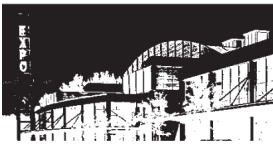

MERC Commission Meeting

July 10, 2013
12:30 pm

Oregon Convention Center 777
NE Martin Luther King Jr. Blvd.
Room C121-C122



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: **Wednesday, July 10, 2013**
Time: 12:30-2:30 p.m.
Place: Oregon Convention Center, Room C121-C122

CALL TO ORDER

12:30	1.	QUORUM CONFIRMED	
12:35	2.	COMMISSIONER, COUNCIL LIAISON COMMUNICATIONS	
12:45	3.	OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS	
12:55	4.	GENERAL MANAGER COMMUNICATIONS	Teri Dresler
	4.1	Financial Report	
1:05	5.	MERC VENUES' BUSINESS REPORTS	Scott Cruickshank Robyn Williams Matthew P. Rotchford
1:20	6.	PCPA WEBSITE PRESENTATION	Sockeye Creative
1:35	7.	DISCUSSION OF PROPOSED CHANGES TO MERC PERSONNEL POLICIES	Antoinette Gasbarre Betsy Tripi
1:50	8.	CONSENT AGENDA	
	8.1	June 4, 2013 MERC Regular Meeting Record of Actions	
1:55	9.	ACTION AGENDA	
	9.1	Resolution 13-13 for the purpose of approving the fiscal year 2013-14 MERC Commission slate of officers	Chris Erickson
	9.2	Resolution 13-14 for the purpose of approving an amendment to the Sales Incentive Policy	Scott Cruickshank Teri Dresler
	9.3	Resolution 13-15 for the purpose of approving the sale of certain real property to Union Pacific Railroad Company	Scott Cruickshank
	9.4	Resolution 13-16 for the purpose of selecting Billings and Cronn Company for the Antoinette Hatfield Hall, "Exterior Insulation Finishing System Replacement Project – Phase II" and authorizing the General Manager to execute a contract with Billings and Cronn Company	Robyn Williams
	9.5	Resolution 13-17 for the purpose of selecting Anderson Roofing Company, Inc. for the Portland Expo Center -Hall D Loading Dock Roof Replacement and Hall C spot repair and aluminum "silvercoating"	Matthew P. Rotchford Josh Lipscomb Cynthia Hill
	9.6	Resolution 13-18 for the purpose of ratifying IATSE 28 contract	Betsy Tripi Jason Blackwell
		ADJOURN	

MERC Commission Meeting

July 10, 2013
12:30 pm

4.1 Financial Report

MAY 2013

FINANCIAL INFORMATION



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: June 28, 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

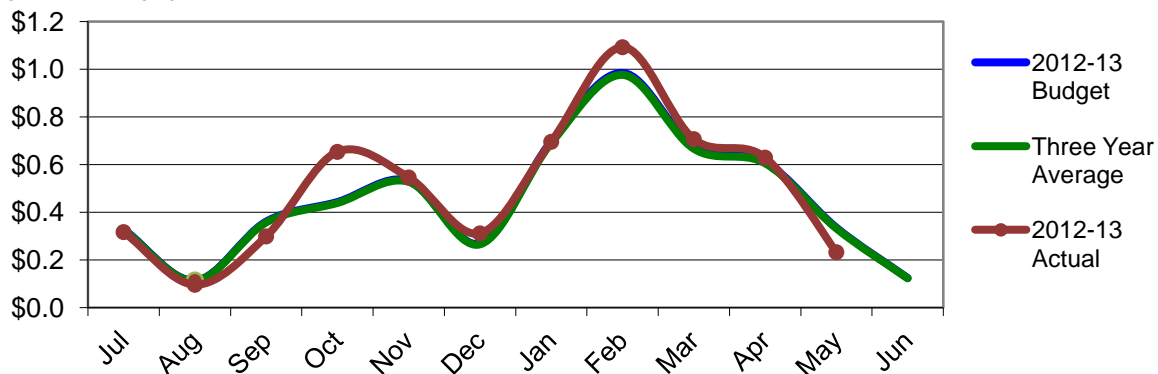
From: Cynthia Hill – Finance Manager

Re: MERC Financial Information May 2013

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

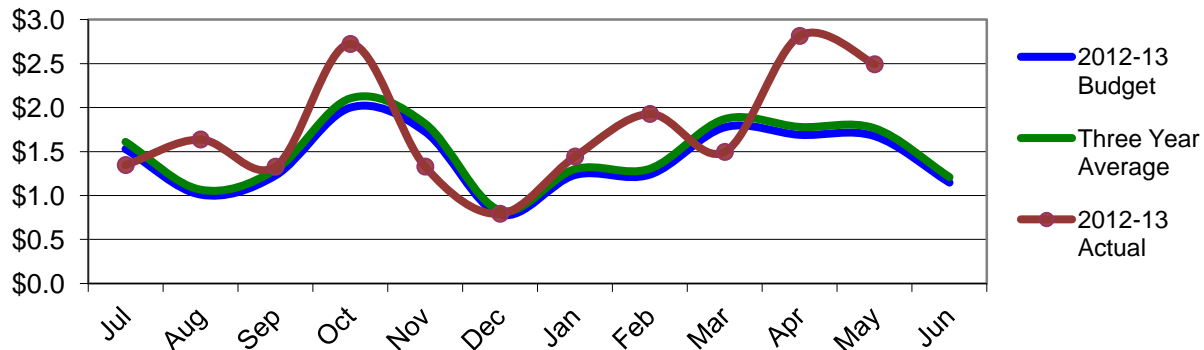
Expo- Operating Revenues by Month

shown in millions

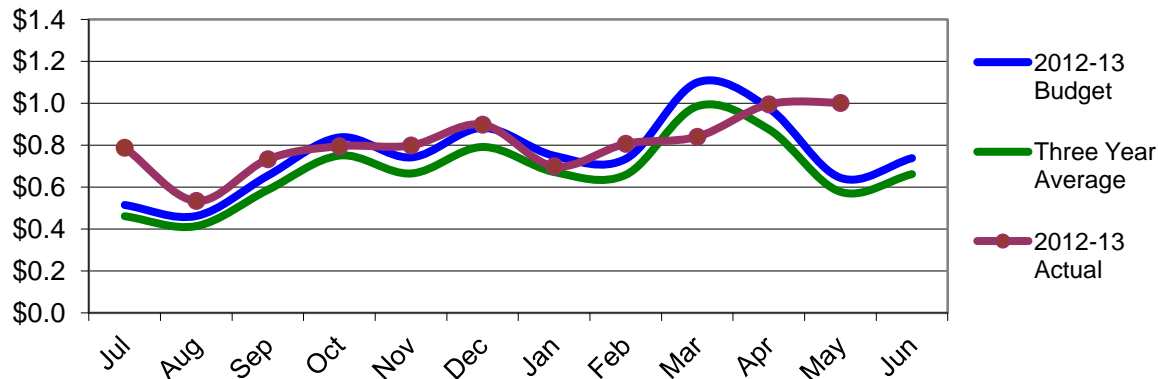


OCC- Operating Revenues by Month

shown in millions



PCPA Operating Revenues by Month
shown in millions



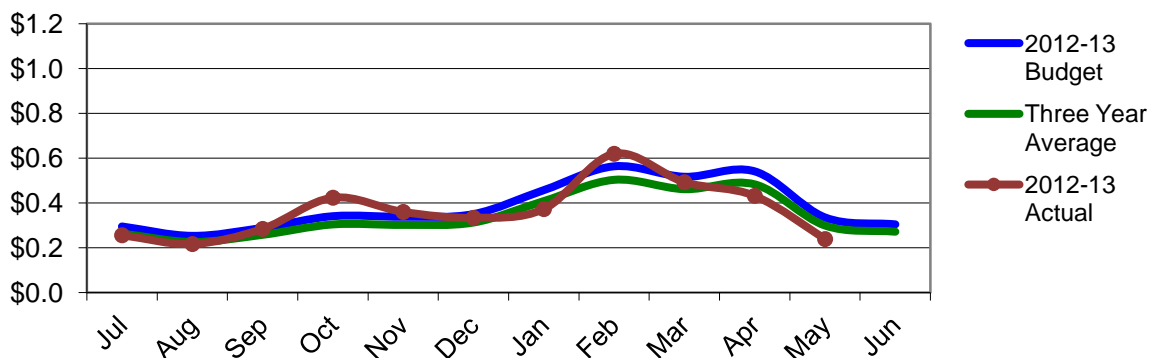
MERC operating revenues are \$33.8 million year to date compared to \$31.5 million in the prior year, an increase of \$2.3 million and \$1.4 million greater than the annual budget of \$32.4 million.

Expo Center's top grossing events in the month of May were Discover the Dinosaurs (\$61 thousand) the Rock and Roll Marathon (\$58 thousand); the Rose City Gun and Knife Show (\$35 thousand); the 2013 CABA Classic (\$35 thousand) and the Food Services of America Annual Food Show (\$28 thousand). May of 2012 included Cirque du Soleil revenue of \$293 thousand.

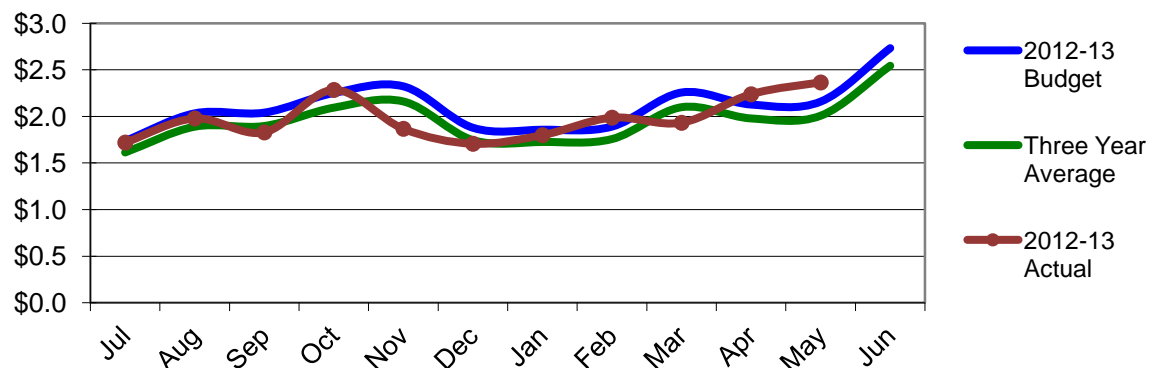
OCC continues to break monthly revenue records with \$2.5 million for the month of May. Operating revenue generally ranges from \$1.3 million to \$1.6 million with a previous high in FY 2010-11 of \$2.4 million. The top grossing events at OCC included DrupalCon (\$743 thousand); The Rails Conference (\$201 thousand) this event crossed over April and May with total event revenue (\$466 thousand) and the 2013 International Quilt Market (\$287 thousand).

Top grossing events at PCPA included Rock of Ages (\$146 thousand); Falstaff (\$102 Thousand); The XX (\$53 thousand); Primus 3D (\$52 thousand). PCPA Revenue continues to trend stronger than prior year due to the ticketing contract and the change in accounting for revenues and expenditures and strong concert business.

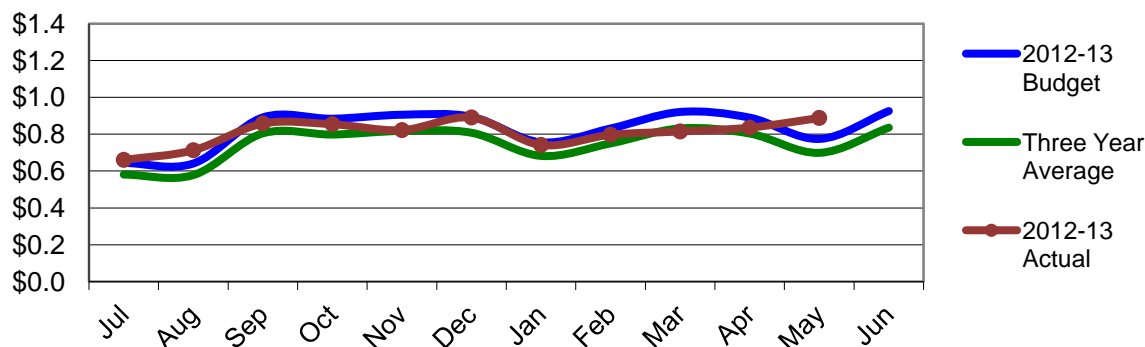
Expo - Operating Expenditures by Month
shown in millions



OCC - Operating Expenditures by Month *shown in millions*



PCPA - Operating Expenditures by Month *shown in millions*



MERC operating expenditures year to date are \$36.0 million, compared to \$35.9 million in the prior year, which is \$286 thousand less. Actual expenditures are expected to end the year less than budget especially with the personal services savings at the Oregon Convention Center.

There are two major expenditures that occur at year end related to Visitor Development Fund (VDF) transfers from Multnomah County. Per the intergovernmental agreement Metro receives bucket #4 OCC Operating Deficit, bucket #5 OCC enhanced national marketing and bucket #8 PCPA enhanced support. Once the funds are received MERC will transfer to Travel Portland the enhanced national marketing amount estimated at \$439 thousand in the adopted budget and \$875 thousand requested through bucket #4 to the Visitor Development Fund Board for supplemental marketing.

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 \$8.6 million compared \$7.7 million in the prior year, a 12.5 percent increase. Year to date as of May room nights sold in the market are up 5.2 percent, occupancy rates (room nights per hotel) are up 5.2 percent and the average daily room rate (ADR) is up 5.6 percent.

MERC Visitor Venues
Events-Performances-Attendance
May FY 12-13

	May-2012		May-2013		Net Change from Prior Year	
OCC	Events	Attendance	Events	Attendance	Events	Attendance
Tradeshows/Conventions	7	9,855	5	14,100	(2)	4,245
Consumer Public Shows	6	63,935	5	10,402	(1)	(53,533)
Miscellaneous					-	-
Miscellaneous -In-House	12	301	14	337	2	36
Meetings	23	5,058	16	2,382	(7)	(2,676)
Catering	14	5,906	13	5,713	(1)	(193)
Totals	62	85,055	53	32,934	(9)	(52,121)

	May-2012		May-2013		Net Change from Prior Year	
Expo Center	Events	Attendance	Events	Attendance	Events	Attendance
Consumer Public Shows	2	6,759	2	13,654	-	6,895
<i>OVO by Cirque Du Soleil</i>	<i>1</i>	<i>98,186</i>	<i>-</i>	<i>-</i>	<i>(1)</i>	<i>(98,186)</i>
Miscellaneous	3	3,069	1	2,250	(2)	(819)
<i>Cirque Australian Forklift Training</i>	<i>2</i>	<i>336</i>	<i>-</i>	<i>-</i>	<i>(2)</i>	<i>(336)</i>
Meetings	1	24	1	20	-	(4)
Catering	-	-	-	-	-	-
Tradeshows/Conventions	3	5,568	2	15,546	(1)	9,978
Totals without/Cirque du Soleil	9	15,420	6	31,470	(3)	16,050
Totals with/Cirque du Soleil	12	113,942	6	31,470	(6)	(82,472)

	May-2012		May-2013		Net Change from Prior Year	
PCPA	Performances	Attendance	Performances	Attendance	Performances	Attendance
Commercial (Non-Broadway)	1	2,668	12	16,960	11	14,292
Broadway	8	13,697	4	6,854	(4)	(6,843)
Resident Company	30	29,333	29	25,000	(1)	(4,333)
Student	39	20,539	43	23,931	4	3,392
Non-Profit	14	9,414	24	6,796	10	(2,618)
Miscellaneous	2	179	2	324	-	145
Totals	94	75,830	114	79,865	20	4,035

Metropolitan Exposition-Recreation Commission
MERC Statement of Activity with Annual Budget
All Departments
May 2013
2013-11

	Current Month Actual May-13	Current Year to Date Actual May-13	Prior Year to Date Actual May-12	% of Prior Year 106% 109%	Annual Budget May-13	% of Annual Budget 105% 104%
Operating						
Revenue	2,112,365	19,605,052	18,431,935	106%	18,729,081	105%
Revenue - Food and Beverage	1,612,371	14,178,135	13,022,604	109%	13,660,301	104%
Total Operating Revenue	3,724,736	33,783,187	31,454,539	107%	32,389,382	104%
Costs - Food and Beverage	1,308,590	11,561,696	10,977,016	105%	11,514,085	100%
Personal Services	1,461,181	15,254,299	15,859,853	96%	17,403,962	88%
Goods & Services	647,099	6,739,147	6,642,964	101%	9,057,018	74%
Marketing Travel Portland	225,004	2,475,044	2,422,310	102%	4,014,278	62%
Total Operating Expenses	3,641,873	36,030,186	35,902,142	100%	41,989,343	86%
Net Operating Results Inc (Dec)	82,863	(2,246,999)	(4,447,603)	51%	(9,599,961)	23%
Non Operating						
Transient, Lodging Tax	1,715,738	8,644,056	7,681,642	113%	9,985,127	87%
Visitor Development Fund (VDF)	-	-	-	-	3,147,506	0%
Government Support City of Portland	-	798,035	774,040	103%	793,408	101%
Non-Operating Revenue	14,436	114,279	189,904	60%	156,412	73%
Non-Operating Expense	-	-	-	-	2,200,000	0%
	1,730,174	9,556,370	8,645,586	111%	11,882,453	80%
Support and Risk Management						
MERC Administration	0	-	-	-	-	-
Metro Support Services	207,527	2,290,914	1,984,444	115%	2,498,424	92%
Metro Risk Management	-	729,301	741,765	98%	729,301	100%
	207,527	3,020,215	2,726,209	111%	3,227,725	94%
Net Increase (Decrease)	1,605,510	4,289,156	1,471,774	291%	(945,233)	-454%
Transfers						
Transfers to (Expense)	13,421	147,631	71,390	207%	392,056	38%
Transfers from (Revenue)	4,167	564,470	114,822	492%	2,768,633	20%
Debt Service (Expense)	249,316	1,187,132	1,188,632	100%	1,187,132	100%
Net Transfers	(258,570)	(770,293)	(1,145,200)	67%	1,189,445	-65%
Net Operations	1,346,940	3,518,863	326,574	1078%	244,212	1441%
Capital						
Capital Outlay	110,525	2,298,927	1,509,068	152%	3,299,077	70%
Non-Operating Revenue	123,833	123,833	134,316	92%	295,000	42%
Net Capital	13,308	(2,175,094)	(1,374,752)	158%	(3,004,077)	72%
Fund Balance Inc (Dec)	1,360,248	1,343,769	(1,048,178)	-128%	(2,759,865)	-49%
Food and Beverage Gross Margin	303,781	2,616,439	2,045,588		2,146,216	122%
Food and Beverage Gross Margin	18.8%	18.5%	15.7%		15.7%	
Full Time Employees					190.0	
Excise Tax	1,819,019	1,854,520	1,709,615			
Transient, Lodging Taxes as percent of revenue	32%	20%	20%		24%	
Fund Balance						
Beginning Fund Balance		26,161,717	26,357,848		26,161,717	
Fund Balance Inc (Dec)		1,343,769	(1,048,178)		(2,759,865)	
Ending Fund Balance		27,505,486	25,309,670		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
May 2013
2013-11

	Current Month Actual May-13	Current Year to Date Actual May-13	Prior Year to Date Actual May-12	% of Prior Year	Annual Budget May-13	% of Annual Budget 92%
Operating						
Revenue	191,174	3,741,449	4,024,895	93%	3,838,186	97%
Revenue - Food and Beverage	41,323	1,837,595	1,968,887	93%	1,811,485	101%
Total Operating Revenue	232,496	5,579,044	5,993,782	93%	5,649,671	99%
Costs - Food and Beverage	39,087	1,566,194	1,715,745	91%	1,569,892	100%
Personal Services	107,678	1,383,524	1,357,849	102%	1,608,478	86%
Goods & Services	91,478	1,073,961	1,199,393	90%	1,392,728	77%
Total Operating Expenses	238,244	4,023,679	4,272,988	94%	4,571,098	88%
Net Operating Results Inc (Dec)	(5,748)	1,555,365	1,720,794	90%	1,078,573	144%
Non Operating						
Non-Operating Revenue	1,299	11,266	23,535	48%	21,290	53%
	1,299	11,266	23,535	48%	21,290	53%
Support and Risk Management						
MERC Administration	12,829	141,115	171,726	82%	153,944	92%
Metro Support Services	18,678	206,188	178,596	115%	224,858	92%
Metro Risk Management	-	80,988	85,947	94%	80,988	100%
	31,507	428,291	436,269	98%	459,790	93%
Net Increase (Decrease)	(35,955)	1,138,340	1,308,060	87%	640,073	178%
Transfers						
Transfers to	113	1,243	-	-	1,359	-9%
Transfers from	375	4,125	7,980	52%	4,500	92%
Debt Service	249,316	1,187,132	1,188,632	100%	1,187,132	100%
Net Transfers	(249,054)	(1,184,250)	(1,180,652)	100%	(1,183,991)	100%
Net Operations	(285,009)	(45,910)	127,408	-36%	(543,918)	8%
Capital						
Capital Outlay Expense	45,940	449,650	116,126	387%	524,500	86%
Non-Operating Revenue	-	-	4,987	0%	-	-
Intrafund Transfers	270,000	270,000	-	-	270,000	0%
Net Capital	224,060	(179,650)	(111,139)	162%	(254,500)	71%
Fund Balance Inc (Dec)	(60,949)	(225,560)	16,269	-1386%	(798,418)	28%
Food and Beverage Gross Margin	2,236	271,401	253,142		241,593	112%
Food and Beverage Gross Margin %	5.4%	14.8%	12.9%		13.3%	
Full Time Employees					13.3	
Excise Tax	483,951	414,932	444,969		-	
Fund Balance						
Beginning Fund Balance		4,310,142	4,732,826		4,310,142	
Fund Balance Inc (Dec)		(225,560)	16,269		(798,418)	
Ending Fund Balance		4,084,582	4,749,095		3,511,724	
Unrestricted Fund Balance					182,705	
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
May 2013
2013-11

	Current Month Actual May-13	Excluding EMP Current Year to Date Actual May-13	Prior Year to Date Actual May-12	% of Prior Year 112% 115%	Annual Budget May-13	% of Annual Budget 92%
Operating						
Revenue	1,129,781	8,935,364	7,968,000	112%	7,798,834	115%
Revenue - Food and Beverage	1,360,797	10,380,070	9,024,999	115%	9,849,862	105%
Total Operating Revenue	2,490,578	19,315,434	16,993,000	114%	17,648,696	109%
Costs - Food and Beverage	1,117,876	8,431,408	7,682,068	110%	8,260,981	102%
Personal Services	770,031	7,855,315	8,260,302	95%	9,125,317	86%
Goods & Services	252,400	2,948,869	3,362,532	88%	3,884,221	76%
Marketing Travel Portland	225,004	2,475,044	2,422,310	102%	4,014,278	62%
Total Operating Expenses	2,365,312	21,710,637	21,727,212	100%	25,284,797	86%
Net Operating Results Inc (Dec)	125,266	(2,395,203)	(4,734,213)	51%	(7,636,101)	31%
Non Operating						
Transient, Lodging Tax	1,495,776	7,535,865	6,662,457	113%	8,729,303	86%
Visitor Development Fund (VDF)	-	-	-	-	2,520,676	0%
Non-Operating Revenue	3,524	32,996	58,820	56%	46,678	71%
Non-Operating Expense	-	-	-	-	2,200,000	0%
	1,499,300	7,568,860	6,721,276	113%	9,096,657	83%
Support and Risk Management						
MERC Administration	79,823	878,055	1,068,513	82%	957,878	92%
Metro Support Services	116,215	1,282,911	1,111,297	115%	1,399,118	92%
Metro Risk Management	-	408,408	397,366	103%	408,408	100%
	196,038	2,569,374	2,577,176	100%	2,765,404	93%
Net Increase (Decrease)	1,428,528	2,604,283	(590,113)	-441%	(1,304,848)	-200%
Transfers						
Transfers to (Expense)	704	7,744	-	-	239,450	3%
Transfers from (Revenue)	2,334	25,674	66,180	39%	2,228,000	1%
Net Transfers	1,630	17,930	66,180	27%	1,988,550	1%
Net Operations	1,430,158	2,622,213	(523,933)	-600%	683,702	384%
Capital						
Capital Outlay Expense	27,404	1,449,736	947,540	153%	2,052,577	71%
Non-Operating Revenue	123,833	123,833	1,404	8820%	220,000	56%
Intrafund Transfers (Exp/Rev)	90,000	90,000	-	-	90,000	100%
Net Capital	186,429	(1,235,903)	(946,136)	131%	(1,742,577)	71%
Fund Balance Inc (Dec)	1,616,587	1,386,311	(1,470,069)	-94%	(1,058,875)	-131%
Food and Beverage Gross Margin	242,921	1,948,662	1,342,931		1,588,881	123%
Food and Beverage Gross Margin %	17.9%	18.8%	14.9%		16.1%	
Full Time Employees					110.3	
Excise Tax	1,335,068	1,439,588	1,264,396		-	
Transient, Lodging Taxes as percent of revenue	38%	28%	28%		33%	
Fund Balance						
Beginning Fund Balance		11,058,549	11,552,031		11,058,549	
Fund Balance Inc (Dec)		1,386,311	(1,470,069)		(1,058,875)	
Fund Balance Inc (Dec) for HQH		190,023	-		(100,000)	
Ending Fund Balance		12,634,882	10,081,962		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 - TLH					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
May 2013
2013-11

	Current Month Actual May-13	Current Year to Date Actual May-13	Prior Year to Date Actual May-12	% of Prior Year	Annual Budget May-13	% of Annual Budget 92%
Operating						
Revenue	791,411	6,928,238	6,435,613	108%	7,092,061	98%
Revenue - Food and Beverage	210,251	1,960,471	2,028,717	97%	1,998,954	98%
Total Operating Revenue	1,001,662	8,888,709	8,464,330	105%	9,091,015	98%
Costs - Food and Beverage	151,627	1,564,094	1,579,202	99%	1,683,212	93%
Personal Services	492,034	4,998,604	4,970,327	101%	5,522,476	91%
Goods & Services	244,807	2,316,514	1,867,632	124%	2,748,093	84%
Total Operating Expenses	888,469	8,879,212	8,417,162	105%	9,953,781	89%
Net Operating Results Inc (Dec)	113,194	9,497	47,168	20%	(862,766)	-1%
Non Operating						
Transient, Lodging Tax	219,962	1,108,191	1,019,185	109%	1,255,824	88%
Visitor Development Fund (VDF)	-	-	-	-	626,830	0%
Government Support City of Portland	-	798,035	774,040	103%	793,408	101%
Non-Operating Revenue	8,776	63,335	99,418	64%	84,376	75%
	228,739	1,969,561	1,892,643	104%	2,760,438	71%
Support and Risk Management						
MERC Administration	49,890	548,785	667,821	82%	598,674	92%
Metro Support Services	72,634	801,815	694,551	115%	874,448	92%
Metro Risk Management	-	239,905	258,452	93%	239,905	100%
	122,524	1,590,505	1,620,824	98%	1,713,027	93%
Net Increase (Decrease)	219,409	388,553	318,987	122%	184,645	210%
Transfers						
Transfers to (Expense)	440	4,840	-	-	5,281	92%
Transfers from (Revenue)	1,458	16,038	28,440	56%	17,500	92%
Net Transfers	1,018	11,198	28,440	39%	12,219	92%
Net Operations	220,427	399,751	347,427	115%	196,864	203%
Capital						
Revenue	-	-	-	-	-	-
Capital Outlay Expense	33,181	379,773	445,402	85%	675,000	56%
Non-Operating Revenue	-	-	127,925	0%	75,000	0%
Intrafund Transfers (Exp/Rev)	-	-	15,000	0%	-	-
Net Capital	(33,181)	(379,773)	(302,477)	126%	(600,000)	63%
Fund Balance Inc (Dec)	187,246	19,978	44,950	44%	(403,136)	-5%
Food and Beverage Gross Margin	58,624	396,377	449,514		315,742	126%
Food and Beverage Gross Margin %	27.9%	20.2%	22.2%		15.8%	
Full Time Employees					46.4	
Taxes as percent of revenue	18%	11%	11%		12%	
Fund Balance						
Beginning Fund Balance		8,445,301	8,490,410		8,445,301	
Fund Balance Inc (Dec)		19,978	44,950		(403,136)	
Ending Fund Balance		8,465,279	8,535,360		8,042,165	
Unrestricted Fund Balance					1,380,355	
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
May 2013
2013-11

	Current Month Actual	Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	Annual Budget	% of Annual Budget
	May-13	May-13	May-12		May-13	92%
Operating						
Goods & Services	23,071	194,806	-	-	472,667	41%
<i>Meetings Expense</i>	70	1,122	-	-	3,800	30%
<i>Communications Consulting</i>	2,362	18,129	-	-	50,000	36%
<i>Construction Consulting</i>	-	24,995	-	-	35,000	71%
<i>Financial Consulting</i>	2,832	18,736	-	-	72,500	26%
<i>Legal Consulting</i>	3,807	4,860	-	-	105,000	5%
<i>Management Consulting</i>	14,000	16,000	-	-	83,467	19%
<i>Market Consulting</i>	-	110,965	-	-	122,900	90%
<i>Project Management</i>	-	-	-	-	-	-
Net Increase (Decrease)	(23,071)	(194,806)	-	-	(472,667)	
Transfers						
Intrafund Transfers	-	-	-	-	-	-
Transfers to	12,164	133,804	-	-	145,966	92%
Transfers from	-	518,633	-	-	518,633	100%
Debt Service	-	-	-	-	-	-
Net Transfers	(12,164)	384,829	-	-	372,667	103%
Net Operations	(35,235)	190,023	-	-	(100,000)	-190%

Metropolitan Exposition-Recreation Commission
MERC Statement of Activity with Annual Budget
MERC Administration
May 2013
2013-11

	Current Month Actual May-13	Current Year to Date Actual May-13	Prior Year to Date Actual May-12	% of Prior Year 82%	Annual Budget May-13	% of Annual Budget 92%
Operating						
Revenue	-	-	3,427	0%	-	-
Personal Services	91,437	1,016,855	1,271,374	80%	1,147,691	89%
Goods & Services	35,342	204,997	213,406	96%	559,309	37%
Net Operating Results Inc (Dec)	(126,779)	(1,221,852)	(1,481,352)	82%	(1,707,000)	72%
Non Operating						
Non-Operating Revenue	836	6,682	8,132	82%	4,068	164%
	836	6,682	8,132	82%	4,068	164%
Support and Risk Management						
MERC Administration	142,541	1,567,955	1,908,060	82%	1,710,496	92%
	142,541	1,567,955	1,908,060	82%	1,710,496	92%
Net Increase (Decrease)	16,599	352,785	434,839	81%	7,564	4664%
Transfers						
Transfers to (Expense)	-	-	71,390	0%	-	-
Transfers from (Revenue)	-	-	12,222	0%	-	-
Net Transfers	-	-	(59,168)	0%	-	-
Net Operations	16,599	352,785	375,671	94%	7,564	4664%
Capital						
Capital Outlay Expense	4,000	19,768	-	-	47,000	42%
Transient, Lodging Tax	-	-	-	-	-	-
Non-Operating Revenue	-	-	-	-	-	-
Intrafund Transfers (Exp/Rev)	(360,000)	(360,000)	(15,000)	2400%	(360,000)	100%
Net Capital	(364,000)	(379,768)	(15,000)	2532%	(407,000)	93%
Fund Balance Inc (Dec)	(347,401)	(26,983)	360,671	-7%	(399,436)	7%
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)		(26,983)	360,671		(399,436)	
Ending Fund Balance		2,320,742	1,943,252		1,948,289	
Unrestricted Fund Balance					1,041,883	
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

July 10, 2013
12:30 pm

7.0 Proposed Changes to MERC
Personnel Policies

BATCH 3 PERSONNEL POLICIES FOR MERC COMMISSION REVIEW

July 10, 2013

Following is a list of policies that Metro Human Resources has created or recently updated. These proposed policies supersede those listed in the Metro Employee Handbook (EO #88) and the MERC Personnel Policies Handbook (8/1/07). All other policies in those documents remain in force.

