
MERC Commission Meeting

July 9, 2014
12:30 pm

Portland Expo Center
2060 N. Marine Drive
Room D202/203

REVISED PACKET



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

www.oregonmetro.gov

Metro | *Exposition Recreation Commission*

Agenda **REVISED 7/7/2014**

Meeting: Metro Exposition Recreation Commission Meeting
Date: Wednesday, July 9, 2014
Time: 12:30 -1:25p.m.
Place: Expo Center, Rooms D202/203

CALL TO ORDER

- | | | | |
|--------------|------------|---|-----------------------------|
| 12:30 | 1. | QUORUM CONFIRMED | |
| 12:33 | 2. | OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS | |
| 12:35 | 3. | COMMISSION COMMUNICATIONS | Terry Goldman |
| 12:40 | 4. | METRO DEPUTY COO COMMUNICATIONS | Scott Robinson |
| | 4.1 | Financial Report, pages 2-16 | |
| | 4.2 | Venue Business Reports, pages 18-24 | |
| 12:45 | 5. | TRAVEL PORTLAND THIRD QUARTER 2013-14 REPORT, pages 26-44 | Jeff Miller |
| 1:00 | 6. | ACTION AGENDA | |
| | 6.1 | RESOLUTION 14-19 For the Purpose of Electing MERC Commission Secretary-Treasurer for Fiscal Year 2014-15, page 46. | Terry Goldman |
| | 6.2 | RESOLUTION 14-20 For the purpose of selecting Anderson Roofing Company, Inc. for the Portland Expo Center -“Hall E Lobby Roof Repairs” and authorizing the Metro Deputy Chief Operating Officer to execute a contract with Anderson Roofing Company, Inc, resolution page 47, contract pages 48-102, staff report page 103. | Matthew P. Rotchford |
| | 6.3 | RESOLUTION 14-21 For the purpose of selecting D&R Masonry Restoration, Inc, for the Arlene Schnitzer Concert Hall, "Exterior Façade Maintenance Repairs" and authorizing the Metro Deputy Chief Operating Officer to execute a contract with D&R Masonry Restoration, Inc, resolution page 104, contract pages 105-180, staff report page 181. | Robyn Williams |
| | 6.4 | RESOLUTION 14-22 For the purpose of approving a contract with Cosco Fire Protection for fire and life safety systems maintenance and repair services at the Portland Expo Center, resolution page 182, contract pages 183-199, staff report page 200. | Matthew P. Rotchford |
| | 6.5 | RESOLUTION 14-23 For the purpose of approving and transmitting to the Metro Council a budget amendment to the Metropolitan Exposition Recreation Commission (MERC) Fund for current fiscal year 2014-15 resolution page 201, staff report page 202. | Tim Collier |
| 1:25 | | ADJOURN for MERC FOTA Work Session | |

MERC Commission Meeting

July 9, 2014
12:30 pm

4.1 Financial Report

MAY 2014

FINANCIAL INFORMATION

For Management Purposes only



Date: July 2, 2014

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

From: Ben Rowe – MERC Finance Manager

Re: MERC Financial Information May 2014

MERC Venues Events & Attendance

The narrative and analysis below excludes events and attendance from Cirque de Soleil 2014.

Total MERC Venue events and performances are down 7% (104) FY 2014 year to date, 3% below the two-year historical average, and were the same in May 2014 compared to May 2013. Total MERC venue YTD event attendance is down 7% (115,172) over the previous YTD, 11% below the two-year historical average, and 1% less in May 2014 compared to May 2013. This trend could be for many reasons, most notably the venues are experiencing the tail end of the great recession’s effect on event bookings, consumer spending is still soft, and the adverse impact on attendance caused by the weather events this season.

	2013		2014		Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance
Total MERC Venues						
Year to Date*	1,538	1,733,163	1,434	1,617,991	(104) (7%)	(115,172) (7%)
First Quarter	283	264,137	225	189,996	(58) (20%)	(74,141) (28%)
Second Quarter	493	497,360	476	527,364	(17) (3%)	30,004, 6%
Third Quarter*	418	621,745	407	563,978	(11) (3%)	(57,767) (9%)
May*	173	144,269	173	143,402	(0) (0%)	(867) (1%)
May including Cirque	173	144,269	180	159,137	7, 4%	14,868, 10%

*Excluding Cirque

MERC Venues Revenues & Expense

All revenue and expense numbers include Cirque de Soleil 2014 unless otherwise noted.

Budget Comparison

Total MERC Venue YTD revenues are at budget projections. Total MERC Venue YTD expenses are 5% below budget projections. YTD TLT revenues are \$1.14 million (13%) over the prior year, 4% over budget projections, and 12% up May 2014 over May 2013.

Prior Year Comparison

MERC revenues are 4% above the previous year to date. However, the following revenue items skew these numbers:

- TLT – YTD additional proceeds over FY 2013 YTD - \$1,139,354 (13%)
- Cirque – gross revenue - \$588,421
- Inter-fund loan proceeds - \$1,919,916

Excluding the items listed above, total MERC operating revenues are \$1.8 million or 4% less than the prior year to date and expenses are 2% higher than the previous year.

3-Year Historical Trend Comparison

MERC revenues are 15% and expenses 10% above the three-year historical average. Excluding the additional TLT and one-time items listed above, FY 2014 revenues are 4% and expenses only 3% above the three-year historical average.

Food & Beverage

Food and beverage revenues are \$890,000 (7%) over budget projections, and \$1 million (7%) below prior year to date commensurate with YTD attendance. YTD Food & Beverage margins are 6% below the three-year historical average and 6.5% below the prior YTD. One element influencing this dynamic is that FY 2013 Food & Beverage sales at the Venues were higher than average, most notably at OCC.

Net Operations

Total MERC YTD net operations are \$1.5 million (157%) greater than the three-year historical average, however, 866,485 or 27% less than the prior year.

Historical Actual Comparison FY 2011-2013 to FY 2014

	Fiscal Year:	2011	2012	2013	2014	2011-13	% Diff.	% Diff.
Revenues	YTD	YTD	YTD	YTD	Average	Average	2013	
Food & Beverage	12,409,199	13,028,913	14,178,401	13,140,028	13,205,504	0%	-7%	
Charges for Services	16,808,972	18,343,625	19,524,178	19,431,210	8,225,591	7%	0%	
Lodging Tax	7,309,759	7,681,642	8,644,056	9,783,409	7,878,486	24%	13%	
Other	985,239	1,167,073	1,557,209	3,391,416	1,236,507	174%	118%	
Total Revenue	37,513,169	40,221,252	43,903,844	45,746,064	40,546,088	13%	4%	
Expenses								
Food & Beverage	10,094,203	10,840,457	11,501,977	11,507,274	10,812,212	6%	0%	
Personnel Services	15,817,544	15,859,853	15,254,299	15,051,451	15,643,899	-4%	-1%	
Materials & Services	8,678,512	9,245,291	9,528,079	12,387,796	9,150,627	35%	30%	
Other	3,576,420	4,089,617	4,373,971	4,420,509	4,013,336	10%	1%	
Total Expenses	38,166,679	40,035,217	40,658,326	43,367,031	39,620,074	9.5%	6.7%	
Net Operations	(653,510)	186,035	3,245,518	2,379,033	926,014	157%	-27%	
Food & Beverage Margins	19%	17%	19%	12%	18%	-6%	-6%	

Oregon Convention Center

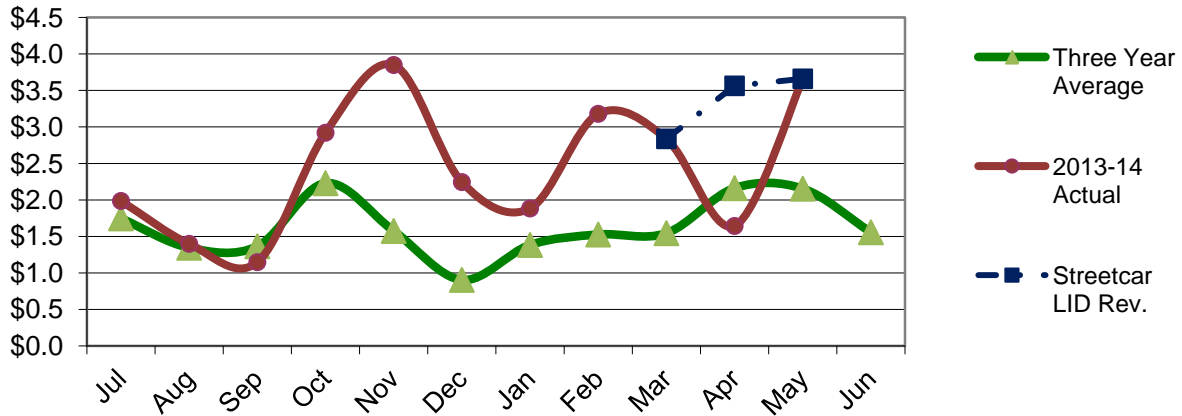
There was the same number of events in May 2014 as in May 2013. Attendance was 32,000 more in May 2014 over 2013 because of two major events (Oregon Potter's Association and Gathering of the Guilds) that were held in May 2014 rather than in April 2013. YTD, OCC attendance is 22,000 (4%) less than the prior year and the two-year historical average. OCC revenues are 1.5% over and expenses 6.5% under YTD budget projections. Excluding the Street Car revenue and expense and additional TLT, OCC revenues are \$2.0 million (7%) below, and expenses 2% above the prior year. OCC revenues in May are 70% above and expenditures 13% above the month of May three-year historical average, this is due to the large influx of TLT (\$1.7 million) in May. OCC received a \$1.9 million inter-fund loan from the General Fund in April and made a corresponding \$1.9 million Portland Street Car Local Improvement District (LID) assessment payment in April as indicated in the graph below. OCC will repay this loan over ten years. OCC Food and Beverage margins are less than 1% for the month of May and 11% YTD, 8% less than the prior year.

Highest Grossing Events

Event	Gross Revenue	% of May Revenue
Joint Aquatic Sciences Meeting	\$507,134	27%
SU15 CAD	273,572	14%
UNFI 2014 West Winter Holiday Table Top Show	81,557	4%
A Gathering of the Guilds	49,985	3%
All other Events	988,504	52%
Total	\$1,900,751	100%

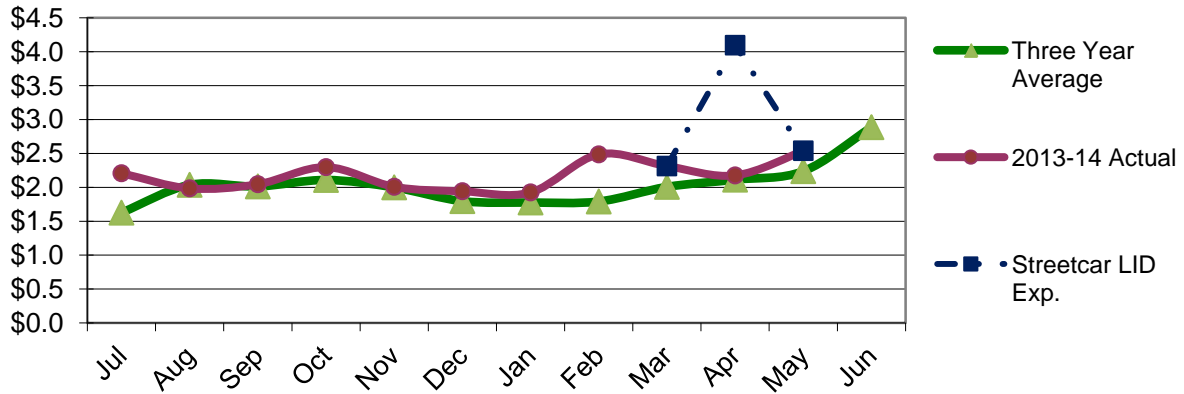
OCC Program Revenues by Month

Shown in Millions



OCC Program Expense by Month

Shown in Millions



Portland's Centers for the Arts

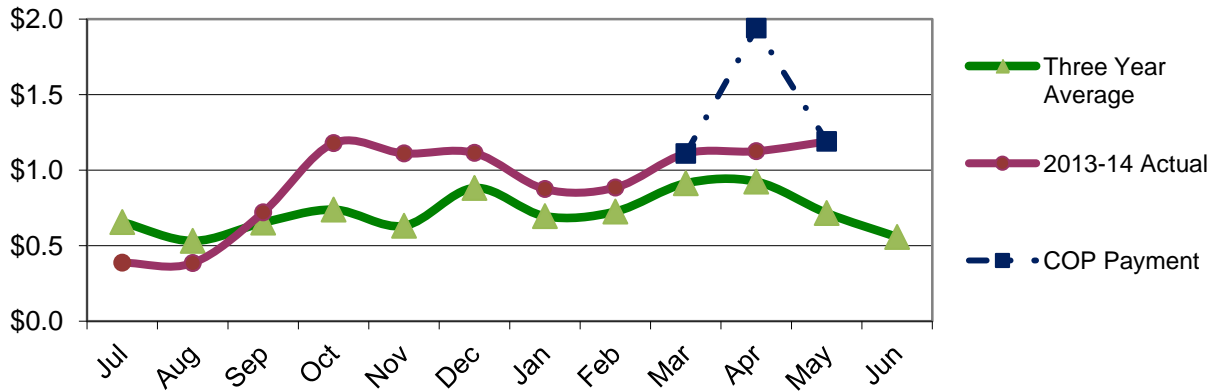
There were 5 less events and 14,000 less attendance at the Portland's Centers for the Arts in May 2014 than in May 2013. Portland's YTD events and attendance are 4% lower than the previous year. Portland's events are 3% higher and attendance 11% lower than the two-year historical average. Portland's YTD revenues are 7% above, and expenses 1% above budget projections. Portland's revenues are 3% above and expenses 5% above the prior year. Portland's revenues are 40% above and expenses 23% above the month of May three-year historical average. In April, Portland's received it's approximately \$815,000 annual contribution from the City of Portland (COP) for facility maintenance as indicated in the graph below. Portland's Food and Beverage margins are 2% for the month of May and 18% YTD, 3% lower than the previous year to date.

Highest Grossing Events

Event	Gross Revenue	% of May Revenue
Book of Mormon Presale (Performances: 07.07.14 – 07.20.14)	\$318,449	33%
Pirates of Penzance	101,750	11%
Rodriguez	42,857	4%
Joshua Bell Plays Sibelius	40,197	4%
All other Events	452,458	47%
Total	\$955,711	100%

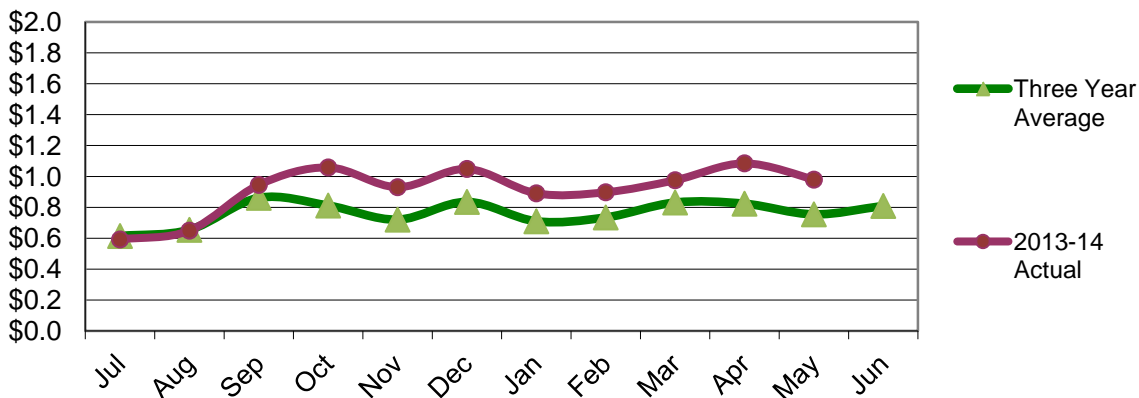
P5CA Program Revenue by Month

Shown in Millions



P5CA Program Expense by Month

Shown in Millions



Portland Expo Center

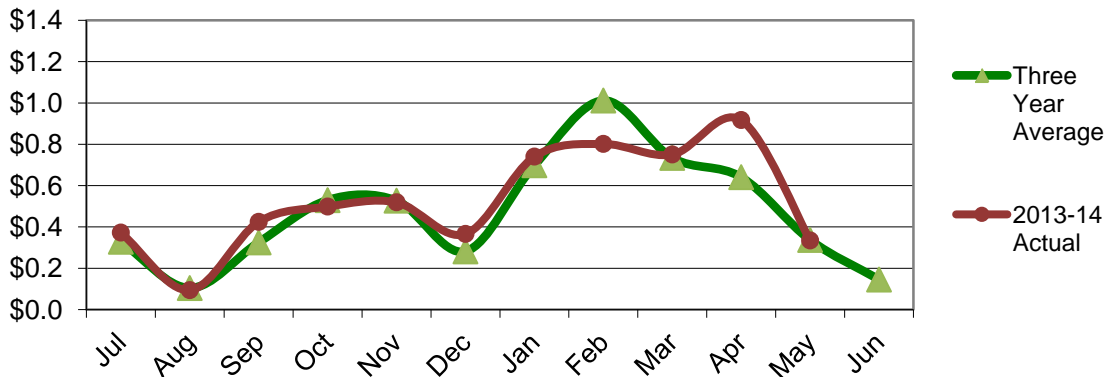
Excluding Cirque, there were 5 more events at Expo in May than the prior year. However, attendance was 18,200 or 58% less than the prior year. Excluding Cirque revenues, Expo's May gross revenue was 33% below the three-year historical average for the month and 5% below a three-year historical YTD average. Excluding Cirque, Expo revenues are 6% below prior year to date, due in large part to the weather events in February. Including Cirque, Expo revenues are 1% below YTD budget projections. Expenses are 4% below budget projections, 5% higher than the previous year to date, and 17% higher than the three-year historical average. Expo makes its annual debt service payments (\$1.2 million combined) for Hall D in November and May as shown in the graph below. Expo's YTD Food & Beverage margin has dramatically picked up, thanks in large part to Cirque, and is a healthy 14.5% YTD. Expo's Food & Beverage margin for the month of May is 6%.

Highest Grossing Events

Event	Gross Revenue	% of May Revenue
Totem by Cirque du Soleil	\$113,814	33%
2014 Northwest Fire & Rescue Expo	53,958	16%
Rose City Gun & Knife Show	32,379	10%
Food Services of America Annual Food Show	25,794	8%
All other Events	114,484	34%
Total	\$340,428	100%

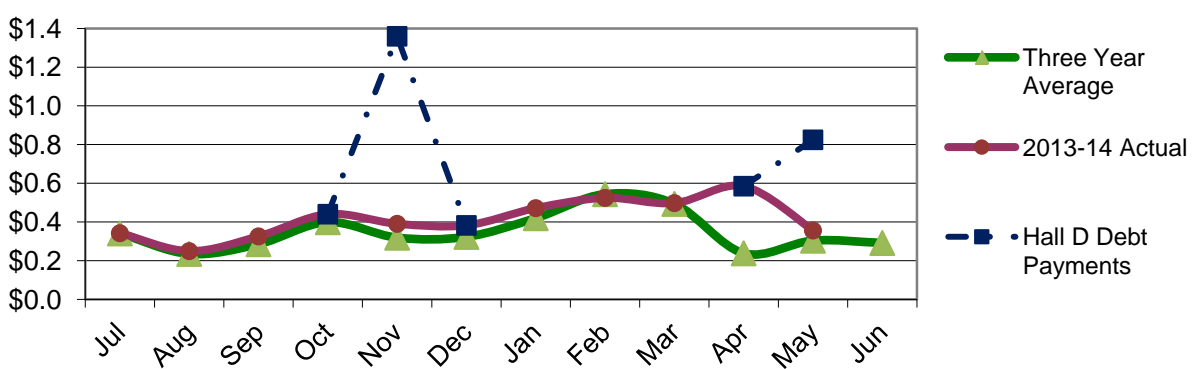
Expo Program Revenue by Month

Shown in Millions



Expo Program Expense by Month

Shown in Millions



MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

All Departments

May 2014

	Current Month Actual	Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	Annual Budget	% of Annual Budget
Operations						
Charges for Services	2,074,461	19,431,210	19,524,178	99.52%	19,076,002	101.86%
Contributions from Governments	-	814,794	798,035	102.10%	816,020	99.85%
Enhanced Marketing VDF	-	-	-	0.00%	455,268	0.00%
Food and Beverage Revenue	1,187,121	13,140,028	14,178,401	92.68%	13,360,725	98.35%
Grants	-	32,422	-	0.00%	-	0.00%
Interest Earnings	9,655	115,823	87,356	132.59%	76,142	152.11%
Interfund Loans	-	1,919,916	-	0.00%	2,200,000	87.27%
Lodging Tax	1,917,882	9,783,409	8,644,056	113.18%	10,280,593	95.16%
Miscellaneous Revenue	(4,126)	89,828	107,348	83.68%	81,805	109.81%
Transfers-R	-	418,633	564,470	74.16%	418,633	100.00%
Visitor Development Fund Alloc	-	-	-	0.00%	2,965,634	0.00%
Total Revenues	5,184,993	45,746,064	43,903,844	104.20%	49,730,822	91.99%
Capital Outlay	-	-	18,993	0.00%	25,000	0.00%
Food & Beverage Services	1,182,141	11,507,274	11,501,977	100.05%	11,389,704	101.03%
Materials and Services	1,201,659	12,387,796	9,528,079	130.01%	14,408,405	85.98%
Personnel Services	1,335,861	15,051,451	15,254,299	98.67%	17,741,183	84.84%
Transfers-E	474,830	4,420,509	4,354,978	101.50%	5,131,804	86.14%
Visitor Development Marketing	-	-	-	0.00%	1,344,719	0.00%
Total Expenditures	4,194,490	43,367,031	40,658,326	106.66%	50,040,815	86.66%
Net Operations	990,502	2,379,033	3,245,518		(309,993)	
Capital						
Contributions from Private Sources	-	85,000	-	0.00%	75,000	113.33%
Grants	-	229,460	123,833	185.30%	494,003	46.45%
Other Financing Sources	-	5,190	-	0.00%	-	0.00%
Transfers-R	-	-	-	0.00%	-	0.00%
Total Revenues	-	319,650	123,833	258.13%	569,003	56.18%
Capital Outlay	419,241	2,732,171	2,352,587	116.13%	5,802,617	47.09%
Total Expenditures	419,241	2,732,171	2,352,587	116.13%	5,802,617	47.09%
Net Capital	(419,241)	(2,412,521)	(2,228,754)		(5,233,614)	
	571,262	(33,488)	1,016,764		(5,543,607)	

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Convention Center Operating Fund

May 2014

	Current Month Actual	Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	Annual Budget	% of Annual Budget
Operations						
Charges for Services	953,482	8,066,354	8,917,797	90.45%	7,749,264	104.09%
Enhanced Marketing VDF	-	-	-	0.00%	455,268	0.00%
Food and Beverage Revenue	968,459	9,344,009	10,379,866	90.02%	9,300,000	100.47%
Grants	-	20,739	-	0.00%	-	0.00%
Interest Earnings	4,059	44,036	27,361	160.94%	23,890	184.33%
Interfund Loans	-	1,919,916	-	0.00%	2,200,000	87.27%
Lodging Tax	1,739,135	8,871,602	7,535,865	117.73%	8,978,088	98.81%
Miscellaneous Revenue	(5,625)	19,768	23,202	85.20%	11,000	179.71%
Transfers-R	-	418,633	544,307	76.91%	(223,432)	-187.36%
Visitor Development Fund Alloc	-	-	-	0.00%	2,315,251	0.00%
Total Revenues	3,659,510	28,705,057	27,428,398	104.65%	30,809,329	93.17%
Capital Outlay	-	-	18,993	0.00%	-	0.00%
Food & Beverage Services	971,824	8,324,897	8,394,408	99.17%	8,050,225	103.41%
Materials and Services	697,561	8,213,970	5,855,319	140.28%	9,351,393	87.84%
Personnel Services	728,761	7,886,087	7,855,315	100.39%	9,674,777	81.51%
Transfers-E	140,879	1,859,109	1,832,867	101.43%	2,470,795	75.24%
Visitor Development Marketing	-	-	-	0.00%	1,330,719	0.00%
Total Expenditures	2,539,025	26,284,063	23,956,902	109.71%	30,877,909	85.12%
Net Operations	1,120,485	2,420,994	3,471,496		(68,580)	
Capital						
Grants	-	-	123,833	0.00%	60,000	0.00%
Transfers-R	-	-	90,000	0.00%	615,000	0.00%
Total Revenues	-	-	213,833	0.00%	675,000	0.00%
Capital Outlay	336,473	1,760,389	1,475,511	119.31%	3,424,814	51.40%
Total Expenditures	336,473	1,760,389	1,475,511	119.31%	3,424,814	51.40%
Net Capital	(336,473)	(1,760,389)	(1,261,678)		(2,749,814)	
Fund Balance Inc (Dec)	784,012	660,605	2,209,817		(2,818,394)	

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Portland's 5 Centers for the Arts Fund

May 2014

	Current Month Actual	Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	Annual Budget	% of Annual Budget
Operations						
Charges for Services	896,842	7,487,509	6,883,266	108.78%	6,969,394	107.43%
Contributions from Governments	-	814,794	798,035	102.10%	816,020	99.85%
Food and Beverage Revenue	110,466	1,887,769	1,962,496	96.19%	1,911,562	98.76%
Interest Earnings	3,400	50,835	42,046	120.90%	39,420	128.96%
Lodging Tax	178,747	911,807	1,108,191	82.28%	1,302,505	70.00%
Miscellaneous Revenue	635	52,310	65,811	79.48%	50,260	104.08%
Transfers-R	-	-	16,038	0.00%	(388,603)	0.00%
Visitor Development Fund Alloc	-	-	-	0.00%	650,383	0.00%
Total Revenues	1,190,089	11,205,023	10,875,884	103.03%	11,350,941	98.71%
Food & Beverage Services	108,280	1,550,866	1,540,660	100.66%	1,647,214	94.15%
Materials and Services	360,905	2,755,430	2,382,023	115.68%	2,821,985	97.64%
Personnel Services	432,978	5,083,128	4,998,604	101.69%	5,623,884	90.38%
Transfers-E	77,365	1,067,673	1,046,560	102.02%	1,145,036	93.24%
Total Expenditures	979,529	10,457,098	9,967,847	104.91%	11,238,119	93.05%
Net Operations	210,560	747,925	908,037		112,822	
Capital						
Contributions from Private Sources	-	85,000	-	0.00%	75,000	113.33%
Grants	-	35,000	-	0.00%	-	0.00%
Total Revenues	-	120,000	-	0.00%	75,000	160.00%
Capital Outlay	10,736	336,098	402,748	83.45%	916,000	36.69%
Total Expenditures	10,736	336,098	402,748	83.45%	916,000	36.69%
Net Capital	(10,736)	(216,098)	(402,748)		(841,000)	
Fund Balance Inc (Dec)	199,825	531,827	505,289		(728,178)	

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Expo Fund

May 2014

	Current Month Actual	Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	Annual Budget	% of Annual Budget
Operations						
Charges for Services	224,137	3,877,322	3,723,115	104.14%	4,357,344	88.98%
Food and Beverage Revenue	108,196	1,908,250	1,836,039	103.93%	2,149,163	88.79%
Grants	-	11,683	-	0.00%	-	0.00%
Interest Earnings	1,257	14,373	11,266	127.58%	9,082	158.26%
Miscellaneous Revenue	864	17,596	18,335	95.97%	20,545	85.64%
Transfers-R	-	-	4,125	0.00%	(111,875)	0.00%
Total Revenues	334,454	5,829,225	5,592,880	104.23%	6,424,259	90.74%
Capital Outlay	-	-	-	0.00%	25,000	0.00%
Food & Beverage Services	102,037	1,631,511	1,566,909	104.12%	1,692,265	96.41%
Materials and Services	119,780	1,239,552	1,085,053	114.24%	1,692,146	73.25%
Personnel Services	112,114	1,405,066	1,383,524	101.56%	1,655,148	84.89%
Transfers-E	256,586	1,493,727	1,475,551	101.23%	1,515,973	98.53%
Visitor Development Marketing	-	-	-	0.00%	14,000	0.00%
Total Expenditures	590,517	5,769,856	5,511,038	104.70%	6,594,532	87.49%
Net Operations	(256,062)	59,368	81,842		(170,273)	
Capital						
Grants	-	194,460	-	0.00%	434,003	44.81%
Other Financing Sources	-	5,190	-	0.00%	-	0.00%
Transfers-R	-	-	270,000	0.00%	165,000	0.00%
Total Revenues	-	199,650	270,000	73.94%	599,003	33.33%
Capital Outlay	34,293	597,944	454,560	131.54%	1,169,003	51.15%
Total Expenditures	34,293	597,944	454,560	131.54%	1,169,003	51.15%
Net Capital	(34,293)	(398,294)	(184,560)		(570,000)	
Fund Balance Inc (Dec)	(290,355)	(338,926)	(102,718)		(740,273)	

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

MERC Admin Sub Fund

May 2014

	Current Month Actual	Current Year to Date Actual	Prior Year to Date Actual	% of Prior Year	Annual Budget	% of Annual Budget
Operations						
Charges for Services	-	25	-	0.00%	-	0.00%
Interest Earnings	940	6,579	6,682	98.45%	3,750	175.44%
Miscellaneous Revenue	-	155	-	0.00%	-	0.00%
Transfers-R	-	-	-	0.00%	1,142,543	0.00%
Total Revenues	940	6,759	6,682	101.14%	1,146,293	0.59%
Materials and Services	23,413	178,843	205,684	86.95%	542,881	32.94%
Personnel Services	62,007	677,170	1,016,855	66.59%	787,374	86.00%
Total Expenditures	85,420	856,014	1,222,539	70.02%	1,330,255	64.35%
Net Operations	(84,480)	(849,255)	(1,215,857)		(183,962)	
Capital						
Transfers-R	-	-	(360,000)	0.00%	(780,000)	0.00%
Total Revenues	-	-	(360,000)	0.00%	(780,000)	0.00%
Capital Outlay	37,740	37,740	19,768	190.91%	292,800	12.89%
Total Expenditures	37,740	37,740	19,768	190.91%	292,800	12.89%
Net Capital	(37,740)	(37,740)	(379,768)		(1,072,800)	
Fund Balance Inc (Dec)	(122,220)	(886,994)	(1,595,625)		(1,256,762)	

**MERC Visitor Venues
Events-Performances-Attendance
FY 2013-14**

OCC	May 2013		May 2014		Net Change from Prior Year		May 2014	
	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Tradeshows/Conventions	5	14,100	6	10,319	1	(3,781)	973,647	51%
Consumer Public Shows	5	10,402	6	38,936	1	28,534	162,002	9%
Miscellaneous					-	-		0%
Miscellaneous -In-House	14	337	9	187	(5)	(150)	238,547	13%
Meetings	16	2,382	20	9,750	4	7,368	186,208	10%
Catering	13	5,713	12	5,668	(1)	(45)	340,346	18%
Totals	53	32,934	53	64,860	-	31,926	\$ 1,900,750	100%

Expo Center	May 2013		May 2014		Net Change from Prior Year		May 2014	
	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Consumer Public Shows	2	13,654	4	6,982	2	(6,672)	85,359	25%
<i>Cirque Du Soleil</i>	-	-	7	15,735	7	15,735	113,814	33%
Miscellaneous	1	2,250	2	2,358	1	108	53,773	16%
Meetings	1	20	2	38	1	18	267	0%
Catering	-	-	1	160	1	160	7,464	2%
Tradeshows/Conventions	2	15,546	2	3,730	-	(11,816)	79,751	23%
Totals	6	31,470	11	13,268	5	(18,202)	\$ 226,614	100%
Totals w/Cirque du Soleil	6	31,470	18	29,003	12	(2,467)	\$ 340,428	100%

Portland '5	May 2013		May 2014		Net Change from Prior Year		May 2014	
	Performances	Attendance	Performances	Attendance	Performances	Attendance	Revenue	% of Rev.
Commercial (Non-Broadway)	12	16,960	2	2,516	(10)	(14,444)	177,027	19%
Broadway	4	6,854	-	-	(4)	(6,854)	328,590	34%
Resident Company	29	25,000	40	40,116	11	15,116	173,691	18%
Student	43	23,931	33	14,097	(10)	(9,834)	23,209	2%
Non-Profit	24	6,796	31	8,337	7	1,541	251,463	26%
Miscellaneous	2	324	3	208	1	(116)	1,730	0%
Totals	114	79,865	109	65,274	(5)	(14,591)	\$ 955,710	100%

**MERC Visitor Venues
Events-Performances-Attendance
FY 2013-14**

OCC	FY 12-13		FY 13-14		Net Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance
Tradeshows/Conventions	82	172,536	71	127,783	(11)	(44,753)
Consumer Public Shows	76	295,323	68	329,829	(8)	34,506
Miscellaneous	-	-	-	-	-	-
Miscellaneous -In-House	168	22,108	123	2,409	(45)	(19,699)
Meetings	149	53,484	142	58,064	(7)	4,580
Catering	76	44,041	84	46,538	8	2,497
Totals	551	587,492	488	564,623	(63)	(22,869)

Expo Center	FY 12-13		FY 13-14		Net Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance
Consumer Public Shows	47	372,543	50	318,046	3	(54,497)
<i>Cirque Du Soleil</i>	-	-	46	96,604	46	96,604
Miscellaneous	29	12,095	24	14,687	(5)	2,592
Meetings	16	514	16	459	-	(55)
Catering	2	2,214	2	1,210	-	(1,004)
Tradeshows/Conventions	9	25,497	9	15,842	-	(9,655)
Totals	103	412,863	101	350,244	(2)	(62,619)
Totals w/Cirque du Soleil	103	412,863	147	446,848	44	33,985

PCPA	FY 12-13		FY 13-14		Net Change from Prior Year	
	Performances	Attendance	Performances	Attendance	Performances	Attendance
Commercial (Non-Broadway)	112	118,942	117	119,951	5	1,009
Broadway	71	132,764	45	88,598	(26)	(44,166)
Resident Company	257	266,768	221	271,161	(36)	4,393
Student	184	96,549	165	94,724	(19)	(1,825)
Non-Profit	228	109,666	261	120,208	33	10,542
Miscellaneous	32	8,119	36	8,482	4	363
Totals	884	732,808	845	703,124	(39)	(29,684)

MERC Food and Beverage Margins

May 2014

	Current Month Actual	Current Year to Date	Prior Year to Date Actual	Annual Budget
Convention Center Operating Fund				
Food and Beverage Revenue	968,459	9,344,009	10,379,866	9,300,000
Food & Beverage Services	971,824	8,324,897	8,394,408	8,050,225
Food and Beverage Gross Margin	(3,364)	1,019,112	1,985,458	1,249,775
Food and Beverage Gross Margin %	-0.35%	10.91%	19.13%	13.44%
Portland'5 Centers for the Arts Fund				
Food and Beverage Revenue	110,466	1,887,769	1,962,496	1,911,562
Food & Beverage Services	108,280	1,550,866	1,540,660	1,647,214
Food and Beverage Gross Margin	2,186	336,903	421,836	264,348
Food and Beverage Gross Margin %	1.98%	17.85%	21.49%	13.83%
Expo Fund				
Food and Beverage Revenue	108,196	1,908,250	1,836,039	2,149,163
Food & Beverage Services	102,037	1,631,511	1,566,909	1,692,265
Food and Beverage Gross Margin	6,159	276,740	269,130	456,898
Food and Beverage Gross Margin %	5.69%	14.50%	14.66%	21.26%
MERC Fund Total				
Food and Beverage Revenue	1,187,121	13,140,028	14,178,401	13,360,725
Food & Beverage Services	1,182,141	11,507,274	11,501,977	11,389,704
Food and Beverage Gross Margin	4,980	1,632,754	2,676,424	1,971,021
Food and Beverage Gross Margin %	0.42%	12.43%	18.88%	14.75%

MERC Statement of Fund Balances and Reserves

May 2014

	Current Year to Date Actual	Prior Year to Date Actual	Annual Budget
<u>Oregon Convention Center</u>			
Beginning Fund Balance	14,415,732	11,058,549	10,467,977
Fund Balance Inc (Dec)	660,605	2,209,817	(2,318,394)
Ending Fund Balance	15,076,337	13,268,366	8,149,583
Contingency - Operating			1,346,726
Contingency - New Capital-Business Strategy			1,415,078
Contingency - Renewal & Replacement			2,584,922
Unappropriated Balance - Stabilization Reserve			260,000
Unappropriated Balance - Renewal & Replacement Reserve			2,542,857
Ending Fund Balance			8,149,583
<u>Portland'5 Centers for the Arts</u>			
Beginning Fund Balance	9,020,155	8,445,301	7,971,363
Fund Balance Inc (Dec)	531,827	505,289	(728,178)
Ending Fund Balance	9,551,982	8,950,590	7,243,185
Contingency - Operating			300,000
Contingency - New Capital-Business Strategy			2,039,685
Contingency - Renewal & Replacement			
Unappropriated Balance - Stabilization Reserve			174,500
Unappropriated Balance - Renewal & Replacement Reserve			4,729,000
Ending Fund Balance			7,243,185
<u>Expo</u>			
Beginning Fund Balance	3,935,352	4,310,142	3,831,492
Fund Balance Inc (Dec)	(338,294)	(102,718)	(736,008)
Ending Fund Balance	3,597,058	4,207,424	3,095,484
Contingency - Operating			364,000
Contingency - New Capital-Business Strategy			2,185,404
Unappropriated Balance - Stabilization Reserve			186,000
Unappropriated Balance - Renewal & Replacement Reserve			360,000
Ending Fund Balance			3,095,404
<u>MERC Administration</u>			
Beginning Fund Balance	3,043,123	2,347,725	1,940,725
Fund Balance Inc (Dec)	886,994	1,595,625	(1,256,762)
Ending Fund Balance	3,930,117	3,943,350	683,963
Contingency - Operating			(88,627)
Contingency - Other			254,605
Unappropriated Balance - Renewal & Replacement Reserve			517,985
Ending Fund Balance			683,963

MERC Commission Meeting

July 9, 2014
12:30 pm

4.2 Venue Business Reports

Oregon Convention Center Monthly Business Report
July 9, 2014

DEPARTMENT	Administration
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The OCC Room Block Project team finalized the Development and Finance Agreement with Mortenson Development and Hyatt Hotels. Metro Council approved the completed documents through a unanimous vote leading the teams to move immediately into pre-development work.

