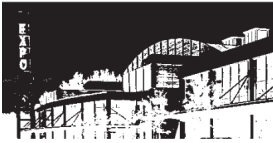

MERC Commission Meeting

June 4, 2013
3:00 pm

Metro Regional Center
600 NE Grand Ave.
Room 301



600 NE Grand Ave.
Portland, OR 97232
503-797-1780

www.oregonmetro.gov



Metro | *Exposition Recreation Commission*

REVISED Agenda

Meeting: Metro Exposition Recreation Commission Meeting
Date: Tuesday, June 4, 2013
Time: 3:00-4:30 p.m.
Place: Metro Regional Center, Room 301

CALL TO ORDER

3:00 1. QUORUM CONFIRMED

3:05 2. COMMISSIONER, COUNCIL LIAISON COMMUNICATIONS

3:15 3. OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS

3:20 4. GENERAL MANAGER COMMUNICATIONS

Teri Dresler

4.1 Financial Report

3:30 5. STRUCTURAL ANALYSIS PRESENTATION OF EXPO HALLS A, B AND C

**Matthew P. Rotchford
Karl Schulz and Vawn
McCollum, inici Group**

3:50 6. MERC VENUES' BUSINESS REPORTS

**Lori Leyba Kramer
Matthew P. Rotchford
Scott Cruickshank**

4:05 7. CONSENT AGENDA

7.1 May 7, 2013 MERC Regular Meeting Record of Actions

4:10 8. ACTION AGENDA

8.1 Resolution 13-10 for the purpose of approving budget amendments to the fiscal year 2013-14 approved budget

Cynthia Hill

8.2 Resolution 13-11 for the purpose of approving Phase I of OCC roof replacement

**Scott Cruickshank
Josh Lipscomb**

8.3 Resolution 13-12 for the purpose of amending contracting and purchasing rules

Tim Collier

ADJOURN

MERC Commission Meeting

June 4, 2013
3:00 pm

4.1 Financial Report

APRIL 2013

FINANCIAL INFORMATION

For Management Purposes only



**PORTLAND CENTER FOR
THE PERFORMING ARTS**



A SERVICE OF METRO



OREGON CONVENTION CENTER



A SERVICE OF METRO



**METROPOLITAN EXPOSITION
RECREATION COMMISSION**



A SERVICE OF METRO

Date: April 30, 2013

To:

Commissioner Chris Erickson, Chair
Commissioner Judie Hammerstad, Vice Chair
Commissioner Terry Goldman, Secretary/Treasurer
Commissioner Ray Leary
Commissioner Cynthia Haruyama
Commissioner Elisa Dozono
Commissioner Karis Stoudamire-Phillips

From: Cynthia Hill – Finance Manager

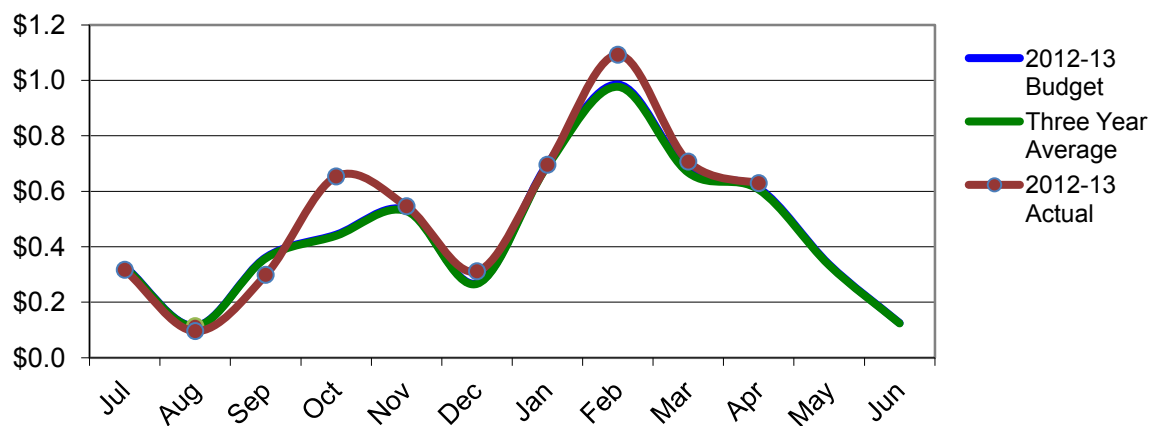
Re: MERC Financial Information April 2013

Enclosed please find the monthly financial report for the Metropolitan Exposition Recreation Commission reflecting revenues and expenditures as of April 2013.

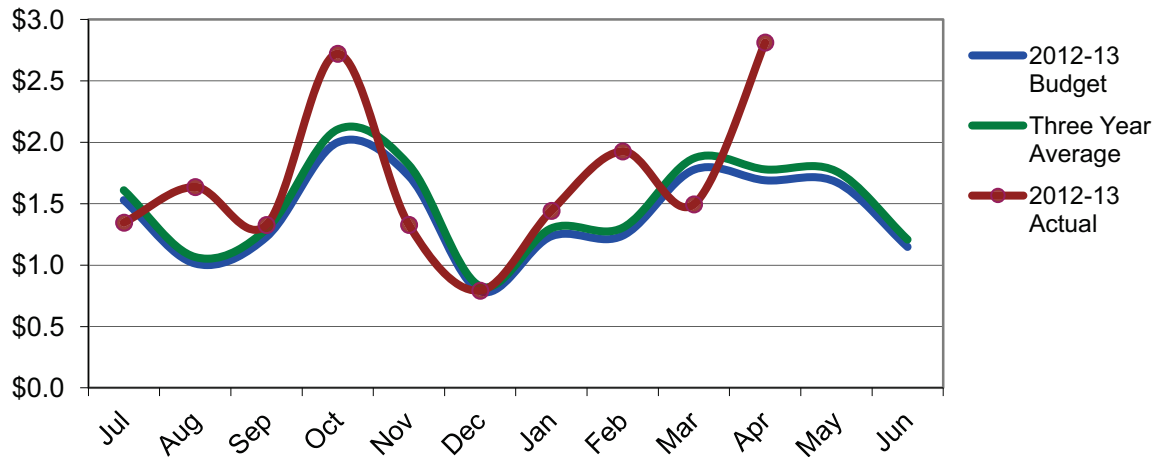
Resolution 13-08 approved May 7, 2013 increasing the budget based on the current forecast for food and beverage sales and the current accounting method for the PCPA ticketing contract is reflected in the annual budget column on the financial report and the budget trend line on the charts.

Expo- Operating Revenues by Month

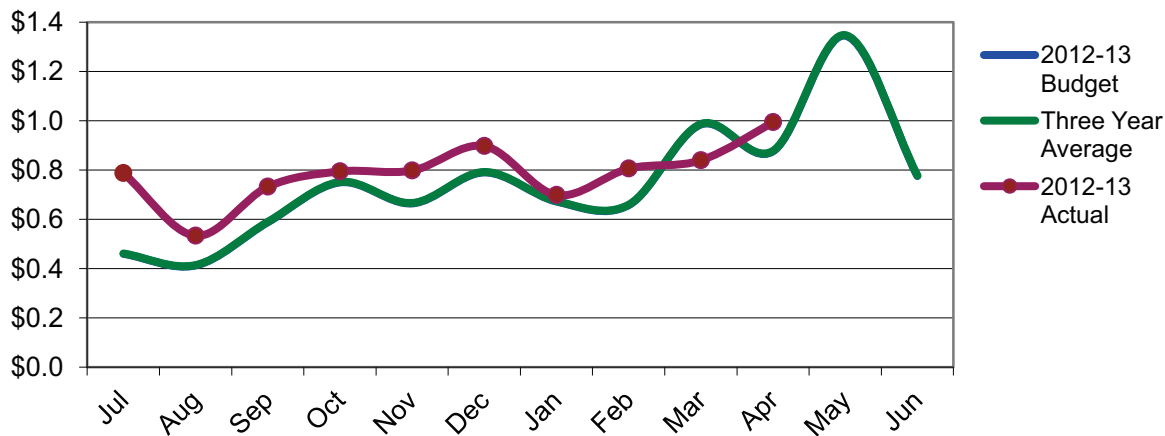
shown in millions



OCC- Operating Revenues by Month
shown in millions



PCPA Operating Revenues by Month
shown in millions



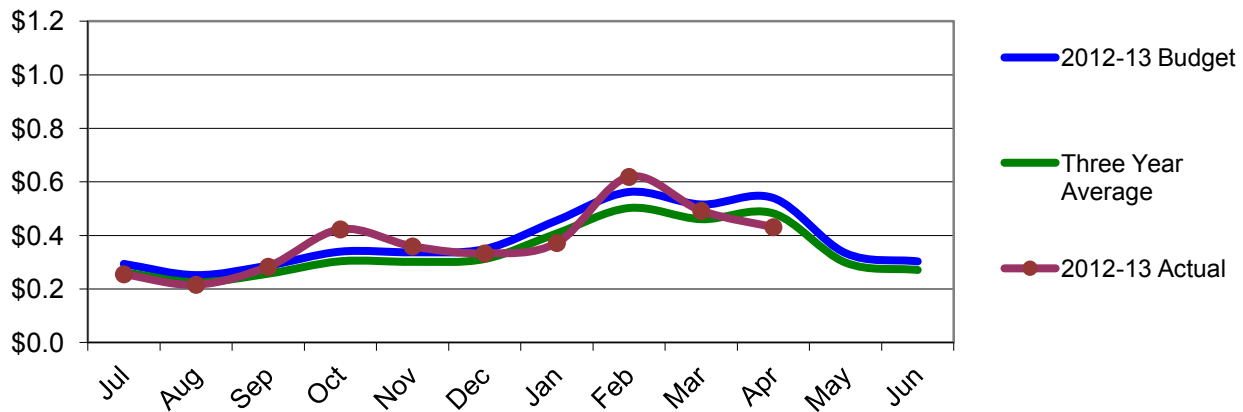
MERC operating revenues are \$30.1million year to date compared to \$28.7 million in the prior year, an increase of \$1.4 million.

Expo Center’s top grossing events in the month of April were the 2013 Portland Swap Meet (\$292 thousand) which was up 14 percent over last year; Collectors West Gun and Knife Show (\$59 thousand); Portland’s Largest Garage Sale (\$40 thousand) and the Northwest Pet and Companion Fair (\$40 thousand). West Delta sales were strong and the new Comcast event also included a \$20 thousand catering effort. April of 2012 included Cirque du Soleil (\$253 thousand). If Cirque du Soleil revenue is excluded, Expo revenue is a \$131 thousand greater than April 2012.

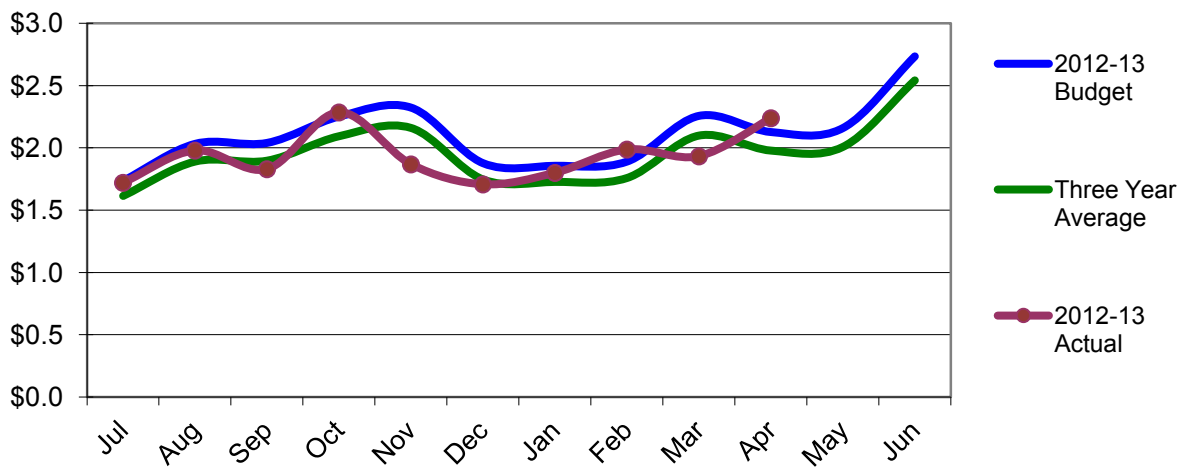
The top grossing events at OCC included the OpenStack Summit (\$639 thousand); the Oregon Dental Conference (\$311 thousand); and the Rails Conference (\$466 thousand), The Rails Conference which includes revenue in both April and May is one of the new events booked since the budget was adopted. OCC had ten additional events the generated gross revenue ranging from \$58 thousand to \$193 thousand during the month. April revenue was \$2.8 million compared to \$1.8 million in FY 2012. The average is \$1.6 million to \$1.8 million. This is the fourth month in FY 2012-13 that OCC revenue has hit record highs.

Top grossing events at PCPA included Flashdance (\$205 thousand); Shen Yun, Classical Chinese dance company (\$88 Thousand); Rain (\$63 thousand). PCPA revenue continues to trend stronger than prior year partially due to the ticketing contract and the change in accounting for revenues and expenditures.

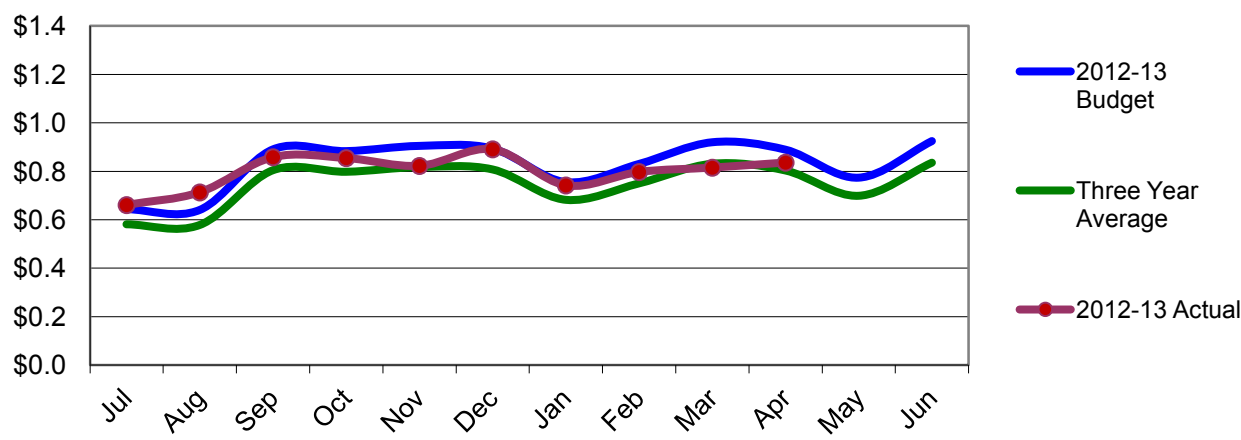
Expo - Operating Expenditures by Month
shown in millions



OCC - Operating Expenditures by Month
shown in millions



PCPA - Operating Expenditures by Month
shown in millions



MERC operating expenditures year to date are \$32.4 million, compared to \$32.6 million in the prior year, which is \$286 thousand less.

Personal services are trending \$444 thousand year to date less than prior year at the Oregon Convention Center resulting from vacant positions. The personal services savings are offset by increases in food and beverage costs driven by greater than prior year sales. Variable operating expenditures are directly related to the event schedule at each venue.

Non Operating Revenue

Transient Lodging Tax (TLT) receipts provide fundamental operating and marketing financial support for OCC and PCPA. Year to date transfers received from Multnomah County total \$6.9 million compared \$6.4 million in the prior year, an 8.19 percent increase. Year to date as of April room nights sold in the market are up 4.6 percent, occupancy rates (room nights per hotel) are up 4.6 percent and the average daily room rate (ADR) is up 4.1 percent.

Events-Performances-Attendance
April FY 2013

| | April-12 | | April-13 | | Net Change from Prior Year | |
|-------------------------|-----------|---------------|-----------|---------------|----------------------------|---------------|
| OCC | Events | Attendance | Events | Attendance | Events | Attendance |
| Tradeshows/Conventions | 5 | 20,790 | 12 | 29,700 | 7 | 8,910 |
| Consumer Public Shows | 3 | 12,438 | 5 | 33,310 | 2 | 20,872 |
| Miscellaneous | | | 1 | 5 | 1 | 5 |
| Miscellaneous -In-House | 7 | 182 | 10 | 118 | 3 | (64) |
| Meetings | 13 | 7,687 | 22 | 7,042 | 9 | (645) |
| Catering | 11 | 6,434 | 12 | 6,216 | 1 | (218) |
| Totals | 39 | 47,531 | 62 | 76,391 | 23 | 28,860 |

| | April-12 | | April-13 | | Net Change from Prior Year | |
|------------------------|-----------|---------------|-----------|---------------|----------------------------|---------------|
| Expo Center | Events | Attendance | Events | Attendance | Events | Attendance |
| Consumer Public Shows | 5 | 40,119 | 9 | 53,920 | 4 | 13,801 |
| Miscellaneous | 6 | 350 | 1 | 1 | (5) | (349) |
| Meetings | 1 | 30 | 3 | 86 | 2 | 56 |
| Catering | - | - | 1 | 1,275 | 1 | 1,275 |
| Tradeshows/Conventions | 1 | 1,425 | - | - | (1) | (1,425) |
| Totals | 13 | 41,924 | 14 | 55,282 | 1 | 13,358 |

| | April-12 | | April-13 | | Net Change from Prior Year | |
|---------------------------|--------------|----------------|--------------|---------------|----------------------------|-----------------|
| PCPA | Performances | Attendance | Performances | Attendance | Performances | Attendance |
| Commercial (Non-Broadway) | 11 | 17,600 | 3 | 5,267 | (8) | (12,333) |
| Broadway | 10 | 23,639 | 11 | 19,008 | 1 | (4,631) |
| Resident Company | 42 | 30,730 | 37 | 24,186 | (5) | (6,544) |
| Student | 20 | 16,870 | 14 | 8,801 | (6) | (8,069) |
| Non-Profit | 10 | 11,592 | 28 | 16,288 | 18 | 4,696 |
| Miscellaneous | 1 | 119 | 2 | 429 | 1 | 310 |
| Totals | 94 | 100,550 | 95 | 73,979 | 1 | (26,571) |

Metropolitan Exposition-Recreation Commission
MERC Statement of Activity with Annual Budget
All Departments
April 2013
2013-10

| | Current Month Actual April-13 | Current Year to Date Actual April-13 | Prior Year to Date Actual April-12 | % of Prior Year | Annual Budget April-13 | % of Annual Budget 83% |
|---|--|---|---|-----------------------|------------------------------|---------------------------------|
| Operating | | | | | | |
| Revenue | 2,446,404 | 17,492,686 | 16,819,014 | 104% | 18,729,081 | 93% |
| Revenue - Food and Beverage | 1,990,710 | 12,565,764 | 11,847,365 | 106% | 13,660,301 | 92% |
| Total Operating Revenue | 4,437,114 | 30,058,451 | 28,666,378 | 105% | 32,389,382 | 93% |
| Costs - Food and Beverage | 1,263,884 | 10,253,106 | 10,006,447 | 102% | 11,514,085 | 89% |
| Personal Services | 1,408,762 | 13,793,118 | 14,452,344 | 95% | 17,403,962 | 79% |
| Goods & Services | 717,456 | 6,092,048 | 6,013,750 | 101% | 9,057,018 | 67% |
| Marketing Travel Portland | 225,004 | 2,250,040 | 2,202,100 | 102% | 4,014,278 | 56% |
| Total Operating Expenses | 3,615,106 | 32,388,313 | 32,674,641 | 99% | 41,989,343 | 77% |
| Net Operating Results Inc (Dec) | 822,008 | (2,329,862) | (4,008,263) | 58% | (9,599,961) | 24% |
| Non Operating | - | - | (0) | - | - | - |
| Transient, Lodging Tax | 97,428 | 6,928,317 | 6,404,010 | 108% | 9,985,127 | 69% |
| Visitor Development Fund (VDF) | - | - | - | - | 3,147,506 | 0% |
| Government Support City of Portland | - | 798,035 | - | - | 793,408 | 101% |
| Non-Operating Revenue | 17,880 | 99,843 | 160,450 | 62% | 156,412 | 64% |
| Non-Operating Expense | - | - | - | - | 2,200,000 | 0% |
| | 115,308 | 7,826,196 | 6,564,460 | 119% | 11,882,453 | 66% |
| Support and Risk Management | | | | | | |
| MERC Administration | 0 | (0) | - | - | - | - |
| Metro Support Services | 208,878 | 2,083,387 | 1,804,040 | 115% | 2,498,424 | 83% |
| Metro Risk Management | 121,549 | 729,301 | 741,765 | 98% | 729,301 | 100% |
| | 330,427 | 2,812,688 | 2,545,805 | 110% | 3,227,725 | 87% |
| Net Increase (Decrease) | 606,889 | 2,683,645 | 10,392 | 25824% | (945,233) | -284% |
| Transfers | | | | | | |
| Transfers to (Expense) | 13,421 | 134,210 | 64,900 | 207% | 392,056 | 34% |
| Transfers from (Revenue) | 522,800 | 560,303 | 114,822 | 488% | 2,768,633 | 20% |
| Debt Service (Expense) | - | 937,816 | 925,816 | 101% | 1,187,132 | 79% |
| Net Transfers | 509,379 | (511,723) | (875,894) | 58% | 1,189,445 | -43% |
| Net Operations | 1,116,268 | 2,171,922 | (865,502) | -251% | 244,212 | 889% |
| | - | 0 | (0) | - | - | - |
| Capital | | | | | | |
| Capital Outlay | 681,677 | 2,188,402 | 1,422,703 | 154% | 3,299,077 | 66% |
| Construction Management | - | - | - | - | - | - |
| Transient, Lodging Tax | - | - | - | - | - | - |
| Non-Operating Revenue | - | - | 134,316 | 0% | 295,000 | 0% |
| Intrafund Transfers (Exp/Rev) | - | - | - | - | - | - |
| Transfers from (Revenue) | - | - | - | - | - | - |
| Net Capital | (681,677) | (2,188,402) | (1,288,387) | 170% | (3,004,077) | 73% |
| Fund Balance Inc (Dec) | 434,591 | (16,480) | (2,153,889) | 1% | (2,759,865) | 1% |
| | - | 0 | (0) | - | - | - |
| Food and Beverage Gross Margin | 726,826 | 2,312,658 | 1,840,917 | | 2,146,216 | 108% |
| Food and Beverage Gross Margin | 36.5% | 18.4% | 15.5% | | 15.7% | |
| Full Time Employees | | | | | 190.0 | |
| Excise Tax | (256,741) | 35,501 | 1,553,605 | | | |
| Transient, Lodging Taxes as percent of revenue | 2% | 19% | 18% | | 24% | |
| Fund Balance | | | | | | |
| Beginning Fund Balance | | 26,161,717 | 26,357,848 | | 26,161,717 | |
| Fund Balance Inc (Dec) | | (16,480) | (2,153,889) | | (2,759,865) | |
| Ending Fund Balance | | 26,145,237 | 24,203,959 | | 23,401,852 | |
| Unrestricted Fund Balance | | | | | 4,955,143 | |
| Operating Contingency | | | | | 652,486 | |
| Stabilization Reserve | | | | | 620,500 | |
| Designated for Renewal & Replacement | | | | | 12,277,072 | |
| New Capital/Business Strategy Reserve | | | | | 4,554,437 | |
| Restricted by Agreement - TLT | | | | | 142,214 | |
| Ending Fund Balance | | | | | 23,401,852 | |

Metropolitan Exposition-Recreation Commission
MERC Statement of Activity with Annual Budget
Portland Exposition Center
April 2013
2013-10

| | Current Month Actual April-13 | Current Year to Date Actual April-13 | Prior Year to Date Actual April-12 | % of Prior Year | Annual Budget April-13 | % of Annual Budget 83% |
|---|--|---|---|-----------------------|------------------------------|---------------------------------|
| Operating | | | | | | |
| Revenue | 376,900 | 3,550,276 | 3,659,406 | 97% | 3,838,186 | 92% |
| Revenue - Food and Beverage | 252,406 | 1,796,272 | 1,763,488 | 102% | 1,811,485 | 99% |
| Total Operating Revenue | 629,306 | 5,346,548 | 5,422,894 | 99% | 5,649,671 | 95% |
| Costs - Food and Beverage | 152,452 | 1,527,107 | 1,532,228 | 100% | 1,569,892 | 97% |
| Personal Services | 127,136 | 1,275,846 | 1,243,543 | 103% | 1,608,478 | 79% |
| Goods & Services | 151,759 | 982,483 | 1,056,602 | 93% | 1,392,728 | 71% |
| Total Operating Expenses | 431,347 | 3,785,435 | 3,832,374 | 99% | 4,571,098 | 83% |
| Net Operating Results Inc (Dec) | 197,959 | 1,561,113 | 1,590,520 | 98% | 1,078,573 | 145% |
| Non Operating | | | | | | |
| Non-Operating Revenue | 1,266 | 9,967 | 21,077 | 47% | 21,290 | 47% |
| Non-Operating Expense | - | - | - | - | - | - |
| | 1,266 | 9,967 | 21,077 | 47% | 21,290 | 47% |
| Support and Risk Management | | | | | | |
| MERC Administration | 12,829 | 128,287 | 156,114 | 82% | 153,944 | 83% |
| Metro Support Services | 18,799 | 187,510 | 162,360 | 115% | 224,858 | 83% |
| Metro Risk Management | 13,498 | 80,988 | 85,947 | 94% | 80,988 | 100% |
| | 45,126 | 396,785 | 404,421 | 98% | 459,790 | 86% |
| Net Increase (Decrease) | 154,100 | 1,174,295 | 1,207,176 | 97% | 640,073 | 183% |
| Transfers | | | | | | |
| Transfers to | 113 | 1,130 | - | - | 1,359 | -17% |
| Transfers from | 375 | 3,750 | 7,980 | 47% | 4,500 | 83% |
| Debt Service | - | 937,816 | 925,816 | 101% | 1,187,132 | 79% |
| Net Transfers | 262 | (935,196) | (917,836) | 102% | (1,183,991) | 79% |
| Net Operations | 154,362 | 239,099 | 289,340 | 83% | (543,918) | -44% |
| Capital | | | | | | |
| Capital Outlay Expense | 23,990 | 403,710 | 59,972 | 673% | 524,500 | 77% |
| Non-Operating Revenue | - | - | 4,987 | 0% | - | - |
| Intrafund Transfers | - | - | - | - | 270,000 | -100% |
| Net Capital | (23,990) | (403,710) | (54,985) | 734% | (254,500) | 159% |
| Fund Balance Inc (Dec) | 130,372 | (164,611) | 234,354 | -70% | (798,418) | 21% |
| Food and Beverage Gross Margin | 99,954 | 269,165 | 231,259 | | 241,593 | 111% |
| Food and Beverage Gross Margin % | 39.6% | 15.0% | 13.1% | | 13.3% | |
| Full Time Employees | | | | | 13.3 | |
| Excise Tax | (46,800) | (69,019) | 402,787 | | - | |
| Fund Balance | | | | | | |
| Beginning Fund Balance | | 4,310,142 | 4,732,826 | | 4,310,142 | |
| Fund Balance Inc (Dec) | | (164,611) | 234,354 | | (798,418) | |
| Ending Fund Balance | | 4,145,531 | 4,967,180 | | 3,511,724 | |
| Operating Contingency | | | | | 242,994 | |
| Stabilization Reserve | | | | | 186,000 | |
| Designated for Renewal & Replacement | | | | | 775,000 | |
| New Capital/Business Strategy Reserve | | | | | 2,125,025 | |
| Ending Fund Balance | | | | | 3,511,724 | |

Metropolitan Exposition-Recreation Commission
MERC Statement of Activity with Annual Budget
Oregon Convention Center
April 2013
2013-10

| | Current Month Actual | Excluding EMP Current Year to Date Actual | Prior Year to Date Actual | % of Prior Year | Annual Budget | % of Annual Budget |
|---|----------------------------|--|---------------------------------|-----------------------|--------------------|--------------------------|
| | April-13 | April-13 | April-12 | | April-13 | 83% |
| Operating | | | | | | |
| Revenue | 1,259,251 | 7,805,583 | 7,284,412 | 107% | 7,798,834 | 100% |
| Revenue - Food and Beverage | 1,553,736 | 9,019,273 | 8,177,471 | 110% | 9,849,862 | 92% |
| Total Operating Revenue | 2,812,986 | 16,824,856 | 15,461,883 | 109% | 17,648,696 | 95% |
| Costs - Food and Beverage | 998,905 | 7,313,532 | 7,007,114 | 104% | 8,260,981 | 89% |
| Personal Services | 713,039 | 7,085,284 | 7,529,372 | 94% | 9,125,317 | 78% |
| Goods & Services | 301,383 | 2,696,469 | 3,070,797 | 88% | 3,884,221 | 69% |
| Marketing Travel Portland | 225,004 | 2,250,040 | 2,202,100 | 102% | 4,014,278 | 56% |
| Total Operating Expenses | 2,238,330 | 19,345,326 | 19,809,382 | 98% | 25,284,797 | 77% |
| Net Operating Results Inc (Dec) | 574,656 | (2,520,469) | (4,347,499) | 58% | (7,636,101) | 33% |
| Non Operating | | | | | | |
| Transient, Lodging Tax | 84,938 | 6,040,089 | 5,554,338 | 109% | 8,729,303 | 69% |
| Visitor Development Fund (VDF) | - | - | - | - | 2,520,676 | 0% |
| Non-Operating Revenue | 3,418 | 29,472 | 54,658 | 54% | 46,678 | 63% |
| Non-Operating Expense | - | - | - | - | 2,200,000 | 0% |
| | 88,355 | 6,069,560 | 5,608,996 | 108% | 9,096,657 | 67% |
| Support and Risk Management | | | | | | |
| MERC Administration | 79,823 | 798,232 | 971,376 | 82% | 957,878 | 83% |
| Metro Support Services | 116,972 | 1,166,696 | 1,010,270 | 115% | 1,399,118 | 83% |
| Metro Risk Management | 68,068 | 408,408 | 397,366 | 103% | 408,408 | 100% |
| | 264,863 | 2,373,336 | 2,379,012 | 100% | 2,765,404 | 86% |
| Net Increase (Decrease) | 398,148 | 1,175,755 | (1,117,515) | -105% | (1,304,848) | -90% |
| Transfers | | | | | | |
| Transfers to (Expense) | 704 | 7,040 | - | - | 239,450 | 3% |
| Transfers from (Revenue) | 2,334 | 23,340 | 66,180 | 35% | 2,228,000 | 1% |
| Debt Service (Expense) | - | - | - | - | - | - |
| Net Transfers | 1,630 | 16,300 | 66,180 | 25% | 1,988,550 | 1% |
| Net Operations | 399,778 | 1,192,055 | (1,051,335) | -213% | 683,702 | 174% |
| Capital | | | | | | |
| Capital Outlay Expense | 426,949 | 1,422,331 | 954,029 | 149% | 2,052,577 | 69% |
| Non-Operating Revenue | - | - | 1,404 | 0% | 220,000 | 0% |
| Intrafund Transfers (Exp/Rev) | - | - | - | - | 90,000 | 0% |
| Net Capital | (426,949) | (1,422,331) | (952,625) | 149% | (1,742,577) | 82% |
| Fund Balance Inc (Dec) | (27,171) | (230,276) | (2,003,960) | 11% | (1,058,875) | 22% |
| Food and Beverage Gross Margin | 554,831 | 1,705,740 | 1,170,358 | | 1,588,881 | 107% |
| Food and Beverage Gross Margin % | 35.7% | 18.9% | 14.3% | | 16.1% | |
| Full Time Employees | | | | | 110.3 | |
| Excise Tax | (209,941) | 104,520 | 1,150,567 | | - | |
| Transient, Lodging Taxes as percent of revenue | 3% | 26% | 26% | | 33% | |
| Fund Balance | | | | | | |
| Beginning Fund Balance | | 11,058,549 | 11,552,031 | | 11,058,549 | |
| Fund Balance Inc (Dec) | | (230,276) | (2,003,960) | | (1,058,875) | |
| Fund Balance Inc (Dec) for HQH | | 225,258 | - | | (100,000) | |
| Ending Fund Balance | | 11,053,530 | 9,548,071 | | 9,899,674 | |
| Unrestricted Fund Balance | | | | | 2,350,200 | |
| Operating Contingency | | | | | 258,839 | |
| Stabilization Reserve | | | | | 260,000 | |
| Designated for Renewal & Replacement | | | | | 5,685,779 | |
| New Capital/Business Strategy Reserve | | | | | 1,334,856 | |
| Restricted by Agreement - TLT | | | | | 10,000 | |
| Ending Fund Balance | | | | | 9,899,674 | |