Policy	Existing MERC Policy	Existing Metro Policy	Legal Requirement	Policy Summary	Fiscal Impact	Business Impact
Alternative Duty Leave	§ 16.7(B)	E.O. 88 § 31(D)	ORS 652.250; ORS 404.200 (Search and Rescue Leave) ORS 401.378 (Red Cross Disaster Relief Services Leave) ORS 236.040 (Peace Corps Leave)	<ul style="list-style-type: none">Provides leave and outlines procedures and requirements consistent with Oregon law and current MERC and Metro policies.<ul style="list-style-type: none">Peace Corps: 2 years of unpaid leaveDisaster relief: up to 15 work days unpaid leave per 12-month periodSearch and rescue: up to 5 days paid leave	N/A	Promotes legal compliance
Charitable Solicitation	N/A	Metro Code § 2.02.050	N/A	<ul style="list-style-type: none">Limits oversolicitation while allowing flexibility to allow fundraisers that benefit or are closely related to Metro.Provides guidelines for allowing employees to leave solicitation materials for review (e.g. school fundraisers etc.).	N/A	Establishes consistent Metro-wide policy and procedures
Employee Records	§ 10	E.O. 88 § 36	ORS 652.750	<ul style="list-style-type: none">Expands policy to address medical recordsClarifies procedures for maintaining, viewing and copying files	N/A	Promotes legal compliance

Information Technology – Acceptable Use	§ 12.12	E.O. 69; E.O. 76	N/A	<ul style="list-style-type: none"> Describes authorized and prohibited uses of Metro technology, including internet and email. <p><i>This policy was previously submitted to the MERC Commission for discussion Sept. 5, 2013 and has since been revised.</i></p>	Limits risk	Protects Metro’s information assets and clarifies employee conduct expectations
Internships	N/A	N/A	Fair Labor Standards Act	<ul style="list-style-type: none"> Describes procedures for creating and recruiting for internships. Outlines legal requirements for unpaid internships to avoid creating an employment relationship. 	Limits risk	Promotes legal compliance and consistency in internship management practices across the agency
Job Sharing	§ 16.0(B)	§ 17	N/A	<ul style="list-style-type: none"> Outlines procedures for initiating and dissolving job share arrangements and performance expectations for job share partners. Eliminates option to alter distribution of benefits; benefits will be prorated based on budgeted work hours (FTE). Changes level of approval required from COO/GM to Department Director and HR Director. 	N/A	Establishes consistent Metro-wide policy and procedures
Modified Duty for Non-Occupational Conditions	N/A	N/A	N/A	<ul style="list-style-type: none"> Describes limited circumstances in which modified work is available for injuries and medical conditions that were not incurred on the job. Consistent with current practices. 	N/A	Establishes consistent Metro-wide policy and procedures
Performance Management	§ 8	E.O. 88 § 11	N/A	<ul style="list-style-type: none"> Outlines timelines and responsibilities for performance management. Increases emphasis on planning and on-going feedback. 	N/A	Establishes consistent Metro-wide policy and procedures

Pregnancy Transfer and Leave	N/A	E.O. 88 § 28	N/A	<ul style="list-style-type: none"> Describes limited circumstances in which modified work and leave are available to accommodate risks related to pregnancy in situations that would not be covered by FMLA, ADA, or other laws and policies. Consistent with current Metro policy. 	Limits risk	Establishes consistent Metro-wide policy and procedures
Resignation and Retirement	§ 15.0	E.O. 88 § 35	N/A	<ul style="list-style-type: none"> Outlines procedures and responsibilities in the event of resignation and retirement. 	N/A	Establishes consistent Metro-wide policy and procedures
Volunteers	N/A	E.O. 88 § 42	Fair Labor Standards Act	<ul style="list-style-type: none"> Outlines general guidelines for Metro volunteer programs and applicable legal restrictions. 	N/A	Promotes legal compliance and consistency in volunteer management practices across the agency
Whistleblowing	§ 12.2	N/A	<p>ORS 659A.199 – 659A.236 (Oregon Whistleblower Law)</p> <p>ORS 659A.030(1)(f) (prohibiting retaliation for opposing unlawful conduct)</p>	<ul style="list-style-type: none"> Outlines legal protections for employees who report unlawful or unethical conduct or engage in legal proceedings in good faith. Provides options for notifying Metro of unlawful or unethical conduct. 	Limits risk	Promotes legal compliance



Metro | Policies and procedures

DRAFT
For MERC
Commission
review
7.10.13

Subject Alternative Duty Leave
Section Human Resources
Approved by

POLICY

In compliance with Oregon law, Metro provides at least two years of unpaid leave for volunteering with the Peace Corps and other approved federal volunteer programs; up to 15 work days of unpaid leave per 12-month period for certified Red Cross disaster services volunteers; and up to five work days of paid leave for participating in search and rescue operations at the request of law enforcement or certain government agencies.

Applicable to

Leave for Peace Corps and other approved federal volunteer programs: Full-time, regular status employees.

Red Cross Leave and Search and Rescue Leave: All full-time and part-time employees.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Guidelines

1. A full-time, regular status employee who serves as a volunteer in the Peace Corps or other federal volunteer program approved by the Department Director and C.O.O. will be granted at least two years of leave during the service period. An employee may draw on any type of accrued paid time off other than sick leave; otherwise, the leave will be unpaid.
2. An employee who is a certified disaster services volunteer of the American Red Cross may receive up to 15 work days of leave in any 12-month period to participate in disaster relief services in the State of Oregon. An employee may draw on any type of accrued paid time off other than sick leave; otherwise, the leave will be unpaid.
3. An employee who takes part in a search or rescue operation at the request of any law enforcement agency, the Department of Transportation, the United States Forest Service or any local organization for civil defense will be provided up to five work days of paid leave. Paid leave will be in addition to any accrued paid time off.
4. Employees who would like a leave of absence for volunteer work not specifically covered by this policy may be eligible for leave under Metro's Leave Without Pay policy. Such requests will be evaluated under the terms of that policy.

Procedures

Leave for Peace Corps and other qualifying federal volunteer programs

1. To request leave for Peace Corps or other federal volunteer service, an employee must provide a copy of his or her Peace Corps or other appointment documents to his or her supervisor upon receipt. Employees are encouraged to communicate their intention to apply for volunteer service and the anticipated dates of service as soon as possible to allow for appropriate planning.
2. Upon expiration of the leave, the employee will be reinstated to the position held before the leave was granted unless the position has been eliminated for reasons unrelated to the employee's leave of absence.
 - a. The employee will receive the same salary as prior to leave unless the applicable pay range has changed during the employee's absence, in which case the employee's salary will be adjusted accordingly.
 - b. The employee will have the same leave accrual rate and other seniority rights he or she had before beginning leave.
3. Employees on leave for Peace Corps service must return to work within 90 days of their separation of service. Employees who do not return to work within this time period will be deemed to have separated from employment. Returning employees are required to notify Metro of their intent to return to work at least 30 days before their anticipated return date so that Metro can make the necessary arrangements.

Red Cross Disaster Relief Services Leave

1. A disaster relief volunteer must notify his or her supervisor as soon as possible in accordance with the applicable work rules for unanticipated absences.
2. To be eligible for leave under this policy, the employee must be a certified disaster services volunteer of the American Red Cross. The disaster relief must take place in the state of Oregon.
3. The employee must provide documentation of Red Cross certification as soon as possible to confirm leave eligibility.
4. Leave will be excused for up to 15 work days total in any rolling 12-month period. If the employee's participation is requested for only a partial day, the employee is not required to return to work for the remainder of his or her shift.
5. If an employee wishes to take part in a disaster relief operation that is not covered by this policy or that continues beyond 15 work days, he or she should request time off following regular attendance policies or apply for unpaid leave under Metro's Leave Without Pay policy.

Search and rescue leave

1. An employee who receives a request for participation in a search and rescue operation must notify his or her supervisor as soon as possible in accordance with the applicable work rules for unanticipated absences.
2. The employee must provide documentation of the request from law enforcement or another agency specified in this policy as soon as possible to confirm leave eligibility.

3. Leave will be excused and paid for the period of time for which the employee's participation is requested by the applicable agency, up to a maximum of five days. If the employee's participation is requested for only a partial day, the employee is not required to return to work for the remainder of his or her shift, and will be paid for the entire day.
4. If an employee wishes to take part in search and rescue operation that is not at the request of law enforcement or another applicable agency, or that continues beyond five days, he or she should request time off following regular attendance policies or apply for unpaid leave under Metro's Leave Without Pay policy.

Responsibilities

Employee:

- Notify your supervisor as soon as possible of the need for leave.
- Give your supervisor the required documentation as soon as possible.
- Keep your supervisor informed of any changes to your anticipated return date.
- Request and code leave time consistent with this policy and regular timekeeping procedures.
- Contact Human Resources if you have questions about your eligibility for leave under this policy or any other concerns related to taking leave.

Supervisor:

- Coordinate with the Department Director as needed to ensure that operational needs are met while the employee is on leave.
- Notify Human Resources of requests for leave under this policy.
- Ensure that the leave request is processed and coded appropriately.

Human Resources Department:

- Advise supervisors and employees on leave procedures as needed.

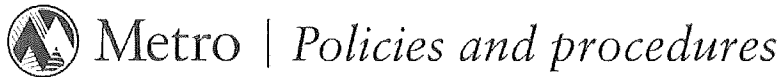
References

ORS 652.250; ORS 404.200 (Search and Rescue Leave)

ORS 401.378 (Red Cross Disaster Relief Services Leave)

ORS 236.040 (Peace Corps Leave)

Leave Without Pay policy



DRAFT
For MERC
Commission
review
7.10.13

Subject Charitable Solicitation
Section Human Resources
Approved by

POLICY

Financial contributions may not be solicited from Metro employees on the job during working hours except through the Metro Charitable Giving Campaign or in accordance with a special exception approved in accordance with this policy.

Applicable to

All employees.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Metro Charitable Giving Campaign: Metro's official annual campaign to raise funds for charitable organizations.

Charitable solicitation: A request for a financial contribution to benefit any charitable, personal or other cause.

Financial contribution: The donation of money or other financial sponsorship (such as a purchase).

Guidelines

1. The Metro Charitable Giving Campaign is the only fundraising campaign that may solicit financial contributions from Metro employees on the job during working hours, including through Metro's email system, unless a unique need of special interest to Metro warrants an exception as described below under Procedures.
2. This policy is not intended to restrict an employee from:
 - a. Attending or participating in fundraising activities as part of the employee's job duties;
 - b. Attending, participating in, or contributing to fundraising activities on a voluntary basis on the employee's personal time.

Procedures

1. In the event of a unique need of special interest to Metro, exceptions to the prohibition on charitable solicitation during working hours may be granted by the Chief Operating Officer on a case-by-case basis.
2. Department Directors have discretion to announce fundraising solicitations and events for causes that benefit or are closely related to the business of their department. Such announcements may be made by the Director or designee during working hours without requesting an exception from the COO as long as the following conditions are met:
 - i. The announcement is not directed to employees outside of that director's department;
 - ii. The announcement clearly indicates that participation is voluntary and not work-related;
 - iii. The announcement does not violate state law restricting on-the-job political activity and political solicitation of public employees.
3. **Passive fundraising by employees:** Department Directors have discretion to approve a location and timeframe for employees of that department to leave solicitation materials, such as for school fundraisers, for review by other department employees *outside* of work time. Employees may also leave these materials in designated employee break rooms or post information on Metro's intramet bulletin board.
4. Employees may contact the Human Resources Department to discuss any concerns about charitable solicitation at Metro.

Responsibilities

Employees:

- Refrain from conduct prohibited by this policy.
- Inform your supervisor if a unique need of special interest to Metro may warrant an exception to this policy.

Supervisors, Managers and Department Directors:

- Refer any employee requests that may warrant an exception to this policy to the attention of the Chief Operating Officer.
- Department Directors: Determine whether, where and when employees may post solicitation materials in your department for passive fundraising outside of working hours.
- Ensure that any fundraising announcements are consistent with this policy and applicable law.
- If you permit employees to post solicitation materials, do not prohibit solicitation or make other distinctions based on the nature of the cause for which funds are solicited. Refer any questions to the Office of Metro Attorney.
- Ensure that any Metro committees authorized to solicit funds from employees comply with the fundraising and cash-handling procedures found in the Metro Committees policy.

Chief Operating Officer:

- Approve or deny requests for special exceptions to permit charitable solicitation of employees on the job during working hours.

References

Metro Code § 2.02.250

Metro Committees policy ORS 260.432 Solicitation



Metro | Policies and procedures

DRAFT
For MERC
Commission
review
7.10.13

Subject Employee Records: Personnel Files and Medical Files

Section Human Resources

Approved by

POLICY

It is Metro's policy to maintain personnel records and medical records separately and in accordance with state and federal law, and to comply with procedures designed to protect the accuracy and confidentiality of these records.

Applicable to

All Metro employees.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Medical Records: All records containing individually identifiable information about an employee or family member's health or medical history.

1. Examples of medical records include personal medical information relating to:
 - a. Employee health insurance and other benefits;
 - b. Disability accommodation;
 - c. Medical leave;
 - d. On-the-job injuries and workers' compensation;
 - e. Non-occupational medical conditions;
 - f. Fitness for duty examination information; and
 - g. Drug and alcohol testing results.

Personnel Records: All records used to determine an employee's qualification for employment, promotion, additional compensation, termination, or other disciplinary action.

1. Examples include:
 - a. Job applications, résumés, and cover letters;
 - b. Reference checks;
 - c. Performance evaluations;

- d. Records of promotions, transfers, and demotions;
 - e. Salary information;
 - f. Supervisory notes or memos used for disciplinary purposes or to determine terms and conditions of employment;
 - g. Disciplinary notices, including written records of oral warnings and reprimands, and related investigative records.
- 2. The personnel file may also include personal information that has been provided to Metro in the course of application and employment, except as specified below.
- 3. Personnel records do not include:
 - a. Records relating to the conviction, arrest, or investigation of criminal conduct;
 - b. Confidential reports from previous employers;
 - c. Confidential medical records;
 - d. Payroll records;
 - e. Attendance records unless relevant to a disciplinary decision;
 - f. Routine supervisory notes that are not used for disciplinary purposes or decisions related to the terms and conditions of employment;
 - g. Grievance records.

Guidelines

- 1. The Human Resources (HR) Department will maintain a personnel file containing each employee's personnel records. This file constitutes the official record of an individual's employment with Metro.
- 1. An employee's medical information will be kept in a confidential file maintained separately from the employee's personnel file.

Procedures

File Maintenance

- 1. Personnel files and Medical Files will be maintained by the HR Department in a locked, confidential area.
 - a. Access to the personnel file will be limited to the employee, management staff, Office of Metro Attorney staff and HR Department staff.
 - b. Access to the confidential medical file will be limited to the employee, Office of Metro Attorney staff and HR Department staff. Management staff will be provided with medical information only as needed to manage work restrictions, requests for leave, disability accommodations, and medical response protocols (e.g., for an employee with a medical condition requiring particular first aid procedures) or to consider as a mitigating factor in a disciplinary process.
- 2. To assure proper records management, employees must notify the HR Department of any changes to their name, home address, phone number or emergency contacts.

3. Supervisors must promptly send HR:
 - a. Copies of all notes or records used as a basis for discipline or to determine the terms and conditions of employment; and
 - b. Originals of all medical records.
 - i. Supervisors may not keep copies of medical records, except that they may retain information about modified duty restrictions, disability accommodations, and medical response protocols while they are in effect.
4. Metro will not place disciplinary records or other information that reflects critically upon an employee in the employee's personnel file without giving a copy to the employee.
 - a. The employee will be asked to sign to acknowledge receipt, however a signature is not required to place the document in the personnel file.
 - b. In the event that the employee does not sign, the supervisor will note the date the document was presented to the employee.
5. Personnel records and medical records will be treated as exempt from public disclosure to the maximum extent permitted by Oregon Public Records law.
 - a. If contacted for an employment reference, Metro will provide the employee's dates of employment, positions held, and salary history. Metro may agree to provide additional information if requested by the employee.
6. Metro will retain personnel records and medical records for a minimum of 3 years.

Viewing and Copying Personnel Records and Medical Records

1. **Employees:** Employees may view their personnel files and medical files in the HR Department office during regular business hours.
 - a. Employees are encouraged to make appointments in advance to ensure that HR staff will be available.
 - b. Employees will be given copies of material in their personnel files and medical files upon request. Metro will certify that the copies provided are true and correct copies of the originals.
 - c. Employees who are unable to come to the HR Department in person may call the department to make other arrangements.
 - d. An employee may provide written authorization to allow another person (such as a union representative) to view or obtain copies of his or her personnel file or medical file.
2. **Managers:** A manager may access an employee's personnel file or medical file only if there is a job-related reason to do so. Before viewing the file, the manager must sign a statement identifying the job-related purpose of the request and acknowledging confidentiality requirements. This statement will be reviewed by HR and considered prior to a decision regarding access.
3. **Former employees:** Following separation from employment, Metro will provide a former employee with a certified copy of his or her existing personnel records or medical records within 45 days of a written request from the employee or his or her authorized representative.

4. Metro may charge a fee for providing information under this policy, but this fee will not exceed an amount reasonably calculated to recover the actual costs for copying and labor. Current employees will not be charged for viewing or copying their files.
5. No one other than HR Department staff is authorized to add or remove information from an official personnel file or medical file. Metro employees and managers who add or remove information without authorization may be subject to discipline.
 - a. If an employee or manager believes information should be added to a personnel or medical file, he or she may submit the information to the HR Department. The HR Department will determine whether it is appropriate to include in the file.
 - b. Documents may be removed from the employee's official personnel or medical file only upon the mutual agreement of the HR Director or designee and the employee or the employee's representative.
 - i. The Oregon public records law prohibits destruction of public records except when certain conditions are met. Documents that are removed from the official personnel file may be retained consistent with applicable law, but will not be used as a basis for future discipline or other employment decisions.
6. Original personnel records and medical records must be viewed in the presence of HR Department staff. Original records may not be removed from the HR Department without approval from the HR Director.

Responsibilities

Employees:

- Comply with procedures for viewing and copying personnel files and medical files.
- Promptly notify your supervisor and the HR Department of changes to your name, home address and contact information, and emergency contacts.

Supervisors and managers:

- Comply with procedures for viewing and copying personnel files and medical files.
- Promptly provide the HR Department with any notes or records used to determine an employee's qualification for employment, promotion, additional compensation, termination, or other disciplinary action.
- Promptly send any medical records received from an employee or any other source to the HR Department without keeping a copy, except that information about work restrictions, disability accommodations, and medical response protocols may be retained while they are in effect.
- Maintain the confidentiality of medical records and other private information.

Human Resources Department:

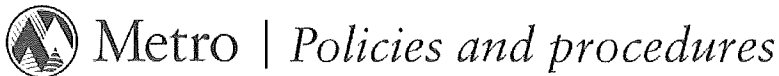
- Maintain employees' official personnel file and medical file in accordance with this policy and applicable legal and contractual requirements.
- Oversee the inspection and copying of personnel records.

References

ORS 652.750 (personnel records)

ORS 192.001 *et seq.* (public records)

Metro Records Retention Schedule



DRAFT
For MERC
Commission
review
7.10.13

Subject Information Technology: Acceptable Use
Section Information Services; Human Resources
Approved by

POLICY

Information, computer systems and devices are made available to users to optimize employee productivity in support of Metro's business processes. The purpose of this policy is to inform technology users of the appropriate and acceptable use of information, computer systems and devices.

Applicable to

All employees and other users of Metro agency information-related technology, services or systems.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Access: To instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system or computer network.

Computer Software: Computer programs, procedures and associated documentation concerned with the operation of a computer system.

Encryption: Use of a process to transform data into a form in which the data is unreadable or unusable without the use of a confidential process or key.

Information System: Computers, hardware, software, storage media, networks, operational procedures and processes used in the collection, processing, storage, sharing or distribution of information within, or with access beyond ordinary public access to, Metro's shared computer and network infrastructure.

Technology Asset: A data processing device that performs logical, arithmetic or memory functions, including the components of a computer and all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network. Technology assets include, but are not limited to, computers, tablets, telephones, and other messaging devices.

Technology Services: Information systems that are functioning on the public network subscribed to by Metro, including services found on the Internet that hold and process mail, files or streams of information.

Users: All Metro employees, volunteers, vendors and contractors who access Metro information assets, and all others authorized to use Metro information technology for the purpose of accomplishing Metro's business objectives and processes.

Guidelines

1. **Users have no right to expect that any information created on, kept on, or transmitted through the Metro information system is private.**
 - a. All information created or kept on Metro information systems, including email, is subject to review for compliance with public records law, regardless of whether the content is business-related or personal.
 - b. Metro documents, communications and work products stored on personally owned devices are also subject to public records law. The use of personally owned electronic devices such as home computers, laptops, smart phones and tablets to access Metro's internal networks may subject the personal device to review and possible disclosure.
 - c. Metro may monitor all electronic communications and information contained on its systems. Metro may monitor any and all email traffic passing through its email system as well as website visits, other computer transmissions, and any stored information created or received using Metro's information systems.
 - d. Metro will disclose or maintain the confidentiality of information in accordance with applicable law.
2. Metro information systems and devices are provided for business purposes only; however, Department Directors may approve limited, incidental personal use consistent with the terms of this policy.
3. Metro expects employees to comply with normal standards of professional and personal courtesy and conduct in their use of email and other electronic communications.
4. The Information Services Department is responsible for issuing guidance, consistent with this policy, to address changing technology or business needs. At a minimum, newly issued guidance will be posted on the IS intranet page and notification will be emailed to employees with Metro email addresses.
5. Violation of terms of this policy may result in the limitation, suspension or revocation of access to Metro information systems and can lead to other disciplinary action up to and including termination.

Procedures

General security protocols

1. All users must be authorized by Information Services to use Metro technology assets.
2. Users are responsible for the security of their passwords and accounts. Users must keep their passwords confidential. Passwords must be changed on a regular basis and should be complex enough that they cannot be easily discovered.

3. Users of Metro information systems shall respect the confidentiality of other users' information. Users shall not attempt to:
 - a. access third-party systems without prior authorization by the system owners;
 - b. obtain other users' login names or passwords;
 - c. attempt to defeat or breach computer or network security measures;
 - d. intercept, access, or monitor electronic files or communications of other users or third parties without approval from the author or responsible business owners;
 - e. review the files or information of another user without a specific business need to do so.
4. **Remote access:** Users may access Metro networks and email from remote locations only with proper authorization and through the use of agency-approved and agency-provided remote access systems or software.
 - a. Telecommuting is subject to applicable Metro policies and collective bargaining agreements.
5. **Software:** Non-approved software, including but not limited to desktop and workgroup applications, screen savers, browsers, application plug-ins and games, may not be downloaded or installed from the Internet, portable computer and storage devices, or other external sources without prior approval from Metro Information Services.
 - a. Approved software is listed on the IS Department intramet page.
 - b. Employees who have an ongoing business need to download non-approved software may request an exception from the requirement to obtain prior approval each time. Such requests must be supported by the employee's supervisor and submitted to the IS Department in writing. IS will evaluate the request with due consideration to the employee's business need, Metro's operational readiness, and the potential security impact. If the request is granted in whole or in part, IS will provide a written description of the expanded approval.
 - c. The IS Director has final authority over software approval decisions.
6. **Privately owned electronic devices:** Privately owned devices may not be connected to Metro networks, wireless access points, computers or other equipment without prior approval from Metro Information Services.
 - a. Privately owned devices such as laptops, smart phones and tablets may be connected to the email server over the public internet in accordance with IS Department guidance.
 - b. Hardware devices that are not required for assigned work must not be attached to a Metro-provided computer. All hardware attached to Metro systems must be appropriately configured, protected and monitored so it will not compromise Metro technology assets.
7. **Instant messaging and streaming video/audio:** Departments may allow the use of Instant Messaging (IM) and other communications or messaging alternatives for business purposes. Departments may also allow the use of streaming video/audio for business purposes. However, these uses must be approved, documented, and adequately secured and must comply with Metro records and information management policies. The IS Department is authorized to monitor IM communications and video/audio streams as needed for business or legal reasons.

