

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION NO. 11-06

For the purpose of approving the selection of Brown Contracting Inc. as the lowest responsive and responsible bidders for the Block 26 Redevelopment project, approving the contract awards and authorizing the General Manager to execute two contracts with Brown Contracting Inc for (1) concrete installation and (2) general site work.

WHEREAS, the Oregon Convention Center intends to construct full block improvements including landscaping, storm water planters, a concrete plaza, seatwalls and other amenities to Block 26 through a partnership with Metro's Parks and Environmental Services Department and a lease with the Portland Development Commission; and

WHEREAS, Section 4(D)(1)(a) of the Metropolitan Exposition Recreation Commission's ("the Commission") Contracting and Purchasing Rules, delegates authority to the General Manager to prepare and approve Request for Bids (RFB) documents and to solicit bids; and

WHEREAS, staff will be acting as the general contractor for this project to increase participation in the Sheltered Market and First Opportunity Target Area (FOTA) programs; and

WHEREAS, staff prepared a total of seven RFBs for work to be performed on this project which have resulted in the selection of one contractor for two separate contracts, (1) concrete installation and (2) general site work on the project each exceeding the \$100,000 contract threshold and therefore requiring Commission approval; and

WHEREAS, participation in the Sheltered Market and FOTA programs is expected to exceed the 15% target for the MWESB program and achieve 4.8% of the 10% FOTA goal; and

WHEREAS, Section 4(D)(1)(c) of the Commission's Contracting and Purchasing Rules, requires the Commission to select the lowest responsive and responsible bidder, approve the contract award, and approve the written contracts by resolution; and

WHEREAS, staff has evaluated the bids and recommends the Commission approve awarding the two major contracts to Brown Contracting Inc. as it is the lowest responsive and responsible bidder.

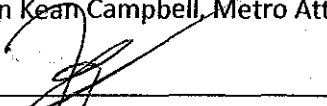
BE IT THEREFORE RESOLVED as follows:

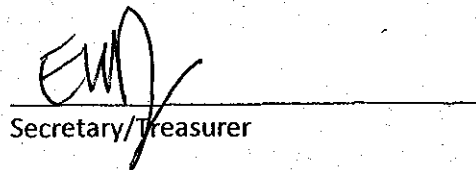
1. The Metropolitan Exposition Recreation Commission selects Brown Contracting Inc. as the lowest responsive and responsible bidder for (1) concrete installation and (2) general site work in response to the Request for Bids for the Block 26 Plaza Redevelopment Project;
2. Approves the award of the contracts to Brown Contracting Inc., in a form substantially similar to the attached Exhibit A; and
3. Delegates authority to the General Manager to execute the contracts on behalf of the Commission.

Passed by the Commission on March 15, 2011.


Chair

Approved As to Form:
Alison Kean Campbell, Metro Attorney

By: 
Nathan A. Schwartz Sykes
Senior Attorney


Secretary/Treasurer

Handwritten text at the top of the page, possibly a header or introductory paragraph.

Second section of handwritten text, continuing the narrative or list.

Third section of handwritten text, appearing as a distinct paragraph.

Fourth section of handwritten text, possibly a concluding paragraph.

Fifth section of handwritten text, located near the bottom of the main body.

Bottom section of handwritten text, including what appears to be a signature or date.

MERC STAFF REPORT

Agenda Item/Issue: Approving the selection of Brown Contracting Inc. as the lowest responsive and responsible bidder to a Request for Bids 11-1808 and 11-1839, relating to the Block 26 Plaza Redevelopment project, approving the contract awards and authorizing the General Manager to execute two contracts with Brown Contracting Inc.

Resolution No: 11-06

Date: March 15, 2011

Presented by: Jeff Blosser

BACKGROUND: The Oregon Convention Center, Portland Development Commission and Metro's Parks and Environmental Services Department have formed a partnership to construct the plaza improvements to Block 26. This project entails removing a building that was unused and beyond its useful life to improve an underutilized site for the public's benefit. It is in the best interest of Metro and the public to complete improvements to the site to allow use of the site for outdoor events, events associated with the Oregon Convention Center and provide a neighborhood amenity. The redevelopment of a new plaza space will be accomplished by construction of a rain garden and an underground detention system to retain all stormwater on site, construction of a large concrete plaza as an event space, installation of concrete seatwalls, landscaping and extensive sidewalk and street tree improvements. This project is included in the 2010-2011 adopted budget as approved at the September 1, 2010 MERC Commission meeting.

Staff is acting as the general contractor for this project to create more opportunities for MWESB and FOTA businesses. The project was divided into seven different bid packages to allow for higher MWESB and FOTA participation.

