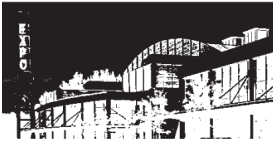

MERC Commission Meeting

November 2, 2016
12:15 pm

Oregon Convention Center
777 NE Martin Luther King Jr. Blvd.
VIP Suite B



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

www.oregonmetro.gov



Metro | *Exposition Recreation Commission*

Agenda

Meeting: Metro Exposition Recreation Commission Meeting
Date: Wednesday, November 2, 2016
Time: 12:15 – 1:00p.m.
Place: Oregon Convention Center, VIP Suite B

CALL TO ORDER

12:15 1. QUORUM CONFIRMED

12:20 2. OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS

12:25 3. COMMISSION/COUNCIL LIAISON COMMUNICATIONS **Elisa Dozono, Sam Chase**

12:30 4. INTERIM GM COMMUNICATIONS **Scott Cruickshank**

- Financial Report, pgs 4-18

12:35 5. CONSENT AGENDA

- Record of MERC Actions, October 5, 2016, pgs 20-21
- Ethics approval for Commissioners for December, 2016 FAM and February, 2017 CAB, pgs 22-23

12:40 6. ACTION AGENDA

Resolution 16-28: For the purpose of approving changes to Personnel Policies, pgs 25-36 **Mary Rowe**

Resolution 16-29: For the purpose of selecting CAPS, LLC (CAPS) for Stagehand Payroll Services and authorizing the General Manager of Visitor Venues to execute a contract with CAPS on behalf of the Metropolitan Exposition Recreation Commission (MERC), pgs 37-55 **Jason Blackwell**

Resolution 16-30: For the purpose of approving and transmitting to the Metro Council budget amendments to the Metropolitan Exposition Recreation Commission (MERC) Fund Approved Budget for fiscal year 2016-17, and requesting amendment of the Capital Improvement Plan (CIP) FY 2016-17, pgs 56-57 **Ben Rowe**

Resolution 16-31: For the purpose of selecting Bull Run Electric, Inc. for the Oregon Convention Center (OCC) Towers and South Atrium Lighting Upgrades and authorizing the General Manager of Visitor Venues to execute a contract with Bull Run Electric, Inc., pgs 58-113 **Josh Lipscomb**

ADJOURN

MERC Commission Meeting

November 2, 2016
12:15 pm

4.0 Financial Report

SEPTEMBER 2016

FINANCIAL INFORMATION

For Management Purposes only



OREGN

Oregon
Convention
Center



Memo



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Date: November 2, 2016
To: Commissioner Elisa Dozono, Chair
Commissioner Karis Stoudamire-Phillips, Vice Chair
Commissioner Deidra Kryz-Rusoff, Secretary-Treasurer
Commissioner Terry Goldman
Commissioner Damien Hall
Commissioner Judie Hammerstad
Commissioner Ray Leary
From: Ben Rowe – MERC Finance Manager
Re: Financial information for the month of September Fiscal Year 2016-17

Fiscal Year 2016-17 Economic Dynamics

Several economic and industry dynamics will interact throughout FY 2016-17 resulting in a fiscal year perhaps not as robust as the last two fiscal years. Firstly, FY 2014-15 and FY 2015-16 were both record-breaking high grossing years for the venues. Any comparison to these years is skewed because they were so robust. That being said, each of the venues' event schedule forecast for FY 2016-17 and beyond is unique. Portland's hosted a record number of Broadway performances (12.5 weeks) in FY 2015-16 however has even more (13.5 weeks) currently booked for FY 2016-17. OCC on the other hand may experience the effects of a reduced national convention schedule due to the current upswing in Portland's hotel market. The Portland hotel market began heating up a few years ago which facilitated a disincentive to hoteliers to provide large room blocks for national convention business. While hotel market demand has grown significantly in the last three years, supply has not increased since 2009. Looking to the near future, there are several downtown hotel projects slated to open in the next 36 months, which should greatly improve the market's capacity and opportunity for booking national conventions. Several large repeat clients at OCC and Expo schedule events every two years instead of each year. We have already seen the off year effect of this scheduling pattern at both venues in July. Finally, it is unknown how long the strong consumer confidence and spending which fueled our growth over the past two years can sustain itself. We hope the consumer spending trends we have seen recently will continue throughout the year and at each Broadway show and convention, however we may experience fluctuations in consumer spending influenced by national political and economic events throughout the year. The venues may have yet another great year or we may experience some cooling when compared to our most recent years.

MERC Venues Events & Attendance

Total MERC venues September events and attendance are respectively at and 35% above the three-year historical average.

Total MERC Venues	2015		2016		Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance
July	88	78,276	70	67,141	(18), (20%)	(11,135), (14%)
August	100	132,028	107	126,856	7, 7%	(5,172), (17%)
September	105	119,532	107	148,832	2, 115%	29,300, 25%
1 st Quarter	293	329,836	284	342,829	(9), (3%)	12,993, (4%)

MERC Venues Revenues & Expense

Total MERC event revenues (rent and food and beverage) closed September 17.5% above September 2015. Total first quarter event revenues closed 20.6% below the prior year, 1.9% above the three-year historical average, and 8% above year to date (YTD) budget projections. Total venue expenses are 6% below the prior year, 7% above the three-year historical average and 2% below YTD budget projections.

Food & Beverage

The total MERC venues food and beverage margin for September is 25% and 19% YTD, 6% below the three-year historical YTD average.

Net Operations

Total MERC YTD net operations is \$1.1 million less than the prior year and \$244,000 greater than the three-year historical YTD average.

Historical Actual Comparison FY 2014-2016 to FY 2016-17

Fiscal Year:	2014	2015	2016	2017	2014-16	% Diff	% Diff
Revenues	YTD	YTD	YTD	YTD	Average	Average	2016
Food & Beverage	3,606,315	3,962,339	5,871,773	3,886,229	4,480,142	-13.3%	-33.8%
Charges for Services	3,326,806	4,746,085	5,820,033	5,395,376	4,630,975	16.5%	-7.3%
Lodging Tax		1,120,046	1,010,102	1,661,817	710,049	134.0%	64.5%
Other	39,788	88,075	42,765	(55,523)	56,876	-197.6%	-229.8%
Total Revenue	6,972,909	9,916,545	12,744,674	10,887,899	9,878,043	10.2%	-14.6%
Expenses							
Food & Beverage	3,034,314	2,926,216	4,012,011	3,140,964	3,324,180	-5.5%	-21.7%
Personnel Services	3,850,278	4,179,376	4,536,292	4,688,255	4,188,649	11.9%	3.3%
Materials & Services	2,415,077	2,707,383	3,149,178	3,450,885	2,757,213	25.2%	9.6%
Other Operating Expense	981,634	1,001,788	1,138,094	796,073	1,040,505	-23.5%	-30.1%
Total Expense	10,281,302	10,814,763	12,835,576	12,076,176	11,310,547	6.8%	-5.9%
Net Operations	(3,308,393)	(898,219)	(90,902)	(1,188,277)	(1,432,505)	-17.0%	1207.2%
Food & Beverage Margin	15.9%	26.1%	31.7%	19.2%	25.8%	-6.6%	-12.5%

Oregon Convention Center

OCC September revenues closed 23% (\$730,000) below the prior September, 28% (\$711,000) above the three-year historical average, and 47% above September budget projections. September events and attendance are respectively 10% above and 12% above the prior year and 1% and 30% above the three-year historical monthly average. Expenses are 13% below the prior year, 4% above the three-year historical average, and 4% below September budget projections. OCC's YTD food and beverage margin is 17.7%, 9% below the three-year historical average.

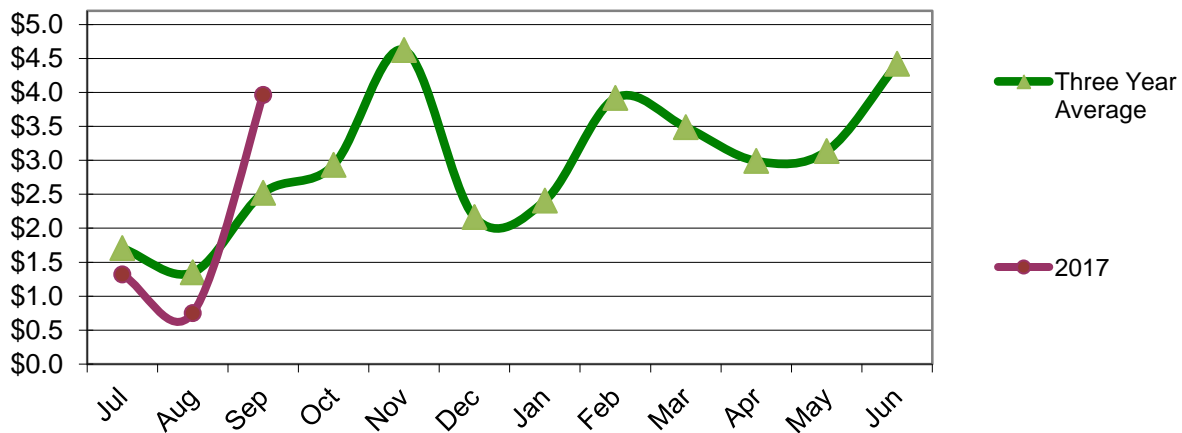
Highest Grossing Events

Event*	Gross Event Revenue	% of September Event Revenue
World Parkinson Congress	\$538,471	22%
Rose City Comic Con	368,031	15%
Institute of Navigation	333,387	12%
American Society of Civil Engineers	152,704	6%
All other Events	1,062,968	43%
Total	\$2,455,561	100%

*Note: revenue reported in this section reflects event receipts in month only and not total gross event revenue.

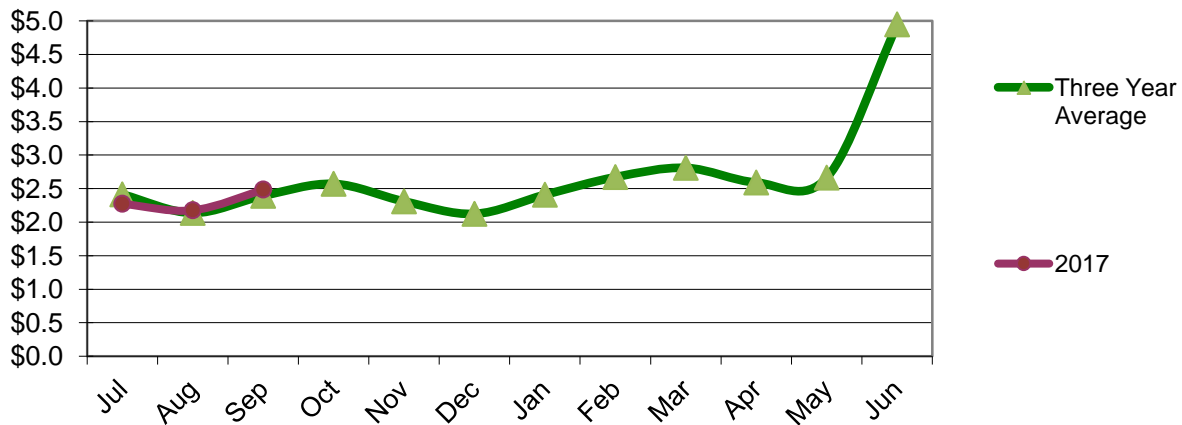
OCC Program Revenues by Month

Shown in Millions



OCC Program Expense by Month

Shown in Millions



Portland's Centers for the Arts

Portland's September revenues are 6% above the prior year, 53% above the three-year historical average and 12% above budget projections. Portland's hosted 3 (-6%) fewer performances, and 14,000 (28%) more attendees compared to the prior year. September performances and attendance are (-3%) below and (39%) above the three-year historical monthly average respectively. September expenses are -14% below the prior year, 27% above the three-year historical average and 8% above September budget projections. Portland's YTD food and beverage margin is 26%, 4% below the prior YTD margin.

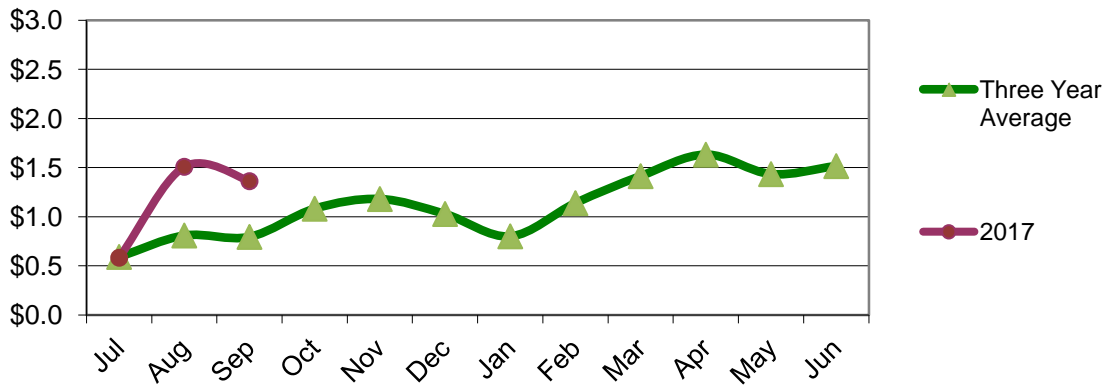
Highest Grossing Events

Event*	Gross Event Revenue	% of September Event Revenue
The Lion King	\$300,587	26%
Neil deGrasse Tyson	74,134	6%
Sigur Ros	66,752	6%
Classical #1 Bluebeard's Castle	64,903	6%
All other Events	666,085	57%
Total	\$1,172,461	100%

*Note: revenue reported in this section reflects event receipts in month only and not total gross event revenue.

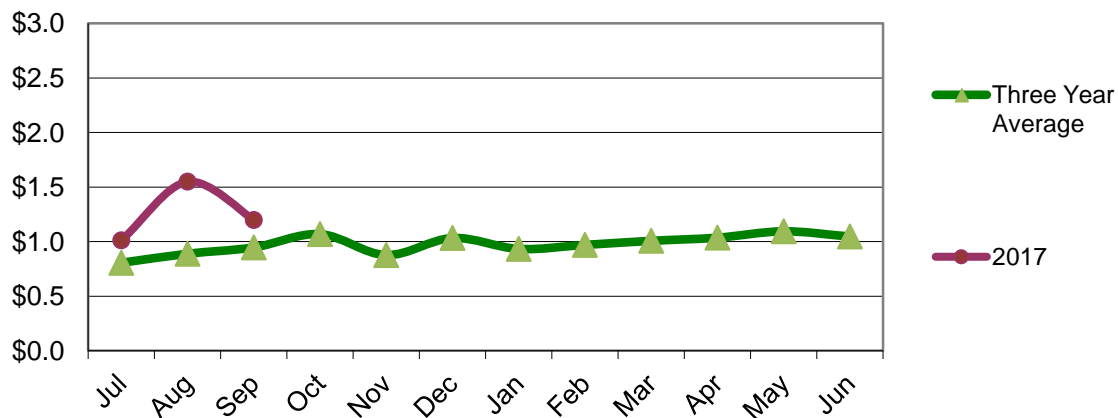
PSCA Program Revenue by Month

Shown in Millions



PSCA Program Expense by Month

Shown in Millions



Portland Expo Center

The Expo team set a new gross revenue record for September! September revenues closed 65% above the prior year, 47% above the three-year historical average, and 35% above budget projections. Expo hosted 1 (9%) more event and 9,100 (45%) more attendees in September than the prior year. Expo hosts the Timber Processing and Energy tradeshow every two years in September which bolstered Expo's numbers this month in rent, parking, and catering. Events and attendance closed 9% and 38% respectively above the three-year historical monthly average. Expo's September expenses are 19% below the prior year, -4% below the three-year historical average, and 5% above budget projections. Expo's YTD food & beverage margin is 15.6%, 7% greater than the prior YTD margin.

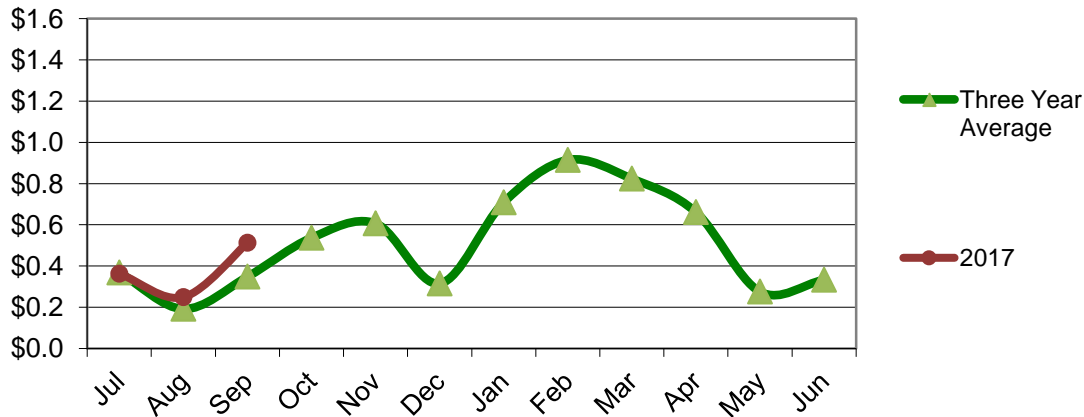
Highest Grossing Events

Event*	Gross Event Revenue	% of September Event Revenue
Portland Fall RV & Van Show	\$132,746	29%
Timber Processing & Energy Expo	117,776	25%
Northwest Quilting Expo	68,287	15%
Laberinto	45,310	10%
All other Events	99,873	22%
Total	\$463,990	100%

*Note: revenue reported in this section reflects event receipts in month only and not total gross event revenue.

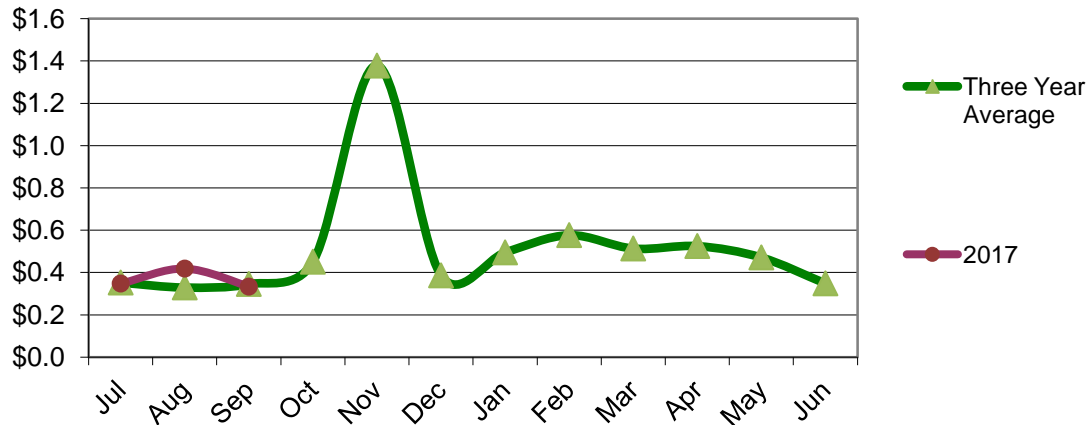
Expo Program Revenue by Month

Shown in Millions



Expo Program Expense by Month

Shown in Millions



MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actual	Prior Year to Date Actual	Current Year Budget	% of Prior Year	% of Annual Budget
Operations							
Charges for Services	2,357,138	2,143,939	5,395,376	5,820,033	25,283,884	92.70%	21.34%
Contributions from Governments	-	-	-	-	871,029	0.00%	0.00%
Contributions from Private Sources	-	-	-	-	13,000	0.00%	0.00%
Enhanced Marketing VDF	-	-	-	-	486,118	0.00%	0.00%
Food and Beverage Revenue	1,943,817	1,517,808	3,886,229	5,871,773	17,248,329	66.18%	22.53%
Grants	1,000	-	2,000	-	55,000	0.00%	3.64%
Interest Earnings	(77,719)	29,712	(148,751)	24,182	171,000	-615.14%	-86.99%
Lodging Tax	1,661,817	1,010,102	1,661,817	1,010,102	11,964,317	164.52%	13.89%
Miscellaneous Revenue	15,340	4,358	21,229	18,583	103,440	114.24%	20.52%
Transfers-R	23,333	(0)	69,999	(0)	280,000	0.00%	25.00%
Visitor Development Fund Alloc	-	-	-	-	6,468,315	0.00%	0.00%
Total Revenues	5,924,725	4,705,918	10,887,899	12,744,674	62,944,432	85.43%	17.30%
Capital Outlay							
Capital Outlay	-	(846)	-	-	-	0.00%	0.00%
Food & Beverage Services	1,458,135	1,397,382	3,140,964	4,012,011	13,985,429	78.29%	22.46%
Materials and Services	1,176,484	1,450,438	3,450,885	3,149,178	17,300,339	109.58%	19.95%
Personnel Services	1,619,085	1,533,256	4,688,255	4,536,292	20,310,932	103.35%	23.08%
Transfers-E	(163,947)	328,045	796,073	1,138,094	9,797,330	69.95%	8.13%
Visitor Development Marketing	-	-	-	-	486,118	0.00%	0.00%
Total Expenditures	4,089,757	4,708,274	12,076,176	12,835,576	61,880,148	94.08%	19.52%
Net Operations	1,834,968	(2,355)	(1,188,277)	(90,902)	1,064,284		
Capital							
Contributions from Private Sources	-	-	-	-	637,501	0.00%	0.00%
Grants	1,000	-	17,464	-	-	0.00%	0.00%
Miscellaneous Revenue	1,732	-	1,732	-	-	0.00%	0.00%
Transfers-R	26,667	-	80,001	-	320,000	0.00%	25.00%
Total Revenues	29,399	-	99,197	-	957,501	0.00%	10.36%
Capital Outlay	261,959	530,068	1,036,908	686,901	14,418,744	150.95%	7.19%
Materials and Services	88	10,010	88	10,010	46,000	0.88%	0.19%
Total Expenditures	262,047	540,078	1,036,996	696,911	14,464,744	148.80%	7.17%
Net Capital	(232,648)	(540,078)	(937,799)	(696,911)	(13,507,243)		
12 Month Fund Balance Increase	1,602,320	(542,434)	(2,126,076)	(787,813)	(12,442,959)		

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

MERC Admin Sub Fund

September 2016

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Interest Earnings	(16,410)	2,982	(32,192)	1,231	18,000	-2615.6%	-178.8%
Transfers-R	104,248	104,966	312,744	314,897	1,250,977	99.3%	25.0%
Total Revenues	87,838	107,948	280,552	316,128	1,268,977	88.7%	22.1%
Capital Outlay	-	(846)	-	-	-	0.0%	0.0%
Materials and Services	4,546	116,867	82,952	131,983	538,085	62.9%	15.4%
Personnel Services	68,984	72,621	191,848	218,137	867,245	87.9%	22.1%
Transfers-E	175	-	5,525	-	16,350	0.0%	33.8%
Total Expenditures	73,705	188,642	280,325	350,120	1,421,680	80.1%	19.7%
<hr/>							
Net Operations	14,133	(80,694)	227	(33,992)	(152,703)		
<hr/>							
Capital Transfers-R	-	-	-	-	(2,391,740)	0.0%	0.0%
Total Revenues	-	-	-	-	(2,391,740)	0.0%	0.0%
<hr/>							
Capital Outlay	-	-	-	-	250,000	0.0%	0.0%
Total Expenditures	-	-	-	-	250,000	0.0%	0.0%
<hr/>							
Net Capital	-	-	-	-	(2,641,740)		
<hr/>							
12 Month Fund Balance Increase	14,133	(80,694)	227	(33,992)	(2,794,443)		

MERC Statement of Activity with Annual Budget
Metropolitan Exposition-Recreation Commission
Convention Center Operating Fund
September 2016