Last week we installed our “green walls” in Ginkoberry Lane. These 5 wall panels showcase OCC’s sustainability initiatives such as energy reduction, waste reduction, LEED building standards, storm water and integrated pest management practices, and community engagement. Come by and take a look soon!

DEPARTMENT SPECIFIC	
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The OCC earned record parking revenues for the month of May, surpassing previous highs of the last two May’s by 36 percent. Current fiscal year parking totals are running ahead of last year by slightly over five percent, despite the nearly \$50,000 loss due to the Auto Show weather.

The OCC Advisory Committee met in May. Major topic was to discuss how OCC could better engage our clients to share in our sustainability goals while they have their events at OCC. Some great suggestions, particularly as they relate to creating a menu of suggestions/options for the client’s consideration and depending on level of participation, formal acknowledgement.

COMPLETED EVENTS	
-------------------------	--

Society of Government Meeting Planners:

- The OCC co-hosted the event with Travel Portland and the entire Portland Hospitality community.
- More than 300 planners came in to town to experience Portland.
- The event exhibited how well Portland, both as a destination and community, welcomes government groups.
- The perfect weather held out for the tradeshow and opening reception hosted at the OCC. A flawless event that was very well received by all!

Nike hosted a design meeting called SU15 CAF:

- The event was attended by 600 people over four days.

- The OCC earned \$293,797 in event revenue and \$179,000 in food and beverage revenue.

Joint Aquatic Sciences:

- Four associations co-located for this first ever joint conference.
- The event was attended by 3,000+ attendees.
- The OCC earned \$532,345 in event revenue and \$295,000 in food and beverage revenue.

United Natural Food Inc

- This returning tradeshow displayed new natural food products for sale.
- The event was attended by 2,737 buyers.
- The OCC contributed tremendous efforts following show to collect food for the Oregon Food Bank.

FUTURE BOOKINGS	
------------------------	--

US Travel Association

- August 2015
- The event has an expected 700 attendees and 1,766 room nights.

IEEE Photovoltaic Specialists

- June 2016
- The event has an expected 2,000 attendees and 3,521 room nights.

International Society for Molecular Plant-Microbe Interactions

- July 2016
- The event has an expected 1,300 attendees and 2,675 room nights.

MERC Commission Monthly Business Report

July 9



May and June Happenings

The Expo Center Market and Feasibility Study project consultants, Hunden Strategic Partners, will be submitting a preliminary draft of their report by close of business today, July 9. This report will indicate the direction of their recommendations based on the analysis they have conducted to date. We look forward to working with Hunden in finalizing these recommendations in preparation for the discussion on the study at the joint MERC/Metro Council work session on August 5.

Last week Expo broke ground on the new and unique Stormwater Green Wall. Built in partnership with the City of Portland Bureau of Environmental Services, and a grant from the EPA, this will showcase a blending of science, art and sustainability. It is our goal that this will assist Expo in reducing stormwater fees with continued discussions with BES. Stop by and watch the progress as the wall on the north side of Hall E is transformed.

The Expo Advisory Committee met in May and members heard updates on the Expo financials; Cirque du Soleil final numbers; an ongoing history project, and upcoming sales and marketing initiatives.

The Expo Operations Department staff increased Expo's diversion rate to 54% for FY14. Standout events included the Spring Home and Garden Show, CABA Classic and Food Services of America.

Two longtime Expo staff members, Jim Caldwell, Operations Manager (23 years) and Ken Barton Ticket and Parking Services Manager (25 years) announced their retirements scheduled for October and November of this year. Both gentlemen are integral to the operation of the Expo Center and they will be greatly missed. Please congratulate them on their outstanding years of public service.



Expo May and June Event Information

May event re-cap:

- We saw a \$35,000 increase in catering mostly due to the NW Fire & Rescue Expo moving their event to May from November. The show is under new management by Amy Patrick, who also runs the NW Agricultural Show
- Food Services of America hosted another successful event in the beginning of May. With the goal of zero waste in mind, they worked to achieve a 72 percent diversion rate. Client contracted with the environmental sciences department at Portland State University to help with their efforts.
- We also hosted the Portland Swap Meet who hosted their 50th Anniversary Banquet at Expo. Our longtime client was ecstatic about the entire event. They were particularly touched at the effort that Expo staff went to ensure that the event happened at Expo and was a special experience for their members.
- The Expo Center welcomed 2 brand new events to our calendar line-up: The Sustainable Preparedness Expo and the Hindu Educational and Cultural Society of America. Both groups had an excellent experience at Expo and are interested in coming back for future events.

June Event re-cap:

In addition to our regularly scheduled June events, Expo booked 2 new events:

Paul Evert's RV Country Show

- New 2 weekend outdoor RV Show at Expo
- Resulted in over \$21,000 in rental and \$3,500 in parking revenue
- Promoter had an excellent experience and outpaced attendance forecast and sales goals for the show.

Nike Photo shoot

- 2 day commercial/editorial shoot for Nike Running
- Resulted in almost \$5,000 in rental
- Excellent opportunity to continue our relationship with Nike and Carlos Serrao Photography

We also saw excellent gains with our popular outdoor concert:

2014 Vans Warped Tour

- We saw an increase of 17 percent in ticket sales over the 2013 event
- Concessions were up by \$20,000 over last year
- Staff worked hard to establish stronger relationships with the City of Portland and local neighborhood associations in regards to noise variance. Our advance work resulted in no noise complaints whatsoever from the outdoor event.

Collectors West Gun & Knife Show

- With the recent tragedy at Reynolds High School, Expo was diligent to prepare for our previously scheduled June gun show.
- We are pleased to report that we had a safe, successful and otherwise uneventful show.



Future Bookings

Expo has a fantastic fall line-up for FY 15:

Magic the Gathering Pro Tour (August 2014)

- Anticipating over 350 professional players for a 3 day tournament
- Will have revenue impacts of almost \$30,000
- While the tournament travels internationally, this will be its first stop in Portland

Timber Processing & Energy Expo (October 2014)

- Anticipating over 2,500 professionals from the timber and energy industry
- Will have revenue impacts of over \$50,000
- This is a return client that visits Portland bi-annually

PGA Merchandise Show

- Anticipating over 500 golf professionals from the Northwest Region
- Will have revenue impacts of over \$20,000
- This is a return client who has increased their shows at Expo from bi-annually to every year.

Expo has also been successful in booking three ride & drives and two Hispanic dances in Q1. We are looking for a robust event line-up in FY15.



Capital Projects

- Halls A and B lighting project is 99:9% complete with minor modifications made to the control systems
- Halls D and E lighting project is delayed as final details for lighting module build slowed production. Items are onsite prior to June 30, with installation now scheduled for August 2015.
- Golf Cart (6 seater) is onsite as of June 30
- AV Truss and Drape, in partnership with OCC, is onsite at OCC as of June 30
- Halls A/B/C Roofing analysis completed and moving ahead with D/E report to complete full roof analysis



Community

- Matthew Rotchford and Jim Caldwell participated in PES/Blue Lake Cleanup event
- Alicia Crawford Loos volunteered for activities related to City visit of Government Meeting Planners via Travel Portland.
- Alicia Crawford Loos and Jim Caldwell participated in the Metro's MWESB Open House

Portland'5 Centers for the Arts
Monthly Business Report
July 9th, 2014

Hired new Director of Booking and Sales-Tom Sessa. Tom is the former GM for the Aladdin Theater where he over saw all operations, marketing and scheduling of shows. He holds a BA in music performance and has played as a percussionist for the Oregon Symphony, Oregon Ballet Orchestra and Portland Opera Orchestra. He is well positioned to help P5 diversify their revenue streams by co-promoting and promoting events.

Music on Main opens 5pm, July 9th with Billie and the Holidays-featuring Liz Vice. Please let Robyn know if you want a table reserved for you for any Music on Main event. Please note that tables can only be held till 5:30 when they will be released to the public.

Robyn attended the Broadway League Road Conference meeting in May. Discussions centered around marketing Broadway shows, demographics of Broadway and social media usage. She also saw several new shows that will be going out on the road in the next year or two. Watch for Rocky (based on the movie), Aladdin (Disney production that is quite spectacular) and Beautiful (the musical based on Carol King).

Robyn concluded her 15th and final year as an instructor at IAVM's Venue Management School where she originated and taught Stage Operations and Communications Challenges. She is a graduate of the school, a past regent and chair of the regents and recipient of the Ray Ward Award-the school's top honor. Bill Looker from the Events Department graduated from the school, Jason Blackwell (Operations) graduated from the Graduate Institute and Stephanie Parish (Operations) completed her first of her two years. New part timer, Annie Salamunovich was an intern at the school. There are currently 12 graduates from the school working at P5.

The Dew Tour that is taking place on Broadway as well as Main Street, August 16-17, has fully leased Schnitzer Concert Hall and Antoinette Hatfield so they could have private use of both venues if they like. This totals about \$40,000 in rent.

Staff have been busy working on various details on the International Association of Venue Manager's annual conference taking place here the end of July. Several staff are participating on panels or organizing off site activities. The closing event will be held on

Main Street as well as in the Schnitz and Hatfield lobbies. This event will feature about \$85,000 in catering.

Food and beverage revenues at P5 have hit the \$2 million mark for the 3rd year in a row. Budget was \$1.9 million.

Summer intern Erin Empey started July 1st. She is a student in the master of arts administration program at the University of Oregon. She will be working on a project to consolidate and organized data and photographs that are sitting in various computer drives. She will also be assisting with Summer Art on Main and Music on Main as well spending time in various departments in order to get a better understanding of the components that make up performing arts venue management.

Our summer is off to a better than average start. In addition to the IAVM closing party we have a number of good events in July: Steely Dan, two weeks of Book of Mormon that are virtually sold out, the World Domination Summit, Michael Jackson's History show and Doris Kearns Goodwin lecture. For August we have Broken Bells, Counting Crows, the Dew Tour, The Voice and Queen: It's a kind of Magic.

Summer is also the time we must get a number of capital and maintenance projects completed before we get too busy. Currently we have the following underway:

Schnitzer

- HVAC maintenance

Newmark

- Repainting seating area floor

Winningstad

- Interior painting and touch ups

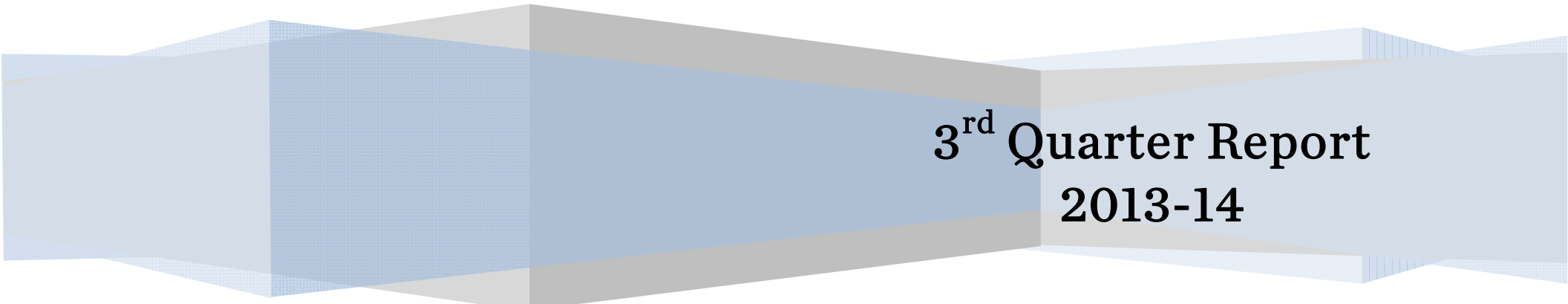
Hatfield Hall

- Large HVAC and lighting controls replacement
- Replacement of all toilets and urinals to lower water use models
- Concrete coring throughout the venue to allow new conduit for network cables, intercom and power that will support a number of building projects.

MERC Commission Meeting

July 9, 2014
12:30 pm

5.0 Travel Portland
Third Quarter 2013-14 Report

A decorative graphic consisting of several overlapping, semi-transparent rectangular blocks in shades of light blue and grey, arranged in a horizontal, slightly wavy pattern across the lower half of the page.

**3rd Quarter Report
2013-14**

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Jeff Miller.....	President and CEO
Brian Doran.....	Executive Vice President of Finance and Administration
Brian McCartin.....	Executive Vice President of Convention and Tourism Sales
Greg Newland.....	Executive Vice President of Marketing and Public Relations

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 Suite 2300
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EXECUTIVE SUMMARY

ACCOMPLISHMENTS

- For the third quarter OCC realized over \$1.6 million dollars in revenue from Travel Portland booked business. Community economic impact ROI from all future bookings was 52.4 to 1.
- Nine new and three repeat OCC conventions were booked for future years in the quarter worth \$1.7 million in OCC revenue and community economic impact of \$16.8 million. Total Travel Portland bookings, including single hotel will result in over \$44.8 million of economic impact.
- Travel Portland booked six minority meetings in the quarter with an EEI of over \$1 million.
- Travel Portland generated ten articles with a value of \$612,291 for the OCC and visitor venues in the quarter.

TRENDS, SUCCESSES, OBSTACLES

- Transient Lodger's Tax continues to increase. Fiscal year collections of the city's tax were up 11.5%.
- Lack of a headquarters hotel resulted in the loss of seven groups worth 32,199 room nights and projected OCC revenue of \$3,612,998. Cost of community economic impact is estimated at over \$24 million.

MERC CONTRACT GOALS

GOAL #	GOAL DESCRIPTION	YEAR TO DATE ACTUAL	ANNUAL GOAL
1	OCC revenue goal	\$5,760,322	\$7.0 Million
2	ROI on future OCC business	3.8	2.8
3	Lead conversion	52%	35%
4	Services performance survey	3.6	3.6
5	ROI on public relations/media	10.6	20.0
6	Community economic impact	45.1	25.0

CITY CONTRACT GOALS

OBJECTIVE #	GOAL DESCRIPTION	YEAR TO DATE ACTUAL	ANNUAL GOAL
1 - Goal A	Travel Portland Convention Sales and Marketing	40.1	25.0
1 - Goal B	Leisure Programs	15.06	17.0
5.	Positive Media Placement	103.7	7.0

CONVENTION SALES

OREGON CONVENTION CENTER BOOKED REVENUE FROM TRAVEL PORTLAND			
Convention Dates	OCC Revenue	Annuals	Total Potential Future Business
FY 13/14	\$ 9,633,240	\$ -	\$ 9,633,240
FY 14/15	\$ 9,249,572	\$ 524,169	\$ 9,773,741
FY 15/16	\$ 6,103,766	\$ 1,070,960	\$ 7,174,726
FY 16/17	\$ 4,382,034	\$ 1,553,443	\$ 5,935,477
FY 17/18	\$ 2,091,586	\$ 1,070,960	\$ 3,162,546
FY 18/19	\$ 520,601	\$ 1,553,443	\$ 2,074,044
FY 19/20	\$ -	\$ 1,070,960	\$ 1,070,960
FY 20/21	\$ 1,416,589	\$ 1,553,443	\$ 2,970,032
FY 21/22	\$ 2,712,354	\$ 1,070,960	\$ 3,783,314
FY 22/23	\$ -	\$ 1,553,443	\$ 1,553,443
Total	\$ 36,109,742	\$ 11,021,781	\$ 47,131,523

Oregon Convention Center Projected Future Revenue			
Total Travel Portland Contract:	Quarter	YTD	Goal
New OCC Bookings	9	35	
Repeat OCC Bookings	3	8	
Total OCC Bookings	12	43	
Room Nights from OCC Bookings	21,924	100,696	
Future OCC Revenue Booked during FY 2013/14	\$ 1,744,277	\$ 10,182,396	
ROI OCC Bookings	\$ 2.0	\$ 3.8	2.8 to 1
Community Economic Impact from OCC Bookings	\$ 16,855,682	\$ 71,593,431	
Total Room Nights Booked	67,525	196,663	
Total Community Economic Impact from Bookings	\$ 44,844,260	\$ 119,609,289	
ROI on Total Community Economic Impact	\$ 52.4	\$ 45.1	25.0 to 1
OCC Revenue Realized During FY 2013/14	\$ 1,634,630	\$ 5,760,322	\$7.0 Million

CONVENTION SALES

OREGON CONVENTION CENTER FUTURE GROUP BOOKINGS					
AS OF APRIL 1, 2014					
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18 and beyond
Current	39	40	21	13	12
4 Year Average	Current	1 yr. out	2 yrs. out	3 yrs. out	Beyond 3 yrs.
(FY 10/11 - FY 13/14)	44	31	19	12	10

3RD QUARTER - ROOM NIGHTS FROM OREGON CONVENTION CENTER BOOKINGS					
Account	Groups	Total Room Nights	Attendees	OCC Revenue	Community Economic Impact
FY 13/14	2	5,606	8,000	\$ 186,465	\$ 3,614,167
FY 14/15	8	9,098	15,940	\$ 880,568	\$ 8,257,209
FY 16/17	1	4,100	3,000	\$ 390,560	\$ 2,946,676
FY 17/18	1	3,120	1,300	\$ 286,684	\$ 2,037,630
Total OCC Bookings	12	21,924	28,240	\$ 1,744,277	\$ 16,855,682

3RD QUARTER - ROOM NIGHTS FROM SINGLE HOTEL BOOKINGS				
Account	Groups	Total Room Nights	Room Tax Generated	Community Economic Impact
FY 13/14	31	11,100	\$ 175,449	\$ 6,567,555
FY 14/15	41	26,230	\$ 414,598	\$ 17,992,567
FY 15/16	3	6,726	\$ 106,313	\$ 2,903,622
FY 16/17	1	1,545	\$ 24,421	\$ 524,834
Total Other Bookings	76	45,601	\$ 720,781	\$ 27,988,578

CONVENTION SALES

LEAD CONVERSION						
	Travel Portland Office		Chicago Office		Washington, DC Office	
	Quarter	YTD	Quarter	YTD	Quarter	YTD
OCC Leads	35	107	6	19	13	40
OCC Lost Leads due to OCC space & availability	3	9	1	2	1	3
OCC Lost Leads due to hotel package & availability	7	16	5	8	1	6
Lead Conversion Percentage	48%	52%	0%	67%	18%	35%
Annual Goal - 35%						

3RD QUARTER - OREGON CONVENTION CENTER LOST BUSINESS						
Account	Groups	Reason	Total Room Nights	Attendees	Lost OCC Revenue	Lost Community Economic Impact
Subtotal	5	Hotel - HQ	27,742	14,850	\$ 3,263,093	\$ 21,495,922
Subtotal	5	Geographic	12,251	4,400	\$ 946,953	\$ 6,580,167
Subtotal	3	Date Availability - OCC	19,758	13,500	\$ 2,027,385	\$ 14,166,886
Subtotal	2	Board Decision	5,790	2,300	\$ 449,344	\$ 3,142,719
Subtotal	2	Client Postponed Search	2,397	1,500	\$ 229,002	\$ 1,546,975
Subtotal	2	Hotel - Under One Roof	4,457	1,800	\$ 349,905	\$ 2,619,562
Subtotal	2	Rates/Cost - Hotel	3,822	4,200	\$ 299,025	\$ 2,135,344
Subtotal	2	Selected Another Year	4,892	3,300	\$ 296,152	\$ 2,351,770
Subtotal	1	Conference Cancelled - Not Happening	1,400	1,700	\$ 132,712	\$ 842,971
Subtotal	1	Flights-Cost/Convenience	4,930	1,500	\$ 388,569	\$ 2,539,496
Subtotal	1	Perceived Destination Draw	2,842	1,700	\$ 209,166	\$ 1,561,965
Subtotal	1	Rates/Cost - OCC	260	2,000	\$ 73,031	\$ 443,730
Subtotal	27		90,541	52,750	\$ 8,664,337	\$ 59,427,507

CONVENTION SALES

3RD QUARTER - OREGON CONVENTION CENTER CANCELLATIONS							
Account Name	Groups	Reason	Total Room Nights	Attendees	Lost OCC Revenue	Lost Community Economic Impact	Lead Arrival
Total OCC Cancellations	0	N/A	0	0	\$ -	\$ -	N/A

3RD QUARTER INDUSTRY TRADE SHOWS AND EVENTS	
Trade Show/Event	Location
Professional Convention Management Association	Boston, MA
3-City Marketing Meeting	Milwaukee, WI
Greater Oregon Society of Government Meeting Professionals	Wilsonville, OR
Connect Diversity	Washington, D.C.
Global Medical Meetings	Philadelphia, PA
Religious Conference Managers Association	Sacramento, CA
Convention Sales Professionals International	Washington, D.C.
DMAI Destinations D.C.	Washington, D.C.
Portland Customer Advisory Board	Portland, OR
Conference	Phoenix, AZ
Denver/Dallas Road Show	Denver, CO/ Dallas, TX
ConferenceDirect	Anaheim, CA
Experient Envision	Las Vegas, NV
Meeting Professionals International - Cascadia	Spokane, WA

CONVENTION SALES

MINORITY PROJECTED FUTURE REVENUE		
Total Travel Portland Contract:	3rd Quarter	YTD
New Minority Bookings	6	16
Total Minority Bookings	6	16
Room Nights from Minority Bookings	3,149	6,257
Minority Leads	12	32
Minority Lost Leads	5	9
Minority Lost Leads due to hotel package & availability	0	1

For the third quarter of FY 2013/14, minority bookings created an estimated economic impact to the greater metro Portland community of approximately \$1 Million. Booked groups included the following:

National Indian Child Welfare Association	\$	578,929
National Newspaper Publishers Association	\$	87,201
Northwest Portland Area Indian Health Board	\$	172,875
SourceAmerica	\$	11,640
SourceAmerica	\$	6,356
Women of Faith	\$	174,633

CONVENTION SERVICES

ACTIVITY DESCRIPTION	3RD QUARTER	YTD
Distribution of promotional pieces	14,897	62,327
Meeting planning assistance - Services leads	549	763
Pre-convention attendance building - Site tours	15	25
Pre-convention attendance building -Promo trips, e-newsletters and materials	8	20
Housing-convention room nights	5,408	8,349

3RD QUARTER INDUSTRY SITE TOURS, TRADE SHOWS AND PROMO TRIPS					
Organization	Organization Location	Promotional Trip	Site Tours	OCC	Non-OCC
Nattional Black Law Students Association	Washington, DC	X		X	
Unitarian Universalist Association	Boston, MA		X	X	
Research Chefs	Atlanta, GA		X	X	
College and Research Libraries Collaborate	Chicago, IL		X	X	
Co-Location of: Environmental Connection & Geosynthetics 2015	Atlanta, GA		X	X	
Evolution 2017	Roseville, MN & Denver, CO		X	X	
Entomological Society of America	Ottawa, ON		X	X	
AASHE 2014 Conference & Expo	Annapolis, MD		X	X	
Association of Pediatric Hematology/Oncology Nurses	Raleigh, NC		X	X	
USS Galveston CLG-3 Shipmates Association	Chicago, IL		X		X
American Association of School Personnel Administrators	Beverly, NJ		X		
American Society of Mechanical Engineers	Overland Park, KS		X		X
National Model Railroad Association	New York City, NY		X		X
Major League Soccer	Soddy Daisy, TX		X		X
Society for Theriogenology	New York City, NY		X		X
	Lexington, KY		X		X

COMMUNICATIONS & PUBLIC RELATIONS

	3rd Quarter	YTD
MERC		
Value	\$ 612,291	\$ 1,093,371
Number of Placements	10	\$ 58
OCC		
Value	\$ 2,000	\$ 192,705
Number of Placements	2	\$ 22
Chicago/DC PR effort (counted separately from MERC)		
Value	\$ -	\$ 20,336
Number of Placements	0	\$ 3
Total Value = MERC + Chicago/DC	\$ 612,291	\$ 1,113,707
Total Number of Placements = MERC + Chicago/DC	10	\$ 61
Total Value = City/Regional PR (Non-MERC/OCC/Chicago/DC)	\$ 15,176,632	\$ 28,816,972
Total Number of Placements = City/Regional PR (Non-MERC/OCC/Chicago/DC)	145	648
Travel Portland Grand Total - Print and Online Value	\$ 15,788,923	\$ 29,930,678
Travel Portland Grand Total - Print and Online Circulation	247,856,657	755,226,114
Travel Portland Grand Total - Number of Placements	155	709
	3rd Quarter	YTD
Total Value = MERC + Chicago/DC	\$ 612,291	\$ 1,113,707
Direct Costs	\$ 60,663	\$ 104,920
ROI	10.1	10.6
Annual Goal - 20.0 to 1		

MARKETING AND TOURISM SERVICES

MARKETING		
	3rd Quarter	YTD
Room nights booked via travelportland.com	1,234	4,680
Travelportland.com (Website Visits)	631,883	1,702,448
Referrals from travelportland.com (from 9/23)	199,635	346,655
Average monthly Facebook reach	4,134,471	7,592,142

TOURISM SALES FY 2013-2014		
	3rd Quarter	YTD Total
Client Contacts		
Trade Shows, Events, Inquiries and Sales Calls	6,656	8,390
Leads/Referrals Sent	745	1,463
FAMS/Research & Site Visits		
# of Fams	10	44
# of Companies	10	92
# of Attendees	14	157
Published Itineraries	102	396
Number of Room Nights by County		
Clackamas County	527	3,137
Columbia County	0	0
Multnomah County	4,886	20,604
Washington County	92	1,021
Mt. Hood/Gorge	82	146

OPERATIONS

AFFIRMATIVE ACTION GOALS 2013-14					
TRAVEL PORTLAND GOALS AND OBJECTIVES BY JOB CATERGORIES					
	March 31, 2014		2013-14		
Job Category	Category Number	Total	Actual Percentage	Goal Percentage	Objective
	Number of Females	Number of Staff			
Office/Clerical	19	21	90%	65%	Monitor
Officials/Administration	3	8	38%	50%	Improve
Professionals	11	15	73%	50%	Monitor
Sales	14	15	93%	50%	Monitor
Technicians	0	2	0%	10%	Improve
Total	47	61	77%	45%	Monitor
	Number of Minorities	Number of Staff			
Office/Clerical	2	21	10%	15%	Improve
Officials/Administration	0	8	0%	10%	Improve
Professionals	2	15	13%	10%	Monitor
Sales	3	15	20%	10%	Monitor
Technicians	0	2	0%	10%	Improve
Total	7	61	11%	11%	Monitor
This report is based on current full and part-time staff.					

OPERATIONS

FIRST OPPORTUNITY TARGET AREA REPORT (FOTA)

HIRING

Travel Portland hired one new employee in the third quarter. Recruiting and special considerations are always made for applicants in the MERC FOTA. Travel Portland currently has ten employees who reside in the MERC FOTA. Job openings were posted to the following: Travel Portland, Asian Reporter, Craigslist, El Hispanic News, Hispanic Metropolitan Chamber, Indeed, Mac's List, The Skanner, SimplyHired, Mosaic Metier, Jooble, Oodle.com and Glassdoor.com.

PURCHASING

Travel Portland expended a total of \$184,494 with businesses in the FOTA area for nine months ending March 31, 2014.

PARTNERSHIP

Travel Portland currently has 91 member businesses within FOTA and 51 minority and 93 women-owned businesses as its partners.

MBE/DBE/WBE PURCHASING PARTICIPATION REPORT FOR THE NINE MONTHS ENDING MARCH, 2014

For the last 25 years Travel Portland has implemented a voluntary MBE/DBE/WBE purchasing program that strives to ensure a high level of participation with certified minority-owned, disadvantaged or women-owned businesses when securing services and supplies that are purchased using lodging tax dollars.

For fiscal year 2013-14, Travel Portland expended \$521,811 of lodging tax dollars in the purchasing of services and supplies where it had the discretion to purchase from outside vendors. Of this amount, \$223,545 or 42% percent was spent with minority/women-owned or emerging small business enterprises.