Staff prepared and issued Requests for Bids in accordance with MERC's Purchasing and Contracting Rules as well as Metro Policy and any and all state (ORS) requirements. Broad MWESB and FOTA outreach was conducted, including networking through Oregon Association of Minority Entrepreneurs and National Association of Minority Contractors of Oregon and making plans and specifications available for review at no cost to contractors. Bid packages were advertised in the Daily Journal of Commerce, El Hispanic News, the Skanner and the Observer. Approximately 18% of the targeted solicitation was to FOTA area businesses. Of all the contracts that staff intends to award, three are located within the FOTA area.

Three bid packages (paver installation, site furnishing and demolition of sidewalks and street trees) were small enough to be bid through Metro's Sheltered Market Program, wherein only State of Oregon Certified MWESBs are solicited. This direct outreach was conducted to 99 MWESB firms. A total of 18 firms from this direct solicitation were within the FOTA area. On February 23, 2011 seven MWESB contractors submitted bids for this work. Their bids ranged from \$21,000 to \$36,000.

The bid documents for the larger bid packages (general site work, concrete and steel reinforcement, landscaping and irrigation installation, and electrical installation) included a 15% MWESB participation goal as well as a 10% FOTA participation goal. Three of the bidders were certified MWESB Contractors. Only one of the lowest responsive and responsible bidders intend to subcontract out any work and there is no dedicated MWESB sub-contractor participation. Of these larger bid packages only two of four were bid over \$100,000.

The lowest responsive and responsible bid for general site work as provided by Columbia Paving and Excavation Inc. was submitted in the amount of one hundred and nine thousand & 00/100 dollars (\$109,000). This bid was disqualified due because this contractor does not hold a commercial CCB license. The second most responsive bidder was Brown Contracting at one hundred and twenty seven thousand three hundred & 00/100 dollars (\$127,300).

The most responsive and responsible bid for the concrete and steel reinforcement installation was Brown Contracting at \$219,400.00.

FISCAL IMPACT: The FY2010-11 adopted budget includes a total of \$660,000 for the Block 26 Plaza Redevelopment Project. Major elements of the project and anticipated expenditures from an Engineer's Estimate based on 100% construction drawings include:

	Estimated Costs	Bid Results	MWESB/ FOTA Participation
General Site Work	\$128,000	\$127,300	None
Landscaping and Irrigation	\$77,000	\$84,376	None
Electrical	\$72,000	\$64,130	None
Concrete & Steel Reinforcement	\$170,000	\$219,400	ESB, MBE (<i>responded, not awarded</i>)
Sidewalk & Street Tree Demolition	\$13,000*	\$23,850	No response from MWESB, None
Site Furnishing Installation	\$22,000*	\$24,843	FOTA, WBE, ESB
Paver Installation	\$11,000*	21,433	ESB
Site survey	\$4,780*	\$4,780	FOTA, MBE, ESB, WBE
Site Design, Landscape Architect	\$65,000*	\$65,000	WBE
Plan copies and Bid Distribution	\$1,000	\$1,000	FOTA
Site fencing and traffic control	\$1,000*	\$1,370	ESB
Total	\$562,780	637,482	

Total MWESB \$118, 426 or 18.5% of the total project cost

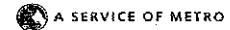
Total FOTA \$30,623 or 4.8% of the total project cost

**Work was directly either contracted or solicited through the Sheltered market Program.*

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution No. 11-06 approving the selection of Brown Contracting Inc. to perform general site work and concrete installation as the lowest responsive and responsible bidder in response to a Request For Bids 11-1808 and 11-1839, relating to the Block 26 Plaza Redevelopment project, approving the contract awards and authorizing the General Manager to execute the contracts.



METROPOLITAN EXPOSITION
RECREATION COMMISSION



Standard Public Contract

CONTRACT NO. _____

Block 26 Plaza Redevelopment: Concrete and Steel Reinforcement Installation

THIS Contract is entered into between Metropolitan Exposition-Recreation Commission ("MERC"), whose address is 777 NE Martin Luther King, Jr., Blvd., Portland, Oregon 97232-2742, and **Brown Contracting- CCB # 114260**, whose address is **PO Box 26439, Eugene OR 97402** hereinafter referred to as the "CONTRACTOR." Work is to be take place at Block 26 Plaza Redevelopment, located at 834 NE MLK Jr Blvd, Portland, OR 97232.

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I TERM OF CONTRACT

The term of this Contract shall be for the period commencing **March 28, 2011** through and including **September 1, 2011**, with substantial completion by September 30, 2011 unless terminated or extended as provided in this Contract.

