

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 08-3897
AN EXEMPTION FROM COMPETITIVE)
BIDDING REQUIREMENTS AND THE) Introduced by Chief Operating Officer
RELEASE OF REQUEST FOR) Michael J. Jordan, with the
PROPOSALS FOR CONSTRUCTION OF) concurrence of Council President
THE RED APE RESERVE AT THE) David Bragdon
OREGON ZOO)

WHEREAS, the Oregon Zoo plans to construct a new exhibit to orangutans, which will be known as "*Red Ape Reserve*"; and

WHEREAS, the Oregon Zoo intends to construct the *Red Ape Reserve* exhibit during Metro fiscal years 2008 and 2009, with the work being performed by both outside contractors and members of the Oregon Zoo staff; and

WHEREAS, the Oregon Zoo intends to select a general contractor to construct the general, site, mechanical, and electrical portions of the project, while the Oregon Zoo will manage under separate contracts certain irrigation, rockwork, and displays associated with the exhibit; and

WHEREAS, ORS 279C.335 and Metro Code 2.04.054 require that all Metro public improvement contracts shall be based on competitive bids unless exempted by the Metro Council, sitting as the Metro Contract Review Board; and

WHEREAS ORS 279C.335(4) and Metro Code Section 2.04.054(c) authorize where appropriate the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition; and

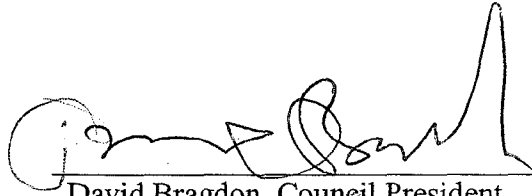
WHEREAS, the Metro Contract Review Board finds, as set forth on the attached Exhibit A that exempting construction of the *Red Ape Reserve* exhibit from competitive bidding requirements is unlikely to encourage favoritism in the award of the public improvement contract associated with the project, or to diminish substantially the competition for such public improvement contracts, and further finds that the award of the contract pursuant to such amendment will result in substantial cost savings to Metro; and

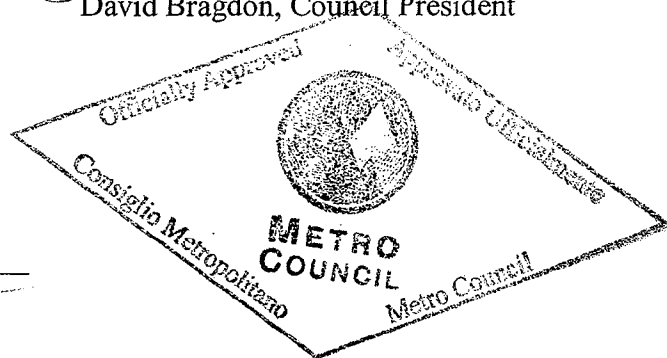
WHEREAS, the Metro Contract Review Board finds, for the reasons stated on the attached Exhibit B, that in order to ensure maximum flexibility and benefit to the Oregon Zoo, the most advantageous, expeditious, and cost effective procurement approach for this project is to allow an alternative contracting process utilizing a Request for Proposal process followed by evaluation of proposals and selection of the most advantageous proposer as the contractor for the exhibit construction; now, therefore

BE IT RESOLVED that the Metro Council, sitting as the Metro Contract Review Board, hereby:

1. Exempts from the competitive bidding requirements of ORS 279C.335 and Metro Code Section 2.04.054 the procurement of a contract for the construction of the *Red Ape Reserve* exhibit at the Oregon Zoo; and
2. Adopts as its findings in support of such exemption the justifications, information and reasoning set forth on the attached Exhibits A, B & C, which are incorporated by this reference as if set forth in full; and
3. Authorizes the Chief Operating Officer to release a form of Request for Proposals ("RFP") substantially similar to that attached as Exhibit D, and thereafter to receive responsive proposals for evaluation; and
4. Following the evaluation of the responses to the RFP, authorizes the Chief Operating Officer to execute a contract with the most advantageous proposer to construct the general, site, mechanical, and electrical portions of this project.

ADOPTED by the Metro Council this 31st day of January 2008.


David Bragdon, Council President



Approved as to Form:

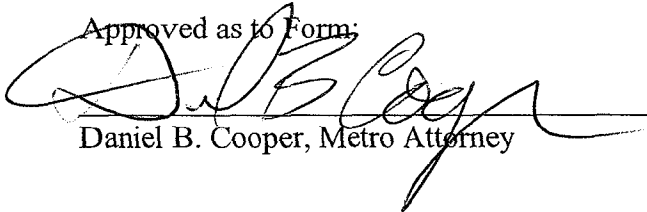

Daniel B. Cooper, Metro Attorney

EXHIBIT A

Findings in Support of Exemption from Competitive Bidding

Pursuant to ORS 279C.335(2) and (4), and Metro Code Section 2.04.054(c), the Metro Contract Review Board makes the following findings in support of the exempting from competitive bidding contracting for the construction of the Red Ape Reserve exhibit:

The Metro Contract Review Board finds that exempting from competitive bidding the procurement of construction of the Red Ape Reserve exhibit is “unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts” because of the unique nature and technical complexity of the construction. The Request for Proposals (“RFP”) will be publicly advertised and made available to all qualified contractors. Full and open competition will be sought, with contract award going to the most advantageous proposer. Local sub-contractors will also be notified of any opportunities within their area of expertise. Metro will utilize the Oregon Daily Journal of Commerce and a minority business publication for the public advertisement.

In addition, the Metro Contract Review Board finds that exempting from competitive bidding the procurement of construction of the Red Ape Reserve exhibit will result in substantial cost savings to Metro because an RFP process will allow Metro to obtain the best value for the work. A contractor experienced in successful completion of similar projects will be better able to complete the exhibits on time and with fewer change orders than an inexperienced contractor. Additionally, through the use of sponsorships and donations, Metro will be able to reduce the overall cost of the project.