8. Technology assets must not be used in a manner that impairs the availability, reliability or performance of Metro business processes and systems or unduly contributes to system or network congestion.
9. Users are required to report evidence of computer viruses, security breaches, or unauthorized access to the IS help desk as soon as possible.
10. Metro-provided email systems and Internet access for the public must be secured appropriately in order to protect Metro technology assets.
11. Metro may employ additional security controls, such as limited workstation access, in order to protect Metro technology assets and maintain a secure environment.
12. Information Services is responsible for monitoring the use of information systems and assets. At a minimum, IS will monitor on a random basis and for cause. Monitoring systems or processes will be used to create usage reports and the resulting reports will be reviewed by Information Services management for compliance.

Restriction of personal use of Metro technology assets

13. Internet use increases the risk of exposing Metro technology assets to security breaches. Metro can only accept this risk for business uses.
 - a. Business use includes accessing information related to employment with Metro, such as accessing benefit-related information. Approved sites for this purpose are the Oregon Public Employees' Retirement System (PERS), Employee Assistance Program (EAP), Oregon Savings Growth Plan and union contract information.
 - b. Department Directors may determine whether to allow limited incidental personal internet use, such as to check weather conditions or in case of emergency.
 - c. Metro has discretion to determine if an employee's use is personal or business. Employees will not be disciplined for personal use without an opportunity to explain any business reasons for the use.
14. Email is to be used for Metro-related business only, except as follows:
 - a. Department Directors may allow employees limited, incidental personal use as long as it does not violate other requirements of this policy and there is no significant cost to the agency.
 - b. Email may be used for union business to the extent allowed in the applicable collective bargaining agreement.
15. Metro employees are responsible for exercising good judgment regarding the reasonableness of personal use of Metro's technology assets. No personal use of Metro information systems shall interfere with staff productivity, pre-empt any business activity, consume more than a trivial amount of resources, or be used for personal gain.
 - a. Users may not use Metro technology systems to play computer games, regardless of whether Internet-based, personal, or included with approved software applications.
 - b. Metro systems may not be used for hosting or operating personal Web pages; non-business-related postings to Internet groups, chat rooms, or list services; or creating, sending or forwarding chain emails.
 - c. Metro information systems, other than the intramet bulletin board, may not be used for personal solicitation. Systems may not be used to lobby, solicit, recruit,

sell or persuade for or against commercial ventures, products, religious or political causes, or outside organizations.

Prohibited uses

16. Metro networks and systems shall not be used to intentionally view, download, store, transmit, or retrieve any information, communication or material that:
 - a. is harassing or threatening; is obscene, pornographic or sexually explicit;
 - b. is defamatory;
 - c. fosters hate, bigotry, discrimination or prejudice or makes discriminatory reference to race, age, gender, sexual orientation, gender identity, religious or political beliefs, national origin, health or disability;
 - d. is untrue or fraudulent;
 - e. is illegal or promotes illegal activities;
 - f. is intended for personal profit;
 - g. facilitates Internet gaming or gambling; or
 - h. contains offensive humor.
17. Under certain circumstances, there may be legitimate business reasons to access materials that are otherwise prohibited. Employees should obtain supervisor approval before accessing such materials.
18. Users shall not intentionally destroy data in an attempt to misrepresent data in Metro information systems.
19. Personal hardware or software may not be used to encrypt any Metro-owned information except with express prior permission and direction from Information Services.
20. Users shall not send email or other electronic communication that attempts to hide the identity of the user or represent the user as someone else. Users shall not utilize proxy devices or servers to hide their identity or to circumvent existing security. No use of scramblers, remailer services, drop-boxes or identity-stripping methods is permitted.

Additional legal requirements

21. All information created on or stored within Metro's applications, systems, devices and networks, whether on or off-premises, is the sole property of Metro and subject to its sole control, except as required by contract. In addition, all Metro documents, communications and work products are the sole property of Metro, regardless of whether the information is stored, accessed or transmitted via Metro-owned or personally owned devices such as computers, tablets, and cell phones.
 - a. No part of Metro agency systems or information is or may become the private property of any system user.
 - b. Metro owns all legal rights to control, transfer, or use all or any part or product of its systems.
 - c. Metro is under no obligation to store or forward the contents of an individual's email inbox, outbox or contact list either during or after their employment.

22. Use of Metro information systems must comply with copyrights, licenses, contracts, intellectual property rights and laws associated with data, software programs and other materials made available through those systems.
23. Users must comply with Metro's records retention policies.

Responsibilities

Employees:

- Take reasonable steps to ensure the physical security of Metro technology assets and passwords and report missing, lost or stolen Metro technology assets to their supervisor immediately.
- Use Metro technology assets in a manner consistent with the Acceptable Use Policy, seeking answers to any questions about the policy from their supervisor or the IS help desk as needed.

Supervisors:

- Ensure that authorized users have received training on acceptable use through the Metro Learning Center software or have received and signed a hard copy of the policy.
- Submit new account request forms for new employees.
- Review and update employee access when requested.
- Ensure employees are using Metro technology assets in a manner consistent with the Acceptable Use Policy and guard against inappropriate use of such assets by employees.
- Coordinate with the agency's Information Services and Human Resources Departments on violations of acceptable use of Metro technology assets.

Department directors:

- Ensure that department purchases for Metro technology assets are restricted to only those necessary for the conduct of official business and that standards for hardware and software are followed.
- Ensure appropriate usage of Metro technology assets and compliance with applicable rules and policies.

Information Services:

- Implement firewall, anti-virus, role provisioning, password controls, web surfing and Email filtering mechanisms, ensure their maintenance, and monitor logs and reports for system performance and compliance.
- Report policy violations to the Human Resources Department and/or supervisory staff as appropriate.
- Create hardware and software standards with the help of a technical standards committee and publish hardware and software standards on at least an annual basis.

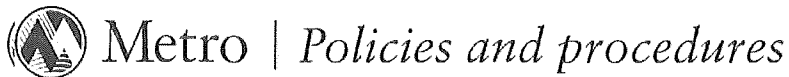
- Review policy annually to determine applicability. Publicize new guidance on the intramet and by email.
- Update filters by employee or group to include items required as part of the job when directed by a manager.

Human Resources Department:

- Alert Information Services of policy violations when appropriate.

Related References

- Information Services Department intramet page:
<http://imet.metro-region.org/index.cfm/go/by.web/id=3265>
- Social Media policy



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Subject Job Sharing
Section Human Resources
Approved by

POLICY

Metro permits two employees to share one full-time position if, in Metro's judgment, the position lends itself to a job sharing arrangement without decreasing efficiency or increasing the net cost of the position to Metro.

Applicable to

All employees.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Full-Time Equivalent (FTE): the number of total work hours divided by the maximum number of compensable hours in a full-time schedule.

Guidelines

1. A budgeted full-time position may be shared by two employees if, in Metro's judgment, the position lends itself to a job sharing arrangement without decreasing efficiency or increasing the net cost of the position to Metro.
 - a. For positions represented by a union, each job share employee will be budgeted at .50 FTE (20 hours per week). For non-represented positions, FTE may be divided according to business need and the needs and preferences of the employees.
2. Benefits will be prorated between the two employees in proportion to each employee's budgeted work hours. The benefits associated with a job share position may not exceed the benefits of an equivalent full-time position. An employee working in a job share position will be treated as a part time employee for purposes of calculating leave accruals.
3. Job share partners must have the same classification (since the classification is associated with the position) but may be paid at different rates, consistent with applicable collective bargaining agreements and policies.

Procedures

1. A budgeted full-time position may be designated a job share position with the approval of the Department Director and HR Director.
2. To initiate a request for job sharing, employees should first discuss the request with their immediate supervisor, who will discuss the request with the Department Director. The decision whether to proceed with the request is at the Department Director's discretion based on operational needs and budget considerations.
3. If the Director supports the request, the employees must submit a written proposal to the Director, signed by both employees. The proposal should describe the proposed division of work hours and duties.
4. The Department Director will forward the proposal to the Human Resources (HR) Benefits Manager. The HR Benefits Manager will review the proposal to ensure compliance with applicable laws and policies related to benefits and discuss any concerns with the Department Director. The HR Benefits Manager will then forward the request to the HR Director who will approve or deny the request and notify the Department Director and Human Resources Information Systems (HRIS) Analyst. The Department Director is responsible for communicating the response to the affected employees.
5. Employees in job sharing arrangements are required to maintain the same performance, productivity and customer service standards that would be expected if the position were filled with one full-time employee. The immediate supervisor is responsible for managing the days and hours worked and the duties assigned to each employee. Job share partners and their supervisors are expected to work together to develop appropriate procedures to balance workloads and share information effectively.
6. Employees in job sharing arrangements may be required to track their work hours, even if they are paid on a salary basis, to facilitate management of the position and ensure compliance with legal requirements. Supervisors are responsible for managing work hours consistent with the approved job share arrangement.
7. If, in the judgment of the Department Director, the job share arrangement is not meeting Metro's business needs, the Department Director may terminate the arrangement upon 30 days' notice to the affected employees.
8. If one partner in a job sharing arrangement separates from employment, the supervisor and Department Director will determine whether to recruit for a new job share partner, convert the position to two part-time positions, or convert the position to one regular full-time position. This decision is at management's discretion based on operational needs and budget considerations.
 - a. If the position is converted to a regular full time position, the remaining job share employee will be offered the opportunity to assume the position on a full-time basis.
 - b. If the former job share employee is unable to assume the offered full-time position, he or she will be laid off following procedures in the applicable policy or collective bargaining agreement and the full-time position will be opened for recruitment.

Responsibilities

Employees:

- Discuss job sharing requests with your immediate supervisor and submit a signed written proposal.

- Share information with your job share partner to ensure efficiency and seamless customer service.
- Track work hours and submit them to your supervisor (salaried, overtime-exempt employees: only if required by supervisor).

Supervisors:

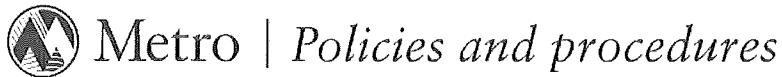
- Ensure that job share employees are meeting applicable performance and customer service standards and that workloads and work hours are consistent with the job share agreement.

Department Director:

- Determine whether to support or deny job share requests.
- Submit job share proposals to the HR Department.

Human Resources:

- Track job share arrangements throughout the agency.
- Benefits Manager: Review job share proposals for compliance with applicable laws and policies.
- Director: Approve or deny job share proposals and notify Department Director and HRIS Analyst.
- HRIS Analyst: Complete data entry to allocate payroll and benefits in accordance with approved proposals.



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Subject Modified Duty for Non-Occupational Medical Conditions
Section Human Resources; Finance and Regulatory Services (Risk)
Approved by

POLICY

In limited circumstances, Metro may provide temporary modified duty (also known as "light duty") for injuries or medical conditions that were not incurred on the job at Metro.

Applicable to

All employees.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Guidelines

1. Metro will temporarily modify the work assigned to employees with temporary non-occupational medical conditions only if the following criteria are met:
 - a. The employee can complete all the essential job functions as outlined in the employee's classification description;
 - b. There is a business need for the work to be performed; and
 - c. There is no financial cost to Metro (e.g. equipment purchases) required to place the employee on modified duty.
2. Metro does not provide transfers to accommodate restrictions due to non-occupational medical conditions except as required by law or other Metro policies.
3. Employees who are unable to perform their regular duties due to non-occupational medical conditions may have additional options under other laws and Metro policies, including the Americans with Disabilities Act (ADA), Oregon Family Leave Act (OFLA), Family and Medical Leave Act (FMLA), and Metro's Pregnancy Transfer and Leave policy. Metro also provides modified duty for on-the-job injuries covered by Metro's workers' compensation insurer. Employees should consult the applicable Metro policies and contact the Human Resources (HR) Department for more information if needed.

Procedures

1. To request modified duty, employees must provide their supervisor or the HR Department with written restrictions from their health care provider.
 - a. Supervisors must forward this information to HR immediately.
 - b. If more information is needed to clarify the restrictions or evaluate the suitability of possible transfer options, the HR Department may request that the employee provide additional information before a decision is made on the employee's request.
2. Modified duty for non-occupational conditions is typically limited to 30 days or less except as required by law or other Metro policies. In unusual circumstances, the C.O.O. or GM may approve an extension of modified duty beyond the standard 30-day period provided there is no adverse impact to Metro's operations.
3. Metro may remove an employee from the modified duty assignment before the end of the 30-day period for any of the following reasons:
 - a. The employee's medical restrictions are lifted or change substantially such that the modified duty assignment is no longer appropriate;
 - b. The employee is unable or unwilling to meet the attendance, performance and conduct expectations for the modified duty assignment; or
 - c. Continuation of the modified duty assignment is not consistent with Metro's business needs.
4. If an employee is medically restricted from performing the duties of his or her position but modified duty is not appropriate under the terms of this policy, the employee will not be permitted to work until the employee is no longer subject to medical restrictions.
5. An employee on modified duty whose medical restrictions are lifted or changed must give his or her supervisor a copy of the release or revised restrictions before the employee's next scheduled work shift or within three business days, whichever comes first.
6. Metro will return an employee to his or her regular duties only upon receipt of a medical release indicating that the employee is able to perform all the duties of that position.
7. Employees with non-occupational medical conditions may have additional options for extended modified duty or a leave of absence under the Americans with Disabilities Act (ADA), the Oregon Family Leave Act (OFLA), the Family and Medical Leave Act (FMLA), and/or other Metro policies.
8. An employee who is unable to return to his or her former position upon the conclusion of the modified duty assignment due to continued medical restrictions may be subject to termination in accordance with regular attendance policies except as provided by applicable law or other Metro policies.

Responsibilities

Employees:

- Provide your supervisor with written restrictions from your physician.
- Fulfill the performance and conduct expectations for the modified duty assignment. Consult with your supervisor if guidance is needed.

- When your restrictions are lifted or changed, give a copy of the release or new restrictions to your supervisor before your next scheduled work shift or within three business days, whichever comes first.
- If you are unable to return to your regular position at the end of your modified duty assignment, consult Metro policies and contact the HR Department to explore any other options you may have for modified duty or a leave of absence.

Supervisors and Managers:

- Notify the HR Department and Risk Management of all employee requests for modified duty.
- Promptly send any medical information received from an employee or another source to the HR Department without keeping copies, except that a copy of the employee's work restrictions may be retained while the restrictions are in effect. Maintain the confidentiality of all medical information.
- Consult with the HR Department before making changes to an employee's work assignment.
- Provide guidance to the employee as to the performance and conduct expectations for the modified duty assignment.
- Instruct employees to consult Metro's personnel policies and contact the HR Department to explore their options if they are unable to return to their regular assignment at the conclusion of modified duty.

Human Resources Department:

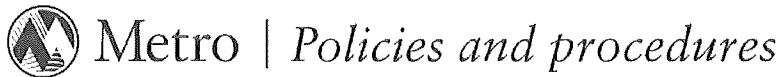
- Maintain all medical information in the employee's confidential medical file in accordance with legal requirements.
- Advise supervisors and employees on options for modified duty and leaves of absence as applicable.

References

Americans with Disabilities Act Policy

Family and Medical Leave Policy

Leave without Pay policy



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Subject Performance Management
Section Human Resources
Approved by

POLICY

The purpose of performance management is to ensure that employees understand job expectations and receive timely feedback and coaching in order to be successful in their current job and prepared for future growth within Metro.

Applicable to

All employees in regular and limited status positions; temporary and seasonal employees as determined by the Department Director.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Coaching: Guidance provided by supervisors to help employees succeed in meeting performance goals and/or to promote professional development.

Performance cycle: A probationary period or the timeframe between annual performance evaluations.

Performance evaluation: A formal evaluation of an employee's performance during the preceding performance cycle.

Performance Improvement Plan (PIP): A set of goals given to an employee who is not meeting performance expectations. The PIP gives specific details of the areas in which the employee must improve and the period of time during which that improvement should occur.

Progress review: A structured review conducted during a performance cycle to review an employee's progress toward meeting performance expectations and the goals set for that cycle.

Guidelines

1. Performance management is an ongoing process that includes planning, feedback and coaching, and review.

2. Performance evaluations are conducted at the end of each probationary or annual performance cycle in order to summarize accomplishments and areas for development and to set goals for the upcoming performance cycle.

Procedures

1. Shortly after an employee begins a new position or performance cycle, the supervisor should initiate a performance planning dialogue with the employee to clarify job responsibilities and identify goals.
2. Feedback and coaching should be ongoing throughout the performance cycle and can be initiated by either the employee or the supervisor.
 - a. Employees are encouraged to ask for feedback and clarification of performance expectations as needed.
 - b. Supervisors are encouraged to provide coaching as soon as possible when an employee's performance is falling short of expectations.
3. Supervisors are required to conduct formal performance evaluations at the end of an employee's probationary period and annually. In addition, a mid-year progress review is required and a mid-probation progress review is strongly recommended.
 - a. A satisfactory performance evaluation is not a guarantee of an increase in wages, salary or benefits, advancement or continued employment.
 - b. A copy of the performance evaluation is kept in the employee's official personnel file.
 - c. In the event that an employee disagrees with any portion of the supervisor's written comments, the employee may submit a written response, which will be included in the employee's personnel file along with the evaluation.
 - i. A response may be submitted at any time; however, the response must be submitted within 10 working days of receipt of the evaluation to be considered as part of the final evaluation. The supervisor has final authority for the evaluation.
 - ii. If an employee submits a written question or concern, the supervisor will discuss the employee's concerns with the employee and provide a written response.
4. Progress reviews and performance evaluations will be conducted in accordance with the Human Resources (HR) Department's Performance Planning and Evaluation Guide. Supervisors may contact HR for additional guidance as needed.
5. If an employee receives an unsatisfactory overall performance rating, the employee will be placed on a Performance Improvement Plan (PIP) with specific goals and timelines to improve performance. If an employee does not meet the PIP goals within the designated timelines, the employee may be subject to discipline.
6. A supervisor's failure to provide an employee with a performance evaluation or place the employee on a PIP does not guarantee that an employee's performance is satisfactory or waive management's right to pursue disciplinary action as appropriate. Employees should ask their supervisors and/or notify HR if they do not receive a timely mid-year progress review or performance evaluation.

Responsibilities

Employees:

- Ask your supervisor for clarification or feedback if you are unsure of performance expectations.
- Actively engage in the process, including goal-setting and self-evaluation.

Supervisors and Managers:

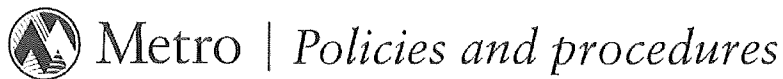
- Conduct performance planning, coaching and review in accordance with the Performance Planning and Evaluation Guide provided by the HR Department.
- Document employees' performance and provide feedback throughout the review cycle.
- Notify HR of performance concerns that may prevent the employee from passing probation or that may warrant disciplinary action.

Human Resources Department:

- Provide training opportunities to assist employees with job performance and career development.
- Develop and maintain performance management forms and guidance documents.
- Notify supervisors of timeframes for completing required evaluations.
- Advise managers on employee coaching and improvement plans as needed.
- Maintain copies of performance evaluations in employees' personnel files.

References

Performance Planning and Evaluation – A guide for employees and managers (available on the intranet on the HR Performance Management page or from the HR Department)



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Subject Pregnancy Transfer and Leave
Section Human Resources; Finance and Regulatory Services (Risk)
Approved by

POLICY

Metro may provide modified duty, a temporary transfer, or a leave of absence for a pregnant employee who is unable to perform any or all job duties without undue risk to the health and safety of the employee or the pregnancy.

Applicable to

All employees who are or may become pregnant.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Guidelines

1. Metro may provide modified duty, a temporary transfer, or a leave of absence for a pregnant employee who is unable to perform any or all job duties without undue risk to the health and safety of the employee or the pregnancy.
 - a. Metro will grant a leave of absence only if modified duty and temporary transfer are not feasible within the terms of this policy, except that if necessary an eligible employee may be granted leave pending consideration of modified duty and transfer options.
2. This policy is intended to address situations that do not meet the legal requirements for coverage under the Americans with Disabilities Act (ADA), Oregon Family Leave Act (OFLA), Family and Medical Leave Act (FMLA). Pregnant employees may have additional options for extended modified duty, transfer, or leave under those laws or other Metro policies. Employees should consult the applicable Metro policies and contact the HR Department for more information as needed.

Procedures

1. To request modified duty, employees must provide their supervisor or the HR Department with written medical restrictions from their health care provider.
 - a. Supervisors must forward this information to HR immediately.

- b. Employees who work around chemicals may find it helpful to ask their health care provider to review copies of the Material Safety Data Sheets (MSDS) for their work area. Supervisors will ensure that MSDS sheets are available to employees.
 - c. If more information is needed to clarify the restrictions or evaluate the suitability of possible transfer options, the HR Department may request that the employee provide additional information before a decision is made on the employee's request. With the employee's consent, the HR Benefits Manager may request follow-up information directly from the employee's health care provider.
 - d. Employees are not required to meet eligibility requirements under the ADA, OFLA or FMLA to qualify for modified duty, transfer or leave under this policy.
 - e. Metro will not assume a pregnant employee is unable to perform regular duties without a request by the employee.
 - f. The employee must meet all the attendance, conduct, and performance expectations for the modified duty or transfer position.
2. A temporary transfer will be provided only if:
- a. It is not feasible to modify the duties of the employee's current position;
 - b. There is an available position for which the employee is qualified;
 - c. The duties in the temporary position are consistent with the employee's medical restrictions; and
 - d. The transfer does not create a hardship to Metro's operations.
3. Metro may remove an employee from a modified duty or transfer assignment for any of the following reasons:
- a. The employee's medical restrictions are lifted or change substantially such that the modified duty or transfer assignment is no longer appropriate;
 - b. The transfer assignment is needed for an employee with a disability that requires accommodation or for an employee with on-the-job injury covered by the Workers' Compensation system;
 - c. The employee is unable or unwilling to meet the attendance, performance and conduct expectations for the modified duty or transfer assignment; or
 - d. Continuation of the modified duty or transfer assignment will create a hardship to Metro's operations.
4. If modified duty or temporary transfer is not feasible, Metro will provide a leave of absence unless it would create a hardship to Metro's operations.
- a. A leave of absence for pregnancy will be paid from accrued paid time off. Once accrued paid time off is exhausted, leave will be unpaid.
 - b. If the employee is benefits-eligible, benefits will be continued for as long as the employee's leave is paid by accruals. For unpaid leave, benefits will continue through the last day of the month following the month in which unpaid leave begins. After that date, leave will be without benefits unless the employee elects to continue benefits at the employee's own expense.
 - i. If the leave is covered by OFLA/FMLA, benefits will continue as described in that policy.
 - c. Leave will be excused for as long as the employee is unable to perform any suitable and available positions due to pregnancy-related medical restrictions.

- d. Leave granted under this policy will not be counted against the employee's attendance record for purposes of discipline or performance evaluations.
5. The position of an employee who has been transferred or is on leave may be filled on a temporary basis or kept vacant until the employee is reinstated.
6. An employee whose medical restrictions change or are lifted must notify the supervisor and submit a copy of the release or revised restrictions to the HR Department by the employee's next scheduled work shift or within three business days, whichever comes first.
7. Metro will reinstate an employee to her regular position prior within ten business days of receiving a medical release indicating that the employee is able to perform all the duties of that position, unless the position has been eliminated or the employee is no longer eligible for the position for reasons unrelated to the pregnancy transfer or leave.
 - a. In the event that the employee's regular position is eliminated, the employee will be subject to layoff consistent with applicable policy and contract provisions.

Responsibilities

Employees:

- Submit a request for modified duty, transfer or leave to your supervisor or the HR Department along with appropriate medical documentation.
- Fulfill the performance and conduct expectations for a modified duty or transfer assignment. Consult with your supervisor if guidance is needed.
- If your restrictions are lifted or changed, give a copy of the release or new restrictions to your supervisor by your next scheduled work shift or within three business days, whichever comes first.
- If you are unable to return to your regular position at the end of your modified duty assignment, consult Metro policies and/or contact the HR Department to explore any other options you may have for modified duty or a leave of absence.
- Request and code leave time consistent with this policy and regular timekeeping procedures.

Supervisors and Managers:

- Notify the Department Director and HR Department if an employee requests modified duty, temporary transfer, or a leave of absence due to pregnancy risks.
- Promptly send any medical information received from an employee or another source to the HR Department without keeping copies, except that a copy of the employee's work restrictions may be retained while the restrictions are in effect. Maintain the confidentiality of all medical information.
- Consult with the HR Department before making changes to an employee's work assignment.
- Provide guidance to the employee as to the performance and conduct expectations for the modified duty assignment.
- Direct employees to consult Metro's personnel policies and/or contact the HR Department to explore their options if they are unable to return to their regular assignment at the conclusion of approved modified duty, transfer or leave.

Human Resources Department:

- Maintain all medical information in the employee's confidential medical file in accordance with legal requirements.
- Notify the Department Director upon receipt of a request for modified duty, transfer or leave under this policy.
- Provide advice on options for modified duty, temporary transfer and leave as needed.

References

Americans with Disabilities Act Policy

Family and Medical Leave Policy

Leave without Pay policy



Metro | Policies and procedures

Subject Resignation and Retirement

Section Human Resources

Approved by

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7.10.13

POLICY

This policy outlines procedures and responsibilities in the event of resignation or retirement.

Applicable to

All employees.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Procedures

1. Metro requests that employees provide a minimum of 14 calendar days' notice of resignation or retirement unless there is a contract or other agreement specifying a different timeframe.
2. Notice of resignation or retirement may be provided verbally or in writing to an employee's supervisor or manager.
3. After receiving notice of resignation or retirement, the supervisor must:
 - a. Immediately notify the Payroll Division via the Kronos Help Desk in order to ensure timely processing of the employee's final paycheck. Please see Metro's Payroll Policy for more information on final paychecks.
 - b. Forward an employee's resignation notice (if any) to the HR Department as soon as possible. If notice of resignation or retirement is given verbally, the supervisor must email the Human Resources (HR) Department to confirm the date and circumstances of the notice and the proposed effective date of the resignation or retirement.
 - c. Complete all applicable close-out procedures listed on the Departing Employee Checklist, available from the HR Department.

4. The effective date of resignation or retirement should ordinarily be the last date the employee is present at work and not extended by leave time or holidays. The HR Department may approve an exception to this rule in unusual circumstances, such as when an employee on leave is unable to return.
5. If an employee who has given notice of resignation or retirement seeks to rescind the notice, the decision whether to accept the rescission is at the discretion of the Department Director based on business need.
6. The HR Department will invite the employee to complete an exit interview or take similar steps to understand the employee's reasons for resigning. Employees are welcome to contact HR to request an exit interview.
7. Employees must return their employee identification cards and all other Metro property, including keys, uniforms, purchasing cards, tools and equipment, by the end of their last day of employment.
8. If contacted for an employment reference, Metro will provide the employee's dates of employment, positions held, and salary history. Metro may agree to provide additional information if requested by the employee.

Responsibilities

Employees:

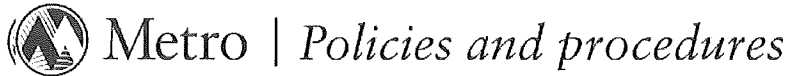
- Provide 14 calendar days' notice of resignation if possible.
- Turn in your identification card and all other Metro property by the end of your last day of work.
- Contact the HR Department with any questions relating to benefits.

Supervisors:

- Notify the Payroll Division via the Kronos Help Desk and the HR Department upon receipt of a notice of resignation.
- Complete applicable close-out procedures listed on the Departing Employee Checklist.
- Limit employment references to the information specified in this policy, or direct inquiries to the HR Department.

Human Resources Department:

- Process separation in applicable HR systems.
- Payroll Division: process employee's final check.
- Provide relevant benefits information.
- Conduct exit interview if requested or otherwise appropriate.



DRAFT
For MERC
Commission
review
7.10.13

Subject Volunteers
Section Human Resources
Approved by

POLICY

Metro values the contributions of volunteers throughout the agency. Metro's volunteer programs expand Metro's capacity to provide services, engage the community, and fulfill its mission while serving as good stewards of public funds.

Applicable to

All departments.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Definitions

Volunteer program: A program that provides and manages volunteer opportunities for a specific Metro department or facility.

Volunteers: Individuals who provide services to Metro without expectation of monetary or non-monetary compensation.