Travel Portland Income Statement

	Actual (Prior Year)	Actual	Budget	Actual (Prior Year)	Actual	Budget	Actual (Prior Year)	Budget
	Month ended	Month ended	Month ended	YTD	YTD	YTD	Full Year	Full Year
	3/31/2013	3/31/2014	3/31/2014	3/31/2013	3/31/2014	3/31/2014	6/30/2013	6/30/2014
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Revenue								
City/County Lodging Tax	-27,224	5,641	324,999	2,969,441	3,311,721	3,142,806	3,743,465	4,117,812
Tourism Improvement District	7,984	7,825	629,088	1,664,201	6,543,005	6,018,992	3,202,219	7,906,199
MERC	232,515	588,514	284,345	2,393,409	2,566,891	2,566,994	3,154,806	3,420,011
Partnership Dues	45,038	39,165	39,584	361,489	350,337	356,256	473,580	475,000
Fees earned	14,952	9,987	18,680	196,927	147,448	168,120	266,504	224,170
Other Income	-39	50	333	93,823	2,724	2,997	171,049	4,000
Tradeout/In-Kind	0	0	0	0	0	0	10,215	0
Cooperative programs	28,364	19,616	15,286	251,734	127,358	142,571	337,217	188,420
RCMP	0	0	46,059	556,232	629,443	414,529	556,232	552,697
Cultural Tourism	20,517	34,370	25,000	244,414	262,484	225,000	313,613	300,000
Downtown Marketing Initiative	0	0	69,026	1,084,700	828,309	621,234	953,309	828,309
Visitor Development Fund (V)	0	56,836	47,365	3,262	841,525	408,781	66,018	550,869
Total Revenue	322,107	762,006	1,499,764	9,819,631	15,611,243	14,068,280	13,248,226	18,567,487
Expenses								
Convention Sales	235,612	218,094	318,907	1,903,801	2,648,683	2,942,806	2,839,783	3,906,362
Tourism Sales	78,761	123,931	135,695	743,412	1,081,668	1,261,255	1,042,872	1,668,312
Marketing & Communications	225,206	523,488	406,081	2,829,246	5,976,997	6,294,729	3,838,500	7,512,906
Downtown Marketing Initiative	53,341	16,761	66,402	680,349	615,665	597,618	962,826	796,828
Convention & Visitors Services	85,547	95,877	91,010	677,978	655,743	835,090	944,282	1,108,000
Partnership Services	30,930	29,228	30,882	265,678	270,384	277,938	370,790	370,597
Events	20,998	20,111	13,714	96,676	113,629	123,426	149,026	164,563
Program Support	136,837	157,072	140,336	1,287,364	1,370,782	1,342,191	1,810,928	1,775,978
Total Expenses	867,232	1,184,561	1,203,027	8,484,504	12,733,552	13,675,053	11,959,008	17,303,546
NET SURPLUS/(DEFICIT)	-545,125	-422,556	296,738	1,335,127	2,877,691	393,228	1,289,218	1,263,941

**Travel Portland
Balance Sheet**

	Actual 3/31/2014 Column A	Actual as of June 30, 2013 Column B	Increase (Decrease) Column C
Assets			
Cash and Cash Equivalents	\$4,227,558.96	\$2,275,100.83	86%
Accounts Receivable	\$1,314,656.69	\$1,176,172.98	12%
Prepaid Assets	\$627,032.48	\$625,488.11	0%
Fixed Assets, net	\$527,274.41	\$439,977.64	20%
Total Assets	\$6,696,522.54	\$4,516,739.56	48%
Liabilities and Net Assets			
Liabilities			
Accounts Payable & Accrued Expenses	\$641,742.35	\$1,176,162.81	-45%
Accrued Personnel	\$912,124.52	\$903,421.80	1%
Deferred Revenue	\$125,122.78	\$297,312.89	-58%
Other Fiduciary Liabilities	\$0.00	\$0.00	0%
Total Liabilities	\$1,678,989.65	\$2,376,897.50	-29%
Net Assets			
Temporarily Restricted Net Assets	\$87,606.54	\$87,606.54	0%
1-1C Undesignated Net Assets- (Target \$2.83M)	\$3,916,073.86	\$1,295,534.52	202%
1-1C Board Designated-(Mkting & PPE Reserve)	\$480,630.25	\$316,724.00	52%
1-1C Board Designated-Net Property and Equipment	\$533,222.24	\$439,977.00	21%
Total Net Assets	\$5,017,532.89	\$2,139,842.06	134%
Total Liabilities and Net Assets	\$6,696,522.54	\$4,516,739.56	48%

OCC SALES AND MARKETING BUDGET

Expenses

	Annual Budget	QTR Ending 03-31-14	Sum of YTD 06/30/2014	Percent
<u>Direct Sales:</u>				
Portland office:				
Professional services	897,368	230,603	730,306	
Direct expenses	109,125	23,584	85,039	
Total Portland office	1,006,493	254,187	815,345	81%
Washington DC office:				
Professional services	234,000	80,738	213,604	
DC client events	12,000	-	12,740	
Direct expenses	53,879	15,254	46,418	
Total DC office	299,879	95,992	272,762	91%
Chicago office:				
Professional services	110,110	26,110	88,687	
Chicago client events	10,775	4,111	6,853	
Direct expenses	17,619	8,325	14,405	
Total Chicago expenses	138,504	38,546	109,945	79%
Fall & Spring Fam	76,275	21,741	49,116	
Site Visits	72,300	14,178	70,159	
Bid/Sales Trips	25,100	7,068	15,053	
Local Promotions	11,834	1,461	9,829	
Tradeshows	221,554	30,728	186,623	
Road Shows/Client Events-Chicago & Washingt	49,274	4,977	21,591	
Research/Lead Generation	41,700	6,045	38,935	
Three City Alliance	56,480	581	22,175	
Advisory Council	55,655	15,670	55,655	
Sub-Total	610,172	102,450	225,240	
Total Direct Sales	2,055,047	491,174	1,545,240	75%
<u>Marketing:</u>				
Total Marketing	548,792	136,380	423,896	77%
<u>Publication Relations:</u>				
Total PR	247,906	93,646	241,921	98%
<u>Convention Services:</u>				
Total Convention Services	338,257	84,189	285,619	84%
<u>Contract Administration:</u>				
Professional Services	230,009	50,274	156,457	
Total Contract Admin	230,009	50,274	156,457	68%
Total Budget for FY 2013-14	\$ 3,420,011	\$ 855,662	\$ 2,653,132	78%

TRAVEL PORTLAND BOARD OF DIRECTORS

EXECUTIVE COMMITTEE

BOARD OF DIRECTORS

<p><i>Chair</i> Chris Erickson The Heathman Hotel</p> <p><i>Chair-elect</i> Tim Ackman Alaska Airlines/Horizon Air</p> <p><i>Vice-chair</i> Jim Dodson Embassy Suites Portland Airport</p> <p><i>Treasurer</i> E. Allen Shelby Langley Investment Properties, Inc.</p> <p><i>Past Chair</i> Sabrina Rokovitz Enterprise Rent A Car</p>	<p><i>Budget and Finance Committee</i> E. Allen Shelby, Langley Investment Properties, Inc.</p> <p><i>Convention Sales Steering Committee Chair</i> Steve Faulstick, Westmont Hospitality Group</p> <p><i>Community Action Committee Chair</i> Sandy Burkett, Hotel Vintage Plaza</p> <p><i>Partner Services Committee Chair</i> David Penilton, America's Hub World Travel</p> <p><i>TID Committee Chair</i> Jim Dodson, Embassy Suites Portland Airport</p>	<p>Councilor Shirley Craddick Metro</p> <p>Victoria Frey Portland Institute for Contemporary Art</p> <p>Terry Hanley Hotel Rose</p> <p>Naim Hasan Naim Hasan Photography</p> <p>Gregg LeBlanc Marketing Karma LLC</p> <p>Tracy Marks Hilton Hotel Downtown Portland</p> <p>Commissioner Diane McKeel Multnomah County</p> <p>Jatin Patel Lodging Management NW, LLC</p> <p>Maria Ponzi Ponzi Vineyards</p>	<p>David Porter Aloft Portland Airport at Cascade Station</p> <p>Tim Pyne Portland Marriott Downtown - Waterfront</p> <p>Wanda Rosenbarger Lloyd Center Mall</p> <p>Commissioner Dan Saltzman City of Portland</p> <p>Jon Tullis Timberline Lodge</p> <p>Bashar Wali Provenance Hotels</p> <p>Lisa Watson Cupcake Jones</p> <p>David Welch Lincoln Restaurant and Sunshine Tavern</p>
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APPENDIX I – COMMUNICATIONS AND PUBLIC RELATIONS

Publication/Air Date	Outlet / Headline	MERC			OCC			Chicago/DC		
		Value	Circulation	Placements	Value	Circulation	Placements	Value	Circulation	Placements
January 1, 2014	Courier Magazine "Looking Ahead: Contact '14"	\$ 1,092.33	6,000	1						
February 1, 2014	Seattle Metropolitan Magazine / SeattleMet.com "The Seattlites Guide to PDX"	\$ 49,592.00	55,430	2						
February 1, 2014	Smart Meetings Magazine / SmartMeetings.com "The City of Roses"	\$ 21,300.00	57,851	2						
February 12, 2014	The Portland Business Journal Online "Why the Heathman's GM wants a HQ hotel"	\$ 1,000.00	11,592	1	\$ 1,000.00	11,592	1			
February 20, 2014	The Portland Business Journal Online "What is tourism worth to Portland? (Hint: It starts with a 'B'")"	\$ 1,000.00	11,592	1	\$ 1,000.00	11,592	1			
March 5, 2014	Pitstopsforkids.com "Portland with kids: Oregon Zoo"	\$ -	0	1						
March 29, 2014	The Boston Globe Newspaper/BostonGlobe.com "Museums, zoo, biking--plenty to do in Portland, Ore."	\$ 538,306.45	15,604,986	2						
Total		\$ 612,290.78	15,747,451	10	\$ 2,000.00	23,184	2	\$ -	0	0

APPENDIX 2 – CONVENTION SERVICES

Travel Portland Survey

Overall impression of the following:

Answer Options	Excellent =	Good =	Average =	Poor	Did not utilize	Rating Average	Response Count
	4	3	2	1			
Travel Portland sales staff	2	0	0	0	0	4.00	2
Travel Portland convention services staff	2	0	0	0	0	4.00	2
Travel Portland housing services (if utilized)	0	0	0	0	2	0.00	2
Travel Portland collateral/promotional materials	0	2	0	0	0	3.00	2
Quality and user-friendliness of the Travel Portland website	0	1	1	0	0	2.50	2
Is there anything Travel Portland could have done to enhance your experience?							1
						<i>answered question</i>	2
						<i>skipped question</i>	0
						<i>Average rating for the quarter</i>	3.38
						<i>Average rating YTD</i>	3.6

Number	Response Date	Is there anything Travel Portland could have done to enhance your experience?	Categories
1	Apr 9, 2014 11:17 AM	The web site is better than it was! :)	

MERC Commission Meeting

July 9, 2014
12:30 pm

6.0 Action Agenda

**METROPOLITAN EXPOSITION RECREATION COMMISSION
Resolution No. 14-19**

For the Purpose of Electing the Metropolitan Exposition Recreation Commission (MERC) Secretary-Treasurer for Fiscal Year 2014-15.

WHEREAS, at the June 4, 2014 regular meeting of MERC the following Commissioners were nominated and elected as the MERC officers for a one- year term, beginning July 1, 2014 and ending June 30, 2015:

Chair: Terry Goldman
Vice Chair: Cynthia Haruyama; and

WHEREAS, the Secretary-Treasurer position was not nominated and elected; and

WHEREAS, the MERC Commissioners nominated and elected the following Commissioner as the Secretary-Treasurer for a one-year term, beginning July 1, 2014 and ending June 30, 2015 at the July 9, 2014 meeting:

Secretary-Treasurer:

BE IT THEREFORE RESOLVED that the position of Secretary-Treasurer of the Metropolitan Exposition Recreation Commission for Fiscal Year 2014-15 be hereby confirmed.

Passed by the Commission on July 9, 2014.

Approved as to form:
Alison R. Kean, Metro Attorney

Chair

Nathan A. S. Sykes, Deputy Metro Attorney

Secretary-Treasurer

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 14-20

For the purpose of selecting Anderson Roofing Company, Inc. for the Portland Expo Center - "Hall E Lobby Roof Repairs" and authorizing the Metro Deputy COO to execute a contract with Anderson Roofing Company, Inc.

WHEREAS, the Portland Expo Center's Hall E Lobby Roof Mechanical areas have reached the end of their useful life and require replacement; 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 Anderson Roofing Company, Inc. is the lowest responsive and responsible bidder with a bid amount of One Hundred Eighty-One Thousand, Nine Hundred Fifty-Eight and no/100ths dollars (\$181,958.00); and

WHEREAS, the lowest bid received exceeded the project's budgeted amount. MERC staff worked with Anderson Roofing to value engineer the project to within the budgeted amount; and

WHEREAS, Anderson Roofing and MERC staff agreed to a modified scope of work with a cost of One Hundred, Twenty-One Thousand, Seven Hundred Seventy-Seven and No/100ths Dollars (\$121,770.00)

BE IT THEREFORE RESOLVED as follows:

1. The Commission 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 E Lobby Roof Repairs.
2. The Commission approves the contract with Anderson Roofing Company, Inc. in the form substantially similar to the attached Exhibit A and authorizes the Metro Deputy COO to execute the contract on behalf of the Commission.

Passed by the Commission on July 9, 2014.

Chair

Secretary/Treasurer

Approved As to Form:
Alison Kean Campbell, Metro Senior Attorney

By: _____
Nathan A. Schwartz Sykes
Deputy Metro Attorney

Construction Agreement

MERC CONTRACT NO. 304045

THIS CONSTRUCTION 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 AND CONTRACT TERMS

CONTRACTOR shall perform the work and/or deliver to MERC the goods described in the Scope of Work attached hereto and incorporated herein as Attachment A. All services and goods shall be of good quality and otherwise in accordance with the Scope of Work. CONTRACTOR shall perform the work and/or deliver to MERC the goods described in the Scope of Work strictly in accord with the terms of this Construction Agreement and the General Conditions attached hereto and incorporated herein as Attachment B.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing July 15, 2014 through and including October 31, 2014. Substantial completion per Section 9.4 of the General Conditions is September 30, 2014. This agreement may be extended or amended at MERC's sole discretion.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

MERC shall pay the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work, in the maximum amount of ONE HUNDRED TWENTY-ONE THOUSAND, SEVEN HUNDRED SEVENTY AND NO/100THS DOLLARS (\$121,770.00) (the "Maximum Price"). 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. 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.

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.



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

Construction Agreement

MERC CONTRACT NO. 304045

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 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 97206
 503-797-1795 fax

CONTRACTOR

METROPOLITAN EXPOSITION RECREATION
 COMMISSION

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

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ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

1. Purpose and Goal of Work

MERC is contacting for roof repairs over the lobby area of Exhibit Hall E of the Portland Expo Center (EXPO) located at 2060 N. Marine Drive, 97217.

2. Scope of Work

Description of Work

Work will consist of the Roof System detailed below. Installation is to be as per Manufacturer's specifications. Location of work area shown on (*Attachment C*) as referenced below.

Contractor shall perform the following:

CONCRETE DECK/MECHANICAL AREAS

- PROVIDE CITY OF PORTLAND RE-ROOFING PERMIT.
- PROVIDE AND INSTALL OSHA APPROVED STAIR TOWER FOR ACCESS AND EGRESS
- PROVIDE AND INSTALL 2X PT SEPARATION JOINTS AT ADJOINING METAL DECKING; INSTALLING SCUPPER OPENINGS AT DRAIN LOCATIONS.
- 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 1/2" RECOVER BOARD OVER REMAINING MEMBRANE. (TAPER EDGES AT DRAIN AREA WITH 1/2" TO 0" X 6" TAPERED EDGE.)
- PROVIDE AND INSTALL AN ADDITIONAL LAYER OF 1/2" RECOVER BOARD IN TREMCO LOWRISE FOAM ADHESIVE. (STAGGERING ALL EDGES MINIMUM OF 12" AND TAPERING EDGES AT DRAINS WITH TAPERED EDGE.)
- PROVIDE AND INSTALL TAPERED POLYISO IN LOW RISE FOAM AS NEEDED TOO CRICKET DRAIN AREAS.
- PROVIDE AND INSTALL 3" PERLITE CANT STRIP IN TREMCO ELS MASTIC
- PROVIDE AND INSTALL TWO PLYS OF TREMCO COMPOSITE PLY HT, IN BURMASTIC SF, 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 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 VERTICLE 8" AND ONTO THE HORIZONTAL 4")
- PROVIDE AND INSTALL AN ADDITIONAL LAYER OF TREMCO POWERPLY STANDARD AT ALL CANTED AREAS IN ELS MASTIC
- PROVIDE AND INSTALL 24 GAUGE, PRE-PAINTED, LINER, WALL, AND COPING METALS.
- REINSTALL DRAIN RINGS AND SCREENS.
- PROVIDE 2 YEAR INSTALLER WARRANTY.
- PROVIDE 20 YEAR MANUFACTURER WARRANTY.

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METAL DECK/ EXPOSED FIREPROOF AREAS

- REBUILD EXISTING DRAIN AREAS; PROVIDING AND INSTALLING NEW TAPERED INSULATION AND .060 TPO MEMBRANCE. (REUSE EXISTING DRAIN PARTS)
- PROVIDE AND INSTALL TAPERED POLYISO AND .060 TPO MEMBRANE AND PONDED AREA.
- PROVIDE AND INSTALL .060 BASE FLASHINGS AT NEW SEPARATION JOINTS
- PROVIDE AND INSTALL 24 GAUGE, PRE-PAINTED, LINER, WALL AND COPING METALS.
- PROVIDE 2 YEAR INSTALLER WARRANTY.

Clarifications

- After the wet insulation has been removed per spec, mechanically attach a 4"X4"X1/2", 6 sided asphalt coated wood fiber board over the existing sliced roof system with 1 fastener installed every two square feet (16 fasteners per 4'X8' board). Adhere over the new 1/2" fiber board another 4"X4"X1/2", 6 sided asphalt coated wood fiber cover board set in low rise foam adhesive.
- Along the concrete and metal deck transition, install tapered Polyisocyanurate insulation to provide a smooth roof surface transition. Run the new roof system through this new detail per spec. Install along the upper edge of the transition an 18" strip of TRA set in Tremlar LRM. 5 Course leading edges of TRA with Tremlar LRM and Burmesh.
- All support columns and irregular flashing details shall have AlphaGuard flashing installed as by the materials manufacturer.
 - A. Clean surface with Xylene and wire brush as needed.
 - B. Prime surface with AlphaGuard M Prime.
 - C. Apply AlphaGuard with embedded 4" polyester.
- McQuay Air Handler Units shall have a TRA base flashing adhered with Tremlar LRM. 3 Course the upper edge of TRA with Tremlar LRM and Burmesh. Install along the upper edge a two piece counter flashing. All new counter flashings shall extend behind the existing unit flanges as possible.
- Install walk pads along all unit access panels, roof hatch location and along beam step overs.
- All inter-ply adhesive shall be installed at 2.5 gallons per square with a clean 1/4" notched squeegee
- All flashing and coping is to be pre-painted to match Hall D. (Owner to approve submittal prior to ordering)
- No ground storage shall be available to Contractor during work.
- A Temporary stair tower is acceptable. Tower shall be located at the South end of Hall E and must maintain access to doors of the exhibit hall. (Owner to approve tower location prior to installation)
- Contractor may set up a debris chute on a daily basis to be coordinated with venue staff. Because of the nature of the business at the Expo Center a debris chute may not be set up for the duration of the work.

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 effect an

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event or timeline. 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 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.

The Scope of Work includes any Plan Set, Specifications or Addenda attached hereto, and any Change Orders entered into in accordance with the terms of the Contract;

ATTACHMENT C: Portland Expo Center Partial Site Plan Google-earth Map;

Where applicable, reference to this Contract herein shall be deemed to refer to all of the Contract Documents.

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.

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Attachment B - SECTION 007200 METRO GENERAL CONDITIONS

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METRO GENERAL CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

1.1 Definitions. Unless otherwise defined or specified in the Contract Documents, the following terms shall have the meanings indicated:

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

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

1.1.3 Alternate Bids: Portions of the Work for which a Bidder must submit a separate Bid amount. Alternate Bid items may or may not be awarded at Metro's discretion.

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

1.1.5 "As-Builts" or Record Documents: Those drawings made, revised, or annotated by Contractor and approved by Metro during the performance of the Contract, fully illustrating how all elements of the Work were actually installed and completed.

1.1.6 Aspirational Target: Target of intended utilization of MBE, WBE, and ESB firms that a contractor has no contractual obligation to meet.

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

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

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

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

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

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

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

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

1.1.14.1 The change in the Work;

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

1.1.14.3 The extent of any adjustment to the Contract Time.

1.1.15 Clarification: A written document consisting of supplementary details, instruction or information issued by Metro after the award of Contract that clarifies or supplements the Contract Documents and becomes a part of the Contract Documents. A Clarification may or may not affect the scope of Work.

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

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

1.1.18 Contract: The Contract Documents.

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

1.1.20 Contract Documents or Contract or Bidding Documents: All of the following documents: the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms, the Construction Agreement, the Performance Bond, the Labor and Materials Payment Bond, the General Conditions, the Supplementary Conditions, the Specifications, the drawings, the approved and updated Construction Schedule, and any modifications of any of the foregoing in the form of Addenda, Clarifications, Change Orders, or Force Account Work.

1.1.21 Contractor: The person 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.

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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 First Opportunity Target Area or FOTA: FOTA is the economically distressed area located in the immediate vicinity of the Oregon Convention Center as authorized by Section 2, Chapter 909, Oregon Laws 1989.

1.1.34 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.

1.1.35 General Conditions: The Metro General Conditions of the Contract for Construction set forth in this document.

1.1.36 General Manager of Visitor Venues or GM: The GM oversees the Portland's Centers for the Performing Arts, the Oregon Convention Center, the Portland Expo Center and the Oregon Zoo.

1.1.37 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.

1.1.38 Landscape Architect: A person lawfully practicing landscape architecture. The term "Landscape Architect" refers to the Landscape Architect or the Landscape Architect's authorized representative.

1.1.39 LEED Certification: A Leadership in Energy and Design Certification issued by the United States Green Building Council (USGBC).

1.1.40 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.

1.1.41 Metro: A metropolitan service district organized under the laws of the State of Oregon and the Metro Charter. Metro is the Contract Review Board for MERC.

1.1.42 Metropolitan Exposition Recreation Commission (MERC): An appointed commission of Metro with contracting authority for the Portland's Centers for the Arts, the Oregon Convention Center and the Portland Expo Center.

1.1.43 Metro Chief Operating Officer or COO: The Chief Operating Officer of Metro.

1.1.44 Metro Council or Council: Metro's elected governing body.

1.1.45 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

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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.

1.1.46 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.

1.1.47 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.

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

1.1.48.1 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.

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

1.1.48.3 Contractor-owned equipment.

1.1.48.4 Equipment maintenance and repairs.

1.1.48.5 Temporary construction, utilities, and safety requirements.

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

1.1.48.7 Parking fees for workers (if applicable).

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

1.1.48.9 Cost of reproduction.

1.1.48.10 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:

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

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

1.1.48.10.3 Interest on capital.

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

1.1.49 Owner: Metro.

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

1.1.51 Plans: Drawings.

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

1.1.53 Project: The Work described in the Contract Documents.

1.1.54 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.

1.1.55 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.

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

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

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

1.1.59 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.

1.1.60 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

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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.

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

1.1.62 Request for Bid (RFB): A solicitation to perform Work where a Contract is awarded based on price.

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

1.1.64 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.

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

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

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

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

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

1.1.70 Solicitation Documents: An RFB.

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

1.1.72 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.

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

1.1.74 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.

1.1.75 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.

1.1.76 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.

1.1.77 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.

1.1.78 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.

1.1.79 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,

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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.

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.

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1.2.8 Standards that Apply Where Detailed Specifications Are Not Furnished. Wherever in these Contract Documents or in any directions given by Metro pursuant to or supplementing these Contract Documents, it is provided that Contractor shall furnish materials or manufactured articles or shall do work for which no detailed Specifications are set forth, the materials or manufactured articles shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed drawings or Specifications are set forth herein shall conform to the usual standards for first-class work of the kind required. Dimensions not expressly provided in the Contract Documents are to be computed, rather than determined by scale or rule.

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

1.4 Use of Contract Documents. The Contract Documents were prepared for use in the construction of this Project only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of Metro. Any unauthorized use of the Contract Documents is at the sole responsibility of the user and such unauthorized use shall be deemed an activity in the performance of the Contract for purposes of Contractor's duty to indemnify under Article 11.

1.5 Copyright. All submittals, record documents, and any other products or documents produced by Contractor pursuant to this Contract are the property of Metro and it is agreed by the Parties hereto that such documents are works made for hire. Contractor does hereby convey, transfer, and grant to Metro all rights of reproduction and the copyright to all such documents.

1.6 Contractor's Status as Independent Contractor. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor under ORS 670.600. The Contractor further agrees that Contractor, its officers, agents, and employees, any Subcontractor or Supplier of Contractor of any tier, or its officers, agents, or employees, are not officers, employees, or agents of Metro under the Oregon Tort Claims Act (ORS 30.260 through 30.300). Contractor and its officers, agents, employees, and its Subcontractors and Suppliers of any tier and their officers, agents, and employees will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300. Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.

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

1.8 Severability Clause. Should any provision of this Contract at any time be in conflict with any law, regulation, or ruling, or be legally unenforceable for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event that any provision of this Contract shall become legally unenforceable, in whole or in part, the remaining provisions of this Contract shall nevertheless remain in full force and effect.

1.9 Notice or Service. Any written notice required or allowed under the Contract shall be deemed to have been communicated to the other Party and service thereof shall be deemed to have been made if such notice is delivered in person to the individual, a member of the partnership or joint venture, or an officer of the corporation for whom it was intended, or if delivered at or sent by regular, registered, or certified mail to the last business address of the relevant person or Party known to the person or Party giving the notice, or to Contractor's Site office if the notice is directed to Contractor. Notice may be delivered by e-mail as long as a hard copy is mailed the same day to the relevant person by the methods noted above. The date or time of service for purposes of all notices required or allowed under the Contract shall be the date and/or time upon which the relevant document was mailed or delivered as above described. The address given in the Bid or Proposal by the Contractor is hereby designated as the legal business address of Contractor, but such address may be changed at any time by ten (10) days' prior notice in writing, delivered to Metro.

ARTICLE 2 CONTRACTOR

2.1 Responsibilities of the Contractor.

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

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whatever nature and shall provide or cause to be provided all materials, equipment, tools, and other facilities of whatever nature necessary to complete the Work and shall otherwise cause the Work to be completed in accordance with the Contract Documents.

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

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

2.2 Documents.

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

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

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

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

2.3 Contractor's Authorized Representative. Prior to commencing any Work under this Contract, the Contractor shall appoint in writing an authorized representative or representatives. Such appointment shall include the name and title of each representative along with the extent to which each representative is authorized to represent, bind, and act for Contractor. The description of extent of representation shall include but not be limited to the maximum dollar value of Change Orders that the individual may authorize, whether the individual may respond to RFPs and for what maximum dollar amount, and whether the individual may submit a claim pursuant to Section 3.4.

2.4 On-Site Representation Required. Contractor shall at all times be represented at the Site by one or more of such authorized representatives who, cumulatively, shall have complete authority to represent, bind, and act for Contractor in all matters pertaining to or related to this Contract. In the event that Metro deems it reasonably necessary to take immediate actions at the Site pertaining or relating to this Contract and Contractor has failed to comply with this Section and is consequently not fully represented at the Site at such time, then Contractor shall be deemed to acquiesce in all actions so taken by Metro.

2.5 Contractor's Office at the Site. Prior to commencement of Work at the Site, Contractor shall establish a field office at the Site acceptable to the Project Manager. This office shall be located in a job trailer or temporary building. This office shall be the headquarters of Contractor's representatives authorized to receive notices, instructions, drawings, or other communications from the Project Manager on behalf of Metro or the Architect, and to act on Change Orders or other actions. Such notices, instructions, drawings, or other communications given to such a representative or delivered to Contractor's Site office in his/her absence shall be deemed to have been given to Contractor.

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

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

2.7 Review of Project Conditions. Prior to execution of the Contract, the Contractor will evaluate the conditions and limitations under which the Work is to be performed, including without limitation (i) the geographical and topographical location, condition, layout, and nature of the Project Site and surrounding areas; (ii) generally prevailing climatic conditions; (iii) anticipated labor supply and costs; (iv) availability and cost of materials, tools, and equipment; (v) 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

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Contractor's plant or equipment, or any of Contractor's methods of executing the Work, appear to Metro to be inadequate to ensure the required quality, environmental protection, or rate of progress of the Work, Metro may order Contractor to increase or improve its facilities or methods, and Contractor shall promptly comply with such orders. Neither compliance with such orders nor failure of Metro to issue such orders shall relieve Contractor from the obligation or liability to secure the quality of Work and the rate of progress required by the Contract. Contractor shall be responsible for overload of any part or parts of structures beyond their safe calculated carrying capacities and for release of pollutants into surrounding waters resulting from Contractor's activities on the Site.

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

2.14 Permits.

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

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

2.15 Contractor's Temporary Structures. Contractor shall obtain all necessary permits for and shall erect and maintain at its own expense, and remove upon completion of the Work or as ordered by Metro, temporary structures, sheds, barriers, walks, hoisting equipment, scaffolds, etc., as are necessary for the Work pursuant to these Contract Documents. Contractor's temporary structures, equipment, stored materials, stored equipment, etc., shall be located so as not to interfere with the prosecution of the Work. If not so located, they shall be moved by Contractor, as directed by Metro, at no cost to Metro. Contractor's temporary structures, equipment, or materials that obstruct progress of any portion of the Work shall be removed or relocated by Contractor at Contractor's expense.

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

2.17 Accounting Records.

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

2.17.1.1 The performance of the Contractor, including but not limited to Contractor compliance with Contract plans and Specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions, and compliance with any and all requirements imposed on Contractor or Subcontractor under the terms of the Contract or subcontract;

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

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

2.17.1.4 Payments made to all suppliers and sub-consultants.

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

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

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

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by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs in sending its employees or consultants to examine, audit, inspect, and copy those records. If Contractor elects to have such Contract Records outside these boundaries, the costs paid by Contractor to Metro for inspection, auditing, examining, and copying those records shall not be recoverable costs in any legal proceeding.

2.17.4 The Contractor and Subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of Metro Auditor, to inspect, examine, copy, and audit the books and records of Contractor or Subcontractor relating to this Contract, including tax returns, financial statements, other financial documents, and any documents that may be placed in escrow according to any Contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law.

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

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

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

ARTICLE 3 ADMINISTRATION OF THE CONTRACT

3.1 Authority and Relationships of Metro and Architect. Except as specifically provided in this Section, no individual other than the Metro Chief Operating Officer or the Project Manager, duly appointed as set forth below, shall have any authority to make representations, statements, or decisions of whatever nature binding Metro or Architect regarding any aspect of this Contract. Except as specifically provided in this Article, Contractor shall have no right to, and shall not rely on, any such representation, statement, or decision. Any reference to action by Metro in this Contract requires the written approval of the Metro Chief Operating Officer or the Project Manager designated in writing by the Metro Chief Operating Officer as having authority to act for Metro, but only to the extent that such authority is expressly delegated in writing.

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

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

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

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

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

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.

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

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

3.2.8 Contractor has no right to and shall not rely on representations of whatever nature made by any individual, whether or not employed by or purporting to represent Metro, unless such individual has been specifically and expressly delegated authority to make such representations pursuant to these Contract Documents. Likewise, Contractor has no right to and shall not rely on any representations of authorized changes in the Contract of whatever size or nature unless such change is in writing and signed by Metro.

3.2.9 Nothing contained in this Section shall obligate Metro or Architect to supervise Contractor's Work under this Contract, and Contractor shall remain fully responsible for the complete and proper supervision of all of the Work.

3.3 Request for Information. If the Contractor believes that the Work to be done or any of the matters relative to the Contract Documents are not sufficiently detailed or explained in the Contract Documents, or if the Contractor has any questions as to the meaning or intent of the Contract Documents, Contractor shall immediately submit to Architect and Metro a written Request for Information ("RFI") that shall fully describe the information sought.

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

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

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

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

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

3.4 Contractor's Claims.

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

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

3.4.2.3 Claims based on Clarifications or Change Orders issued by Metro or any other decision, action, or failure to act by Metro as described in Section 3.4.5.

3.4.3 Claims For Excusable Delays.

3.4.3.1 Definition of Excusable Delay. A Delay is "Excusable" if such act, event, or condition has a materially adverse effect on the ability of Contractor to perform its obligations under this Contract as scheduled, and/or materially increases the cost to Contractor to perform such obligations as scheduled and if such act, event, or condition and its effect:

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

3.4.3.1.2 Do not arise out of (a) strikes, labor disputes, or other labor difficulties involving Contractor or its Subcontractors or Suppliers or entities providing transportation to Contractor or its Subcontractors or Suppliers; (b) labor shortages; or (c) changing economic conditions; and

3.4.3.1.3 Could not have been reasonably anticipated by Contractor.

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

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

3.4.3.3.1 An Act of God.

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

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

3.4.3.3.4 The failure to issue or renew, or the suspension, termination, interruption, or denial of, any permit, license, consent, authorization, or approval essential to the Work, if such act or event is not the result of the willful or negligent action or inaction of Contractor or of any third party for whom Contractor is directly responsible, and if Contractor is taking, has taken, or will cause to be taken, all reasonable actions in good faith to contest such action (it being understood that the contesting in good faith of any such action shall not constitute or be construed as a willful or negligent act of Contractor).

3.4.3.3.5 The failure of any appropriate federal, state, municipal, county, or other public agency or authority or private utility having operational jurisdiction over the Work or Site to provide and maintain utilities, services, water and sewer lines, and power transmission lines to the Site, that are required for and essential to the Work.

3.4.3.3.6 Epidemics or quarantines.

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

3.4.3.3.8 Priorities or privileges established for the manufacture, assembly, or allotment of material by order, decree, or otherwise of the U. S. or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority.

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

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

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:

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

3.4.3.5.2 Any delay in the prosecution of parts of the Work that may in itself be unavoidable but that does not necessarily prevent or delay the prosecution of other parts of the Work nor the Substantial Completion of the Work of this Contract within the time specified.

3.4.3.5.3 Any reasonable delay resulting from the time required by Metro for review of submittals or shop drawings submitted by Contractor and for the making of surveys, measurements, and inspections.

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

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

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

3.4.3.6 Excusable Delay Claims Procedure.

3.4.3.6.1 Contractor shall, within forty-eight (48) hours of the start of the occurrence or Contractor's first knowledge of the occurrence that is the basis of the claim for Excusable Delay, whichever is earlier, notify Metro in writing of such delay. The written notice by Contractor shall indicate the cause of the delay and shall estimate the possible time extension requested. Within ten (10) days after the cause of the delay has been remedied, Contractor shall give written notice to the Project Manager of any actual time extension and, if the Excusable Delay is a Compensable Excusable Delay, any increase in the Contract Amount requested as a result of the aforementioned occurrence in accordance with this Contract. If Contractor believes that a single circumstance or set of facts gives rise to both a claim for an extension to the Contract Time and an increase in the Contract Amount, Contractor must state both such allegations in one written claim or waive the unstated allegation.

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

3.4.3.6.3 Within twenty-one (21) days after Contractor submits to the Project Manager such a written notice for an extension of Contract Time and/or increase in the Contract Amount, the Project Manager will issue the decision on each request. If Contractor is dissatisfied with such decision, Contractor may preserve its claim as provided and prescribed by Section 3.4.6.

3.4.4 Claims for Differing Site Conditions-- Contractor shall promptly, and before the conditions are disturbed, give written notice to the Project Manager of (i) subsurface or latent physical conditions at the Site that differ materially from those indicated in this Contract, or (ii) physical conditions at the Site that were unknown and not reasonably discoverable by means of the Review of Project Conditions required by Section 2.7, are of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract. The Project Manager shall investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ as to cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made and a Change Order issued. If Contractor is dissatisfied with the decision of the Project Manager under this Section, Contractor may preserve its claim as provided and prescribed by Section 3.4.6.

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

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;

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

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

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

3.4.5.2 Submission of written notice of intent to make a formal claim as specified above shall be mandatory and failure to comply shall be a conclusive waiver to any claim by Contractor. Oral notice or statement will not be sufficient nor will notice or statement after commencing the Work in question.

3.4.5.3 After the written notification is submitted by Contractor (if the claim is not resolved or withdrawn in writing) and only upon written direction by the Project Manager, Contractor shall proceed without delay to perform the Work pursuant to the direction of the Project Manager. While the Work on an unresolved claim is being performed, Contractor shall keep track of costs and maintain records in the manner set forth in the section on Force Account Work, at no cost to Metro. Such notice by Contractor and the fact that Contractor is keeping track of costs and maintaining records shall not in any way be construed as proving the validity of the claim nor the costs thereof.

3.4.5.4 Provided the claim or claims have been submitted in accordance with the requirements of this Section, the Project Manager will consider and investigate the claim or claims of Contractor. Within twenty-one (21) days of receipt of the above-described written notification of claim, the Project Manager will advise Contractor of the Project Manager's decision to accept or reject the claim or claims, in full or in part. If Contractor is dissatisfied with the decision of the Project Manager under this Section, Contractor may preserve its claim as provided and prescribed by Section 3.4.6.

3.4.6 Preservation of Claims -- Within thirty (30) days after a rejection of a claim, in whole or in part, by Metro under Sections 3.4.3, 3.4.4 or 3.4.5, Contractor may preserve its claim by submitting a fully documented claim package to the Metro Procurement Officer. That package shall include substantiating documentation with an itemized breakdown of Contractor and Contractor's Subcontractors' costs on a daily basis that shall include but not be limited to labor, material, equipment, supplies, services, Overhead, and Profit. All documentation that Contractor believes is relevant to the claim shall be provided in the claim package, including without limitation payroll records, purchase orders, quotations, invoices, estimates, correspondence, profit and loss statements, daily logs, ledgers, and journals. Failure to submit the claim package in full compliance with this requirement and/or maintain cost records as herein required will constitute a waiver of the claim. If Contractor elects to pursue any claims by filing a lawsuit against Metro, it must commence such lawsuit within six (6) months after the date of Substantial Completion. Failure to commence a lawsuit within this time limitation shall constitute a waiver of all such claims by Contractor.

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

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

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

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

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Contract Time, and that Metro will be vulnerable to further damages if Metro is obligated to continue paying Contractor for Work performed after the Contract Time has expired. It is therefore agreed that upon the expiration of the Contract Time, Metro may adjust its payments to Contractor by any combination of the following: (1) making no further payments to Contractor until the Work is substantially complete; (2) paying the Subcontractor costs incurred by Contractor without any overhead, profit, or fee of any kind going to Contractor; and/or (3) collection of liquidated damages as designated in the Contract. Permitting Contractor to continue and finish the Work or any part thereof after the Contract Time has expired shall not waive any of Metro's rights under this Section or the balance of the Contract Documents.

