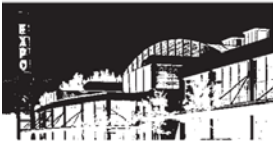

MERC Commission Meeting

October 4, 2017
12:30 pm

Oregon Zoo
4001 SW Canyon Road
Conservation Hall



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

www.oregonmetro.gov



Metro | *Exposition Recreation Commission*

Agenda

Meeting: Metro Exposition Recreation Commission Meeting
Date: Wednesday, Oct. 4, 2017
Time: 12:30 – 2:30 p.m.
Place: Oregon Zoo, Conservation Hall

CALL TO ORDER

- | | | | |
|-------|-----|---|---|
| 12:30 | 1. | QUORUM CONFIRMED | |
| 12:35 | 2. | OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS | |
| 12:40 | 3. | COMMISSION/COUNCIL LIAISON COMMUNICATIONS | Karis Stoudamire-Phillips, Sam Chase |
| 12:45 | 4. | GM COMMUNICATIONS | Scott Cruickshank |
| 12:50 | 5. | FINANCIAL REPORT , pages 4-20 | Rachael Lembo |
| 1:00 | 6. | VENUE BUSINESS REPORTS | Robyn Williams, Craig Stroud, Matthew P. Rotchford |
| 1:10 | 7. | CONSENT AGENDA | |
| | | <ul style="list-style-type: none"> • Record of MERC Actions, Sept. 6, 2017, pages 22-23 | |
| 1:15 | 8. | ACTION AGENDA | |
| | 8.1 | Resolution 17-28: For the purpose of recognizing the 100 th anniversary of the Keller Auditorium, pages 25-27 | Robyn Williams |
| | 8.2 | Resolution 17-29: 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, and requesting amendment of the Capital Improvement Plan (CIP) FY 2017-18.; pages 28-36 | Rachael Lembo |
| | 8.3 | Resolution 17-30: For the purpose of approving the contract with First Cascade Corporation for the Oregon Convention Center’s “Staff and Setup Supervisor Support Space Renovation” and authorizing the General Manager of Visitor Venues to execute the contract, pages 37-92 | Nancy Strening |
| | 8.4 | Resolution 17-31: For the purpose of approving the contract with Environmental Controls for Alerton Control Services Support for the Oregon Convention Center, and authorizing the General Manager of Visitor Venues to execute the contract; pages 93-102 | Craig Stroud |
| | 8.5 | Resolution 17-32: For the purpose of approving the contract with Grady Britton for “On-call Marketing, Promotions and Creative Services,” at the Oregon Convention Center (OCC), and authorizing the General Manager of Visitor Venues to execute the contract, pages 103-114 | Craig Stroud |
| | 8.6 | Resolution 17-33: For the purpose of approving changes to MERC personnel policies, pages 115-122 | Terry Smith |
| | 8.7 | Resolution 17-34: For the purpose of ratifying the collective bargaining agreement with the Custodial and Utility Employees of the International Union of Operating Engineers, Local 701-1, pages 123-138 | Mikki Nutt, Terry Smith, Ross Hume |

ADJOURN

MERC Commission Meeting

October 4, 2017
12:30 pm

5.0 Financial Report

AUGUST 2017

FINANCIAL INFORMATION

For Management Purposes only



OREGN

Oregon
Convention
Center



Memo



Date: October 4, 2017
 To: Commissioner Karis Stoudamire-Phillips, Chair
 Commissioner Deidra Kryss-Rusoff, Secretary-Treasurer
 Commissioner Judie Hammerstad
 Commissioner Ray Leary
 Commissioner Damien Hall
 Commissioner Deanna Palm
 Commissioner Danel Malan
 From: Rachael Lembo – MERC Finance Manager
 Re: Financial Updates for FY 2016-17 and August FY 2017-18

Fiscal Year 2016-17 – 3rd Financial Close Update

Fiscal year 2016-17 is now in the third close, which includes the Aramark qualitative incentive payment and the final deposit of Transient Lodging Tax (TLT). Overall TLT receipts were \$18.8 million, an increase of \$500k, 3%. This is less than the double digit increases we’ve seen in the past few years. The TLT Pooled Capital receipts were down slightly; TLT first funds OCC and P5 operations which received increases of 7% and 1.1%, respectively.

As a whole, MERC received \$68.7 million in operations revenue, 109% of budget, and spent \$62.2 million in operations expenditures, less than 0.5% over budget. Food and beverage margins for the year were 19.5 percent, slightly lower than the 21.8 percent margin achieved in FY 2015-16 but higher than the three-year historical average margin of 18.6 percent.

Capital revenues were \$7.6 million due to the TLT and Aramark Capital Contribution, and capital expenditures were \$7.6 million, 53% of budget.

Total MERC Venues – August Financial Statistics

MERC Venues Events & Attendance

The venues in total were below the prior year in events and attendance in August, primarily due to The Lion King playing nearly the entire month in August 2016. Cirque du Soleil’s “Kurios” opened August 24, and accounted for 10 events and nearly 24,000 attendees at Expo.

Total MERC Venues	2016		2017		Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance
July	70	67,141	67	57,440	(3), (4%)	(9,701), (14%)
August	107	126,856	78	74,063	(29), (27%)	(52,793), (42%)

MERC Venues Revenues & Expense

Total venue event revenues (charges for services and food & beverage) through August are \$4.4 million, 11% below the prior year and 28% less than the 3-year historical average. Other revenue includes a \$300,000 contribution from Mortenson Construction, the general contractor for the Hyatt Regency OCC Hotel, for the construction apprenticeship development program. Overall operating expenses through August are \$7.9 million, on par with the prior year and the 3-year historical average.

Food & Beverage

The lower numbers seen in events and attendance have a major impact on food and beverage. Each venue has a certain amount of sales necessary to break even, and all venues generated revenues below their break-even point in August 2017. However, we can expect a turnaround as a result of large events, such as Cirque du Soleil. The current food and beverage margin for all venues combined is (6%), compared to 13.4% in the prior year and a 25.5% 3-year historical average.

Net Operations

Each of the venues expects strong revenues in FY17-18, which has the highest revenue budget in recent years, and negative variances in the early months are not expected to have significant impacts.

Total MERC net operations through August are negative \$3.0 million, slightly less than the prior year but significantly larger than the historical three-year average.

Historical Actual Comparison FY 2014-15 to FY 2017-18

	Fiscal Year:	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	3-yr Hist.	% Var	% Var
Revenues		YTD	YTD	YTD	YTD	Average	Average	PY
Food and Beverage		2,397,564	4,353,966	1,942,412	1,679,667	2,897,981	-42.0%	-13.5%
Charges for Services		2,946,351	3,676,094	3,038,238	2,757,828	3,220,228	-14.4%	-9.2%
Lodging Tax		-	-	-	-	-	-	-
Other		69,571	8,695	(17,477)	480,444	20,263	2271.0%	-2849.1%
Total Revenues		5,413,485	8,038,755	4,963,174	4,917,939	6,138,471	-19.9%	-0.9%
Expenses								
Food and Beverage		1,841,665	2,614,630	1,682,829	1,781,205	2,046,374	-13.0%	5.8%
Personnel Services		2,731,027	3,003,037	3,069,170	3,142,619	2,934,411	7.1%	2.4%
Materials and Services		1,760,607	1,698,740	2,274,401	2,188,645	1,911,249	14.5%	-3.8%
Other Operating Expense		707,488	810,895	960,020	773,692	826,134	-6.3%	-19.4%
Total Operating Expense		7,040,787	8,127,302	7,986,419	7,886,161	7,718,169	2.2%	-1.3%
Net Operations		(1,627,302)	(88,547)	(3,023,245)	(2,968,222)	(1,579,698)	87.9%	-1.8%
Food & Beverage Margin \$		555,899	1,739,336	259,584	(101,539)	851,606	-111.9%	-139.1%
Food & Beverage Margin %		23.2%	39.9%	13.4%	-6.0%	25.5%		

Oregon Convention Center

August total revenues closed at \$1.8 million, 141% above August 2016, primarily due to additional tradeshow/conventions. There was one more event and 4,000 more attendees than the prior August. Operating expenses for the month were \$2.8 million.

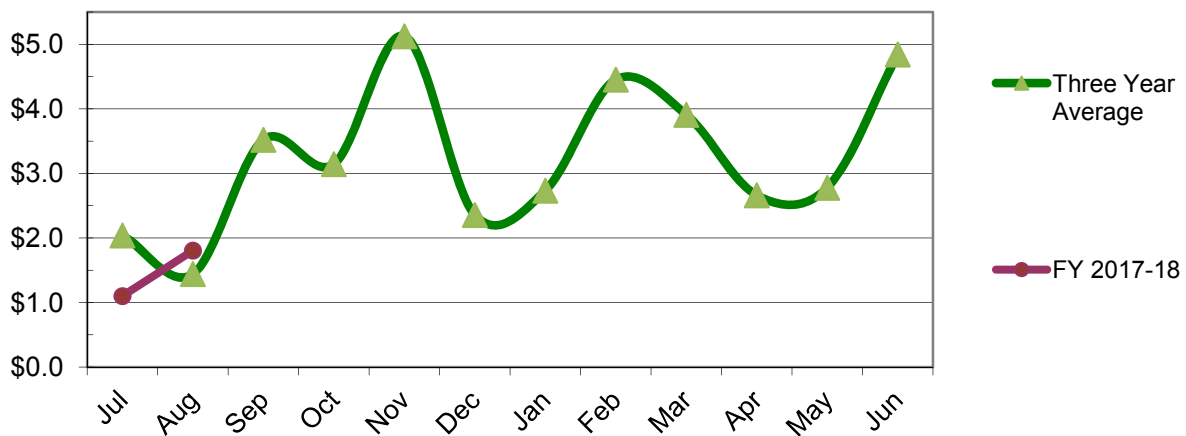
Highest Grossing Events

Event*	Gross Event Revenue	% of June Event Revenue
Ecological Society of America	\$415,307	29%
IAVCEI Scientific Assembly	234,498	16%
Farwest Show	190,788	13%
NW Materials Show	127,334	9%
All other Events	460,776	32%
Total Event Revenues	\$1,428,704	100%

*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.

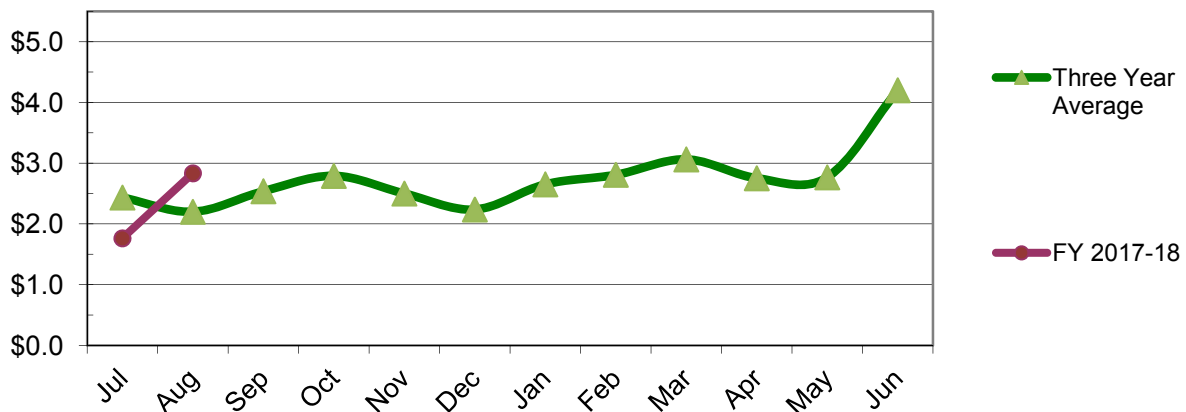
OCC Program Revenues by Month

Shown in Millions



OCC Program Expense by Month

Shown in Millions



Portland's Centers for the Arts

August total revenues closed at \$533 thousand, significantly below the previous August which included The Lion King. Other performances and attendance were also down, for a total of 41 fewer performances and 76,000 fewer attendees. Operating expenses for the month were \$1.2 million.