Guidelines

1. Volunteers are not employees of Metro and are subject to Metro's personnel policies only where noted in the policy or otherwise provided by law. Volunteers may also be required to follow department procedures applicable to their work.
2. Volunteers are expected to meet the performance and conduct standards applicable to the volunteer opportunity and to fulfill their agreed commitments.
3. Metro employees may not volunteer to perform duties for Metro that are the same as, similar, or related to their normal job duties. Metro and its managers and supervisors may not require employees to perform volunteer work.

Procedures

1. Metro's volunteer programs develop and manage volunteer opportunities in accordance with the applicable Metro policies and legal requirements and the specific needs of that program. Volunteer programs are responsible for recruiting and selecting volunteers, tracking volunteer assignments and hours, and establishing the expectations and procedures applicable to a particular volunteer assignment.
2. Volunteer programs are responsible for providing volunteers in recurring or ongoing assignments with an opportunity to review all applicable policies and procedures, including but not limited to the following:
 - a. Discrimination and Harassment policy;
 - b. Criminal Background Check policy;
 - c. Workplace Violence policy;
 - d. Driving and Vehicle Use policy (if applicable);
 - e. Information Technology: Acceptable Use policy (if applicable);
 - f. Whistleblowing policy
 - g. All safety rules and procedures applicable to the assignment;
 - h. All conduct and performance standards, procedures, and other information applicable to the assignment.
3. For one-day volunteer assignments, volunteer coordinators may provide policies for review as they deem appropriate.
4. Metro is legally restricted from providing direct or indirect compensation to its volunteers. Volunteer supervisors must request review from the Office of Metro Attorney (OMA) before offering new discounts, privileges, or other benefits to volunteers.
5. Supervisors are required to track volunteers' work hours and report this information to the HR Department Payroll Division no later than 10 calendar days after the end of each quarter for workers' compensation purposes.
6. A volunteer may be removed from his or her assignment with or without notice for any lawful, non-discriminatory reason. Volunteer supervisors must consult with the Human Resources (HR) Department and/or the Office of Metro Attorney before removing a volunteer for performance or conduct reasons.
7. Volunteers may contact their supervisor or HR with any questions or concerns.

Responsibilities

Volunteer Coordinators, Supervisors and Managers:

- Establish standards and procedures and manage volunteer programs in accordance with applicable law. Consult with HR and OMA as needed and/or as directed by this policy.
- Provide volunteers with all applicable policies and procedures.
- Track volunteers' work hours and report this information to the HR Department Payroll Division no later than 10 calendar days after the end of each quarter.

Human Resources Department:

- Advise staff and volunteers on policies as needed.
- Conduct appropriate background checks on potential volunteers.

Volunteers:

- Comply with all applicable policies and procedures.
- Promptly advise your supervisor or his/her designee of any changes to your availability.
- Contact your supervisor or the HR Department with any questions or concerns.

References

Criminal Background Check policy

Discrimination and Harassment policy

Driving and Vehicle Use policy

Information Technology: Acceptable Use policy

Workplace Violence policy



Metro | Policies and procedures

Subject Whistleblowing (Reporting Improper Conduct)
Section Human Resources
Approved by

DRAFT
For MERC
Commission
review
7.10.13

POLICY

It is Metro's policy to promote ethical behavior and to comply with Oregon's Whistleblower Law. Employees, interns, volunteers and contractors are encouraged to report improper or unlawful conduct and may do so anonymously. Such reports serve the public interest and assist Metro in meeting high standards of public accountability. No employee will be subject to disciplinary action or retaliation for making a good faith report or disclosure under this policy or for initiating or aiding in a criminal or civil proceeding.

Applicable to

All employees and contractors performing services for Metro.

Interns and volunteers are also encouraged to report improper or unlawful conduct using the procedures described in this policy.

Definitions

Disclosure: A formal or informal internal or extra-agency communication.

Employees: For the purposes of the Oregon whistleblower law, "employees" include contractors and their employees in addition to individuals who are employed directly by Metro.

Good faith: A sincere belief or motive.

Reckless disregard for truth or falsity: A conscious disregard of a substantial and justifiable risk that the information disclosed is false.

Reporter: An individual who makes a report or disclosure under this policy.

Guidelines

1. Metro encourages its employees, interns, volunteers and contractors to notify Metro of improper or unlawful government action by Metro or its officials or employees.
2. No employee will be subject to discipline or other retaliation for disclosing information the employee reasonably believes is evidence of:
 - a. A violation of any federal or state law, rule, or regulation by the agency;

- b. Serious agency misconduct that could undermine Metro's ability to fulfill its public mission;
 - a. Gross misuse or waste of public resources or funds;
 - b. Abuse of authority in connection with the administration of a public program or the execution of a public contract; or
 - c. A substantial and specific danger to public health or safety resulting from agency action.
- 3. No employee will be subject to discipline or other retaliation for initiating or aiding in criminal, civil, or administrative legal proceedings in good faith.

Procedures

Reporting improper or unlawful conduct:

- 1. Employees, interns, volunteers and contractors are encouraged to notify Metro of improper or unlawful actions in any Metro facility or department.
 - a. Reports may be made to any Metro manager, the Human Resources (HR) Department, and/or the Office of Metro Attorney (OMA).
 - b. Reports also may be made confidentially using Metro's Ethics Line, which can be accessed online at metroethicsline.org, or by calling (888) 299-5460.
 - i. The Ethics Line is administered by the Metro Auditor's Office. The auditor contracts with a hotline vendor, EthicsPoint, to maintain the reporting system and ensure confidentiality. EthicsPoint does not reveal the reporting party's identity to Metro.
- 2. Metro will not discipline or retaliate against an employee for making a good faith report under this policy. Employees will be subject to discipline only if:
 - a. The information disclosed is known by the employee to be false, or is disclosed with reckless disregard for its truth or falsity; or
 - b. The disclosed information relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority, or endangerment of the public health or safety, in which case the employee may be disciplined for the underlying conduct.
- 3. During its investigation of any disclosure listed above, Metro will not identify the individual making the disclosure without his or her written consent unless such identification is necessary to an investigation or legal process and allowable by law. In that case, Metro will protect the reporter's confidentiality to the greatest extent possible without impairing the investigation or legal process.

Initiating or Aiding Administrative, Criminal or Civil Proceedings

- 4. Metro will not discriminate or retaliate against an employee because he or she has in good faith:
 - a. Reported criminal activity (or activity the employee believes to be criminal) to any person or caused criminal charges to be filed against any person;
 - b. Cooperated with a criminal investigation or testified at a criminal trial;
 - c. Initiated, cooperated with, or testified at a civil administrative or court proceeding;

- d. Opposed harassment, discrimination, or other conduct prohibited by civil rights laws;
- e. Discussed, inquired about, or brought a claim for unpaid wages.

Legislative Testimony

5. Metro will not prohibit, discourage, or otherwise interfere with an employee responding to a legislative request to discuss the activities of Metro or any other political subdivision of the state.
 - a. An employee is not required to inform Metro before engaging in the requested legislative discussion, unless the legislative request for information is directed to Metro and the employee is responding on behalf of Metro.
 - b. Notwithstanding this policy, employees are not permitted to:
 - i. Represent the employee's personal opinions as the opinions of the agency;
 - ii. Disclose information required to be kept confidential by law;
 - iii. Disclose records exempt from disclosure, except as provided by law;
 - iv. Disclose information of an advisory nature to the extent that it is preliminary to any final agency determination of policy or action and covers other than purely factual materials.
 - c. Absences to testify before a legislative committee will be excused. Employees may take unpaid leave or use any type of accrued paid time off other than sick leave. Employees are not required to disclose the purpose of the absence. Testifying on behalf of Metro is paid work time.

Whistleblowing in general

6. Employees are not required to notify Metro before engaging in activities protected under this policy and will not face discipline if they choose not to do so; however, Metro encourages individuals to bring problems to its attention so they can be addressed promptly. As noted above, reports may be made confidentially using the Ethics Line.
7. Discrimination, harassment, and retaliation are prohibited for activities undertaken in good faith under this policy even if the underlying complaint or report is ultimately not substantiated.
8. Anyone who experiences or observes discrimination, harassment, or retaliation on the basis protected activity under this policy should report the offending conduct using the procedures specified in this policy or in Metro's Discrimination and Harassment Policy.

Responsibilities

Employee:

- Report illegal and unethical conduct by notifying a Metro manager, the Human Resources Department or the Office of Metro Attorney, or by using Metro's Ethics Line.
- Notify a Metro manager, the Human Resources Department, or the Office of Metro Attorney if you observe or become aware of any conduct that may constitute discrimination, harassment or retaliation for protected activity under this policy.

Supervisor/Manager/Department Director:

- Ensure that no employee is subject to discipline, harassment or other retaliatory action for engaging in protected activity under this policy. Contact Human Resources immediately if you observe or become aware of any conduct that may constitute harassment or retaliation for protected activity under this policy.
- Cooperate with ethics investigations while protecting the reporter's confidentiality.

Human Resources Department:

- Cooperate with ethics investigations while protecting the reporter's confidentiality.
- Investigate any complaints of retaliation in violation of this policy.

References

ORS 659A.199 – 659A.236 (Oregon Whistleblower Law)

ORS 659A.030(1)(f) (prohibiting retaliation for opposing unlawful conduct)

OAR 839-010-0000 – 839-010-0140 (BOLI administrative Rules)

Metro Ethics Hotline: metroethicsline.org; (888) 299-5460

Metro Ethics Employee Q&A (on Intramet)

MERC Commission Meeting

July 10 , 2013
12:30 pm

8.0 Consent Agenda

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

June 4, 2013
Metro Regional Center, Room 301
600 NE Grand Ave. Portland OR 97232

Present:	Chris Erickson (Chair), Karis Stoudamire-Phillips , Cynthia Haruyama , Ray Leary , Elisa Dozono, Terry Goldman
Absent:	Judie Hammerstad (excused) , Councilor Sam Chase (excused)
	A regular meeting of the Metropolitan Exposition Recreation Commission was called to order by chair Chris Erickson at the Metro Regional Center, Room 301 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"> • None
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 commented on Action item 8.3 which amends contracting and purchasing rules. Today's proposal comes from work done by Commissioners Leary, Dozono and Stoudamire-Phillips to put new emphasis on engaging minority contractors and providing opportunities for them to earn contracts from the venues. It is not limited to FOTA but also provides opportunities for any state certified MWESB. In addition, we've been talking about diversity outreach in terms of employment and limitation of the current FOTA program language. As a result, I'm finalizing a job description for a limited duration position who can look at FOTA and house bill language around that to help us determine how to make that program more flexible so we can improve recruitment and contracting as well as help us improve interactions with stakeholders. If you know of anyone, please send names. • T. Dresler updated on Hotel project: Today's work session was canceled as we don't have the amended IGA language for the VDI bucket system completed yet. Due to budget schedules at the city and county, we are pushing the decision dates from June to July. The joint work session date is to be determined. We continue to work with the Mortenson Hyatt development team and will finalize term sheet language for Metro Council vote as well. Council President Tom Hughes, Chair Ericson and Commissioner Leary joined me and Scott Cruickshank a couple of week s ago to talk to the State Ways and Means Committee about capital requests for lottery funds. We have a request in for \$12 million. We should expect a yes or no on that at the end of June. • Event announcements: FAM tour this weekend. Oregon League of Minority Voters dinner this Friday. Metro participation in Pride Festival and Pride Parade on June 15, 16. • Commissioner Leary inquired if we have engaged PDC in any new discussion for their participation in the hotel project? T. Dresler responded that she is not sure if President Tom Huges had an opportunity to make that outreach. He is meeting with the Mayor on Friday and that would be on his agenda.

	<ul style="list-style-type: none"> Commissioner Dozono inquired if conversations with Business Oregon were still on-going? T. Dresler responded that she will check with Randy Tucker and will respond.
5.0	<p>STRUCTURAL ANALYSIS PRESENTATION OF EXPO HALLS A, B AND C</p> <p>Matt Rotchford & Inici Group presented to the Commission</p> <ul style="list-style-type: none"> Chair Erickson inquired if there were any mold or water issues. Karl Schulz responded that there is no concern right now. Commissioner Goldman asked if we are looking at the incentives from Energy Trust of Oregon. M. Rotchford responded that Energy Trust will do an energy audit of the entire campus. Energy Trust is doing the lighting upgrade. Commissioner Leary commented that the Commission has discussed various times about the prospect of framing a proposal to assist Expo to address their debt service however with this major expenditure forthcoming, we might not be able to frame a proposal to help with debt relief. T. Dresler responded that Matthew Rotchford and Tim Collier have been discussing about the feasibility of refinancing the current bonds and taking advantage of favorable interest rates however we have learned that the threshold to accomplish feasibility will not be met. So that is not possible. Second issue perusing is the existing Council resolution on Metro Tourism Opportunity and Competitiveness Account (MOTACA) which is currently provides funding through Metro's general fund to OCC. Discussed with Martha Bennett (COO) about revising that language to include Expo. We suggested excise tax relief or removal for Expo. However, that will be quite challenging since Metro's general fund can't afford to lose that revenue without eliminating some programs therefore, we're trying to be creative about other opportunities. We are discussing but no solution yet. Chair Erickson inquired about the current debt service amount. Matt Rotchford responded it is currently \$1.2 million dollars/year. Chair Erickson inquired If we are self insured for the Expo building. Nathan Sykes responded we are not for property. Commissioner Haruyama inquired whether Teri Dresler is working to bring a Project Manager on board to take on the bigger picture that we haven't been able to get to and asked whether Expo's long term solution for debt relief is one of those? Teri Dresler responded that that's the same position that will work on FOTA. Taking on Expo's issue would be the very next priority for the position. Commissioner Haruyama inquired on the amount of EXPO's excise tax. Teri Dresler responded it is 7.5% of every dollar. Matt Rotchford noted that last fiscal year it was close to \$450,000. Teri Dresler expressed her appreciation for Matthew Rotchford , Jim Caldwell and Josh Lipscomb for their great accomplishments on this project.
6.0	<p>MERC VENUES' BUSINESS REPORTS</p> <ul style="list-style-type: none"> Lori Kramer , Matthew Rotchford and Scott Cruickshank updated to the Commission
7.0 7.1	<p>CONSENT AGENDA</p> <p>May 7, 2013 MERC Regular Meeting Record of Actions</p> <ul style="list-style-type: none"> A motion was made by Commissioner Dozono and seconded by Commissioner Goldman to approve the Consent Agenda <p>VOTING: Aye: 6 (Erickson,Stoudamire-Phillips,Haruyama, Leary, Dozono, Goldman) Nay: 0</p> <p>Motion passed</p>

8.0	ACTION AGENDA
8.1	<p>Resolution 13-10 for the purpose of approving budget amendments to the fiscal year 2013-14 approved budget.</p> <ul style="list-style-type: none"> • Cynthia Hill presented to the Commission • Commissioner Goldman inquired if we have secured \$1.5 million dollars for the contingency fund. • Teri Dresler responded affirmatively. <p>VOTING: Aye: 6 (Erickson,Stoudamire-Phillips,Haruyama, Leary, Dozono, Goldman) Nay: 0</p> <p>Motion Passed</p>
8.2	<p>Resolution 13-11 for the purpose of approving Phase I of OCC roof replacement</p> <ul style="list-style-type: none"> • Scott Cruickshank and Josh Lipscomb presented to the Commission • Commissioner Haruyama inquired about timeline of Phase II. Scott Cruickshank responded 2014-15 calendar year. • Commissioner Leary inquired if we have numerical target established in Metro Code to reach as an MWESB outreach goal or is it aspirational only? <ul style="list-style-type: none"> • Teri Dresler responded it is aspirational. • Commissioner Leary commented we need to get in line with Multnomah County and the city of Portland in terms of having this specific number to pursue for accountable participation in MWESB and get away from aspirational language. We're leaving it up to the contractors to perform in good faith on our behalf. • Teri Dresler responded that we can have this discussion in next FOTA meeting and talk about making further revisions to MERC code. • Commissioner Dozono further clarified Commissioner Leary's inquiry that the issue is more of a contractual one so that we need to change the standard contracts. • Nathan Sykes commented that in absence of finding intentional discrimination, we cannot have an actual quota thus we need to have aspirational goals. • Commissioner Leary suggested that we should then have an aspirational goal with numbers to commit to (% of participation) attached as opposed to a good faith estimate. • Scott Cruickshank clarified that Phase I is Oregon ballroom loading dock area. Exhibit A, B and C falls under Phase II. • Commissioner Dozono inquired why Metro COO has the authority for administration of the contract. Nathan Sykes responded that is due to the code that it is delegated to the COO not through General Manager. • A motion was made by Commissioner Leary and seconded by Commissioner Haruyama to approve the Resolution 13-11. <p>VOTING: Aye: 6 (Erickson,Stoudamire-Phillips,Haruyama, Leary, Dozono, Goldman)</p> <p>Nay: 0</p> <p>Motion Passed</p>

8.3

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

- Tim Collier presented to the Commission
- Commissioner Dozono expressed her appreciation to follow up on the subject.
- A motion was made by Commissioner Soudamire-Phillips and seconded by Commissioner Haruyama to approve the Resolution 13-12.

VOTING: Aye: 6 (Erickson,Stoudamire-Phillips,Haruyama, Leary, Dozono, Goldman)
Nay: 0
Motion Passed

Meeting adjourned at 4:30 pm

MERC Commission Meeting

July 10, 2013
12:30 pm

9.0 Action Agenda

METROPOLITAN EXPOSITION-RECREATION COMMISSION
Resolution No. 13-13

For the Purpose of Electing MERC Commission Officers for Fiscal Year 2013-14.

WHEREAS, at the July 10, 2013 regular meeting of the Metropolitan Exposition-Recreation Commission, the following Commissioners were nominated and elected as the Metropolitan Exposition-Recreation Commission officers for a one- year term, beginning July 1, 2013 and ending June 30, 2014:

Chair:

Vice Chair:

Secretary-Treasurer:

BE IT THEREFORE RESOLVED that the above slate of officers of the Metropolitan Exposition-Recreation Commission be hereby confirmed.

Passed by the Commission on July 10, 2013.

Approved as to form:
Alison Kean Campbell, Metro Attorney

Chair

Nathan A. Schwartz Sykes, Senior Attorney

Secretary-Treasurer

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 13-14

For the purpose of approving an amendment to the Sales Incentive Plan.

WHEREAS, the Metropolitan Exposition Recreation Commission (MERC) approves personnel policies that apply to the MERC venues; and

WHEREAS, MERC previously approved the Sales Incentive Plan applicable to Sales Managers at the Oregon Convention Center;

WHEREAS, MERC management request that the Sales Incentive Plan be amended so that Sales Managers receive any cost of living increases approved by MERC to their base salaries as this is fair and equitable;

WHEREAS, MERC staff recommend that MERC approve this amendment to the Sales Incentive Plan.

BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission hereby approves the amendment to the Sales Incentive Plan as set forth in Exhibit A to this resolution.

Passed by the Commission on July 10, 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 Approving an Amendment to the Sales Incentive Plan

Resolution No.: 13-14

Presented By: Teri Dresler

Date: July 10, 2013

Background and Analysis

At the July 6, 2011 MERC meeting the Commission voted to approve a personnel policy providing for sales incentive bonuses for venue sales staff in lieu of annual salary increases. This program has proven to be a tremendous incentive program for the sales staff who have continued to increase their efforts, and results, generating new and additional business for the Oregon Convention Center. At this time the OCC is the only venue utilizing this incentive program.

July 1, 2013, the classification ranges of all MERC positions will be trended by cost of living for the first time in many years, and certainly for the first time since the sales incentive program has been in place. This action brought to light the need to evaluate the sales manager classification in regard to cost of living trending. It is clear that in order to maintain a competitive range for this position, a cost of living increase needs to be given to the individuals who are also receiving the sales incentive bonus, and that the range should be trended. Current policy language precludes the staff who participate in the incentive program from receiving any other increases.

The amendment to the existing policy provides for the cost of living action. It additionally defines specifically that those employees who participate in the sales incentive bonus program will not be eligible for merit increases should that program be reinstated.

Fiscal Impact: The budget impact in FY 2013 – 2014 is less than \$2000. In future years should a cost of living increase be appropriate, the amount necessary will be included in budget planning.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution 13-14 for the purpose of approving an amendment to the Sales Incentive Plan.

DRAFT



Subject Sales Incentive Plan

Approved by MERC Commission and/or Metro COO

POLICY or PROCEDURE

Sales Managers will participate in a sales incentive program. The incentive goals will be included in the annual budget and reviewed quarterly. If employees meet both individual and team goals, they will receive quarterly bonuses.

Applicable to

MERC venue Sales Managers.

Definitions

1. Sales incentive plan: pre-established goals and criteria identified by management and approved by the MERC Commission or Metro COO. The plan will identify goals that are measurable, increase revenues to the department utilizing the program, provide a reward that motivates employees, and offers immediate rewards.
2. Sales incentive bonus: is compensation in lieu of any merit pay program and is intended to reward program participants for meeting pre-established, quarterly, targeted goals to increase revenue. Employees participating in the plan are eligible for quarterly payments based on both individual and team objectives.
3. Sales incentive plan and program goals: the goals for the sales incentive programs are as follows:
 - a. To increase sales of facility rentals and other services when compared to the same quarter in previous years
 - b. To insure Metro's venues remain first class and operate as prestige facilities at the national/international level as measured by industry standards
 - c. To increase total economic impact to the region by increasing city-wide sales as measured in the annual economic impact study
 - d. To retain a strong sales team by compensating them according to standard industry practices
4. Sales incentive plan quarterly rating periods:
 - a. July 1-September 30
 - b. October 1-December 31
 - c. January 1-March 31
 - d. April 1-June 30

Guidelines

The intention of this program is to align sales teams with industry practices in order to provide consistency and achieve strong results. The incentive structure gives management immediate feedback on successful programs at both the group and individual level. This is

essential in market-driven industries like the hospitality industry. The bonus structure allows management to target current “need” periods with specific goals and incentives in order to increase bookings, revenues and facility utilization on an expanded basis.

Staff will receive rewards for generating immediate revenue as well as increasing bookings for successive years, specifically targeting an 18-24 month timeframe. Metrics for this will be meeting sales goals, feasibility of implementing across other departments, and staff feedback.

During the annual budget development process, financial compensation tied to this program will be incorporated and approved through the usual route. Metro Finance and Regulatory Services will affirm quarterly results and bonus payments (if any) following an audit of documentation submitted by the Director of Sales and the Facility Director will approve bonuses.

Procedures:

1. At the beginning of each fiscal year, management, in consultation with the MERC Commission or Metro COO, will determine overall sales incentive plan ratings and goals. These ratings will be metrics that are accessible from the EBMS database or another program participant’s financial systems.
2. Upon approval, management will inform sales teams of their goals. All members of the team will participate in the sales incentive plan in lieu of any merit pay program. Management will collect and evaluate data at the end of each ratings period to determine if the sales team both as a group and individually have met quarterly goals. An audit of this information will be conducted by accounting staff during their regular quarter end process.
3. Following this audit, authorization for incentive payments (if any) will be forwarded to Human Resources Department for payroll processing.
4. If, during the employment performance assessment process an employee receives an overall rating of Needs Development or Unsatisfactory, the employee will forfeit their eligibility to participate in the sales incentive plan until their performance improves.
5. The sales team will be eligible for salary increases if their salaries fall below the range of a new compensation plan or by a CPI trending of the overall compensation salary structure. The dollar amount budgeted for the sales incentive plan will be determined on an annual basis during the budget development process. Continuation of the plan and the budget must be approved as part of the regular budget process.

Responsibilities

Sales Team: Participants are expected to be familiar with the plan, goals, incentives, and the rating areas.

Director of Sales: In conjunction with Visitor Venues General Manager and other senior management, develop goals, budget, and rating areas. The Director of Sales is also responsible for communicating the annual plan to the sales team, managing the plan, and accountability for conducting a regular review of progress towards the goals with both the sales team staff and other senior management.

Finance and Regulatory Services: Review and audit quarterly results and approve transmission of the results to Human Resources for processing.

Facility Director: Oversee Director of Sales implementation and management of plan.
Monitor and communicate quarterly results of the incentive plan to the Visitor Venues
General Manager, MERC Commission, and other stakeholders.

METROPOLITAN EXPOSITION RECREATION COMMISSION
Resolution No. 13-15

For the purpose of approving the sale of certain real property to Union Pacific Railroad Company

WHEREAS, Metro owns a parcel of real property located in Block 71, East Portland located at the site of the Oregon Convention Center (the “Metro Property”); and

WHEREAS, Union Pacific Railroad Company (“Union Pacific”) owns and operates a main line rail track that lies adjacent to the Metro Property; and

WHEREAS, Union Pacific seeks to shift its existing main line rail track to a point that would cause the line to enter upon and cross a portion of the Metro Property; and

WHEREAS, Union Pacific has proposed to purchase from Metro a 1,474-square-foot portion of the Metro Property (the “Sale Parcel”), depicted as “Parcel 1” on Exhibit A to this Resolution, which Sale Parcel Union Pacific requires in order to make the adjustment of its main line rail track and, as part of the sale price, Union Pacific proposes to release and quitclaim to Metro a communications line easement held by Union Pacific that burdens a 2,270-square-foot portion of the Metro Property, depicted as “Parcel 2” on Exhibit A; and

WHEREAS, as part of the transaction, Union Pacific has proposed to pay Metro the sum of \$1,000, which represents the difference between the appraised value of the Sale Parcel Property and the appraised value of the communications line easement that UP is relinquishing; and

WHEREAS, MERC has determined that the possibility that the Sale Parcel would be developed, improved or otherwise required by the Oregon Convention Center or Metro is minimal and that the transfer of the required portion will not in any way impair or impede the operation of the Oregon Convention Center; and

WHEREAS, MERC has determined that the 1,474-square-foot portion of property proposed for sale to Union Pacific is not needed for public use and that the proposed transaction with Union Pacific would further the public interest by, among other things, releasing the remainder of the Metro Property from Union Pacific’s communications line easement; now, therefore,

BE IT THEREFORE RESOLVED, that the Commission hereby approves and authorizes Metro’s Chief Operating Officer to proceed with the proposed sale of the Sale Parcel, subject to the direction and authorization of the Metro Council.

Passed by the Commission on July 10, 2013.

Chair

Secretary/Treasurer

Approved As to Form:

Alison Kean Campbell, Metro Attorney

By: _____

Nathan A. Schwartz Sykes

Senior Attorney

Page 2 Resolution No. 13-15



MERC STAFF REPORT

Agenda Item/Issue: Consideration for approval of a proposed exchange of property with Union Pacific Railroad Company to allow Union Pacific Railroad Company to shift its existing main line track.

Resolution No: 13 – 15

Presented by: Scott Cruickshank

Date: July 10, 2013

Background and analysis: Union Pacific Railroad Company (“Union Pacific”) owns and operates a main line track adjacent to the Oregon Convention Center (“OCC”). Union Pacific has developed a plan to shift its existing track to the north. This shift will cause the track to cross a portion of real property owned by Metro which is a part of the property upon which the OCC is sited. Union Pacific has proposed an exchange of real property interests in which Union Pacific would acquire a 1,474-square foot portion of Metro property and Union Pacific would transfer to Metro its interest in a communications easement that crosses a 2,270-square foot portion of adjacent property that would continue to be owned by Metro. As part of the transaction, Union Pacific will pay Metro the sum of \$1,000, which represents the difference between the appraised value of the property Union Pacific would acquire and the appraised value of the communications line easement that Union Pacific is relinquishing. Because the portion of property that would be transferred to Union Pacific lies immediately adjacent to Union Pacific’s main line track, the possibility that that portion of the property would be developed, improved, or otherwise required by OCC or Metro is sufficiently low to be deemed *de minimus*. The transfer of the required portion will not in any way impair or impede the operation of OCC. The relinquishment of Union Pacific’s communications easement would remove a restriction on the use of the affected property thereby enhancing its value to Metro and OCC.

Fiscal Impact: \$1,000 to Metro received as part of purchase price.

Recommendation: Staff recommends that the Metropolitan Exposition and Recreation Commission, by Resolution No. 13-15, approve the proposed exchange of property interests with Union Pacific.

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION NO. 13-16

For the purpose of selecting Billings and Cronn Company for the Antoinette Hatfield Hall, "Exterior Insulation Finishing System Replacement Project – Phase II" and authorizing the General Manager to execute a contract with Billings and Cronn Company.