3.6.2 Adjusted Payments Not a Bar to Metro's Right to Other Damages. Payment of adjusted payments shall not release Contractor from obligations in respect to the complete performance of the Work, nor shall the payment of such adjusted payments constitute a waiver of Metro's right to collect any additional adjusted payments that it may sustain by failure of Contractor to fully perform the Work, it being the intent of the Parties that the aforesaid adjusted payments be full and complete payment only for failure of Contractor to complete the Work on time. Metro expressly reserves the right to make claims for any and all other damages that Metro may incur due to Contractor's failure to perform in strict accordance with this Contract.

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

3.7.1 The mediator shall be an individual mutually acceptable to both Parties. Should the Parties disagree on the selection of a mediator, the Parties shall look to the local circuit court or the Oregon Dispute Resolution Commission. Each Party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two Parties.

3.7.2 Both Parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement on both Metro and Contractor. The schedule and time allowed for mediation shall be mutually acceptable. The mediation process is nonbinding.

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

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

3.9 Work to Continue Notwithstanding Dispute. In no event shall submission of a dispute arising out of this Contract by either Party relieve Contractor of its obligation to fully perform the requirements of the Contract as directed by Metro pending resolution of the dispute pursuant to the procedures set forth in this Article. In the event Contractor, in Metro's opinion, fails to fully perform the requirements of the Contract pending resolution of a dispute, Metro shall be entitled to exercise its rights to impose adjusted payments pursuant to Section 3.6, and/or terminate the Contract pursuant to Article 15 of these General Conditions.

ARTICLE 4

SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

4.1 Subcontracting. Contractor shall arrange and delegate its Work in conformance with trade practices and union regulations, if applicable, but shall remain responsible to Metro for performance of all Work required or implied by the Contract Documents. Contractor shall also be responsible for coordinating the efforts of its Subcontractors and Suppliers.

4.2 Objection to Subcontractors or Suppliers. Metro reserves the right to make reasonable objection to any of Contractor's Subcontractors or Suppliers if Metro discovers any data or information at any time during the 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.

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4.4 Removal of Subcontractors at Request of Metro. When any Subcontractor fails to prosecute a portion of the Work in a satisfactory manner, Metro may so notify Contractor. If the Subcontractor fails to cure the unsatisfactory Work promptly, Contractor shall remove such Subcontractor immediately upon written request of Metro and Contractor shall request approval from Metro of a new Subcontractor to perform this section of the Work at no increase in the Contract Amount, and with no change in the Contract Time.

4.5 Metro Not Obligated to Detect Unsatisfactory Work. Nothing contained in this Contract shall obligate Metro or place on Metro an affirmative duty to detect or discover unsatisfactory Work or materials of Contractor's Subcontractors or Suppliers. Failure of Metro to detect or discover such unsatisfactory Work or materials shall not relieve Contractor of any of its obligations under this Contract.

4.6 No Contractual Relationships Between Metro and Contractor's Subcontractors and Suppliers. Nothing contained in this Contract is intended nor shall be construed to create any contractual or third party beneficiary relationship between Metro and any of Contractor's Subcontractors, Suppliers, or agents, save and except in relation to the Labor and Materials Payment Bond.

4.7 Contractor's Agreements with Subcontractors.

4.7.1 Contractor shall provide in all subcontract and supply agreements that the Subcontractor or Supplier will be bound by the terms and conditions of this Contract to the extent that they relate to the Subcontractor's or Supplier's Work. Contractor shall require each Subcontractor to enter into similar agreements with sub-tier Subcontractors and Suppliers. Contractor shall make available to each proposed Subcontractor and Supplier, prior to the execution of the subcontract or supply agreement, copies of the Contract Documents that apply to the Work and materials to be provided by the Subcontractor or Supplier. Subcontractors and Suppliers shall similarly make copies of applicable portions of such documents available to their respective proposed sub-tier Subcontractors and Suppliers.

4.7.2 All Subcontractor and Supplier agreements shall also provide that they are assignable to Metro at Metro's option, in the event that Metro terminates the Contract. Contractor will provide to Metro a copy of all subcontracts and supply contracts for permanent materials.

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

4.8 Assignment. Contractor shall constantly give its personal attention to the faithful prosecution of the Work. Contractor shall keep the Work under its personal control and shall not assign any or all of Contractor's rights, by power of attorney or otherwise, nor delegate any of its duties except with the prior written approval of the Metro Council.

ARTICLE 5

TIME OF COMPLETION AND SCHEDULE FOR THE WORK

5.1 Prosecution of Work Generally. Contractor shall commence the Work within five (5) days after issuance of written Notice to Proceed from Metro and will diligently prosecute the Work to its Final Completion and Acceptance. The start of Work shall include attendance at preconstruction conferences, preparation and submittal of shop drawings, equipment lists, Schedule of Values, CPM construction schedules, requests for substitutions, and other similar activities, as described by these Contract Documents.

5.2 Time of Completion.

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

5.2.2 The time limits stated in these Contract Documents are of the essence of this Contract. By executing the Construction Agreement, Contractor confirms that the Contract Time is a reasonable period for performing all of the Work.

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.

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

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

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

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

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

ARTICLE 6

COORDINATION WITH OTHER METRO CONTRACTORS

6.1 Other Metro Contractors Generally. Metro reserves the right to award other contracts in connection with the Work. Contractor shall allow such Other Metro Contractors reasonable opportunity for storage of their materials and execution of their Work, shall ensure that the execution of Contractor's Work properly connects and coordinates with Work of all Other Metro Contractors, and shall cooperate with Other Metro Contractors to facilitate the Work in such a manner as Metro may direct. Connection between the Work of the Contractor and Other Metro Contractors will be the responsibility of the Party that is last in time to construct, unless otherwise directed in the Contract Documents.

6.2 Duty to Inspect Other Metro Contractors' Work. Where Contractor's Work is associated with that of Other Metro Contractors, or is to interface in any way with such Other Metro Contractors' Work, Contractor shall examine, inspect, and measure the adjacent or in-place Work of such Other Metro Contractors. If Contractor determines that any defect or condition of such adjacent or in-place Work will impede or increase the cost of Contractor's performance or otherwise prevent the proper execution of Contractor's Work, Contractor shall immediately, and before performing any Work affected by the Other Metro Contractors' work, submit an RFI to Metro pursuant to Section 3.3. If Contractor proceeds without examining or inspecting the Work and submitting a Request for Information, Contractor shall be held to have accepted the Other Metro Contractors' Work or material and the existing conditions, shall be responsible for any defects in Contractor's Work resulting therefrom, and shall not be relieved of any obligation or any warranty under this Contract because of any such condition or imperfection. This provision shall be included in any and all of Contractor's subcontracts for Work to be performed.

6.3 Latent Defects in Other Contractor's Work. Section 6.2 does not apply to latent defects. Contractor shall report latent defects in any Other Metro Contractors' Work at any time such defects become known or Contractor should have known, and Metro shall promptly thereafter take such steps as may be appropriate. If Contractor in the exercise of reasonable care should have known of such defects but did not report them, such defects shall not be considered latent.

6.4 Duty to Maintain Schedule. It shall be the responsibility of Contractor to maintain its schedule so as not to delay the progress of the Project or the Work of Other Metro Contractors. Contractor is required to cooperate in every way possible with Other Metro Contractors. Except as otherwise specifically provided in this Contract, no additional compensation will be paid for such cooperation. If Contractor delays the progress of the Project or the progress of Other Metro Contractors, it shall be the responsibility of Contractor to take all of the steps necessary to bring the affected Work into compliance with any affected schedules and to indemnify Metro from all liability for such delays pursuant to Article 11. Metro shall be under no duty to monitor or detect any delays of Contractor or any Other 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.

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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

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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.

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.

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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

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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.

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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

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accrue to Contractor in the future, including at Metro's option, the right to control any such litigation on such claim for relief or cause of action, by reason of any violation of 15 USC Section 1-15, ORS 646.725, or ORS 646.730 in connection with any goods or services that are used, in whole or in part, for the purpose of carrying out Contractor's obligations under this Contract.

7.12.2 Contractor shall require all Subcontractors and Suppliers to irrevocably assign to Metro, as a third-Party beneficiary, any right, title, or interest that has accrued or may accrue to the Subcontractors or Suppliers by reason of any violation of 15 USC Section 1-15, ORS 646.725, or ORS 646.730, including, at Metro's option, the rights to control any litigation arising hereunder, in connection with any goods or services provided to the Subcontractors or Suppliers by any person, in whole or in part, for the purpose of carrying out the Subcontractors' or Suppliers' obligations as agreed to by Contractor in pursuance of the completion of the Contract. Contractor shall require all Subcontractors and Suppliers to Execute the Assignment of Antitrust Claims attached as Exhibit 2 to these General Conditions as part of Contractor's subcontract with Subcontractor or Supplier.

7.12.3 In connection with Contractor's, Subcontractors' or Suppliers' assignment, it is an express obligation of Contractor, Subcontractor, or Supplier that it will take no action that will in any way diminish the value of the rights conveyed or assigned hereunder to Metro. It is an express obligation of Contractor, Subcontractor, or Supplier to advise the Office of Metro Attorney:

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

7.12.3.2 Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the impendency of such action; and

7.12.3.3 The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.

7.12.4 In the event that any payment under any such claim is made to Contractor, Subcontractor, or Supplier, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro under this Section 7.12.

ARTICLE 8 CHANGES IN THE WORK

8.1 Change Orders Generally.

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

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

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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.

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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

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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 279C.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

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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.

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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.

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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.

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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, if the Work is performed in the City of Portland, 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.

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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.

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

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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

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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

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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:

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- 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.

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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.

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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.

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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

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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

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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;

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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.



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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

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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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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 _____



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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 \$ _____, 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 above set forth Progress 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, through the period covered by said progress payment made by Metro.

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. _____, 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, **upon receipt of the above set forth progress payment**, which is the full payment due and owing to Undersigned up to and through the date set forth in section 2, Undersigned will be 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 agrees that, **conditioned upon receipt of the above set forth progress payment**, and in consideration thereof, the Undersigned hereby fully and unconditionally waives and releases Metro from 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 Metro may rely on this Affidavit, Agreement for Lien Waiver and Release in connection with remitting Progress Payment No. _____ to Undersigned.

Dated: _____ Affiant: _____ Its: _____

STATE OF OREGON)
County of _____)

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

Notary Public - State of Oregon



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

Construction Agreement

MERC CONTRACT NO. 304045

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



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

Construction Agreement

MERC CONTRACT NO. 304045

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 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

MERC Staff Report

Agenda Item/Issue:

For the purpose of selecting Anderson Roofing Company, Inc. for the Portland Expo Center - "Hall E Lobby Roof Repairs" and authorizing the Metro Deputy Chief Operating Officer to execute a contract with Anderson Roofing Company, Inc.

Resolution No: 14-20

Date: July 9, 2014

Presented by: Matthew P. Rotchford

Background: The roof above Expo's Hall E Lobby and meeting rooms is nearly twenty years old and in need of replacement. The roofing material used is a single ply membrane, a single line of defense, which when deteriorated allows water into the facility. The roof has three areas, the north and south mechanical spaces and the main roof area. All roof areas are the same material, however the mechanical areas are in the worst condition.

MERC staff prepared and issued Bid Documents and a Request for Bids in accordance with MERC's Purchasing Policies for the Hall E Lobby and Meeting Room Roof Repairs at the Portland Expo Center. The RFB was published in the *Daily Journal of Commerce*, *El Hispanic News* and on the state of Oregon ORPIN website. MERC staff included in the bid documents requirements of a good faith effort for outreach to the MWESB and FOTA communities.

On May 22, 2014, MERC staff conducted a site walk for potential bidders in which three roofing contractors and two subcontractors attended. Of the five attendees, one was an ESB. There were no representatives from WBE, MBE or FOTA firms. Three bids were received on June 10, 2014 and ranged from \$181,985.00 to \$218,420.00. No bids were received from MWESB or FOTA firms. The lowest responsive and responsible bidder was Anderson Roofing Company, in the amount of one hundred, eighty one thousand, nine hundred, and fifty-eight & 00/100 dollars (\$181,958.00). Anderson Roofing Company included an ESB subcontractor participation of \$20,494.00 or over 11% of the contract amount.

All of the bids exceeded the budgeted amount of \$125,000.00. MERC staff negotiated a reduced scope of work with the contractor and has agreed to a scope of work valued at \$121,770.00. The subcontractor participation for the reduced scope of work has been reduced in dollar amount to \$17,500, but this increases the subcontractor participation to over 14%. The reduced scope of work will provide Expo with a new 20-year roof at both Mechanical Areas (North and South ends of the roof area) and will make small modifications to the main roof area that will allow Expo to safely defer replacement for five years. The roof in these areas are considered sound with these added modifications. In the Mechanical Areas, the originally installed roofing material is nearing the end of life, is past warranty and is 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 over the Hall D Loading Dock in 2013, which will provide a 20 year warranty.

It should also be noted that the Portland Expo Center is currently engaged with a firm to fully review all roofing areas on all exhibit halls and support buildings. This study will allow for continued capital planning, more accurate budgeting and priority forecasting. These studies will inform the next steps on this and future roofing projects at the Expo.

Fiscal Impact: The FY2014-15 Adopted budget amount for the Hall E Lobby and Meeting Room Roof Repairs Project is \$125,000.00. The proposed contract value is less than the budgeted amount.

Recommendation: Staff recommends the Metropolitan Exposition-Recreation Commission, by Resolution No.14-20, approve the contract award and written contract with Anderson Roofing Company, for the amount of One hundred, twenty-one thousand, seven hundred, seventy & 00/100 dollars (\$121,770.00) for the Hall E Lobby and Meeting Room Roof Repairs at the Portland Expo Center.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 14-21

For the purpose of selecting D&R Masonry Restoration, Inc, for the Arlene Schnitzer Concert Hall, "Exterior Façade Maintenance Repairs" and authorizing the Metro Deputy Chief Operating Officer to execute a contract with D&R Masonry Restoration, Inc.

WHEREAS, the Portland’s Centers for the Arts must continue the repair and restoration of the cast stone and brick façade on the Arlene Schnitzer Concert Hall; and

WHEREAS, Section 7(B) of the Metropolitan Exposition Recreation Commission's ("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 D&R Masonry Restoration, Inc. is the lowest responsive and responsible bidder with a bid amount of One-hundred, Twenty-Nine Thousand, Seven Hundred Twenty-Five and No/100ths (\$129,725.00).

WHEREAS, MERC Staff included a request for bid alternate pricing in the published RFB. MERC staff reviewed the alternate pricing and has accepted each alternate pricing, increasing the contract price to Two-hundred, Twenty-Five Thousand and NO/100ths (\$225, 000.00).

BE IT THEREFORE RESOLVED as follows:

1. MERC selects D&R Masonry Restoration, Inc. as the lowest responsive and responsible bidder in response to the Request for Bids for the Portland’s Centers for the Arts – Arlene Schnitzer Concert Hall - Exterior Façade Maintenance Repairs.
2. MERC approves the contract with D&R Masonry Restoration, Inc. in the form substantially similar to the attached Exhibit A and authorizes the Metro Deputy Chief Operating Officer to execute the contract on behalf of the Commission.

Passed by the Commission on July 9, 2014

Chair

Secretary/Treasurer

Approved As to Form:
Alison R. Kean, Metro Attorney

By: _____
Nathan A. S. Sykes
Deputy Metro Attorney



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

Construction Agreement

MERC CONTRACT NO. 304046

THIS CONSTRUCTION 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 D&R Masonry Restoration, Inc., referred to herein as "Contractor," located at 8890 SE McLoughlin Blvd., Milwaukie, OR 97222.

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK AND CONTRACT TERMS

CONTRACTOR shall perform the work and/or deliver to MERC the goods described in the Scope of Work attached hereto and incorporated herein as Attachment A. All services and goods shall be of good quality and otherwise in accordance with the Scope of Work. CONTRACTOR shall perform the work and/or deliver to MERC the goods described in the Scope of Work strictly in accord with the terms of this Construction Agreement and the General Conditions attached hereto and incorporated herein as Attachment B.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing July 15, 2014 through and including November 30, 2014. Substantial completion per Section 9.4 of the General Conditions is October 31, 2014. This agreement may be extended or amended at MERC's sole discretion.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

MERC shall pay the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work, in the maximum amount of TWO HUNDRED TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$225,000.00) (the "Maximum Price"). 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. 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.

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.



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Construction Agreement

MERC CONTRACT NO. 304046

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 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: Daniel Elkins
 D & R Masonry Restoration, Inc.
 8890 SE McLoughlin Blvd
 Milwaukie, OR 97222
 503-654-1291 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 97206
 503-797-1795 fax

CONTRACTOR

METROPOLITAN EXPOSITION RECREATION
 COMMISSION

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

Construction Agreement

MERC CONTRACT NO. 304046

ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

1. Purpose and Goal of Work

MERC is contracting for exterior façade and masonry repairs at the Portland's Arlene Schnitzer Concert Hall, located at 1037 SW Broadway, Portland, OR 97205.

2. Scope of Work

Description of Work

BACKGROUND

This is the second phase of repair work on the exterior masonry at the Arlene Schnitzer Concert Hall. Phase 1 work entailed repair of the highest priority items and included replacement and patching work on the south and west elevations. This phase shall dovetail with and continue work started in Phase 1, and shall utilize similar procedures and products. Work shall be performed as per the attached specifications (*Attachment C*). Elevations of the facility using the below reference numbers, and photographs have been provided for additional clarity as *Attachment D*.

SUMMARY OF WORK

1. At South: Clean, repoint [35% cast stone joints] patch [four (4) patches of up to 20 square inches], and seal cast stone at the lower [east portion] of the parapet and upper wall cornice, coat horizontal part of both upper and lower cornices with waterproof coating.
2. At South: Repoint [35% cast stone joints], clean, seal cast stone belt cornice, and five (5) blind arch surrounds. At the middle cast stone band of each blind arch head cut out and tuck point 3 of the 6 masonry units where cracked in line with the existing inner and outer unit joints.
Apply with waterproof coating top [arched head] horizontal projection at five (5) blind arches and belt cornice.
3. At South: 100% Repoint top eight (8) brick courses (courses below uppermost cast stone), and the lower four (4) courses within each blind arch.
4. At West: Clean, repoint [25% cast stone joints], patch [two (2) patches of 150 square inches and six (6) patches of up to 20 square inches], and seal upper cast stone band area (parapet, cornice, frieze), coat horizontal part of cornice with waterproof coating.
5. At West: Repoint [35% cast stone joints], clean, seal cast stone belt cornice, and six (6) blind arch surrounds, cartouches and balconies. At the middle cast stone band of each blind arch head cut out and tuck point three (3) of the 6 masonry units where cracked in line with the existing inner and outer unit joints.
Apply with waterproof coating top [arched head] horizontal projection at (6) blind arches and belt cornice.
6. At West: 100% Repoint top ten (10) brick courses (courses below uppermost cast stone), and the lower four (4) courses within each blind arch.
7. At West Pediment: Clean, repoint [20% cast stone joints] and seal cast stone at the middle, lower, the 2nd balcony portion, and the door surrounds and cartouches below balcony not done in Phase 1.
8. Allow for minor patching at various cast stone panels in addition to that specifically scheduled, assume twenty (20) patches of up to 20 square inches each, locations to be determined by owner during project work.
9. South Elevation Service Door: replace one (1) broken cast stone at head; injection epoxy fill cracks at soffit and patch damaged areas.

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10. At two (2) west mezzanine exit door openings, and building base: Patch spalls, epoxy infill cracks at head masonry; patch auto damage at lower cast stone by service door. Clean and seal the cast stone at the balcony door surrounds.
11. At North Entry Projection and Surround: Clean heavily soiled roof balcony, cement wash at roof to achieve greater slope; recoat horizontal part of cornice with waterproof coating.
12. At the North and at the East Return on the North End: Clean, repoint [20% cast stone joints], patch [four (4) patches of up to 20 square inches], and seal upper cast stone band area (parapet, cornice, frieze), coat horizontal part of cornice with waterproof coating.
13. At North Studio Building down to and including top of lower cornice [see drawing]; clean sheet metal and masonry, repoint [15%], seal cast stone.
14. At East Elevation, South End: Clean, repoint [20% cast stone joints], patch [four (4) patches of up to 20 square inches], and seal upper cast stone band area (parapet, cornice, frieze), coat horizontal part of cornice with waterproof coating.

The Scope of Work includes any Plan Set, Specifications or Addenda attached hereto, and any Change Orders entered into in accordance with the terms of the Contract;

ATTACHMENT C: Specifications, titled "Arlene Schnitzer Concert Hall Exterior Façade Maintenance Repairs", and dated April 30, 2014;

ATTACHMENT D: Facility Elevations and Photographs;

Where applicable, reference to this Contract herein shall be deemed to refer to all of the Contract Documents.

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.

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Attachment B - SECTION 007200 METRO GENERAL CONDITIONS

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METRO GENERAL CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

1.1 Definitions. Unless otherwise defined or specified in the Contract Documents, the following terms shall have the meanings indicated:

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

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

1.1.3 Alternate Bids: Portions of the Work for which a Bidder must submit a separate Bid amount. Alternate Bid items may or may not be awarded at Metro's discretion.

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

1.1.5 "As-Builts" or Record Documents: Those drawings made, revised, or annotated by Contractor and approved by Metro during the performance of the Contract, fully illustrating how all elements of the Work were actually installed and completed.

1.1.6 Aspirational Target: Target of intended utilization of MBE, WBE, and ESB firms that a contractor has no contractual obligation to meet.

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

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

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

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

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

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

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

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

1.1.14.1 The change in the Work;

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

1.1.14.3 The extent of any adjustment to the Contract Time.

1.1.15 Clarification: A written document consisting of supplementary details, instruction or information issued by Metro after the award of Contract that clarifies or supplements the Contract Documents and becomes a part of the Contract Documents. A Clarification may or may not affect the scope of Work.

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

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

1.1.18 Contract: The Contract Documents.

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

1.1.20 Contract Documents or Contract or Bidding Documents: All of the following documents: the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms, the Construction Agreement, the Performance Bond, the Labor and Materials Payment Bond, the General Conditions, the Supplementary Conditions, the Specifications, the drawings, the approved and updated Construction Schedule, and any modifications of any of the foregoing in the form of Addenda, Clarifications, Change Orders, or Force Account Work.

1.1.21 Contractor: The person 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.

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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 First Opportunity Target Area or FOTA: FOTA is the economically distressed area located in the immediate vicinity of the Oregon Convention Center as authorized by Section 2, Chapter 909, Oregon Laws 1989.

1.1.34 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.

1.1.35 General Conditions: The Metro General Conditions of the Contract for Construction set forth in this document.

1.1.36 General Manager of Visitor Venues or GM: The GM oversees the Portland's Centers for the Performing Arts, the Oregon Convention Center, the Portland Expo Center and the Oregon Zoo.

1.1.37 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.

1.1.38 Landscape Architect: A person lawfully practicing landscape architecture. The term "Landscape Architect" refers to the Landscape Architect or the Landscape Architect's authorized representative.

1.1.39 LEED Certification: A Leadership in Energy and Design Certification issued by the United States Green Building Council (USGBC).

1.1.40 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.

1.1.41 Metro: A metropolitan service district organized under the laws of the State of Oregon and the Metro Charter. Metro is the Contract Review Board for MERC.

1.1.42 Metropolitan Exposition Recreation Commission (MERC): An appointed commission of Metro with contracting authority for the Portland's Centers for the Arts, the Oregon Convention Center and the Portland Expo Center.

1.1.43 Metro Chief Operating Officer or COO: The Chief Operating Officer of Metro.

1.1.44 Metro Council or Council: Metro's elected governing body.

1.1.45 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

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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.

1.1.46 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.

1.1.47 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.

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

1.1.48.1 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.

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

1.1.48.3 Contractor-owned equipment.

1.1.48.4 Equipment maintenance and repairs.

1.1.48.5 Temporary construction, utilities, and safety requirements.

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

1.1.48.7 Parking fees for workers (if applicable).

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

1.1.48.9 Cost of reproduction.

1.1.48.10 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:

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

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

1.1.48.10.3 Interest on capital.

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

1.1.49 Owner: Metro.

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

1.1.51 Plans: Drawings.

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

1.1.53 Project: The Work described in the Contract Documents.

1.1.54 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.

1.1.55 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.

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

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

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

1.1.59 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.

1.1.60 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

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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.

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

1.1.62 Request for Bid (RFB): A solicitation to perform Work where a Contract is awarded based on price.

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

1.1.64 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.

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

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

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

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

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

1.1.70 Solicitation Documents: An RFB.

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

1.1.72 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.

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

1.1.74 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.

1.1.75 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.

1.1.76 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.

1.1.77 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.

1.1.78 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.

1.1.79 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,

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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.

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.

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1.2.8 Standards that Apply Where Detailed Specifications Are Not Furnished. Wherever in these Contract Documents or in any directions given by Metro pursuant to or supplementing these Contract Documents, it is provided that Contractor shall furnish materials or manufactured articles or shall do work for which no detailed Specifications are set forth, the materials or manufactured articles shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed drawings or Specifications are set forth herein shall conform to the usual standards for first-class work of the kind required. Dimensions not expressly provided in the Contract Documents are to be computed, rather than determined by scale or rule.

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

1.4 Use of Contract Documents. The Contract Documents were prepared for use in the construction of this Project only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of Metro. Any unauthorized use of the Contract Documents is at the sole responsibility of the user and such unauthorized use shall be deemed an activity in the performance of the Contract for purposes of Contractor's duty to indemnify under Article 11.

1.5 Copyright. All submittals, record documents, and any other products or documents produced by Contractor pursuant to this Contract are the property of Metro and it is agreed by the Parties hereto that such documents are works made for hire. Contractor does hereby convey, transfer, and grant to Metro all rights of reproduction and the copyright to all such documents.

1.6 Contractor's Status as Independent Contractor. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor under ORS 670.600. The Contractor further agrees that Contractor, its officers, agents, and employees, any Subcontractor or Supplier of Contractor of any tier, or its officers, agents, or employees, are not officers, employees, or agents of Metro under the Oregon Tort Claims Act (ORS 30.260 through 30.300). Contractor and its officers, agents, employees, and its Subcontractors and Suppliers of any tier and their officers, agents, and employees will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300. Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.

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

1.8 Severability Clause. Should any provision of this Contract at any time be in conflict with any law, regulation, or ruling, or be legally unenforceable for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event that any provision of this Contract shall become legally unenforceable, in whole or in part, the remaining provisions of this Contract shall nevertheless remain in full force and effect.

1.9 Notice or Service. Any written notice required or allowed under the Contract shall be deemed to have been communicated to the other Party and service thereof shall be deemed to have been made if such notice is delivered in person to the individual, a member of the partnership or joint venture, or an officer of the corporation for whom it was intended, or if delivered at or sent by regular, registered, or certified mail to the last business address of the relevant person or Party known to the person or Party giving the notice, or to Contractor's Site office if the notice is directed to Contractor. Notice may be delivered by e-mail as long as a hard copy is mailed the same day to the relevant person by the methods noted above. The date or time of service for purposes of all notices required or allowed under the Contract shall be the date and/or time upon which the relevant document was mailed or delivered as above described. The address given in the Bid or Proposal by the Contractor is hereby designated as the legal business address of Contractor, but such address may be changed at any time by ten (10) days' prior notice in writing, delivered to Metro.

ARTICLE 2 CONTRACTOR

2.1 Responsibilities of the Contractor.

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

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whatever nature and shall provide or cause to be provided all materials, equipment, tools, and other facilities of whatever nature necessary to complete the Work and shall otherwise cause the Work to be completed in accordance with the Contract Documents.

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

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

2.2 Documents.

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

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

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

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

2.3 Contractor's Authorized Representative. Prior to commencing any Work under this Contract, the Contractor shall appoint in writing an authorized representative or representatives. Such appointment shall include the name and title of each representative along with the extent to which each representative is authorized to represent, bind, and act for Contractor. The description of extent of representation shall include but not be limited to the maximum dollar value of Change Orders that the individual may authorize, whether the individual may respond to RFPs and for what maximum dollar amount, and whether the individual may submit a claim pursuant to Section 3.4.

2.4 On-Site Representation Required. Contractor shall at all times be represented at the Site by one or more of such authorized representatives who, cumulatively, shall have complete authority to represent, bind, and act for Contractor in all matters pertaining to or related to this Contract. In the event that Metro deems it reasonably necessary to take immediate actions at the Site pertaining or relating to this Contract and Contractor has failed to comply with this Section and is consequently not fully represented at the Site at such time, then Contractor shall be deemed to acquiesce in all actions so taken by Metro.

2.5 Contractor's Office at the Site. Prior to commencement of Work at the Site, Contractor shall establish a field office at the Site acceptable to the Project Manager. This office shall be located in a job trailer or temporary building. This office shall be the headquarters of Contractor's representatives authorized to receive notices, instructions, drawings, or other communications from the Project Manager on behalf of Metro or the Architect, and to act on Change Orders or other actions. Such notices, instructions, drawings, or other communications given to such a representative or delivered to Contractor's Site office in his/her absence shall be deemed to have been given to Contractor.

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

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

2.7 Review of Project Conditions. Prior to execution of the Contract, the Contractor will evaluate the conditions and limitations under which the Work is to be performed, including without limitation (i) the geographical and topographical location, condition, layout, and nature of the Project Site and surrounding areas; (ii) generally prevailing climatic conditions; (iii) anticipated labor supply and costs; (iv) availability and cost of materials, tools, and equipment; (v) 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

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Contractor's plant or equipment, or any of Contractor's methods of executing the Work, appear to Metro to be inadequate to ensure the required quality, environmental protection, or rate of progress of the Work, Metro may order Contractor to increase or improve its facilities or methods, and Contractor shall promptly comply with such orders. Neither compliance with such orders nor failure of Metro to issue such orders shall relieve Contractor from the obligation or liability to secure the quality of Work and the rate of progress required by the Contract. Contractor shall be responsible for overload of any part or parts of structures beyond their safe calculated carrying capacities and for release of pollutants into surrounding waters resulting from Contractor's activities on the Site.

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

2.14 Permits.

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

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

2.15 Contractor's Temporary Structures. Contractor shall obtain all necessary permits for and shall erect and maintain at its own expense, and remove upon completion of the Work or as ordered by Metro, temporary structures, sheds, barriers, walks, hoisting equipment, scaffolds, etc., as are necessary for the Work pursuant to these Contract Documents. Contractor's temporary structures, equipment, stored materials, stored equipment, etc., shall be located so as not to interfere with the prosecution of the Work. If not so located, they shall be moved by Contractor, as directed by Metro, at no cost to Metro. Contractor's temporary structures, equipment, or materials that obstruct progress of any portion of the Work shall be removed or relocated by Contractor at Contractor's expense.

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

2.17 Accounting Records.

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

2.17.1.1 The performance of the Contractor, including but not limited to Contractor compliance with Contract plans and Specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions, and compliance with any and all requirements imposed on Contractor or Subcontractor under the terms of the Contract or subcontract;

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

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

2.17.1.4 Payments made to all suppliers and sub-consultants.

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

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

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

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by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs in sending its employees or consultants to examine, audit, inspect, and copy those records. If Contractor elects to have such Contract Records outside these boundaries, the costs paid by Contractor to Metro for inspection, auditing, examining, and copying those records shall not be recoverable costs in any legal proceeding.

2.17.4 The Contractor and Subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of Metro Auditor, to inspect, examine, copy, and audit the books and records of Contractor or Subcontractor relating to this Contract, including tax returns, financial statements, other financial documents, and any documents that may be placed in escrow according to any Contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law.

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

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

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

ARTICLE 3 ADMINISTRATION OF THE CONTRACT

3.1 Authority and Relationships of Metro and Architect. Except as specifically provided in this Section, no individual other than the Metro Chief Operating Officer or the Project Manager, duly appointed as set forth below, shall have any authority to make representations, statements, or decisions of whatever nature binding Metro or Architect regarding any aspect of this Contract. Except as specifically provided in this Article, Contractor shall have no right to, and shall not rely on, any such representation, statement, or decision. Any reference to action by Metro in this Contract requires the written approval of the Metro Chief Operating Officer or the Project Manager designated in writing by the Metro Chief Operating Officer as having authority to act for Metro, but only to the extent that such authority is expressly delegated in writing.

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

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

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

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

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

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.

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

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

3.2.8 Contractor has no right to and shall not rely on representations of whatever nature made by any individual, whether or not employed by or purporting to represent Metro, unless such individual has been specifically and expressly delegated authority to make such representations pursuant to these Contract Documents. Likewise, Contractor has no right to and shall not rely on any representations of authorized changes in the Contract of whatever size or nature unless such change is in writing and signed by Metro.

3.2.9 Nothing contained in this Section shall obligate Metro or Architect to supervise Contractor's Work under this Contract, and Contractor shall remain fully responsible for the complete and proper supervision of all of the Work.

3.3 Request for Information. If the Contractor believes that the Work to be done or any of the matters relative to the Contract Documents are not sufficiently detailed or explained in the Contract Documents, or if the Contractor has any questions as to the meaning or intent of the Contract Documents, Contractor shall immediately submit to Architect and Metro a written Request for Information ("RFI") that shall fully describe the information sought.

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

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

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

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

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

3.4 Contractor's Claims.

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

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

3.4.2.3 Claims based on Clarifications or Change Orders issued by Metro or any other decision, action, or failure to act by Metro as described in Section 3.4.5.

3.4.3 Claims For Excusable Delays.

3.4.3.1 Definition of Excusable Delay. A Delay is "Excusable" if such act, event, or condition has a materially adverse effect on the ability of Contractor to perform its obligations under this Contract as scheduled, and/or materially increases the cost to Contractor to perform such obligations as scheduled and if such act, event, or condition and its effect:

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

3.4.3.1.2 Do not arise out of (a) strikes, labor disputes, or other labor difficulties involving Contractor or its Subcontractors or Suppliers or entities providing transportation to Contractor or its Subcontractors or Suppliers; (b) labor shortages; or (c) changing economic conditions; and

3.4.3.1.3 Could not have been reasonably anticipated by Contractor.

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

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

3.4.3.3.1 An Act of God.

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

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

3.4.3.3.4 The failure to issue or renew, or the suspension, termination, interruption, or denial of, any permit, license, consent, authorization, or approval essential to the Work, if such act or event is not the result of the willful or negligent action or inaction of Contractor or of any third party for whom Contractor is directly responsible, and if Contractor is taking, has taken, or will cause to be taken, all reasonable actions in good faith to contest such action (it being understood that the contesting in good faith of any such action shall not constitute or be construed as a willful or negligent act of Contractor).

3.4.3.3.5 The failure of any appropriate federal, state, municipal, county, or other public agency or authority or private utility having operational jurisdiction over the Work or Site to provide and maintain utilities, services, water and sewer lines, and power transmission lines to the Site, that are required for and essential to the Work.