Metropolitan Exposition-Recreation Commission
MERC Statement of Activity with Annual Budget
Portland Center for the Performing Arts
April 2013
2013-10

| | Current Month Actual April-13 | Current Year to Date Actual April-13 | Prior Year to Date Actual April-12 | % of Prior Year | Annual Budget April-13 | % of Annual Budget 83% |
|---|--|---|---|-----------------------|------------------------------|---------------------------------|
| Operating | | | | | | |
| Revenue | 810,254 | 6,136,827 | 5,871,768 | 105% | 7,092,061 | 87% |
| Revenue - Food and Beverage | 184,569 | 1,750,220 | 1,906,406 | 92% | 1,998,954 | 88% |
| Total Operating Revenue | 994,822 | 7,887,047 | 7,778,174 | 101% | 9,091,015 | 87% |
| Costs - Food and Beverage | 112,528 | 1,412,467 | 1,467,106 | 96% | 1,683,212 | 84% |
| Personal Services | 478,078 | 4,506,570 | 4,523,020 | 100% | 5,522,476 | 82% |
| Goods & Services | 245,501 | 2,071,706 | 1,689,911 | 123% | 2,748,093 | 75% |
| Total Operating Expenses | 836,107 | 7,990,743 | 7,680,036 | 104% | 9,953,781 | 80% |
| Net Operating Results Inc (Dec) | 158,715 | (103,697) | 98,139 | -106% | (862,766) | 12% |
| Non Operating | | | | | | |
| Transient, Lodging Tax | 12,491 | 888,229 | 849,672 | 105% | 1,255,824 | 71% |
| Visitor Development Fund (VDF) | - | - | - | - | 626,830 | 0% |
| Government Support City of Portland | - | 798,035 | - | - | 793,408 | 101% |
| Non-Operating Revenue | 12,361 | 54,558 | 77,248 | 71% | 84,376 | 65% |
| Non-Operating Expense | - | - | - | - | - | - |
| | 24,852 | 1,740,822 | 926,919 | 188% | 2,760,438 | 63% |
| Support and Risk Management | | | | | | |
| MERC Administration | 49,890 | 498,895 | 607,110 | 82% | 598,674 | 83% |
| Metro Support Services | 73,107 | 729,181 | 631,410 | 115% | 874,448 | 83% |
| Metro Risk Management | 39,983 | 239,905 | 258,452 | 93% | 239,905 | 100% |
| | 162,980 | 1,467,981 | 1,496,972 | 98% | 1,713,027 | 86% |
| Net Increase (Decrease) | 20,588 | 169,145 | (471,914) | -36% | 184,645 | 92% |
| Transfers | | | | | | |
| Transfers to (Expense) | 440 | 4,400 | - | - | 5,281 | 83% |
| Transfers from (Revenue) | 1,458 | 14,580 | 28,440 | 51% | 17,500 | 83% |
| Net Transfers | 1,018 | 10,180 | 28,440 | 36% | 12,219 | 83% |
| Net Operations | 21,606 | 179,325 | (443,474) | -40% | 196,864 | 91% |
| Capital | | | | | | |
| Capital Outlay Expense | 214,970 | 346,592 | 408,702 | 85% | 675,000 | 51% |
| Non-Operating Revenue | - | - | 127,925 | 0% | 75,000 | 0% |
| Intrafund Transfers (Exp/Rev) | - | - | 15,000 | 0% | - | - |
| Net Capital | (214,970) | (346,592) | (265,777) | 130% | (600,000) | 58% |
| Fund Balance Inc (Dec) | (193,364) | (167,268) | (709,251) | 24% | (403,136) | 41% |
| Food and Beverage Gross Margin | 72,041 | 337,753 | 439,300 | | 315,742 | 107% |
| Food and Beverage Gross Margin % | 39.0% | 19.3% | 23.0% | | 15.8% | |
| Full Time Employees | | | | | 46.4 | |
| Taxes as percent of revenue | 1% | 10% | 10% | | 12% | |
| Fund Balance | | | | | | |
| Beginning Fund Balance | | 8,445,301 | 8,490,410 | | 8,445,301 | |
| Fund Balance Inc (Dec) | | (167,268) | (709,251) | | (403,136) | |
| Ending Fund Balance | | 8,278,033 | 7,781,159 | | 8,042,165 | |
| Operating Contingency | | | | | 47,754 | |
| Stabilization Reserve | | | | | 174,500 | |
| Designated for Renewal & Replacement | | | | | 5,345,000 | |
| New Capital/Business Strategy Reserve | | | | | 1,094,556 | |
| Ending Fund Balance | | | | | 8,042,165 | |

Metropolitan Exposition-Recreation Commission
MERC Statement of Activity with Annual Budget
Convention Center Enhanced Marketing Project
April 2013
2013-10

| | Current Month Actual | Current Year to Date Actual | Prior Year to Date Actual | % of Prior Year | Annual Budget | % of Annual Budget |
|----------------------------------|----------------------------|-----------------------------------|---------------------------------|-----------------------|------------------|--------------------------|
| | April-13 | April-13 | April-12 | | April-13 | 83% |
| Operating | | | | | | |
| Goods & Services | 3,901 | 171,735 | - | - | 472,667 | 36% |
| <i>Meetings Expense</i> | 402 | 1,052 | - | - | 3,800 | 28% |
| <i>Developer Agreement I</i> | - | - | - | - | - | - |
| <i>Developer Agreement II</i> | - | - | - | - | - | - |
| <i>Communications Consulting</i> | 2,210 | 15,767 | - | - | 50,000 | 32% |
| <i>Construction Consulting</i> | - | 24,995 | - | - | 35,000 | 71% |
| <i>Financial Consulting</i> | 236 | 15,904 | - | - | 72,500 | 22% |
| <i>Legal Consulting</i> | 1,053 | 1,053 | - | - | 105,000 | 1% |
| <i>Management Consulting</i> | - | 2,000 | - | - | 83,467 | 2% |
| <i>Market Consulting</i> | - | 110,965 | - | - | 122,900 | 90% |
| <i>Project Management</i> | - | - | - | - | - | - |
| Net Increase (Decrease) | (3,901) | (171,735) | - | - | (472,667) | |
| Transfers | | | | | | |
| Transfers to | 12,164 | 121,640 | - | - | 145,966 | 83% |
| Transfers from | 518,633 | 518,633 | - | - | 518,633 | 100% |
| Net Transfers | 506,469 | 396,993 | - | - | 372,667 | 107% |
| Net Operations | 502,568 | 225,258 | - | - | (100,000) | -225% |
| Fund Balance Inc (Dec) | 502,568 | 225,258 | - | - | (100,000) | -225% |

Metropolitan Exposition-Recreation Commission
MERC Statement of Activity with Annual Budget
MERC Administration
April 2013
2013-10

| | Current Month Actual April-13 | Current Year to Date Actual April-13 | Prior Year to Date Actual April-12 | % of Prior Year 86% | Annual Budget April-13 | % of Annual Budget 83% |
|--|--|---|---|------------------------------|------------------------------|---------------------------------|
| Operating | | | | | | |
| Revenue | - | - | 3,427 | 0% | - | - |
| Personal Services | 90,510 | 925,418 | 1,156,410 | 80% | 1,147,691 | 81% |
| Goods & Services | 14,912 | 169,655 | 196,440 | 86% | 559,309 | 30% |
| Net Operating Results Inc (Dec) | (105,422) | (1,095,073) | (1,349,422) | 81% | (1,707,000) | 64% |
| Non Operating | | | | | | |
| Non-Operating Revenue | 835 | 5,846 | 7,467 | 78% | 4,068 | 144% |
| Non-Operating Expense | - | - | - | - | - | - |
| | 835 | 5,846 | 7,467 | 78% | 4,068 | 144% |
| Support and Risk Management | | | | | | |
| MERC Administration | 142,541 | 1,425,413 | 1,734,600 | 82% | 1,710,496 | 83% |
| | 142,541 | 1,425,413 | 1,734,600 | 82% | 1,710,496 | 83% |
| Net Increase (Decrease) | 37,954 | 336,186 | 392,645 | 86% | 7,564 | 4445% |
| Transfers | | | | | | |
| Transfers to (Expense) | - | - | 64,900 | 0% | - | - |
| Transfers from (Revenue) | - | - | 12,222 | 0% | - | - |
| Net Transfers | - | - | (52,678) | 0% | - | - |
| Net Operations | 37,954 | 336,186 | 339,967 | 99% | 7,564 | 4445% |
| Capital | | | | | | |
| Capital Outlay Expense | 15,768 | 15,768 | - | - | 47,000 | 34% |
| Transient, Lodging Tax | - | - | - | - | - | - |
| Non-Operating Revenue | - | - | - | - | - | - |
| Intrafund Transfers (Exp/Rev) | - | - | (15,000) | 0% | (360,000) | 0% |
| Net Capital | (15,768) | (15,768) | (15,000) | 105% | (407,000) | 4% |
| Fund Balance Inc (Dec) | 22,186 | 320,418 | 324,967 | 99% | (399,436) | -80% |
| Full Time Employees | | | | | 20.0 | |
| Excise Tax | - | - | 251 | | - | |
| Fund Balance | | | | | | |
| Beginning Fund Balance | | 2,347,725 | 1,582,581 | | 2,347,725 | |
| Fund Balance Inc (Dec) | | 320,418 | 324,967 | | (399,436) | |
| Ending Fund Balance | | 2,668,143 | 1,907,548 | | 1,948,289 | |
| Operating Contingency | | | | | 102,899 | |
| Designated for Renewal & Replacement | | | | | 471,293 | |
| Contingency for Renewal & Replacement | | | | | 200,000 | |
| Restricted by Agreement - TLT | | | | | 132,214 | |
| Ending Fund Balance | | | | | 1,948,289 | |

MERC Commission Meeting

June 4 , 2013
3:00 pm

7.0 Consent Agenda

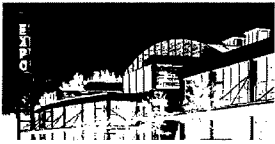
**Metropolitan Exposition Recreation Commission
Record of MERC Commission Actions**

May 7, 2013
Metro Regional Center, Room 301
600 NE Grand Ave. Portland Oregon 97211

| | |
|-----------------|--|
| Present: | Chris Erickson (Chair), Ray Leary, Karis Stoudamire-Phillips , Elisa Dozono, Judie Hammerstad |
| Absent: | Cynthia Haruyama (Excused), Terry Goldman (Excused) |
| | A regular meeting of the Metropolitan Exposition Recreation Commission was called to order by chair Chris Erickson at the Metro Regional Center at 3:00pm |
| 1.0 | QUORUM CONFIRMED A quorum of Commissioners was present. |
| 2.0 | COMMISSIONER/ COUNCIL LIAISON COMMUNICATIONS <ul style="list-style-type: none"> National Travel and Tourism Week Proclamation Chair Erickson read the Proclamation to the Commission. Commissioner Hammerstad shared that she recently attended an event at the Oregon Convention Center and was pleased to see that the center was extremely busy. Commissioner Leary shared that he attended a Drumlandia concert as a benefit for Metro Arts. Commissioner Dozono congratulated Chair Erickson for being named incoming chair of Travel Portland. Commissioner Dozono expressed appreciation to Teri Dresler and MERC staff for moving forward with diversity/minority contracting goals |
| 3.0 | OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS <ul style="list-style-type: none"> None |
| 4.0 | GENERAL MANAGER COMMUNICATIONS <ul style="list-style-type: none"> Teri Dresler presented to the Commission <ul style="list-style-type: none"> T. Dresler presented Commissioner Hammerstad the Legacy Award from REAP for recognition of her civic leadership and dedication to public service. Commissioner Hammerstad was unable to attend the REAP ceremony on April 19 due to illness. Commissioner Hammerstad commented that she was thrilled to receive the award. The joint MERC/Metro Council work session has been postponed until June 4th 2013. The June Commission meeting will follow the session. The joint work session will be held to review the financial mechanism of the Hotel project to prepare Metro council for their vote on June 13th. They are the first of the three elected bodies to vote on changes to VDI bucket system. Following Metro, the city and county will vote. Metro's second vote takes place on July 27th when the Council will consider the term sheet which is an initial deal with Mortenson Development and Hyatt Hotels. This vote is to consider accepting the term sheet and authorizing the issuance of revenue bonds. It is a last stop before we start negotiating a full development agreement which is anticipated to be completed in September. The July MERC meeting will most likely be postponed as it is currently scheduled for July 3. An alternative date will be proposed soon. T. Dresler updated on MERC Budget finalization T. Dresler expressed her gratitude to Commissioner Dozono for acknowledging the FOTA program meeting. Two significant points were discussed at the meeting. First was how to proceed with the FOTA project in both procurement and employment. Dresler is planning to hire a project manager to engage and extend outreach to the community as well as study the issue in terms of the economic and demographic shifts seen over the years and discuss with Metro's legal team how to alter FOTA language to improve the program and attain the spirit of FOTA. Dresler would like to hear if anyone |

| | |
|--------------------------|--|
| | <p>knows of a well-suited candidate. The position will be of a limited duration.</p> <p><i>(3:25 p.m., Council Liaison Sam Chase joined the meeting.)</i></p> <p>Other piece of the discussion was how to utilize existing FOTA program to leverage opportunity with the hotel project. Stephanie Soden has prepared a draft of a “Community Benefit Statement” for the hotel project. It will be sent to the group soon. It is an overview of the project and will serve as a starting point for a discussion with the community on what the Convention Center Hotel will bring to the FOTA neighborhood so we can do some early outreach. Council Liaison Chase suggested proactive outreach particularly to the North Portland community to communicate that the hotel project will provide jobs and contracting opportunities. He suggested that we let people know where to find those opportunities when they are available.</p> <ul style="list-style-type: none"> • Dresler will present a Resolution next month on procurement language changes that will introduce sheltered market programs in the procurement rules as well as some MWESB expanded language in order to make MERC procurement rules more in line with Metro rules. • Council Liaison Chase commented on the open spaces levy appearing on the ballot in two weeks. Also updated on the equity agenda for Metro. Committee applications are due soon for MERC Commission. |
| 5.0 | <p>MERC VENUES’ BUSINESS REPORTS</p> <p>Robyn Williams, Matthew Rotchford and Scott Cruickshank updated to the Commission</p> |
| 6.0 | <p>TRAVEL PORTLAND QUARTERLY REPORT</p> <p>Jeff Miller and Roy Jay presented to the Commission</p> <ul style="list-style-type: none"> • Commissioner Leary inquired regarding the marketing funds for the Multicultural Meetings Study initiatives. • Jeff Miller explained that they are putting a strategy together to go after that business and are working on how to implement the study results. Travel Portland knows it needs to learn how to find multicultural business and show those businesses how to use their services. • Council Liaison Chase inquired about the projection up to year 2022 asking how the figures would change if the hotel were built today. • Jeff Miller responded that initially there could be a dip in business as people wait for the hotel. Then there would be an increase of 10-15 more conventions per year. Average OCC revenue increase could be from \$700,000 to \$1,000,000. • Scott Cruickshank commented that if we were able to announce breaking ground for the hotel in 2014, the timing would be perfect to fill sparse bookings for years 2018-19 and 2019-20. • Council Liaison Chase inquired to confirm if Mr. Miller’s response means a potential doubling of revenue. Jeff Miller responded affirmatively as a potential. Especially if larger conventions are attracted. • Commissioner Leary commented that the hotel will also provide additional revenue support for various VDI buckets which should enhance our ability to get business. |
| 7.0 7.1 | <p>CONSENT AGENDA</p> <p>April 3, 2013 MERC Regular Meeting Record of Actions</p> <ul style="list-style-type: none"> • A motion was made by Commissioner Hammerstad and seconded by Commissioner Stoudamire-Phillips to approve the Consent Agenda. <p>VOTING: Aye: 5 (Erickson, Leary, Stoudamire-Phillips, Dozono, Hammerstad) Nay: 0 Motion passed</p> |

| | |
|-----------------------|--|
| 7.2 | <p>Ethics Form for Travel Portland CAB, FAM Tours</p> <ul style="list-style-type: none"> Teri Dresler announced that a part of Consent Agenda just approved is the Ethics Form for Commissioners to participate in upcoming CAB event in June and FAM tours in July. Invitation will be sent out shortly for Commissioners to RSVP. |
| <p>8.0</p> <p>8.1</p> | <p>ACTION AGENDA</p> <p>Resolution 13-08 for the purpose of approving and transmitting to the Metro Council a budget amendment to the MERC Fund for current fiscal year 2012-13</p> <p>Cynthia Hill presented to the Commission</p> <ul style="list-style-type: none"> A motion was made by Commissioner Dozono and seconded by Commissioner Stoudamire-Phillips to approve Resolution 13-08 as presented. <p>VOTING: Aye: 5 (Erickson, Leary, Stoudamire-Phillips ,Dozono, Hammerstad) Nay: 0 Motion passed</p> |
| | <p>Meeting adjourned at 4:30 p.m.</p> |



600 NE Grand Ave.
Portland, OR 97232
503-797-1780

www.oregonmetro.gov



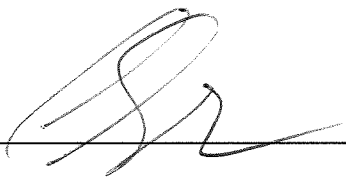
Metro | *Exposition Recreation Commission*

2013 PROCLAMATION

May 4-12, 2013 National Travel and Tourism Week

- Whereas** travel matters to the nation's economic prosperity and its image abroad, to business wealth and to individual travelers;
- Whereas** travel to and within the United States provides significant economic benefits for the nation, generating \$2.0 trillion in economic output in 2012, with \$855.4 billion spent directly by travelers that spurred an additional \$1.1 trillion in other industries;
- Whereas** travel is among the largest private-sector employers in the United States, supporting 14.6 million jobs in 2012, including 7.7 million directly in the travel industry and 6.9 million in other industries;
- Whereas** travelers' spending directly generated tax revenues of \$129 billion for federal, state and local governments, funds used to support essential services and programs;
- Whereas** international travel to the United States is the nation's largest single export industry – greater than the export of business services, machinery, computer and electronic products, motor vehicles and agriculture. In 2012, travel generated \$168.1 billion in exports, creating \$5 billion in balance of travel trade surplus for the U.S.;
- Whereas** meetings, events and incentive travel are core business functions that help companies strengthen business performance – averaging a return on investment of \$12.50 in profits and \$3.80 in revenue for every dollar spent on corporate travel – align and educate employees and customers, and reward business accomplishments;
- Whereas** leisure travel, which accounts for more than three-quarters of all trips taken in the United States, spurs countless benefits to travelers' creativity, cultural awareness, education, happiness, productivity, relationships and wellness;
- Whereas** travel is a catalyst that moves the national economy forward;
- Whereas** the Portland region accounts for \$4.016 billion in travel-generated spending, tax receipts, employment and payroll and 30,100 jobs in the industry;
- Whereas** building a convention center hotel is a Metro Council and MERC Commission priority because it stands to boost the state's tourism economy by attracting 5 to 10 additional conventions each year, translating into hundreds of millions of dollars of new spending in local businesses and creating nearly 3,000 jobs;

* **Now, therefore,** the Metropolitan Exposition Recreation Commission proclaims May 4-12, 2013 as Travel and Tourism Week in Portland, Oregon, and, recognizing the impact of our local Travel and Tourism Industry on the venues under our management, urges the citizens of Portland to join in this special observance with appropriate events and commemorations.



5/6/13

Metro Exposition Recreation Commission Chair, Chris Erickson

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 13-08

For the purpose of approving and transmitting to the Metro Council a budget amendment to the MERC Fund for current fiscal year 2012-13.

WHEREAS, Metro Code 6.01.050 provides that the Commission shall annually prepare and approve an annual budget which shall, to the maximum extent permitted by law, consist of one commission-wide series of appropriations; and

WHEREAS, Metro Code 6.01.050(d) further provides that once the Commission's budget has been adopted by the Metro Council, any changes in the adopted appropriations must be ratified in advance by the Metro Council; and

WHEREAS, the Commission previously approved and transmitted to the Metro Council the fiscal year 2012-13 budgets for the MERC Fund; and

WHEREAS, MERC staff request amendments to the current budget for the reasons described in the attached Staff Report.

BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission approves a budget amendment to the MERC Fund as described in the attached Staff Report for the fiscal year beginning July 1, 2012 and ending June 30, 2013 for inclusion as part of the total Metro budget for this period and requests that the Metro COO present this to the Metro Council for ratification.

Passed by the Commission on May 7, 2013.

Approved as to Form:
Alison Kean Campbell, Metro Attorney

By: _____
Nathan A. Schwartz Sykes, Senior Attorney

Chair

Secretary/Treasurer

MERC Staff Report

Agenda Item/Issue:

For the purpose of approving and transmitting to the Metro Council a budget amendment to the MERC Fund for fiscal year 2012-13

Resolution No: 13-08

Presented By: Cynthia Hill

Date: May 7, 2013

Background and Analysis:

Food & beverage sales are greater than the original budget anticipated. The increase in revenue has an offsetting increase in expenditures. This amendment will increase expenditures by borrowing appropriation from the appropriated reserves, which are the Operating Contingency and the Business Strategy reserves. The accounting for the PCPA New Era Ticketing contract is creating a similar increase in revenue and offsetting expenditures. The increased revenues will be acknowledged and the expenditure appropriation will be increased. At year end the increased revenues will replenish the appropriate reserves.

1. Food & Beverage

Oregon Convention Center (OCC)

OCC food and beverage revenue forecast is \$9.8 million, an increase of \$1.6 million over the adopted budget of \$8.2 million. Food and beverage cost forecast is \$8.3 million, an increase of \$1.4 million over the adopted budget of \$6.9 million. The projected margin is 16.1 percent with net revenue of \$1.6 million. The original budget estimate was 16.34 percent. Several events have experienced stronger than expected food & beverage sales and OCC has booked five additional conventions this year.

Portland Center for Performing Arts (PCPA)

PCPA food and beverage revenue forecast is \$2.0 million, an increase of \$284 thousand over the adopted budget of \$1.7 million. Food and beverage cost forecast is \$1.7 million, an increase of \$207 thousand over the adopted budget of \$1.5 million. The projected margin is 15.8 percent with net revenue of \$316 thousand. The original budget estimate was 13.92 percent. Increased sales are a result of a strong concert schedule and Broadway season.

Portland Exposition Center (Expo)

Expo food and beverage revenue forecast is \$1.8 million, close to the adopted budget of 1.9 million. Food and beverage cost forecast is \$1.6 million, an increase of \$65 thousand over the adopted budget of \$1.5 million. The projected margin is 13.34 percent with net revenue of \$242 thousand; the original budget estimate was 19.28 percent and \$360 thousand. Labor costs are greater as Expo has invested in the culinary quality of the concession foods and customer experience. Reserve expenditures have also increased as well as operating costs to meet these standards. Concession price increases took place in February 2013 to offset these increases.

| Account | | Amount |
|------------------------------------|------------------------|--------------------|
| Resources: | | |
| Food & Beverage Revenue (increase) | | \$1,855,480 |
| | Total Resources | \$1,855,480 |

| | | |
|-------------------------------------|--------------------------|--------------------|
| Requirements: | | |
| Food & Beverage Costs | | \$1,651,941 |
| | Total Expenditure | \$1,651,941 |
| RESERVES & FUND BALANCE: | | |
| Unappropriated Fund Balance | | \$1,855,480 |
| Appropriated Reserves | | (\$1,651,941) |
| | Net Increase | \$203,538 |

2. PCPA Ticket Services

PCPA operating revenues continue to trend above the budget line. This trend is partially due to the first year of the new ticketing system. PCPA collects the full service charge then pays the ticketing company their ticket agency fee and pays the credit card expense reflected in a materials and service. Under the old system, the former ticketing company took their fee out prior to sending ticket commissions to us. The FY 2012-13 budget was developed before the new contract was in place. This action will amend the budget to reflect the change in accounting for the New Era ticketing contract.

| Account | | Amount |
|-------------------------------------|--------------------------|------------------|
| REVENUE: | | |
| Ticket Services Charge | | \$661,349 |
| | Total Revenue | \$661,349 |
| EXPENDITURE: | | |
| Ticket Agency Fee | | \$434,209 |
| Credit Card Expense | | \$208,073 |
| Ticket Services Charge | | \$400,000 |
| | Total Expenditure | \$642,282 |
| RESERVES & FUND BALANCE: | | |
| Unappropriated Fund Balance | | \$661,349 |
| Appropriated Reserves | | (\$642,349) |
| | Net Increase | \$19,067 |

Oregon budget law does not allow the recognition and direct appropriation of this additional revenue without the benefit of a supplemental budget. This action transfers from appropriated Reserves to materials and services to provide for the needed increase in food and beverage expense and ticketing expense. It also acknowledges the receipt of additional revenue but places the additional revenue in the unappropriated Fund Balance.

Fiscal Impact:

Net increase to fund balance \$222,605

Recommendation:

Staff recommends that the Metropolitan Exposition Recreation Commission adopt Resolution 13-08.

MERC Commission Meeting

June 4, 2013
3:00 pm

8.0 Action Agenda

METROPOLITAN EXPOSITION RECREATION COMMISSION**Resolution No. 13-10**

For the purpose of approving and transmitting to the Metro Council budget amendments to the MERC Fund Approved Budget for fiscal year 2013-14, and requesting amendment of the Capital Improvement Plan FY 2013-14 (CIP).

WHEREAS, Metro Code 6.01.050 provides that the Metropolitan Exposition Recreation Commission (MERC) shall annually prepare and approve an annual budget which shall, to the maximum extent permitted by law, consist of one commission-wide series of appropriations; and

WHEREAS, MERC previously approved and transmitted to the Metro Council the fiscal year 2013-14 budget for the MERC Fund; and

WHEREAS, MERC staff request certain budget amendments to the approved budget for fiscal year 2013-14; and

WHEREAS, the budget amendment includes a change to the CIP that increases one project budget for FY 2013-14.

BE IT THEREFORE RESOLVED THAT,

1. MERC approves the budget amendments to the MERC Fund for the fiscal year beginning July 1, 2013 and ending June 30, 2014 for inclusion as part of the total Metro budget for this period and approves the requested changes to the CIP as described in the attached Staff Report and Exhibit A.
2. MERC requests that the Metro COO present these amendments to the Approved Budget to Metro Council for ratification.

Passed by the Commission on June 4, 2013.

Approved as to Form:
Alison Kean Campbell, Metro Attorney

Chair

Secretary/Treasurer

By:

Nathan A. Schwartz Sykes, Senior Attorney

MERC Staff Report

Agenda Item/Issue: For the purpose of approving and transmitting to the Metro Council budget amendments to the MERC Fund Approved Budget for fiscal year 2013-14, and requesting amendment of the Capital Improvement Plan FY 2013-14 (CIP).

Resolution No.: 13-10

Presented By: Cynthia Hill

Date: June 4, 2013

Background and Analysis:

The MERC Budget was approved by Metro Council on May 2rd and submitted to Tax Supervising and Conservation Commission (TSCC). Metro Council will adopt a final budget on June 20rd.

