

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF PROVIDING AN ) RESOLUTION NO. 96-2402 A  
EXEMPTION FROM THE SEALED BIDDING )  
REQUIREMENT FOR THE REQUEST FOR )  
PROPOSALS FOR CONSTRUCTION MANAGER/ ) Introduced by  
GENERAL CONTRACTOR SERVICES FOR THE ) Regional Facilities Committee  
ZOO OREGON PROJECT )

WHEREAS, Metro staff have prepared the Request for Proposals (RFP) for Construction Manager/General Contractor (CM/GC) Services for the Zoo Oregon Project which is attached as Exhibit A; and

WHEREAS, the RFP is designed to select a qualified contractor to perform the required pre-construction and construction services under a multi-year contract; and

WHEREAS, the criteria which will be evaluated during the selection process include project approach and management plan, key personnel qualifications and organization of project staff and resources, fee proposal and past experience with M/WBE participation; and

WHEREAS, the Metro Code requires that the sealed bid process be utilized for the procurement of such construction services unless exempted by the Metro Contract Review Board; and

WHEREAS, waiver of the sealed bid requirement is unlikely to encourage favoritism or substantially diminish competition and will result in substantial cost savings; and

WHEREAS, Metro staff shall take steps to ensure that the use of an RFP process shall further the spirit and objectives of Metro's Minority and Women-owned Business Program; now, therefore,

BE IT RESOLVED,

1. That the Metro Contract Review Board adopts the findings attached as Exhibit B.
2. That the Metro Contract Review Board exempts the Zoo Oregon Project construction manager/general contractor contract from the sealed bid process and authorizes Metro staff to employ an RFP process that will meet the goal of encouraging competition through alternative contracting and purchasing practices.
3. That the Metro Contract Review Board authorizes the Executive Officer to execute a contract in a form substantially similar for construction manager/general contractor services with the most qualified proposer and to determine the Guaranteed Maximum Price for each project component as set forth in the RFP.

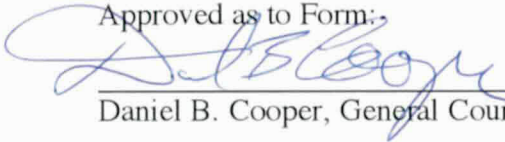
4. That the Metro Contract Review Board authorizes Metro staff, in consultation with Metro's Office of General Counsel, to devise alternative methods to ensure that the spirit and objectives of Metro's Minority and Women-owned Businesses Program are furthered through the RFP process.

ADOPTED by the Metro Council this 14<sup>th</sup> day of November, 1996.



\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:



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Daniel B. Cooper, General Counsel

Exhibit B

**FINDINGS**

CONSTRUCTION MANAGER/GENERAL CONTRACTOR RFP PROCESS

ZOO OREGON PROJECT

As required by ORS 279.015(2)(a), Metro Contract Review Board finds that exempting the Zoo Oregon Project Construction Manager/General Contractor (CM/GC) RFP process from sealed bidding process is unlikely to encourage favoritism or substantially diminish competition because:

1. It is anticipated that several general contracting firms from around the region will respond to the RFP which will be advertised in the same manner as if the usual bid process was utilized. Many of these firms have worked under the CM/GC contracting approach which has been used by many state and local jurisdictions in the past several years. Use of this contracting method is not expected to diminish competition among general contracting firms.
2. The criteria which will be utilized to select the contractor include performance-based criteria in addition to cost. The team which will select the contractor will include members from Metro's Property Services Division and Zoo staff and outside experts in the construction field. The decision will be based on objective criteria cited in the RFP and will not result in favoritism.
3. The RFP will require the successful CM/GC to solicit and receive at least three bids for all elements of the work; to conduct bid openings with a Metro representatives present; to award subcontracts to the bidder whose bid reflects the best value at the lowest cost, thus maintaining the usual competition for construction work. Because price will be a significant evaluation criteria, it is expected that each proposer will aggressively solicit and receive subbids from the local contracting community, thereby maintaining the usual degree of competition at the subcontractor level.

As required by ORS 279.015 (2)(a), Metro Contract Review Board finds that exempting the RFP for the Zoo Oregon Project Construction Manager/General Contractor from the sealed bidding process will result in substantial cost savings because:

1. The project encompasses nine separate project elements. The CM/GC process will result in significant cost savings due to the single contractor scenario. Under the alternative approach, nine separate contractors could be involved; each with mobilization costs, trailers, temporary facilities, and project staff to include superintendent, engineer, etc. The duplication of these items would result in significant additional costs. The single contractor scenario will result in cost savings by virtue of economies of scale.
2. In addition to the above, the single CM/GC contractor will likely result in reduced costs due to the avoidance of claims resulting from multiple contractors. Multiple contractors working simultaneously on related projects on a limited site such as the Zoo will likely result in claims alleging hindrance, delay or interference among the contractors.

The amount of such claims is difficult to estimate, however, the complexity and interrelated phasing of the project indicate that these claims could have a significant impact.

3. The CM/GC approach will result in cost savings due to high quality value engineering and design and constructability review early on in the design phases and minimal fee layering on change orders. The amount of cost savings is difficult to quantify, however, Metro staff have estimated that cost savings due to high quality value engineering and change order savings in a complicated project such as the Zoo Oregon Project could be as high as \$500,000.

3. The CM/GC process typically results in far less change orders related to faulty design because the designer and the builder are on the same team and work together on creative solutions for completing the project within budget rather than the adversarial role which is typical in the design/bid approach. Cost savings will result when design driven change orders are reduced or eliminated.

## Staff Report

### CONSIDERATION OF RESOLUTION NO. 96-2402 FOR THE PURPOSE OF PROVIDING AN EXEMPTION FROM THE SEALED BIDDING REQUIREMENT FOR THE REQUEST FOR PROPOSALS FOR THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES FOR THE ZOO OREGON PROJECT

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Meeting Date: November 4, 1996

Presented by: Berit Stevenson

#### Factual Background and Analysis

Metro and Zoo staff are preparing a final draft of a Request for Proposals (RFP) for Construction Manager/General Contractor (CM/GC) services for the Zoo project. The RFP contemplates the utilization of an alternative construction method known as CM/GC. Metro and Zoo staff recommend that the CM/GC approach be utilized for this project. Metro Code requires that a construction project such as this utilize the more typical sealed bid process unless an exemption is authorized by the Metro Contract Review Board. To exempt a contract, the Review Board must find that allowing the proposal rather than the sealed bid process will not encourage favoritism or substantially diminish competition and will result in substantial cost savings.

The CM/GC method is recognized by both private and public owners as an innovative and superior contracting method. It has been widely utilized by several local and state agencies over the past several years. Metro is employing this method currently on the Expo Expansion Project which is proceeding both within budget and schedule. Metro staff involved in the Expo project believe that because of the extremely aggressive schedule which was dictated by the upcoming Smithsonian Exhibit, it would have been unlikely to successfully complete the project on time without utilizing the CM/GC method.

The process is best suited for projects which combine one or more of the following attributes: accelerated schedule, technical program complexity, construction complexity, and the need for budget certainty and early commitment to construction costs. The Zoo's Oregon Project involves all four of these attributes, primarily technical program and construction complexity.

The project's schedule is quite complicated and based on several milestones and a desire to avoid costly arbitrage payments. The milestones include the opening of the Tri-Met Westside light rail station and the opening of the primary exhibits (*Forests* and *Waters*) consecutively. This phasing of exhibit openings is designed to maximize Zoo attendance by timing the major exhibit openings for the Zoo's optimal operating season.

The scope of the Oregon Project includes several major exhibits including *Lions*, *Mountain Goats*, *Forest* and *Waters* exhibits. The *Waters* exhibit will feature sea otters and stellar sea lions and includes a sophisticated filtration system necessary for its animal and fish inhabitants. The *Forest* area will include an "Underground Exhibit", "Pond and Wetland" and an "Eagle Aviary". Other exhibits will include specialized robotics equipment which adds significantly to the project's technical complexity.

The project's unique construction complexity can be ascertained by reviewing the preliminary schedule. The Oregon Project is comprised of a series of major improvements which will occur over a three year period. In all, nine separate project elements have been identified. Because the project includes the demolition of several existing animal habitats and the construction of new

homes for these animals, an intricate phasing schedule is required to ensure the well being of the animals and the timely completion of the project.

In addition to the required phasing, two other elements add to the project's construction complexity. First, the work will be occurring during on-going operations of the Zoo. With over one million visitors per year, the project requires a contractor with proven ability to work around the public and on-going operations. Lastly, much of the project area is included within an "environmental" zone which requires heightened review and regulations by the City. This "environmental" designation increases the construction complexity significantly.

The budget for this project has been established by the successful general obligation bond. The process of designing to meet the budget is best accomplished when both the design team and the contractor are working together during the early phases of the project. Constructability review and value engineering are key elements of the CM/GC process which lead to early commitment to budget. In addition, an active constructability review and value engineering phase typically result in a higher quality product and the avoidance of additional cost due to faulty design.

It is anticipated that several contracting firms with CM/GC experience will respond to the RFP providing adequate competition at the general contracting level. In addition, the RFP will provide that the CM/GC solicit and receive at least three bids for all elements of the work, thus maintaining the usual competition at the sub-contractor level.

The criteria which will be utilized to select the CM/GC will include performance-based criteria in addition to cost. One of the criteria which will be evaluated is the proposer's ability to successfully implement a minority and women-owned businesses program. Other factors which will be evaluated include past experience with CM/GC projects, specific Zoo or other exhibit-related construction experience and value engineering experience. This criteria will be objective and will be included in the RFP. The selection committee will include representatives from Metro, the Zoo and outside experts in the construction field.

#### Budget Impact

The Zoo Oregon Project is funded by the successful \$28.8 million general obligation bond which the voters of the region approved in September 1996.

#### Executive Officer's Recommendation

The Executive Officer recommends adoption of Resolution 96-2402.