3.4.3.3.6 Epidemics or quarantines.

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

3.4.3.3.8 Priorities or privileges established for the manufacture, assembly, or allotment of material by order, decree, or otherwise of the U. S. or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority.

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

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

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:

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

3.4.3.5.2 Any delay in the prosecution of parts of the Work that may in itself be unavoidable but that does not necessarily prevent or delay the prosecution of other parts of the Work nor the Substantial Completion of the Work of this Contract within the time specified.

3.4.3.5.3 Any reasonable delay resulting from the time required by Metro for review of submittals or shop drawings submitted by Contractor and for the making of surveys, measurements, and inspections.

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

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

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

3.4.3.6 Excusable Delay Claims Procedure.

3.4.3.6.1 Contractor shall, within forty-eight (48) hours of the start of the occurrence or Contractor's first knowledge of the occurrence that is the basis of the claim for Excusable Delay, whichever is earlier, notify Metro in writing of such delay. The written notice by Contractor shall indicate the cause of the delay and shall estimate the possible time extension requested. Within ten (10) days after the cause of the delay has been remedied, Contractor shall give written notice to the Project Manager of any actual time extension and, if the Excusable Delay is a Compensable Excusable Delay, any increase in the Contract Amount requested as a result of the aforementioned occurrence in accordance with this Contract. If Contractor believes that a single circumstance or set of facts gives rise to both a claim for an extension to the Contract Time and an increase in the Contract Amount, Contractor must state both such allegations in one written claim or waive the unstated allegation.

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

3.4.3.6.3 Within twenty-one (21) days after Contractor submits to the Project Manager such a written notice for an extension of Contract Time and/or increase in the Contract Amount, the Project Manager will issue the decision on each request. If Contractor is dissatisfied with such decision, Contractor may preserve its claim as provided and prescribed by Section 3.4.6.

3.4.4 Claims for Differing Site Conditions-- Contractor shall promptly, and before the conditions are disturbed, give written notice to the Project Manager of (i) subsurface or latent physical conditions at the Site that differ materially from those indicated in this Contract, or (ii) physical conditions at the Site that were unknown and not reasonably discoverable by means of the Review of Project Conditions required by Section 2.7, are of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract. The Project Manager shall investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ as to cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made and a Change Order issued. If Contractor is dissatisfied with the decision of the Project Manager under this Section, Contractor may preserve its claim as provided and prescribed by Section 3.4.6.

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

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;

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

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

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

3.4.5.2 Submission of written notice of intent to make a formal claim as specified above shall be mandatory and failure to comply shall be a conclusive waiver to any claim by Contractor. Oral notice or statement will not be sufficient nor will notice or statement after commencing the Work in question.

3.4.5.3 After the written notification is submitted by Contractor (if the claim is not resolved or withdrawn in writing) and only upon written direction by the Project Manager, Contractor shall proceed without delay to perform the Work pursuant to the direction of the Project Manager. While the Work on an unresolved claim is being performed, Contractor shall keep track of costs and maintain records in the manner set forth in the section on Force Account Work, at no cost to Metro. Such notice by Contractor and the fact that Contractor is keeping track of costs and maintaining records shall not in any way be construed as proving the validity of the claim nor the costs thereof.

3.4.5.4 Provided the claim or claims have been submitted in accordance with the requirements of this Section, the Project Manager will consider and investigate the claim or claims of Contractor. Within twenty-one (21) days of receipt of the above-described written notification of claim, the Project Manager will advise Contractor of the Project Manager's decision to accept or reject the claim or claims, in full or in part. If Contractor is dissatisfied with the decision of the Project Manager under this Section, Contractor may preserve its claim as provided and prescribed by Section 3.4.6.

3.4.6 Preservation of Claims -- Within thirty (30) days after a rejection of a claim, in whole or in part, by Metro under Sections 3.4.3, 3.4.4 or 3.4.5, Contractor may preserve its claim by submitting a fully documented claim package to the Metro Procurement Officer. That package shall include substantiating documentation with an itemized breakdown of Contractor and Contractor's Subcontractors' costs on a daily basis that shall include but not be limited to labor, material, equipment, supplies, services, Overhead, and Profit. All documentation that Contractor believes is relevant to the claim shall be provided in the claim package, including without limitation payroll records, purchase orders, quotations, invoices, estimates, correspondence, profit and loss statements, daily logs, ledgers, and journals. Failure to submit the claim package in full compliance with this requirement and/or maintain cost records as herein required will constitute a waiver of the claim. If Contractor elects to pursue any claims by filing a lawsuit against Metro, it must commence such lawsuit within six (6) months after the date of Substantial Completion. Failure to commence a lawsuit within this time limitation shall constitute a waiver of all such claims by Contractor.

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

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

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

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

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Contract Time, and that Metro will be vulnerable to further damages if Metro is obligated to continue paying Contractor for Work performed after the Contract Time has expired. It is therefore agreed that upon the expiration of the Contract Time, Metro may adjust its payments to Contractor by any combination of the following: (1) making no further payments to Contractor until the Work is substantially complete; (2) paying the Subcontractor costs incurred by Contractor without any overhead, profit, or fee of any kind going to Contractor; and/or (3) collection of liquidated damages as designated in the Contract. Permitting Contractor to continue and finish the Work or any part thereof after the Contract Time has expired shall not waive any of Metro's rights under this Section or the balance of the Contract Documents.

3.6.2 Adjusted Payments Not a Bar to Metro's Right to Other Damages. Payment of adjusted payments shall not release Contractor from obligations in respect to the complete performance of the Work, nor shall the payment of such adjusted payments constitute a waiver of Metro's right to collect any additional adjusted payments that it may sustain by failure of Contractor to fully perform the Work, it being the intent of the Parties that the aforesaid adjusted payments be full and complete payment only for failure of Contractor to complete the Work on time. Metro expressly reserves the right to make claims for any and all other damages that Metro may incur due to Contractor's failure to perform in strict accordance with this Contract.

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

3.7.1 The mediator shall be an individual mutually acceptable to both Parties. Should the Parties disagree on the selection of a mediator, the Parties shall look to the local circuit court or the Oregon Dispute Resolution Commission. Each Party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two Parties.

3.7.2 Both Parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement on both Metro and Contractor. The schedule and time allowed for mediation shall be mutually acceptable. The mediation process is nonbinding.

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

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

3.9 Work to Continue Notwithstanding Dispute. In no event shall submission of a dispute arising out of this Contract by either Party relieve Contractor of its obligation to fully perform the requirements of the Contract as directed by Metro pending resolution of the dispute pursuant to the procedures set forth in this Article. In the event Contractor, in Metro's opinion, fails to fully perform the requirements of the Contract pending resolution of a dispute, Metro shall be entitled to exercise its rights to impose adjusted payments pursuant to Section 3.6, and/or terminate the Contract pursuant to Article 15 of these General Conditions.

ARTICLE 4

SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

4.1 Subcontracting. Contractor shall arrange and delegate its Work in conformance with trade practices and union regulations, if applicable, but shall remain responsible to Metro for performance of all Work required or implied by the Contract Documents. Contractor shall also be responsible for coordinating the efforts of its Subcontractors and Suppliers.

4.2 Objection to Subcontractors or Suppliers. Metro reserves the right to make reasonable objection to any of Contractor's Subcontractors or Suppliers if Metro discovers any data or information at any time during the 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.

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4.4 Removal of Subcontractors at Request of Metro. When any Subcontractor fails to prosecute a portion of the Work in a satisfactory manner, Metro may so notify Contractor. If the Subcontractor fails to cure the unsatisfactory Work promptly, Contractor shall remove such Subcontractor immediately upon written request of Metro and Contractor shall request approval from Metro of a new Subcontractor to perform this section of the Work at no increase in the Contract Amount, and with no change in the Contract Time.

4.5 Metro Not Obligated to Detect Unsatisfactory Work. Nothing contained in this Contract shall obligate Metro or place on Metro an affirmative duty to detect or discover unsatisfactory Work or materials of Contractor's Subcontractors or Suppliers. Failure of Metro to detect or discover such unsatisfactory Work or materials shall not relieve Contractor of any of its obligations under this Contract.

4.6 No Contractual Relationships Between Metro and Contractor's Subcontractors and Suppliers. Nothing contained in this Contract is intended nor shall be construed to create any contractual or third party beneficiary relationship between Metro and any of Contractor's Subcontractors, Suppliers, or agents, save and except in relation to the Labor and Materials Payment Bond.

4.7 Contractor's Agreements with Subcontractors.

4.7.1 Contractor shall provide in all subcontract and supply agreements that the Subcontractor or Supplier will be bound by the terms and conditions of this Contract to the extent that they relate to the Subcontractor's or Supplier's Work. Contractor shall require each Subcontractor to enter into similar agreements with sub-tier Subcontractors and Suppliers. Contractor shall make available to each proposed Subcontractor and Supplier, prior to the execution of the subcontract or supply agreement, copies of the Contract Documents that apply to the Work and materials to be provided by the Subcontractor or Supplier. Subcontractors and Suppliers shall similarly make copies of applicable portions of such documents available to their respective proposed sub-tier Subcontractors and Suppliers.

4.7.2 All Subcontractor and Supplier agreements shall also provide that they are assignable to Metro at Metro's option, in the event that Metro terminates the Contract. Contractor will provide to Metro a copy of all subcontracts and supply contracts for permanent materials.

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

4.8 Assignment. Contractor shall constantly give its personal attention to the faithful prosecution of the Work. Contractor shall keep the Work under its personal control and shall not assign any or all of Contractor's rights, by power of attorney or otherwise, nor delegate any of its duties except with the prior written approval of the Metro Council.

ARTICLE 5

TIME OF COMPLETION AND SCHEDULE FOR THE WORK

5.1 Prosecution of Work Generally. Contractor shall commence the Work within five (5) days after issuance of written Notice to Proceed from Metro and will diligently prosecute the Work to its Final Completion and Acceptance. The start of Work shall include attendance at preconstruction conferences, preparation and submittal of shop drawings, equipment lists, Schedule of Values, CPM construction schedules, requests for substitutions, and other similar activities, as described by these Contract Documents.

5.2 Time of Completion.

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

5.2.2 The time limits stated in these Contract Documents are of the essence of this Contract. By executing the Construction Agreement, Contractor confirms that the Contract Time is a reasonable period for performing all of the Work.

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.

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

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

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

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

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

ARTICLE 6

COORDINATION WITH OTHER METRO CONTRACTORS

6.1 Other Metro Contractors Generally. Metro reserves the right to award other contracts in connection with the Work. Contractor shall allow such Other Metro Contractors reasonable opportunity for storage of their materials and execution of their Work, shall ensure that the execution of Contractor's Work properly connects and coordinates with Work of all Other Metro Contractors, and shall cooperate with Other Metro Contractors to facilitate the Work in such a manner as Metro may direct. Connection between the Work of the Contractor and Other Metro Contractors will be the responsibility of the Party that is last in time to construct, unless otherwise directed in the Contract Documents.

6.2 Duty to Inspect Other Metro Contractors' Work. Where Contractor's Work is associated with that of Other Metro Contractors, or is to interface in any way with such Other Metro Contractors' Work, Contractor shall examine, inspect, and measure the adjacent or in-place Work of such Other Metro Contractors. If Contractor determines that any defect or condition of such adjacent or in-place Work will impede or increase the cost of Contractor's performance or otherwise prevent the proper execution of Contractor's Work, Contractor shall immediately, and before performing any Work affected by the Other Metro Contractors' work, submit an RFI to Metro pursuant to Section 3.3. If Contractor proceeds without examining or inspecting the Work and submitting a Request for Information, Contractor shall be held to have accepted the Other Metro Contractors' Work or material and the existing conditions, shall be responsible for any defects in Contractor's Work resulting therefrom, and shall not be relieved of any obligation or any warranty under this Contract because of any such condition or imperfection. This provision shall be included in any and all of Contractor's subcontracts for Work to be performed.

6.3 Latent Defects in Other Contractor's Work. Section 6.2 does not apply to latent defects. Contractor shall report latent defects in any Other Metro Contractors' Work at any time such defects become known or Contractor should have known, and Metro shall promptly thereafter take such steps as may be appropriate. If Contractor in the exercise of reasonable care should have known of such defects but did not report them, such defects shall not be considered latent.

6.4 Duty to Maintain Schedule. It shall be the responsibility of Contractor to maintain its schedule so as not to delay the progress of the Project or the Work of Other Metro Contractors. Contractor is required to cooperate in every way possible with Other Metro Contractors. Except as otherwise specifically provided in this Contract, no additional compensation will be paid for such cooperation. If Contractor delays the progress of the Project or the progress of Other Metro Contractors, it shall be the responsibility of Contractor to take all of the steps necessary to bring the affected Work into compliance with any affected schedules and to indemnify Metro from all liability for such delays pursuant to Article 11. Metro shall be under no duty to monitor or detect any delays of Contractor or any Other 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.

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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

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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.

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.

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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

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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.

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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

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accrue to Contractor in the future, including at Metro's option, the right to control any such litigation on such claim for relief or cause of action, by reason of any violation of 15 USC Section 1-15, ORS 646.725, or ORS 646.730 in connection with any goods or services that are used, in whole or in part, for the purpose of carrying out Contractor's obligations under this Contract.

7.12.2 Contractor shall require all Subcontractors and Suppliers to irrevocably assign to Metro, as a third-Party beneficiary, any right, title, or interest that has accrued or may accrue to the Subcontractors or Suppliers by reason of any violation of 15 USC Section 1-15, ORS 646.725, or ORS 646.730, including, at Metro's option, the rights to control any litigation arising hereunder, in connection with any goods or services provided to the Subcontractors or Suppliers by any person, in whole or in part, for the purpose of carrying out the Subcontractors' or Suppliers' obligations as agreed to by Contractor in pursuance of the completion of the Contract. Contractor shall require all Subcontractors and Suppliers to Execute the Assignment of Antitrust Claims attached as Exhibit 2 to these General Conditions as part of Contractor's subcontract with Subcontractor or Supplier.

7.12.3 In connection with Contractor's, Subcontractors' or Suppliers' assignment, it is an express obligation of Contractor, Subcontractor, or Supplier that it will take no action that will in any way diminish the value of the rights conveyed or assigned hereunder to Metro. It is an express obligation of Contractor, Subcontractor, or Supplier to advise the Office of Metro Attorney:

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

7.12.3.2 Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the impendency of such action; and

7.12.3.3 The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.

7.12.4 In the event that any payment under any such claim is made to Contractor, Subcontractor, or Supplier, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro under this Section 7.12.

ARTICLE 8 CHANGES IN THE WORK

8.1 Change Orders Generally.

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

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

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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.

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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

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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 279C.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

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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.

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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.

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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.

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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, if the Work is performed in the City of Portland, 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.

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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.

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

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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

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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

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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:

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- 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.

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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.

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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.

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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

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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

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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;

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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.



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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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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_____



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

Construction Agreement

MERC CONTRACT NO. 304046

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 impendency 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 _____



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

Construction Agreement

MERC CONTRACT NO. 304046

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 \$ _____, 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 above set forth Progress 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, through the period covered by said progress payment made by Metro.

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. _____, 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, **upon receipt of the above set forth progress payment**, which is the full payment due and owing to Undersigned up to and through the date set forth in section 2, Undersigned will be 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 agrees that, **conditioned upon receipt of the above set forth progress payment**, and in consideration thereof, the Undersigned hereby fully and unconditionally waives and releases Metro from 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 Metro may rely on this Affidavit, Agreement for Lien Waiver and Release in connection with remitting Progress Payment No. _____ to Undersigned.

Dated: _____ Affiant: _____ Its: _____

STATE OF OREGON)
County of _____)

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

Notary Public - State of Oregon



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

Construction Agreement

MERC CONTRACT NO. 304046

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



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

Construction Agreement

MERC CONTRACT NO. 304046

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 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

ATTACHMENT C

SPECIFICATIONS

Arlene Schnitzer Concert Hall Exterior Facade Maintenance Repairs April 30, 2014

TABLE OF CONTENTS

	SPEC SECTION 00800	SUPPLEMENTARY CONDITIONS
CAST STONE (NEW):	SPEC SECTION 04235	CAST STONE
CLEANING:	SPEC SECTION 04510	CLEANING AND SEALING
SEALING:	SPEC SECTION 04510	CLEANING AND SEALING
WATERPROOF COATING:	SPEC SECTION 04510	CLEANING AND SEALING
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REPOINTING:	SPEC SECTION 04520	MASONRY RESTORATION
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CRACK FILLING:	SPEC SECTION 04520	MASONRY RESTORATION
CAULKING:	SPEC SECTION 07900	JOINT SEALERS

**SECTION 00800
SUPPLEMENTARY CONDITIONS**

PART 1 GENERAL

1.01 SUMMARY OF WORK

- A. The historic exterior masonry of the existing building is to be rehabilitated including repairs and repointing to the existing masonry and associated material.
- B. The Arlene Schnitzer Concert Hall Building is an historic landmark. All work on this project shall be in accordance with The Secretary of the Interiors Standards for Rehabilitation.

1.02 ACCESS BY OWNER AND PUBLIC

- A. Maintain access and use of facility by owner and public. Protect entries from hazards created by the project.
- B. Items noted 'NIC' (Not in Contract), will be furnished and installed by Owner.
- C. Owner shall provide certain materials as noted in individual specification sections. Items furnished by Owner to be installed by Contractor are noted (OFCI).

1.03 PROTECTING EXISTING UTILITIES

- A. Before starting work, Contractor shall determine exact location of any lines that could be damaged by Contract Work.
- B. Contractor shall assume that other unknown utility lines do exist, and Contractor shall proceed with caution when working in areas that could conceal unknown Utilities. If such utility lines are encountered, immediately request disposition instructions from Architect.
- C. Protect and maintain existing utilities, active electrical conductors, sewers, pipes, and other active lines on property.

1.04 PROTECTING EXISTING FACILITIES

- A. Protect sidewalks, paving, window areaways, shrubs, trees, lawn areas, and irrigation system against damage caused by Work of this Contract.
- B. Protect catch basins and yard drains against plugging. Maintain drainage system in properly operable working condition.
- C. Clean, repair, resurface, or restore existing surfaces to their original condition, or completely replace such surfaces to match existing, where damaged by construction operations.
- D. Damage to property adjacent to Owner's property shall be restored to satisfaction of respective property owners.
- E. Protect existing portions of the building and property not scheduled for work from damage that may be caused by work under this project.

1.05 COORDINATION

- A. Coordinate scheduling, submittals, and Work of the various Sections of specifications to assure efficient and orderly sequence of installation of interdependent construction elements.

1.06 PROGRESS MEETINGS

- A. Schedule and administer meetings throughout progress of the Work at regular intervals in relation to work performed; schedule meetings as determined at Preconstruction conference.

1.07 CONSTRUCTION SCHEDULES

- A. Coordinate the scheduling of work that may interfere with ASCH events with the owner's representative. Note: During the summer months Main Street is closed with events all day every Wednesday, also the park blocks host a farmers market on Wednesday. Both of these events draw heavy pedestrian traffic, contract is responsible for rerouting of pedestrian traffic as necessary for their work.
- B. Submit initial progress schedule in duplicate within 15 days after date of Owner-Contractor Agreement for Architect review.
- C. Submit revised schedules with each Application for Payment, identifying changes since previous version. Indicate estimated percentage of completion for each item of Work at each submission.

1.08 PROPOSED PRODUCTS LIST

- A. Within 15 days after date of Owner-Contractor Agreement, submit complete list of major Products proposed for use, with name of manufacturer, trade name, and model number of each Product.

1.09 SHOP DRAWINGS

- A. Submit applicable and requested Shop Drawings for review by Architect/Owner.

1.10 PRODUCT DATA

- A. Submit applicable and requested Product Data for review by Architect/Owner.
- B. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information unique to this project.

1.11 SAMPLES

- A. When specified in individual specification Sections, submit samples to illustrate functional and aesthetic characteristics of the Product.
- B. Submit samples of finishes from the full range of manufacturers' standard colors (or specific colors where noted), textures, and patterns for Architect's selection.

1.12 MANUFACTURERS' INSTRUCTIONS

- A. When specified in individual specification Sections, submit manufacturers' printed instructions for delivery, storage, assembly, installation, adjusting, and finishing, in quantities specified for Product Data.

1.13 MANUFACTURER'S CERTIFICATES

- A. When specified in individual specification Sections, submit manufacturers' certificate to Architect/Engineer for review, in quantities specified for Product Data.
- B. Indicate material or Product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.

1.14 QUALITY ASSURANCE/CONTROL OF INSTALLATION

- A. Monitor quality control over suppliers, manufacturers, Products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply fully with manufacturers' instructions.
- C. Comply with specified standards as a minimum quality for the Work except when more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.

1.15 FIELD SAMPLES

- A. Construct field samples at the site for review as required by individual specifications Sections. Acceptable samples represent a quality level for the Work.

1.16 INSPECTION AND TESTING LABORATORY SERVICES

- A. Owner may appoint and employ services of an independent firm to perform inspection and testing.
- B. The independent firm will perform inspections, tests, and other services as required.
- C. Cooperate with independent firm; furnish samples as requested.
- D. Re-testing required because of non-conformance to specified requirements will be charged to the Contractor.

1.17 TEMPORARY ELECTRICITY

- A. Connect to existing power service. Power consumption shall not disrupt Owner's need for continuous service. Owner to pay for power consumed.
- B. Provide power outlets for construction operations, branch wiring, distribution boxes, and flexible power cords as required.

1.18 TELEPHONE SERVICE

- A. Provide, maintain and pay for mobile telephone service to field operation/personnel at time of project mobilization.

1.19 TEMPORARY WATER SERVICE

- A. Connect to existing water source for construction operations.

1.20 TEMPORARY SANITARY FACILITIES

- A. Owner's facilities may be used.
- B. Maintain in clean and sanitary condition.

1.21 BARRIERS AND FENCING

- A. Provide barriers or fencing to prevent unauthorized entry to construction areas and to protect existing facilities and adjacent properties from damage.
- B. A sidewalk/pedestrian plan is required to be submitted to the owner prior to mobilization to the site.
- C. Construction: Contractor's option upon approval.

1.22 PROTECTION OF INSTALLED WORK

- A. Protect installed Work and provide special protection where specified in individual specification Sections.
- B. Prohibit traffic or storage upon waterproofed or roofed surfaces.

1.23 SECURITY

- A. Provide security and facilities to protect Work and existing facilities, and Owner's operations from unauthorized entry, vandalism, or theft.

1.24 PROGRESS CLEANING

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition. Minimize dust and surface runoff from operations.

1.25 FIELD OFFICES AND SHEDS

- A. Job meetings to be held in an available portion of the existing building or in the field.
- B. METRO will provide (2) onstreet spaces for the Contractor's use. The location of the spaces may change during the work. Contractor may park trucks or job trailers in those spaces. Additional parking spaces, if needed, to be provided by the Contractor.

1.26 REMOVAL OF ANCHORS AND FACILITIES

- A. Remove temporary anchors as may be required for work on this project. Clean and repair damage caused by installation or use of temporary work.
- B. Restore existing facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

1.27 PRODUCTS

- A. Products: Means new material, machinery, components, equipment, fixtures, and systems forming the Work, but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components specifically identified for reuse.
- B. Do not use materials and equipment removed from existing premises, except as specifically identified or allowed by the Contract Documents.
- C. Use interchangeable components of the same manufacture for similar components.

1.28 TRANSPORTATION, HANDLING, STORAGE AND PROTECTION

- A. Transport, handle, store and protect Products in accordance with manufacturer's instructions.

1.29 CONTRACT CLOSEOUT PROCEDURES

- A. Submit written certification that Contract Documents have been reviewed, Work has been inspected, and Work is complete in accordance with Contract Documents and ready for Architect/Engineer's inspection.
- B. Submit final Application for Payment identifying total adjusted Contract Sum/Price, previous payments, and amount remaining due.

1.30 FINAL CLEANING

- A. Execute final cleaning prior to final inspection.
- B. Clean exterior surfaces exposed to view.
- C. Clean exterior side of window glazing in the area of work.
- D. Clean debris from site, roofs, gutters, downspouts, and drainage systems.
- E. Remove waste and surplus materials, rubbish, and construction facilities from the site.

1.31 PROJECT RECORD DOCUMENTS

- A. Maintain on site, one set of Contract Documents to be utilized for record documents.
- B. Record actual revisions to the Work. Record information concurrent with construction progress. Record extent of work performed under this contract if contract is for less than the entire work.

- C. Specifications: Legibly mark and record at each Product Section a description of actual Products installed.
- D. Record Documents and Shop Drawings: Legibly mark each item to record actual construction, include product cut sheets.
- E. Submit documents to Architect with claim for final Application for Payment.

1.32 OPERATION AND MAINTENANCE DATA

- A. Submit two sets prior to final inspection, bound in 8-1/2 x 11 inch (216 x 279 mm) text pages with durable covers.
- B. Contents:
 - 1. Directory, listing names, addresses, and telephone numbers of Architect/Engineer, Contractor, Subcontractors, and major equipment suppliers.
 - 2. Operation and maintenance instructions, arranged by system.
 - 3. Project documents and certificates.
 - 4. Physical samples of sealant.

1.33 WARRANTIES

- A. Provide copies as required under the Contract.
- B. Execute and assemble documents from Subcontractors, suppliers, and manufacturers.
- C. Note requirements for extended warranties.
- D. Submit prior to final Application for Payment.

1.34 SPARE PARTS AND MAINTENANCE MATERIALS

- A. Provide Products, spare parts, maintenance and extra materials in quantities specified in individual specification Sections.
- B. Deliver to Project site and place in location as directed.

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

Not Used

END OF SECTION

**SECTION 04235
CAST STONE**

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. New Wet Casted Cast Stone fabrication, installation work to match existing, extent as indicated.
- B. Removal of existing cast stone.
- C. Molds required for the work.
- D. Engineering and regulatory approvals as necessary for the work.

1.02 SYSTEM DESCRIPTION

- A. Design Requirements:
 - 1. Contractor is responsible for structural engineering for the units, reinforcing and connection of cast stone to existing building and for stabilization of existing cast stone to remain during installation of new members.
 - 2. Match color, size and texture and pattern of original cast stone work to be replaced.
 - 3. Match existing cast stone profile and design.
 - 4. Modify existing connections and install flashing and sealing systems as needed to provide a watertight assembly and as approved by Architect.

1.03 RELATED SECTIONS

- A. Coordinate work with related Sections 04510 Masonry Cleaning and Sealing, 04520 Masonry Restoration.

1.04 PROTECTION

- A. Protect finished surfaces, plantings, and ground surface from masonry materials, and debris.
- B. Coordinate periods of noisy operations with METRO; Refer to SUPPLEMENTARY CONDITIONS. Wet grind mortar joints and take other precautions to limit dust and as required by regulatory agencies.

1.05 STAGING

- A. Staging and lifts may be located adjacent to the building base or elsewhere as allowed by Owner.
- B. Review SUPPLEMENTARY CONDITIONS for patron, public and vehicular safety, egress, and exiting.

1.06 TRADE QUALIFICATIONS

- A. Site foremen shall have at least 5 successful similar projects on designated Historic Buildings and a minimum of five years experience in repointing masonry surfaces; successful experience with light colored masonry is required
- B. Masonry personnel shall have at least 2 successful similar projects on designated Historic Buildings, or manufacturer's certification, and a minimum of three years experience in similar installations.
- C. Submit in writing prior project reference data including names of project, reference person, and phone number.

1.07 SUBMITTALS

- A. Product Data: Submit fabricator's specifications, concrete mix information, and instructions for manufactured materials and products.
- B. Shop Drawings: Submit shop drawings for Architect/Owner Representative review, showing complete information for fabrication and installation of Cast Stone units.
 - 1. Indicate member dimensions, cross-section, module layout and stone numbering.
 - 2. Show location and details of anchorage/lifting devices that are to be embedded in other construction.
 - 3. Indicate welded connections by AWS standard symbols. Detail inserts, connections, and joints, including accessories and construction at openings in precast units.
 - 4. Provide written installation procedure. Include methods for removal of designated units and protection of existing cast stone to remain during installation of new members; methodology for installation of new units; staging and equipment.
 - 5. Engineering design and calculations.
 - 6. Testing Laboratory results showing compressive strength and water absorption results for a sample unit.
 - 7. Review methodology and construction requirements for removal and installation of units with Architect/Owner Representative.
- C. Samples: Submit two samples approximately 12"x12"x2" to illustrate quality, color, and texture of surface finish.

1.08 QUALITY ASSURANCE

- A. Codes and Standards: Comply with provisions of following codes, specifications and standards, except as otherwise indicated:
 - 1. ACI 318 "Building Code Requirements for Reinforced Concrete".
 - 2. Concrete Reinforcing Steel Institute, "Manual of Standard Practice".
 - 3. Prestressed Concrete Institute MNL 117, "Manual for Quality Control for Plants and Production of Architectural Precast Concrete Products".
- B. Fabricator and Erector Qualifications: A minimum of 4 years experience in the fabrication and erection of Cast Stone units, similar to units required for this project. Supply documentation of sufficient production capacity for the project.
- C. Certification: Contractor shall furnish certification that similar cast stone made from materials being used to meet the requirements of this specification has been used as exposed outdoor trim for ten years without signs of deterioration and surface defects which would affect its appearance.

1.09 DELIVERY, STORAGE AND HANDLING

- A. Deliver cast stone units to project site in sufficient time to assure continuity of installation.
- B. Store units at project site to prevent cracking, distortion, warping, staining, or other physical damage and so that markings are visible.
- C. Lift and support units only at designated lifting or supporting points as shown on final shop drawings.

1.10 ENVIRONMENTAL REQUIREMENTS

- A. Cold Weather Requirements: IMIAC - Recommended Practices and Specifications for Cold Weather Masonry Construction.

PART 2 PRODUCTS

2.01 CAST STONE UNIT MATERIALS

- A. Concrete Materials; Cast stone units shall be wet cast and contain concrete coloring agents, white concrete, colored sand and aggregates, air entrainment admixture, bonding agents.
- B. Mix to match coloration and texture finish of existing cast stone. In matching surface texture, allow for either acid etch or light sandblast finishing as necessary to match original units.
- C. All surfaces intended to be exposed to view shall have a fine-grained texture similar to natural stone, with no air voids in excess of 1/32 in. and the density of such voids shall be less than 3 occurrences per any 1 in.2 and not obvious under direct daylight illumination at a 5 ft distance.
- D. Exposed surface finishes shall be free of defects, smooth and uniform, and finished to a depth of at least 1/4". Alternatively, the face mix extend 100% of thickness.
- E. Support and Anchoring Devices; stainless steel as approved.
- F. Mortar Materials and Mix:
 - 1. Portland Cement: ASTM C150, Type II (white non staining). Maximum alkali content: 0.60%.
 - 2. Lime: ASTM C-207, Type S, Hydrated.
 - 3. Sand: ASTM C33, Sand color, size and texture shall match the original as closely as possible. Natural sand is preferred.
 - 4. Water: Clean and Potable.
 - 5. Mortar Mix: ASTM 270 Type "S"; using the property method; mix in quantities for immediate use in accordance with ASTM C270. The existing mortar has been tested and results are available for review.
- G. Reinforcement: If reinforced, cast stone shall be reinforced with epoxy coated steel or stainless steel 'all-thread' when necessary for safe handling and erection. The size and type of reinforcing shall be specified in shop drawings. The reinforcement shall be protected in accordance with ACI Standards. (To allow for temperature changes and structural stress, there shall be a minimum steel reinforcement amounting to 1/4 of 1 percent of the sectional area of the stone, should the stone be greater than 12 inches in any dimension the temperature steel shall be placed in both directions.)
- G. Absorption: The average absorption of water by the stone castings when immersed for 48 hours in water in 60 degrees F. shall be less than 6 percent by weight.

2.02 FABRICATION

- A. General:
 - 1. Fabricate units straight, smooth, and true to size and shape, with exposed edges and corners precise and square unless otherwise indicated.
 - (a) Cross section dimensions shall not deviate by more than $\pm 1/8$ in. from approved dimensions.
 - (b) Length of units shall not deviate by more than length/ 360 or $\pm 1/8$ in. whichever is greater, not to exceed $\pm 1/4$ in.
 - (c) Warp, bow or twist of units shall not exceed length/ 360 or $\pm 1/8$ in, whichever is greater.
 - 2. Precast units which are warped, cracked, broken, spalled, stained, or otherwise defective will not be acceptable.

3. Fabricate units that uniformly match each other throughout the entire production. ASTM D 2244 permissible variation in color between units of comparable age subjected to similar weathering exposure.

(a) Total color difference – not greater than 6 units.

(b) Total hue difference – not greater than 2 units.

B. Built-In Items: Provide reglets, slots, holes, and other accessories in units to receive dowels, reglets, waterstops, flashings, or other similar work as indicated.

C. Anchorages: Provide loose stainless steel plates, clip angles, seat angles, anchors, dowels, cramps, hangers, and other miscellaneous stainless steel shapes not provided by other trades, necessary for securing precast units to supporting and adjacent members.

D. Minimum Compressive Strength; Cast Stone Units shall have a minimum compressive strength of 6,500 psi.

PART 3 EXECUTION

3.01 EXAMINATION AND PREPARATION

A. Examine existing conditions, substrate construction and materials.

B. Verify that field conditions are acceptable and ready to receive Work.

C. Coordinate placement of anchors supplied to other Sections.

3.02 INSTALLATION

A. General:

1. Remove existing cast stone units according to submitted methodology, working in sequence with installation of new units.

2. Deliver anchorage items which are to be embedded in other construction before start of such work. Provide setting diagrams, templates, instructions and directions as required for installation.

3. Install precast concrete members plumb, level, and in alignment. Work to existing conditions and align with adjacent work, and equalize mortar joint dimensions.

4. Provide temporary supports and bracing as required to maintain position, stability and alignment as members are being permanently connected.

5. Verify that existing adjacent masonry is maintained in good condition and unharmed by operations.

6. Salvage existing removed cast stone as possible; These pieces may be utilized for historic interpretive uses. Review salvage with Owner.

7. Refer to Section 04520 for mortar mix requirements.

8. Provide weeps or weep tubes at sill joint.

B. Accessories:

1. Install clips, hangers, and other accessories required for erection of precast units to supporting members and back-up materials.

2. Anchor units in final position by bolting, welding, grouting, or as otherwise required. Remove temporary shims, wedges, and spacers as soon as possible after anchoring is completed.

3.03 CLEANING

- A. Clean exposed facings to remove dirt and stains which may be on units after erection and completion of joint treatments.
- B. Wash and rinse in accordance with precast manufacturer's recommendations.
- C. Protect other work from damage due to cleaning operations.
- D. Do not use cleaning materials or processes which could change the character of exposed concrete finishes, or adjacent finishes.
- E. Coordinate with work in Section 04510 Masonry Cleaning and Sealing.

END OF SECTION

**SECTION 04510
MASONRY CLEANING & SEALING**

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Brick Masonry, Cast Stone cleaning.
- B. Brick Masonry, Cast Stone sealing and water proofing.

1.02 SCOPE

- A. Work defined in this Section applies to the exposed brick, and cast stone masonry, concrete at the exterior building walls where scheduled.