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Charges for Services	1,058,498	1,140,682	2,067,496	2,849,851	10,764,464	72.5%	19.2%
Enhanced Marketing VDF	-	-	-	-	486,118	0.0%	0.0%
Food and Beverage Revenue	1,511,420	1,242,835	2,738,064	4,673,767	12,000,000	58.6%	22.8%
Grants	1,000	-	2,000	-	-	0.0%	0.0%
Interest Earnings	(28,824)	12,250	(58,582)	4,570	75,000	-1281.9%	-78.1%
Lodging Tax	1,477,951	892,604	1,477,951	892,604	10,593,288	165.6%	14.0%
Miscellaneous Revenue	9,275	2,458	6,270	5,502	17,000	114.0%	36.9%
Transfers-R	(67,396)	(58,987)	(202,188)	(176,960)	(808,751)	114.3%	25.0%
Visitor Development Fund Alloc	-	-	-	-	5,771,546	0.0%	0.0%
Total Revenues	3,961,924	3,231,842	6,031,012	8,249,333	38,898,665	73.1%	15.5%
Food & Beverage Services	1,118,844	943,153	2,252,741	3,105,701	9,762,922	72.5%	23.1%
Materials and Services	606,461	792,329	1,752,752	1,760,737	10,167,186	99.5%	17.2%
Personnel Services	838,977	814,778	2,477,363	2,430,809	10,892,021	101.9%	22.7%
Transfers-E	(78,719)	191,339	453,691	669,933	6,790,481	67.7%	6.7%
Visitor Development Marketing	-	-	-	-	486,118	0.0%	0.0%
Total Expenditures	2,485,563	2,741,600	6,936,547	7,967,180	38,098,728	87.1%	18.2%
Net Operations	1,476,361	490,242	(905,534)	282,153	799,937		
Capital							
Contributions from Private Sources	-	-	-	-	398,438	0.0%	0.0%
Grants	-	-	7,500	-	-	0.0%	0.0%
Miscellaneous Revenue	1,732	-	1,732	-	-	0.0%	0.0%
Transfers-R	26,667	-	80,001	-	1,695,000	0.0%	4.7%
Total Revenues	28,399	-	89,233	-	2,093,438	0.0%	4.3%
Capital Outlay	207,441	200,521	376,551	203,192	6,913,959	185.3%	5.4%
Materials and Services	88	10,010	88	10,010	-	0.9%	0.0%
Total Expenditures	207,529	210,531	376,639	213,202	6,913,959	176.7%	5.4%
Net Capital	(179,130)	(210,531)	(287,406)	(213,202)	(4,820,521)		
12 Month Fund Balance Increase	1,297,231	279,711	(1,192,941)	68,950	(4,020,584)		

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Portland's Centers for the Arts Fund

September 2016

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Charges for Services	965,808	748,783	2,646,225	2,331,532	10,351,965	113.5%	25.6%
Contributions from Governments	-	-	-	-	871,029	0.0%	0.0%
Contributions from Private Sources	-	-	-	-	13,000	0.0%	0.0%
Food and Beverage Revenue	271,467	210,651	769,301	888,518	3,252,119	86.6%	23.7%
Grants	-	-	-	-	55,000	0.0%	0.0%
Interest Earnings	(27,031)	11,946	(46,547)	17,356	60,000	-268.2%	-77.6%
Lodging Tax	183,866	117,499	183,866	117,499	1,371,029	156.5%	13.4%
Miscellaneous Revenue	5,149	1,763	10,272	9,985	61,590	102.9%	16.7%
Transfers-R	(36,852)	(35,701)	(110,557)	(107,103)	(442,226)	103.2%	25.0%
Visitor Development Fund Alloc	-	-	-	-	696,769	0.0%	0.0%
Total Revenues	1,362,407	1,054,940	3,452,559	3,257,786	16,290,275	106.0%	21.2%
Food & Beverage Services	215,205	364,309	568,273	621,276	2,520,826	91.5%	22.5%
Materials and Services	465,144	415,632	1,368,451	1,017,918	5,126,153	134.4%	26.7%
Personnel Services	562,788	507,647	1,600,018	1,476,510	6,786,405	108.4%	23.6%
Transfers-E	(45,409)	97,369	224,457	314,992	1,256,191	71.3%	17.9%
Total Expenditures	1,197,728	1,384,956	3,761,199	3,430,697	15,689,575	109.6%	24.0%
Net Operations	164,679	(330,016)	(308,640)	(172,911)	600,700		
Capital							
Contributions from Private Sources	-	-	-	-	95,625	0.0%	0.0%
Grants	1,000	-	9,964	-	-	0.0%	0.0%
Total Revenues	1,000	-	9,964	-	95,625	0.0%	10.4%
Capital Outlay	25,651	201,894	630,934	320,763	5,229,405	196.7%	12.1%
Total Expenditures	25,651	201,894	630,934	320,763	5,229,405	196.7%	12.1%
Net Capital	(24,651)	(201,894)	(620,970)	(320,763)	(5,133,780)		
12 Month Fund Balance Increase	140,027	(531,910)	(929,610)	(493,674)	(4,533,080)		

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Expo Fund

September 2016

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Charges for Services	332,832	254,474	681,655	638,651	4,167,455	106.7%	16.4%
Food and Beverage Revenue	160,930	64,321	378,864	309,489	1,996,210	122.4%	19.0%
Interest Earnings	(5,453)	2,534	(11,430)	1,025	18,000	-1114.7%	-63.5%
Miscellaneous Revenue	915	137	4,687	3,096	24,850	151.4%	18.9%
Transfers-R	23,333	(10,278)	69,999	(30,834)	280,000	-227.0%	25.0%
Total Revenues	512,556	311,189	1,123,775	921,427	6,486,515	122.0%	17.3%
Food & Beverage Services	124,086	89,920	319,950	285,034	1,701,681	112.2%	18.8%
Materials and Services	100,333	125,611	246,730	238,541	1,468,915	103.4%	16.8%
Personnel Services	148,336	138,209	419,025	410,836	1,765,261	102.0%	23.7%
Transfers-E	(39,994)	39,337	112,400	153,169	1,734,308	73.4%	6.5%
Total Expenditures	332,761	393,077	1,098,105	1,087,579	6,670,165	101.0%	16.5%
Net Operations	179,795	(81,888)	25,670	(166,152)	(183,650)		
Capital							
Contributions from Private Sources	-	-	-	-	143,438	0.0%	0.0%
Transfers-R	-	-	-	-	1,016,740	0.0%	0.0%
Total Revenues	-	-	-	-	1,160,178	0.0%	0.0%
Capital Outlay	28,867	127,653	29,422	162,946	2,025,380	18.1%	1.5%
Materials and Services	-	-	-	-	46,000	0.0%	0.0%
Total Expenditures	28,867	127,653	29,422	162,946	2,071,380	18.1%	1.4%
Net Capital	(28,867)	(127,653)	(29,422)	(162,946)	(911,202)		
12 Month Fund Balance Increase	150,929	(209,541)	(3,753)	(329,098)	(1,094,852)		

MERC Food and Beverage Margins

September 2016

	Current Month Actual	Prior Year Month Actual	Current Year to Date	Prior Year to Date Actual	Annual Budget
Convention Center Operating Fund					
Food and Beverage Revenue	1,511,420	1,242,835	2,738,064	4,673,767	12,000,000
Food & Beverage Services	1,118,844	943,153	2,252,741	3,105,701	9,762,922
Food and Beverage Gross Margin	392,576	299,682	485,323	1,568,066	2,237,078
Food and Beverage Gross Margin %	25.97%	24.11%	17.73%	33.55%	18.64%
Portland'S Centers for the Arts Fund					
Food and Beverage Revenue	271,467	210,651	769,301	888,518	3,252,119
Food & Beverage Services	215,205	364,309	568,273	621,276	2,520,826
Food and Beverage Gross Margin	56,262	(153,657)	201,028	267,241	731,293
Food and Beverage Gross Margin %	20.73%	-72.94%	26.13%	30.08%	22.49%
Expo Fund					
Food and Beverage Revenue	160,930	64,321	378,864	309,489	1,996,210
Food & Beverage Services	124,086	89,920	319,950	285,034	1,701,681
Food and Beverage Gross Margin	36,844	(25,598)	58,914	24,455	294,529
Food and Beverage Gross Margin %	22.89%	-39.80%	15.55%	7.90%	14.75%
MERC Fund Total					
Food and Beverage Revenue	1,943,817	1,517,808	3,886,229	5,871,773	17,248,329
Food & Beverage Services	1,458,135	1,397,382	3,140,964	4,012,011	13,985,429
Food and Beverage Gross Margin	485,682	120,426	745,265	1,859,762	3,262,900
Food and Beverage Gross Margin %	24.99%	7.93%	19.18%	31.67%	18.92%

**MERC Visitor Venues
Events-Performances-Attendance
FY 2016-17**

OCC	September 2014		September 2015		September 2016		Net Change from Prior Year		September 2016	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Tradeshows/Conventions	8	9,039	7	7,686	8	10,720	1	3,034	1,439,986	59%
Consumer Public Shows	2	25,832	1	30,000	3	33,570	2	3,570	410,168	17%
Miscellaneous							-	-		0%
Miscellaneous -In-House	18	257	14	260	12	375	(2)	115	9,871	0%
Meetings	15	3,858	14	8,566	13	7,560	(1)	(1,006)	199,724	8%
Catering	7	2,859	5	2,926	9	3,345	4	419	395,813	16%
Totals	50	41,845	41	49,438	45	55,570	4	6,132	\$ 2,455,562	100%

Expo Center	September 2014		September 2015		September 2016		Net Change from Prior Year		September 2016	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Consumer Public Shows	7	21,208	6	20,152	6	20,786	-	634	272,075	59%
<i>Cirque Du Soleil</i>	-	-	-	-	-	-	-	-		0%
Miscellaneous	-	-	3	37	4	2,731	1	2,694	11,923	3%
Meetings	2	30	1	20	-	-	(1)	(20)	381	0%
Catering	-	-	-	-	-	-	-	-		0%
Tradeshows/Conventions	1	50	1	50	2	5,884	1	5,834	179,610	39%
Totals	10	21,288	11	20,259	12	29,401	1	9,142	\$ 463,989	100%
Totals w/Cirque du Soleil	10	21,288	11	20,259	12	29,401	1	9,142	\$ 463,989	100%

Portland '5	September 2014		September 2015		September 2016		Net Change from Prior Year		September 2016	
	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Revenue	% of Rev.
Commercial (Non-Broadway)	23	22,980	9	18,133	15	26,611	6	8,478	573,394	49%
Broadway	-	-	8	14,660	6	16,550	(2)	1,890	328,921	28%
Resident Company	9	15,903	9	12,849	9	15,375	-	2,526	3,237	0%
Non-Profit	23	4,234	24	3,456	12	2,300	(12)	(1,156)	210,834	18%
Promoted/Co-Promoted	1	103	2	607	5	2,138	3	1,531	35,047	3%
Student	-	-	-	-	1	750	1	750	20,352	2%
Miscellaneous	1	57	1	130	2	137	1	7	677	0%
Totals	57	43,277	53	49,835	50	63,861	(3)	14,026	\$ 1,172,462	100%

MERC Visitor Venues
Events-Performances-Attendance
FY 2016-17

OCC	1st Quarter 14-15		1st Quarter 15-16		1st Quarter 16-17		Net Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance
Tradeshows/Conventions	16	30,243	16	36,002	14	22,867	(2)	(13,135)
Consumer Public Shows	16	39,183	9	37,202	6	38,087	(3)	885
Miscellaneous	-	-	-	-	-	-	-	-
Miscellaneous -In-House	36	628	45	873	37	834	(8)	(39)
Meetings	22	6,218	34	12,252	38	26,444	4	14,192
Catering	9	7,468	12	9,113	12	18,998	-	9,885
Totals	99	83,740	116	95,442	107	107,230	(9)	11,788

Expo Center	1st Quarter 14-15		1st Quarter 15-16		1st Quarter 16-17		Net Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance
Consumer Public Shows	13	44,960	9	38,734	9	40,127	-	1,393
<i>Cirque Du Soleil</i>	-	-	-	-	-	-	-	-
Miscellaneous	12	10,479	12	16,013	15	15,207	3	(806)
Meetings	4	75	3	61	1	18	(2)	(43)
Catering	1	52	1	37	-	-	(1)	(37)
Tradeshows/Conventions	1	50	3	13,736	3	9,634	-	(4,102)
Totals	31	55,616	28	68,581	28	64,986	-	(3,595)
Totals w/Cirque du Soleil	31	55,616	28	68,581	28	64,986	-	(3,595)

PCPA	1st Quarter 14-15		1st Quarter 15-16		1st Quarter 16-17		Net Change from Prior Year	
	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance
Commercial (Non-Broadway)	42	62,686	29	53,281	41	46,055	12	(7,226)
Broadway	17	46,603	33	82,895	32	86,917	(1)	4,022
Resident Company	10	17,453	21	17,307	24	22,777	3	5,470
Non-Profit	33	6,953	28	4,495	15	3,197	(13)	(1,298)
Promoted/Co-Promoted	9	2,556	12	4,809	25	10,259	13	5,450
Student	22	2,518	23	2,758	9	1,213	(14)	(1,545)
Miscellaneous	6	2,554	3	268	3	195	-	(73)
Totals	139	141,323	149	165,813	149	170,613	-	4,800

MERC Statement of Fund Balances and Reserves

September 2016

	FY 2017 Through September	FY 2016 Through September	FY 2016 Through June	FY 2017 Annual Budget
<u>Oregon Convention Center</u>				
Beginning Fund Balance	21,770,042	18,574,045	18,574,045	18,513,545
Fund Balance Inc (Dec)	(1,192,941)	68,950	3,195,997	(4,020,584)
Ending Fund Balance	20,577,101	18,642,995	21,770,042	14,492,961
<i>Contingency - Operating</i>				1,500,000
<i>Contingency - New Capital-Business Strategy</i>				1,821,308
<i>Contingency - Renewal & Replacement</i>				11,171,653
Ending Fund Balance				14,492,961
<u>Portland'5 Centers for the Arts</u>				
Beginning Fund Balance	13,178,660	10,622,451	10,622,451	11,348,488
Fund Balance Inc (Dec)	(929,610)	(493,674)	2,556,209	(4,533,080)
Ending Fund Balance	12,249,050	10,128,777	13,178,660	6,815,408
<i>Contingency - Operating</i>				600,000
<i>Contingency - New Capital-Business Strategy</i>				2,004,255
<i>Contingency - Renewal & Replacement</i>				4,211,153
Ending Fund Balance				6,815,408
<u>Expo</u>				
Beginning Fund Balance	2,843,104	3,167,865	3,167,865	2,798,742
Fund Balance Inc (Dec)	(3,753)	(329,098)	(324,760)	(1,094,852)
Ending Fund Balance	2,839,351	2,838,767	2,843,105	1,703,890
<i>Contingency - Operating</i>				350,000
<i>Contingency - New Capital-Business Strategy</i>				1,353,890
<i>Contingency - Renewal & Replacement</i>				-
Ending Fund Balance				1,703,890
<u>MERC Administration</u>				
Beginning Fund Balance	14,171,403	8,001,482	8,001,481	8,188,922
Fund Balance Inc (Dec)	227	(33,992)	6,169,921	(2,794,443)
Ending Fund Balance	14,171,630	7,967,490	14,171,402	5,394,479
<i>Contingency - Operating</i>				65,000
<i>Contingency - Renewal & Replacement</i>				1,576,837
<i>Contingency - TLT Pooled Capital</i>				3,752,642
Ending Fund Balance				5,394,479
<u>MERC Fund</u>				
Beginning Fund Balance	51,963,209	40,365,843	40,365,842	40,849,697
Fund Balance Inc (Dec)	(2,126,076)	(787,812)	11,597,367	(12,442,959)
Ending Fund Balance	49,837,133	39,578,031	51,963,209	28,406,738

MERC Commission Meeting

November 2, 2016
12:00 pm

5.0 Consent Agenda

Metropolitan Exposition Recreation Commission

Record of MERC Commission Actions

October 5, 2016

Oregon Convention Center Rooms C125-126

Present:	Elisa Dozono (Chair), Deidra Kryz-Rusoff, Ray Leary, Karis Stoudamire-Phillips, Judie Hammerstad, Council Liaison Sam Chase
Absent:	Terry Goldman, Damien Hall
	A regular meeting of the Metropolitan Exposition-Recreation Commission was called to order by Chair Elisa Dozono at 1:47 p.m.
1.0	QUORUM CONFIRMED A quorum of Commissioners was present.
2.0	OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS None
3.0	COMMISSION/COUNCIL LIAISON COMMUNICATIONS <ul style="list-style-type: none"> • Council Liaison Chase reported on recent Metro Council meetings with regional and community leaders to discuss funding strategies to support transportation needs. • Chair Dozono thanked Teri Dresler and staff for the FOTA Work Session held prior to today’s MERC meeting.
4.0	GM COMMUNICATIONS Teri Dresler provided these updates to the Commission: <ul style="list-style-type: none"> • Dresler thanked staff for the informative presentations at today’s FOTA work session adding that staff will plan to bring the group together again in a few months for additional updates. • Today’s packet was revised to include with Resolution 16-26 the executed design services price agreement with LMN Architects which was approved at last month’s meeting. • The annual Budget Retreat will follow the November 2nd MERC meeting. • Commissioner Kryz-Rusoff, chair of the MERC Budget Committee, added that this year’s budget meetings have been pared down to two meetings in order to provide a more efficient use of everyone’s time. • Dresler introduced Metro COO Martha Bennett, who reported on progress being made regarding the GM position transition. Bennett also shared details about the recruitment schedule and a preview of the draft job description.
5.0	TRAVEL PORTLAND CONTRACT PERFORMANCE REVIEW Tim Collier, Director of Metro Finance and Regulatory Services, presented his response following his review of Travel Portland’s contract performance. <ul style="list-style-type: none"> • Commissioner Leary noted that the goals in the past few years were checked by the challenges faced after the difficult years of 2012-2014. Collier agreed with Leary’s comment but added that it was time to review the targets to make them more realistic to today’s business. • Chair Dozono inquired about the process that will be used to change the goals. Scott Cruickshank of OCC stated that he and Steve Faulstick of Travel Portland have begun meetings and are putting together a proposal for goals that are more in line with recent historical achievements as well as some “stretch” goals regarding revenue generation. • Steve Faulstick of Travel Portland agreed that the targets needed updating adding that he is working with Scott Cruickshank to look at both the goals and methodology used to set them.
6.0	PROPOSED CHANGES TO MERC PERSONNEL POLICIES Mary Rowe of Metro Human Resources presented draft changes planned for MERC policies including the whistleblower policy, administrative leave policy, and the rescission of some ethics policies. The policies

	<p>will be presented for approval at the November MERC meeting.</p> <ul style="list-style-type: none"> Chair Dozono expressed concerns about the whistleblower policy. Rowe noted that Joyce Wan of Metro HR would be best person to respond and that Wan follow-up with Dozono after today's meeting.
7.0	<p>CONSENT AGENDA</p> <p>Includes:</p> <ul style="list-style-type: none"> Record of MERC Actions, September 7, 2016 Ethics approval for Leary and Hammerstad attendance at Travel Portland Multicultural Events in Washington DC <p>A motion was made by Commissioner Hammerstad and seconded by Commissioner Krys-Rusoff to approve the Consent Agenda.</p> <p>VOTING: AYE: 5 (Dozono, Leary, Hammerstad, Krys-Rusoff, Stoudamire-Phillips) NAY: 0 MOTION PASSED</p>
8.0 8.1	<p>ACTION AGENDA</p> <p>Resolution 16-26: For the purpose of approving the Work Order "OCC Plaza and Entries Re-Design" generated by the Price Agreement Contract with LMN Architects and authorizing the General Manager of Visitor Venues to execute the Professional Design Services Contract containing the Work Order with LMN.</p> <p>Scott Cruickshank, Executive Director of the Oregon Convention Center presented the resolution.</p> <ul style="list-style-type: none"> Commissioner Leary asked for an estimate of the construction costs for the design changes. Cruickshank responded that they would equal about \$6,000,000. <p>A motion was made by Commissioner Krys-Rusoff and seconded by Commissioner Leary to approve resolution 16-26.</p> <p>VOTING: AYE: 5 (Dozono, Leary, Hammerstad, Krys-Rusoff, Stoudamire-Phillips) NAY: 0 MOTION PASSED</p>
8.2	<p>Resolution 16-27: For the purpose of recognizing Teri Dresler's contributions to the Metropolitan Exposition Recreation Commission (MERC) as General Manager of Metro Visitor Venues. MERC Commissioners presented the resolution.</p> <p>A motion was made by Commissioner Stoudamire-Phillips and seconded by Commissioner Krys-Rusoff to approve Resolution 16-27.</p> <p>VOTING: AYE: 5 (Dozono, Leary, Hammerstad, Krys-Rusoff, Stoudamire-Phillips) NAY: 0 MOTION PASSED</p> <p>Dresler, who is retiring from Metro on October 14, 2016, thanked staff and the commission. Commissioners, Martha Bennett, venue directors and staff shared their appreciation for Dresler's leadership, dedication and work with the Commission and venues.</p>
	<p>As there was no further business to come before the Commission, the meeting was adjourned at 2:40 p.m.</p>

**Authorization to Represent MERC/METRO
on Trade-Promotion Mission; Fact-Finding Mission
(Food Travel, Lodging Expenses - exception (H))**

In accordance with ORS 244.020(6)(b)(H), the following public officials: **all current MERC Commissioners and current Metro Councilors** are hereby authorized to represent Metro/MERC in an official capacity; and

The MERC Commission and Metro Council hereby approve the receipt of reasonable expenses for food, travel, and/or lodging for the above-named public officials and his/her accompanying relative, household member, or staff member, for attendance at:

- trade-promotion mission;**
- fact-finding mission;**
- economic development activity; OR**
- negotiation;**

as follows:

A Portland familiarization tour ("fam tour") where meals will be paid for by Travel Portland, to familiarize potential meeting planners and association executives with Portland and with the Oregon Convention Center, which activity(ies) will take place in Portland on *December 1-3, 2016*.

Being approved by the MERC Commission, at its regular meeting on November 2, 2016, the above activity is hereby officially sanctioned by MERC.

MERC Commission Chair

Being approved by the Metro Council, at its regular meeting on _____, the above activity is hereby officially sanctioned by Metro.

Metro Council President

**Authorization to Represent MERC/METRO
on Trade-Promotion Mission; Fact-Finding Mission
(Food Travel, Lodging Expenses - exception (H))**

In accordance with ORS 244.020(6)(b)(H), the following public officials: **all current MERC Commissioners and current Metro Councilors** are hereby authorized to represent Metro/MERC in an official capacity; and

The MERC Commission and Metro Council hereby approves the receipt of reasonable expenses for food, travel, and/or lodging for the above-named public officials and his/her accompanying relative, household member, or staff member, for attendance at:

- trade-promotion mission;**
- fact-finding mission;**
- economic development activity; OR**
- negotiation;**

as follows:

A Portland customer advisory board ("CAB") meeting where meals will be paid for by Travel Portland, to familiarize potential meeting planners and association executives with Portland and with the Oregon Convention Center, which activity(ies) will take place in Portland on February 1-2, 2017.

Being approved by the MERC Commission, at its regular meeting on November 2, 2016, the above activity is hereby officially sanctioned by MERC.

MERC Commission Chair

Being approved by the Metro Council, at its regular meeting on _____, the above activity is hereby officially sanctioned by Metro.

Metro Council President

MERC Commission Meeting

November 2, 2016
12:00 pm

6.0 Action Agenda

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 16-28

For the purpose of adopting changes to the MERC Personnel Policies.

WHEREAS, the Metropolitan Exposition Recreation Commission (MERC) is authorized to adopt personnel policies pursuant to Metro Code Sections 2.02.010 (b) and 6.01.040 (a); and

WHEREAS, MERC periodically updates the MERC Personnel Policies (the Personnel Policies) in accordance with both legal requirements and agency-wide policies.

THEREFORE BE IT RESOLVED: That the Metropolitan Exposition Recreation Commission adopts the changes to the Personnel Policies in a form substantially similar to the attached Exhibit B.

Passed by the Commission on November 2, 2016

Chair

Secretary-Treasurer

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

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

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of adopting changes to the MERC Personnel Policies.

Resolution No.: 16-28

Presented by: Mary Rowe, Metro Human Resources Director

Background and Analysis: The MERC Commission last approved a complete personnel policy manual for venues staff in August 2007. Beginning in 2011, Metro's Human Resources Department began a project to review and update both the MERC policy manual and Metro's policy manual, Executive Order #88, with the goal of developing one set of agency-wide personnel policies and procedures. The policies are being updated and implemented on a rolling basis in an order determined by legal changes and business needs. Human Resources staff developed these policies in consultation with department managers, the Office of Metro Attorney, and the Metro Senior Leadership Team as appropriate. These policies have been updated for legal compliance. These policies were presented to the Commission for discussion on October 5, 2016.

