal Format (above). The five (5) categories and the highest possible score for each are as follows:

<u>Category</u>	<u>Max. Score</u>
1) Proposal Format	10 points
2) Contractor Qualifications	25 points
3) Design Elements	25 points
4) Fees / Cost Control	20 points
5) Schedule Control	20 points
Total Maximum Possible Score:	100 points

For each proposal, the total score from each Evaluator shall be computed; this figure will be added to that proposal's scores from the other Evaluators, giving the full "Evaluation Score" for each written proposal.

METRO may choose to add a second step to the evaluation process. If, at the conclusion of evaluation of the written proposals, it is determined to be in the best interests of METRO, oral evaluations will also be conducted. The top-scoring Proposers, not more than three, (3) shall be invited to the oral interview. The same criteria used to evaluate the written responses will be used to evaluate the finalists during the oral evaluations. No additions, deletions or substitutions may be made to proposals during the oral evaluations that cannot be viewed as clarification.

After the oral evaluation, each evaluator will independently assign a score to each evaluation criterion and the criteria scores for the oral evaluation will be summed. The oral evaluation scores and the written evaluation scores will be summed resulting in a final score. The award will be given to the proposal having the highest final score.

III. PROPOSAL REQUIREMENTS

3.1. PREPARATION OF PROPOSALS

- 3.1.1. Metro reserves the right to declare any proposal non-responsive and reject it without further consideration if it is deemed to contain errors, omissions, is conditioned by the Contractor, or in any manner, extent or way fails to conform to each and every specific requirement(s) of these RFP.
- 3.1.2. Each Proposal shall give the full business address of the Contractor and be signed by it with its legal signature.
 - A. Proposals 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. Proposals 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 Proposal is submitted by a joint venture, a certified copy of the legal agreement constituting the joint venture shall be attached to the Proposal.
- 3.1.3. The name of each person signing shall also be typed or printed below the signature. Signatures of all individuals must be in longhand.
- 3.1.4. Failure to fulfill any of the above requirements may render the Proposal non-responsive.

3.2. SUBMISSION OF PROPOSALS

All proposals must be submitted not later than the time prescribed, at the place, and in the manner set forth in the INTRODUCTION. Proposals must be made in the prescribed format; Each Proposal and all other documentation required to be submitted with the Proposal 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 INTRODUCTION and the REQUEST FOR PROPOSALS.

3.3. MODIFICATION OR WITHDRAWAL OF PROPOSALS

- 3.3.1. Any Proposal may be modified after delivery to the location specified in the Invitation to Proposal by delivering to the same location before the time fixed for the Proposal opening, a written sealed supplement to the original Proposal, marked "Supplement to Proposal of (Name of Contractor) for the "Oregon Stormwater Improvements, Attention: Lee Campbell, Project Manager. A supplement shall clearly identify the Proposal item(s) that are changed by setting forth the original Proposal item(s), and the modified item(s). Metro may reject any Proposal 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 Contractor. No Contractor shall be allowed to submit more than one (1) Proposal for this Contract.
- 3.3.2. Proposals may be withdrawn by the Contractor prior to the time fixed for the receipt of Proposals by having an authorized representative of the Contractor with sufficient identification personally pick up the Proposal. Proposals may not be withdrawn for a period of sixty (60) days from and after the opening of Proposals or on or prior to the last date of any extension of such time as may be agreed upon between Metro and the Contractor.

3.4. PROPOSAL SECURITY

- 3.4.1. Proposals must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a Proposal 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 US. Treasury Department, in the amount of not less than Ten Percent (10%) of the proposal amount. This proposal security shall be given as a guarantee that the Contractor will not withdraw its Proposal for a period of sixty (60) days after Proposal opening, and that if awarded the Contract, the successful Contractor 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 Proposal, within the time specified. Proposal security deposited in the form of a certified check or cashier's check shall be subject to the same requirements as a Proposal Bond.
- 3.4.2. 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.

3.5. REJECTION OF PROPOSALS

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

END OF SECTION

SECTION THREE: GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

- 1.1. Definitions. Unless otherwise defined or specified in the Contract Documents, the following terms shall have the meanings indicated:
- 1.1.1. Act of God -- means an earthquake, flood, typhoon, cyclone or other natural phenomenon of catastrophic proportions or intensity.
 - 1.1.2. 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.
 - 1.1.3. Alternate 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.
 - 1.1.4. Owner/Engineer -- is the firm representing Metro as designers and its agents, representatives, employees and consultants or such other firm as Metro may appoint. The Owner/Engineer will have authority to act on behalf of Metro only to the extent provided in these Contract Documents.
 - 1.1.5. "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.
 - 1.1.6. 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.
 - 1.1.7. BES -- Bureau of Environmental Services
 - 1.1.8. 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.
 - 1.1.9. 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.
 - 1.1.10. Bidding Documents -- See "Contract Documents."
 - 1.1.11. Bid Forms -- include the following: the Bid proposal (including Schedule of Bid Prices and Recycled Product Attachment), Surety; Minority, Women-Owned and Emerging Small Business Program Compliance Form; Resident/Non-Resident Bidder Status form; Signature Page; the Non-Collusion Affidavit; and Bid Bond.
 - 1.1.12. City -- means the City of Portland, Oregon.
 - 1.1.13. Change Order -- is a written document signed by Metro and Contractor stating their agreement upon all of the following:
 - A. a change in the Work;
 - B. the amount of the increase or decrease in the Contract Amount, if any; and
 - C. the extent of the adjustment to the Contract Time, if any.