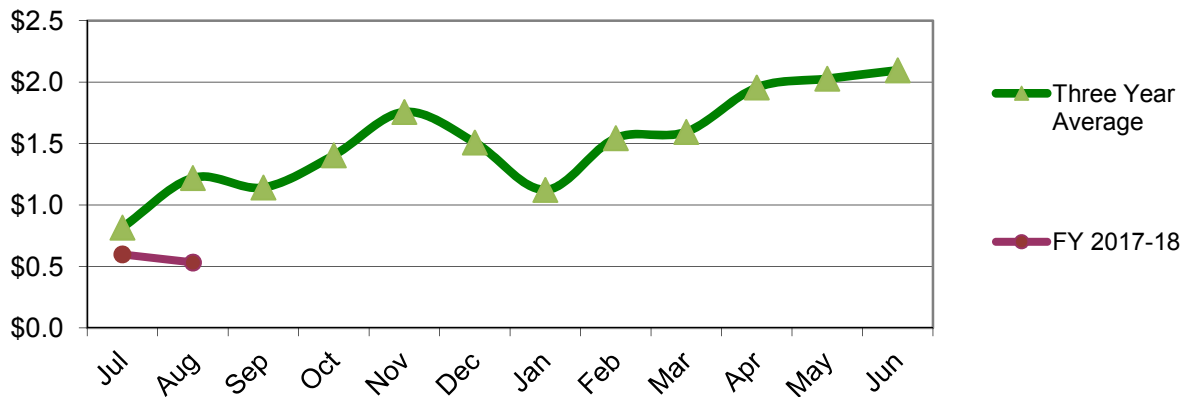
Highest Grossing Events

Event*	Gross Event Revenue	% of June Event Revenue
Lyle Lovett & His Large Band	\$108,485	22%
Idina Menzel	66,961	13%
Los Tigres del Norte	51,885	10%
Bryan Ferry	49,665	10%
All other Events	219,812	44%
Total Event Revenues	\$496,808	100%

*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.

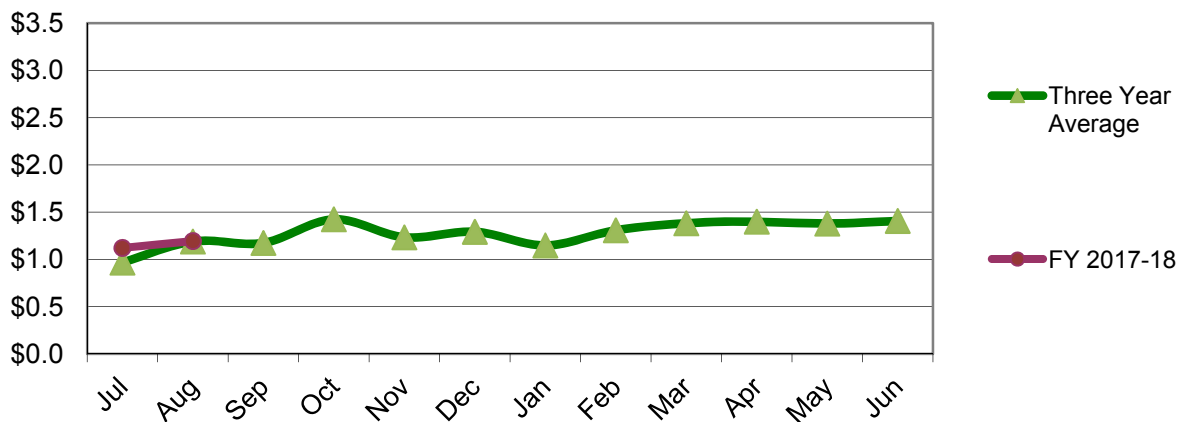
P5CA Program Revenue by Month

Shown in Millions



P5CA Program Expense by Month

Shown in Millions



Portland Expo Center

August total revenues closed at \$217 thousand, just \$30 thousand shy of August 2016 which included the Vans Warped Tour. Cirque du Soleil had 10 performances and nearly 24,000 attendees, and is expected to have a larger impact in September with a full month of performances. Excluding Cirque du Soleil, there was one additional event but 4,500 fewer attendees this year. Operating expenses for the month were \$408 thousand.

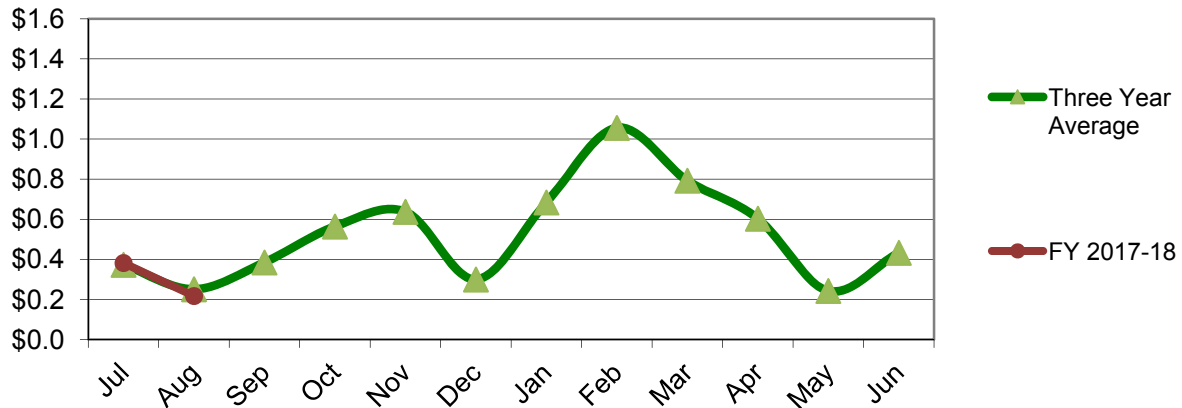
Highest Grossing Events

Event*	Gross Event Revenue	% of June Event Revenue
Indo Expo	\$65,682	32%
Cirque du Soleil Kurios	45,976	22%
Brick Fest Live! Lego Fan Experience	28,809	14%
Just Between Friends Children's Consignment Sale	17,159	8%
All other Events	46,907	23%
Total Event Revenues	\$204,533	100%

*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.

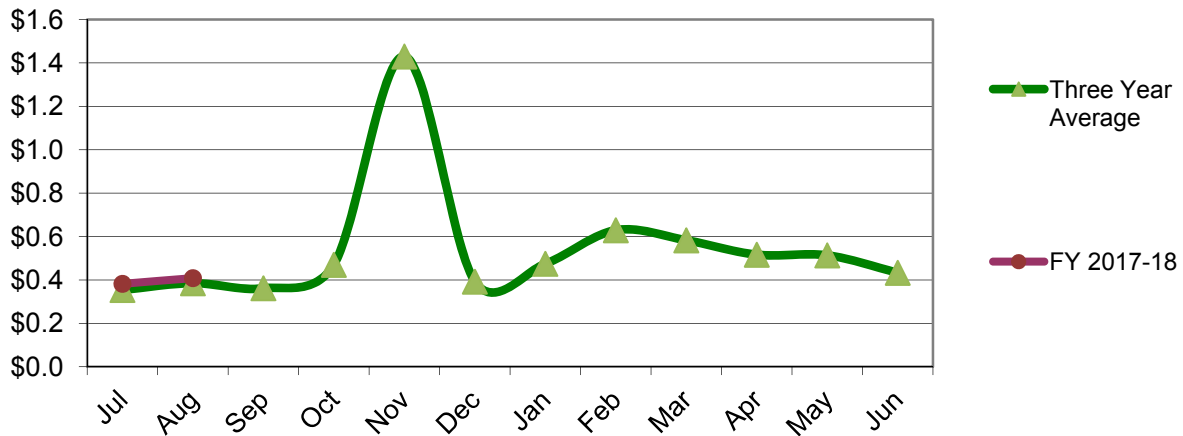
Expo Program Revenue by Month

Shown in Millions



Expo Program Expense by Month

Shown in Millions



MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

All Departments

August 2017

	Current Year Month Actual	Prior Year Month Actual	Current Year to Date Actual	Prior Year to Date Actual	Current Year Budget	% of Prior Year	% of Annual Budget
Operations							
Charges for Services	1,420,148	1,816,239	2,757,828	3,038,238	28,783,091	90.77%	9.58%
Contributions from Governments	-	-	-	-	889,441	0.00%	0.00%
Contributions from Private Sources	300,000	-	300,000	-	75,000	0.00%	400.00%
Enhanced Marketing VDF	-	-	-	-	491,122	0.00%	0.00%
Food and Beverage Revenue	862,404	812,944	1,679,667	1,942,412	18,524,543	86.47%	9.07%
Grants	-	1,000	50,000	1,000	38,000	5000.00%	131.58%
Interest Earnings	49,735	(60,063)	50,401	(71,032)	445,000	-70.96%	11.33%
Lodging Tax	-	-	-	-	13,052,470	0.00%	0.00%
Miscellaneous Revenue	4,981	4,542	13,377	5,889	113,765	227.13%	11.76%
Transfers-R	33,333	23,333	66,666	46,666	400,000	142.86%	16.67%
Visitor Development Fund Alloc	-	-	-	-	4,488,395	0.00%	0.00%
Total Revenues	2,670,601	2,597,995	4,917,939	4,963,174	67,300,827	99.09%	7.31%
Food & Beverage Services	894,221	750,647	1,781,205	1,682,829	15,252,656	105.85%	11.68%
Materials and Services	1,651,391	1,438,888	2,188,645	2,274,401	18,326,503	96.23%	11.94%
Personnel Services	1,600,770	1,606,795	3,142,619	3,069,170	22,106,786	102.39%	14.22%
Transfers-E	384,096	477,510	773,692	960,020	5,830,412	80.59%	13.27%
Visitor Development Marketing	-	-	-	-	2,508,282	0.00%	0.00%
Total Expenditures	4,530,478	4,273,840	7,886,161	7,986,419	64,024,639	98.74%	12.32%
Net Operations	(1,859,877)	(1,675,845)	(2,968,222)	(3,023,245)	3,276,188		
Capital							
Contributions from Private Sources	-	-	-	-	762,501	0.00%	0.00%
Grants	-	16,464	-	16,464	-	0.00%	0.00%
Lodging Tax	-	-	-	-	6,741,441	0.00%	0.00%
Transfers-R	-	26,667	-	53,334	-	0.00%	0.00%
Total Revenues	-	43,131	-	69,798	7,503,942	0.00%	0.00%
Capital Outlay	329,940	786,265	387,436	774,949	14,071,310	49.99%	2.75%
Materials and Services	399,705	-	399,705	-	1,130,000	0.00%	35.37%
Total Expenditures	729,645	786,265	787,141	774,949	15,201,310	101.57%	5.18%
Net Capital	(729,645)	(743,134)	(787,141)	(705,151)	(7,697,368)		
12 Month Fund Balance Increase	(2,418,978)	(3,755,363)	(3,728,396)	(4,421,180)			

MERC Statement of Activity with Annual Budget
Metropolitan Exposition-Recreation Commission
Convention Center Operating Fund
August 2017

	Current Year Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Charges for Services	823,962	531,926	1,426,925	1,008,998	11,789,193	141.4%	12.1%
Contributions from Private Sources	300,000	-	300,000	-	-	0.0%	0.0%
Enhanced Marketing VDF	-	-	-	-	491,122	0.0%	0.0%
Food and Beverage Revenue	723,550	312,230	1,292,667	1,226,645	13,050,157	105.4%	9.9%
Grants	-	1,000	-	1,000	-	0.0%	0.0%
Interest Earnings	21,354	(25,499)	21,354	(29,757)	190,000	-71.8%	11.2%
Lodging Tax	-	-	-	-	11,661,784	0.0%	0.0%
Miscellaneous Revenue	2,974	(2,380)	7,927	(3,005)	17,700	-263.8%	44.8%
Transfers-R	(67,396)	(67,396)	(145,556)	(134,792)	(937,926)	108.0%	15.5%
Visitor Development Fund Alloc	-	-	-	-	3,784,454	0.0%	0.0%
Total Revenues	1,804,445	749,880	2,903,317	2,069,088	40,046,484	140.3%	7.2%
Food & Beverage Services	731,679	413,452	1,351,268	1,133,897	10,840,964	119.2%	12.5%
Materials and Services	980,227	658,325	1,093,797	1,146,291	9,848,744	95.4%	11.1%
Personnel Services	901,945	839,094	1,712,279	1,638,386	11,199,173	104.5%	15.3%
Transfers-E	219,750	266,205	439,500	532,410	2,830,488	82.5%	15.5%
Visitor Development Marketing	-	-	-	-	2,491,122	0.0%	0.0%
Total Expenditures	2,833,600	2,177,076	4,596,843	4,450,984	37,210,491	103.3%	12.4%
Net Operations	(1,029,156)	(1,427,195)	(1,693,526)	(2,381,896)	2,835,993		
Capital							
Contributions from Private Sources	-	-	-	-	476,563	0.0%	0.0%
Grants	-	7,500	-	7,500	-	0.0%	0.0%
Transfers-R	-	26,667	-	53,334	16,000,000	0.0%	0.0%
Total Revenues	-	34,167	-	60,834	16,476,563	0.0%	0.0%
Capital Outlay	204,737	201,174	221,286	169,110	9,200,500	130.9%	2.4%
Materials and Services	31,356	-	31,356	-	355,000	0.0%	8.8%
Total Expenditures	236,092	201,174	252,642	169,110	9,555,500	149.4%	2.6%
Net Capital	(236,092)	(167,007)	(252,642)	(108,276)	6,921,063		
12 Month Fund Balance Increase	(1,265,248)	(1,594,202)	(1,946,168)	(2,490,172)	9,757,056		

MERC Statement of Activity with Annual Budget
Metropolitan Exposition-Recreation Commission
Portland'5 Centers for the Arts Fund
August 2017