Resolution: This resolution seeks the MERC Commission's approval of the following personnel policies:

- Administrative Leave for Exemplary Service and Recruitment (Non-represented)
- Whistleblower
- Rescission: Ethics Policies

Long range fiscal impact: There is minimal additional fiscal impact projected for implementation of these policies changes.

Recommendation: The Metropolitan Exposition Recreation Commission adopts the change to the Personnel Policies in a form substantially similar to the attached Exhibit B.

**EXHIBIT A: SUMMARY OF PROPOSED PERSONNEL POLICY FOR MERC COMMISSION
NOVEMBER 2, 2016**

Below is a list of the draft policies for your review. These proposed policies are intended to supersede the ones adopted in January 2016.

Policy	Existing All Metro or MERC Policy	Applicable Legal Provisions	Policy Summary/Explanation of Change	Fiscal Impact	Business Impact
Whistleblowing	Whistleblowing Policy (10/14) – All Metro	ORS Ch 659A as amended by HB 4067 (2016)	Brings Policy into compliance with statute by increasing rights and remedies, and affirmative defenses for whistleblowers, and increases employee notice requirements. Deletes references to interns who are not statutorily covered. Paid interns are employees and covered, unpaid are not.	Minimal.	Minimal Metro has very few unpaid interns.
Administrative Leave for Exemplary Service and Recruitment (Non-represented Employees)	Administrative Leave (12/12) – All Metro	N/A	Authorizes Department Director with HR Director approval to offer benefits eligible management and non-represented exempt new hires up to 40 hours additional leave annually for up to 3 years. Criteria for offering additional leave based on individual’s previous benefits, special skills or experience. Leave may be granted in 1 hour increments, previously 8 hour blocks.	Minimal.	Consistent with total compensation approach. Adds recruitment benefit increasingly used by public sector employers.
Proposed Rescissions					

<p><i>Proposed Rescission: Employee Conduct, #10. Ethics</i></p>	<p>MERC Personnel Policies (1997) § 12</p>	<p>N/A</p>	<p>Redundant. This simply states requirement that employees follow state ethics law. Employee Conduct Policy (All Metro) prohibits employees from violating state Ethics laws.</p>	<p>N/A</p>	<p>Streamlines policies.</p>
<p><i>Proposed Rescission: Ethical Requirements for Employees, Officers, Elected and Appointed Officials Policy</i></p>	<p>All Metro</p>	<p>Metro Code 2.02.120 Ethical Requirements for Employees, Officers, Elected and Appointed Officials</p>	<p>Duplicates Metro Code.</p>	<p>N/A</p>	<p>Streamlines policies.</p>
<p><i>Proposed Rescission: Code of Ethics</i></p>	<p>N/A</p>	<p>ORS 244 – Government Ethics; Metro Code 2.02.120 Ethical Requirements for Employees, Officers, Elected and Appointed Officials</p>	<p>Duplicates state ethics laws & Metro Code.</p>	<p>N/A</p>	<p>Streamlines policies.</p>

 Metro | *Policies and procedures*

Subject Administrative Leave for Exemplary Service and Recruitment (Non-represented)
Section Human Resources
Approved by

POLICY

Metro may, upon management’s discretion, award paid leave to non-represented, benefits-eligible, overtime-exempt regular status and limited duration employees who demonstrate extraordinary dedication by working long hours above and beyond the expectations for their position and to provide additional leave to non-represented benefits eligible employees to accomplish recruitment objectives as part of the total compensation package for new employees.

Applicable to

All non-represented, benefits-eligible, overtime exempt regular status and limited duration employees: 1) who are ineligible to receive overtime compensation due to their exempt status under the Fair Labor Standards Act, or 2) who are newly hired Metro employees.

Bonus time may be available for represented employees as determined by the applicable collective bargaining agreement.

Guidelines

1. Administrative leave for exemplary service (exemplary service leave) is intended to reward employees who put in a substantial amount of work time in excess of regular work hours for a sustained period of time and are ineligible for overtime compensation.
2. The decision whether to award leave and the length of the leave awarded are at Metro’s sole discretion. Exemplary service leave is not intended to compensate employees for extra work on an hour-for-hour basis.
3. The maximum exemplary service leave that may be awarded under this policy is 40 hours per fiscal year.
4. As part of employment negotiations when recruiting a candidate outside of Metro, Department Directors with the approval of the HR Director may provide administrative leave (recruitment leave) benefits to new employees hired for regular status positions. Justification for recruitment leave should include previous leave benefits of the applicant or the individual’s special skills or experience.

5. Up to forty (40) hours of recruitment leave per year for the first three years of employment may be approved for eligible new employees for recruitment purposes.
6. Administrative leave awards under this policy are in addition to accrued paid leave and will have no effect on accrual rates or maximum accrual limits for other types of leave.
7. Metro's fiscal year runs from July 1 – June 30. Administrative leave time must be used within the fiscal year in which it is awarded, with the exception of leave time awarded during the month of June, which may be carried over to the following fiscal year. Leave time that is not used within the applicable fiscal year will be forfeited. Leave awarded in June must be used by June 30 of the following fiscal year.
8. Employees will not receive monetary payment for any unused leave awarded under this policy.

Procedures

1. An award of leave must be approved in writing by the Department Director and for recruitment leave approved by the HR Director also. A supervisor who wishes to award administrative leave for exemplary service or recruitment purposes to an employee will coordinate with the Department Director. Leave will be granted to a Department Director only with the written approval of the General Manager, Chief Operating Officer (C.O.O.) or designee.
2. Leave must be awarded in full hour increments up to 40 hours. Administrative leave may be used in accordance with regular procedures for use of vacation and personal holidays.
3. Once approval is confirmed, the Department Director, General Manager, C.O.O or designee must notify the Payroll Division.
4. The Payroll Division will establish an administrative leave bank for the employee by entering the hours into the timekeeping system, and will confirm with the supervisor and Department Director when this process has been completed.
5. The supervisor will notify the employee of leave awarded under this policy.
6. Employees who have been awarded leave should follow regular procedures for requesting to use accrued leave. Employees may use leave under this policy only after receiving notification that the Payroll Division has established an administrative leave bank.

Responsibilities

Employee:

- After receiving an award of leave, follow regular procedures for requesting and coding use of leave.

Supervisor:

- Coordinate with the Department Director to award leave under this policy.
- Notify the employee that leave has been awarded.
- Complete Administrative Leave form and submit to Payroll (exemplary leave) or Human

Resources (recruitment leave for new hires).

Department Director:

- Approve leave awards and notify the Payroll Division.
- Consult with HR Director prior to awarding recruitment leave.

Human Resources Director:

- Review and approve requests for recruitment leave.

Human Resources:

- Establish a leave bank and notify the supervisor and Department Director that leave has been awarded.

Exhibit B to Resolution 16-28

 Metro | *Policies and procedures*

DRAFT 9/8/2016

Section Human Resources

Approved by

POLICY

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

Applicable to

All employees and contractors performing services for Metro.

Volunteers and unpaid interns are also encouraged to report improper or unlawful conduct using the procedures described in this policy.

Definitions

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

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

Good faith: A sincere belief or motive.

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

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

Guidelines

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

- b. Serious agency misconduct that could undermine Metro’s ability to fulfill its public mission;
 - a. Gross misuse or waste of public resources or funds;
 - b. Abuse of authority in connection with the administration of a public program or the execution of a public contract; or
 - c. A substantial and specific danger to public health or safety resulting from agency action.
- 3. No employee will be subject to discipline or other retaliation for initiating or aiding in criminal, civil, or administrative legal proceedings in good faith.
- 4. Volunteers and unpaid interns will not be subject to harassment or retaliation for taking actions outlined in #2 or 3 above.

Procedures

Reporting Improper or Unlawful Conduct:

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

Initiating or Aiding Administrative, Criminal or Civil Proceedings

- 4. Metro will not discriminate or retaliate against an employee because he or she has in good faith:
 - a. Reported criminal activity (or activity he or she believes to be criminal) to any person or caused criminal charges to be filed against any person;

- b. Cooperated with a criminal investigation or testified at a criminal trial;
- c. Initiated, cooperated with, or testified at a civil administrative or court proceeding;
- d. Opposed harassment, discrimination, or other conduct prohibited by civil rights laws;
- e. Discussed, inquired about, or brought a claim for unpaid wages.

Legislative Testimony

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

Whistleblowing in General

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

Whistleblowing Affirmative Defense:

- 9. An employee’s good faith and objectively reasonable belief of a violation of federal, state or local law, rule or regulation by Metro shall be an affirmative defense to a civil or criminal charge related to the disclosure by the employee of lawfully accessed information related to

the violation, including information that is exempt from disclosure as provided in Oregon's Public Records Law or by Metro policy, if the information is provided to:

- a. A state or federal regulatory agency;
 - b. A law enforcement agency;
 - c. A manager employed by Metro;
 - d. An attorney licensed to practice law in the state of Oregon if a confidential communication is made in connection with the alleged violation and in furtherance of the rendition of legal services to the employee that are subject to the attorney-client privilege.
10. An employee may not assert the affirmative defense described herein if the information:
- a. Is disclosed or re-disclosed by the employee or at the employee's direction to a party other than the parties listed in paragraph 9 above;
 - b. Is stated in a commercial exclusive negotiating agreement with Metro, provided that the agreement is not related to the employee's employment or relationship with Metro; or
 - c. Is stated in a commercial nondisclosure agreement with Metro, provided that the agreement is not related to the employee's employment with Metro.
11. The affirmative defense described in paragraph 9 is available to an employee who discloses information related to an alleged violation by a coworker or supervisor if the disclosure relates to the course and scope of employment of the coworker or supervisor.
12. The affirmative defense described in paragraph 9 may not be asserted by an employee who is an attorney or by an employee who is not an attorney but who is employed, retained, supervised or directed by an attorney if the information disclosed pursuant to paragraph 9 is related to the representation of a client.
13. Disclosure made to a state or federal regulatory agency, law enforcement agency, manager employed by Metro or attorney licensed to practice law in the state of Oregon are subject to the rules of professional conduct that are binding upon Oregon attorneys.
14. Subject to the rules of professional conduct for Oregon attorneys, a public employee who is an attorney may report to the Attorney General the employee's knowledge of a violation of federal, state or local law, rule or regulation by Metro.
15. Disclosure of information pursuant to paragraph 9 does not waive the attorney-client privilege or affect the applicability of any exemption from disclosure of a public record under Oregon's Public Records Law.
16. Notwithstanding paragraph 9, information protected from disclosure under federal law, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), may be disclosed only in accordance with federal law.

Whistleblower Rights and Remedies:

17. Any employee who invokes his/her rights under this policy shall have the rights and remedies provided for by Oregon's Whistleblower laws. To the extent an employee has been aggrieved by engaging in whistleblower activity, the employee may file a complaint with the Bureau of Labor and Industries and/or file a civil action in circuit court. Remedies available may include injunctive relief and compensatory damages among others.

Responsibilities

Employee:

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

Supervisor/Manager/Department Director:

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

Human Resources Department:

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

References

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

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

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

ORS chapter 244 (Oregon Government Ethics Law)

OAR chapter 199 (Oregon Government Ethics Commission Administrative Rules)

Metro Accountability Hotline: www.metroaccountability.org; (888) 299-5460

Metro Ethics Employee Q&A (on MetroNet)

METROPOLITAN EXPOSITION RECREATION COMMISSION

RESOLUTION NO. 16-29

For the purpose of selecting CAPS, LLC (CAPS) for Stagehand Payroll Services and authorizing the General Manager of Visitor Venues to execute a contract with CAPS on behalf of the Metropolitan Exposition Recreation Commission (MERC)

WHEREAS, Portland’s Center for the Arts (P’5) utilizes certain stagehands from the IATSE union (the Union) for commercial shows and P’5 Presents that have been paid through Oregon Stagehands Inc. (OSI), a local payroll company; and

WHEREAS, OSI was the one local option for these services used by the Union but recently other vendors have entered the Portland market for these specialized services; and

WHEREAS, MERC staff issued a formal Request for Proposals (RFP) in accordance with MERC’s Purchasing and Contracting Rules for Stagehand Payroll Services; and

WHEREAS, MERC staff received one proposal from CAPS; and

WHEREAS, CAPS has significant experience in the entertainment industry with successfully providing stage-related payroll services nationwide and in the Portland region; and

WHEREAS, the CAPS contract proposal will significantly reduce overhead costs to MERC that will allow MERC to continue to diversify revenue streams; and

WHEREAS, MERC staff recommend selecting CAPS for Stagehand Payroll Services at P’5.

BE IT THEREFORE RESOLVED as follows:

1. MERC selects CAPS, LLC as the successful proposer in response to the Request for Bids for Stagehand Payroll Services; and
2. MERC approves the contract with CAPS, LLC in the form substantially similar to the attached Exhibit A; and
3. MERC delegates authority to the General Manager of Visitor Venues to execute the contract on behalf of MERC.

Passed by the Commission on November 2, 2016.

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

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

Chair

Secretary/Treasurer

CAPS PAYROLL SERVICE AGREEMENT

This SERVICE AGREEMENT (“Agreement”), entered into between CAPS, LLC, a Delaware limited liability company (“CAPS”), with offices located at 10600 Virginia Avenue, Culver City, CA 90232, and

NAME: Metro Exposition Recreation Commission (MERC), an appointed commission of Metro, a municipal corporation (hereinafter “Company”)

ADDRESS: 600 N.E. Grand Avenue, Portland, OR 97232-2736

WHEREAS CAPS is a payroll service provider for the Sports and Entertainment industry (including stadiums, arenas, conventions centers, theatres and festivals); and

WHEREAS Company wishes to engage CAPS to exclusively supply payroll services for Company’s personnel in the job classifications listed on the attached Service Schedule (collectively “Covered Workers” and each individually a “Covered Worker”) in connection with production of one or more of Company’s projects (collectively the “Projects”), and CAPS wishes to supply the payroll services with respect to such Covered Workers, on the terms and conditions of this Agreement. CAPS shall be the sole and exclusive provider of payroll services to Company until the later of: (i) the completion of the Projects or (ii) the Term described in Paragraph 2, below.

NOW, THEREFORE, for the promises and consideration stated herein, Company and CAPS hereby agree as follows:

1. Engagement of CAPS:

1.1 Engagement: Company hereby engages CAPS to serve as “Employer of Record” of the Covered Workers on behalf of Company for purposes of workers’ compensation insurance and payroll processing. Company shall supply to CAPS all information and materials required and requested by CAPS (e.g., applicable union collective bargaining agreements, W-4s, W-9s, I-9s, time cards, deal memos, call sheets, production reports) to permit CAPS perform its obligations hereunder.

1.2 General and Administrative Services: In addition to the services to be provided by CAPS as the Employer of Record pursuant to Paragraph 1.1 above, CAPS shall perform general and administrative services in connection therewith, including without limitation, payroll tax (including, but not limited to, payroll withholdings and the payment of workers compensation and unemployment insurance premiums) and insurance administration.

1.3 Employee Acceptance and Control: It is expressly agreed by the parties hereto that within the scope of this Agreement, the status of CAPS is that of Employer of Record and “general employer” of the Covered Workers for the purposes only of providing workers’ compensation insurance, unemployment insurance administration, management of unemployment claims and payroll processing services. Company shall maintain sole and exclusive authority to hire, supervise, assign, direct, control, set the compensation of, and terminate the Covered Workers and thus having such authority, Company is and shall be deemed the common law employer and the “special employer” of all Covered Workers, as the terms “general employer” and “special employer” are understood for purposes of workers’ compensation statutes, liability for payment of wages to the Covered Workers and liability for negligence and any other wrongful acts or omissions arising out of or relating in any way to the Projects or the employment relationship between the Covered Workers and Company.

2. **Term:** This Agreement shall be effective as of the date it is executed or at such time Company first becomes obligated to process a payroll, whichever is earlier. The term shall continue so long as all parties are in full compliance with their obligations hereunder and have not elected to terminate the Agreement, where such termination is available under this Agreement.
3. **Relationship Between CAPS and Company:** It is expressly agreed by the parties hereto that within the scope of this Agreement, CAPS is at all times herein acting and performing its payroll and related services as an independent contractor. Except as otherwise expressly provided hereunder or approved in writing hereto, neither party shall assume or create any obligation or responsibility whatsoever on behalf of or in the name of the other party.
4. **Payroll Service Responsibilities**

4.1 Company's Obligations: Company agrees to promptly provide CAPS with the classifications, rates of pay, hours guaranteed, and any deal memos or other information reflecting compensation arrangements differing from and/or in addition to the minimum terms and conditions set forth in any collective bargaining agreements applicable to each Covered Worker. Company further agrees to provide CAPS, if requested by CAPS, with all call sheets, production reports and time cards for all Covered Workers on a weekly basis, with a copy of its Articles of Incorporation or other organizational documentation, and with all completed forms required by law (e.g., W-4, W-9, I-9). In order for Company to avoid late payment penalties, all payroll reports and approved time cards must be delivered to CAPS no later than Tuesday of the following week in which work was performed and, in the case of daily Covered Workers whose services have been terminated, immediately upon the layoff or termination of the affected Covered Worker(s). Company shall be solely responsible for any and all obligations (whether by collective bargaining agreement, personal agreement, statute or otherwise) with regard to any employees that do not constitute Covered Workers pursuant hereto, and/or for any Covered Workers for whom Company does not timely provide information or required documentation to CAPS. Notwithstanding anything herein to the contrary, CAPS reserves the right to refuse to process any payroll for which CAPS in its reasonable discretion determines it has not been provided with timely and accurate information by Company in order to process such payroll in compliance with applicable laws.

Company is responsible for compliance with the employer health coverage mandate with respect to the Covered Workers under Section 4980H of the Internal Revenue Code, and all reporting related thereto. No Covered Workers will travel or perform services outside the United States.

Company will delegate and maintain a representative who will be the primary point of contact for dealing with CAPS. Company may change its representative by giving written notice to CAPS and an indication of when such change will become effective. Company acknowledges that its designated representative shall act as the primary liaison with CAPS with respect to this Agreement and any services or solution CAPS may provide.

4.2 CAPS' Services: For the convenience of and at the specific request of the Company, Company desires to have CAPS become the designated "Employer of Record" and provide payroll services on behalf of Company for all Covered Workers. As the "Employer of Record" for the Covered Workers, CAPS shall be responsible for obtaining and maintaining during the term of this Agreement workers compensation insurance and unemployment insurance as required by applicable Oregon law (the "Required Insurance") and hereby assumes the Company's workers compensation and unemployment liabilities arising from the employment of the Covered Workers during the term of this Agreement to the extent covered by such Required Insurance. CAPS represents and warrants that it has obtained workers' compensation insurance and unemployment insurance coverage in compliance with Oregon law. Notwithstanding CAPS' provision of the Required Insurance, Company shall be solely and exclusively liable for payment of wages to the Covered Workers, and for any and all wrongful acts or omissions arising out of or relating in any way to the Projects or the

employment relationship between the Covered Workers and Company. For the avoidance of doubt, any and all liabilities, claims, demands, charges, grievances and/or obligations which are not insured under the applicable Required Insurance shall be the sole and exclusive responsibility of Company, unless failure to insure was caused solely by CAPS' material breach of its covenants or representations contained in this Agreement which has not been cured after written notice to CAPS and reasonable opportunity to cure. Company shall indemnify CAPS against any such liabilities and CAPS shall indemnify Company for any such liabilities in the manner specified in Paragraph 11 hereunder.

In accordance with the submission of all records described in Paragraph 4.1 and subject to its provisions, CAPS shall calculate and pay all wages, allowances, penalties, fees, fringe benefits, pension plan contributions, health plan contributions and/or other payments called for under any applicable statutes and/or collective bargaining agreement and/or individual agreements. CAPS will pay Oregon State unemployment insurance taxes and administer unemployment procedures. In addition, CAPS will calculate all employee withholdings of the Covered Workers and pay all taxes and related obligations imposed by applicable law or governmental or union regulations in connection with services of the Covered Workers hereunder, including without limitations, payment and withholdings for Social Security and Medicare taxes, unemployment insurance taxes, workers compensation and required disability insurance. CAPS shall also prepare and file any required returns and reports, including but not limited to quarterly or yearly employment tax returns and benefit plan contribution reports, but excluding reports related to mandated employer health coverage (including form 1095-C or other reports as may be required by IRS Sections 6065 and 6056) unless otherwise specified, in writing.

Company shall be liable to CAPS for any and all overpayments that may result from any incorrect information supplied by Company and Company shall promptly pay or reimburse CAPS for such overpayments. CAPS agrees to waive its workers' compensation insurer's right to recover against Company where allowed by law. CAPS shall be liable to Company for any mistakes caused solely by CAPS' material breach of its covenants or representations contained in this Agreement which has not been cured after written notice to CAPS and reasonable opportunity to cure.

4.3 Company's Obligation to Pay CAPS: Company shall reimburse CAPS for any and all payments made to and/or on behalf of the Covered Workers pursuant to any and all applicable laws, rules or regulations, collective bargaining agreement(s) and/or individual agreement(s), including but not limited to all wages, fringe benefits, statutory payments and Trust Fund contributions made with respect to such Covered Workers and/or pursuant to Paragraph 4.2 above or Paragraph 5.2 below. Company shall also pay to CAPS the processing and other fees for services performed in accordance with the attached SERVICE SCHEDULE. (Such fees do not purport to represent CAPS' actual costs.) Termination of this Agreement by either party hereto or this Agreement's expiration shall not relieve Company from its obligation to pay CAPS' fees as detailed on the Fee Schedule, and/or to reimburse CAPS for the amounts described above in this Paragraph 4.3 or for the settlement of any claims or grievances concerning the payment of wages, statutory payments, payroll taxes, union fringe benefits, or other Trust Fund payments, even if such obligation(s) may arise after the expiration or termination of this Agreement unless such termination is caused solely by CAPS' material breach of its covenants or representations contained in this Agreement which has not been cured after written notice to CAPS and reasonable opportunity to cure.. Company shall reimburse CAPS for any and all retroactive adjustments to statutory payments and payroll taxes as required by the respective taxing authorities unless such adjustments are caused solely by CAPS' material breach of its covenants or representations contained in this Agreement which has not been cured after written notice to CAPS and reasonable opportunity to cure.. Company shall reimburse CAPS for any late claim filing penalties incurred by CAPS arising as a result of Company's failure to comply with any obligation prescribed by applicable law or agreement, including but not limited to the obligations set forth above in Paragraph 4.1 of this Agreement. Company's obligation to pay CAPS is unconditional, and any claim of any type whatsoever that Company may have against CAPS under this Agreement or otherwise shall not excuse Company from that obligation to pay or constitute defense to or offset from that obligation to pay, except where caused solely by CAPS' material breach of its covenants or

representations contained in this Agreement which has not been cured after written notice to Caps and reasonable opportunity to cure.

4.4 Interest Charges: If Company fails to make any payment as and when due hereunder, interest charges may, at CAPS' sole option, accrue thereon from the date payment is due, at the rate of ten percent (10%) per year.

5. Employee Compensation:

5.1 Rates: The rates of compensation for Covered Workers shall be those set forth in written time cards, deal letters, memorandum agreements, contracts, collective bargaining agreements, or otherwise, as approved in writing by Company. Company shall provide CAPS with copies of all such writings pursuant to Paragraph 4.1 of this Agreement, and shall verify and be solely responsible for the accuracy of those writings and the information contained therein.

5.2 Travel and Living Expenses: Subject to the conditions set forth below, (subject to payment or reimbursement by Company pursuant to Paragraphs 4.1 and 4.3), CAPS shall pay or reimburse Covered Workers for travel, living expenses away from home, other per diem payments and any other reimbursable items as required by any applicable personal service agreement and/or collective bargaining agreement, and CAPS shall make all withholdings and related payments required by law and governmental and/or union regulations in connection therewith. In order to qualify for such payments, Company shall require the Covered Workers paid by CAPS pursuant to this Agreement to submit detailed documentary support of all travel, living expenses away from home, other per diem payments and any other reimbursable items, and Company shall maintain such records and supply copies of such support to CAPS if requested by CAPS. CAPS is performing its services pursuant to this paragraph as an accommodation to Company and any liabilities, including, but not limited to, any interest, taxes and penalties which arise in connection with payments pursuant to this paragraph shall be the sole responsibility of Company unless caused solely by CAPS' material breach of its covenants or representations contained in this Agreement which has not been cured after written notice to Caps and reasonable opportunity to cure..