ARTICLE II CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work, in an amount not to exceed **Two Hundred Thousand Nineteen Four Hundred dollars and no cents (\$219,400.00)** as follows:

Payment shall be on a unit price only for those goods or services received in a condition or manner acceptable to MERC. CONTRACTOR'S Invoice shall include an itemized statement of items purchased or services provided, and shall be sent to MERC, Attention: Accounts Payable, 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon 97232-2742. As per Article VII of this document, Contractor's invoice must breakout and withhold retainage as obligated by Public Contracting Code, and submit certified payroll with their invoice as per Prevailing Wage Requirement Law. MERC will pay Contractor within 30 days of receipt of an approved invoice.

ARTICLE III SCOPE OF WORK

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

CONTRACTOR is to provide all labor, materials, tools, equipment, and services necessary, for Block 26 Plaza Redevelopment: Concrete and Steel Reinforcement Installation. Scope of Work is as specified in the "Request for Bids" documents dated February 2, 2010, and hereto attached as "Attachment "A."

Contractor agrees to comply with each and every term, condition and provision of the contract documents. Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, and every other item and service necessary to perform the work described in the contract

documents. Contractor may be subject to liquidated damages if work not in compliance with Request for Bids Documents as referenced above, and Contract Agreement. **All work on this contract is subject to Prevailing Wage Rates.**

Additional Requirements:

CONTRACTOR must provide to MERC:

- **A Current W-9**
 - **A copy of Contractor's Certificate of Insurance as specified in Article VI below**
 - **A written Workplace Safety Program and Drug Policy prior to start of work**
 - **A written Work Schedule to be approved by Owner 48 hours prior to start of work.**
- Work must be performed without causing any disruptions to scheduled events. Owner will make every effort to keep construction areas off limits to the public to accommodate the Contractor's Work Plan.**

Contractor must coordinate all work with Metro/MERC Project Manager.

The Contract Time shall commence upon issuance of the Notice to Proceed which is anticipated to be issued following execution of the contract. Contractor shall commence work under this Contract within no more than ten (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the Work to **substantial completion no later than September 30, 2011 or at such date as may be extended by Change Order approved by Contractor and Owner.** By executing this Contract, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work.

The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the work by the date specified.

**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, use of MERC provided office space and/or other areas 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 MERC, Metro its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract or use of MERC provided office space and/or other areas. 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 MERC.

**ARTICLE V
TERMINATION**

MERC 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. MERC shall not be liable for indirect, consequential damages or any other damages. Termination by MERC will not waive any claim or remedies it may have against CONTRACTOR. Contractor may be liable for liquidated damages.

**ARTICLE VI
INSURANCE**

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

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. **MERC, Metro, and their elected and appointed officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**
- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. **MERC, Metro and their elected and appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.** Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

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

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

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

ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A & B, 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 Contract. Specifically, it is a condition of this contract that Contractor and all employers working under this Contract are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

All applicable provisions of ORS Chapters 187 and 279A & B, 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 Contract including, but not limited to, ORS 279B.220 to 279B.235.

For this Public Works project subject to ORS 279C.800 to 279C.870, the contractor shall pay Prevailing Wage Rates as per the *Oregon Bureau of Labor and Industries (BOLI) "Prevailing Wage Rates for Public Contract Works Contracts in Oregon - Effective January 1, 2011"*, pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractor must provide a written schedule to employees showing the number of hours per day and days per week the employee may be required to work; and must pay daily, weekly, weekend and holiday overtime in accordance with, and as required by ORS 279C.520.

Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor fails to pay for labor or services, the contracting agency can pay and withhold these amounts due the contractor. Additionally, 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

promptly pay for any medical services they have agreed to pay in accordance with ORS 279C.530. 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.

Contractor is required to Submit Certified Payroll Reports each month to MERC as Contracting Public Agency to: MERC–Construction/Capital Projects Dept–Attn: Renee, 777 NE MLK Jr Blvd Portland, OR 97232; as well as to BOLI. In addition to any other retainage obligated by the Public Contracting Code, the Prevailing Wage Requirement Law requires public agencies to withhold 25 percent of any amount earned by the prime contractor if the prime contractor does not submit certified payroll reports. Once the certified payroll reports have been submitted, the public agency must pay the 25 percent withheld within 14 days. ORS 279C.845(7)

Contractor and every subcontractor must have a Public Works Bond filed with the Construction Contractors Board prior to starting work on the Contract, unless exempt, in accordance with ORS 279C.830(3). Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

CONTRACTOR shall meet MERC Bonds and Bid Security requirements as follows:

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

CONTRACTOR shall meet the Metro "Good Faith Efforts" Requirement for Construction Projects as below:

For construction contracts of \$100,000 or more, the Commission adopts in principle, policy, and content, the "Good Faith Effort" program established by Metro Code§ 2.04.100 through 2.04.190 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro's Minority Business Enterprise, Women Owned Business and Emerging Small Business Program. The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE/WBE/ESB program as it relates to MERC contracting activities. Metro and MERC have a compelling government interest to ensure that their contracts provide fair and equal employment opportunities for minority, women, and emerging small businesses reflecting the diversity found in the Portland Metropolitan area. **Therefore, MERC aspires to utilize 15 (by dollar value) MBE/WBE/ESB subcontractor participation on this project.** Accordingly, the prime contractor is required to submit proof showing that Good Faith Effort has been made to contract with MBE/WBE/ESB subcontractors. **Additionally, MERC aspires to utilize 10% (by dollar value) of subcontractors within the First Opportunity Target Area (FOTA).** Contractor shall submit an MWESB/FOTA report along with certified payroll for compliance.

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

ARTICLE VIII 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 MERC, 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 MERC.

ARTICLE IX 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 MERC, 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 MERC request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

ARTICLE X SUBCONTRACTORS

CONTRACTOR shall contact MERC prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from MERC 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.

MERC 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 Contract. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XI RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this Contract or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

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

ARTICLE XII SAFETY

If services of any nature are to be performed pursuant to this Contract, 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. Contractor shall supply a written safety program/policy that all employees must follow. Workplace safety MUST be in compliance with OSHA regulations at all times

ARTICLE XIII
INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated Contract between MERC 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 MERC and CONTRACTOR.

ARTICLE XIV
JURISDICTION

This Contract was entered into in the State of Oregon. This Contract will be interpreted, construed, and enforced in accordance with the laws of the State of Oregon. Both parties agree that exclusive jurisdiction for any claim under this Contract will be in Multnomah County, Oregon.

ARTICLE XV
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 MERC to enforce a provision of the Contract is not to be construed as a waiver by MERC of this right to do so.

ARTICLE XVI
BINDING ON ASSIGNS AND SUCCESSORS

This Contract is binding upon the parties hereto and upon their heirs, administrators, representatives, executors, successors, and assigns, and will inure to the benefit of said parties and each of them and to their heirs, administrators, representatives, executors, successors and assigns.

ARTICLE XVII
COMPLIANCE

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

ARTICLE XVIII
COUNTERPARTS

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

ARTICLE XIX
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: Commission Lydia Neill
 Construction Manager
 600 NE Grand Avenue
 Portland OR 97232

To: Contractor Sean Emrick
 Brown Contracting
 PO Box 26439
 Eugene OR 97402

ARTICLE XX
ASSIGNMENT

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

CONTRACTOR

**METROPOLITAN EXPOSITION-RECREATION
COMMISSION**

Signature: _____

Signature: _____

Printed Name _____

Printed Name Teri Dresler

Date: _____

Date: _____

Title: _____

Title: General Manager

Company: _____

Signature: _____

Address _____

Printed Name Jeff Blosser

Date: _____

Telephone: _____

Title: Executive Director, OCC

Tax I.D. or SS#: _____

Project Manager: Lydia Neill

CCB #114260

Division: Construction/Capital Projects

Telephone: 503-797-1830

Attachment A, Scope of Work

Metro will act as the general contractor for the overall project and coordinate all work between contractors. Metro will provide property survey to establish and maintain control points, set rough grades and finish elevations per the plans. The contract contemplated consists of installation of concrete reinforcing steel, sealing and caulking as part of construction of a plaza redevelopment project. Consult drawings, specifications and general conditions for the following scope of work. See Cast In Place Concrete 03 30 00, Concrete Paving 32 13 00, and Pavement Joint Sealant 32 13 73. The scope of work does not include installing base rock material on a 95% compacted subgrade. The project scope for concrete and steel reinforcement includes:

- Steel reinforcement
- Interior plaza concrete flatwork
- Transformer pad
- Stormwater planter
- Light pole bases
- Concrete seatwall and cheekwall construction
- Concrete curbing, mow strips, planter edging, paver area border within plaza area
- Concrete stairs and handrail footings
- Concrete weirs for the raingardens
- Tent footings, hardware by others
- Concrete sidewalks, driveway approaches and curb construction in the right of way
- Sealants and caulking

Work does not include demolition of damaged sidewalks or curbing or placement of base rock material. Completion of this scope of work will require coordination with other contractors and trades.