Resolution No. 08-3897
EXHIBIT B

Findings in Support of Use of Alternative Contracting Method

Utilizing a Request for Proposals (“RFP”) process will not diminish competition, as it will allow for open competition among contractors experienced in the construction of animal exhibits. The RFP will be formally advertised in local publications and posted on Metro’s web site, as well as notices sent to known experienced contractors. It is unlikely to encourage favoritism as all offers will be considered and evaluated by an impartial committee of qualified individuals.

In addition, the use of an alternative contracting process will result in substantial cost savings to Metro and to the public, and will also substantially promote the public interest in a manner that could not practically be realized if traditional bidding procedures were utilized, and will also satisfy the requirement set forth in ORS 279B.085(6) that the contract will be awarded to the entity that is “the most advantageous to the contracting agency,” because this type of contracting will allow the use of donations, material discounts, and sponsorships, it is believed that significant savings will be realized.

Resolution No. 08-3897
EXHIBIT C

**Factors Used to Support Conclusions of Metro
Regarding Exemption from Competitive Bidding**

In making the above findings contained in Exhibits A & B, the Metro Contract Review Board considered the following factors pursuant to ORS 279C.330 to reach its conclusions concerning the exemption from competitive bidding and method of procurement:

- a. Operational, budget and financial data: Utilizing the Request for Proposals (“RFP”) process will allow Metro to obtain guaranteed project costs from the construction contractor, and also allow for cost reductions through subsequent donations, discounts and sponsorships. The Red Ape Reserve exhibit project is estimated to cost \$2 million, and will be funded through both private donations and Oregon Zoo funds.
- b. Public Benefits: In addition to the public benefits from the cost savings noted above, expeditious completion of the Project by utilizing the RFP process will help ensure that the exhibit is available for viewing by the public as soon as possible, thus more quickly bringing economic benefits to the Zoo and to the region. The Red Ape Reserve project will provide the region with a world-class animal exhibit, as well as attract visitors from throughout the world.
- c. Value engineering: The RFP process will enable the contractor to work with the project architect, and the Zoo construction and design staff to help minimize construction costs by providing innovative approaches to the work. This type of contract will allow the possibility of innovative solutions and value engineering, which can be negotiated into the contract. Such solutions may also result in a shortened project completion time. These negotiation options would not be available to Metro through the traditional competitive bid process.
- d. Specialized expertise required. The construction of a complex animal exhibits like the Red Ape Reserve requires specialized expertise, knowledge, and experience, all of which can be factored into the contractor selection in the RFP process. A contractor with specialized expertise also increases the chances of the project being completed on or ahead of schedule, resulting in increased benefit to Zoo patrons. The ability to factor in expertise and experience is inherent in the RFP process, but is not normally part of the traditional competitive bid process.
- e. Public safety: Because this is a large, complex project where the work will be conducted under a tight construction schedule, the Zoo requires a contractor that can expeditiously and safely complete the work. The Zoo desires a selection process that allows for the completion of the project in a safe and thorough manner, ensuring existing exhibits stay open and that public safety is maximized.

- f. Market conditions: The RFP process will better take into account current market conditions within the construction industry, which is believed to be competitive, both on a prime and sub-contractor basis. By taking into account such things as discounted labor rates, material donations, and contractor sponsorships, the Zoo can complete the project in a timely, cost effective manner.

- g. Technical complexity: The design and construction of this type of exhibit is highly technical and complex. An architect with such expertise has been selected and will work with the selected general contractor with similar expertise in complex projects. The RFP process will take into account each contractor's past performance and technical knowledge of animal exhibit construction. Based on the necessary quality of the finished exhibit, and the technical complexity of the undertaking, the Procurement Officer believes an alternative contracting process to be necessary.

- h. Funding sources: The Red Ape Reserve will be funded primarily through donations, discounts and sponsorships throughout the life of the project. By utilizing an alternative contracting process, it is the intent of the Zoo to maximize the use of outside funding sources to complete these projects.

RESOLUTION 08-3897
EXHIBIT D

REQUEST FOR PROPOSALS 08-1276-ZOO

Red Ape Reserve Exhibit for the Oregon Zoo



February 2008

Prepared by:

METRO

Procurement Services
600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1815
Fax (503) 797-1796
www.metro-region.org



Request for Proposals 08-1276-ZOO Red Ape Reserve Exhibit



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

REQUEST FOR PROPOSALS

Metro is requesting proposals for the construction of the Red Ape Reserve Exhibit in accordance with the plans and specifications included in this RFP. It is the intent of Metro to select a general contractor to construct the general, site, mechanical and electrical portion of the project. The Oregon Zoo will perform certain irrigation, rock work, and displays with Zoo staff, or other work as deemed by the Zoo to be necessary and appropriate.

Proposals Due

Sealed proposals must be delivered to Metro Procurement Services, 600 NE Grand Avenue, Portland, Oregon 97232-2736, to the attention of Darin Matthews, no later than **2:00 P.M. PST**, on **February 28, 2008**. Proposer names will be publicly read at that time.

Summary of Work

- Metro requires the services of an experienced general contractor, with a varied set of construction disciplines, to work with Zoo staff in the construction of the Red Ape Reserve exhibit, which will be used to house lions, cheetahs, wild dogs and other African predators. The project will combine demolition of some existing spaces with construction of new spaces. The project has considerable civil, structural, mechanical and electrical work.
- The construction will be in accordance with all applicable building standards, zoo industry best practices, and the attached plans and specifications.
- The exhibit must be complete by May 25, 2009 and ready for public use and viewing. Construction mobilization and permits required for this work must be available before starting.
- Construction shall not hinder the operations of the Oregon Zoo. Weekend and evening work may be permitted with appropriate notice to arrange for access and security.
- The area of construction will be marked and separated off from the general public in order to minimize disruption and inconvenience to Zoo operations and Zoo patrons.