## Exhibit B

### FINDINGS

#### CONSTRUCTION MANAGER/GENERAL CONTRACTOR RFP PROCESS

#### ZOO OREGON PROJECT

As required by ORS 279.015(2)(a), Metro Contract Review Board finds that exempting the Zoo Oregon Project Construction Manager/General Contractor (CM/GC) RFP process from sealed bidding process is unlikely to encourage favoritism or substantially diminish competition because:

1. It is anticipated that several general contracting firms from around the region will respond to the RFP which will be advertised in the same manner as if the usual bid process was utilized. Many of these firms have worked under the CM/GC contracting approach which has been used by many state and local jurisdictions in the past several years. Use of this contracting method is not expected to diminish competition among general contracting firms.
2. The criteria which will be utilized to select the contractor include performance-based criteria in addition to cost. The team which will select the contractor will include members from Metro's Property Services Division and Zoo staff and outside experts in the construction field. The decision will be based on objective criteria cited in the RFP and will not result in favoritism.
3. The RFP will require the successful CM/GC to solicit and receive at least three bids for all elements of the work; to conduct bid openings with a Metro representatives present; to award subcontracts to the bidder whose bid reflects the best value at the lowest cost, thus maintaining the usual competition for construction work. Because price will be a significant evaluation criteria, it is expected that each proposer will aggressively solicit and receive subbids from the local contracting community, thereby maintaining the usual degree of competition at the subcontractor level.

As required by ORS 279.015 (2)(a), Metro Contract Review Board finds that exempting the RFP for the Zoo Oregon Project Construction Manager/General Contractor from the sealed bidding process will result in substantial cost savings because:

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The amount of such claims is difficult to estimate, however, the complexity and interrelated phasing of the project indicate that these claims could have a significant impact.

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**REQUEST FOR PROPOSALS**

for

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR  
SERVICES**

for the

**METRO WASHINGTON PARK ZOO**

**OREGON PROJECT**

Metro  
600 Northeast Grand Avenue  
Portland, Oregon 97232

Issued November 8, 1996

**REQUEST FOR PROPOSALS**  
**for**  
**CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES**  
**for the**  
**METRO WASHINGTON PARK ZOO PROJECT**

**1.0 INTRODUCTION**

1.1 The Metro Washington Park Zoo, a department of Metro (Owner), a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, is soliciting written proposals from qualified general contractors to provide Construction Manager/General Contractor (CM/GC) services for the Zoo's Oregon Project. It is the intent of Owner to select a CM/GC who will become a member of a team composed of , the Owner, the CM/GC and the Project's consultant team in the design process and the construction phase. It is anticipated that as pre-construction services are concluded for the various elements of the Project, four separate Guaranteed Maximum Prices (GMP) will be developed for the four phases of the work identified herein.

1.2 The CM/GC is being selected early in the Project to provide Owner and the design team with expertise and experience that will assist in Project decision making, and ensure that procedures are implemented to aggressively manage the construction costs and schedule. The design must allow for economical and efficient methods of construction and construction must occur to allow for the ongoing operations of the Zoo, minimum disruption to Zoo visitors, Zoo animals and the Zoo environment. Owner seeks the CM/GC who can best provide the services needed to achieve these goals.

**2.0 PROJECT BACKGROUND**

2.1 The Zoo developed a long-range master plan which was adopted by the Metro Council in 1992. The plan calls for gradual improvement of the Zoo during a 25 year period. In-addition to physical improvements, including construction of new exhibits and a new entry, the plan identifies programmatic solutions which improve the Zoo for animals and visitors. Many of the improvements identified in the master plan are included within the Oregon Project, which is intended to emphasize the state's natural environment, including Oregon's threatened animal species. The project is designed to educate visitors to the Zoo about significant issues surrounding the state of Oregon so that they may play a more direct role as these issues are discussed, debated and resolved.

2.2 Voters of the Metro region approved a ballot measure in September, 1996, authorizing Owner to issue \$28.8 million in bonds for the Oregon Project. A qualified CM/GC is being sought early on to assist with project

planning and development. Of critical importance to Owner is a CM/GC with experienced capability to work within the ongoing operations of the Zoo. More than one million persons a year visit the Zoo. The selected CM/GC will be required to conduct construction activity in a manner which minimizes disruption to the Zoo visitors. In addition, the CM/GC must be responsive to working around the Zoo's resident animals and its environmentally sensitive site.

2.3 While the Oregon Project is underway, the Owner will also carry out other construction and capital improvement projects which are funded by sources other than the bond measure. These projects will be outside the scope of the CM/GC's responsibility but will require some level of coordination and cooperation to ensure the success of all projects.

### **3.0 GENERAL PROPOSAL INFORMATION**

3.1 Proposals will be received at the Metro offices located at 600 Northeast Grand Avenue, Portland, Oregon, 97232, to the attention of Berit Stevenson, until 5:00 p.m., December 3, 1996. Submittals should be clearly marked "Proposal - Construction Manager/General Contractor Services - Zoo Oregon Project". Each submittal must be submitted in the format described in this RFP.

3.2 All information submitted by Proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the proposals for which Proposers request exception from disclosure to the extent permitted by Oregon law.

3.3 Owner and its Contractors will not discriminate against any person based on race, color, national origin, sex, sexual orientation, age, religion, physical disability, political affiliation or marital status.

3.4 During the performance of the contract, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin.

3.5 A mandatory pre-proposal conference and site visit has been scheduled for November 13, 1996 at 1:00 p.m. Those attending should check-in at the Zoo's administrative offices located at 4001 Southwest Canyon Road, Portland, Oregon 97225.

### **4.0 RFP TIME-TABLE**

4.1 The following schedule has been developed for the course of the RFP process. All dates are subject to change.

November 8, 1996 Issue RFP

November 13, 1996 - 1:00 p.m. Mandatory Pre-Proposal Conference at Zoo

|                              |  |
|------------------------------|--|
| December 3, 1996 - 5:00 p.m. | Proposals due to Owner                         |
| Week of December 15, 1996    | Interview of finalist and tabulation of scores |
| Week of December 22, 1996    | CM/GC selection/ notification                  |
| January 2, 1997              | CM/GC Contract commencement                    |

## 5.0 PROJECT ADMINISTRATION

5.1 The Owner's contact for this project is the project manager to be appointed in writing by the Metro Executive Officer.

5.2 The CM/GC and exhibit fabrication consultant, hired under a separate contract, will report to the project manager.

5.3 The CM/GC will work in a partnership with the exhibit fabrication consultant (EFC) in delivery of new exhibits for the zoo. The role of the CM/GC is to ensure timely, cost effective construction and development of the zoo's Oregon exhibit by working in partnership with the EFC. They will develop timelines and allow for specialized suppliers to install such elements as simulated rocks and trees, electronic interpretive equipment, graphic panels, and other fabrication necessary for the successful completion of the project.

## 6.0 PROJECT OVERVIEW

### 6.1. PROJECT PHASING AND SCOPE

6.1.1 The Oregon Project is a series of major improvements at the Zoo, with construction beginning in March of 1997 and continuing through approximately November of 1999. A preliminary project schedule has been prepared which tentatively indicates the project phasing. This schedule, titled "Metro Washington Park Zoo - Master Schedule" is attached as Appendix C. It is anticipated that the construction activity will occur in four separate phases labeled Phase 1, 2, 3 and 4 respectively. Separate GMPs will be developed for each phase. This preliminary phasing plan may be modified based on input received from the selected CM/GC.

6.1.2 Phase 1 includes the *Return Loop Pathway, Classrooms, and Lions Exhibit & Bobcat and Cougar Holding*. It is anticipated that the GMP encompassing this phase would be developed mid February 1997, approximately 6 weeks after execution of the CM/GC contract. Phase 2 includes the *Entry Plaza, Mountain Goat Exhibit, Train Station and Main Pathway*. The GMP covering this work would be developed

around May 1, 1997 which is approximately 4 months after the CM/GC commences work. Phase 3, includes the (*Lower Plaza, Waters Exhibit and Picnic Area*) GMP for this phase of work would be developed in September 1997. Phase 4, which is the last phase includes the *Upper and Lower Forest Exhibits*. The GMP for this fourth phase of work would be developed in October of 1997. The separate elements making up the scope of work are more fully described below and in the Conceptual Drawings included in Appendix E.

.1 **Return Loop Pathway.** This will be the first bond financed project to be opened to the public. The new path will connect the existing "Africa" area of the Zoo to the main Zoo pathway adjacent to the existing felines building. A small amphitheater and public restrooms may also be included in this project.

Approximate Cost: \$350,000

.2 **Classrooms.** The east bear grottos (4 concrete enclosures) will be demolished as part of this project, the site prepared and two modular classroom buildings will be installed. The modular classrooms will be procured directly by Owner, with the balance of the work performed by the CM/GC. The timing of this work is not critical and can wait until the Zoo relocates the bears to their new homes.

Approximate Cost: \$200,000

.3 **Lions Exhibit, Bobcat and Cougar Holding.** Both the lions and the bobcats and cougars need to have replacement homes constructed prior to the demolishing of their current home in the felines building. The existing lemurs outdoor yard will be demolished to make way for the new Lions Exhibit. Demolition of the felines building is necessary to make way for the Waters exhibit.

Approximate Cost: \$2.5 million

.4 **Entry Plaza, Mountain Goats, Train Station and Main Pathway.** Owner desires to coordinate the opening of the Zoo's new entry with that of the new Westside light rail station which is scheduled for September 1998. The major components of this element of the work are:

- Two level Restaurant and Banquet Building (approx. 38,000 s.f.)
- Single level Gift Shop Building (approx. 7,000 s.f.)
- Main Entry Plaza of the Zoo to include covered areas, ticket booths, special kiosks and designed for a variety of outdoor activities (approx. 10,000 s.f.)

- Mountain Goat Exhibit, including Goat Holding
- Train Station, with track changes, located adjacent to the Lower Plaza
- Main Zoo Pathway, connecting the Entry Plaza to the Train Station, including bridges over existing tracks

Approximate Cost: \$8 million

.5 **Waters, Lower Plaza:** After completion of (3) above, approximately 60% of the existing feline building will be demolished and the new Waters exhibit will be built in its place. Sea Otters and Stellar Sea Lions are the main elements, with Tide Pools, a Blow Hole Fountain and the Lower Plaza being part of this project. The remaining portions of the felines building must be made operational. New filtration and keeper spaces will be constructed. All animals will be vacated from the building during demolition and Waters construction

Approximate Cost: \$4 million

.6 **Upper Forest Exhibits.** The series of exhibits labeled "Forest Canopy Exhibits", "Bobcat Exhibit", "Cougar Exhibit" and "Wolverines Exhibit" are called the Upper Forest Exhibits, and may have separate staging/ access and time frame from the Lower Forest Exhibits. Construction of Forest Exhibits is currently scheduled to begin in Spring of 1998.