5.3 Retroactive Changes: If any union, union-related organization, benefit plan, governmental, or administrative agency conducts any audit or assesses retroactive charges, interest, or penalties, CAPS shall promptly invoice Company for such amounts, and Company shall pay such amounts to CAPS as rendered within ten (10) business days. If it is later determined that such charges, interest, or penalties arose solely as a result of the fault of CAPS, then CAPS will reimburse Company for all such amounts.

5.4 Residuals or Royalties: Payment of any and all residuals or royalties arising out of or relating to Company Projects to any individual entity or organization are not covered under CAPS services and shall remain the exclusive obligation of the Company.

6. **Unions:** Company is or will become signatory to any collective bargaining agreement(s) applicable to the Covered Workers hereunder and warrants that it shall remain signatory to the collective bargaining agreement(s) during the term of this Agreement; and, hereby covenants to comply with the any applicable provisions of such collective bargaining agreement(s) with respect to the Covered Workers. To the extent there is an inconsistency between the terms of this Agreement and any applicable collective bargaining agreement(s), the collective bargaining agreement(s) shall prevail.

7. **Strikes:** The parties hereto acknowledge that the applicable collective bargaining agreements, if any, contain express or implied "no strike, no lockout" provisions and agree to comply with same. CAPS shall not be in breach of this Agreement if it declines to provide Covered Workers to Company to any location

where a strike, lockout, or labor dispute exists under circumstances where a Covered Worker would be legally privileged to withhold services.

8. Confidentiality:

8.1 Agreement Confidential: Subject to the limits of Oregon's Public Records Law, the parties agree that this Agreement and its terms, including any exhibits or schedules, are and shall be the Confidential Information (as defined below) of CAPS. Company may not disclose this Agreement, its terms, or any exhibit or schedule to any third party or person, except as may reasonably be required to enforce the terms of this Agreement, and/or to its attorneys, accountants, directors, parent organizations, tax authorities, appropriate elected and appointed officials, the applicable Union that has members paid under this Agreement, IATSE, Local 28 or as otherwise required by law, subject in all cases to any permitted third party or person being under the same obligation to keep the information confidential as called for in this Agreement. For the purposes of this Agreement, "Confidential Information" means information which has been or which may be disclosed, either orally or in writing, by one party ("Disclosing Party") to the other party ("Receiving Party") in confidence, that is marked "Confidential," or which is reasonably understood to be the proprietary or confidential information of the Disclosing Party, including, without limitation, information associated with or related to the information concerning any aspect of the business of the Disclosing Party or its affiliates, trade secrets, financial statements, business and marketing plans, business and technical data, pending or threatened litigation, prospective contractual relations, collection, tabulation, and analysis of data, computer programming methods, designs, specifications, plans, drawings and similar materials, programs, software, databases, inventions and works (whether or not eligible for legal protection under patent, trademark, or copyright laws), research and development, and/or work in progress. Notwithstanding the foregoing, Confidential Information does not include any information which (i) is or was in the public domain at the time communicated to the Receiving Party, or which becomes public through no fault of the Receiving Party; (ii) is or was obtained by the Receiving Party, with permission to disclose, from a third party not subject to a contractual, fiduciary or other duty not to disclose; (iii) has been independently developed by the Receiving Party, as shown by Receiving Party documentation; or (iv) was lawfully in the Receiving Party's possession free of any duty to the Disclosing Party before the date of disclosure to the Receiving Party by the Disclosing Party.

8.2 Confidentiality and Non-Disclosure: Each party agrees to preserve the confidentiality of all Confidential Information of the other party that is obtained in performance or connection with this Agreement, and shall not, without the prior written consent of the other party, disclose or make available to any person, or use for its own benefit or that of another person or entity other than as contemplated by this Agreement, any Confidential Information of the other party. Each party shall exercise the level of care it would exercise to safeguard its own Confidential Information concerning Confidential Information received from the other, provided that such efforts shall at least be reasonable. These restrictions do not apply to Confidential Information which a Receiving Party (i) is required by law or regulation to disclose, but only to the extent and for the purposes of such law or regulation; (ii) discloses in response to a valid order of a court or other governmental body, but only to the extent of and for the purposes of such order, and only if the Receiving Party first notifies the Disclosing Party of the order and permits the Disclosing Party to seek an appropriate protective order or move to quash or limit such order; or (iii) discloses with written permission of the Disclosing Party, in compliance with any terms or conditions set by the Disclosing Party regarding such disclosure.

9. Force Majeure: Either party's obligations under this Agreement shall be suspended during the duration of any events beyond either party's control, including but not limited to, acts of God, strikes, lockouts, breaches by a third party of its contractual obligations, suspension of production, and any event that prevents a party from performing under this Agreement. If CAPS or Company suspends all services supplied hereunder for a period in excess of five (5) business days, the non-suspending party may elect to terminate this Agreement

by written notice to CAPS, provided that on or before the effective date of termination, where Company is the party electing to terminate, it shall pay all amounts due and owing to CAPS up to the date and time of termination, and Company shall assume, in writing, all executory obligations which CAPS may have with respect to performing its obligations for Company under this Agreement.

10. Representations, Warranties & Covenants:

10.1 Company's Representations, Warranties & Covenants: Company represents, warrants and covenants that:

- a) Company retains the sole and exclusive authority to hire, supervise, assign, direct, control, set the compensation of, and terminate the Covered Workers. Accordingly, it being understood that Covered Workers are not the agents or employees of CAPS for any purpose, CAPS shall not be subject to any claims arising from, in connection with, or as a result of services supplied by CAPS hereunder or the product of any services provided to Company by any Covered Worker, or the use of such product in any medium anywhere in the world, except to the extent that such claims are due to acts or omissions by CAPS.
- b) Company has the right to enter into this Agreement and to perform its obligations hereunder.
- c) Company is self-insured for any applicable claims under this Agreement with comprehensive excess insurance for any claims that exceed One Millions Dollars (\$1,000,000.00) and Company shall also name CAPS as an additional insured on such policy and provide CAPS with a certificate demonstrating such coverage and further provide CAPS with prompt written notice of the termination of such policy.
- d) In the engagement by Company of any and all Covered Workers, the Company agree to comply with all applicable federal, state and local laws, rules, statutes and regulations, including, without limitation, those concerning the hiring of individuals authorized to work in the United States, wage payment, occupational safety and health, discrimination, retaliation or harassment based on race, religion, gender, age, sexual orientation physical disability, color, national origin and any other categories protected by applicable laws.
- e) Company agrees to use commercially reasonable efforts to protect the personally identifiable information of Covered Workers from unauthorized access or disclosure.
- f) INTENTIONALLY LEFT BLANK
- g) Company represents and warrants that any and all information provided to CAPS pursuant to this Agreement will be accurate and in compliance with applicable collective bargaining agreements, personnel service contracts and federal, state, and local laws and regulations.
- h) Company will permit CAPS to inspect and copy any and all records of Company, its subsidiaries, alter egos, affiliates and/or related entities that pertain or relate to any Covered Worker or this Agreement upon reasonable written notice to the other party.
- i) Company shall promptly provide CAPS with copies of any and all grievances, charges, claims or suits of any kind of which Company becomes aware relating in any way to any personnel working

on the Projects, including, but not limited to, the Covered Workers, that may impact the Services of CAPS under this Agreement.

- j) To the extent that Company is requested to do so by CAPS, Company will disseminate to all Covered Workers for whom workers compensation insurance and/or any other benefit programs has been provided any and all information and/or documentation provided to it regarding such benefit programs and will use its best efforts to see that such Covered Workers comply with the requirements of those programs. Notwithstanding the above, Company hereby acknowledges that CAPS is neither an employer nor a fiduciary under any employee welfare benefit plan offered or provided to any covered worker under the Employee Retirement Income Security Act (“ERISA”), or any state counterpart or derivative law. Company acknowledges and agrees that its damages, if any, arising from or related to acts or omission by CAPS in connection with the operation, administration and compliance with the terms of any and all employee welfare benefit plans offered or provided to any Covered Workers shall be limited to the actual monetary payments, penalties, fines and interest paid by Company to the affected Covered Worker[s], except where such damage is caused solely by CAPS’ material breach of its covenants or representations contained in this Agreement which has not been cured after written notice to CAPS and reasonable opportunity to cure.
- k) CAPS will provide access to the solution(s) identified on Exhibit C. Company hereby acknowledges and agrees that any CAPS solution shall be subject to the Remote Access Terms and Conditions set forth in Exhibit B, which are hereby incorporated into this Agreement as if set forth fully herein. Any right to use the software and system made available by CAPS shall be limited to the term of this Agreement.

10.2 CAPS Representations, Warranties and Covenants: CAPS hereby represents, warrants, and covenants that CAPS has the right to enter into this Agreement and has the ability to perform its obligations hereunder as provided for in CAPS response to the Request For Proposals issued by MERC.

- a) **CAPS:** In performance of its services under this Agreement, CAPS agrees to comply with all Federal and State local laws and regulations that regulate the performance of such services. CAPS shall not discriminate against its employees based on race, color, or national origin
- b) CAPS agrees to use commercially reasonable efforts protect the personally identifiable information of Covered Workers from unauthorized access or disclosure.
- c) CAPS will provide Company with copies of any documents or records of CAPS involved in the performance of this Agreement with reasonable written notice to the CAPS.

11. Indemnification: Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution where applicable, Company agrees to hold CAPS harmless and to indemnify and defend CAPS, its successors, licensees and assignees and representatives against any and all claims, demands, charges, grievances, unfair labor charges, arbitration claims, investigations, administrative actions, court actions, costs, expenses and liabilities, including reasonable legal fees and costs (collectively “Indemnification Liabilities”), instituted against Company and/or CAPS by any governmental agency or person or entity, including but not limited to any Covered Worker or other person working for or with Company (whether or not covered by this Agreement) and/or by any labor organization purporting to represent any such individual(s), which arise out of or relate in any way to (i) any breach of a representation or warranty of Company given to CAPS pursuant hereto, (ii) Company’s breach of any of its covenants arising under this Agreement, (iii) all liabilities arising out of or in connection with compliance with the employer coverage mandate under Section 4980H of the

Internal Revenue Code, and (iv) the employer-employee relationship between Company and any Covered Worker; other than workers compensation liabilities for which CAPS has expressly assumed liability pursuant to Paragraph 4.2 hereof, and which shall constitute the sole and exclusive liability assumed by CAPS hereunder except where such damage is caused solely by CAPS' material breach of its covenants or representations contained in this Agreement which has not been cured after written notice to CAPS and reasonable opportunity to cure. Company's duty to defend CAPS hereunder shall entitle CAPS to select its legal counsel, at reasonable rates given the nature of the action, it being acknowledged by Company and CAPS that in any action arising pursuant to this Paragraph 11, the respective interests of Company and CAPS may in some instances be in conflict. CAPS agrees to hold Company harmless and to indemnify and defend Company, its successors, licensees and assignees and representatives against any and all Indemnification Liabilities instituted against Company and/or CAPS by any governmental agency or person or entity, including but not limited to any person working for or with Company (whether or not covered by this Agreement) and/or by any labor organization purporting to represent any such individual(s), which arise out or are in connection with (i) any breach of a representation or warranty of CAPS given to Company pursuant hereto, (ii) CAPS's breach of any of its covenants arising under this Agreement and/or (iii) all liabilities for which CAPS has expressly assumed liability pursuant to Paragraph 4.2 hereof. CAPS duty to defend Company hereunder shall entitle Company to select its legal counsel, at reasonable rates given the nature of the action, it being acknowledged by CAPS and Company that in any action arising pursuant to this Paragraph 11, the respective interests of Company and CAPS may in some instances be in conflict. Notwithstanding anything herein to the contrary, any and all penalties, fines, settlements, judgments, awards, fees and/or costs shall be borne solely by Company, unless determined to be caused solely by CAPS' material breach of its covenants or representations contained in this Agreement which has not been cured after written notice to CAPS and reasonable opportunity to cure. .

12. **Limitation of Liability and Damages:** In no event shall either party be liable for any indirect, incidental, consequential, exemplary, or special damages arising out of or in any way connected with this agreement, whether in an action based upon contract, tort, or otherwise. Moreover, in no event shall CAPS or its third party licensor(s) be liable for any direct or indirect damages or loss due to (i) any Company materials; (ii) Company's results from the use of the services or software of CAPS; (iii) any damage to, or degradation or loss of, any other information, materials, or software of Company; or (iv) any matter beyond CAPS' reasonable control. Company's sole remedy for CAPS' liability regarding the performance of training, consulting, software support o, provided under this agreement or in conjunction with the software made available by caps shall be limited to the re-performance of any defective service provided by CAPS, or if re-performance is not available or practical, then a pro-rata refund of the fees paid to caps that are allocable to the defective service or software. Moreover, in no event shall the liability of CAPS or its third party licensors for matters described in (i), (ii), (iii), or (iv) exceed the fees paid by Company under this agreement during the prior twelve months for any and all claims hereunder by Company, regardless of the form of the action. The parties agree that the limitations in this section are a bargained for exchange and a material condition and premise of this agreement.
13. **Termination:** CAPS shall have the right to terminate its obligations under this Agreement without cause upon ninety (90) business days' written notification. CAPS shall also have the right to terminate its obligations under this Agreement if Company is in material breach of its obligations hereunder or under any applicable individual or collective bargaining agreement(s), and fails to cure such breach upon seven (7) business days' written notification thereof. Company shall have the right to terminate this Agreement upon three (3) days' written notice to CAPS, provided that Company makes full and timely payment to CAPS of all sums due to CAPS for services rendered and/or obligations accrued during the term of this Agreement and without set-off or reduction for any reason except a material breach of this Agreement.

14. **Survival of Certain Provisions**: Notwithstanding the termination or expiration of this Agreement, all of the indemnification covenants of the parties hereto set forth herein and all obligations of Company to pay CAPS all sums due CAPS hereunder shall survive such termination or expiration.
15. **Assignment**: Neither Company nor CAPS shall have the right to assign this Agreement without the written consent of the other, provided that CAPS may assign this Agreement to an affiliate or successor, or as part of a sale or assignment of all or substantially all of CAPS' assets.
16. **No Continuing Waiver**: No waiver by either party of any breach hereof shall be deemed a waiver of any preceding or succeeding breach hereof.
18. **Severability**: If any provision, or any part of this Agreement shall, for any reason, be held invalid, unenforceable, or contrary to public policy or any law, the legality, validity and enforceability of the remainder of this Agreement shall not be affected thereby.
19. **Governing Law**: This Agreement shall be deemed, made, construed and interpreted in accordance with the laws of the State of Oregon, without giving effect to that state's choice of law rules.
20. **Jurisdiction and Venue**: CAPS consents to the exclusive jurisdiction of the federal and state courts in the State of Oregon for the purpose of any lawsuit arising from or related to this Agreement, and Company and CAPS agree to Multnomah County as the exclusive venue for any such suit.
21. **Further Documents**: The parties hereby agree to execute and deliver all further documents that are reasonably necessary to effectuate the terms and conditions of this Agreement.
22. **Entire Agreement**: This Agreement (together with the schedules and exhibits (including the Remote Access Terms and Conditions of Exhibit B) attached hereto) sets forth the entire agreement of the parties, supersedes all prior and contemporaneous agreements, understandings, covenants and conditions relating to the subject matter hereof. This Agreement may not be changed, amended, modified, or supplemented except by a writing signed by CAPS and Company.
23. **Representation**: The relationship between the parties to this Agreement is and shall be that of independent contractors only and nothing in this Agreement shall be construed or used to create or imply any relationship of partners, joint venturers, or employer and employee between the parties. Company and CAPS each represent and warrant it was represented by its own separate and independent counsel in the negotiation and execution of this Agreement. Company nevertheless agrees that CAPS may use Company's name to disclose that it is a client of CAPS in CAPS's advertising and promotion. Except for the foregoing, neither CAPS nor Company shall issue any press release or other public statement regarding the subject matter hereof or otherwise use the other party's names, trademarks, service marks, logos, or trade dress unless the other party has previously approved it. Either party, however, may make such disclosure as may be required by applicable law.

BY SIGNING BELOW, EACH PARTY HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD ALL THE TERMS AND CONDITIONS OF THIS PAYROLL SERVICE AGREEMENT AND INTENDS TO BE BOUND THEREBY.

CAPS, LLC

By: _____

Its: _____

Date: _____

Metro Exposition Recreation Commission

By: _____

Its: _____

Date: _____

Date: _____

Name, Individually

SERVICE SCHEDULE

Venue & Event Production

Rates for 2016 as of January 1, 2016

<u>Employment Taxes:</u>	<u>Oregon</u>
FICA	7.65%
FUI ¹	0.60%
Supplemental FUI	0.00%
SUI ²	5.40% (\$35,700 ceiling)
Total ³	13.65%

***Plus any locally mandated employer taxes

Workers' Compensation:⁴ **Oregon**

Crew & Guest Services	5.49%
Executive Officers/Clerical	1.53%

¹ Up to 1.5% may be refunded in December 2016 pending the States' repayment of loans to the Federal Unemployment Account.

² SUI rates subject to change.

³ Payroll is subject to additional jurisdictional employment taxes.

Note: The Workers' Compensation rates noted above are for non-hazardous work. Stunts, pyrotechnics, aircraft, watercraft or other hazardous activities are not covered unless approved in advance of the work by the CAPS Risk Management Department. Hazardous activities may be subject to a surcharge that impacts your project's budget.

Administrative Fee:

Two percent (2.00%) of gross wages or a minimum of ten dollars (\$10.00) per check, whichever is greater
Postage to be paid by Company on checks and stubs that are mailed

EXHIBIT B
REMOTE ACCESS TERMS & CONDITIONS

The following terms and conditions are a part of the CAPS Payroll Service Agreement by and between CAPS, LLC and the named Company (the "Agreement"). Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.

NAME: **TYPE COMPANY NAME** (hereinafter "Company")

ADDRESS: **TYPE COMPANY ADDRESS**

1. **DEFINITIONS.** In addition to any other terms defined in the Agreement, the capitalized terms used in this Exhibit B will have the meanings set forth below.

1.1. **"Authorized User(s)"** means the following person or entities:

 (a) Company's designated employee(s) given access by Company to the CAPS Solution; and

 (b) If applicable, Company's designated agents, contractors, and subcontractors working on behalf of and given access by Company to the CAPS Solution.

1.2. **"Derivative Works"** mean any updates, suggestions, contributions, enhancements, improvements, additions, modifications, or derivative works.

1.3. **"Documentation"** means the user documentation and any other operating or reference manuals associated with the CAPS Solution, as is or may be supplied or provided by CAPS to Company, as well as any Derivative Works thereto.

1.4. **"CAPS Solution"** means the CAPS designated software application(s) or online solution, all of which shall be made available only in the form of compiled, executable object code. Unless otherwise noted, references to the CAPS Solution shall include the Documentation, associated API, interface, or portal, and resultant standard form reporting provided by CAPS to Company or any Authorized User(s) as well as any Derivative Works thereto (or to any part thereof).

2. **THE CAPS SOLUTION.**

2.1. **Remote Access Grant.**

 (a) **General.** CAPS hereby grants to Company during the term of the Agreement, and Company hereby accepts from CAPS, a non-exclusive and non-transferable right and license, with a limited right to sublicense (as set forth below) the right, to access and use the CAPS Solution only for Company's internal business purposes, which shall exclude any uses or purposes other than accounting for Company, and only by Company's Authorized Users and subject at all times to the number of licenses purchased by Company or permitted by the Agreement. Unless otherwise noted, references to "Company" in the Agreement will include both Company and all Authorized Users. Except as otherwise agreed by CAPS, the foregoing access grant shall permit each Authorized User to print and download materials from the CAPS Solution on a single-use, single-copy basis and not for resale or further distribution, display, or transmission so long as any such copy(ies) includes any CAPS' proprietary or legal notices.

 (b) **Right to Sublicense.** Subject to the terms and conditions of the Agreement, CAPS hereby grants to Company, during the term of the Agreement, and Company hereby accepts a limited right and license, on a non-exclusive, non-transferable basis, to enable Authorized Users that are not full-time employees (and who have been retained by Company as an agent, accountant, or contractor to use the CAPS Solution on behalf of Company in accordance with the Agreement) to access and use the CAPS Solution only for Company's internal business purposes, which shall exclude any uses or purposes other than the internal accounting for Company.

2.2. **Restrictions.** Except as expressly permitted herein, Company may not (i) copy, store, reproduce, transmit, distribute, display, rent, lease, sell, modify, alter, license, sublicense, or commercially exploit the CAPS Solution or any part thereof; (ii) reverse engineer, decompile, disassemble, translate or create any derivative work of the CAPS Solution, or any part thereof; (iii) access, link to, or use any source code from the CAPS Solution (or any part thereof); (iv) erase or

Initials: _____ _____
 CAPS Manager

remove any proprietary or intellectual property notice contained in or on the CAPS Solution, or any part thereof; (v) alter or modify any information displayed, transmitted or printed from the CAPS Solution; or (vi) use or permit use of the CAPS Solution for or by any person or entity (including Company's affiliates and subsidiaries) other than Company's Authorized Users. Moreover, except as permitted by CAPS, Company acknowledges that it has no right to sublicense any of its rights herein to another person or entity. Company acknowledges that exceeding the scope of the license herein, shall be a material breach of the Agreement and subject to the termination provisions set forth herein.

2.3. Availability. CAPS shall use commercially reasonable efforts to make the CAPS Solution accessible to Company through a CAPS designated online address, subject to required and emergency maintenance, failure of third-party networks and communications facilities, and events of force majeure for which CAPS will not be responsible. Any other specifics for access, including any registration requirements for Authorized Users, shall be set forth in the Agreement or online. The content layout, formatting, and arrangement of the CAPS Solution shall be designed by CAPS in its sole discretion. In the event that Company desires that CAPS modify the "look and feel" or standard delivery features of the CAPS Solution, the parties will mutually agree upon the provision of any related services and Company agrees to compensate CAPS for such services (as provided below).

2.4. Security. CAPS will employ the commercially reasonable security measures, using no less than industry standard security methodologies, to maintain the security of the CAPS Solution, including any Company data stored on the CAPS Solution.

3. GENERAL COMPANY OBLIGATIONS. Company acknowledges and agrees that successful implementation of the CAPS Solution shall require Company's reasonable and timely cooperation and that any failure to fulfill its obligations may cause delays in the fulfillment by CAPS of its obligations under the Agreement. Accordingly, Company acknowledges and agrees that CAPS will be relieved of its obligations under the Agreement to the extent that they are affected by Company's failure to fulfill its obligations under the Agreement. With regard to CAPS, Company's responsibilities, in addition to any other general obligations set forth in the Agreement, are as follows:

3.1. Delivery of Company Materials. In connection with implementation of the CAPS Solution for use by Company, Company shall provide to CAPS any necessary Company information or materials ("Company Materials") in a timely manner (as CAPS may request and the parties, together, may specify). Company shall also reasonably cooperate with CAPS in connection with the implementation of the CAPS Solution for use by Company and its Authorized Users and the delivery of any Company Materials by Company to the CAPS Solution. With respect to any Company Materials, Company must obtain (and acknowledges that it is responsible for obtaining) at its sole expense, and provide CAPS with reasonable proof thereof, all necessary consents, rights, permissions, and clearances required for CAPS to use the Company Materials for the purposes contemplated by the Agreement. In connection with delivering and providing CAPS with access to and use of the Company Materials, Company hereby grants to CAPS a non-exclusive right and license to copy, distribute, create derivative works from, display, modify, reformat, transmit, and otherwise use any Company Materials in connection with CAPS's obligations under the Agreement. CAPS reserves the right to refuse any Company Materials that do not meet CAPS's specification or guidelines, that do not arrive in a timely fashion, or that are otherwise likely to be considered infringing, objectionable, or in violation of law. If any portion of Company Materials cannot be integrated as required by the Agreement for the foregoing reasons, the Parties shall cooperate and mutually agree on alternatives (to the extent such Company Materials are required for CAPS to fulfill its obligations).