WHEREAS, the Portland Center for the Performing Arts must replace the EIFS and Flashing systems along the alley of the Antoinette Hatfield Hall due to water damage/intrusion; 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 Billings and Cronn Company is the lowest responsive and responsible bidder with a bid amount of one hundred fifty-five thousand, eight hundred nineteen and no/100ths dollars (\$155,819.00)

BE IT THEREFORE RESOLVED as follows:

1. The Commission selects Billings and Cronn Company as the lowest responsive and responsible bidder in response to the Request for Bids for the Portland Center for the Performing Arts – Antoinette Hatfield Hall Exterior Insulation Finishing System Replacement Project – Phase II.
2. The Commission approves the contract with Billings and Cronn Company 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 July 10, 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 selecting Billings and Cronn Company for the Antoinette Hatfield Hall, "Exterior Insulation Finishing System Replacement Project – Phase II" and authorizing the General Manager to execute a contract with Billings and Cronn Company.

Resolution No: 13-16

Presented by: Robyn Williams

Date: July 10, 2013

BACKGROUND: Due to ongoing water leaks and poor appearance, a thorough inspection and assessment of the Exterior Insulation Finishing System (EIFS) was completed in June of 2010. The focus of this report was to use exterior inspections to focus on the primary objective of identifying and analyzing EIFS issues and defects that have led (or may lead) to premature compromise of the building's exterior envelope system. The report outlined several areas of concern. This project is Phase II of three proposed phases of replacement. Phase I was completed last fiscal year with a product that, with proper maintenance, will be functional indefinitely.

Safety of the building envelope is a critical piece of building operations for both water and air leaks. The Winningstad Theatre has experienced significant leaks from above and along the upstage wall for many years.

Ultimately, our goal is to avoid potential additional damage to the Winningstad Theatre, related production equipment, and/or potentially endangering our ability to book performances if the leaks were unable to be controlled or could cause harm to the public occupants of the theaters or buildings.

The scope of work for this phase includes replacing the failed EIFS system, with a redesigned EIFS wall system including new flashing, vapor barrier, and insulation to provide an appropriate building exterior. The area of work for Phase II covers the north elevation of the building in the alleyway outside of the Winningstad Theatre and the adjacent four walls of the cooling tower mechanical patio.

MERC Staff prepared and issued Bid Documents and a Request for Bids in accordance with MERC's Purchasing and Contracting Rules and in compliance with Metro Policy and any and all state (ORS) requirements. On June 5, 2013, two bids were received and ranged from \$155,819 to \$221,037. Staff recommend Billings and Cronn Company be considered the lowest responsive and responsible bidder with the bid as submitted in the amount of \$155,819.

None of the bids received were from a certified M/W/ESB. Two ESB and one MBE firms were solicited with the MBE also being a FOTA contractor.

FISCAL IMPACT: The FY13-14 adopted budget includes \$175,000 appropriation for the PCPA – Antoinette Hatfield Hall EIFS Replacement Project – Phase II. The project is expected to be completed within the budgeted amount.

Construction Agreement

MERC CONTRACT NO.303041

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 Billings and Cronn Co., referred to herein as "Contractor," located at 2340 SE Gladstone, Suite #100 Portland, OR 97202.

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 July 24, 2013 through and including November 1, 2013. Substantial completion per Section 9.4 of the General Conditions is September 27, 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.303041

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: Mitchell Rask
Billings and Cronn Co.
2340 SE Gladstone, Suite #100
Portland, OR 97202
503-235-0052 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, Oregon 97232
503-797-1795 fax

CONTRACTOR

METROPOLITAN EXPOSITION RECREATION
COMMISSION

By_____

By_____

Print Name_____

Print Name_____

Date_____

Date_____



Construction Agreement

MERC CONTRACT NO. 303041

ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

1. Purpose and Goal of Work

Metro is contacting for Exterior Insulation Finish System (EIFS) replacement at the Portland Center for the Performing Arts (PCPA) Antoinette Hatfield Hall located at 1111 SW Broadway, Portland, OR 97205.

2. Description of Work

The Exterior Insulation Finish System (EIFS) replacement scope of work is defined as below and as detailed in Western Architectural's "*Project Manual for the Portland Center for the Performing Arts - Exterior Repair Project at Antoinette Hatfield Hall*" and "*Portland Center for the Performing Arts – Contract Documents Drawings*", both dated April 26, 2013, and hereto included as *Attachments C and D* respectfully. The work is to be performed in the alleyway between the facility and the First Congregational Church (Church) next door as well as in a mechanical well adjacent to the alley. Scope of work is the removal and replacement of the EIFS, and all associated flashings and doors in the outlined work area. A more detailed scope of work and specifications are provided in *Attachments C and D*.

The Contractor is expected to work with the facility to comply with city regulations in the alleyway in terms of egress. No unusual installation of scaffolding is expected. Prior to installation of scaffolding, owner and Contractor will agree on a final plan that is acceptable to the City of Portland.

Contractor is responsible for cleanliness of work areas and shall pick up debris created during construction. Contractor is responsible for cover up and protection of existing equipment/building materials to remain. Contractor is to maintain a worksite free of hazardous work conditions and construction debris.

To support the PCPA's sustainability goals, materials being removed from the worksite shall be recycled and receipts provided to the MERC project manager. If recycling is not possible, then approval must be obtained from the MERC project manager for disposal.

Contractor shall not interfere with scheduled events or prohibit any tenants or clients from accessing other spaces in the building. Loud noise can be an issue in the facility; therefore any work that may be louder than a hand drill or similar will need to be coordinated with PCPA, so as to not disturb events/clients. Dust control is the responsibility of the Contractor. Although work is expected to be in areas without impact on events, work will need to be done around building schedule. Schedule will need to be coordinated with PCPA project manager. This project may require Contractor outside of normal work hours in order to complete the project in a timely manner as agreed upon with the PCPA.

Material submittals are required before materials are ordered and must be approved by PCPA.

PCPA will provide the necessary building permits.

Contractor is to provide one (1) set of Red Line drawings, and two (2) hard copies and one (1) electronic copy Operation and Maintenance manuals upon project completion.

3. Clarifications

- The adjacent Church will not allow bracing against or attachment to their property.
- Stairwell access needs to remain during construction.
- Regarding the concrete curb at the base of the wall: The curb will run the full length of the south wall within the alley and terminate at the stairwell, per detail 4/A3.0. The alternate detail, 4/A3.2 pertains to termination of the EIFS system within the stairwell or other applicable locations.
- Regarding louvers above the double door on the south elevation: The metal panels have been installed in the place of the louvers above the double doors. The panels are supported by structural steel girders,

Construction Agreement

MERC CONTRACT NO.303041

which will remain in place when the doors are removed. Upon removal of the existing EIFS and doors, Contractor is to remove the panels so that the structural steel girders can be cleaned down to the metal, primed and painted per the paint specification. The same process will be done on the panels prior to reinstalling them. A bead of sealant will be applied around the panels to make the panels water tight.

- Regarding the modified door at the east end of the alley: Contractor may choose to modify the frame of the door to be only as high as necessary to replace the existing door with one of similar height and width. If the contractor chooses to pursue this option, their bid should account for the addition of wall framing and any associated costs of properly tying in the new wall framing to the existing framing, new densglass, and additional EIFS. Details pertaining to the flashing at the door head, jamb, and sill shall remain the same as provided in the detail package.

4. Contract Documents

The Contract Documents consist of this Contract; the Advertisement for Bids; Request for Bids (RFB 14-2408); 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, Specifications titled "Western Architectural's *"Project Manual for the Portland Center for the Performing Arts - Exterior Repair Project at Antoinette Hatfield Hall"*", dated April 26, 2013;

ATTACHMENT D; Plan Set titled "*Portland Center for the Performing Arts – Contract Documents Drawings*" and dated April 26, 2013;

Addenda 1 through 1; 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.

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.

Construction Agreement

MERC CONTRACT NO.303041

5. Payment and Billing,

Contractor shall perform the above work for a maximum price not to exceed ONE HUNDRED FIFTY-FIVE THOUSAND, EIGHT HUNDRED NINETEEN AND NO/100THS DOLLARS (\$155,819.00).

Unit Pricing:

Replacement of metal framing	\$16.00 per lineal foot (<i>at 10' high</i>)
Replacement of insulation	\$4.50 per square foot

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. 303041

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.303041

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 CONTRACTORS20-22

- 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 MATERIAL22-26

- 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.....26-19

- 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 COMPLETION29-32

- 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.....33-8

- 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.
- 10.6 UTILITIES.
- 10.7 HAZARDOUS SUBSTANCES ENCOUNTERED DURING CONSTRUCTION AND OTHER ENVIRONMENTAL LAWS.

Construction Agreement

MERC CONTRACT NO.303041

10.8	ADDITIONAL REQUIREMENTS FOR WORK.	
ARTICLE 11	INDEMNIFICATION	38
11.1	INDEMNIFICATION.	
ARTICLE 12	INSURANCE	39-41
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	41-42
ARTICLE 14	MISCELLANEOUS STATUTORY RESPONSIBILITIES OF THE CONTRACTOR	42
ARTICLE 15	TERMINATION OR SUSPENSION OF THE WORK	42-45
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. 303041

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-Built" 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.

1.1.23 Critical Path Method or CPM: The critical path method of scheduling as understood and interpreted by standard industry practice.

Construction Agreement

MERC CONTRACT NO.303041

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

Construction Agreement

MERC CONTRACT NO.303041

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 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.

Construction Agreement

MERC CONTRACT NO.303041

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 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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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

Construction Agreement

MERC CONTRACT NO.303041

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 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

Construction Agreement

MERC CONTRACT NO.303041

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, 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

Construction Agreement

MERC CONTRACT NO.303041

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 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

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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

Construction Agreement

MERC CONTRACT NO.303041

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 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.



Construction Agreement

MERC CONTRACT NO.303041

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.

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.



Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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

Construction Agreement

MERC CONTRACT NO.303041

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 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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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 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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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



Construction Agreement

MERC CONTRACT NO.303041

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 imminency 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.

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

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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

Construction Agreement

MERC CONTRACT NO.303041

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.

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

Construction Agreement

MERC CONTRACT NO.303041

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 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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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 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

Construction Agreement

MERC CONTRACT NO.303041

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.

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

Construction Agreement

MERC CONTRACT NO.303041

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 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



Construction Agreement

MERC CONTRACT NO.303041

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.

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:



Construction Agreement

MERC CONTRACT NO.303041

- 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.

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.

Construction Agreement

MERC CONTRACT NO.303041

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 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 A VII or better 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. The CGL insurance will also include the following: (a) separation of insured; (b) incidental medical malpractice; and (c) per-project aggregate for premises operations.

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.



Construction Agreement

MERC CONTRACT NO.303041

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 **Alternates: Min. \$2,000,000/\$5,000,000/\$10,000,000**

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.

Construction Agreement

MERC CONTRACT NO.303041

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.

12.11 Property Insurance

12.11.1 Builders Risk. Contractor, for the life of this Contract, shall effect and maintain Builders All Risk Insurance and fire insurance with extended coverage and malicious mischief coverage upon the structures on which the Work of this Contract is to be done to 100 percent (100%) of the insurable value thereof, protecting (1) Owner's interest; (2) Contractor's interest; and (3) the Subcontractor's interest in the Work. Contractor's interest and Subcontractor's interest, as used herein, means their property interests and the property interests of others for which they are responsible in the Project, in all materials and supplies entering into or used or destined for use therein, and in all expendable items of equipment that are used in or are incidental to but that do not become a part of the finished Project, located at the job Site at the time of loss or damage. Such insurance shall not exclude coverage for landslides, collapse, explosion, or loss due to the result of faulty workmanship. Such insurance will include coverage for soft costs or delay in opening.

12.11.1.1 Contractor and all Subcontractors shall be responsible for any loss or damage to their machinery and apparatus and nonexpendable items of their equipment.

12.11.1.2 Contractor shall provide adequate fire protection equipment and safeguards to protect Metro and Contractor's interests in accordance with Metro's insurance carrier's requirements.

12.11.1.3 Contractor will furnish copies of Certificates of Insurance establishing coverage prior to project start.

12.11.2 Contractor's Responsibility. Contractor must provide insurance for its own machinery, tools, equipment, or supplies that are not to become a part of the Project.

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

Construction Agreement

MERC CONTRACT NO.303041

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.

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



Construction Agreement

MERC CONTRACT NO.303041

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.

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;

Construction Agreement

MERC CONTRACT NO.303041

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

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.

Construction Agreement

MERC CONTRACT NO.303041

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

MERC CONTRACT NO. 303041

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.303041

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. 303041

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



Metro

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

Construction Agreement

MERC CONTRACT NO.303041

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.303041

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. 13-17

For the purpose of selecting Anderson Roofing Company, Inc. for the Portland Expo Center -Hall D Loading Dock Roof Replacement and Hall C roof spot repair and aluminum “silvercoating,” authorizing the General Manager to execute a contract with Anderson Roofing Company, Inc., amending the MERC Capital Plan, and recommending the Metro Council amend the Capital Improvement Plan (CIP) to add the Hall C roof aluminum “silvercoating” project at a cost of \$115,000.

WHEREAS, the Portland Expo Center’s Hall D Loading Dock roof has reached the end of its useful life and requires replacement; and

WHEREAS, the Portland Expo Center’s Hall C roof is in need of spot repairs and requires aluminum “silvercoating” to extend its useful life; and

WHEREAS, the Metropolitan Exposition Recreation Commission’s (MERC) Capital Asset Management Policy requires any project exceeding \$100,000 receive MERC approval; and

WHEREAS, Metro’s adopted financial policies require an amendment to the Capital Improvement Plan (CIP) for any new project exceeding \$100,000 ; and

WHEREAS, the Hall C roof spot repair and aluminum “silvercoating” bid increased over \$100,000 and requires an amendment to the MERC Capital Plan as well as a Metro Council amendment to the CIP; and

WHEREAS, capacity within revised renewal and replacement projects provide adequate appropriation funds; and

WHEREAS, Section 7(B) of the MERC 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 Anderson Roofing Company, Inc. is the lowest responsive and responsible bidder for both projects with a bid amount of three hundred sixty-one thousand, forty-seven and no/100ths dollars (\$361,047.00)

BE IT THEREFORE RESOLVED as follows:

1. MERC selects Anderson Roofing Company, Inc. as the lowest responsive and responsible bidder in response to the Request for Bids for the Portland Expo Center -Hall D Loading Dock Roof Replacement and Hall C roof spot repair and aluminum “silvercoating” Projects.
2. MERC approves the contract with Anderson Roofing Company, Inc. in the form substantially similar to the attached Exhibit A and authorizes the General Manager to execute the contract on behalf of the Commission.
3. MERC amends the MERC Capital Plan for Hall C – Roof repair from \$15,000 to \$115,000, Hall D Lobby carpet replacement from \$100,000 to \$25,000, and Bleacher replacement from \$50,000 to \$25,000.
4. MERC recommends that the Metro Council amend the CIP to add the Expo Hall C roof spot repair and aluminum “silvercoating” project with a total cost with contingency, of \$115,000.

Passed by the Commission on July 10, 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 selecting Anderson Roofing Company, Inc. for the Portland Expo Center - Hall D Loading Dock Roof Replacement and Hall C roof spot repair and aluminum "silvercoating," authorizing the General Manager to execute a contract with Anderson Roofing Company, Inc., amending the MERC Capital Plan, and recommending the Metro Council amend the Capital Improvement Plan (CIP) to add the Hall C roof aluminum "silvercoating" project at a cost of \$115,000.

Resolution No: 13-17

Date: July 10, 2013

Presented by: Matthew Rotchford
Josh Lipscomb
Cynthia Hill

BACKGROUND: MERC staff prepared and issued Bid Documents and a Request for Bids that included a detailed scope of work for two roof areas at the Portland Expo Center; Hall D Loading Dock and Hall C. The scope of work for Hall C includes spot repair and aluminum "silvercoating" of the entire roof. This process will extend the life span of the Hall C roof by 5 years. Hall C bids exceeded the budgeted amount by over \$96,720. Revision of MERC Capital Plan within the renewal and replacement budget will provide the capacity to complete the Hall C roof repair as intended. The location of the work at Hall D is located above the loading dock roof area, a low slope roof. The originally installed roofing material has failed, is past warranty and in need of full replacement. The proposed roofing is a built up roofing product similar to that used over Hall D Lobby in 2012, and will provide a 15 year warranty.

The RFB was issued in accordance with MERC's Purchasing and Contracting Rules and is in compliance with Metro Policy and any and all state (ORS) requirements. The RFB was published in the Daily Journal of Commerce, the Scanner and on the Metro website. On June 6, 2013, two bids were received and ranged in total from \$361,047.00 to \$586,494.00. Staff recommends Anderson Roofing Company, Inc. be considered the lowest responsive and responsible bidder with the bid as submitted in the amount of \$361,047.00. The bid includes both the bid for Hall D Loading Dock at \$249,327, and the bid for the Hall C work at \$111,720.

The Hall C spot repair and "silvercoating" roof repair project is included in the MERC Capital Plan, however the Metro CIP includes projects greater than \$100,000. This resolution recommends Metro Council amend the FY 2013-14 Capital Improvement Plan (CIP) to add the Hall C roof spot repair and "silvercoating" project at \$115,000.

None of the bids received were from a certified MWESB or FOTA Business. None of the companies that submitted bids included any M/W/ESB or FOTA subcontractor participation.

FISCAL IMPACT: The FY2013-14 adopted budget for the Portland Expo Center includes \$250,000 appropriation for the Hall D Loading Dock roof replacement, and only \$15,000 in appropriation for the Hall C roof spot repair aluminum "silvercoating." The budgeted total for the areas of work is \$265,000. Due to the bid prices for the Hall C roof area exceeding the budget amount, Expo staff proposes to proceed with the Hall D work, and to revise the following MERC Capital Plan budgets for the Expo Center to the following amounts:

Hall C Roof Repair	From	\$15,000.00	to \$115,000.00
Hall D Lobby Carpet Replacement	From	\$100,000.00	to \$25,000.00
Bleacher purchase	From	\$50,000.00	to \$25,000.00

This completes the Hall C roof repair while making partial progress on two other projects where budgets were reduced.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution No.13-17, approve the contract award and written contract with Anderson Roofing Company Inc., for the amount of three hundred sixty-one thousand, forty-seven and no/100ths dollars (\$361,047.00) for the Portland Expo Center -Hall D Loading Dock Roof Replacement and the Hall C roof spot repair and aluminum "silvercoating" as detailed in RFB 14-2409 (attached), amend the MERC Capital Plan for the Expo Center, and also recommends that Metro Council amend the FY 2013-14 Capital Improvement Plan (CIP) accordingly.



Metro

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

Construction Agreement

MERC CONTRACT NO. 303042

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 Anderson Roofing Company, Inc., referred to herein as "Contractor," located at PO Box 10085 Portland, OR 97296.

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 July 24, 2013 through and including November 1, 2013. Substantial completion per Section 9.4 of the General Conditions is September 28, 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



Metro

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

Construction Agreement

MERC CONTRACT NO. 303042

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: Dan Frakes
Anderson Roofing Company, Inc.
PO Box 10085
Portland, OR 97296-0085
503-294-0306 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. 303042

ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

1. Purpose and Goal of Work

MERC is contacting for roof repairs at several areas on Exhibit Halls C and D of the Portland Expo Center (EXPO) located at 2060 N. Marine Drive, 97217.

2. Description of Work

Work will consist of two (2) different Roof Systems detailed below and a coating of the existing Hall C roof. Installation is to be as per Manufacturer's specifications. Location of work areas for each method shown on attached Portland Expo Center Partial Site Plan Google-earth Map (*Attachment C*).

HALL C – ALUMINUM COATING

- REINFORCE TWO (2) ROOF AREAS DESIGNATED ON THE ROOF WITH PAINT (APPROXIMATELY 700 FT).
 - PRIME THE DESIGNATED ROOF AREA.
 - APPLY TREMLASTIC AT 3 GALLONS PER 100 SQ FT.
 - BOOM TREMLASTIC OVER THE RAPID SET FABRIC AT 3 GALLONS PER 100 SQ FT.
- ROOF RAISED CENTER ROOF AREA
 - PRIME THE FLASHINGS 12" WIDE AROUND THE RAISED ROOF AREA (APPROXIMATELY 476 FT)
 - BROOM TREMLASTIC AT 3 GALLONS PER 100 SQ FT OVER THE PRIMER
 - BROOM ON 12' WIDE BURMESH MAT. INTO THE TREMLASTIC
 - BROOM TREMLASTIC AT 3 GALLONS PER 100 SQ FT OVER THE BURMESH MAT
- SWEEP CLEAN ROOF AREAS TO BE COATED.
- PATCH ALL VISIBLE SPLITS, PUNCTURES, FASTENERS BACKING OUT, ETC., AT AREAS TO BE COATED. UTILIZING TREMCO SOLVENT FREE POLYROOF, TREMCO BURMESH REINFORCING FABRIC, AND TREMCO COMPOSITE PLY HT FOR REPAIRS PRIOR TO COATING.
- PROVIDE AND INSTALL TREMCO ONE COAT ALUMINUM AT A RATE OF 2 GALLONS PER 100 SQ FT (BROOM FINISH).
- PROVIDE TREMCO 5 YEAR MANUFACTURER WARRANTY.
- PROVIDE 2 YEAR INSTALLER WARRANTY.

HALL D – WEST ROOF AREAS

SYSTEM A

- PROVIDE CITY OF PORTLAND RE-ROOFING PERMIT.
- SWEEP CLEAN THE FAILED, EXISTING TPO MEMBRANE, ROOF SURFACE.
- REMOVE EXISTING ROOF DRAIN SCREENS AND CLAMPING RINGS; SAVE FOR REUSE.
- CUT BACK THE TPO MEMBRANE AT THE DRAINS; EXPOSING THE DRAIN BODIES
- PROVIDE AND MECHANICALLY ATTACH A LAYER OF ½" RECOVER BOARD OVER REMAINING MEMBRANE. (TAPER EDGES AT DRAIN AREA WITH ½" TO 0" X 6" TAPERED EDGE).
- PROVIDE AND INSTALL AN ADDITIONAL LAYER OF ½" RECOVER BOARD IN TREMCO LOWRISE FOAM ADHESIVE. (STAGGERING ALL EDGES MINIMUM OR 12" AND TAPERING EDGES AT DRAINS WITH TAPERED EDGE).
- PROVIDE AND INSTALL 3" PERLITE CANT STRIP IN TREMCO ELS MASTIC.
- PROVIDE AND INSTALL ONE PLY OF TREMCO 28 LB BASE SHEET IN TREMCO BURMASTIC SF, AT A RATE OF 2.5 GALLONS PER 100 SQ FT.
- PROVIDE AND INSTALL AN ADDITIONAL TWO PLIES OF TREMCO COMPOSITE PLY HT AT AN INNERPLY RATE OF 2.5 GALLONS PER 100 SQ FT.
- PROVIDE AND INSTALL ALL 4 LB LEAD AND/OR STAINLESS STEEL M/E/P AND PENETRATION FLASHINGS; PRIMED WITH ASPHALT PRIMER, SET IN ELS AND SEALED WITH TWO PLY TARGETS OF COMPOSITE PLY HT. (ALL PITCH POCKETS TO INCLUDE STAINLESS STEEL LIDS AND ALL TWO PIECE LEAD FLASHINGS TO BE FIELD SOLDERED AND COUNTER FLASHED).
- PROVIDE AND INSTALL AN ADDITIONAL LAYER OF TREMCO COMPOSITE PLY HT IN TREMCO ELS ALL CANTED AREAS. (EXTENDING UP THE VERTICAL 8" AND ONTO THE HORIZONTAL 4").



Construction Agreement

MERC CONTRACT NO. 303042

- PROVIDE AND INSTALL AN ADDITIONAL LAYER OF TREMCO ICE FABRIC (IN ADDITION TO THE COMPOSITE PLY HT), SET IN TREMCO ICE ADHESIVE AT ALL CANTED AREAS. (EXTENDING 8" ONTO THE HORIZONTAL SURFACE).
- PROVIDE AND INSTALL VAPOR BARRIER OVER EXPOSED INTERIOR WALLS EXTENDING DOWN OVER TWO PLY BASE FLASHING DETAIL.
- PROVIDE AND INSTALL HIGH TEMP ICE AND WATER SHIELD OVER COPING EXTENDING DOWN OVER FACE 2" AND LAPPING DOWN OVER THE INTERIOR VAPOR BARRIER OR BASE FLASHINGS.
- PROVIDE AND INSTALL 24 GAUGE, PRE-PAINTED, LINER, WALL, AND COPING METALS.
- REINSTALL DRAIN RINGS AND SCREENS.
- PROVIDE AND INSTALL TREMCO ONE COAT ALUMINUM SURFACING AT A RAE OF 2.5 GALLONS PER 100 SQ FT (BRUSH FINISH).
- PROVIDE 2 YEAR INSTALLER WARRANTY.
- PROVIDE 15 YEAR MANUFACTURER WARRANTY.

SYSTEM B

- PROVIDE CITY OF PORTLAND RE-ROOFING PERMIT
- REMOVE EXISTING ROOF DRAIN SCREENS AND CLAMPING RINGS; SAVE FOR REUSE.
- REMOVE AND DISPOSE OF THE EXISTING TPO MEMBRANE AND POLYISO. (REMOVE IN A NON-DESTRUCTIVE MANNER, I.E. GRIND OR SAW, TO ELIMINATE SPALLING OR CONCRETE).
- PROVIDE AND INSTALL 3" PERLITE CANT STRIP IN TREMCO ELS MASTIC.
- PROVIDE AND INSTALL TWO PLIES OF TREMCO COMPOSITE PLY HT AT AN INNERPLY RATE OF 2.5 GALLONS PER 100 SQ FT.
- PROVIDE AND INSTALL ALL 4 LB LEAD AND/OR STAINLESS STEEL M/E/P AND PENETRATION FLASHINGS; PRIMED WITH ASPHALT PRIMER, SET IN ELS AND SEALED WITH TWO PLY TARGETS OF COMPOSITE PLY HT. (ALL PITCH POCKETS TO INCLUDE STAINLESS STEEL LIDS AND ALL TWO PIECE LEAD FLASHINGS TO BE FILED SOLDERED AND COUNTER FLASHED).
- PROVIDE AN ADDITIONAL PLY OF TREMCO POWERPLY STANDARD AT AN INNERPLY RATE OF 2.5 GALLONS PER 100 SQ FT.
- PROVIDE AND INSTALL AN ADDITIONAL LAYER OF TREMCO COMPOSITE PLY HT IN TREMCO ELS ALL CANTED AREAS. (EXTENDING UP THE VERTICAL 8" AND ONTO THE HORIZONTAL 4").
- PROVIDE AND INSTALL AN ADDITIONAL LAYER OF TREMCO ICE FABRIC (IN ADDITION TO THE COMPOSITE PLY HT), SET IN TREMCO ICE ADHESIVE AT ALL CANTED AREAS. (EXTENDING 8" ONTO THE HORIZONTAL SURFACE).
- REINSTALL DRAIN RINGS AND SCREENS.
- PROVIDE AND INSTALL A LAYER OF 6 MIL VISQUEEN OVER COMPLETED AND INSPECTED ROOFING SYSTEM.
- PROVIDE AND INSTALL A LAYER OF 2.5" T-CLEAR LG PANELS OVER VISQUEEN PER MANUFACTURER SPECIFICATION.
- PROVIDE AND INSTALL VAPOR BARRIER OVER EXPOSED INTERIOR WALLS EXTENDING DOWN OVER TWO PLY BASE FLASHING DETAIL.
- PROVIDE AND INSTALL HIGH TEMP ICE AND WATER SHIELD OVER COPING EXTENDING DOWN OUTER FACE 2" AND LAPPING DOWN OVER INTERIOR VAPOR BARRIER OR BASE FLASHINGS.
- PROVIDE AND INSTALL 24 GAUGE, PRE-PAINTED, LINER, WALL, LG STRAPPING (22 GAUGE), AND COPING METALS.
- PROVIDE 2 YEAR INSTALLER WARRANTY.
- PROVIDE 15 YEAR MANUFACTURER WARRANTY.