Approximate Cost: \$3.25 million

.7 **Lower Forest Exhibits.** The existing building in the current "Cascades" exhibit will be remodeled and expanded for a variety of new exhibits, including "Underground Exhibits", "Wetland" and "River Otter" exhibits. The major exhibit groups of "Pond and Wetlands", "Eagle Aviary", "American Black Bear" and "Family Farm" will be a part of the Lower Forest Exhibits.

Approximate Cost: \$4 million

.8 **Picnic Area.** After the new Entry Plaza is opened, the existing entry area will be demolished and a new picnic area constructed.

Approximate Cost: \$475,000

## 6.2. CONSTRUCTION BUDGET

6.2.1 The Project's construction budget is approximately \$23 million. In addition to this amount, the Project includes a budget of \$3,000,000 for interpretive elements. Some portion of the interpretive budget may be included in the selected CM/GC's scope of work.

## 6.3 SCOPE OF PRE-CONSTRUCTION SERVICES

6.3.1 Pre-construction services will be provided under the terms of the sample CM/GC Agreement contained in Appendix B. It is anticipated that the specific scope of pre-construction services will be negotiated prior to signing the Pre-construction Services Agreement, based on the Proposer's input as well as Owner's requirements. In general, services are anticipated to include:

.1 Consult with, advise, assist and provide recommendations to Owner and consultant team on all aspects of the planning and design of the separate phases of the work.

.2 Provide information, estimates, schemes, and participate in decisions regarding construction phasing, temporary facilities, temporary access routes/detours which will create the minimum disruption to the public, animals and Zoo operations. Write a Course of Construction Plan, outlining the four phases of work and the above items to ensure minimal disruptions to Zoo visitors, animals and environment.

.3 Develop information and participate in decisions regarding value engineering. Provide information on construction materials, methods, systems, phasing, and costs to assist in determinations which are aimed at providing Owner with the highest quality building within the budget and schedule.

.4 Provide input to Owner and the design team regarding current construction industry practices, labor market, and materials availability.

.5 Review in-progress design documents with the EFC and provide input and advice with respect to construction feasibility, alternative materials/methods, and long-lead material procurements.

.6 Review completed design budget, documents and suggest modifications to improve completeness or clarity to the Owner and consultant team with the EFC.

.7 Recommend division of the work to facilitate bidding and award of trade contracts, considering such factors as minimizing disruption of existing operations, improving or accelerating construction completion, minimizing trade jurisdiction disputes, and other related issues. This work shall be developed with the EFC to coordinate installation of interpretive elements.

.8 Work with Owner to develop a plan for maximizing minority and women-owned business and opportunities in compliance with the goals and intent of Owner's Minority and Women-owned Businesses Program.

.9 Continuously monitor and update the project schedule and recommend adjustments in the design documents or construction bid packaging to ensure completion of the project in the most expeditious manner possible. This will include pre-purchasing and expediting recommendations for long-lead materials in order to meet necessary delivery dates and avoid construction delays.

.10 Write comprehensive Commissioning Plans to be implemented during the course of construction. The Plan shall identify major tasks and the individuals or firms responsible for completing each task.

.11 Work with Owner and the consultant team to maximize energy efficiency, the use of recyclable products to the maximum extent economically feasible and water conservation in the Project. Provide estimating and value engineering support to the Owner's analysis and application for energy related incentive programs offered by local utilities. Participate with Owner and the design team to analyze utility options for the service of the buildings.

.12 Prepare construction cost estimates for the Project at appropriate times throughout the design phases of the work. Owner and the consultant team will participate fully in the preparation of these cost estimates.

Furnish a Guaranteed Maximum Price (GMP) in accordance with the Standard General Conditions for each Phase of the Project for Owner's review and approval. It is anticipated that GMPs will be called for at 50% of the Construction Document for each phase in the project. The CM/GC will notify Owner and the design team immediately if their construction cost estimates



appear to be exceeding the construction budget or the GMP, once it is established.

#### 6.4. CONSTRUCTION SERVICES

6.4.1 Construction services will generally be provided under the terms of the Standard General Conditions provided herein. Duties of the CM/GC will include:

- .1 Solicit and publicly conduct sub-contractor bidding for all construction work except that which is specifically exempted by Owner.
- .2 Maintain a qualified, full time Superintendent with the needed staff at the job-site to coordinate and provide direction of the work.
- .3 Prepare and maintain a detailed Critical Path Schedule for monitoring project progress and managing the work. Keep Owner and the design team fully advised of the work progress status.
- .4 Make available all cost and budget estimates, including supporting materials and records, to Owner and the design team. Provide monthly reports of actual costs and work progress as compared to estimated cost projections and scheduled work progress. Explain significant variations and provide information as requested by Owner or the consultant team.
- .5 Establish an effective quality control plan for all construction and inspect the work as it is being performed to assure that materials furnished and quality of work performed are in accordance with the plan and construction documents.
- .6 Work with Owner and the consultant team to establish and implement procedures for tracking, expediting and processing all shop drawings, catalogs, requests for information and other drawings.
- .7 Establish effective programs for job-site safety, for maintaining current job-site records, labor relations as a minimum.
- .8 Implement the previously established Minority and Women-Owned Business. Report as requested the status and results of such Program.

.9 Implement the previously prepared Course of Construction Plans. Make adjustments to the Plans as requested by Owner.

.10 Prepare and distribute weekly and monthly progress and status reports.

.11 Review and process all applications for payment by sub-contractors and material suppliers in accordance with the terms of their contract. Review, resolve, with Owner's approval, all sub-contractors' and/or material suppliers' request for additional costs. Owner shall approve all changes to the work.

.12 Schedule and conduct at least weekly job meetings to ensure orderly progress of the work. Prepare and distribute record of the meetings to meetings attendees, Owner and the design team.

.13 Resolve, on behalf of Owner, all disputes that may arise between sub-contractors and/or suppliers as a result of construction and report resolutions to the Owner.

.14 As construction is completed, the CM/GC shall provide the following close-out services:

Coordinate and expedite the submittal of record documents.

Organize and index operations and maintenance manuals.

Assist in securing occupancy permits.

Provide continuing change order review and processing services.

Prepare a project completion report for assistance in turnover of new buildings and exhibits to Zoo operating department.

Prepare a final report of all construction costs. Assist Owner with audit of final cost report and supply all supporting documentation.

Provide lien waivers from all sub-contractors and material suppliers.

Implement the previously written Commissioning Plan.

Coordinate production, delivery and archiving of as-built drawings with the Owner.

## 6.5 SPECIAL REQUIREMENTS

6.5.1 The CM/GC will publicly conduct the sub-bidding of all construction work in excess of \$2,500 which is not specifically exempted by Owner. This will include:

.1 The bid opening process will be observed and reviewed by an Owner's project representative. Upon review of bids received, the CM/GC will make written recommendations for Owner's approval of the low qualified bidder.

.2 The CM/GC will contact Metro prior to embarking on solicitations for bids to receive a list of M/WBE subcontractors for each element of the work. The CM/GC will contact all such subcontractors during the course of solicitation.

.3 Solicitations for bids will be advertised at least ten days in advance of the bid opening. Solicitations will be advertised in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach MBE and WBE audiences and owner identified journals common to some specialty construction trades.

.4 If the CM/GC or its subsidiary desires to submit a bid on any portion of the work, the CM/GC shall publicly advertise the work at least twenty-one days in advance of the bid opening.

.5 The CM/GC should attempt to obtain a minimum of three bids for each package of work bid.

6.5.2 The award of sub-contracts by the CM/GC will be subject to the following:

Owner concurrence in the award of sub-contracts is required

Advance approval by Owner is required for sole-source contract awards

6.5.3 At a minimum, all workers on this project shall be paid in accordance with the provisions of the Prevailing Wage Rates for Public Work Projects in the State of Oregon. See Appendix D.

6.5.4 CM/GC shall work with Owner and the design team to incorporate work(s) of art from the Projects 1% for Art Program into the design and construction of the project. Some art installation may be integrated into the building's construction. Costs for art and installation are not the responsibility of the CM/GC.

6.5.5 Owner has a staff person responsible for media relations and contact. Any questions regarding the project must be directed to that staff person.

## 7.0 PROPOSAL INSTRUCTIONS

### 7.1 Deadline and Submission of Proposals

10 copies of the submittal shall be furnished to Owner addressed to:

Metro  
600 NE Grand Ave.  
Portland, OR 97232  
Attention: Berit Stevenson

and clearly marked "Proposal - Construction Manager/General Contractor Services - Zoo Oregon Project" Submittals will be returned and not considered if received after 5:00 p.m., December 3, 1996. Postmarks are not acceptable.

Proposers may withdraw their Proposal in person, or by written or telegraphic request prior to the scheduled closing time for submitting Proposals.

### 7.2 Basis for Proposals

This RFP represents the most definitive statement Owner will make concerning the information upon which the submittals are to be based. Any information which is not addressed in this RFP will not be considered by Owner in evaluating the submittals. All questions relating to the RFP should be addressed to Berit Stevenson. Any questions which in the opinion of Owner warrant a written reply or RFP amendment will be furnished to all parties receiving this RFP. Owner will not respond to questions received after 5:00 p.m., November 29, 1996.

### 7.3 Selection Committee

Owner will appoint a Selection Committee to review the submittals received and conduct interviews. The Selection Committee will evaluate information provided in the written proposals and interviews and rank the candidates in order of suitability to meet Owner's needs. Criteria to be used for evaluation are listed in Section entitled Evaluation of Proposals.

### 7.4 Award of Contract

Owner intends to award a contract to the Proposer who, after considering the recommendation of the Selection Committee, Owner finds best fits the needs

of Owner to perform the work in accordance with the requirements set out in this RFP.