This resolution requests a technical amendment to the approved budget, attached as “Exhibit A” .

| | | |
|------------------------------|---|---|
| 1) | Increase Expo operating budget and adjust carry over for Expo and OCC non capital projects | \$196,262 |
| 2) | Capital project carry over all venues | 581,005 |
| 3) | Increase the MERC Capital Project Management budget for professional services to support project management | 50,000 |
| 4) | Carry over of Eastside Light Rail LID Assessment | 2,431,000 |
| 5) | Reclassify a portion of the OCC Renewal & Replacement Reserve from an unappropriated reserve to an appropriated Reserve | 2,584,922 <u>(2,584,922)</u> <u>-0-</u> |
| Total Increased Expenditures | | \$3,258,267 |

Fiscal Impact:

The carryover projects are funded from the increased ending fund balance in FY 2012-13 carrying forward into FY 2013-14 beginning balance. The requested increases to the Expo Center and MERC Capital Project Management Services are funded from savings generated from the COO global budget decisions. Savings was originally added to the Business Strategy Reserve. The reclassification of the Renewal & Replacement Reserve has no immediate impact; however it allows the Commission to access those funds through a future amendment during FY 2013-14.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution No. 13-10

| <i>For FP Use Only</i> | |
|------------------------|---|
| Org Unit | # |
| | |

TECHNICAL AMENDMENT TO FY 2013-14 BUDGET

CENTER/SERVICE: MERC Operating Fund

DATE: May 28, 2013

PREPARED BY : Cynthia Hill

| | | |
|----------------------|-----------------------|----------------|
| <i>Amendment to:</i> | <i>Purpose:</i> | <i>Status:</i> |
| Proposed Budget | Operating | Ongoing |
| Approved Budget | Capital Project | One-time |
| | Renewal & Replacement | |

PROPOSED AMENDMENT: *Increase carry over for non capital projects and increase existing line items based on new information since the proposed budget was approved.*

Expo Center

Amount

- 1) The Expo budget is very lean and was balanced in March by making reductions in all departments. After the budget was balanced the COO made global decisions that created a savings to the Expo budget of \$22,674. This amendment requests three additions to the budget using \$15,000 of the \$22,674.
 - a) Increase Taxes (non payroll) for potential rate increase from the Multnomah County Drainage District \$5,000
 - b) Increase Services Temporary Help based on new contract for event custodial services 5,000
 - c) Increase Credit Card Expense as actual costs in the current year are trending higher than the proposed budget forecasted. 5,000
- 2) Reduce carry over estimate for the Halls A, B and C project included in the approved budget (\$10,000)
- 3) Increase carry over estimate for the Expo marketing project included in the approved budget \$16,262
- 4) Request carry over from utility budget savings to cover truss repair in Hall B based on a current repair estimate from the Multnomah County bridge repair of \$33,000. \$35,000

Oregon Convention Center

- 5) Carry over balance in the Metro Tourism Opportunity and Competitiveness Account – contracted professional services including outside legal and other professional services. \$140,000

Total **\$196,262**

BUDGET DETAIL:

| | |
|--------------|-----------|
| Fund: | MERC Fund |
|--------------|-----------|

| <i>Line Item Title</i> | <i>Account</i> | <i>Fund</i> | <i>Dept</i> | <i>Prog</i> | <i>Class</i> | <i>Proj</i> | <i>Amount</i> |
|--|----------------|-------------|-------------|-------------|--------------|-------------|---------------|
| <i>Resources:</i> | | | | | | | |
| Beginning Fund Balance – Expo | 900000 | 556 | 56100 | 55990 | | | \$41,262 |
| Beginning Fund Balance – OCC | 900000 | 555 | 55100 | 55990 | | | 140,000 |
| <i>Total Resources</i> | | | | | | | \$181,262 |
| <i>Requirements:</i> | | | | | | | |
| Taxes (non payroll) | 531000 | 556 | 56100 | 55000 | | | \$5,000 |
| Services – Temporary Help | 528300 | 556 | 56300 | 53000 | | | 5,000 |
| Credit Card Expense | 528210 | 556 | 56100 | 55000 | | | 5,000 |
| Services Building | 526010 | 556 | 56300 | 53800 | | | 35,000 |
| Contracted Professional Services – legal | 524020 | 550 | 55950 | 55000 | | | 90,000 |
| Contracted Professional Services | 524070 | 556 | 56100 | 55910 | | 88165 | 16,262 |
| Contracted Professional Services | 524070 | 556 | 56100 | 55910 | | 88166 | -10,000 |
| Contracted Professional Services | 524070 | 550 | 55950 | 55000 | | | 50,000 |
| <i>Subtotal Materials & Services</i> | | | | | | | 196,262 |
| Business Strategy Reserve - Expo | | | | | | | (15,000) |
| <i>Total Requirements</i> | | | | | | | \$181,262 |

| <i>For FP Use Only</i> | |
|------------------------|---|
| Org Unit | # |
| | |

TECHNICAL AMENDMENT TO FY 2013-14 BUDGET

CENTER/SERVICE: MERC Capital Projects

DATE: May 31, 2013

PREPARED BY : Cynthia Hill

| | | |
|---|---|--|
| <i>Amendment to:</i> | <i>Purpose:</i> | <i>Status:</i> |
| Proposed Budget <input type="checkbox"/> | Operating <input type="checkbox"/> | Ongoing <input type="checkbox"/> |
| Approved Budget <input checked="" type="checkbox"/> | Capital Project <input checked="" type="checkbox"/> | One-time <input checked="" type="checkbox"/> |
| | Renewal & Replacement <input checked="" type="checkbox"/> | <input type="checkbox"/> |

PROPOSED AMENDMENT: *Carry over capital projects and increase the OCC roof replacement project.*

- A) Six of the seven capital projects listed below will not be complete by June 30th. This amendment is requesting to carry over these projects into FY 2013-14.
- B) The FY 2013-14 approved budget for the OCC roof replacement project includes \$1,000,000 for construction and \$80,000 for consultant work associated with the construction. A Request for Bids (RFB) was issued to replace the roof on the Oregon Ballroom and the loading dock on the original building. Three bids were received and the costs are close to the approved construction budget of \$1,000,000. A project of this size requires some contingency funds be available. It is likely that additional insulation removal will be required, but the extent of that work is not known. This request will add an additional \$100,000 to the budget for this project from the OCC renewal & replacement reserve. The additional \$100,000 would be available to fund change orders if unanticipated work is required. This amendment also amends the Capital Improvement Plan.

| | |
|--|------------------|
| <u>EXPO Center</u> | |
| 1) Electronic Reader Board (TLT Pooled Capital) | \$40,000 |
| 2) Audio Visual Sign Towers (TLT Pooled Capital) | 30,000 |
| Subtotal Expo Center | \$70,000 |
| <u>Oregon Convention Center</u> | |
| 3) Dragon Café Concession Upgrades (Aramark Capital Investment) | 78,000 |
| 4) CCTV Replacement (R & R) | 248,005 |
| 5) Roof Replacement Project (R & R) increase budget for unanticipated work if required | 100,000 |
| Subtotal OCC | \$426,005 |
| <u>Portland Center for Performing Arts</u> | |
| 6) Keller Orchestra Pit Handrails (R & R) | 35,000 |
| 7) Keller Carpet Stairwells (R & R) | 50,000 |
| Subtotal PCPA | \$85,000 |
| Total | \$581,005 |

BUDGET DETAIL:

| | |
|--------------|-----------|
| Fund: | MERC Fund |
|--------------|-----------|

| <i>Line Item Title</i> | <i>Account</i> | <i>Fund</i> | <i>Dept</i> | <i>Prog</i> | <i>Class</i> | <i>Proj</i> | <i>Amount</i> |
|--|----------------|-------------|-------------|-------------|--------------|-------------|---------------|
| <i>Resources:</i> | | | | | | | |
| Beginning Fund Balance - Expo | 900000 | 556 | 56100 | 55990 | | | \$70,000 |
| Beginning Fund Balance - OCC | 900000 | 550 | 55100 | 55990 | | | 326,005 |
| Beginning Fund Balance - PCPA | 900000 | 554 | 58100 | 55990 | | | 85,000 |
| <i>Total Resources</i> | | | | | | | \$481,005 |
| <i>Requirements:</i> | | | | | | | |
| | | | | | | | |
| Equipment | 574000 | 556 | 56999 | 55950 | | | \$40,000 |
| Equipment | 574000 | 556 | 56999 | 55950 | | | 30,000 |
| Building & Related | 572000 | 550 | 55999 | 55950 | | | 78,000 |
| Equipment | 574000 | 550 | 55999 | 55950 | | | 248,005 |
| Building & Related | 572000 | 550 | 55999 | 55950 | | | 100,000 |
| Building & Related | 572000 | 554 | 58999 | 55950 | | | 35,000 |
| Building & Related | 572000 | 554 | 58999 | 55950 | | | 50,000 |
| <i>Total Capital</i> | | | | | | | \$581,005 |
| | | | | | | | |
| Unappropriated Renewal & Replacement Reserve | 805200 | 550 | 55100 | 55990 | | | (100,000) |
| <i>Total Requirements</i> | | | | | | | \$481,005 |
| | | | | | | | |

| <i>For FP Use Only</i> | |
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| Org Unit | # |
| | |

TECHNICAL AMENDMENT TO FY 2013-14 BUDGET

CENTER/SERVICE: MERC Administration – Capital Construction Management

DATE: May 28, 2013

PREPARED BY : Cynthia Hill

| | | |
|---|--|--|
| <i>Amendment to:</i> | <i>Purpose:</i> | <i>Status:</i> |
| Proposed Budget <input type="checkbox"/> | Operating <input checked="" type="checkbox"/> | Ongoing <input type="checkbox"/> |
| Approved Budget <input checked="" type="checkbox"/> | Capital Project <input type="checkbox"/> | One-time <input checked="" type="checkbox"/> |
| | Renewal & Replacement <input type="checkbox"/> | <input type="checkbox"/> |

PROPOSED AMENDMENT: *Increase MERC Administration Capital Project Management Support.*

Due to the number of capital projects budget in the FY 2013-14 budget there is a need for additional project management support. This amendment requests \$50,000 for contracted professional services to support MERC Capital projects on an as needed basis.

Project management in the venues is generally provided by one individual, Josh Lipscomb, who works in the Metro Construction Project Management Office (cPMO). This amendment would allow the cPMO Manager to access contracted project management services when a project is in need of either additional project management resources or specialized expertise. Other resources outside of this amendment could be accessed as well, including other Metro project managers, procurement staff or similar, on an as needed basis.

The contracted project management services would be procured through an existing on-call contract with a professional project management company. This group has already assisted with projects throughout Metro including the MRC, Parks, and Visitor Venues, specifically the aviary project at the Zoo.

The addition of these services will help ensure projects have the resources needed to be completed. The additional services for FY 13-14 would be a one-time use of funds for project management in that specific fiscal year. For FY 14-15, a longer term funding solution for project management will be explored. That discussion is expected to start in the fall.

BUDGET DETAIL:

| | |
|--------------|-----------|
| Fund: | MERC Fund |
|--------------|-----------|

| <i>Line Item Title</i> | <i>Account</i> | <i>Fund</i> | <i>Dept</i> | <i>Prog</i> | <i>Class</i> | <i>Proj</i> | <i>Amount</i> |
|--|----------------|-------------|-------------|-------------|--------------|-------------|---------------|
| <i>Resources:</i> | | | | | | | |
| Intra-Fund Clearing Transfer (Expo) | 499300 | 556 | 59600 | 55940 | | | (\$5,000) |
| Intra-Fund Clearing Transfer (OCC) | 499300 | 550 | 59500 | 55940 | | | (\$28,000) |
| Intra-Fund Clearing Transfer (PCPA) | 499300 | 554 | 59800 | 55940 | | | (\$17,000) |
| Intra-Fund Clearing Transfer (MERC Administration) | 499300 | 558 | 59000 | 55940 | | | \$50,000 |
| <i>Total Resources</i> | | | | | | | \$0 |

| | | | | | | | |
|--|--------|-----|-------|-------|--|--|------------|
| <i>Requirements:</i> | | | | | | | |
| Contracted Professional Services | 524070 | 558 | 55060 | 55000 | | | \$50,000 |
| New Capital/Business Strategy Reserve (Expo) | 701003 | 556 | 56100 | 55990 | | | (\$5,000) |
| New Capital/Business Strategy Reserve (OCC) | 701003 | 550 | 55100 | 55990 | | | (\$28,000) |
| New Capital/Business Strategy Reserve (PCPA) | 701003 | 554 | 58100 | 55990 | | | (\$17,000) |
| <i>Total Requirements</i> | | | | | | | \$0 |

| <i>For FP Use Only</i> | |
|------------------------|---|
| Org Unit | # |
| FRS | 1 |

TECHNICAL AMENDMENT TO FY 2013-14 BUDGET

CENTER/SERVICE: Oregon Convention Center and Finance & Regulatory Services

DATE: May 28, 2013

PREPARED BY : Kathy Rutkowski

| | | |
|---|--|--|
| <i>Amendment to:</i> | <i>Purpose:</i> | <i>Status:</i> |
| Proposed Budget <input type="checkbox"/> | Operating <input checked="" type="checkbox"/> | Ongoing <input type="checkbox"/> |
| Approved Budget <input checked="" type="checkbox"/> | Capital Project <input type="checkbox"/> | One-time <input checked="" type="checkbox"/> |
| | Renewal & Replacement <input type="checkbox"/> | |

PROPOSED AMENDMENT: *Carryover of Eastside Streetcar LID Assessment*

The FY 2012-13 budget provides for payment of the Eastside Streetcar local improvement district assessment levied by the City of Portland on the Oregon Convention Center. The OCC assessment is approximately \$2.2 million and is to be paid from an interfund loan from the General Fund repaid by OCC over a ten year period. We have been notified by the City of Portland that the invoices for the assessment will not be issued until next fiscal year. This action requests the carryover and re-budgeting of all actions approved in the current year to next year to allow for payment of the assessments when received in late July or early August 2013. MERC will carry over the funding received in FY 2012-13 for the anticipated first year repayment and make two years of payments in FY 2013-14.

BUDGET DETAIL:

Fund: MERC Fund – Oregon Convention Center

| <i>Line Item Title</i> | <i>Account</i> | <i>Fund</i> | <i>Dept</i> | <i>Prog</i> | <i>Class</i> | <i>Proj</i> | <i>Amount</i> |
|----------------------------|----------------|-------------|-------------|-------------|--------------|-------------|---------------|
| <i>Resources:</i> | | | | | | | |
| Beginning Fund Balance | 340000 | 550 | 59500 | 55900 | | | \$231,000 |
| Interfund loan – Principal | 496000 | 550 | 59500 | 55970 | 8010 | | \$2,200,000 |
| <i>Total Resources</i> | | | | | | | \$2,431,000 |
| <i>Requirements:</i> | | | | | | | |
| Government Assessments | 532000 | 550 | 55100 | 55000 | | | \$2,200,000 |
| Interfund Loan - Principal | 586000 | 550 | 59500 | 55970 | 8010 | | \$220,000 |
| Interfund Loan - Interest | 586500 | 550 | 59500 | 55970 | 8010 | | \$31,000 |
| <i>Total Requirements</i> | | | | | | | \$2,431,000 |

| <i>For FP Use Only</i> | |
|------------------------|---|
| Org Unit | # |
| | |

TECHNICAL AMENDMENT TO FY 2013-14 BUDGET

CENTER/SERVICE: MERC - Oregon Convention Center

DATE: May 28, 2013

PREPARED BY : Cynthia Hill

| | | | | | |
|----------------------|-------------------------------------|-----------------------|-------------------------------------|----------------|-------------------------------------|
| <i>Amendment to:</i> | | <i>Purpose:</i> | | <i>Status:</i> | |
| Proposed Budget | <input type="checkbox"/> | Operating | <input checked="" type="checkbox"/> | Ongoing | <input type="checkbox"/> |
| Approved Budget | <input checked="" type="checkbox"/> | Capital Project | <input type="checkbox"/> | One-time | <input checked="" type="checkbox"/> |
| | | Renewal & Replacement | <input type="checkbox"/> | | <input type="checkbox"/> |

PROPOSED AMENDMENT: *Reclassify \$2,584,922 from a unappropriated to an appropriated renewal & replacement reserve.*

The Oregon Convention Center (OCC) currently has \$5,227,779 in the unappropriated Renewal & Replacement Reserve and \$1,415,078 available in the appropriated Business Strategy Reserve. This amendment will reclassify \$2,584,922 of the Renewal & Replacement Reserve to an appropriated Renewal & Replacement Contingency. The combination of the Business Strategy Reserve and the Renewal & Replacement Contingency will create \$4,000,000 in appropriated reserves available in the FY 2013-14 budget. This amount would be available through a future budget amendment to be approved by the MERC Commission and Metro Council for contribution to the construction cost of the Oregon Convention Center Hotel. OCC is experiencing a better than expected current year with increased revenues generated from five additional conventions scheduled since budget adoption and a large catering event in June. New revenue combined with salary savings from three key positions vacant during the current fiscal year will contribute to a greater than expected ending fund balance. Any additional funds available at year end would replenish the renewal and replacement reserve until the \$2,584,922 is repaid plus the annual contribution of \$875,000 when due. The next annual contribution will be in FY 2014-15 as the FY 2013-14 contributions are included in the current balance of \$5,227,779.

BUDGET DETAIL:

| Fund: | MERC Fund | | | | | | |
|--|----------------|-------------|-------------|-------------|--------------|-------------|---------------|
| <i>Line Item Title</i> | <i>Account</i> | <i>Fund</i> | <i>Dept</i> | <i>Prog</i> | <i>Class</i> | <i>Proj</i> | <i>Amount</i> |
| <i>Resources:</i> | | | | | | | |
| <i>Total Resources</i> | | | | | | | \$0 |
| <i>Requirements:</i> | | | | | | | |
| Unappropriated Renewal and Replacement Reserve | 805200 | 550 | 55100 | 55990 | | | (\$2,584,922) |
| Appropriated Renewal & Replacement Contingency | 706000 | 550 | 55100 | 55990 | | | \$2,584,922 |
| <i>Total Requirements</i> | | | | | | | \$0 |

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 13-11

For the purpose of selecting Snyder Roofing of Oregon, LLC for the Oregon Convention Center -“Original Building Roof Replacement – Phase I” and authorizing the General Manager to execute a contract with Snyder Roofing of Oregon, LLC.

WHEREAS, the Oregon Convention Center’s original roof requires replacement to be split into two phases, Phase I includes the roof areas above the Oregon Ballroom and the original loading dock roof; and

WHEREAS, Section 7(B) of the Metropolitan Exposition Recreation Commission's ("the Commission") Contracting and Purchasing Rules, requires competitive sealed bids under ORS Chapter 279C for public improvements such as this project; and

WHEREAS, MERC staff has evaluated the bids, and Snyder Roofing of Oregon, LLC is the lowest responsive and responsible bidder with a bid amount of nine hundred, ninety-nine thousand, nine hundred fifty-one & 00/100 (\$999,951.00)

BE IT THEREFORE RESOLVED as follows:

1. The Commission selects Snyder Roofing of Oregon, LLC as the lowest responsive and responsible bidder in response to the Request for Bids for the Oregon Convention Center – Original Building Roof Replacement – Phase I.
2. The Commission approves the contract with Snyder Roofing of Oregon, LLC in the form substantially similar to the attached Exhibit A and authorizes the General Manager to execute the contract on behalf of the Commission.

Passed by the Commission on June 4, 2013.

Chair _____

Secretary/Treasurer

Approved As to Form:
Alison Kean Campbell, Metro Attorney

By: _____
Nathan A. Schwartz Sykes
Senior Attorney

MERC STAFF REPORT

Agenda Item/Issue: Approval of the contract and awarding to the lowest responsible bidder, Snyder Roofing of Oregon, LLC for the Oregon Convention Center, "Original Building Roof Replacement – Phase I" and delegate authority to the GM of visitor venues to execute the contract.

Resolution No: 13-11

Presented by: Scott Cruickshank

Date: June 4, 2013

Background and Analysis: In December, 2012, MERC contracted with Carleton Hart Architecture, a minority owned business, for architectural and engineering services for the purpose of preparing comprehensive construction documents to be used for soliciting bids for construction to replace the roof on the original building portion of the Oregon Convention Center. Contractor was responsible for conducting a roof assessment and then preparing construction documents for use with bidding and construction to address roof replacement for the original portion of the building. Contractor continues to evaluate opportunities to incorporate renewable energy and sustainable features, including green or ecoroof options, solar hot water heating, and solar photovoltaics; and evaluate the potential improvements for their alignment with future LEED certifications requirements. These studies will be incorporated into Phase II of the roofing project.

Following the preparation of the construction documents by Carleton Hart, MERC Staff prepared and issued Bid Documents and a Request for Bids that included a detailed scope of work for Phase I of two roof replacement projects at the Oregon Convention Center. Phase I includes the roof areas over the Oregon Ballroom and the Original building loading dock area. The existing original roofing material has failed, is out of warranty and is in need of full replacement. The scope of work includes, but is not limited to, removal of the existing roof system and related flashing down to the existing insulation of approximately 97,600 square feet of roof area. Also included is the removal and replacement of damaged insulation and substrate board where it exists, installation of an 80 mil PVC roof system, sheet metal flashings, rigid insulation assemblies, protection stanchions, roof hatch guardrails as well as modifications to existing screen wall support assemblies and the re-furbishing of existing drain assemblies. The specified roof system carries a 20 year warranty.

The RFB was issued in accordance with MERC's Purchasing and Contracting Rules and in compliance with Metro Policy and any and all state (ORS) requirements. The RFB was published in the Daily Journal of Commerce, the Observer and on the Metro website. On May 1, 2013, three bids were received and ranged from \$1,520,000 to \$999,951.00. Staff recommends Snyder Roofing of Oregon, LLC be considered as the lowest responsive and responsible bidder with the bid as submitted in the amount of \$999,951.00.

No bids were received from a certified MWESB or FOTA area business. Two of the companies that submitted bids included ESB participation. Snyder Roofing of Oregon, LLC intends to subcontract with two ESB firms for a total of \$102,303.00 or 10.2% of the contract amount.

Fiscal Impact: The FY2013-14 approved budget for the Oregon Convention Center includes \$1,000,000 for the appropriation for the Original Roof Replacement construction and \$80,000 for construction consulting services. The budget amendment for FY 2013-14, Resolution 13-10 requested an additional \$100,000 for a project contingency to provide for unanticipated costs associated with the insulation removal.

Recommendation: Staff recommends that the Metropolitan Exposition and Recreation Commission, by Resolution No.13-11, approve the contract award and written contract (attached hereto) with Snyder Roofing of Oregon, LLC., for the amount of Nine hundred, ninety-nine thousand, nine hundred fifty-one & 00/100 (\$999,951.00) for the Oregon

Convention Center – Original Building Roof Replacement – Phase I as detailed in the RFB and delegate authority to the General Manager of visitor venues to execute the contract.

Construction Agreement

MERC CONTRACT NO. 303033

THIS AGREEMENT is between Metropolitan Exposition Recreation Commission , an appointed commission of Metro, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, referred to herein as "MERC" or "Metro," and Snyder Roofing of Oregon, LLC, referred to herein as "Contractor," located at PO Box 23819 Tigard, OR 97281

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to MERC 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 June 15, 2013 through and including October 31, 2013. Substantial completion per Section 9.4 of the General Conditions is September 13, 2013.

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work. Payment shall be made by MERC on a Net 30 day basis upon approval of CONTRACTOR invoice.

ARTICLE IV BONDS

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 V 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. MERC 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



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

Construction Agreement

MERC CONTRACT NO. 303033

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 contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against MERC 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 VI COUNTERPARTS

This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

ARTICLE VII DELIVERY OF NOTICES

Any notice, request, demand, instruction, or any other communications to be given to any party hereunder shall be in writing, sent by registered or certified mail or fax as follows:

To Contractor: Michael Schilling
Snyder Roofing of Oregon, LLC
PO Box 23819
Tigard, OR 97281
503-684-3310 fax

To Metro: Metro Procurement Services
600 NE Grand Ave
Portland, Oregon 97232
503-797-1791 fax

With Copy to: Josh Lipscomb
600 NE Grand Ave
Portland, OR 97232
503-797-1795 fax

CONTRACTOR

METROPOLITAN EXPOSITION RECREATION
COMMISSION

By_____

By_____

Print Name_____

Print Name_____

Date_____

Date_____

Construction Agreement

MERC CONTRACT NO. 303033

ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

1. Purpose and Goal of Work

Contractor is to provide all equipment, labor and materials necessary for the removal and replacement of the existing roof of the Oregon Ballroom and Loading dock areas on the Oregon Convention Center, as defined in the attached Drawings and Specifications, dated 4/9/2013, hereto attached as *Attachment C and Attachment D* respectively. The Oregon Convention Center is Located at 777 NE MLK Jr. Blvd. Portland, OR 97232

The scope of work includes, but is not limited to:

1. Removal of the existing roof system and related flashing down to existing insulation at approximately 97,600 square feet of roof area.
2. Removal and replacement of damaged insulation and substrate board where exists. Installation of 80 mil PVC roof system, sheet metal flashings, and rigid insulation assemblies; installation of fall protection stanchions and roof hatch guardrails; modifications to existing screen wall support assemblies and re-furbishing of existing drain assemblies.
3. Remove and replace sealant joints between pre-cast panels per section 012300 in the Attachment B Specifications. (Bid Alternate #1 – RFB 14-2366).

Detailed information can be found in Attachment C and Attachment D

2. Contract Documents

The Contract Documents consist of this Contract; the Advertisement for Bids; Request for Bids (RFB 14-2366); the Instructions to Bidders; the Bid Forms (including Schedule of Bid Prices and Schedule of values, Bid Bond, First-Tier Subcontractor Disclosure, Surety, MBE/WBE/ESB Program, Resident/Non-resident Status, Signature Page, Labor and Material Payment Bond and Performance Bond);

ATTACHMENT B, METRO GENERAL CONDITIONS;

ATTACHMENT C, Plan Set, "Metro Oregon Convention Center Roof Replacement–Phase 1", dated April 9, 2013;

ATTACHMENT D,

Specifications, "Metro Oregon Convention Center Roof Replacement–Phase 1" dated, April 9, 2013;

Addenda 1 through 2; the Performance and the Labor and Materials Payment Bonds; 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 Contract 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 Contract 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.

Scope of Work

Contractor shall 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 shall fully comply with each and every term, condition and provision of the Contract Documents.

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.

Construction Agreement

MERC CONTRACT NO. 303033

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.

3. Payment and Billing,

Contractor shall perform the above work for a maximum price not to exceed NINE HUNDRED NINETY-NINE THOUSAND, NINE HUNDRED FIFTY-ONE AND NO/100THS DOLLARS (\$999,951.00)

Unit Pricing

| | |
|--|-------------------|
| Additional 3" EPS insulation removal and replacement | \$ 1.65 per sq ft |
| Additional ½" gypsum substrate board removal and replacement | \$ 1.35 per sq ft |
| Replacement of disturbed Fireproofing | \$61.00 per sq ft |

The maximum price includes all fees, costs and expenses of whatever nature. Each of MERC's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the MERC contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and expenses incurred during the billing period, and will not be submitted more frequently than once a month. Contractor's billing invoices shall be sent to Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or metroaccountspayable@oregonmetro.gov. The MERC contract number shall be referenced in the email subject line. Contractor's billing invoices for services through June 30 shall be submitted to Metro by July 15. Payment shall be made by MERC on a Net 30 day basis upon approval of Contractor invoice.

Construction Agreement

MERC CONTRACT NO. 303033

Attachment B - SECTION 007200
METRO GENERAL CONDITIONS

TABLE OF CONTENTS

| | |
|---|--------------|
| ARTICLE 1 GENERAL PROVISIONS..... | 4-9 |
| 1.1 DEFINITIONS | |
| 1.2 INTERPRETATION AND USE OF CONTRACT DOCUMENTS. | |
| 1.3 SUPPLY OF CONTRACT DOCUMENTS. | |
| 1.4 USE OF CONTRACT DOCUMENTS. | |
| 1.5 COPYRIGHT. | |
| 1.6 CONTRACTOR'S STATUS AS INDEPENDENT CONTRACTOR. | |
| 1.7 NO THIRD-PARTY BENEFICIARY TO THE CONTRACT. | |
| 1.8 SEVERABILITY CLAUSE. | |
| 1.9 NOTICE OR SERVICE. | |
| ARTICLE 2 CONTRACTOR | 9-13 |
| 2.1 RESPONSIBILITIES OF THE CONTRACTOR. | |
| 2.2 DOCUMENTS. | |
| 2.3 CONTRACTOR'S AUTHORIZED REPRESENTATIVE. | |
| 2.4 ON-SITE REPRESENTATION REQUIRED. | |
| 2.5 CONTRACTOR'S OFFICE AT THE SITE. | |
| 2.6 USE OF THE SITE BY CONTRACTOR. | |
| 2.7 REVIEW OF PROJECT CONDITIONS. | |
| 2.8 CONSTRUCTION STAKING. | |
| 2.9 CONSTRUCTION STAGING AREA. | |
| 2.10 KEY PERSONNEL. | |
| 2.11 CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS. | |
| 2.12 CONTRACTOR TO SUPPLY SUFFICIENT MATERIAL AND WORKERS. | |
| 2.13 CONSTRUCTION PLANT, EQUIPMENT, AND METHODS. | |
| 2.14 PERMITS. | |
| 2.15 CONTRACTOR'S TEMPORARY STRUCTURES. | |
| 2.16 COMPLIANCE WITH PRODUCT MANUFACTURER'S RECOMMENDATIONS. | |
| 2.17 ACCOUNTING RECORDS | |
| ARTICLE 3 ADMINISTRATION OF THE CONTRACT | 13-18 |
| 3.1 AUTHORITY AND RELATIONSHIPS OF METRO AND ARCHITECT. | |
| 3.2 AUTHORITY OF METRO. | |
| 3.3 REQUEST FOR INFORMATION. | |
| 3.4 CONTRACTOR'S CLAIMS. | |
| 3.5 METRO'S RIGHT TO STOP, PERFORM, OR DELETE WORK. | |
| 3.6 METRO'S RIGHT TO ADJUST PAYMENTS. | |
| 3.7 MEDIATION. | |
| 3.8 LITIGATION. | |
| 3.9 WORK TO CONTINUE NOTWITHSTANDING DISPUTE. | |
| ARTICLE 4 SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT | 18-19 |
| 4.1 SUBCONTRACTING. | |
| 4.2 OBJECTION TO SUBCONTRACTORS OR SUPPLIERS. | |
| 4.3 SUBSTITUTION, CHANGE, OR ADDITION OF SUBCONTRACTORS OR SUPPLIERS. | |
| 4.4 REMOVAL OF SUBCONTRACTORS AT REQUEST OF METRO. | |
| 4.5 METRO NOT OBLIGATED TO DETECT UNSATISFACTORY WORK. | |
| 4.6 NO CONTRACTUAL RELATIONSHIPS BETWEEN METRO AND CONTRACTOR'S SUBCONTRACTORS AND SUPPLIERS. | |
| 4.7 CONTRACTOR'S AGREEMENTS WITH SUBCONTRACTORS. | |
| 4.8 ASSIGNMENT. | |



Construction Agreement

MERC CONTRACT NO. 303033

| | |
|---|--------------|
| ARTICLE 5 TIME OF COMPLETION AND SCHEDULE FOR THE WORK..... | 19-20 |
| 5.1 PROSECUTION OF WORK GENERALLY. | |
| 5.2 TIME OF COMPLETION. | |
| 5.3 EXTENSIONS OF TIME. | |
| 5.4 PROJECT SCHEDULING. | |
| 5.5 USE OF COMPLETED PARTS OF THE WORK BEFORE ACCEPTANCE. | |
| ARTICLE 6 COORDINATION WITH OTHER METRO CONTRACTORS | 20-22 |
| 6.1 OTHER METRO CONTRACTORS GENERALLY. | |
| 6.2 DUTY TO INSPECT OTHER METRO CONTRACTORS' WORK. | |
| 6.3 LATENT DEFECTS IN OTHER CONTRACTOR'S WORK. | |
| 6.4 DUTY TO MAINTAIN SCHEDULE. | |
| 6.5 FAILURE TO MAINTAIN SCHEDULE. | |
| 6.6 FAILURE TO COORDINATE WORK. | |
| 6.7 OTHER METRO CONTRACTORS' FAILURE TO COORDINATE. | |
| 6.8 CONFLICTS AMONG CONTRACTORS. | |
| 6.9 COORDINATION DRAWINGS. | |
| 6.10 FURNISHED BY OWNER, INSTALLED BY CONTRACTOR ("FOIC") ITEMS. | |
| 6.11 CONFERENCES. | |
| ARTICLE 7 CONTROL AND QUALITY OF WORK AND MATERIAL | 23-27 |
| 7.1 QUALITY CONTROL. | |
| 7.2 INSPECTION. | |
| 7.3 UNSATISFACTORY MATERIALS AND WORKMANSHIP. | |
| 7.4 GENERAL WARRANTY OF CONTRACTOR. | |
| 7.5 THIRD-PARTY WARRANTIES. | |
| 7.6 SUBCONTRACTOR WARRANTIES. | |
| 7.7 CORRECTION OF WORK BY CONTRACTOR. | |
| 7.8 WARRANTY AND CORRECTION AGREEMENTS BY SUBCONTRACTORS. | |
| 7.9 REMEDIES NOT EXCLUSIVE. | |
| 7.10 PROOF OF COMPLIANCE WITH CONTRACT PROVISIONS. | |
| 7.11 PATENTS, COPYRIGHTS, TRADEMARKS. | |
| 7.12 ANTI-TRUST CLAIMS. | |
| ARTICLE 8 CHANGES IN THE WORK..... | 27-29 |
| 8.1 CHANGE ORDERS GENERALLY. | |
| 8.2 PROCEDURE FOR DETERMINING IMPACT OF CHANGE ORDERS ON CONTRACT AMOUNT. | |
| 8.3 LIMITATIONS WHEN CHANGE ORDERS IMPACT CONTRACT AMOUNT. | |
| 8.4 FORCE ACCOUNT WORK. | |
| 8.5 CONTRACTOR PROPOSALS FOR CHANGES IN WORK. | |
| 8.6 IMPACT OF AUTHORIZED CHANGES IN THE CONTRACT. | |
| ARTICLE 9 PAYMENTS AND COMPLETION | 29-33 |
| 9.1 SCOPE OF PAYMENT. | |
| 9.2 SCHEDULE OF VALUES. | |
| 9.3 PROGRESS PAYMENT PROCEDURE. | |
| 9.4 SUBSTANTIAL COMPLETION. | |
| 9.5 FINAL COMPLETION AND ACCEPTANCE. | |
| 9.6 CLOSEOUT SUBMITTALS. | |
| 9.7 RELEASES. | |
| 9.8 FINAL PAYMENT. | |
| 9.9 NO WAIVER OF RIGHTS. | |
| ARTICLE 10 SAFETY, USE OF SITE, AND PROTECTION OF THE WORK..... | 33-38 |
| 10.1 LAWS AND REGULATIONS. | |
| 10.2 SAFETY REQUIREMENTS. | |
| 10.3 FIRST AID. | |
| 10.4 USE OF SITE. | |
| 10.5 PROTECTION OF WORK, PERSONS, AND PROPERTY AGAINST DAMAGE. | |



Construction Agreement

MERC CONTRACT NO. 303033

| | |
|---|--------------|
| 10.6 UTILITIES. | |
| 10.7 HAZARDOUS SUBSTANCES ENCOUNTERED DURING CONSTRUCTION AND OTHER ENVIRONMENTAL LAWS. | |
| 10.8 ADDITIONAL REQUIREMENTS FOR WORK. | |
| ARTICLE 11 INDEMNIFICATION | 39 |
| 11.1 INDEMNIFICATION. | |
| ARTICLE 12 INSURANCE | 39-42 |
| 12.1 GENERAL INSURANCE REQUIREMENT | |
| 12.2 REQUIRED COVERAGE | |
| 12.3 LIMITS | |
| 12.4 ADDITIONAL INSURED | |
| 12.5 JOINT VENTURE | |
| 12.6 PRIMARY COVERAGE | |
| 12.7 CONTRACTOR'S FAILURE TO MAINTAIN INSURANCE | |
| 12.8 CERTIFICATES OF INSURANCE | |
| 12.9 SUBCONTRACTOR INSURANCE | |
| 12.10 LIMITATIONS ON COVERAGE | |
| 12.11 PROPERTY INSURANCE | |
| ARTICLE 13 MINORITY/WOMEN/EMERGING SMALL BUSINESS PROGRAM | 42-43 |
| ARTICLE 14 MISCELLANEOUS STATUTORY RESPONSIBILITIES OF THE CONTRACTOR | 43 |
| ARTICLE 15 TERMINATION OR SUSPENSION OF THE WORK | 43-45 |
| 15.1 DEFAULT OF CONTRACTOR. | |
| 15.2 TERMINATION IN THE PUBLIC INTEREST. | |
| EXHIBIT 1 WARRANTY FORM | |
| EXHIBIT 2 SUBCONTRACTOR ASSIGNMENT OF ANTITRUST CLAIMS | |
| EXHIBIT 3 AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE (PROGRESS PAYMENT) | |
| EXHIBIT 4 AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE (FINAL CLOSEOUT) | |
| EXHIBIT 5 AFFIDAVIT, LIEN WAIVER AND RELEASE – CONDITIONAL FINAL (SUBCONTRACTOR CLOSEOUT) | |

Construction Agreement

MERC CONTRACT NO. 303033

METRO 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: An earthquake, flood, typhoon, cyclone, or other natural phenomenon of catastrophic proportions or intensity.