Contractor is responsible for cleanliness of work areas and should plan to pick up and sort recyclable debris created during construction. Contractor is to maintain a worksite free of hazardous work conditions and construction debris. Contractor shall not interfere with scheduled events or prohibit any tenants or clients from accessing other spaces in the building. Loud noise can be an issue in the facility; therefore any work that may be louder than a hand drill or similar will need to be coordinated with EXPO, so as to not disturb events/clients. Expo Event and Operations managers will advise the Project manager should noise affect an event or timeline. Dust control is the responsibility of the Contractor. Although work is expected to be in areas without impact on



Construction Agreement

MERC CONTRACT NO. 303042

events, work will need to be done around building schedule. Schedule will need to be coordinated with EXPO project manager and shall include time for all products to adequately ventilate allowing for normal event conditions. Contractor shall work with EXPO provided schedule. This project may require Contractor to work "off hours" in order to complete the project in a timely manner as agreed upon with EXPO. Any changes to work schedule will require notification to the MERC project manager and Expo operations manager

Contractor is responsible for all permits necessary per local regulatory agencies.

To support the EXPO's sustainability goals, materials being removed from the worksite shall be recycled and receipts provided to the MERC project manager and Expo Operations manager. If recycling is not possible, then approval must be obtained from the MERC project manager or Expo operations manager for disposal.

3. **Contract Documents**

The Contract Documents consist of this Contract; the Advertisement for Bids; Request for Bids (RFB 14-2409); 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, Portland Expo Center Partial Site Plan Google-earth Map;

Addenda 1 through 1; 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.

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.

4. **Payment and Billing,**

Contractor shall perform the above work for a maximum price not to exceed THREE HUNDRED SIXTY-ONE THOUSAND, FORTY SEVEN AND NO/100THS DOLLARS (\$361,047.00)



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Portland, OR 97232-2736
503-797-1700

Construction Agreement

MERC CONTRACT NO. 303042

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. 303042

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. 303042

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 CONTRACTORS20-22

- 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 MATERIAL22-26

- 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.....26-29

- 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 COMPLETION29-33

- 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.
- 10.6 UTILITIES.
- 10.7 HAZARDOUS SUBSTANCES ENCOUNTERED DURING CONSTRUCTION AND OTHER ENVIRONMENTAL LAWS.



Construction Agreement

MERC CONTRACT NO. 303042

10.8	ADDITIONAL REQUIREMENTS FOR WORK.	
ARTICLE 11	INDEMNIFICATION	38
11.1	INDEMNIFICATION.	
ARTICLE 12	INSURANCE	39-41
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	41-42
ARTICLE 14	MISCELLANEOUS STATUTORY RESPONSIBILITIES OF THE CONTRACTOR	42
ARTICLE 15	TERMINATION OR SUSPENSION OF THE WORK	42-45
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. 303042

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-Built" 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.

1.1.23 Critical Path Method or CPM: The critical path method of scheduling as understood and interpreted by standard industry practice.



Construction Agreement

MERC CONTRACT NO. 303042

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



Construction Agreement

MERC CONTRACT NO. 303042

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 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.



Construction Agreement

MERC CONTRACT NO. 303042

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 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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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 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



Construction Agreement

MERC CONTRACT NO. 303042

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, 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



Construction Agreement

MERC CONTRACT NO. 303042

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 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



Construction Agreement

MERC CONTRACT NO. 303042

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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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 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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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 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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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 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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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,



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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 imminency 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.

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,



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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 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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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 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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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 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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

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:



Construction Agreement

MERC CONTRACT NO. 303042

- 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.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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 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 A VII or better 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. The CGL insurance will also include the following: (a) separation of insured; (b) incidental medical malpractice; and (c) per-project aggregate for premises operations.

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.



Construction Agreement

MERC CONTRACT NO. 303042

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 **Alternates: Min. \$2,000,000/\$5,000,000/\$10,000,000**

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.



Construction Agreement

MERC CONTRACT NO. 303042

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.

12.11 Property Insurance

12.11.1 Builders Risk. Contractor, for the life of this Contract, shall effect and maintain Builders All Risk Insurance and fire insurance with extended coverage and malicious mischief coverage upon the structures on which the Work of this Contract is to be done to 100 percent (100%) of the insurable value thereof, protecting (1) Owner's interest; (2) Contractor's interest; and (3) the Subcontractor's interest in the Work. Contractor's interest and Subcontractor's interest, as used herein, means their property interests and the property interests of others for which they are responsible in the Project, in all materials and supplies entering into or used or destined for use therein, and in all expendable items of equipment that are used in or are incidental to but that do not become a part of the finished Project, located at the job Site at the time of loss or damage. Such insurance shall not exclude coverage for landslides, collapse, explosion, or loss due to the result of faulty workmanship. Such insurance will include coverage for soft costs or delay in opening.

12.11.1.1 Contractor and all Subcontractors shall be responsible for any loss or damage to their machinery and apparatus and nonexpendable items of their equipment.

12.11.1.2 Contractor shall provide adequate fire protection equipment and safeguards to protect Metro and Contractor's interests in accordance with Metro's insurance carrier's requirements.

12.11.1.3 Contractor will furnish copies of Certificates of Insurance establishing coverage prior to project start.

12.11.2 Contractor's Responsibility. Contractor must provide insurance for its own machinery, tools, equipment, or supplies that are not to become a part of the Project.

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,



Construction Agreement

MERC CONTRACT NO. 303042

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.

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



Construction Agreement

MERC CONTRACT NO. 303042

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.

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:



Construction Agreement

MERC CONTRACT NO. 303042

- 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
 - 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.



Metro

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Portland, OR 97232-2736
503-797-1700

Construction Agreement

MERC CONTRACT NO. 303042

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



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Construction Agreement

MERC CONTRACT NO. 303042

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_____



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Construction Agreement

MERC CONTRACT NO. 303042

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_____



Construction Agreement

MERC CONTRACT NO. 303042

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



Metro

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Portland, OR 97232-2736
503-797-1700

Construction Agreement

MERC CONTRACT NO. 303042

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



Construction Agreement

MERC CONTRACT NO. 303042

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.

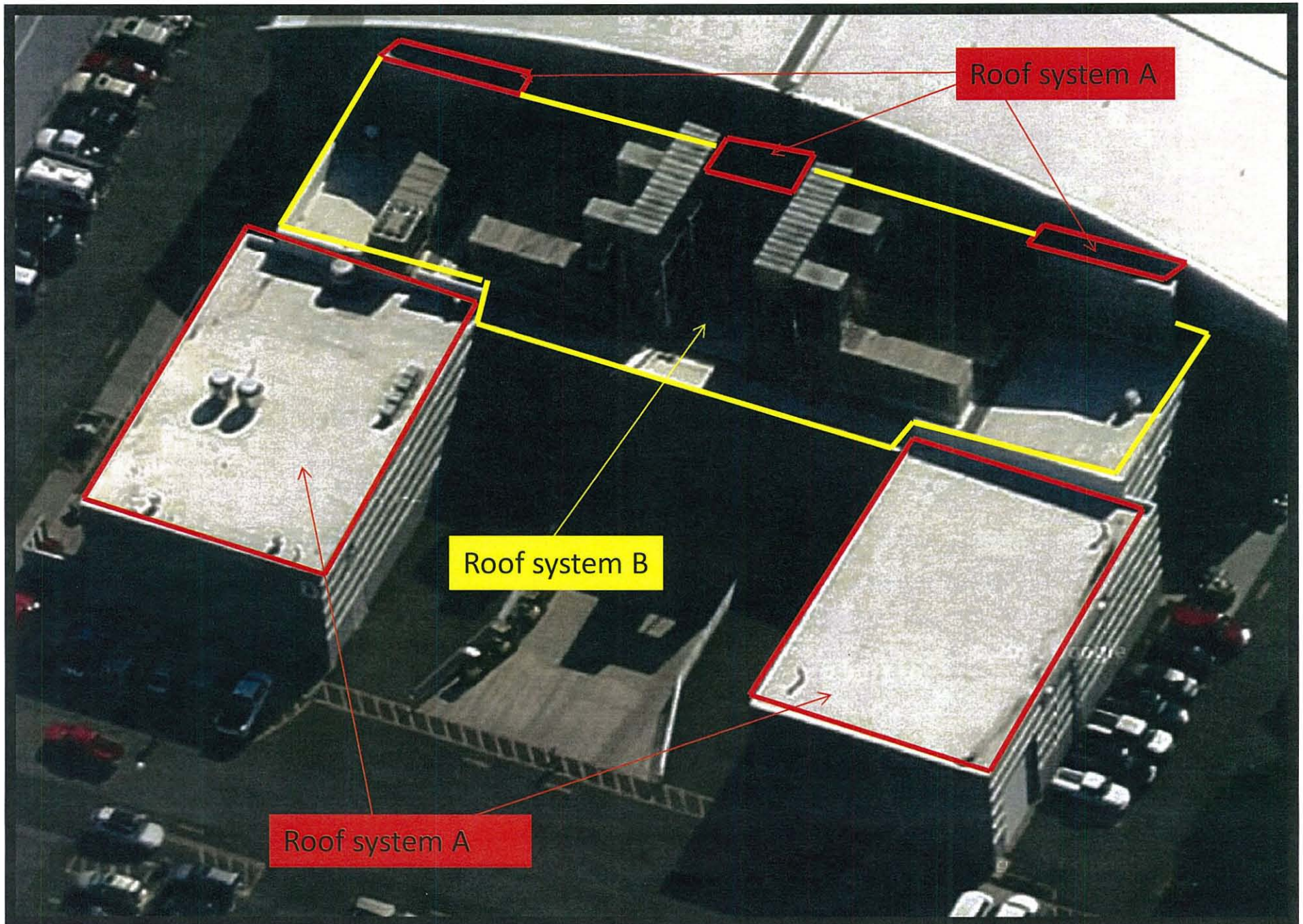
4. The affiant signing below does hereby swear and attest that he/she has the full authority to sign this document on behalf of the Undersigned and that, ***conditioned upon receipt of the Final Payment***, which is the full and Final Payment due and owing to Undersigned, that Undersigned has been paid 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





Google earth



ATTACHMENT C

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 13-18

For the purpose of ratifying the collective bargaining agreement with the Theatrical Stage Employees of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local 28 (IATSE 28).

WHEREAS, the Metropolitan Exposition Recreation Commission's (MERC) designated representatives for labor relations and IATSE 28 have negotiated in good faith; and

WHEREAS, the parties have reached an agreement for a three year collective bargaining agreement; and

WHEREAS, the Union membership is voting to ratify the collective bargaining agreement; and

WHEREAS, MERC believes that the collective bargaining agreement is fair, reasonable, and in the public interest.

BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission:

- 1) Approves the collective bargaining agreement contingent upon IATSE 28 membership ratifying the contract attached to this Resolution as Exhibit A.
- 2) Authorizes and directs the General Manager of Visitor Venues, or her delegate, to execute the collective bargaining agreement and forward it to the Union for signature.

Adopted by the Commission on July 10, 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 a collective bargaining agreement with the theatrical stage employees of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local 28.

Resolution No. 13-18

Presented by: Betsy Tripi, Metro Human Resources Analyst

Date: July 10, 2013

Background and Analysis: Bargaining began on April 15, 2013. The parties reached tentative agreement on the contract on June 24, 2013.

This collective bargaining agreement covers PCPA's fifteen regular department head stagehands as well as any relief department heads and extra stage labor hired by MERC/Metro.

Many of the direct costs under this contract, including wages and most benefits, are pass-through expenses billed to clients of PCPA. Accordingly, management's bargaining interest included controlling direct costs in order to remain competitive in the market; adding consistency where possible with clauses that are common to all the bargaining agreements of the agency; and improving the readability and clarity of the contract in order to promote certainty and reduce administrative time and expense. To meet these needs, contract provisions were re-ordered and several articles were brought into closer alignment with language across the six MERC contracts and the two Metro contracts.

RESOLUTION: The resolution states the MERC Commission approves ratification of the contract contingent upon IATSE 28 ratification. The major elements of the Agreement are as follows:

- **Term of Agreement:** July 1, 2013 - June 30, 2016.
- **Wages:** A cost of living increase of 2.25% will be applied to all wage rates for each year of the contract.
- **Insurance:** In FY 2013-14, MERC/Metro will contribute 94% of the insurance premium costs per plan and employees will pay 6%, consistent with current contribution levels. Beginning in FY 2014-15, MERC/Metro will contribute 92% of the premium costs and employees will pay 8%. MERC/Metro also contributes to the IATSE Health and Welfare Fund for relief department heads and extra stage labor hired under this agreement, subject to an indemnification provision. This contribution will increase from 18% to 18.5% in FY 2013-14 and 2014-15 and 19% in 2015-16. These are pass-through expenses for this work group.
- **PERS/retirement benefits:** There will be no change to current PERS/retirement benefits for the term of the contract. These are pass-through expenses for this work group.
- **Holidays:** Presidents' Day was added to the list of holidays compensated at a premium rate, which is consistent with other contracts.
- **Vacation:** An additional accrual rate was added for regular department heads with 10 or more years of service. Vacation accrual for relief department heads was limited to the lowest accrual rate. The option to exceed the cap on accrued vacation was eliminated.

Other significant language changes:

- The following new articles were created to address management interests: Management Rights, Probation and Breaks in Service, and Overpayments and Underpayments.

- Discipline and discharge language, Health and Welfare/Joint Labor Management Committee language, and grievance and arbitration procedures and timelines were substantially revised for clarity and consistency with other contracts.
- The union recognition clause was revised to clarify that the c.b.a. covers extra stage labor hired by MERC/Metro but not extra stage labor hired by clients.
- MERC/Metro agrees to deduct regular department heads' annual union membership fees in addition to the work fees currently deducted, subject to an indemnification provision.
- Equal Employment Opportunity language was standardized.
- Trainings or meetings scheduled on the same day as a separate work call will not be subject to minimum call provisions.
- A minimum of two department heads will be required backstage for any performance in the Keller, Schnitzer or Newmark, except per the Letter of Agreement between the parties for Oregon Children's Theatre performances, which was extended for the duration of the contract.
- Department Heads' maintenance responsibilities were clarified.
- Scheduling and vacation request procedures were clarified.
- Overtime language was revised to include safety as a factor in scheduling overtime.
- Exceptions to the recording fee premium were clarified.
- Obsolete wage classifications were eliminated and the pay plan was reformatted from 14 pages to two.

SHORT RANGE FISCAL IMPACT:

The costs of the collective bargaining agreement are within budgeted amounts for FY 13-14.

LONG RANGE FISCAL IMPACT:

The costs of the collective bargaining agreement are reasonable and consistent with other employee compensation and will be reflected in future budgets.

RECOMMENDATION:

Staff recommends approval of Resolution 13-18, which states the MERC Commission approves ratification of the contract contingent upon IATSE 28 ratifying the contract.

**COLLECTIVE
BARGAINING
AGREEMENT**

METROPOLITAN EXPOSITION-RECREATION COMMISSION

And

**THEATRICAL STAGE EMPLOYEES OF THE INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND
ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA**

LOCAL 28

Effective July 1, 2010 2013 - June 30, 2013 2016

TABLE OF CONTENTS

Article	Title	Page
	Preamble	2
I	Union Recognition and Hiring	2
II	Management Rights	6
III	Jurisdiction	7
IV	Probation and Breaks in Service	11
V	Scheduling	11
VI	Wages; Overtime and Conditions	14
VII	Health and Welfare	20
VIII	Vacation	26
IX	Retirement Benefits	27
X	No Strike or Lockout	28
XI	Discipline and Discharge	29
XII	Resolution of Disputes	31
XIII	Miscellaneous Provisions	34
XIV	Safety and Workers' Compensation	37
XV	First Opportunity Target Area	38
XVI	Recording	38
XVII	Overpayments and Underpayments	40
XVIII	Term and Termination	42
Exh. A	Wage Classifications (pay schedule)	43
L.O.A.	Oregon Children's Theatre	45

THIS AGREEMENT is made and entered into effective July 1, 2010-**2013**, by and between the METROPOLITAN EXPOSITION-RECREATION COMMISSION (hereinafter referred to as the "Employer" or "MERC"), and LOCAL 28, THEATRICAL STAGE EMPLOYEES OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA (hereinafter referred to as the "Union").

WITNESSETH

Purposes

For and in consideration of settled and harmonious trade conditions, mutually beneficial to the parties hereto, the Employer and the Union do hereby enter into and agree to abide by the following Agreement covering wages, hours and working conditions of the employees of the Employer in the classifications hereinafter set forth.

ARTICLE I: Union Recognition and Hiring

1.1 The Employer recognizes the Union as the sole exclusive bargaining representative for all of its Employees as set forth in the wage classifications herein, and the Employer agrees that all Employees employed by it to perform within the jurisdiction of the Union shall become members of the Union in accordance with the Constitution and By-Laws of the Union or shall become fair share payers pursuant to ~~1.1.1~~ **1.2.3.**

1.1.1 ~~Unless otherwise stated (e.g. Article 2.10 —, Exh. A), This Agreement includes only Department Heads, and Relief Department Heads~~ **and extra stage labor hired by the Employer** as specified. This Agreement shall specifically exclude **all extra stage labor employed by clients of Employer; supervisors, security personnel, building maintenance employees, clerical employees, casual non-stagehand labor, box office employees, ushers, ticket takers, and other**

professional trades employees.

1.1.2 Metropolitan Exposition-Recreation Commission (MERC) meetings, Metro Council meetings, or other MERC or Metro in-house activities conducted at the Portland Center for the Performing Arts (PCPA) facilities shall not require the services of any employees covered by this Agreement, so long as only general house lights are utilized, and the sound reinforcement system, computerized lighting board or any house curtains are not utilized.

1.2 Dues and work fees

Employer agrees to deduct from the paychecks of employees covered by this Agreement ~~either membership dues~~ work fees for Union members ~~and membership dues for Regular Department Heads~~ who have provided the Employer with written authorization for ~~dues~~ such deductions, or fair share fees pursuant to ~~1.1.1~~ 1.2.3. Withholding of Union work fees and membership dues or fair share fees will begin the first of the month following 30 calendar days of employment. If Employer does not receive a signed dues/work fees authorization within 30 days of employment, the employee will be deemed a fair share payer. Dues/work fees authorizations shall continue in effect from year to year, unless revoked in writing. The employer shall, no later than 15 calendar days after each payday, remit all dues, work fees and fair share fees deducted from employees' pay to the Union.

1.2.1 Work fees will be deducted in the amount of 5% of gross wages per pay period.

1.2.2 Regular department heads' membership dues will be deducted in an amount equal to 1/24 of the total annual membership fees per pay period worked. No payroll deduction of dues or fair share fees will be made for any pay period in which the earnings received are insufficient to cover the payroll deduction, nor will any deduction be made from subsequent payrolls to cover the period in which there was insufficient earnings to cover the deduction of the applicable dues or fees.

1.2.3 ~~1.1.1~~ Fair Share: The parties hereby enter into a fair share agreement for all

purposes consistent with state and federal law. The Employer shall deduct a fair share fee or payment in-lieu-of-dues from the paycheck of each bargaining unit member covered by this contract who is not a member of Local 28. The amount will be designated by Local 28, but in no event will it exceed an amount equal to the full dues and initiation fees paid by Local 28 members. Local 28 shall utilize such payments in accordance with the requirements of state and federal law. This fair share agreement shall be construed to safeguard the rights of employees under ORS 243.666.

1.2.4 ~~1.1.2~~ **Indemnification:** The Union agrees that it will indemnify, defend and save MERC, **Metro, and/or any of their facilities** harmless from all suits, actions, proceedings and claims against MERC, **these entities** or a person acting on **their** behalf of MERC, whether for damages, compensation, reinstatement or a combination hereof arising out of MERC's implementation of this Article **Section** if the Employer gives reasonable notice to the Union. The Employer agrees that the Union may designate counsel of its choice to represent the Employer in the defense of these claims.

1.3 ~~1.2~~ **Equal Opportunity:** Both the Employer and the Union recognize and promise to adhere to the principles of equal opportunity and agree to cooperate with each other in complying with all applicable federal, state and local laws and regulations. Both parties to this Agreement agree not to discriminate with regard to conditions of membership in the Union, and employment by and with the Employer in any manner regarding race, national origin, marital status, religion, sexual orientation, age, sex, gender identity, mental or physical handicap. **race, color, religion, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, veteran status, disability, or any other status protected by law.**

1.4 ~~1.3~~ **Hiring**

1.4.1 ~~1.3.1~~ The parties agree that the Employer is solely responsible for selecting and hiring Department Heads. The parties also agree that the Union has expertise in the

areas covered by this Agreement. The parties agree to work together to maintain the high-level standards currently in place. The selection of Department Heads shall not be subject to grievance, ~~except as provided in 1.2.~~ except that current employees may grieve transfer or promotion decisions on the basis of equal opportunity as provided in 1.3.

1.4.2 ~~1.3.2~~ The Union shall provide necessary personnel that possess the level of skills, knowledge and expertise required to perform duties and handle responsibilities to the general satisfaction of the Employer and/or any third parties utilizing such employees. The Employer and the Union shall provide ongoing training and education for all employees covered by this Agreement. MERC, upon written request and giving due consideration to the facility needs, will make equipment and/or facilities available without charge for training purposes.

1.5 ~~1.4~~ Continuing Education, Licenses and Training

1.5.1 ~~1.4.1~~ The Employer shall support the Union in a continuing education program in stagecraft and shall assist in providing employees regular department heads with related training education.

1.5.2 ~~1.4.2~~ If work assigned by the employer requires an electrical license to be held by the employee a regular department head the licensing fees, tuition and materials shall be reimbursed or paid by the employer.

1.5.3 ~~1.4.3~~ The Employer may require employees to participate in additional training related to the employer's needs and the employee's job description. When such training is required, tuition and materials shall be reimbursed or paid by the Employer. Training hours will be counted as hours worked and shall be compensated at straight time. Training or meetings scheduled on the same day as a separate work call will not be subject to minimum call provisions described in Article VI, section 6.4.1 when there is no more than a two hour break between end of the first activity and the scheduled start time of the second activity. All other working conditions will remain in effect.

1.5.4 ~~1.4.4~~ The Employer may direct employees covered by this agreement possessing expertise in stagecraft and knowledge and experience relating to their departments to train others. When such training is required it shall be compensated as set forth in Article ~~III~~ VI: Wages; Overtime & Conditions.

ARTICLE II: Management Rights

2.1 The employer shall have and retain the sole responsibility for the management and operation of all Metro and/or MERC functions and direction and control of its work force, facilities, properties, programs and activities, except as expressly limited by the terms and conditions of this Agreement. These rights include but are not limited to the following, diminished only as required by law and this Agreement:

2.1.1 Determining the employer's mission, policies, and all standards of service offered to the public and other local governments;

2.1.2 Planning, directing, controlling and determining the operations or services of Metro and/or MERC;

2.1.3 Determining the methods, means, and, subject to Article III Sec. 3.2, number of personnel needed to carry out any department's or facility's mission;

2.1.4 Hiring and assigning or transferring employees within or between departments or facilities;

2.1.5 Promoting, suspending, disciplining or discharging, consistent with this Agreement;

2.1.6 Laying off or relieving employees due to lack of work or funds;

2.1.7 Directing the work force and issuing, making, changing, publishing and enforcing work practices, work orders, rules or personnel policies and regulations covering permissive subjects of bargaining, provided they are not in conflict with or otherwise addressed in a specific provision of this Agreement, and provided that the Union may demand to bargain over the impacts of such

changes on mandatory subjects. The Employer agrees the Union has the right to challenge work rules in grievance procedure if it believes the work rule to be arbitrary and/or capricious.

2.1.8 Introducing new or improved methods, equipment or facilities.

ARTICLE # III: Jurisdiction

3.1 ~~2.1~~ This Agreement shall only apply to the Portland Center for the Performing Arts-. It is understood and agreed that the Union has jurisdiction over all stagecraft performed by stagehands employed by the Employer to work in PCPA facilities as described in Section 3.2.

3.2 ~~2.5~~ Both parties to this Agreement hereby recognize the jurisdictional working rights and responsibilities of the Union as being understood to mean the following:

3.2.1 ~~2.5.1~~ There shall be five (5) production departments that cover the working jurisdiction and responsibilities of the Union under this Agreement. These departments are to be known as (1)Carpentry, (2)Electric, (3)Sound, (4)Fly and (5)Property. There shall be a Department Head for each department. Each Department Head shall appropriately maintain the equipment and coordinate the personnel working within ~~the~~ their production department.

3.2.2 ~~2.5.2~~ At Keller Auditorium and Arlene Schnitzer Concert Hall (ASCH), the first five (5) stage labor employees shall be Department Heads and employees of MERC. At the Newmark Theatre, the first four (4) stage labor employees shall be Department Heads and employees of MERC. The first (1st) stage labor employee at the Winningstad Theatre shall be a Department Head and an employee of MERC. A minimum of two department heads will be required backstage for any performance in the Keller Auditorium, Arlene Schnitzer Concert Hall, and the Newmark Theatre. Reductions from these minimums shall be determined by mutual agreement of the Union and the Employer in accordance with the needs of

the event. The parties agree there shall be no minimum for Brunish Hall Theatre and that users can provide their own stage labor. If the Employer calls stage labor to Brunish Hall Theatre, the terms of this Agreement apply.

~~2.5.3 If regular Department Heads are not available for any work, their replacements shall receive head of department pay, or greater as determined by work performed.~~

3.3 ~~2.2~~ Personnel engaged by the Employer to perform the work covered under this Agreement shall be considered employees of the Employer, which has the ultimate right of control and direction of the employees during the event in question. All employees shall conform to ~~house~~ work rules regarding procedures and methods of operation. ~~No house rules will be adopted which are contrary to this Agreement.~~

3.4 ~~2.3~~ The Employer shall determine the specific job assignments of all individuals employed under this Agreement. The Employer and the Union further recognize and agree that all Department Heads may be assigned to work in all areas if qualified, may be required to rotate positions from time to time, and may be assigned to perform work as required or as needed without regard to venue or departmental distinction. A Department Head may perform tasks in other areas without regard to departmental distinction; however, it is understood that these tasks shall not interfere with the safe and ~~workmanlike~~ professional execution of their primary responsibilities to the Employer as a head of department.

~~2.4~~ Relief Department Heads

~~2.4.1 Department Heads are responsible for notifying their employer two weeks in advance of a scheduled absence. At the time notice is given, the Department Head shall recommend an available Relief Department Head who can perform the duties required to the satisfaction of the Employer and third parties paying for services. The Employer will coordinate the replacement with the Union by either requesting an individual by name or by asking the Union to dispatch a worker. A Relief Head is responsible for the performance of all typical duties of the Department Head. In the event of a schedule change with less than two weeks notice, the Department~~

Head is still responsible for assisting the Employer in coordinating with the Union in assigning a Relief Department Head.

~~2.4.2 — If a Relief Department Head is required for single events or for predetermined periods of time, the Relief Department Head shall be engaged under the terms and conditions of this Agreement. If a Relief Department Head is required during the run of a production and the Relief Head is already on the presenter's payroll, the Relief Head may stay on the presenter's payroll for the purpose of payroll continuity. With respect to Relief Department Heads, the Employer may opt to use a mutually agreed on payroll company as specified for Extra Personnel under Section 2.10.~~

~~2.4.3 — The Employer retains the right to reject any Relief Department Head referred. Regular and Relief Department Heads will be scheduled by the Employer. Unless prior arrangements have been made, or except in cases of unforeseen events (illness, personal business, death of family members, etc.), Department Heads, regular or relief, who start a show shall be allowed to complete it, subject to Article VI. Relief Department Heads or extra personnel who have not worked 800 hours for the Employer from July 1, 2010 shall not be removed for arbitrary or capricious reasons.~~

~~2.4.4 — When a regular Department Head requests temporary leave during a performance run or work call, a shadowed performance call or additional training may be required for their replacement. This determination will be made at the sole discretion of the Employer. During a shadowed call a Relief Department Head learns the cues and duties associated with the performance. The Relief Head shall receive Department Head pay for all hours worked during shadowed calls or training.~~

~~2.5 — Both parties to this Agreement hereby recognize the jurisdictional working rights and responsibilities of the Union as being understood to mean the following:~~

~~2.5.1 — There shall be five (5) production departments that cover the working jurisdiction~~

and responsibilities of the Union under this Agreement. These departments are to be known as (1)Carpentry, (2)Electric, (3)Sound, (4)Fly and (5)Property. There shall be a Department Head for each department. Each Department Head shall coordinate the personnel working within the department.