## 8.0 PROPOSAL CONTENTS

8.1 The submittal should contain not more than forty single sided pages of written material (excluding resumes which should be included in an appendix), describing the ability of the Proposer to perform the work requested. Proposals should be concise and direct. They should be submitted on 8-1/2 x 11 inch paper, with basic text information no smaller than 12-point type. The only exception to this page-size limit is a single 11 x 17 inch sheet for the proposed project schedule and organization chart. They should be submitted on recyclable, double-sided recycled paper (post-consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal. The submittal should include the following information:

### .1 Firm Description

For each firm participating in the proposal, provide a brief narrative description of the firm's history and capabilities. Include relevant construction and CM/GC experience, annual volume figures for the last five years, current firm commitments and current bonding capacity.

### .2 Staffing

a. Provide a project organization chart showing your proposed staff for each element of the project (pre-construction, construction and commissioning), including all professional or contracted staff involved in project management, corporate administration, engineering and estimating, construction management, commissioning and supervision. Clearly identify field staff versus off-site staff and indicate the approximate percentage each individual will work on the project. Include resumes and references for all individuals on the chart, listing their relevant past experience with similar projects and the CM/GC method.

b. Describe the duties and responsibilities for all key staff positions.

### .3 Project Approach and Management of the Work

In detail, describe your firms' overall plan to complete the project. At a minimum, include the following:

- a. Discuss your plan for providing services in the pre-construction, construction and commissioning phases. Include information on management of project costs and schedule, work quality and safety.
- b. Explain your preliminary approach/ideas on work phasing. Address the viability of the current construction schedule. Proposer may suggest potential modifications which would improve the project.
- c. Explain how you will approach the cost estimating and value engineering work. Comment on the balance between the Project's scope and estimated budget ( \$23.0 million), identifying areas of concern and opportunity. Explain your approach to addressing these issues with Owner and the design team given the status of the project development.
- d. Discuss your experience with promoting participation on the part of minority and women-owned businesses as contractors, subcontractors and suppliers. Explain your approach to obtain maximum participation on this project.
- e. Explain how you intend to establish and maintain good relations and foster open and productive communications with Owner, their Project Manager, the consultant team, Owner's staff and sub-contractors.
- f. Identify key issues and constraints you foresee in the project. Propose means of resolution of such.
- g. Describe what your experience has been and what your expectations are for labor and materials availability for this project.

#### 4. Fee Proposal

- a. Submit a fee proposal for the CM/GC services in three parts.
  - i. *Pre-Construction Services*: Identify a not-to-exceed cost for services to be provided during the planning and design phases of each of the major project phases. Identify labor hours and cost per hour. Identify an estimate of expenses included in the not-to-exceed cost.
  - ii. *Construction Services*: Identify the fee for construction services in two parts:  
  
Fixed Fee - State the Fixed Fee, as a percentage of the direct construction costs, for which your firm would contract to perform the required construction services. Identify what costs you would propose are included in the Fixed Fee. Note if proposed cost items are different than what is stated in the

Standard General Conditions included as Appendix A. Identify all proposed project staff that would be included as a part of the Fixed Fee.

Reimbursables - Based on the staffing shown on the project organization chart and the individuals identified above, provide a detailed estimate of the staffing costs which are not in the Fixed Fee, but will be included within the GMP as a cost of the work for performing construction services. Identify and estimate the cost expenses, other than sub-contract labor and materials cost, which will be included in the General Conditions costs. A cost range may be used, describing the parameters which would effect the high and low ends of the range. Note if proposed cost items are different from the Standard General Conditions which is attached as Appendix A.

- b. Describe your proposed method of documenting the line item components of the GMP and the method of determining whether project changes are inside or outside the scope of the GMP.

## 9.0 GENERAL PROPOSAL AND CONTRACT CONDITIONS

### 9.1 Limitation and Award

This RFP does not commit Owner to the award of a contract, nor to pay any costs incurred in the preparation and submission of Proposals in anticipation of a contract. Owner reserves the right to reject or accept any or all Proposals received as the result of this request, to negotiate with all qualified sources, or to cancel all or part of this RFP.

### 9.2. Contract Type

9.2.1 Owner will use the Construction Manager/General Contractor Agreement for Pre-Construction Services and the Standard General Conditions enclosed herein as a basis for this Contract. Any concerns or recommendations for changes should be included in the Proposal submittal, including an explanation why it is in the best interests of Owner to accept recommended changes. Proposed modifications will not be scored separately, but will be considered in the Selection Committee's scoring of each Proposal. Requests for changes in contract language submitted after selection of the successful Proposer may be treated as a withdrawal of the Proposal. In the event Owner and the successful Proposer do not agree on the terms of a contract, Owner may, at its option, begin negotiations with the Proposer ranked next highest by the Selection Committee.

9.2.2 It is the intent of Owner to enter into a contract with the selected CM/GC for pre-construction services only. These activities will include design, scheduling, and estimating for each Phase of the Project. Upon completion of the pre-construction activities for each phase, the CM/GC will submit a GMP for that phase for Owner's review and approval. Acceptance of the GMP will constitute completion of pre-construction services by phase. Change Orders to the CM/GC agreement will be issued for each construction phase of the project. At the time of the execution of the construction phase Change Orders, the CM/GC will be required to submit a 100% Performance Bond for the completion of each phase.

### 9.3 Validity Period and Authority

The Proposal shall be considered valid for a period of 60 days and shall contain a statement to that effect. The submittal shall contain the name, title, address and telephone number of an individual or individuals with authority to bind the proposing firm during the period in which Owner is evaluating the submittals.



9.4 Conflict of Interest

A Proposer submitting a Proposal thereby certifies that no officer, agent, or employee of Owner or Owner has a pecuniary interest in the submittal; that the submittal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

9.5 Appeals

Appeals of the award of the Contracts should be addressed to the Owner Contracts Administrator, Risk and Contracts Division, 600 NE Grand Avenue, Portland, Oregon 97232. Appeals shall be submitted in writing within five working days of the postmarked Notice of Award or disqualification. Appeals must describe the specific citation of law, rule, regulation, or practice upon which protest is based. The judgment used in the evaluation by individual members of the Selection Committee is not grounds for appeal.

9.6 Performance and Payment Bonds

Performance and Payment Bonds will be required from the successful Proposer. Such bonds shall be issued by a company currently licensed to do business in the State of Oregon, on a form acceptable to Owner, and drawn in favor of Owner in an amount not less than the GMP.

10.0 EVALUATION OF PROPOSALS

10.1 Evaluation Procedure

Only submittals received that conform to the requirements of this RFP will be evaluated. The evaluation will be based on the criteria identified in the following section and performed by a Selection Committee appointed by Owner. After review of the written submittals, the Selection Committee will rank the proposers. The three highest ranking proposers will be interviewed. Upon completion of the interviews, the Selection Committee will rank the three candidates based both on their written proposal and their interview. The Selection Committee may request clarifying information of any Proposer during the evaluation process which should be provided in a timely manner.

10.2 Evaluation Criteria

The Selection Committee will evaluate information provided in the written Proposals and the interviews to rank the candidates in order of suitability to meet Owner's needs. Criteria to be used for evaluation are

as follows, listed in order of importance with the most important criteria listed first.:

- A. Project Approach and Management Plan
- B. CM/GC Project Team
- C. Past Experience of the Firm
- D. Fee Proposal
- E. Project Cost, Schedule and Quality Controls
- F. Past Utilization of M/WBE subcontractors

End of Request for Proposals

APPENDIX A  
STANDARD GENERAL CONDITIONS

METRO  
STANDARD GENERAL CONDITIONS FOR  
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENTS

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METRO  
STANDARD GENERAL CONDITIONS FOR  
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENTS

**SECTION A**  
**DEFINITION OF TERMS**

**A.1 DEFINITION OF TERMS**

In the Contract Documents the following terms shall be as defined below:

**ARCHITECT/ENGINEER** means the person, firm, or corporation, so identified, appointed by the Owner to make drawings and specifications and to provide contract administration of the Work contemplated by the Contract.

**BID** means a competitive offer, which is binding on the offerer, in which price, delivery (or project completion), and conformance to specification and the requirements of the Invitation to Bid shall be the predominant award criteria.

**BIDDER** is an individual, firm, or corporation who submits a Bid in response to a public contracting agency's Invitation to Bid or the Construction Manager/General Contractor Invitation to Bid.

**CLAIM** is a resubmitted change request which has been previously denied by the Owner's Authorized Representative.

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR**, means the individual, firm, or corporation awarded the Contract for the Work contemplated. The Construction Manager/General Contractor will be referred to as **CONTRACTOR** throughout the Standard General Conditions.

**CONTRACT** is the written agreement between the Owner and the Construction Manager/General Contractor describing the Work to be done and the obligations between the parties.

**CONTRACT DOCUMENTS** consist of the Advertisement Document, Invitation to Bid including any bid addenda, Instructions to Bidders, General Conditions, Special Conditions, if any, accepted Bid, the Contract and Amendments thereto, if any, Performance Bond, Plans, Specifications, approved shop drawings, and approved change orders.

**CONTRACTOR'S FEE** shall mean the sum payable to the Construction Manager/General Contractor by the Owner for the performance of the Contract

determined as a percentage of the cost of the Work, as stated in the Agreement. The Contractor's Fee shall be included in the Guaranteed Maximum Price (GMP).

**CONTRACT PERIOD**, as set forth in these Contract Documents, shall begin with the issuance of the Notice to Proceed and conclude upon Final Completion.

**CONTRACTOR SELECTION PROCESS** is the means used to select the Construction Manager/General Contractor for the Work. Includes the issuance of a Request for Proposal (RFP), the review of the RFP's received from contractors, the selection of the contractors to be interviewed, the interviewing of the contractors and the selection of the contractor to be the Construction Manager/General Contractor for the Work.

**COSTS OF THE WORK and COSTS TO BE REIMBURSED** shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Work except with the prior consent of the Owner or as otherwise required by any other provisions of the Standard General Conditions. Costs are further defined as follows:

1. **Labor Costs** shall mean the wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops; wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's agreement; wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work; costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by laws or collective bargaining agreements. For personnel not covered by such agreements, payment for customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions will be paid at an agreed upon percent of employee direct salary.
2. **Subcontract Costs** shall mean payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.
3. **Materials and Equipment Costs**, shall mean those incorporated or to be incorporated in the completed construction, including transportation costs and materials in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work, or at the Owner's option shall be sold by the Contractor. Amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.



4. Other Materials and Equipment Costs, including transportation costs, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work, and costs less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor; cost for items previously used by the Contractor (cost for items previously used by the Contractor shall mean fair market value); rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented by the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof; rates and quantities of equipment rented shall be subject to the Owner's prior approval .
  