- 1.1.14. 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.
- 1.1.15. Completion -- See "Substantial Completion" and "Final Completion and Acceptance."
- 1.1.16. 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 Chief Operating Officer. For purposes of administering this contract the terms "Construction Coordinator", "Construction Manager", and will refer to the on-site Metro representative and to any duly appointed assistants who may be designated in writing. The Owner/ Engineer of Record will be called upon as required by and at the direction of Metro for technical assistance and for interpretation of the Contract Documents.
- 1.1.17. Construction Manager See "Construction Coordinator."
- 1.1.18. Construction Schedule or Schedule -- is the timeline described in Article 5 of the General Conditions and Section 1, Article 5.2.4 (Page 9 of 22) Design/Construction Schedule.
- 1.1.19. Contract Amount -- is the total amount shown in the Construction Agreement as revised by Change Orders.
- 1.1.20. 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.
- 1.1.21. 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.
- 1.1.22. 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.
- 1.1.23. Critical Path Method or CPM -- means the critical path method of scheduling as understood and interpreted by standard industry practice.
- 1.1.24. Days -- means calendar day including Saturdays, Sundays and legal holidays.
- 1.1.25. 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.
- 1.1.26. Minority Business Program -- is Metro's program to provide maximum opportunities to Minority, Women-Owned and Emerging Small Business Enterprises in contracts, which is contained in Metro Code Section 2.04.
- 1.1.27. 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.
- 1.1.28. 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 Owner/Engineer prior to installation of any material or product in the Project. Where the term "or equal" is not used and a sole product is specified, the term "or equal" is implied.

- 1.1.29. 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.
- 1.1.30. Final Payment -- is the balance of the Contract Amount to be paid to the Contractor upon Final Completion and Acceptance of the Work.
- 1.1.31. Force Account Work -- is work, ordered in writing by Metro, for which Contractor must report its actual costs in accordance with Paragraph 8.4 of the General Conditions.
- 1.1.32. 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.
- 1.1.33. General Contractor -- is the party who enters into the Contract with Metro. See also "Contractor".
- 1.1.34. Geotechnical Engineer -- The Geotechnical Engineer is an agent of the Engineer.
- 1.1.35. Incident 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 critical path of 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.
- 1.1.36. 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.
- 1.1.37. Lump Sum -- means all costs and expenses of whatever nature, including Overhead and Profit, associated with the Work involved.
- 1.1.38. 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.
- 1.1.39. Metro -- is a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter.
- 1.1.40. Metro Chief Operating Officer or Chief Operating Officer -- means the Chief Operating Officer of Metro.

- 1.1.41. Metro Council or Council -- means the elected Council of Metro.
- 1.1.42. 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.
- 1.1.43. Notice of 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 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.
- 1.1.44. 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.
- 1.1.45. Other Metro Contractors -- are all individuals, corporations, partnerships, or joint ventures (except Contractor or Owner/Engineer) with whom Metro has a contract to perform work on, or related to, the Project.
- 1.1.46. Overhead -- when applied to the cost of the work, shall include the following items, when reasonable and necessary for completion of the work:
- A. 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.
 - B. Small tools (less than \$250 capital cost per item).
 - C. Equipment maintenance and repairs.
 - D. Temporary construction, utilities, and safety requirements.
 - E. Transportation of materials other than direct identifiable cost of specific deliveries, or as included in price of material.
 - F. Parking fees for workers (if applicable).
 - G. Permit fees.
 - H. Cost of reproduction.
 - I. Field office costs.
 - J. 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. Accounting functions of Contractor's Home and Branch Office.
 - 2. General expenses of Contractor's Home and Branch Office.
 - 3. Interest on capital.
 - 4. Salaries of any home and branch office estimators and administration.
- 1.1.47. Owner -- means Metro.
- 1.1.48. Plans -- means Drawings.
- 1.1.49. Profit -- means that portion of Contractor's Bid price that is not Direct Costs or Overhead

- 1.1.50. Project -- means the Work described in the Contract Documents.
- 1.1.51. Provide -- means furnish and install complete and in place and ready for operation and use.
- 1.1.52. Punch List -- is the list prepared by the Owner/Engineer and/or 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 Owner/Engineer and Metro in order for the Project to reach Final Completion and Acceptance.
- 1.1.53. Request for Clarification -- is a written request made by Contractor for additional information to clarify an ambiguity in the Contract Documents.
- 1.1.54. Retainage or Retention -- is the difference between the amount earned by Contractor on the Contract and the amount paid on the Contract by Metro.
- 1.1.55. Schedule of Values -- is the detailed breakdown of a lump sum contract amount as required in Article 9.2 of the General Conditions.
- 1.1.56. Separate Contract -- is a contract between Metro and a party other than Contractor for the construction or furnishing of a portion of the Project.
- 1.1.57. Shown, As Shown -- work shown on the Drawings which is a part of the Contract Documents.
- 1.1.58. Site -- is the real property upon which the Project is located.
- 1.1.59. Special Inspector -- is a representative of the, Owner, Engineer or Geotechnical Engineer with specialized knowledge applicable to the installation of certain elements of the work.
- 1.1.60. 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.
- 1.1.61. 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.
- 1.1.62. 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 Owner/Engineer.
- 1.1.63. 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.
- 1.1.64. 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.
- 1.1.65. 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.
- 1.1.66. 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.