~~2.5.2 — At Keller Auditorium and Arlene Schnitzer Concert Hall (ASCH), the first five (5) stage labor employees shall be Department Heads and employees of MERC. At the Newmark Theatre, the first four (4) stage labor employees shall be Department Heads and employees of MERC. The first (1st) stage labor employee at the Winingstad Theatre shall be a Department Head and an employee of MERC. Reductions from these minimums shall be determined by mutual agreement of the Union and the Employer in accordance with the needs of the event. The parties agree there shall be no minimum for Brunish Hall and that users can provide their own stage labor. If the Employer calls stage labor to Brunish Hall, the terms of this Agreement apply.~~

~~2.5.3 — Relief Department Heads who have been employed for more than 1,040 hours during one fiscal year shall be granted paid leave as set forth in Article VIII, Section 4 of this Agreement.~~

~~2.6 — Time sheets submitted to the Employer shall not be altered by the Employer without notification to the affected employee of any such alteration.~~

~~2.7 — Payroll checks for all personnel covered under this Agreement will be issued and made available in accordance with the Employer's regular payroll period.~~

~~2.8 — No employees covered by this Agreement shall donate his or her services without prior, mutual, written consent of the Employer and the Union.~~

~~2.9 — All Department Heads hired during the term of this contract shall serve a six month probationary period.~~

~~2.10 — When extra personnel beyond the number of regular Department Heads are needed to perform maintenance or other tasks, the Employer shall notify the Union at least 24 hours~~

~~in advance of the time and location of the calls and the number of personnel needed. The Union shall provide the qualified personnel to fill the call. If the Union is unable to fill the call after the Employer provides the required notice, the Employer may fill the call by other means. Personnel shall be subject to the terms and conditions of this Agreement and shall be paid according to Exhibit A. Personnel may be paid through the regular MERC payroll, or the Employer may opt to use a mutually agreed on payroll company.~~

ARTICLE IV: Probation and Breaks in Service

4.1 **2.10 Probation**

All Department Heads hired during the term of this contract shall serve a six-month probationary period.

4.1.1 **Just cause protections for Regular Department Heads, Relief Department Heads and Extra Personnel are described in Article XI, Discipline and Discharge.**

4.2 **Breaks in service**

Any individual who does not work for the Employer for 12 or more consecutive months will be deemed to have separated from MERC/Metro. An individual who returns to work after a 12-month break in service will be required to complete any applicable probation and re-qualify for any contractual benefits conditioned on length of employment or hours worked for MERC/Metro. If the individual has taken any statutorily protected leave, calculation of the length of the break in service will comply with all relevant legal requirements, which may call for more than 12 months of protected leave. Leave may also be extended beyond 12 months in accordance with the terms of Metro's personnel policies.

ARTICLE V: Scheduling

5.1 **Requests for Time Off**

2.4.1 Department Heads are responsible for notifying their employer **requesting time off at least** two weeks in advance of a scheduled absence.

5.1.1 Department Heads will use Employer's timekeeping system to request paid or unpaid time off (leave without pay). Requests for vacation will be processed consistent with Article VIII (Vacation).

5.1.2 Department Heads will provide notice of unavailability for scheduling by requesting leave without pay through Employer's timekeeping system.

5.1.3 At the time notice is given **the request is made**, the Department Head shall recommend an available Relief Department Head who can perform the duties required to the satisfaction of the Employer and third parties paying for services. The Employer will coordinate the replacement with the Union by either requesting an individual by name or by asking the Union to dispatch a worker. A Relief Head is responsible for the performance of all typical duties of the Department Head. In the event of a schedule change with less than two weeks notice, the Department Head is still responsible for assisting the Employer in coordinating with the Union in assigning a Relief Department Head **recommending an available Relief Department Head**.

5.2 Relief Department Heads

The Employer will coordinate the replacement **scheduling of a Relief Department Head** with the Union by either requesting an individual by name or by asking the Union to dispatch a worker. A Relief Head is responsible for the performance of all typical duties of the Department Head. In the event of a schedule change with less than two weeks notice, the Department Head is still responsible for assisting the Employer in coordinating with the Union in assigning a Relief Department Head. The Employer retains the right to reject any Relief Department Head referred.

5.2.1 2.4.2 If a Relief Department Head is required for single events or for predetermined periods of time, the Relief Department Head shall be engaged under the terms and conditions of this Agreement. If a Relief Department Head is required during the

run of a production and the Relief Head is already on the presenter's payroll, the Relief Head may stay on the presenter's payroll for the purpose of payroll continuity. With respect to Relief Department Heads, the Employer may opt to use a mutually agreed on payroll company as specified for Extra Personnel under Section 2-10-5.3.1.

5.2.2 ~~2-4.3~~ The Employer retains the right to reject any Relief Department Head referred.
Regular and Relief Department Heads will be scheduled by the Employer. Unless
prior arrangements have been made, or except in cases of unforeseen events
(illness, personal business, death of family members, etc.), Department Heads,
regular or relief, who start a show shall be allowed to complete it, subject to Article
~~VI-XI~~. Relief Department Heads or extra personnel who have not worked 800 hours
for the Employer from July 1, 2010 shall not be removed for arbitrary or capricious
reasons.

5.2.3 ~~2-4.4~~ When a regular Department Head requests temporary leave during a
performance run or work call, a shadowed performance call or additional
training may be required for their replacement. This Both determinations will be
made at the sole discretion of the Employer. During a shadowed call a Relief
Department Head learns the cues and duties associated with the performance.
The Relief Head shall receive Department Head pay for all hours worked during
shadowed calls or training.

5.3 ~~2-10~~ Extra Personnel: When extra personnel beyond the number of regular Department
Heads are needed to perform maintenance or other tasks, the Employer shall notify the
Union at least 24 hours in advance of the time and location of the calls and the number of
personnel needed. The Union shall provide the qualified personnel to fill the call. If the
Union is unable to fill the call after the Employer provides the required notice, the
Employer may fill the call by other means.

5.3.1 Extra Personnel shall be subject to the terms and conditions of this Agreement and
shall be paid according to Exhibit A. Extra Personnel may be paid through the

regular ~~MERC~~ Metro payroll, or the Employer may opt to use a mutually agreed on payroll company.

5.4 **Notice of Resignation or Retirement:** ~~6.1~~ No employee working under this Agreement shall resign unless two (2) weeks' written notice is given to the Employer. The employee shall send a A copy of said notice shall be sent to the Business Agent of the Union. The parties hereto may mutually agree to a shorter period of notice, should conditions so warrant.

ARTICLE-III VI: Wages; Overtime & Conditions

6.1 ~~3.1.1~~ Attached hereto is Exhibit A, which is incorporated by reference and made a part of this Agreement. Exhibit A sets forth the job classifications, wages, hours and overtime to be paid to all employees performing the work described therein, and the exhibit, having been agreed to by the parties, shall be binding upon the Employer, the Union and employees covered by this Agreement. Effective the next pay period following ~~Upon ratification, of this agreement~~ by both parties, wages will be increased ~~1.5%~~ 2.25% for the fiscal year beginning ~~effective October 22, 2010~~ July 1, 2013. Effective July 1, 2011 ~~2014~~ wages will be increased ~~2.5%~~ 2.25% and effective July 1, 2012 ~~2015~~ wages will be increased ~~3.0%~~ 1.25% 2.25% as reflected in Exhibit A.

~~3.1.2~~ Employees whose wages were frozen at the amount set for the fiscal year 2008-2009 contract amounts when they performed work for non-profit groups including resident companies, will receive a rebate of those wages. This rebate only applies to hours worked between September 1, 2009 and June 30, 2010. It will be calculated as a gross amount and paid in a lump sum during the second pay period following the signing of this Agreement.

~~3.1.3~~ Effective upon ratification, Department Heads will receive a \$250 signing bonus on the next regularly scheduled payroll.

6.2 **3.2 Conditions of Regular Time**

6.2.1 ~~3.2.1~~ When employees are employed during the hours of 8:00 a.m. and 12:00 midnight, they shall be paid at the regular straight-time hourly rate, as modified by the premium provisions of this Agreement.

6.2.2 ~~3.2.2~~ If an employee performs the duties of a higher paying classification, they shall receive the higher rate specified in Exhibit A. Such time shall be paid in one (1) hour increments. At no time shall a Department Head receive less than Department Head rate. If regular Department Heads are not available for any work, their replacements **Relief Department Heads** shall receive head of department pay, or greater as determined by work performed.

6.3 ~~3.3~~ **Conditions of Overtime**

6.3.1 ~~3.3.1~~ When employees are engaged for work calls ~~on an hourly basis~~ during the hours of 12:00 midnight and 8:00 a.m., the wage rate shall be two (2) times the regular straight time hourly rate. The hourly wage rate shall revert back to the regular hourly rate at 8:00 a.m., except under the conditions of Section ~~3.4.9~~ **6.4.11**.

6.3.2 ~~3.3.2~~ **Daily overtime:** When employees have worked more than eight (8) hours on the same day, the wage rate shall be one and one-half (1 ½) times the applicable hourly rate.

6.3.3 ~~3.3.3~~ When employees are engaged for any work call on a holiday during the twenty-four (24) hour period constituting a holiday (12 midnight to 12 midnight), the employee shall be compensated at two (2) times the regular straight time hourly rate. Holidays for purposes of this Agreement are: ~~New Year's Day (January 1), Martin Luther King, Jr. Day (third Monday in January), Memorial Day (last Monday in May), Fourth of July (July 4), Labor Day (first Monday in September), Veterans' Day (November 11), Thanksgiving Day (fourth Thursday in November), Christmas Eve after 6:00 p.m. effective December 24, 2011), and Christmas Day (December 25).~~

New Year's Day January 1

<u>Martin Luther King, Jr. Day</u>	<u>Third Monday in January</u>
<u>Presidents' Day</u>	<u>Third Monday in February</u>
<u>Memorial Day</u>	<u>Last Monday in May</u>
<u>Fourth of July</u>	<u>July 4</u>
<u>Labor Day</u>	<u>First Monday in September</u>
<u>Veterans' Day</u>	<u>November 11</u>
<u>Thanksgiving Day</u>	<u>Fourth Thursday in November</u>
<u>Christmas Eve after 6:00 pm</u>	<u>December 24</u>
<u>Christmas Day</u>	<u>December 25</u>

6.3.4 ~~3.3.4~~ When employees are engaged for any work calls on a holiday and are entitled to additional premium pay due to provisions contained in this Agreement, then such pay shall not exceed two (2) times the regular straight time rate. The limit on premium pay shall not apply to the meal premium contained in Section ~~3.5~~ **6.5**.

6.3.5 ~~3.3.5~~ **Weekly overtime:** The first eight (8) hours worked in a single workday shall be considered as regular hours for purposes of weekly overtime. Hours worked in excess of forty (40) regular hours in an employee's workweek (Monday through Sunday) shall be compensated for at one and one-half (1 ½) times the applicable hourly rate.

~~3.3.6~~ — The Employer shall retain the exclusive right to monitor all overtime and schedule employees in a manner that limits or avoids overtime, provided, however, no employee shall be replaced or removed after eight (8) hours per day or after forty (40) hours per week during a single promoter event for the purpose of preventing payment of overtime or premium wage scale.

6.3.6 Except as provided in this Article, the Employer shall retain the right to monitor all overtime and schedule employees in a manner that promotes employee safety.

6.3.7 No employee shall be replaced or removed after eight (8) hours per day or

after forty (40) hours per week during a single promoter event for the purpose of preventing payment of overtime or premium wage scale.

6.3.8 The employer has the right to schedule a separate crew when work with more than one promoter makes around-the-clock and multiple shift work necessary.

6.3.9 If a single promoter event is expected to result in the employee working more than 24 continuous hours, the Employer shall notify the union and endeavor to schedule staff in a manner that ensures both safety and continuity of work.

6.4 3.4 Conditions of Wage Policy

6.4.1 ~~3.4.1~~ Minimum calls shall be four (4) hours pay at the rate applicable to the time of day the four (4) hour call falls within, except that no rate other than the regular base rate shall be paid on minimum calls unless employees are actually working during premium times.

6.4.2 Maintenance work and inspections of the five (5) production departments covering the working jurisdiction and responsibilities of Department Heads under this Agreement shall be performed as directed by management and/or manufacturer requirements. The appropriate Department Head shall lead the work.

6.4.3 When initiated by Department Heads, maintenance work and inspections of the equipment or systems under their care shall have no minimum call requirements. Extra stage labor needed to perform maintenance work or other tasks under the direction of a Department Head shall be paid as Grips/Extra People, or greater as determined by the work performed.

6.4.4 ~~3.4.2~~ For purposes of computing time under this Agreement, any fraction of a half-hour over five(5) minutes, when worked by an employee, shall be considered a full half-hour.

6.4.5 ~~3.4.3~~ In no event shall wages be duplicated or pyramided. Compensation shall not be paid more than once for the same hours under any provision of this

Article.

6.4.6 ~~3.4.4~~ Employees shall be allowed an uninterrupted rest period of fifteen (15) minutes on the Employer's time for each four (4) hours of working time. Rest periods shall be scheduled as nearly as possible to the midpoint of the work period.

6.4.7 ~~3.4.5~~ On a call back where the break between the call back and the initial work is more than one hundred twenty (120) minutes, the call back shall be paid as a four (4) hour minimum call.

6.4.8 ~~3.4.6~~ Employees will be kept on call only when appropriate stage work is required by the Employer.

6.4.9 ~~3.4.7~~ All employees shall have a paid pre-call of no less than one-half (½) hour prior to the beginning of the performance.

6.4.10 ~~3.4.8~~ Employees shall remain on the call until the performance is completed.

6.4.11 ~~3.4.9~~ Employees covered by this Agreement working more than one hundred twenty (120) minutes between midnight and 8:00 a.m. will continue receiving the same rate of pay as specified in 3.3.1 until the employee has received no less than an eight (8) hour rest period.

6.4.12 ~~3.4.10~~ The wage rate applicable to employees (other than Department Heads) who perform maintenance work shall be determined on a case-by-case basis, depending on whether the work is performed without supervision, whether a special license is required or other factors particular to the specific job.

6.4.13 ~~3.4.11~~ Absent unusual circumstances beyond the Employer's control, the Employer shall provide at least forty-eight (48) hours advance notice prior to the originally scheduled call time for the event to employees covered by the Agreement.

6.5 ~~3.5~~ Meal Period Breaks During Employment

6.5.1 ~~3.5.1~~ All employees covered by this Agreement shall have an unpaid meal period

of at least one (1) hour duration no later than the end of the fifth continuous hour of work except as noted below. Meal periods may be staggered to allow uninterrupted continuation of the work call as long as there are enough personnel remaining on duty to ensure that the work is done in a safe ~~workman-~~like professional manner. ~~When working for PCPA on a venue maintenance call, an unpaid meal break of ½ hour will be allowed, at the option of the employee.~~

6.5.2 When working for PCPA on a venue maintenance call, an unpaid meal break of ½ hour will be allowed, at the option of the employee.

~~3.5.2 Department Heads shall receive a minimum one and one-half (1 ½) hour call immediately following each meal break.~~

6.5.3 ~~3.5.3~~ If the Employer or Presenter has a special situation and MERC wishes to negotiate an exemption or modification to these conditions, it shall contact the Union representative in a timely manner to determine if the revision or waiver is mutually acceptable. Should the representatives of both Employer and Union fail to mutually agree upon a revised meal period break, the Employer shall pay each employee a meal period premium. The value of a meal period premium shall be computed as being equal to one and one-half (1 ½) times the applicable hourly rate until such a meal period is allowed. If no meal is given by the end of the seventh hour then the meal premium shall be computed as being equal to two (2) times the applicable hourly rate until such a meal period is allowed.

6.5.4 ~~3.5.4~~ The Employer, in lieu of providing employees a full meal period break or in lieu of paying employees a meal period premium, may provide an adequate meal for all employees and at least thirty (30) minutes to consume the meal. Employees shall receive continuous pay during the thirty (30) minute meal period. ~~An adequate meal is defined as cold sandwiches and drinks, deli trays or a hot meal, depending on the hour of the day.~~

6.5.5 Definition of adequate meal: Between 8:00 A.M. and 8:00 P.M., an adequate meal is cold sandwiches and/or deli trays, salad, chips and drinks. Between

8:00 P.M. and 8:00 AM, an adequate meal is a hot entrée, two sides and drinks.

6.5.6 ~~3.5.5~~ If a meal period falls between the hours of 10:30 P.M. and 8:00 A.M., an adequate hot meal and a one-half (½) hour period in which to eat must be provided. Employees shall receive continuous pay during the one-half (½) hour meal period.

6.5.7 ~~3.5.6~~ In the Winningstad Theatre, no employee shall take a meal break during a performance or any type of rehearsal. No employee shall take a meal break during a performance or dress rehearsal.

6.5.8 ~~3.5.2~~ Department Heads shall receive a minimum one and one-half (1 ½) hour call immediately following each meal break.

6.6 ~~2.6~~ Time sheets submitted to the Employer shall not be altered by the Employer without notification to the affected employee of any such alteration.

6.7 ~~2.7~~ Payroll checks for all personnel covered under this Agreement will be issued and made available in accordance with the Employer's regular payroll period.

6.8 ~~2.8~~ No employees covered by this Agreement shall donate his or her services without prior, mutual, written consent of the Employer and the Union.

ARTICLE ~~IV~~ VII: Health and Welfare

7.1 ~~4.1~~ **Joint Labor-Management Committee**

A Metro Joint Labor-Management Committee (JLMC) for Health Benefits comprised in accordance with adopted by-laws shall review health dental and vision insurance plans and costs, and shall make plan offering recommendations to the Metro Human Resources Director and Chief Operating Officer in an effort to keep health care costs at a minimum for employees and for Metro. The Union is entitled to select one member to serve and vote on the Joint Labor-Management Committee on Health Benefits.

Metro shall make available to the Committee current information regarding insurance

premium rates and projected increases as such information becomes available to Metro.

The committee shall meet to maintain an ongoing review of health benefit related issues for employees of Metro.

A lawful meeting shall be comprised of an equal number of Union and Metro Committee members with not less than two of each group. The Committee shall make recommendations to the Human Resource Director and Chief Operating Officer. The Chief Operating Officer shall consider the Committee's recommendations and have the authority to make plan modifications as necessary. ~~In the event that the parties do not agree, the union has the right to utilize remedies available under law including mediation and fact finding.~~

4.2 ~~For all employees working under this Agreement other than department heads, the Employer agrees to contribute to the IATSE National Health & Welfare Fund the further sum of 17% for fiscal year 2010-2011. Beginning July 2011 through the remainder of the contract the Employer agrees to contribute at least eighteen (18%) of the gross wages earned by each employee covered by this Agreement and employed by the Employer under its terms. The contributions are payable by the 10th of the month following the month of employment. These contributions are in addition to all wages and other sums required to be paid by this Agreement.~~

~~The Employer agrees to be bound by the Agreement and Declaration of Trust establishing the IATSE National Health & Welfare fund, including all its rules and regulations (including, without limitation, the Statement of Policy and Procedure for Collection of Contributions payable to Employers) and any and all amendments and modifications thereto that may be adopted by the Trustees during the Terms of this Agreement. The Employer agrees to execute all documents necessary to support contribution to the IATSE National Benefit Funds.~~

4.3 ~~The Employer's obligation to make contributions to the health and welfare plan, described above shall not be construed as a guarantee by the Employer that it will continue to agree to make such contributions in future contracts. The Employer expressly reserves the right~~

~~to negotiate a cessation or substitution of its health and welfare contribution obligation in future labor agreements, and the Employer shall have no liability to any past, present or future employee with respect to such decision. The parties further acknowledge and understand that the Employer's agreement to make contributions to any of the insurance plans referred to above shall not be construed as a guarantee of any specific level of benefits and the Employer's only obligation under the terms of this Agreement shall be to make the monthly contribution described above.~~

7.2 **4.4 Benefit Eligibility**

Regular Department Heads shall be eligible for Health and Welfare benefits currently provided to the Employer's represented employees on the 1st (first) day of the month following thirty (30) days of employment.

7.3 **4.5 Premium Sharing for Department Heads**

Beginning July 1, 2011 ~~2013 and through June 30, 2014, out the duration of this Agreement;~~ Metro shall contribute ninety-four (94%) of the insurance premium costs per plan and employees shall pay six percent (6%) of the premium costs per plan through payroll deduction for medical, dental, and vision plans provided by an HMO and/or PPO/indemnity carrier. Beginning July 1, 2014 Metro shall contribute ninety-two (92%) and employees shall pay eight (8%) of the premium costs per plan and July 1, 2015 Metro shall contribute ninety-two (92%) and employees shall pay eight (8%) of the premium costs per plan through payroll deduction for medical, dental, and vision plans provided by an HMO and/or PPO/indemnity carrier.

~~4.5.1 If any health insurance plan increases by more than twelve percent (12%) two years in a row then Metro and the Union shall split the increase over twelve percent (12%) equally beginning in the second year. The earliest this split could occur would be with the plan year beginning July 1, 2012.~~

7.3.1 4.5.2 Metro agrees to pay cash back at an amount not to exceed \$150 per month to Department Heads who provide proof of other medical coverage and who opt out of medical and dental coverage through Metro. ~~Metro shall determine the~~

~~amount offered to employees for opt-out based on contracts with insurance carriers, financial consideration, and health insurance plan designs.~~

7.3.2 **Plan Changes: If Metro does not voluntarily change plans, but rather the health insurance carrier or benefits administrators change the terms of a plan during the life of the contract, Metro and the Union agree to accept those changes or go to the next best available plan at such time as the JLMC for Health Benefits can be reconvened and make a recommendation. The parties agree to meet at the earliest possible date and discuss that portion of the contract. At no time shall Metro operate outside of the health insurance plan structure that it is offering employees.**

7.4 4.6-The Health and Welfare benefit package is in lieu of Section 4.2 **7.6** and applies to Regular Department Heads only. If, during the term of this agreement, the Employer is unable to offer a choice between an HMO and PPO/ indemnity plans, the Union may “opt out” of the Employer’s health and welfare benefit package and may choose for all Department Heads the health and welfare benefits offered by the IATSE National Health & Welfare Fund. Metro’s implementation of a lack of offering both an HMO and PPO/indemnity plan will be the qualifying event for IATSE to opt out. In the event that the Union chooses this option, the Employer shall contribute to the IATSE National Health & Welfare Fund an amount equal to the amount the employer was contributing for the employee at the time they opted out; however it may be changed in the event the employee has a qualifying event that would allow them to add or delete a dependent. In such case the Employer will contribute the amount it would have contributed prior to the elimination of the plan had those dependents been added or deleted prior to the plan change.

7.5 4.7 Health benefits will be funded to the limits listed. Should Metro choose to fund any other group at a higher level, then such new level will be applied equally to this contract.

7.6 4.2 **IATSE National Health & Welfare Fund**

7.6.1 For all employees working under this Agreement other than **regular** department

heads, the Employer agrees to contribute to the IATSE National Health & Welfare Fund the further sum of ~~17% for fiscal year 2010-2011. Beginning July 2011 through the remainder of the contract the Employer agrees to contribute at least eighteen (18%)~~

- 7/1/2013 - 6/30/2014 18.5%
- 7/1/2014 - 6/30/2015 18.5%
- 7/1/2015 - 6/30/2016 19%

of the gross wages earned by each employee covered by this Agreement and employed by the Employer under its terms. The contributions are payable by the 10th of the month following the month of employment. These contributions are in addition to all wages and other sums required to be paid by this Agreement.

7.6.2 The Employer agrees to be bound by the Agreement and Declaration of Trust establishing the IATSE National Health & Welfare fund, including all its rules and regulations (including, without limitation, the Statement of Policy and Procedure for Collection of Contributions payable to Employers) and any and all amendments and modifications thereto that may be adopted by the Trustees during the Terms of this Agreement. The Employer agrees to execute all documents necessary to support contribution to the IATSE National Benefit Funds.

7.6.3 ~~4.3~~ The Employer's obligation to make contributions to the health and welfare plan, described above shall not be construed as a guarantee by the Employer that it will continue to agree to make such contributions in future contracts. The Employer expressly reserves the right to negotiate a cessation or substitution of its health and welfare contribution obligation in future labor agreements, and the Employer shall have no liability to any past, present or future employee with respect to such decision. The parties further acknowledge and understand that the Employer's agreement to make contributions to any of the insurance plans referred to above shall not be construed as a guarantee of any specific level of benefits and the Employer's only obligation under the terms of this Agreement shall be to make the

monthly contribution described above.

7.6.4 Consistent with the 2003 Letter of Agreement between the parties, the Union shall indemnify, hold harmless, and defend Employer, its agents, employees and elected officials from and against any and all liabilities damages, actions, costs, losses, claims and expenses (including attorneys' fees) arising out of or resulting in whole or in part from any activities, administration or conduct of the IATSE National Health & Welfare Fund ("Fund") or from Employer's contributions to the Fund, including but not limited to claims asserted by the Union's members or by the IATSE National Health & Welfare Fund. The union may select the counsel used to defend Employer pursuant to this paragraph. This provision will apply only if Employer is current on all of the health and welfare contributions on behalf of all individuals required by the collective bargaining agreement.

~~4.8 — Public Employees Retirement System~~

~~The Employer will continue its participation in the PERS program as required by law. The required six percent (6%) employee PERS contribution shall be "picked up" by the Employer.~~

~~4.9 — For those employees working under this Agreement for whom it is not required to make a PERS contribution, the Employer shall contribute an amount equal to seven percent (7%) of each employee's wages to the Entertainment Industry 401(k) plan. The Employer agrees to process employee contributions to the plan for those employees for whom the Employer makes contributions, subject to approval by the plan and review by Counsel for the Union.~~

7.7 ~~4.10 Life , Long Term Disability, and Accidental Death and Dismemberment Insurance~~

Life insurance, dependent life, long-term disability, and accidental death and dismemberment coverage shall be provided to all employees who are health insurance benefit eligible. Such coverage will be provided at no cost to the employee unless adjustments are made because of recommendations made by the Joint Labor Management Committee, to minimize medical, dental, and vision costs.

7.8 Employer will comply with the Affordable Care Act and all applicable legal requirements related to health care reform.

ARTICLE VIII: Vacation

8.1 Eligibility

8.1.1 Regular Department Heads. Regular Department Heads ~~that~~ who have successfully completed the probationary period in Article IV are eligible to take accrued vacation leave with pay.

8.1.2 Relief Department Heads. Relief Department Heads who have been employed for more than 1040 hours during one fiscal year ~~shall be granted paid leave as set forth in Article VIII, Section 4 of this Agreement.~~ are eligible to take accrued vacation leave with pay.

8.2 8.4 Vacation Accrual

Regular Department Heads shall accrue vacation at the rate shown below:

Years of Service	Accrual Rate
0 through 4	0.04 hours of vacation per hour worked
5 or more	0.06 hours of vacation per hour worked
<u>10 or more</u>	<u>0.08 hours of vacation per hour worked</u>

8.2.1 Relief Department Heads who are not also employed as Regular Department Heads shall accrue vacation at the rate shown above for 0 through 4 years of service.

8.2.2 ~~Regular Department Heads that have successfully completed the probationary period are eligible to take accrued vacation leave with pay. However, they~~

Regular and Relief Department Heads will not be allowed to accrue more than two hundred and fifty (250) hours of vacation leave. ~~Vacation leave beyond two hundred and fifty (250) hours will be lost, unless reasons for an exception receive approval by the Facility Director and General Manager. Accumulations must be within stated limits as of June 30 each fiscal year. Excess vacation accruals will be lost if not used by June 30, unless reasons for an exception receive approval by the Facility Director and General Manager.~~ If an employee is close to reaching the 250 hour cap, the employee will request to schedule vacation as described in 8.3 of this Article.

8.3 ~~8.4.1~~ Scheduling of Vacations. Vacation requests shall be consistent with Article V (Scheduling). Requests must be submitted through Employer's timekeeping system and approved by the Stage Supervisor management. Requests for vacation leave shall be submitted at least two (2) weeks prior to desired vacation time. ~~If no exception has been granted and the employee would lose accrued vacation time because the Stage Supervisor denied a request, the employee may request an exception to the 250-hour limit.~~ Vacation requests will be processed within two weeks of the request. If a vacation request is denied, the employee will be informed in writing.