5. Miscellaneous Costs shall include the portion of premiums and bonds directly attributable to the Work; sales, use or similar taxes imposed by a government authority which are related to the Work and for which the Contractor is liable; fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay; fees of testing laboratories for tests required by the Contract Documents, except those specifically stated to be paid for by the Owner and those related to defective or nonconforming work for which reimbursement is excluded; the cost of defending suits or claims for infringement of patent rights arising from such requirements by the Contract Documents; payments made in accordance with legal judgements against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent, provided however, that such costs of legal defenses, judgements and settlements shall not be included in the calculation of the Contractor's Fee of a Guaranteed Maximum Price, and provided that such royalties, fees, and costs are not excluded by other provisions of the Contract Documents; and deposits lost for other than the Contractor's fault or negligence.
  
6. Costs Not To Be Reimbursed shall include salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office other than the site office, except as specifically provided in Labor Costs; expenses of the Contractor's principal office; overhead and general expenses except as may be permitted elsewhere in these General Conditions; rental costs of machinery and equipment except as may be permitted elsewhere in these General Conditions; any costs due to the fault or negligence of the Contractor, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable,

including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplies, and making good damage to property not forming part of the Work .

**DAYS** are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

**FINAL COMPLETION** means the final completion of all requirements under the Contract, including Contract Closeout (Section K) and that the final payment may be made and all retainage, if any, released.

**FORCE MAJEURE** means an inevitable act, event, happening, or occurrence which results entirely from natural causes and is in no sense attributable to human agency.

**GUARANTEED MAXIMUM PRICE (GMP)** shall mean the cost of the Work plus Contractor's Fee. The GMP shall be prepared by the Contractor in consultation with the Owner and Architect and shall incorporate such value engineering modifications to the drawings and specifications, to which the Owner, architect, and Contractor mutually agree. The establishment of the GMP shall be accomplished by Change Order. In the event that the actual and final cost of the Work plus the Contractor's Fee is less than the final GMP, as adjusted by Change Order. the difference will be given to the Owner.

Following preparation of the GMP, the Contractor shall provide to the Owner and Architect a complete copy of the GMP estimate, including all details which comprise the cost of the Work and the Contractor's Fee.

**MINORITY OR WOMEN BUSINESS ENTERPRISE**, as defined in ORS 200.005, means a small business concern which is at least 51 percent (51%) owned by one or more minorities or women, or in the case of a corporation, at least 51 percent (51%) of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more such individuals. For projects of Metro, a minority or women's business enterprise must be registered and certified by the Office of Minority, Women and Emerging Small Business.

**MINORITY INDIVIDUAL**, as defined in ORS 200.005, means a person who is a citizen or lawful permanent resident of the United States.

**NOTICE TO PROCEED** is official written notice from the Owner indicating that all initial contract requirements, including the Contract, performance bond, and certificates of insurance, have been fully executed and submitted in a suitable form

and that the Contractor may proceed with the Work defined in the Contract Documents.

**OVERHEAD**, means those items which may be included in the Contractor's markup (general and administrative expense, overhead and profit) and shall not be charged as direct cost of the Work; personnel above the level of foreman (i.e., superintendents and project managers); equipment owned or leased by the Contractor (i.e., job trailers, small tools); expenses of the Contractor's offices including personnel; and overhead and general administrative expenses.

**OWNER** means Metro.

**OWNER'S AUTHORIZED REPRESENTATIVE** means those individuals identified in writing by the Owner to act on behalf of the Owner for the Work.

**PLANS** are the drawings which show the location, type, dimensions, and details of the Work to be done under the contract.

**PROJECT** means the specific Work to be performed as described in the Contract Documents.

**PUNCH LIST** is the list of work yet to be completed or deficiencies which need to be corrected in order to achieve final completion of the contract.

**PURCHASING AGENT** means agent of the issuing agency as identified in the Contract Documents.

**SOLICITATION DOCUMENTS** include the Request for Proposal (RFP).

**SPECIFICATIONS** are this publication and all publications to which are referred in this publication as well as supplemental specifications, special provisions, and documents referred to and/ or bound with the Contract Documents; together with all signed, written agreements pertaining to the method and manner of doing the Work, or to the quantities or qualities of materials to be furnished under the Contract.

**SUBCONTRACTOR** means the individual, firm, or corporation having a direct contract with the Contractor, or another subcontractor, to perform a portion of one or more items of the Work.

**SUBSTANTIAL COMPLETION** means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. (Refer also to Section K.4.)

**SUBSTITUTIONS** are items that are the same or better in function, performance, reliability, quality, and general configuration as that product(s) specified. Approval of the substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owners Authorized Representative is final.

**WOMAN**, as defined in ORS 200.005, means a person of the female sex who is a citizen or lawful permanent resident of the United States.

**WORK** means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

## **A.2 SCOPE OF WORK**

The Work contemplated under this Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the Project described in the Contract Documents. The Contractor shall perform other work necessary to render the Project complete and usable.

## **A.3 CONTRACT DOCUMENTS**

The Contract Documents consist of the Solicitation Documents, General Conditions, Special Conditions, if any, Guaranteed Maximum Price (GMP) the Contract and Amendments thereto, if any, Performance Bond, Plans, Specifications, approved shop drawings, and approved change orders.

## **A.4 INTERPRETATION OF DOCUMENTS**

**A.4.1** The Contract Documents are intended to be complementary. Whatever is called for or in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations shall be based on the following priorities:

1. The Contract, and Amendments to same, with those of later date having precedence over those of an earlier date;
2. The Special Conditions;
3. The General Conditions of the Contract;
4. Specifications and Plans and notes on Plans.

**A.4.2** In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's Authorized Representative's interpretation in writing.

**A.4.3** If the Contractor finds discrepancies in, or omissions from, the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner's Authorized Representative. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative.

**A.4.4** Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference is specific or by implication shall mean the latest standard specification, manual, code or laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

**A.5 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

It is understood that the Contractor, when responding to the Solicitation Documents, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner shall in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/ Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

**A.6 INDEPENDENT CONTRACTOR STATUS**

The service or services to be rendered under this Contract are those of an independent contractor. Contractor is not an officer, employee or agent of the Owner as those terms are used in ORS.30.265.

**SECTION B**  
**ADMINISTRATION OF THE CONTRACT**

**B.1 CONTRACTOR'S MITIGATION OF IMPACTS**

**B.1.1** The Contractor is responsible for mitigating any impacts to the Project, including authorized changes, which may affect cost, schedule or quality.

**B.1.2** The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and subcontractors to the Project.

## **B.2 MATERIALS AND WORKMANSHIP**

**B.2.1** The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.

**B.2.2** The Contractor is responsible for performing the Work as required by the Contract Documents. Defective work shall be corrected at the Contractor's expense.

**B.2.3** Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.

**B.2.4** Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work (walkways, railings, ladders, tunnels, platforms, etc.). Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

**B.2.5** The Contractor shall furnish samples of materials for testing by the Owner's Authorized Representative and include the cost of the samples in the Contract Price.

## **B.3 PERMITS**

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Special Conditions, for the construction of the work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental, etc., as required for the Project. Contractor shall be responsible for all violations of the law in connection with the construction, or caused by obstructing streets, sidewalks, or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The contractor shall defend all suits or claims for infringement of any patent rights and save harmless and blameless from loss, on account thereof, Metro, and its departments, Councilors, members and employees.

## **B.4 COMPLIANCE WITH GOVERNMENT REGULATIONS**

- B.4.1** Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Damages or costs resulting from noncompliance shall be the responsibility of Contractor.
- B.4.2** Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and Contractor shall not discriminate against minority, women or
- (a) emerging small business enterprises in the awarding of subcontracts.
  - (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
  - (c) failure to comply with any or all of the requirements of B.4.1 through B.4.3 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.
- B.4.3** Unless contrary to federal law, Contractor shall certify that it shall not accept a bid or proposal from subcontractors to perform work as described in ORS 701.005 under this Contract unless such subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids or proposals to the Contractor.
- B.4.4** Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing work under this Contract holds a valid landscape contractor's license issued pursuant to ORS.671.560.

**B.5** **SUPERINTENDENCE**

Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner, and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

**B.6** **INSPECTION**

- B.6.1** Owner's Authorized Representative shall have access to the Work at all times.
- B.6.2** Inspection of the Work shall be made by the Owner's Authorized Representative at its discretion. Any work found to be not in conformance with the Contract Documents, in the sole discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.

**B.6.3** As required by the Contract Documents, work done or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.

**B.6.4** If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized representative, the uncovering and restoration shall be paid for as a change order .

**B.7** **SEVERABILITY**

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

**B.8** **ACCESS TO RECORDS**

**B.8.1** Contractor shall keep, at all times on the Work site, a copy of the complete Contract Documents and current as-builts, and shall at all times give the Owner's Authorized Representative access thereto.

**B.8.2** The Owner and its duly authorized representatives shall have access, for a period not less than three (3) years, to books, documents, papers and records of Contractor which are pertinent to the Contract including records pertaining to overhead and indirect cost pools, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all pertinent records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

**B.9** **WAIVER**

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

**B.10** **ASSIGNMENT/ SUBCONTRACT**



Contractor shall not assign, sell, or transfer rights, or delegate responsibilities under this Contract, in whole or in part, without the prior consent of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred .

**B.11 SUCCESSORS IN INTEREST**

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective successors and assigns.

**B.12 OWNER'S RIGHT TO DO WORK**

At any time and without prejudicing this Contract, the Owner may perform work with its own personnel or separate contractor. The Contractor shall fully cooperate with any and all Owner forces without additional cost to the Owner.