1.2. Intent and Interpretation of Contract Documents

- 1.2.1. 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 Owner, Engineer and Metro.
- 1.2.2. 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.
- 1.2.3. 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.
- 1.2.4. 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:
 - A. Signed Construction Agreement.
 - B. Supplementary Conditions.
 - C. General Conditions, Advertisement for Bids, Instructions to Bidders, Invitation to Bid, Bid Forms, Performance Bond and Labor and Materials Payment Bond.
 - D. Specifications
 - E. Drawings.

Within each of the above documents, 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.

- 1.2.5. 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 3.2. 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.

- 1.2.6. 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.
- 1.3. Supply of Contract Documents -- Metro shall supply Contractor, without charge, a maximum of ten (10) sets of Contract Documents. Contractor shall contact Metro for additional sets of documents for which Contractor shall be charged the cost of printing.
- 1.4. 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.
- 1.5. 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.
- 1.6. 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.
- 1.7. 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

- 2.1. 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 3.3. 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.

- 2.2. 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 Owner/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.
- 2.3. 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.
- 2.4. 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.

- 2.5. 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:

2.5.1. Name of Contractor and Project.

2.5.2. Weather, temperature and any unusual Site conditions for the day in question.

2.5.3. 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)

- 2.5.4. 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.
 - 2.5.5. A detailed listing of labor employed on the Work for that day. The listing shall include a description of both Contractor's and Subcontractor's workers employed that day and shall have breakdowns for minority, female trade and worker classifications and hours worked.
 - 2.5.6. Equipment in use that day (other than hand tools).
 - 2.5.7. Daily summary and accumulated quantity amounts of items listed above.
 - 2.5.8. Any other information as requested by Metro or its representative.
- 2.6. 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.
- 2.7. 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.

- 2.8. 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

- 3.1. Authority and Relationships of Metro and Owner/Engineer -- the following provisions shall govern the authority of the various officers, agents, representatives, consultants and employees of Metro, and Owner/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 Owner/Engineer shall have any authority to make representations, statements or decisions of whatever nature binding Metro or Owner/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 Chief Operating Officer or a person who is designated in writing by the Metro Chief Operating Officer as having authority to act for Metro but only to the extent that such authority is expressly delegated in writing.

3.1.1. 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 Owner/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 Owner/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 Owner/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 Owner/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.

3.2. 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 Owner and Metro so that the orderly progress and prosecution of the Work is not delayed.

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

3.3. Contractor's Claims

3.3.1. 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.

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

- A. Claims based upon justifiable delays as described in Subparagraph 3.3.3;
- B. Claims based upon differing Site conditions as described in Subparagraph 3.3.4;
- C. 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 3.3.5.

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;

3.3.3. Claims For Justifiable Delays

A. 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 3.3.3.B.

"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:

1. Are beyond the reasonable control of Contractor (or any third party for whom Contractor is directly responsible);
2. 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. 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 Owner/Engineer, Metro or Contractor which are found to be justifiable delay under 3.3.3.A.3 (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 critical path of 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.

- B. 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 3.3.6.

- 3.3.4. 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 3.3.6.

- 3.3.5. 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:

- A. 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;
- B. how Metro's decision, action or failure to act has affected Contractor's performance or otherwise affected Contractor;
- C. 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;
- D. 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 3.3.6.

- 3.3.6. Preservation of Claims -- Within thirty (30) days after a rejection of claim, in whole or in part, by Metro under Subparagraphs 3.3.3, 3.3.4 or 3.3.5, Contractor may preserve its claim by submitting a fully documented claim package to Purchasing and Contracts Manager, 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.

3.4. Metro's Right to Adjust Payments

- 3.4.1. 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 any combination of the

following: (1) making no further payments to Contractor until the Work is substantially complete, (2) paying the Subcontractor costs incurred by Contractor without any overhead, profit or fee of any kind going to Contractor, and/or (3) by collection of liquidated damages in the amount of \$600 per day.

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.

3.4.2. 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.

3.5. Mediation -- Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Contract. It is agreed, subject to the conditions and limitations of this paragraph, that any controversy or claim arising out of or relating to this Contract which remains unresolved after such negotiations, shall submit to mediation prior to the commencement of litigation. The mediator shall be an individual mutually acceptable to both parties. Should the parties lack specific recommendations for a mediator, the parties shall look to the local circuit court or the Oregon Dispute Resolution Commission. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement on both the and Contractor. The schedule and time allowed for mediation shall be mutually acceptable. The mediation process is nonbinding.