Contractor Qualifications

Contractor must have demonstrated experiences in animal exhibitry, specialized construction or related experiences that are deemed comparable by the Oregon Zoo. All Proposers shall provide adequate documentation of their qualifications. Metro reserves the right to evaluate, approve or reject Proposers on the basis of their qualifications and experience.

Pre-Proposal Conference

A Mandatory Pre-Proposal Conference is scheduled for all potential prime contractors, and first tier sub-contractors on **February 12, 2008**, at **9:00 A.M. PST** in The Zoo facility resource room at the Oregon Zoo. Interested additional or specialty sub-contractors are welcome to attend.

Request for Proposals 08-1276-ZOO Red Ape Reserve Exhibit



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INSTRUCTIONS TO PROPOSERS

PROPOSAL SUBMISSION

Metro is soliciting proposals from qualified general contractors for the construction of the Red Ape Reserve Exhibit at the Oregon Zoo. Proposals must be enclosed in a sealed envelope and mailed or delivered to the Finance and Administrative Services, Procurement Office, Metro, 600 NE Grand, Portland, Oregon 97232-2736, Attention: Darin Matthews, Procurement Officer.

All proposals must be received by the date and time specified in this RFP, and will be publicly opened and proposer names announced in Room 270 at Metro Regional Center. First tier subcontractors' forms are due from all proposers within two hours of the Proposal due time or the Proposal will be considered non-responsive. A Proposal may not be submitted by Facsimile (FAX) transmittal or electronically by email.

The outside of the envelope shall plainly identify the subject of the proposal, the opening date, and the RFP number.

All proposals must be clearly and distinctly typed or written with ink or indelible pencil. All blank spaces must be completed. No erasures are permitted. Mistakes must be crossed out and corrections typewritten or written in ink adjacent thereto, and initialed in ink by the party signing the proposal, or his/her authorized representative.

Written amounts shall be shown in both words and figures. Words shall govern in cases of discrepancy between the amounts stated in words and the amounts stated in figures.

All proposals must be submitted in sealed envelopes that clearly identify the item(s) as stated in the RFP. RFP documents, (including plans and specifications depicting the work) may be examined and are available at the Oregon Zoo, 4001 SW Canyon Road, Portland, OR 97232 from 8:30 a.m. until 4:30 p.m., Monday through Friday, or by calling (503) 797-1815.

All proposals must conform to the RFP format and be complete including the use of any required forms. Metro may accept or reject any or all proposals, in whole or in part, or waive irregularities not affecting substantial rights if such action is deemed in the public interest.

COST OF PROPOSAL

This Request for Proposal does not commit Metro to pay any costs incurred by any Proposer in the submission of a Proposal, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the RFP.

ERRORS/OMISSIONS

Any Proposal may be deemed non-responsive by the Procurement Officer if it is: not on the Proposal forms provided; contains errors or omissions, erasures, alterations, or additions of any kind; proposes prices which are unsolicited or obviously unbalanced; or not in complete conformance with any and all conditions of the RFP documents.

ADDENDA TO PLANS OR SPECIFICATIONS

Requests for additional information or interpretation of the RFP documents shall be delivered to the Procurement Officer, technical questions shall be directed to the Project Manager, all questions shall be in writing, at least five (5) business days prior to the Proposal opening date and time. If, in the opinion of the Procurement Officer, additional information or interpretation is needed by the Proposal, an addendum will be issued to all known specification holders. The provisions of any written addenda issued by the Procurement Officer at least seventy two (72) hours prior to the Proposal opening date and time shall be binding upon the Proposers, and failure of a Proposer to obtain such addenda shall not excuse compliance by the successful Proposer.

MODIFICATION OF PROPOSAL

An offer to modify the Proposal that is received from the successful Proposal after award of contract that makes the terms of the Proposal more favorable or advantageous to Metro will be considered, and may thereafter be accepted. To be effective, every modification must be made in writing.

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Red Ape Reserve Exhibit



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WITHDRAWAL OF PROPOSALS

A Proposal may withdraw its Proposal in person, or by written or telegraphic request, which are received prior to the scheduled closing time for filing Proposals. A Proposal may not be withdrawn by FAX. Negligence on the part of the Proposal in preparing his Proposal confers no right to withdraw the Proposal after the scheduled closing time for filing Proposals.

LATE PROPOSALS

Proposals received after the scheduled closing time for filing Proposals shall be considered late. Late proposals will be returned to the Proposer unopened, unless such closing time is extended by Metro.

EXECUTION

Each Proposal shall give the Proposer's full business address and bear its legal signature.

Proposals by partnerships must list the full name of all partners and be signed by a partner or agent authorized to execute the contract on behalf of the partnership and identified by printed name and title.

Proposals by corporations must bear the legal name of the corporation, the name of the state of incorporation, and the signature of the officer or agent authorized to legally bind the corporation.

Upon request by Metro, satisfactory evidence of the authority of the partner or officer shall be furnished.

If an agent who is not an officer of the corporation or a member of the partnership signs the Proposal, a notarized Power of Attorney must be on file with Metro prior to the opening of Proposals or be submitted with the Proposal. Without such notice of authority, the Proposal shall be considered improperly executed, defective and therefore non-responsive.

A Proposal submitted by a joint venture must include a certified copy of the terms and conditions of the agreement creating the joint venture.

EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK

It is understood that the Proposer, before submitting a Proposal, has made a careful examination of the plans, specifications, and contract; that it has fully informed itself as to the quality and quantity of materials and the character of the work required; and that it has made a careful examination of the location and condition of the work and the sources of supply for materials.

COMPLIANCE

Each Proposer shall inform itself of, and the Proposer awarded a contract shall comply with, federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, waste reduction and recycling, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and similar subjects.

ELIGIBILITY

Prior to submitting a Proposal, all contractors (and subcontractors) on public works/construction projects are required to be registered with the State of Oregon Construction Contractors Board pursuant to ORS 701.035.

EQUAL EMPLOYMENT AND NONDISCRIMINATION

Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, creed, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.metro-region.org or call (503) 797-1536.

