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# MERC Commission Meeting

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June 7, 2017  
12:00 pm

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Oregon Convention Center  
777 NE MLK Jr. Blvd  
Rooms C121,122

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**REVISED**

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## Ogeysiiska takooris la'aanta ee Metro

Metro waxay ixtiraamtaa xuquuqda madaniga. Si aad u heshid macluumaad ku saabsan barnaamijka xuquuqda madaniga ee Metro, ama aad u heshid warqadda ka cabashada takoorista, booqo [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Haddii aad u baahan tahay turjubaan si aad uga qaybqaadatid kullan dadweyne, wac 503-797-1890 (8 gallinka hore illaa 5 gallinka dambe maalmaha shaqada) shan maalmo shaqa ka hor kullanka si loo tixgaliyo codsashadaada.

## Metro의 차별 금지 관련 통지서

Metro의 시민권 프로그램에 대한 정보 또는 차별 항의서 양식을 얻으려면, 또는 차별에 대한 불만을 신고 할 수 [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). 당신의 언어 지원이 필요한 경우, 회의에 앞서 5 영업일 (오후 5시 주중에 오전 8시) 503-797-1890를 호출합니다.

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## ការម Metro

ការគោរពសិទ្ធិពលរដ្ឋសំខាន់ៗ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋ Metro ឬដើម្បីទទួលបានក្របខណ្ឌសិទ្ធិសមស្របសម្រាប់ការប្រកាសនៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទលេខ 503-797-1890 (ម៉ោង 8 រឺកម្រិតម៉ោង 5 ល្ងាច ថ្ងៃអាទិត្យ) ប្រាំពីរថ្ងៃមុន ថ្ងៃអង្គារ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក

## إشعار بحقوق مدني من Metro

تحتزم Metro الحقوق والمدنية للمزيد من المعلومات حول برنامج Metro لحقوق والمدنية أو لإبداء شكوى خذات مديري رجي زيارة الموقع الإلكتروني [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). إن كنت بحاجة إلى مساعدة في اللغة، ي ج ب على ك الاتصال مقدم ب ر ق ل ه ا ت ف 503-797-1890 من الساعة 8 صباحاً حتى الساعة 5 مساءً، أيام الاثنين إلى الجمعة قبل خمسة ( ) أيام عمل من موعد الاجتماع.

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Iginagalang ng Metro ang mga karapatang sibil. Para sa impormasyon tungkol sa programa ng Metro sa mga karapatang sibil, o upang makakuha ng porma ng reklamo sa diskriminasyon, bisitahin ang [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Kung kailangan ninyo ng interpreter ng wika sa isang pampublikong pulong, tumawag sa 503-797-1890 (8 a.m. hanggang 5 p.m. Lunes hanggang Biyernes) lima araw ng trabaho bago ang pulong upang mapagbigyan ang inyong kahilingan. Notificación de no discriminación de Metro.

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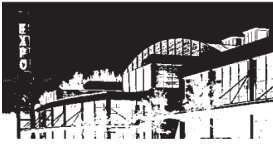
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## Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

Metro tributes cai. Rau cov lus qhia txog Metro txoj cai kev pab, los yog kom sau ib daim ntawv tsis txaus siab, mus saib [www.oregonmetro.gov/civilrights](http://www.oregonmetro.gov/civilrights). Yog hais tias koj xav tau lus kev pab, hu rau 503-797-1890 (8 teev sawv ntxov txog 5 teev tsaus ntuj weekdays) 5 hnub ua hauj lw m ua nte ntawm lub rooj sib tham.





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

www.oregonmetro.gov



# Metro | Exposition Recreation Commission

## Revised Agenda

Meeting: Metro Exposition Recreation Commission Meeting  
Date: Wednesday, June 7, 2017  
Time: 12:00 – 1:00 p.m.  
Place: Oregon Convention Center, C121-122

### CALL TO ORDER

**12:00 1. QUORUM CONFIRMED**

**12:01 2. OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS**

**12:05 3.0 CONSENT AGENDA**

- Record of MERC Actions, May 3, 2017, pages 4-6
- Ethics approval for Commissioners Leary and Hall to attend ASAE, page 7

**12:10 4.0 ACTION AGENDA**

- |            |  |  |
|------------|--|--|
| <b>4.1</b> | <b>Resolution 17-17:</b> For the purpose of approving contracts with Advanced Equipment Corporation and Golden Airwall Inc. to provide Operable Partition Services for the Oregon Convention Center (OCC) and delegating authority to the Metro General Manager of Visitor Venues to execute the contracts, pages 9-28   | <b>Matt Pizzuti</b>                                |
| <b>4.2</b> | <b>Resolution 17-18:</b> 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, pages 29-30   | <b>Ben Rowe</b>                                    |
| <b>4.3</b> | <b>Resolution 17-19:</b> 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 2017-18, pages 31-34  | <b>Ben Rowe</b>                                    |
| <b>4.4</b> | <b>Resolution 17-20:</b> For the purpose of approving a contract with Hollywood Lights, Inc. for the installation of house and stage lighting equipment in the Newmark Theater and Dolores Winningstad Theater at Portland's Centers for the Arts and delegating authority to the Metro General Manager of Visitor Venues to execute the contract, pages 35-91 | <b>Robyn Williams</b>                              |
| <b>4.5</b> | <b>Resolution 17-21:</b> For the purpose of electing the slate of MERC officers for FY2017-18, page 92   | <b>Stoudamire-Phillips</b>                         |
| <b>4.6</b> | <b>Resolution 17-22:</b> For the purpose of approving an agreement with City Center Parking for Parking Lot Operations at the Portland Expo Center (Expo) and the Oregon Convention Center (OCC) and delegating authority to the Metro General Manager of Visitor Venues to execute such an agreement, pages 93-95   | <b>Matthew P. Rotchford</b><br><b>Matt Pizzuti</b> |

### ADJOURN

Note: The packet includes the following items which will not be presented at the meeting: April 2017 Financial report on pages 98-116, the venue business reports on pages 118-122 and the Travel Portland 3<sup>rd</sup> Quarter Report on pages 124-145

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# **MERC Commission Meeting**

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June 7, 2017  
12:00 pm

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3.0 Consent Agenda

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**Metropolitan Exposition Recreation Commission**  
**Record of MERC Commission Actions**  
 May 3, 2017  
 Oregon Convention Center, C121-122

<b>Present:</b>	Damien Hall (via telephone), Deidra Krysov-Rusoff, Ray Leary, Karis Stoudamire-Phillips, Council Liaison Sam Chase
<b>Absent:</b>	Judie Hammerstad
	A regular meeting of the Metropolitan Exposition-Recreation Commission was called to order by Chair Karis Stoudamire-Phillips at 12:35 p.m.
<b>1.0</b>	<b>RECOGNITION OF TERRY GOLDMAN</b> Commissioner Goldman resigned his position on the board following the April 5, 2017 MERC meeting. The Commissioners, Councilor Chase and staff recognized his contributions to the Commission, the MERC venues and Metro and presented him with a framed certificate honoring his service.
<b>2.0</b>	<i>Commissioner Hall was connected to the meeting by phone.</i> <b>QUORUM CONFIRMED</b> A quorum of Commissioners was present.
<b>3.0</b>	<b>ACTION AGENDA</b>
<b>3.1</b>	Chair Stoudamire-Phillips called for a nomination for the position of MERC Vice Chair – the position held previously by Commissioner Goldman. A motion was made by Commissioner Krysov-Rusoff to nominate Commissioner Hammerstad for the position of MERC Vice Chair. Commissioner Leary seconded the motion. VOTING: AYE: 4 (Hall, Leary, Krysov-Rusoff, Stoudamire-Phillips) NAY: 0 MOTION PASSED  <b>Resolution 17-12:</b> For the purpose of electing the Metropolitan Exposition Recreation Commission (MERC) Vice Chair for the remainder of Fiscal Year 2016-17. Chair Stoudamire-Phillips presented the resolution. A motion was made by Commissioner Leary and seconded by Commissioner Krysov-Rusoff to approve resolution 17-12 as presented. VOTING: AYE: 4 (Leary, Krysov-Rusoff, Stoudamire-Phillips, Hall) NAY: 0 MOTION PASSED
<b>3.2</b>	<b>Resolution 17-13:</b> For the purpose of approving Work Order 2 ‘OCC Interior Renovations and Improvements Design Services’ generated by the Price Agreement Contract with LMN Architects and authorizing the General Manager of Visitor Venues to execute the Work Order with LMN. Brent Shelby, Project Manager from Metro Construction Project Management Office, presented the resolution. A motion was made by Commissioner Krysov-Rusoff and seconded by Commissioner Leary to approve resolution 17-13 as presented. VOTING: AYE: 4 (Leary, Krysov-Rusoff, Stoudamire-Phillips, Hall) NAY: 0 MOTION PASSED
<b>3.3</b>	<b>Resolution 17-14:</b> 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) FY2016-17.

<p><b>3.4</b></p>	<p>Ben Rowe, MERC Finance Manager, presented the resolution.  A motion was made by Commissioner Leary and seconded by Commissioner Krys-Rusoff to approve resolution 17-14 as presented.  VOTING:    AYE: 4 (Leary, Krys-Rusoff, Stoudamire-Phillips, Hall)                NAY: 0                MOTION PASSED</p> <p><b>Resolution 17-15:</b> 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 2017-18.  Ben Rowe, MERC Finance Manager, presented the resolution.</p> <ul style="list-style-type: none"> <li>• Commissioner Krys-Rusoff asked for clarification on the fact that the position proposed to be added will include working with the Zoo however the funding will come solely from the MERC Admin budget.  Rowe responded that the position will be funded this way at least for the first year and will be re-evaluated for the second year.</li> </ul> <p>A motion was made by Commissioner Hall and seconded by Commissioner Krys-Rusoff to approve resolution 17-15 as presented.  VOTING:    AYE: 4 (Leary, Krys-Rusoff, Stoudamire-Phillips, Hall)                NAY: 0                MOTION PASSED</p>
<p><b>3.5</b></p>	<p><b>Resolution 17-16:</b> For the purpose of approving the purchase of roofing materials for the Portland Expo Center through an interstate cooperative procurement agreement.  Matthew P. Rotchford, Executive Director of Expo, and Jesse Flores of Metro CPMO presented the resolution.</p> <ul style="list-style-type: none"> <li>• Commissioner Leary asked for clarification on the timeline for the roof replacement.  Rotchford responded that the project is scheduled to begin in June and finish by September.</li> <li>• Commissioner Krys-Rusoff inquired if there would be any displacement of shows during the period the roof is being replaced.  John Lindenthal of Metro CPMO responded that the product would not affect the scheduled events at Expo. Rotchford added that the contractor will provide safe ingress and egress and that there will be a strong safety plan in place during the replacement.</li> <li>• Commissioner Leary inquired how the materials will be stored assuming that it all arrives once ordered.  Rotchford responded that Expo has room to store the product on site.</li> </ul> <p>A motion was made by Commissioner Hall and seconded by Commissioner Krys-Rusoff to approve resolution 17-16 as presented.  VOTING:    AYE: 4 (Leary, Krys-Rusoff, Stoudamire-Phillips, Hall)                NAY: 0                MOTION PASSED</p>
<p><b>4.0</b></p>	<p><b>CONSENT AGENDA</b>  Record of MERC Actions, April 5, 2017  A motion was made by Commissioner Krys-Rusoff and seconded by Commissioner Hall to approve the Consent Agenda.  VOTING:    AYE: 4 (Leary, Krys-Rusoff, Stoudamire-Phillips, Hall)                NAY: 0                MOTION PASSED</p> <p><i>Commissioner Hall was disconnected from the meeting at 1:15 p.m.</i></p>

	<i>Commissioner Leary departed the meeting at 1:15 p.m.</i>
<b>5.0</b>	<b>OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS</b> None
<b>6.0</b>	<b>COMMISSION/COUNCIL LIAISON COMMUNICATIONS</b> <ul style="list-style-type: none"> <li>• Councilor Chase reported on the Construction Career Pathway Project and Metro’s consideration of a partnership with Construction Apprenticeship &amp; Workforce Solutions, Inc. (CAWS), an organization created by Oregon construction industry stakeholders to support strategies to build an inclusive, equitable construction workforce for the Hyatt Regency.</li> </ul>
<b>7.0</b>	<b>GM COMMUNICATIONS</b> Scott Cruickshank provided these updates to the Commission: <ul style="list-style-type: none"> <li>• Ben Rowe has been selected for the position included in the budget amendment presented in resolution 17-15. The Expo project, the P’5 project, and issues regarding the Zoo’s financial situation are among the projects to be managed through this position. An internal recruitment to fill Rowe’s current position will begin soon.</li> <li>• David Woodman has been selected as the General Manager of Aramark pacificwild catering. Woodman was previously the General Manager of Aramark pacificwild catering at Portland’s Centers for the Arts.</li> <li>• Cruickshank called on Patty Unfred of Metro’s Diversity, Equity and Inclusion Program to introduce Nathan Baptiste, Metro’s new Diversity Program Manager.</li> <li>• The MERC commissioner nominations from Multnomah County and Washington County are expected to be considered in the next three to four weeks.</li> <li>• Cruickshank offered thanks to Matt Pizzuti for his continuing work as Interim Executive Director of OCC. He announced that the position has been posted and that applications are currently being received. A team will soon do an initial screening of applicants in order to select a group of candidates to be considered for interviews.</li> <li>• Commissioners are invited to a workshop titled “Leading with a Racial Equity Approach for Structural Transformation” to be offered on May 25<sup>th</sup> and 26<sup>th</sup> at Metro. It will be led by Scott Winn, a national expert on the subject.</li> <li>• Bond rating meetings for the Hyatt Regency Portland are being held this month.</li> <li>• Travel Portland and travel industry partners will host a Familiarization tour on June 1-4.</li> </ul>
<b>8.0</b>	<b>FINANCIAL REPORT</b> MERC Finance Manager, Ben Rowe, updated the Commission on MERC finances.
<b>9.0</b>	<b>VENUE BUSINESS REPORTS</b> Robyn Williams, Matthew P. Rotchford and Matt Pizzuti presented updates on business at the venues.
	As there was no further business to come before the Commission, the meeting was adjourned at 2:11 p.m.

**Authorization to Represent MERC/METRO  
on Trade-Promotion Mission; Fact-Finding Mission;  
Economic Development Activity; or Negotiation  
(Food Travel, Lodging Expenses Approved in Advance - exception (H))**

In accordance with ORS 244.020(7)(b)(H), the following public official: **Ray Leary, and Damien Hall, MERC Commissioners**, are hereby authorized to represent Metro/MERC in an official capacity; and

The MERC Commission hereby approves in advance, the receipt of reasonable expenses for food and travel for the above-named public official and his/her accompanying relative, household member, or staff member, for attendance at (*check one*):

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

as follows (*describe date and type of event*):

While attending the ASAE Annual Meeting and Exposition, activities related to the Travel Portland business relationship where meals, room and travel expenses will be paid for by Travel Portland, to introduce and familiarize potential meeting planners and association executives with Portland and the Oregon Convention Center, and to facilitate Oregon and Portland tourism and economic development, which activity(ies) will take place in Toronto, Canada, on August 12-15, 2017.

Being approved by the MERC Commission, at its regular meeting on June 7, 2017, the above activity is hereby officially sanctioned by MERC.

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Karis Stoudamire-Phillips,  
MERC Commission Chair



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# **MERC Commission Meeting**

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June 7, 2017  
12:00 pm

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4.0 Action Agenda

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**METROPOLITAN EXPOSITION RECREATION COMMISSION**  
**Resolution No. 17-17**

For the purpose of approving contracts with Advanced Equipment Corporation and Golden Airwall Inc. to provide Operable Partition Services for the Oregon Convention Center (OCC) and delegating authority to the Metro General Manager of Visitor Venues to execute the contracts.

**WHEREAS**, OCC's meeting, ballroom and exhibit spaces include operable partition systems which allow flexibility in space size and structure; and

**WHEREAS**, OCC's original and expansion portions of the buildings include operable partition equipment from two separate manufacturers, ModernFold and Advanced Equipment Corporation; and

**WHEREAS**, OCC's operable partition equipment have aged, causing mechanical failures; and

**WHEREAS**, OCC wants to use two on-call contractors, Advanced Equipment Corporation and Golden Airwall Inc., to complete the inspection of all components and perform necessary cleaning, lubrication and repairs, for the operable partition equipment in the expansion and original portions of the building; and

**WHEREAS**, Metro issued an Invitation to Bid under Metro's Procurement Administrative Procedures, Section 47-0255, which allows for competitive sealed bids in accordance with ORS 279B.055 for public contracts such as this purchase and Metro received two bids; and

**WHEREAS**, OCC staff has evaluated the bids and Advanced Equipment Corporation is the lowest responsive and responsible bidder and only bidder qualified for the expansion portion of OCC and Golden Airwall, Inc. is the lowest responsive and responsible bid for the original portion of OCC; and

**WHEREAS**, these contracts will support a project included and approved as part of OCC's fiscal year 2017-2018 capital plan; and

**WHEREAS**, OCC staff request approval of these contracts in an amount not to exceed \$175,000 per contract.

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

1. Approves the contract with Advanced Equipment Corporation for Operable Partition Services in a form substantially similar to the attached Exhibit A.
2. Approves the contract with Golden Airwall, Inc., to provide Operable Partition Services in a form substantially similar to the attached Exhibit B.
3. Delegates authority to the General Manager of Visitor Venues to execute both contracts on behalf of the Metropolitan Exposition Recreation Commission.

Passed by the Commission on June 7, 2017.

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

\_\_\_\_\_  
Chair

By: \_\_\_\_\_  
Nathan A. S. Sykes  
Deputy Metro Attorney

\_\_\_\_\_  
Secretary-Treasurer

# Standard Public Contract

MERC CONTRACT NO. 207083

THIS Contract is entered into between Metropolitan Exposition Recreation Commission (MERC), an appointed commission of Metro, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Advanced Equipment Corporation whose address is 19501 144<sup>th</sup> Ave NE, Suite C-100, Woodinville, WA 98072, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

## ARTICLE I SCOPE OF WORK

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

## ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing **July 1, 2017** through and including **June 30, 2022**.

## ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

Contractor shall perform the above work for a maximum price not to exceed **ONE HUNDRED SEVEN FIVE THOUSAND AND NO/100<sup>TH</sup> DOLLARS (\$175,000.00)**.

Advanced Equipment Corporation Moveable Partitions		
Type of Hour	Days/Hours of service	Rate per hour
Regular	Monday – Friday 7:00AM – 3:30PM	\$ 111.00
Overtime	One (1) staff working over eight (8) hours	\$ 155.00
<b>Parts/Materials Markup Percentage</b> (Project Manager may require copies of invoices before approving payment )		15 %

Travel expenses shall be invoiced at Federal Per Diem rated for Portland, OR and billed at cost.

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 and contractor name 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 LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless MERC, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying

# Standard Public Contract

MERC CONTRACT NO. 207083

CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC.

## ARTICLE V TERMINATION

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

## ARTICLE VI INSURANCE & BONDS

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

- A. The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. CONTRACTOR'S coverage will be primary as respects METRO;
- B. Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence;
- C. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and

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

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

CONTRACTOR shall provide MERC with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to MERC. CONTRACTOR shall email Certificate of Insurance to [submitdocuments@oregonmetro.gov](mailto:submitdocuments@oregonmetro.gov). Certificate of Insurance shall identify the MERC contract number.

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

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

## ARTICLE VII PUBLIC CONTRACTS

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

For public work subject to ORS 279C.800 to 279C.870, the CONTRACTOR shall pay prevailing wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, the CONTRACTOR and every subcontractor on such public work shall pay at least the higher prevailing wage. The CONTRACTOR and each subcontractor shall pay workers not less than the specified minimum hourly rate of wage in accordance with Section 7 of 2005 Oregon Laws Chapter 360. 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

# Standard Public Contract

MERC CONTRACT NO. 207083

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 VIII MODIFICATIONS

MERC may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by MERC, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Contractor of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

## ARTICLE IX QUALITY OF GOODS AND SERVICES

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

## ARTICLE X OWNERSHIP OF DOCUMENTS

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

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

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

# Standard Public Contract

MERC CONTRACT NO. 207083

- B. CONTRACTOR and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. CONTRACTOR and subcontractors shall make records available to METRO, and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, within the boundaries of the METRO region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of METRO, the CONTRACTOR or subcontractor agrees to bear all of the costs for METRO employees, and any necessary consultants hired by METRO, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the CONTRACTOR elects to have such records outside these boundaries, the costs paid by the CONTRACTOR to METRO for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.
- D. CONTRACTOR and subcontractors authorize and permit METRO and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, to inspect, examine, copy and audit the books and records of CONTRACTOR or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. METRO shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.
- E. CONTRACTOR and subcontractors agree to disclose the records requested by METRO and agree to the admission of such records as evidence in any proceeding between METRO and the CONTRACTOR or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F. CONTRACTOR and subcontractors agree that in the event such records disclose that METRO is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the CONTRACTOR or subcontractor shall pay all costs incurred by METRO in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from METRO.
- G. Failure of the CONTRACTOR or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future METRO contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the CONTRACTOR or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

## ARTICLE XI SUBCONTRACTORS

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

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

## ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

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



# Standard Public Contract

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MERC CONTRACT NO. 207083

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

## ARTICLE XIII SAFETY

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

## ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

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

## ARTICLE XV COMPLIANCE

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

## ARTICLE XVI: REPRESENTATIONS, WARRANTIES AND COVENANTS RELATING TO COMPLIANCE WITH TAX LAWS

Contractor represents and warrants that Contractor is in compliance with all applicable local, regional and state Tax Laws as of the effective date of this Contract. Contractor agrees to continue to comply with all Tax Laws throughout the duration of this Contract and any extensions. Any breach of the above set forth warranty, misrepresentation, or violation of Contractor's covenant to continue to comply with said Tax Laws during the term of the Contract shall constitute a material breach of this Contract. Such breach shall entitle Metro to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies against Contractor available under this Contract, at law, or in equity, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement contractor, limited specific performance, declaratory or injunctive relief. For purposes of this section, the term "Tax Laws" includes but is not limited to laws ORS 305.620 and ORS chapters 316, 317 and 318, and any tax provisions imposed by a political subdivision of this state that applies to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor, or that applies to goods, services, or property, whether tangible or intangible, supplied by Contractor.

## ARTICLE XVII INTERGOVERNMENTAL COOPERATIVE AGREEMENT

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

# Standard Public Contract

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MERC CONTRACT NO. 207083

program by marking the box below, the Contractor agrees to participate in the Intergovernmental Cooperative Purchasing program. **Contractor declines to participate in the Intergovernmental Cooperative Purchasing program or is not applicable to this Contract as indicated by the following initials \_\_\_\_\_.**

## ARTICLE XVIII SITUS

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

## ARTICLE XIX ASSIGNMENT

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

## ARTICLE XX SEVERABILITY

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

## ARTICLE XXI COUNTERPARTS

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

## ARTICLE XXII 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: Alexandria Bartelt  
Advanced Equipment Corporation  
19501 144<sup>th</sup> Ave NE, Suite C-100  
Woodinville, WA 98072  
425-488-1212 fax

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

With Copy to: Josh Lipscomb  
777 NE Martin Luther King Jr Blvd  
Portland, OR 97232  
503-731-7806 fax



# Standard Public Contract

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MERC CONTRACT NO. 207083

CONTRACTOR

METROPOLITAN EXPOSITION RECREATION  
COMMISSION

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# Scope of Work – Attachment A

MERC Contract No. 207083

**1. Purpose and Goal of Work**

The contract consists of performing inspections, routine maintenance, repairs and other work as requested by Oregon Convention Center (OCC) on moveable partitions and related items.

**2. Description of the Scope of Work**

Preventative Maintenance will consist of the following:

- Clean all old lubrication and debris from track system and apply new lubricant.
- Inspect each trolley, clean and lubricate as needed.
- Inspect all pass-through doors, and adjust and repair as needed.
- Verify the diverters and track switch operation, repair as needed.
- Operate every panel checking all mechanical functions of drop seals. Replace any damaged or non-functioning equipment.