A Notice to Proceed will be issued once permit approval is obtained from the City of Portland and all pre-project start information has been provided by the Contractor. Pre-project start information is as follows:

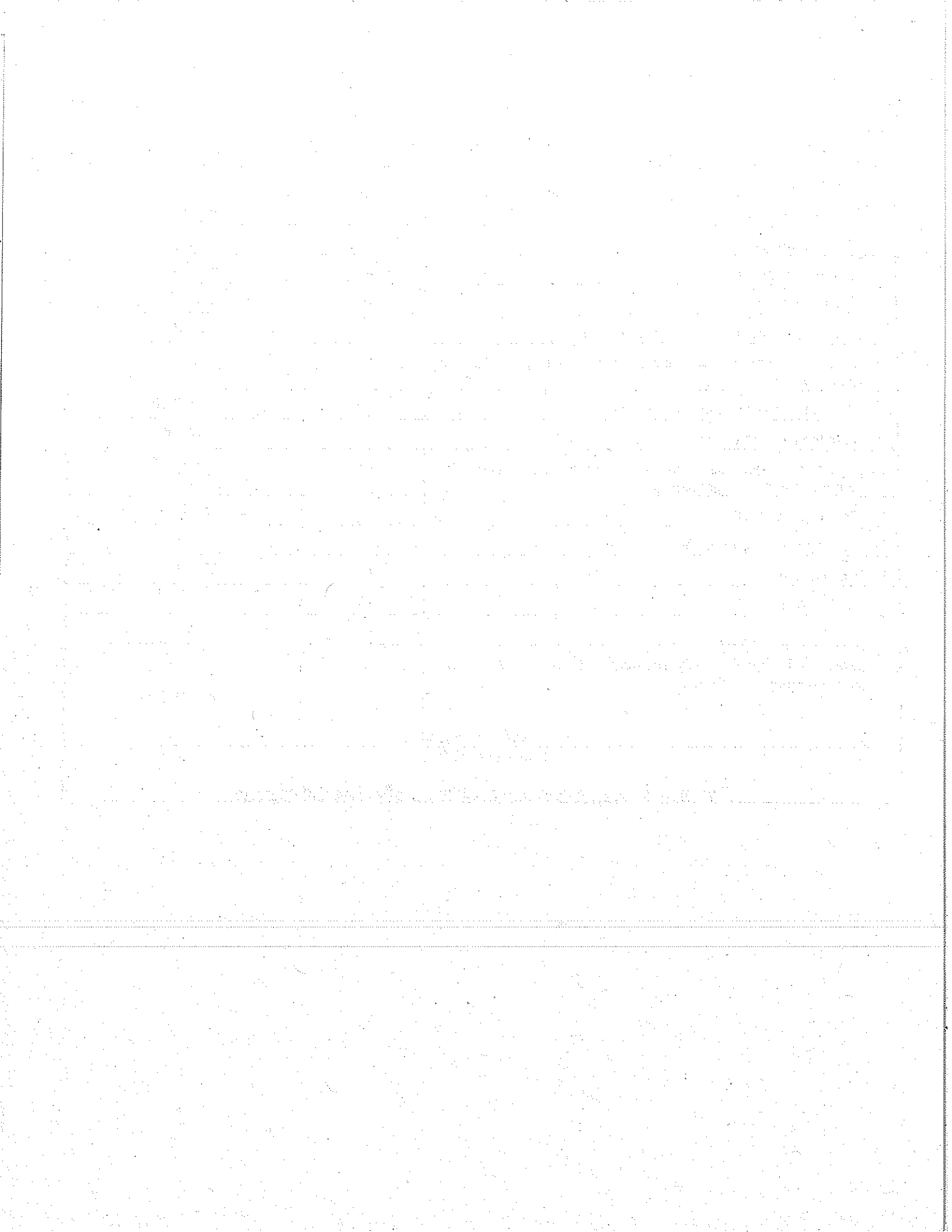
- A schedule with details of critical path tasks with dates of completion of each task within this work scope
- A schedule of values for project work
- Attendance at a pre-project meeting
- Submittals needed prior to performing work

During work Contractor shall provide the Project Manager:

- Mock-up of slab and wall concrete for pre-approval
- Appropriate back-up documentation for materials, labor sheets, tags and proof of any other charges with invoices
- Request for Information or Clarification submittal for approval prior to any changes in work scope
- Representation at all meetings required by the Project Manager
- Responsibility for management of all subcontractors and accountability to resolve all issues with performance of subcontractors, should any sub-contractors used to perform any work
- As-built drawings for all work before application of final payment