	Current Year Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Charges for Services	475,664	1,172,580	974,883	1,680,417	12,170,223	58.0%	8.0%
Contributions from Governments	-	-	-	-	889,441	0.0%	0.0%
Contributions from Private Sources	-	-	-	-	75,000	0.0%	0.0%
Food and Beverage Revenue	79,433	382,916	216,306	497,833	3,175,764	43.4%	6.8%
Grants	-	-	-	-	38,000	0.0%	0.0%
Interest Earnings	13,676	(15,600)	14,342	(19,517)	170,000	-73.5%	8.4%
Lodging Tax	-	-	-	-	1,390,686	0.0%	0.0%
Miscellaneous Revenue	721	5,826	2,380	5,123	61,590	46.5%	3.9%
Transfers-R	(36,852)	(36,852)	(77,371)	(73,704)	(486,226)	105.0%	15.9%
Visitor Development Fund Alloc	-	-	-	-	703,941	0.0%	0.0%
Total Revenues	532,641	1,508,869	1,130,540	2,090,152	18,188,419	54.1%	6.2%
Food & Beverage Services	85,784	242,514	211,373	353,067	2,503,553	59.9%	8.4%
Materials and Services	529,343	601,588	907,583	903,307	6,323,561	100.5%	14.4%
Personnel Services	469,175	573,063	976,842	1,037,230	7,862,673	94.2%	12.4%
Transfers-E	110,177	134,933	220,354	269,866	1,322,109	81.7%	16.7%
Total Expenditures	1,194,479	1,552,098	2,316,152	2,563,471	18,011,896	90.4%	12.9%
Net Operations	(661,838)	(43,229)	(1,185,612)	(473,319)	176,523		
Capital							
Contributions from Private Sources	-	-	-	-	114,375	0.0%	0.0%
Grants	-	8,964	-	8,964	-	0.0%	0.0%
Total Revenues	-	8,964	-	8,964	114,375	0.0%	0.0%
Capital Outlay	35,210	584,894	41,109	605,283	2,004,120	6.8%	2.1%
Materials and Services	1,150	-	1,150	-	325,000	0.0%	0.4%
Total Expenditures	36,360	584,894	42,259	605,283	2,329,120	7.0%	1.8%
Net Capital	(36,360)	(575,930)	(42,259)	(596,319)	(2,214,745)		
12 Month Fund Balance Increase	(698,198)	(619,158)	(1,227,871)	(1,069,638)	(2,038,222)		

MERC Statement of Activity with Annual Budget
 Metropolitan Exposition-Recreation Commission
 Expo Fund
 August 2017

	Current Year 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
<hr/>							
Operations							
Charges for Services	120,522	111,733	356,020	348,824	4,823,675	102.1%	7.4%
Food and Beverage Revenue	59,421	117,799	170,694	217,934	2,298,622	78.3%	7.4%
Interest Earnings	2,819	(5,188)	2,819	(5,977)	35,000	-47.2%	8.1%
Miscellaneous Revenue	1,286	1,096	3,070	3,772	34,475	81.4%	8.9%
Transfers-R	33,333	23,333	66,666	46,666	400,000	142.9%	16.7%
Total Revenues	217,381	248,774	599,269	611,219	7,591,772	98.0%	7.9%
Food & Beverage Services	76,758	94,681	218,564	195,864	1,908,139	111.6%	11.5%
Materials and Services	129,772	114,107	168,276	146,397	1,615,813	114.9%	10.4%
Personnel Services	148,224	132,962	296,378	270,689	1,939,455	109.5%	15.3%
Transfers-E	53,984	76,197	107,968	152,394	1,670,090	70.8%	6.5%
Visitor Development Marketing	-	-	-	-	17,160	0.0%	0.0%
Total Expenditures	408,739	417,947	791,186	765,344	7,150,657	103.4%	11.1%
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Net Operations	(191,358)	(169,174)	(191,917)	(154,126)	441,115		
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Capital							
Contributions from Private Sources	-	-	-	-	171,563	0.0%	0.0%
Transfers-R	-	-	-	-	2,850,000	0.0%	0.0%
Total Revenues	-	-	-	-	3,021,563	0.0%	0.0%
Capital Outlay	89,993	198	125,040	556	2,616,690	22507.9%	4.8%
Materials and Services	367,200	-	367,200	-	450,000	0.0%	81.6%
Total Expenditures	457,193	198	492,240	556	3,066,690	88605.7%	16.1%
<hr/>							
Net Capital	(457,193)	(198)	(492,240)	(556)	(45,127)		
<hr/>							
12 Month Fund Balance Increase	(648,551)	(169,371)	(684,158)	(154,681)	395,988		
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MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

MERC Admin Sub Fund

August 2017

	Current Year Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Grants	-	-	50,000	-	-	0.0%	0.0%
Interest Earnings	11,886	(13,776)	11,886	(15,781)	50,000	-75.3%	23.8%
Transfers-R	104,248	104,248	222,927	208,496	1,424,152	106.9%	15.7%
Total Revenues	116,134	90,472	284,814	192,715	1,474,152	147.8%	19.3%
Materials and Services	12,049	64,868	18,990	78,406	538,385	24.2%	3.5%
Personnel Services	81,426	61,676	157,120	122,864	1,105,485	127.9%	14.2%
Transfers-E	185	175	5,870	5,350	7,725	109.7%	76.0%
Total Expenditures	93,660	126,719	181,979	206,620	1,651,595	88.1%	11.0%
Net Operations	22,474	(36,247)	102,834	(13,905)	(177,443)		
Capital							
Lodging Tax	-	-	-	-	6,741,441	0.0%	0.0%
Transfers-R	-	-	-	-	(18,850,000)	0.0%	0.0%
Total Revenues	-	-	-	-	(12,108,559)	0.0%	0.0%
Capital Outlay	-	-	-	-	250,000	0.0%	0.0%
Total Expenditures	-	-	-	-	250,000	0.0%	0.0%
Net Capital	-	-	-	-	(12,358,559)		
12 Month Fund Balance Increase	22,474	(36,247)	102,834	(13,905)	(12,536,002)		

MERC Food and Beverage Margins

August 2017

	Current Year Month Actual	Prior Year Month Actual	Current Year to Date	Prior Year to Date Actual	Annual Budget
Convention Center Operating Fund					
Food and Beverage Revenue	723,550	312,230	1,292,667	1,226,645	13,050,157
Food & Beverage Services	731,679	413,452	1,351,268	1,133,897	10,840,964
Food and Beverage Gross Margin	(8,128)	(101,222)	(58,601)	92,747	2,209,193
Food and Beverage Gross Margin %	-1.12%	-32.42%	-4.53%	7.56%	16.93%
Portland'5 Centers for the Arts Fund					
Food and Beverage Revenue	79,433	382,916	216,306	497,833	3,175,764
Food & Beverage Services	85,784	242,514	211,373	353,067	2,503,553
Food and Beverage Gross Margin	(6,351)	140,402	4,933	144,766	672,211
Food and Beverage Gross Margin %	-8.00%	36.67%	2.28%	29.08%	21.17%
Expo Fund					
Food and Beverage Revenue	59,421	117,799	170,694	217,934	2,298,622
Food & Beverage Services	76,758	94,681	218,564	195,864	1,908,139
Food and Beverage Gross Margin	(17,338)	23,118	(47,871)	22,070	390,483
Food and Beverage Gross Margin %	-29.18%	19.62%	-28.04%	10.13%	16.99%
MERC Fund Total					
Food and Beverage Revenue	862,404	812,944	1,679,667	1,942,412	18,524,543
Food & Beverage Services	894,221	750,647	1,781,205	1,682,829	15,252,656
Food and Beverage Gross Margin	(31,817)	62,297	(101,539)	259,584	3,271,887
Food and Beverage Gross Margin %	-3.69%	7.66%	-6.05%	13.36%	17.66%

MERC Statement of Fund Balances and Reserves

August 2017

	Annual Basis			Monthly Basis	
	FY 2016-17 Actuals	FY 2017-18 Budget	FY 2017-18 YTD Actuals	FY 2016-17 August	FY 2017-18 August
<u>Oregon Convention Center</u>					
Beginning Fund Balance	21,770,042	24,966,039	25,203,578	21,770,042	25,203,578
Fund Balance Inc (Dec)	3,433,536	9,757,056	(680,920)	(2,490,172)	(1,946,168)
Ending Fund Balance	25,203,578	34,723,095	24,522,657	19,279,870	23,257,409
<i>Contingency - Operating</i>		1,500,000			
<i>Contingency - New Capital-Business Strategy</i>		2,092,301			
<i>Contingency - Renewal & Replacement</i>		31,130,794			
Ending Fund Balance		34,723,095			
<u>Portland's Centers for the Arts</u>					
Beginning Fund Balance	13,178,660	13,293,035	12,943,704	13,178,660	12,943,704
Fund Balance Inc (Dec)	(234,956)	(2,038,222)	(529,673)	(1,066,893)	(1,227,871)
Ending Fund Balance	12,943,704	11,254,813	12,414,031	12,111,767	11,715,833
<i>Contingency - Operating</i>		600,000			
<i>Contingency - New Capital-Business Strategy</i>		2,263,311			
<i>Contingency - Renewal & Replacement</i>		8,391,502			
Ending Fund Balance		11,254,813			
<u>Expo</u>					
Beginning Fund Balance	2,843,104	2,527,012	1,972,376	2,843,104	1,972,376
Fund Balance Inc (Dec)	(870,728)	395,988	(34,017)	(154,681)	(684,158)
Ending Fund Balance	1,972,376	2,923,000	1,938,359	2,688,423	1,288,218
<i>Contingency - Operating</i>		662,730			
<i>Contingency - New Capital-Business Strategy</i>		2,260,270			
<i>Contingency - Renewal & Replacement</i>		-			
Ending Fund Balance		2,923,000			
<u>MERC Administration</u>					
Beginning Fund Balance	14,171,403	18,757,585	15,945,528	14,171,403	15,945,528
Fund Balance Inc (Dec)	1,774,125	(12,536,002)	80,360	(13,905)	102,834
Ending Fund Balance	15,945,528	6,221,583	16,025,887	14,157,498	16,048,362
<i>Contingency - Operating</i>		53,460			
<i>Contingency - Renewal & Replacement</i>		1,056,059			
<i>Contingency - TLT Pooled Capital</i>		5,112,064			
Ending Fund Balance		6,221,583			
<u>MERC Fund</u>					
Beginning Fund Balance	51,963,209	59,543,671	56,065,185	51,963,209	56,065,185
Fund Balance Inc (Dec)	4,101,976	(4,421,180)	(1,164,250)	(3,725,650)	(3,755,363)
Ending Fund Balance	56,065,185	55,122,491	54,900,935	48,237,559	52,309,822

**MERC Visitor Venues
Events-Performances-Attendance
FY 2017-18**

OCC	August 2014		August 2015		August 2016		August 2017		Net Change from Prior Year		August 2017	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Tradeshows/Conventions	4	13,439	5	16,106	3	9,900	7	14,519	4	4,619	1,068,207	75%
Consumer Public Shows	8	6,495	4	4,279	1	1,013	-	-	(1)	(1,013)	(1,718)	0%
Miscellaneous									-	-	-	0%
Miscellaneous -In-House	13	179	18	279	12	239	14	423	2	184	5,062	0%
Meetings	5	1,990	9	1,599	14	11,933	10	11,462	(4)	(471)	246,094	17%
Catering	1	20	1	872	1	28	1	800	-	772	111,059	8%
Totals	31	22,123	37	23,135	31	23,113	32	27,204	1	4,091	\$ 1,428,704	100%

Expo Center	August 2014		August 2015		August 2016		August 2017		Net Change from Prior Year		August 2017	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Consumer Public Shows	3	5,984	-	-	-	-	3	4,870	3	4,870	67,722	33%
<i>Cirque Du Soleil</i>	-	-	-	-	-	-	10	23,844	10	23,844	45,976	22%
Miscellaneous	9	6,364	7	11,456	9	12,439	7	1,816	(2)	(10,623)	24,010	12%
Meetings	1	20	1	15	-	-	-	-	-	-	-	0%
Catering	-	-	-	-	-	-	-	-	-	-	1,143	1%
Tradeshows/Conventions	-	-	1	12,203	1	3,750	1	4,810	-	1,060	65,682	32%
Totals	13	12,368	9	23,674	10	16,189	11	11,496	1	(4,693)	\$ 158,557	78%
Totals w/Cirque du Soleil	13	12,368	9	23,674	10	16,189	21	35,340	11	19,151	\$ 204,533	100%

Portland '5	August 2014		August 2015		August 2016		August 2017		Net Change from Prior Year		August 2017	
	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Revenue	% of Rev.
Commercial (Non-Broadway)	9	24,385	7	12,357	19	9,837	6	4,097	(13)	(5,740)	203,215	41%
Broadway	-	-	25	68,235	26	70,367	-	-	(26)	(70,367)	3,123	1%
Resident Company	-	-	5	1,029	2	1,252	2	1,156	-	(96)	42,277	9%
Non-Profit	6	1,209	4	1,039	1	725	-	-	(1)	(725)	8,749	2%
Promoted/Co-Promoted	8	2,453	6	2,247	11	5,010	11	6,004	-	994	237,997	48%
Student	6	308	6	217	7	363	6	262	(1)	(101)	1,364	0%
Miscellaneous	-	-	1	95	-	-	-	-	-	-	83	0%
Totals	29	28,355	54	85,219	66	87,554	25	11,519	(41)	(76,035)	\$ 496,808	100%