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PERMITS AND LICENSES

Each Proposer shall obtain and include in his Proposal the cost for all special permits, inspections and licenses, which may be required to perform the contract. Metro has secured the City of Portland permits.

CONFLICT OF INTEREST

A Proposer filing a Proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this Proposal or has participated in contract negotiations on behalf of Metro; that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for Proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

IMMATERIAL VARIANCES

Metro reserves the right to determine whether equipment or materials that comply substantially in quality and performance with the specifications are acceptable to Metro, and whether any variance listed in a Proposal is material or immaterial. Such determination shall be made only after consultation with the Office of the Metro Attorney.

LATEST MODEL

Parts and materials must be new, of latest model, of current date, and meet specifications. This provision excludes all surplus, remanufactured, and used products, unless such material is proposed in lieu of items specified.

"OR APPROVED EQUAL" CLAUSE

In order to establish a basis of quality, certain processes, types of machinery and equipment, or kinds of materials may be specified, either by description of process or by designating a manufacturer by name and referring to his brand or product designation, or by specifying a kind of material. It is not the intent of these specifications to exclude other processes, equipment, or materials of equal value, utility or merit.

Whenever a process is designated or a manufacturer's name, brand, or product is described, it shall be understood that the words, "or approved equal" follow such name, designation, or description, whether in fact they do so or not.

If a Proposer proposes to furnish an item, process or material, which it claims to be of equal utility to the one designated, then:

1. Proposer shall submit to Metro, in care of the Project Manager, a written statement describing it together with supporting data and details sufficient to permit Metro to evaluate the same, five (5) work days prior to the Proposal opening date and time.

If the product contains chemical properties, the relevant Material Safety Data Sheets (MSDS) shall be included to document all health and physical hazards, chemical ingredients, exposure limits, personal protective equipment for handling and use, and emergency procedures in response to unanticipated spills or environmental release.

2. Metro may require demonstration, additional tests, and additional data, all to be supplied at the expense of the Proposer.
3. If Metro determines that the proposed item, material or process is of equal value, utility or merit, the Project Manager shall notify all potential Proposers of record by issuance of an addendum at least seventy two (72) hours prior to the Proposal opening date and time.

RECYCLABLE PRODUCTS

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

RECYCLED PRODUCTS AS PROPOSAL ITEMS

Oregon Law (ORS 279A.125) requires Metro and all public agencies to give preference to materials and supplies manufactured from recycled materials.

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All Proposers are therefore required to specify the exact or minimum percentage of recycled paper and fiber type in all paper products or recycled content in all other products offered, plus both the post-consumer and secondary waste content of the products offered.

Only Proposals submitted with such information shall receive preference consideration and post Proposal declaration or discovery shall not be allowed.

Definitions of "recycled product," "post-consumer" and "secondary" waste material and other explanatory notes are available from the Metro Purchasing and Contracts Division.

PRICES

All prices submitted shall be firm during the contract period. If unit prices are requested, they should be provided for each unit on which there is a Proposal. In case of mistake in extension of price, unit prices shall govern. All prices shall be F.O.B. the destination designated by Metro.

WARRANTY/GUARANTY

Each Proposal for the furnishing of materials and equipment shall provide an explanation of both the Proposer's and manufacturer's warranties on materials and workmanship.

Every Proposal shall indicate any warranty costs to Metro, including but not limited to, all parts, labor, and shipping costs required for compliance with any specific requirement(s) contained in the special conditions.

Each Proposer on a public works/ construction project shall provide at minimum a one-year guaranty on all materials and workmanship.

DELIVERY

Each Proposalder shall provide a delivery schedule for each item offered. The successful Proposer shall notify Metro, in writing, within five (5) business days of order if delivery cannot be completed as proposed and required.

Upon receipt of such notice from the successful Proposer, Metro reserves the right to cancel the order and make the purchase from the second lowest, responsible Proposer.

If Metro does not elect to cancel the contract initially, subsequent failure to meet the then current delivery requirement does not foreclose Metro's option for later cancellation.

PROPOSAL SECURITY

All Proposals must be accompanied by a Proposal deposit in the form of a cashier's check or certified check drawn on a bank in good standing, or a Proposal bond issued by a surety authorized to conduct such business in the state of Oregon. Security shall be in the amount of five (5) percent of the bid amount. The deposit shall serve as a guarantee that the Proposer will not withdraw the Proposal for a period of sixty (60) days after Proposal opening, and if awarded the Contract will execute the Metro contract and furnish all bond(s) as required and within the time frame specified herein.

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

Proposal security is not required for food products and may be waived by the Metro Council if expressly deleted by the special conditions attached.

EXPERIENCE AND ABILITY TO PERFORM THE WORK

Upon request, Proposers must present all necessary information indicating that the Proposer has met the standards of responsibility set forth in ORS 279B.055 and 279.385C. Metro will make the final determination as to whether or not the

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Proposer is qualified to perform the work. It is preferable that the Proposer (prime contractor) be responsible for performing a significant portion of the work.

BASIS OF AWARD

The award shall be made to the responsive Proposers submitting the most advantageous Proposal to Metro. The following criteria will be used in evaluating Proposals.

<p>Cost Metro will evaluate the total cost for the performance of the work. The lowest price for the work will receive the maximum points, with the other proposals receiving a proportionate amount based upon their proposed cost.</p>	40 points
<p>Related Experience The experience of contractor with related projects, including the construction of animal exhibits through the use of outside donations and sponsorships, will be evaluated. Demonstrated experience with similar projects is desirable.</p>	15 points
<p>Qualifications of Key Personnel Metro will evaluate the qualifications and expertise of key personnel to be assigned to this project. Project managers and skilled workers with animal construction experience are desirable.</p>	10 points
<p>Past Performance Contractor's past performance will be evaluated, including work for Metro and other public or private organizations. Proven performance in the areas of exhibit quality, timely completion of projects, and limited change orders and cost overruns is desirable.</p>	10 points
<p>References Metro will contact a minimum of three client references and reserves the right to contact references other than those submitted in the Proposal.</p>	10 points
<p>Prime Contractor Performed Work Metro will evaluate the commercially useful function of the work that the proposer intends to perform as a prime contractor. It is preferable that the proposer be responsible for a significant amount of the project, including the performance and supervision of the work involved.</p>	15 points

Metro shall appoint an evaluation committee of qualified individuals to evaluate all responsive Proposals received. Based on the criteria listed in the RFP, a determination will be made as to the most advantageous Proposal at Metro's sole discretion.