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

All disputes not resolved by mediation shall be decided exclusively by a court of competent jurisdiction in Multnomah County, Oregon, under the laws of the state of Oregon.

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 3.4.1, and/or terminate the Contract pursuant to Article 15 of this Contract.

ARTICLE 4 SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

4.1. 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.

4.2. 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.

4.2.1. 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.

4.2.2. 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.

4.2.3. 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.

4.2.4. 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.

4.2.5. 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 the 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.

- 4.3. 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

- 5.1. Prosecution of Work Generally -- Contractor shall commence the Work within five (5) 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.

- 5.2. 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.

- 5.3. 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.

- 5.4. 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.

- 5.5. 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

- 6.1. 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.

- 6.2. 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 3.2. 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.

- 6.3. 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.

- 6.4. 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:

- 6.4.1. Increase manpower in such quantities and crafts as will substantially eliminate the backlog of work.
- 6.4.2. 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.
- 6.4.3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
- 6.4.4. Expedite delivery of materials and equipment such as use of airfreight.

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.

- 6.5. 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:
 - 6.5.1. Withhold any payment otherwise due hereunder until Contractor complies with Metro's directions.
 - 6.5.2. 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.
 - 6.5.3. Terminate any or all portions of the Work for Contractor's failure to perform in accordance with the Contract.
- 6.6. 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 3.2.
- 6.7. 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.
- 6.8. 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.
- 6.9. 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

7.1. Quality Control

- 7.1.1. 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 Owner/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.

- 7.1.2. 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.
- 7.1.3. 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.
- 7.2. 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.
- 7.2.1. 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 Owner/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.
- 7.2.2. 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 Owner/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.
- 7.2.3. 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.
- 7.2.4. 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 Owner/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.

7.2.5. 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.

7.3. Unsatisfactory Materials and Workmanship

7.3.1. 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.

7.3.2. 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.

7.4. 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.

7.5. 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.

7.6. Warranty and Correction Agreements by Subcontractors

7.6.1. 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 7.4. 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 7.5.

7.6.2. 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 7.6.1 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 Oregon Stormwater Improvements 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 7.5 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."

7.7. 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.

7.8. 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.

7.9. 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 Owner 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:

- 7.10.1. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- 7.10.2. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- 7.10.3. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.

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

- 8.1. 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.

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 Owner/Engineer shall have approved any design modifications entailed thereby.

8.2. Procedure for Determining Impact of Change Orders on Contract Amount

8.2.1. 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 approved 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.

8.2.2. 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 approved 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.

8.2.3. 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.

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

8.3.1. 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 twenty percent (20%) 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 five percent (5%) 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 thirty percent (30%) of the Direct Cost of the changed work. Distribution of this Overhead and Profit among the tiers is the responsibility of Contractor.

8.3.2. 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.

- 8.3.3. Bond Premiums -- The actual rate of bond premium as paid on the additional Direct Cost plus the cost of taxes defined in 8.3.2 will be allowed. No Overhead and Profit will be allowed on such premiums.
- 8.3.4. 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.
- 8.4. 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 Force Account work shall be the sum total of the following items:
 - 8.4.1. Actual labor cost, including premium on compensation insurance and charge for social security taxes, and other taxes pertaining to labor.
 - 8.4.2. 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.
 - 8.4.3. Actual cost of material, including applicable taxes pertaining to materials.
 - 8.4.4. 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 8.3.4 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.
 - 8.4.5. Overhead and Profit as provided and limited in Paragraph 8.3.
 - 8.4.6. 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 and Metro's representative 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.

- 8.5. Oral Modifications -- No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.
- 8.6. Contractor Proposals for Changes in Work
 - 8.6.1. 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.
 - 8.6.2. Purpose -- Metro encourages Contractor to submit Value Engineering Change Proposals (VECPs) in order to avail Metro of potential cost savings 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.

- 8.6.3. 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.
- 8.6.4. 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.
- 8.6.5. Submission --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.
- 8.6.6. 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 mediation or otherwise.
- 8.6.7. 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:
- A. Definitions
1. 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.
 2. Contractor Costs (CC): Reasonable costs incurred by Contractor in preparing the VECP and making the change such as cancellation or restocking charges where required.
 3. Estimated Net Savings to Contractor (NS): Gross savings (GS) less Contractor costs (CC).
 4. Metro's Costs (OC): Reasonable costs incurred by Metro for evaluating and implementing the VECP, such as testing and redesign, where required.
- B. Calculations
1. The Contract Price shall be reduced by an amount equal to 50 percent of (NS) plus 50 percent of (OC), expressed by the formula:
Reduction = 0.5 (NS) + 0.5 (OC).
 2. Contractor's profit will not be reduced by application of the VECP.

- 8.6.8. 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.
- 8.6.9. 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.

- 8.7. 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

- 9.1. 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.

- 9.2. Schedule of Values

9.2.1. Generally -- Within thirty (30) days after the Notice to Proceed and 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. The format and detail of the breakdown shall be as directed by Metro to facilitate and clarify future progress payments to Contractor. This breakdown shall be referred to as the Schedule of Values.

9.2.2. 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.