1.03 COORDINATION

- A. Coordinate this work with Masonry Restoration 04520, Cast Stone 04235, Joint Sealants 07900, Painting 09900 and other related Sections.

1.04 PROTECTION

- A. Cleaning agents may be an acidic products and should be handled accordingly for personal, public safety and building protection. Observe statutory and manufacturer's recommendations and requirements for its use.
- B. Protect glass, woodwork, roof areas, painted and finished areas to remain, ground surface, plantings and pedestrian traffic from cleaning materials - follow manufacturer's recommended safety and protection procedures.
- C. Damaged material to be replaced or refinished to match adjacent undamaged material sufficiently to not show patch from 5 feet away. If unable to blend in repair area, then repaint - refinish complete surface.
- D. Coordinate periods of noisy operations with METRO; Refer to the SUPPLEMENTARY CONDITIONS.

1.05 STAGING

- A. Staging and lifts may be located adjacent to the building base or elsewhere as allowed by Owner.
- B. Review General Requirements for patron, public and vehicular safety, egress, and exiting.

1.06 TRADE QUALIFICATIONS

- A. Site foremen shall have at least 5 successful similar projects on designated Historic Buildings and a minimum of five years experience in cleaning and sealing masonry surfaces; successful experience with light colored masonry is required
- B. Masonry Cleaning personnel shall have at least 3 successful similar projects on designated Historic Buildings and a minimum of three years experience in cleaning and sealing masonry surfaces; successful experience with light colored masonry is required.
- C. Submit in writing prior project reference data including names of project, reference person, and phone number.

1.07 SAMPLES

- A. Cleaning and Sealing Tests shall be performed by the Contractor at locations to be determined prior to commencing full work. These samples shall be utilized for evaluation of the effectiveness and potential

revision of the materials. The work on this Project shall meet the standards of work on these samples once approved, and these shall will be the standard for all work.

- B. The Contractor shall provide samples of each type of cleaner, sealer and waterproofing to be used for Architect/Owner Representative's approval prior to authorization for use on the project.

1.08 ENVIRONMENTAL REQUIREMENTS

- A. Cleaning: Follow Cleaning Materials manufacturer's instructions.
- B. Containment: Capture cleaning agent runoff. Dispose of as required by DEQ.
- C. Precautions: Store materials, rags, products, and equipment in safe manner and as recommended by manufacturer. Certain materials may be flammable and are not to be stored adjacent to the building.

PART 2 PRODUCTS

2.01 MASONRY CLEANERS

- A. Hot Water with medium pressure for initial, gentle cleaning.
- B. Approved Cleaners: Cleaners for heavily soiled, mossy, and stubborn stains where hot water does not remove staining: ProSoCo "SURE-KLEAN ReKlaim; or "DUMOND Chemicals, Inc, Safe N Easy".
- C. Additional Approved Cleaners for heavily soiled stains at limited areas: ProSoCo SURE-KLEAN: Restoration Cleaner, #766 Limestone & Masonry Prewash with Limestone & Masonry Afterwash.
- D. All cleaning and cleaning agents shall be applied in accordance per approved Samples as noted above.

2.02 MASONRY SEALERS

- A. Approved Sealers: ProSoCo PD Clear, Breathable, Siloxane Water Repellent; Alternate: Chem-Trete BSM40 Water Repellent.

2.03 MASONRY WATERPROOFING

- A. Approved Water Proofing: Sonoguard by Sonneborn Building Products; Sonoguard Base Coat and Top Tint Coat system; and related primers, and accessories. A moisture curing polyurethane deck membrane system
- B. Colors: BP-5578 'Pink-Brown' at Brick, BP-5756 at Cast Stone. Verify match to prior work and to existing clean conditions.

PART 3 EXECUTION

3.01 MASONRY CLEANING

- A. Use cleaning agents and methods as established on the test sample.
- B. Clean masonry prior to repointing and repair work. Follow up cleaning after masonry rehabilitation work.
- C. Apply strippable masking to glass and take other measures to protect woodwork, roofs and adjacent ground surface, if recommended by the manufacturer for use of cleaners.
- D. Procedures and Equipment:
 - 1. Standard hot water pressure washing equipment without chemical cleaning agents: Use medium pressure setting and a temperature of 260 degree F, wand tip of 15 degree with a fan tip at least 12" from the masonry surface.

2. Chemical cleaners may be applied using brush, a deep nap roller or spray. If the brush application is preferred, a soft fibered "Tampico" masonry washing brush should be used to apply the material. Nylon brushes or nylon rollers shall not be used.
3. If spray application is preferred, the cleaner should be applied using a low pressure sprayer suitable for applying acidic compounds. The spraying equipment should supply an even flow of cleaning solution to the surface at an operating pressure less than 50 psi at building surface.
4. Application of the rinse water is extremely important. Cleaners penetrate into the masonry surface solubilizing stain producing elements. Use pressure water rinsing equipment developing 400-600 psi. Follow manufacturer's recommendations with regard to temperature of cleaning and rinsing products.
5. Application of the neutralizer is extremely important for certain products. Carefully follow manufacturer's recommendations.

E. Dilutions:

1. Porous masonry surfaces (cast stone etc.): Cleaner should be applied in normal mix during initial testing. If the cleaner cleans effectively, tests should be run with diluted solutions of up to 3 parts water to 1 part concentrate. The effectiveness of the diluted solutions depends upon the number of applications, the severity of the stain, and job conditions.
2. Non-porous Masonry (field brick): The cleaner may be diluted with 1 to 3 parts water, depending upon the conditions.

F. Application:

1. Prewet the surface to be cleaned with clean water.
2. Apply the cleaning solution liberally and uniformly to the masonry surface using low pressure spray, roller or brush.
3. Allow the cleaning solution to remain on the surface for 3 to 5 minutes. Reapply. Light scrubbing of the surface improves cleaning results.
4. Rinse the treated area thoroughly using as much water pressure as possible without causing masonry damage. Rinse from the bottom of the treated area to the top covering each section of the surface with the concentrated stream of water.
5. Hold the spray equipment nozzle back sufficiently to minimize damage to masonry surfaces.
6. Take every precaution to avoid streaking surface.
7. Reapply cleaners to remove stubborn stains. Repeat cleaning and rinsing steps.
8. Apply paint strippers or poultices to remove noticeable paint spatters.
9. Minimize the amount of water entering the masonry and its assembly.
10. Follow manufacturer's recommendations.

3.02 SEALING

- A. Verify that the masonry is clean and suitable for treatment as recommended by the manufacturer. Notify the Architect of problematic situations and schedule changes.
- B. Apply water repellent to dry masonry in weather that will allow application without adverse effect [no rain within 2 hours of last application].
- C. Apply using low pressure (15-25 psi) pumping equipment with a wet fan type spray nozzle. Alternate methods include power roller with a 1" nap or by brush.
- D. Do not alter or dilute the water repellent material.
- E. Vertical Surfaces: Apply in a flooding application, from bottom up so the material runs down 6 to 8 inches below the spray pattern.
- F. Horizontal Surfaces: Allow material to pond at least 5 seconds before being absorbed.

3.03 WATERPROOFING

- A. Verify the substrate is clean and dry and prepared per manufacturer's instructions.
- B. Apply base coat with notched trowel to a wet thickness of 25 mils, overcoating cracks, joints and flashings. For sloped surfaces use slope grade base coat. Immediately backroll to level coat.
- C. Allow to cure overnight a minimum of 16 hours before application of tinted top coat; extend cure time as required for weather conditions.
- D. Apply tinted top coat with notched squeegee to a wet thickness of 25 mils. For sloped surfaces use slope grade material. Immediately backroll to level coat.
- E. Allow to cure as noted above.
- F. Apply a second tinted top coat with notched squeegee to a wet thickness of 15 mils.
- G. Apply waterproofing at scheduled horizontal surfaces. Continue membrane over top surfaces, joints and steps to waterproof top surfaces exposed to rain.
- H. At Cornice Units, stop waterproofing at the exterior lower outside corner (bottom of drip lip) of the protruding cast stone masonry face. Extend the waterproofing 1" up the back vertical face of cast stone and terminate at the joint with the parapet cladding unit. Refer to red line in Attachment Photo that indicates the extent of the coating.
- I. At Blind Arch Heads: apply the waterproofing to the portion projecting from the brick plane, stop at the exterior outside corner intersection with vertical cast stone masonry face so that the coating is not visible from the street when viewing straight on. Extend the waterproofing back cast stone to the intersection with the brick.

END OF SECTION

**SECTION 04520
MASONRY RESTORATION**

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Repairs and patching of damaged masonry.
- B. Repointing.
- C. Related but non masonry work.

1.02 SCOPE

- A. Work defined in this Section applies to the exposed brick, and cast stone masonry, concrete at the exterior building walls where scheduled.

1.03 COORDINATION

- A. Coordinate this work with Masonry Cleaning-Sealing 04510, Cast Stone 04235, Joint Sealants 07900, Painting 09900 and other related Sections.

1.04 PROTECTION

- A. Protect finished surfaces, plantings, and ground surface from masonry materials, and debris.
- B. Coordinate periods of noisy operations with METRO; Refer to General Requirements. Wet grind mortar joints and take other precautions to limit dust and as required by regulatory agencies.

1.05 STAGING

- A. Staging and lifts may be located adjacent to the building base or elsewhere as allowed by Owner.
- B. Review SUPPLEMENTARY CONDITIONS for patron, public and vehicular safety, egress, and exiting.

1.06 TRADE QUALIFICATIONS

- A. Site foremen shall have at least 5 successful similar projects on designated Historic Buildings and a minimum of five years experience in repointing masonry surfaces; successful experience with light colored masonry is required
- B. Masonry repair personnel shall have at least 3 successful similar projects on designated Historic Buildings, or manufacturer's certification, and a minimum of three years experience in repair/repointing masonry surfaces.
- C. Submit in writing prior project reference data including names of project, reference person, and phone number.

1.07 SAMPLES

- A. Prior to starting work prepare a range of mortar color samples mixed to match existing mortars for approval. Upon acceptance prepare a 2'-0" wide x 2'-0" high sample of repointing for each color-type of masonry involved at a designated area for the Architect/Owner Representative's approval.
- B. Patching Samples: Provide cured sample test patching on cast stone scheduled to be removed for approval by Architect/Owner.
- C. Approved samples will be the standard for all work.

1.08 ENVIRONMENTAL REQUIREMENTS

- A. Cold Weather Requirements: IMIAC Recommended Practices and Specifications for Cold Weather Masonry Construction.

1.09 WARRANTY

- A. Provide for extended Warranty Period of 2 years.

1.10 TESTING

- A. Owner may contract with an independent testing laboratory to test composition and hardness of installed mortar.

PART 2 PRODUCTS

2.01 MASONRY

- A. Reuse existing removed brick to the extent possible. New matching brick is expected to be difficult to match.
- B. New replacement masonry to match existing in material, sizes, color and surface. Materials may need to be cut to size.
- C. Existing brick, where damaged, may be reused for replacements by rotating and reinstalling if it satisfies face and corner integrity.

2.02 MORTAR

- A. Portland Cement: ASTM C150, Type 1, gray color.
- B. Mortar Aggregate: ASTM C144. Sand aggregate shall be a combination of the following and shall match the color and texture of the original mortar mix: Local stock course aggregate, free of silt, loam, soluble salts, and organic matter, screened to match size of aggregate within existing mortar mix [some larger aggregates exist].
- C. Hydrated Lime: ASTM C207, Type S.
- D. Mortar Color: Mineral oxide pigment color; Color to match existing mortar as approved; manufactured by Davis or approved.
- E. Water: Clean and potable.
- F. Bonding Agent: Nitobond acrylic manufactured by Fosroc or approved.

2.03 MORTAR MIXES

- A. Pointing Mortar for Masonry: ASTM C270, Type N using the Property Method; 1 part cement, 1 part lime, 5-6 parts sand by volume.
- B. Thoroughly mix mortar ingredients in quantities needed for immediate use in accordance with ASTM C270.
- C. Add mortar color in accordance with manufacturer's instructions.
- D. Do not use anti-freeze compounds to lower the freezing point of mortar.
- E. Mortar color is not required to be used at deep repointing.

2.04 PATCHING MATERIALS

- A. Cast Stone Patch Material: Jahn Restoration Mortar by Cathedral Stone; System 44 by Edison Coatings, or as approved by Architect.

- B. Color, Texture: Provide for matching existing material to be patched; allow for custom matching requiring several rounds of samples before approval. Patching to match base finish in color, texture, minimum thickness of finish material, sheen and visual qualities.

2.05 CEMENT WASH MATERIALS

- A. Cementitious, exterior, non shrink, trowel grade material able to meet required thickness; BASF Emaco GP with Acryl 60 bonding agent or as approved by Architect/Owner.

2.06 INJECTION CRACK FILLER

- A. Micro Capsule Engineering [MCE] low pressure, high viscosity epoxy crack filler as manufactured by NSK International, Inc. or approved.

2.07 ACCESSORIES

- A. Helifix Anchors: Size and type to be verified depending upon requirements, if needed.

PART 3 EXECUTION

3.01 MASONRY REMOVAL AND REINSTALLATION

- A. At masonry to be reused, remove existing masonry carefully to preserve units for reinstallation. Clean units, and store safely.
- B. Reinstall existing units matching layout, mortaring and grouting of original construction. Match to existing infill requirements. Anchor masonry per industry standards with only non-corrosive ties and anchors.
- C. Install masonry flush and plumb with adjacent units.

3.02 REPOINTING

- A. General: Repointing shall remove deteriorated mortar from the masonry joints and replace it with new mortar of hardness as specified and color-texture to match the original material which is different at brick and at cast stone.
- B. Preparation:
 1. Remove mortar where deteriorated or scheduled to a minimum depth of one inch or 2-1/2 times the width of the joint beyond existing mortar face. Any loose or disintegrated mortar beyond this minimum depth shall also be removed. For joints less than three-eighths inch in width rake back to a depth of one-half inch or to sound and tight mortar.
 2. Use a suitable tool that will insure no damage to edges or corners of masonry. If a grinding wheel is used, it shall be a small precision tool equipped with easily interchangeable cutting heads in a complete range of thicknesses. The tool being used, it shall always be thinner than the mortar joint being cleaned at its narrowest point. Under no circumstances shall the tool be forced through a joint that is narrower than the tool itself. Raked joints may require hand work.
 3. Contractor is responsible for replacement of any masonry gouged or nicked during removal of deteriorated mortar.
 4. At joints requiring Deep Repointing (well beyond the minimum range stated above), carefully clean loose materials out joint area.
 5. After cutting, thoroughly flush joint with water under moderate pressure (300 to 500 psi). If damage is observed to mortar joint, reduce pressure. At Deep joints take care to not use excessive water and damage interior finish and surfaces.

C. Repointing:

1. Saturate joints with water. At the time of repointing, brick and stone shall be damp but without excess water present.
2. Force mortar into recesses with narrow jointer. Fill joint gradually compacting mortar in several layers averaging three-eighths inch thick. Allow each layer to stiffen slightly to thumb print hardness before following with additional layers. Avoid overfilling.
3. When final layer has reached thumb print hardness, neatly tool joint flush with adjacent (original) mortar surfaces. Prevent mortar from filling edge and corner defects - maintain a straight mortar line of same width as the space between adjacent corners.
4. At Brick: Tool joints to match the original joint that was struck flush, and brushed, with masonry then cleaned of excess.
5. At Cast Stone: Tool joints slightly concave and flush with adjacent masonry.
6. Follow tooling, remove excess mortar from edge of joint by brushing with a bristle (not steel) brush. Before it hardens, clean all traces of excess pointing mortar from the face of masonry using bristle (not steel) brushes and water.
7. Review areas indicated for joint filling with sealants per Section 07600.
8. Build in bolts for anchorage devices, structural elements, and flashing.

3.03. SLOPED CEMENT WASH

- A. Prepare area for intended work, including disconnection, removal and storage of light fixtures, brackets and other items that may interfere with the work.
- B. Remove existing loose cement, coatings, various toppings or waterproofing to sound underlying material.
- C. Apply bonding agent per manufacturer's instructions.
- D. Apply new cementitious grout and trowel flat and smooth with uniform slope to create positive drainage to exterior edges and away from building wall.
- E. Provide a bed with a minimum slope of $\frac{1}{2}$ " per foot with a minimum of $\frac{1}{2}$ " thickness.
- F. Install waterproof coating; Refer to Section 04510
- G. Clean and confirm drainage operation.

3.04 MASONRY PATCHING REPAIRS

- A. At damaged masonry where reinforcing is to be removed, remove cast stone adjacent to the exposed steel until sound material is reached. Cut off steel or remove completely. Prime treat exposed steel per Section 09900.
- B. Clean area to be patched and repaired of loose material. Where reinforcing and loose pieces are removed, remove existing material to provide sufficient depth and location for patching success.
- C. Review surface ornament and pattern to determine best location of joint from patch to existing regarding visual appearance and future weatherization.
- D. Prepare the substrate for proper adhesion of patching material.
- E. Install bonding agents as recommended by manufacturer.
- F. Install patching material in thicknesses and in applications as recommended by manufacturer.
- G. Complete finish of patch to match adjacent original material design, and surface.

3.05 CRACK REPAIR

- A. At cracks to be filled, use low pressure, high viscosity epoxy applied by syringe capsules as recommended by manufacturer

Take precaution to prevent leakage onto face of masonry. Clean exposed visible areas.

3.06 BLIND ARCH CAST STONE CRACK REPAIRS

- A. Existing Conditions: The cast stone band at the head of the blind arches is composed of an inner, middle and outer band of masonry, each with a half bond such that the inner and outer band joints are in a line and the middle band is staggered. Many of the middle masonry units are cracked at this line.
- B. Repairs: As scheduled and where cracked, saw cut the middle masonry units in line with the existing inner and outer band grout joints. This joint is to be pointed to match other cast stone mortar joints. Refer to Attachment Photo. The red line indicates the middle cast stone portion and is adjacent to a crack that is to be repaired.

3.07 PROTECTING COMPLETED REPAIRS

- A. Protect against damage until compounds and mortars have set.
- B. Protect and cover if necessary to prevent undesirable effects of weather.

3.08 CLEANING

- A. Remove compound, mortar, and stains from exposed masonry surfaces.
- B. Delay cleaning until masonry and repairs are sufficiently cured to prevent damage.
- C. Prior to cleaning remove excess compound, mortar, and stains by scraping with brass, nylon or other non-ferrous devices only.
- D. Follow manufacturer's instructions for applying and removing cleaning agents; coordinate work with Masonry Cleaning 04510.
- E. Remove debris from project site upon work completion or sooner if directed.

END OF SECTION

**SECTION 07900
JOINT SEALERS**

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Preparing sealant substrate surfaces.
- B. Placement of joint fillers, backing, and sealants.
- C. Work in this section is by Unit Cost. No work is included in the Base Bid.

1.02 SYSTEM DESCRIPTION

- A. System performance to achieve moisture and air tight joint seals.

1.03 QUALITY ASSURANCE

- A. Perform Work in accordance to Sealant and Waterproofers Institute - Sealant and Caulking Guide Specification requirements for materials and installation.

1.04 ENVIRONMENTAL REQUIREMENTS

- A. Do not install solvent curing sealants in enclosed building spaces.
- B. Maintain temperature and humidity recommended by the sealant manufacturer during and after installation.

PART 2 PRODUCTS

2.01 SEALANTS

- A. Polyurethane Sealant: Two component, chemical curing, non-staining, non-bleeding, paintable, capable of continuous water immersion, non-sagging, slope gradient type; Color: Submit for Architect approval; #NP-2 as manufactured by Sonneborn, or as approved by Architect. Color: Custom matched per schedule below. Submit color for approval.

Elongation Capability 25 percent.
Service Temperature Range -40 to 180 degrees F.
Shore A Hardness Range 35-45.

2.02 ACCESSORIES

- A. Primer: Non-staining type, [recommended by sealant manufacturer] to suit application.
- B. Joint Cleaner: Non-corrosive and non-staining type, recommended by sealant manufacturer; compatible with joint forming materials.
- C. Joint Backing Filler: round, closed cell[polyethylene foam rod; oversized 30 to 50 percent larger than joint width; CC manufactured by Sonneborn or as approved by Architect.
- D. Bond Breaker: Pressure sensitive tape recommended by sealant manufacturer to suit application.

PART 3 EXECUTION

3.01 EXAMINATION AND PREPARATION

- A. Verify that surfaces, joint openings are ready to receive work, and that joint measurements and surface conditions are as recommended by the sealant manufacturer.
- B. Remove loose materials and foreign matter which may impair adhesion of sealant.
- C. Verify that joint backing and release tapes are compatible with sealant.
- D. Perform preparation in accordance with ASTM C804 for solvent release sealants.

3.02 INSTALLATION

- A. Clean and prime seal joints in accordance with manufacturer's instructions.
- B. Install sealant in accordance with manufacturer's instructions.
- C. Measure joint dimensions and size materials to achieve required width/depth ratios.
- D. Install joint backing and filler to achieve a neck thickness dimension no greater than 1/3 the joint width.
- E. Install bond breaker where joint backing or filler is not used.
- F. Mix approved repointing colored sand with sealant.
- G. Apply sealant within recommended application temperature ranges. Consult manufacturer when sealant cannot be applied within these temperature ranges.
- H. Tool joints concave.
- I. Apply sand to surface of sealant to minimize its appearance next to mortar.

3.03 APPLICATION APPROACH

- A. Windows: At lobby window sills to masonry: remove any existing sealant and install new at each window.
- B. Brick or Cast Stone Joints: Where not repointed and at expansion joints, seal as necessary to prevent water intrusion.
- C. Brick to Steel Joints: Seal as necessary to prevent water intrusion.

3.04 TYPE & COLOR SCHEDULE

- A. Window to Brick/Masonry: Two component Polyurethane Sealant; Color: custom matched to brick color; swatch to be furnished by Contractor to Architect during construction.
- B. Brick or Cast Stone Joints: Two component Polyurethane Sealant; Color: custom matched to brick color; swatch to be furnished by Contractor to Architect during construction.
- C. Brick to Steel Joints: Two component Polyurethane Sealant; Color: custom matched to brick color; swatch to be furnished by Contractor to Architect during construction.
- D. Prior Colors Used: BP-5578 'Pink-Brown' at Brick, BP-5756 at Cast Stone. Verify match at existing clean conditions with Architect prior to work.

END OF SECTION
07900-2

MERC Staff Report

Agenda Item/Issue: For the purpose of selecting D&R Masonry Restoration, Inc, for the Arlene Schnitzer Concert Hall, "Exterior Façade Maintenance Repairs" and authorizing the Metro Deputy Chief Operating Officer to execute a contract with D&R Masonry Restoration, Inc.

Resolution No: 14-21

Presented by: Robyn Williams/Josh Lipscomb

Date: July 9, 2014

Background and analysis: While the 1984 rehabilitation of the Arlene Schnitzer Concert Hall included some exterior masonry repair and rehabilitation, some of the work envisioned during the project was omitted due to budget constraints. Due to appearance and safety concerns, a thorough inspection and assessment of the exterior façade was completed in 2010. This report outlined immediate repair and rehabilitation needs, as well as additional short term and long term recommendations in order to preserve the façade. The commission approved a contract in 2011 to complete the immediate repairs; this contract's scope of work represents the majority of the short term recommendations from the 2010 report. The scope of work includes brick replacement, cast stone repair, mortar repointing, cleaning and sealing of brick, mortar and cast stone on all elevations of the facility. Due to the historic relevance of the facility, the contract scope of work includes specific instructions as to methods, materials and qualifications of potential bidders that limits the number of qualified firms in the local area to complete this work.

MERC Staff prepared and issued Bid Documents and a Request for Bids, including the detailed scope of work as provided by the architect who completed the 2010 report, in accordance with MERC's Purchasing and Contracting Policies for Exterior Façade Maintenance Repairs. The RFB was published in the online version of El Hispanic News and the DJC, as well as ORPIN.

On May 30, 2014, MERC Staff conducted a non-mandatory site walk for potential bidders in which one contractor attended, who was not an MWESB or FOTA Contractor. Two bids were received on June 12, 2014 and ranged from \$129,725.00 to \$206,811.00. None of the bids received were from MWESB or FOTA firms. The lowest responsive and responsible bidder was D&R Masonry Restoration, Inc., in the amount of one hundred, twenty-nine thousand, seven hundred twenty-five & 00/100 dollars (\$129,725.00). The complexity of this project does not allow for subcontracting. MERC Staff included a request for pricing on six additional scopes of work in the RFB, acceptance of all pricing results in a contract that is below the budgeted amount. The alternate pricing received by D&R Masonry Restoration, Inc. was reviewed by MERC Staff and have all been accepted. The additional items increase the contract amount to two hundred, twenty-five thousand, & 00/100 dollars (\$225,000.00).

Fiscal Impact: The FY14-15 Adopted Budget included \$250,000 in appropriation for the Portland's 5 Centers for the Arts Exterior Façade Maintenance Repairs. The proposed contract value of \$225,000.00 is less than the budgeted amount.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution No. 14-21 approve the contract award and written contract (attached hereto) with D&R Masonry Restoration, Inc., for the amount of two hundred, twenty-five thousand, & 00/100 dollars (\$225,000.00) for the Exterior Façade Maintenance Repairs at the Arlene Schnitzer Concert Hall and authorize the Metro Deputy Chief Operating Officer to execute a contract with D&R Masonry Restoration, Inc.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution no. 14-22

For the purpose of approving a contract with Cosco Fire Protection for fire and life safety systems maintenance and repair services at the Portland Expo Center.

WHEREAS, the Portland Expo Center requires comprehensive fire and life safety systems maintenance and repairs services; and

WHEREAS, an agency-wide competitive bidding process was conducted according to the Metropolitan Exposition Recreation Commission (MERC) Purchasing and Contracting rules; and

WHEREAS, MERC staff has evaluated the bid responses and Cosco Fire Protection Inc. was the lowest responsive and responsible bidder.

BE IT THEREFORE RESOLVED as follows:

1. MERC selects Cosco Fire Protection as the lowest responsive and responsible bidder in response to the bid process for fire and life safety systems maintenance and repairs services; and
2. MERC approves the contract with Cosco Fire Protection in the form substantially similar to the attached Exhibit A and authorizes the Metro Deputy COO to execute the contract on behalf of the Commission.

Passed by the Commission on July 9, 2014.

Chair

Secretary/Treasurer

Approved As to Form:
Alison R. Kean , Metro Attorney

By: _____
Nathan A. S. Sykes
Deputy Metro Attorney



Standard Public Contract

CONTRACT NO. 204071

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Cosco Fire Protection, whose address is 2501 SE Columbia Way, Suite 100, Vancouver WA 98661, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

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

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing July 1, 2014 through and including June 30, 2019.

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

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

ARTICLE IV LIABILITY AND INDEMNITY

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

ARTICLE V TERMINATION

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

ARTICLE VI INSURANCE & BONDS

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

- A. The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. CONTRACTOR'S coverage will be primary as respects Metro;
- B. Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence;



Standard Public Contract

CONTRACT NO. 204071

C. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and

METRO, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability and Automobile policies.

CONTRACTOR shall provide to Metro 30 days notice of any material change or policy cancellation.

CONTRACTOR shall provide Metro with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to Metro. Certificate of Insurance shall identify the Metro contract number.

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

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

ARTICLE VII PUBLIC CONTRACTS

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

For public work subject to ORS 279C.800 to 279C.870, the CONTRACTOR shall pay prevailing wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, the CONTRACTOR and every subcontractor on such public work shall pay at least the higher prevailing wage. The CONTRACTOR and each subcontractor shall pay workers not less than the specified minimum hourly rate of wage in accordance with Section 7 of 2005 Oregon Laws Chapter 360. METRO shall pay an administrative fee as provided in ORS 279C.825(1) to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. CONTRACTORS must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the CONTRACTOR or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the CONTRACTOR or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the CONTRACTOR or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. CONTRACTOR must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against Metro on account of any labor or material furnished. CONTRACTORS are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

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

ARTICLE VIII MODIFICATIONS

Metro may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by

Standard Public Contract

CONTRACT NO. 204071

Metro, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

ARTICLE IX QUALITY OF GOODS AND SERVICES

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

ARTICLE X OWNERSHIP OF DOCUMENTS

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

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

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

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

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

D. CONTRACTOR and subcontractors authorize and permit METRO and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, to inspect, examine, copy and audit the books and records of CONTRACTOR or subcontractor, including tax returns, financial statements, other financial

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Standard Public Contract

CONTRACT NO. 204071

documents and any documents that may be placed in escrow according to any contract requirements. METRO shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

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

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

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

ARTICLE XI SUBCONTRACTORS

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

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

ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

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

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

ARTICLE XIII SAFETY

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

ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

Standard Public Contract

CONTRACT NO. 204071

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

ARTICLE XV COMPLIANCE

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

ARTICLE XVI INTERGOVERNMENTAL COOPERATIVE AGREEMENT

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

ARTICLE XVI SITUS

The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

ARTICLE XVII ASSIGNMENT

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

ARTICLE XVIII SEVERABILITY

The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by METRO to enforce a provision of the Contract is not to be construed as a waiver by METRO of this right to do so.

ARTICLE XIX COUNTERPARTS

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



Metro

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

Standard Public Contract

CONTRACT NO. 204071

ARTICLE XX 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: Brian Wecker
Cosco Fire Protection
2501 SE Columbia Way, Suite 100
Vancouver, WA 98661
360-883-6390 fax

To Metro: Procurement Services
600 NE Grand Ave.
Portland, OR 97232
503.797.1791 fax

To Expo: Jim Caldwell
Portland Expo Center
2060 N. Marine Drive
Portland, OR 97217
503.736.5241 fax

CONTRACTOR

METRO

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

Scope of Work – Attachment A

Contract No. 204071

1. Purpose and Goal of Work

Metro requires preventative maintenance as indicated in the Description of the Scope of Work for fire and life safety equipment. Services are required at the following facilities, but are not limited to:

- Portland Expo Center (Expo), 2060 North Marine Dr, Portland, OR 97217

Contractor shall provide all necessary equipment, product and skilled technicians to perform the required work. Reasonable care shall be employed to ensure that all Metro facilities and equipment is operated safely and maintained in proper operating condition. All work and equipment, its performance, use, inspection, testing and maintenance shall comply with all applicable codes and jurisdictions, including but not limited to the most recent amendment of the OR-OSHA and ANSI codes. In addition, all work shall be performed in accordance with the standards of NFPA 13, 25, 72, 72e, 72h, fc14-1, meet all requirements of the authority having jurisdiction, and meet all federal, state, and local rules, regulations, codes, and laws.

2. Description of the Scope of Work

Contractor shall provide preventative maintenance program including all inspections and maintenance requirements as prescribed by code for the following service tasks:

A. FIRE SPRINKLER AND ALARM SYSTEMS

The following work is to be performed on fire sprinkler and alarm systems and components annually. Unless otherwise specified, systems are to be checked per code requirements.

- Test, inspect and seal all Control Valves
- Inspect Fire Department Connection(s)
- Flow test Main Drain
- Flow test farthest branch inspector drain
- Test and calibrate all Pressure Gauges
- Visually inspect all sprinkler piping components
- Visually inspect all sprinkler heads and pendants, clean any that are fouled or loaded
- Inspect and test all water flow switches, tamper switches, accelerators and compressors
- Inspect and test all system check and backflow prevention valves
- Drain low point drains
- Trip and test dry pipe valves, switches and alarm points, drain after test
- Test all system supervisory functions and panel operations
- Inspect, calibrate and clean all smoke detectors and test for:
 - Sensitivity, Circuit Supervision (as applicable) and Alarm Functions
- Inspect all heat detectors and test for:
 - Circuit Supervision (as applicable) and Alarm Functions
- Test all manual pull stations and remote annunciators for proper operation
- Test all audible and visual devices for proper operation, ensure correct maximum and minimum sound levels (db levels) and synchronization in all areas
- In cooperation with elevator contractor, test and verify all elevator alarm and lockout functions

Expo Quantity	Hall A & B: Notifier; Hall D: SimplexGrinnell 4010; Hall E: EST EST-2
	See Exhibit A

Scope of Work – Attachment A

Contract No. 204071

Five Year Required Sprinkler System Testing: Contractor shall perform the required five-year testing and inspection of sprinkler systems based on each facilities' schedule. Contractor shall perform the following work:

Expo	
Item	Description
1	Backflush Fire Department Connection
2	Perform internal pipe inspections – 2 per year
3	Pressure test dry standpipes
4	Supply microbial test kit and perform sampling for microbial growth test

B. ALARM SYSTEMS – PANIC / HOLDUP, THEFT, FIRE – 24 HOUR MONITORING; ATM MONITORING INCLUDED

Contractor shall provide services for the continuous monitoring of alarm systems, including call-out to local police and fire authorities, notification of alarms to Metro staff, allowance for offline testing of systems and after-action reporting to Metro. Metro anticipates there may be a need for initial installation, hardware and programming of monitoring equipment by Contractor. Systems include:

Expo Quantity	Hall A & B: Notifier; Hall D: SimplexGrinnell 4010; Hall E: EST EST-2
	See Exhibit A for quantities
Expo Quantity	Halls A, D and E ATMs
3	See Exhibit B

C. FIRE DOOR SYSTEMS

Annually, Contractor shall inspect and test all fire doors, including conducting drop tests on rolling gravity and powered doors per NFPA 80:

Expo Quantity	Door
6	Powered Coil Doors, 20 ft H x 18 ft W, electrically triggered, monitored,
1	Roll-up 3 ft H x 4ft W, West Delta Restaruant ft w/fusible thermal link
1	Roll-up 9'4" x 8 ft w/fusible thermal link

D. EMERGENCY LIGHTING SYSTEM:

Annually, Contractor shall inspect and test and inspect all emergency light fixtures including battery testing per code requirements.

E. PORTABLE FIRE EXTINGUISHERS

Contractor shall provide routine extinguisher servicing that encompasses only the inspection and maintenance requirements in NFPA 10, Chapter 7 for portable extinguishers. Annually, Contractor shall inspect and tag all portable fire extinguishers in all three buildings. After this annual service, Contractor shall advise Metro about any necessary repairs or replacement due to age, damage or other factors. Contractor shall commence additional work at the approval of Metro.

Scope of Work – Attachment A

Contract No. 204071

K-Type portable extinguishers are not included in this section. Servicing of that type is covered under the Kitchen Hood and Wet Chemical Kitchen Suppression System section.