MERC Totals (w/ Cirque)	73	62,846	100	132,028	107	126,856	78	74,063	(29)	(52,793)	2,130,045	
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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** - substantially complete, **On going** - capital maintenance

Category Project Title	Management	Phase	FY 2017-18 Budget		
			Adopted	Actual	Remaining
Food & Beverage					
Food & Beverage Point of Sale System (POS) Replacement	ARA / IS	Contracting	230,000	-	230,000
Renewal & Replacement					
Plaza, Entries, & Major Interior Remodel	CPMO	Design	6,000,000	177,025	5,822,975
Building Envelop Assessment	CPMO	Planning	150,000	-	150,000
Cooling System Design Consulting (Cooling Towers & Chillers)	CPMO	Planning	80,000	2,882	77,118
Loading Dock Improvements (Dock Locks, Enclosures, Levelers)	CPMO	Planning	360,000	10,196	349,805
Movable Partition Refurbishment	OCC	In Progress	180,000	18,491	161,509
Staff & Setup Supervisor Support Space Renovation	CPMO	Planning	380,000	-	380,000
Security & Access					
Security Camera Replacements	CPMO	Design	450,000	-	450,000
Alerton Global Controller & Software Upgrade	OCC	In Progress	70,000	-	70,000
Integrated Door Access Controls	CPMO	Planning	300,000	-	300,000
Life & Safety					
Telecom MDF Fire Suppression Upgrade	OCC	Contracting	55,000	-	55,000
Emergency Notification Upgrade	OCC	In Progress	305,000	21,841	283,159
Fire Sprinkler System Design Consulting	OCC	Planning	50,000	-	50,000
Lighting & Electrical					
Exhibit Hall Lighting Control Replacement	CPMO	Construction	275,000	-	275,000
Technology					
Telephone - Voice Over Internet Protocol (VOIP) Implementation	IS	Construction	352,500	12,555	339,945
Equipment					
AV Equipment	OCC	Complete	150,000	154,881	(4,881)
Tug Tow Tractor Purchase	OCC	Planning	28,000	-	28,000
480V Show Equipment	OCC	Planning	90,000	-	90,000
Holladay Suites Furniture Purchase	OCC	Planning	50,000	-	50,000
Total			9,555,500	397,870	9,157,630
% of Budget				4%	96%

Portland'5 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** - substantially complete, **On going** - capital maintenance

Category Project Title	Management	Phase	FY 2017-2018 Budget		
			Adopted	Actuals	Remaining
Food & Beverage					
ArtBar Bar Replacement (Aramark)	CPMO	Planning	200,000	-	200,000
Aramark Point Of Sale System Replacement	ARA / IS	Contracting	130,000	-	130,000
Venue Management					
Newmark Lighting Overhaul	P5	Construction	550,000	10,563	539,437
Winningstad - House Lighting Control & Dimmers	P5	Construction	200,000	-	200,000
AHH Brunish Theater Electrical Improvements	P5	Contracting	50,000	-	50,000
ASCH Audience Chamber Lighting	P5	Contracting	25,000	-	25,000
AHH Main Street Rotunda Storefront Doors Replacement	P5	On hold	75,000	-	75,000
AHH, ASCH, Keller Assisted Listening System	P5	Contracting	70,000	-	70,000
AHH, ASCH, Keller ADA Signage	P5	Planning	50,000	-	50,000
ASCH Soft Goods	P5	Design	100,000	-	100,000
Keller Balcony Front Fill Speakers	P5	Planning	50,000	-	50,000
Aerial Work Platform (Scissor lift)	P5	Construction	20,000	-	20,000
Banquet Chairs Replacement	P5	Planning	20,000	-	20,000
CpMO Management					
Schnitzer Orchestra Shell Replacement	CPMO	Planning	25,000	22,286	2,714
Keller Backstage Dressing Tower Elevator Overhaul	CPMO	Cancelled	300,000	-	300,000
All Buildings Access Controls CCTV Replacement	CPMO	Planning	200,000	-	200,000
AHH Roof, Green Roof	CPMO	Design	50,000	-	50,000
Information Technology					
AHH/ASCH/Keller VOIP Implementation	IS	Design	72,600	-	72,600
AHH/ASCH/Keller VOIP Implementation	IS	Design	141,520	-	141,520
Total			2,329,120	32,849	2,296,271
% of Budget				1%	99%

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** - substantially complete, **On going** - capital maintenance

Category Project Title	Management	Phase	2018 Budget		
			Adopted	Actuals	Remaining
Food & Beverage					
Connector Glass Door (ARA)	CPMO	Design	120,000	-	120,000
Concessions Upgrades (ARA)	EXPO	Planning	50,000	-	50,000
Aramark Point of Sale System Replacement	IS	Contracting	160,000	-	160,000
Renewal & Replacement					
Parking Lot Asphalt (R&R)	CPMO	On going	135,000	-	135,000
Expo Water Efficiency Upgrades	EXPO	Construction	80,000	-	80,000
Halls ABCDE Lighting Controls study and Replacement	CPMO	Planning	20,000	-	20,000
New Hall A Shore Power	EXPO	Complete	150,000	126,023	23,977
Interior & Exterior Lighting Replacements	EXPO	Planning	70,000	-	70,000
Hall C HVAC Study	EXPO	Planning	35,000	-	35,000
Halls ABCDE HVAC Controls Replacement	EXPO	Planning	60,000	-	60,000
Roofing					
ABC Roof Repairs (R&R)	EXPO	On going	80,000	-	80,000
Halls D & E Roof Replacement (R&R)	CPMO	Construction	1,898,750	383,938	1,535,751
Equipment					
Radio Replacements (1 of 5)	EXPO	In Progress	20,000	-	20,000
Information Technology					
Voice Over IP (VoIP) Infrastructure	IS	In Progress	107,940	-	107,940
WiFi Upgrade (TLT)	EXPO	In Progress	80,000	-	80,000
Total			3,066,690	509,961	2,577,668
% of Budget				17%	84%

MERC Commission Meeting

October 4, 2017
12:30 pm

7.0 Consent Agenda

Metropolitan Exposition Recreation Commission

Record of MERC Commission Actions

September 6, 2017

Expo Center, D202-203

Present:	Karis Stoudamire-Phillips, Deidra Krys-Rusoff, Ray Leary, Judie Hammerstad, Damien Hall; Dañel Malán
Absent:	Deanna Palm (excused)
	A regular meeting of the Metropolitan Exposition-Recreation Commission was called to order by Chair Karis Stoudamire-Phillips at 12:40 p.m.
1.0	<p>QUORUM CONFIRMED</p> <p>A quorum of Commissioners was present.</p> <p>Before beginning the meeting, Chair Stoudamire-Phillips called on Matthew P. Rotchford for a brief explanation of the backstage tour of Cirque du Soleil’s Grand Chapiteau which will follow the meeting.</p>
2.0	<p>OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS</p> <p>None</p>
3.0	<p>CONSENT AGENDA</p> <ul style="list-style-type: none"> • Record of MERC Actions, August 2, 2017 • Ethics approval for Stoudamire-Phillips’ attendance at the Travel Portland trip to Washington D.C. <p>A motion was made by Commissioner Hammerstad and seconded by Commissioner Leary to approve the Consent Agenda.</p> <p>VOTING: AYE: 6 (Hall, Hammerstad, Krys-Rusoff, Leary, Malán, Stoudamire-Phillips) NAY: 0 MOTION PASSED</p>
4.0	<p>COMMISSION AND COUNCIL COMMUNICATIONS</p> <ul style="list-style-type: none"> • Councilor Chase reported that the governor had signed a transportation package last week which included funding for reducing fares for low income transit riders. He also stated that Metro’s Committee on Racial Equity (CORE) has begun meeting. • Commissioner Leary reported on his attendance at the Mortenson bid package meeting held at Metro on August 30. He also offered thanks to those who had helped with the hotel project over the years yet were not able to attend the ground breaking ceremony. He introduced his nephew, J. T. Flowers, who currently works as an aide in Congressman Blumenauer’s office. • Commissioner Krys-Rusoff thanked Matthew P. Rotchford and his staff for Cirque du Soleil’s opening night celebration. • Chair Stoudamire-Phillips noted that Commissioner Palm had been formally appointed to Metro’s Audit Committee and thanked her for her service. She also reported that the MERC officers are meeting to begin planning for the upcoming MERC Retreat. More details will follow.
5.0	<p>GM COMMUNICATIONS</p> <p>Scott Cruickshank updates included:</p> <ul style="list-style-type: none"> • Cruickshank introduced Metro’s new DEI Program Director, Raahi Reddy. Ms. Reddy provided a few details about her background and her goals. • Colas Construction was selected for the Construction Manager General Contractor for the Convention Center Renovation project. They will work on the project with Raimore Construction. Both are local minority-owned companies. Cruickshank called on Andrew Colas to say a few words. Colas acknowledged that the selection of his firm for the project marked one of the best days of his career and added that the selection process was very fair and that all who worked on the process should be very proud of the effort and outcome. • Demolition and excavation have begun for the hotel project.

	<ul style="list-style-type: none"> On Monday, Sept 18, from 3-5 p.m. the “Construction Workforce Equity Panel: Best Practices from Seattle” will be held at Metro. All are welcome to attend this government to government conversation about increasing equity in the construction workforce. Rachael Lembo has been selected as the MERC Finance Manager. The Portland Tribune recently reported on Craig Stroud being selected as the Executive Director of the Oregon Convention Center.
6.0	<p>FINANCIAL REPORT Rachael Lembo reported on venue financials.</p>
7.0	<p>CAPITAL PROJECTS REPORT Ben Rowe presented the report.</p> <ul style="list-style-type: none"> Commissioner Krys-Rusoff asked what can be done to help to minimize the impacts noted in the report. For instance, she noted that staff turnover might be something that the venues would have control over. Rowe responded that at the end of each project, a “lessons learned” report is done. Also, John Lindenthal, manager of the Construction Project Management Office at Metro is working to change the way the CPMO operates in order to make it more efficient.
8.0	<p>VENUE BUSINESS REPORTS Robyn Williams of Portland’5, Matthew P. Rotchford of Expo and Craig Stroud of the Oregon Convention Center updated the commission on venue business.</p>
9.0	<p>PROPOSED CHANGES TO PERSONNEL POLICIES Angie Bond presented proposed changes to the MERC vacation policy for non-represented employees.</p> <ul style="list-style-type: none"> Commissioner Krys-Rusoff questioned the cost of the policy change. Bond responded that any costs would be minimal.
10.0	<p>TRAVEL PORTLAND FOURTH QUARTER REPORT Steve Faulstick of Travel Portland presented the report including some examples of incentives offered to encourage convention business noting the costs associated with such offers. He then called on Greg Newland, Travel Portland Chief Marketing Officer, and Ajay Date, Travel Portland Vice President of Marketing, to present an update on the program Travel Portland is developing for welcoming all communities to Portland.</p> <ul style="list-style-type: none"> Commissioner Malán, in reference to the welcoming communities portion of the presentation, noted that since Latinos are the largest minority in Portland she would prefer to have more diverse representation of that community in the images. Commissioner Krys-Rusoff offered her thanks for the work on the welcoming communities presentation. Commissioner Leary supported Krys-Rusoff’s comments and stated that Travel Portland not only received the message from the Commission, but raised it a notch. He requested that MERC have an opportunity to see a segment of “On She Goes” which was included in the presentation. Councilor Chase noted that the response reflects Portland’s diversity but added that he would like a better understanding of how diverse communities are engaged in the strategy. Newland responded that Tamara Kennedy Hill has put together a program with PDC called Showcase Portland that will bring in brand name leaders providing a forum for communities of color to make connections and to receive feedback. Ajay added that the voice needs to be from the community – not Travel Portland’s response – that is the goal. Chase suggested that Metro’s Committee on Racial Equity could be engaged in helping with content.
	As there was no further business to come before the Commission, the meeting was adjourned at 2:29 p.m.

MERC Commission Meeting

October 4, 2017
12:30 pm

8.0 Action Agenda

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 17-28

For the purpose of recognizing the 100th anniversary of the Keller Auditorium.