<b>Location of Moveable Partitions at OCC</b>
<b>Advanced Equipment Corp (expansion side)</b>
Exhibit Hall C/D
Exhibit Hall D/E
D Meeting Rooms
E Meeting Rooms
F Meeting Rooms
Portland Ballroom

# Scope of Work – Attachment A

MERC Contract No. 207083

<b>Specifications of Moveable Partitions at OCC</b>
<b>Advanced Equipment Corp (expansion side)</b>
Exhibit Hall Partition Type: ALPHA 'X' Panel 30' tall 58" wide #1B track 4" bottom seals
Meeting Room Partition Type: ALPHA 'S' Panel 18' tall 4' wide #1A track 2" bottom seals
Ballroom Partition Type: ALPHA 'S' Panel 31' tall 56-58" wide #1B track 2" bottom seals

### 3. Deliverables/Outcomes

The contractor shall provide the following:

- All labor, supervision, travel, equipment, tools, materials, supplies, tax and permits, if applicable, necessary for and incidental to fully performing all services in accordance with specifications, set forth herein.
- Provide inspection reports outlining necessary repairs.
- Provide warranty information per project/repair.

# Standard Public Contract

MERC CONTRACT NO. 207084

THIS Contract is entered into between Metropolitan Exposition Recreation Commission (MERC), an appointed commission of Metro, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Golden Airwall, Inc. whose address is 16271 SE Hillside Lane, Milwaukie, OR 97267, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

**ARTICLE I  
SCOPE OF WORK**

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

**ARTICLE II  
TERM OF CONTRACT**

The term of this Contract shall be for the period commencing **July 1, 2017** through and including **June 30, 2022**.

**ARTICLE III  
CONTRACT SUM AND TERMS OF PAYMENT**

Contractor shall perform the above work for a maximum price not to exceed **ONE HUNDRED SEVEN FIVE THOUSAND AND NO/100<sup>TH</sup> DOLLARS (\$175,000.00)**.

ModernFold Moveable Partitions		
Type of Hour	Days/Hours of service	Rate per hour
Regular	Monday – Friday First eight (8) hours	\$ 95.00
Weekend	Saturday – Sunday	\$ 110.00
Overtime	One (1) staff working over eight (8) hours	\$ 110.00
<b>Parts/Materials Markup Percentage</b> (Project Manager may require copies of invoices before approving payment )		10 %

Travel expenses shall be invoiced at Federal Per Diem rated for Portland, OR and billed at cost.

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 and contractor name 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.

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# Standard Public Contract

MERC CONTRACT NO. 207084

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- B. Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000 per occurrence;
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METRO, MERC, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability and Automobile policies.

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

CONTRACTOR shall provide MERC with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to MERC. CONTRACTOR shall email Certificate of Insurance to [submitdocuments@oregonmetro.gov](mailto:submitdocuments@oregonmetro.gov). Certificate of Insurance shall identify the MERC contract number.

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MERC CONTRACT NO. 207084

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## ARTICLE X OWNERSHIP OF DOCUMENTS

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

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

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

# Standard Public Contract

MERC CONTRACT NO. 207084

- B. CONTRACTOR and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. CONTRACTOR and subcontractors shall make records available to METRO, and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, within the boundaries of the METRO region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of METRO, the CONTRACTOR or subcontractor agrees to bear all of the costs for METRO employees, and any necessary consultants hired by METRO, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the CONTRACTOR elects to have such records outside these boundaries, the costs paid by the CONTRACTOR to METRO for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.
- D. CONTRACTOR and subcontractors authorize and permit METRO and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, to inspect, examine, copy and audit the books and records of CONTRACTOR or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. METRO shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.
- E. CONTRACTOR and subcontractors agree to disclose the records requested by METRO and agree to the admission of such records as evidence in any proceeding between METRO and the CONTRACTOR or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- F. CONTRACTOR and subcontractors agree that in the event such records disclose that METRO is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the CONTRACTOR or subcontractor shall pay all costs incurred by METRO in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from METRO.
- G. Failure of the CONTRACTOR or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future METRO contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the CONTRACTOR or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

## ARTICLE XI SUBCONTRACTORS

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

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

## ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

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



# Standard Public Contract

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MERC CONTRACT NO. 207084

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

## ARTICLE XIII SAFETY

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

## ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

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

## ARTICLE XV COMPLIANCE

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

## ARTICLE XVI: REPRESENTATIONS, WARRANTIES AND COVENANTS RELATING TO COMPLIANCE WITH TAX LAWS

Contractor represents and warrants that Contractor is in compliance with all applicable local, regional and state Tax Laws as of the effective date of this Contract. Contractor agrees to continue to comply with all Tax Laws throughout the duration of this Contract and any extensions. Any breach of the above set forth warranty, misrepresentation, or violation of Contractor's covenant to continue to comply with said Tax Laws during the term of the Contract shall constitute a material breach of this Contract. Such breach shall entitle Metro to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies against Contractor available under this Contract, at law, or in equity, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement contractor, limited specific performance, declaratory or injunctive relief. For purposes of this section, the term "Tax Laws" includes but is not limited to laws ORS 305.620 and ORS chapters 316, 317 and 318, and any tax provisions imposed by a political subdivision of this state that applies to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor, or that applies to goods, services, or property, whether tangible or intangible, supplied by Contractor.

## ARTICLE XVII INTERGOVERNMENTAL COOPERATIVE AGREEMENT

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



# Standard Public Contract

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MERC CONTRACT NO. 207084

program by marking the box below, the Contractor agrees to participate in the Intergovernmental Cooperative Purchasing program. **Contractor declines to participate in the Intergovernmental Cooperative Purchasing program or is not applicable to this Contract as indicated by the following initials \_\_\_\_\_.**

## ARTICLE XVIII SITUS

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

## ARTICLE XIX ASSIGNMENT

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

## ARTICLE XX SEVERABILITY

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

## ARTICLE XXI COUNTERPARTS

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

## ARTICLE XXII 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: Bryce Golden  
Golden Airwall, Inc.  
16271 SE Hillside Lane  
Milwaukie, OR 97267  
503-303-5145 fax

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

With Copy to: Josh Lipscomb  
777 NE Martin Luther King Jr Blvd  
Portland, OR 97232  
503-731-7806 fax

# Standard Public Contract

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MERC CONTRACT NO. 207084

CONTRACTOR

METROPOLITAN EXPOSITION RECREATION  
COMMISSION

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# Scope of Work – Attachment A

MERC Contract No. 207084

## 1. Purpose and Goal of Work

The contract consists of performing inspections, routine maintenance, repairs and other work as requested by Oregon Convention Center (OCC) on moveable partitions and related items

## 2. Description of the Scope of Work

Preventative Maintenance will consist of the following:

- Clean all old lubrication and debris from track system and apply new lubricant.
- Inspect each trolley, clean and lubricate as needed.
- Inspect all pass-through doors, and adjust and repair as needed.
- Verify the diverters and track switch operation, repair as needed.
- Operate every panel checking all mechanical functions of drop seals. Replace any damaged or non-functioning equipment.

<b>Location of Moveable Partitions at OCC</b>
<b>ModernFold (original side)</b>
Exhibit Hall A/A1
Exhibit Hall A1/B
Exhibit Hall B/C
A Meeting Rooms
B Meeting Rooms
C Meeting Rooms
Oregon Ballroom

# Scope of Work – Attachment A

MERC Contract No. 207084

<b>Specifications of Moveable Partitions at OCC</b>
<b>ModernFold (original side)</b>
Exhibit Hall Partition Type: 931 ModernFold partition 30' tall 4' wide #14 track 2" manual drop seal
Meeting Room Partition Type: 931 ModernFold partition 18' tall 4' wide #14 track 2" manual drop seal
Ballroom Partition Type: 931 ModernFold partition 23' tall 4' wide #14 track 2" manual drop seal

### 3. Deliverables/Outcomes

The contractor shall provide the following:

- All labor, supervision, travel, equipment, tools, materials, supplies, tax and permits, if applicable, necessary for and incidental to fully performing all services in accordance with specifications, set forth herein.
- Provide inspection reports outlining necessary repairs.
- Provide warranty information per project/repair.

## MERC Staff Report

**Agenda Item/Issue:** For the purpose of approving the contracts with Advanced Equipment Corporation and Golden Airwall Inc. to provide Operable Partition Services for the Oregon Convention Center (OCC), and authorizing the General Manager of Visitor Venues to execute the contract.

**Resolution No:** 17-17

**Date:** June 7, 2017

**Presented by:** Matt Pizzuti

**BACKGROUND:** The OCC meeting, ballroom and exhibit spaces include operable partition systems, commonly referred to as “air walls.” These air walls serve as removable partitions, allowing the OCC the flexibility to create the perfect meeting space and size for its clients. The original and expansion sides of the building contain two different types of operable partitions, ModernFold and Advanced Equipment Corp.

The original side air walls have had major maintenance performed on the tracks and trollies seven years ago. While the tracks and trollies are still in good working condition the drop seals and doors require additional attention. The contractor will provide an inspection of all components and perform necessary cleaning, lubrication and repairs. They will provide these services on an On-Call basis for a period of five years.

The expansion side air walls have not been replaced, upgraded or received any major maintenance since their installation. The daily use over the previous 14 years has caused degradation of tracks, switches, trollies and overall reliability. The contractor will provide an inspection of all components and perform necessary cleaning, lubrication and repairs. They will provide these services on an On-Call basis for a period of five years.

In April 2017, staff issued an RFB that received two proposals. OCC reviewers deemed that both proposals were the lowest, responsive bidders. Advanced Equipment Corporation is the manufacturer of the movable partition for the expansion portion of the building. Because of this, they were able to meet all qualifications and are best suited to work on those systems. The second bidder, Golden Airwall, Inc., provided a lower hourly wage, but did not meet the qualifications for the Advanced Equipment system. They are a general company with established experience the ModernFold product. Therefore, the OCC will use Golden Airwall Inc., to provide the services needed on the operable partitions located in the original portion of the OCC.

MERC staff issued the RFB in accordance with MERC's purchasing and contracting rules, in compliance with Metro policy and all statutory requirements. The RFB was published in the Daily Journal of Commerce, the Skanner, ORPIN and on the Metro website.

**FISCAL IMPACT:** The FY 2017-18 Oregon Convention Center Capital Improvement Plan (CIP) includes \$180,000 appropriation for the Operable Partition Services project.

**RECOMMENDATION:** Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution No 17-17, approve the contract awards and written contracts (attached hereto) with Advanced Equipment Corporation and Golden Airwall, Inc., both for an amount not to exceed one hundred seventy five thousand & 00/100 dollars (\$175,000.00) for Operable Partition Services for the Oregon Convention Center and authorize the General Manager of Visitor Venues to execute the contract.

**METROPOLITAN EXPOSITION RECREATION COMMISSION**

**Resolution No. 17-18**

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 Adopted 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 Adopted Budget to the Metro Council for ratification.

Passed by the Commission on June 7, 2017.

**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:** 17-18

**Presented By:** Ben Rowe

**Date:** June 7, 2017

**Background and Analysis:** Throughout the year, the MERC capital program confronts many project challenges, which sometimes require changes to the original project scope, schedule or budget. Specifically, many capital projects across the agency are currently experiencing significant disparities between project cost estimates and bid amounts due to the rapidly rising costs of commercial construction in the Portland Metro Area. It is currently a contractor’s market. Often through the course of planning and executing the project unforeseen energy or operation efficiency opportunities are identified requiring nominal budget increases to implement. The six capital project budget scope changes presented below are complementary to each other.

The Expo Center is proposing the following Capital Project amendments to take advantage of product pricing, seasonal capacity, and a return on investment opportunity.

The Expo team has strategically chosen to delay the HVAC Review and Repair project to FY 2018-19 and use this project budget to fund both the materials purchase for the Halls D&E Roof refurbishment and the Expo sign replacement on Hall A.

The self-production of Expo’s annual Drive-in Movie Extravaganza requires the use of a high-powered, high definition projector. In the past the Expo team has rented this equipment at a significant expense. Expo proposes to delay purchase of scaffolding to FY 2018 or 2019 and cancel the retrofit exhaust fans project due to the fire marshal’s determination that we cannot use our indoor spaces for parking. This facilitates an increase of the budget for Audio Video equipment purchase. This strategy is forecasted to save money in the long-term and generate revenue through leasing to offset the cost of the equipment.

The proposed amendments do not increase Expo’s capital budget but instead increases and decreases the projects budgets listed above by the same amounts for a net zero effect.

**Portland Expo Center**

<b>Fund:</b>		<b>556 – Portland Expo Center</b>		
<b>Line Item</b>	<b>Project #</b>	<b>Amended Budget</b>	<b>Amendment</b>	<b>Amended Budget</b>
HVAC Review & Repair	8R137	170,000	(170,000)	0
Hall A Carpet, Paint, Sign	8R149	0	25,000	25,000
Halls D&E Roof Refurbishment	8R136	779,500	145,000	924,500
Halls ABCDE Retrofit Exhaust Fans	8N065	25,000	(25,000)	0
Scaffolding Purchase	8N066	10,000	(10,000)	0
Audio Visual Equipment	8N020	50,000	35,000	85,000
<b>Total Requirements:</b>		<b>\$1,034,500</b>	<b>\$0</b>	<b>\$1,034,500</b>

**Fiscal Impact:** This action will amend the FY 2016-17 Adopted Budget subtracting and adding the amounts listed above among the appropriate capital project line items.

**Recommendation:** Staff recommends the Metropolitan Exposition Recreation Commission adopt Resolution 17-18.

**METROPOLITAN EXPOSITION RECREATION COMMISSION**

**Resolution No. 17-19**

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 2017-18.

**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 2017-18 budget for the MERC Fund; and

**WHEREAS**, MERC staff request certain budget amendments to the Proposed Budget for fiscal year 2017-18 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, 2017 and ending June 30, 2018 for inclusion as part of the total Metro budget for this period.
2. MERC requests that the Metro COO present these amendments to the Proposed Budget to the Metro Council for ratification.

Passed by the Commission on June 7, 2017.

\_\_\_\_\_  
**Chair**

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

\_\_\_\_\_  
**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 2017-18 Budget and Capital Improvement Plan (CIP) amendment to the MERC Fund.

**Resolution No:** 17-19

**Presented By:** Ben Rowe

**Date:** June 7, 2017

**Background and Analysis:** Throughout the year, the MERC capital program confronts many project challenges, which sometimes require changes to the original project scope, schedule or budget. Specifically, many capital projects across the agency are currently experiencing significant disparities between project cost estimates and bid amounts due to the rapidly rising costs of commercial construction in the Portland Metro Area. It is currently a contractor's. Often through the course of planning and executing the project unforeseen energy or operation efficiency opportunities are identified requiring nominal budget increases to implement.

**Oregon Convention Center**

The two capital project budget scope changes presented below are complementary to one another. The Emergency Notification EST-3 Fire Alarm Upgrade was re-budgeted in FY 18 due to a possibility of not completing the project in FY 17. Fortunately staff were able to work with the vendor and schedule the project for completion in FY 17. Conversely, the Alerton Software & Programming Upgrades require additional funding. The proposed amendments do not increase OCC's capital budget but instead decreases the Emergency Notification EST-3 Fire Alarm Notification project budget and increases the Alerton Software & Programming Upgrades by the same amount for a net zero effect.

<b>Fund:</b>	<b>550 – Oregon Convention Center</b>			
<b>Line Item</b>	<b>Project #</b>	<b>Original Budget</b>	<b>Amendment</b>	<b>Amended Budget</b>
Emergency Notification EST-3 Fire Alarm Upgrade	8R163	375,000	(70,000)	\$305,000
Alerton Software & Programming Upgrades	8R166	0	70,000	\$70,000
<b>Total Requirements:</b>		<b>\$375,000</b>	<b>\$0</b>	<b>\$375,000</b>

1. 8R163 – Emergency Notification EST-3 Fire Alarm Notification Upgrade – (\$70,000 decrease) –This project was funded in FY17 and rebudgeted in full in FY18. OCC Staff have made rapid progress and expect to complete the project in FY17. OCC proposes to reduce the budget appropriation in FY18 to provide additional funding to the following project.
2. 8R166 – Alerton Software & Programming Upgrades – (\$70,000 increase) – This is a continuation of the Alerton BAS programming and upgrade project. This software controls the HVAC systems across the facility. Staff requests to increase the budget amount by \$70,000 to make additional programming changes to the system outside the original scope. During the ongoing commissioning project, control programming issues were discovered causing significant energy loss. Potential energy savings by correcting these issues were presented to the Energy Trust of Oregon (ETO). ETO has offered an incentive of \$38,000 upon implementation of the proposed fixes. This incentive is an unanticipated benefit of the project. Staff anticipates an additional phase of this project in future fiscal year capital plans to achieve more efficiency.

**Portland's Centers for the Arts**

The five capital project budget scope changes presented below are complementary to one another. The three lighting projects listed below, are managed as a single scope of work for practical purposes. Due to several dynamics, the estimated costs of this project have compounded to a 50% increase. Specifically, costs increased due to equipment specifications and installation costs. Actual bids on both the specified lighting equipment and the installation time and labor costs came in much higher than anticipated. The majority of the cost increase however is due to the installation costs. Specialized equipment is needed to reach the lighting equipment for replacement and the work must be done in a finite window of time to accommodate the performance schedules in the rental spaces. As noted above, the specialized equipment and tight timelines are compounded by the rapidly rising commercial construction costs in the Portland area. Because these lighting projects are priority, the Portland's team will reduce the project budgets for both

the Schnitzer Cooling Tower and Orchestra Shell Rigging in FY 2017-18, postponing these scope of work until future budget years to accomplish the lighting projects. The proposed amendments do not increase Portland's capital budget but instead decreases and increases the projects listed above and below by the same amount for a net zero effect.

<b>Fund:</b>	<b>554 – Portland's Centers for the Arts</b>
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Line Item	Project #	Original Budget	Amendment	Amended Budget
Newmark Lighting Overhaul Phase II	8R089	100,000	175,000	275,000
Newmark Lighting Overhaul Phase III	8R144	100,000	175,000	275,000
Winningstad - House Lighting Control & Dimmers	8R090	100,000	100,000	200,000
ASCH - Cooling Tower & Associated Piping ( R & R)	8R120	350,000	(350,000)	0
ASCH - Orchestra Shell Rigging - loft blocks	8R092	125,000	(100,000)	25,000
<b>Total Requirements:</b>		<b>\$775,000</b>	<b>\$0</b>	<b>\$775,000</b>

### Portland Expo Center

The Portland Expo Center has secured the contract with Cirque du Soleil for 64 performances August 24<sup>th</sup> through October 8<sup>th</sup> 2017. Staff planned to propose a separate budget amendment for the Cirque event after the contract was signed. The proposed line items below represent both the revenues and expenditures specific to the event. The proposed budget below represents a \$65,790 (26%) Food and Beverage margin, a \$144,000 (22%) parking operation margin and a total \$312,730 (47%) total event margin.

<b>Fund:</b>	<b>556 – Portland Expo Center</b>
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Line Item Title	Account	Fund	Dept	Prog	Class	Proj	Amount
<i>Resources:</i>							
F&B Service Rev - Liquor	455110	556	56800	51300	0000		18,500
F&B Service Rev - Beer	455120	556	56800	51300	0000		4,625
F&B Service Rev - Beer	455120	556	56800	51100	0000		105,080
F&B Service Rev - Wine	455130	556	56800	51300	0000		24,975
F&B Service Rev - Wine	455130	556	56800	51100	0000		79,735
F&B Service Rev - Food	455500	556	56800	51100	0000		3,238
Outside Catering Buy-out	455910	556	56800	51300	0000		4,625
Outside Catering Buy-out	455910	556	56800	51100	0000		9,250
F&B Recovery - Billed Gratuity	455920	556	56800	51100	0000		6,938
<b>Food &amp; Beverage Subtotal:</b>							<b>256,965</b>
Rentals - Outdoor Space	452110	556	56200	53710	0000		155,000
Parking Fees	462000	556	56850	54000	0000		250,000
<b>Total Resources</b>							<b>661,965</b>

<i>Requirements:</i>							
F&B Svcs - Promoter Revenue Share		529128	556	56800	51300	0000	65,865
F&B - Liquor Cost		529122	556	56800	51300	0000	5,550
F&B - Beer Cost		529124	556	56800	51300	0000	21,941
F&B - Wine Cost		529123	556	56800	51100	0000	20,942
F&B - Beverage Cost		529121	556	56800	51100	0000	500
F&B - Food Cost		529120	556	56800	51100	0000	648
F&B Service - Other		529129	556	56800	51100	0000	3,000
F&B Services - Direct Salary & Wage - Manager		529130	556	56800	51100	0000	12,000
F&B Services - Direct Salary & Wage - Hourly		529131	556	56800	51100	0000	31,000
F&B Services - Reserves		529191	556	56800	51500	0000	13,900
F&B Services - Net Gross Receipts		529198	556	56800	51400	0000	9,000
F&B Services - Percent of Net Profit		529199	556	56800	51400	0000	6,830
<b>Food &amp; Beverage Subtotal:</b>							<b>191,176</b>
Parking Services		529210	556	56850	54000	0000	76,000
Parking - Traffic Control		528092	556	56850	54000	0000	30,000
<b>Parking Subtotal:</b>							<b>106,000</b>
Marketing & Sales - Enhanced		524700	556	56200	53100	0000	17,160
Miscellaneous Expenditures - Operations		549000	556	56300	53100	0000	19,550
Miscellaneous Expenditures - Event Coordination		549000	556	56500	53100	0000	15,350
<b>Event Related Expenses Subtotal:</b>							<b>52,060</b>
<b>Total Requirements</b>							<b>349,236</b>

**Fiscal Impact:** This action will amend the FY 2017-18 Adopted Budget subtracting and adding the amounts listed above among the appropriate capital project line items.

**Recommendation:** Staff recommends the Metropolitan Exposition Recreation Commission adopt Resolution 17-19.

**METROPOLITAN EXPOSITION RECREATION COMMISSION**

**Resolution No. 17-20**

For the purpose of approving a contract with Hollywood Lights, Inc. for the installation of house and stage lighting equipment in the Newmark Theater and Dolores Winningstad Theater at Portland’s Centers for the Arts and delegating authority to the GM of Visitor Venues to execute the contract.

**WHEREAS**, Portland’s Centers for the Arts needs to complete a lighting renewal and replacement project in the Newmark and Winningstad theaters to replace obsolete and energy inefficient equipment, and;

**WHEREAS**, the Metropolitan Exposition Recreation Commission (MERC) approved purchase of lighting equipment for both theaters in April, 2017, and;

**WHEREAS**, staff completed an extensive Invitation to Bid process for installation of this equipment and;

**WHEREAS**, staff received one bid and determined it was responsive, and;

**WHEREAS**, staff selected the one bidder, Hollywood Lights, Inc., a local company, with a bid of \$449,000.00, and;

**WHEREAS**, staff recommends approval by MERC of a contract with Hollywood Lights, Inc. for this installation in an amount not to exceed \$449,000.00.

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

1. Approves the award of the contract to Hollywood Lights, Inc. in a form substantially similar to the attached Exhibit A.
2. Delegates authority to the General Manager of Visitor Venues to execute the contract on behalf of MERC.

Passed by the Commission on June 7, 2017

\_\_\_\_\_  
Chair

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

By: \_\_\_\_\_  
Nathan A. S. Sykes  
Deputy Metro Attorney

\_\_\_\_\_  
Secretary-Treasurer

## Construction Agreement



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

METRO CONTRACT NO. 207078

THIS CONSTRUCTION AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and Hollywood Lights, Inc., whose address is 5251 SE McLoughlin Blvd, Portland, OR 97202, hereinafter referred to as the "Contractor".

THE PARTIES AGREE AS FOLLOWS:

### ARTICLE I

#### SCOPE OF WORK AND CONTRACT TERMS

CONTRACTOR shall perform the work and/or deliver to METRO 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 METRO 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 June 19, 2017 through and including June 30, 2018. Substantial completion per Section 9.4 of the General Conditions is September 8, 2017 for the Newmark Theater and January 16, 2018 for the Winningstad Theater. Work periods are detailed in the Scope of Work.

### ARTICLE III

#### CONTRACT SUM AND TERMS OF PAYMENT

METRO shall pay the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work, in the maximum amount of FIVE HUNDER FORTY FIVE THOUSAND 00/100THS DOLLARS (\$545,000.00) (the "Maximum Price"). METRO shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work. The Maximum Price includes all fees, costs and expenses of whatever nature. Each of METRO's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the METRO contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and expenses incurred during the billing period, and will not be submitted more frequently than once a month.