9.3. Progress Payment Procedure

9.3.1. Generally -- Subject to the approval of Metro, disbursements shall be made by Metro of progress payments upon written request of Contractor. 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 Manager 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.

9.3.2. 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 279C.570.

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 279C.570. 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:

- A. Bills, certificates, notes or bonds of the United States.
- B. Other obligations of the United States or its agencies.
- C. Obligations of any corporation wholly owned by the federal government.
- D. 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.

- 9.3.3. 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 off-site 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 therefore 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 off-site.

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.

- 9.3.4. 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.

- 9.3.5. 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
- 9.3.6. 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.

9.3.7. Time of the Essence --Time is of the essence for the performance of the Work under this Contract.

9.4. 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 Owner will review the Work, including a physical inspection, to determine the status of completion. Should the Owner and Metro determine that the Work is not substantially complete:

9.4.1. Construction Manager will promptly notify Contractor in writing, giving the reasons therefor.

9.4.2. 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 Owner/Engineer, substantially complete. At that point:

A. The Owner/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 Owner/Engineer.

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

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

9.5.1. Contract Documents have been reviewed.

9.5.2. Work has been inspected for compliance with Contract Documents.

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

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

9.5.5. Work is ready for final inspection.

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

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

B. 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 Owner/Engineer.

C. Owner/Engineer and Metro will review and re-inspect the Work.

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

- 9.6. Closeout Submittals -- Contractor shall submit the following items, as applicable, with its request for Final Payment:
- 9.6.1. Evidence of Compliance with Requirements of Governing Authorities.
 - 9.6.2. Project record documents in accordance with the Specifications.
 - 9.6.3. Operation and maintenance data in accordance with the Specifications.
 - 9.6.4. Warranties in accordance with requirements of various Specification sections and these General Conditions.
 - 9.6.5. Extra stock and maintenance materials. Contractor shall submit receipts, signed by Metro, for the various specific items.
 - 9.6.6. Evidence of payment and release of claims in accordance with the following section.
 - 9.6.7. Consent of surety to Final Payment.
 - 9.6.8. Certificates of insurance for products and completed operations in accordance with Article 11 of these General Conditions.
 - 9.6.9. If Contractor is a "non-resident contractor" as that term is defined in Subparagraph 14.3.6, complete documentation of Contractor's compliance with ORS 279A.120.
- 9.7. 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 Owner/Engineer of and from all liabilities, obligations and claims arising under this Contract.

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

- 9.7.1. Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales, and employee withholding taxes.
 - 9.7.2. 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.
 - 9.7.3. Deliver to Metro Contractor's written undertaking, with sureties acceptable to Metro:
 - A. To promptly pay and obtain a release of claims on any bonds which may in the future affect the premises; and
 - B. 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.
- 9.8. Final Payment -- Upon application of Contractor and Contractor's completion of and compliance with all of the provisions of the above Paragraphs and settle of all claims arising from the agreement including claims that Metro may have against Contractor, Metro shall pay Contractor the balance of the Contract Amount subject to the availability of monies in the Construction Fund as described in Paragraph 9.1 and less any previous payments, offsets and withholdings allowed Metro under this Contract and Retainage which has been returned to Contractor.

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.

- 9.9. 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

10.1. Safety Requirements

- 10.1.1. 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.

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.

- 10.1.2. Health and Safety Program -- Contractor shall develop, publish and implement the overall Health and Safety Program for the Project. This Program shall conform to all applicable codes. 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.

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

- 10.2. 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.

- 10.3. Protection of Work, Persons and Property Against Damages -- 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.

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.

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.

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.

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

ARTICLE 11 INDEMNIFICATION AND INSURANCE

- 11.1. 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, Owner, 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 Owner.

Contractor shall assume the defense, if requested, indemnify and hold harmless Metro and Owner 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 ship, 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:

- 11.1.1. 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.
- 11.1.2. 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.
- 11.1.3. 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.
- 11.1.4. 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.

11.2. Insurance

11.2.1. 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 \$1,000,000.

Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to the change.

- 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.

11.2.2. 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.

11.2.3. Forms of Policies and Other Insurance Requirements

-- In addition to filing any other insurance certificates specified elsewhere in these Contract Documents, Contractor shall, within seven (7) days following Notice of 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.

11.3. Builder's All Risk Insurance

- 11.3.1. Contractor, for the life of this Contract, shall effect and maintain Builders All Risk Insurance and fire insurance with extended coverage and malicious mischief coverage upon the structures on which the work of this Contract is to be done to 100 percent (100%) of the insurable value thereof, protecting: 1) 's interest; 2) Contractor's interest; and 3) the subcontractor's interests in the work. Contractor's interest and the subcontractor's interests, as used herein, means their property interests and the property interests of others for which they are responsible in the Project, in all materials and supplies entering into or used or destined for use therein, and in all expendable items of equipment which are used in or are incidental to but which do not become a part of the finished Project, located at the job site at the time of loss or damage. Such insurance shall not exclude coverage for landslides, collapse, explosion or loss due to the result of faulty workmanship.
- 11.3.2. Contractor and all subcontractors shall be responsible for any loss or damage to their machinery and apparatus and nonexpendable items of their equipment.
- 11.3.3. Contractor shall provide adequate fire protection equipment and safeguards to protect 's and Contractor's interests in accordance with 's insurance carrier's requirements.