Metro reserves the right to request clarifications from Proposers during the evaluation process, or to conduct interviews with the top ranked Proposers in determining the most advantageous Proposal.

NOTICE OF AWARD

Within 20 calendar days after the opening of Proposals, Metro will accept one of the Proposals, or combination of Proposals, or reject all Proposals in accordance with the Basis of Award. The acceptance of the Proposal will be by written Notice of Award, mailed or delivered to the office designated in the Proposal. The Notice of Award shall not entitle the party to whom it is delivered to any rights whatsoever.

APPEAL OF AWARD

Aggrieved Proposers who wish to appeal the award of this contract must do so in writing within seven (7) days of issuance of notice of award by Metro. Appeals must be submitted to the Metro Procurement Officer, 600 NE Grand, Portland, OR 97232 and must state the specific deviation of rule, law or procedure upon which the appeal is based. Any disagreement with the judgment exercised by the evaluation committee is not a basis for appeal.

Upon receipt of an appeal, the Procurement Officer will notify the Director of the Oregon Zoo and the Metro Chief Operating Officer. Within ten (10) days of receipt of the appeal, Metro will issue its notice of rejection or acceptance of the appeal. The appellant may appeal the decision to the Metro Council, acting as the agency's local public contract review

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board. Such appeals must be received within five (5) working days from the postmarked date of the appeal response. The appeal will be considered by the Metro Council, whose decision on the matter shall be final.

CONTRACT

Within 10 business days of receipt of the contract from Metro, the Successful Proposer shall sign and deliver the Contract to Metro. Metro's standard contract is attached.

COMMENCEMENT OF WORK

Prior to starting work on a contract or sub-contract for a public works project, a contractor or sub-contractor shall file a public works bond with the Construction Contractors Board. Bond shall be from a corporate surety authorized to do business in the state of Oregon and be in the amount of \$30,000 and shall comply with all other requirements of ORS 279C.800 to 279C.870. Contractor shall provide written documentation of bond number(s) of bond(s) for contractor and all sub contractor(s) to Metro Project Manager with original Proposal or prior to starting project work.

PROPOSAL SECURITY RETURN

Proposal securities will be held until the Contract has been finally executed, after which all Proposal securities, other than those which have been forfeited, will be returned to the respective Proposers whose Proposal they accompanied.

BONDS

Within seven (7) days of notification of award, the Contractor shall provide the following:

- A performance bond in an amount equal to 100 percent of the contract price.
- A Labor and Materials bond in an amount equal to 100 percent of the contract price.

FOREIGN CONTRACTOR

A Contractor that is not domiciled in or registered to do business in the State of Oregon shall, upon execution of a contract in excess of \$10,000, promptly report the total contract price, terms of payment, length of contract and all other required information to the Oregon Department of Revenue. Compliance shall be documented and Metro shall be fully satisfied as to complete compliance prior to release of final payment.

INSURANCE

The Contractor shall purchase and maintain at his expense the following types of insurance covering the Contractor, and his employees and agents.

1. Broad form commercial general liability insurance covering bodily injury, property damage, and personal injury with automatic coverage for premises and operations and product liability. The policy must be endorsed with contractual liability coverage.
2. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be a minimum of \$1,000,000 per occurrence.

Metro, its councilors, department, 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.

The Contractor shall comply with ORS 656.017 for all employees who work in the state of Oregon for more than 10 days. The Contractor shall provide Metro with certification of workers' compensation insurance including employer's liability.

WORKERS' COMPENSATION

The Contractor, and all subsequent subcontractors and suppliers performing work pursuant to this contract shall provide Workers' Compensation benefits as required by and in accordance with all applicable state and federal laws.

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NOTICE OF ASSIGNMENT

Metro will not recognize any assignment or transfer of any interest in this contract without written approval by the Office of the Metro Attorney.

HAZARD COMMUNICATION

The Contractor shall be required to strictly adhere to, coordinate with Metro and document full compliance with the policies and procedures of the Oregon Occupational Health and Safety Code, OAR Chapter 437, Division 155, Hazard Communication.

Therefore, the Contractor and all subcontractors and suppliers within his control shall notify Metro and all parties to the agreement as to:

- Hazardous materials to which they may be exposed on site;
- Employee measures to lessen the possibility of exposure;
- All contractor measures to reduce the risk;
- Procedures to follow if exposed.

The Contractor shall provide Metro with all Material Safety Data Sheets (MSDS) prior to delivery or introduction of the material on site.

For further information or clarification, contact the Metro Risk Management Division at 797-1615.

DELIVERY TIMES

The Contractor shall deliver materials on business days between the hours of 6:00 a.m. and 5:00 p.m. Unloading must be completed by 5:00 p.m. unless approved in advance by Metro. Requests for such approval must be received by Metro at least three (3) days prior to delivery. Contractor shall assume all risk of deliveries made during hours beyond those listed above.

FAILURE TO PERFORM

Should the Contractor fail to meet the agreed upon delivery schedule, thereby making it necessary for Metro to purchase urgently-needed items from another source, the low Proposer shall pay the difference between the accepted low Proposal price and the purchase price or accept an offset against any monies then owed by Metro.

PATENTS

The Contractor agrees to protect, to defend (if Metro requests) and save the agency harmless against any demand for payment for wrongful or unauthorized use of any patented material, process, article, or device that may enter into manufacture, construction, or forms a part of the work covered by this contract.