Contractor's billing invoices shall be sent to metroaccountspayable@oregonmetro.gov. The Metro contract number and Contractor name shall be referenced in the email subject line. Metro requests that contractors submit billing invoices for services within 10 business days of performance. Payment shall be made by Metro 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

# Construction Agreement



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

METRO CONTRACT NO. 207078

part of this Agreement. Specifically, it is a condition of this contract that CONTRACTOR and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

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

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

## ARTICLE 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: Frank Locke  
Hollywood Lights, Inc  
5251 SE McLoughlin Blvd,  
Portland, OR 97202  
503-232-8505 fax

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

With Copy to: Ed Williams  
1111 SW Broadway  
Portland, OR 97205  
503-796-6507 fax

CONTRACTOR

METRO

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

# Construction Agreement



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

---

METRO CONTRACT NO. 207078

Date \_\_\_\_\_

Date \_\_\_\_\_

## ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

### 1. Purpose and Goal of Work

The work under this contract will result in the complete replacement of all house lighting systems in the Newmark and Winningstad Theaters, and the stage lighting system in Newmark Theater located at Antoinette Hatfield Hall, 1111 SW Broadway, Portland, Oregon 97205

### 2. Scope of Work

- Contractor shall perform or cause to be performed the work laid out in Attachment A, Narrative Description of Work.
- Other necessary information is provided in Exhibits as follows:
  - Exhibit (a)– List of Owner Furnished Equipment and Services
  - Exhibit (b)– Product Data Sheets for Owner Furnished Equipment
  - Exhibit (c) – House Lighting Fixture Layout Drawings
  - Exhibit (d) – Lighting Controls Functional Concept Drawings
- Contractor shall be responsible for interfacing with ETC, the manufacturer of the dimming systems and architectural fixtures used in this project, to coordinate testing, software installation, commissioning and training of theater personnel.
- Contractor shall provide a complete set of as-built drawings in AutoCAD file format within 60 days following completion of the work.

### 3. Work Periods

- Newmark Preparation period runs from Contract execution through August 13, 2017. During this time, some work may be done in support spaces outside the theater seating area. In addition, some in-theater work time may be available based on client needs and performance schedules. A detailed list of dates has been provided to the Contractor. Work in the theater shall be at the sole discretion of P'5 in accordance with its Licensee requirements and P'5 may stop any in-theater work at the request of the Licensee or P'5.
- Newmark in-theater construction period runs August 14, 2017 through September 8, 2017. During this time, the Newmark Theater is completely shut down and dedicated for this work. The theater must be ready to accept a new client loading on September 9.
- Winningstad prep and construction period runs December 4, 2017 to January 16, 2018. During this period, the Winningstad Theater is completely shut down and dedicated for this work.

### 4. Contractor shop pre-preparation

- Contractor is free to perform as much pre-configuration work and testing of equipment on the Contractor's shop premises as Contractor deems necessary.
- This preparation work is performed independently of MERC supervision or involvement

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.

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 shall be deemed part of this 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.



## ATTACHMENT B - SECTION 007200 METRO GENERAL CONDITIONS

### TABLE OF CONTENTS

<b>ARTICLE 1 GENERAL PROVISIONS.....</b>	<b>7-12</b>
1.1 DEFINITIONS	
1.2 INTERPRETATION AND USE OF CONTRACT DOCUMENTS.	
1.3 SUPPLY OF CONTRACT DOCUMENTS.	
1.4 USE OF CONTRACT DOCUMENTS.	
1.5 COPYRIGHT.	
1.6 CONTRACTOR'S STATUS AS INDEPENDENT CONTRACTOR.	
1.7 NO THIRD-PARTY BENEFICIARY TO THE CONTRACT.	
1.8 SEVERABILITY CLAUSE.	
1.9 NOTICE OR SERVICE.	
<b>ARTICLE 2 CONTRACTOR .....</b>	<b>12-16</b>
2.1 RESPONSIBILITIES OF THE CONTRACTOR.	
2.2 DOCUMENTS.	
2.3 CONTRACTOR'S AUTHORIZED REPRESENTATIVE.	
2.4 ON-SITE REPRESENTATION REQUIRED.	
2.5 CONTRACTOR'S OFFICE AT THE SITE.	
2.6 USE OF THE SITE BY CONTRACTOR.	
2.7 REVIEW OF PROJECT CONDITIONS.	
2.8 CONSTRUCTION STAKING.	
2.9 CONSTRUCTION STAGING AREA.	
2.10 KEY PERSONNEL.	
2.11 CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.	
2.12 CONTRACTOR TO SUPPLY SUFFICIENT MATERIAL AND WORKERS.	
2.13 CONSTRUCTION PLANT, EQUIPMENT, AND METHODS.	
2.14 PERMITS.	
2.15 CONTRACTOR'S TEMPORARY STRUCTURES.	
2.16 COMPLIANCE WITH PRODUCT MANUFACTURER'S RECOMMENDATIONS.	
2.17 ACCOUNTING RECORDS	
<b>ARTICLE 3 ADMINISTRATION OF THE CONTRACT .....</b>	<b>16-21</b>
3.1 AUTHORITY AND RELATIONSHIPS OF METRO AND ARCHITECT OR ENGINEER.	
3.2 AUTHORITY OF METRO.	
3.3 REQUEST FOR INFORMATION.	
3.4 CONTRACTOR'S CLAIMS.	
3.5 METRO'S RIGHT TO STOP, PERFORM, OR DELETE WORK.	
3.6 METRO'S RIGHT TO ADJUST PAYMENTS.	
3.7 MEDIATION.	
3.8 LITIGATION.	
3.9 WORK TO CONTINUE NOTWITHSTANDING DISPUTE.	
<b>ARTICLE 4 SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT .....</b>	<b>21-22</b>
4.1 SUBCONTRACTING.	
4.2 OBJECTION TO SUBCONTRACTORS OR SUPPLIERS.	
4.3 SUBSTITUTION, CHANGE, OR ADDITION OF SUBCONTRACTORS OR SUPPLIERS.	
4.4 REMOVAL OF SUBCONTRACTORS AT REQUEST OF METRO.	
4.5 METRO NOT OBLIGATED TO DETECT UNSATISFACTORY WORK.	
4.6 NO CONTRACTUAL RELATIONSHIPS BETWEEN METRO AND CONTRACTOR'S SUBCONTRACTORS AND SUPPLIERS.	
4.7 CONTRACTOR'S AGREEMENTS WITH SUBCONTRACTORS.	
4.8 ASSIGNMENT.	
<b>ARTICLE 5 TIME OF COMPLETION AND SCHEDULE FOR THE WORK.....</b>	<b>22-23</b>
5.1 PROSECUTION OF WORK GENERALLY.	
5.2 TIME OF COMPLETION.	

5.3	EXTENSIONS OF TIME.	
5.4	PROJECT SCHEDULING.	
5.5	USE OF COMPLETED PARTS OF THE WORK BEFORE ACCEPTANCE.	
	<b>ARTICLE 6 COORDINATION WITH OTHER METRO CONTRACTORS</b>	<b>23-25</b>
6.1	OTHER METRO CONTRACTORS GENERALLY.	
6.2	DUTY TO INSPECT OTHER METRO CONTRACTORS' WORK.	
6.3	LATENT DEFECTS IN OTHER CONTRACTOR'S WORK.	
6.4	DUTY TO MAINTAIN SCHEDULE.	
6.5	FAILURE TO MAINTAIN SCHEDULE.	
6.6	FAILURE TO COORDINATE WORK.	
6.7	OTHER METRO CONTRACTORS' FAILURE TO COORDINATE.	
6.8	CONFLICTS AMONG CONTRACTORS.	
6.9	COORDINATION DRAWINGS.	
6.10	FURNISHED BY OWNER, INSTALLED BY CONTRACTOR ("FOIC") ITEMS.	
6.11	CONFERENCES.	
	<b>ARTICLE 7 CONTROL AND QUALITY OF WORK AND MATERIAL</b>	<b>26-30</b>
7.1	QUALITY CONTROL.	
7.2	INSPECTION.	
7.3	UNSATISFACTORY MATERIALS AND WORKMANSHIP.	
7.4	GENERAL WARRANTY OF CONTRACTOR.	
7.5	THIRD-PARTY WARRANTIES.	
7.6	SUBCONTRACTOR WARRANTIES.	
7.7	CORRECTION OF WORK BY CONTRACTOR.	
7.8	WARRANTY AND CORRECTION AGREEMENTS BY SUBCONTRACTORS.	
7.9	REMEDIES NOT EXCLUSIVE.	
7.10	PROOF OF COMPLIANCE WITH CONTRACT PROVISIONS.	
7.11	PATENTS, COPYRIGHTS, TRADEMARKS.	
7.12	ANTI-TRUST CLAIMS.	
	<b>ARTICLE 8 CHANGES IN THE WORK</b>	<b>30-32</b>
8.1	CHANGE ORDERS GENERALLY.	
8.2	PROCEDURE FOR DETERMINING IMPACT OF CHANGE ORDERS ON CONTRACT AMOUNT.	
8.3	LIMITATIONS WHEN CHANGE ORDERS IMPACT CONTRACT AMOUNT.	
8.4	FORCE ACCOUNT WORK.	
8.5	CONTRACTOR PROPOSALS FOR CHANGES IN WORK.	
8.6	IMPACT OF AUTHORIZED CHANGES IN THE CONTRACT.	
	<b>ARTICLE 9 PAYMENTS AND COMPLETION</b>	<b>32-36</b>
9.1	SCOPE OF PAYMENT.	
9.2	SCHEDULE OF VALUES.	
9.3	PROGRESS PAYMENT PROCEDURE.	
9.4	SUBSTANTIAL COMPLETION.	
9.5	FINAL COMPLETION AND ACCEPTANCE.	
9.6	CLOSEOUT SUBMITTALS.	
9.7	RELEASES.	
9.8	FINAL PAYMENT.	
9.9	NO WAIVER OF RIGHTS.	
	<b>ARTICLE 10 SAFETY, USE OF SITE, AND PROTECTION OF THE WORK</b>	<b>36-42</b>
10.1	LAWS AND REGULATIONS.	
10.2	SAFETY REQUIREMENTS.	
10.3	FIRST AID.	
10.4	USE OF SITE.	
10.5	PROTECTION OF WORK, PERSONS, AND PROPERTY AGAINST DAMAGE.	
10.6	UTILITIES.	
10.7	HAZARDOUS SUBSTANCES ENCOUNTERED DURING CONSTRUCTION AND OTHER ENVIRONMENTAL LAWS.	
10.8	ADDITIONAL REQUIREMENTS FOR WORK.	
	<b>ARTICLE 11 INDEMNIFICATION</b>	<b>42</b>
11.1	INDEMNIFICATION.	

<b>ARTICLE 12 INSURANCE .....</b>	<b>42-45</b>
12.1 GENERAL INSURANCE REQUIREMENT	
12.2 REQUIRED COVERAGE	
12.3 LIMITS	
12.4 ADDITIONAL INSUREDS	
12.5 JOINT VENTURE	
12.6 PRIMARY COVERAGE	
12.7 CONTRACTOR'S FAILURE TO MAINTAIN INSURANCE	
12.8 CERTIFICATES OF INSURANCE	
12.9 SUBCONTRACTOR INSURANCE	
12.10 LIMITATIONS ON COVERAGE	
12.11 PROPERTY INSURANCE	
<b>ARTICLE 13 MINORITY/WOMEN/EMERGING SMALL BUSINESS PROGRAM .....</b>	<b>45-46</b>
<b>ARTICLE 14 MISCELLANEOUS STATUTORY RESPONSIBILITIES OF THE CONTRACTOR .....</b>	<b>46</b>
<b>ARTICLE 15 TERMINATION OR SUSPENSION OF THE WORK .....</b>	<b>46-48</b>
15.1 DEFAULT OF CONTRACTOR.	
15.2 TERMINATION IN THE PUBLIC INTEREST.	
EXHIBIT 1 WARRANTY FORM	
EXHIBIT 2 SUBCONTRACTOR ASSIGNMENT OF ANTITRUST CLAIMS	
EXHIBIT 3 AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE (PROGRESS PAYMENT)	
EXHIBIT 4 AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE (FINAL CLOSEOUT)	
EXHIBIT 5 AFFIDAVIT, LIEN WAIVER AND RELEASE – CONDITIONAL FINAL (SUBCONTRACTOR CLOSEOUT)	

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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.

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.

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.



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.

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



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

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

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

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.



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

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.

### 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.

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;



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

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

**3.10 Liquidated Damages for Failure to Complete Work on Schedule.** Time is of the essence of this Agreement. Contractor's unexcused or unauthorized (per Sections 3 and 8) failure to complete the Work on or before the Substantial Completion Date described in Article II of the Construction Agreement and Section 9.4 of these General Conditions constitutes a breach of this Agreement. Unexcused or unauthorized failure to complete the work will not include failure to complete the work caused by Metro's negligence or willful misconduct. Metro and Contractor agree that any such breach will result in damages to Metro, including but not limited to increased operating costs, lost revenues, potential liability for damage to the Licensee that has rented the building for scheduled events and lost opportunity damages that would be difficult and expensive to determine in the event of a breach. The Parties agree that \$13,000.00 per day is a reasonable estimate of the actual damages Metro will suffer in the event of such a breach (the "Liquidated Damages"), and that said Liquidated Damages are fair and reasonable and are not a penalty.

## ARTICLE 4

### SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

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

**4.2 Objection to Subcontractors or Suppliers.** Metro reserves the right to make reasonable objection to any of Contractor's Subcontractors or Suppliers if Metro discovers any data or information at any time during the performance of the Contract that gives Metro a basis for such reasonable objection. Metro will notify Contractor in writing if Metro has any reasonable objection to any of Contractor's Subcontractors or Suppliers. Contractor shall not

subcontract with any Subcontractor or Supplier to which Metro has made a reasonable objection. In the event of Metro's reasonable objection to any Subcontractor or Supplier, Contractor shall propose another entity to which Metro has no reasonable objection.

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

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

**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 to 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.

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.

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.

**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.

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 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.

**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 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 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.
- 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 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 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

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.

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 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.

### **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 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 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 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:

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.

## 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.

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](mailto: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 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 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 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;

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.

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

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

SUBCONTRACTOR

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

METRO GENERAL CONDITIONS - EXHIBIT 2

**SUBCONTRACTOR ASSIGNMENT OF ANTITRUST CLAIMS**

Project: \_\_\_\_\_

Owner: Metro \_\_\_\_\_

General Contractor: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

Release Date: \_\_\_\_\_

1. By entering into a contract with the General Contractor, subcontractor, for consideration paid to subcontractor under the subcontract, does irrevocably assign to Metro any claim for relief or cause of action that subcontractor now has or that may accrue to Subcontractor in the future, including at Metro's option, the right to control any such litigation on such claim for relief or cause of action, by reason of any violation of 15 USC Section 1 15, ORS 646.725, or ORS 646.730 in connection with any goods or services that are used, in whole or in part, for the purpose of carrying out subcontractor's obligations under its subcontract with the General Contractor.

2. Subcontractors irrevocably assigns to Metro, as a third-Party beneficiary of the subcontract, any right, title, or interest that has accrued or may accrue to the Subcontractor by reason of any violation of 15 USC Section 1 15, ORS 646.725, or ORS 646.730, including, at Metro's option, the rights to control any litigation arising hereunder, in connection with any goods or services provided to the Subcontractors or Suppliers by any person, in whole or in part, for the purpose of carrying out the Subcontractor's obligations as agreed to by Subcontractor in pursuance of the completion of the Contract .

3. It is an express obligation of Subcontractor that it will take no action that will in any way diminish the value of the rights conveyed or assigned hereunder to Metro. It is an express obligation of Subcontractor to advise the Office of Metro Attorney:

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

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

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

4. In the event that any payment under any such claim is made to Subcontractor, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro herein.

**SUBCONTRACTOR**

By \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_



METRO 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

## METRO GENERAL CONDITIONS - EXHIBIT 4

### **AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE**

(General Contractor – Final Closeout)

This AFFIDAVIT, AGREEMENT FOR INDEMNITY, LIEN WAIVER AND RELEASE is entered into \_\_\_\_\_, by and between Metro, a Metropolitan Service District established pursuant to Oregon law and the Metro Charter (“METRO”) \_\_\_\_\_, (the “Undersigned”) in accord with Metro Contract No. \_\_\_\_\_, dated \_\_\_\_\_, between Metro and the Undersigned for construction of the \_\_\_\_\_ (the “Contract”). As a condition precedent to Metro’s final payment under the Contract, in the amount of \_\_\_\_\_ (the “Final Payment”), and in consideration thereof, the Undersigned agrees to make the following representations, warranties, covenants, agreements and indemnities, and to fully and completely waive, release and discharge Metro from all liabilities, obligations, and claims arising under the Contract, as follows:

1. The Undersigned hereby certifies, represents and warrants as follows:

1.1 It has supplied labor, services, equipment, materials or materials transported to the construction of the \_\_\_\_\_ as General Contractor under Metro Contract No. \_\_\_\_\_ (the “Project”), and has subcontracted with other persons and entities to so provide.

1.2 It has complied with all federal, state and local laws, including social security laws, unemployment compensation laws, workers’ compensation laws, and tax laws, insofar as applicable to the performance of the Contract work, and has paid all federal, state and local taxes including excise, use, sales and withholding taxes.

1.3 All subcontractors, laborers, service providers, equipment suppliers and material suppliers and transporters for work, services, equipment or materials supplied to the Project or to the Undersigned and used in the Project have been paid in full by the Undersigned through the period covered by previous progress payments made by Metro.

1.4 It either has paid in full, or within ten (10) business days of receipt of the Final Payment, will pay in full all subcontractors, laborers, service providers, equipment suppliers and material suppliers and transporters for work, services, equipment or materials supplied to the Project or to the Undersigned connected with or used in the Project.

1.5 It has delivered to Metro written releases of all rights to file claims on any bonds in connection with the Contract, signed by each subcontractor, service provider and supplier who performed work, services or furnished or transported materials or equipment in connection with the Contract, in accord with Article 9 of the General Conditions to the Contract.

2. The Undersigned covenants and agrees that progress payments made by Metro up to the date hereof, in the sum of \$\_\_\_\_\_, plus the Final Payment in the amount of \_\_\_\_\_, constitute full and final payment of all amounts due to Undersigned for all labor, services, equipment, and materials provided or transported in connection with the Project. The Undersigned agrees that, **conditioned upon receipt of the Final Payment**, and in consideration thereof, the Undersigned hereby fully and unconditionally waives, discharges and releases Metro from all liabilities, obligations and claims, including all liens, claims of lien, rights to lien, bond claim rights and any other claim for payment it now has or asserts or may have or assert for labor, services, equipment, materials provided or transported in connection with the Contract, and further releases Metro, the Project land and improvements from any claim, cause of action, or demand whatsoever arising out of or relating to the Project.

3. The Undersigned hereby agrees to defend, indemnify and hold Metro harmless from any liability or expense resulting from any claim on any bond or any other claim related to the Contract or work there under, in accord with Articles 9 and 1 of the General Conditions to the Contract.

4. The affiant signing below does hereby swear and attest that he/she has the full authority to sign this document on behalf of the Undersigned and that, **except for the Final Payment**, which is the full and final payment due and owing to Undersigned, that Undersigned has been paid in full for all labor (including contributions and benefits), services, equipment, supplies and materials provided or transported in connection with the Project without exceptions, and that there are no other unsettled claims or demands therefore. The Undersigned affiant further acknowledges that Metro may rely on this Affidavit, Agreement for Indemnity, Lien Waiver and Release in connection with remitting the Final Payment to Undersigned.

Dated: \_\_\_\_\_ Undersigned: \_\_\_\_\_  
By: \_\_\_\_\_ Its: \_\_\_\_\_

STATE OF OREGON        )  
                                      ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_ as \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_  
Notary Public - State of Oregon

# Construction Agreement



METRO CONTRACT NO. 207078

## METRO GENERAL CONDITIONS - EXHIBIT 5

### AFFIDAVIT, LIEN WAIVER AND RELEASE – CONDITIONAL FINAL (Subcontractor - Closeout)

1. The undersigned, \_\_\_\_\_ (“Undersigned”), has provided labor, services, equipment, materials or materials transport to the construction of the improvements at \_\_\_\_\_ known as \_\_\_\_\_, as a Subcontractor to \_\_\_\_\_ (“Contractor”), Metro Contract No. \_\_\_\_\_ (the “Project”).

2. The Undersigned acknowledges and agrees that the sum of \$ \_\_\_\_\_ constitutes full and final payment of all amounts due to Undersigned for all labor, services, equipment, and materials provided or transported in connection with the Project (the “Final Payment”). The Undersigned agrees that, **conditioned upon receipt of the Final Payment**, and in consideration thereof, the Undersigned hereby fully and unconditionally waives and releases all liens, claims of lien, rights to lien, bond claim rights and any other claim for payment it now has or asserts or may have or assert for labor, services, equipment, materials provided or transported in connection with the Project, and further releases Metro, the Project land and improvements, and the Contractor from any claim, cause of action, or demand whatsoever arising out of or relating to the Project.

3. The Undersigned hereby certifies as follows:

3.1 It has complied with all federal, state and local laws, including tax laws, social security laws, unemployment compensation laws and workers’ compensation laws, insofar is applicable to the performance of the subcontract work.

3.2 Its laborers, equipment suppliers and material suppliers have been fully paid through the period covered by previous progress payments made by Contractor except as explicitly noted in writing and attached hereto.

3.3 It either has paid in full, or within five (5) business days of receipt of the Final Payment, will pay in full for all labor, materials and equipment used in or furnished in connection with Project.

4. The affiant signing below does hereby swear and attest that he/she has the full authority to sign this document on behalf of the Undersigned and that, **conditioned upon receipt of the Final Payment**, which is the full and Final Payment due and owing to Undersigned, that Undersigned has been paid in full for all labor (including contributions and benefits), services, equipment, supplies and materials provided or transported in connection with the Project without exceptions, and that there are no other unsettled claims or demands therefore. The Undersigned affiant and further acknowledges that Metro and Contractor are relying on this Affidavit, Lien Waiver and Release in connection with processing the Final Payment.

Dated: \_\_\_\_\_ Undersigned | Subcontractor: \_\_\_\_\_  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON     )  
                                  ) ss.  
County of Multnomah    )

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_ as \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public - State of Oregon

## MERC Staff Report

**Agenda Item/Issue:** For the purpose of approving Hollywood Lights, Inc. for the installation of house and stage lighting equipment for the Newmark Theater and Dolores Winningstad Theater in Antoinette Hatfield Hall.

**Resolution No.:** 17-20

**Presented By:** Robyn Williams

**Date:** June 7, 2017

**Background and Analysis:** Portland's Centers for the Arts (Portland's) seeks approval of a contract for the installation of new lighting system equipment for the Newmark Theater and the Delores Winningstad Theater at Antoinette Hatfield Hall.

A goods and supply contract for equipment only was approved by the Commission in April 2017. This was originally budgeted in FY17 and the intent was to order the material in FY17 because of the lengthy lead time to manufacture and ship the product and install in the next fiscal year. The scope of the complete project provides for the replacement of all original stage and house lighting dimmers, controls and fixtures for the Newmark Theater and the Dolores Winningstad Theater. Current lighting systems date back to 1987 and are not only obsolete, but are highly energy inefficient.

In April, MERC and Metro staff prepared and distributed an Invitation to Bid in accordance with Metro's Procurement Administrative Procedures and state (ORS) requirements. In addition to public postings in media, including the Asian Reporter and Portland Tribune, the ITB was posted on the Oregon Procurement Information Network (ORPIN). A mandatory pre-bid was held April 20<sup>th</sup> and two companies participated-neither of which were COBID certified.

Staff received only one bid. Hollywood Lights, Inc, in Southeast Portland was the sole bidder. Unfortunately, there are no subcontracting opportunities on this project. The contractor must do all work with their own in house staff due to the very tight installation schedule required by Portland's.