11.4. Labor and Materials and Performance Bonds

- 11.4.1 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.

11.4.2 As an alternative to providing either or both of the bonds specified in this section, 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 BUSINESS PROGRAM

Contractor shall comply with all pertinent provisions of Metro's Minority Business Program which are contained in Metro Code 2.04 and which are by this reference expressly incorporated herein and made a part of this Contract.

Contractor shall not replace a minority, women-owned or emerging small business enterprise Subcontractor with another Subcontractor, either before Contract award or during Contract performance, without prior written approval of Metro. In replacing a minority, women-owned or emerging small business Subcontractor, Contractor shall replace such minority, women-owned or emerging small business Subcontractor with another certified minority, women-owned or emerging small 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 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

- 14.1. 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.
- 14.2. 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
Metro
Planning Commissions (as applicable)

14.3. Other Provisions of Oregon Law

14.3.1. 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, and all sections of ORS 279A, 279B and 279C. Contractor shall fully comply with all applicable provisions of these statutes. The specific requirements of certain of these sections are set out below.

14.3.2. Payment to Subcontractors and Laborers -- Pursuant to ORS 279C.505, Contractor shall make payment promptly, as due, to all persons supplying such Contractor labor or material for the projection 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.

- 14.3.3. Failure to Make Payment for Labor or Services -- Pursuant to ORS 279C.515, 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 279C.515 shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.
- 14.3.4. Hours of Work -- Except as provided in ORS 279C.520, no person shall be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of ten (10) hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279C.540.
- 14.3.5. Payment for Medical Care -- Pursuant to ORS 279C.530, 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.
- 14.3.6. Requirements for Non-resident Contractors -- Pursuant to ORS 279A.120, any "non-resident 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 "non-resident contractor" is one who is not domiciled in or registered to do business in the state of Oregon.

- 14.3.7. Prevailing Wage -- The contractor, and all subcontractors and suppliers, shall be required to comply with ORS 279C.800 through 279C.870 and ensure that all workers are paid not less than, and in accordance with, the Prevailing Wages published by the Oregon Bureau of Labor and Industries.

The contractor is required to pay a fee equal to one-tenth of one percent (0.1 percent) of the price of the contract, but not less than \$100 nor more than \$5,000, under ORS 279C.825. The fee shall be paid on or before the first progress payment or 60 days from the date work first began on the contract, whichever comes first. The fee is payable to the Bureau of Labor and Industries at the following address:

Bureau of Labor and Industries
Wage and Hour Division
Prevailing Wage Unit
800 NE Oregon Street, #32
Portland, OR 97232

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. In order to insure compliance of prevailing wage requirements, under Chapter 279, Metro will require that all payrolls be submitted on a schedule to be determined by Metro.

14.3.8. 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).

14.3.9. 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.

14.4. 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 3.2, 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.

14.5. 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

15.1. 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:

- 15.1.1. Stop work under the Contract on the date and to the extent specified in the notice of termination or suspension.
- 15.1.2. 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.
- 15.1.3. 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.

- 15.2 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 FOUR - ATTACHMENTS

**SECTION 00500
DESIGN/CONSTRUCTION AGREEMENT**

CONTRACT NO. _____

This Construction Agreement is made by and between _____, hereinafter called Contractor and **Metro, 600 N.E. Grand Ave., Portland, OR 97232** a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, hereinafter called Metro.

Contractor and Metro agree as follows:

1. Contract Documents

The Contract Documents consist of this Construction Agreement, the Advertisement for Proposals, the Invitation to Proposal, the Instructions to CONTRACTORS, the Proposal Forms (including Schedule of Proposal Prices, Surety, MBE/WBE/ESB Business Program Compliance, Prevailing Wage Rate Compliance, Resident/Non-resident CONTRACTOR Status, Signature Page, Non-Collusion Affidavit, Proposal Bond, MBE/WBE/ESB 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 and the attached Schedule of Proposal Prices dated _____

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 five (5) calendar days after issuance of written Notice to Proceed. Contractor shall bring the work to substantial completion no later than _____ days after notice to proceed. 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.

For public work subject to ORS279C.800 to 279C.870, the Contractor shall pay prevailing wages and shall pay an administrative fee to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of the Bureau of Labor and Industries.

9. Ownership of Documents and Maintenance of Records

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of Metro, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon Metro request, Contractor shall promptly provide Metro with an electronic version of all Work Products that have been produced or recorded in electronic media. Metro and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such Work Products.

A. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:

1. The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
2. Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
3. Any cost and pricing data relating to the contract; and
4. Payments made to all suppliers and subcontractors.

B. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.

C. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

D. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

E. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

F. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

G. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

10. 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: _____

Performance Bond

SECTION 00600 PERFORMANCE BOND

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

KNOW BY ALL MEN BY THESE PRESENT:

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 _____, 20____, which
 Contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: _____
 _____.

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 _____
 _____, 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 _____
 _____ 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 _____ 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 _
 _____ or to the Work or to the Specifications. Any such change, extension of time, alteration or addition
 to the terms of the _____ 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 _____, 20____.