Schedule of Prices

Item	Description	Unit	Total Amount
1	Steel reinforcement	LS	\$12,000.00
2	Interior plaza concrete flatwork	LS	85,000.00
3	Transformer pad	LS	900.00
4	Stormwater planter	LS	0
5	Light pole bases	LS	1000.00
6	Concrete seatwall and cheekwall construction	LS	38,000.00
7	Concrete curbing, mow strips, planter edging, paver area border within plaza area	LS	22,000.00
8	Concrete stairs and handrail footings	LS	10,000.00
9	Tent footings, hardware by others	LS	700.00
10	Concrete sidewalks, driveway approaches and curb construction in the right of way	LS	22,000.00
11	Sealants and caulking	LS	3000.00
12	Concrete Weirs for raingardens	LS	1800.00
13	Mobilization	LS	22,000.00
14	Traffic Mitigation	LS	1000.00
<i>Block 26 Plaza Redevelopment: Concrete and Steel Reinforcement Installation</i>			\$219,400.00
<i>Base Bid Project</i> Total Contract Price			
Two hundred thousand nineteen four hundred dollars and no cents			





METROPOLITAN EXPOSITION
RECREATION COMMISSION

A SERVICE OF METRO

Standard Public Contract

CONTRACT NO. _____

Block 26 Plaza Redevelopment: Excavation, General Site Work and Utility Installation

THIS Contract is entered into between Metropolitan Exposition-Recreation Commission ("MERC"), whose address is 777 NE Martin Luther King, Jr., Blvd., Portland, Oregon 97232-2742, and **Brown Contracting, Inc. - CCB# 114260**, whose address is **PO Box 26439, Eugene OR 97402** hereinafter referred to as the "CONTRACTOR." Work is to be take place at Block 26 Plaza Redevelopment, located at 834 NE MLK Jr Blvd, Portland, OR 97232.

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I TERM OF CONTRACT

The term of this Contract shall be for the period commencing **March 28, 2011** through and including **September 1, 2011**, with substantial completion by September 30, 2011 unless terminated or extended as provided in this Contract.

ARTICLE II CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work, in an amount not to exceed One Hundred Twenty Seven Thousand Three Hundred dollars and no cents **\$127,300.00** as follows:

Payment shall be on a unit price only for those goods or services received in a condition or manner acceptable to MERC. CONTRACTOR'S Invoice shall include an itemized statement of items purchased or services provided, and shall be sent to MERC, Attention: Accounts Payable, 777 NE Martin Luther King, Jr. Blvd., Portland, Oregon 97232-2742. As per Article VII of this document, Contractor's invoice must breakout and withhold retainage as obligated by Public Contracting Code, and submit certified payroll with their invoice as per Prevailing Wage Requirement Law. MERC will pay Contractor within 30 days of receipt of an approved invoice.

ARTICLE III SCOPE OF WORK

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

CONTRACTOR is to provide all labor, materials, tools, equipment, and services necessary, for Block 26 Plaza Redevelopment: Excavation, General Site Work and Utility Installation. Scope of Work is as specified in the "Request for Bids" documents dated February 2, 2010, and hereto attached as "Attachment "A."

Contractor agrees to comply with each and every term, condition and provision of the contract documents. Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, and every other item and service necessary to perform the work described in the contract documents. Contractor may be subject to liquidated damages if work not in compliance with Request for

Bids Documents as referenced above, and Contract Agreement. **All work on this contract is subject to Prevailing Wage Rates.**

Additional Requirements:

CONTRACTOR must provide to MERC:

- **A Current W-9**
 - **A copy of Contractor's Certificate of Insurance as specified in Article VI below**
 - **A written Workplace Safety Program and Drug Policy prior to start of work**
 - **A written Work Schedule to be approved by Owner 48 hours prior to start of work.**
- Work must be performed without causing any disruptions to scheduled events. Owner will make every effort to keep construction areas off limits to the public to accommodate the Contractor's Work Plan.**

Contractor must coordinate all work with Metro/MERC Project Manager.

The Contract Time shall commence upon issuance of the Notice to Proceed which is anticipated to be issued following execution of the contract. Contractor shall commence work under this Contract within no more than ten (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the Work to **substantial completion no later than September 30, 2011 or at such date as may be extended by Change Order approved by Contractor and Owner.** By executing this Contract, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work.

The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the work by the date specified.

**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, use of MERC provided temporary office space and/or other areas 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 MERC, Metro its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract or use of MERC provided temporary office space and/or other areas. 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 MERC.

**ARTICLE V
TERMINATION**

MERC 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. MERC shall not be liable for indirect, consequential damages or any other damages. Termination by MERC will not waive any claim or remedies it may have against CONTRACTOR. Contractor may be liable for liquidated damages.