While delivering much needed technology to the theaters, the final project design ended up with a larger scope of work than originally budgeted. Technology improved during the design phases of the project, allowing us to take advantage of systems and fixtures that will ultimately save more energy and operate more efficiently in the long term and better meet the needs of our clients but added approximately 12% to the overall cost of the equipment.

Installation costs are high largely due to:

- Specialized equipment and rigging needed to reach the high ceilings in Newmark
- Overtime costs for Union electricians working on a six day, two shifts schedule throughout the project in order to complete the installation in time to re-open the Newmark for clients.
- Higher costs for manufacturer commissioning due to short timeline – additional factory staff will need to travel.

To mitigate pressures on the project we have separated the Winningstad portion and will accomplish that work during a non-event window in the December/January timeframe. That work is still included in this contract.

**Fiscal Impact:** The budget for this project spans 2 fiscal years both FY17 and FY18. The Current total project budget, including the amendment from Resolution 17-19, is \$1,042,000. The proposed contract before you (\$545,000) plus the lighting equipment contract approved by the Commission in April (\$415,000) totals \$960,000. With the approval of resolution of 17-19, there is enough budget appropriation to accommodate both contracts and complete the project. However, if specific project deliverables are not met in the current year, (and we don't spend as much as we think we will) we may need to come back to the Commission at a later date to amend the FY18 budget to accommodate all the project expenses in FY18.

**Recommendation:** Staff recommends that the Metropolitan Exposition Recreation Commission, by Resolution No. 17-20, approve Hollywood Lights, Inc. for the installation of house and stage lighting equipment for the Newmark Theater and Dolores Winningstad Theater in Antoinette Hatfield Hall and delegate authority to the General Manager to execute this contract between MERC and Hollywood Lights, Inc.

**METROPOLITAN EXPOSITION RECREATION  
COMMISSION Resolution No. 17-21**

For the Purpose of Electing Metropolitan Exposition Recreation Commission Officers for Fiscal Year 2017-18.

**WHEREAS**, at the June 7, 2017 regular meeting of the Metropolitan Exposition Recreation Commission, the following Commissioners were nominated and elected as the Metropolitan Exposition-Recreation Commission officers for a one- year term, beginning July 1, 2017 and ending June 30, 2018:

- Chair:**
- Vice Chair:**
- Secretary-Treasurer:**

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

Passed by the Commission on June 7, 2017.

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

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Nathan A. S. Sykes, Deputy Metro Attorney

\_\_\_\_\_  
Secretary-Treasurer



**METROPOLITAN EXPOSITION RECREATION COMMISSION**

**Resolution No. 17-22**

For the purpose of approving an agreement with City Center Parking for Parking Lot Operations at the Portland Expo Center (Expo) and the Oregon Convention Center (OCC) and delegating authority to the Metro General Manager of Visitor Venues to execute such an agreement.

**WHEREAS**, Expo and the OCC operate professional parking operations that generate vital revenues as part of their standard event operations, and;

**WHEREAS**, both Metro procurement, OCC and Expo staff participated in an extensive Request for Proposal process for these services, and;

**WHEREAS**, staff received and reviewed two (2) complete written proposals for these services and interviewed both candidates within a fair and competitive process, and;

**WHEREAS**, staff selected City Center Parking as the successful proposer for the Parking Lot Operations at both facilities; and;

**WHEREAS**, this project will have a net positive revenue impact on the budgets of OCC and Expo; and

**WHEREAS**, staff recommend approval of a contract with City Center Parking and request authority to negotiate the final terms in accordance with the accepted proposal.

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

1. Approves entering into an Agreement with City Center Parking in a form approved by the Office of Metro Attorney.
2. Delegates the authority to the Metro General Manager of Visitor Venues to execute such an agreement.

Passed by the Commission on June 7<sup>th</sup>, 2017.

Approved as to form:

Alison R. Kean, Metro Attorney

\_\_\_\_\_  
Chair

By: \_\_\_\_\_

Nathan A. S. Sykes, Deputy Metro Attorney

\_\_\_\_\_  
Secretary/Treasurer

## MERC Staff Report

**Agenda Item/Issue:** For the purpose of approving an agreement with City Center Parking for Parking Lot Operations at the Portland Expo Center (Expo) and the Oregon Convention Center (OCC) and delegating authority to the Metro General Manager of Visitor Venues to execute such an agreement.

**Resolution No.:** 17-22

**Presented By:**

Matthew P. Rotchford and Clark Moss,  
Matt Pizzuti and Charles White

**Date:** June 7<sup>th</sup>, 2017

### **Background and Analysis:**

The Portland Expo Center and the Oregon Convention Center operate professional parking operations that generate vital revenues as part of their standard event operations. The current parking lot operations provider's contracted agreement is set to expire on June 30th, 2017.

Metro procurement, Oregon Convention Center (OCC) and Portland Expo Center (Expo) staff participated in an extensive Request for Proposal process for these services. The RFP (3334) posted on Orpin on April 24<sup>th</sup> 2017, and was followed by advertisements in the Portland Business Journal and The Asian Reporter newspapers. Outreach to previous parking operations applicants were also notified of the opportunity directly. Staff then received and reviewed only two (2) complete written proposals for these services. No COBID certified proposals were received.

Written proposals were then reviewed by Metro Procurement for budget/costs, diversity in employment, contracting, and sustainable business practices. Project work plans/approach as well as the project staffing experience were then scored and reviewed by a panel of five (5) staff from both OCC and Expo, and in particular by both managers of the venues parking operations. The panel then took the further action of generating interview questions and materials to focus on reporting, customer service, audit controls and many other aspects towards our success. Interviews of both proposing organizations commenced within a fair and competitive process on May 25<sup>th</sup> 2017. After a lengthy review, the panel determined City Center Parking to be the most responsive and appropriate choice for parking lot operations management for both the Oregon Convention Center and the Portland Expo Center based upon the revenue potential, expense containment, project approach, diversity and sustainability practices.

As the Oregon Convention Center and Portland Expo Center parking management staff have yet to fully negotiate the final terms agreement and review these final negotiations with the Office of Metro attorney; staff will need a bit more time to finalize the complete contract details, but the substantive merits of the agreement will be much the same as the agreement currently in place, with key factors negotiated to enhance our mutual success.

Both venues expressed some concerns regarding the details and actions on communication, reports, technological parking operation advances and clarity for supervisory staffing levels. To address those concerns; both venues agree that a two (2) year term for this agreement along with three (3) one (1) year extensions, will allow for renewal options to continue sufficiently but with additional venue and financial staff oversight not sought after in previously parking lot

operations agreements. Staff feel this is in the best interest of the venues for this vital revenue generation agreement.

**Fiscal Impact:** Revenue over the next two years is anticipated to reach \$1,658,000 per year at the Oregon ConventionCenter and \$1,581,460 at the Portland Expo Center. Expense containment within a competitive labor market will be a key component to our success. Expanded duties of the parking lot operations partner will focus on enhancement of existing technologies, dynamic pricing and consistent staffing levels to support our important first impressions and customer service with our venue guests and patrons.

**Recommendation:** Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution 17-22, delegating the authority to the MERC General Manager to finalize and execute an agreement with City Center Parking as our agent to manage, hire, audit, develop, operate and advance the parking lot operations of the Portland Expo Center and the Oregon Convention Center for the purpose of generating revenue for both facilities for a minimum of a two (2) year term with three (3) one year renewal options following staff review and approvals.

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# **MERC Commission Meeting**

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June 7, 2017  
12:00 pm

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Financial Report

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APRIL 2017

FINANCIAL INFORMATION

*For Management Purposes only*



**OREGN**

Oregon  
Convention  
Center



# Memo



**Metro**

600 NE Grand Ave.  
Portland, OR 97232-2736

Date: June 7, 2017  
To: Commissioner Karis Stoudamire-Phillips, Chair  
Commissioner Deidra Kryss-Rusoff, Secretary-Treasurer  
Commissioner Damien Hall  
Commissioner Judie Hammerstad  
Commissioner Ray Leary  
From: Ben Rowe – MERC Finance Manager  
Re: Financial information for the month of April Fiscal Year 2016-17

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## **Executive Summary**

Overall, the venues are having another excellent year compared to record high revenues in recent years. YTD event related revenues compared to the prior year are closing the gap. In January, YTD event revenues closed 10% behind the prior year, in February 8%, in March 5.6%, and in April 3.3%. Total YTD MERC event revenues (charges for services and food & beverage) closed 12.6% above the three-year historical average. Year to date rent and event charges for services closed 1% (\$167,000) below the prior year however, food and beverage closed 7% (-\$1.2 million) below the prior year. Total YTD MERC revenues closed 1% (\$369,000) below the prior year, 15% above the three-year historical average, and at budget projections. Total YTD MERC expenses closed 1% above the prior year, 11% above the three-year historical average, and 7% below YTD budget projections.

Transient Lodging Tax (TLT) is currently 2% (\$259,000) above the prior year and 24% above the three-year historical average. OCC doesn't have large events booked this year like they did the prior year however we still have 4 more scheduled TLT payments from Multnomah County this fiscal year. With more hotel rooms coming on line, increasing capacity, we may see an increase this year. This summer will be an excellent indicator of things to come in the next 2 years until the Hyatt opens. Our forecast remains the same, that another significant deposit will be made into our TLT pooled capital account providing much needed funding for OCC and Expo capital projects.

## **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. 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 experienced a slower first half of the year 30% below the prior year, however quickly regained footing and is now only 10% behind its record setting year in FY 2015-16. Expo's event revenue is trending at pace and slightly better than the prior year and recently announced plans to host Cirque du Soleil in early FY 2017-18. 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 April events and attendance are respectively 5% above and 7% below the three-year historical average.

	2016		2017		Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance
<b>Total MERC Venues</b>						
1 <sup>st</sup> Quarter	293	329,836	284	342,829	(9), (3%)	12,993, 4%
2 <sup>nd</sup> Quarter	462	497,534	443	513,411	(19), (4%)	15,877, 3%
3 <sup>rd</sup> Quarter	438	680,882	469	654,702	(2), (0.5%)	(3,568), (1%)
April	201	203,765	197	201,881	(4), (2%)	(1,884), (1%)
<b>Year to Date</b>	<b>1,394</b>	<b>1,702,017</b>	<b>1,393</b>	<b>1,712,823</b>	<b>(1), 0%</b>	<b>806, 0%</b>

### MERC Venues Revenues & Expense

Total MERC event revenues (charges for services and food & beverage) in April closed 18% higher than April 2016. Total venue expenses for April closed 10% above the prior year.

#### Food & Beverage

The total MERC venues food and beverage margin for April is 18% and 20% YTD, in parity with the three-year historical YTD average.

#### Net Operations

Total MERC YTD net operations are \$780,000 million (11%) less than the prior year most attributable to food and beverage operations performing significantly above average in FY 2015-16. However net operations are \$2.1 million (48%) greater than the three-year historical YTD average.

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

	Fiscal Year:	2014	2015	2016	2017	3-yr Hist.	% Diff	% Diff
Revenues	YTD	YTD	YTD	YTD	Average	Average	2016	
Food and Beverage	11,952,907	14,744,286	16,590,477	15,394,971	14,429,223	6.7%	-7.2%	
Charges for Services	17,356,749	21,091,781	24,739,837	24,573,005	21,062,789	16.7%	-0.7%	
Lodging Tax	7,865,528	9,435,687	11,790,751	12,049,575	9,697,322	24.3%	2.2%	
Other	3,385,887	476,468	911,236	1,645,762	1,591,197	3.4%	80.6%	
<b>Total Revenues</b>	<b>40,561,071</b>	<b>45,748,222</b>	<b>54,032,301</b>	<b>53,663,313</b>	<b>46,780,531</b>	<b>14.7%</b>	<b>-0.7%</b>	
<b>Expenses</b>								
Food and Beverage	10,325,133	11,461,041	12,644,091	12,264,380	11,476,755	6.9%	-3.0%	
Personnel Services	13,715,590	14,708,661	15,961,777	16,514,990	14,795,343	11.6%	3.5%	
Materials and Services	11,186,138	10,615,798	13,459,585	13,503,059	11,753,840	14.9%	0.3%	
Other Operating Expense	3,945,679	4,421,826	4,622,698	4,817,282	4,330,068	11.3%	4.2%	
<b>Total Operating Expense</b>	<b>39,172,540</b>	<b>41,207,325</b>	<b>46,688,151</b>	<b>47,099,710</b>	<b>42,356,005</b>	<b>11.2%</b>	<b>0.9%</b>	
<b>Net Operations</b>	<b>1,388,531</b>	<b>4,540,897</b>	<b>7,344,150</b>	<b>6,563,602</b>	<b>4,424,526</b>	<b>48.3%</b>	<b>-10.6%</b>	
<b>Food &amp; Beverage Margins</b>	<b>13.6%</b>	<b>22.3%</b>	<b>23.8%</b>	<b>20.3%</b>	<b>20.5%</b>	<b>-0.1%</b>	<b>-3.5%</b>	

### Oregon Convention Center

April revenues closed 12% (\$261,000) above April 2016, 20% below the three-year historical monthly average, and 25% below budget projections. OCC hosted 1 (2%) less event and 6,600 (10%) fewer attendees in April compared to the prior year. April events and attendance are respectively 15% above and 1% below the three-year historical monthly average. April expenses closed 3% above the prior year, 3% above the three-year historical average, and close 16% below April budget projections. OCC's YTD food and beverage margin is 18%, 6% below the prior YTD margin.

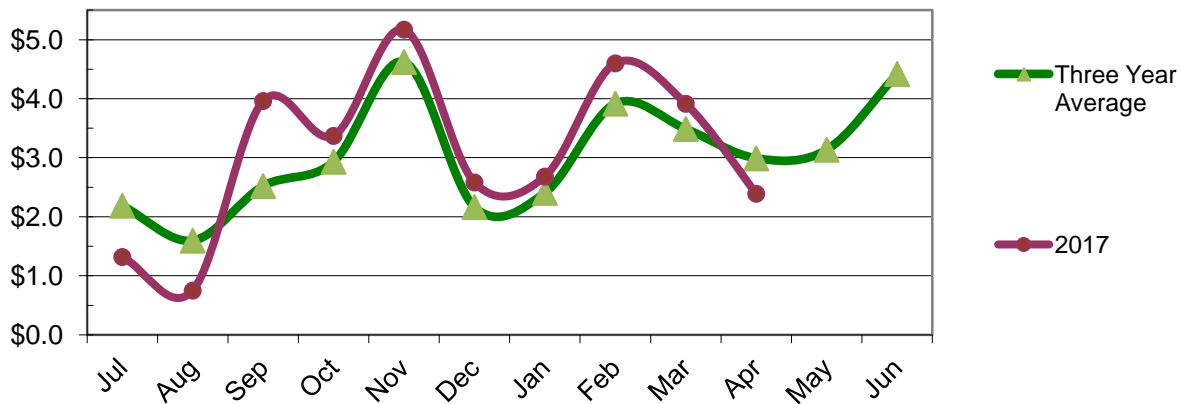
### Highest Grossing Events

Event*	Gross Event Revenue	% of April Event Revenue
Oregon Dental Association	\$331,386	19%
The Society for Investigative Dermatology	270,382	15%
Northwest Facilities Expo	152,552	9%
PNW Key Clubs	126,347	7%
All other Events	902,527	51%
<b>Total</b>	<b>\$1,783,194</b>	<b>100%</b>

\*Note: revenue reported in the table above reflects event receipts in the reporting month only and not total gross event revenue or total gross monthly revenue.

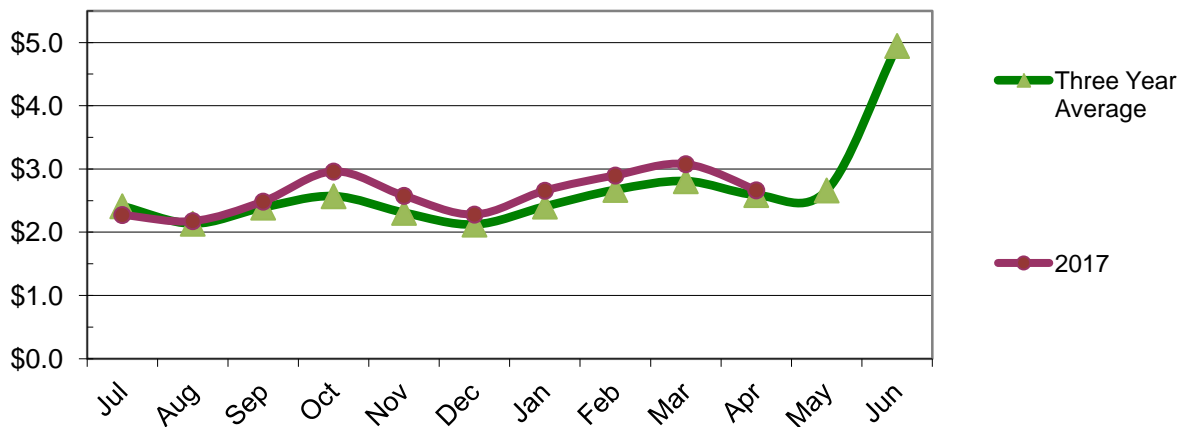
### OCC Program Revenues by Month

Shown in Millions



### OCC Program Expense by Month

Shown in Millions



### Portland's Centers for the Arts

Portland's April was its highest performing month ever! Even after controlling for its \$866,000 annual contribution from the City of Portland received in April, it was still its highest performing month on record. One of the dynamics facilitating this spike in revenue is the completion of a backlog of *Portland's Presents* event settlements by central accounting. April closed 73% (\$1.3 million) above its three-year historical monthly average and 64% above budget expectations. Portland's hosted 3 (2%) fewer performances and 8,000 (8%) more attendees compared to the prior year. April performances and attendance are 2% and 1% respectively below the three-year historical monthly average. April expenses closed 22% above the prior year, 43% above the three-year historical average and 2% below budget projections. Portland's YTD food and beverage margin is 30%, 3% above the prior YTD margin.

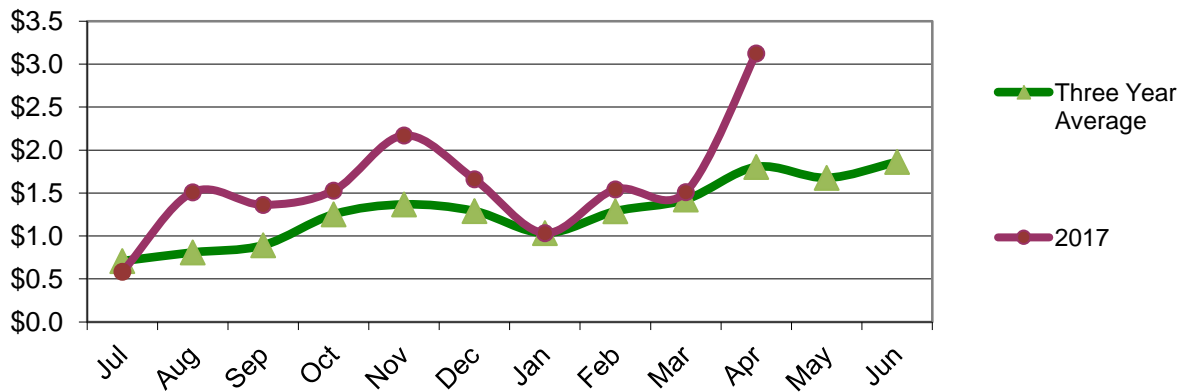
### Highest Grossing Events

Event*	Gross Event Revenue	% of April Event Revenue
Jersey Boys	\$243,372	11%
Shen Yun	146,244	7%
Brian Setzer Orchestra Christmas Rocks!	134,923	6%
Black Violin	102,774	5%
All other Events	1,530,985	71%
<b>Total</b>	<b>\$2,158,298</b>	<b>100%</b>

\*Note: revenue reported in the table above reflects event receipts in the reporting month only and not total gross event revenue or total gross monthly revenue.

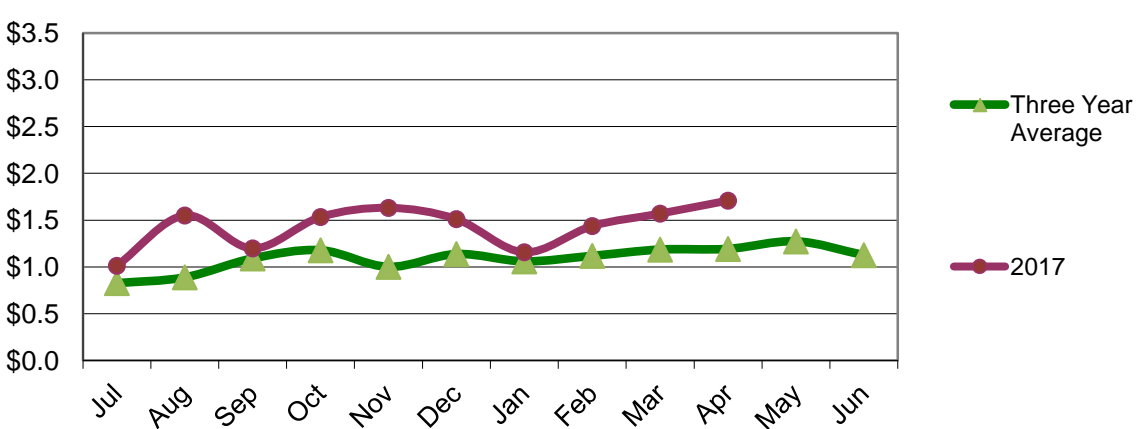
### PSCA Program Revenue by Month

Shown in Millions



### PSCA Program Expense by Month

Shown in Millions



### Portland Expo Center

Expo's 2016 April set a new monthly record excluding Cirque years! Its 2017 April closed 12% above average excluding Cirque years. Expo hosted the same number of events as the prior year, however, 3,000 (8%) fewer attendees. Events and attendance performed 9% and 18%, respectively, below the three-year historical April average excluding Cirque years. Expo's April expenses closed 14% above the prior year, 7% above the three-year historical monthly average, and 1% below budget projections. Expo's YTD food & beverage margin is 19%, the same as the prior YTD margin.

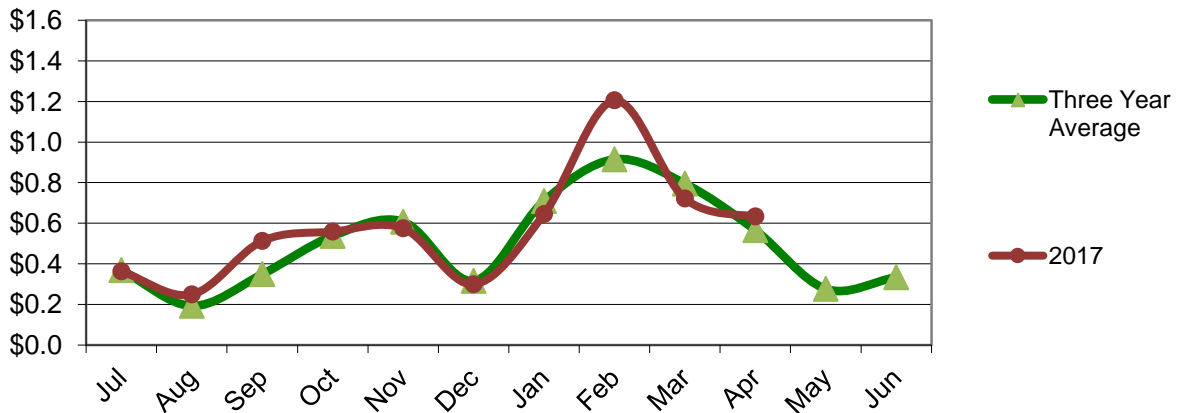
### Highest Grossing Events

Event*	Gross Event Revenue	% of April Event Revenue
Portland Auto Swap Meet	\$260,019	45%
KF Presented by PLA	49,992	9%
Performance Warehouse	49,643	9%
Just Between Friends	42,335	7%
All other Events	176,534	31%
<b>Total</b>	<b>\$578,522</b>	<b>100%</b>

\*Note: revenue reported in the table above reflects event receipts in the reporting month only and not total gross event revenue or total gross monthly revenue.