8.4 ~~8.4.2~~ Vacation Pay Upon Termination. A Department Head who has successfully completed the initial probationary period, and is separated from MERC, shall be entitled to payment for accrued vacation leave. In no case shall payment be for more than the maximum accumulation. In case of death, compensation for accrued vacation leave shall be paid in the same manner that salary due is paid.

8.5 Breaks in Service. Eligibility to take vacation and to receive higher accrual rates based on years of service is subject to the Break in Service provision in Article IV.

ARTICLE IX: Retirement Benefits

9.1 4-8 Public Employees Retirement System. The Employer will continue its participation in the PERS program as required by law. The required six percent (6%) employee PERS

contribution shall be "picked up" by the Employer.

9.2 ~~4.9~~ For ~~those employees~~ **relief department heads and extra stage labor** working under this Agreement for whom it is not required to make a PERS contribution, the Employer shall contribute an amount equal to seven percent (7%) of each employee's wages to the Entertainment Industry 401(k) plan. The Employer agrees to process employee contributions to the plan for those employees for whom the Employer makes contributions, subject to approval by the plan and review by Counsel for the Union.

ARTICLE V X: No Strike or Lockout

10.1 ~~5.1~~ The Union agrees that during the life of this Agreement it will not engage in a strike, picketing, slow-down or other work stoppage regarding any matter covered by this Agreement. The Employer agrees that during the life of this Agreement it will not engage in a lockout regarding any matter covered by this Agreement. In addition, the Union agrees not to engage in a sympathy strike. Employer and Union each agree that neither shall engage in any strike, slow-down, other work stoppage or lockout except in compliance with and as permitted by Oregon law.

10.2 ~~5.2~~ Upon notification by the Employer to the Union of any work stoppage, slowdown, picketing or strike in violation of Section ~~10.1-5.1~~, the Union agrees to immediately notify any employees engaging in such activities to cease and desist. The Union agrees to declare that such work stoppage, slowdown, picketing or strike is in violation of this Agreement and is unauthorized. The Union agrees to immediately notify all employees of their obligation and responsibility for maintaining compliance with this Article including their responsibilities to remain at work during any interruption which may be caused or initiated by others and to encourage other employees violating Section ~~10.1-5.1~~ above to return to work.

ARTICLE VI XI: Discharge or Resignation Discipline and Discharge

~~6.1 No employee working under this Agreement shall resign unless two (2) weeks' written notice is given to the Employer. A copy of said notice shall be sent to the Business Agent of the Union. The parties hereto may mutually agree to a shorter period of notice, should conditions so warrant.~~

11.1 6.1 Disciplinary actions shall include only the following:

- Oral reprimand,
- Written reprimand,
- Suspension, or
- Termination (discharge).

11.1.1 Employer may select any of these disciplinary actions as appropriate to the circumstances.

11.1.2 If the Employer has reason to discipline an employee, every reasonable effort will be made to avoid embarrassment to the employee before other employees or the public.

11.1.3 The Employer will send the Union notice of any disciplinary action:

11.2 ~~6.2 The Employer may discharge, discipline, suspend or demote a Department Head, Relief Department Head, or extra personnel per the accumulation standard in 6.3 for just cause, including, but not limited to, Just cause for discipline includes, but is not limited to: unsatisfactory work performance, violation of Metro personnel policies, violation of work rules adopted pursuant to this Agreement, criminal conduct, dishonesty related to employment, drinking related to employment, insubordination related to employment, selling, transporting or using illegal narcotics and/or any other conduct sufficiently serious in nature as to justify employee discipline, regardless of whether the employee has been provided with a prior written warning notice concerning the conduct in question. If feasible, the Employer shall give the Union and affected employee two (2) weeks' written notice of intent to discharge, but nothing in this Agreement shall require the Employer to~~

~~provide such notice. In situations where an employee is discharged with less than two (2) weeks' notice, or otherwise removed from the job without prior warning, the employee shall be paid for actual time worked on the date of the discharge or suspension, and the minimum call requirements of the various schedules to this Agreement shall not apply. Relief Department Heads and extra personnel are entitled to just cause rights upon completion of 800 hours of work for the Employer. The calculation date for the 800 hours begins July 1, 2010.~~

11.2.1 Regular Department Heads who have completed the required six-month probation described in Article IV will not be subject to termination or other discipline without just cause.

11.2.2 Relief Department Heads and extra personnel are entitled to just cause rights upon completion of 800 hours of work for the Employer. The calculation date for the 800 hours begins July 1, 2010.

11.2.3 Just cause rights are subject to the break in service provision in Article IV.

11.2.4 Relief Department Heads or Extra Personnel who have not worked 800 hours for the Employer from July 1, 2010 No individual working under this agreement shall not be removed for arbitrary or capricious reasons regardless of probationary status or length of service.

11.3 6.3 If feasible, the Employer shall give the Union and affected employee two (2) weeks' written notice of intent to discharge, but nothing in this Agreement shall require the Employer to provide such notice. In situations where an employee is discharged with less than two (2) weeks' notice, or otherwise removed from the job without prior warning, the employee shall be paid for actual time worked on the date of the discharge or suspension, and the minimum call requirements of the various schedules to this Agreement shall not apply.

ARTICLE VII XII: Resolution of Disputes

12.1 ~~7.1~~ **Grievance and Arbitration Procedure**. A grievance is defined as a dispute by the Union or a covered employee concerning the application or interpretation of a specific provision of this Agreement. Employees (either alone or with a Union representative) and supervisors are encouraged to meet to discuss potential grievances in an effort to resolve issues at the lowest level. If the issue is not resolved, a written grievance Grievances may be initiated and pursued in the following manner: following the procedures in this Article.

12.1.1 At all steps listed below, a grievance must be signed by a union representative and must include a written statement of the specific provisions of the Agreement alleged to have been violated, a brief statement of the facts, and a statement of the relief requested.

12.1.2 The Employer or its designee(s) shall meet at mutually convenient times with the Union.

12.2 **Steps of Grievance Procedure**

12.2.1 ~~(1)~~ **Step I - Supervisor:** An employee who believes they have a grievance may present this a written grievance to their immediate supervisor for adjustment within five ~~(5)~~ **fourteen (14)** calendar days of the date on which the events occurred giving rise to the grievance.

An employee's supervisor shall respond promptly, but in no event more than seven ~~(7)~~ **in writing within fourteen (14)** calendar days after receipt of the oral written grievance.

12.2.2 ~~(2)~~ **Step II – Facility Director:** If a written grievance has not been settled is not resolved at Step I, the Union may advance the grievance to Step II by submitting it to the Facility Director. between the affected employee and the immediate supervisor the grievance shall be reduced to writing, and submitted by a Union representative or affected employee to the Employer's designee within twenty-one

~~(21) calendar days of the date on which the events occurred giving rise to the grievance, inclusive of all time provided for processing of the grievance in Step I of this procedure. A Step II grievance is due within fourteen (14) calendar days of receipt of the supervisor's Step I written response or, in the event no response was provided, within fourteen (14) calendar days of the date the response was due.~~

~~A written statement of the grievance shall be signed by the aggrieved employee or by a Union representative, and shall include a statement of the specific provisions of the Agreement alleged to have been violated, a brief statement of the facts and a statement of the relief requested.~~

The Employer Facility Director shall respond to the Step II written grievance in writing within fourteen (14) calendar days of its receipt.

12.2.3 ~~(3) Step III – General Manager, Visitor Venues: If a written grievance is not resolved at Step II, the Union may advance the grievance to Step III by submitting the grievance to the General Manager of Visitor Venues. A Step III grievance is due within fourteen (14) calendar days of receipt of the Facility Director's Step II written response or, in the event no response was provided, within fourteen (14) calendar days of the date the response was due.~~

12.3 Arbitration

12.3.1 If the grievance is still unsettled, the Union may within ~~ten (10)~~ fourteen (14) calendar days of the date of the Employer's Step III response, or the date that such response was due, or upon the decision of the Employer or its designee(s) under Step # III, have a right to have the matter arbitrated by a third party jointly agreed upon by the Employer and the Union. notify the Employer and the Metro Human Resources Department in writing of its desire to have the matter arbitrated by a third party agreed upon by Metro and the Union.

12.3.2 In order to advance the grievance, the Union shall request a list of seven (7) arbitrators from the State of Oregon Mediation and Conciliation Services

within fourteen (14) calendar days from the request for arbitration. Upon receipt of the list of arbitrators within fifteen (15) fourteen (14) days both the Employer and the Union shall have the right to strike three (3) names from the list alternately; the last name remaining shall be the impartial arbitrator. The Employer and the Union shall flip a coin to determine who strikes first. If the parties are unable to agree upon an arbitrator, the Oregon State Mediation and Conciliation Service shall be requested to submit a list of seven (7) names. Both the Employer and the Union shall have the right to strike three (3) names from the list. Either party shall have the right to reject one list in its entirety. The party to strike first shall be determined by coin toss, the other party shall then strike one name and the parties shall alternate strikes until one remains who shall be the arbitrator.

12.3.3 The designated arbitrator shall conduct a hearing. The arbitrator shall issue a decision, which shall be final and binding on the Employer, the Union and all involved employees. The arbitrator shall have no authority to amend, modify, nullify, ignore or add to the provisions of this Agreement and shall decide only the grievance presented. The arbitrator's decision and award shall be based on his or her interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented. The arbitrator shall not render an award inconsistent with retained management rights of the Employer.

12.3.4 Expenses for the arbitrator shall be borne equally by the Employer and the Union; however, each party shall be responsible for compensating its own representatives and witnesses.

12.3.5 If either party desires a verbatim recording of the proceedings, it may cause such a record to be made, provided it pays for the record and makes a copy available without charge to the arbitrator. If the other party desires a copy, both parties shall jointly share the cost of the transcript and all copies.

12.3.6 If either party fails to proceed with the procedures of ~~Step III~~ this section within

thirty (30) days, unless otherwise mutually agreed, the other party may proceed on an ex parte basis.

12.4 ~~7.3~~ **Time Limits.** The time limits of this grievance and arbitration procedure shall be strictly adhered to. ~~The Employer shall have the right to refuse to process or arbitrate a grievance which is not raised in a timely fashion.~~ **If the employee or Union fails to advance the grievance within the specified time limit, the grievance will be deemed abandoned and the Employer will have no further obligation to process or arbitrate the grievance.** If at any step of the grievance procedure the Employer does not formally respond as provided herein, it will be assumed that the Employer has rejected the grievance, and that the next step of the grievance procedure shall be available.

12.4.1 ~~7.4~~ **Extension of Time Limits.** The time limits of this grievance and arbitration procedure may be extended by mutual agreement, in writing, between the parties. The parties may mutually agree in writing to waive any of the time limits contained in this procedure.

12.4.2 ~~7.5~~ For purposes of this Article, the date of receipt shall be considered the effective date for purposes of calculating the time limits contained in this grievance procedure.

12.5 ~~7.6~~ The parties may, upon mutual agreement, in writing, submit multiple grievances to an arbitrator for decision.

12.6 ~~7.7~~ The provisions of this Article shall not be interpreted to require that the Union process any grievance through the grievance or arbitration procedure which it believes in good faith lacks sufficient merit.

ARTICLE VIII XIII: Miscellaneous Provisions

13.1 **8.1 Inspection Privileges.**

Authorized agents of the Union, shall have access to the Employer's establishment during

working hours for the privilege of adjusting disputes, and investigating working conditions, and ascertaining that the Agreement is being adhered to; provided, however, that no interruption of work shall occur.

13.2 ~~8.2~~ **Other Work.**

The Employer, at its sole discretion, may offer employees represented by the Union under this Agreement work and responsibilities not within and/or specifically excluded from the overall work jurisdiction or responsibilities of the Union covered under this Agreement. Neither the offer by the Employer to employees represented by the Union to perform work and/or accept responsibility of work not within and/or specifically excluded from the work jurisdiction and responsibilities of this Agreement, nor acceptance of any such work by employees represented by the Union will constitute a precedent and/or past practice under this Agreement nor shall future work be covered by this Agreement. Employees shall not be required to perform work outside of the jurisdiction of this Agreement. When work outside of the normal jurisdiction is performed, the terms and conditions of this agreement shall apply. Applicable wage rates shall be mutually agreed upon in advance.

~~8.3~~ ~~Worker's Compensation Insurance.~~ It is agreed by the Employer that the employees shall be insured according to the requirements of Oregon Revised Statute 656.

~~8.4~~ ~~Vacation.~~ Regular Department Heads shall accrue vacation at the rate shown below:

Years of Service	Accrual Rate
0 through 4	0.04 hours of vacation per hour worked
5 or more	0.06 hours of vacation per hour worked

~~Regular Department Heads~~

~~Regular Department Heads that have successfully completed the probationary period are eligible to take accrued vacation leave with pay. However, they will not be allowed to accrue~~

~~more than two hundred and fifty (250) hours of vacation leave. Vacation leave beyond two hundred and fifty (250) hours will be lost, unless reasons for an exception receive approval by the Facility Director and General Manager. Accumulations must be within stated limits as of June 30 each fiscal year. Excess vacation accruals will be lost if not used by June 30, unless reasons for an exception receive approval by the Facility Director and General Manager.~~

8.4.1 Scheduling of Vacations

~~Vacation requests shall be submitted through and approved by the Stage Supervisor. Request for vacation leave shall be submitted at least two (2) weeks prior to desired vacation time. If no exception has been granted and the employee would lose accrued vacation time because the Stage Supervisor denied a request, the employee may request an exception to the 250-hour limit.~~

8.4.2 Vacation Pay Upon Termination

~~A Department Head who has successfully completed the initial probationary period, and is separated from MERC, shall be entitled to payment for accrued vacation leave. In no case shall payment be for more than the maximum accumulation. In case of death, compensation for accrued vacation leave shall be paid in the same manner that salary due is paid.~~

~~8.5 Safety. The Employer acknowledges its obligation to provide a safe and healthy environment for employees in accordance with all applicable federal, state and local laws pertaining to health and safety. In situations that are under the direct control and responsibility of the Employer, the Employer shall respond promptly to alleged unsafe conditions brought to its attention by an employee. The Union shall appoint one or two members to the Portland Center for the Performing Arts Safety Committee and may discuss safety issues of mutual concern and make recommendations to the manager of the Portland Center for the Performing Arts regarding safety issues pertaining to employees.~~

~~8.5.1 Light Duty. When there is a compensable on-the-job injury and the Department Head is released for light duty by a physician, Risk Management will meet with the Union business agent and a management representative to determine a suitable and available light duty~~

assignment.

~~8.6 — Management Rights. The Employer retains all customary, usual and exclusive rights, decision-making, prerogatives, functions and authority connected with or in any way incident to its responsibility to manage the affairs of the Employer. The Employer retains all prerogatives, functions and rights not specifically limited by the terms of this Agreement, or by law.~~

~~8.7 — Work Rules. The parties recognize that the Employer is directly responsible for carrying out the functions and services to its clients. For this reason, it is jointly recognized that the Employer retains broad authority to fulfill its responsibilities and may do so by implementing work rules, oral or written, which now exist or which may be implemented in the future. It is agreed, however, that no work rule will be adopted or implemented which is inconsistent with a specific provision of this Agreement. All work rules which have been or shall be implemented will be reduced to writing and furnished to employees and the Union fifteen (15) calendar days prior to their effective date in order to provide the Union and employees an opportunity to comment and suggest changes. The Employer agrees the Union has the right to challenge work rules in grievance procedure if it believes the work rule to be arbitrary and/or capricious.~~

ARTICLE XIV: Safety and Workers' Compensation

14.1 ~~8.3~~ **Worker's Compensation Insurance.** It is agreed by the Employer that the employees shall be insured according to the requirements of Oregon Revised ~~Statue~~ **Statutes ch. 656.**

14.2 ~~8.5~~ **Safety.** The Employer acknowledges its obligation to provide a safe and healthy environment for employees in accordance with all applicable federal, state and local laws pertaining to health and safety. In situations that are under the direct control and responsibility of the Employer, the Employer shall respond promptly to alleged unsafe conditions brought to its attention by an employee. The Union shall appoint one or two members to the Portland Center for the Performing Arts Safety Committee and may discuss safety issues of mutual concern and make recommendations to the manager of the

Portland Center for the Performing Arts regarding safety issues pertaining to employees.

14.3 ~~8.5.1~~ **Light Modified Duty.** When there is a compensable on-the-job injury and the Department Head is released for ~~light~~ **modified** duty by a physician, Risk Management will meet with the Union business agent and a management representative to determine a suitable and available light duty assignment.

ARTICLE ~~IX~~ XV: First Opportunity Target Area Recruitment

The Union hereby agrees to use its best efforts to assist the Employer in meeting its community outreach and target area hiring obligations.

ARTICLE X XVI: Recording - Video and Audio

16.1 ~~10.1~~ Subject to the exclusions in Article ~~10.3~~ 16.3 below, any film, video or audio recording and/or transmission used for commercial purposes shall be classified as a recording and all employees performing services under this Agreement on such work shall be compensated at the recording rate listed in Exhibit A.

16.1.1 ~~10.1.1~~ The recording rate shall apply at all times during recording and/or transmission to all crew-members from the beginning to the end of the recorded event.

16.1.2 ~~10.1.2~~ If the Sound Department Head is utilized for his/her technical expertise beyond regular job duties or is asked to perform substantial other duties related to the recording of an event, then all hours worked on the event by the Sound Department Head shall be paid at the recording rate. If equipment is added for the purpose of recording, the applicable recording rate will be paid for the Sound Department for all hours from load-in to load-out, and will also apply to all crew required for the call from the beginning to the end of the recorded event.

16.1.3 ~~10.1.3~~ When a special event takes place the recording rate shall apply to all crewmembers for all hours worked on the event, from load-in through load-out.

For purposes of this Article, a "special event" is an event that is designed to be recorded, or for which recording is a primary purpose of the event, or which is produced with high production values that are the equivalent of a broadcast event. A single recorded performance during the run of a production, is not considered a special event for purposes of this Article.

16.2 ~~10.2~~ At least one Department Head shall be employed at all times during the installation and operation of recording equipment.

16.3 ~~10.3~~ **Exceptions:** Unless the recording is reproduced **for sale** or transmitted for sale, the recording rate shall not apply for the purposes or under the circumstances listed below:

- a) Recording or transmitting for newscast purposes; provided the broadcast segment is no longer than five (5) minutes.
- b) Promotional activities for the event itself or for the purpose of selling tickets;
- c) Any event or activity presented by non-profit (as defined by Section 501(c) 3 of the Internal Revenue Code) performing, visual, civic, social, religious, or educational organization or institution;
- d) Closed circuit television within any PCPA facility;
- e) The recording and/or transmission for public radio or television for crewmembers other than the Sound Department Head;
- f) Recording for archival or study purposes ~~which utilize a single microphone and/or two (2) fixed cameras,~~ for crewmembers other than the Sound Department Head **as per 16.1.2. For the purposes of this article an archival recording will be defined as the following:**

- **Audio: a board feed utilizing only equipment required for the event.**
- **Video: utilizing no more than two fixed cameras.**

Recording devices that require no interconnection with house systems shall be considered archival or for study purposes.

ARTICLE XVII: Overpayments and Underpayments of Wages and Benefits

17.1 Overpayments

In the event that an employee receives wages or benefits from the Employer to which the employee is not entitled, regardless of whether the employee knew or should have known of the overpayment, the Employer shall recover the overpayment as follows:

17.1.1 The Employer shall notify the employee in writing of the overpayment. The Employer shall notify the Union of overpayments that affect multiple employees or more than \$100 of an individual employee's gross pay. The notification will include supporting information showing that an overpayment exists and the amount of wages and/or benefits to be repaid.

17.1.2 The employee shall respond to the overpayment notification within 14 calendar days. The employee may respond by (1) accepting the employer's proposed repayment schedule by completing and returning a form provided by the Payroll Division; (2) disputing the existence or amount of the overpayment by filing a step 1 written grievance; or (3) requesting consideration of alternative repayment options. At the employee's request, the Union may respond on behalf of the employee.

17.1.3 If the employee does not accept the employer's proposed repayment schedule within 14 days, the employee, the Union (at the request of the employee) and the Employer shall attempt in good faith to reach mutual agreement on the amount of the overpayment and a repayment schedule within 14 days of the employee's response. The parties may extend this timeline by written mutual agreement.

17.1.4 Payroll deduction may be used to recover all or part of an overpayment only if authorized by the employee in writing. At the employee's request, the Union

may authorize the use of payroll deduction on behalf of the employee.

17.1.4.1 The employee (or Union, if applicable) may provide authorization by completing and returning a form provided by the Payroll Division.

17.1.4.2 The Payroll Division may agree to process a payroll deduction if written authorization is provided in a format other than the form provided, but it is not required to do so. At a minimum, an acceptable authorization must clearly indicate acceptance of the payroll deduction method; the total amount to be deducted; the percentage or amount to be deducted per paycheck; and whether the remaining amount may be deducted from the employee's final check if the employee leaves the employer's service before the employer fully recovers the overpayment.

17.1.5 The corresponding tax and other deductions withheld from the original paycheck will be adjusted in accordance with applicable law. For overpayments recovered through payroll deduction, the Employer will use the payroll system to process the corresponding adjustments if, in the Employer's determination, it is lawful and cost-effective to do so.

17.1.6 This Article does not waive the Employer's right to pursue other legal procedures and processes to recover an overpayment made to an employee at any time should the employee and Employer not reach agreement per the procedure outlined in this Article.

17.2 Underpayments

17.2.1 In the event the Employer discovers and agrees that an employee has been underpaid, the Employer shall notify the employee in writing of the underpayment. The employer shall notify the Union of underpayments that affect multiple employees or more than \$100 of an individual employee's gross

pay. The notification will include supporting information showing that an underpayment exists and the amount of wages and/or benefits to be repaid.

17.2.2 The Employer shall correct any such underpayment that was made within a maximum period of two years before the notification.

17.2.3 This section applies only to undisputed underpayments. This section will not apply to disputes over the application of terms of this Agreement.

ARTICLE XVIII: Term and Termination

18.1 ~~11.1~~ Term. This Agreement shall be effective July 1, 2010 ~~2013~~ and shall remain in full force and effect until the 30th day of June 2013 ~~2016~~. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing not later than sixty (60) days prior to the expiration or subsequent anniversary date that it wishes to modify or terminate this Agreement for any reason. In the event that such notice is given, negotiations shall begin no later than thirty- (30) days after said notice.

18.2 ~~11.2~~ Closure. The parties shall have no obligation to bargain with respect to any subjects covered by the terms of this Agreement and closed to further bargaining for the term hereof.

18.3 ~~11.3~~ Amendment. The Agreement expressed herein in writing constitutes the entire agreement between the Employer and the Union, and no oral statement shall add to or supersede any of its provisions. This Agreement may be amended at any time by mutual agreement of the Employer and the Union; any such amendment shall be in writing and signed by both parties.

EXHIBIT A - WAGE CLASSIFICATIONS

MERC - IATSE 28

July 1, 2013 - June 30, 2016

TA'd as to form; rounding issues under review.

DEPARTMENT HEADS: Carpenters, Flyrail, Electrician, Properties and Sound, Orchestra Head and Supertext Operator

	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$25.78	\$12.89	\$26.36	\$13.18	\$26.95	\$13.48
After 8 hours/day or 40 hours/workweek	\$38.67	\$19.34	\$39.54	\$19.77	\$40.43	\$20.22
Between 12:00 midnight and 8:00 AM	\$51.55	\$25.78	\$52.71	\$26.36	\$53.90	\$26.95

DEPARTMENT HEAD RECORDING RATES:

	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$30.68	\$15.34	\$31.37	\$15.68	\$32.07	\$16.04
After 8 hours/day or 40 hours/workweek	\$46.02	\$23.01	\$47.06	\$23.52	\$48.12	\$24.05
Between 12:00 midnight and 8:00 AM	\$61.36	\$30.68	\$62.74	\$31.37	\$64.15	\$32.07

RIGGING SCALE: to be paid to all personnel in Arenas, Auditoriums on open beams, hanging ceilings, and gridirons. When riggers are called to spot lines by moving adjustable loft/head block sheaves on a fixed gridiron and safety devices are installed in conjunction with spotlines, the rigging scale will be paid.

	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$35.28	\$17.64	\$36.07	\$18.03	\$36.88	\$18.44
After 8 hours/day or 40 hours/workweek	\$52.91	\$26.46	\$54.10	\$27.06	\$55.32	\$27.67
Between 12:00 midnight and 8:00 AM	\$70.55	\$35.28	\$72.14	\$36.07	\$73.76	\$36.88

GROUND RIGGER: to be paid to all personnel at the request of the Employer or the show Production Manager, who assist the riggers in assembling and/or disassembling the rigging from the stage or Arena floor.

	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$26.85	\$13.43	\$27.45	\$13.73	\$28.07	\$14.04
After 8 hours/day or 40 hours/workweek	\$40.27	\$20.13	\$41.17	\$20.59	\$42.10	\$21.05
Between 12:00 midnight and 8:00 AM	\$53.69	\$26.85	\$54.90	\$27.45	\$56.13	\$28.07

TRUCK LOADERS:

	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$28.92	\$14.46	\$29.57	\$14.78	\$30.23	\$15.12
After 8 hours/day or 40 hours/workweek	\$43.38	\$21.69	\$44.36	\$22.18	\$45.36	\$22.67
Between 12:00 midnight and 8:00 AM	\$57.84	\$28.92	\$59.14	\$29.57	\$60.48	\$30.23

GRIPS/EXTRA PEOPLE: Carpenters, Flyrail, Electrician, Properties and Sound						
	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$22.16	\$11.08	\$22.66	\$11.33	\$23.17	\$11.59
After 8 hours/day or 40 hours/week	\$33.24	\$16.63	\$33.99	\$17.00	\$34.75	\$17.38
Between 12:00 midnight and 8:00 AM	\$44.33	\$22.16	\$45.32	\$22.66	\$46.34	\$23.17

GRIPS/EXTRA PEOPLE RECORDING RATES:						
	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$26.33	\$13.16	\$26.92	\$13.46	\$27.53	\$13.76
After 8 hours/day or 40 hours/week	\$39.49	\$19.74	\$40.38	\$20.19	\$41.29	\$20.64
Between 12:00 midnight and 8:00 AM	\$52.66	\$26.33	\$53.84	\$26.92	\$55.06	\$27.53

EXTREMELY LOUD/ARENA OR THEATRE ROCK OR COUNTRY WESTERN SHOWS: which are extremely loud. Extremely loud shall be defined as sound of 112 decibels which occurs for 25 percent or more of the show as measured from the employee's work location.

	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$29.14	\$14.57	\$29.72	\$14.86	\$30.32	\$15.15
After 8 hours/day or 40 hours/week	\$43.71	\$21.86	\$44.58	\$22.30	\$45.47	\$22.74
Between 12:00 midnight and 8:00 AM	\$58.28	\$29.14	\$59.45	\$29.72	\$60.64	\$30.32

EXTREMELY LOUD RECORDING RATES:						
	July 1, 2013 - June 30, 2014		July 1, 2013 - June 30, 2015		July 1, 2015 - June 30, 2016	
	Per Hour	Per Half Hour	Per Hour	Per Half Hour	Per Hour	Per Half Hour
Between 8:00 AM and 12:00 midnight	\$34.64	\$17.32	\$35.33	\$17.67	\$36.04	\$18.02
After 8 hours/day or 40 hours/week	\$51.97	\$25.98	\$53.01	\$26.50	\$54.07	\$27.03
Between 12:00 midnight and 8:00 AM	\$69.29	\$34.64	\$70.67	\$35.33	\$72.09	\$36.04

Effective July 1, 2013, the following inactive wage classifications have been removed from Exhibit A:

Special operators

Wardrobe attendants/department head wardrobe/hair and makeup

Dressers

Motion picture operators

LETTER of AGREEMENT
MERC and IATSE Local 28
Article III: Jurisdiction

MERC (Employer) and IATSE Local 28 (Union) agree to the following:

For the duration of the 2013-2016 Collective Bargaining Agreement, Article III (Jurisdiction) section 3.2.2 is hereby amended in the case of Oregon Children's Theatre productions in the Newmark Theatre, in which case reduction of the minimums listed in Article III, section 3.2.2 by one Department Head shall be determined by the Employer after conferring with the Union.

For MERC:

For IATSE Local 28:

Mary Rowe Date
Metro Human Resources Director

Roger Gayton II Date