**B.13 OTHER CONTRACTS**

In all cases and at any time, the Owner has the right to execute other contracts related to, or unrelated to, the Work of this Contract. The Contractor of this Contract shall fully cooperate with any and all other contractors without additional cost to the Owner

**SECTION C**  
**WAGES AND LABOR**

**C.1 MINIMUM WAGE RATES ON PUBLIC WORKS**

The contractor, and all subcontractors and suppliers, shall be required to comply with ORS 279.350 through 279.354 and ensure that all workers are paid not less than, and in accordance with, the Prevailing Wages published by the Oregon Bureau of Labor and Industries

The contractor is required to pay a fee equal to one-tenth of one percent (.1 percent) of the price of the contract, but not less than \$100 nor more than \$5,000, under ORS 279.352 (2) and section 5 (1), ch 594, 1995 Oregon Laws. The fee shall be paid on or before the first progress payment or 60 days from the date work first began on the contract, whichever comes first. The fee is payable to the Bureau of Labor and Industries at the following address:

Bureau of Labor and Industries  
Wage and Hour Division  
Prevailing Wage Unit  
800 NE Oregon Street, #32  
Portland, OR 97232

## **C.2 PAYROLL CERTIFICATION REQUIREMENT**

- C.2.1** The Contractor and its subcontractors shall submit complete weekly certified statements of payrolls for the week immediately preceding each submission as follows:
- C.2.2** For projects of less than 90 days, the weekly certified statements of payroll shall be submitted:
- (a) once before the first payment is made to the Contractor by the public agency; and
  - (b) once before the final payment (covering the last full week of work on the project) is made to the Contractor by the public agency.
- C.2.3** For projects exceeding 90 days, the weekly certified statements of payroll shall be submitted:
- (a) once before the first payment is made to the Contractor by the public agency;
  - (b) at 90 day intervals thereafter; and
  - (c) once before the final payment (covering the last full week of work on the project) is made to the Contractor by the Owner.
- C.2.4** Payroll and Certified Wage Statement forms are available at any BOLI office. The forms must be submitted to the public agency at the times indicated in C.2.2 and C.2.3. Payroll and certified statement records must be kept by the Contractor for three (3) years from the date of Final Completion of the Contract.

## **C.3 PROMPT PAYMENT AND LIABILITY FOR CLAIMS**

- C.3.1** The Contractor shall:
- C.3.1** Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract. Further, Contractor shall include the following provisions in each subcontract for property, materials, or services:
- (a) a payment clause that obligates the Contractor to pay the subcontractor or material supplier for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to Contractor by Owner:

- (b) a clause requiring the Contractor to pay the subcontractor an interest penalty on amounts due and unpaid under C.3.1.2(a) at the rate of one and one-half percent (1.5%) per month from the day after the required payment date until the day of actual payment and;
- (c) a clause which requires each of Contractor's subcontractors to include, in each of their contracts with lower-tier subcontractors or suppliers, provisions to the effect that the subcontractor shall pay its lower-tier subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

**C.3.1.2** Pay all contributions or amounts due the State Industrial Accident Fund and the State Unemployment Compensation Trust Fund from such Contractor or subcontractor incurred in the performance of the Contract .

**C.3.1.3** Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.

**C.3.1.4** Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**C.3.2** If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with the Project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

**C.3.3** All employers working under this Contract are subject employers which must comply with ORS 656.017 relating to providing Workers' Compensation coverage.

**C.4 PAYMENT FOR MEDICAL CARE**

Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services, and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**C.5 HOURS OF LABOR**

No person shall be employed to perform work under this Contract for more than eight hours in any one day or forty hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay for all time in excess of eight hours a day or for work performed on Saturday and on any legal holiday. This section C.5 shall not apply to Contractor's work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

## **SECTION D** **CHANGES IN THE WORK**

### **D.1 CHANGES IN WORK**

**D.1.1** The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of the Owner's Authorized Representative.

**D.1.2** It is mutually agreed that changes in plans, quantities, or details of construction are inherent to the nature of construction, and may be necessary or desirable during the course of construction. The Owner's Authorized Representative may, at any time, without notice to the sureties, either increase or decrease the amount of work to be performed under the Contract. Without impairing the Contract, the Owner reserves the right to require changes determined necessary or desirable to complete the proposed construction within the general scope of the Contract. These changes may include, but are not limited to:

- (a) specifications and design;
- (b) increases or decreases in quantities;
- (c) additional work;
- (d) elimination of any Contract item;
- (e) duration of project;
- (f) acceleration or delay in performance of work.

**D.1.3** The Owner and Contractor agree that changes shall be administered and negotiated according to the following:

Any Contract Amendment including change orders, extra work, field orders, or other changes in the Contract Documents which modifies the original Contract, may be made with the Contractor without competitive bidding subject to the following conditions: the original Contract was let by competitive procurement, unit prices or solicitation alternates were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the

additional work. Where unit prices or solicitation alternates do not establish the cost for additional work, the limits of OAR 125-310-150 shall apply.

**D.1.4** In the event there are any changes or extra work of a class not covered by the prices included in the Contract Documents, the basis of payments shall be agreed upon in writing between the Parties to the Contract before the Work is done. If basis for payment cannot be agreed upon prior to the beginning of the Work, and if so directed by the Owner's Authorized Representative, then work shall be performed on the basis of furnishing direct labor, equipment, and material costs on all work performed. In either case, in addition to direct costs, up to the following amounts may be added to the Contractor's or subcontractors direct costs to cover overhead expenses for work performed with their own forces:

|           |     |
|-----------|-----|
| Labor     | 15% |
| Equipment | 10% |
| Materials | 10% |

When work is performed by an authorized subcontractor, the Contractor shall be allowed a supplemental mark up on each piece of subcontract work covered by the change order up to the following:

|                     |     |
|---------------------|-----|
| \$0.00 - \$2,000.00 | 10% |
| Over \$2,000.00     | 5%  |

These payments made to the Contractor shall be complete compensation for overhead, profit, and all other costs that were incurred by the Contractor or by other forces furnished by the Contractor, including subcontractors. These payments apply to all change order work. No other reimbursement, compensation, or payment shall be made.

**D.1.5** If any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the Work under this Contract, the Contractor must submit a written statement setting forth the nature and specific extent of the claim, including all time and cost impacts against the Contract as soon as possible, but no later than 30 days after receipt of any written notice of modification of the Contract. (Refer also to Section H. 1.4 for notification.)

**D.1.6** No claim by the Contractor for additional costs shall be allowed if made after receipt of final payment application under this Contract.

**D.1.7** All change order work shall be executed under the conditions of the Contract Documents except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

**D.1.8** Deductive changes are those which reduce the scope of the Work. All deductive changes shall be negotiated using the percentages for labor, equipment, material and subcontractor markups in D.1.4.

**D.1.9** It is understood that changes in the Work are inherent to construction of this type. The number of changes, the scope of those changes, and the impact they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes are anticipated and that there shall be no compensation made to Contractor directly related to number of changes. Each change shall be evaluated for extension of Contract time and increase or decrease in compensation based on its own merit.

## **D.2** DELAYS

**D.2.1** If the Contractor is delayed by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner, or by Force Majeure, the Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two working days of the delay. This notice shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated time extension necessary to compensate for the delay. Within seven days after the cause of the delay has been mitigated, or in no case more than 30 days after the initial notice, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional time resulting from the delay. The request shall be reviewed as described in Section D.3 Claims Review Process.

**D.2.2** Avoidable delays include delays which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors, including, but not limited to, the following:

- (a) delays which may in themselves be unavoidable, but which affect only a portion of the Work, and do not necessarily prevent or delay the prosecution of other parts of the Work, nor the completion of the whole Work within the contract time;
- (b) delays which do not impact activities on the accepted critical path schedule;
- (c) time associated with the reasonable interference of other contractors employed by the Owner, which do not necessarily prevent the completion of the whole Work within the contract time.

**D.2.3** Unavoidable delays include those which result from causes beyond the control of the Contractor, and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its subcontractors. Delays caused by Force Majeure, war, public enemy, freight embargoes, and strikes which occur despite the Contractor's reasonable efforts to avoid them, shall be considered as unavoidable.

**D.2.4** The Owner may grant a time extension for avoidable delay, if the Owner deems it is in its best interest. Time extensions for avoidable or unavoidable delays shall not be compensable. Only delays within the reasonable control of the Owner shall be compensable.

**D.2.5** Claims by the Contractor based on adverse weather conditions must be substantiated by documentation that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the Project. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the work, which might reasonably have been anticipated from the previous ten (10) years historical records of the general locality of the work, shall not be construed as abnormal. It is hereby agreed that rainfall greater than the following cannot be reasonably anticipated:

- (a) daily rainfall equal to, or greater than 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25%) or more;
- (b) daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

**D.2.6** If the Contractor discovers site conditions which differ materially from what was represented in the Contract Documents, or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents, the Contractor shall notify the Owner's Authorized Representative immediately and before the area has been disturbed. The Owner's Authorized Representative shall investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents, or those which could reasonably be expected in execution of this particular Contract. If it is determined that some differing site conditions exist, any compensation or credit shall be determined based on Section D.1., Changes. If the Contractor does not concur with the decision of the Owner's Authorized Representative and/or believes that it is entitled to additional compensation, the Contractor may proceed to file a claim.

### **D.3 CLAIMS REVIEW PROCESS**

**D.3.1** All Contractor claims shall be referred to the Owner's Authorized Representative for review. All claims shall be made in writing to the Owner's Authorized Representative not more than ten days from the date of the occurrence of the event which gives rise to the claim or not more than ten days from the date that the Contractor knew, or

should have known, of the problem. Unless the claim is made in accordance with these time requirements, it shall be waived.

**D.3.2** All claims shall be submitted in writing and shall include a detailed, factual statement of the basis of the claim, pertinent dates. Contract provisions which support or allow the claim, reference to, or copies of, any documents which support the claim, the exact dollar value of the claim, and specific time extension requested for the claim. If the claim involves work to be completed by subcontractors, the Contractor shall analyze and evaluate the merits of the subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner shall not consider direct claims from subcontractors, suppliers, manufacturers, or others not a party to this Contract .

**D.3.3** The Owner's Authorized Representative shall review all claims and take one or more of the following preliminary actions within ten days of receipt of a claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the claim in whole or in part and identify the reasons for rejection; (4) recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

**D.3.4** The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen days of receipt of the decision. The Contractor must present written documentation supporting the claim within fifteen days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within 30 days after receiving the appeal documents.

**D.3.5** The decision of the Owner shall be final and binding unless the Contractor requests mediation within fifteen days of receipt of the Owner's decision. Both the Owner and the Contractor are obligated to participate in the mediation process prior to either or both proceeding to litigation. The mediation process is nonbinding .