1.1.2 Addendum: A document issued by Metro during the solicitation period clarifying, adding, deleting, or materially changing Metro's solicitation documents.

1.1.3 Alternate Bids: 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 Architect: A person retained by Metro as its design professional for the Work and authorized to practice architecture in the State of Oregon. The term "Architect" refers to the Architect or the Architect's authorized representative.

1.1.5 "As-Builts" or Record Documents: 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 Aspirational Target: Target of intended utilization of MBE, WBE, and ESB firms that a contractor has no contractual obligation to meet.

1.1.7 Authorized Representative: A person acting on behalf of another through expressly delegated authority as specified in these Contract Documents.

1.1.8 Bid: The written offer of a Bidder to perform the Work as defined in these Contract Documents submitted in compliance with Metro's Bid Documents and Public Contracting Rules.

1.1.9 Bidder: A person acting directly or through a duly and legally authorized representative who submits or intends to submit a Bid for the Work as described in these Contract Documents.

1.1.10 Bid Documents: Those documents upon which a Bidder bases its bid to Metro.

1.1.11 Business Day: Calendar day excluding Saturdays, Sundays, and legal holidays.

1.1.12 Bid Forms: Forms required by Metro to be submitted with a Bid.

1.1.13 City or County: The city or county in which the Work is located.

1.1.14 Change Order: A written document signed by Metro and Contractor stating their agreement upon all of the following:

1.1.14.1 The change in the Work;

1.1.14.2 The amount of any adjustment in the Contract Amount; and

1.1.14.3 The extent of any adjustment to the Contract Time.

1.1.15 Clarification: A written document consisting of supplementary details, instruction or information issued by Metro after the award of Contract that 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.

1.1.16 Completion: See "Substantial Completion" and "Final Completion and Acceptance."

1.1.17 Construction Schedule or Schedule: The timeline described in Article 5.

1.1.18 Contract: The Contract Documents.

1.1.19 Contract Amount: The total amount shown in the Construction Agreement as modified by any Change Orders.

1.1.20 Contract Documents or Contract or Bidding Documents: All of the following documents: 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: The person or entity having 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: The amount of time stated in the Contract Documents for the performance of all or a specified portion of the Work, as modified by any Change Orders.

Construction Agreement

MERC CONTRACT NO. 303033

- 1.1.23 Critical Path Method or CPM: The critical path method of scheduling as understood and interpreted by standard industry practice.
- 1.1.24 Day: Calendar day including Saturdays, Sundays, and legal holidays.
- 1.1.25 Defective Work: Work that (a) is performed in an unsatisfactory, faulty, or deficient manner; (b) does not conform to the Contract Documents; (c) does not meet the requirements of any reference standard, test, or approval referred to or incorporated by the Contract Documents; or (d) has been damaged by anyone other than Metro prior to Acceptance of the Work, whether or not such Work is in Metro's possession or use.
- 1.1.26 Direct Costs: The costs of labor (including benefits), materials, and equipment incurred by the person performing the Work or part of the Work.
- 1.1.27 Drawings: 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 Engineer: A person lawfully practicing engineering. The term "Engineer" refers to the Engineer or the Engineer's authorized representative.
- 1.1.29 Environmental Laws: Any applicable statute, law, ordinance, order, consent decree, judgment, permit, license, code provision, covenant deed, common law, treaty, convention, or other requirement pertaining to protection of the environment, health or safety, natural resources, conservation, wildlife, waste management, or disposal of hazardous substances or pollution, including but not limited to regulation of releases to air, land, water, and groundwater.
- 1.1.30 Equal, Approved, Approved Equal: The material or product to be supplied or installed is equal to or better than that specified in function, performance, reliability, quality, and general configuration and is approved by Architect. Equality in reference to the Project design requirements shall be determined by Architect 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.
- 1.1.31 Final Completion: Full performance of all of the Work and acceptance of the Project by Metro.
- 1.1.32 Final Payment: The balance of the Contract Amount to be paid to the Contractor upon Final Completion and Acceptance of the Work. "Final Payment" includes payment of any withheld Retainage less deductions permitted or required by the Contract.
- 1.1.33 Force Account Work: Work, ordered in writing by Metro, for which Contractor must report its actual costs in accordance with Section 8.4 of the General Conditions.
- 1.1.34 General Conditions: The Metro General Conditions of the Contract for Construction set forth in this document.
- 1.1.35 Hazardous Materials: Any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local statute, regulation, or ordinance presently in effect or subsequently enacted. For purposes of Section 10.7, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project Site regardless of whether the Hazardous Material was specified, required, or otherwise addressed in the Contract Documents.
- 1.1.36 Invitation to Bid ("ITB"): A solicitation to perform Work where a Contract is awarded based on price.
- 1.1.37 Landscape Architect: A person lawfully practicing landscape architecture. The term "Landscape Architect" refers to the Landscape Architect or the Landscape Architect's authorized representative.
- 1.1.38 LEED Certification: A Leadership in Energy and Design Certification issued by the United States Green Building Council (USGBC).
- 1.1.39 Lump Sum: A way of expressing the Contract Amount for the Work, or the price bid for a portion of the Work, stated as a single price for all labor, materials, supplies, incidental work, overhead, and profit.
- 1.1.40 Metro: A metropolitan service district organized under the laws of the State of Oregon and the Metro Charter.
- 1.1.41 Metro Chief Operating Officer or COO: The Chief Operating Officer of Metro.
- 1.1.42 Metro Council or Council: Metro's elected governing body.
- 1.1.43 Minority Business Enterprise, Women Business Enterprise and Emerging Small Business ("MWESB"): A firm eligible to participate as a Minority Business Enterprise, Women Business Enterprise or Emerging Small Business (collectively referred to as "MWESB") because it meets the criteria as established by the Office of Minority Women and Emerging Small Business in the State of Oregon. A firm will no longer qualify as an MWESB on

Construction Agreement

MERC CONTRACT NO. 303033

this Contract when it receives notification of decertification, denial of recertification, or notice of graduation by the certifying agency.

1.1.44 MWESB Program: 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 2.04.100 to 2.04.190.

1.1.45 Notice to Proceed: The written notice given by Metro to the Contractor to proceed with all or part of the Work. The Notice to Proceed will also establish the date and time of a preconstruction conference.

1.1.46 Overhead: When applied to the cost of the Work, includes the following items, when reasonable and necessary for completion of the Work:

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

1.1.46.2 Small tools (less than \$250 capital cost per item).

1.1.46.3 Contractor-owned equipment.

1.1.46.4 Equipment maintenance and repairs.

1.1.46.5 Temporary construction, utilities, and safety requirements.

1.1.46.6 Transportation of materials other than direct identifiable cost of specific deliveries, or as included in price of material.

1.1.46.7 Parking fees for workers (if applicable).

1.1.46.8 Permit fees paid by the Contractor pursuant to the Contract Documents.

1.1.46.9 Cost of reproduction.

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

1.1.46.10.1 Accounting functions of Contractor's home and branch office.

1.1.46.10.2 General expenses of Contractor's home and branch office.

1.1.46.10.3 Interest on capital.

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

1.1.47 Owner: Metro.

1.1.48 Person: An individual, partnership, corporation, joint venture, limited liability corporation, joint stock company, or other legal entity.

1.1.49 Plans: Drawings.

1.1.50 Profit: That portion of Contractor's Bid price that is not Direct Costs or Overhead

1.1.51 Project: The Work described in the Contract Documents.

1.1.52 Project Manager: The Metro representative on the construction Site. The Project Manager 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 term "Project Manager" will refer to the on-site Metro representative and to any duly appointed assistants who may be designated in writing. The Architect will be called upon as required by and at the direction of Metro for technical assistance and for interpretation of the Contract Documents.

1.1.53 Proposal: The written offer of a Proposer to perform the Work as defined in these Contract Documents submitted in compliance with Metro's Request for Proposals and Public Contracting Rules.

1.1.54 Proposal Documents: Those documents upon which a Proposer responds to a Request for Proposals.

1.1.55 Proposer: A person who responds or intends to respond to a Request for Proposals issued by Metro.

1.1.56 Provide: To furnish and install complete and in place and ready for operation and use.

1.1.57 Punch List: The list prepared by the Architect and/or Project Manager at the time of Substantial Completion that reflects Contractor's incomplete, nonconforming Work. Punch List items must be completed to the satisfaction of the Architect and Metro in order for the Project to reach Final Completion and Acceptance.

1.1.58 Reference Specifications: Bulletins, standards, rules, methods of analysis or testing, codes, and Specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents that when included in the Contract Documents establish the basis by which specific portions of the Work

Construction Agreement

MERC CONTRACT NO. 303033

are to be performed. All such references specified refer to the latest edition thereof, including any Amendments in effect and published at the time of advertising for Bids or of issuing the permit for the Project.

1.1.59 Release: When used in regard to environmental laws or regulations, "release" as defined in Oregon or federal law.

1.1.60 Request for Information (RFI): A written request made by Contractor for additional information to clarify an ambiguity in the Contract Documents.

1.1.61 Request for Proposals ("RFP"): A solicitation to perform Work issued where a Contract is awarded based on factors other than or in addition to price.

1.1.62 Retainage or Retention: The difference between the amount earned by Contractor on the Contract and the amount paid on the Contract by Metro.

1.1.63 Schedule of Values: The detailed breakdown of a lump-sum contract amount as required in Section 9.2.

1.1.64 Separate Contract: A contract between Metro and a party other than Contractor for the construction or furnishing of a portion of the Project.

1.1.65 Shown, As Shown: Work shown on the drawings that is a part of the Contract Documents.

1.1.66 Site: The real property upon which the Project is located.

1.1.67 Solicitation Documents: An RFB.

1.1.68 Special Inspector: A representative of Metro, Architect, Engineer or Geotechnical Engineer with specialized knowledge applicable to the installation of certain elements of the Work.

1.1.69 Specifications: 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, including any Reference Specifications.

1.1.70 Subcontractor: A person that has a contract with Contractor to perform a portion of the Work at the Site.

1.1.71 Submittals: Includes 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 that Contractor is required to submit to the Architect.

1.1.72 Substantial Completion: 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 lawfully occupy or use the Work for its intended use.

1.1.73 Supplier: An individual, partnership, corporation or joint venture entering into an agreement with Metro or Contractor for furnishing a portion of the Work that requires no labor at the Site, other than common carriers.

1.1.74 Unit Price: The dollar amount to complete a particular portion of the Contract Work, as defined in the Bid and Supplementary Conditions, and includes all costs, including but not limited to equipment, labor, materials, incidentals, Overhead, and Profit for the portion of Work described.

1.1.75 Unusually Persistent Severe Weather: Exists in any period when daily rainfall exceeds 0.50 inch during a month when the monthly average rainfall exceeds the normal monthly average by over twenty-five percent (25%), or when average daytime temperatures at the Project are less than 32 degrees F and are accompanied by accumulations of ice or snow, continuing for a day or more in excess of the annual average number of consecutive days severe weather conditions persist for the part of the Metro region where the Project is located ("Annual Average"). The Annual Average shall be calculated for this purpose based on ten-year averages reported in the Local Climatological Data for Portland Oregon, available at the Portland Weather Service Office. Contractor shall incorporate said Annual Average number of consecutive days severe weather conditions exist into the Project schedule at Project inception.

1.1.76 Work: 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 Interpretation and Use of Contract Documents.

1.2.1 Intent and Effect of the Contract. The Contract Documents form the Contract for construction and represent an integrated agreement between the Parties. The Contract supersedes all prior negotiations, representations, or agreements between the Parties, either written or oral. The Contract Documents are

Construction Agreement

MERC CONTRACT NO. 303033

complementary, and what is required by one shall be as binding as if required by all. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. Unless otherwise stated in the Contract Documents, words describing materials or Work that have a well-known technical or trade meaning shall be construed in accordance with such meanings.

1.2.2 Modification of Contract Documents. The Contract Documents may only be modified by written Amendment or Change Order signed by both Parties.

1.2.3 Divisions and Headings. Titles and headings are for the convenience of organizing the Contract Documents and shall not control or limit the Contractor's obligations under the Contract.

1.2.4 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 the quality or according to qualifications noted, to perform each operation called for, in the sequence called for, and to provide therefore 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.

1.2.5 Precedence of Contract Documents. All determination of the precedence of, or resolution of discrepancies in, the Contract Documents shall be made by Metro, but in general, precedence will be in accordance with the following list with the highest precedence item at the top:

1.2.5.1 Executed Construction Agreement.

1.2.5.2 Supplementary Conditions.

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

1.2.5.4 Specifications.

1.2.5.5 Drawings.

1.2.5.6 Contractor's Proposal. Within each of the above documents, detailed information takes precedence over general information and words take precedence over numbers unless obviously incorrect.

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

1.2.6 Meaning of Miscellaneous Phrases. Unless the context requires otherwise, phrases in the Contract Documents shall be interpreted as follows:

1.2.6.1 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.

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

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

1.2.7 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 Information to Metro pursuant to Section 3.3. If Contractor proceeds with any such Work without receiving a response to the Request for Information, Contractor shall be responsible for all resulting damage and defects, and shall perform any Work necessary to comply with the Request for Information at no cost to Metro. Any Work or material not indicated in the Contract Documents that 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.



Construction Agreement

MERC CONTRACT NO. 303033

1.2.8 Standards that 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. Dimensions not expressly provided in the Contract Documents are to be computed, rather than determined by scale or rule.

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 Contractor's Status as Independent Contractor. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor under ORS 670.600. The Contractor further agrees that Contractor, its officers, agents, and employees, any Subcontractor or Supplier of Contractor of any tier, or its officers, agents, or employees, are not officers, employees, or agents of Metro under the Oregon Tort Claims Act (ORS 30.260 through 30.300). Contractor 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. Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.

1.7 No Third-Party Beneficiary to the Contract. The Parties agree that the execution of the Contract is not intended to, nor does it, create any third-party beneficiary rights in any person.

1.8 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.

1.9 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. Notice may be delivered by e-mail as long as a hard copy is mailed the same day to the relevant person by the methods noted above. 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 or Proposal by the Contractor 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

2.1 Responsibilities of the Contractor.

2.1.1 The Contractor will perform the Work as required by the Contract Documents, including but not limited to providing all labor, materials, equipment, tools, machines, and incidental work necessary for its performance. The Contractor will supervise and direct the Work using the Contractor's best skill and attention. Contractor is solely responsible for and will have control of all of the means and methods of construction. Contractor shall be responsible to Metro for the acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor

Construction Agreement

MERC CONTRACT NO. 303033

or any of its Subcontractors. 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.

2.1.2 Until the Work is completed and accepted by Metro, the Contractor is responsible for any damage it causes to either permanent or temporary work, utilities, materials, plants, and equipment, all of which must be repaired to the satisfaction of the Project Manager at the Contractor's expense. Damage caused by vandals must be covered by the Contractor's insurance. Damage to any portion of the Work that has been completed and accepted by Metro and that is open for public use is not the responsibility of the Contractor if caused by third persons, such as vandals.

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

2.2 Documents.

2.2.1 The Contractor will maintain at the Site for Metro one record As-Built copy of the drawings, plans, Specifications, Addenda, Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction, as well as one record copy of shop drawings that have been reviewed and are being used. These as-built documents shall incorporate all changes and substitutions to the Work, including without limitation changes or substitutions arising from Change Orders, construction change directives, and details clarified by requests for information, supplemental instructions, or approved shop drawings. The Contractor's as-built documentation shall be available to the Architect and Metro during the course of the Project.

2.2.2 The Contractor shall maintain all approved permit drawings in a manner that will make them accessible at the Project Site to governmental inspectors and other authorized agencies. All approved drawings shall be wrapped, marked, and delivered to Metro within 60 days of Substantial Completion.

2.2.3 The Contractor must continuously maintain at the Project Site all material safety data sheets, safety records, daily logs, and other Contract documentation necessary to immediately ascertain the safety of the Work and to establish compliance with life safety policies, hazardous materials requirements, and the Contract Documents.

2.2.4 The Contractor, with its Subcontractors, will prepare draft record Contract Documents showing all as-built conditions as required under this Section 2.2 and submit them to Metro for review. Based on Metro's review and comments, if any, and pursuant to Metro's close-out policies and procedures, Contractor will prepare and deliver to Metro within 60 days of Substantial Completion, final, accurate, and complete record Contract Documents, including without limitation record drawings and Specifications showing the exact "as-built" conditions of the Work.

2.3 Contractor's Authorized Representative. Prior to commencing any Work under this Contract, the Contractor shall appoint in writing an authorized representative or representatives. Such appointment 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 that the individual may authorize, whether the individual may respond to RFPs and for what maximum dollar amount, and whether the individual may submit a claim pursuant to Section 3.4.

2.4 On-Site Representation Required. 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 to or related to this Contract. In the event that Metro deems it reasonably necessary to take immediate actions at the Site pertaining or relating to this Contract and Contractor has failed to comply with this Section and is consequently not fully represented at the Site at such time, then Contractor shall be deemed to acquiesce in all actions so taken by Metro.

2.5 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 Project Manager. 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 Project Manager on behalf of Metro or the Architect, 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.

2.6 Use of the Site by Contractor. Contractor shall have complete and exclusive use of the premises for execution of the Work within the boundaries shown on the drawings. The Contractor's use of the premises is limited only by Metro's right to perform Work or to retain other contractors on portions of the Project. All construction activities,

Construction Agreement

MERC CONTRACT NO. 303033

storage, staging, and Work shall be confined to the limits of Work, as per the drawings. Under no circumstances shall portions of the Site beyond the limits of Work be disturbed. The Contractor shall appropriately fence and maintain barriers to confine limits of Work to those areas indicated on the drawings. All driveways and entrances to the Site shall remain clear and available to Metro and emergency vehicles at all times. The Contractor shall not use these areas for parking or storage of materials. The Contractor shall schedule delivery of materials to minimize space and time requirements for storage of materials and equipment on Site. The Contractor shall keep roadway pavement clean, free of mud, rocks, debris associated with materials, and vehicles. The Contractor shall coordinate use of the premises under the direction of the Architect and Owner. The Contractor shall assume all responsibility for the protection and safe keeping of the Site, structures, and products stored on the Site included in this Contract. At no cost to Metro, the Contractor shall move any stored products that interfere with operations of Metro or construction activities. The Contractor shall obtain and pay for the use of additional storage or Work areas needed for operations.

2.7 Review of Project Conditions. Prior to execution of the Contract, the Contractor will evaluate the conditions and limitations under which the Work is to be performed, including without limitation (i) the geographical and topographical location, condition, layout, and nature of the Project Site and surrounding areas; (ii) generally prevailing climatic conditions; (iii) anticipated labor supply and costs; (iv) availability and cost of materials, tools, and equipment; (vi) ease or difficulty of access to the Project Site by vehicles, equipment and workers; and (v) other similar issues. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. Metro will not be required to make any adjustment to the Contract Time or the Contract Price in connection with any failure by the Contractor to have complied with the requirements of this Section.

2.8 Construction Staking. Contractor shall provide all necessary construction staking as to lines and grades shown on the drawings. Contractor shall protect and preserve all control points in their original position or be responsible for providing new control points established from Architect's original control points.

2.9 Construction Staging Area. Coordinate use of the Site with Owner prior to utilization of the area. Providing Site security, barriers, and other temporary protection is the responsibility of the Contractor. Limit all construction activities within the Work limits shown on the drawings. All areas disturbed in any way or during construction and not covered by roads, parking, or structures shall be rehabilitated to their pre-construction condition.

2.10 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.

2.11 Contractor's Employees and Subcontractors.

2.11.1 Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. It is the Contractor's responsibility to hire all personnel for the proper and diligent performance of the Work, and the Contractor shall maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum.

2.11.2 Metro may notify the Contractor that it needs to exclude or remove from the Project Site any or all employees, agents, suppliers, or representatives of the Contractor or its Subcontractors who threaten the safety of others or who are disruptive to the Project or Metro's operations. The Contractor will supply replacement personnel promptly after receiving notice of exclusion or removal. Nothing in this Section requires the Contractor to take any particular employment or contract action with regard to an employee or Subcontractor.

2.11.3 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.

2.12 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 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.

2.13 Construction Plant, Equipment, and Methods.

2.13.1 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 that will

Construction Agreement

MERC CONTRACT NO. 303033

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 regulations during construction.

2.13.2 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, appear 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 the 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.

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

2.14 Permits.

2.14.1 The Contractor, without additional expense to Metro, is responsible for obtaining and paying for any necessary fees, licenses, and Permits and for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the Work, unless expressly provided otherwise in other portions of the Contract Documents. Notwithstanding this Section, Metro will submit Contract Documents to the City of Portland and pay all plan check fees and building permit fees.

2.14.2 The Contractor understands that preliminary approval of Metro's plans and Specifications by regulatory agencies does not prohibit such agencies from requesting changes in order that the Work complies with the provisions of applicable codes, laws, and regulations. The Contractor agrees that a reasonable number of changes directed by regulatory inspectors is inherent in the nature of construction work and that its Bid includes the costs of making them. The Contractor will bear the expense of complying with the requirements of regulatory inspectors for a reasonable number of changes even if such requirements require different or additional Work than that originally contemplated by the Contract Documents.

2.15 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.

2.16 Compliance with Product Manufacturer's Recommendations. Unless otherwise directed by the Architect, the Contractor shall perform all Work in accordance with the product manufacturer's recommendations, Specifications, or directions for best results. No predatory step or installation procedure may be omitted unless specifically authorized by the Contract Documents or at the direction of the Architect. Conflicts among manufacturer's directions or the Contract Documents shall be resolved by the Architect.

2.17 Accounting Records.

2.17.1 The Contractor and Subcontractors shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant and sub-consultants shall maintain any other records necessary to clearly document:

2.17.1.1 The performance of the Contractor, including but not limited to Contractor 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 Contractor or Subcontractor under the terms of the Contract or subcontract;

2.17.1.2 Any claims arising from or relating to the performance of Contractor or Subcontractor under this Contract;

2.17.1.3 Any cost and pricing data relating to the Contract; and

2.17.1.4 Payments made to all suppliers and sub-consultants.

2.17.1.5 The records described in this Section 2.17.1 are the Contract Records.

2.17.2 The Contractor and Subcontractors shall maintain the Contract Records for the longer period of (a) six years from the date of final completion of the Contract to which the Contract Records relate or (b) until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract.

Construction Agreement

MERC CONTRACT NO. 303033

2.17.3 The Contractor and Subcontractors shall make Contract Records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of Metro's 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 Contract 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 Contractor elects to have such Contract Records outside these boundaries, the costs paid by Contractor to Metro for inspection, auditing, examining, and copying those records shall not be recoverable costs in any legal proceeding.

2.17.4 The 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 Metro Auditor, to inspect, examine, copy, and audit the books and records of Contractor or Subcontractor relating to this Contract, 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.

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

2.17.6 The Contractor and Subcontractors agree that in the event such Contract Records or any audit disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, Contractor and Subcontractors 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.

2.17.7 Failure of the Contractor or Subcontractors to keep or disclose Contract Records as required by this Contract or any solicitation document may result in debarment 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 3 ADMINISTRATION OF THE CONTRACT

3.1 Authority and Relationships of Metro and Architect. Except as specifically provided in this Section, no individual other than the Metro Chief Operating Officer or the Project Manager, duly appointed as set forth below, shall have any authority to make representations, statements, or decisions of whatever nature binding Metro or Architect 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 the Project Manager 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.

3.2 Authority of Metro. The Work must be performed to the complete satisfaction of the Project Manager.

3.2.1 The decision of the Project Manager will be final, binding, and conclusive on the Contractor on all questions that arise regarding the quantity of materials and Work, the quality of materials and Work, the acceptability of materials furnished and Work performed, the acceptable rate of progress of the Work, the interpretation of the plans and Specifications, the measurement of all quantities, the acceptable fulfillment of the Contract on the part of the Contractor, and payments under the Contract.

3.2.2 Work will not be considered completed until it has passed final inspection by the Project Manager and is accepted by Metro. The authority of the Project Manager is such that the Contractor must at all times carry out and fulfill the instructions and directions of the Project Manager insofar as they concern the Work to be done under the Contract.

3.2.3 If the Contractor fails to comply with any reasonable order made under the provisions of this Section, the Project Manager may cause unacceptable Work to be remedied or removed and replaced, and unauthorized Work to be removed, and to deduct the costs thereof from any money due or to become due to the Contractor.

3.2.4 The Project Manager has the authority to suspend Work for cause as set forth in Section 3.5.

Construction Agreement

MERC CONTRACT NO. 303033

3.2.5 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.

3.2.6 Nothing in this Section or elsewhere in the Contract is to be construed as requiring the Project Manager to direct or advise the Contractor on the method or manner of performing any Work under the Contract. No approval or advice as to the method or manner of performing or producing any materials to be furnished constitutes a representation or warranty by Metro that the result of such method or manner will conform to the Contract, relieve the Contractor of any of the risks or obligations under the Contract, or create any liability to Metro because of such approval or advice.

3.2.7 An Architect, Engineer, designer, or other person hired by Metro under a separate contract is not the Project Manager, unless the Contract Documents expressly state otherwise. The Contractor will be notified in writing if the Project Manager is to be changed.

3.2.8 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, unless such individual has been specifically and expressly delegated authority to make such representations pursuant to these Contract Documents. Likewise, Contractor has no right to 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.

3.2.9 Nothing contained in this Section shall obligate Metro or Architect 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.

3.3 Request for Information. If the Contractor believes 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 if the Contractor has any questions as to the meaning or intent of the Contract Documents, Contractor shall immediately submit to Architect and Metro a written Request for Information ("RFI") that shall fully describe the information sought.

3.3.1 The RFI shall be directed to the Project Manager and Architect. Subcontractors shall direct correspondence through the Contractor to the Project Manager and Architect. At a minimum the RFI shall contain: (1) project title, (2) identify the nature and location of each clarification/verification, (3) date, (4) response by and RFI number, (5) subject, (6) initiator of the question, (7) indication of the costs, (8) Contract drawings reference, (9) Contract Specification section, and (10) descriptive text and space for a reply. Each RFI shall be numbered sequentially beginning with #001, and a separate RFI shall be submitted for each item. Verbal discussions/clarifications for minor items can be addressed with the Architect by phone and the Contractor shall follow up with a confirming RFI.

3.3.2 It is Contractor's responsibility to request information under this Section in sufficient time for review by the Architect and Metro so that the orderly progress and prosecution of the Work is not delayed.

3.3.3 The Architect, in consultation with Metro, shall interpret the meaning and intent of the Contract Documents and shall issue, within five (5) working days of receiving an RFI from Contractor, a written Clarification describing such meaning and intent. Additionally, the Architect, after consulting with Metro, may at any time issue a written RFI as deemed necessary to carry out the Work included in the Contract Documents. Notwithstanding any dispute or disagreement that Contractor may have concerning any such RFI, Contractor shall perform the Work as prescribed and in accordance with all such RFI.

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

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

3.4 Contractor's Claims.

3.4.1 Generally. No claim by Contractor shall be considered or allowed under this Contract except as specifically provided and prescribed under this Section. Failure to make a claim as specifically prescribed by this Section or failure to perform disputed Work, if any, as directed by Metro shall bar Contractor from any recovery or extension of time resulting from the facts surrounding the claim. Contractor's full and complete compliance with this



Construction Agreement

MERC CONTRACT NO. 303033

Section 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 Section.

3.4.2 Types of Claims. Contractor claims are limited to the following:

3.4.2.1 Claims based on Excusable Delays as described in Section 3.4.3.

3.4.2.2 Claims based on differing Site conditions as described in Section 3.4.4;

3.4.2.3 Claims based on Clarifications or Change Orders issued by Metro or any other

decision, action, or failure to act by Metro as described in Section 3.4.5.

3.4.3 Claims For Excusable Delays.

3.4.3.1 Definition of Excusable Delay. A Delay is "Excusable" if such act, event, or

condition has a materially adverse effect on the ability of Contractor to perform its obligations under this Contract as scheduled, and/or materially increases the cost to Contractor to perform such obligations as scheduled and if such act, event, or condition and its effect:

3.4.3.1.1 Are beyond the reasonable control of Contractor (or any third party for whom Contractor is directly responsible); and

3.4.3.1.2 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

3.4.3.1.3 Could not have been reasonably anticipated by Contractor.

3.4.3.2 Types of Excusable Delay Claims. Excusable Delays are either Compensable or Non-compensable. Claims for Non-compensable Excusable Delays are limited to claims for extension of Contract Time. Contractor may claim both an increase in the Contract Amount and an extension of the Contract Time for Compensable Excusable Delays.