 SURETY

 CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

 Street Address

 Street Address

 City State ZIP

 City State ZIP

Phone Number

Phone Number



METRO

600 NE Grand Ave.
Portland, OR 97232-
2736
(503) 797-1700

Labor and Material Payments Bond

SECTION 00650

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

KNOW ALL MEN BY THESE PRESENT:

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 _____, 20____, which contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: _____.

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 _____, 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 279C.600.
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 279C.610 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 _____ 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 _____ 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 279C.600.

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 _____, 20____.

SURETY

CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

-

Street Address

City, State ZIP

Phone Number

Street Address

City, State ZIP

Phone Number

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 279A.120).

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

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

Indicate state in which Bidder resides: _____

CONTRACTOR QUALIFICATION STATEMENT

The undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading:

Contractor Name _____

Address _____

Telephone _____ Fax _____

E-Mail _____

Project Name _____

Organization _____

How many years has your organization been in business as a Contractor? _____

Under what former names has your organization operated? _____

Licensing

Oregon CCB# _____

Other licenses _____

Experience

List the type of work your organization normally performs with its own forces? _____

Does your firm own or able to obtain the necessary equipment for this job? Please explain _____

Claims and Suits

Has your organization ever failed to complete any work awarded to it? _____

-

Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or officers? _____

Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? Provide information _____

Have any officers or employees been convicted of any crimes relative to a project such as this? _____

References

List the major construction projects your organization has **in progress**

Project Name	Owner	Architect	Amount	% Complete	Completion Date	Contact Person	Phone #

List the major construction projects your organization has **completed in last 3 years**

Project Name	Owner	Architect	Amount	% Complete	Completion Date	Contact Person	Phone #

List 3 subs we can contact for a reference.

Name	Specialty	Contact Name	Phone #

List 3 suppliers we can contact for a reference.

Name	Specialty	Contact Name	Phone #

List a bank reference: _____

Signature

The information provided is true and complete.

Signature _____ Title _____ Date _____

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 20__

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 20__.

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 20__.

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 _____ 20____.

Notary Public for _____ My Commission Expires: ___/___/___



METRO

600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

PROPOSAL Bond

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

BOND NO. _____

AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENT, that _____
hereinafter called the PRINCIPAL, and _____
_____ a
corporation duly organized under the laws of the State of _____ having its principal place of
business at _____ in the state of _____, and
authorized to do business in the state of Oregon, as SURETY, are held and firmly bound unto _____
hereinafter called the OBLIGEE, in the penal sum of _____
____ DOLLARS (\$ _____), for the payment of which we bind ourselves, our heirs,
executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS PRINCIPAL IS SUCH THAT:

WHEREAS the PRINCIPAL is herewith submitting a **PROPOSAL FOR** _____ said
Proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the Proposal submitted by the PRINCIPAL is accepted, and the Contract awarded
to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Contract and shall furnish any
bond(s) required by the Contract Documents within the time fixed by the Documents, then this obligation
shall be void; if the PRINCIPAL shall fail to execute the proposed Contract and furnish the bond(s), the
SURETY hereby agrees to pay to the OBLIGEE the penal sum as liquidated damages, within ten (10)
days of such failure.

Signed and sealed this _____ day of _____, 20____.

By: _____
PRINCIPAL

By: _____
ATTORNEY-IN-FACT

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO.05-3645, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A DESIGN / BUILD REQUEST FOR PROPOSALS (RFP), FOR THE DESIGN, ENGINEERING AND CONSTRUCTION OF A WATER PLAY FACILITY FOR BLUE LAKE REGIONAL PARK AND ENTER INTO A CONTRACT WITH THE SELECTED CONTRACTOR

Date: November 10, 2005

Prepared by: Glenn Taylor and Teri Dresler

BACKGROUND

Metro Council approved Resolution No. 01-3101B, (“For the Purpose of Approving the Blue Lake Regional Park Economic Feasibility Study and Facility Design Concept”), on December 6, 2001. The preferred concept plan included a new child-adult water play area that would serve as a safe water experience for young children and be an integral component of a broader strategy to restore sagging attendance and support transition to increased entry fees. The water play area will be an additional attraction that will relieve some pressure on the swim beach and also provide an attractive option for young ones not allowed in the lake or those that prefer a non-lake water experience.

The proposed water “Spray Park” is a children’s play area on a concrete slab where water is sprayed from structures and/or ground sprays and immediately drained to a re-circulating water treatment system. Typically, children interact with the spray fixtures using simple-to-operate controls. They interact with each other by collaboratively changing spray patterns, squirting each other with water cannons, or “disappearing” into a mist or a waterfall. It will replace the existing basketball court near the swim beach.