WHEREAS, the Portland Municipal Auditorium was built in Portland, Oregon, during 1916-1917 and opened on July 4, 1917; and

WHEREAS, the brand new public auditorium was refitted as a temporary hospital in order to receive Spanish Influenza cases in October 1918; and

WHEREAS, the building was used as Red Cross disaster headquarters and nursery for the Vanport Flood response in 1948; and

WHEREAS, the auditorium was renamed as the Civic Auditorium in 1966 and later the Keller Auditorium in 2000 in honor of a \$1.5 million renovation donation by Richard B. Keller; and

WHEREAS, the auditorium was the site of several historical speeches given by national politicians including President Calvin Coolidge in August of 1922; Adlai Stevenson in October 1956; President Eisenhower in 1958; Senator John F. Kennedy and Vice President Richard Nixon in 1960; and

WHEREAS, the auditorium was the site of several historical cultural events including performances by Richard Crooks, the first American-born lead tenor for the Metropolitan Opera, in 1934; Paul Robeson in November 1940, an event which was announced in The Oregonian with the headline “Negro Singer Coming Here”; and a vocal performance by Margaret Truman, daughter of President Harry Truman, in 1952; and

WHEREAS, the Keller Auditorium is the renowned performing arts center for the city of Portland, Oregon and home to several resident performing arts companies including the Portland Opera and The Oregon Ballet Theater; and

WHEREAS, audiences continue to enjoy Broadway productions, ballet, operas, family events and more at the Keller Auditorium, making it fundamental to the cultural heart of the City of Portland; and

WHEREAS, the Keller Auditorium provides hundreds of thousands of dollars in economic impact on the Portland metropolitan area each year; and

WHEREAS, Metro Council wishes to recognize that 2017 marks the 100th anniversary of the Keller Auditorium; now therefore,

BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission officially recognizes and celebrates the 100th anniversary of the Keller Auditorium.

Adopted by the Commission on October 4, 2017.

Approved as to form:

Alison R. Kean, Metro Attorney

Chair

By: _____

Nathan A. S. Sykes, Deputy Metro Attorney

Secretary/Treasurer

AUDITORIUM WILL BE OPENED TODAY

Fine Programme Arranged for Introducing Public to City's \$600,000 Hall.

NOTE WILL BE PATRIOTIC

Building Declared Unusually Attractive and Large Audience Is Expected at Dedicatory Exercises at 10:30 o'Clock.

FACTS ABOUT TODAY'S DEDICATION OF THE PUBLIC AUDITORIUM.

Building opens at 10 A. M. Admission free. Dedication programme starts at 10:30 o'clock. Arrangements made for opening of entire lower floor, making room for 5500 persons.

With an elaborate programme Portland will dedicate her beautiful public Auditorium this morning at 10:30 o'clock.

The building, representing an investment of about \$600,000 and marking the final realization of a civic institution sought for 10 years or more, is virtually finished.

The floors will open at 10 o'clock, at which time the dedicatory exercises will begin to assemble. The dedication is to be under the auspices of the Royal Rosarians, assisted by the Monday Musical Club and the Daughters of the Confederacy.

A series of novel features of an artistic and patriotic nature have been arranged by the Rosarians for the programme which has been worked out by the Rosarian committee.

Large Gathering Expected. It is expected the Auditorium will be crowded to capacity. The lower floor will be open for the occasion, which means there will be seats for 5500 persons.

The opening number of the programme will be patriotic music by the Royal Rosarian band under the direction of J. E. Etzinger.

Madame Valair to Sing. Madame Lucie Valair will be on the programme for solo. "America, My Motherland." She is representing the Monday Musical Club and the Daughters of the Confederacy.

All during the day after 10 o'clock the building will be open for public inspection. It is expected thousands of persons will visit it, inasmuch as this will be the first opportunity the public has had to see the interior.

Workmen were busy yesterday rounding out the final finishing touches. Last night Mayor Baker put a large force of men to work making the final clean-up so the building will be spick and span for today.

DRIVER FALLS 60 FEET

Horse and Wagon Goes Over Bank, Animal Hurt, Man Escapes.

D. H. Mills, driver for the Bleidt Boot Shop, yesterday morning fell down a 60-foot embankment with his horse and wagon, and escaped with a few minor scratches.

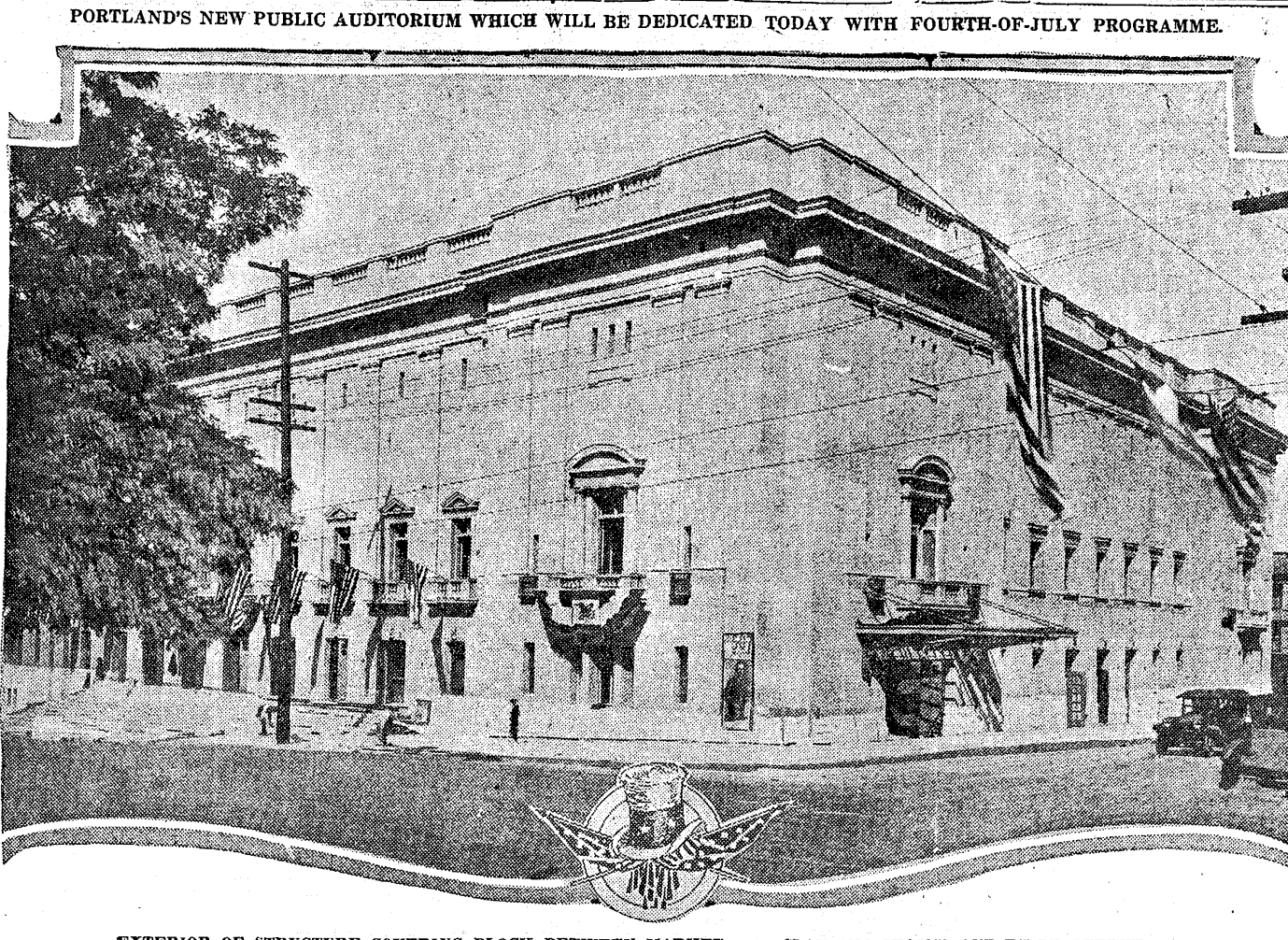
Mr. Mills was attempting to turn his horse and wagon around on their Street Drive, near the embankment, when the animal became unmanageable and started to buck.

LECTURE SERIES CHANGED Summer School to Adjourn During Convention Week.

A change in the schedule of lectures offered in Portland by the University of Oregon in connection with the Summer school session has been announced by Dr. George Rebec, who is in charge of the Portland Summer session.

Aberdeen Arrests 20 Men. ABERDEEN, Wash., July 3.—(Special.)—Twenty men were arrested here yesterday on charges of drunkenness—the largest number for that offense arrested in any one day since the dry law went into effect, 18 months ago.

Portland's New Public Auditorium which will be dedicated today with fourth-of-July programme.



EXTERIOR OF STRUCTURE COVERING BLOCK BETWEEN MARKET AND CLAY AND SECOND AND THIRD STREETS.

RECORD NOT CLEAR

Mr. Muck Thinks Minutes of Bridge Meetings Changed.

TYPING SEEMS DIFFERENT County Commissioner Says He Is Ready to Fight to Last Ditch to Prevent Unfair Distribution of Net Profits.

Alleged tampering with the records of the Interstate Bridge Commission is to be fully investigated by County Commissioner Muck prior to the next meeting of the commission, which is scheduled to be held the middle of this month.

In an examination already made by Mr. Muck, what appears to have been a tampering of the records has been brought to light, and he announced yesterday that he would insist upon a rigid investigation before any action is taken which will give Clarke County two-fifths of the bridge profits.

In examining the records of the commission before he became a member, Mr. Muck found that a clause had been inserted in the resolution setting forth the fact that this two-fifths is the pro rata share of the cost of construction.

This last clause was written with a different style of typewriter from the first part of the resolution and Mr. Muck will demand an explanation.

In looking over the records of the commission, Mr. Muck found that it was ordered that Multnomah County pay five-sevenths and Clarke County two-sevenths of the cost of construction of the bridge.

"I will see to it that a thorough investigation is made before any definite action is taken," said Mr. Muck. "If a fair division of the profits is made, Clarke County will receive its two-sevenths and I will fight any effort on the part of the Clarke County Commissioners or Chairman Holman to give the Washington County two-fifths of the profits."

This fight will mean a saving of thousands upon thousands of dollars to the taxpayers of Multnomah County in the course of a few years. In fact, even for the first four months of the operation of the bridge, the difference between two-fifths and two-sevenths amounts to more than \$2000.

PERSONAL MENTION. W. L. Clark, of Hood River, is at the Ritz.

W. F. White, of Albany, Or., is at the Seward.

R. A. Booth, of Eugene, Or., is at the Imperial.

W. R. Ingram, of Yacolt, Wash., is at the Oregon.

I. E. Dayton, of Los Angeles, Cal., is at the Carlton.

F. E. Craig registered at the Perkins from Astoria, Or.

E. C. Brownlee, of Hood River, Or., is at the Corvallis.

W. C. McFarland, of Clifton, Ariz., is registered at the Oregon.

Mrs. Annie Phillips, of Hood River, Or., is at the Corvallis.

John Twobly registered at the Portland from Spokane, Wash.

T. A. McCullough registered at the Nortonia from Eugene, Or.

Mrs. W. B. Taylor, of Chehalis, Wash., is registered at the Oregon.

George H. Reach, of Springfield, Mass., is at the Washington.

BATTERY B FORMING

New Field Unit Expects Early Service in France.

"BE VOLUNTEER" IS SLOGAN National Guard Officers Desire to Fill Regiment to Replace Men Discharged Because They Have Persons Dependent.

Instead of being sent from the Auditor's office to the individual members of the Council interested in the subject.

The Council by unanimous vote repealed the ordinance passed by the old Council doing away with Council action on all communications.

BAPTISTS FOR PROHIBITION Medford Congregation Urges Senator Chamberlain to Take Stand.

MEDFORD, Or., July 3.—(Special.)—Acting upon the suggestion of their pastor, Rev. F. W. Carstens, the congregation of the Baptist Church sent a night letter to Senator Chamberlain

ITALIAN SURGEON IS ANGRY Alleged Insinuations of Mr. Ferrara on Reservists' Tests Scored.

Dr. Carlo Visetti, ex-Consular Agent for the Italian government in Portland, resents the implications contained in recent declarations by Albert B. Ferrara, well-known Italian attorney, that numerous Italian reservists examined

THE THIRD OREGON INFANTRY NEEDS FIFTY. Men are needed for the artillery, cavalry, infantry and the engineers.

10,000 SEE ROUND-UP MANY THRILLERS ARE STAGED ON SECOND DAY AT ALBANY.

Diamond C. Dumps Los Angeles Rider, Then Turns Somersault—"Broncho Bob" Hall Is Favorite.

ALBANY, Or., July 3.—(Special.)—Scores of automobiles poured into Albany today from all directions, and a crowd estimated to exceed 10,000 persons viewed the second day's events of the Western Oregon Round-up.

\$1500 GIVEN FOR LIFE Two Verdicts Award Damages for Automobile Accident.

Damages amounting to \$1500 were awarded to Carl Lorenz, administrator of the estate of W. Lorenz, and against the Roberts Motor Car Company and the Wash Lee Yuen Company in a verdict returned yesterday at the conclusion of the personal injury trial before Circuit Judge Phelps.

COUNCIL ACTION INCREASED Auditor to Send All Business to Board Instead of Individuals.