3.2. Assistance with Authorized Users. Company acknowledges and agrees that it is Company's responsibility to monitor its or any Authorized User's use of the CAPS Solution in compliance with these terms and conditions. Moreover, Company shall ensure that only Authorized Users have access to the CAPS Solution. In addition, Company shall keep CAPS reasonably informed as to any problems encountered with the CAPS Solution by any Authorized User and will communicate promptly in writing to CAPS any and all notices of problems, errors, or defects (and a reasonable description thereof) as well as any suggestions for improvements or corrections (with such suggestions for improvements or corrections becoming the sole and exclusive property of CAPS). Moreover, all Authorized Users given access to the CAPS Solution must agree to (i) abide by the terms and conditions of the Agreement and the End User License Agreement granting to each individual Authorized User the right to access and use the CAPS Solution in accordance with the Agreement ("EULA") (as such EULA is made available and as may be modified by CAPS from time to time), and (ii) restrict use of the CAPS Solution only for such Authorized User's internal business purposes and only as

permitted by the Agreement. Company acknowledges and agrees that Company shall be responsible and liable for any acts or omissions of its Authorized Users. Accordingly, Company acknowledges that any breach of the Agreement by Company's Authorized User(s) shall constitute a breach by Company.

3.3. Notice of Breach. If Company or any of its Authorized Users discover or are notified of a breach or potential breach of security or permissible use of personally identifiable information relating to the CAPS Solution, Company shall immediately: (i) notify CAPS of such breach or such potential breach and (ii) if the applicable information, data, or content from the CAPS Solution was in the possession or control of Company or its Authorized Users, including, without limitation, in instances where such possession or control was permitted or required by the Agreement, at the time of such breach or potential breach, Company shall immediately: (a) investigate such breach or such potential breach, (b) inform CAPS of the results of such investigation, and (c) assist CAPS in maintaining the confidentiality of such information. In addition to the foregoing, Company shall provide CAPS with any assistance reasonably necessary to enforce CAPS's rights and to enable CAPS to comply with any state or federal laws requiring the provision of notice of any security breach with respect to any personally identifiable information of the affected or impacted data subjects. Company acknowledges that CAPS has sole control over the timing, content, and method of providing any notification to any individuals (to the extent that CAPS maintains the relationship with such individuals). Company also agrees that it shall reimburse CAPS for all expenses associated with such notification if due to Company's breach of its obligations under the Agreement.

3.4. Hardware and the CAPS Solution Requirements. On a reasonable basis, CAPS shall furnish to Company information that pertains to the technical requirements for Company's use of the CAPS Solution under the Agreement and Company shall be solely responsible for obtaining, paying for all required third party software or hardware (and any licenses thereto) as necessary for access to the CAPS Solution.

3.5. Compliance with Laws. Both parties shall undertake all measures necessary to ensure that the use of the CAPS Solution complies in all respects with applicable laws, regulations, and other rules promulgated by governing authorities having jurisdiction over the Parties. In addition, Company shall not export, directly or indirectly, the CAPS Solution without first obtaining all required licenses and approvals from CAPS and the appropriate government agencies.

4. PROPRIETARY RIGHTS.

4.1. CAPS. The Agreement is not a sale of the CAPS Solution nor is it a transfer or assignment of any intellectual property rights in the CAPS Solution. Accordingly, Company acknowledges that CAPS and/or its licensors owns all right, title, and interest, including, without limitation, all intellectual property, in and to the CAPS Solution, and any related data, databases, database structure, procedures, and processes, programming code, HTML coding and design, interfaces, Web/portal pages, and any Derivative Works thereof or thereto. Any rights that Company may acquire by operation of law with respect to the CAPS Solution and any Derivative Works with respect to either the CAPS Solution are hereby assigned by Company to CAPS. Moreover, Company acknowledges and agrees that (i) the CAPS Solution includes unpublished, licensed works, and trade secrets; (ii) independent economic advantages are derived by CAPS from its ownership of the CAPS Solution; and (iii) the CAPS Solution is the confidential information of CAPS and subject to reasonable precautions to protect such information from unauthorized disclosure and use as well as any other obligations of confidentiality set forth in the Agreement. CAPS and all other names, logos, and icons identifying CAPS's products and services are proprietary marks of CAPS and/or its licensors and any use of such marks by Company shall inure to the benefit of CAPS and/or its licensors and any use of such marks without CAPS's prior written consent is strictly prohibited. CAPS reserves all other rights, title, and interests not expressly granted herein, and Company acknowledges and agrees that it shall not do anything to impair CAPS and/or its licensors rights in and to the CAPS Solution. Nothing herein, however, shall be construed as granting to CAPS any right of ownership in the data provided by Company.

4.2. Right to Monitor & Enforcement. Company acknowledges that CAPS reserves the right, at any time and without notice, to monitor compliance with the terms of the Agreement and to otherwise protect its rights in the CAPS Solution by utilizing security or other management technology and otherwise monitoring usage of the CAPS Solution, including, without limitation, by monitoring time, date, and access and implementing other controls, counters, passwords, user i.d.'s, and/or other devices or procedures. CAPS further reserves the right to suspend or terminate Company's and/or any Authorized User's access to the CAPS Solution if Company fails to comply with the terms and conditions of the

Agreement and/or the EULA. In such event, CAPS shall be relieved of its obligations under the Agreement during the period of suspension and shall not be found to be in breach of the Agreement for such relief. Moreover, Company acknowledges and agrees that any breach, threatened or actual, of any provision of these terms and conditions may cause irreparable injury to CAPS and that such injury would not be quantifiable in monetary damages alone. Accordingly, Company acknowledges and agrees that CAPS would not have an adequate remedy at law and shall otherwise be entitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of Company's obligations under these terms and conditions.

5. **WARRANTY DISCLAIMER.** THE CAPS SOLUTION IS PROVIDED "AS IS" AND "AS AVAILABLE," AND CAPS DISCLAIM ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CAPS DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE CAPS SOLUTION (AND ANY ASSOCIATED INFORMATION, SOFTWARE, AND MATERIALS), SERVICES, AND/OR SUPPORT IN TERMS OF SUITABILITY, ACCURACY, TIMELINESS, RELIABILITY, CURRENTNESS, COMPLETENESS, FUNCTIONALITY, INTENDED PURPOSE, OR OTHERWISE. CAPS ALSO DOES NOT REPRESENT OR WARRANT THAT THE CAPS SOLUTION WILL OPERATE ERROR-FREE, UNINTERRUPTED, OR IN A MANNER THAT WILL MEET YOUR REQUIREMENTS. MOREOVER, CAPS SHALL NOT BE RESPONSIBLE FOR ANY UNAUTHORIZED USE OF OR ACCESS TO THE CAPS SOLUTION.

6. **DUTIES UPON TERMINATION.** Upon termination or expiration of the Agreement for any reason all rights and licenses granted hereunder to Company and any Authorized User shall immediately terminate and Company and all Authorized Users shall immediately return to CAPS all CAPS materials in its possession, custody, or control in whichever form held (including all copies or embodiments thereof). Upon request by CAPS, Company shall provide to CAPS, as soon as possible, an affidavit executed by an officer of Company certifying that Company and its Authorized Users have complied with all of their termination duties under the Agreement.

CAPS, LLC

By: _____ Date: _____

Its: _____

PRODUCTION COMPANY NAME

By: _____ Date: _____

Its: _____

Name, Individually Date: _____

5

Initials: _____
CAPS Manager

EXHIBIT C

CAPS Solution

Solution Name	Solution URL
Electronic Time Card	https://etc.capspayroll.com
C-PAS (CAPS Production Accounting System)	https://nextgen.capspayroll.com/NextGen/Account/Home
CAPS Pay	https://capspay.capspayroll.com
LAjit (Commercial Accounting Solution) LAjit Fee: \$2,500 per month. If the client reaches the \$1,000,000 in crew payroll annually, CAPS will refund the monthly fee	<a "="" href="https://lajit.west.capspayroll.com/">https://lajit.west.capspayroll.com/ <i>InsertCompanyNameHere</i> /Login.aspx

MERC STAFF REPORT

Agenda Item/Issue: Metropolitan Exposition and Recreation Commission approval of the contract and award to the lowest responsible proposer, CAPS LLC for Stagehand Payroll Services and delegate authority to the GM of visitor venues to execute the contract.

Resolution No: 16-29

Presented by: Jason Blackwell

Date: November 2, 2016

BACKGROUND: Portland's Centers for the Arts has a collective bargaining agreement with IATSE Local 28 covering stagehand workers. Besides the fifteen regularly employed department head stagehands, Portland's also utilizes relief heads, grips, riggers, and other stage-related positions on an event-driven basis. These workers are not employed by MERC and require regular payroll services from a third-party contractor outside MERC/Metro. Historically, MERC has used a 3rd party contractor for these services in order to streamline the administrative complexities associated with this particular workforce, especially as it relates to passing through costs to our clients on an event by event basis.

In the past, MERC has had only one local option for these services, but recently other vendors have entered the Portland market for these specialized services and staff chose to conduct a procurement process.

MERC Staff prepared and issued a Request for Proposal that included a detailed scope of work and schedule for payroll services. The scope of work is limited to services for workers covered by the terms and conditions of a collective bargaining agreement between MERC and IATSE Local 28 at Portland's facilities. The contractor will provide complete payroll services, including but not limited to workers' compensation and unemployment insurance and claims handling for workers. Payroll services also include all employer-related functions as required by the United States Federal Government, State of Oregon, and any local governmental jurisdictions. This includes the coordination of all appropriate deductions and reporting requirements for taxes, fees, etc. Contractor will also authorize and issue payments on behalf of workers to the responsible parties mutually agreed upon by MERC and IATSE 28 for 401(k) and Health and Welfare contributions.

With regards to workers, Contractor will provide and coordinate new worker on boarding paperwork and any other typical employer provided services. MERC will be responsible for supervision, hiring, training, scheduling, and termination of all workers. Contractor will issue regular payments to workers and applicable parties for benefit contributions as described above.

The RFP was issued in accordance with MERC's Purchasing and Contracting Rules and in compliance with Metro Policy and any and all state (ORS) requirements. The RFP was published on ORPIN and directed to three known potentially qualified bidders and on the Metro website. On May 26, 2016, one proposal was received from CAPS LLC. CAPS LLC has significant experience with successfully providing stage-related payroll services nationwide and in the Portland region. This new contract has a few relevant features that will support MERC business needs. MERC staff will be able to operate far more efficiently with timely and accurate completion of show settlement processes. The contract with CAPS includes a significant reduction of overhead costs to MERC that will allow us to continue to diversify revenue streams. MERC currently spends 27% in payroll taxes administrative fees. The CAPS proposal will reduce that to 21.14%. Staff anticipates saving more than \$30,000 in the first year of the agreement and the equivalent of hundreds of hours saved through business process improvements created by the new agreement.

No bids were received from a certified MWESB or FOTA area business.

FISCAL IMPACT: 3rd party payroll services are budgeted in FY17 at \$375,000 and given the increased event volumes, staff anticipates continued growth year over year.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition and Recreation Commission, by Resolution No. 16-29, approve the contract award and written contract (attached hereto) with CAPS LLC, for Stagehand Payroll Services as detailed in the RFP and delegate authority to the General Manager of visitor venues to execute the contract.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 16-30

For the purpose of approving and transmitting to the Metro Council budget amendments to the Metropolitan Exposition Recreation Commission (MERC) Fund Approved Budget for fiscal year 2016-17, and requesting amendment of the Capital Improvement Plan (CIP) FY 2016-17.

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

WHEREAS, MERC previously approved and transmitted to the Metro Council the fiscal year 2016-17 budget for the MERC Fund; and

WHEREAS, MERC staff request certain budget amendments to the approved budget for fiscal year 2016-17 for the reasons described in the attached Staff Report.

BE IT THEREFORE RESOLVED THAT,

1. MERC approves the budget amendments to the MERC Fund for the fiscal year beginning July 1, 2016 and ending June 30, 2017 for inclusion as part of the total Metro budget for this period and approves the requested changes to the CIP as described in the attached Staff Report.
2. MERC requests that the Metro COO present these amendments to the Approved Budget to Metro Council for ratification.

Passed by the Commission on November 2, 2016.

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

Chair

Secretary/Treasurer

By:

Nathan A. S. Sykes, Deputy Metro Attorney

MERC Staff Report

Agenda Item/Issue:

For the purpose of approving and transmitting to the Metro Council a FY 2016-17 Budget and Capital Improvement Plan (CIP) amendment to the MERC Fund.

Resolution No: 16-30

Presented By: Ben Rowe

Date: November 2, 2016

Background and Analysis:

The Oregon Convention Center is currently managing five large lighting replacement projects, replacing less efficient fixtures and bulbs with either more efficient or LED lighting in the following areas: North Towers and South Atrium, Portland Ballroom, Oregon Ballroom, Loading Dock and Parking Garage. Once complete, OCC will realize electricity cost savings and receive substantial rebates from the Energy Trust of Oregon.

The contract for the Portland and Oregon ballrooms lighting replacement was approved in May 2016. And as reported in the staff report for resolution 16-16 June 1, 2016:

OCC's lighting projects (\$396,900) were delayed due to rapidly emerging LED technology and the availability of preferred products.

In addition to the Carryover of unspent lighting project budget, OCC will propose in the first budget amendment process to add \$750,000 to the Tower Lighting portion of the project. The scope of this portion includes lighting design and replacing fixtures in both the towers on the North end and the Skylight [atrium] on the South end of the building. This portion of the project will reduce the number of fixtures, increase lumens (brightness), reduce total Watts used, introduce colors lamps, and computerized controls.

OCC received initial professional cost estimates for the tower, atrium, Oregon Ballroom and parking garage projects significantly lower than secondary estimates and bids. The discrepancy between the initial and secondary estimates are due to several factors including constantly evolving LED fixture technology, product availability, and pilot product testing for operational compatibility. A combination of these variables facilitated the schedule delays and cost changes to these projects.

OCC proposes to reduce the budget amount for the OCC Holliday Plaza Landscape Design Project (8R082) and increase the combined budget amounts in the three lighting upgrade projects listed below and by the same amount. The proposed changes will not change the total capital budget appropriation for OCC, merely how much is allocated to each project.

Fund:	OCC Fund						
<i>Line Item Title</i>	<i>Account</i>	<i>Fund</i>	<i>Dept</i>	<i>Prog</i>	<i>Class</i>	<i>Proj</i>	<i>Amount</i>
<i>Requirements:</i>							
Holladay Plaza Design	571000	550	55999	55950	0000	8R082	(724,100)
Tower Lighting	572000	550	55999	55950	0000	8R052	526,100
Oregon Ballroom Lighting	572000	550	55999	55950	0000	8R080	108,000
Parking Garage Lighting	572000	550	55999	55950	0000	8R167	90,000
<i>Total Requirements</i>							\$0.

Fiscal Impact:

This action will amend the FY 2016-17 Approved Budget subtracting and adding the amounts listed above among the appropriate line items.

Recommendation:

Staff recommends the Metropolitan Exposition Recreation Commission adopt Resolution 16-30.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 16-31

For the purpose of selecting Bull Run Electric, Inc. for the Oregon Convention Center (OCC) Towers and South Atrium Lighting Upgrades and authorizing the General Manager of Visitor Venues to execute a contract with Bull Run Electric, Inc.

WHEREAS, the Towers and South Atrium currently have Metal Halide Lighting that are not as energy efficient as LED lighting; and

WHEREAS, replacing the above mentioned fixtures with LED lighting is in the public’s best interest as the specified fixtures will have a life span of over 20 years, providing a high quality illumination with significantly reduced maintenance requirements; and

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

WHEREAS, MERC staff evaluated the submitted bids, and Bull Run Electric, Inc., was the lowest responsive and responsible bidder with a bid amount of Four Hundred Ninety-Nine thousand, Nine Hundred Twenty One and 00/100 dollars (\$499,921.00).

BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission:

1. Selects Bull Run Electric, Inc., as the lowest responsive and responsible bidder in response to the Request for Bids for the Oregon Convention Center Towers and South Atrium Lighting Upgrades.
2. Approves the contract with Bull Run electric, Inc. in the form substantially similar to the attached Exhibit A.
3. Delegates authority to the General Manager of Visitor Venues to execute the contract on behalf of MERC.

Passed by the Commission on November 2, 2016

Approved as to form
Alison R. Kean, Metro Attorney

Chair

Secretary/Treasurer

By: _____

Nathan A. S. Sykes
Deputy Metro Attorney

MERC STAFF REPORT

Agenda Item/Issue: Metropolitan Exposition and Recreation Commission approval of the contract and award to the lowest responsible bidder, Bull Run Electric for the Oregon Convention Center, for “Towers and South Atrium Lighting Upgrades” and delegate authority to the GM of visitor venues to execute the contract.

Resolution No: 16-31

Presented by: Josh Lipscomb

Date: November 2, 2016

BACKGROUND: Oregon Convention Center’s towers serve as an iconic landmark for Portland, balancing the east and west sides of the city. During the day, the two 320-foot glass and steel spires provide natural lighting to the center. New programmable, colored, LED lights will add drama to the city’s nighttime skyline, enhance the convention center’s visitor experience, and amplify its forward-thinking brand. The original tower lighting has been in place for 26 years, and the updated lighting system is one of many steps the LEED Platinum certified building is taking to reduce its overall energy usage. Additionally, reduced maintenance effort/costs are anticipated as a result of the new fixtures.

MERC Staff prepared and issued Bid Documents and a Request for Bids that included a scope of work to upgrade the lighting fixtures in the Towers and South Atrium of the Oregon Convention Center. The Scope of work included the Replacement of existing metal halide lighting fixtures with energy efficient LED lighting.

The RFB was issued in accordance with MERC’s Purchasing and Contracting Rules and in compliance with Metro Policy and any and all state (ORS) requirements. The RFB was published on ORPIN, in the Portland Observer online, and the Business Tribune. On October 13, 2016 two bids were received and ranged from \$499,921.00 to \$594,500.00. Staff recommends Bull Run Electric be considered as the lowest responsive and responsible bidder with the bid as submitted in the amount of \$499,921.00.

Bull Run is a certified COBID business. Neither of the companies that submitted bids intend to use subcontractors

FISCAL IMPACT: The FY 2016-17 Amended Budget for this project in the Oregon Convention Center CIP includes \$650,000 for the appropriation for the proposed Lighting Upgrades. The budget was amended based upon the high range of revised estimates prior to receiving the bids referenced above.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition and Recreation Commission, by Resolution No 16-31, approve the contract award and written contract (attached hereto) with Bull Run Electric, for the amount \$499,921.00 for the Oregon Convention Center – Towers and South Atrium Lighting Upgrades as detailed in the RFB and delegate authority to the General Manager of visitor venues to execute the contract.



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

Construction Agreement

MERC CONTRACT NO. 307003

THIS CONSTRUCTION AGREEMENT is between Metropolitan Exposition Recreation Commission, an appointed commission of Metro, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, referred to herein as "MERC" or "Metro," and Bull Run Electric, Inc., referred to herein as "Contractor," located at P.O. Box 1147, Sandy, Oregon, 97055..

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK AND CONTRACT TERMS

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

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing November 2, 2016 through and including August 31, 2017. Substantial completion per Section 9.4 of the General Conditions is June 30, 2017.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

MERC shall pay the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work, in the maximum amount of Four Hundred Ninety-Nine Thousand Nine Hundred Twenty-One AND 00/100THS DOLLARS (\$499,921.00) (the "Maximum Price"). MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work. The Maximum Price includes all fees, costs and expenses of whatever nature. Each of MERC's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the MERC contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and expenses incurred during the billing period, and will not be submitted more frequently than once a month.

Contractor's billing invoices shall be sent to metroaccountspayable@oregonmetro.gov. The MERC contract number shall be referenced in the email subject line. MERC requests that Contractors submit billing invoices for services within 10 business days of performance. Payment shall be made by MERC on a Net 30 day basis upon receipt of CONTRACTOR invoice.

ARTICLE IV

BONDS

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

ARTICLE V

PUBLIC CONTRACTS

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

For public work subject to ORS 279C.800 to 279C.870, the CONTRACTOR shall pay prevailing wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, the CONTRACTOR and every



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

Construction Agreement

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

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

ARTICLE VI COUNTERPARTS

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

ARTICLE VII DELIVERY OF NOTICES

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

To Contractor: Kyle Ruthardt
 Bull Run Electric, Inc.
 P.O. Box 1147
 Sandy, Oregon 97055
 503-668-5045

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

With Copy to: Nancy Strening
 600 NE Grand Ave
 Portland, OR 97232
 503-797-1929

CONTRACTOR

METROPOLITAN EXPOSITION RECREATION
 COMMISSION

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

Construction Agreement

MERC CONTRACT NO. 307003

ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

1. Purpose and Goal of Work

MERC is contracting for the provision and installation of replacement lighting fixtures for energy efficiency in the Towers and South Atrium of the Oregon Convention Center (OCC), located at 777 NE MLK Jr Blvd, Portland, OR 97232.

2. Scope of Work

Description of Work

Contractor is to provide all equipment, materials and labor, for removal and replacement of lighting fixtures in the Towers and South Atrium of the Oregon Convention Center. The Scope of Work includes the removal and disposal of the current lighting fixtures as well as the installation and connection for the new fixtures and equipment.

Work is to be performed as specified below and as per the drawings, fixture specifications and manufacturers cut sheets, attached hereto as Attachments C, D and E respectively.

Clarifications

- Contractor is responsible for removal and disposal of existing fixtures in accordance with the EPA guidelines. More information can be found regarding EPA guidelines at <http://www.deq.state.or.us/lq/hw/UW.htm>
- Contractor is to provide reporting of recycling/waste disposal to Metro Project Manager.
- All installations must comply with manufacturer's specifications.
- Contractor responsible for field verification of all installation and quantities.
- Installing Contractor will be responsible for supplying all required lifts
- Material submittals are required before materials are ordered and must be approved per the Specifications
- Miscellaneous materials necessary for proposer installation are to be provided by contractor.
- A loading dock area or equivalent will be available for Contractor job storage. OCC shall coordinate with Contractor to establish location.

Contractor is to provide three (3) sets of hard copy and one set of electronic As-Built drawings upon project completion. This "as built" documentation is to include, but is not limited to; all warranty information, all parts information, all specific parts ordering information and requirements including vendor name, part # and model #, any drawings and a list of vendor representatives and contact information. This documentation is a record of the final systems as installed and adjusted, after all final acceptance tests have been completed. System documentation includes a clearly outlined schedule for routine maintenance operations and safety checks.

Contractor is responsible for cleanliness of work areas and shall pick up and dispose of debris created during construction. Contractor is responsible for protection of work area from pedestrian traffic. Contractor is responsible for cover up and protection of existing equipment and building. Contractor is to maintain a worksite free of hazardous work conditions and construction debris. Dust control is the responsibility of the Contractor.

Contractor shall not interfere with scheduled events or prohibit any tenants of clients from accessing other spaces in the building. Loud noise can be an issue in the facility, therefore any work that may be louder than a hand drill or similar will need to be coordinated with OCC, so as to not disturb events/clients. Work will need to be done around building schedule. Schedule will need to be coordinated with and approved by Metro Project Manager and contractor shall work with OCC provided schedule. Work can be scheduled during normal business hours between December 12, 2016 and December 30, 2016. All work taking place outside of those dates shall be performed between the hours of 10:00 p.m. and 7:00 a.m.

Construction Agreement

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

ATTACHMENT C: Plan Set, titled “Oregon Convention Center – North and East Towers Re-Lighting”, dated June 28, 2016;

ATTACHMENT D: Specifications, titled “Oregon Convention Center – North and East Towers Re-Lighting”; dated June 28, 2016

ATTACHMENT E: Manufacturers Cut Sheets;

And any modifications of any of the foregoing in the form of Addenda or Change Orders entered into in accordance with the terms of the Contract. Where applicable, reference to this Contract herein shall be deemed to refer to all of the Contract Documents.

Contractor shall provide all labor, tools, equipment, machinery, supervision, transportation, permits, and every other item and service necessary to perform the Work described in the Contract Documents. Contractor shall fully comply with each and every term, condition and provision of the Contract Documents.

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ATTACHMENT B - SECTION 007200 METRO GENERAL CONDITIONS

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METRO GENERAL CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.13.1 The change in the Work;

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

1.1.13.3 The extent of any adjustment to the Contract Time.

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

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

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

1.1.17 Contract: The Contract Documents.

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

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

1.1.20 Contractor: The person having entered into this Contract with Metro and who is responsible for the complete performance of the Work contemplated by the Contract Documents and for the payment of all legal debts pertaining to the Work, including its officers, agents, employees, and representatives.