3.4.3.3 Non-Compensable Excusable Delay Claims. Delays resulting from the following acts, events, and conditions are Non-Compensable Excusable Delays:

3.4.3.3.1 An Act of God.

3.4.3.3.2 Unusually Persistent Severe Weather. No claim for extension of the Contract Time will be considered for Unusually Persistent Severe Weather unless Contractor submits documentation within 72 hours of the occurrence of the Unusually Persistent Severe Weather satisfactory to Metro establishing that the weather at the Project Site satisfied the definition of Unusually Persistent Severe Weather and that the delay could not have been avoided by either rescheduling the Work or implementing reasonable measures to protect against the weather so that the Work could proceed.

3.4.3.3.3 Acts of a public enemy, war (whether or not declared), or governmental intervention resulting therefrom, blockage, embargo, insurrection, riot, or civil disturbance.

3.4.3.3.4 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 is not 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 is taking, has taken, or will cause 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).

3.4.3.3.5 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, that are required for and essential to the Work.

3.4.3.3.6 Epidemics or quarantines.

3.4.3.3.7 Material, equipment, or fuel shortages or freight embargoes.

3.4.3.3.8 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.

3.4.3.4 Compensable Excusable Delay Claims. Delays resulting from the following acts, events, and conditions are Compensable Excusable Delays:

3.4.3.4.1 Changes in the Work ordered by Metro if they require additional time to complete the Work and adversely impact the Critical Path.



Construction Agreement

MERC CONTRACT NO. 303033

3.4.3.4.2 The prevention by Metro of Contractor from commencing or prosecuting the Work.

3.4.3.4.3 Failure by the Architect to respond to a Request for Information within five (5) working days of submittal by the Contractor.

3.4.3.5 Inexcusable Delays. Delays resulting from the following acts, events, and conditions shall not result in Excusable Delays:

3.4.3.5.1 Any delay that could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of Contractor.

3.4.3.5.2 Any delay in the prosecution of parts of the Work that may in itself be unavoidable but that 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.

3.4.3.5.3 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.

3.4.3.5.4 Any delay arising from an interruption in the prosecution of the Work on account of the reasonable interference from Other Metro Contractors that does not necessarily prevent the Substantial Completion of the Work of this Contract within the time specified.

3.4.3.5.5 Any delay resulting in any manner from labor disputes, strikes, or difficulties or any delay resulting in any manner from any labor-related event, act, or condition whether or not Contractor has any control over such event, act, or condition.

3.4.3.5.6 Any delays in delivery of equipment or material purchased by Contractor or its Subcontractors or Suppliers (including Metro-selected equipment. Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

3.4.3.6 Excusable Delay Claims Procedure.

3.4.3.6.1 Contractor shall, within forty-eight (48) hours of the start of the occurrence or Contractor's first knowledge of the occurrence that is the basis of the claim for Excusable Delay, whichever 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 Project Manager of any actual time extension and, if the Excusable Delay is a Compensable Excusable Delay, any increase in the Contract Amount requested as a result of the aforementioned occurrence in accordance with this Contract. 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.

3.4.3.6.2 Submission of timely written notice as specified above shall be mandatory and failure to comply shall be a conclusive waiver to any claim for Excusable Delay by Contractor. Oral notice or statement will not be sufficient.

3.4.3.6.3 Within twenty-one (21) days after Contractor submits to the Project Manager such a written notice for an extension of Contract Time and/or increase in the Contract Amount, the Project 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 Section 3.4.6.

3.4.4 Claims for Differing Site Conditions-- Contractor shall promptly, and before the conditions are disturbed, give written notice to the Project Manager of (i) subsurface or latent physical conditions at the Site that differ materially from those indicated in this Contract, or (ii) physical conditions at the Site that were unknown and not reasonably discoverable by means of the Review of Project Conditions required by Section 2.7, are of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract. The Project 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 Project Manager under this Section, Contractor may preserve its claim as provided and prescribed by Section 3.4.6.

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

Construction Agreement

MERC CONTRACT NO. 303033

3.4.5.1 Contractor shall, within forty-eight (48) hours following discovery of the facts that give rise to its claim, notify the Project Manager in writing of its intent to make the claim. Within ten (10) days following discovery of the facts that 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 Project Manager. Contractor's formal claim shall include a description of:

3.4.5.1.1 The factual occurrences upon which Contractor bases the claim including the decision, action, or failure to act by Metro or its authorized representatives that allegedly give rise to the claim;

3.4.5.1.2 How Metro's decision, action, or failure to act has affected Contractor's performance or otherwise affected Contractor;

3.4.5.1.3 Whether the claim is for an extension in the Contract Time or increase in the Contract Amount, or both, and the specific extension or increase requested;

3.4.5.1.4 The provisions of the Contract upon which the claim is based.

3.4.5.2 Submission of written notice of intent to make a 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.

3.4.5.3 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 Project Manager, Contractor shall proceed without delay to perform the Work pursuant to the direction of the Project 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.

3.4.5.4 Provided the claim or claims have been submitted in accordance with the requirements of this Section, the Project 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 Project Manager will advise Contractor of the Project 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 Project Manager under this Section, Contractor may preserve its claim as provided and prescribed by Section 3.4.6.

3.4.6 **Preservation of Claims** -- Within thirty (30) days after a rejection of a claim, in whole or in part, by Metro under Sections 3.4.3, 3.4.4 or 3.4.5, Contractor may preserve its claim by submitting a fully documented claim package to the Metro Procurement Officer. That package shall include substantiating documentation with an itemized breakdown of Contractor and Contractor's Subcontractors' costs on a daily basis that 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.

3.5 Metro's Right to Stop, Perform, or Delete Work.

3.5.1 If the Contractor fails to correct Work not in conformance with the Contract or fails to carry out Work in accordance with the Contract, Metro may issue a written order to the Contractor to stop all or part of the Work until the deficiency set forth in the order has been corrected. Metro has no duty to exercise this right for the benefit of anyone other than Metro.

3.5.2 If the Contractor refuses or fails to comply with the Contract, Metro may correct any deficiency or defect or perform Work that the Contractor has failed to perform, or take other appropriate action, without prejudice to any other remedy Metro may have under the Contract. Before taking that action, Metro will provide the Contractor and its sureties with seven days' written notice of its intentions, unless an emergency or dangerous condition exists, in which case the action may be taken without notice. If Metro performs part of the Contractor's Work, corrects deficiencies, or is required to take action as a result of an emergency or dangerous condition, Metro will deduct the cost of that action from any payment then or thereafter due the Contractor. If the cost of Metro's action exceeds any sums held by Metro and otherwise payable to the Contractor, the Contractor agrees to reimburse Metro for any excess costs.



Construction Agreement

MERC CONTRACT NO. 303033

3.5.3 Metro has the right to delete Work from this Contract, and the Parties agree that such action does not constitute a breach of contract. Therefore, Metro may delete Work from the Contract and perform it with its own forces or have such Work performed by another Contractor. If Work is deleted from the Contract, the cost of performing such Work will be deducted from the Contract Amount to be paid to the Contractor. Any objection to the change in Contract Amount must be processed as a claim as required by Section 3.4.5.

3.5.4 Metro's rights as stated in this Section 3.5 are in addition to and do not limit Metro's other rights or remedies.

3.6 Metro's Right to Adjust Payments.

3.6.1 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 upon the expiration of 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) collection of liquidated damages as designated in the Contract. Permitting Contractor to continue and finish the Work or any part thereof after the Contract Time has expired shall not waive any of Metro's rights under this Section or the balance of the Contract Documents.

3.6.2 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 that 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 that Metro may incur due to Contractor's failure to perform in strict accordance with this Contract.

3.7 Mediation. Both Parties shall endeavor to negotiate resolutions to all disputes arising out of this Contract. Any controversy or claim arising out of or relating to this Contract that remains unresolved after such negotiations shall be submitted to mediation prior to the commencement of litigation.

3.7.1 The mediator shall be an individual mutually acceptable to both Parties. Should the Parties disagree on the selection of 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.

3.7.2 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 Metro and Contractor. The schedule and time allowed for mediation shall be mutually acceptable. The mediation process is nonbinding.

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

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

3.9 Work to Continue Notwithstanding Dispute. 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 Section 3.6, and/or terminate the Contract pursuant to Article 15 of these General Conditions.

ARTICLE 4

SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

4.1 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 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

Construction Agreement

MERC CONTRACT NO. 303033

performance of the Contract that 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.

4.3 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.

4.4 Removal of Subcontractors at Request of Metro. 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.

4.5 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.

4.6 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.

4.7 Contractor's Agreements with Subcontractors.

4.7.1 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. 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 that 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.

4.7.2 All Subcontractor and Supplier 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.

4.7.3 The Contractor will provide Metro with copies of all of its subcontracts, purchase orders, and supply agreements relating to the Work upon Metro's request within three (3) business days of the request.

4.8 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.

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

5.2.2 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.

Construction Agreement

MERC CONTRACT NO. 303033

5.2.3 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 liquidated 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 following the Critical Path method. 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.

5.5.1 Metro may decide to use part of the Work that has been completed before completion of all the Work required by the Contract. If that occurs, Metro will notify the Contractor in writing of its intention.

5.5.2 When use of part of the Work by Metro begins, the Contractor is:

5.5.2.1 Relieved of the duty of maintaining and protecting that portion of the Work, provided that it has been completed in accordance with the Contract.

5.5.2.2 Relieved of responsibility for injury or damage to the portion of Work used by Metro from use by public traffic or from the action of the elements of nature or from any other cause, except injury or damage resulting from the Contractor's own operations or from its negligence.

5.5.2.3 Relieved of the responsibility of cleaning up that portion of the Work before final acceptance, unless the Contractor's own operations require such cleanup.

5.5.3 Use by Metro of a part of the Work as described in this Section does not constitute final acceptance of the Work as a whole or in any part.

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 allow such Other Metro Contractors reasonable opportunity for storage of their materials and execution of their Work, shall ensure 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 facilitate 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 that 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 Contractors' 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 an RFI to Metro pursuant to Section 3.3. If Contractor proceeds without examining or inspecting the Work and submitting a Request for Information, Contractor shall be held to have accepted the Other Metro Contractors' Work or material and the existing conditions, 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.

6.3 Latent Defects in Other Contractor's Work. Section 6.2 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.

6.4 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



Construction Agreement

MERC CONTRACT NO. 303033

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.

6.5 Failure to Maintain Schedule.

6.5.1 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 that 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 that shall fully demonstrate the manner of intended compliance with this Section. The steps referred to above shall include but not be limited to:

6.5.1.1 Increased manpower in such quantities and crafts as will substantially eliminate the backlog of Work.

6.5.1.2 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.

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

6.5.1.4 Expedite delivery of materials and equipment, such as use of airfreight.

6.5.2 If Metro directs Contractor to take measures described in this Section, 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 these General Conditions.

6.5.3 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 all or part of the monthly progress payments.

6.6 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:

6.6.1 Withhold any payment otherwise due hereunder until Contractor complies with Metro's directions.

6.6.2 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.

6.6.3 Terminate any or all portions of the Work for Contractor's failure to perform in accordance with the Contract.

6.7 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 notify Metro immediately and before performing any affected Work.

6.8 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 a manner as may be prescribed by Metro when such suspension or prosecution is necessary to facilitate the Work of Other Metro Contractors.

6.9 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 that may arise.

6.10 Furnished by Owner, Installed by Contractor ("FOIC") Items.

6.10.1 Owner Responsibilities for FOIC Items. Owner-furnished products/items are indicated on the drawings as FOIC items. Owner's responsibilities include: (1) arrangement for and delivery of necessary shop drawings, product data, and samples to the contractor; (2) arrangement of and payment for Product delivery to the Site; (3) delivery of Suppliers' bill of materials to Contractor; (4) inspection of deliveries jointly with the Contractor and recording shortages of and damaged or defective items; (5) submission of claims for transportation damage; (6) arrangement for replacement of damaged, defective, or missing items; and (7) arrangement for manufacturers' warranties, bonds, service, and inspections as required. Owner is responsible for scheduling all FOIC items in accordance with Contractor's Construction Schedule.

Construction Agreement

MERC CONTRACT NO. 303033

6.10.2 Contractor Responsibilities for FOIC Items. The following outlines the responsibilities of the Contractor for FOIC items: (1) designating a delivery date for each item in the Construction Schedule; (2) reviewing shop drawings, product data, and samples; (3) immediately notifying the Project Manager of any discrepancies or problems anticipated in the use of the product; (4) reviewing and unloading products at the Site; (5) promptly inspecting products jointly with Owner and recording shortages and damaged or defective items; (6) handling products at the Site, including uncrating and storage; (7) protecting products from exposure to elements and damage; (8) assembling, installing, connecting, adjusting, and finishing product as stipulated in the Specifications; and (9) repairing or replacing items damaged by Contractor.

6.11 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 the Contractors engaged in the Project or related projects.

6.11.1 Project Meetings. The Contractor will schedule and chair meetings and conferences at the Project Site unless otherwise indicated. Contractor will inform participants and other individuals whose presence is required of the date and time of each meeting. The Contractor shall prepare an agenda, distribute to all attendees, and prepare minutes that reflect significant discussions and agreements achieved. Meeting minutes shall be distributed to everyone concerned, including Metro, within three (3) days of the meeting.

6.11.2 Pre-construction Conference. The Contractor will schedule a pre-construction conference prior to start of construction. The meeting will be scheduled at a time convenient to Metro and Architect, but no later than five (5) days after execution of the Contract. The conference will be held at the Project Site or another convenient location. The purpose of the meeting is to review responsibilities and personnel assignments. Attendees will include authorized representatives of Metro, Architect and its consultants, Contractor and its superintendent, major subcontractors and suppliers, and other concerned parties. All participants shall be familiar with the Project and be authorized to conclude matters relating to the Work. The agenda shall include tentative construction schedule, phasing, critical Work sequencing and long-lead items, designation of key personnel and their duties, procedures for processing field decisions and Change Orders, procedures for RFIs, procedures for testing and inspecting, procedures for processing applications for payment, distribution of Contract Documents, submittal procedures, preparation of record documents, use of premises, Work restrictions, Owner's occupancy requirements, responsibilities for temporary facilities and Site protection, construction waste management and recycling, parking availability, office, Work, and storage areas, equipment deliveries and priorities, first aid, security, progress cleaning, and working hours.

6.11.3 Pre-installation Conferences – Contractor will conduct a pre-installation conference at the Project Site before each construction activity that requires coordination with other construction and includes installation of FOIC items. Contractor is responsible for conducting these meetings, which shall occur on the same date as progress meetings, if possible. Attendees shall include the installers and representatives of manufacturers and fabricators involved in or affected by the installation and its coordination with other materials or installations. Agenda items will include Contract Documents, options, related RFIs, related Change Orders, purchases, deliveries, submittals, review of mock-ups, possible conflicts, compatibility problems, time schedules, weather limitations, manufacturers' written recommendations, warranty requirements, compatibility of materials, acceptability of materials, temporary facilities and controls, space and access limitations, regulations of authorities having jurisdiction, testing and inspecting, installation procedures, coordination with other Work, required performance results, protection of adjacent Work, and protection of the Site and its elements. The Architect shall record significant conference discussions, agreements, and disagreements, including corrective action measures and action.

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. During the performance of the Work, Metro, the Architect, Special Inspectors, and any representatives of federal, state, and local agencies having jurisdiction over the Work may enter the Project Site, the shops where any part of the Work is being prepared, or the factories or sites where any materials for use in the Work are being or will be manufactured or derived. Contractor shall provide proper and safe facilities for such inspections, 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 Section.

Construction Agreement

MERC CONTRACT NO. 303033

7.1.2 Quality Control Plan. Contractor shall prepare and submit a Quality Control Plan to the Project Manager within thirty (30) days following the Notice to Proceed. The Plan will describe the Contractor's procedures for implementing the Quality Control Plan. The Plan shall include without limitation 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, 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 Project 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. At all times during construction of the Work, Contractor shall permit Metro, the Architect, and Special Inspectors, or any 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.

7.2.2.1 At all times during construction of the Work, Contractor shall permit Metro, the Architect, and Special Inspectors, or any 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.

7.2.2.2 The Contractor is responsible for scheduling and coordination of special inspections. Contractor shall be diligent in scheduling special inspections and make every effort to combine special inspections to avoid unnecessary budget impacts.

7.2.2.3 The Contract Documents or regulatory agencies may require that portions of the Work be observed, reviewed, tested, or inspected before they are obscured or covered. Similarly, upon request, the Project Manager is entitled to observe portions of the Work before they are covered or obscured. Contractor shall be solely responsible for notifying Project Manager at least two (2) working days prior to performing such Work so that necessary arrangements for inspection and testing can be made. If the Contractor covers or obscures a portion of the Work that is required or requested to be observed, it will uncover the Work for observation and bear any cost associated with that activity without a change in Contract Time.

7.2.2.4 The Project Manager may request to see a portion of the Work that has been covered regardless of the requirements of the Contract Documents, regulatory agencies, or a prior request. Thereafter the Contractor must comply with Metro's request. If, on inspection by the Project Manager, the portion of the Work that is uncovered is found to be in accordance with the Contract Documents, Metro will bear all costs associated with that activity and provide additional Contract Time if that activity would cause the Contractor to incur liquidated damages. But if, upon inspection by the Project Manager, the portion of the Work that is uncovered is found not to be in accordance with the Contract Documents, the Contractor will correct the Work and bear any cost associated with that activity without a change in Contract Time. Metro retains the right at any time during construction, or at any time during production, fabrication, or preparation of the Work, to test samples to determine whether they meet the requirements of the Contract Documents. Metro may test any sample, regardless of prior certification, and regardless of whether any prior certification was required. Metro may either conduct the test with its own forces or hire other persons to perform this Work.

7.2.2.5 Metro retains the right at any time during construction, or at any time during production, fabrication, or preparation of the Work, to test samples to determine whether they meet the requirements of the Contract Documents. Metro may test any sample, regardless of prior certification, and regardless of whether any prior certification was required. Metro may either conduct the test with its own forces or hire other persons to perform this Work.

7.2.2.6 If a sample is to be tested prior to its incorporation into the Work, the Contractor may not incorporate the material, product, part, or equipment into the Work until testing is completed and Metro gives permission for its use.

Construction Agreement

MERC CONTRACT NO. 303033

7.2.2.7 Metro will bear the costs of testing unless the tests show that the material, product, part, or equipment failed the test and did not conform to the requirements of the Contract, in which case the Contractor will bear the costs of testing.

7.2.2.8 If the sample was previously incorporated into the Work and testing shows that the sample does not meet the requirements of the Contract Documents, the Contractor will pay for the test and for replacing and repairing any equipment, materials, products, or portion of the Work in order to meet the requirements of the Contract Documents.

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 that otherwise fails to conform to the Contract Documents that 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 Architect, 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.

7.2.6 Replacement and correction of defective Work before the Work is completed and accepted is not limited by any warranty period otherwise established by the Contract.

7.3 Unsatisfactory Materials and Workmanship.

7.3.1 Generally. Material, Work, or workmanship that, in the opinion of the Project Manager, does not conform to the Contract Documents, or is not equal to the samples submitted to and approved by the Project 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, defective Work, or unsatisfactory 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 Section shall be in addition to any other specific warranties and certifications required elsewhere in these Contract Documents.

7.5 Third-Party Warranties.

7.5.1 The Contractor shall obtain from Subcontractors, manufacturers, and suppliers guarantees and warranties according to the Contract Documents with the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain said warranties.

7.5.2 All guarantees or warranties of materials furnished to the Contractor or Subcontractor by any manufacturer or supplier shall be deemed to run for the benefit of the Owner.

Construction Agreement

MERC CONTRACT NO. 303033

7.5.3 As a condition of Substantial Completion of the Project by the Owner, the Contractor shall deliver to the Owner via the Architect three (3) bound volumes of all guarantees and warranties on material furnished by all manufacturers and suppliers to the Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall assign to the Owner, and shall deliver to the Owner, all manufacturers' warranties not later than the date of Substantial Completion.

7.6 Subcontractor Warranties. The Contractor shall and does hereby assign to the Owner the benefits of all warranties and guarantees of all Subcontractors, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

7.7 Correction of Work by Contractor.

7.7.1 Any portion of the Work that does not conform to the requirements of the Contract is unacceptable or defective and must be removed and corrected by the Contractor, even if it is contended that Project Manager or other assigned personnel knew or should have known of the existence of the unacceptable Work. This obligation includes defective Work discovered during construction and within one (1) year after the date of Substantial Completion.

7.7.1.1 All portions of the Work that do not conform to the requirements of the Contract Documents must be corrected within a reasonable time at the Contractor's sole expense and without an extension of Contract Time.

7.7.1.2 Metro may replace or correct Work within a reasonable time if the Contractor fails to do so and may charge the Contractor with all reasonable costs incurred while performing that Work, as well as the costs of storing any salvageable materials or equipment. If that occurs, Metro is also entitled to deduct such costs from any sums otherwise due the Contractor.

7.7.1.2.1 If salvageable materials, equipment, or both are stored, Metro will notify the Contractor of the storage and give the Contractor ten days to remove the materials. If the Contractor fails to remove them by the end of that time, Metro may sell them in any commercially reasonable manner, whether privately or publicly.

7.7.1.2.2 If sale is made, Metro will keep all proceeds to the extent that the proceeds do not exceed the costs incurred in correcting and replacing the Work and in storing the materials and equipment. The Contractor will pay Metro any difference in costs that may remain after the sale. If the proceeds exceed Metro's cost, however, it will forward those sums to the Contractor.

7.7.2 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 that 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.

7.7.3 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.

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

7.8 Warranty and Correction Agreements by Subcontractors.

7.8.1 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 Section 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 Section 7.5.

7.8.2 Form of Submissions. Contractor shall require all of its Subcontractors and Suppliers of any tier to sign documents evidencing the promises made pursuant to Section 7.8.1 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 form attached as Exhibit 1 to these General Conditions.

7.9 Remedies Not Exclusive. The remedies provided for in this Article shall not be exclusive, but are in addition to all other remedies of Metro with respect to latent defects, frauds, or failure to perform all Work as required by the Contract Documents.

Construction Agreement

MERC CONTRACT NO. 303033

7.10 Proof of Compliance with Contract Provisions. For Metro to determine whether Contractor has complied or is complying with the requirements of the Contract that 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.

7.11 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 or Proposal for doing the Work. Contractor shall save, keep, hold harmless, and fully indemnify Metro and Architect from all damages, claims for damage, lawsuits, costs, expenses, or liabilities of whatever nature in law or equity, including attorney fees and court costs, that 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.

7.12 Anti-Trust Claims.

7.12.1 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 that Contractor now has or that 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.

7.12.2 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 hereunder, 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. Contractor shall require all Subcontractors and Suppliers to Execute the Assignment of Antitrust Claims attached as Exhibit 2 to these General Conditions as part of Contractor's subcontract with Subcontractor or Supplier.

7.12.3 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 that 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 Office of Metro Attorney:

7.12.3.1 In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;

7.12.3.2 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 impendency of such action; and

7.12.3.3 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.

7.12.4 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 under this Section 7.12.

ARTICLE 8 CHANGES IN THE WORK

8.1 Change Orders Generally.

8.1.1 Metro and the Contractor mutually agree that changes in plans, quantities, or details of the Work are inherent in the nature of construction and may be necessary or desirable. Therefore, without impairing the Contract, Metro reserves the right to require changes determined necessary or desirable to complete the proposed construction within the general scope of the Work provided for in the Contract or to order extra Work if that is required. Performance of changed or extra Work will not invalidate the Contract or release the Contractor's surety from its obligations. Changes to the Contract Amount, if any, as a result of the performance of changed or extra Work must be made pursuant to this Article 8.

Construction Agreement

MERC CONTRACT NO. 303033

8.1.2 The only authorized method for increasing or changing the amount of compensation, increasing the amount of Contract Time, or changing the scope of Work to be performed is through the execution of a written Change Order.

8.1.3 Change Orders must be executed in advance when any changed or extra Work for which additional compensation is due will be performed, unless the Work is Force Account Work.

8.1.4 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 Architect shall have approved any design modifications entailed thereby.

8.1.5 Agreement on any Change Order shall constitute a final settlement of all matters relating to the changes in the Work that are the subject of the Change Order, including without limitation all direct and indirect costs associated with such change, and any and all adjustments to the Contract Sum or Contract Time.

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 (3) 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, effect 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 Section. 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 that Contractor shall not exceed without further authorization by Metro. Within fourteen (14) days after issuance of such by Metro, Contractor shall furnish three (3) 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, effect 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 Section. 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.

8.3.1.1 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 that 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.

8.3.1.2 Overhead and Profit for the entity performing the Work with its own crews shall not exceed ten percent (10%) of the Direct Cost of the changed Work.

8.3.1.3 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.

8.3.1.4 If the Work is performed by a second-tier Subcontractor, the total Overhead and Profit for all tiers shall in no event exceed twenty percent (20%) 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, 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.

Construction Agreement

MERC CONTRACT NO. 303033

8.3.4 Equipment Costs. The allowance for equipment costs (both rental and 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.

8.4.1 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:

8.4.1.1 Actual labor cost, including premium on worker's compensation insurance and charge for social security taxes, and other taxes pertaining to labor.

8.4.1.2 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.

8.4.1.3 Actual cost of material, including applicable taxes pertaining to materials.

8.4.1.4 Actual cost of plant and equipment rental, at rates to be agreed upon in writing before the Work is begun or at rates per Section 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.

8.4.1.5 Overhead and Profit as provided and limited in Section 8.3.

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

8.4.2 Whenever any Force Account Work is in progress, each working day Contractor shall furnish to Metro a detailed written report signed by Contractor and Project Manager 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 Contractor Proposals for Changes in Work.

8.5.1 Generally. At any time during the performance of the Work, Contractor may propose to Metro changes in Work that 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.

8.5.2 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 this Section 8.5. Contractor is encouraged to submit VECPs whenever it identifies an area that can be improved, using the format described herein.

8.5.3 Application. This clause applies to a Contractor-developed and documented VECP that: (1) requires a change to this Contract 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.

8.5.4 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 that 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 that 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 its 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.

8.5.5 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.

Construction Agreement

MERC CONTRACT NO. 303033

8.5.6 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 Contract. 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.

8.5.7 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:

8.5.7.1 Definitions:

8.5.7.1.1 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.

8.5.7.1.2 Contractor Costs ("CC"): Reasonable costs incurred by Contractor in preparing the VECP and making the change such as cancellation or restocking charges where required.

8.5.7.1.3 Estimated Net Savings to Contractor ("NS"): GS less CC.

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

8.5.7.2 Calculations:

8.5.7.2.1 The Contract Price shall be reduced by an amount equal to 70 percent of NS plus 50 percent of OC.

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

8.5.8 Subcontracts. Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$25,000 or greater. Contractor 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 Section 8.5.7.2 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 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 in the Contract that Contractor is to do Work or provide materials of any class for which no price is fixed in the Contract, Contractor will 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 or Proposal.

9.2 Schedule of Values.

9.2.1 Generally. Within fifteen (15) days after the Notice to Proceed, Contractor shall submit a detailed breakdown costs itemized per Construction Specification Institute division format. The format and detail of the breakdown shall be as directed by Metro. 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 on completed Work items or percentages of Work items completed prior to the end of the payment period as more fully described below.

Construction Agreement

MERC CONTRACT NO. 303033

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 and pursuant to the Contract Documents as specified in Section 9.3.2.

9.3.2 Before the end of each calendar month, Contractor shall file with the Project 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 Architect shall review Contractor's estimate and shall determine the value of Contractor's Work based on the Schedule of Values and incorporated labor and materials for the payment period. Contractor shall not be paid for any Work that 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.

9.3.3 Retainage.

9.3.3.1 Metro will withhold Retainage from each payment at a rate of five percent (5%) in accordance with ORS 279C.570.

9.3.3.2 All funds retained by Metro under this Section shall be retained in a fund by Metro and paid in accordance with ORS 79C.550 to 279C.580.

9.3.3.3 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 to 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 Metro Director of Finance & Regulatory Services including but not limited to:

9.3.3.3.1 Bills, certificates, notes, or bonds of the United States.

9.3.3.3.2 Other obligations of the United States or its agencies.

9.3.3.3.3 Obligations of any corporation wholly owned by the federal government.

9.3.3.3.4 Indebtedness of the Federal National Mortgage Association.

9.3.3.4 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.

9.3.3.5 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.

9.3.4 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 photo documentation) and appropriate insurance coverage will be required for payment. Title to all equipment and materials shall pass to Metro upon payment therefore or incorporation into 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.

9.3.5 Other Conditions Precedent to Payment.

9.3.5.1 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

Construction Agreement

MERC CONTRACT NO. 303033

payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Contract, Contractor shall submit a claims release before any payment in the form set forth in Exhibit 3 to these General Conditions, and a final claims release stating Contractor has been paid in full prior to the Final Payment in the form set forth in Exhibit 4 to these General Conditions.

9.3.5.2 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.

9.3.6 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.

9.3.7 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.

9.4 Substantial Completion.

9.4.1 Metro is also entitled to occupy or use all or a portion of the Work on Substantial Completion. Occupancy or use on Substantial Completion does not constitute Metro's acceptance of the Work not complying with the requirements of the Contract Documents, nor does it waive rights Metro has to completion of the Contract in accordance with the requirements of the Contract Documents.

9.4.1.1 When Contractor considers the Work to be substantially complete, Contractor shall submit to Metro a written notice that the Work is substantially complete

9.4.2 Within a reasonable time after receipt of such notice, Metro and Architect will review the Work, including a physical inspection, to determine the status of completion. Should the Architect and Metro determine that the Work is not substantially complete:

9.4.2.1 The Project Manager will promptly notify Contractor in writing, giving the reasons therefore.

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

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

9.4.3.1 The Architect will prepare a Certificate 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 Architect.

9.4.3.2 Metro shall submit the Certificate of Substantial Completion to Contractor for signature.

9.4.4 Punch List. When the Work is substantially complete, the Contractor shall prepare a Punch List of items to be completed or corrected for review and approval by Metro and the Architect. The Architect shall be responsible for preparing the final Punch List. The Contractor remains responsible to complete the Work in accordance with the Contract Documents regardless of whether an item is omitted from the Punch List.

9.4.4.1 The Contractor is required to proceed promptly to complete the items on the Punch List and any other items that may be discovered to be incomplete or incorrect regardless of whether they are on the Punch List or not. If the Contractor fails to complete the Punch List within 30 days or such other time as Project Manager may allow, Metro may terminate any further services of the Contractor under the Contract and complete the Punch List items remaining to be completed or corrected with Metro's own forces or by hiring another Contractor to perform the Punch List Work. Costs of performing the Punch List Work by Metro will be deducted from any payments otherwise due the Contractor.

9.4.4.2 The Contractor will notify Metro when the Punch List Work is complete, and Final Payment will then be made in accordance with. After receipt of that Notice, Metro will inspect the Work to determine whether the Punch List is complete as provided in Section 9.5 of these General Conditions.



Construction Agreement

MERC CONTRACT NO. 303033

9.4.4.3 If the Work is not complete despite the Contractor's notice that the Punch List items are complete, and Metro has hired an Architect or Engineer to assist it on the Project, the Contractor will pay costs for the Architect's or Engineer's services if more than two inspections of the Work are required because the Punch List remains incomplete.

9.4.4.4 On Substantial Completion, Metro will be responsible for utilities, insurance, security, maintenance, and damage to Work caused by Metro's agents and employees unless otherwise provided in the Certificate of Substantial Completion. The Contractor remains responsible for damage to Work caused by its Subcontractors, agents, and employees during the performance of Punch List Work.

9.5 Final Completion and Acceptance.

9.5.1 When Contractor considers the Work to be finally complete, Contractor shall submit written certification to Metro that:

9.5.1.1 Contract Documents have been reviewed.

9.5.1.2 Work has been inspected for compliance with Contract Documents.

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

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

9.5.1.5 Work is ready for final inspection.

9.5.2 Architect 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.

9.5.3 Should the Architect and Metro consider that the Work is incomplete or defective:

9.5.3.1 Project Manager or the Architect will promptly notify Contractor in writing, listing the incomplete or defective Work.