All public matters received by the City Auditor's office will be sent direct to the City Council from now on

STATE SOCIETY MEETS

FORMER RESIDENTS OF MICHIGAN HAVE SOCIABLE TIME. Entertainment Consists of Speaking and Musical Numbers—N. E. A. Delegates to Be Welcomed.

An elaborate programme was given by the Michigan Society of Oregon in the Portland Hotel Monday night at its regular monthly meeting.

Pendleton Court Work Drops Off. PENDLETON, Or., July 3.—(Special.)—Police Court business in Pendleton during the month of June was at its lowest ebb.

Home Products Week At the Meier & Frank Store July 9th to 14th

To the Manufacturers of Oregon: We desire to offer you, free of charge, space available in our store, for the purpose of demonstrating the manufacture and exhibition of Home Made Products during Home Products Week, July 9th to 14th.

It is the desire of the Meier & Frank Company to take this opportunity, while there are so many visitors in the city (N. E. A. Week), to assist the producers of this community and the state at large in showing the superior character and quality of merchandise and articles made in Oregon, thereby increasing the demand and making for a bigger and better city and state. Apply for space at once. Office, 6th floor.

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Store Closed All Day Today Independence Day Meier & Frank Co. THE QUALITY STORE OF PORTLAND

Employer and Employee FROM the head of the industry or business down to the person receiving the smallest pay envelope in plant and store—the Northwestern National Bank affords all a courteous, prompt and efficient banking service.

STATE SOCIETY MEETS FORMER RESIDENTS OF MICHIGAN HAVE SOCIABLE TIME. Entertainment Consists of Speaking and Musical Numbers—N. E. A. Delegates to Be Welcomed.

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Meier & Frank Co. THE QUALITY STORE OF PORTLAND

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 17-29

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, and requesting amendment of the Capital Improvement Plan (CIP) FY 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 October 4, 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 2017-18 Budget and Capital Improvement Plan (CIP) amendment to the MERC Fund.

Resolution No: 17-29

Presented By: Rachael Lembo, MERC Finance Manager

Date: October 4, 2017

Background and Analysis:

CIP Amendment – Oregon Convention Center

The OCC staff and setup supervisor support spaces date to 2002 and lack necessary infrastructure, equipment, and amenities for the number of staff who use the spaces for trainings, meetings, event briefings, breaks, meals, and as office space. This is both a functional issue and a staff morale issue. This two-level renovation project consists of the following scopes:

The at grade break room will receive a complete renovation and upgrade to its infrastructure and usability. The space will be reconfigured to create:

- A shift briefing room, including radio storage and audio-visual capability, for start of shift team huddles.
- A training area with four computer work stations available to staff for business messaging, training and other career development activities.
- A more functional dining area with additional microwaves, refrigerators, a larger dishwasher, new lighting, flooring and seating. The lunch break for most staff that use the space is a half-hour and the number of appliances is inadequate to support staff needs.
- Upgrades to the currently underserved HVAC, power and network capabilities.

The area directly above the break room on the second level will be renovated for the seven setup supervisors to improve infrastructure and usability. This work will include:

- Private and shared office spaces for the setup supervisors
- Meeting and training spaces for the setup supervisors
- An appropriately sized and secured storage space for supplies and materials
- Upgrades to the currently underserved HVAC, power, and network capabilities

Fiscal Impact

Originally there were two separate projects with different project numbers and budget appropriations to complete this work. The two projects were combined to gain efficiencies and cost savings in design, construction, project management and schedule. Combining the projects also minimizes safety risks by reducing the period of construction within the building.

The original budgets, estimated by the project architect, totaled \$380,000. The current combined and forecasted total budget, including recent construction bid results and project contingency, totals \$644,000. There are a number of scope elements that the architect did not include in the original scope that are increasing the project costs, including:

- Insufficient existing power and network infrastructure
- Insufficient HVAC distribution
- Replacement furniture for the setup supervisor office space
- Furniture for the new shared meeting and training spaces

In addition, the original estimate did not include cost escalation sufficient to address the rate of escalation experienced in the past 18 months.

Funding for the increase in project costs will come from undesignated capital fund reserves. The OCC's strong financial performance to budget the past several years has contributed additional funds that can be invested in capital improvements. Using these funds for this project does not reduce the budget of other OCC planned capital projects.

The FY17-18 budget appropriation for the two projects totals \$380,000. Sufficient budget appropriation exists within the MERC capital fund to cover the additional appropriation needed for this combined project. The appropriation is from the OCC Mass Notification Fire Alarm Upgrade project which was appropriated in both years but mostly competed in FY16-17.

FY 2017-18 Budget Impact – Oregon Convention Center CIP

Project Description	Project #	FY 17-18 Current Budget	Amendment	FY 17-18 Amended Budget
Staff & Setup Supervisor Support Space Renovation	8R191	380,000	264,000	644,000
Emergency Notification Upgrade	8R163	305,000	(264,000)	41,000
Project Subtotal:		\$685,000	\$0	\$685,000

CIP Amendment – Portland’s Centers for the Arts

Capital project amendments range from new projects to budget adjustments between fiscal years with no change in project budget. To emphasize what type of change is proposed, and provide additional explanation for new or expanded projects, the Portland’s amendments have been broken out into three categories, as defined below.

- New projects or projects with budget increases
- Carry forward of unspent prior year funds for projects that were not completed
- Timing adjustments to the five-year CIP schedule

The following changes are new or expanded projects:

- The Arlene Schnitzer Concert Hall Orchestra Shell Replacement project is a new request. It is currently in the planning stage. This amendment requests approval of a \$3.2 million project, with \$1.3 million budgeted in FY 2017-18 and the remainder in FY 2018-19.
 - o The current orchestra shell is 33 years old and in need of replacement. It was identified in the Rigging Inspection Report dated 05/27/15 as requiring repair or replacement “sooner than later.” To ensure that the shell could be used safely during the 2017/2018 Symphony season, P’5 replaced some rigging. The shell itself cannot be repaired because parts are not available due to the age of the shell. Design standards and codes have also changed and the way the shell is installed is no longer considered a best safety practice. Replacing the traditional shell eliminates the need for heavy shell components and complex rigging, promoting ease of show set up and increasing safety for stage crew and operations staff.
 - o Another reason to replace the shell with an acoustic system is that the shell does not work for all of the types of music/performances that P’5 offers and strives to offer to its diverse and expanding audience. This is because only orchestras use the shell. All users will benefit from the digital acoustical system. In addition the shell configuration does not work for the primary users, The Oregon Symphony. As the orchestra grows it does not fit within the shell and it does not allow the musicians to hear each other effectively.

The proposed solution of a digital system for acoustic applications would significantly enhance the sound quality/effects of various types of performances, without altering the architecture and construction of the performance space. The digital acoustical system would create more opportunities to reach diverse audiences by providing flexibility that will allow for a larger variety of music/performances. Additionally, select Symphony musicians have tested and approved the acoustical system.
 - o This amendment prioritizes the shell replacement because it will require 10-12 weeks of dark time in the Concert Hall and those weeks are available in July-August of 2018. The next opportunity for replacement would be 2019 or later based on the availability of the hall.

- The Hatfield Hall Roof project is currently in the design stage. This amendment requests an increase from \$50k to \$150k for design and engineering. A budget for construction will be developed after design and is expected to be presented with the FY 2018-19 budget proposal and CIP.
 - o The roof of Hatfield Hall is past its useful life. Additionally the parapet wall assemblies and surfaces are damaged as a result of improper detailing and are in need of repair. MERC requires architectural, roofing consulting, and engineering design services from a qualified firm for the purpose of preparing comprehensive construction documents to be used for soliciting bids for construction for the Hatfield Hall Roof Replacement and Parapet Wall Repair. The design will also be expanded to include green roof recommendations that fall in line with Metro sustainability goals.

FY 2017-18 Budget Impact – Portland’s CIP, new/expanded projects

Project Description	Project #	FY 17-18 Current Budget	Amendment	FY 17-18 Amended Budget
Schnitzer Orchestra Shell Replacement	8R092	25,000	1,330,000	1,355,000
Hatfield Hall Roof	8R179	50,000	100,000	150,000
Project Subtotal:		\$75,000	\$1,430,000	\$1,505,000

The following changes carry forward unspent FY 2016-17 funds for projects that were not completed by June 30, 2017.

The following projects were budgeted for and in progress in FY 2016-17, however some costs were not incurred until FY 2017-18. The amendments below are large projects that spill into additional years. They do not represent a change in the overall project budget, instead they are allocating budget amounts to FY 2017-18 since costs spanned fiscal years. The increased budget amounts in FY 2017-18 are funded by savings from unspent budget amounts in the prior year, as shown below.

FY 2017-18 Budget Impact – Portland’s CIP, unspent PY funds

Project Description	Project #	FY 17-18 Current Budget	Amendment	FY 17-18 Amended Budget	FY 2016-17 Unspent Budget
Newmark Lighting Overhaul Phase II & III	8R089	550,000	123,063	673,063	123,063
Winningstad - House Lighting Control & Dimmers	8R090	200,000	73,550	273,550	73,550
Newmark LED Cyclorama Light Fixtures	8R143	0	70,000	70,000	75,000
Keller – Roof and Drains Replacement	8R098	0	90,000	90,000	240,709
ASCH – Portland Sign Assessment and Refurbishment	8R099	0	150,000	150,000	206,654
ASCH – Cooling Tower and Associated Piping (design portion)	8R120	0	10,000	10,000	27,696
Project Subtotal		\$750,000	\$516,613	\$1,266,613	\$837,307

The following changes are due to timing adjustments on the five-year CIP schedule.

Some move projects in or out of FY 2017-18, which impacts the current year budget, while others move projects in the outlying years only. These changes are necessary as priorities change based on need. All projects are described below, but only the changes impacting the current year budget are shown in the FY2017-18 Budget Impact table. The revised five year CIP is included as Attachment 1.

- The Keller Backstage Dressing Tower Elevator Overhaul project is currently on hold, and has been shifted to year FY2021-22 on the five year CIP schedule. A facility review, including seismic upgrades, is being performed for the Keller, and until it is complete non-essential projects will be delayed. This amendment decreases the budget for this project from \$300k to \$0.
- The ArtBar bar replacement is postponed due to a delay in the point of sale upgrade. Originally \$200k was budgeted in FY2017-18, however \$125k of that is shifting to FY 2018-19. The \$75k will be used on design in the current year.
- The Antoinette Hatfield Hall rotunda doors replacement project has been postponed until FY 2018-19.

- The timeline for the Arlene Schnitzer Concert Hall elevators overhaul has been shifted to July and August of 2018 to take advantage of the dark time. The following amendment has no FY 2017-18 budget impact, but shifts the timing of costs from FY 2020-21 and FY 2021-22 to FY 2018-19. The estimated project cost of the front of house elevators remains the same, \$300k, while the back of house elevators has decreased from \$485k to \$400k.

FY 2017-18 Budget Impact – Portland’s CIP, 5 year CIP updates

Project Description	Project #	FY 17-18 Current Budget	Amendment	FY 17-18 Amended Budget
Keller Backstage Dressing Tower Elevator Overhaul	8R175	300,000	(300,000)	0
ArtBar bar replacement	85108	200,000	(125,000)	75,000
Hatfield Hall rotunda doors	8R180	75,000	(75,000)	0
Project Subtotal:		\$575,000	(\$500,000)	\$75,000

Total FY 2017-18 Budget Impact – Portland’s CIP

	FY 17-18 Current Budget	Amendment	FY 17-18 Amended Budget
New/expanded projects	75,000	1,430,000	1,505,000
Carry forward of unspent FY 2016-17 funds	750,000	516,613	1,266,613
Timing adjustments to the five year CIP	575,000	(500,000)	75,000
Total CIP Amendment	\$1,400,000	\$1,446,613	\$2,696,613
Contingency	\$11,254,813	(\$1,446,613)	\$9,808,200

Portland Expo Center – Capital Projects

Capital project amendments range from new projects to budget adjustments between fiscal years with no change in project budget. To emphasize what type of change is proposed, and provide additional explanation for new or expanded projects, the amendments have been broken out into three categories, as defined below.

- New projects or projects with budget increases
- Carry forward of unspent prior year funds for projects that were not completed

The following change is a new project:

- A new building is proposed as Phase III of the Expo Shore Power Improvements. Phase I extended PGE Power to the Expo’s Lower Lot 1 area and provided the infrastructure for the utility’s power transformer. Phase II provided site improvements including the utility extension to a new foundation and 14’x22’ concrete pad for the Electrical Switchgear to be installed and energized.

The proposed Phase III building will be a utility Concrete Masonry Unit (CMU) block building to permanently house the electrical infrastructure improvement (switchgear). The building will be basic in nature with only minimal lighting and HVAC requirements as necessary and will fit the existing 14’x22’ foundation and concrete pad. This improvement is a PGE requirement/stipulation to provide a safe and compliant facility for PGE and/or Expo staff as they interact with the new switchgear.

The estimated costs for Phase III were developed by the Architect at the current commercial construction rates plus a small contingency to cover City of Portland requirements.