1.1.21 Contract Time: The amount of time stated in the Contract Documents for the performance of all or a specified portion of the Work, as modified by any Change Orders.

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

1.1.23 Day: Calendar day including Saturdays, Sundays, and legal holidays.

Construction Agreement

METRO CONTRACT NO. 307003

1.1.24 Defective Work: Work that (a) is performed in an unsatisfactory, faulty, or deficient manner; (b) does not conform to the Contract Documents; (c) does not meet the requirements of any reference standard, test, or approval referred to or incorporated by the Contract Documents; or (d) has been damaged by anyone other than Metro prior to Acceptance of the Work, whether or not such Work is in Metro's possession or use.

1.1.25 Direct Costs: The costs of labor (including benefits), materials, and equipment incurred by the person performing the Work or part of the Work.

1.1.26 Drawings: The graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.27 Engineer: A person lawfully practicing engineering. The term "Engineer" refers to the Engineer or the Engineer's authorized representative.

1.1.28 Environmental Laws: Any applicable statute, law, ordinance, order, consent decree, judgment, permit, license, code provision, covenant deed, common law, treaty, convention, or other requirement pertaining to protection of the environment, health or safety, natural resources, conservation, wildlife, waste management, or disposal of hazardous substances or pollution, including but not limited to regulation of releases to air, land, water, and groundwater.

1.1.29 Equal, Approved, Approved Equal: The material or product to be supplied or installed is equal to or better than that specified in function, performance, reliability, quality, and general configuration and is approved by Architect or Engineer. Equality in reference to the Project design requirements shall be determined by Architect or Engineer prior to installation of any material or product in the Project. Where the term "or equal" is not used and a sole product is specified, the term "or equal" is implied.

1.1.30 Final Completion: Full performance of all of the Work and acceptance of the Project by Metro.

1.1.31 Final Payment: The balance of the Contract Amount to be paid to the Contractor upon Final Completion and Acceptance of the Work. "Final Payment" includes payment of any withheld Retainage less deductions permitted or required by the Contract.

1.1.32 Force Account Work: Work, ordered in writing by Metro, for which Contractor must report its actual costs in accordance with Section 8.4 of the General Conditions.

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

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

1.1.35 Hazardous Materials: Any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local statute, regulation, or ordinance presently in effect or subsequently enacted. For purposes of Section 10.7, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project Site regardless of whether the Hazardous Material was specified, required, or otherwise addressed in the Contract Documents.

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

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

1.1.38 Lump Sum: A way of expressing the Contract Amount for the Work, or the price bid for a portion of the Work, stated as a single price for all labor, materials, supplies, incidental work, overhead, and profit.

1.1.39 Metro: A metropolitan service district organized under the laws of the State of Oregon and the Metro Charter.

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

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

1.1.42 Minority Business Enterprise, Women Business Enterprise and Emerging Small Business ("MWESB"): A firm eligible to participate as a Minority Business Enterprise, Women Business Enterprise or Emerging Small Business (collectively referred to as "MWESB") because it meets the criteria as established by the Office of Minority Women and Emerging Small Business in the State of Oregon. A firm will no longer qualify as an MWESB on this Contract when it receives notification of decertification, denial of recertification, or notice of graduation by the certifying agency.

1.1.43 MWESB Program: Metro's program to provide maximum opportunities to Minority, Women-Owned and Emerging Small Business Enterprises in contracts, which is contained in Metro Code Section 2.04.100 to 2.04.190.

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

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

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

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

1.1.45.3 Contractor-owned equipment.

1.1.45.4 Equipment maintenance and repairs.

1.1.45.5 Temporary construction, utilities, and safety requirements.

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

1.1.45.7 Parking fees for workers (if applicable).

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

1.1.45.9 Cost of reproduction.

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

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

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

1.1.45.10.3 Interest on capital.

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

1.1.46 Owner: Metro.

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

1.1.48 Plans: Drawings.

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

1.1.50 Project: The Work described in the Contract Documents.

1.1.51 Project Manager: The Metro representative on the construction Site. The Project Manager will be an employee of Metro who will represent Metro to the extent of his authority as delegated by the Chief Operating Officer. For purposes of administering this Contract the term "Project Manager" will refer to the on-site Metro representative and to any duly appointed assistants who may be designated in writing. The Architect or Engineer will be called upon as required by and at the direction of Metro for technical assistance and for interpretation of the Contract Documents.

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

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

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

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

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

1.1.57 Reference Specifications: Bulletins, standards, rules, methods of analysis or testing, codes, and Specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents that when included in the Contract Documents establish the basis by which specific portions of the Work are to be performed. All such references specified refer to the latest edition thereof, including any Amendments in effect and published at the time of advertising for Bids or of issuing the permit for the Project.

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

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

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

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

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

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

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

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

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

1.1.67 Solicitation Documents: An RFB.

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

1.1.69 Specifications: That portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, and performance of related services, including any Reference Specifications.

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

1.1.71 Submittals: Includes shop drawings, samples, manufacturer's brochures, pamphlets, catalog cuts, color charts, or other descriptive data, clearly defining the article, material, equipment, or device proposed by Contractor for use in the Work. "Shop drawings" are the drawings and diagrams showing details of fabrication and erection that Contractor is required to submit to the Architect or Engineer.

1.1.72 Substantial Completion: The stage in the progress of the Work, as determined by Metro, when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Metro can lawfully occupy or use the Work for its intended use.

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

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

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

1.1.76 Work: Unless the context requires otherwise, the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute all or a portion of the Project as the context requires.

1.2 Interpretation and Use of Contract Documents.

1.2.1 Intent and Effect of the Contract. The Contract Documents form the Contract for construction and represent an integrated agreement between the Parties. The Contract supersedes all prior negotiations, representations, or agreements between the Parties, either written or oral. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. Unless otherwise stated in the Contract Documents, words describing materials or Work that have a well-known technical or trade meaning shall be construed in accordance with such meanings.

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

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

1.2.4 Mandatory Nature of Specifications and Drawings. Mention in the Specifications or indication on the drawings of articles, materials, operations, sequence, or methods requires Contractor to furnish and install (i.e., provide) each article mentioned or indicated, of the quality or according to qualifications noted, to perform each operation called for, in the sequence called for, and to provide therefore all necessary labor, equipment, and incidentals. The determination of the type of operations and methods to be utilized in the performance of the Work shall be the responsibility of Contractor unless the Contract Documents prescribe a specific type of operation, sequence, or method, in which case Contractor shall comply with the prescribed operation, sequence, or method. Sentences in the imperative tense or command format in these Contract Documents shall be deemed to be directed to Contractor and to require Contractor to perform the services and/or provide the materials described.

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

1.2.5.1 Executed Construction Agreement.

1.2.5.2 Supplementary Conditions.

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

1.2.5.4 Specifications.

1.2.5.5 Drawings.

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

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

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

1.2.6.1 Wherever the words "as directed," "as instructed," "as required," "as permitted," or words of like effect are used, it shall be understood that the direction, requirement, or permission of Metro is intended.

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

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

1.2.7 Discrepancies, Errors and Omissions. The intent of the Contract Documents is to require Contractor to perform and provide every detail and item necessary for completion of the Project. The Contract Documents are not complete in every detail, however, and Contractor shall comply with their intent and meaning, taken as a whole, and shall not avail itself of any manifest errors or omissions to the detriment of the Work. Should any error, omission, discrepancy, or ambiguity appear in the Contract Documents, instructions, or Work done by others, Contractor shall immediately upon discovery submit a Request for Information to Metro pursuant to Section 3.3. If Contractor proceeds with any such Work without receiving a response to the Request for Information, Contractor shall be responsible for all resulting damage and defects, and shall perform any Work necessary to comply with the Request for Information at no cost to Metro. Any Work or material not indicated in the Contract Documents that is manifestly necessary for full and faithful performance of the Work in accordance with the intent of the Contract Documents shall be indicated by Contractor on the shop drawings and provided by Contractor to the same extent as if both indicated and specified. Any Work indicated on the drawings but not specified, or vice versa, shall be furnished in the manner specified above as though fully set forth in both. Work not particularly detailed, marked, or specified shall be the same as similar parts that are detailed, marked, or specified. In case of discrepancy or ambiguity in quantity or quality, the greater quantity or better quality as determined by Metro shall be provided at no extra cost to Metro.

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

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

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

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

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

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

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

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

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

ARTICLE 2 CONTRACTOR

2.1 Responsibilities of the Contractor.

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

2.1.2 Until the Work is completed and accepted by Metro, the Contractor is responsible for any damage it causes to either permanent or temporary work, utilities, materials, plants, and equipment, all of which must be repaired to the satisfaction of the Project Manager at the Contractor's expense. Damage caused by vandals must

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be covered by the Contractor's insurance. Damage to any portion of the Work that has been completed and accepted by Metro and that is open for public use is not the responsibility of the Contractor if caused by third persons, such as vandals.

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

2.2 Documents.

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

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

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

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

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

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

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

2.6 Use of the Site by Contractor. Contractor shall have complete and exclusive use of the premises for execution of the Work within the boundaries shown on the drawings. The Contractor's use of the premises is limited only by Metro's right to perform Work or to retain other contractors on portions of the Project. All construction activities, storage, staging, and Work shall be confined to the limits of Work, as per the drawings. Under no circumstances shall portions of the Site beyond the limits of Work be disturbed. The Contractor shall appropriately fence and maintain barriers to confine limits of Work to those areas indicated on the drawings. All driveways and entrances to the Site shall remain clear and available to Metro and emergency vehicles at all times. The Contractor shall not use these areas for parking or storage of materials. The Contractor shall schedule delivery of materials to minimize space and time requirements for storage of materials and equipment on Site. The Contractor shall keep roadway pavement clean, free of mud, rocks, debris associated with materials, and vehicles. The Contractor shall coordinate use of the premises under the direction of the Architect or Engineer and Owner. The Contractor shall assume all responsibility for

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the protection and safe keeping of the Site, structures, and products stored on the Site included in this Contract. At no cost to Metro, the Contractor shall move any stored products that interfere with operations of Metro or construction activities. The Contractor shall obtain and pay for the use of additional storage or Work areas needed for operations.

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

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

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

2.10 Key Personnel. Contractor shall submit, in writing, to Metro a list of the names, addresses, and telephone numbers of its key personnel who are to be contacted in case of emergencies on the job during non-working hours, including Saturdays, Sundays, and holidays, and all other key personnel as may be required.

2.11 Contractor's Employees and Subcontractors.

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

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

2.11.3 Contractor shall give Metro, at its request at any time, full and correct information as to the number of workers employed in connection with each subdivision of the Work, the classification and rate of pay of each worker, the cost to Contractor of each class of materials, tools, and appliances used by it in the Work, and the amount of each class of materials used in each subdivision of the Work.

2.12 Contractor to Supply Sufficient Material and Workers. Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to substantially complete the Work within the time specified in the Contract and in accordance with the Construction Schedule. Contractor shall coordinate the Work of its Subcontractors so that information required by one will be provided by others involved in time for incorporation in the Work in proper sequence and without delay of any materials, devices, or provisions for future Work.

2.13 Construction Plant, Equipment, and Methods.

2.13.1 The construction plant and equipment provided by Contractor, and Contractor's methods and organization for handling the Work, shall be such as will secure a good quality of Work and rate of progress that will ensure the completion of the Work within the time specified, in accordance with the Construction Schedule, and without violating city, local, state, or federal environmental regulations during construction.

2.13.2 Contractor shall give Metro full information in advance as to Contractor's plans for carrying on any part of the Work. If at any time before the commencement or during the progress of the Work, any part of Contractor's plant or equipment, or any of Contractor's methods of executing the Work, appear to Metro to be inadequate to ensure the required quality, environmental protection, or rate of progress of the Work, Metro may order Contractor to increase or improve its facilities or methods, and Contractor shall promptly comply with such orders. Neither compliance with such orders nor failure of Metro to issue such orders shall relieve Contractor from the obligation or liability to secure the quality of Work and the rate of progress required by the Contract. Contractor shall

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be responsible for overload of any part or parts of structures beyond their safe calculated carrying capacities and for release of pollutants into surrounding waters resulting from Contractor's activities on the Site.

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

2.14 Permits.

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

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

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

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

2.17 Accounting Records.

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

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

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

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

2.17.1.4 Payments made to all suppliers and sub-consultants.

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

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

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

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

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

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

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

ARTICLE 3 ADMINISTRATION OF THE CONTRACT

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

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

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

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

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

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

3.2.5 Metro may call for meetings of Contractor, Contractor's Subcontractors, and Suppliers as Metro deems necessary for the proper supervision and inspection of the Work. Such meetings shall be held at the Site on regular working days during regular working hours, unless otherwise directed by Metro. Attendance shall be mandatory for all Parties notified to attend.

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

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Contractor of any of the risks or obligations under the Contract, or create any liability to Metro because of such approval or advice.

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

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

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

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

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

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

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

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

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

3.4 Contractor's Claims.

3.4.1 **Generally.** No claim by Contractor shall be considered or allowed under this Contract except as specifically provided and prescribed under this Section. Failure to make a claim as specifically prescribed by this Section or failure to perform disputed Work, if any, as directed by Metro shall bar Contractor from any recovery or extension of time resulting from the facts surrounding the claim. Contractor's full and complete compliance with this Section shall be a condition precedent to any right of Contractor to further prosecute any claim against Metro arising out of or related to Work described in the Contract Documents. Every decision and action of Metro shall be considered final unless Contractor makes a claim concerning such decision or action pursuant to this Section.

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

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

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

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

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

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3.4.3 Claims For Excusable Delays.

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

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

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

3.4.3.1.3 Could not have been reasonably anticipated by Contractor.

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

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

3.4.3.3.1 An act of force majeure.

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

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

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

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

3.4.3.3.6 Epidemics or quarantines.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.4.3.6 Excusable Delay Claims Procedure.

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

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

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

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

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

3.4.5.1 Contractor shall, within forty-eight (48) hours following discovery of the facts that give rise to its claim, notify the Project Manager in writing of its intent to make the claim. Within ten (10) days following discovery of the facts that give rise to its claim and prior to commencing the Work or conforming to the Clarification on which the claim is based, if any, Contractor shall submit its formal written claim to the Project Manager. Contractor's formal claim shall include a description of:

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

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

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

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

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

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

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

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

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

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

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

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

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

3.6 Metro's Right to Adjust Payments.

3.6.1 Adjusted Payments for Delay. Time is of the essence in this Contract. Metro and Contractor understand and agree that Metro will be damaged if Contractor fails to substantially complete the Work within the Contract Time, and that Metro will be vulnerable to further damages if Metro is obligated to continue paying Contractor for Work performed after the Contract Time has expired. It is therefore agreed that upon the expiration of the Contract

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

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

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

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

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

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

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

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

ARTICLE 4

SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

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

4.2 Objection to Subcontractors or Suppliers. Metro reserves the right to make reasonable objection to any of Contractor's Subcontractors or Suppliers if Metro discovers any data or information at any time during the performance of the Contract that gives Metro a basis for such reasonable objection. Metro will notify Contractor in writing if Metro has any reasonable objection to any of Contractor's Subcontractors or Suppliers. Contractor shall not subcontract with any Subcontractor or Supplier to which Metro has made a reasonable objection. In the event of Metro's reasonable objection to any Subcontractor or Supplier, Contractor shall propose another entity to which Metro has no reasonable objection.

4.3 Substitution, Change, or Addition of Subcontractors or Suppliers. At any time that Contractor intends to substitute, change, or add a Subcontractor or Supplier during the performance of the Contract, Contractor shall give Metro prior written notice of such intention. Contractor shall not substitute, change, or add any such Subcontractor or Supplier if Metro gives Contractor reasonable objection in writing within ten (10) days after Metro receives such notice.

4.4 Removal of Subcontractors at Request of Metro. When any Subcontractor fails to prosecute a portion of the Work in a satisfactory manner, Metro may so notify Contractor. If the Subcontractor fails to cure the unsatisfactory Work promptly, Contractor shall remove such Subcontractor immediately upon written request of Metro

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and Contractor shall request approval from Metro of a new Subcontractor to perform this section of the Work at no increase in the Contract Amount, and with no change in the Contract Time.

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

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

4.7 Contractor's Agreements with Subcontractors.

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

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

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

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

ARTICLE 5

TIME OF COMPLETION AND SCHEDULE FOR THE WORK

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

5.2 Time of Completion.

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

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

5.2.3 Failure of Contractor to substantially complete the Work within the Contract Time and according to the provisions of these Contract Documents shall subject Contractor to liquidated damages pursuant to the applicable sections of these Contract Documents.

5.3 Extensions of Time. Extensions of the Contract Time shall be made pursuant to the procedure and according to the provisions and requirements contained in Articles 3 and 8 of these Contract Documents.

5.4 Project Scheduling. Contractor shall submit to Metro a detailed Construction Schedule for completion of the Work pursuant the Specifications following the Critical Path method. The Construction Schedule shall, when approved and as updated and approved by Metro, become a part of the Contract Documents.

5.5 Use of Completed Parts of the Work Before Acceptance.

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

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

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

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

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

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

ARTICLE 6 COORDINATION WITH OTHER METRO CONTRACTORS

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

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

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

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

6.5 Failure to Maintain Schedule.

6.5.1 If, in the opinion of Metro, Contractor falls behind the Construction Schedule or delays the progress of Other Metro Contractors and is not entitled to an extension of time pursuant to the Contract Documents, Contractor shall perform all steps that are necessary, in the opinion of Metro, to bring Contractor's Work into compliance with the Construction Schedule or to remedy any delay to the progress of Other Metro Contractors. Contractor shall submit operation plans to Metro that shall fully demonstrate the manner of intended compliance with this Section. The steps referred to above shall include but not be limited to:

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

6.5.1.2 Increase, when permitted, the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment or any combination of the foregoing, sufficient to eliminate the backlog of Work.

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

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

6.5.2 If Metro directs Contractor to take measures described in this Section, or if Contractor takes such measures without direction from Metro, Contractor shall bear all costs of complying. Metro shall, however, reimburse Contractor for reasonable costs of complying if such directive to accelerate from Metro was issued to overcome delay caused by the acts or omissions of Metro or persons acting for Metro, provided Contractor has complied with all applicable provisions of Articles 3 and 8 of these General Conditions.

6.5.3 Failure to maintain the construction schedule or to take action to regain the schedule or to furnish a schedule as outlined in the Specifications may result in withholding all or part of the monthly progress payments.

6.6 Failure to Coordinate Work. If Contractor fails to coordinate its Work with the Work of Other Metro Contractors as directed by Metro, Metro may, upon written notice to Contractor:

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

6.6.2 Direct others to perform portions of the affected Work and charge the cost of such Work against the Contract Amount or deduct the cost from sums held in Retainage.

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

6.7 Other Metro Contractors' Failure to Coordinate. If Contractor determines that any Other Metro Contractor on this Project is failing to coordinate its Work with the Work of Contractor, Contractor shall notify Metro immediately and before performing any affected Work.

6.8 Conflicts Among Contractors. Any difference or conflict that may arise between Contractor and Other Metro Contractors in regard to their Work shall be adjusted as determined by Metro. If directed by Metro, Contractor shall suspend any part of the Work specified or shall carry on the same in such a manner as may be prescribed by Metro when such suspension or prosecution is necessary to facilitate the Work of Other Metro Contractors.

6.9 Coordination Drawings. Contractor shall prepare coordination drawings as determined necessary by Metro to satisfactorily coordinate and interface its Work with the Work of all Other Metro Contractors, thereby avoiding conflicts that may arise.

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

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

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

6.11 Conferences. At any time during the progress of the Work, Metro shall have authority to require Contractor to attend any conference of any or all of the Contractors engaged in the Project or related projects.

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

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

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

ARTICLE 7 CONTROL AND QUALITY OF WORK AND MATERIAL

7.1 Quality Control.

7.1.1 Generally. Contractor has the primary responsibility for quality control. Contractor will provide continuous superintendence and inspection to insure that the Work is completed in accordance with the plans and Specifications. During the performance of the Work, Metro, the Architect or Engineer, Special Inspectors, and any representatives of federal, state, and local agencies having jurisdiction over the Work may enter the Project Site, the shops where any part of the Work is being prepared, or the factories or sites where any materials for use in the Work are being or will be manufactured or derived. Contractor shall provide proper and safe facilities for such inspections, and shall make arrangements with manufacturers or other suppliers to facilitate inspection of their processes and products to such extent as Metro's interest may require. No claims for extension of the Contract Time or increase in the Contract Amount shall be allowed for any access allowed to Metro under this Section.

7.1.2 Quality Control Plan. Contractor shall prepare and submit a Quality Control Plan to the Project Manager within thirty (30) days following the Notice to Proceed. The Plan will describe the Contractor's procedures for implementing the Quality Control Plan. The Plan shall include without limitation the Quality Control organization, inspection procedures, tests anticipated, materials control, contingency plans related to fire protection and remediation of contaminated releases or other environmental improvement, and reports. Metro reserves the right to accept, reject, or modify the Quality Control Plan. Contractor will submit an interim Quality Control Plan prior to the start of Work to cover the first thirty (30) days of construction.

7.1.3 Quality Control Manager. Prior to initiation of construction, Contractor shall designate in writing a Quality Control Manager who shall be responsible for coordinating Contractor's Quality Control Program. The individual so designated shall be the interface with the Project Manager on matters relating to submittals, inspection, scheduling, unacceptable Work product, and corrective actions. Metro reserves the right to accept or reject the Quality Control Manager designated by Contractor.

7.2 **Inspection**. Contractor has the primary responsibility for providing inspection and testing, except as otherwise set forth in the Specifications. Metro and its agents will also inspect at their discretion or as outlined in the Specifications.

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7.2.1 Generally. At all times during construction of the Work, Contractor shall permit Metro, the Architect or Engineer, and Special Inspectors, or any representatives of federal, state, and local agencies having jurisdiction over the Work, to visit and monitor the progress of the Work for conformance of the Work with the Contract Documents.

7.2.2 Special Inspections.

7.2.2.1 At all times during construction of the Work, Contractor shall permit Metro, the Architect or Engineer, and Special Inspectors, or any representatives of federal, state, and local agencies having jurisdiction over the Work, to visit and inspect the Work, the materials and the manufacture and preparation of such materials, and subject the Work and materials to inspection and testing to determine if the Work conforms to the requirements of the Contract Documents. Contractor shall maintain proper facilities and safe access for all such inspections.

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

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

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

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

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

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

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

7.2.3 Notice to Metro for Certain Work Days. Whenever Contractor intends to perform Work on Saturday, Sunday, or any legal holiday, it shall give written notice to Metro of such intention at least two (2) working days prior to performing such Work, or such other period as may be specified by Metro, so that Metro may make the necessary arrangement for testing and inspection.

7.2.4 Correction of Defective Work Before Acceptance. Any defective Work or Work that otherwise fails to conform to the Contract Documents that is discovered before Final Completion and Acceptance of the Work, shall be corrected immediately by Contractor, and any unsatisfactory materials shall be rejected and replaced with

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satisfactory materials, notwithstanding that they may have been overlooked by the authorized inspector. The inspection of the Work by Metro, the Architect or Engineer, or any other agency shall not relieve Contractor of any of its obligations to perform fully all of the terms and provisions of the Contract Documents.

7.2.5 Acceptance Not Implied by Failure to Object. Failure or neglect on the part of Metro or any of its authorized representatives to condemn or reject defective, improper, or inferior Work or materials shall not be construed to imply a final acceptance of such Work or materials and shall not be construed as relieving Contractor of its duties to perform fully all requirements of the Contract Documents.

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

7.3 Unsatisfactory Materials and Workmanship.

7.3.1 Generally. Material, Work, or workmanship that, in the opinion of the Project Manager, does not conform to the Contract Documents, or is not equal to the samples submitted to and approved by the Project Manager, or is in any way unsatisfactory or unsuited to the purpose for which it is intended, will be rejected. Contractor shall bear the cost of correcting or removing, as deemed necessary by Metro, all non-conforming materials, defective Work, or unsatisfactory workmanship. Contractor shall make a close inspection of all materials as delivered, and shall promptly replace all defective materials with conforming materials without waiting for their rejection by Metro.