9.5.3.2 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 Architect.

9.5.3.3 Architect and Metro will review and re-inspect the Work.

9.5.4 The procedure set forth in Section 9.5.3 shall be followed until the Work is, in the opinion of Metro and Architect, 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 12 of these General Conditions.

9.6.9 If Contractor is a non-resident bidder or proposer, 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, discharging and releasing Metro and the Architect of and from all liabilities, obligations, and claims arising under this Contract. The Final Release shall be in the form attached as Exhibit 4 to these General Conditions. 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.



Construction Agreement

MERC CONTRACT NO. 303033

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. The release shall be in the form attached as Exhibit 5 to these General Conditions.

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

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

9.7.3.2 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 Sections and settlement of all claims arising from the Contract, including claims that Metro may have against Contractor, Metro shall pay Contractor the balance of the Contract Amount subject to the availability of monies and less any previous payments, offsets, and withholdings allowed Metro under this Contract, and Retainage that has been returned to Contractor. Acceptance of Final Payment by Contractor shall constitute a waiver of all claims of whatever nature that 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 that it would in any case have.

ARTICLE 10

SAFETY, USE OF SITE, AND PROTECTION OF THE WORK

10.1 Laws and Regulations.

10.1.1 The Contractor must comply with all federal, state, and municipal laws in regard to all matters concerning this Contract. This includes but is not limited to compliance with the ADA. The Contractor must also comply with the orders, rulings, decrees, and decisions of any administrative or judicial officials that in any manner whatsoever affect the Project, the Work, the safety of persons around the Work Site, or the manner in which the Work is performed.

10.1.2 If the Contractor observes that any portion of the Work is to be performed in a way that violates any law, code, or regulation, it must immediately notify Metro in writing.

10.1.3 Contractor will divert a minimum of 85% of all construction and demolition waste to recycling and reuse markets, and comply with City of Portland Code 17.102.270 and related administrative rules.

10.2 Safety Requirements.

10.2.1 Safety Generally.

10.2.1.1 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.

10.2.1.2 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.

10.2.1.3 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.

10.2.1.4 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.

Construction Agreement

MERC CONTRACT NO. 303033

10.2.1.5 In an emergency affecting safety of persons or property, the Contractor shall act to prevent the threatened damage, injury, or loss and immediately notify Metro.

10.2.2 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.

10.2.3 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 Project Manager on matters relating to safety and Contractor's compliance with the approved Safety Program. Metro reserves the right to accept or reject the Health and Safety Officer designated by Contractor.

10.3 First Aid.

10.3.1 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 Project Manager.

10.3.2 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, and safety belts as required for the type of Work being done.

10.4 Use of Site.

10.4.1 The Contractor shall confine operations at the Site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents, and shall not unreasonably encumber the Site with materials or equipment.

10.4.2 Prior to commencement of the Work, the Contractor shall review the Project Site with Metro in detail and identify the area of the Work, staging areas, connections or interfaces with existing structures and operations, and restrictions on the Project Site area. The Contractor will ensure that all forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the Site. The Contractor, with advance consent of Metro, will erect such barriers, signage, and devices as are necessary to restrict access to the Project Site to approved personnel and to prevent unauthorized access by construction personnel to non-Work areas.

10.4.3 The Contractor and its Subcontractors shall receive prior approval from Metro before delivering or storing any materials or tools on Metro's premises. Upon approval, materials and tools will be stored so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.

10.4.4 Contractor and its Subcontractors shall not erect on the Project Site any signage intended to advertise or promote their business without the prior written consent of Metro.

10.4.5 If the Contractor removes Metro's property, fixtures, materials, or other equipment to perform the Work, the Contractor shall be responsible for the safekeeping of all such property, fixtures, materials, or other equipment including without limitation assuring that such items are not lost, damaged, or destroyed, and are upon Metro's directive are either returned to their original location, reinstalled, replaced, or repaired as necessary.

10.4.6 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause

10.4.7 At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project, and shall return any damage or altered portion of Metro's property to at least its pre-construction condition.

10.5 Protection of Work, Persons, and Property Against Damage.

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

10.5.2 The Contractor will keep the Project Site safe in compliance with applicable law. Safety includes but is not limited to: (1) providing approved types of secured and adequate barricades or fences that are easily visible from a reasonable distance around open excavations; (2) closing up or covering with steel plates all open excavations at the end of each Working Day in all street areas and in all other areas when it is reasonably required for

Construction Agreement

MERC CONTRACT NO. 303033

public safety; (3) marking all open Work and obstructions by lights at night; (4) installing and maintaining all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges, and facilities; (5) observing any and all safety instructions received from Project Manager; and (6) following all laws and regulations concerning worker and public safety. If the law requires greater safety obligations than those imposed by Metro, the Contractor must comply with the law.

10.5.3 The Contractor will protect, and take every reasonable precaution to avoid damage to, all public and private property that might be damaged by its operations.

10.5.4 If public or private property, or both, is damaged by the Contractor's operations, the Contractor must either repair the damage or have the damage repaired by others at its own expense, without additional compensation from Metro. The repair must bring the damaged property back to the same condition it was in before the damage occurred. If repair and restoration is not feasible, the Contractor will pay Metro for the full cost of the damage. If the damage has been caused to property of Metro, Metro has the right to determine whether or not the property will be repaired and restored by the Contractor. If Metro elects to have the property repaired with its own forces or by another entity, the Contractor will pay Metro all costs associated with that repair and restoration.

10.5.5 The Contractor must give reasonable Notice to Metro and occupants of property adjacent to the Work to permit them to remove vehicles, trailers, and other possessions, as well as salvage or relocate plants, trees, fences, sprinkler systems, or other improvements in the Easement or Right-of-Way that are designated for removal or that might be destroyed or damaged by the Contractor's operations.

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

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

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

10.5.9 The Contractor must protect worksites and storage and disposal areas from washouts and erosion, and take all necessary precaution to control or abate dust, nuisances, and air pollution arising from the performance of Work by taking necessary actions to prevent this. Such actions include but are not limited to cleaning up, sweeping, sprinkling, covering, enclosing, or sheltering Work areas and stockpiled materials, and removing promptly from paved areas earth or other materials that may become airborne or that may be washed into waterways or drainage systems.

10.6 Utilities.

10.6.1 The Contractor is responsible for locating light and power poles, underground electrical, underground communication, sewer, gas, and water piping, gas/water "shut off" boxes and covers, and all other utility lines. The Contractor will follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in the Oregon Administrative Rules. Copies of these rules may be obtained by contacting the Center. If the Contractor has questions about the rules, it is to contact the Center. The Parties agree that any Project plans or permits issued by Metro are deemed to have this language incorporated by reference.

10.6.2 The Contractor will give Notice to Metro of any intended excavation it may have at least 48 hours in advance of the proposed excavation. If the intended excavation or other work would cause any interruption in utility service, the Contractor will give notice to Metro at least five (5) days in advance. The specific schedule for all interruptions in utility services must be coordinated with the Project Manager.

10.6.3 The Contractor will maintain any markings showing the presence of underground facilities. If the Contractor does not maintain such markings, and Metro is required to reestablish them, the Contractor will pay Metro any and all costs associated with that activity.

10.6.4 The Contractor will exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements. The Contractor will arrange for and pay the cost of disconnecting, removing, relocating, capping, replacing, or abandoning all public and private utilities impeding construction operations, all in accordance with servicing utilities' regulations and governing codes. The Contractor will cap abandoned utilities. The Contractor will provide maintenance of all on-site active above-grade and below-grade services. Any utilities damaged by Contractor shall be repaired immediately to Owner's satisfaction.

Construction Agreement

MERC CONTRACT NO. 303033

10.7 Hazardous Substances Encountered During Construction and Other Environmental Laws.

10.7.1 With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or may be present on the Project Site, maintain available for inspection at the Project Site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor will submit to Metro a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors onto Metro's property, including the purpose for their use on the Project.

10.7.2 In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project Site, the Contractor must **immediately** (1) stop the Work or the portion of the Work affected, (2) notify Metro and the Architect orally and in writing, and (3) protect against exposure of persons to the Hazardous Materials. The Contractor is to provide all written warnings, notices, reports, or postings required at law or by contract for the existence, use, release, or discovery of Hazardous Materials.

10.7.3 With respect to any Hazardous Materials or other material or substance reported to Metro under Section 10.7.2 above that were not introduced to the Project Site by the Contractor or its Subcontractors of any tier, Metro will obtain the services of a qualified environmental consultant to verify the presence or absence of the material or substance reported by the Contractor and, if the material or substance is found to be present, to verify that it is rendered harmless. Unless otherwise required by the Contract Documents, Metro will furnish in writing to the Contractor and Architect the names and qualifications of persons or entities that are to perform tests verifying the presence or absence of such material or substance, or that are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to Metro in writing, stating whether or not either has reasonable objection to the persons or entities proposed by Metro. If either the Contractor or the Architect has an objection to a person or entity proposed by Metro, Metro will propose another to which the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area is to resume upon written agreement of Metro and the Contractor. By Change Order, the Contract Time may, subject to agreement by Metro and the Contractor, be extended appropriately and the Contract Amount will be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, which adjustments are to be accomplished as provided in Article 8.

10.7.4 With respect to any Hazardous Materials or other material or substance reported to Metro under section 10.7.2 above that was introduced to the Project Site by the Contractor or its Subcontractors of any tier, the Contractor will be responsible to carry out the duties of (1) proposing to Metro and the Architect a qualified environmental consultant, (2) obtaining and paying for the services of the environmental consultant, and (3) verifying that the material is rendered harmless, as otherwise set forth in Section 10.7.3 above. The Contractor will not be entitled to an increase in the Contract Amount as stated in the last sentence of Section 10.7.3 if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation Work must be conducted by properly qualified contractors approved in advance by Metro. Generally, Metro may at its option contract directly with environmental consultants and remediation contractors, regardless of whether the Work will be performed at the Contractor's expense.

10.7.5 To the fullest extent permitted by law, Metro will indemnify the Contractor, Subcontractors, Architect, Architect's consultants and agents, and employees of any of them and hold them harmless from and against claims, damages, losses, and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project Site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by Metro under this Section will be required to indemnify the Contractor, Subcontractors, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but will require indemnity to the extent of the fault of Metro or its agents or representatives.

10.7.6 To the fullest extent permitted by law, the Contractor will indemnify Metro, the Project Manager, and employees of any of them and hold them harmless from and against claims, damages, losses, and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project Site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No

Construction Agreement

MERC CONTRACT NO. 303033

indemnification provided by the Contractor under this Section will be required to indemnify Metro or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by Metro's own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents or representatives.

10.8 Additional Requirements for Work at Metro Project Sites. The Contractor will comply with the following requirements in addition to the requirements set forth in this Article 10.

10.8.1 Safety and Health Precautions.

10.8.1.1 Contractor shall take all precautions to prevent the possibility of fire resulting from construction operations. Contractor will provide emergency fire extinguishing equipment of adequate type and quantity, readily available, and properly maintained. Contractor shall provide a fire watch and screening whenever welding is in progress in areas accessible or visible to Metro staff or the general public.

10.8.1.2 All contracted employees are expected to follow established safety procedures in the General Contractor's Safety Plan and report any safety violation or unsafe work practice to a lead worker or project manager. Violation of any safety procedure is a serious offense due to the severe consequences that may result and must be reported immediately. It is most important to report safety violations and unsafe work practices to individuals who can take immediate action to resolve the problem.

10.8.1.3 Vests and hardhats (as well as other personal protection attire as required by the General Contractor) are required to be worn at construction worksites. Contractors shall wear such vests at all times on the Project Site.

10.8.1.4 Any physical, mental, or emotional condition that may affect a Contractor or Subcontractor employee's ability to work safely, make sound judgments, or compromise their ability to react quickly in the event of an emergency, must be reported to their lead or project manager prior to the start of their shift.

10.8.1.5 For safety reasons, iPods, MP3 players, and other sound devices requiring earphones are prohibited during working hours.

10.8.1.6 The Contractor will provide warning signs, flagger(s), and other safety and health precautions that may become necessary or required for protection of Work or for protection of the public, Owner's personnel, and construction personnel, including Owner's and Architect's Representatives engaged on the Project. State of Oregon Workmen's Compensation Board Safety Codes for Construction Work and Federal Safety Codes, form a part of these Specifications.

10.8.2 Access to Metro Project Site. Contractor and Subcontractors will comply with the following requirements:

10.8.2.1 Locations for access to the Project Site by Contractor and Subcontractors shall be approved by the Project Manager.

10.8.2.2 The Contractor's representatives must always be on the premises when Subcontractors are working. Identification will be issued and worn for General Contractor's representatives.

10.8.2.3 The Contractor will keep a log of all Subcontractors that are working on-site each day. Subcontractors must always sign in with the Contractor and wear identification issued by the Contractor.

10.8.2.4 Construction on the Project Site is limited to 7 am to 5 pm, Monday through Friday, unless Work at other times is approved in advance by the Project Manager.

10.8.2.5 When Contractor needs access throughout the day to an area that is normally secured and inaccessible to visitors, the Project Manager will provide "contractor locks" and keys, and Contractor must keep said areas secure.

10.8.2.6 Contractor will ensure that all of its and Subcontractors' officers, employees, and agents are aware of and comply with the access requirements in this Section 10.8.2.

10.8.3 Site Protection/Safety.

10.8.3.1 The Project Site may be in operation and open to the public during construction of the Work. Construction Work in and around Owner's buildings occupied by Metro personnel or frequented by the public shall be conducted in such a manner as to permit such operation without jeopardy and with the absolute minimum of inconvenience to occupants and the public.

10.8.3.2 Metro may restrict hours of work to accommodate Metro activities or special events.

10.8.3.3 Construction Work that requires coordination with Metro staff activities will be planned in advance with the Project Manager. A meeting will be held with Metro staff to identify a plan for the activity.



Construction Agreement

MERC CONTRACT NO. 303033

10.8.3.4 The Contractor will take every precaution to minimize noise, spreading of dust and debris, causing undue vibrations or impacts, and other nuisances. The Contractor shall do no structural or other damage to any in-place improvements.

10.8.3.5 Metro-owned tools, vehicles, and other equipment may not be used at any time.

10.8.3.5.1 Tree/Vegetation Protection. The Contractor shall comply with the local government regulations applicable to the Project, and shall consult with the Project Manager prior to doing work that could impact the health of a tree or vegetation not scheduled for removal by contract documents.

10.8.4 Personnel and Subcontractors.

10.8.4.1 Smoking is prohibited in all areas of the Project Site except in designated smoking areas. Contractor and Project Manager to determine a designated smoking area.

10.8.5 Prejudicial remarks, actions, slurs, and jokes in the workplace that are offensive to people relative to their race, color, religion, national origin, sex, age, marital status, veteran status, disability, or sexual orientation are strictly prohibited. Sexual harassment is strictly prohibited. Contractors are expected to use a reasonable person's standard of good judgment in their working relationships. No person shall be subjected to deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature, or that which is offensive, hostile, or intimidating.

10.8.6 Restrictions:

10.8.6.1 Contractors are not allowed to bring the following items onto the Project Site:

10.8.6.1.1 Weapons

10.8.6.1.2 Alcohol, narcotics

10.8.6.1.3 Skates/Skateboards/Rollerblades/Wheelies

10.8.6.1.4 Bicycles (if a Contractor employee is commuting to the Project Site via bicycle, arrangements can be made for appropriate parking and use).

10.8.6.1.5 Pets

10.8.7 Prohibited Conduct:

10.8.7.1 The following conduct is strictly prohibited and will result in the immediate ejection of the offending Contractor employee or Subcontractor from Project Site premises:

10.8.7.1.1 Possessing, using, transferring, offering, or being under the influence of any intoxicants or narcotics during working hours.

10.8.7.1.2 Willful deceit, gross negligence, or theft, including of personal or public property.

10.8.7.1.3 Neglect of duty, violation of Metro ordinances, regulations, and directives.

10.8.7.1.4 Willful or repeated negligent violation of established safety policies and procedures.

10.8.7.1.5 Possessing a firearm, illegal weapons, fireworks, or explosive device on Metro property

10.8.7.1.6 Harassment, discourteous treatment of any kind, or discrimination to staff, volunteers, or members of the public. Obscenities, profanity, yelling, shouting, abusive, or maligning tone of voice and/or language is considered discourteous and is prohibited.

10.8.7.1.7 Misuse of Metro property.

ARTICLE 11 INDEMNIFICATION

11.1 Indemnification.

11.1.1 Contractor shall assume all responsibility for the Work and shall bear all losses and damages directly or indirectly resulting to Contractor, Metro, Architect, their officers, agents, and employees, or to others on account of the character or performance of the Work or accidents.

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



Construction Agreement

MERC CONTRACT NO. 303033

11.1.3 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 Section.

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

11.1.4.1 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.

11.1.4.2 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 Contract Time under any provisions of the Contract Documents that cause other Metro Contractors to fall behind the Construction Schedule so that they must then accelerate the performance of the Work, as directed by Metro, in order to maintain progress.

11.1.4.3 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 that might affect this Contract.

11.1.5 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 fees and court costs incident thereto.

11.1.6 No indemnification provided by the Contractor under this Article 11 or insurance provided under Article 12 will be required to indemnify Metro or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Contractor or those entities or persons for whom the Contractor is responsible.

ARTICLE 12 INSURANCE

12.1 General Insurance Requirement. The Contractor will purchase from and maintain in a company or companies lawfully authorized to do business in the State of Oregon such insurance as will protect the Contractor from claims set forth below that may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

12.1.1 Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed;

12.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

12.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

12.1.4 Claims for damages insured by usual personal injury liability coverage and commercial general liability coverage (or its equivalent as approved in advance by the Owner);

12.1.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

12.1.6 Claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle;

12.1.7 Claims for bodily injury or property damage arising out of completed operations;

12.1.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Article 12 of the General Conditions;

12.1.9 Claims for third-party injury and property damage (including without limitation clean-up costs) as a result of pollution conditions arising from the Contractor's operations or completed operations; and

12.1.10 Claims involving the Contractor's professional liability, solely to the extent that the Contractor accepts design or design/build responsibilities under the Contract.

12.2 Required Coverage. Without waiver of any other requirement of the Contract Documents, the Contractor will provide, pay for, and maintain in full force and effect at all times during the performance of the Work

Construction Agreement

MERC CONTRACT NO. 303033

until final acceptance of the Work or for such further duration as required, the following policies of insurance issued by a responsible carrier. All of the Contractor's insurance carriers will be rated with a Financial Strength of A or higher and a Financial Size Category of VII or higher by A.M. Best's rating service, unless otherwise approved by the Owner.

12.2.1 Workers' Compensation: Workers' compensation coverage sufficient to meet statutory liability limits.

12.2.2 Employer's Liability: The Contractor will purchase and maintain employer's liability insurance in addition to its workers' compensation coverage with at least the minimum limits in Section I.C below.

12.2.3 Commercial General Liability: The Contractor will purchase and maintain commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 0001 (12/04 or later) or an equivalent form approved in advance by the Owner. CGL coverage will include all major coverage categories including bodily injury, property damage, and products/completed operations coverage maintained for at least six years following final payment.

12.2.4 Professional Liability/Errors and Omissions: To the extent that the Contractor accepts design or design/build responsibilities, the Contractor will purchase and maintain professional liability/errors and omissions insurance and cause those Subcontractors providing design services do so.

12.2.5 Automobile Liability: The Contractor will purchase and maintain automobile liability insurance with coverage for owned, hired, and non-owned vehicles on ISO form CA 00 01 or an equivalent form approved in advance by the Owner. The automobile liability insurance will include pollution liability coverage resulting from vehicle overturn and collision.

12.2.6 Pollution Liability: The Contractor will purchase a contractors' pollution liability policy. Coverage will include third-party claims for bodily injury, property damage, and environmental damage resulting from pollution conditions caused during the performance of covered operations for both on-site and migrating from the job site. Such coverage will include pollution conditions arising from covered operations including work performed by its Subcontractors and third-party claims against the Contractor alleging improper supervision of its Subcontractors.

12.2.7 Commercial Umbrella/Excess Coverage: The Contractor will purchase or maintain a commercial umbrella or excess liability policy to meet the minimum limits as described below in Section I.C. Commercial umbrella/excess liability coverage will include: (a) "Pay on behalf of" wording; (b) concurrency of effective dates with primary coverage; (c) punitive damages coverage (where not prohibited by law); (d) application of aggregate (where applicable) in primary coverage; (e) "care, custody, and control" coverage that follows the form for primary coverage; and (f) drop-down feature. Excess/umbrella coverage will be scheduled to the CGL, employer's liability, and automobile liability policies.

12.3 Limits. The insurance required by this Article 12 will be written for at least the limits of liability specified in this Section or required by law, whichever is greatest.

12.3.1 Workers' Compensation Statutory Limits

12.3.2 Employer's Liability

12.3.2.1 Each Accident \$1,000,000

12.3.2.2 Each Bodily Injury/Disease \$1,000,000

12.3.2.3 Aggregate Bodily Injury/Disease \$1,000,000

12.3.3 Commercial General Liability

12.3.3.1 Each Occurrence \$2,000,000

12.3.3.2 General Aggregate \$2,000,000

12.3.3.3 Product/Completed Operations \$2,000,000

12.3.3.4 Personal & Advertising Injury \$2,000,000

12.3.3.5 Fire Damage Limit \$2,000,000

12.3.3.6 Medical Expense Limit \$2,000,000

12.3.4 Automobile Liability

12.3.4.1 Combined Single Limit \$2,000,000

12.3.5 Pollution Liability

12.3.5.1 Single Limit \$2,000,000

12.3.5.2 Aggregate \$2,000,000

12.3.6 Commercial Umbrella/Excess Coverage

12.3.6.1 Each Occurrence limit of \$3,000,000, bringing the total per occurrence limit to

\$500,000.00.

Construction Agreement

MERC CONTRACT NO. 303033

12.4 Additional Insureds. The Contractor's third-party liability insurance policies will include the Owner and its officers, employees, agents, volunteers, partners, successors, and assigns as additional insureds. The policy endorsement must extend premise operations and products/completed operations to the additional insureds. The additional insured endorsement for the CGL insurance must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent, but will not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

12.5 Joint Venture. If the Contractor is a joint venture, the joint venture will be a named insured for the liability insurance policies.

12.6 Primary Coverage. The Contractor's insurance will be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the Owner or the Architect, including any property damage coverage carried by the Owner. Contractor's insurance will apply separately to each insured against whom a claim is made or suit is brought. The Contractor's insurance will not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party.

12.7 Contractor's Failure to Maintain Insurance. If for any reason the Contractor fails to maintain required insurance coverage, such failure will be deemed a material breach of the Contract and the Owner, at its sole discretion, may suspend or terminate the Contract for cause pursuant to Article 15 of this Contract. The Owner may, but has no obligation to, purchase such required insurance, and without further notice to the Contractor, the Owner may deduct from the Contract Sum any premium costs advanced by the Owner for such insurance. Failure to maintain the insurance coverage required by this Article 12 will not waive the Contractor's obligations to the Owner.

12.8 Certificates of Insurance. The Contractor will supply to the Owner Certificates of Insurance for the insurance policies described in this Article 12 prior to the commencement of the Work and before bringing any equipment or construction personnel onto the Project site.

12.8.1 Additional Certificates. To the extent that the Contractor's insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage will be submitted with the final application for payment. Information concerning reduction of coverage because of revised limits or claims paid under the general aggregate, or both, will be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

12.8.2 Prohibition Until Certificates Received. The Owner will have the right, but not the obligation, to prohibit the Contractor and its Subcontractors from entering the Project site until the required certificates (or other competent evidence that insurance has been obtained in complete compliance with this Article 12) are received and approved by the Owner.

12.8.3 Deductibles/Self-Insured Retentions: Payment of deductibles or self-insured retention is a Cost of the Work and does not justify a Change Order. Satisfaction of all self-insured retentions or deductibles will be the sole responsibility of the Contractor.

12.9 Subcontractor Insurance. The Contractor will cause each Subcontractor to purchase and maintain in full force and effect policies of insurance as specified in this Article 12, except that the coverage limits shall be at least \$1,000,000 combined single limit for each occurrence and in the aggregate. The Contractor will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the Owner, the Contractor will furnish copies of Certificates of Insurance establishing coverage for each Subcontractor.

12.10 Limitations on Coverage.

12.10.1 No insurance provided by the Contractor under this Article 12 will be required to indemnify the Owner, the Architect, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents, representatives, or Subcontractors.

12.10.2 The obligations of the Contractor under this Article 12 will not extend to the liability of the Architect or its consultants for (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications; or (b) the giving or failure to give directions or instructions to the extent that the directions, or failure to provide directions, are the cause of the injury or damage.

12.10.3 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance in effect or procured by the Contractor will not reduce or limit the Contractor's contractual obligations to indemnify and defend the Owner for claims or suits that result from or are connected with the performance of the Contract.

Construction Agreement

MERC CONTRACT NO. 303033

ARTICLE 13

MINORITY/WOMEN/EMERGING SMALL BUSINESS PROGRAM

13.1 Contractor shall comply with all pertinent provisions of Metro's MWESB Business Program that are contained in Metro Code 2.04.100 to 2.04.190 and that are by this reference expressly incorporated herein and made a part of this Contract.

13.2 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.

13.3 Metro reserves the right, at all times during the period of this Contract, to monitor Contractor's compliance with the terms of the MWESB 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.

13.4 MWESB Participation in the Contract.

13.4.1 It is Metro's policy that Contractor shall take reasonable steps to ensure that Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Emerging Small Businesses (ESB) have the opportunity to participate in the Work.

13.4.2 Termination and Substitution of MWESB. The Contractor shall notify Metro in writing and confer with Metro before terminating or replacing a MWESB that has a signed contract with the Contractor.

13.4.3 Changes in Work Committed to MWESB. Metro will consider the impact on MWESB participation in instances where Metro changes, reduces, or deletes Work contracted to MWESB firms at the time of Contract Award. In such instances, the Contractor shall not be required to replace the Work but is encouraged to do so. If the Contractor proposes any changes that involve a contracted MWESB, the Contractor shall notify the MWESB of the proposed change, reduction, or deletion of any Work committed at the time of Contract Award prior to executing the Change Order. The Contractor can choose to enable the affected MWESB to participate in the Change Order request and is requested to make every effort to maintain the contracted MWESB percentage.

13.4.4 Contractor Payments to Subcontractors. The Contractor shall maintain records of all subcontracts entered into with MWESB firms and records of materials purchased from MWESB suppliers. Such records shall show the name and business address of each MWESB subcontractor or vendor and the total dollar amount actually paid to each MWESB subcontractor or vendor. The Contractor shall pay each subcontractor for satisfactory performance of its contract no later than ten (10) Calendar Days from receipt of each payment the Contractor receives from Metro. The Contractor shall also return Retainage payments to each subcontractor within ten (10) Calendar Days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Metro Project Manager. The Contractor shall submit a completed, signed original "Metro Monthly Subcontractor Payment and Utilization Report," available from Metro. The Contractor shall submit the form when a progress or final payment has been made to each subcontractor or supplier or when any held retainage is returned to a subcontractor or supplier. Contractor shall submit the form no later than the fifth day of each month. At the completion of the Project, Contractors shall submit a final form indicating the total amounts paid to all subcontractors and suppliers.

ARTICLE 14

MISCELLANEOUS STATUTORY RESPONSIBILITIES OF CONTRACTOR

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, and city, or taxes of any other governmental entity applicable to the Work performed or materials provided under this Contract.



Construction Agreement

MERC CONTRACT NO. 303033

ARTICLE 15 TERMINATION OR SUSPENSION OF THE WORK

15.1 Default of Contractor.

15.1.1 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.

15.1.2 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 may finish the Work or the portion terminated by whatever method it may deem expedient.

15.1.3 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 its surety. If only a portion of the Contract is terminated, this Section shall be deemed to apply to that portion of the Work only.

15.1.4 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 that 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.

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

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

15.1.5.2 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 that is not terminated or suspended.

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

15.1.6 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.

15.1.7 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.

Construction Agreement

MERC CONTRACT NO. 303033

15.2 Termination in the Public Interest.

15.2.1 Metro may unilaterally terminate the Contract in whole or in part for convenience, when Metro determines it to be in the public interest.

15.2.2 When Metro decides to terminate a Contract for convenience, Metro will notify the Contractor and its sureties in writing of its intention to terminate the Contractor's right to proceed with the Work no less than seven (7) days in advance of the date of the actual termination. The date of termination, which is the date after which no Work is to be performed, must be stated in the notice. Notice will be deemed to have been given if sent to the Contractor's or any surety's last known address provided to Metro by the Contractor and its sureties. For purposes of computing time in this Section, the first day counted is the day that the notice is mailed by Metro.

15.2.3 After receipt of a notice of termination, and except as directed by Metro, the Contractor will immediately proceed with the following obligations:

15.2.3.1 Stop Work by the date as specified in the notice;

15.2.3.2 Award no further subcontracts and place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the Contract, if any;

15.2.3.3 Terminate all Subcontractors and orders to the extent that they relate to the Work terminated;

15.2.3.4 Assign to Metro, if directed by Project Manager, all right, title, and interest of the Contractor under the subcontracts terminated, in which case Metro will have the right to settle or to pay any termination settlement proposals arising out of those terminations;

15.2.3.5 With approval or ratification to the extent required by Metro, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;

15.2.3.6 As directed by Metro, transfer title and deliver to Metro (a) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other materials produced or acquired for the Work terminated, and (b) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Metro;

15.2.3.7 Take any actions that may be necessary, or that Project Manager may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which Metro has or may acquire an interest; and

15.2.3.8 Use its best efforts to sell, as directed or authorized by Project Manager, any property of the type referred to in Section 14.2.3.6 above, except that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved by, the Project Manager. The process of any transfer or disposition will be applied to reduce any payments to be made by Metro under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by Project Manager.

15.2.4 Upon termination, Metro will pay the Contractor the following costs, and no other, as a result of the termination:

15.2.4.1 With regard to the Contract Work performed before the effective date of termination, the total (without duplication of any items) of the following costs:

15.2.4.1.1 The cost of this Work, as determined by the method of payment established by the Contract Documents;

15.2.4.1.2 The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if such costs are not included in Section 14.2.3.4; and

15.2.4.1.3 A sum as profit on Section 14.2.4.1.1 above, not to exceed ten percent of that amount, unless it appears that the Contractor would have sustained a loss on the entire Contract had it been completed. No profit, however, is permitted on costs compensated under Section 14.2.4.1.2.

15.2.4.2 The reasonable costs of settlement of the Work terminated, including:

15.2.4.2.1 Accounting, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, except that no allowance will be made for costs incurred as attorney fees;

15.2.4.2.2 The termination and settlement of Subcontractors (excluding the amounts of such settlements); and

Construction Agreement

MERC CONTRACT NO. 303033

15.2.4.2.3 Storage, transportation, and other costs incurred reasonably necessary for the preservation, protection, or disposition of the termination inventory.

15.2.5 No costs other than those allowed in Section 14.2.4 are to be paid. By way of example only, and not by way of limitation, costs that would not be allowed include anticipated profits on unperformed Work, consequential damages, post-termination overhead, Bid or Proposal preparation costs, costs for retraining employees, depreciation on idle equipment, cost of common items reasonably usable on the Contractor's other work, and costs unrelated to the Work performed prior to the date of termination.