FY 2017-18 Budget Impact – Expo CIP, new projects

Project Description	Project #	FY 17-18 Current Budget	Amendment	FY 17-18 Amended Budget
PGE Upgrades	TBD	0	100,000	100,000
Project Subtotal:		\$0	\$100,000	\$100,000

The following changes carry forward unspent FY 2016-17 funds for projects that were not completed by June 30, 2017.

The following projects were budgeted for and in progress in FY 2016-17, however some costs were not incurred until FY 2017-18. The amendments below are large projects that spill into additional years. They do not represent a change in the overall project budget, instead they are allocating budget amounts to FY 2017-18 since costs spanned fiscal years. The increased budget amounts in FY 2017-18 are funded by savings from unspent budget amounts in the prior year, as shown below.

FY 2017-18 Budget Impact – Expo CIP, unspent PY funds

Project Description	Project #	FY 17-18 Current Budget	Amendment	FY 17-18 Amended Budget	FY 2016-17 Unspent Budget
Electronic Signage & Landscaping	8N011	0	47,548	47,548	47,548
Halls D & E Roof Replacement	8R136	1,898,750	20,939	1,919,689	20,939
Security Camera Access Control System	8R112	0	82,138	82,138	82,138
Audio Visual Equipment	8R135	0	11,867	11,867	11,867
Project Subtotal		\$1,898,750	\$162,492	\$2,061,242	\$162,492

Total FY 2017-18 Budget Impact – Expo CIP

	FY 17-18 Current Budget	Amendment	FY 17-18 Amended Budget
New/expanded projects	0	100,000	100,000
Carry forward of unspent FY 2016-17 funds	1,898,750	162,492	2,061,242
Total CIP Amendment	\$1,898,750	\$262,492	\$2,161,242
Contingency	\$2,923,000	(\$262,492)	\$2,660,508

Fiscal Impact: This action will amend the FY 2017-18 Adopted Budget as shown above. The revised five year CIP is included as Attachment 1.

Recommendation: Staff recommends the Metropolitan Exposition Recreation Commission adopt Resolution 17-29.

Oregon Convention Center CIP Summary

	ID	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	Total
Convention Center Operating Fund							
P'5 Capital projects < \$100k		273,000	-	75,000	-	-	348,000
OCC - Master Plan Renovation	8R082	6,000,000	29,000,000	-	-	-	35,000,000
OCC - CCTV Replacement	8R032	450,000	-	-	-	-	450,000
OCC Lding Dock Imprvmnts	8R189	360,000	-	-	-	-	360,000
OCC - EST-3 Fire Alarm Notification Upgrades	8R163	41,000	-	-	-	-	41,000
OCC - Integrated Door Access Controls	8N025	300,000	-	-	-	-	300,000
OCC Staff & Setup Supervisor Support Space Reno	8R191	644,000	-	-	-	-	644,000
OCC - Lighting Control System	88174	275,000	-	-	-	-	275,000
OCC - POS Replacement	OCCTBD38	230,000	-	-	-	-	230,000
OCC - Movable Partition Refurbishment	8R190	180,000	-	-	-	-	180,000
OCC - Building Envelope	8R187	150,000	700,000	-	-	-	850,000
OCC - A/V Equipment (NBS)	8R118	150,000	150,000	150,000	150,000	150,000	750,000
OCC Cooling System Rplcmnt	8R188	80,000	2,300,000	-	-	-	2,380,000
OCC - Alerton Glbl Cntrlr Upgrd	8R166	70,000	50,000	-	-	-	120,000
OCC - Orbit Bakery/Front Remodel	OCCTBD41	-	700,000	-	-	-	700,000
OCC - Lighting Project - BOH, Offices	8R148A	-	500,000	-	-	-	500,000
OCC - Crbrd Baler & Cnpy	8N067	-	215,000	-	-	-	215,000
OCC - WiFi & Show Network Upgrades	OCCTBD31	-	120,000	-	130,000	-	250,000
OCC - Chair Replacement	OCCTBD30	-	-	600,000	-	660,000	1,260,000
OCC - Table Replacement	OCCTBD44	-	-	400,000	-	-	400,000
OCC - AV Audio System Upgrade	OCCTBD42	-	-	315,000	-	-	315,000
OCC - Sandwich Company Renovation	OCCTBD45	-	-	250,000	-	-	250,000
OCC - Public Circulation Furniture Replacement	OCCTBD43	-	-	175,000	-	-	175,000
OCC - Portland Roasting Coffee Renovation	OCCTBD46	-	-	150,000	150,000	-	300,000
OCC - Boiler Replacement (2)	OCC08	-	-	-	1,750,000	-	1,750,000
OCC - Tortilla Crisp Renovation	OCCTBD47	-	-	-	400,000	-	400,000
Information Systems and Property and Eviron. Services Projects							
VOIP Phone System Upgrade Phase II	65701C	300,000	-	-	-	-	300,000
VOIP Phone System Upgrade	65701B	52,500	-	-	-	-	52,500
Oregon Convention Center Fund Total		\$9,555,500	\$33,735,000	\$2,115,000	\$2,580,000	\$810,000	\$48,795,500
Total changes in proposed amendment		\$0	\$0	\$0	\$0	\$0	\$0

Portland'5 CIP Summary

	ID	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	Total
Portland'5 Centers for the Arts Projects							
P5 ASCH Backstage Elevator Overhaul	P5TBD73	-	-	-	-	-	-
P'5 Capital projects < \$100k		420,000	355,000	75,000	60,000	-	910,000
ASCH Shell Rigging	8R092	1,355,000	1,845,000	-	-	-	3,200,000
P'5 - AHH Newmark Lighting System Overhaul - Phase II	8R089	673,063	-	-	-	-	673,063
P'5 - AHH Winingstad House Lighting Controls & Dimmers	8R090	273,550	-	-	-	-	273,550
P5 AHH/ASCH/Keller Access Control/CCTV replacement	P5TBD31	200,000	-	-	-	-	200,000
ASCH - Portland Sign Assessment & Refurb Scoping	8R099	150,000	-	-	-	-	150,000
P5 AHH Food Service PO system replacement	P5TBD32	130,000	-	-	-	-	130,000
P5 ASCH/Keller Main Curtain/Organ Loft Curtains	8R183	100,000	-	-	-	-	100,000
P5 AHH Roof	8R179	150,000	300,000	-	-	-	450,000
P5 ArtBar Bar Rplcmnt	85108	75,000	325,000	-	-	-	400,000
P5 ASCH Chamber Lighting	8R177	25,000	150,000	-	-	-	175,000
ASCH - Cooling Tower Replacement	8R120	10,000	350,000	-	-	-	360,000
P5 Keller Wall Panels	8R145	-	3,000,000	-	-	-	3,000,000
P5 ASCH Piano Replacement	P5TBD71	-	550,000	-	-	-	550,000
P5 Keller Building HVAC Controls & Stage HVAC	P5TBD56	-	500,000	-	-	-	500,000
P5 ASCH BOH Elevators Overhaul	P5TBD68	-	400,000	-	-	-	400,000
P5 Keller HVAC Controls Upgrades (R&R)	P5TBD15	-	350,000	-	-	-	350,000
P5 ASCH FOH Elevators Overhaul	P5TBD69	-	300,000	-	-	-	300,000
P5 Keller Main Switchgear (R&R)	8R155	-	300,000	-	-	-	300,000
P5 Keller Electric Panels	8R158	-	300,000	-	-	-	300,000
P5 AHH - Backstage Elevator Overhaul	8R121	-	270,000	-	-	-	270,000
AHH, ASCH, Keller - Stage Doors and Office Plan	8R101	-	200,000	-	-	-	200,000
P5 ASCH Broadway Marquee	P5TBD55	-	175,000	200,000	-	-	375,000
P5 AHH Rotunda/Bistro Carpet Replacement	P5TBD53	-	150,000	-	-	-	150,000
P5 Keller Interior Paneling Repairs	P5TBD52	-	100,000	-	-	-	100,000
P5 ASCH Roof Drains	P5TBD51	-	100,000	-	-	-	100,000
P5 AHH/ASCH/Keller ADA updates	P5TBD47	-	30,000	50,000	-	95,000	175,000
P5 AHH FOH Elvtr Ovrhl	8R152	-	-	575,000	-	-	575,000
P5 Keller Stage Pit Lifts Overhaul	P5TBD66	-	-	350,000	-	-	350,000
P5 Keller Carpet Front of House	P5TBD64	-	-	150,000	-	-	150,000
P5 Keller Main Speakers	P5TBD65	-	-	150,000	-	-	150,000
P5 ASCH Park Street Marquee	P5TBD63	-	-	125,000	175,000	-	300,000
P5 ASCH Seat cushion/fabric replacement	P5TBD62	-	-	100,000	100,000	-	200,000
P5 AHH Storage Racking System	P5TBD61	-	-	100,000	-	-	100,000
P5 AHH Demand Control Ventilation HVAC	P5TBD57	-	-	20,000	125,000	-	145,000
P5 AHH EIFS Replacement Phase III	P5TBD70	-	-	-	400,000	-	400,000
P5 Keller FOH Elevator Overhauls	P5TBD59	-	-	-	-	650,000	650,000
P5 Keller Backstage Dressing Tower Elevator	8R175	-	-	-	-	300,000	300,000
P5 AHH Freight Elevator Overhaul	P5TBD72	-	-	-	-	100,000	100,000
Information Systems and Property and Eviron. Services							
Projects							
VOIP Phone System Upgrade Phase II	65701C	141,521	-	-	-	-	141,521
VOIP Phone System Upgrade	65701B	72,600	-	-	-	-	72,600
Portland'5 Centers for the Arts Fund Total		\$3,775,734	\$10,050,000	\$1,895,000	\$860,000	\$1,145,000	\$17,725,734
Total changes in proposed amendment		\$1,446,613	\$2,745,000	\$0	(\$300,000)	(\$185,000)	\$4,481,613

Expo Center CIP Summary

	ID	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	Total
Expo Fund							
Expo Capital projects < \$100k		421,553	185,000	205,000	-	150,000	961,553
Expo - Hall D Roof Repairs/Replacement	8R136	1,919,689	975,000	-	-	-	2,894,689
Expo - POS Micros System	EXTBD16	160,000	-	-	-	-	160,000
Expo - Hall A Elec. transformer/LP1 Shore Power /Cirque	EXTBD31	150,000	-	-	-	-	150,000
Expo - Parking Lot Asphalt Maintenance / Replacement	8R040	135,000	60,000	60,000	60,000	60,000	375,000
Expo - Connector Glass Door	85106	120,000	45,000	-	-	-	165,000
Expo - PGE Upgrades	TBD	100,000	-	-	-	-	100,000
Expo - Roof Repair - Halls ABC Minor Repairs	8R135	80,000	135,000	10,000	10,000	10,000	245,000
Expo - WiFi - Telecommunications Upgrade	8R139	80,000	-	-	50,000	-	130,000
Expo - Hall C HVAC Study and Installation	EXTBD25	35,000	250,000	-	-	-	285,000
Expo - Lighting Control review and install - Halls ABCDE	EXTBD30	20,000	150,000	-	-	-	170,000
Expo - Sport Court / Futsol	EXTBD23	-	175,000	-	-	-	175,000
Expo - Hall C Roof Recoat	EXTBD49	-	125,000	-	-	-	125,000
Expo - Halls ABC Interior Paint (R&R)	EXTBD12	-	120,000	-	-	-	120,000
Expo - UP4 New Storage Building	EXTBD19	-	50,000	250,000	-	-	300,000
Expo - Expo Website Update	EXTBD32	-	50,000	200,000	-	-	250,000
Expo - Facility Wide Door review / install / security	EXTBD27	-	35,000	250,000	-	-	285,000
Expo - Electrical Equipment (New Bus/Capital)	EXTBD06	-	-	150,000	-	-	150,000
Expo - Hall D Kitchen Office Conversion	EXTBD17	-	-	35,000	300,000	-	335,000
Expo - Hall D Storage Office Conversion	EXTBD18	-	-	35,000	300,000	-	335,000
Expo - Roof Repair - Hall E Loading Dock (TLT Pooled)	EXTBD02	-	-	-	375,000	330,000	705,000
Expo - Facility Wide Overhead Door review / install	EXTBD28	-	-	-	35,000	250,000	285,000
Expo - Parking Entry System and Loop Replacement	EXTBD50	-	-	-	-	700,000	700,000
Expo - Hall E HVAC	EXTBD39	-	-	-	-	290,000	290,000
Information Systems and Property and Eviron. Services Projects							
VOIP Phone System Upgrade Phase II	65701C	70,740	-	-	-	-	70,740
VOIP Phone System Upgrade	65701B	37,200	-	-	-	-	37,200
Expo Center Fund Total		\$3,329,182	\$2,355,000	\$1,195,000	\$1,130,000	\$1,790,000	\$9,799,182
Total changes in proposed amendment		\$262,492	\$0	\$0	\$0	\$0	\$262,492

METROPOLITAN EXPOSITION RECREATION COMMISSION
Resolutions No. 17-30

For the purpose of approving the contract with First Cascade Corporation for the Oregon Convention Center’s “Staff and Setup Supervisor Support Space Renovation” and authorizing the General Manager of Visitor Venues to execute the contract.