**D.3.6** Should the parties arrive at an impasse regarding any claims or disputed claims, it is agreed that the parties shall submit to mediation prior to the commencement of litigation. The mediator shall be an individual mutually acceptable to both parties. Should the parties lack specific recommendations for 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. 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 the Owner and the Contractor. The schedule and time allowed for mediation shall be mutually acceptable.



**D.3.7** Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease work without a written stop work order from the Owner or Owner's Authorized Representative.

**SECTION E**  
**PAYMENTS**

**E.1 SCHEDULE OF VALUES**

The Contractor shall submit, at least ten days prior to submission of its first application for progress payment, a schedule of values for the contracted Work. This schedule shall provide a breakdown of values for the contracted Work and shall be the basis for progress payments. The breakdown shall demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment.

**E.2 APPLICATIONS FOR PAYMENT**

**E.2.1** Owner shall make progress payments on the Contract monthly as work progresses. Payments shall be based upon estimates of work completed and schedule of values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

**E.2.2** Contractor shall submit to the Owner's Authorized Representative an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor including payments to Subcontractors. Contractor shall include in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: \_\_\_\_\_"

**E.2.3** Generally, request for payment shall be accepted only for materials which have been installed. Under special conditions, payment requests for stored materials shall be accepted. Such a payment shall be subject to the following conditions:

- (a) the request for stored material shall be submitted at least 30 days in advance of the Application for Payment on which it appears; requests for payment shall be entertained for major equipment, components or expenditures only;
- (b) the Contractor shall submit invoices showing the quantity and cost of the material stored;
- (c) the material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract period;
- (d) the Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed; a certificate noting this coverage shall be issued to the Owner;
- (e) payments shall be made for material only; the submitted invoice amount shall be reduced by the cost of transportation for an inspector to check the delivery at out of town storage sites;
- (f) within 60 days of the request for payment, the Contractor shall submit evidence of payment covering the material stored;
- (g) payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents;
- (h) all required documentation must be submitted with the respective Application for Payment.

**E.2.4** The Owner reserves the right to withhold payment for Work which has been demonstrated or identified as failing to conform with the Contract Documents.

### **E.3 PAYROLL CERTIFICATION REQUIREMENT**

**E.3.1** Reference Section C.2 for this information

### **E.4 DUAL PAYMENT**

Contractor shall not be compensated for work performed under this Contract from any agency other than the agency which is a party to this Contract.

### **E.5 RETAINAGE**

**E.5.1** Retainage shall be in accordance with OAR 580.50.032(10).

**E.5.1.1** Owner may reserve as retainage from any progress payment an amount not to exceed 5 percent (5%) of the payment. As work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly contract payments after 50 percent (50%) of the work under the Contract is completed. If, in the Owner's opinion, such work is progressing satisfactorily, elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the work is 97 1/2 percent (97.5%) completed, the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent (100%) of the value of the work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

**E.5.1.2** In accordance with the provisions of OAR 580.40.0007 or OAR 580.50.032(10), Contractor may request in writing:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with Owner or in an escrow account, satisfactory to Owner, with an approved bank or trust company;
- (b) that retainage is deposited in an interest-bearing account, established through the State Treasurer, in a bank, savings bank, trust company or savings association for the benefit of the public agency, with earnings from such account accruing to the Contractor; or

Where the Owner has agreed to the Contractor's election of option (a) or (b), Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment.

**E.5.1.3** The retainage held by Owner shall be included in, and paid to the Contractor as part of, the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent (1.5%) per month on the final payment due Contractor, interest to commence 30 days after the Work under the Contract has been completed and accepted, and to run until the date when final payment is tendered to Contractor. The Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within 15 days after receiving the written notice, either accept the Work or notify the Contractor of work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15 day period.

**E.5.1.4** The Owner shall reduce the amount of the retainage if the Contractor notifies of the Owner that the Contractor has deposited in a bank or trust company, in a manner

authorized by the Owner's Authorized Representative, bonds and securities of equal value of a kind approved by the Owner's Authorized Representative.

## **E.6 FINAL PAYMENT**

Upon completion of all the work under this Contract, the Contractor shall notify the Owner's Authorized Representative in writing that he has completed his part of the Contract, and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative shall inspect, and if acceptable, submit to the Owner his recommendation as to acceptance of the completed Work, and as to the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner shall notify Contractor within 15 days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K.3 RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due him under the provisions of these Contract Documents.

## **SECTION F JOB SITE CONDITIONS**

### **F.1 USE OF PREMISES**

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises.

### **F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC**

**F.2.1** Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, Owner's workers, and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

**F.2.2** Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents, and all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized

Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

**F.2.3** Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report immediately in writing to the Owner's Authorized Representative all pertinent facts relating to such property damage, and the ultimate disposition of the claim for damage.

**F.2.4** Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.

**F.2.5** Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials shall be conducted so no release shall occur that may pollute or become hazardous.

**F.2.6** In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be equitably determined.

### **F.3 CUTTING AND PATCHING**

**F.3.1** Contractor shall be responsible for coordinating all cutting, fitting, or patching of the work to make its several parts come together properly and fit to receive or be received by work of other contractors or subcontractors shown upon, or reasonably implied by the Contract Documents.

**F.3.2** Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

### **F.4 CLEANING UP**

From time to time as may be ordered by the Owner and, in any event, immediately after completion of the Work, the Contractor shall, at his own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If

Contractor fails to do so within twenty-four hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

## **F.5 ENVIRONMENTAL CONTAMINATION**

**F.5.1** Contractor shall be held responsible for any and all releases of environmental pollution during performance of the Contract which occur as a result of, or are contributed by, actions of its agent, personnel, or subcontractors. Contractor agrees to promptly dispose of such spills or leaks to satisfaction of the Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.

**F.5.1.1** Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and;
- (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state or local statutes, rules or ordinances.

**F.5.1.2** Contractor shall be liable for any and all costs; expenses, damages, claims, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by Contractor's (i) negligence or (ii) failure to perform in accordance with the Contract Documents. Nothing in this section F.5.1.2 shall limit Contractor's liability or responsibility under Sections G.2.1.1 and G.2.1.2 of this Contract.

**F.5.2** Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR, Part 302, Table 302.4 for hazardous substances and in OAR 340-108 for petroleum products. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) description of items released (identity, quantity, manifest no., and all other documentation required by law);
- (b) whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported;
- (c) exact time and location of release, including a description of the area involved;
- (d) containment procedures initiated;
- (e) summary of communications about the release Contractor has had with members of the press or State officials other than Owner;
- (f) description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue;
- (g) personnel injuries, if any, resulting from, or aggravated by, the release.

## **F.6 ENVIRONMENTAL CLEAN-UP**

**F.6.1** Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. Hazardous substance(s) are those substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the Project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a bona fide risk or danger to the health or well being of Contractor's or any subcontractor's work force.

**F.6.2** Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s) .

## **F.7 FORCE MAJEURE**

**F.7.1** Neither party of this contract shall be held responsible for delay or default caused by fire, riot, acts of God, Sovereign, public enemy, and/or war which is beyond that party's control. The Owner may terminate this contract upon written notice after determining such delay or default shall reasonably prevent successful performance of the contract.

**F.7.2** In the event force majeure impacts this project, the Owner may grant a reasonable extension of time, there shall be no additional compensation paid to the Contractor.

## **SECTION G** **BONDING AND INSURANCE**

## **G.1 PERFORMANCE AND PAYMENT BONDS**

**G.1.1** The Contractor shall furnish and maintain in effect at all times during the Contract Period, bonds to cover performance and payment in a sum equal to the Contract Price.

**G.1.2** A surety bond furnished by a surety company authorized to do business in Oregon is the only acceptable form of performance security unless otherwise specified in the Contract Documents.

## **G.2 INSURANCE**

### **G.2.1 Responsibility for Damages/ Hold Harmless:**

**G.2.1.1** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, his subcontractors, personnel or agents and the Contractor shall indemnify and hold harmless the Owner against any claims arising from said damage, injury, loss or expense.

**G.2.1.2** Contractor shall save, defend, indemnify and hold Metro, its elected officials, departments, employees and agents (including Architect/Engineer) from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor, or its subcontractors, agents, or employees under this Contract .

**G.2.2** Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverage indicated are minimums unless otherwise indicated by the Contract Documents.

**G.2.3** Workers Compensation: The Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers Compensation coverage that satisfies Oregon Law for all their subject workers. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 each accident. Contractors who perform the work without the assistance or labor of any employee need not obtain such coverage, but shall provide an independent contractor certification statement. The Contractor shall require proof of such Workers Compensation by receiving and keeping on file a Certificate of Insurance from each subcontractor, or anyone else directly employed by either the Contractor or its subcontractors.



## **G.2.4 Builder's Risk Insurance**

**G.2.4.1 Builder's Risk:** During the term of this contract, the Contractor shall maintain in force, at its own expense, Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the contract. Any deductible shall not exceed \$50,000 each loss, except the earthquake and flood deductible shall not exceed 2 percent (2%) of each loss, or \$50,000, whichever is more.

**G.2.4.2 Builder's Risk Installation Floater:** The Contractor shall obtain, at the Contractor's expense, and keep in effect during the term of this contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the work performed under this contract. The minimum amount of coverage to be carried shall be equal to the full amount of the contract. This insurance shall include as loss payees Metro, the Contractor, and its subcontractors as their interests may appear.

## **G.2.5 Liability Insurance**

**G.2.5.1 Commercial General Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided for under this Contract and products/completed operations liability. Combined single limit per occurrence shall not be less than \$5 million, or the equivalent. Each annual aggregate limit shall not be less than \$5 million, when applicable. Coverage must be on an "occurrence" basis.

**G.2.5.2 Automobile Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance. This coverage may be written in combination with the Comprehensive or Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$5 million, or the equivalent.

**G.2.6 Additional Insured:** The liability insurance coverage, except Professional Liability, if included, required for performance of this Contract shall include Metro, its elected officials, departments, employees and agents as Additional Insureds, but only with respect to the Contractor's activities to be performed under this Contract.

**G.2.7 Notice of Cancellation or Change:** There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to the Owner. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the Owner.