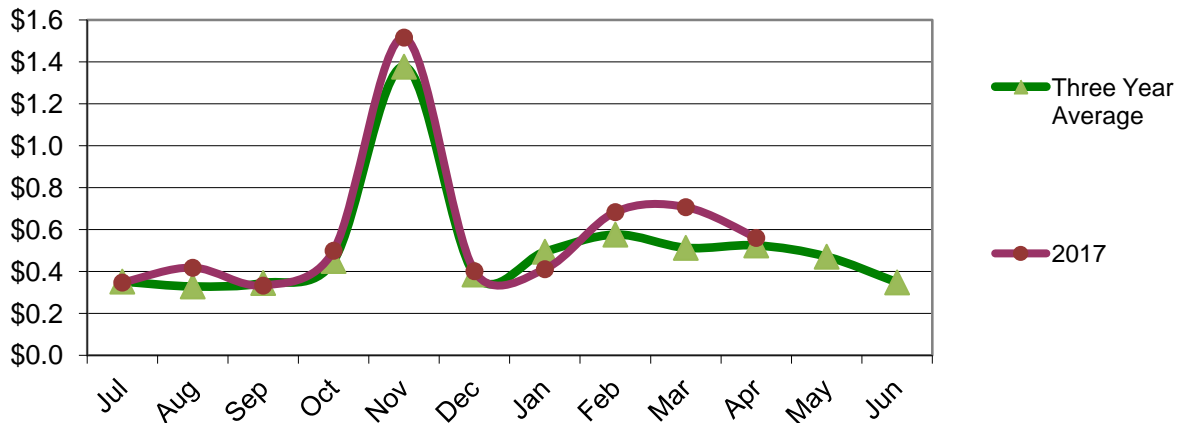
### Expo Program Revenue by Month

Shown in Millions



### Expo Program Expense by Month

Shown in Millions



# MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

All Departments

April 2017

	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
<b>Operations</b>							
Charges for Services	3,278,616	2,669,016	24,573,005	24,739,837	25,283,884	99.33%	97.19%
Contributions from Governments	866,299	-	866,299	-	871,029	0.00%	99.46%
Contributions from Private Sources	-	-	-	-	13,000	0.00%	0.00%
Enhanced Marketing VDF	-	-	-	-	486,118	0.00%	0.00%
Food and Beverage Revenue	1,499,733	1,385,060	15,394,971	16,590,477	17,248,329	92.79%	89.25%
Grants	-	-	8,055	-	55,000	0.00%	14.65%
Interest Earnings	53,799	107,434	307,934	293,805	171,000	104.81%	180.08%
Lodging Tax	530,611	106,181	12,049,575	11,790,751	11,964,317	102.20%	100.71%
Miscellaneous Revenue	13,574	8,199	180,144	127,431	103,440	141.37%	174.15%
Transfers-R	23,333	-	283,330	490,000	330,000	57.82%	85.86%
Visitor Development Fund Alloc	-	-	-	-	6,468,315	0.00%	0.00%
<b>Total Revenues</b>	<b>6,265,966</b>	<b>4,275,891</b>	<b>53,663,313</b>	<b>54,032,301</b>	<b>62,994,432</b>	<b>99.32%</b>	<b>85.19%</b>
Capital Outlay	-	-	-	-	-	0.00%	0.00%
Food & Beverage Services	1,227,244	1,187,459	12,264,380	12,644,091	13,985,429	97.00%	87.69%
Materials and Services	1,750,313	1,326,157	13,503,059	13,459,585	17,350,339	100.32%	77.83%
Personnel Services	1,718,373	1,662,019	16,514,990	15,961,777	20,310,932	103.47%	81.31%
Transfers-E	338,918	385,972	4,817,282	4,622,698	9,814,830	104.21%	49.08%
Visitor Development Marketing	-	-	-	-	486,118	0.00%	0.00%
<b>Total Expenditures</b>	<b>5,034,848</b>	<b>4,561,607</b>	<b>47,099,710</b>	<b>46,688,151</b>	<b>61,947,648</b>	<b>100.88%</b>	<b>76.03%</b>
<b>Net Operations</b>	<b>1,231,117</b>	<b>(285,717)</b>	<b>6,563,602</b>	<b>7,344,150</b>	<b>1,046,784</b>		
<b>Capital</b>							
Contributions from Private Sources	-	-	318,750	193,750	637,501	164.52%	50.00%
Grants	-	-	108,512	30,980	-	350.26%	0.00%
Miscellaneous Revenue	-	-	4,317	2,455	-	175.84%	0.00%
Transfers-R	26,667	-	266,670	110,000	320,000	242.43%	83.33%
<b>Total Revenues</b>	<b>26,667</b>	<b>-</b>	<b>698,249</b>	<b>337,185</b>	<b>957,501</b>	<b>207.08%</b>	<b>72.92%</b>
Capital Outlay	136,100	324,710	2,366,751	1,499,083	14,418,744	157.88%	16.41%
Materials and Services	3,461	-	1,177,648	18,571	46,000	6341.33%	2560.10%
<b>Total Expenditures</b>	<b>139,560</b>	<b>324,710</b>	<b>3,544,398</b>	<b>1,517,654</b>	<b>14,464,744</b>	<b>233.54%</b>	<b>24.50%</b>
<b>Net Capital</b>	<b>(112,893)</b>	<b>(324,710)</b>	<b>(2,846,149)</b>	<b>(1,180,468)</b>	<b>(13,507,243)</b>		
<b>12 Month Fund Balance Increase</b>	<b>1,118,224</b>	<b>(610,427)</b>	<b>3,717,453</b>	<b>6,163,682</b>	<b>(12,460,459)</b>		

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Convention Center Operating Fund

April 2017

	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
<b>Operations</b>							
Charges for Services	1,041,668	1,175,311	9,959,369	11,172,341	10,764,464	89.1%	92.5%
Enhanced Marketing VDF	-	-	-	-	486,118	0.0%	0.0%
Food and Beverage Revenue	915,321	871,080	10,492,665	11,961,714	12,000,000	87.7%	87.4%
Grants	-	-	8,055	-	-	0.0%	0.0%
Interest Earnings	21,826	48,262	114,301	118,791	75,000	96.2%	152.4%
Lodging Tax	471,904	93,830	10,716,390	10,419,209	10,593,288	102.9%	101.2%
Miscellaneous Revenue	7,197	(49)	75,297	42,658	17,000	176.5%	442.9%
Transfers-R	(67,396)	(58,987)	(623,959)	(379,868)	(758,751)	164.3%	82.2%
Visitor Development Fund Alloc	-	-	-	-	5,771,546	0.0%	0.0%
<b>Total Revenues</b>	<b>2,390,519</b>	<b>2,129,448</b>	<b>30,742,118</b>	<b>33,334,845</b>	<b>38,948,665</b>	<b>92.2%</b>	<b>78.9%</b>
Food & Beverage Services	800,030	781,489	8,612,813	9,117,016	9,762,922	94.5%	88.2%
Materials and Services	831,682	755,188	6,793,917	7,934,457	10,217,186	85.6%	66.5%
Personnel Services	832,349	828,250	8,443,552	8,438,633	10,892,021	100.1%	77.5%
Transfers-E	199,731	227,737	2,200,244	2,137,682	6,790,481	102.9%	32.4%
Visitor Development Marketing	-	-	-	-	486,118	0.0%	0.0%
<b>Total Expenditures</b>	<b>2,663,792</b>	<b>2,592,665</b>	<b>26,050,525</b>	<b>27,627,788</b>	<b>38,148,728</b>	<b>94.3%</b>	<b>68.3%</b>
<b>Net Operations</b>	<b>(273,273)</b>	<b>(463,216)</b>	<b>4,691,593</b>	<b>5,707,056</b>	<b>799,937</b>		
<b>Capital</b>							
Contributions from Private Sources	-	-	199,219	121,094	398,438	164.5%	50.0%
Grants	-	-	97,548	-	-	0.0%	0.0%
Miscellaneous Revenue	-	-	4,317	2,455	-	175.8%	0.0%
Transfers-R	26,667	-	266,670	650,000	1,695,000	41.0%	15.7%
<b>Total Revenues</b>	<b>26,667</b>	<b>-</b>	<b>567,754</b>	<b>773,549</b>	<b>2,093,438</b>	<b>73.4%</b>	<b>27.1%</b>
Capital Outlay	119,326	124,955	855,337	398,168	6,913,959	214.8%	12.4%
Materials and Services	(784)	-	970,206	18,571	-	5224.3%	0.0%
<b>Total Expenditures</b>	<b>118,542</b>	<b>124,955</b>	<b>1,825,543</b>	<b>416,739</b>	<b>6,913,959</b>	<b>438.1%</b>	<b>26.4%</b>
<b>Net Capital</b>	<b>(91,875)</b>	<b>(124,955)</b>	<b>(1,257,789)</b>	<b>356,810</b>	<b>(4,820,521)</b>		
<b>12 Month Fund Balance Increase</b>	<b>(365,148)</b>	<b>(588,172)</b>	<b>3,433,804</b>	<b>6,063,867</b>	<b>(4,020,584)</b>		



# MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Portland's Centers for the Arts Fund

April 2017

	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
<b>Operations</b>							
Charges for Services	1,910,216	1,186,670	11,073,850	9,991,475	10,351,965	110.8%	107.0%
Contributions from Governments	866,299	-	866,299	-	871,029	0.0%	99.5%
Contributions from Private Sources	-	-	-	-	13,000	0.0%	0.0%
Food and Beverage Revenue	306,600	286,076	2,940,465	2,794,330	3,252,119	105.2%	90.4%
Grants	-	-	-	-	55,000	0.0%	0.0%
Interest Earnings	16,622	36,240	103,608	114,334	60,000	90.6%	172.7%
Lodging Tax	58,708	12,351	1,333,184	1,371,542	1,371,029	97.2%	97.2%
Miscellaneous Revenue	3,581	4,179	76,667	50,922	61,590	150.6%	124.5%
Transfers-R	(36,852)	(35,701)	(368,522)	(357,011)	(442,226)	103.2%	83.3%
Visitor Development Fund Alloc	-	-	-	-	696,769	0.0%	0.0%
<b>Total Revenues</b>	<b>3,125,173</b>	<b>1,489,817</b>	<b>16,025,551</b>	<b>13,965,592</b>	<b>16,290,275</b>	<b>114.8%</b>	<b>98.4%</b>
Food & Beverage Services	215,393	219,977	2,053,737	2,035,587	2,520,826	100.9%	81.5%
Materials and Services	735,267	462,002	5,202,224	4,250,808	5,126,153	122.4%	101.5%
Personnel Services	660,653	617,389	5,992,281	5,344,075	6,786,405	112.1%	88.3%
Transfers-E	96,587	105,257	1,063,015	1,024,818	1,256,191	103.7%	84.6%
<b>Total Expenditures</b>	<b>1,707,900</b>	<b>1,404,625</b>	<b>14,311,257</b>	<b>12,655,288</b>	<b>15,689,575</b>	<b>113.1%</b>	<b>91.2%</b>
<b>Net Operations</b>	<b>1,417,273</b>	<b>85,192</b>	<b>1,714,294</b>	<b>1,310,304</b>	<b>600,700</b>		
<b>Capital</b>							
Contributions from Private Sources	-	-	71,719	43,594	95,625	164.5%	75.0%
Grants	-	-	9,964	30,980	-	32.2%	0.0%
<b>Total Revenues</b>	<b>-</b>	<b>-</b>	<b>81,683</b>	<b>74,574</b>	<b>95,625</b>	<b>109.5%</b>	<b>85.4%</b>
Capital Outlay	3,377	197,415	1,317,822	897,937	5,229,405	146.8%	25.2%
Materials and Services	-	-	54,223	-	-	0.0%	0.0%
<b>Total Expenditures</b>	<b>3,377</b>	<b>197,415</b>	<b>1,372,045</b>	<b>897,937</b>	<b>5,229,405</b>	<b>152.8%</b>	<b>26.2%</b>
<b>Net Capital</b>	<b>(3,377)</b>	<b>(197,415)</b>	<b>(1,290,362)</b>	<b>(823,363)</b>	<b>(5,133,780)</b>		
<b>12 Month Fund Balance Increase</b>	<b>1,413,896</b>	<b>(112,222)</b>	<b>423,932</b>	<b>486,941</b>	<b>(4,533,080)</b>		

# MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Expo Fund

April 2017

	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
<b>Operations</b>							
Charges for Services	326,732	307,035	3,539,786	3,576,021	4,167,455	99.0%	84.9%
Food and Beverage Revenue	277,812	227,903	1,961,841	1,834,433	1,996,210	106.9%	98.3%
Interest Earnings	2,584	7,764	13,209	19,596	18,000	67.4%	73.4%
Miscellaneous Revenue	2,796	4,068	28,180	33,851	24,850	83.2%	113.4%
Transfers-R	23,333	(10,278)	233,330	177,220	280,000	131.7%	83.3%
<b>Total Revenues</b>	<b>633,258</b>	<b>536,492</b>	<b>5,776,346</b>	<b>5,641,121</b>	<b>6,486,515</b>	<b>102.4%</b>	<b>89.1%</b>
Food & Beverage Services	211,821	185,993	1,597,831	1,491,488	1,701,681	107.1%	93.9%
Materials and Services	158,378	106,386	1,258,095	1,054,200	1,468,915	119.3%	85.6%
Personnel Services	147,874	145,810	1,502,061	1,463,813	1,765,261	102.6%	85.1%
Transfers-E	42,425	52,978	1,520,523	1,460,198	1,734,308	104.1%	87.7%
<b>Total Expenditures</b>	<b>560,498</b>	<b>491,167</b>	<b>5,878,509</b>	<b>5,469,700</b>	<b>6,670,165</b>	<b>107.5%</b>	<b>88.1%</b>
<b>Net Operations</b>	<b>72,759</b>	<b>45,326</b>	<b>(102,164)</b>	<b>171,422</b>	<b>(183,650)</b>		
<b>Capital</b>							
Contributions from Private Sources	-	-	47,813	29,063	143,438	164.5%	33.3%
Grants	-	-	1,000	-	-	0.0%	0.0%
Transfers-R	-	-	-	280,000	1,016,740	0.0%	0.0%
<b>Total Revenues</b>	<b>-</b>	<b>-</b>	<b>48,813</b>	<b>309,063</b>	<b>1,160,178</b>	<b>15.8%</b>	<b>4.2%</b>
Capital Outlay	13,397	2,340	193,591	202,978	2,025,380	95.4%	9.6%
Materials and Services	4,244	-	153,219	-	46,000	0.0%	333.1%
<b>Total Expenditures</b>	<b>17,642</b>	<b>2,340</b>	<b>346,810</b>	<b>202,978</b>	<b>2,071,380</b>	<b>170.9%</b>	<b>16.7%</b>
<b>Net Capital</b>	<b>(17,642)</b>	<b>(2,340)</b>	<b>(297,998)</b>	<b>106,084</b>	<b>(911,202)</b>		
<b>12 Month Fund Balance Increase</b>	<b>55,118</b>	<b>42,986</b>	<b>(400,161)</b>	<b>277,506</b>	<b>(1,094,852)</b>		

# MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

MERC Admin Sub Fund

April 2017

	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
<b>Operations</b>							
Interest Earnings	12,767	15,167	76,816	41,084	18,000	187.0%	426.8%
Transfers-R	104,248	104,966	1,042,481	1,049,658	1,250,977	99.3%	83.3%
<b>Total Revenues</b>	<b>117,015</b>	<b>120,133</b>	<b>1,119,297</b>	<b>1,090,743</b>	<b>1,268,977</b>	<b>102.6%</b>	<b>88.2%</b>
Capital Outlay	-	-	-	-	-	0.0%	0.0%
Materials and Services	24,986	2,581	248,823	220,119	538,085	113.0%	46.2%
Personnel Services	77,497	70,570	577,096	715,255	867,245	80.7%	66.5%
Transfers-E	175	-	33,500	-	33,850	0.0%	99.0%
<b>Total Expenditures</b>	<b>102,658</b>	<b>73,151</b>	<b>859,419</b>	<b>935,374</b>	<b>1,439,180</b>	<b>91.9%</b>	<b>59.7%</b>
<b>Net Operations</b>	<b>14,357</b>	<b>46,982</b>	<b>259,878</b>	<b>155,368</b>	<b>(170,203)</b>		
<b>Capital</b>							
Transfers-R	-	-	-	(820,000)	(2,391,740)	0.0%	0.0%
<b>Total Revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(820,000)</b>	<b>(2,391,740)</b>	<b>0.0%</b>	<b>0.0%</b>
Capital Outlay	-	-	-	-	250,000	0.0%	0.0%
<b>Total Expenditures</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>250,000</b>	<b>0.0%</b>	<b>0.0%</b>
<b>Net Capital</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(820,000)</b>	<b>(2,641,740)</b>		
<b>12 Month Fund Balance Increase</b>	<b>14,357</b>	<b>46,982</b>	<b>259,878</b>	<b>(664,632)</b>	<b>(2,811,943)</b>		

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

OCC	April 2014		April 2015		April 2016		April 2017		Net Change from Prior Year		April 2017	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Tradeshows/Conventions	4	26,394	5	16,368	5	10,028	5	19,499	-	9,471	1,001,762	56%
Consumer Public Shows	8	19,980	5	26,141	9	35,726	4	23,953	(5)	(11,773)	200,857	11%
Miscellaneous									-	-		0%
Miscellaneous -In-House	9	200	14	263	13	351	26	1,119	13	768	9,864	1%
Meetings	15	4,354	14	5,762	23	14,183	17	9,382	(6)	(4,801)	229,228	13%
Catering	13	6,557	9	6,175	11	4,820	8	4,510	(3)	(310)	341,484	19%
<b>Totals</b>	<b>49</b>	<b>57,485</b>	<b>47</b>	<b>54,709</b>	<b>61</b>	<b>65,108</b>	<b>60</b>	<b>58,463</b>	<b>(1)</b>	<b>(6,645)</b>	<b>\$ 1,783,195</b>	<b>100%</b>

Expo Center	April 2014		April 2015		April 2016		April 2017		Net Change from Prior Year		April 2017	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Consumer Public Shows	7	44,409	7	37,444	7	32,358	5	27,939	(2)	(4,419)	420,439	73%
<i>Cirque Du Soleil</i>	33	66,415	-	-	-	-	-	-	-	-		0%
Miscellaneous	2	205	2	404	2	2,205	1	20	(1)	(2,185)	55,208	10%
Meetings	1	30	1	40	1	30	3	570	2	540	1,583	0%
Catering	1	1,050	-	-	-	-	-	-	-	-		0%
Tradeshows/Conventions	-	-	-	-	2	1,281	3	4,310	1	3,029	101,293	18%
<b>Totals</b>	<b>11</b>	<b>45,694</b>	<b>10</b>	<b>37,888</b>	<b>12</b>	<b>35,874</b>	<b>12</b>	<b>32,839</b>	<b>-</b>	<b>(3,035)</b>	<b>\$ 578,523</b>	<b>100%</b>
<b>Totals w/Cirque du Soleil</b>	<b>44</b>	<b>112,109</b>	<b>10</b>	<b>37,888</b>	<b>12</b>	<b>35,874</b>	<b>12</b>	<b>32,839</b>	<b>-</b>	<b>(3,035)</b>	<b>\$ 578,523</b>	<b>100%</b>

Portland '5	April 2014		April 2015		April 2016		April 2017		Net Change from Prior Year		April 2017	
	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Revenue	% of Rev.
Commercial (Non-Broadway)	21	16,893	5	11,514	6	13,131	6	13,727	-	596	361,638	17%
Broadway	8	15,991	8	16,801	8	21,414	8	12,715	-	(8,699)	255,928	12%
Resident Company	24	26,517	42	28,575	39	28,858	39	29,370	-	512	327,602	15%
Non-Profit	21	17,110	27	16,092	35	22,128	25	23,537	(10)	1,409	261,793	12%
Promoted/ Co-Promoted	1	164	1	215	4	3,069	6	4,985	2	1,916	871,951	40%
Student	18	13,397	36	19,473	36	14,183	41	26,245	5	12,062	60,873	3%
Miscellaneous	-	-	-	-	-	-	-	-	-	-	18,514	1%
<b>Totals</b>	<b>93</b>	<b>90,072</b>	<b>119</b>	<b>92,670</b>	<b>128</b>	<b>102,783</b>	<b>125</b>	<b>110,579</b>	<b>(3)</b>	<b>7,796</b>	<b>\$ 2,158,299</b>	<b>100%</b>
<b>Total MERC</b>			<b>176</b>	<b>185,267</b>	<b>201</b>	<b>203,765</b>	<b>197</b>	<b>201,881</b>	<b>(4)</b>	<b>(1,884)</b>		

## MERC Food and Beverage Margins

April 2017

	Current Month Actual	Prior Month Actual	Current Year to Date	Prior Year to Date Actual	Annual Budget
<b>Convention Center Operating Fund</b>					
Food and Beverage Revenue	915,321	871,080	10,492,665	11,961,714	12,000,000
Food & Beverage Services	800,030	781,489	8,612,813	9,117,016	9,762,922
Food and Beverage Gross Margin	115,290	89,591	1,879,852	2,844,698	2,237,078
Food and Beverage Gross Margin %	12.60%	10.29%	17.92%	23.78%	18.64%
<b>Portland'S Centers for the Arts Fund</b>					
Food and Beverage Revenue	306,600	286,076	2,940,465	2,794,330	3,252,119
Food & Beverage Services	215,393	219,977	2,053,737	2,035,587	2,520,826
Food and Beverage Gross Margin	91,208	66,100	886,728	758,743	731,293
Food and Beverage Gross Margin %	29.75%	23.11%	30.16%	27.15%	22.49%
<b>Expo Fund</b>					
Food and Beverage Revenue	277,812	227,903	1,961,841	1,834,433	1,996,210
Food & Beverage Services	211,821	185,993	1,597,831	1,491,488	1,701,681
Food and Beverage Gross Margin	65,991	41,910	364,011	342,945	294,529
Food and Beverage Gross Margin %	23.75%	18.39%	18.55%	18.69%	14.75%
<b>MERC Fund Total</b>					
Food and Beverage Revenue	1,499,733	1,385,060	15,394,971	16,590,477	17,248,329
Food & Beverage Services	1,227,244	1,187,459	12,264,380	12,644,091	13,985,429
Food and Beverage Gross Margin	272,489	197,601	3,130,591	3,946,386	3,262,900
Food and Beverage Gross Margin %	18.17%	14.27%	20.34%	23.79%	18.92%

# MERC Statement of Fund Balances and Reserves

April 2017

	FY 2017 Through April	FY 2016 Through April	FY 2016 Through June	FY 2017 Annual Budget
<b><u>Oregon Convention Center</u></b>				
Beginning Fund Balance	21,770,042	18,574,045	18,574,045	18,513,545
Fund Balance Inc (Dec)	3,433,804	6,063,867	3,195,997	(4,020,584)
<b>Ending Fund Balance</b>	<b>25,203,846</b>	<b>24,637,912</b>	<b>21,770,042</b>	<b>14,492,961</b>
<i>Contingency - Operating</i>				1,500,000
<i>Contingency - New Capital-Business Strategy</i>				1,821,308
<i>Contingency - Renewal &amp; Replacement</i>				11,171,653
<b>Ending Fund Balance</b>				<b>14,492,961</b>
<b><u>Portland'5 Centers for the Arts</u></b>				
Beginning Fund Balance	13,178,660	10,622,451	10,622,451	11,348,488
Fund Balance Inc (Dec)	423,932	486,941	2,556,209	(4,533,080)
<b>Ending Fund Balance</b>	<b>13,602,592</b>	<b>11,109,392</b>	<b>13,178,660</b>	<b>6,815,408</b>
<i>Contingency - Operating</i>				600,000
<i>Contingency - New Capital-Business Strategy</i>				2,004,255
<i>Contingency - Renewal &amp; Replacement</i>				4,211,153
<b>Ending Fund Balance</b>				<b>6,815,408</b>
<b><u>Expo</u></b>				
Beginning Fund Balance	2,843,104	3,167,865	3,167,865	2,798,742
Fund Balance Inc (Dec)	(400,161)	277,506	(324,760)	(1,094,852)
<b>Ending Fund Balance</b>	<b>2,442,943</b>	<b>3,445,371</b>	<b>2,843,105</b>	<b>1,703,890</b>
<i>Contingency - Operating</i>				350,000
<i>Contingency - New Capital-Business Strategy</i>				1,353,890
<i>Contingency - Renewal &amp; Replacement</i>				-
<b>Ending Fund Balance</b>				<b>1,703,890</b>
<b><u>MERC Administration</u></b>				
Beginning Fund Balance	14,171,403	8,001,482	8,001,481	8,188,922
Fund Balance Inc (Dec)	259,878	(664,632)	6,169,921	(2,794,443)
<b>Ending Fund Balance</b>	<b>14,431,281</b>	<b>7,336,850</b>	<b>14,171,402</b>	<b>5,394,479</b>
<i>Contingency - Operating</i>				65,000
<i>Contingency - Renewal &amp; Replacement</i>				1,576,837
<i>Contingency - TLT Pooled Capital</i>				3,752,642
<b>Ending Fund Balance</b>				<b>5,394,479</b>
<b><u>MERC Fund</u></b>				
Beginning Fund Balance	51,963,209	40,365,843	40,365,842	40,849,697
Fund Balance Inc (Dec)	3,717,453	6,163,682	11,597,367	(12,442,959)
<b>Ending Fund Balance</b>	<b>55,680,662</b>	<b>46,529,525</b>	<b>51,963,209</b>	<b>28,406,738</b>