7.3.2 Removal of Rejected or Non-Conforming Work or Material. All rejected material or Work, and all defective or non-conforming Work or material, shall be removed from the Site without delay. If Contractor fails to do so within forty-eight (48) hours after having been so directed by Metro, the rejected material may be removed by Metro and the cost of removal charged against Contractor and deducted from Retainage held by Metro or offset against payments due Contractor, at Metro's option. If in the judgment of Metro it is undesirable or impracticable to replace any defective or non-conforming Work or materials, the compensation to be paid to Contractor shall be reduced by Change Order or Force Account, as applicable, by such amount as, in the judgment of Metro, shall be equitable.

7.4 **General Warranty of Contractor.** Contractor warrants to Metro that materials and equipment provided under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects and contaminants not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Metro, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty made by Contractor under this Section shall be in addition to any other specific warranties and certifications required elsewhere in these Contract Documents.

7.5 Third-Party Warranties.

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

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

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

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

7.7 Correction of Work by Contractor.

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

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

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

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

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

7.7.2 In the case of equipment manufactured by others and supplied and/or installed by Contractor, the one (1)-year period shall commence upon the date of first beneficial operation of such equipment by Metro. In the case of Work that is corrected or replaced by Contractor, the one (1)-year period shall commence again on the date of acceptance by Metro of such corrected or replaced Work. Testing shall not be construed to mean acceptance.

7.7.3 If Metro does not require correction or replacement of defective Work or Work failing to conform to the Contract Documents, Contractor, if required by Metro, shall repay to Metro such portion of the Contract Amount as is equitable under the circumstances, as determined by Metro.

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

7.8 Warranty and Correction Agreements by Subcontractors.

7.8.1 Generally. In addition to any requirements for written warranties required by the Specifications, Contractor shall require all of its Subcontractors and Suppliers of any tier to make the same warranty to Metro as Contractor makes under Section 7.4. Contractor shall also require all of its Subcontractors and Suppliers of any tier to agree to correct or replace defective Work or Work not conforming to the Contract Documents, and to take full responsibility for defective materials in the same manner as Contractor agrees to correct or replace such Work under Section 7.5.

7.8.2 Form of Submissions. Contractor shall require all of its Subcontractors and Suppliers of any tier to sign documents evidencing the promises made pursuant to Section 7.8.1 above and shall submit such documents to Metro with its request for Final Payment. Such documents shall be signed by both Contractor and the applicable Subcontractor or Supplier and shall be in the form attached as Exhibit 1 to these General Conditions.

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

7.10 **Proof of Compliance with Contract Provisions.** For Metro to determine whether Contractor has complied or is complying with the requirements of the Contract that are not readily enforceable by inspection and test of the Work, Contractor shall, upon request, promptly submit to Metro such properly authenticated documents as may be necessary to demonstrate compliance with the Contract or other satisfactory proof of its compliance with such requirements.

7.11 **Patents, Copyrights, Trademarks.** All fees or costs of claims for any patented invention, article, or arrangement or any copyrights or trademarks that may be used upon or in any manner connected with the performance of the Work or any part thereof, shall be included in the Bid or Proposal for doing the Work. Contractor shall save, keep, hold harmless, and fully indemnify Metro and Architect or Engineer from all damages, claims for damage, lawsuits, costs, expenses, or liabilities of whatever nature in law or equity, including attorney fees and court costs, that may at any time arise or be set up for any infringement of the patent rights, copyrights, or trademarks of any person or persons in consequence of the use by Metro of articles to be supplied under the Contract and of which Contractor is not the patentee or assignee or has not the lawful right to sell the same. This is in addition to all other hold-harmless and indemnification clauses in these Contract Documents.

7.12 Anti-Trust Claims.

7.12.1 By entering into this Contract, Contractor, for consideration paid to Contractor under the Contract, does irrevocably assign to Metro any claim for relief or cause of action that Contractor now has or that may

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

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

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

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

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

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

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

ARTICLE 8 CHANGES IN THE WORK

8.1 Change Orders Generally.

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

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

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

8.1.4 Metro may, at its discretion, also require the signature of Contractor's surety on the Change Order. Prior to the approval of such Change Order, the Architect or Engineer shall have approved any design modifications entailed thereby.

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

8.2 Procedure for Determining Impact of Change Orders on Contract Amount.

8.2.1 Price before Proceeding. If Metro intends to order changes in the Work, it may request a proposal by Contractor for the proposed added or deleted Work before directing Contractor to commence Work. Within fourteen (14) days after issuance of such request by Metro, Contractor shall furnish three (3) copies of a complete breakdown of costs of both credits and additions directly attributable to the change in the Work proposed, itemizing materials, labor, taxes, effect on Contract Time, if any, and Overhead and Profit on a form approved by Metro and in accordance with the limitations described in the following Section. Subcontract Work shall be so indicated and written proposals from Subcontractors or Suppliers shall be included with similar breakdowns provided. Following

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submission of its cost breakdown, Contractor shall meet with Metro to discuss all aspects of scope, costs, scheduling, and construction methods.

8.2.2 Proceed While Pricing. If Metro finds it necessary to make changes in the Work in an expeditious manner, it may direct Contractor to proceed with the change while preparing a proposal for the added or deleted Work. In such an instance, Metro may assign an estimated value to the change that Contractor shall not exceed without further authorization by Metro. Within fourteen (14) days after issuance of such by Metro, Contractor shall furnish three (3) copies of a complete breakdown of costs of both credits and additions directly attributable to the change in the Work proposed, itemizing materials, labor, taxes, effect on Contract Time, if any, and Overhead and Profit on a form approved by Metro and in accordance with the limitations described in the following Section. Subcontract Work shall be so included with similar breakdowns provided. Following submission of its cost breakdown, Contractor shall meet with Metro to discuss all aspects of scope, costs, scheduling, and construction methods.

8.2.3 Unit Prices. If the proposed additional or deleted Work is the subject of Unit Prices stated in the Contract Documents or subsequently agreed upon, such Unit Prices shall be binding upon Contractor in calculating the increase or decrease in the Contract Amount attributable to the proposed additional or deleted Work.

8.3 Limitations when Change Orders Impact Contract Amount. The following limitations shall apply in the calculation of the costs of changes in the Work:

8.3.1 Overhead and Profit.

8.3.1.1 Contractor will be permitted a reasonable allowance for Profit and Overhead on its increased Direct Cost resulting from any changes in the Work ordered by Metro. Likewise, Profit and Overhead will be deducted for any portion of the Work that is deleted. In the case of a change involving both credits and extras, Overhead and Profit shall be applied to the net extra after subtraction of credits.

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

8.3.1.3 Overhead and Profit for Contractor or Subcontractor who has had the Work performed by a lower tier Subcontractor shall not exceed five percent (5%) of the Direct Cost of the changed Work.

8.3.1.4 If the Work is performed by a second-tier Subcontractor, the total Overhead and Profit for all tiers shall in no event exceed twenty percent (20%) of the Direct Cost of the changed Work. Distribution of this Overhead and Profit among the tiers is the responsibility of Contractor.

8.3.2 Taxes and Insurance. Federal, state, regional, county, and local taxes, including but not limited to income taxes, excise taxes, sales and use taxes, and payroll taxes and insurance shall be shown separately, will be allowed on extras, and shall be credited on credits. No Overhead and Profit will be allowed on taxes and insurance.

8.3.3 Bond Premiums. The actual rate of bond premium as paid on the additional Direct Cost plus the cost of taxes defined in 8.3.2 will be allowed. No Overhead and Profit will be allowed on such premiums.

8.3.4 Equipment Costs. The allowance for equipment costs (both rental and Contractor-owned equipment) shall be limited to those rates in the Rental Rate Bluebook published by Dataquest Incorporated, 1290 Ridder Park Drive, San Jose, California 95131-2398, (800) 227-8444.

8.4 Force Account Work.

8.4.1 If Contractor does not respond to Metro's Request for Proposal with a cost breakdown within the fourteen (14)-day period as required above, or if Metro determines that Contractor's breakdown of costs is unreasonable in consideration of the Work proposed to be added or deleted, or if Metro determines that the proposed Work must be commenced promptly to avoid delay to the Project, Metro may issue an order for Force Account Work and Contractor shall promptly perform or delete the Work described in such order. Change, if any, in the Contract Amount due to such Force Account Work shall be the sum total of the following items:

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

8.4.1.2 The proportionate cost of premiums of public liability property damage and other insurance applicable to the extra Work involved and required by these Contract Documents.

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

8.4.1.4 Actual cost of plant and equipment rental, at rates to be agreed upon in writing before the Work is begun or at rates per Section 8.3.4 above. No charge for the cost of repairs to plant or equipment will be allowed. Equipment items having a capital cost of under \$250.00 are considered small tools and classified as Overhead.

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

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

8.4.2 Whenever any Force Account Work is in progress, each working day Contractor shall furnish to Metro a detailed written report signed by Contractor and Project Manager of the amount and cost of all of the items listed in (1) through (6) above, and no claim for compensation for such extra Work will be allowed unless such report shall have been made. Metro reserves the right to provide such materials as it may deem expedient, and no compensation, overhead, or profit will be allowed to Contractor for such materials.

8.5 Contractor Proposals for Changes in Work.

8.5.1 Generally. At any time during the performance of the Work, Contractor may propose to Metro changes in Work that Contractor believes will result in higher quality Work, improve safety, shorten the Contract Time, decrease the Contract Amount, or otherwise result in better or more efficient Work.

8.5.2 Purpose. Metro encourages Contractor to submit Value Engineering Change Proposals ("VECPs") in order to avail Metro of potential cost savings that may result. Contractor and Metro will share any savings, computed in accordance with this Section 8.5. Contractor is encouraged to submit VECPs whenever it identifies an area that can be improved, using the format described herein.

8.5.3 Application. This clause applies to a Contractor-developed and documented VECP that: (1) requires a change to this Contract to implement the VECP, and (2) reduces the Contract Price without impairing essential functions or characteristics of the Work, provided it is not based solely on a change in specified quantities.

8.5.4 Documentation. At a minimum, the following information shall be submitted by Contractor with each VECP: (1) description of the existing requirements of the Contract Documents that are involved in the proposed change; (2) description of the proposed change; (3) discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item; (4) itemization of the requirements that must be changed if the VECP is accepted (e.g., drawing numbers and Specifications); (5) justification for changes in function or characteristics of each such affected item and effect of the change on the performance of the end item; (6) effect of proposed change on life-cycle costs, including operation and maintenance, replacement costs, and life expectancy; (7) date or time by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on Contract Time or delivery schedule; and (8) cost estimate for existing Contract requirements correlated to its lump sum breakdown and proposed changed requirements. Costs of development and implementation by Contractor shall be identified. Estimated Metro costs (e.g., cost of testing and redesign) shall also be identified.

8.5.5 Submission. Proposals will be processed expeditiously; however, Metro will not be liable for any delay in acting upon any proposal submitted pursuant to this clause. Contractor shall have the right to withdraw, in whole or in part, any VECP at any time prior to acceptance by Metro.

8.5.6 Acceptance. Metro may accept, in whole or in part, by Change Order, any VECP submitted pursuant to this clause. Until a Change Order is issued, Contractor shall remain obligated to perform in accordance with this Contract. The decision as to acceptance or rejection of any VECP will be at the sole discretion of Metro and will be final and not subject to review by mediation or otherwise.

8.5.7 Sharing. If a VECP submitted by Contractor pursuant to this clause is accepted, Contractor shall proceed with the change and the Contract Price will be adjusted in accordance with the following provisions:

8.5.7.1 Definitions:

8.5.7.1.1 Estimated Gross Savings to Contractor ("GS"): The difference between cost of performing the Work according to the existing requirement and the cost if performed according to the proposed change. In each instance, Contractor's profit shall not be considered part of the cost.

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

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

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

8.5.7.2 Calculations:

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

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

8.5.8 Subcontracts. Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$25,000 or greater. Contractor may include such provisions in any agreement. Subcontracts shall contain a provision that any benefits accruing to Contractor as a result of an accepted VECP initiated by a

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Subcontractor shall be shared by Contractor and Subcontractor. To compute any adjustment in the Contract Price under Section 8.5.7.2 above, Contractor's costs of preparation and charge for a VECP shall include any preparation and change costs. Examples are cancellation or restocking charges, when required.

8.6 Impact of Authorized Changes in the Contract. Changes in the Work made pursuant to this Article and extensions of the Contract Time allowed by Metro due to such changes shall not in any way release any warranty or promises given by Contractor pursuant to the provisions of the Contract Documents, nor shall such changes in the Work relieve or release the sureties of bonds executed pursuant to said provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of Contract Time made by reason thereof.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 Scope of Payment. Payment to Contractor of the Contract Amount for performing all Work required under the Contract, as adjusted for any Change Orders approved as hereinbefore specified, shall be full compensation for furnishing all labor, materials, equipment, and tools necessary to the Work, and for performing and completing, in accordance with these Contract Documents, all Work required under the Contract, and for all expenses incurred by Contractor for any purpose in connection with the performance and completion of said Work. Whenever it is specified in the Contract that Contractor is to do Work or provide materials of any class for which no price is fixed in the Contract, Contractor will do such Work or provide such materials without extra charge or allowance or direct payment of any sort, and that the cost of doing such Work or providing such materials is included in its Bid or Proposal.

9.2 Schedule of Values.

9.2.1 Generally. Within fifteen (15) days after the Notice to Proceed, Contractor shall submit a detailed breakdown costs itemized per Construction Specification Institute division format. The format and detail of the breakdown shall be as directed by Metro. This breakdown shall be referred to as the Schedule of Values.

9.2.2 Review of Schedule of Values. Metro will review the Schedule of Values to ascertain that the dollar amounts of the Schedule of Values are in fact fair cost allocations for the Work item listed. Upon concurrence by Metro, a formal approval of this Schedule of Values will be issued. Metro shall be the sole judge of fair cost allocations. Contractor's monthly progress payment requests shall reflect the cost figures included in the approved Schedule of Values and shall be based on completed Work items or percentages of Work items completed prior to the end of the payment period as more fully described below.

9.3 Progress Payment Procedure.

9.3.1 Generally. Subject to the approval of Metro, disbursements shall be made by Metro of progress payments upon written request of Contractor and pursuant to the Contract Documents as specified in Section 9.3.2.

9.3.2 Before the end of each calendar month, Contractor shall file with the Project Manager in duplicate on a form approved by Metro, a proposed payment estimate for the period commencing on the 26th day of the previous month through midnight on the 25th day of the calendar month in question. Metro and the Architect or Engineer shall review Contractor's estimate and shall determine the value of Contractor's Work based on the Schedule of Values and incorporated labor and materials for the payment period. Contractor shall not be paid for any Work that is, in Metro's opinion, defective or improper, or for Work needed to correct Contractor's defective or improper Work. Contractor shall be paid 95 percent (95%) of the determined value of Work accomplished, less any offset or withholding of sums by Metro allowed under the Contract Documents, within thirty (30) days after receipt by Metro of Contractor's payment estimate. Metro will routinely withhold five percent (5%) as Retainage. No inaccuracy or error in any monthly progress payment estimates shall operate to release Contractor or its surety from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and Metro shall have the right subsequently to correct any error made in any estimate for progress payments.

9.3.3 Retainage.

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

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

9.3.3.3 Contractor may elect to deposit bonds or securities of the type described below with Metro or in any bank or trust company to be held in lieu of the cash Retainage described above and for the benefit of Metro. In such event, Metro shall reduce the Retainage in an amount equal to the value of the bonds and securities

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and shall pay the amount of the reduction to Contractor in accordance with ORS.279C.570. Interest on such bonds or securities shall accrue to Contractor. Bonds and securities deposited or acquired as described above shall be of a character approved by the Metro Director of Finance & Regulatory Services including but not limited to:

- 9.3.3.3.1 Bills, certificates, notes, or bonds of the United States.
- 9.3.3.3.2 Other obligations of the United States or its agencies.
- 9.3.3.3.3 Obligations of any corporation wholly owned by the federal

government.

- 9.3.3.3.4 Indebtedness of the Federal National Mortgage Association.

9.3.3.4 Contractor may elect to require Metro to deposit the accumulated Retainage in an interest bearing account in a bank, savings bank, trust company, or savings association for the benefit of Metro. Interest on such an account shall accrue to Contractor.

9.3.3.5 If Metro incurs additional costs as a result of Contractor's exercise of any of the above-described options, Metro may recover such costs from Contractor by reduction of the Final Payment. Metro shall inform Contractor of all such accrued costs.

9.3.4 Payment for Material Stored Off Site. Payment for material stored off of the Site will not be allowed unless the payment for such material benefits Metro in terms of lead time, scarcity, schedule, etc. Metro has sole discretion as to what materials will be paid for in advance of delivery to or installation on Site. Proof of off-site material purchases (invoice or checks and photo documentation) and appropriate insurance coverage will be required for payment. Title to all equipment and materials shall pass to Metro upon payment therefore or incorporation into the Work, whichever shall first occur, and Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title. Contractor must provide to Metro written consent from Contractor's surety approving the advanced payment for materials stored off-site. The maximum prepayment allowed by Metro shall be 75 percent of the actual fair market value of the item being considered. Metro shall be the sole judge of fair market value. Contractor shall protect stored materials from damage, and damaged or otherwise unacceptable materials, even though paid for, shall not be incorporated into the Work.

9.3.5 Other Conditions Precedent to Payment.

9.3.5.1 It is a condition precedent to Contractor's rights to any payments under the Contract that all bills for labor and materials, including labor and materials supplied by or to Contractor, shall have been paid in full and, if requested by Metro, Contractor shall submit receipted invoices and/or lien waivers, as evidence of payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Contract, Contractor shall submit a claims release before any payment in the form set forth in Exhibit 3 to these General Conditions, and a final claims release stating Contractor has been paid in full prior to the Final Payment in the form set forth in Exhibit 4 to these General Conditions.

9.3.5.2 Payments to Contractor shall be conditioned upon Contractor complying with all provisions of this Contract regarding scheduling and progress reports submissions and upon Contractor furnishing all other information and data necessary to ascertain actual progress. Metro's determination that Contractor has failed or refused to furnish the required information, data, schedules, or other reports shall constitute a basis for withholding all payments until the required information, data, revised schedules, and diagrams, if necessary, and other reports are furnished.

9.3.6 Payment Does Not Imply Acceptance of Work. The granting of any progress payment, or the receipt thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof, and shall in no way lessen the liability of Contractor to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may or may not have been apparent or detected at the time such payment was made.

9.3.7 Offset of Sums Due Metro from Contractor. In addition to any retention rights allowed Metro under this Contract, it is mutually understood and agreed that Metro may, upon prior written notice to Contractor, offset from any payment otherwise due Contractor as much as may be necessary to protect and compensate Metro from any costs or expenses it may incur due to any breach of the Contract by Contractor, including applicable liquidated damages. Any sums so offset shall become the property of Metro.

9.4 Substantial Completion.

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

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

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

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

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

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

9.4.3.1 Metro or the Architect will prepare a Certificate of Substantial Completion on AIA Document G704, accompanied by the approved Punch List of items to be completed or corrected as verified and amended by the Architect or Engineer.

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

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

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

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

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

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

9.5 Final Completion and Acceptance.

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

9.5.1.1 Contract Documents have been reviewed.

9.5.1.2 Work has been inspected for compliance with Contract Documents.

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

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

9.5.1.5 Work is ready for final inspection.

9.5.2 Architect or Engineer and Metro will promptly review the Work and include a physical inspection to verify the status of completion and shall inform Metro of the conclusions. Metro shall, within fifteen (15) days after receipt of Contractor's certification, either accept the Work or notify Contractor of the Work yet to be performed on the Contract as outlined below.

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

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

9.5.3.2 Contractor shall take immediate steps to remedy the stated deficiencies, and send a second written certification to Metro that the Work is complete. Metro will then advise the Architect or Engineer.

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

9.5.4 The procedure set forth in Section 9.5.3 shall be followed until the Work is, in the opinion of Metro and Architect or Engineer, finally complete. Contractor shall immediately thereafter prepare and submit Closeout Submittals as described below.

9.6 Closeout Submittals. Contractor shall submit the following items, as applicable, with its request for Final Payment:

9.6.1 Evidence of Compliance with Requirements of Governing Authorities.

9.6.2 Project record documents in accordance with the Specifications.

9.6.3 Operation and maintenance data in accordance with the Specifications.

9.6.4 Warranties in accordance with requirements of various Specification sections and these General Conditions.

9.6.5 Extra stock and maintenance materials. Contractor shall submit receipts, signed by Metro, for the various specific items.

9.6.6 Evidence of payment and release of claims in accordance with the following section.

9.6.7 Consent of surety to Final Payment.

9.6.8 Certificates of insurance for products and completed operations in accordance with Article 12 of these General Conditions.

9.6.9 If Contractor is a non-resident bidder or proposer, complete documentation of Contractor's compliance with ORS 279A.120.

9.7 Releases. Contractor and each assignee under any assignment in effect at the time of Final Payment shall execute and deliver, at the time of application for Final Payment, as a condition precedent to Final Payment, discharging and releasing Metro and the Architect or Engineer of and from all liabilities, obligations, and claims arising under this Contract. The Final Release shall be in the form attached as Exhibit 4 to these General Conditions. In addition to the above-described release, Contractor shall:

9.7.1 Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales, and employee withholding taxes.

9.7.2 Deliver to Metro written releases of all rights to file claims against Metro or to file claims on any bonds in connection with the Contract, signed by each Subcontractor and Supplier who performed labor or furnished materials in connection with the Work. The release shall be in the form attached as Exhibit 5 to these General Conditions.

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

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

9.7.3.2 To defend, indemnify, and save Metro harmless from any liability or expense because of any claim on any bond or any other claim related to the Contract or the Work.

9.8 Final Payment. Upon application of Contractor and Contractor's completion of and compliance with all of the provisions of the above Sections and settlement of all claims arising from the Contract, including claims that Metro may have against Contractor, Metro shall pay Contractor the balance of the Contract Amount subject to the availability of monies and less any previous payments, offsets, and withholdings allowed Metro under this Contract, and Retainage that has been returned to Contractor. Acceptance of Final Payment by Contractor shall constitute a waiver of all claims of whatever nature that Contractor may have or allege to have against Metro arising out of or related to Work described in the Contract Documents.

9.9 No Waiver of Rights. Neither the final review by Metro, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by Metro, nor any extension of time, nor any position taken by Metro shall operate as a waiver of any provision of this Contract or of any power herein reserved by Metro or any right to damage herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. All of Metro's remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided; and Metro shall have any and all equitable and legal remedies that it would in any case have.

ARTICLE 10

SAFETY, USE OF SITE, AND PROTECTION OF THE WORK

10.1 Laws and Regulations.

10.1.1 The Contractor must comply with all federal, state, and municipal laws in regard to all matters concerning this Contract. This includes but is not limited to compliance with the ADA. The Contractor must also

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comply with the orders, rulings, decrees, and decisions of any administrative or judicial officials that in any manner whatsoever affect the Project, the Work, the safety of persons around the Work Site, or the manner in which the Work is performed.

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

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

10.2 Safety Requirements.

10.2.1 Safety Generally.

10.2.1.1 Contractor shall be solely and completely responsible for the safety of the Work and the Site, including but not limited to the safety of all persons and property involved in the Work at the Site at any time until Final Completion and Acceptance of the Work.

10.2.1.2 All Work shall be performed in full accordance with all applicable safety codes, laws, ordinances, and requirements including but not limited to the Safety and Health Regulations for Construction promulgated by the Secretary of Labor under Section 107 of the Contract Work Hours and Safety Standards Act as set forth in Title 29 of the Code of Federal Regulations, federal and state OSHA, Metro's insurance standards, and all other applicable safety codes. Where any of these are in conflict, the more stringent requirement shall be followed. Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from any requirements in the Contract Documents to comply with such safety provisions or from any penalties for failure to so comply.

10.2.1.3 Contractor shall inspect the Work and the Site daily and immediately correct any unsafe conditions. All job personnel shall be knowledgeable of and comply with the above safety requirements.

10.2.1.4 Contractor shall take all precautions to prevent the possibility of fire resulting from Contract operations. Contractor shall provide properly maintained emergency fire extinguishing equipment of a readily available type and quantity as necessary to meet potential fire hazards.