INVOICES

Invoices shall be prepared and submitted unless otherwise specified. Invoices shall contain the following information: Contract or Purchase Order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices and extended totals. Invoice should also state name of the unit or department to which the merchandise was shipped or delivered.

LAW OF STATE OF OREGON

This contract is entered into within the state of Oregon, and the law of said State, whether substantive or procedural, shall apply and be followed with respect to this contract.

PREVAILING WAGE RATES

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. This project is covered by appropriate Bureau of Labor and Industries (BOLI) prevailing wage rates available at <http://www.boli.state.or.us> or by calling the State of Oregon Bureau of Labor and Industries at

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(971) 673-0839. If the project is subject to Davis-Bacon Act (40U.S.C. 276A), Contractor and all sub-contractors shall pay the higher rate of state or federal prevailing wages.

The contractor, as well as the agency, 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 \$250 nor more than \$7,500, under ORS 279C.825. The contractor's 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 Commissioner of 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

CERTIFIED PAYROLL

The Contractor and all sub-contractors, in compliance with ORS 279C.845, shall file certified payroll statements with Metro Project Manager to be due once per month by the fifth business day of the following month. Metro shall retain 25% of any amount earned by Contractor if certified payrolls are not submitted as required. Contractor shall retain 25% of sub-contractor earnings if sub-contractor certified payrolls are not submitted as required. Upon receipt of appropriate certified payrolls, Metro and Contractor shall release any amounts so retained within 14 days.

MINORITY, ESB AND WOMEN-OWNED BUSINESS PROGRAM

In the event that any subcontracts are to be utilized in the performance of this agreement, the Proposer's attention is directed to Metro Code Section 2.04.100. Metro encourages the use of MWESB sub-contractors to the maximum extent practical in the performance of the work. Copies of that document are available from the Procurement Services Division, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232 or by calling (503) 797-1816.

NON-DISCRIMINATION

Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, creed, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.metro-region.org or call (503) 797-1536.

NOTICE TO ALL PROPOSERS

The public contract included herein is a standard agreement approved for use by the Office of Metro Attorney. This is the contract the successful Proposer will enter into with Metro; it is included for your review prior to submitting a Proposal.

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PROPOSER'S CHECKLIST

FIRM _____
NAME _____
MAILING ADDRESS _____
PHONE _____ FAX _____ EMAIL _____

PROPOSALDER REPRESENTS/CERTIFIES/ACKNOWLEDGES AS PART OF THIS OFFER THAT:

(Contractor shall check or complete all applicable boxes)

(To Be Submitted by 2:00 p.m. on Proposal Due Date)

(PROPOSAL WILL BE CONSIDERED NON-RESPONSIVE WITHOUT THE FOLLOWING DOCUMENTS*)

1. **PROPOSAL***
2. **PROPOSAL BOND***: Proposer has complied with Metro's requirements for \$500.00 Proposal surety and guarantees that this Proposal is irrevocable for the period specified herein.
3. **CONFLICT OF INTEREST***: Proposer hereby certifies that no officer, agent, or employee of Metro has participated on behalf of Metro in preparation of this Proposal, that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same work, and the Proposer is competing solely in its own behalf without connection or obligation to any undisclosed person or firm.
4. **RESIDENT/NON-RESIDENT***: Undersigned Proposer states that it is a resident or non-resident of the state of Oregon. State in which Proposer resides: _____
5. **TYPE OF BUSINESS ORGANIZATION***: Proposer operates as an individual, a corporation, incorporated under the laws of the state of _____, a non-profit organization, a partnership. (If partnership, attach names of the partners)
6. **OREGON LICENSE***: If a corporation, it is, or is not, licensed with Oregon Corporation Commission
7. **REGISTRATION NO***: _____ with Construction Contractors Board.
8. **METRO CONTRACTOR QUALIFICATION STATEMENT***
9. **CERTIFICATE OF COMPLIANCE*** for recycling.
10. **CERTIFICATE OF EMPLOYEE DRUG TESTING PROGRAM***
11. **DOING BUSINESS AS***: Provide any assumed names utilized.

TO BE SUBMITTED IN SEPARATE ENVELOPE BY PROPOSAL DUE DATE AND TIME OF 4:00 P.M.

1. **FIRST TIER SUBCONTRACTOR DISCLOSURE FORM***

2. **MBE/WBE/ESB PROGRAM FORMS***

PRIOR TO AWARD:

Financial records and other information in accordance with ORS 279C at the option of Metro's Project Manager

Performance Bond: Cost of the Bond shall be included in the Proposal.

Labor and Materials Bond: Cost of the Bond shall be included in the Proposal.

Bond amounts shall each equal 100% of contract total, or as stated in RFB.

(Below \$50K Performance and Labor, and Materials Bonds may be combined)

NAME AND TITLE OF PERSON AUTHORIZED TO CONTRACT/SIGN OFFER (TYPE OR PRINT)

SIGNATURE OF AUTHORIZED PERSON

Proposals must be enclosed in a sealed envelope, endorsed on the outside, indicate the Proposal subject, Request for Proposal number and opening date, and delivered to Metro on or before the date and time the Proposal is due. (See Instructions to Proposers)

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PROPOSAL FORMS

NOTE TO PROPOSER: Proposers must provide all of the information requested in this RFP. Proposer should type or use ink for completing this Proposal.

To: Metro Procurement Services

Address: 600 N.E. Grand Avenue, Portland, OR 97232

Contract: Red Ape Reserve Exhibit

Proposer: _____

Address: _____

Proposer's Contact: _____

Telephone: () _____ Date: _____

PROPOSER'S DECLARATION AND UNDERSTANDING

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

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

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

PROPOSAL SECURITY

Proposal security in the form of a certified check, cashier's check or Proposal bond as further described in the Instructions for Proposers and in the amount of five (5) percent of the Proposal is enclosed herewith and is subject to all the conditions stated in the Instructions for Proposers.