15.2.6 Metro may deduct from any sums otherwise due the Contractor under Section 14.2.4 above the cost of advance payments made to the Contractor under the terminated portion of this Contract, any claim that Metro has against the Contractor whether or not arising from this Contract, and the agreed price of, or proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provision of Section 14.2.3.8 and not recovered by or credited to Metro.

15.2.7 Payment from Metro is not due until the Contractor has submitted an itemization of its recoverable costs to Metro in writing, together with supporting documentation. The Contractor will supply additional supporting documentation on request by Metro in order to recover its costs.

15.2.8 The Contractor will maintain all records and documents relating to the termination until Metro and the Contractor resolve the amount of costs to be paid by Metro to the Contractor as a result of this termination. Such records must be made available to Metro within thirty (30) days of the request.

END OF SECTION

Construction Agreement



Metro

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

MERC CONTRACT NO. 303033

METRO GENERAL CONDITIONS - EXHIBIT 1

WARRANTY FORM

We the undersigned hereby warrant that the [DESCRIBE WORK PERFORMED OR MATERIALS SUPPLIED].that we have provided for [INSERT PROJECT NAME] 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 Metro General Conditions.

We agree to correct or remove and replace any or all of our Work, together with any other adjacent Work that may be displaced or affected by so doing, that may be defective in its workmanship or materials, or that may fail to conform to the requirements of the Contract Documents, within a period of one (1) year following the later of the date of substantial completion or the date described in Section 7.7 of the Metro General Conditions, 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 to dispose of nonconforming materials and charges therefore upon demand. If Metro is required to enforce payment, it shall be entitled to recover its costs and reasonable attorney fees.

CONTRACTOR

By_____

Print Name_____

Date_____

SUBCONTRACTOR

By_____

Print Name_____

Date_____



Metro

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

Construction Agreement

MERC CONTRACT NO. 303033

METRO GENERAL CONDITIONS - EXHIBIT 2

SUBCONTRACTOR ASSIGNMENT OF ANTITRUST CLAIMS

Project: _____

Owner: Metro

General Contractor: _____

Subcontractor: _____

Release Date: _____

1. By entering into a contract with the General Contractor, subcontractor, for consideration paid to subcontractor under the subcontract, does irrevocably assign to Metro any claim for relief or cause of action that subcontractor now has or that may accrue to Subcontractor 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 subcontractor's obligations under its subcontract with the General Contractor.

2. Subcontractors irrevocably assigns to Metro, as a third-Party beneficiary of the subcontract, any right, title, or interest that has accrued or may accrue to the Subcontractor 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 hereunder, 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 Subcontractor's obligations as agreed to by Subcontractor in pursuance of the completion of the Contract .

3. It is an express obligation of Subcontractor that it will take no action that will in any way diminish the value of the rights conveyed or assigned hereunder to Metro. It is an express obligation of Subcontractor to advise the Office of Metro Attorney:

a. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;

b. 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 imminency of such action; and

c. 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.

4. In the event that any payment under any such claim is made to Subcontractor, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro herein.

SUBCONTRACTOR

By_____

Print Name_____

Date_____



Metro

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

Construction Agreement

MERC CONTRACT NO. 303033

METRO GENERAL CONDITIONS - EXHIBIT 3

AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE

(General Contractor – Progress Payment)

This AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE is entered into _____, by and between Metro, a Metropolitan Service District established pursuant to Oregon law and the Metro Charter ("METRO") and _____, (the "Undersigned") in accord with Metro Contract No. _____, dated _____, between Metro and the Undersigned for construction of _____ (the "Contract"). As a condition precedent to Metro's progress payment No. _____ under the Contract in the amount of \$ _____ (the "Payment No. _____"), and in consideration thereof, the Undersigned agrees to make the following representations, warranties, covenants, agreements, and indemnities, and to fully and completely waive, release, and discharge Metro from all liabilities, obligations, and claims arising under the Contract, as follows:

1. The Undersigned hereby certifies, represents, and warrants as follows:

1.1 It has supplied labor, services, equipment, materials, and materials provided or transported to the construction of the _____ as General Contractor under the Contract (the "Project"), and has subcontracted with other persons and entities to so provide.

1.2 It has complied with all federal, state, and local laws, including social security laws, unemployment compensation laws, workers' compensation laws, and tax laws, insofar as applicable to the performance of the Contract work, and has paid all federal, state, and local taxes including excise, use, sales, and withholding taxes.

1.3 All subcontractors, laborers, service providers, equipment suppliers and material suppliers, and transporters for work, services, equipment, or materials supplied to the Project or to the Undersigned and used in the Project have been paid in full by the Undersigned through the period covered by previous progress payments made by Metro.

1.4 It either has paid in full, or within ten (10) business days of receipt of the Final Payment, will pay in full all subcontractors, laborers, service providers, equipment suppliers and material suppliers, and transporters for work, services, equipment, or materials supplied to the Project or to the Undersigned connected with or used in the Project.

1.5 It has delivered to Metro written releases of all rights to file claims on any bonds in connection with the Contract, signed by each subcontractor, service provider, and supplier who performed work or services, or furnished or transported materials or equipment in connection with the Contract, in accord with Article 9 of the Metro General Conditions to the Contract.

2. The Undersigned acknowledges and agrees that Progress Payments made by Metro up to the date hereof, in the sum of _____, plus Progress Payment No. _____, in the sum of \$ _____ when paid, constitute payment in full of all amounts due to Undersigned for all labor, services, equipment, and materials provided or transported in connection with the Project up to and through _____, _____, as set forth in the Undersigned's payment application No. _____. The Undersigned agrees that, ***conditioned upon receipt of Payment No. _____***, and in consideration thereof, the Undersigned hereby fully and unconditionally waives and releases all liability for payment, liens or claims of lien, rights to lien, bond claim rights, and any other claim for payment it now has or asserts or may have or assert for labor, services, equipment, materials, and materials provided or transported in connection with the Project through and up to said date, and further releases Metro, the Project land and improvements from any claim, cause of action, or demand whatsoever, arising out of or relating to the Project that arose on or before said date.

3. The Undersigned hereby agrees to promptly pay and obtain a release of claims on any bonds that may in the future affect the Project, and 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 work under the Contract through and up to the date set forth in section 2.

4. The affiant signing below does hereby swear and attest that he/she has the full authority to sign this document on behalf of the Undersigned and that, ***conditioned upon receipt of Progress Payment No. _____***, which is the full payment due and owing to Undersigned up to and through the date set forth in section 2, that Undersigned has been paid in full for all labor (including contributions and benefits), services, equipment, supplies, and materials provided or transported in connection with the Project without exceptions, and that there are no other unsettled claims or demands therefore. The affiant further acknowledges that Metro may rely on this Affidavit, Agreement for Lien Waiver and Release in connection with remitting Progress Payment No. _____ to Undersigned.

Dated: _____ Undersigned: _____
By: _____ Its: _____

STATE OF OREGON)
County of _____)

This instrument was acknowledged before me on _____ by _____ as _____
_____ of _____

Notary Public - State of Oregon



Construction Agreement

MERC CONTRACT NO. 303033

METRO GENERAL CONDITIONS - EXHIBIT 4

AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE

(General Contractor – Final Closeout)

This AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE is entered into _____, by and between Metro, a Metropolitan Service District established pursuant to Oregon law and the Metro Charter ("METRO") _____, (the "Undersigned") in accord with Metro Contract No. _____, dated _____, between Metro and the Undersigned for construction of the _____ (the "Contract"). As a condition precedent to Metro's final payment under the Contract, in the amount of _____ (the "Final Payment"), and in consideration thereof, the Undersigned agrees to make the following representations, warranties, covenants, agreements and indemnities, and to fully and completely waive, release and discharge Metro from all liabilities, obligations, and claims arising under the Contract, as follows:

1. The Undersigned hereby certifies, represents and warrants as follows:

1.1 It has supplied labor, services, equipment, materials or materials transported to the construction of the _____ as General Contractor under Metro Contract No. _____ (the "Project"), and has subcontracted with other persons and entities to so provide.

1.2 It has complied with all federal, state and local laws, including social security laws, unemployment compensation laws, workers' compensation laws, and tax laws, insofar as applicable to the performance of the Contract work, and has paid all federal, state and local taxes including excise, use, sales and withholding taxes.

1.3 All subcontractors, laborers, service providers, equipment suppliers and material suppliers and transporters for work, services, equipment or materials supplied to the Project or to the Undersigned and used in the Project have been paid in full by the Undersigned through the period covered by previous progress payments made by Metro.

1.4 It either has paid in full, or within ten (10) business days of receipt of the Final Payment, will pay in full all subcontractors, laborers, service providers, equipment suppliers and material suppliers and transporters for work, services, equipment or materials supplied to the Project or to the Undersigned connected with or used in the Project.

1.5 It has delivered to Metro written releases of all rights to file claims on any bonds in connection with the Contract, signed by each subcontractor, service provider and supplier who performed work, services or furnished or transported materials or equipment in connection with the Contract, in accord with Article 9 of the General Conditions to the Contract.

2. The Undersigned covenants and agrees that Progress Payments made by Metro up to the date hereof, in the sum of \$ _____, plus the Final Payment in the amount of _____, constitute full and final payment of all amounts due to Undersigned for all labor, services, equipment, and materials provided or transported in connection with the Project. The Undersigned agrees that, ***conditioned upon receipt of the Final Payment***, and in consideration thereof, the Undersigned hereby fully and unconditionally waives, discharges and releases Metro from all liabilities, obligations and claims, including all liens, claims of lien, rights to lien, bond claim rights and any other claim for payment it now has or asserts or may have or assert for labor, services, equipment, materials provided or transported in connection with the Contract, and further releases Metro, the Project land and improvements from any claim, cause of action, or demand whatsoever arising out of or relating to the Project.

3. The Undersigned hereby agrees to defend, indemnify and hold Metro harmless from any liability or expense resulting from any claim on any bond or any other claim related to the Contract or work there under, in accord with Articles 9 and 1 of the General Conditions to the Contract.

4. The affiant signing below does hereby swear and attest that he/she has the full authority to sign this document on behalf of the Undersigned and that, ***except for the Final Payment***, which is the full and final payment due and owing to Undersigned, that Undersigned has been paid in full for all labor (including contributions and benefits), services, equipment, supplies and materials provided or transported in connection with the Project without exceptions, and that there are no other unsettled claims or demands therefore. The Undersigned affiant further acknowledges that Metro may rely on this Affidavit, Agreement for Indemnity, Lien Waiver and Release in connection with remitting the Final Payment to Undersigned.

Dated: _____ Undersigned: _____
By: _____ Its: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me on _____ by _____ as _____
of _____

Notary Public - State of Oregon



Metro

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

Construction Agreement

MERC CONTRACT NO. 303033

METRO GENERAL CONDITIONS - EXHIBIT 5

AFFIDAVIT, LIEN WAIVER AND RELEASE – CONDITIONAL FINAL

(Subcontractor - Closeout)

1. The undersigned, _____ (“Undersigned”), has provided labor, services, equipment, materials or materials transport to the construction of the improvements at _____ known as _____, as a Subcontractor to _____ (“Contractor”), Metro Contract No. _____ (the “Project”).

2. The Undersigned acknowledges and agrees that the sum of \$ _____ constitutes full and final payment of all amounts due to Undersigned for all labor, services, equipment, and materials provided or transported in connection with the Project (the “Final Payment”). The Undersigned agrees that, ***conditioned upon receipt of the Final Payment***, and in consideration thereof, the Undersigned hereby fully and unconditionally waives and releases all liens, claims of lien, rights to lien, bond claim rights and any other claim for payment it now has or asserts or may have or assert for labor, services, equipment, materials provided or transported in connection with the Project, and further releases Metro, the Project land and improvements, and the Contractor from any claim, cause of action, or demand whatsoever arising out of or relating to the Project.

3. The Undersigned hereby certifies as follows:

3.1 It has complied with all federal, state and local laws, including tax laws, social security laws, unemployment compensation laws and workers’ compensation laws, insofar as is applicable to the performance of the subcontract work.

3.2 Its laborers, equipment suppliers and material suppliers have been fully paid through the period covered by previous progress payments made by Contractor except as explicitly noted in writing and attached hereto.

3.3 It either has paid in full, or within five (5) business days of receipt of the Final Payment, will pay in full for all labor, materials and equipment used in or furnished in connection with Project.

4. The affiant signing below does hereby swear and attest that he/she has the full authority to sign this document on behalf of the Undersigned and that, ***conditioned upon receipt of the Final Payment***, which is the full and Final Payment due and owing to Undersigned, that Undersigned has been paid in full for all labor (including contributions and benefits), services, equipment, supplies and materials provided or transported in connection with the Project without exceptions, and that there are no other unsettled claims or demands therefore. The Undersigned affiant and further acknowledges that Metro and Contractor are relying on this Affidavit, Lien Waiver and Release in connection with processing the Final Payment.

Dated: _____ Undersigned | Subcontractor: _____
By: _____
Print Name: _____
Its: _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on _____ by _____ as _____
_____ of _____.

Notary Public - State of Oregon

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 13-12

For the Purpose of Amending the Metropolitan Exposition Recreation Commission Contracting and Purchasing Rules

WHEREAS, on February 23, 2005 the Metropolitan Exposition Recreation Commission (MERC) adopted the Contracting and Purchasing Rules applicable to the MERC venues in accordance with its powers under Chapter 6.01.04 of the Metro Code; and

WHEREAS, the MERC Contracting and Purchasing Rules were amended on September 24, 2008 and October 19, 2011; and

WHEREAS, MERC wants to amend the Contracting and Purchasing Rules in regard to the use of Minority, Women, Emerging Small Business contractors as well as the Appeal Procedures; and

WHEREAS, MERC staff recommend the requested changes.

BE IT THEREFORE RESOLVED AS FOLLOWS:

- The Metropolitan Exposition Recreation Commission hereby amends the MERC Contracting and Purchasing Rules as set forth in attached Exhibit A. (see Exhibit A).

Passed by the Commission on June 4, 2013.

Chair

Secretary/Treasurer

Approved As to Form:
Alison Kean Campbell, Metro Attorney

By: _____
Nathan A. Schwartz Sykes
Senior Attorney

MERC Staff Report

Agenda Item/Issue: For the Purpose of Adopting Contracting and Purchasing Rules.

Resolution No.: 13-12

Presented By: Tim Collier

Date: June 4, 2013

Background: The MERC Commission formally adopted resolution 98-24 on April 8, 1998 accepting the report of the MERC Advisory Committee on Development of Economic Opportunities. One of the recommendations of the report was for the MERC commission to continue to focus on investing in ways to improve partnerships with Minority owned, Women owned and Emerging Small Businesses.

The MERC Commission most recently updated the MWESB contracting language with resolution 05-05 in February of 2005.

MERC FOTA liaisons, Karis Stoudamire-Phillips, Elisa Dozono, and Ray Leary have met numerous times with staff to determine how best to increase contracting opportunities within our minority communities. These changes are one of the avenues the group is recommending as a means to improve MERC's outreach to the minority community.

The proposed Contracting and Purchasing Rules revisions recommended here, further strengthen the MERC Commission's commitment to FOTA and the MWESB program and align MERC's procurement rules closer to Metro's more rigorous standards.

The proposed Contracting and Purchasing Rules revisions contain the following significant changes to current provisions:

- Adds a third required MWESB vendor solicitation on all contracts exceeding \$5,000 but less than \$100,000. The current requirements include outreach to one FOTA MBE, WBE, or ESB and outreach to one MBE, WBE, or ESB regardless of location.
- Creates a sheltered market program by requiring all Public Improvement Contracts more than \$5,000 but less than \$50,000 be bid only amongst MBE, ESB and WBE vendors.
- Adjusts timelines and amounts of the appeals process to be consistent with Metro procurement rules.
- Adds definition of Procurement Officer

Fiscal Impact: There is no direct fiscal impact. It is likely that construction project managers will invest more time in either solicitation efforts or time in supporting the selected contractor while on the job. History tells us that the sheltered market program can be successful if enough time is invested in managing and supporting the contractor through the contracting process and through the project.

Recommendation: The staff recommends that the Commission adopt the proposed Contracting and Purchasing Rules.

SECTION 1 - DEFINITIONS

The following terms shall have the following meanings:

- A. “Commission”** means the Metropolitan Exposition-Recreation Commission.
- B. “Contract Manager”** means the MERC staff person responsible for a particular procurement.
- C. “Emergency”** means circumstances that: (a) could not have been reasonably foreseen; (b) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.
- D. “Emergency Contract”** means a contract whose purpose is limited to remedying an emergency situation.
- E. “Emerging Small Business” or “ESB”** means a State of Oregon-certified emerging small business firm.
- F. “First Opportunity Target Area” or “FOTA”** means the economically distressed area located in the immediate vicinity of the Oregon Convention Center as authorized by Section 2, Chapter 909, Oregon Laws 1989.
- G. “General Manager”** means the individual appointed by the Commission who is responsible for managing the MERC staff.
- H. “Labor and Materials Bond”** means a bond for the protection of a person or firm claiming to have supplied labor or materials for the performance of work provided for in a public contract.
- I. “MERC Facility” or “Facilities”** means the Oregon Convention Center, the Portland Center for the Performing Arts, and the Portland Metropolitan Exposition Center, and any other facilities that are added to MERC’s management responsibilities from time to time.
- J. “MERC Purchasing Procedures Manual”** means the administrative procedures prepared by the General Manager.
- K. “Minority Business Enterprise” or “MBE”** means a State of Oregon-certified minority owned business.
- L. “Performance Bond”** means a bond conditioned on the faithful performance of a contract in accordance with the plans, specifications, and conditions of the contract.

- M. “Personal Services Contract”** means any contract by which MERC acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor, or materials, or the services of a construction trade are not personal services contracts.
- N.** "Procurement Officer" means the person designated by the Chief Operating Officer to carry out the functions required of such person by these rules.
- O. “Public Contract”** means any purchase, lease or sale by MERC of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.
- P. “Public Improvement Contract”** means a contract for the construction, reconstruction or major renovation on real property. A public improvement contract does not include emergency work, minor alteration, or ordinary repair or maintenance.
- Q. “Revenue Contract”** means a contract that provides revenue to MERC wherein MERC does not purchase a good or service.
- R. “Woman-Owned Business Enterprise” or “WBE”** means a State of Oregon-certified woman-owned business.

SECTION 2 - GENERAL PROVISIONS

A. Intent.

This document contains the purchasing and contracting rules adopted by the Metropolitan Exposition-Recreation Commission pursuant to ORS 279A.065. The intent of these rules is to permit the most flexible and efficient contracting procedures available under applicable state law and the Metro Code.

B. Exceptions To These Rules.

These policies do not apply to: (1) employment contracts for Commission personnel, (2) contracts for the lease or use of MERC facilities, (3) sponsorship and naming agreements, which are subject to MERC’s Sponsorship and Naming Policies, (4) donations and grants, (5) revenue contracts, to the extent permitted by the Metro Code and state law, and (6) other contracts exempted by the Commission from these policies on a case by case basis.

C. Oregon Attorney General’s Model Rules Inapplicable.

The Oregon Attorney General’s model contracting rules do not apply to the Commission.

D. Conflicts With Oregon Public Contracting Code.

In the event of a conflict between any provision of the Oregon Public Contracting Code and these rules, the provisions of the Oregon Public Contracting Code shall control.

SECTION 3 - AUTHORITY AND DELEGATION

A. Duties And Powers Of The Commission.

In accordance with Section 6.01.040(J) of the Metro Code, the Metropolitan Exposition-Recreation Commission is empowered to enter into contracts as the Commission deems necessary under contracting rules adopted by the Commission. Specifically, the Commission has the authority to enter into contracts of such types and in such amounts, including intergovernmental agreements, as the Commission may deem necessary, appropriate, or convenient for the renovation, equipping, maintenance, repair, operation and marketing of the use of buildings and facilities for which it is responsible, and for professional and other services. Pursuant to Metro Code Section 6.01.040, the Commission is impliedly empowered to amend and terminate contracts to which the Commission is a party, as the Commission may deem necessary, appropriate or convenient.

B. Commission Approval Required.

Procurements of \$100,000 or more require the Commission, by duly adopted resolution, to select the contractor and approve the contract.

C. General Manager's Authority.

The Commission delegates to the General Manager the authority to conduct procurements of less than \$100,000. The General Manager may enter into contracts less than \$100,000 without the approval of the Commission. All contracting by the General Manager shall be conducted in accordance with the Oregon Public Contracting Code, these rules, and the MERC Purchasing Procedures Manual promulgated by the General Manager. The General Manager may delegate his/her authority under these rules. Any such delegation shall be in writing.

D. Facility Authority.

1) Procurement Authority.

Individual MERC facilities shall not contract for amounts above \$5,000 without the prior approval of the General Manager. All contracting by the MERC facilities shall be conducted in accordance with the Oregon Public Contracting Code, these rules, and the policies promulgated by the General Manager.

2) Amendment Authority.

No contract in an amount above \$5,000 may be amended without the General Manager's approval. Any amendment of a contract by individual MERC facilities shall comply with all the requirements of Section 8 of these rules.

E. Purchasing Procedures Manual Required.

The General Manager shall develop a MERC Purchasing Procedures Manual with instructions to implement these rules. The MERC Purchasing Procedures Manual does not require Commission approval and may be revised as deemed necessary by the General Manager.

F. Contracts List Required.

The General Manager shall maintain a “current and pending contracts list” that shows items or services to be purchased and, if applicable, due dates and times bids or proposals will be opened.

SECTION 4 - PUBLIC CONTRACTS (GOODS & SERVICES)

A. Applicability.

The rules in this Section 4 apply to all public contracts of the Commission except public improvement contracts. Public improvement contracts are governed by Section 7 of these rules. For purposes of this Section 4, a public contract means any purchase, lease, or sale by MERC of personal property or services, including those transacted by purchase order, other than agreements that are for personal services. Personal services are governed by Section 5 of these rules.

B. Public Contracts Not Exceeding \$5,000.

A public contract not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the General Manager. The General Manager shall promulgate procedures in the MERC Purchasing Procedures Manual for contracts not exceeding \$5,000.

C. Public Contracts Exceeding \$5,000 But Less Than \$100,000.

Any public contract exceeding \$5,000 but less than \$100,000 shall be awarded in accordance with the provisions of ORS 279B.070, as follows:

- 1) A procurement may not be artificially divided or fragmented so as to fall within this rule.
- 2) When conducting a procurement under this section, the contract manager shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The contract manager shall attempt to obtain at least one quote from a state-certified MBE, WBE, or ESB within the FOTA area. The contract manager shall attempt to obtain second and third quotes from any state-certified MBE, WBE, or ESB regardless of location. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall

be in writing, and shall be kept as supporting documentation. The contract manager shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the contract manager shall make a written record of the effort made to obtain the quotes or proposals. Nothing shall prevent the contract manager from obtaining more than three quotes at any time.

- 3) If a contract is awarded, the contract shall be awarded to the offeror whose quote or proposal will best serve the interests of MERC, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- 4) Before the contract is awarded, the contract manager shall notify the General Manager of the nature of the proposed contract, the estimated cost of the contract, the names of the offerors and the amounts of the quotes or proposals, and the name of a contact person for the offeror. The contract may not be awarded without the approval of the General Manager.

D. Public Contracts Of \$100,000 Or More.

Public contracts of \$100,000 or more shall be awarded in accordance with this section, unless the contract is within a class of contracts designated by the Metro Council as a class special procurement. If the Metro Council has designated the procurement as a special procurement, the procurement may be awarded in accordance with Section 6 of these policies. Procurements governed by this Section 4(D) shall be awarded through the issuance of competitive sealed bids in accordance with ORS 279B.055, or through the issuance of competitive sealed proposals in accordance with ORS 279B.060, as follows:

- 1) Public Contracts Procured Through The Issuance Of Requests For Competitive Sealed Bids.
 - a) The Commission delegates authority to the General Manager to prepare and approve request for bid documents and to solicit competitive sealed bids. Commission staff is responsible for determining the exact specifications for the proposed purchase. The Commission delegates authority to the General Manager to prepare and approve requests for information, requests for interest or other preliminary documents to obtain information useful in the preparation of invitations to bid. Every procurement using competitive sealed bids shall comply with all the requirements of ORS 279B.055.
 - b) The procurement may not proceed without the approval of the General Manager.
 - c) The Commission shall evaluate the competitive sealed bids and shall select the successful bidder or bidders in accordance with the criteria

set forth in this section and in ORS 279B.055, as it may be amended from time to time. Completion of the procurement process requires Commission approval of the contract award and approval of the written contract by resolution. If a contract is awarded, the Commission shall award the contract:

- (1) To the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; or
- (2) When the invitation to bid specifies or authorizes the award of multiple contracts, to the responsible bidders:
 - (a) Whose bids substantially comply with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; and
 - (b) Who qualify for the award of a public contract under the terms of the invitation to bid.
- d) The Commission may, by duly adopted resolution, waive the requirements for Commission approval of contract award subject to any conditions established by the Commission.
- e) The Commission may reject any or all competitive sealed bids in accordance with the provisions of ORS 279B.100.
- 2) Public Contracts Procured Through The Issuance Of Requests For Competitive Sealed Proposals.

Any procurement of goods or services of \$100,000 or more may be awarded through the issuance of competitive sealed proposals, in accordance with the provisions of ORS 279B.060, as follows:

- a) The Commission delegates authority to the General Manager to prepare and approve proposal documents and to solicit competitive proposals. Commission staff is responsible for determining the exact needs and evaluation criteria for any proposed purchase. The Commission delegates authority to the General Manager to prepare and approve requests for information, requests for interest, requests for qualifications or other preliminary documents to obtain information useful in the preparation of a request for proposals, in accordance with ORS 279B.060(11). Every procurement using competitive sealed proposals shall comply with all the requirements of ORS 279B.060.

- b) The Commission delegates to the General Manager the authority to determine the evaluation criteria and selection methods to be used. The evaluation criteria and selection methods chosen by the General Manager shall be identified in the request for proposals. When provided for in the request for proposals, the contract manager may employ any combination of methods of evaluation, including but not limited to the methods listed in ORS 279B.060(6)(b).
- c) The procurement may not proceed without the approval of the General Manager.
- d) The Commission shall evaluate the competitive sealed proposals and shall award the contract to the responsible proposer whose proposal the Commission determines, by duly adopted resolution, to be the most advantageous to the Commission based on the evaluation process and evaluation factors described in the request for proposals, any applicable preferences required by Oregon law and, when applicable, the outcome of any negotiations authorized by the request for proposals. Completion of the procurement process requires Commission approval of the contract award and approval of the written contract by resolution.
- e) The Commission may waive the requirements for Commission approval of contract award subject to any conditions established by the Commission.
- f) The Commission may reject any or all competitive sealed proposals in accordance with the provisions of ORS 279B.100.

SECTION 5 - PERSONAL SERVICES CONTRACTS

A. Applicability.

This section establishes the rules for the procurement of personal services. Personal services contracts are those contracts designated by the Metro Council as “personal services contracts.” Section 2.04.010 of the Metro Code defines “personal services contract” as follows:

“Any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts with are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.”

The objective in contracting for personal services is to obtain the highest quality of work for the most reasonable price. The quality of technical services may be more important than cost.

B. Personal Services Contracts Not Exceeding \$5,000.

A personal services contract not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the General Manager. The General Manager shall promulgate procedures in the MERC Purchasing Procedures Manual for contracts not exceeding \$5,000.

C. Personal Services Contracts Exceeding \$5,000 But Less Than \$100,000.

Any procurement of personal services exceeding \$5,000 but less than \$100,000 shall be awarded in accordance with the provisions of ORS 279B.070, as follows:

- 1) A procurement may not be artificially divided or fragmented so as to fall within this rule.
- 2) When conducting a procurement under this section, the contract manager shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. The contract manager shall attempt to obtain at least one quote from a state-certified MBE, WBE, or ESB within the FOTA area. The contract manager shall attempt to obtain second and third quotes from any state-certified MBE, WBE, or ESB regardless of location. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation. The contract manager shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the contract manager shall make a written record of the effort made to obtain the quotes or proposals. Nothing shall prevent the contract manager from obtaining more than three quotes at any time.
- 3) If a contract is awarded, the contract shall be awarded to the offeror whose quote or proposal will best serve the interests of MERC, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- 4) Before the contract is awarded, the contract manager shall notify the General Manager of the nature of the proposed contract, the estimated cost of the contract, the names of the offerors and the amounts of the quotes or proposals, and the name of a contact person for the offeror. The contract may not be awarded without the approval of the General Manager.

D. Personal Services Contracts of \$100,000 Or More.

Any procurement of personal services of \$100,000 or more shall be awarded through the issuance of competitive sealed proposals, in accordance with the provisions of ORS 279B.060, as follows:

- 1) The Commission delegates authority to the General Manager to prepare and approve proposal documents and to solicit proposals. Commission staff is responsible for determining the exact needs and evaluation criteria for any proposed services requiring competitive sealed proposals. The Commission delegates authority to the General Manager to prepare and approve requests for information, requests for interest, requests for qualifications or other preliminary documents to obtain information useful in the preparation of a request for proposals, in accordance with ORS 279B.060(11). Every procurement using competitive sealed proposals shall comply with all the requirements of ORS 279B.060.
- 2) The Commission delegates to the General Manager the authority to determine the evaluation criteria and selection methods to be used. The evaluation criteria and selection methods chosen by the General Manager shall be identified in the request for proposals. When provided for in the request for proposals, the contract manager may employ any combination of methods of evaluation, including but not limited to the methods listed in ORS 279B.060(6)(b).
- 3) The procurement may not proceed without the approval of the General Manager.
- 4) The Commission shall evaluate the competitive sealed proposals and shall award the contract to the responsible proposer whose proposal the Commission determines, by duly adopted resolution, to be the most advantageous to the Commission based on the evaluation process and evaluation factors described in the request for proposals, any applicable preferences required by Oregon law and, when applicable, the outcome of any negotiations authorized by the request for proposals. Completion of the procurement process requires Commission approval of the contract award and approval of the written contract by resolution.
- 5) The Commission may waive the requirements for Commission approval of contract award subject to any conditions established by the Commission.
- 6) The Commission may reject any or all competitive sealed proposals in accordance with the provisions of ORS 279B.100.

SECTION 6 - SPECIAL PROCUREMENTS

A. Metro Council Designation Of Special Procurements.

A contract may be awarded as a special procurement if (a) the contract is in a class of contracts that has been designated as a special procurement or (b) the specific contract has been approved by Metro Council as a special procurement. A current list of special procurements designated by Metro Council is contained in Attachment "A."

B. Procedures For Special Procurements.

Special procurements shall be procured in accordance with the specific procedure, if any, contained in the Metro Code for that class of procurement. If no procurement is specified by Metro Code for the class of the special procurement, procurement shall be performed by means of procedures chosen by the Chief Executive Officer as an appropriate method tailored to fit and in light of the demands, circumstances and market realities associated with obtaining each of the enumerated goods and services. Such procurement procedures may include but shall not be limited to direct negotiations with individual or multiple vendors or suppliers; negotiations with ranked proposers; competitive negotiations; or multiple tiered competitions.

SECTION 7 - PUBLIC IMPROVEMENT CONTRACTS

A. Competitive Quotes Permitted For Public Improvement Contracts Not To Exceed \$100,000.

Public improvement contracts estimated not to exceed \$100,000 may be let by competitive quote under the following procedures:

- 1) Informal Construction Opportunities. Requiring all public improvement construction opportunities for contracts more than \$5,000.00 and less than \$50,000.00 to be bid only by qualified ESBs, MBEs and WBEs. The Procurement Officer may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.
- 2) When conducting a procurement under this section, the contract manager shall seek at least three informally solicited competitive price quotes from prospective contractors. The contract manager shall attempt to obtain at least one quote from a state-certified MBE, WBE, or ESB within the FOTA area. The contract manager shall attempt to obtain second and third quotes from any state-certified MBE, WBE, or ESB regardless of location. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation. The contract manager shall keep a written record of the sources of the quotes received. If three quotes are not reasonably available, fewer will suffice, but the

contract manager shall make a written record of the effort made to obtain the quotes. Nothing shall prevent the contract manager from obtaining more than three quotes at any time.