Expo Quantity	Extinguisher
81	ABC, 5 lb

F. KITCHEN HOOD CLEANING AND FIRE SUPPRESSION SYSTEM MAINTENANCE

Every six months, Contractor shall perform the following service:

- Thoroughly clean the hood, filters, ductwork and exhaust stack in order to remove cooking fats and grease
- Perform semi-annual service on both the hood system and the portable backup hand extinguisher in accordance with manufacturer requirements and using only genuine manufacturer parts and supplies
- Advise Metro of any repairs necessary beyond the normal service items involved in the semi-annual service

Expo	Equipment
E-1 Stand	Two Ansul R-102 three gallon exhaust hood system is installed, (6 gallons) along with an Ansul K-Type backup hand extinguisher
E-2 Stand	Two Ansul R-102 three gallon exhaust hood system is installed, (6 gallons) along with an Ansul K-Type backup hand extinguisher
D-1 Stand	Two Ansul R-102 three gallon exhaust hood system is installed, (6 gallons) along with an Ansul K-Type backup hand extinguisher
D-2 Stand	Two Ansul R-102 three gallon exhaust hood system is installed, (6 gallons) along with an Ansul K-Type backup hand extinguisher
A Stand	PLC-350 exhaust hood system is installed, along with an Ansul K-Type backup hand extinguisher
C Stand	PLC-350 exhaust hood system is installed, along with an Ansul K-Type backup hand extinguisher
Kitchen South	Four Ansul R-102 three gallon exhaust hood system is installed (12 gallons), along with an Ansul K-Type backup hand extinguisher
Kitchen North	One Ansul R-102 three gallon exhaust hood system is installed, (3 gallons) along with an Ansul K-Type backup hand extinguisher

G. LABOR RATES

Days/Hours of Service	Type	Rate per hour	Overtime Rate per hour
Monday- Friday, 7:00am-5:00pm	Regular	\$98.00	\$147.00
Monday - Friday, 5:00pm - 7:00am & Saturday- Sunday, 7:00am - 5:00pm	Evening	\$147.00	\$147.00
Saturday- Sunday, 7:00am-5:00pm	Weekend	\$196.00	\$196.00
Saturday- Sunday, 5:00 pm- 7:00am & All Observed Holidays	Emergency	\$196.00	\$196.00

Scope of Work – Attachment A

Contract No. 204071

H. RECORDKEEPING

Contractor shall provide and maintain one of the following:

- an online account portal that allows Metro to access work orders, inspection records and other account details, or
- all inspection and work order records in an electronic format and provide appropriate updates when any work under the terms and conditions of this Contract is conducted.

I. RESPONSE TIME / EMERGENCY SERVICE:

Contractor will respond by phone within 1 hour of notification for an emergency service call and be on site within 2 hours of notification for an emergency service call. For non-emergency service calls, contractor will respond within 48 hours from the time of the notification call.

3. **Deliverables/Outcomes**

Contractor shall perform the work as scheduled with Metro staff.

4. **Payment and Billing**

Contractor shall perform the above work for a maximum price not to exceed One Hundred Twenty Five Thousand, Four Hundred Fifty Eight AND 00/100TH DOLLARS (\$125,458.00).

The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the Metro 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 Metro 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 Metro on a Net 30 day basis upon approval of Contractor invoice.

Exhibit A – Portland Expo Center – Fire System

Building: Expo Center Halls A,B and C		Control Panel: 1 - Notifier -		
Device Type	Location			
Control				
Annunciator	1st At Hall C Section 25			
Battery	1st At Hall A Maintenance Office Dialer			
Battery	1st At Hall A Maintenance Office			
Battery	1st At Hall A Maintenance Office			
Communicator	1st At Hall A Maintenance Office			
Control Panel	1st At Hall A Maintenance Office			
Voice Evacuation	1st At Hall A Maintenance Office			
Initiating				
Beam Detector	1st At Hall C			
Beam Detector	1st At Hall C			
Beam Detector	1st At Hall C			
Beam Detector	1st At Hall A			
Beam Detector	1st At Meeting Room Hall A			
Beam Detector	1st At Hall A			
Beam Detector	1st At Hall A			
Beam Detector	1st At Hall A			
Beam Detector	1st At Hall A			
Beam Detector	1st At Hall B			
Beam Detector	1st At Hall B			
Beam Detector	1st At Hall B			
Pull Station	1st At Hall C Entrance/Exit			
Pull Station	1st At Hall C Entrance/Exit Section 25			
Pull Station	1st At Hall C Entrance/Exit Section 28			
Pull Station	1st At Hall C Section 23			
Pull Station	1st At Hall A By FACP			
Pull Station	1st At Hall A			
Pull Station	1st At Hall A Main Show Office			
Pull Station	1st At Hall A Main Show Office			
Pull Station	1st At Hall B			
Pull Station	1st At Hall B			
Pull Station	1st At Hall B			
Pull Station	1st At Hall B West 2			
Pull Station	1st At Hall B			
Pull Station	1st At Hall A			
Pull Station	1st At Hall A Lobby			
Pull Station	1st At Hall A Operations Office			
Smoke Detector	1st At Womens Restroom Hall B			
Smoke Detector	1st At Womens Restroom Hall B			
Smoke Detector	1st At Electrical Room Hall B			
Smoke Detector	1st At Womens Restroom			
Smoke Detector	1st At Mens Restroom			
Smoke Detector	1st At Mens Restroom			
Smoke Detector	1st At Womens Restroom			
Smoke Detector	1st At Womens Restroom			
Smoke Detector	1st At Mens Restroom			
Smoke Detector	1st At Operations			
Smoke Detector	1st At Mens Restroom Hall B			
Smoke Detector	1st At Womens Restroom Hall B			
Waterflow Switch	1st At Hall B			

Device Type	Location			
Waterflow Switch	1st At Sprinkler Room 6			
Waterflow Switch	1st At Sprinkler Room 4			
Waterflow Switch	1st At Sprinkler Room 3			
Waterflow Switch	1st At Sprinkler Room 2			
Waterflow Switch	1st At Sprinkler Room 1			
Waterflow Switch	1st At Sprinkler Room Operations			
Waterflow Switch	1st At Sprinkler Room 20			
Waterflow Switch	1st At Sprinkler Room 20			
Monitor				
Monitoring	1st At Hall A Maintenance Office			
Supervisory				
Air Pressure Switch	1st At Hall B			
Air Pressure Switch	1st At Sprinkler Room 6			
Air Pressure Switch	1st At Sprinkler Room 4			
Air Pressure Switch	1st At Sprinkler Room 3			
Air Pressure Switch	1st At Sprinkler Room 2			
Air Pressure Switch	1st At Sprinkler Room 1			
Air Pressure Switch	1st At Sprinkler Room Operations			
Tamper Switch	1st At Sprinkler Room By FACP			
Tamper Switch	1st At Sprinkler Room By FACP			
Tamper Switch	PIV's 1, 2, 3, 4, 5, 6, 7, 19, 20, M20, M4, M5			
Summary				
Air Pressure Switch				7
Annunciator				1
Battery				3
Beam Detector				1
Beam Detector				12
Communicator				1
Control Panel				1
Monitoring				1
Pull Station				16
Smoke Detector				12
Tamper Switch				14
Voice Evacuation				1
Waterflow Switch				9
Total				79
Building: Expo Center Hall D		Control Panel: 1 - SimplexGrinnell 4010		
Device Type	Location			
Auxiliary				
Elevator	1st At Elevator Room			
Elevator	1st At Elevator Room			
Elevator	1st At Elevator Room			
Elevator	1st At Elevator Room			
Elevator	1st At Elevator Room			
Control				
Annunciator	1st At Main Entrance			
Battery	1st At Electrical/FACP Room			
Battery	1st At Electrical/FACP Room			
Battery	1st At Electrical/FACP Room			

Device Type	Location			
Battery	1st At Electrical/FACP Room			
Battery	1st At Electrical/FACP Room			
Battery	1st At Electrical/FACP Room			
Battery	1st At Electrical/FACP Room			
Battery	1st At Electrical/FACP Room			
Communicator	1st At Electrical/FACP Room			
Control Panel	1st At Electrical/FACP Room			
Expander Panel	1st At Electrical/FACP Room			
Power Supply	1st At Electrical/FACP Room			
Voice Evacuation	1st At Electrical/FACP Room			
Initiating				
Heat Detector	1st At Snack Bar			
Heat Detector	1st At Snack Bar			
Heat Detector	1st At Custodian Room			
Heat Detector	1st At Elevator Room			
Heat Detector	1st At Snack Bar			
Heat Detector	1st At Snack Bar			
Pull Station	1st At Hallway By Kitchen			
Pull Station	1st At Kitchen			
Pull Station	1st At Kitchen			
Pull Station	1st At Hallway By Electrical Rm			
Pull Station	1st At Loading Dock			
Pull Station	1st At Loading Dock Storeroom			
Pull Station	1st At Loading Dock			
Pull Station	1st At Loading Dock			
Pull Station	1st At Exhibit Hall			
Pull Station	1st At Exhibit Hall			
Pull Station	1st At Main Entrance			
Pull Station	1st At Main Entrance			
Pull Station	1st At Main Entrance			
Pull Station	1st At By Snac Bar			
Pull Station	1st At By Snack Bar			
Pull Station	1st At By Snack Bar			
Pull Station	2nd At Stair			
Pull Station	2nd At Stair			
Smoke Detector	1st At Electrical/FACP Room			
Smoke Detector	1st At Hallway By Kitchen			
Smoke Detector	1st At Kitchen Storeroom			
Smoke Detector	1st At Hallway By Electrical Rm 148			
Smoke Detector	1st At Electrical Rm 148			
Smoke Detector	1st At Electrical Rm 155			
Smoke Detector	1st At Electrical Rm 155			
Smoke Detector	1st At Hallway By Electrical Rm 155			
Smoke Detector	1st At Hallway Loading Dock			
Smoke Detector	1st At Hallway Loading Dock			
Smoke Detector	1st At Hallway Loading Dock			
Smoke Detector	1st At Engineering Room			
Smoke Detector	1st At Roof Access Room			
Smoke Detector	1st At Loading Dock			
Smoke Detector	1st At Loading Dock Storage			
Smoke Detector	1st At Loading Dock Storage			
Smoke Detector	1st At Loading Dock Storage			
Smoke Detector	1st At Electrical Room 123			
Smoke Detector	1st At Lobby Entrance			
Smoke Detector	1st At Lobby Entrance			

Device Type	Location			
Smoke Detector	1st At Loading Dock Storage			
Smoke Detector	1st At Loading Dock Storage			
Smoke Detector	1st At Loading Dock Storage			
Smoke Detector	1st At Main Entrance			
Smoke Detector	1st At Main Entrance			
Smoke Detector	1st At Main Entrance			
Smoke Detector	1st At Main Entrance			
Smoke Detector	1st At West Delta Bar & Grill			
Smoke Detector	1st At Elevator Lobby Rear			
Smoke Detector	1st At Elevator Lobby Front			
Smoke Detector	1st At Storage Area By Elevator			
Smoke Detector	1st At Elevator Room			
Smoke Detector	1st At Electrical Room 115			
Smoke Detector	2nd At Elevator Lobby			
Smoke Detector	2nd At Top Of Stair			
Smoke Detector	2nd At Main Office Hallway			
Smoke Detector	2nd At Main Office Hallway			
Smoke Detector	2nd At High Ceiling Balcony			
Smoke Detector	2nd At High Ceiling Balcony			
Smoke Detector	2nd At High Ceiling Balcony			
Smoke Detector	2nd At Hallway Balcony			
Smoke Detector	2nd At Hallway Balcony			
Smoke Detector	2nd At Hallway Balcony			
Smoke Detector	2nd At Hallway Balcony			
Smoke Detector	2nd At Stair			
Smoke Detector	2nd At Electrical Room 211			
Smoke Detector	2nd At Elevator Lobby Rear			
Waterflow Switch	1st At Sprinkler Room			
Waterflow Switch	1st At Sprinkler Room			
Waterflow Switch	1st At Sprinkler Room			
Waterflow Switch	1st At Sprinkler Room			
Monitor				
Monitoring	1st At Electrical/FACP Room			
Supervisory				
Air Pressure Switch	1st At Sprinkler Room			
Air Pressure Switch	1st At Sprinkler Room			
Tamper Switch	1st At Sprinkler Room			
Tamper Switch	1st At Sprinkler Room			
Tamper Switch	1st At Sprinkler Room			
Tamper Switch	1st At Sprinkler Room			
Tamper Switch	1st At Sprinkler Room			
Tamper Switch	PIV			
Summary				
Air Pressure Switch				2
Annunciator				1
Battery				8
Communicator				1
Control Panel				1
Elevator				5
Expander Panel				1
Heat Detector				6
Monitoring				1
Power Supply				1
Pull Station				18

Device Type	Location			
Smoke Detector				47
Tamper Switch				6
Voice Evacuation				1
Waterflow Switch				4
Total				103

Building: Expo Center Hall E Control Panel: 1 - EST EST-2

Device Type	Location			
-------------	----------	--	--	--

Control				
Battery	1st At FACP Room Dialer			
Battery	1st At FACP Room			
Battery	1st At FACP Room			
Battery	1st At FACP Room			
Battery	1st At FACP Room			
Communicator	1st At FACP Room			
Control Panel	1st At FACP Room			
Printer	1st Floor			
Voice Evacuation	1st At FACP Room			

Initiating				
Duct Detector	1st At Room 111			
Duct Detector	1st At Roof			
Duct Detector	1st At Roof			
Duct Detector	1st At Roof			
Duct Detector	1st At Roof			
Pull Station	1st At Near Pizzeria			
Pull Station	1st At Near Hall E Breeze Way			
Pull Station	1st At In Breeze Way			
Pull Station	1st At In Breeze Way			
Pull Station	1st Near Womens Restroom			
Pull Station	1st Near Hall E1 Exit			
Pull Station	1st At Main Entrance			
Pull Station	1st At Main Entrance			
Pull Station	1st At Main Entrance			
Pull Station	1st At Main Entrance By E102			
Pull Station	1st Near Gourmet Grill			
Pull Station	1st At Hall Exit			
Pull Station	1st Near Womens Restroom			
Smoke Detector	1st At FACP Room			
Smoke Detector	1st At Electrical Room 111			
Smoke Detector	1st At Electrical Room 119			
Smoke Detector	1st At Electrical Room 136			
Waterflow Switch	1st At Riser E6			
Waterflow Switch	1st At Riser E5			
Waterflow Switch	1st At Riser E4			
Waterflow Switch	1st At Riser E3			

• Monitor				
Monitoring	1st At FACP Room			

Supervisory				
Air Pressure Switch	1st At Riser E2			

Device Type	Location			
Air Pressure Switch	1st At Riser E2			
Tamper Switch	1st At Riser E2			
Tamper Switch	1st At Riser E3			
Tamper Switch	1st At Riser E4			
Tamper Switch	1st At Riser E5			
Tamper Switch	1st At Riser E6			
Tamper Switch	PIV			
Summary			Quantity	
Air Pressure Switch			2	
Battery			5	
Communicator			1	
Control Panel			1	
Duct Detector			5	
Monitoring			1	
Printer			1	
Pull Station			13	
Smoke Detector			4	
Tamper Switch			6	
Voice Evacuation			1	
Waterflow Switch			4	
Total			44	

From: Dave Coffey
To: Procurement Bids and Proposals
Subject: RE: RFB 2687
Date: Friday, May 23, 2014 7:56:09 AM
Attachments: image002.png
image003.png

Angela also missing from the RFB is that Metro Regional is to be inspected after normal working hours (not shown in the RFB) for fire alarm, emergency lighting, mag hold opens, and sprinklers, an overtime expense. Fire extinguishers are inspected during normal working hours. Cosco had to bid the fire alarm, emergency lighting, mag hold open doors, and the sprinkler inspection work to be performed at normal working hours to be competitive in the bidding process. The pricing at Metro Regional overtime/afterhours rates are:

1. Metro Regional Emergency Lighting:

Year one: \$3,800.00

Year two: \$3,914.00

Year three: \$4,032.00

Year four: \$4,253.00

Year five: \$4,380.00

2. Metro Regional Mag hold open doors:

Our testing pricing listed on the original bid form is OK for this scope of work.

3. Metro Regional Fire Sprinklers and Alarm Systems:

Year one: \$6,885.00

Year two: \$7,092.00

Year three: \$7,305.00

Year four: \$7,525.00

Year five: \$7,550.00

The only remaining thing not covered by the RFB is, after speaking with Jim Caldwell at the Expo Center after the bid date, there are three ATM machines that are monitored. We bid to monitor the three fire alarm system, but not the ATM'S, (not shown in the RFB). With the addition of the ATM'S at the Expo the pricing for monitoring will be:

Year one: \$2,100.00

Year two: \$2,163.00

Year three: \$2,228.00

Year four: \$2,295.00

Year Five: \$2,364.00

Please contact me with any questions or concerns. Thank you.

With Kind Regards

Dave Coffey

Senior Account Executive

MERC Staff Report

Agenda Item/Issue: For the purpose of approving a contract with Cosco Fire Protection for fire and life safety systems maintenance and repair services at the Portland Expo Center.

Resolution No: 14-22

Date: July 9, 2014

Presented by: Matthew P. Rotchford

Background:

MERC Staff prepared and issued Bid Documents and a Request for Bids in accordance with MERC's Purchasing Policies for Fire Life and Safety Maintenance and Repair Services at the Portland Expo Center, Portland' 5, Oxbow and Blue Lake Parks, and Metro Regional Center. Metro procurement staff encouraged and coordinated an agency-wide solicitation process to allow for more flexibility and potential cost savings. The RFB was published in the *Daily Journal of Commerce*, *Asian Reporter* and posted on the state of Oregon ORPIN website.

The services requested for Expo include preventative maintenance on fire and life safety equipment as well as all necessary repairs, replacement product and skilled technicians' labor. All work and equipment, its performance, use, inspection, testing and maintenance shall comply with all applicable codes and jurisdictions. The following Expo Center fire and life safety equipment was included in this bidding process.

- Fire sprinkler system testing and inspection of system and alarm systems and components
- Services for continuous monitoring of alarm systems including ATMs and the elevator
- Inspection and testing of all fire doors, including conducting drop tests on rolling gravity and powered doors
- Servicing of fire extinguishers encompassing inspection, tagging and maintenance and hydro-testing
- Kitchen hood cleaning and fire suppression system maintenance (clean hoods, filters, ductwork and exhaust stack) and hydro-testing
- Provide labor, materials and parts for any emergency or routine repairs during the life of the contract which includes emergency paging and lighting maintenance and repairs.

Two bids were received and neither of the respondents were FOTA or MWESB certified. The lowest responsible and responsive bidder was Cosco Fire Protection Inc. Each venue and park prepared their own 5-year contract specific to their respective facility needs for maintenance, inspections, testing, monitoring and repair services related to fire life and safety. The Expo Center contract included services in the areas of fire alarms, sprinkler, fire suppression and hoods, fire extinguishers, backflows, coil/fire doors and the Expo elevator.

Fiscal Impact: This contract expense is budgeted in the Expo budget on an annual basis.

Recommendation: Staff recommends the Metropolitan Exposition-Recreation Commission approve Resolution No. 14-22 approving a 5-year contract with Cosco Fire Protection, Inc. for fire and life safety maintenance and repair services for the Portland Expo Center; and, authorizing the Deputy Chief Operating Officer to execute the contract.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 14-23

For the purpose of approving and transmitting to the Metro Council a budget amendment to the Metropolitan Exposition Recreation Commission (MERC) Fund for current fiscal year 2014-15.

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

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

WHEREAS, MERC previously approved and transmitted to the Metro Council the fiscal year 2014-15 budgets for the MERC Fund; and

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

BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission approves a budget amendment to the MERC Fund as described in the attached Staff Report for the fiscal year beginning July 1, 2014 and ending June 30, 2015 for inclusion as part of the total Metro budget for this period and requests that the Metro COO present this to the Metro Council for ratification.

Passed by the Commission on July 9, 2014.

Approved as to form:

Alison R. Kean, Metro Attorney

_____ Chair

By: _____

Nathan A. S. Sykes, Deputy Metro Attorney

_____ Secretary/Treasurer

MERC Staff Report

Agenda Item/Issue: For the purpose of approving and transmitting to the Metro Council a budget amendment to the Metropolitan Exposition Recreation Commission (MERC) Fund for current fiscal year 2014-15.

Resolution No.: 14-23

Presented By: Tim Collier, Director of FRS

Date:

7/9/2014

Background and Analysis: Due to continued opposition to the Oregon Convention Center Hotel project and the additional risk that it brings to the project, Metro has agreed to share pre-development costs with Mortenson. This contribution to pre-development costs is in an amount not to exceed \$600,000, made available as a reimbursement to Mortenson for select pre-development costs on a 40/60 pro-rata basis. These funds will be an advance on the Metro Grant of \$4.0 million. Sharing these costs provides a path for the project to move forth despite the opposition. These funds were not budgeted as a line item for the 2014-15 budget, as we were waiting for Council to approve the Development and Financing Agreement, which they did with Resolution 14-4520 on June 26, 2014. This budget amendment requests the transfer of \$600,000 from the Oregon Convention Center contingency to contracted professional services.

Fiscal Impact: The Oregon Convention Center Contingency includes a grant of \$4.0 Million for the Convention Center Hotel Construction. The \$600,000 in this amendment will be transferred from contingency to fund the MERC portion of the pre development costs as a part of that grant.

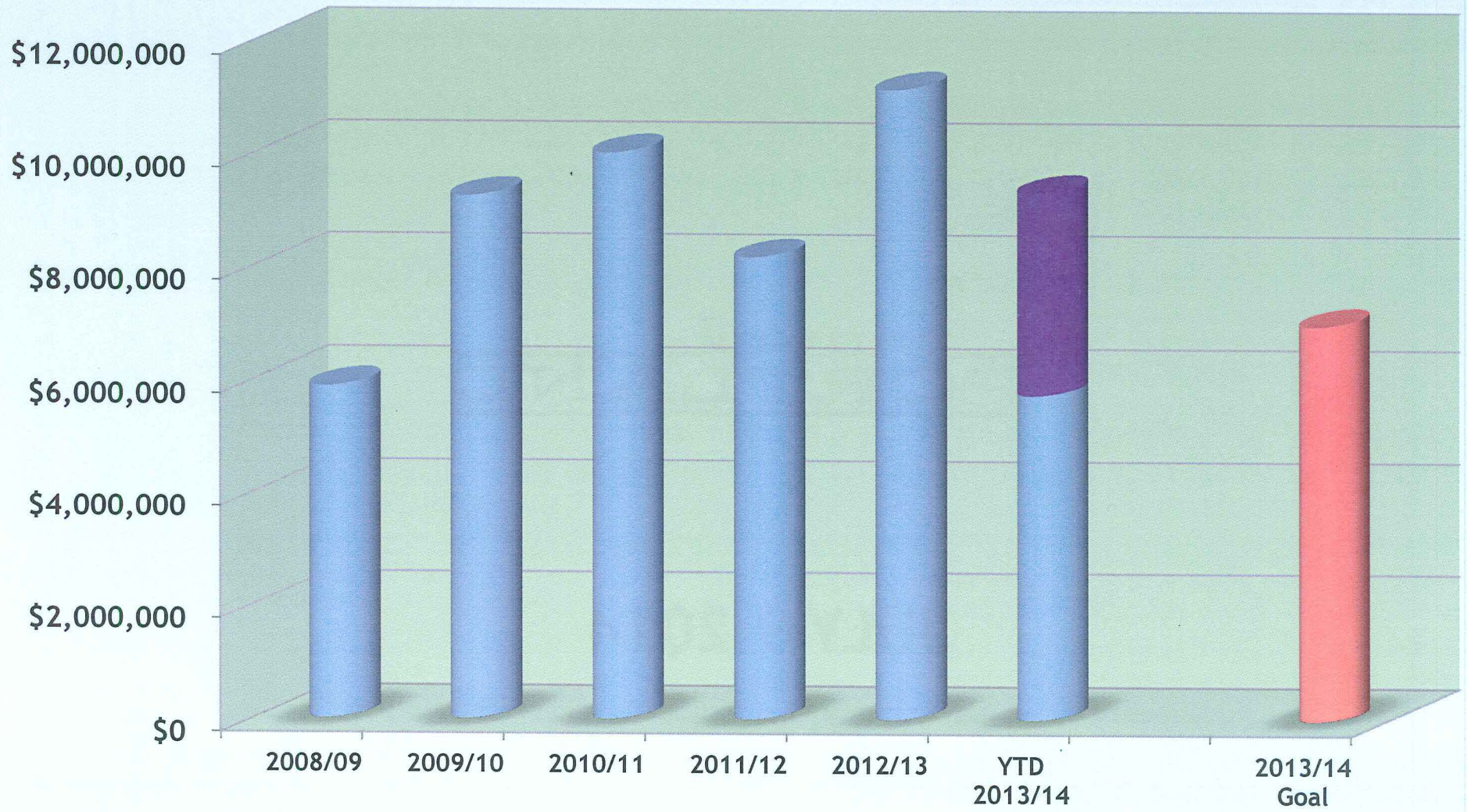
Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution 14-23, For the purpose of approving and transmitting to the Metro Council a budget amendment to the Metropolitan Exposition Recreation Commission (MERC) Fund for current fiscal year 2014-15.

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

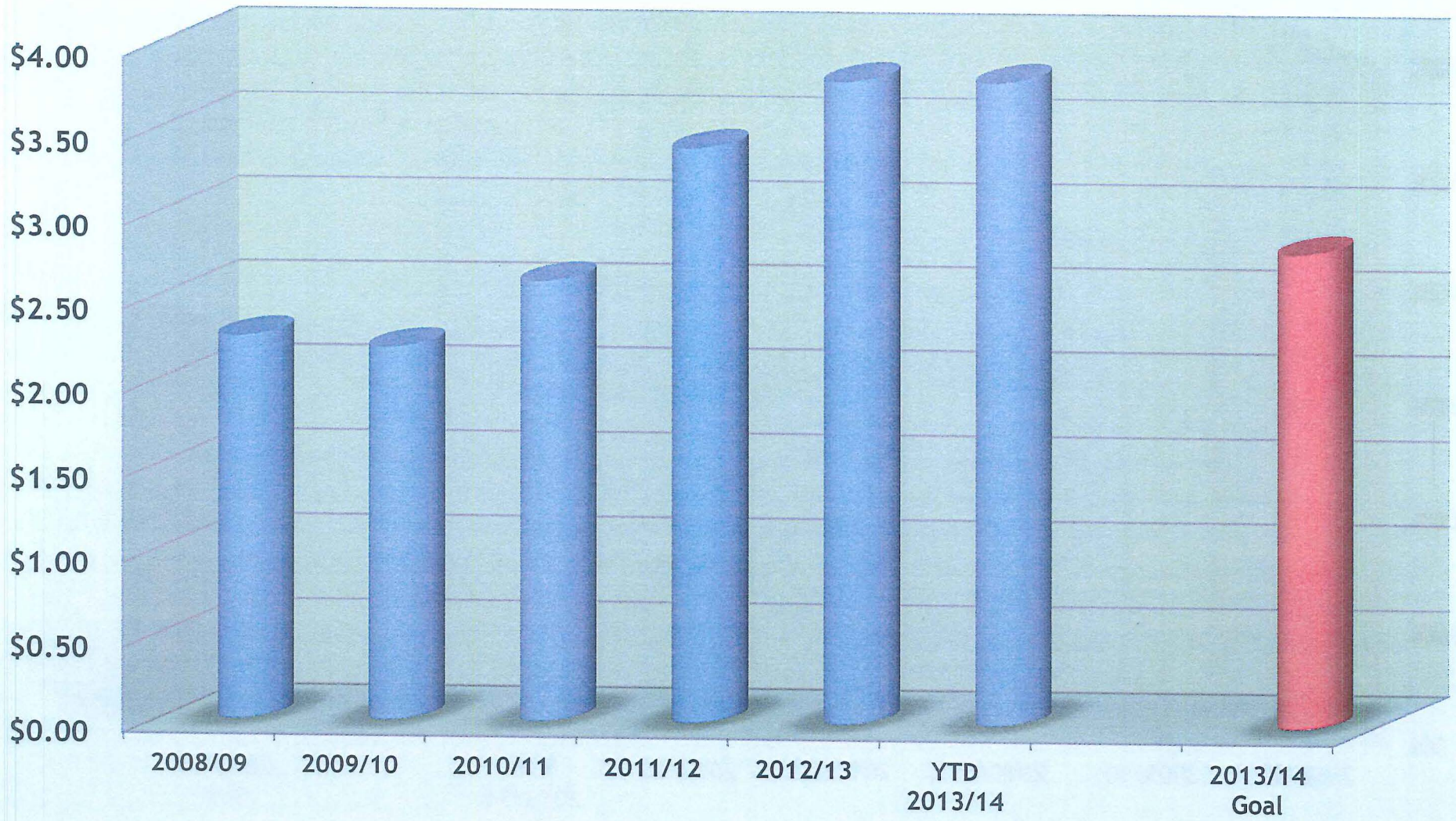
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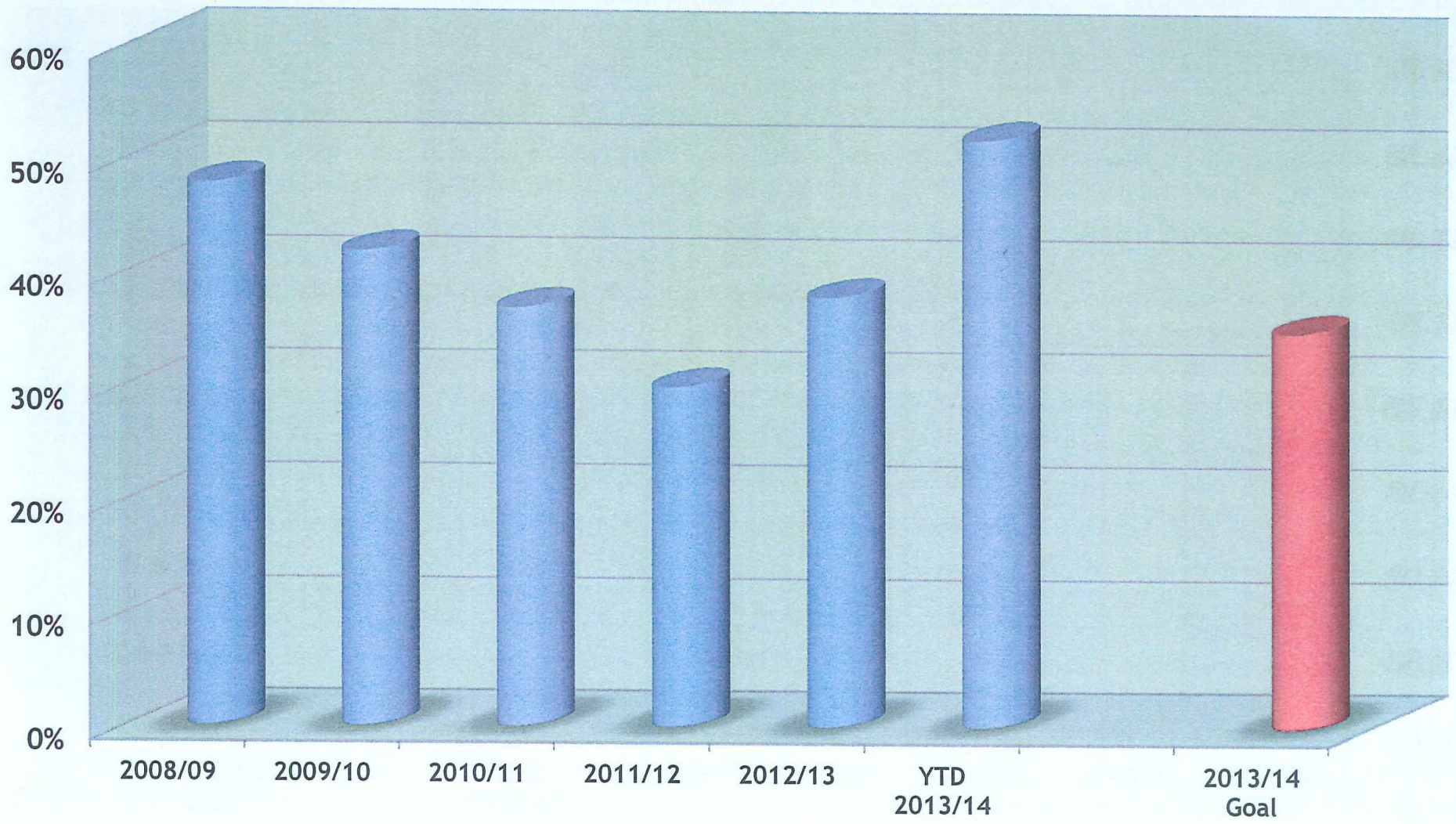
Actual OCC Revenue Realized - Current