## OCC Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering,

**Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete**

Category Project Title	Management	Phase	2017 Budget				2018
			Approved	Amended	Actual	Remaining	Approved
<b>Food &amp; Beverage</b>							
Cucina Rosa Remodel	CPMO	<b>On Hold</b>	331,779	331,779	-	331,779	-
Portable Concession Kiosks	ARAMARK	<b>On Hold</b>	50,000	50,000	-	50,000	-
Food & Beverage Point of Sale System (POS) Replacement	ARA / IS	<b>Contracting</b>	-	-	-	-	230,000
<b>Special &amp; Master Planning</b>							
Facility Master Plan	OCC	<b>Complete</b>	298,560	288,560	18,243	270,317	-
Facility Conditions Assessment	OCC	<b>Complete</b>	-	10,000	5,475	4,525	-
<b>Renewal &amp; Replacement</b>							
Plaza, Entries, & Major Interior Remodel	CPMO	<b>Design</b>	2,600,000	2,589,965	57,334	2,532,631	6,000,000
Admin & Guest Services Area Carpet Replacement	OCC	<b>Complete</b>	95,000	103,891	103,991	(100)	-
Drinking Fountains Replacement	OCC	<b>Complete</b>	175,000	175,000	168,127	6,873	-
Engineer Workspace Remodel	OCC	<b>Complete</b>	35,000	36,144	36,144	-	-
Building Envelop Assessment	CPMO	<b>Planning</b>	-	-	-	-	150,000
Cooling System Design Consulting (Cooling Towers & Chillers)	CPMO	<b>Planning</b>	-	20,000	-	20,000	80,000
Loading Dock Improvements (Dock Locks, Enclosures, Levelers)	CPMO	<b>Planning</b>	-	20,000	-	20,000	360,000
Movable Partition Refurbishment	OCC	<b>Planning</b>	-	-	-	-	180,000
Break Room Renovation	CPMO	<b>Planning</b>	-	20,000	-	20,000	285,000
Setup Supervisors' Office Renovation	CPMO	<b>Planning</b>	-	10,000	-	10,000	95,000
<b>Security &amp; Access</b>							
Security Camera Replacements	CPMO	<b>Design</b>	450,000	450,000	(956)	449,044	450,000
Alerton Global Controller & Software Upgrade	OCC	<b>Construction</b>	70,000	70,000	13,684	56,316	-
Integrated Door Access Controls	CPMO	<b>Planning</b>	302,712	302,712	982	301,730	300,000
<b>Life &amp; Safety</b>							
Telecom MDF Fire Suppression Upgrade	OCC	<b>Contracting</b>	55,000	55,000	-	55,000	55,000
Emergency Notification Upgrade	OCC	<b>Construction</b>	375,000	375,000	103,748	271,252	375,000
Fire Sprinkler System Design Consulting	OCC	<b>Planning</b>	-	-	-	-	50,000
<b>Lighting &amp; Electrical</b>							
Tower Lighting	CPMO	<b>Construction</b>	650,000	650,000	500	649,500	-



## OCC Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering,

**Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete**

Category Project Title	Management	Phase	2017 Budget				2018
			Approved	Amended	Actual	Remaining	Approved
Portland Ballroom Can Lighting	CPMO	Construction	115,000	115,000	94,747	20,253	-
Oregon Ballroom Lighting Replacement	CPMO	Construction	220,000	220,000	142,542	77,458	-
Loading Dock & Parking Lot Lighting Replacement	CPMO	Construction	46,000	46,000	34,353	11,647	-
Parking Garage Lighting	CPMO	Construction	90,000	90,000	78,798	11,202	-
Exhibit Hall Lighting Control Replacement	OCC	Construction	25,000	50,000	13,930	36,070	275,000
<b>Technology</b>							
Telephone - Voice Over Internet Protocol (VOIP) Implementation	IS	Construction	366,068	366,068	-	366,068	352,500
Xirrus WiFi & Show Network Upgrade	OCC	Construction	170,000	170,000	134,871	35,129	-
OM4 Network Upgrade	OCC	Planning	130,000	130,000	-	130,000	-
<b>Equipment</b>							
Parking Management System	CPMO	Construction	1,000,000	1,000,000	559,617	440,383	-
AV Equipment	OCC	In progress	150,000	150,000	118,428	31,572	150,000
Cardboard Baler & Canopy	CPMO	On Hold	130,000	-	-	-	-
Utility Cart & Tug	OCC	Complete	15,000	15,000	13,816	1,184	-
Performance Stage ADA Ramp	OCC	Complete	16,500	16,500	16,401	99	-
Tug Tow Tractor Purchase	OCC	Planning	-	-	-	-	28,000
480V Show Equipment	OCC	Planning	-	-	-	-	90,000
Holladay Suites Furniture Purchase	OCC	Planning	-	-	-	-	50,000
<b>Total:</b>			<b>7,961,619</b>	<b>7,926,619</b>	<b>1,714,775</b>	<b>6,209,932</b>	<b>9,555,500</b>
<b>% of Budget:</b>					<b>22%</b>		

## Portland'5 Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering,  
**Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete**

Category Project Title	Management	Phase	2017 Budget				2018
			Adopted	Amended	Actual	Remaining	Approved
<b>Food &amp; Beverage</b>							
Keller - North Concessions Stand Remodel (Aramark)	CPMO	<b>Planning</b>	150,000	150,000	-	150,000	-
Keller - 1st Balcony Concessions stand remodel	CPMO	<b>Planning</b>	30,000	30,000	-	30,000	-
All Venues - 14 Grab & Go Portables	ARA	<b>Planning</b>	168,000	168,000	-	168,000	-
ArtBar Bar Replacement (Aramark)	CPMO	<b>Design</b>	30,000	200,000	-	200,000	200,000
ArtBarista Remodel (Aramark)	CPMO	<b>Design</b>	30,000	30,000	-	30,000	-
Aramark Point Of Sale System Replacement	ARA / IS	<b>Contracting</b>	-	-	-	-	130,000
<b>Information Technology</b>							
AHH/ASCH/Keller VOIP Implementation	IS	<b>Construction</b>	214,120	214,120	-	214,120	214,120
AHH - Stagehand Payroll Upgrade	P5	<b>Complete</b>	-	5,593	5,593	-	-
<b>Elevators</b>							
AHH/ASCH/Keller - Elevators Design & Scope	CPMO	<b>Construction</b>	15,767	150,767	738	150,029	-
AHH - Backstage Elevator Overhaul (R&R)	CPMO	<b>Planning</b>	235,000	-	-	-	-
AHH FOH Elevator Overhaul (R&R)	CPMO	<b>Planning</b>	480,000	580,000	-	580,000	-
Keller Backstage Dressing Tower Elevator Overhaul	CPMO	<b>Planning</b>	-	-	-	-	300,000
<b>Lighting &amp; Electrical</b>							
Newmark Lighting Overhaul Phase II	P5	<b>Contracting</b>	40,000	40,000	-	40,000	100,000
Newmark Lighting Overhaul Phase III	P5	<b>Contracting</b>	130,000	130,000	74	129,926	100,000
Winningstad - House Lighting Control & Dimmers	P5	<b>Contracting</b>	40,000	120,000	-	120,000	100,000
Keller Auditorium - LED Lighting Conversion	P5	<b>Construction</b>	110,635	90,635	-	90,635	-
Newmark LED Cyclorama Light Fixtures	P5	<b>Contracting</b>	75,000	75,000	-	75,000	-
P5 NMK/Winni FOH Lighting System Overhaul (R&R)	P5	<b>Planning</b>	80,000	-	-	-	-
AHH Winni LED Par Theatrical Fixtures (R&R)	P5	<b>Planning</b>	15,000	25,000	-	25,000	-
AHH Brunish Theater Electrical Improvements	P5	<b>Planning</b>	-	-	-	-	50,000
ASCH Audience Chamber Lighting	P5	<b>Planning</b>	-	-	-	-	25,000
<b>CPMO Management</b>							
AHH - Fire Alarm System	CPMO	<b>Construction</b>	175,000	225,000	250	224,750	-
Keller - Roof & Drains Replacement	CPMO	<b>Construction</b>	1,509,793	1,509,793	961,174	548,619	-
ASCH - Portland Sign Assessment & Refurb Scoping	CPMO	<b>Construction</b>	360,000	560,000	6,932	553,068	-
ASCH - Cooling Tower & Associated Piping ( R & R)	CPMO	<b>Construction</b>	50,000	50,000	15,796	34,204	350,000
Keller Wall Panels	CPMO	<b>Design</b>	500,000	35,000	20,546	14,454	-
All Buildings Access Controls CCTV Replacement	CPMO	<b>Planning</b>	-	-	-	-	200,000
AHH Roof, Green Roof	CPMO	<b>Planning</b>	-	-	-	-	50,000
<b>Venue Management</b>							
Keller Carpet Stairwells (R & R)	P5	<b>Complete</b>	-	11,827	11,827	-	-
Keller - Rehearsal Hall Acoustical Treatment	P5	<b>Complete</b>	50,000	50,000	-	50,000	-

## Portalnd'5 Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering,  
**Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete**

Category Project Title	Management	Phase	2017 Budget				2018
			Adopted	Amended	Actual	Remaining	Approved
ASCH - Orchestra Shell Rigging - loft blocks	P5	Planning	150,000	64,801	-	64,801	125,000
Stage Doors & Box Offices Plan	P5	Construction	241,719	241,719	10,203	231,516	-
Marketing & Reception Office Remodel	P5	Construction	-	-	33,902	(33,902)	-
AHH/ASCH/Keller Building Re-key & Key Control	P5	Complete	94,784	148,933	149,779	(846)	-
Keller Main Switch Gear (R&R)	P5	Contracting	25,000	25,000	-	25,000	-
Keller Electrical Panels Replacement (R&R)	P5	Contracting	25,000	25,000	-	25,000	-
AHH Brunish Deck Replacement (R&R)	P5	Complete	25,000	38,630	38,630	-	-
ASCH Backstage Entry Door Replacement (R&R)	P5	Construction	30,000	85,000	9,446	75,554	-
Water Fixture Upgrades	P5	Complete	-	-	42,396	(42,396)	-
AHH Main Street Rotunda Storefront Doors	P5	Planning	-	-	-	-	75,000
AHH, ASCH, Keller Assisted Listening System	P5	Planning	-	-	-	-	70,000
AHH, ASCH, Keller ADA Signage	P5	Planning	-	-	-	-	50,000
<b>Equipment</b>			-	-	-	-	-
Newmark - Stage Floor Replacement (R&R)	P5	Complete	100,000	100,000	63,650	36,350	-
Newmark - Main Speakers Replacement (R&R)	P5	Contracting	100,000	100,000	-	100,000	-
Keller - Sound Console replacement (R&R)	P5	Complete	-	-	90	(90)	-
Keller/ASCH - Soft Goods, Main Curtain, Borders (R&R)	P5	Complete	29,587	29,587	1,457	28,130	-
ASCH & Keller Main Curtain, Loft Curtains, Legs &	P5	Planning	-	-	-	-	100,000
Keller Balcony Front Fill Speakers	P5	Planning	-	-	-	-	50,000
Aerial Work Platform (Scissor lift)	P5	Planning	-	-	-	-	20,000
Banquet Chairs Replacement	P5	Planning	-	-	-	-	20,000
<b>Total:</b>			<b>5,309,405</b>	<b>5,309,405</b>	<b>1,372,483</b>	<b>3,936,922</b>	<b>2,329,120</b>
<b>% of Budget:</b>					<b>26%</b>		

## Expo Center Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering,  
**Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete**

Category	Project Title	Management	Phase	2017 Budget				2018
				Adopted	Amended	Actual	Remaining	Approved
<b>Food &amp; Beverage</b>								
	Connector Glass Door (ARA)	CPMO	Contracting	100,000	100,000	11,062	88,938	120,000
	Concessions Upgrades (ARA)	ARA	Planning	15,000	15,000	-	15,000	50,000
	Aramark Point of Sale System Replacement	ARA / IS	Contracting	-	-	-	-	160,000
<b>Special Projects</b>								
	Marketing & Comm Plan - Advertising	EXPO	Planning	15,000	15,000	-	15,000	-
	Hall A, B, C Assessment	EXPO	Planning	33,000	33,000	-	33,000	-
<b>Maintenance</b>								
	Capital Maintenance - Truss Repair	EXPO	In Progress	19,800	19,800	8,528	11,272	-
	Capital Maintenance - Truss Repair	EXPO	In Progress	7,500	7,500	-	7,500	-
	Parking Lot Asphalt (R&R)	EXPO	In Progress	77,415	77,415	35,000	42,415	-
	Capital Maintenance - Asphalt Repair	CPMO	In Progress	-	-	-	-	135,000
	Expo Water Efficiency Upgrades	EXPO	Planning	46,000	46,000	-	46,000	80,000
<b>Lighting &amp; Electrical</b>								
	Halls ABCDE Lighting Controls study and Replacement	CPMO	Planning	-	-	-	-	20,000
	New Hall A Shore Power	EXPO	Construction	-	75,000	-	75,000	150,000
	Interior & Exterior Lighting Replacements	EXPO	Planning	-	-	-	-	70,000
<b>Renewal &amp; Replacement</b>								
	Hall D Lobby Carpet/Paint (R & R)	CPMO	In Progress	25,065	25,065	2,822	22,243	-
	HVAC Rvw & Repair (TLT)	EXPO	Planning	170,000	170,000	-	170,000	-
	Halls ABCDE Retrofit Exhaust Fans	EXPO	On Hold	25,000	25,000	-	25,000	-
	Hall A Carpet & Paint & Sign	EXPO	On Hold	125,000	-	-	-	-
	Hall C HVAC Study	EXPO	Planning	-	-	-	-	35,000
	Halls ABCDE HVAC Controls Replacement	EXPO	Planning	-	-	-	-	60,000
<b>Roofing</b>								
	ABC Roof Repairs (R&R)	EXPO	In Progress	10,000	10,000	-	10,000	80,000
	Halls D & E Roof Replacement (R&R)	CPMO	Construction	779,500	779,500	-	779,500	1,898,750
	Halls D&E Solar Project	CPMO	Planning	100,000	72,123	-	72,123	-
<b>Equipment</b>								
				-	-	-	-	-

## Expo Center Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering,

**Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete**

Category	Project Title	Management	Phase	2017 Budget			2018	
				Adopted	Amended	Actual	Remaining	Approved
	Audio Visual Equipment (Pooled TLT Capital)	EXPO	Planning	50,000	50,000	-	50,000	-
	Plastic Folding Stacking Chairs (1 of 3)	EXPO	Complete	25,000	52,877	52,877	-	-
	Radio Replacements (1 of 5)	EXPO	In Progress	10,000	10,000	10,342	(342)	20,000
	Scaffolding	EXPO	On Hold	10,000	10,000	-	10,000	-
<b>Information Technology</b>				-	-	-	-	-
	Security Camera Access Control System (Phase 1	CPMO	In Progress	98,000	98,000	12,363	85,637	-
	Electronic Signage (TLT Pooled) & Landscaping	CPMO	In Progress	265,000	265,000	162,991	102,009	-
	Voice Over IP (VoIP) Infrastructure	IS	In Progress	107,940	107,940	-	107,940	107,940
	Ticketing Hardware	EXPO	Complete	8,000	8,000	1,531	6,469	-
	WiFi Upgrade (TLT)	CPMO	In Progress	25,000	75,000	1,788	73,212	80,000
	<b>Total:</b>			<b>2,147,220</b>	<b>2,147,220</b>	<b>299,304</b>	<b>1,847,916</b>	<b>3,066,690</b>
	<b>% of Budget</b>					<b>14%</b>		

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# **MERC Commission Meeting**

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June 7, 2017  
12:00 pm

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Venue Business Reports

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Oregon Convention Center  
MERC Monthly Business Report  
June 7, 2017

<b>COMPLETED EVENTS</b>	
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- Oregon Dental Association
  - 20<sup>th</sup> Consecutive Convention: In 1998, they had 1,500 participations and now they are up to almost 7,000
  - Attendance: 6,800
  - Revenue: \$318,581
  - This event uses OCC parking, AV, catering and telecom
- Northwest Facilities Expo
  - Attendance: 3,200 – a 30% increase from last year
  - Revenue: \$150,702
  - OCC powered over 75 machines
- Northwest Foodservice Show
  - Attendance: 6,300
- Society for Investigative Dermatology
  - Attendance: 1,600
  - Revenue: \$282,478
  - Numerous ancillary and community events

<b>CURRENT PROJECTS</b>	
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- The large freight elevator (#18) was repaired after an extensive search both nationally and internationally for parts that would correct a safety issue. After several weeks of identifying and procuring the parts the Thyssen Krupp elevator contractor replaced the parts and corrected the balance of the car for a more efficient operation.
- Wiring for the VOIP project begun in April and to date the contractor has completed about 65% of the work with the expectation that the wiring will be completed by 6.30.17.
- The Fire alarm notification upgrade project is 75% completed and it too is expected to have the wiring portion completed by 6.30.17.



Portland's  
MERC Monthly Business Report  
June 7, 2017

<b>CAPITAL PROJECTS UPDATE FY17</b>	
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In lieu of a usual business report, I am providing a detailed update of the capital projects scheduled for FY17. Over all our completion schedule is very good, especially considering we lost the Director of Operations Jan. 10<sup>th</sup> and the Assistant Director of Operations April 1. The new Director of Operations does not start until June 12<sup>th</sup>.

ASCH-Arlene Schnitzer Concert Hall  
NMK-Newmark Theater  
Winni-Winningstad Theater  
AHH-Antoinette Hatfield Hall  
KA-Keller Auditorium  
FOH-Front of House  
BOH-Back of House  
POS-Point of Sale

FY 17 projects completed or on track to be completed

- Soft good Keller and ASCH 50K Complete
- Winni/NMK floor replacement 100K Complete (came in 40K under, funds moved)
- Keller Drains 300K General roofing work is ramping back up now that warmer drier weather has settled in. Most of the remaining drain leaks were cured over the winter, the drain portion of this project is 99% complete
- Keller Roof 1,036,000 Same as above regarding ramp up due to weather improvements. New supplies are being delivered and contractor feels confident about finishing by 6/30
- Keller Main Switchgear and elect. Panels (design and engineering only) 50K Contractor recently presented 60% document package. Project will be completed by June 30
- Engineering study-ASCH cooling tower 50K Design 99% complete, awaiting final documents. We anticipate wrapping this phase by June 30
- Phase I and II Building rekey 160K Fully complete and paid for. Project ended up approximately \$30k over budget due to extraordinarily high number of damaged or broken lock components found during installation at Schnitzer
- Brunish Deck 25K Complete
- AHH Fire Alarm 175K Installation approximately 85% complete. Final testing and PF&R approval expected approximately Jun 26.
- ASCH Backstage entry 30K Installation finally starting on this project which was delayed multiple times due to City of Portland Historic Review Committee and manufacturer lead

time issues. Portland Commercial Construction, a COBID ESB will have the project completed by June 30

- Winni PAR lights 15K Complete. All instruments delivered.
- NMK cyc light conversion to LED 75K All equipment ordered, will be delivered by June 30. This is an internal staff installation, so all funds dispersed FY17.
- PDX sign 360K (increase to 550K) Sign has been removed and shipped to Yakima. Fabrication is underway. New steel beam installed at ASCH, reinstallation of cast stone and brick work to occur early June. Sign currently estimated to be back on site approximately July 17
- ASCH orchestra shell 150K (reduce to 60K) Full shell re-rig on hold as interest in Meyer Sound electro-acoustic system is increasing with Symphony. Interim plan rigging hardware is arriving and all will be on site prior to June 30. This is an internal staff installation plus a small amount of outside stage labor which will be paid for from operating funds.

#### Delay till FY 18

- Keller exterior panels 500K (reduce to actual spent, 21K) Repair/Refurb work pushed to a future fiscal year TBD, pending results of City funded seismic study, underway now.
- FOH lighting NMK Phase II and Win 80K
- Phase III NMK lighting 130K
  - Mfg delays caused us to miss construction window
  - Scheduled Summer 2017
  - All of the projects above now combined, with total 218K FY17 and 300K FY18, now amended up to \$750K. Equipment in on order and we are currently negotiating contract terms with the Contractor. The project has been significantly to move the Winningstad portion out to the Winter 17-18
- Ltg. Control and LED upgrades BOH Keller (roll) 75K (reduced to 10K) Scaled back for the time being to get more detailed design and pricing estimates. Excess funds moved to large Newmark-Winningstad lighting project, as well as putting things in a general holding pattern pending seismic study completion.
- Main speakers NMK 100K Unable to complete specs in time to get equipment delivered by end of June or even this summer due to 2 vacancies in operations department. Project cancelled for now, will re-budget for FY19
- Balcony concession stand remodel 30K Aramark has requested holding this until a future year, funds to go toward ArtBar which needs extensive repairs/replacement and to the new POS system.
- N. Keller concession stand 150K Aramark has requested holding this until a future year, funds to go toward ArtBar at AHH and POS system.

- ArtBar replacement design 30K Metro Capital Projects Office is working on this project with various vendors to keep it within a \$200K budget
- Artbarista remodel (design only) 30K Aramark has requested holding this until a future year, funds to go toward ArtBar at AHH and POS system.
- Food and Beverage Kiosks 168K Aramark has requested that this be delayed to FY18 due to more pressing needs to update Art Bar and Keller Concessions in order to provide increased points of sale.
- Voice over internet protocol (VoIP) 215K
  - This is being handled by Information Services so time line is dependent on that Metro department; most recent meetings suggest Infrastructure portion of this may yet be completed in FY17. New team meetings scheduled in mid-June to begin “kick off”
- AHH backstage elevator 235K Postponed until future FY in favor of attempting to complete KA Backstage elevator
- AHH FOH elevators 480K Postponed until future FY in favor of attempting to complete KA Backstage elevator
- KA Backstage Elevator 300K Metro Capital Projects has received approval for a pilot project which will hire Kone elevator, under a co-op contract held by the State of Colorado, to directly contract for replacement work. Looking for window to complete work.
- Box offices, stage door, rehearsal hall design and renovations 200K
  - Focused on office needs of new staff in FY 17 (marketing office completed)
  - Intended as a multi-year project
  - Lower priority
  - No change here. Funds were not rolled to FY18, this design contract expired end of June 2016. Will look at re-budgeting for FY19

Expo  
MERC Monthly Business Report  
June 7, 2017

<b>SALES AND EVENTS</b>	
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- In May the Expo hosted three events surrounding the anniversaries of the Portland Assembly Center and the Vanport Flood. Both our significant events for the community.
  - On May 6<sup>th</sup>, we partnered with the Oregon Nikkei Endowment for the event *Return & Remembrance*, which marked the 75<sup>th</sup> anniversary of Japanese Americans being sent to the Portland Assembly Center. We were honored to have as guests many of those that survived these hardships to share their memories and to educate others.
  - May 25<sup>th</sup> marked the 3<sup>rd</sup> annual *Honoring our History* event in partnership with Beaumont Middle School 8<sup>th</sup> graders from Ms. Kirsten Parrot's class. This year's project, "Opening the Doors to Vanport's History" gave a glimpse into what life at Vanport was like for its residents, as well as displays from past events.
  - On Memorial Day weekend, Vanport Mosaic hosted bus and bike tours of the Vanport site – Both the Expo Center and Metro were "Community Champions" for the event.
- The Expo Center sales team has worked hard to increase business in May, including two tradeshow: the Diesel Service Unit Vendor Fair (automotive industry) and the Oregon Nail Expo (beauty industry). Tradeshow are becoming an important part of Expo's business make-up – typically, they utilize week day dates that do not disrupt our weekend consumer business.