CONTRACT EXECUTION, BONDS AND INSURANCE

The Proposer agrees that if this Proposal is accepted, it will, within seven (7) days after award of the Contract by the Metro Council, sign the Construction Agreement in the form attached, and will at that time deliver to Metro the Performance Bond and the Labor and Materials Payment Bond required herein and in the form annexed hereto, along with all certificates of insurance and certified copies of insurance policies specified and required in these Contract Documents, and will, to the extent of its

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Proposal, furnish all machinery, tools, apparatus, and other means of operation and construction and do the Work and furnish all the materials necessary to complete all Work as specified or indicated in the Contract Documents

COMMENCEMENT OF WORK AND CONTRACT COMPLETION TIME

The time frame for the award and execution of this Contract shall be as described in the Instructions for Proposers and other Contract Documents. The Successful Proposer further agrees to commence the Work within five (5) days of issuance of the Notice to Proceed and to diligently prosecute the Work to its final completion in accordance with the Contract Documents.

ADJUSTED PAYMENTS

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

SALES AND USE TAXES

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

LUMP SUM AND UNIT PRICE WORK

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

PREVAILING WAGES FOR PUBLIC WORK

Proposer hereby certifies that the provisions of ORS 279C.800 - 279C.870, regarding prevailing wages, shall be complied with on this project.

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SCHEDULE OF PROPOSAL PRICES

The Proposer, whose legal signature binding the Proposer to the Proposal process indicated on these pages is found on the signature page, hereby Proposals as follows:

Item	Description	Qty	Unit	Unit Price	Total Amount
1.	Construction of the Red Ape Reserve Exhibit	1	L.S.		
	Total Proposal Price				

(_____ **DOLLARS**)
CONTRACT PRICE (in words)

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FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

PROJECT NAME: Red Ape Reserve Exhibit

PROPOSAL #08-1275-ZOO PROPOSAL CLOSING: D_____ Time: 2:00 p.m.

DISCLOSURE DEADLINE Date: _____ Time: 4:00 p.m.

This form must be submitted at the location specified in the Invitation to Proposal within two (2) working hours of the advertised Proposal closing date and time, but no later than the **DISCLOSURE DEADLINE** stated above.

List below the Name, Address, Dollar Value, Contact Name, Telephone Number, Construction Contractor Board (CCB) number (if required), and Public Works Bond number (if public improvement) of each subcontractor that will be furnishing labor and materials that are required to be disclosed. Enter "NONE" if there are no subcontractors that need to be disclosed. **(ATTACH ADDITIONAL SHEETS IF NEEDED.)**

Name, Address, Phone, CCB# Public Works Bond #	Dollar Value	Category of Work
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
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_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The above listed first-tier subcontractor(s) are providing labor and materials with a dollar value equal to or greater than:

- a) 5% of the total Contract Price, but at least \$15,000 of the Proposal Price,
- b) \$350,000 regardless of the percentage of the total Proposal Price.

Failure to submit this form in a separate envelope by the disclosure deadline will result in a Proposal submitted becoming non-responsive, and such Proposal shall not be considered for award.

Form Submitted By (Proposaller Name): _____

Contact Name: _____ Phone # _____

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ADDENDA

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

(Insert No. and Date of Each Addendum Received)

SURETY

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

SURETY

ADDRESS

1. _____
2. _____

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GOOD FAITH PROGRAM

The Metro Council is committed to doing business with Minority, Woman-owned firms and Emerging Small Businesses (M/W/ESB). The Council recognizes that supporting these firms will result in a stronger economy and increased competition.

To this end, Metro has established these procedures to maximize utilization of M/W/ESB for Metro projects. The following six steps are required to help us monitor the usage of these firms.

Good Faith Efforts Steps:

1. Identify areas in which you intend to use sub-contractors.
2. Attend the Pre-Proposal meeting if held. Meet any M/W/ESB firms at the Pre-Proposal meeting.
3. Contact several (or all) certified M/W/ESB firms listed (with the State of Oregon) to perform the work needed. (Metro's Purchasing & Contracts Office will be happy to provide you with a list of firms upon request (503)-797-1816.)
4. Negotiate with interested, available and capable M/W/ESB firms who submit competitive Proposals.
5. Report to Metro all sub-contractors contacted. Please include their response and price quoted.
6. List all sub-contractors that you intend to use on this project.

Please note a selected M/W/ESB firm must be used unless Metro authorizes a substitution.

Thank you for your assistance in this important area. Attached are forms to complete and return as part of your Proposal document. Please contact our Procurement Division at (503) 797-1816 if you have any questions.

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Step 5: List all sub-contractors to be used for this project.

PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING:

Sub-contractor/ Supplier	Non ** MBE WBE ESB	Nature Of Work	Dollar Value Of Participation
Contact Name Address Phone			CCB #*
Contact Name Address Phone			CCB #*
Contact Name Address Phone			CCB #*
Contact Name Address Phone			CCB #*

*Please include Construction Contractors Board Number

** Non-M/W/ESB Sub-Contractors

Total Proposal/Proposal Amount _____

Authorized Signature _____

Date _____

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RESIDENT/NON-RESIDENT BIDDER STATUS

Oregon law requires that Metro, in evaluating the responsive bidders, 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 Proposal, has a business address in Oregon, and has stated in its Proposal 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: _____

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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 AND BONDING

Oregon CCB# _____ Public Works Bond # _____

Other licenses _____

RELEVANT EXPERIENCE

List the type of work your organization normally performs with its own forces, including animal exhibit experience that demonstrates zoo industry best construction practices: _____

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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? _____

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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 _____

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Red Ape Reserve Exhibit**



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DRUG CERTIFICATION FORM

Please describe your Drug Testing Program (ORS 279C.505):

Series of horizontal lines for text entry.

PROPOSER SIGNATURE

Print Name of Proposer: _____ Signature: _____

Title: _____ Date: _____

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SIGNATURE PAGE

The name of the Proposer submitting this Proposal is _____ doing business

at _____
Street City State Zip

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

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

If Individual

IN WITNESS hereto the undersigned has set his/her hand this ____ day of 20__

Signature of Proposer _____

Printed Name of Proposer _____

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: _____

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NON-COLLUSION AFFIDAVIT

STATE OF _____) County of _____)

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

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

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

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

(4) This Proposal 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 Proposal.