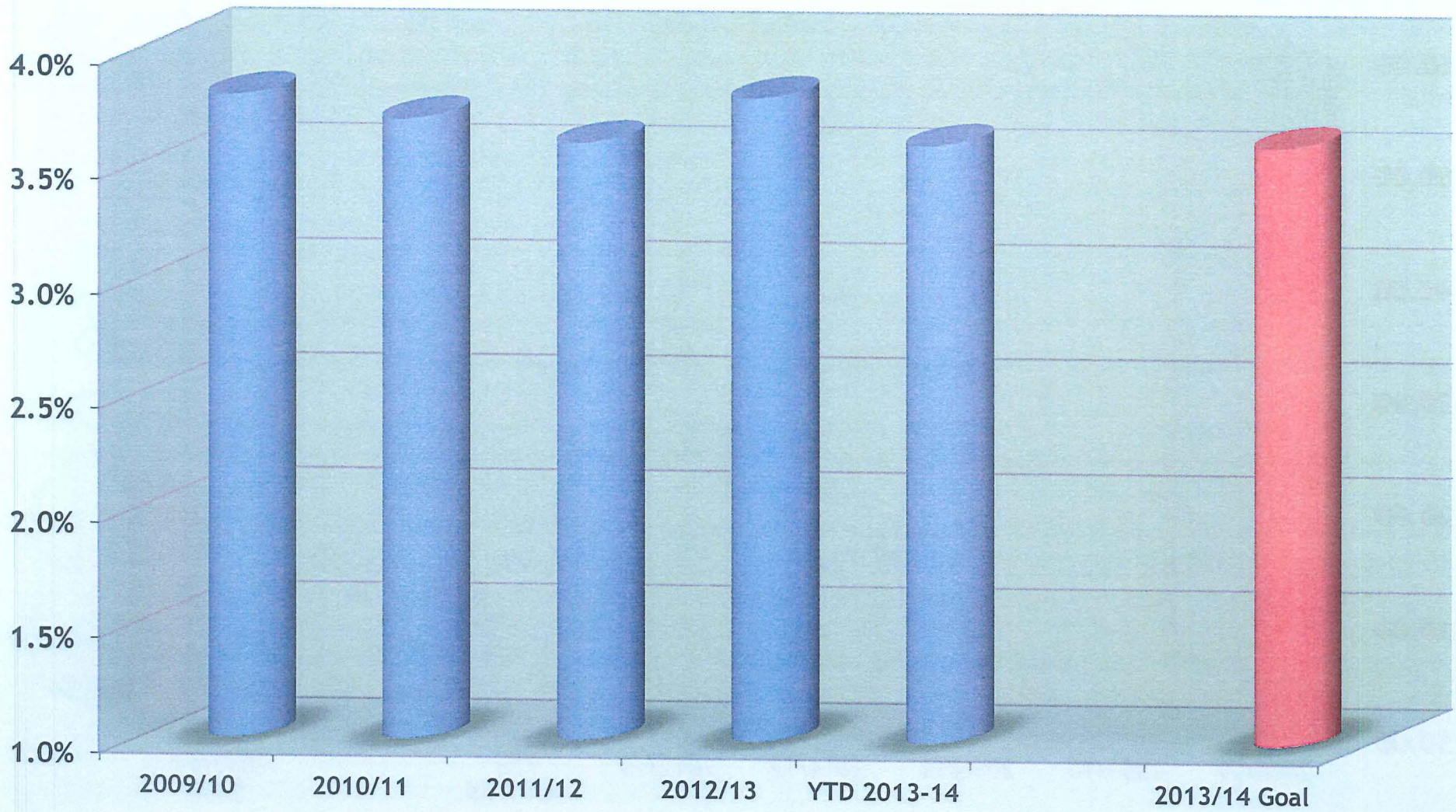
ROI on Future OCC Revenue Generated



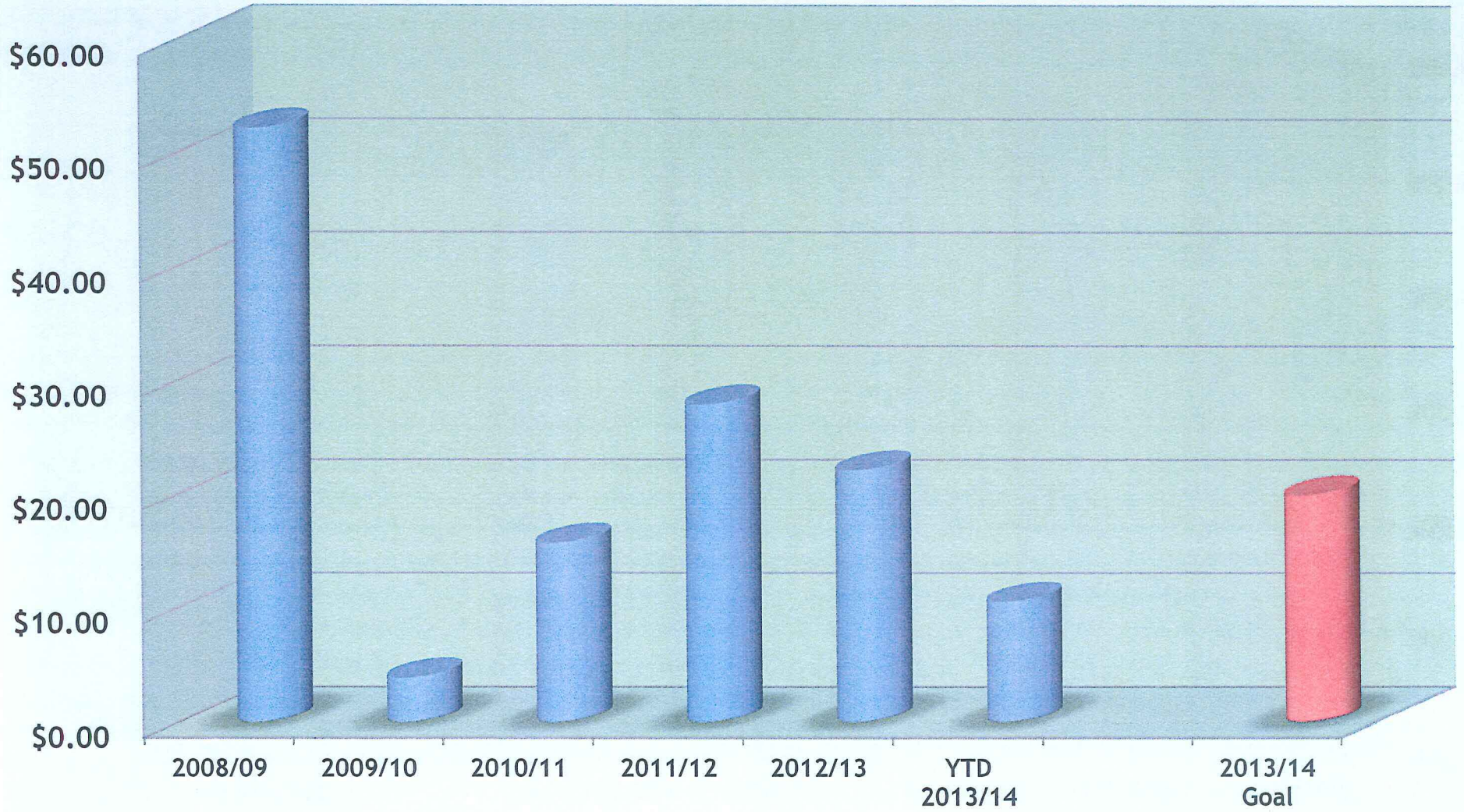
Lead Conversion



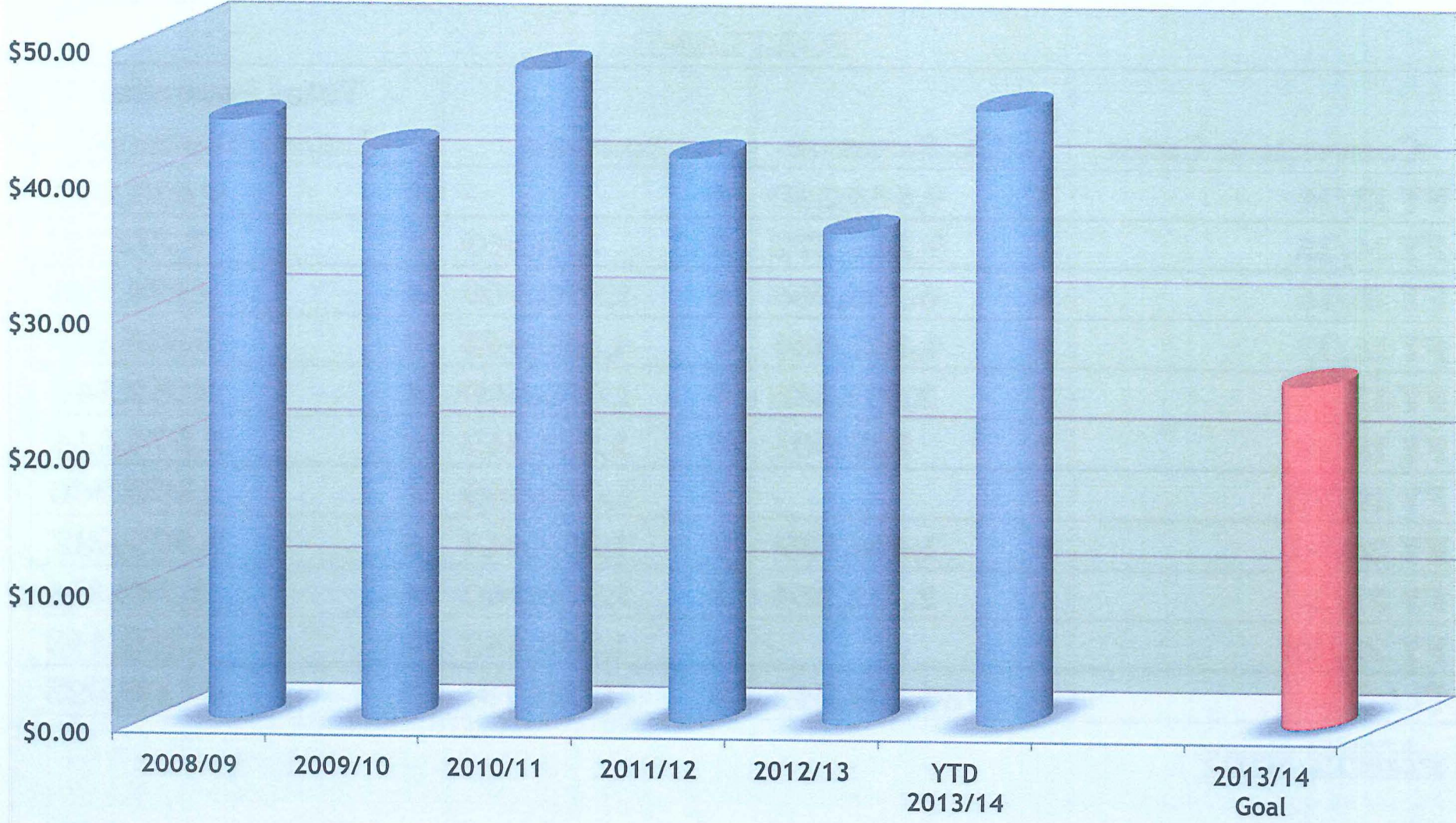
Convention Services Satisfaction Survey Score



ROI on Public Relations



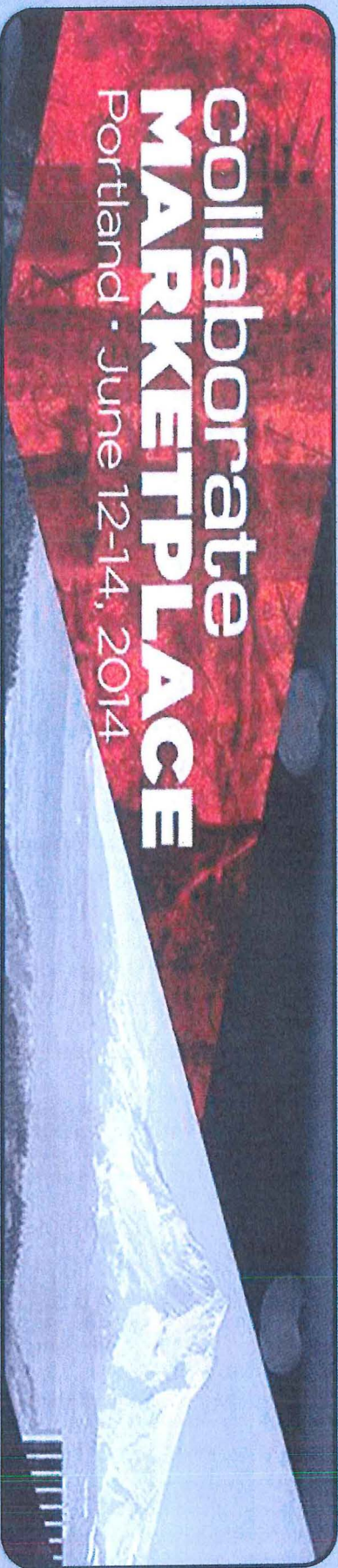
ROI on Total Community Economic Impact



**OREGON CONVENTION CENTER BOOKED REVENUE FROM TRAVEL
PORTLAND**

Convention Dates	OCC Revenue	Annuals	Total Potential Future Business
FY 13/14	\$ 9,633,240	\$ -	\$ 9,633,240
FY 14/15	\$ 9,249,572	\$ 524,169	\$ 9,773,741
FY 15/16	\$ 6,103,766	\$ 1,070,960	\$ 7,174,726
FY 16/17	\$ 4,382,034	\$ 1,553,443	\$ 5,935,477
FY 17/18	\$ 2,091,586	\$ 1,070,960	\$ 3,162,546
FY 18/19	\$ 520,601	\$ 1,553,443	\$ 2,074,044
FY 19/20	\$ -	\$ 1,070,960	\$ 1,070,960
FY 20/21	\$ 1,416,589	\$ 1,553,443	\$ 2,970,032
FY 21/22	\$ 2,712,354	\$ 1,070,960	\$ 3,783,314
FY 22/23	\$ -	\$ 1,553,443	\$ 1,553,443
Total	\$ 36,109,742	\$ 11,021,781	\$ 47,131,523

travel
PORTLAND



collaborate
MARKETPLACE

Portland - June 12-14, 2014

Collaborate Marketplace 2014

Attendees

Corporate Meeting Planners, Hotel, CVB,
and

Convention Center Sales professionals

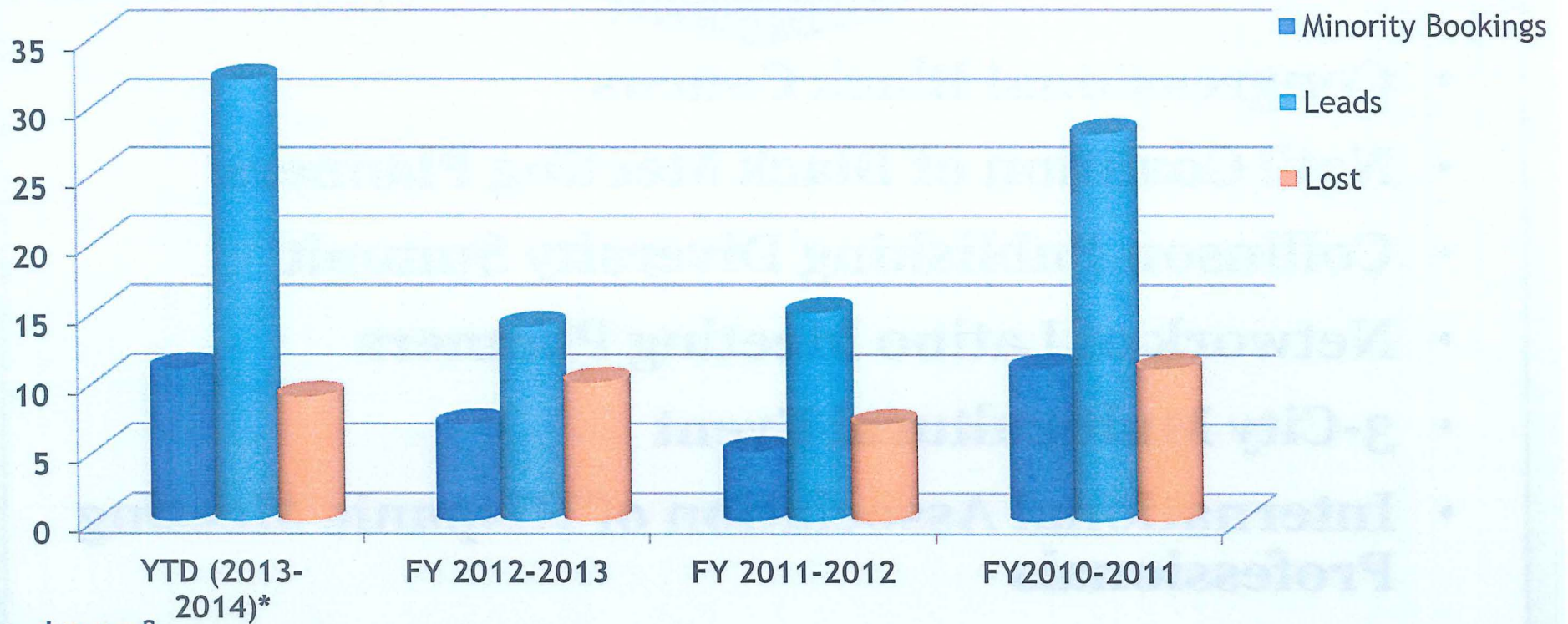
Attendance

1,150 people

MAY 2014 YTD

	Occupancy %		Average Daily Rate		Rev-Par		Room Revenue
	This Year	Last Year	This Year	Last Year	This Year	Last Year	
Portland Market	67.4%	65.5%	\$109.36	\$103.44	\$73.66	\$67.78	+9.2%
% of change	2.8%		5.7%		8.7%		
Portland Central City	74.8%	74.3%	\$142.62	\$131.26	\$106.67	\$97.48	+10.8%
% of change	.7%		8.7%		9.4%		

MULTICULTURAL ACTIVITY SNAPSHOT



CONVENTION SALES TRADESHOWS

- **Congressional Black Caucus**
- **Nat'l Coalition of Black Meeting Planners**
- **Collinson Publishing Diversity Summit**
- **Network of Latino Meeting Planners**
- **3-City Multicultural Event**
- **International Association of Hispanic Meeting Professionals**
- **Just Because**

LOCAL PROGRAMS

- **Diversity Brown Bag Lunch for Partners**
- **China Ready Seminar (Tourism Sales)**
- **Chamber Alliance Networking Event (Minority and Business Chambers)**
- **Say Hey (Partner's in Diversity)**
- **NAYA Friends and Family**

Content and Marketing Projects

VISITORS TRAVEL PROFESSIONALS MEDIA MEETING PLANNERS BUSINESS PARTNERS SELECT LANGUAGE


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AFRICAN AMERICAN PORTLAND

With a diverse range of organizations and businesses, Portland's African American community provides visitors with resources and a friendly welcome.


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CHINESE AMERICAN PORTLAND

From 1880 to 1910 Portland's Chinatown was second in size only to San Francisco's. Today, the growing Chinese population is spread throughout the city, as are a variety of Chinese-owned businesses, Chinese schools and activities.

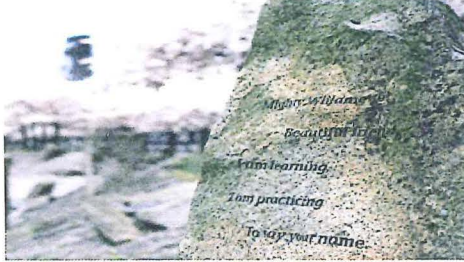
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HISPANIC AMERICAN PORTLAND

Oregon's growing Hispanic population is concentrated in the Portland region and offers rich resources for visitors.

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JAPANESE AMERICAN PORTLAND

Japanese American culture is woven into Portland, from the serene Portland Japanese Garden to Waterfront Park's Japanese American Historical Plaza.

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MINORITY BOOKINGS



**National Indian
Child Welfare
Association**

2015

\$578,929



**Northwest
Portland Area
Indian Health
Board**

2014

\$172,875



**National
Newspaper
Publishers
Association**

2014

\$87,201



SourceAmerica

2014

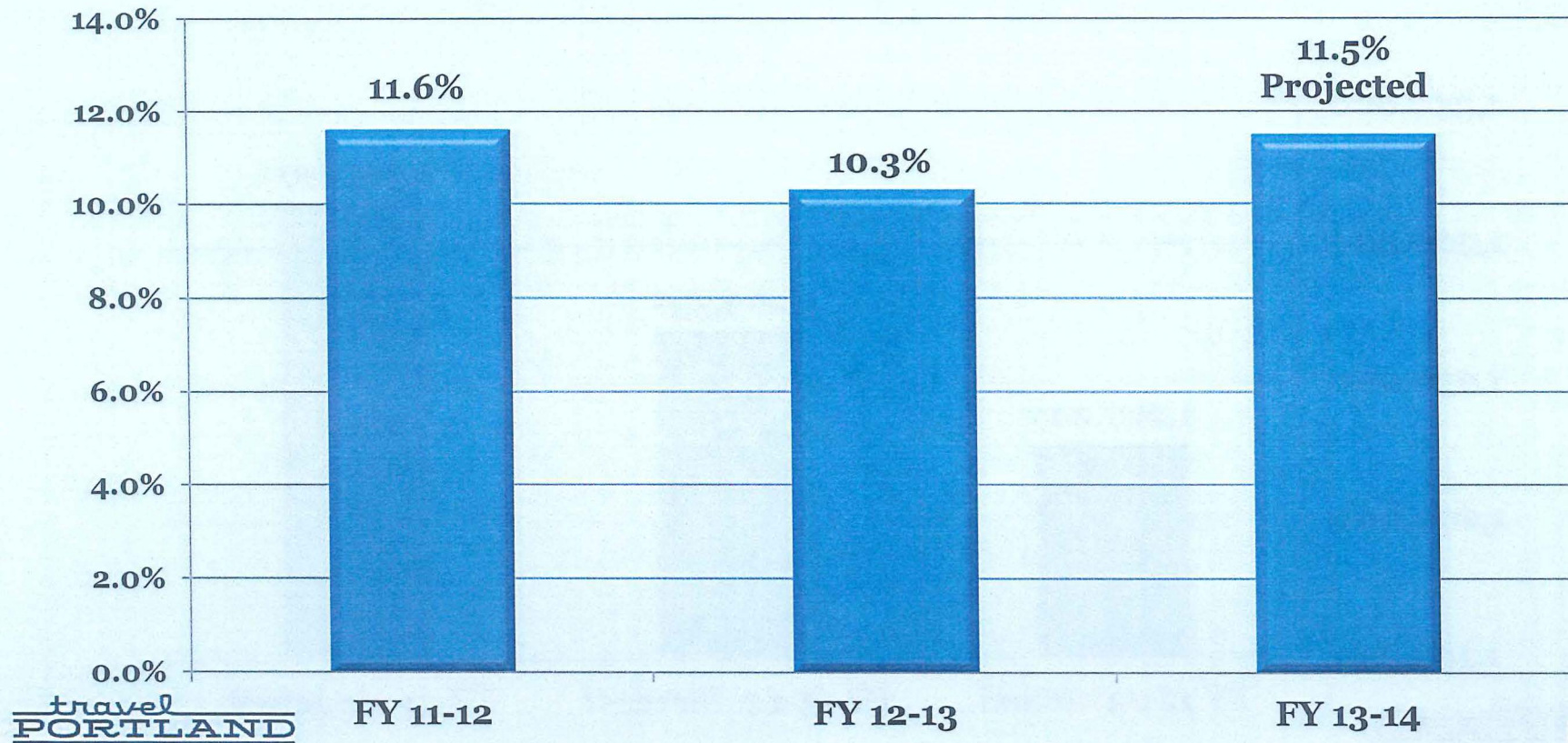
\$17,996

Winter Campaign Update

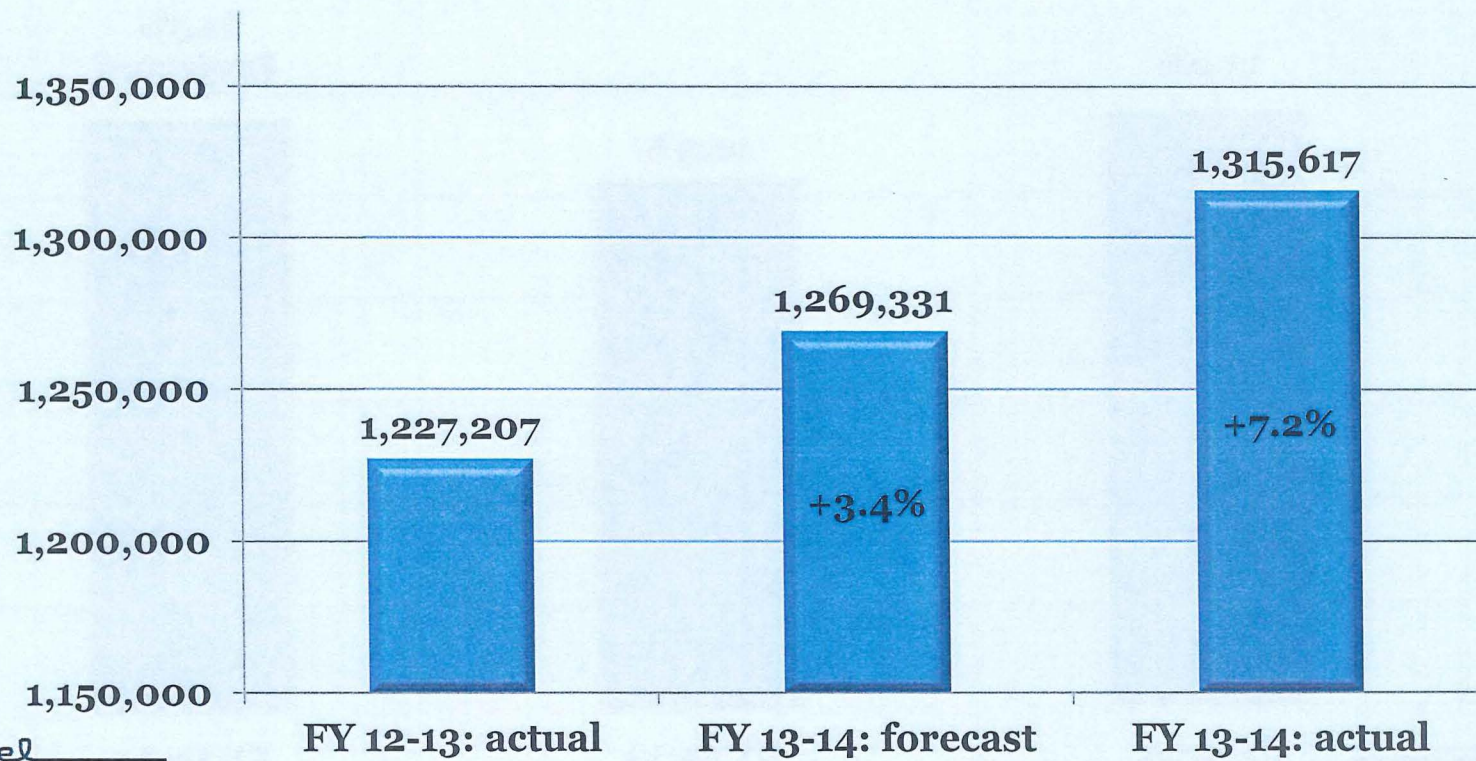
Wieden+
Kennedy

travel
PORTLAND

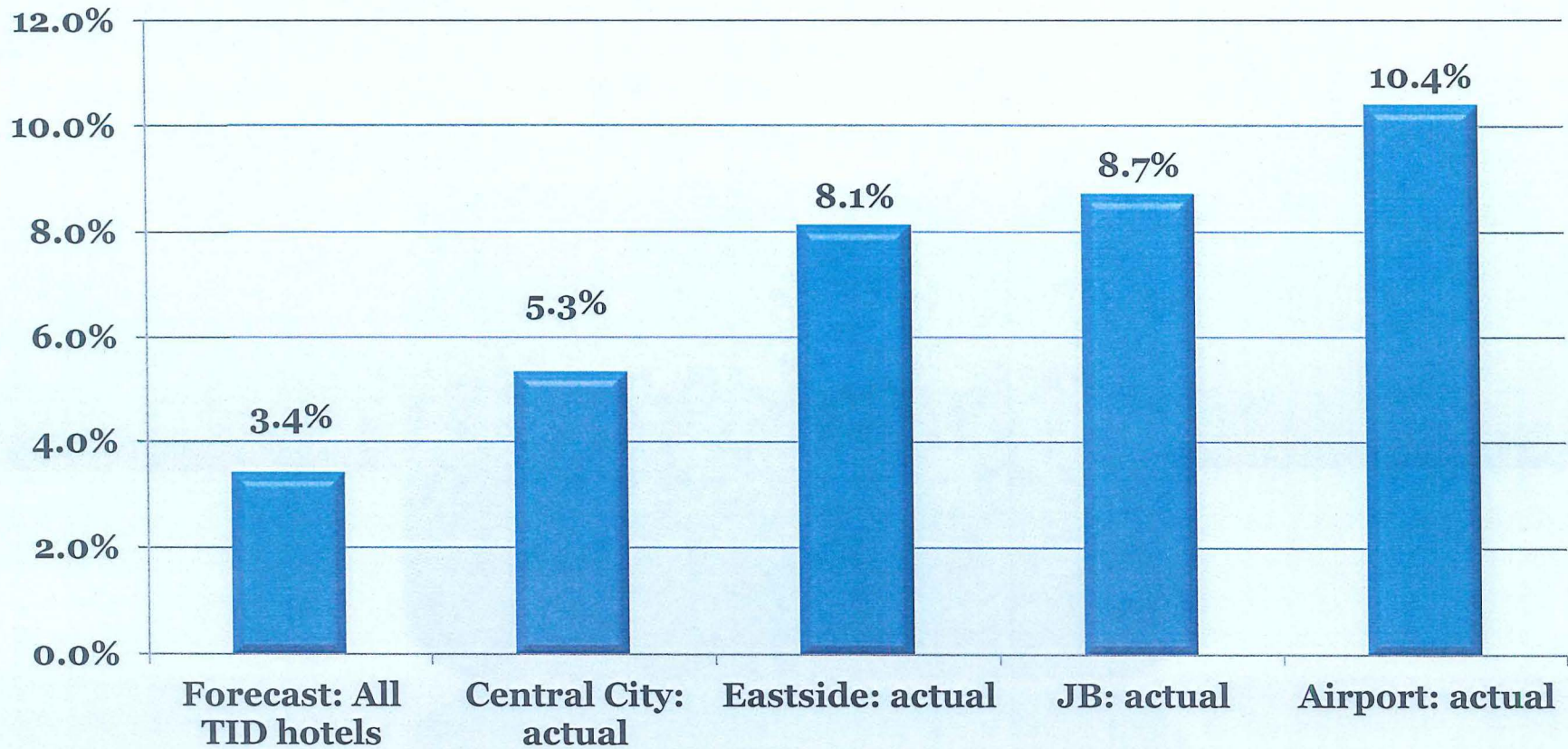
LODGING TAX: DOUBLE-DIGIT GROWTH



DEMAND AT TID HOTELS: NOVEMBER-MARCH



CITY-WIDE IMPACT



travel
PORTLAND

Demand (Rooms Consumed) at TID Hotels, November 2013 – March 2014.
Source: Smith Travel Research.



Thank You

		Tentative calendar for the month of					Tentative calendar for the month of					
		SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY				
ASCH				1	AEG Live Steely Dan 8:00pm	2		3		4	Goldenvoice Nick Cave 8:00pm	5
KA												
NMK				University of Oregon Gabriela Montero 7:30pm	Powells Books Diana Gabaldon 7:30pm							
WIN												
AHH					MERC Commission Meeting 12:30pm BT							
OCC	EXPO			Unity Conference				Los Inquietos				
ASCH		6	7	8	9	10	11	Chris Guillebeau World Domination Summit 9:00am	12			
KA				Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 2:00pm and 7:30pm	Broadway Across America Book of Mormon 2:00pm and 7:30pm			
NMK		University of Oregon OBF Eugene Ballet Creation 3:00pm									University of Oregon Duke Ellington Tribute 7:30pm	
WIN						Chris Guillebeau World Domination Summit 9:00am						
AHH					Noontime Showcase Marti Mendenhall 12pm Music on Main St. Billie & the Holidays 5:00pm						Chris Guillebeau World Domination Summit 7:00am Main Street Rotunda Lobby	
OCC	EXPO							Bead Faire Antique/Collectible Show	Bead Faire Plant Biologists Antique/Collectible Show			
ASCH		Chris Guillebeau World Domination Summit 9:00am	13	14	Showtime Mgmt Michael Jackson History 8:00pm	15	16	17	18	19		
KA		Broadway Across America Book of Mormon 1:00pm and 6:30pm		Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 7:30pm	Broadway Across America Book of Mormon 2:00pm and 7:30pm			
NMK								MetroArts Inc. MetroArts Kids Camp 3:00pm				
WIN			Chris Guillebeau World Domination Summit 9:00am									
AHH		Chris Guillebeau World Domination Summit 7:00am Rotunda Lobby			Noontime Showcase Zimba 12:00pm Music on Main St The Nowhere Band 5:00pm							
OCC	EXPO	Bead Faire Plant Biologists Antique/Collectible Show	Plant Biologists	Plant Biologists					Ptld Kennel Dog Show	Ptld Kennel Dog Show		
ASCH		20	21	22	23	24	25	26	27	28	29	30
KA		Broadway Across America Book of Mormon 1:00pm and 6:30pm										
NMK			OR Historical Society Doris Kerns Goodwin 7:00pm					MetroArts Inc. MetroArts Kids Camp 3:00pm				
WIN												
AHH					Noontime Showcase Pendulum 12:00pm Music on Main St Brothers and Sisters 5:00pm							
OCC	EXPO	Duncan Reunion OSCON Ptld Kennel Dog Show	OSCON	OSCON	OSCON	OSCON			Gun & Knife Show	Gun & Knife Show		
ASCH		27	28	29	30	31						
KA			IAVM Closing Reception 6:30pm ASCH Lobby Portland Theatre Prod 14/15 Season Kick-Off Event 6:00pm									
NMK												
WIN		Ptld Trailblazers Dancer Auditions 2:00pm										
AHH			IAVM Closing Reception 6:30pm Rotunda Lobby Main Street		Noontime Showcase JT Wise Band 12:00pm Music on Main St. Vagabond Opera 5:00pm							
OCC	EXPO	IAVM Gun & Knife Show										

NOTE: ALL LISTED EVENTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

ASCH = Arlene Schnitzer Concert Hall KA = Keller Auditorium NMK = Newmark Theatre WIN = Dolores Winningstad Theatre OCC = Oregon Convention Center R = Rotunda BH = Brunish Hall

August

AS OF: 7/10/2014 14:31

		Tentative calendar for the month of					Tentative calendar for the month of		
		SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	
ASCH		31					AEG Productions The Voice 7:30pm	2	
KA									
NMK									
WIN									
AHH									
OCC	EXPO	Roman Pentecostals							
ASCH		Showtime Mgmt Queen It's A Kinda Magic 7:00pm	4	5	6	7	8	9	
KA									
NMK							OCT OCT Acting Academy 11:00am and 2:30pm		
WIN		Raskia Private Dance Recital 4:00pm					OCT OCT Acting Academy 11:00am and 2:30pm		
AHH					Noontime Showcase Pickled Peppers 12pm Music on Main St. Morning Ritual 5:00pm		OCT OCT Acting Academy 11:00am and 2:30pm BT		
OCC	EXPO	ASCE Pipelines Conf Discover the Dinosaurs	ASCE Pipelines Conf Annual Storm Conf	ASCE Pipelines Conf Annual Store Conf	ASCE Pipelines Conf Annual Storm Conf			Beatriz Adriana Concert	
ASCH		10	Monqui Presents Broken Bells 8:00pm	11	12	13	14	15	
KA					AEG Live Counting Crows 7:00pm			Alli Sports Dew Tour 8:00am	
NMK									
WIN									
AHH					Noontime Showcase Train River 12:00pm Music on Main St. Melao de Cuba 5:00pm			Alli Sports Dew Tour 8:00am Rotunda Lobby Main Street	
OCC	EXPO					Int'l. Quilt Festival	Int'l. Quilt Festival	Int'l. Quilt Festival John Edward Group WrestleSport Pro Wrestling	
ASCH		Alli Sports Dew Tour 8:00am	18	19	20	21	22	23	
KA									
NMK							Pendulum Aerial Arts High Art 7:30pm	Pendulum Aerial Arts High Art 7:30pm	
WIN								Rasika Rasika 4:00pm	
AHH		Alli Sports Dew Tour 8:00am Rotunda Lobby Main Street			Noontime Showcase The Beat Goes On 12pm Music on Main St. Swan Sovereign 5:00pm				
OCC	EXPO			Farwest Nursery Show		Farwest Nursery Show	Farwest Nursery Show Collectors West Gun Show Valdivia Mkt Grp Concert	Farwest Nursery Show Collectors West Gun Show	
ASCH		24	25	26	27	28	29	30	
KA									
NMK		Pendulum Aerial Arts High Art 2:00pm					OCOM Graduation 2:00pm		
WIN									
AHH					Noontime Showcase Anandi 12:00pm Music on Main St. Obo Addy's Okropong 5:00pm		OCOM Graduation 4:00pm Reception		
OCC	EXPO	Collectors West Gun Show						Roman Pentecostals	Roman Pentecostals

NOTE: ALL LISTED EVENTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

ASCH = Arlene Schnitzer Concert Hall KA = Keller Auditorium NMK = Newmark Theatre WIN = Dolores Winningstad Theatre OCC = Oregon Convention Center R = Rotunda BH = Brunish Hall