**G.2.8 Certificate(s) of Insurance:** As evidence of the insurance coverage required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the Owner prior to its issuance of a Notice to Proceed. The Certificate(s) shall specify all of the parties who are Additional Insureds (or Loss Payees). Insurance coverage required under this Contract shall be obtained from insurance companies or entities licensed to do business in the State of Oregon. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

## **SECTION H** **SCHEDULE OF WORK**

### **H.1 CONTRACT PERIOD**

**H.1.1** Time is of the essence on this Contract. The Contractor shall at all times carry on the work diligently, without delay, and punctually fulfill all requirements herein. Contractor shall commence work on the site within 15 calendar days of Notice to Proceed, unless directed otherwise.

**H.1.2** Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents.

**H.1.3** The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete the Work, or any part of it, after the date described in H.1.2 above.

**H.1.4** Any claim for additional time shall be based on written notice stating the general nature of the request, delivered to the Owner's Authorized Representative, in accordance with D.2.1. As a part of this notice, the Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work and Final Completion of the project. Failure to submit a suitable notice within the specified time period shall result in the Contractor waiving this right to request additional time for that delay cause. This does not abrogate Section D.1.5.

### **H.2 SCHEDULE**

**H.2.1** Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items broken down by building and/or exhibit, where applicable. Each schedule item shall account for no greater than 5% of the monetary value of the project or 5% of the available time. Schedules with activities of less than one day or valued at less than 1% of the Contract shall be considered too detailed and shall not be accepted. Schedules lacking adequate detail, or unreasonably detailed, shall be rejected.

Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules shall be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or durations. Any positive difference between the Contractor's scheduled completion and the contract completion date is float owned by the Project. Use of the float shall be negotiated. In no case shall the Contractor make a claim for delays if the Work is completed within the Contract time but after Contractor's scheduled completion.

**H.2.2** The Contractor warrants that it has the expertise, forces, and equipment to complete the work within the Contract Period. It further stipulates that its bid or Guaranteed Maximum Price includes all overhead and profit for the entire Contract Period.

## **SECTION I** **CORRECTION OF WORK**

### **I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT**

### **I.2 WARRANTY WORK**

Work failing to conform to the Contract Documents shall be deemed defective. Contractor shall promptly remove from the premises and replace, all defective materials as determined by the Owner's Authorized Representative as failing to conform to the Contract Documents, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement.

**I.2.1** Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless otherwise specified, Contractor shall correct any defects that appear in the Work within a period of one year from the date of acceptance by the Owner of the completed Project, except for latent defects which shall be remedied by the Contractor at any time they become apparent. The Owner shall give Contractor notice of defects with reasonable promptness.

**I.2.2** This provision does not negate guarantees for periods longer than one year such as guarantees required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

- I.2.3** In addition to Contractor's warranty, manufacturers' warranties shall pass to the Owner, and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.

**SECTION J.**  
**SUSPENSION AND/OR TERMINATION OF**  
**THE WORK**

**J.1 OWNER'S RIGHT TO SUSPEND THE WORK**

- J.1.1** The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to causes including, but not limited to:
- (a) failure of the Contractor to correct unsafe conditions;
  - (b) failure of the Contractor to carry out any provision of the Contract;
  - (c) failure of the Contractor to carry out orders;
  - (d) conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
  - (e) time required to investigate differing site conditions;
  - (f) any reason considered to be in the public interest.

- J.1.2** Contractor and the Contractor's Surety shall be notified in writing of the effective date and time of the suspension and shall be notified in writing to resume Work.

**J.2 CONTRACTOR'S RESPONSIBILITIES**

- J.2.1** During the period of the suspension, Contractor is responsible to continue maintenance at the Project, just as if the Work were in progress. This includes, but is not limited to, protection of completed work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

- J.2.2** When the Work is recommenced after the suspension, the Contractor shall replace or renew any work damaged during the suspension; remove any materials or facilities used as part of temporary maintenance, and complete the Project in every respect as though its prosecution had been continuous and without suspension.

**J.3 COMPENSATION FOR SUSPENSION**

- J.3.1** Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If it was a Contractor caused suspension, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by the

Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

#### **J.4 OWNER'S RIGHT TO TERMINATE CONTRACT**

**J.4.1** The Owner, after providing Contractor opportunity for remedy, may, without prejudice to any other right or remedy and after giving Contractor seven (7) days written notice, terminate the Contract under the conditions including, but not limited to, those listed below:

- (a) if Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fail to assume the Contract within a reasonable time;
- (b) if Contractor should make a general assignment for the benefit of Contractor's creditors;
- (c) if a receiver should be appointed on account of Contractor's insolvency;
- (d) if Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to pursue the work in a timely manner;
- (e) if Contractor should repeatedly fail to make prompt payment to subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its representative; or
- (f) if Contractor is otherwise in material breach of any part of the Contract.

**J.4.2** At any time that the above occurs, the Owner may take possession of the premises and of all materials and appliances, and finish the Work by whatever method it may deem expedient.

**J.4.3** In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the unpaid balance of the Contract Price shall exceed the Owner's cost of finishing the Work (with compensation for added managerial and administrative services), such excess shall be paid to Contractor. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

#### **J.5 TERMINATION FOR CONVENIENCE**

**J.5.1** Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.

**J.5.2** The Owner shall provide the Contractor and the Contractor's surety seven (7) days prior written notice of a termination for public convenience. After such notice the Contractor and the Contractor's surety shall provide the Owner with immediate and peaceful possession of the premises; materials located on and off the premises for

which the Contractor received progress payment under Section E; compensation for work terminated by the Owner under this provision shall be according to Section E. In no circumstances shall Contractor be entitled to lost profits due to termination .

## **J.6 ACTION UPON TERMINATION**

**J.6.1** Upon receiving a Notice of Termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

**J.6.2** As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all project documents, information, and other property that, if the Contract had been completed, would be required to be furnished to the Owner.

## **SECTION K CONTRACT CLOSE OUT**

### **K.1 RECORD DRAWINGS**

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative record drawings of the entire Project. Record drawings shall depict the Project as constructed, and shall reflect each and every change modification and deletion made during the construction. Record drawings are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record drawings include all modifications to the contract documents as defined in Section A.3 unless otherwise directed.

### **K.2 OPERATION AND MAINTENANCE MANUALS**

As part of the Work, Contractor shall submit two completed Operation and Maintenance (O & M) manuals for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the work. No payments beyond 75% shall be made by the Owner until the O & M Manual has been received. The O & M Manual shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturers printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds, etc. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final

pay request, five (5) complete and approved sets of O & M Manuals shall be delivered to the Owner's Authorized Representative by the Contractor.

### **K.3 RELEASE OF LIENS AND CLAIMS**

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized Release of Liens and Claims Form, which states that all subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the Project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the Project. The Contractor shall indemnify and hold harmless the Owner from all claims for labor and materials furnished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

### **K.4 NOTICES**

**K.4.1** Contractor shall provide Owner a written notice of both Substantial and Final Completion.

**K.4.2** Substantial Completion of a building or exhibit shall be that degree of completion that has provided a minimum of 30 continuous days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. Both completion notices must be signed by the Owner's Authorized Representative to be valid. The Owner shall be the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

**K.4.3** Final Completion shall be when all work is complete in accordance with the Contract Documents. The Contractor may request a punch list be prepared by the Owner's Authorized Representative with submission of the Substantial Completion.

### **K.5 TRAINING**

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

#### **K.6 EXTRA MATERIALS**

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the Owner's Authorized Representative.

#### **K.7 ENVIRONMENTAL CLEAN-UP**

As part of the Final Completion Notice, or as a separate written notice submitted with or before the Notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up which was performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdictions over such environmental pollution. The notice shall indemnify and hold harmless the Owner from any claims resulting from the disposal of the environmental pollution including removal, encapsulation, transportation, handling, and disposal.

#### **K.8 CERTIFICATE OF OCCUPANCY**

The Contractor shall not be granted Final Completion or receive final payment, if the Owner has not received an unconditioned Certificate of Occupancy from the appropriate state and/or local building officials.

#### **K.9 OTHER CONTRACTOR RESPONSIBILITIES**

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion, and may not be until Final Completion, if the Owner does not take beneficial use of the buildings or exhibits and the Contractor's forces continue with their work.

### **SECTION L** **LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

#### **L.1 LAWS TO BE OBSERVED**

The following is a list of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:



## **L.2 FEDERAL AGENCIES**

Agriculture, Department of

Forest Service

Soil Conservation Service

Coast Guard

Defense, Department of  
Army Corps of Engineers

Energy, Department of  
Federal Energy Regulatory Commission

Environmental Protection Agency

Health and Human Services, Department of

Housing and Urban Development, Department of  
Solar Energy and Energy Conservation Bank

Interior, Department of  
Bureau of Land Management  
Bureau of Indian Affairs  
Bureau of Mines  
Bureau of Reclamation  
Geological Survey  
Minerals Management Service  
U.S. Fish and Wildlife Service

Labor, Department of

Mine Safety and Health Administration

Occupation Safety and Health Administration

Transportation, Department of  
Federal Highway Administration

Water Resources Council

### **L.3 STATE AGENCIES**

Administrative Services, Department of

Agriculture, Department of  
Soil and Water Conservation Commission

Columbia River Gorge Commission

Energy, Department of

Environmental Quality, Department of

Fish and Wildlife, Department of

Forestry, Department of

Geology and Mineral Industries, Department of

Human Resources, Department of

Insurance and Finance, Department of

Land Conservation and Development Commission

Parks and Recreation, Department of

State Lands, Division of

Water Resources Department

### **L.3 LOCAL AGENCIES**

City Councils

County Courts

County Commissioner, Board of

Design Commissions

Historical Preservation Commission

Planning Commissions

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**APPENDIX B**  
**SAMPLE CM /GC AGREEMENT**



2. COMPENSATION

The OWNER agrees to compensate the CONSTRUCTION MANAGER/GENERAL CONTRACTOR for Basic Services on a fixed fee basis.

A. Basic Services include all structural, mechanical, electrical and cost estimating/value engineering services \$\_\_\_\_\_.

3. TIME OF PERFORMANCE

This Agreement shall take effect when signed by both parties and shall continue in force, unless canceled, through December, 31, 1999.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

METRO

By \_\_\_\_\_

By \_\_\_\_\_

Date

Date

APPENDIX C  
MASTER SCHEDULE

APPENDIX D  
PREVAILING WAGE  
for  
PUBLIC WORKS  
in the  
STATE OF OREGON



## APPENDIX E

### CONCEPTUAL DRAWINGS