**ARTICLE VI
INSURANCE**

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

- A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. MERC, Metro, and their elected and appointed officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.
- B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. MERC, Metro and their elected and appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

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

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

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

ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A & B, 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 Contract. Specifically, it is a condition of this contract that Contractor and all employers working under this Contract are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

All applicable provisions of ORS Chapters 187 and 279A & B, 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 Contract including, but not limited to, ORS 279B.220 to 279B.235.

For this Public Works project subject to ORS 279C.800 to 279C.870, the contractor shall pay Prevailing Wage Rates as per the *Oregon Bureau of Labor and Industries (BOLI) "Prevailing Wage Rates for Public Contract Works Contracts in Oregon - Effective January 1, 2011"*, pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractor must provide a written schedule to employees showing the number of hours per day and days per week the employee may be required to work; and must pay daily, weekly, weekend and holiday overtime in accordance with, and as required by ORS 279C.520.

Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor fails to pay for labor or services, the contracting agency can pay and withhold these amounts due the contractor. Additionally, 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

promptly pay for any medical services they have agreed to pay in accordance with ORS 279C.530. 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.

Contractor is required to Submit Certified Payroll Reports each month to MERC as Contracting Public Agency to: MERC–Construction/Capital Projects Dept–Attn: Renee, 777 NE MLK Jr Blvd Portland, OR 97232; as well as to BOLI. In addition to any other retainage obligated by the Public Contracting Code, the Prevailing Wage Requirement Law requires public agencies to withhold 25 percent of any amount earned by the prime contractor if the prime contractor does not submit certified payroll reports. Once the certified payroll reports have been submitted, the public agency must pay the 25 percent withheld within 14 days. ORS 279C.845(7)

Contractor and every subcontractor must have a Public Works Bond filed with the Construction Contractors Board prior to starting work on the Contract, unless exempt, in accordance with ORS 279C.830(3). Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

CONTRACTOR shall meet MERC Bonds and Bid Security requirements as follows:

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

CONTRACTOR shall meet the Metro "Good Faith Efforts" Requirement for Construction Projects as below:

For construction contracts of \$100,000 or more, the Commission adopts in principle, policy, and content, the "Good Faith Effort" program established by Metro Code§ 2.04.100 through 2.04.190 (Metro Minority Business Enterprise, Women Owned Business, and Emerging Small Business Program) as they apply to contracts of the Commission. This adoption includes any and all ordinances subsequently adopted by the Metro Council relating to Metro's Minority Business Enterprise, Women Owned Business and Emerging Small Business Program. The General Manager shall designate MERC staff to perform the functions of the Liaison Officer to carry out the MBE/WBE/ESB program as it relates to MERC contracting activities. Metro and MERC have a compelling government interest to ensure that their contracts provide fair and equal employment opportunities for minority, women, and emerging small businesses reflecting the diversity found in the Portland Metropolitan area. **Therefore, MERC aspires to utilize 15% (by dollar value) MBE/WBE/ESB subcontractor participation on this project.** Accordingly, the prime contractor is required to submit proof showing that Good Faith Effort has been made to contract with MBE/WBE/ESB subcontractors. **Additionally, MERC aspires to utilize 10% (by dollar value) of subcontractors within the First Opportunity Target Area (FOTA).** Contractor shall submit an MWESB/FOTA report along with certified payroll for compliance.

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

ARTICLE VIII 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 MERC, 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 MERC.

ARTICLE IX 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 MERC, 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 MERC request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

ARTICLE X SUBCONTRACTORS

CONTRACTOR shall contact MERC prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from MERC 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.

MERC 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 Contract. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XI RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this Contract or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

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

ARTICLE XII SAFETY

If services of any nature are to be performed pursuant to this Contract, 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. Contractor shall supply a written safety program/policy that all employees must follow. Workplace safety MUST be in compliance with OSHA regulations at all times

ARTICLE XIII
INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated Contract between MERC 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 MERC and CONTRACTOR.

ARTICLE XIV
JURISDICTION

This Contract was entered into in the State of Oregon. This Contract will be interpreted, construed, and enforced in accordance with the laws of the State of Oregon. Both parties agree that exclusive jurisdiction for any claim under this Contract will be in Multnomah County, Oregon.

ARTICLE XV
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 MERC to enforce a provision of the Contract is not to be construed as a waiver by MERC of this right to do so.

ARTICLE XVI
BINDING ON ASSIGNS AND SUCCESSORS

This Contract is binding upon the parties hereto and upon their heirs, administrators, representatives, executors, successors, and assigns, and will inure to the benefit of said parties and each of them and to their heirs, administrators, representatives, executors, successors and assigns.