<b>CAMPUS PROJECTS</b>	
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- *Gravel Lot* - Staff recently renovated our gravel lot with new gravel and striping – this simple project expanded the spaces to 250 in the lot, creating additional parking on busy show days.  
*History Case* – A beautiful white oak history case was added to Hall E lobby to showcase artifacts and host ongoing exhibits, completing our project for that lobby space.
- *Transformer Project* – With the assistance of PGE, Metro cPMO, and others - the Expo Center is in the process of adding shore power to our lower parking lots for Cirque du Soleil to utilize. Having access to shore power gives clients a more permanent "plug and play" electrical set-up that has the potential to attract more business to our outdoor space, and provide future alternatives that will support our campus electrical infrastructure.
- *Hall D / E Roofing Project* – Following last months, MERC Commission approval, staff moved forward on the materials purchase for the roofing project which puts us in a good place coming into the summer months to execute the project with owner supplied materials under warranty.
- Based on a 2016 HVAC Assessment, Expo replaced 3 heat exchangers that will allow for more even distribution that will cause less wear and tear on the system.

<b>STAFF</b>	
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- PT Event Manager - Expo welcomed Chris Fruhling as our new PT Event Manager supporting the upcoming Cirque season and more. Chris comes to us with great event experience in the running industry. He is learning a lot and is a great addition to our team. Welcome Chris!

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# **MERC Commission Meeting**

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June 7, 2017  
12:00 pm

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Travel Portland  
Quarterly Report

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*travel*  
**PORTLAND**

Highlights:

Executive Summary - Page 3



## Table of Contents

Executive Summary.....	3
Convention Sales.....	4
Convention Services.....	11
Communications and Publications.....	13
Marketing.....	16
Tourism.....	16
Operations.....	17
Finance.....	19
Board of Directors.....	22

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

100 SW Main  
Suite 1100  
Portland, OR 97204  
503.275.9750





# Executive Summary

## ACCOMPLISHMENTS

- For the third quarter OCC realized over \$3.3 million in revenue from Travel Portland booked business. Community impact ROI from all future bookings was 38.2 to 1.
- Fourteen new and four repeat OCC conventions were booked for future years in the quarter worth over \$3.2 million in OCC revenue and community economic impact over \$20.1 million. Total Travel Portland bookings, including single hotel will result in over \$42.5 million of economic impact.
- Travel Portland generated 61 articles with a value over \$9.6 million for the OCC and visitor venues in the quarter.

## TRENDS, SUCCESSES, OBSTACLES

- Transient Lodging Tax is rising at a normalized rate after 4 years of significant increases. YTD collections of the city's tax were up 3.8%.
- Lack of a headquarters hotel resulted in the loss of ten groups worth 37,784 room nights and projected OCC lost revenue of over \$3.6 million. Cost of community economic impact is estimated at over \$28.0 million.

## MERC CONTRACT TARGETS

TARGET #	TARGET DESCRIPTION	YEAR TO DATE ACTUAL	ANNUAL TARGET
1	OCC revenue target	\$8,911,413	\$14.0 Million
2	ROI on future OCC business	3.5	3.8
3	Lead conversion	36%	35%
4	Services performance survey	3.8	3.85
5	ROI on public relations/media	55.6	25.0
6	Community economic impact	37.0	42.0

## CITY CONTRACT GOALS

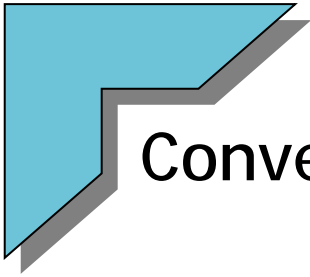
OBJECTIVE #	GOAL DESCRIPTION	YEAR TO DATE ACTUAL	ANNUAL GOAL
1	Convention Sales and Marketing Economic Impact ROI	35.7	25.0
6	Media Placement ROI	97.1	25.0



# Convention Sales

OREGON CONVENTION CENTER BOOKED REVENUE FROM TRAVEL PORTLAND BOOKINGS			
	OCC Revenue	Annuals	Total Potential Future Business
<b>FY 16/17</b>	\$ 12,699,974	\$ -	\$ 12,699,974
<b>FY 17/18</b>	\$ 9,532,609	\$ 791,439	\$ 10,324,048
<b>FY 18/19</b>	\$ 6,943,076	\$ 1,403,869	\$ 8,346,945
<b>FY 19/20</b>	\$ 5,850,551	\$ 1,538,804	\$ 7,389,355
<b>FY 20/21</b>	\$ 3,253,017	\$ 1,538,804	\$ 4,791,821
<b>FY 21/22</b>	\$ 5,400,278	\$ 1,538,804	\$ 6,939,082
<b>FY 22/23</b>	\$ 1,115,564	\$ 1,538,804	\$ 2,654,368
<b>FY 23/24</b>	\$ -	\$ 1,538,804	\$ 1,538,804
<b>FY 24/25</b>	\$ -	\$ 1,538,804	\$ 1,538,804
<b>TOTAL</b>	\$ 44,795,069	\$ 11,428,132	\$ 56,223,201

Oregon Convention Center Projected Future Revenue			
Total Travel Portland Contract:	Quarter	YTD	Target
New OCC Bookings	14	46	
Repeat OCC Bookings	4	6	
Total OCC Bookings	18	53	
Room Nights from OCC Bookings	25,593	104,961	
Future OCC Revenue Booked during FY 2016/17	\$ 3,277,481	\$ 12,567,574	
ROI OCC Bookings	\$ 2.9	\$ 3.5	3.8 to 1
Community Economic Impact from OCC Bookings	\$ 20,131,959	\$ 81,699,963	
Total Room Nights Booked	71,251	208,741	
Total Community Economic Impact from Bookings	\$ 42,597,994	\$ 131,934,259	
ROI on Total Community Economic Impact	\$ 38.2	\$ 37.0	42.0 to 1
OCC Revenue Realized During FY 2016/17	\$ 3,377,118	\$ 8,911,413	\$14.0 Million



# Convention Sales

OREGON CONVENTION CENTER FUTURE GROUP BOOKINGS					
AS OF APRIL 1, 2017					
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21 and beyond
Current	53	43	20	17	16
4 Year Average (FY 13/14 - FY 16/17)	Current 39	1 yr. out 28	2 yrs. out 15	3 yrs. out 9	Beyond 3 yrs. 10

3RD QUARTER - ROOM NIGHTS FROM OREGON CONVENTION CENTER BOOKINGS					
Year	Groups	Total Room Nights	Attendees	OCC Revenue	Community Economic Impact
FY 16/17	1	1,963	10,000	\$ 312,752	\$ 462,509
FY 17/18	11	8,064	23,700	\$ 1,248,937	\$ 7,273,526
FY 18/19	1	2,707	1,200	\$ 137,744	\$ 1,394,509
FY 19/20	4	7,300	5,600	\$ 871,117	\$ 6,118,414
FY 22/23	1	5,559	2,800	\$ 706,931	\$ 4,883,001
<b>TOTAL OCC BOOKINGS</b>	<b>18</b>	<b>25,593</b>	<b>43,300</b>	<b>\$ 3,277,481</b>	<b>\$ 20,131,959</b>

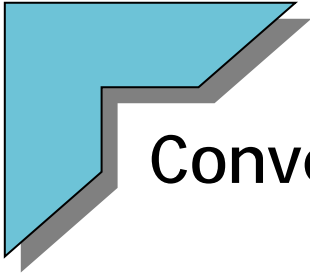
3RD QUARTER - ROOM NIGHTS FROM SINGLE HOTEL BOOKINGS				
Year	Groups	Total Room Nights	Room Tax Generated	Community Economic Impact
FY 16/17	34	9,530	\$ 150,634	\$ 4,151,758
FY 17/18	51	24,891	\$ 393,433	\$ 12,905,288
FY 18/19	8	5,027	\$ 79,458	\$ 2,251,375
FY 19/20	5	6,210	\$ 98,157	\$ 3,157,614
<b>TOTAL OTHER BOOKINGS</b>	<b>98</b>	<b>45,658</b>	<b>\$ 721,682</b>	<b>\$ 22,466,035</b>

# Convention Sales

Oregon Convention Center Revenue: Three Year Average						
	Total Contract		Chicago Office		Washington, DC Office	
	Quarter	YTD	Quarter	YTD	Quarter	YTD
OCC Revenue Generated (3 yr. average)	\$ 3,209,165	\$ 9,696,697	\$ 206,554	\$ 870,096	\$ 276,377	\$ 2,076,362
Travel Portland Contract Costs	\$ 1,113,930	\$ 3,570,295	\$ 41,677	\$ 123,099	\$ 58,471	\$ 234,133
ROI (Revenue / Costs)	2.88	2.72	4.96	7.07	4.73	8.87
Annual Goal	2.2/2.5 to 1					

LEAD CONVERSION						
	Travel Portland Office		Chicago Office		Washington, DC Office	
	Quarter	YTD	Quarter	YTD	Quarter	YTD
OCC Leads	79	203	17	42	34	82
OCC Lost Leads due to OCC space & availability	15	25	4	7	7	10
OCC Lost Leads due to HQ hotel & hotel package	10	33	6	12	3	15
Lead Conversion Percentage	33%	36%	71%	39%	8%	18%
Annual Target - 35%						

3RD QUARTER - OREGON CONVENTION CENTER LOST BUSINESS						
Account	Groups	Reason	Total Room Nights	Attendees	Lost OCC Revenue	Lost Community Economic Impact
Subtotal	8	Hotel - HQ	27,666	13,750	\$ 2,502,818	\$ 18,070,786
Subtotal	15	Date Availability - OCC	37,599	33,800	\$ 5,109,751	\$ 31,156,736
Subtotal	6	Board Decision	16,959	6,050	\$ 1,174,999	\$ 9,705,741
Subtotal	5	Geographic	6,653	6,600	\$ 875,385	\$ 5,877,944
Subtotal	4	Rates/Cost - Hotel	33,135	16,320	\$ 3,146,796	\$ 22,610,017
Subtotal	3	Client Postponed Search	8,380	7,000	\$ 1,138,414	\$ 10,373,644
Subtotal	3	Selected Another Year	12,282	5,125	\$ 1,015,430	\$ 8,134,250
Subtotal	2	Hotel Package - Number Hotels Needed	10,118	7,200	\$ 1,114,974	\$ 9,955,215
Subtotal	2	3rd Party Lost Account	5,990	2,200	\$ 529,629	\$ 3,599,749
Subtotal	1	Conference Cancelled - Not Happening	2,450	1,200	\$ 223,563	\$ 1,587,064
Subtotal	1	Date Availability - Hotel	3,440	2,000	\$ 308,770	\$ 2,355,664
Subtotal	1	Declined business - OCC	3,405	1,100	\$ 309,247	\$ 2,203,584
Subtotal	1	Hotel - Meeting Space Issue	1,654	1,500	\$ 151,352	\$ 1,004,913
Subtotal	1	OCC - Meeting Space Issue	7,212	3,500	\$ 862,684	\$ 6,291,723
Subtotal	1	Rates/Cost - OCC	3,469	2,000	\$ 513,796	\$ 3,194,816
<b>Total</b>	<b>54</b>		<b>180,412</b>	<b>109,345</b>	<b>\$ 18,977,608</b>	<b>\$ 136,121,846</b>



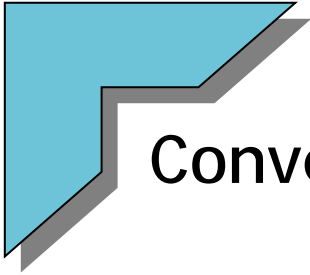
# Convention Sales

## 3RD QUARTER - OREGON CONVENTION CENTER CANCELLATIONS

Account Name	Groups	Reason	Total Room Nights	Attendees	Lost OCC Revenue	Lost Community Economic Impact	Arrival Date
N/A	0	N/A	0	0	\$ -	\$ -	N/A

## 3RD QUARTER INDUSTRY TRADE SHOWS AND EVENTS

Trade Show/Event	Location
Professional Convention Managers Association	Austin, TX
Council of Engineering and Science Society Executives	Austin, TX
Religious Conference Managers Association	Chicago, IL
Customer Advisory Board Meeting	Portland, OR
Greater Oregon Society of Government Meeting Planners	Pendleton, OR
Northern California Road Show	San Francisco & San Jose, CA
Experient Envision	Cleveland, OH
Destination Showcase	Washington DC
Meeting Professionals International - Cascadia	Pendleton, OR
Meeting Professionals International - Northern California	San Francisco
National Association of Sports Commissions	Sacramento, CA
Meet NewYork	NewYork, NY
Connect Diversity	Las Vegas, NV



# Convention Sales

<b>MINORITY PROJECTED FUTURE REVENUE</b>		
<b>Total Travel Portland Contract:</b>	<b>3rd Quarter</b>	<b>YTD</b>
<b>New Minority Bookings</b>	<b>0</b>	<b>1</b>
<b>Total Minority Bookings</b>	<b>0</b>	<b>1</b>
<b>Room Nights from Minority Bookings</b>	<b>0</b>	<b>174</b>
<b>Minority Leads</b>	<b>3</b>	<b>7</b>
<b>Minority Lost Leads</b>	<b>1</b>	<b>3</b>
<b>Minority Lost Leads Due to OCC Space &amp; Availability</b>	<b>1</b>	<b>1</b>
<b>Minority Lost Leads Due to Hotel Package &amp; Availability</b>	<b>0</b>	<b>0</b>

For the third quarter of FY 2016/17, there were zero minority bookings created. The estimated economic impact to the greater metro Portland community was zero dollars.

# Convention Sales

Program	Date	Location	Desiree Everett	Shawna Wellman	Cathy Kreitz	Mandy Tucker	Alva Liberty	Chanel Sheraggy	Tori Pontrelli	To Be Determined (2)	Erica Vanausdell	Kayla Davis	Julie Smith	To Be Determined	Cara Tobias Ingram	Tracey Chapman	Maureen Champitt	Kristine Becker	Mike Smith	Steve Paultrick	Jeff Miller	Total Staff
<b>Apr-17</b>																						
ConferenceDirect Annual Partner Meeting & Tradeshow	April 9-13, 2017	Baltimore, MD				1																1
Simpleview Summit	April 3-6, 2017	Tucson, AZ								1	1											2
HelmsBriscoe Annual Business Conference & Partner Fair	April 18-20, 2017	Chicago, IL					1															1
National Association of Sports Commissions Sports Event Symposium	March 27-30, 2017	Sacramento, CA		1																		1
<b>May-17</b>																						
D.C. client event week	May 1-5, 2017	Washington, D.C.	1		1		1	1						1	1				1		1	8
Chicago client events	May 22-26, 2017	Chicago, IL		1		1		1								1			1	1		6
Xperience Design Project	May 23-24, 2017	Washington, D.C.	1											1	1							3
<b>Jun-17</b>																						
Oregon Association of Nurseries Golf Tournament	June 8, 2017	Portland, OR																	1	1		2
Oregon Dental Association Golf Tournament	June 2017 (TBD)	Portland, OR																	1	1		2
Travel Portland Spring Familiarization Tour	June 1-4, 2017	Portland, OR	1	1	1	1	1	1		1	1	1	1	1	1	1	1	1	1	1	1	17
Professional Convention Management Association Education Conference	June 11-14, 2017	New York City, NY					1	1	1					1	1			1				6
Society of Government Meeting Professionals National Education Conference	June 6-8, 2017	Fort Lauderdale, FL						1														1
Meeting Professionals International World Education Congress	June 19 - 22, 2017	Las Vegas, NV			1																	1
Cvent Connect	June 12-14, 2017	Las Vegas, NV	1																			1
<b>Jul-17</b>																						
Oregon Society of Association Management and Meeting Professionals International - Oregon Chapter Golf Tournaments	TBD	TBD																				0
Council of Engineering and Scientific Society Executives Annual Meeting	TBD	TBD																				0
IEEE Panel of Conference Organizers	TBD	TBD																				0
<b>Aug-17</b>																						
Council of Manufacturing Association	August 2 - 4, 2017	Boston, MA					1										1					2
HelmsBriscoe Cares	TBD	Lake Geneva, WI														1						1
ASAE	August 12-15, 2017	Toronto, Canada	1											1				1	1	1		5
Kellen Management	August 28 - 30, 2017	Chicago, IL														1						1
Connect Marketplace	August 21-23, 2017	New Orleans, LA			1		1							1								3
<b>Sep-17</b>																						
Professional Convention Management Association/Meeting Professionals International NW Summit	TBD	Seattle area						1	1													2
Destination Marketing Association of the West Education Summit	September 27-29, 2017	Las Vegas, Nevada								1	1											3
ASAE 5 Star Weekend	September 7 - 10, 2017	San Antonio, TX																	1		1	2
CDX Client & Partner Event	September 5 - 8, 2017	Dallas, TX	1																			1
Congressional Black Caucus Annual Legislative Conference	September 20 - 24, 2017	Washington, D.C.					1							1	1				1	1	1	6
<b>Oct-17</b>																						
PCMA Philly/Road Show	TBD	Philly/Pittsburgh		1			1															2
Customer Advisory Board	October 4 - 6, 2017	Portland, OR	1	1	1		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	18
IMEX America: The Worldwide Meetings and Incentive Travel Exhibition	October 10 -13, 2017	Las Vegas, NV	1		1													1	1		1	4
Single Hotel DC Sales Mission	TBD	Washington, D.C.	1					1	1					1	1				1			6
Connect Faith	October 24-26, 2017	Cincinnati, OH					1															1



# Convention Sales

Program	Date	Location	Desiree Everett	Shawna Wellman	Cathy Kretz	Mandy Tucker	Ana Liberty	Chanel Shevagy	Tori Poutrelli	To Be Determined (2)	Erica Vannusdoli	Kayla Davis	Julie Smith	To Be Determined	Cara Tobias Ingram	Tracey Chapman	Maureen Clappitt	Kristine Becker	Mike Smith	Steve Paulick	Jeff Miller	Total Staff
<b>Nov-17</b>																						
HPN Global Partners Meeting	November 28-30, 2017	San Francisco, CA	1																			1
Single Hotel Chicago Sales Mission	TBD	Chicago, IL	1					1	1					1	1		1					6
Certified Meeting Planner Conclave	November 13-15, 2017	Baltimore, MD		1							1											2
Nursing Organizations Alliance Fall Summit	November 16-18, 2017	Birmingham, AL		1																		5
Washington DC Multicultural Event	TBD	Washington, D.C.				1								1	1			1	1	1		6
National Coalition of Black Meeting Planners Educational Conference	TBD	Cincinnati, OH				1								1								3
<b>Dec-17</b>																						
Travel Portland Fall Familiarization Tour	December 7 - 10, 2017	Portland, OR	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	18
Oregon Society of Association Management Annual Meeting	December 6, 2017	Portland, OR							2									1				3
Holiday Showcase	December 14, 2017	Chicago, IL	1																		1	2
Inter[act]ion	TBD	New Orleans, LA			1																	6
<b>Jan-18</b>																						
Professional Convention Management Association Convening Leaders 2017	January 7 - 10, 2018	Nashville, TN	1	1	1			1						1	1	1	1	1	1			9
Religious Conference Management Association Emerge Conference	January 30 - Feb. 1, 2018	Omaha, NE				1																1
CMA	January 10 - 12, 2018	Philly					1										1					2
<b>Feb-18</b>																						
Council of Engineering and Scientific Society Executives Chief Executive Officer Meeting	TBD																					0
Connect Diversity	February 2 - 8, 2018	Portland, OR	1		1	1									1			1	1	1		7
Meeting Professional International Northern California Chapter Annual Conference	TBD	San Francisco, CA						1	1													2
Society of Government Meeting Professionals National Education Conference & Expo	TBD	TBD							1													1
Road Show	TBD	Denver/Col. Springs			1	1																2
<b>Mar-18</b>																						
Experient Envision	TBD	TBD														1						1
MPI Cascadia	TBD	TBD						1														1
Destination Showcase D.C.	TBD	Washington, D.C.	1											1	1							8
CBI Pharma Forum	TBD	TBD					1										1					2
Meet NY	TBD	New York, NY		1																		1
Convention Sales Professional International Annual Conference	TBD	Washington, D.C.	1																			1
<b>Apr-18</b>																						
ConferenceDirect Annual Partner Meeting & Tradeshow	TBD	TBD	1				1															2
HelmsBriscoe Annual Business Conference & Partner Fair	TBD	TBD	1				1	1														3
National Association of Sports Commissions Sports Event Symposium	TBD	TBD			1																	9
<b>May-18</b>																						
D.C. client event week	TBD	TBD	1		1	1	1	1						1	1		1	1				9
Chicago client events (1020)	May 2017 (TBD)	Chicago, IL	1	1			1									1		1			1	6
IMEX Frankfurt	May 15 - 18, 2017	Frankfurt, Germany			1																	1
Simpleview Summit (1110)	May 7-10, 2018	Scottsdale, AZ								1												1
Xperience Design Project	TBD	TBD												1	1				1			3
<b>Jun-18</b>																						
Oregon Association of Nurseries Golf Tournament	TBD	Portland, OR																1	1			2
Oregon Dental Association Golf Tournament	TBD	Portland, OR																1	1			2
Travel Portland Spring Familiarization Tour	June 7 - 10, 2018	Portland, OR	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	10
Chicago client events	TBD	TBD																				0
Professional Convention Management Association Education Conference	TBD	TBD					1	1	1					1	1		1					6
Society of Government Meeting Professionals National Education Conference	TBD	TBD																				0
Meeting Professionals International World Education Congress	TBD	Page 133 of 145			1																	1
Cvent Connect	TBD	Las Vegas, NV	1																			1



# Convention Services

ACTIVITY DESCRIPTION	3RD QUARTER	YTD
OCC groups occurring during the quarter	14	42
Distribution of promotional pieces	33,120	81,815
Meeting planning assistance - Services leads	344	921
Pre-convention attendance building - Site tours	6	21
Pre-convention attendance building -Promo trips, e-newsletters and materials	0	7
Housing-convention room nights	7,639	19,431

## 3RD QUARTER INDUSTRY SITE TOURS, TRADE SHOWS AND PROMO TRIPS

Organization	Organization Location	Promotional Trip	Site Tours	OCC	Non-OCC
American Geophysical Union	Washington, DC		X	X	
Association for Professionals in Infection Control & Epidemiology	Washington, DC		X	X	
Medical Library Association	Chicago, IL		X	X	
National Assembly of State Arts Agencies	Washington, DC		X		X
TD Ameritrade	Jersey City, NJ		X		X
Maximus Inc.	Northbrook, IL		X		X



TRAVEL PORTLAND POST CONVENTION SURVEY							
Overall impression of the following:							
Answer Options	Excellent = 4	Good = 3	Average = 0	Poor = 1	N/A	Rating Average	Response Count
Travel Portland sales staff	3	1	0	0	0	3.75	4
Travel Portland convention services staff	3	1	0	0	0	3.75	4
Travel Portland housing services (if utilized)	1	0	0	0	3	4.00	1
Travel Portland collateral/promotional materials	1	2	0	0	1	3.33	3
Quality and user-friendliness of the Travel Portland website	1	1	0	0	2	3.50	2
<i>Average rating for the quarter</i>						3.7	
<i>Average rating YTD</i>						3.8	
<i>Target</i>						3.85	
<b>Is there anything Travel Portland could have done to enhance your experience?</b>							
No comments							
<b>Groups Serviced/Surveyed:</b>							
Northwest Food Processors Association Tektronix, Inc. Bible Study Fellowship Wizard World Signature EquipoVision, LLC Pac West Spirit Group Governor's Occupational Safety and Health Conference National Council of Teachers of English ( <i>*Completed survey</i> ) Westside Girls Gymnastics Parents Club ( <i>*Completed survey</i> ) National Council on Education for the Ceramic Arts ( <i>*Completed survey</i> ) Northwest Council for Computer Education ( <i>*Completed survey</i> )							



# Communications & PR

	3rd Quarter	YTD	Target
<b>Totals (Broadcast, Print, &amp; Online)</b>			
Value	\$20,620,637	\$52,221,719	
Circulation	790,253,280	1,429,603,387	
Placements	311	525	
<b>International (Broadcast, Print, &amp; Online)</b>			
Value	\$4,255,092	\$8,688,832	
Circulation	238,644,338	350,255,018	
Placements	156	194	
<b>MERC (facilities*)</b>			
Value	\$9,614,775	\$9,801,930	
Direct Costs	\$69,834	\$176,316	
ROI	137.7	55.6	25.0 to 1
Circulation	240,160,062	241,004,296	
Placements	61	85	
<b>Oregon Convention Center</b>			
Value	\$223,601	\$345,394	
Circulation	2,850,749	3,517,420	
Placements	23	31	
<b>City of Portland</b>			
Value	\$20,620,637	\$52,221,719	
Direct Costs	\$179,817	\$537,754	
ROI	114.7	97.1	25.0 to 1

\* No multipliers are used to calculate media values.