- 3) The contract manager shall award the contract to the prospective contractor whose quote will best serve the interests of MERC, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the contract manager shall make a written record of the basis for the award.
- 4) A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section.
- 5) Nothing in this section may be construed as prohibiting a contract manager from using competitive bidding procedures to conduct a procurement that is \$100,000 or less.
- 6) Before the contract is awarded, the contract manager shall notify the General Manager of the nature of the proposed contract, the estimated cost of the contract, the names of the offerors and the amounts of the quotes, and the name of a contact person for the offeror. The contract may not be awarded without the approval of the General Manager.

B. Competitive Sealed Bids Required For Public Improvement Contracts Exceeding \$100,000.

All public improvement contracts exceeding \$100,000 shall be based upon competitive sealed bids. The procedures for competitive bidding of all MERC public improvement contracts shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapter 279C.

C. Negotiations With Bidder(s).

If bids are solicited for a public improvement contract, and all bids exceed the budget for the project, the contract manager may, prior to contract award and with the prior approval of the General Manager, negotiate for a price within the project budget under the following procedures:

- 1) Negotiations shall begin with the lowest responsive and responsible bidder. If negotiations are not successful, then the contract manager may begin negotiations with the second lowest responsive, responsible bidder, and so on.
- 2) Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.

- 3) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.
- 4) The contract manager shall adhere to the provisions of ORS 279C.340 in applying this section.

D. Bonds.

Bonds and bid security requirements are as follows:

- 1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for \$50,000 or less.
- 2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over \$100,000.
- 3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the General Manager determines it is in the public interest.

E. Adoption Of Metro Good Faith Efforts Requirement For Construction Projects.

For construction contracts of \$100,000 or more, the Commission adopts in principle, policy, and content the “Good Faith Effort” program established by Metro Code § 2.04.100 through 2.04.190 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro’s Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program. The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE/WBE/ESB program as it relates to MERC contracting activities.

SECTION 8 - CONTRACT AMENDMENTS

A. Public Contract Amendments.

- 1) The General Manager may execute amendments to public contracts provided that any one of the following conditions are met:
 - a) The original contract was let by a formal competitive procurement process, the amendment is for the purpose of authorizing additional work for which unit prices or alternates were provided that established the cost for the additional work and the original contract governs the terms and conditions of the additional work; or

- b) The amendment is a change order that resolves a bona fide dispute with the contractor regarding the terms and conditions of a contract for a public improvement and the amendment does not materially add to or delete from the original scope of work included in the original contract; or
 - c) The amount of the aggregate cost increase resulting from all amendments does not exceed 20 percent of the initial contract if the face amount is less than or equal to \$1,000,000 or 10 percent if the face amount is greater than \$1,000,000; amendments made under subsection (a)(i) or (a)(ii) are not included in computing the aggregate amount under this subsection; or
 - d) The Commission, by duly adopted resolution, has authorized the contract amendment.
- 2) No public contract may be amended to include additional work or improvements that are not directly related to the scope of work that was described in the competitive process utilized to award the contract.

B. Personal Services Contract Amendments.

- 1) Personal services contracts of an initial amount of \$50,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. The limit provided in this subsection is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this limit must be approved by the Commission.
- 2) Personal services contracts with an initial amount greater than \$50,000 may be amended provided that any amendment that increases the total amount payable to an amount more than \$50,000 greater than the initial contract amount shall be subject to approval by the Commission. The Commission shall determine whether it is appropriate to amend the contract in light of the policies set forth in ORS 279A.015 and ORS 279B.010.

SECTION 9 - APPEAL PROCEDURES

A. Appeal Requirements.

At least seven (7) working days prior to the execution of any public contract over \$100,000.00 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$100,000.00. The appeal process for bids is the same as for a Request for Proposals. In the case of a

Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

All appeals shall be made in writing and shall be delivered to the Procurement Officer at Metro's main office within seven (7) working days of the postmarked/electronic delivery date on the notice of award. The protest must describe the specific rule, regulation, statute, or procedure upon which the appeal is based and the specific alleged conduct that violates such authority. Disagreement with the judgment exercised by evaluators in scoring a proposal is not a basis of appeal.

The Procurement Officer shall forthwith notify the appropriate Department Director and the General Manager of the appeal.

B. General Manager Response.

The General Manager shall respond to the protestor within ten (10) working days of receipt of notice of appeal. The response shall reject the protest if the General Manager finds that the protest is lacking in merit or shall uphold the appeal. Acceptance of the protest by the General Manager may cause the rejection of all bids or proposals or the award of the contract to a different bidder or proposer at the General Manager's discretion.

C. Further Appeals.

If the protestor wishes to appeal the decision of the General Manager, the protestor must submit a written appeal to the General Manager within five (5) working days of the postmark date on the General Manager's decision. The appeal shall be presented to the Commission at its next meeting by the General Manager. The Commission may convene a special meeting to consider the appeal. The Commission shall, by resolution, reject the protest due to lack of merit or uphold the protest. Acceptance of the protest by the Commission may cause the rejection of all bids or proposals or may require the contract be awarded to a different bidder at the discretion of the Commission. If the proposer wishes to appeal the decision of the Commission, the protestor shall appeal to the Contract Review Board in writing within five (5) working days of the Commission's decision on the protest.

SECTION 10 - DISPOSITION OF PERSONAL AND SURPLUS PROPERTY

A. Definitions

For purposes of this section, the following terms have the following meaning:

- 1) "Acquiring Facility" means the MERC facility that last used the property prior to declaring it surplus. For purposes of this section, MERC Administration is considered an acquiring facility.
- 2) "Surplus Property" means any MERC asset, whether or not carried as a fixed asset on the general ledger, and deemed to be of no further useful value to the acquiring MERC facility or to MERC as a whole.

- 3) “Property Services Manager” means the MERC official designated by the General Manager to administer the disposal of surplus property.
- 4) “MERC Property” means all personal property purchased with MERC funds, or given to MERC at no cost. Real Property is not included.
- 5) “Useful value” means the functional utility of an item, as determined by the acquiring facility, or the Property Services Manager after consulting with the acquiring department.
- 6) “Market value” means the amount of money that the sale of property could yield as determined by the Property Services Manager after reasonable inquiry.
- 7) “Scrap” means the property has no useful value to MERC and no market value. Surplus property may also be designated scrap if the further storage or cost of disposal exceeds its market value.

B. General Scope.

Property purchased by individual facilities and being used by MERC facilities is under the control of those facilities until it is of no further use to the facility. When property is declared to be of no further use to an individual facility, it is to be turned over to the Property Services Manager to be reused by another facility, sold, discarded or donated. Property cannot be disposed of by the individual facilities. When property is located at a site remote from the Property Services Manager, he/she may delegate the disposal and sale function to the facility director having control over the asset. When this is done, the facility director shall notify the Property Services Manager of intent to dispose of property. The Property Services Manager will make the determination based on the most cost effective disposal method.

C. Procedures.

Surplus property turned over to the Property Services Manager by MERC facilities will be processed as follows:

- 1) When a determination is made by the Property Services Manager that surplus property has further value to MERC, and the cost of storage does not exceed its value, it may be stored for future use. An inventory of property available for use by other MERC facilities will be maintained in the office of the Property Services Manager.
- 2) When surplus property is determined by the Property Services Manager to have no useful value to MERC and the market value exceeds \$100,000 after cost of advertising and sale, Commission approval for the sale is required. The property may be sold by one of the following methods:

- a) Advertise the sale in a newspaper of general circulation. Receive bids for the purchase and sale of the property to the highest bidder.
 - b) Hold a public auction with a licensed auctioneer, or auction the property in accordance with auction procedures of an auctioneer under contract with the State of Oregon. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder.
 - c) In the case of specialty property where the market is narrow, the property may be consigned to a broker to sell. The broker must be approved by the Commission.
 - d) The property may be sold or donated to another governmental entity or non-profit agency serving the region. The sale or donation under this provision shall be approved by the Commission.
- 3) When surplus property is determined by the Property Services Manager to have no useful value to MERC and the market value exceeds \$10,000 but does not exceed \$100,000 after the cost of advertising and sale, the Property Services Manager shall sell the property by one of the following methods:
- a) Advertise the sale in a newspaper of general circulation. Receive bids for the purchase and sale of the property to the highest bidder.
 - b) Hold a public auction with a licensed auctioneer, or auction the property in accordance with auction procedures of an auctioneer under contract with the State of Oregon. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder.
 - c) In the case of specialty property where the market is narrow, the property may be consigned to a broker to sell. The broker is to be selected by the Property Services Manager in consultation with the facility director after reasonable inquiry to insure the best marketing effort and commission rate is received.
 - d) The property may be sold or donated to another governmental entity or non-profit agency serving the region. The sale or donation under this provision shall be approved by the General Manager.
- 4) When surplus property is determined by the Property Services Manager to have no useful value to MERC and a market value of greater than \$0 and less than \$10,000 after deducting the cost of advertising and sale, the Property Services Manager shall sell the property by one of the following methods:

- a) Solicit bids from at least three liquidators or brokers (if there are three interested). The property will be sold to the highest bidder.
 - b) Hold a public auction with a licensed auctioneer, or auction the property in accordance with auction procedures of an auctioneer under contract with the State of Oregon. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder.
 - c) Conduct a public sale with marked prices reflecting the estimated quick sale value as determined by the Property Services Manager.
 - d) In the case of specialty property where the market is narrow, the property may be consigned to a broker to sell. The broker is to be selected by the Property Services Manager, in consultation with the facility director, after reasonable inquiry to insure the best marketing effort and commission rate is received.
 - e) The property may be sold or donated to another governmental entity or non-profit agency serving the region. The sale or donation under this provision shall be approved by the General Manager or his/her designee.
- 5) When surplus property has no useful value and no market value as determined by the Property Services Manager, it is declared “scrap” and may be disposed of by any of the following methods:
- a) Discard or recycle the property in any method prescribed by the Property Services Manager.
 - b) Donate the property to another governmental entity or nonprofit organization for reuse or sale.
 - c) As a last resort (to avoid discarding the property into the solid waste stream) the property may be given to any interested party agreeing to reuse or recycle it in exchange for the timely removal of the property from the premises.
- 6) A record of all property disposals shall be maintained in the office of the Property Services Manager. All surplus property disposals will be recorded in the property disposal files and maintained in accordance with proper archiving practices.
- 7) All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company

conducting the auction shall execute an appropriate bill of sale, which shall recite that the sale is without warranty, as provided in this subsection.

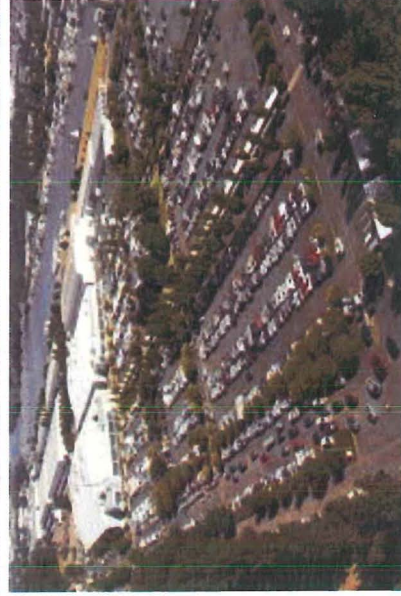
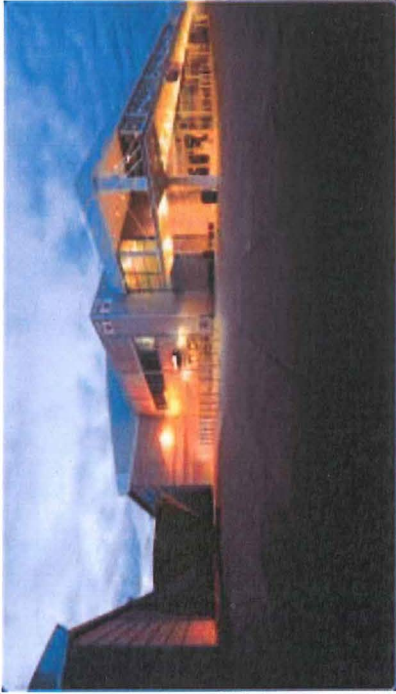
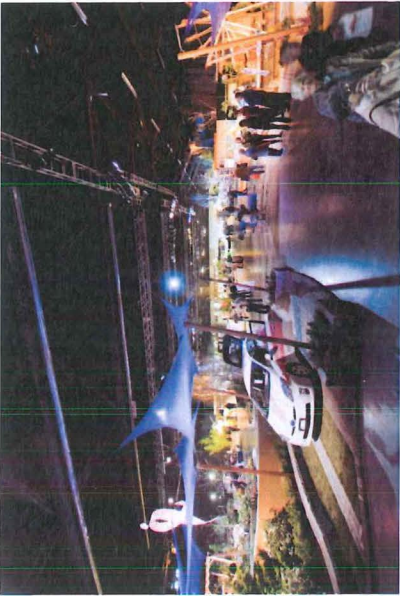
D. Accounting Requirements.

- 1) When the property is sold, proceeds from the sale shall be turned over to MERC Accounting and credited to the originating fund when the fund is identifiable. If the originating fund cannot be identified, the proceeds will be credited to the MERC Operating Fund as miscellaneous revenue.
- 2) When surplus property is a fixed asset carried on the general ledger, the disposal or transfer of the property to another facility shall be reported to MERC Accounting. The asset will be transferred to the receiving facility if the property has sufficient value to be considered a fixed asset on the general ledger.

E. Exceptions.

- 1) Expendable materials and supplies that are normally recycled or disposed of after use are not considered property for the purpose of this rule.
- 2) Real Property is not included in this rule.

**Materials following this page are
attachments to the public record.**



PORTLAND expo CENTER

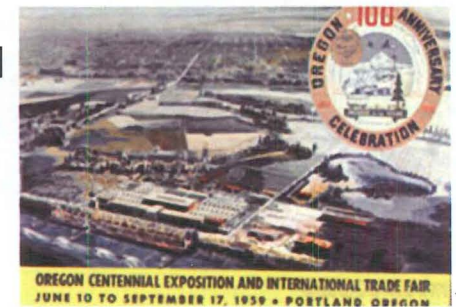
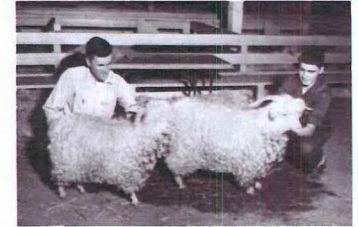
Halls A, B and C Conditions Assessment
June 4, 2013



History and Overview

2

- 1921** Original buildings were constructed.
- 1925** Following a fire the on-site all structures were rebuilt.
- 1920 – 1950's** Used primarily by the Pacific International Livestock Association or "P.I."
- 1942** Converted to "Portland Assembly Center" (Japanese internment) from May 2nd – September 10th per Executive Order 9066 by President Roosevelt.
- 1948** Tragic Vanport flood takes place – May 30th flooding Vanport City to the South, killing 15.
- 1959** Oregon Centennial Exposition and International Trade Fair – 3 months and over 1.5M visitors. Welcoming Paul Bunyan statue remains today in Kenton.



History and Overview

3

- 1950 – 1980s** Gradual growth of consumer show events – Portland Swap Meet, Rose City Classic Dog Show, Antique and Collectible Show, O’ Loughlin Trade Shows
- 1960 – 1990s** Site hosts annual Multnomah County Fair and Exhibition
- 1994** MERC/Metro assume ownership and management of the facilities
- 1996 – 1997** Hall E opens. Smithsonian Institution “Traveling America” Exhibition featuring Lincoln’s Top Hat and Dorothy’s ruby red slippers.
- 2001** Hall D Opens, adding 72,000 SF.
- 2011** West Delta restaurant opens.
- 2012 - Present** Expo hosts Cirque du Soleil for close to 100,000 visitors. Expo completes rebranding efforts with new website, tower signage in neon, marquee, as well as increased sustainability efforts.





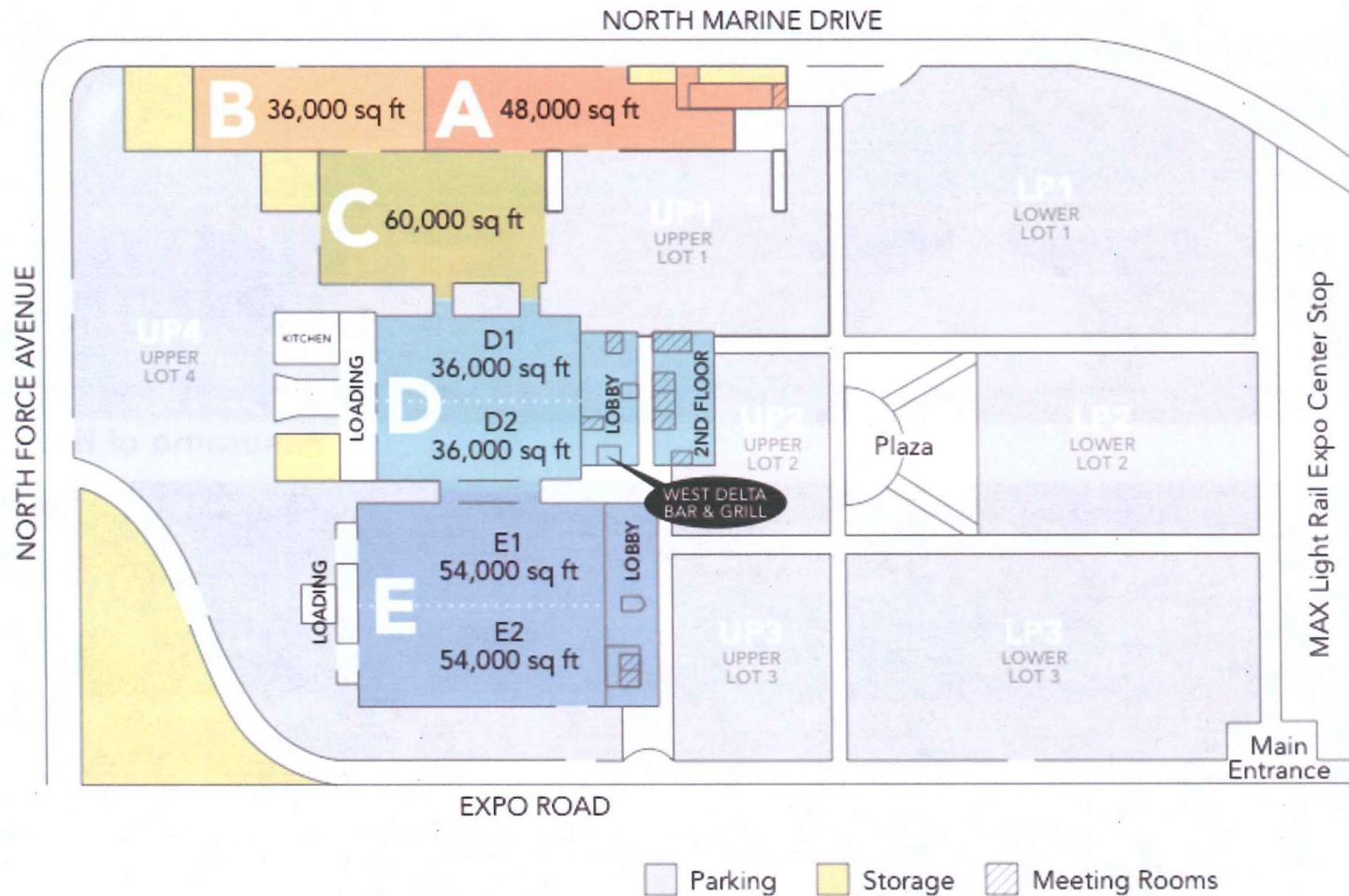
Current Layout 330,000 SF Exhibit Space

4

| <u>Exhibit Hall Spaces</u> | <u>Square Feet</u> | <u>Year Built</u> |
|----------------------------|--------------------|-------------------|
| Hall A | 48,000 | 1925 |
| Hall B | 36,000 | 1925 |
| Hall C | 60,000 | 1925 |
| East Hall (Hall A) | 4,400 | 1925 |
| Hall E1/E2 | 108,000 | 1997 |
| Hall D1/D2 | 72,000 | 2001 |
| Connector (Halls D & E) | 4,500 | 2001 |

Expo Exhibit Halls Map

5



- Leadership
- Management
- Sustainability

Halls A & B and Hall C



Panorama of Halls A & B



Panorama of Hall C

Assessment Tasks for Halls A, B, & C

7

- Indoor Air Quality
- Hazardous Materials
- Geotechnical
- Structural
- Roof
- Mechanical
- Electrical / Lighting
- Water Conservation
- Fire / Life Safety
- Audio / Visual

Report Findings – Indoor Air Quality

8

JSE Labs Inc. completed an investigation and tests April 2013, finding no significant issues.

- Completed air testing of Halls A, B, and C
- No significant mold or air quality problems tested
- Air quality determine to be acceptable
- Halls A and B would benefit from fresh air ventilation to improve user experience



Hall C

Report Findings – Hazardous Materials

9

Testing and study of existing materials not completed at this time

- Air quality testing confirms conditions are safe
- Possible hazardous materials in Halls include:
 - Asbestos
 - Lead Paint
 - Lead Flashing
 - PCB in electrical switch gear and light ballast
- Exterior (plywood) walls of Halls A and B currently encapsulate any asbestos and therefore, no immediate action is required
- Long-term renovations would require the budgeting of removal and proper disposal

Report Findings – Geotechnical

10

Westlake Consultants prepared baseline survey March 2013 - Ongoing

- History of settlement in Halls A and B
- Complete recording of settlement at campus locations to confirm:

Continuous settlement

Possible stress on structures

Cosmetic damages impacts



Hall A & B

Report Findings – Structural

11

Report prepared by Grummel Engineering April 2013

- No requirements to upgrade buildings to current structural code
- Report recommends seismic improvements to improve structural performance in a seismic event



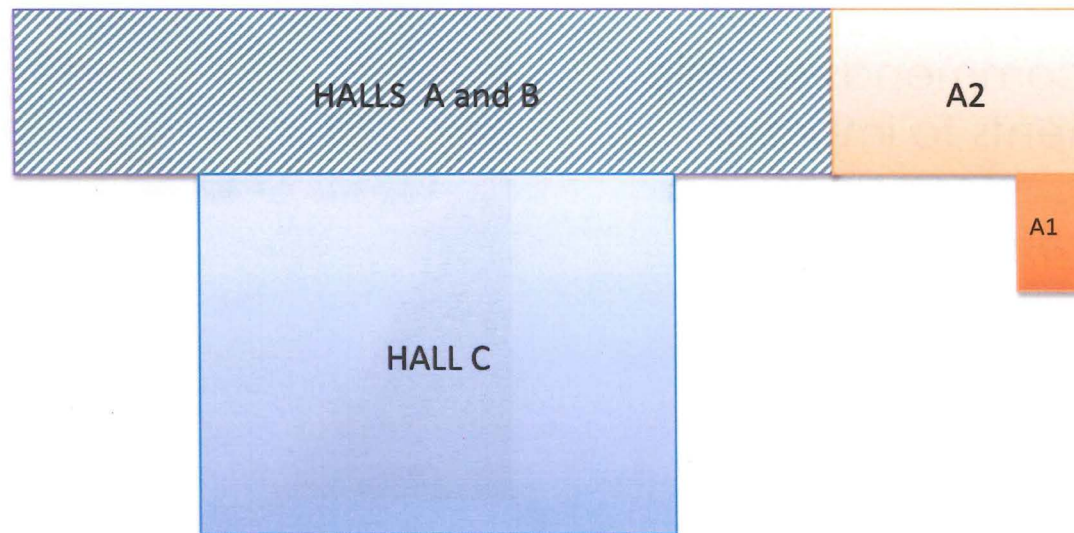
Hall A

Report Findings – Roof

12

Synder Roofing provided study of EXPO roofs in January 2008

- Studies recommend re-roofing portions of Halls A and B
- Hall C roof is in good condition and can be maintained with coating system every 5 years



Report Findings – Mechanical

13

Report completed by MFIA Inc. Consulting Engineers May 2013

- Install efficient water heaters seismic bracing and vacuum breakers
- Halls A and B have inefficient gas forced air heating units
- Provide energy efficient heating and ventilating units for Halls A & B and meet sustainability goals



Hall A

Report Findings – Electrical / Lighting

14

Report completed by MFIA Inc. Consulting Engineers May 2013

- Sustainable lighting upgrades planned will provide proper emergency exiting requirements and new controls
- Consultant highlighted areas that should be updated as systems meet end of life cycle
 - Grounding wires
 - Panels and Breakers



Hall A

Report Findings – Water Conservation

15

Report compiled by Portland Water Bureau December 2012

• Water usage study showed Halls A, B and C are not as efficient as Halls D and E. Sustainable recommendations for Halls A, B & C were as follows:

- Replace Toilet Flush Valves
- Replace Ice Machine
- Faucet Replacement



Hall C, Home and Garden Show

Report Findings – Fire/Life Safety

16

FM Global completed Fire/Life Safety reports in 2007 and 2010 with ongoing review

- FM Global provides property insurance for buildings at Expo for insurance standards
- Expo meets with FM Global annually to inspection building conditions
- Expo is continuously working with FM Global to address all issues brought to their attention
- Metro addresses all fire permit requirements and inspections immediately.

Report Findings – Audio/Visual

17

Study not yet completed for Audio Visual System

- Current system in Halls A, B and C installation dates back to 1950's
- System is in working order and ties to newer system in Halls D and E



Hall C

Halls A, B, and C Status

18

- MERC/Metro has operated these buildings for close to 20 years and will need to continue the capital investments needed to keep buildings suitable for current and future events contracted with Expo
- Halls A, B, and C meet current safety codes and requirements
 - Continued market analysis for these three halls is underway
 - Structural report recommends seismic improvements to improve structural performance in a seismic event
- Halls A and B
 - Have plans for both major (lighting) and minor improvements
 - Survey work is ongoing with specific attention to these floors
 - The roof has leaks and will eventually need to be replaced
- Hall C
 - Roof is in good working order
 - Heating & lighting improvements have been made

Recommended Actions

19

| BUILDING COMPONENT | ACTION | NO ACTION |
|---------------------|---|---------------------------|
| Structural | Renovations as indicated | |
| Geotechnical | Continue to survey reviews and reports | |
| Roof | Re-roof Halls A and B as recommended | |
| Mechanical | Following other improvements, install sustainable heating and ventilation systems for Halls A and B | |
| Electrical | Upgrade grounding, panels and related systems | |
| Water | Continue to follow City of Portland recommendations | |
| Life Safety | Continue to follow FM Global recommendations | |
| Air Quality | | None |
| Hazardous Materials | | Contained / Not hazardous |
| Audio/Visual | | Not critical at this time |

Conclusion

20

With MERC/Metro's continued feedback, over the next 3 years we need to:

1. Complete our study and analysis of conditions and cost estimates.
2. Evaluate and review our current Master Plan (ends 2021) and future goals.
3. Review our current Capital Plan and goals for these structures.
4. Determine the best course of action to proceed with existing buildings, depending on numerous factors which influence MERC/Metro such as:

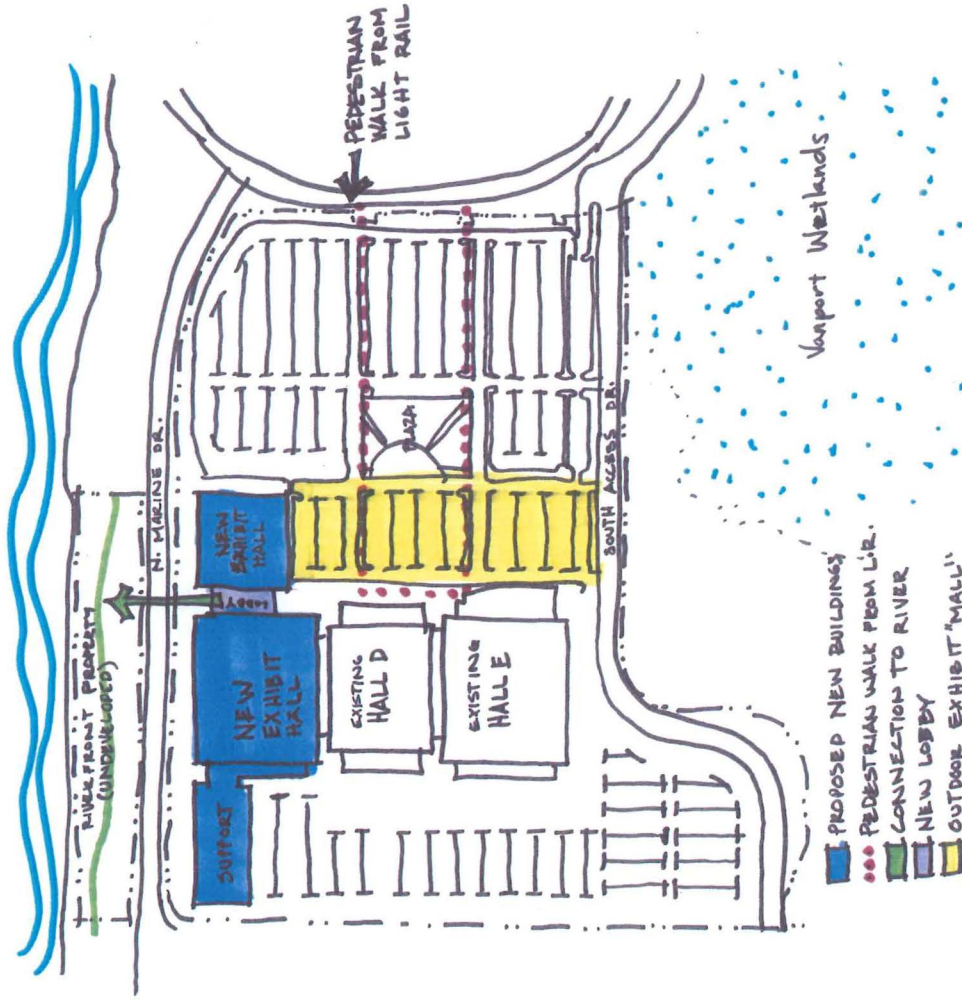
Convention Center Hotel

Columbia River Crossing Project and related access issues

Regional changes – MCDD, Trimet, Surrounding neighborhoods

Long-Term Funding

Current Expo Master Plan



CURRENT EXPO MASTER PLAN

- Leadership
- Management
- Sustainability



Questions

22

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Portland Center for the Performing Arts
presents

2013 Tony Awards Viewing Party

Sunday, June 9, 2013 - 7:00pm
Free!



Join us for the 2013 Tony Awards Viewing Party on Sunday, June 9 at 7:00pm in the rotunda of Antoinette Hatfield Hall, located at 1111 SW Broadway. Watch the Tony Awards on two big screens with other Broadway fans and cheer for your favorite nominees! We'll also have a Tony Awards trivia contest, prizes and other giveaways, and a video preview of the coming [2013/14 U.S. Bank Broadway Across America season](#). The [Artbar & Bistro](#) will also be open for the evening. This is a free event – no tickets required.



Find out more about the nominees, watch video clips, and study for the trivia contest on the [2013 Tony Awards website](#).

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