(5) _____ (Name of Proposer), 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 Proposing on any public contract, except as listed and described in the attached appendix.

I state that I and _____ (Name of Proposer) 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 Proposal is submitted. Any misstatement in this Affidavit will be treated as fraudulent concealment from Metro of the true facts relating to the submission of Proposals 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: ___/___/___

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PROPOSAL BOND

BOND NO. _____

AMOUNT: \$ _____

NOTE: Proposers must use this form, not a surety company form

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

Request for Proposals 08-1276-ZOO Red Ape Reserve Exhibit



LABOR AND MATERIAL PAYMENTS BOND

(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.

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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

By: _____

Title: _____

Street Address

City, State ZIP

Phone Number

CONTRACTOR

By: _____

Title: _____

Street Address

City, State ZIP

Phone Number

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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.

Request for Proposals 08-1276-ZOO Red Ape Reserve Exhibit



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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

By: _____

Title: _____

Street Address

City State ZIP

Phone Number

CONTRACTOR

By: _____

Title: _____

Street Address

City State ZIP

Phone Number

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For Public Contracts \$50,000 & Up

CONTRACT NO. _____

STANDARD PUBLIC CONTRACT

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and _____, whose address is _____, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing _____, 20__ through and including _____, 20__.

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

ARTICLE IV LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless METRO, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and METRO.

ARTICLE V TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect, consequential damages or any other damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

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ARTICLE VI INSURANCE & BONDS

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

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. **Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. **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.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work

In addition, for public works subject to ORS 279C.800 to 279C.870, CONTRACTOR and every subcontractor shall have a public works bond required by 2005 Oregon Laws Chapter 360 filed with the Construction Contractors Board before starting work on the project, unless exempt under Section 2 of 2005 Oregon Laws Chapter 360.

ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A, 279B, and 279C and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, the Contractor shall pay prevailing wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, the Contractor and every subcontractor on such public work shall pay at least the higher prevailing wage. The Contractor and each subcontractor shall pay workers not less than the specified minimum hourly rate of wage in accordance with Section 7 of 2005 Oregon Laws Chapter 360. In addition, the Contractor shall pay an administrative fee as provided in ORS 279C.825(1) to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from

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Red Ape Reserve Exhibit



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contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against Metro on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

ARTICLE VIII ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

ARTICLE X OWNERSHIP OF DOCUMENTS

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

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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.

ARTICLE XI SUBCONTRACTORS

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors. In addition for public improvement work, if a CONTRACTOR is required to file certified statements under ORS 279C.845, METRO shall retain 25 percent of any amount earned by the CONTRACTOR on the public works until the contractor has filed all required certified statements with METRO.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

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ARTICLE XIII SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE XVI INTERGOVERNMENTAL COOPERATIVE AGREEMENT

(Requires competitive solicitation) – Pursuant to ORS 279A and the Metro public contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's obligation to Metro under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and Metro makes no guarantee as to their participation in any purchase. Any bidder may decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this contract. Unless the bidder specifically declines to participate in the program by marking the box below, the bidder agrees to participate in the Intergovernmental Cooperative Purchasing program. **Bidder declines to participate in Intergovernmental Cooperative Purchasing.**

ARTICLE XVII ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

CONTRACTOR NAME

METRO

By _____

By _____

Date _____

Date _____

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3897, FOR THE PURPOSE OF APPROVING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING A REQUEST FOR PROPOSAL PROCESS FOR THE CONSTRUCTION OF THE RED APE RESERVE EXHIBIT AT THE OREGON ZOO

Date: January 31, 2008

Prepared by: Darin Matthews
Carmen Hannold

BACKGROUND

The Oregon Zoo plans to construct a new outdoor-indoor exhibit, the Red Ape Reserve. This exhibit will house orangutans, including Inji, our 47 year old orangutan that arrived in Portland in 1961, and her exhibit mates, Batk and Kutai. The Red Ape Reserve will provide the orangs with climbing structures and a special enrichment tree that zookeepers can access from an underground tunnel. The new exhibit will be three and a half times larger than the existing exhibit. It will provide Zoo visitors an unprecedented opportunity to observe orangutans exhibiting natural behavior. This exhibit is slated for construction during fiscal years 2008 and 2009, with the work being performed by outside contractors as well as staff members from the Oregon Zoo. The work will be funded through a combination of outside donations, sponsorships, and Zoo funds.

Under separate contract, the Oregon Zoo has retained Peck, Smiley, Ettlin Architects, to provide the design services for the Red Ape Reserve exhibit. The design specifications and drawings will be used to solicit competitive proposals from qualified contractors.

The resolution and attached findings describe the specialized nature of this project. Based on these findings, the Procurement Officer believes that a value-based selection process is more appropriate than a traditional, competitive bid (which looks solely at lowest bid price). Therefore, it is recommended to Council that an alternative procurement process, Request for Proposals, be authorized. This will allow the Zoo to consider cost, as well as experience and expertise in completing similar projects in selecting the best contractor for this project.

ANALYSIS/INFORMATION

1. **Known Opposition** None known.
2. **Legal Antecedents** Metro Code 2.04.054, 2.04.05(c); Oregon Revised Statutes 279C.335(4).
3. **Anticipated Effects** Procurement process will be open and competitive, but items other than cost will be considered in the awarding of the contract.
4. **Budget Impacts** The estimated cost of the Red Ape Reserve exhibit is \$2 million.

RECOMMENDED ACTION

Metro Council, acting as Public Contract Review Board, approves the use of a Request for Proposal process and exempts this project from traditional competitive bidding. Further, Council authorizes the execution of the resulting contract by the Chief Operating Officer in a form to be approved by the Office of the Metro Attorney.