\* MERC Value - Counts all media placements that mention any MERC facility: Oregon Convention Center, Portland's, Portland Metropolitan Exposition Center and Oregon Zoo or cover industry topics related to Portland as a meetings destination.

\* OCC Value - Counts only those media placements that feature the Oregon Convention Center.

\* Totals represent broadcast, print, and online media



# Communications & PR

KEY MESSAGES/CONTENT	
Circulation Totals - 2016-17	
Top 10 of 31 key messages	
	Total
Character	857,085,801
Food	779,898,561
Drink	742,566,259
Designers & Makers	517,896,618
TravelPortland.com	378,862,874
Lodging	355,496,068
Diversity/Minority	311,778,820
Southwest	307,951,438
Outdoor Recreation	295,431,286
Northwest	271,092,443

Publication/ Air Date	Outlet	Articles Headline	MERC			OCC		
			Total Value	Total Circulation	Placements	Total Value	Total Circulation	Placements
4/1/2016	Reiselyst	Gronn Innovasjon I Portland	\$1	80,000	1			
7/15/2016	Luxury Travel Blog	6 Reasons to visit Oregon	\$500	258,251	1			
8/1/2016	Group Leisure	Overseas Festivities	\$844	7,000	1			
8/26/2016	ELLE Netherlands	Hotspots in Portland: 16 Favorieten	\$11,161	1,014,196	1			
10/1/2016	National Geographic Traveler	Best 24 Hours on Earth	\$1	23,200,000	1			
10/13/2016	Bon Appetit	At Restaurants, When Do You Order the Chicken and When Do You Avoid?	\$7,821	8,792,110	1			
10/27/2016	The Seattle Times	5 reasons to visit Portland's Old Town Chinatown now	\$69,093	11,515,550	1			
10/27/2016	OnFaith	Capturing Multicultural Expressions of Craft and Community in Portland	\$1	140,161	1			
12/1/2016	Association Conventions & Facilities	The Pacific Northwest	\$1	904	1	\$1	904	1
12/15/2016	Road Trips for Families	3 Museums for Families in Portland, OR	\$1	47,568	1	\$1	47,568	1
12/20/2016	Sing Tao Daily	Portland Riot	\$1,018	10,000	1			
12/20/2016	Sing Tao Daily	Portland Riot	\$0	128,981	1			
12/22/2016	Food Republic	8 New Restaurants You Can't Miss in Portland, Oregon	\$415	438,460	1			
12/22/2016	27 Kinds of Crazy	17+ Things to do on a Weekend in Portland	\$1	1	1			
12/29/2016	The Portland Tribune Online	Portland's Zine Scene Promotes Local Coolness	\$1,952	195,273	1			
12/29/2016	Hillsboro Tribune	Portland's Zine Scene Promotes Local Coolness	\$1,693	171,043	1			
1/1/2017	ELLE Netherlands	Popi Portland	\$60,268	70,000	1	\$60,268	70,000	1
1/1/2017	Successful Meetings	Pacific Northwest	\$48,200	50,000	1	\$48,200	50,000	1
1/1/2017	Meetings Today	Pampered in the Pacific Northwest	\$14,530	55,151	1	\$14,530	55,151	1
1/1/2017	Alaska Airlines Magazine	While You're There	\$10,270	79,820	1	\$10,270	79,820	1
1/1/2017	Alaska Beyond & Horizon Edition	While You're There	\$10,270	79,820	1	\$10,270	79,820	1
1/1/2017	Alaska Beyond & Horizon Edition	Bringing in the New Lunar Year	\$10,270	97,820	1			
1/1/2017	Association Conventions & Facilities	The Pacific Northwest	\$9,400	20,505	1	\$9,400	20,505	1
1/1/2017	Group Tour Magazine	Portland Japanese Garden Reflects Peace and Serenity	\$6,377	15,370	1			
1/1/2017	Meetings Today	Upscale amenities await in Washington, Oregon and Idaho	\$2,085	106,918	1	\$2,085	106,918	1



# Communications & PR

Publication/ Air Date	Outlet	Articles Headline	MERC			OCC		
			Total Value	Total Circulation	Placements	Total Value	Total Circulation	Placements
1/3/2017	Successful Meetings	The Pacific Northwest's Rich Offerings	\$7,917	56,546	1	\$7,917	56,546	1
1/4/2017	The New York Times	52 Places to go in 2017	\$2,084,717	29,781,685	1			
1/4/2017	Portland Business Journal	Convention Center hotel could finally see the light of day in 2017	\$7,457	10,327	1	\$7,457	10,327	1
1/4/2017	Portland Business Journal	Convention Center hotel could finally see the light of day in 2017	\$4,630	92,602	1	\$4,630	92,602	1
1/5/2017	USA Today Online	10Best: Best New Restaurants 2016	\$1,907,511	36,682,913	1			
1/8/2017	The New York Times	52 Places to go in 2017- ENews Letter	\$2,084,718	29,781,685	1			
1/8/2017	The New York Times	52 Places to go in 2017	\$16,011	626,257	1			
1/10/2017	El Tiempo	10 Razones por las que Portland es un destino ideal para latinos	\$88,523	5,667,313	1			
1/10/2017	The Houston Chronicle	52 Places to go in 2017	\$16,114	236,092	1			
1/11/2017	New York Daily News	A visit to Portland, Oregon is like glamping in concrete tents	\$1,044,493	26,112,348	1			
1/11/2017	Willamette Week	We Went To Tokyo To Figure Out Why They're Obsessed With Our City	\$25,900	70,000	1			
1/11/2017	Willamette Week	We Went To Tokyo To Figure Out Why They're Obsessed With Our City	\$3,750	435,627	1			
1/17/2017	Hayo Magazine	Portland's Creative Economy & 6 Makers You Need To Know	\$1	29,520	1			
1/22/2017	Sunday Star Times	In Love With Oregon	\$84,875	115,730	1			
1/22/2017	Stuff.co.nz	Captivated by the Sights and Sensations of Oregon	\$59,865	2,044,000	1			
1/23/2017	The Huffington Post	5 Ways Portland, OR, is winning over the Latino Community	\$177,210	22,865,758	1			
1/27/2017	Cleveland Jewish News	Portland, Oregon - Worthwhile, wonderful and a little weird in a good way	\$5,914	8,000	1	\$5,914	8,000	1
1/30/2017	Hello Vancity	Visiting the Oregon Zoo in Portland	\$1	15,968	1			
2/1/2017	Meetings & Conventions Magazine	Attention Please	\$24,100	50,000	1			
2/1/2017	Meetings & Conventions Magazine	Destination Marketing on the Cutting Edge	\$18,237	130,266	1			
2/1/2017	Smart Meetings Magazine	The Oregon Meeting Trail	\$9,400	44,000	1	\$9,400	44,000	1
2/1/2017	Smart Meetings Magazine Online	The Oregon Meeting Trail	\$2,500	120,134	1	\$2,500	120,134	1
2/16/2017	Indagare.com	The Perfect Weekend in Portland	\$250	60,000	1			
2/17/2017	Portland Business Journal	James Jessie	\$7,457	10,327	1	\$7,457	10,327	1
2/21/2017	Portland Business Journal Online	Portland expected to bid for enormous Outdoor Retailer trade show	\$4,630	92,602	1	\$4,630	92,602	1
2/22/2017	Portland Monthly	Where to Score the Best Three-Course Deals during Portland Dining Month	\$34,685	462,461	1			
2/22/2017	Portland Business Journal	Outline of Portland's Outdoor Retailer bid emerges	\$7,457	10,327	1	\$7,457	10,327	1
2/22/2017	Portland Business Journal	Outline of Portland's Outdoor Retailer bid emerges	\$4,630	92,602	1	\$4,630	92,602	1
2/23/2017	Portland Business Journal Online	How Portland stacks up in the bid to host the Outdoor Retailer show	\$4,630	92,602	1	\$4,630	92,602	1
2/25/2017	Times Colonist	When bad weather hits, there's lots to do in Portland	\$1	440,065	1			
3/2/2017	The Seattle Times	Where to go for dining and drinks in Portland? It's rocking across the Willamette	\$886,150	195,778	1			
3/2/2017	The Seattle Times	Where to go for dining and drinks in Portland? It's rocking across the Willamette	\$483,653	11,515,550	1			
3/2/2017	OPB Radio News	Portland Conventions   Port Of Portland   Eugene Dogs Ordinance   Women's Film Festival	\$1	1,110,721	1	\$1	1,110,721	1
3/2/2017	OPB Radio News	Portland Conventions   Port Of Portland   Eugene Dogs Ordinance   Women's Film Festival	\$1	404,000	1	\$1	404,000	1
3/6/2017	The Portland Tribune Online	Tourism alert: more good times ahead for the Rose City	\$1,952	195,273	1	\$1,952	195,273	1
3/7/2017	Chicago Tribune	Portland's robust food cart scene a treat for the taste buds	\$239,261	23,926,081	1			
			\$ 9,614,775	240,160,062	61	\$ 223,601	2,850,749	23



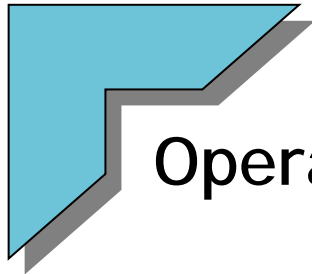
# Marketing & Tourism Sales

MARKETING		
TravelPortland.com*	3rd Quarter	YTD
Visits	1,117,785	2,992,798
International Visits	166,411	388,514
Referrals	282,252	792,790
Business and Event Detail Views	414,407	1,412,108
Meetings.TravelPortland.com*		
Venue Finder Page Views	1,433	4,150
Social Media**		
Estimated Economic Impact of Social Media Activity (Monthly Average)		\$ 616,690

\*Source: Google Analytics / \*\*Source: Edelman Worldwide

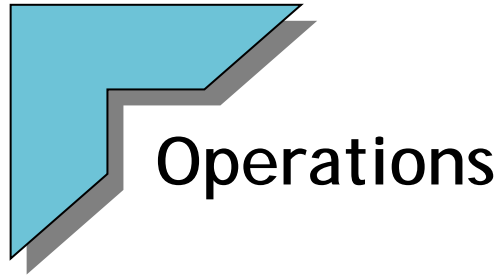
TOURISM SALES		
	3rd Quarter	YTD Total
Client Contacts		
Trade Shows, Events, Inquiries and Sales Calls	27,205	40,414
FAMS/Research & Site Visits		
# of Fams	12	55
# of Companies	40	142
# of Attendees	93	228
Published Itineraries	25	32
Number of Room Nights by County		
Clackamas County	114	2,166
Columbia County	0	5
Multnomah County	17,266	41,765
Washington County	0	1,719





# Operations

<b>DIVERSITY EMPLOYMENT STATISTICS 2016-17</b>					
<b>TRAVEL PORTLAND GOALS AND OBJECTIVES BY JOB CATEGORIES</b>					
	<b>March 31, 2017</b>		<b>2016-17</b>		
<b>Job Category</b>	<b>Category Number</b>	<b>Total</b>	<b>Actual Percentage</b>	<b>Goal Percentage</b>	<b>Objective</b>
	<b>Number of Females</b>	<b>Number of Staff</b>			
Office/Clerical	19	20	95%	65%	Monitor
Officials/Administration	4	10	40%	50%	Improve
Professionals	9	13	69%	50%	Monitor
Sales	15	16	94%	50%	Monitor
Technicians	4	6	67%	10%	Monitor
<b>Total</b>	<b>51</b>	<b>65</b>	<b>78%</b>	<b>45%</b>	<b>Monitor</b>
	<b>Number of Minorities</b>	<b>Number of Staff</b>			
Office/Clerical	5	20	25%	15%	Monitor
Officials/Administration	3	10	30%	10%	Monitor
Professionals	0	13	0%	10%	Improve
Sales	3	16	19%	10%	Monitor
Technicians	0	6	0%	10%	Improve
<b>Total</b>	<b>11</b>	<b>65</b>	<b>17%</b>	<b>11%</b>	<b>Monitor</b>
<b>This report is based on current full and part-time staff.</b>					



## FIRST OPPORTUNITY TARGET AREA (FOTA)

### HIRING

Travel Portland hired four new employees in the third quarter. Recruiting and special considerations are always made for applicants in the MERC FOTA. Travel Portland currently has nine employees who reside in the MERC FOTA. Job openings were posted to the following: Destination Marketing Association International, American Society of Association Executives, Professional Conventions Management Association, DMOPROZ, DMA West, HCareers, Indeed, Mac's List, Jooble, The Skanner, Asian American Reporter, El Hispanic News, Mosaic Metier, Urban League, Travel Portland website, and LinkedIn.

### PURCHASING

Travel Portland expended a total of \$224,621 with businesses in the FOTA area for ending FY quarter March 2017.

### PARTNERSHIP

Travel Portland currently has 136 member businesses within FOTA and 68 minority and 100 women-owned businesses as its partners.

## MBE/DBE/WBE PURCHASING PARTICIPATION

For the last 28 years Travel Portland has implemented a voluntary MBE/DBE/WBE purchasing program that strives to ensure a high level of participation with certified minority-owned, disadvantaged or women-owned businesses when securing services and supplies that are purchased using lodging tax dollars.

For fiscal year 2016-17, Travel Portland expended \$821,900 of lodging tax dollars in the purchasing of services and supplies where it had the discretion to purchase from outside vendors. Of this amount, \$511,051 or 62% percent was spent with minority/women-owned or emerging small business enterprises.

# OCC SALES AND MARKETING BUDGET

## Expenses

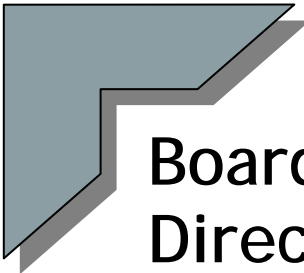
	Annual Budget	QTR Ending 09-30-16	QTR Ending 12-31-16	QTR Ending 03-31-17	Sum of YTD 06-30-2017	Percent
<b>Direct Sales:</b>						
<b>Portland office:</b>						
Personnel Costs	1,131,184	220,451	244,566	264,499	729,516	
Direct expenses	122,714	30,679	30,679	30,679	92,036	
Total Portland office	1,253,898	251,129	275,245	295,177	821,551	66%
<b>Washington DC office:</b>						
Personnel Costs	248,000	66,680	72,120	40,040	178,840	
DC client events	13,000	3,250	3,250	3,250	9,750	
Direct expenses	60,725	15,181	15,181	15,181	45,543	
Total DC office	321,725	85,111	90,551	58,471	234,133	73%
<b>Chicago office:</b>						
Personnel Costs	120,000	33,281	32,213	33,713	99,206	
Chicago client events	12,000	3,000	3,000	3,000	9,000	
Direct expenses	19,857	4,964	4,964	4,964	14,893	
Total Chicago expenses	151,857	41,246	40,177	41,677	123,099	81%
Fall & Spring Fam	113,000	3,592	111,391	4,546	119,529	
Site Visits	72,500	51,382	25,659	15,091	92,132	
Bid/Sales Trips	44,800	26,404	4,994	14,106	45,503	
Local Promotions	9,000	20,379	13,083	2,482	35,944	
Tradeshows	307,221	337,201	160,365	105,031	602,597	
Road Shows/Client Events-Chicago & Washington DC	95,000	2,151	8,500	54,233	64,885	
Research/Lead Generation	47,840	25,778	8,105	15,212	49,095	
Three City Alliance	60,000	13,889	30,406	10,177	54,473	
Advisory Council	60,000	975	8,197	60,629	69,801	
Minority Sales	55,450	25,302	14,771	17,248	57,321	
Sub-Total	864,811	507,053	385,470	298,757	1,191,280	
<b>Total Direct Sales</b>	<b>2,592,291</b>	<b>884,539</b>	<b>791,443</b>	<b>694,082</b>	<b>2,370,064</b>	91%
<b>Marketing:</b>						
<b>Total Marketing</b>	<b>734,393</b>	<b>167,644</b>	<b>179,581</b>	<b>192,250</b>	<b>539,476</b>	73%
<b>Publication Relations:</b>						
<b>Total PR</b>	<b>173,660</b>	<b>35,611</b>	<b>70,871</b>	<b>69,834</b>	<b>176,316</b>	102%
<b>Convention Services:</b>						
<b>Total Convention Services</b>	<b>406,218</b>	<b>139,962</b>	<b>129,887</b>	<b>127,805</b>	<b>397,654</b>	98%
<b>Contract Administration:</b>						
Personnel Costs	179,557	32,915	23,912	29,959	86,785	
<b>Total Contract Admin</b>	<b>179,557</b>	<b>32,915</b>	<b>23,912</b>	<b>29,959</b>	<b>86,785</b>	48%
<b>Total Budget</b>	<b>\$ 4,086,118</b>	<b>1,260,671</b>	<b>\$ 1,195,694</b>	<b>\$ 1,113,930</b>	<b>\$ 3,570,295</b>	87%

**Travel Portland  
Income Statement**  
(Statement of Financial Activities)

	<b>Actual (Prior Year) YTD 3/31/2016 Column A</b>	<b>Actual YTD 3/31/2017 Column B</b>	<b>Budget YTD 3/31/2017 Column C</b>	<b>Actual (Prior Year) Full Year 6/30/2016 Column D</b>	<b>Budget Full Year 6/30/2017 Column E</b>
<b>Revenue</b>					
City/County Lodging Tax (1%)	5,130,264	4,993,882	5,625,928	6,449,149	7,121,428
Tourism Improvement District (TID) (2%)	8,503,477	8,922,940	8,911,107	10,742,745	11,279,882
MERC (OCC contract)	2,675,947	3,064,589	3,064,587	3,821,201	4,086,119
Partnership Dues	356,783	365,679	352,503	483,767	470,005
Fees earned	161,403	130,270	131,100	173,385	174,800
Other Income	5,911	22,335	22,500	43,431	30,000
Tradeout/In-Kind	0	0	0	10,135	0
Cooperative programs	265,609	173,891	330,845	376,511	406,128
Regional RCTP (from Travel Oregon)	425,000	425,000	382,500	425,000	425,000
Cultural Tourism	277,423	298,791	225,000	323,244	300,000
Visitor Development Fund (VDF)	129,004	2,406	40,597	129,004	54,130
<b>Total Revenue</b>	<b>17,930,821</b>	<b>18,399,784</b>	<b>19,086,667</b>	<b>22,977,572</b>	<b>24,347,492</b>
<b>Expenses</b>					
Convention Sales	2,750,685	3,253,275	3,614,355	3,815,027	4,819,161
Tourism Sales	1,494,394	1,768,671	2,082,093	2,367,501	2,776,129
Marketing & Communications	7,115,929	6,664,920	8,792,147	9,152,371	11,722,870
Regional RCTP (from Travel Oregon)	356,900	441,555	618,085	565,039	686,761
Convention & Housing Services	642,043	754,045	782,643	916,403	1,043,529
Partnership Services & Events	446,390	497,047	568,592	662,639	758,127
Visitor Services (Fulfillment & VIC)	228,449	246,937	282,126	321,523	376,170
Program Support	2,096,454	2,536,380	2,690,748	2,871,430	3,587,670
<b>Total Expenses</b>	<b>15,131,243</b>	<b>16,162,831</b>	<b>19,430,788</b>	<b>20,671,934</b>	<b>25,770,418</b>
<b>NET SURPLUS/(DEFICIT)</b>	<b>2,799,578</b>	<b>2,236,953</b>	<b>-344,122</b>	<b>2,305,638</b>	<b>-1,422,926</b>

**Travel Portland**  
**Balance Sheet**  
(Statement of Financial Position)

	<b>Actual 3/31/2017 Column A</b>	<b>Actual as of 6/30/2016 Column B</b>	<b>Increase (Decrease) Column C</b>
<b>Assets</b>			
Cash and Cash Equivalents	\$6,475,446.48	\$5,726,332.21	13%
Investments	\$4,363,230.53	\$3,833,002.11	14%
Accounts Receivable	\$771,206.40	\$857,657.06	-10%
Prepaid Assets	\$574,413.61	\$694,243.18	-17%
Fixed Assets, net	\$1,979,401.73	\$1,300,047.06	52%
Other Assets	\$0.00	(\$20,860.05)	-100%
<b>Total Assets</b>	<b>\$14,163,698.75</b>	<b>\$12,390,421.57</b>	<b>14%</b>
<b>Liabilities and Net Assets</b>			
<b>Liabilities</b>			
Accounts Payable & Accrued Expenses	\$1,079,679.58	\$1,253,227.72	-14%
Accrued Personnel	\$1,420,979.40	\$1,465,224.84	-3%
Deferred Revenue	(\$858.26)	\$245,024.41	-100%
Other Fiduciary Liabilities - RCTP	\$86,760.85	\$86,760.85	0%
<b>Total Liabilities</b>	<b>\$2,586,561.57</b>	<b>\$3,050,237.82</b>	<b>-15%</b>
<b>Net Assets</b>			
Undesignated-Balance Sheet	\$7,945,164.86	\$6,781,106.55	17%
Board Designated-Balance Sheet	\$1,652,570.59	\$1,259,030.14	31%
Net Property and Equipment-Balance Sheet	\$1,979,401.73	\$1,300,047.06	52%
<b>Total Net Assets</b>	<b>\$11,577,137.18</b>	<b>\$9,340,183.75</b>	<b>24%</b>
<b>Total Liabilities and Net Assets</b>	<b>\$14,163,698.75</b>	<b>\$12,390,421.57</b>	<b>14%</b>



# Board of Directors

Last Name	First Name	Company	Officers	Committee Chair
Ackman	Tim	Alaska Airlines		
Bebo	Chris	Provenance Hotels		
Craddick	Shirley	Metro		
Dawes	Alex	Embassy Suites by Hilton Portland Downtown		
Drumheller	Tom	Escape Lodging		
Frey	Victoria	Portland Institute for Contemporary Art		
Goldman	Terry	DoubleTree by Hilton Hotel Portland		
Hasan	Naim	Naim Hasan Photography @ N2H Media Group	Vice Chair	
Holt	Charles	Holiday Inn Portland Airport		
Johnson	Dennis	CPA		
Kunzer	Ryan	RiverPlace Hotel		
Malek	Kim	Salt & Straw		
Murray	Dave	Courtyard Portland City Center		
Patel	Jatin	Lodging Mgmt NW, LLC		
Penilton	David	America's Hub World Tours	Chair	
Ponzi	Maria	Ponzi Vineyards		
Pyne	Tim	Portland Marriott Downtown Waterfront		Convention Sales Steering Committee
Rank Ignacio	Renee	McMenamins Pubs, Breweries & Historic Hotels		
Rokovitz	Sabrina	Enterprise Rent A Car		
Shelby	E. Allen	BPM Real Estate Group	Treasurer	Budget and Finance Committee
Shelly	Ruth	Portland Children's Museum		Partner Services Committee
Smith	Loretta	Multnomah County		
Walters	Eric	Hilton Portland & Executive Tower		TID Committee
Watson	Lisa	Cupcake Jones		
Weston	Linda	Rapporto		Community Action Committee
Wheeler	Ted	City of Portland		