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

10.2.2 Health and Safety Program. Contractor shall develop, publish, and implement the overall Health and Safety Program for the Project. This Program shall conform to all applicable codes. Contractor shall submit the written Health and Safety Program to Metro for review and comment within fourteen (14) days after the receipt of the written Notice To Proceed. Metro's review and comment, if any, and Contractor's changes to the Health and Safety Program, based on Metro's review, if any, shall not constitute an endorsement or approval of same by Metro such that Contractor is relieved of sole responsibility for content of the Health and Safety Program and its implementation. Metro is expressly released of any implied liability therefore. The Health and Safety Program shall subsequently be distributed to and implemented by Contractor's personnel, as well as its Subcontractors and Suppliers. Contractor shall fully implement and comply with the Contractor's Health and Safety Program. Under no circumstance will the contractor commence work prior to submitting and implementing the Health and Safety Program.

10.2.3 Health and Safety Officer. Prior to initiation of construction, Contractor shall designate in writing a Site Health and Safety Officer who shall be responsible for coordinating Contractor's Health and Safety Program. The individual so designated shall be the interface with the Project Manager on matters relating to safety and Contractor's compliance with the approved Safety Program. Metro reserves the right to accept or reject the Health and Safety Officer designated by Contractor.

10.3 First Aid.

10.3.1 Contractor shall maintain on the Site during Work operations, a member of its work force who is qualified in administering first aid to its personnel and shall have available in its job office the first aid equipment as required to meet all applicable safety codes. The names and credentials of qualified personnel will be submitted to the Project Manager.

10.3.2 Contractor shall require or provide adequate clothing and protective gear for all personnel working on the job Site. This includes but is not limited to hard hats, substantial boots or shoes, shirts with sleeves at all times, eye and ear protection, gloves, face masks, welding hoods, and safety belts as required for the type of Work being done.

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10.4 Use of Site.

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

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

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

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

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

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

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

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

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

10.5.2 The Contractor will keep the Project Site safe in compliance with applicable law. Safety includes but is not limited to: (1) providing approved types of secured and adequate barricades or fences that are easily visible from a reasonable distance around open excavations; (2) closing up or covering with steel plates all open excavations at the end of each Working Day in all street areas and in all other areas when it is reasonably required for public safety; (3) marking all open Work and obstructions by lights at night; (4) installing and maintaining all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges, and facilities; (5) observing any and all safety instructions received from Project Manager; and (6) following all laws and regulations concerning worker and public safety. If the law requires greater safety obligations than those imposed by Metro, the Contractor must comply with the law.

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

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

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

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

10.5.7 Contractor shall provide and maintain such guards, fences, barriers, signs, regulatory and warning lights, and other traffic control and safety devices adjacent to and on the Site as may be necessary to prevent

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

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

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

10.6 Utilities.

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

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

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

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

10.7 Hazardous Substances Encountered During Construction and Other Environmental Laws.

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

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

10.7.3 With respect to any Hazardous Materials or other material or substance reported to Metro under Section 10.7.2 above that were not introduced to the Project Site by the Contractor or its Subcontractors of any tier, Metro will obtain the services of a qualified environmental consultant to verify the presence or absence of the material or substance reported by the Contractor and, if the material or substance is found to be present, to verify that it is rendered harmless. Unless otherwise required by the Contract Documents, Metro will furnish in writing to the Contractor the names and qualifications of persons or entities that are to perform tests verifying the presence or absence of such material or substance, or that are to perform the task of removal or safe containment of such material or substance. The Contractor will promptly reply to Metro in writing, stating whether or not either has reasonable objection to the persons or entities proposed by Metro. If the Contractor has an objection to a person or entity proposed by Metro, Metro will propose another to which the Contractor has no reasonable objection. When the

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material or substance has been rendered harmless, Work in the affected area is to resume upon written agreement of Metro and the Contractor. By Change Order, the Contract Time may, subject to agreement by Metro and the Contractor, be extended appropriately and the Contract Amount will be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, which adjustments are to be accomplished as provided in Article 8.

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

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

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

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

10.8.1 Safety and Health Precautions.

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

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

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

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

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

10.8.1.6 The Contractor will provide warning signs, flagger(s), and other safety and health precautions that may become necessary or required for protection of Work or for protection of the public, Owner's

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personnel, and construction personnel, including Owner's and Architect's or Engineer's Representatives engaged on the Project. State of Oregon Workmen's Compensation Board Safety Codes for Construction Work and Federal Safety Codes, form a part of these Specifications.

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

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

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

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

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

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

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

10.8.3 Site Protection/Safety.

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

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

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

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

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

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

10.8.4 Personnel and Subcontractors.

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

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

10.8.6 Restrictions:

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

10.8.6.1.1 Weapons

10.8.6.1.2 Alcohol, narcotics

10.8.6.1.3 Skates/Skateboards/Rollerblades/Wheelies

10.8.6.1.4 Bicycles (if a Contractor employee is commuting to the Project Site

via bicycle, arrangements can be made for appropriate parking and use).

10.8.6.1.5 Pets

10.8.7 Prohibited Conduct:

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

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- 10.8.7.1.1 Possessing, using, transferring, offering, or being under the influence of any intoxicants or narcotics during working hours.
- 10.8.7.1.2 Willful deceit, gross negligence, or theft, including of personal or public property.
- 10.8.7.1.3 Neglect of duty, violation of Metro ordinances, regulations, and directives.
- 10.8.7.1.4 Willful or repeated negligent violation of established safety policies and procedures.
- 10.8.7.1.5 Possessing a firearm, illegal weapons, fireworks, or explosive device on Metro property
- 10.8.7.1.6 Harassment, discourteous treatment of any kind, or discrimination to staff, volunteers, or members of the public. Obscenities, profanity, yelling, shouting, abusive, or maligning tone of voice and/or language is considered discourteous and is prohibited.
- 10.8.7.1.7 Misuse of Metro property.

ARTICLE 11 INDEMNIFICATION

11.1 Indemnification.

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

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

11.1.3 Any specific duty or liability imposed or assumed by Contractor, as may be otherwise set forth in the Contract Documents, shall not be construed as a limitation or restriction of the general liability or duty imposed upon Contractor by this Section.

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

11.1.4.1 Special activities by Metro to verify and/or expedite delivery of materials and those losses incurred by Metro as a result of any delays to Other Metro Contractors resulting from acts of Contractor or its failure to act.

11.1.4.2 Acceleration payments to Other Metro Contractors on the Project or related projects resulting from Contractor falling behind the Construction Schedule for causes not entitling it to an extension of Contract Time under any provisions of the Contract Documents that cause other Metro Contractors to fall behind the Construction Schedule so that they must then accelerate the performance of the Work, as directed by Metro, in order to maintain progress.

11.1.4.3 Violations of the ordinances or regulations of Metro, any federal, state, county, or city laws or order of any properly constituted authority in any manner affecting this Contract, in addition to any laws or regulations that might affect this Contract.

11.1.5 Any and all suits, actions, damages, or claims of every name and description to which the above-indemnified may be subjected or put by reason of injury to persons or property arising out of, in connection with, or incident to the execution of the Work, or resulting from acts or omissions on the part of Contractor, its Subcontractors, officers, employees, or agents, and all attorney fees and court costs incident thereto.

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

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ARTICLE 12 INSURANCE

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

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

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

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

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

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

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

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

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

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

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

12.2 Required Coverage. Without waiver of any other requirement of the Contract Documents, the Contractor will provide, pay for, and maintain in full force and effect at all times during the performance of the Work until final acceptance of the Work or for such further duration as required, the following policies of insurance issued by a responsible carrier. All of the Contractor's insurance carriers will be rated A VII or better by A.M. Best's rating service, unless otherwise approved by the Owner.

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

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

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

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

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

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

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

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

12.3.1 Workers' Compensation Statutory Limits

12.3.2 Employer's Liability

12.3.2.1 Each Accident \$1,000,000

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

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

12.3.3 Commercial General Liability

12.3.3.1 Each Occurrence \$2,000,000

12.3.3.2 General Aggregate \$2,000,000

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

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

12.3.3.5 Fire Damage Limit \$2,000,000

12.3.3.6 Medical Expense Limit \$2,000,000

12.3.4 Automobile Liability

12.3.4.1 Combined Single Limit \$2,000,000

12.3.5 Pollution Liability

12.3.5.1 Single Limit \$2,000,000

12.3.5.2 Aggregate \$2,000,000

12.3.6 Commercial Umbrella/Excess Coverage

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

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

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

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

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

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

12.8.1 Additional Certificates. To the extent that the Contractor's insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage will be submitted with the final application for payment. Information concerning reduction of coverage

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because of revised limits or claims paid under the general aggregate, or both, will be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

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

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

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

12.10 Limitations on Coverage.

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

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

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

12.11 Property Insurance

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

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

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

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

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

ARTICLE 13

MINORITY/WOMEN/EMERGING SMALL BUSINESS PROGRAM

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

13.2 Contractor shall not replace a minority, women-owned or emerging small business enterprise Subcontractor with another Subcontractor, either before Contract Award or during Contract performance, without prior

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written approval of Metro. In replacing a minority, women-owned or emerging small business Subcontractor, Contractor shall replace such minority, women-owned or emerging small business Subcontractor with another certified minority, women-owned or emerging small business Subcontractor or make good faith efforts to do so. Failure to do so shall constitute Contractor's default of this Contract, and Metro, at its option, may terminate this Contract under the procedures set out in Article 15.

13.3 Metro reserves the right, at all times during the period of this Contract, to monitor Contractor's compliance with the terms of the MWESB Business Program and enforce the program if Contractor should fail to so comply. Contractor shall be bound by any and all representations made concerning its compliance with the program prior to Contract Award and any and all representations made by Contractor concerning the replacement of a minority or women-owned business Subcontractor during the performance of this Contract.

13.4 MWESB Participation in the Contract.

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

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

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

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

ARTICLE 14

MISCELLANEOUS STATUTORY RESPONSIBILITIES OF CONTRACTOR

Contractor shall keep itself fully informed of and shall fully comply with all federal, state, regional, and local laws, rules, regulations, ordinances, and orders pertaining in any manner to this Contract and those rules, regulations, and orders of any agency or authority having jurisdiction over the Work or those persons employed or engaged therein. Contractor shall pay all taxes, including federal, state, regional, county, and city, or taxes of any other governmental entity applicable to the Work performed or materials provided under this Contract.

ARTICLE 15

TERMINATION OR SUSPENSION OF THE WORK

15.1 Default of Contractor.

15.1.1 If Contractor should be adjudged bankrupt, or if Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of insolvency, or if Contractor should refuse to or fail to supply enough properly skilled workers or proper materials for the efficient prosecution of the Work, disregard laws, ordinances, or the instructions of Metro, or otherwise be in violation of any provision of the Contract, Metro may, without prejudice to any other right or remedy and after giving Contractor and Contractor's surety on the Performance Bond prior written notice, terminate the Contract or any portion of the Contract, which termination shall be effective ten (10) days after service of such notice. Such notice shall contain the reasons for the termination and shall

Construction Agreement

METRO CONTRACT NO. 307003

state that unless, within ten (10) calendar days of service of the termination notice on Contractor, Contractor or its surety on the Performance Bond shall have cured or shall have made, in Metro's opinion, appropriate arrangements for prompt cure of all of the cause(s) for termination cited in the notice of termination, the Contract shall terminate.

15.1.2 Upon termination, Metro may take possession of the premises and of all materials, tools, and appliances thereon, as well as all other materials whether on the premises or not, for which Contractor has received partial payment, and may finish the Work or the portion terminated by whatever method it may deem expedient.

15.1.3 In the event action as above indicated is taken by Metro, Contractor or Contractor's surety shall provide Metro with immediate and peaceful possession of all of the materials, tools, and appliances located on the premises, as well as all other materials whether on the premises or not, for which Contractor has received any progress payment. Upon termination, in the event that the surety does not complete the Contract, at the election of Metro, Contractor shall assign any and all subcontracts and material contracts to Metro or Metro's designee. Further, Contractor shall not be entitled to receive any further payment until the Work is completed. On completion of the Work, determination shall be made by Metro of the total amount Contractor would have been entitled to receive for the Work under the terms of the Contract had Contractor completed the Work. If the difference between said total amount and the sum of all amounts previously paid to Contractor, which difference will hereinafter be called the "unpaid balance," exceeds the expense incurred by Metro in completing the Work, including expense for additional managerial and administrative service, and all other costs, damages, and expenses incurred by Metro due to Contractor's failure to complete the Contract, such excess will be paid to Contractor, with the consent of the surety. If, instead, the described expenses incurred by Metro exceed the unpaid balance, the amount of the excess shall be paid to Metro by Contractor or its surety. If only a portion of the Contract is terminated, this Section shall be deemed to apply to that portion of the Work only.

15.1.4 In addition to the above-mentioned right, Metro shall have the right, at its option, to suspend all or part of Contractor's performance under the Contract should any of the events occur that give Metro the right to terminate the Contract as above described. In such event, Metro shall give Contractor and Contractor's surety prior written notice of such suspension and Contractor shall stop or cause to stop all such Work under the Contract immediately on receipt of such notice and shall not commence such Work under the Contract again unless and until Contractor shall receive written notice from Metro to proceed. Metro shall not be responsible or liable to Contractor or others for any costs or expenses of whatever nature related to Contractor's failure to stop Work as directed by Metro.

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

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

15.1.5.2 Place no further orders or subcontracts, or suspend the same, as applicable, for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract that is not terminated or suspended.

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

15.1.6 Metro may, at its discretion, avail itself of any or all of the above rights or remedies and its invoking of any one of the above rights or remedies will not prejudice or preclude Metro from subsequently invoking any other right or remedy set forth above or elsewhere in the Contract.

15.1.7 None of the foregoing provisions shall be construed to require Metro to complete the Work nor to waive or in any way limit or modify the provisions of the Contract relating to the fixed and liquidated damages suffered by Metro on account of failure to complete the Project within the time prescribed.

15.2 Termination in the Public Interest.

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

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

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

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

Construction Agreement

METRO CONTRACT NO. 307003

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Construction Agreement

METRO CONTRACT NO. 307003

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

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

END OF SECTION



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

Construction Agreement

MERC CONTRACT NO. XXXXXX

METRO GENERAL CONDITIONS - EXHIBIT 1

WARRANTY FORM

We the undersigned hereby warrant that the [DESCRIBE WORK PERFORMED OR MATERIALS SUPPLIED].that we have provided for [INSERT PROJECT NAME] has been done in accordance with the Contract Documents and that the Work as provided will fulfill the requirements of the warranty included in Article 7 of the Metro General Conditions.

We agree to correct or remove and replace any or all of our Work, together with any other adjacent Work that may be displaced or affected by so doing, that may be defective in its workmanship or materials, or that may fail to conform to the requirements of the Contract Documents, within a period of one (1) year following the later of the date of substantial completion or the date described in Section 7.7 of the Metro General Conditions, without any expense whatsoever to Metro, normal wear and tear and mistreatment excepted.

In the event of our failure to comply with the above-mentioned conditions within twenty (20) calendar days after Metro notifies Contractor in writing, we collectively and separately do hereby authorize Metro to proceed to have said defects repaired and corrected at our expense, and we will honor and pay the costs to dispose of nonconforming materials and charges therefore upon demand. If Metro is required to enforce payment, it shall be entitled to recover its costs and reasonable attorney fees.

CONTRACTOR

By_____

Print Name_____

Date_____

SUBCONTRACTOR

By_____

Print Name_____

Date_____



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

Construction Agreement

MERC CONTRACT NO. XXXXXX

METRO GENERAL CONDITIONS - EXHIBIT 2

SUBCONTRACTOR ASSIGNMENT OF ANTITRUST CLAIMS

Project: _____

Owner: Metro _____

General Contractor: _____

Subcontractor: _____

Release Date: _____

1. By entering into a contract with the General Contractor, subcontractor, for consideration paid to subcontractor under the subcontract, does irrevocably assign to Metro any claim for relief or cause of action that subcontractor now has or that may accrue to Subcontractor in the future, including at Metro's option, the right to control any such litigation on such claim for relief or cause of action, by reason of any violation of 15 USC Section 1 15, ORS 646.725, or ORS 646.730 in connection with any goods or services that are used, in whole or in part, for the purpose of carrying out subcontractor's obligations under its subcontract with the General Contractor.

2. Subcontractors irrevocably assigns to Metro, as a third-Party beneficiary of the subcontract, any right, title, or interest that has accrued or may accrue to the Subcontractor by reason of any violation of 15 USC Section 1 15, ORS 646.725, or ORS 646.730, including, at Metro's option, the rights to control any litigation arising hereunder, in connection with any goods or services provided to the Subcontractors or Suppliers by any person, in whole or in part, for the purpose of carrying out the Subcontractor's obligations as agreed to by Subcontractor in pursuance of the completion of the Contract .

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

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

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

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

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

SUBCONTRACTOR

By _____

Print Name _____

Date _____



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

Construction Agreement

MERC CONTRACT NO. XXXXXX

METRO GENERAL CONDITIONS - EXHIBIT 3

AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE

(General Contractor – Progress Payment)

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

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

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

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

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

1.4 It either has paid in full, or within ten (10) business days of receipt of the above set forth Progress Payment, will pay in full all subcontractors, laborers, service providers, equipment suppliers and material suppliers, and transporters for work, services, equipment, or materials supplied to the Project or to the Undersigned connected with or used in the Project, through the period covered by said progress payment made by Metro.

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

2. The Undersigned acknowledges and agrees that Progress Payments made by Metro up to the date hereof, in the sum of _____, plus Progress Payment No. _____, when paid, constitute payment in full of all amounts due to Undersigned for all labor, services, equipment, and materials provided or transported in connection with the Project up to and through _____, _____, as set forth in the Undersigned’s payment application No. _____. The Undersigned agrees that, **upon receipt of the above set forth progress payment**, which is the full payment due and owing to Undersigned up to and through the date set forth in section 2, Undersigned will be paid in full for all labor (including contributions and benefits), services, equipment, supplies, and materials provided or transported in connection with the Project without exceptions, and that there are no other unsettled claims or demands therefore. The Undersigned agrees that, **conditioned upon receipt of Payment of the above set forth progress payment**, and in consideration thereof, the Undersigned hereby fully and unconditionally waives and releases Metro from all liability for payment, liens or claims of lien, rights to lien, bond claim rights, and any other claim for payment it now has or asserts or may have or assert for labor, services, equipment, materials, and materials provided or transported in connection with the Project through and up to said date, and further releases Metro, the Project land and improvements from any claim, cause of action, or demand whatsoever, arising out of or relating to the Project that arose on or before said date.

3. The Undersigned hereby agrees to promptly pay and obtain a release of claims on any bonds that may in the future affect the Project, and defend, indemnify, and save Metro harmless from any liability or expense because of any claim on any bond or any other claim related to the work under the Contract through and up to the date set forth in section 2.

4. The affiant signing below does hereby swear and attest that he/she has the full authority to sign this document on behalf of the Undersigned and that Metro may rely on this Affidavit, Agreement for Lien Waiver and Release in connection with remitting Progress Payment No. _____ to Undersigned.

Dated: _____ Affiant: _____ Its: _____

STATE OF OREGON)
County of _____)

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

Notary Public - State of Oregon



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

Construction Agreement

MERC CONTRACT NO. XXXXXX

METRO GENERAL CONDITIONS - EXHIBIT 4

AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE

(General Contractor – Final Closeout)

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

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

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

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

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

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

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

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

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

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

Dated: _____ Undersigned: _____

By: _____ Its: _____

STATE OF OREGON)
) ss.
County of _____)

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

Notary Public - State of Oregon



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

Construction Agreement

MERC CONTRACT NO. XXXXXX

METRO GENERAL CONDITIONS - EXHIBIT 5

AFFIDAVIT, LIEN WAIVER AND RELEASE – CONDITIONAL FINAL (Subcontractor - Closeout)

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

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

3. The Undersigned hereby certifies as follows:

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

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

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

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

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

STATE OF OREGON)
) ss.
County of Multnomah)

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

Notary Public - State of Oregon

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

**Authorization to Represent MERC/METRO
on Trade-Promotion Mission; Fact-Finding Mission
(Food Travel, Lodging Expenses - exception (H))**

In accordance with ORS 244.020(6)(b)(H), the following public officials: **all current MERC Commissioners and current Metro Councilors** are hereby authorized to represent Metro/MERC in an official capacity; and

The MERC Commission and Metro Council hereby approve the receipt of reasonable expenses for food, travel, and/or lodging for the above-named public officials and his/her accompanying relative, household member, or staff member, for attendance at:

- trade-promotion mission;**
- fact-finding mission;**
- economic development activity; OR**
- negotiation;**

as follows:

A Portland familiarization tour ("fam tour") where meals will be paid for by Travel Portland, to familiarize potential meeting planners and association executives with Portland and with the Oregon Convention Center, which activity(ies) will take place in Portland on December 1-3, 2016.

Being approved by the MERC Commission, at its regular meeting on November 2, 2016, the above activity is hereby officially sanctioned by MERC.



MERC Commission Chair

Being approved by the Metro Council, at its regular meeting on _____, the above activity is hereby officially sanctioned by Metro.

Metro Council President

**Authorization to Represent MERC/METRO
on Trade-Promotion Mission; Fact-Finding Mission
(Food Travel, Lodging Expenses - exception (H))**

In accordance with ORS 244.020(6)(b)(H), the following public officials: **all current MERC Commissioners and current Metro Councilors** are hereby authorized to represent Metro/MERC in an official capacity; and

The MERC Commission and Metro Council hereby approves the receipt of reasonable expenses for food, travel, and/or lodging for the above-named public officials and his/her accompanying relative, household member, or staff member, for attendance at:

- trade-promotion mission;**
- fact-finding mission;**
- economic development activity; OR**
- negotiation;**

as follows:

A Portland customer advisory board ("CAB") meeting where meals will be paid for by Travel Portland, to familiarize potential meeting planners and association executives with Portland and with the Oregon Convention Center, which activity(ies) will take place in Portland on February 1-2, 2017.

Being approved by the MERC Commission, at its regular meeting on November 2, 2016, the above activity is hereby officially sanctioned by MERC.



MERC Commission Chair

Being approved by the Metro Council, at its regular meeting on _____, the above activity is hereby officially sanctioned by Metro.

Metro Council President

**Metropolitan Exposition Recreation Commission
2017 Regular Meeting Dates**

DATE	MEETING PLACE	TIME
Wednesday, January 4, 2017	Portland's Centers for the Arts Brunish Theater 1111 SW Broadway	12:00 Lunch 12:30 p.m. Meeting
Wednesday, February 1, 2017	Oregon Convention Center C121-122 777 NE MLK Jr. Blvd.	12:00 Lunch 12:30 p.m. Meeting
Wednesday, March 1, 2017	Expo Center 2060 N Marine Drive Rooms TBD	12:00 Lunch 12:30 p.m. Meeting
Wednesday, April 5, 2017	Oregon Zoo Vista/Skyline rooms 4001 SW Canyon Road	12:00 Lunch 12:30 p.m. Meeting
Wednesday, May 3, 2017	Oregon Convention Center C121-122 777 NE MLK Jr. Blvd.	12:00 Lunch 12:30 p.m. Meeting
Wednesday, June 7, 2017	Joint Work Session Metro Council Chamber 600 NE Grand Ave.	12:00 Lunch 12:30 p.m. Meeting
Wednesday, July 12, 2017	Oregon Convention Center A107-109 777 NE MLK Jr. Blvd.	12:00 Lunch 12:30 p.m. Meeting
Wednesday, August 2, 2017	Oregon Convention Center A107-109 777 NE MLK Jr. Blvd.	12:00 Lunch 12:30 p.m. Meeting
Wednesday, September 6, 2017	Expo Center 2060 N Marine Drive Rooms TBD	12:00 Lunch 12:30 p.m. Meeting
Wednesday, October 4, 2017	Oregon Zoo Vista/Skyline rooms 4001 SW Canyon Road	12:00 Lunch 12:30 p.m. Meeting
Wednesday, November 1, 2017	Oregon Convention Center C121-122 777 NE MLK Jr. Blvd.	12:00 Lunch 12:30 p.m. Meeting
Wednesday, December 6, 2017	Expo Center 2060 N Marine Drive Rooms TBD	12:00 Lunch 12:30 p.m. Meeting

Meeting Dates/Locations Subject to Change

Metropolitan Exposition Recreation Commission Meeting
November 2, 2016 Oregon Convention Center, VIP Suite B

SIGN-IN SHEET

Name – Please Print	Organization
Michael Hall	WRITE HERE &
Be Marston	WRITE HERE 8