This contract, for the design and construction of the interactive water-play facility, will be awarded based on a competitive process. But due to aesthetic elements and the complexity of determining the best offer, the award will not be based solely on the lowest price. Each design/build firm will submit their offer in the form of a preliminary design and a firm fixed price for the features and amenities they will provide. The evaluation criteria used to select a design/build firm for this project will be based on a combination of the following criteria: 1) Format (10 Points), 2) Contractor Qualifications and Experience with Similar Projects (25 Points), 3) Design Elements – Priority Listing of Desirable Features (25 points), 4) Fees /Cost (25 points), and 5) Schedule (20 points). A Committee established by the Metro Regional Parks & Greenspaces Department for this purpose will conduct the evaluation, and recommend to the Chief Operating Officer which design/build firm to award the contract.

The selection process is excerpted below in italics from the RFP document (attached to the Resolution as Exhibit A).

EVALUATION AND SELECTION PROCESS

The proposals shall be evaluated by an Evaluation Committee consisting of not less than five (5) knowledgeable individuals ("Evaluators"). Working independently with copies of the written proposals, the Evaluators will assign scores to each proposal for each of the five categories described under

Proposal Format (above). The five (5) categories and the highest possible score for each are as follows:

<u>Category</u>	<u>Max. Score</u>
1) Proposal Format	10 points
2) Contractor Qualifications	25 points
3) Design Elements	25 points
4) Fees / Cost Control	20 points
5) Schedule Control	20 points
Total Maximum Possible Score:	100 points

For each proposal, the total score from each Evaluator shall be computed; this figure will be added to that proposal's scores from the other Evaluators, giving the full "Evaluation Score" for each written proposal.

Metro may choose to add a second step to the evaluation process. If, at the conclusion of evaluation of the written proposals, it is determined to be in the best interests of Metro, oral evaluations will also be conducted. The top-scoring Proposers, not more than three, (3) shall be invited to the oral interview. The same criteria used to evaluate the written responses will be used to evaluate the finalists during the oral evaluations. No additions, deletions or substitutions may be made to proposals during the oral evaluations that cannot be viewed as clarification.

After the oral evaluation, each evaluator will independently assign a score to each evaluation criterion and the criteria scores for the oral evaluation will be summed. The oral evaluation scores and the written evaluation scores will be summed resulting in a final score. The award will be given to the proposal having the highest final score.

FINDINGS

In accordance with Metro Code Sections 2.04.054(c) and 2.04.052(a)(1), and ORS Chapter 279, the conditions for exemption from competitive bidding are as follows:

- A. The proposed exemption to competitive bidding is unlikely to encourage favoritism or substantially diminish competition for public contracts.
 - 1) Several domestic and international firms offer this type of specialized equipment and provide design services as a part of their package price and this process encourages them to partner with local contractors for the installation. There is no dearth of competition.
 - 2) The proposed process of selection will ensure fairness in the competition for the best overall design and lowest long-term lifecycle cost.
- B. The awarding of this contract pursuant to the exemption will result in substantial cost savings to Metro or the public.
 - 1) The design-build option will optimize the design and construction timeline due to the synergy between the contractor and consultant. The formal bid process that typically requires a minimum of six weeks is eliminated. Research by the "Design-Build Institute of America" indicates this method of procurement results in an average reduction in the total time from RFP to completed project of 33%.

- 2) Under the proposed format, design and construction will begin as soon as a contract between Metro and the successful offering firm has been ratified. The expected signature date is approximately January 15th, 2006. The designer and the builder are selected under one competitive process instead of two separate competitions under design, bid, and then build. This reduces staff time and the cost of the finished product. The average construction cost savings has been found to be 6%.
- 3) The proposed design/build process will result in the offer being selected that has the “Greatest Value” for Metro. This facility will require substantial operation and maintenance funding over its entire life as a popular recreational facility. The selection criteria under this process include the lowest total “life cycle cost” rather than merely the lowest initial cost.

ANALYSIS/INFORMATION

- 1 **Known Opposition:** There is no known opposition to this proposed resolution.
- 2 **Legal Antecedents:** Metro Code Section 2.04.054(c) provides that the Metro Contract Review Board shall, where appropriate, direct the use of alternate contracting practices that take account of market realities and modern and innovative contracting methods, which are consistent with the public policy of encouraging competition, subject to the requirements of ORS 279C.335
- 3 ORS 279C.335 provides that the Metro Contract Review Board may exempt a public improvement contract from the competitive bidding process, upon the approval of findings stating that it is unlikely that the exemption will encourage favoritism or substantially diminish competition for public improvement contracts, and the exemption will result in the award of a contract that produces substantial cost savings to Metro and the public.

Metro Code Section 2.04.052(a)(1) provides that the procedures for the issuance of competitive Requests for Proposals, when authorized as an exception to competitive bid requirements shall comply with all state law requirements that are generally applicable to local governments.

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- 4 **Anticipated Effects:** The Regional Parks and Greenspaces Department will issue a Contractor-Led Design / Build Request for Proposals with a maximum-price of \$190,000.
- 5 **Budget Impacts:** The FY 05-06 budget included the Water Play Structure for an amount of \$140,000. However, this budget did not include a water recycling facility for the structure that is estimated to cost an additional \$50,000, which will come out of the parks renewal and replacement budget. The recycling facility is estimated to reduce water use by 85% or an estimated 2,500,000 gallons per year

RECOMMENDED ACTION

Chief Operating Officer recommends passage of Ordinance No. 05-3645