ARTICLE XVII
COMPLIANCE

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

ARTICLE XVIII
COUNTERPARTS

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

ARTICLE XIX
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: Commission Lydia Neill
Construction Manager
600 NE Grand Avenue
Portland OR 97232

To: Contractor Sean Emrick
Brown Contracting, Inc
Po Box 26439
Eugene OR 97402

ARTICLE XX
ASSIGNMENT

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

CONTRACTOR

**METROPOLITAN EXPOSITION-RECREATION
COMMISSION**

Signature: _____

Signature: _____

Printed Name _____

Printed Name Teri Dresler

Date: _____

Date: _____

Title: _____

Title: General Manager

Company: _____

Signature: _____

Address _____

Printed Name Jeff Blosser

Date: _____

Telephone: _____

Title: Executive Director, OCC

Tax I.D. or SS#: _____

Project Manager: Lydia Neill

CCB #114260

Division: Construction/Capital Projects

Telephone: 503-797-1830

Attachment A, Scope of Work

Contractor shall perform excavation, general site work and utility installation for Block 26 Plaza Redevelopment project. Metro will act as the general contractor for the overall project and coordinate work between contractors. Metro will provide property survey for the project to establish and maintain control points, establish rough grades and finish elevations per the plans. Completion of this scope of work will require coordination with other contractors and trades. Consult drawings and specifications for the following scope of work. See Site Clearing 31 10 00, Storm Utility Drainage Piping 33 41 00 and Earth Moving 31 20 00 specifications. Contractor shall:

- Grade site according to elevations indicated on plans
- Cut/fill/dispose of soils as needed to prepare the subgrade and obtain rough elevations
- Install and maintain all erosion/sedimentary control including: silt fence, truck track pad, filtration rolls and catch basin protection
- Install all base course material for concrete construction, curbs, sidewalks, seat walls, foundations, stairs, footings, drain rock at French drain and filtration fabric
- Install storm drain utilities: perforated pipe, PVC installation, pre-cast flow control manhole, bypass inlet, trench drains, cleanouts, mitered outfall, tie-in to existing system, Chambermaxx stormwater detention system
- Install miscellaneous sanitary sewer connections
- Install water connections
- Install asphalt paving patches at curb and driveway locations

A Notice to Proceed will be issued once permit approval is obtained from the City of Portland and all pre-project start information has been provided by the Contractor. Pre-project start information is as follows:

- A schedule with details of critical path tasks with dates of completion of each task within this work scope
- A schedule of values for project work
- Attendance at a pre-project meeting
- Submittals needed for approval prior to performing work

During work Contractor shall provide the Project Manager:

- Appropriate back-up documentation for materials, labor sheets, tags and proof of any other charges with invoices
- Request for Information or Clarification for pre-approval of any changes
- Representation at all meetings required by the Project Manager
- Responsibility for management of all subcontractors and accountability to resolve all issues with performance of subcontractors, should any sub-contractors be used to perform any work
- As-built drawings for all work before application of final payment

Schedule of Prices

Item	Description	Unit	Total Amount
1	Grade site according to elevations indicated on plans	LS	\$4000.00
2	Cut/fill/dispose of soils as needed to prepare the subgrade and obtain rough elevations	LS	31,000.00
3	Install and maintain all erosion/sedimentary control including: silt fence, truck track pad, filtration rolls and catch basin protection	LS	1000.00
4	Install all base course material for concrete construction, curbs, sidewalks, seat walls, foundations, stairs, footings, drain rock at French drain and filtration fabric	LS	18,000.00
5	Install storm drain utilities: perforated pipe, PVC installation, pre-cast flow control manhole, bypass inlet, trench drains, cleanouts, mitered outfall, tie-in to existing system, Chambermaxx stormwater detention system	LS	56,000.00
6	Install miscellaneous sanitary sewer connections	LS	500.00
7	Install water connections	LS	400.00
8	Install asphalt paving patches at curb and driveway locations	LS	1800.00
9	Install sleeving as indicated in drawings	LS	1800.00
10	Mobilization	LS	12,000.00
11	Traffic Mitigation	LS	800.00
<p><i>BLOCK 26 PLAZA REDEVELOPMENT: EXCAVATION, GENERAL SITE WORK AND UTILITY INSTALLATION</i></p> <p><i>BASE BID PROJECT</i></p>			<p>\$127,300.00</p>
<p>Total Contract Price</p>			<p>One Hundred Twenty Seven Thousand Three Hundred dollars and no cents</p>