WHEREAS, the OCC staff and setup supervisor support spaces date back to 2002 and lack necessary infrastructure, equipment, and amenities for the number of staff who use the spaces; and

WHEREAS, the current configuration and equipment of the first-level space is not conducive or adequate for training, meetings, event briefings, breaks, meals and start of shift team huddles; and

WHEREAS, the second-level setup supervisor office space is inefficiently configured; and

WHEREAS, the renovation upgrades the infrastructure and usability of the spaces on both levels, including HVAC, power and network capabilities; and

WHEREAS, Metro issued an invitation to bid under Section 49-0130 of Metro’s Procurement Administrative Procedures which requires competitive sealed bids in accordance with ORS Chapter 279C for public improvements such as this project; and

WHEREAS, Staff evaluated the submitted bids, and First Cascade Corporation was the lowest responsive and responsible bidder with a bid amount of Four Hundred Twenty One thousand, Nine Hundred Thirty Three and 00/100 dollars (\$421,933.00).

BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission:

1. Approves the contract with First Cascade Corporation in the form substantially similar to the attached Exhibit A; and
2. Authorizes the General Manager of Visitor Venues to execute the contract on behalf of the Commission.

Passed by the Commission on October 4, 2017

Chair

Secretary/Treasurer

Approved As to Form
Alison R. Kean, Metro Attorney

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

Construction Agreement



METRO CONTRACT NO. XXXXXX

THIS CONSTRUCTION AGREEMENT is between MERC, an appointed Commission of 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 First Cascade Corporation, referred to herein as "Contractor," located at PO Box 2158, Lake Oswego, Oregon 97035.

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 October 4, 2017 through and including June 30, 2018. Substantial completion per Section 9.4 of the General Conditions is January 8, 2018.

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 Four Hundred Twenty One Thousand Nine Hundred thirty Three AND 00/100THS DOLLARS (\$421,933.00) (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 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.

Construction Agreement



METRO CONTRACT NO. XXXXXX

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: Scott Conway
First Cascade Corporation
PO Box 2158
Lake Oswego, Oregon 97035
503-699-8970

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

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

CONTRACTOR

METRO

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

1. Purpose and Goal of Work

The employee breakroom lacks necessary equipment and amenities for the number of staff who use the space for breaks and lunch. The current space lacks appropriate finishes and lighting and contains mismatched furniture and seating. This is not just a functional issue but a morale issue among staff.

The breakroom will receive a complete renovation upgrading its functionality and appearance. The renovation will include a more functional eating area, additional microwaves, refrigerators, larger dishwasher, new lighting, flooring, seating and a small shift briefing room for start of shift team huddles. The end result will be a fully functioning break room space that staff are proud of and want to maintain appropriately.

The setup supervisor's office is above the employee breakroom and needs improved functionality and storage capacity. A redesign of the entire second level floor plan will provide more functional and efficient workspace for the supervisors. The current work space is underserved with power and network capability and will be addressed in the renovation. Two offices, a storage area and a communal workspace for the supervisors will be created across the entire second level floor plan above the employee break room. The end result will be a more cohesive workspace.

The employees and functions will be temporarily relocated to vacant event/meeting spaces during construction. However, commitments may be made for those spaces for the days following the proposed end of the construction period, so it is essential that work be completed and the renovated space be available to occupy by the targeted completion date.

2. Scope of Work

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.

Plan Set, titled **ATTACHMENT C; Oregon Convention Center Breakroom and Office** and dated September 20, 2017

ITB Addenda **1** through **3**; and any modifications of any of the foregoing in the form of Addenda or Change Orders entered into in accordance with the terms of the Contract. Where applicable, reference to this Contract herein shall be deemed to refer to all of the Contract Documents.

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

**ATTACHMENT B - SECTION 007200
METRO GENERAL CONDITIONS**

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METRO GENERAL CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.13.1 The change in the Work;

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

1.1.13.3 The extent of any adjustment to the Contract Time.

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

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

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

1.1.17 Contract: The Contract Documents.

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

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

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

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

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

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

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.

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 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 imminency 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	<u>Workers' Compensation</u>	Statutory Limits
12.3.2	<u>Employer's Liability</u>	
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	<u>Commercial General Liability</u>	
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	<u>Automobile Liability</u>	
12.3.4.1	Combined Single Limit.....	\$2,000,000
12.3.5	<u>Pollution Liability</u>	
12.3.5.1	Single Limit	\$2,000,000
12.3.5.2	Aggregate	\$2,000,000
12.3.6	<u>Commercial Umbrella/Excess Coverage</u>	
12.3.6.1	Each Occurrence Alternates: Min. \$2,000,000/\$5,000,000/\$10,000,000	

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

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

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

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

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

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

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

By _____
Print Name _____
Date _____

SUBCONTRACTOR

By _____
Print Name _____
Date _____

Construction Agreement



METRO CONTRACT NO. XXXXXX

METRO GENERAL CONDITIONS - EXHIBIT 2

SUBCONTRACTOR ASSIGNMENT OF ANTITRUST CLAIMS

Project: _____

Owner: Metro _____

General Contractor: _____

Subcontractor: _____

Release Date: _____

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

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

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

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

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

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

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

SUBCONTRACTOR

By _____

Print Name _____

Date _____

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. XXXXXX

METRO GENERAL CONDITIONS - EXHIBIT 5

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

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

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

3. The Undersigned hereby certifies as follows:

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

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

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

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

Dated: _____ Undersigned | Subcontractor: _____
By: _____
Print Name: _____
Its: _____

STATE OF OREGON)
) ss.
County of Multnomah)

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

Notary Public - State of Oregon

MERC STAFF REPORT

Agenda Item: For the purpose of approving the contract with First Cascade Corporation for the Oregon Convention Center's "Staff and Setup Supervisor Support Space Renovation" and authorizing the General Manager of Visitor Venues to execute the contract.

Resolution No: 17-30

Date: October 4, 2017

Presented by: Nancy Strening

BACKGROUND:

The OCC staff and setup supervisor support spaces date to 2002 and lack necessary infrastructure, equipment, and amenities for the number of staff who use the spaces for trainings, meetings, event briefings, breaks, meals, and as office space. This is both a functional issue and a staff morale issue. This two-level renovation project consists of two scopes.

The at grade break room will receive a complete renovation and upgrade to its infrastructure and usability. The space will be reconfigured to create a shift briefing room, including radio storage and audio-visual capability, for start of shift team huddles; a training area with four computer work stations available to staff for business messaging, training and other career development activities; a more functional dining area with additional microwaves, refrigerators, a larger dishwasher, new lighting, flooring and seating. The lunch break for most staff that use the space is a half-hour and the number of appliances is inadequate to support staff needs; and upgrades to the currently underserved HVAC, power and network capabilities.

The area directly above the break room on the second level will be renovated for the seven setup supervisors to improve infrastructure and usability. This work will include private and shared office spaces for the setup supervisors; meeting and training spaces for the setup supervisors; and an appropriately sized and secured storage space for supplies and materials.

MERC staff prepared and issued an Invitation to Bid (ITB) that included a scope of work to upgrade the staff and setup supervisor support spaces. Staff issued the ITB in accordance with MERC's purchasing and contracting rules and in compliance with Metro Policy and state of Oregon requirements. To communicate the opportunity, the ITB was published on ORPIN and advertised broadly and with the intent of notifying minority contractors via the Business Tribune, the Skanner, El Hispanic, the Portland Observer, and the Asian Reporter. On September 14, 2017, MERC received two bids to complete the renovation, which ranged from \$421,933 to \$489,000. Staff recommends First Cascade Corporation as the lowest responsive and responsible bidder with the bid of \$421,933.

Neither bidder is a Certified Office of Business Inclusion and Diversity (COBID) contractor. First Cascade Corporation demonstrated extensive outreach to COBID subcontractors, and intends to award \$30,000 of the contract to a COBID subcontractor.

FISCAL IMPACT: The FY 2017-18 Amended Budget and Capital Improvement Plan (CIP) includes \$644,000 for the proposed renovation.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution No 17-30, approve the contract award and written contract (attached hereto) with First Cascade Corporation, for the amount four hundred twenty one thousand nine hundred thirty three dollars and 00/100 (\$421,933.00) for the Oregon Convention Center's Staff and Setup Supervisor

Support Space Renovation and authorize the General Manager of Visitor Venues to execute the contract.

METROPOLITAN EXPOSITION RECREATION COMMISSION
Resolution No. 17-31

For the purpose of approving the contract with Environmental Controls for Alerton Control Services Support for the Oregon Convention Center, and authorizing the General Manager of Visitor Venues to execute the contract.

WHEREAS, the Oregon Convention Center (OCC) opened in 1990 and expanded in 2003; and

WHEREAS, with the expansion OCC installed a new Building Automation System (BAS), which controls the heating, ventilation and air conditioning (HVAC) systems for the whole building; and

WHEREAS, the BAS is manufactured and maintained by Alerton Controls, a company that uses Environmental Controls Corporation as the regional provider for their proprietary systems; and

WHEREAS, Environmental Controls Corporation is the only company directly authorized to sell, install and service Alerton Control products in specific Oregon and Washington counties, including Multnomah County; and

WHEREAS, as the Alerton dealer for Oregon, Environmental Controls Corporation has factory-trained personnel on staff and access to proprietary products and information that are part of the Alerton BAS; and

WHEREAS, this service agreement is necessary to ensure the ongoing and efficient operation of the Alerton BAS; and

WHEREAS, under Rule 47-0288(11) of Metro’s Local Contract Review Board Rules, this is a class special procurement for equipment, maintenance, repair or overhaul that allows Metro to directly award the contract; and

WHEREAS, work performed under this contract scope will be funded from OCC operations and maintenance budget, pending adoption each budget year through the contract term of October 3, 2022.

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

1. Approve the contract award and written contract (attached hereto) with Environmental Controls, for an amount not to exceed two hundred fifty thousand and 00/100 dollars (\$250,000.00) for Alerton Control Services Support for the Oregon Convention Center; and
2. Authorizes the General Manager of Visitor Venues to execute the contract.

Passed by the Commission on October 4, 2017.

Chair

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

Secretary/Treasurer

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

Standard Public Contract



METRO CONTRACT NO. XXXXXX

For Public Contracts \$50,000 & Above

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Environmental Controls, whose address is 15954 SW 72nd Ave, Tigard, OR 97224, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

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

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing **October 4, 2017** through and including **October 3, 2022**.

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 **TWO HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$250,000.00)** (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 LIABILITY AND INDEMNITY

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

ARTICLE V TERMINATION

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

ARTICLE VI INSURANCE & BONDS

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

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

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

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

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

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

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

ARTICLE VII PUBLIC CONTRACTS

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

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

claims are permitted to be filed against Metro on account of any labor or material furnished. CONTRACTORS are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

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

ARTICLE VIII MODIFICATIONS

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

ARTICLE IX QUALITY OF GOODS AND SERVICES

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

ARTICLE X OWNERSHIP OF DOCUMENTS

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

- A. CONTRACTOR and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, CONTRACTOR and subcontractors shall maintain any other records necessary to clearly document:
1. The performance of the CONTRACTOR, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the CONTRACTOR or subcontractor under the terms of the contract or subcontract;
 2. Any claims arising from or relating to the performance of the CONTRACTOR or subcontractor under a public contract;
 3. Any cost and pricing data relating to the contract; and
 4. Payments made to all suppliers and subcontractors.
- B. CONTRACTOR and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. CONTRACTOR and subcontractors shall make records available to METRO, and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, within the boundaries

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

D. CONTRACTOR and subcontractors authorize and permit METRO and its authorized representatives, including but not limited to the staff of any METRO department and the staff of the METRO Auditor, to inspect, examine, copy and audit the books and records of CONTRACTOR or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. METRO shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

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

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

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

ARTICLE XI SUBCONTRACTORS

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

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

ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

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

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

ARTICLE XIII
SAFETY

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

ARTICLE XIV
INTEGRATION OF CONTRACT DOCUMENTS

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

ARTICLE XV
COMPLIANCE

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

ARTICLE XVI:
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 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 METRO.

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

ARTICLE 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: Rick Devlin
Environmental Controls
15951 SW 72nd Ave
Tigard, OR 97224
503-968-1029 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

CONTRACTOR

METRO

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

Attachment A – Scope of Work



Metro Contract No. XXXXXX

1. Purpose and Goal of Work

The purpose of this contract is to provide the Oregon Convention Center (OCC) with on-call Alerton Compass Building Management System service that will provide the support needed to insure OCC operates at peak efficiency with minimum downtime. This contract is a supplement agreement to the software service agreement.

2. Description of the Scope of Work

Services may include, but are not necessarily limited to, diagnosis, repair, maintenance and/or replacement of the Alerton Compass Building Management System components. Services may be related to deficiencies/potential improvements noted during standard service visits or associated with project work.

3. Deliverables/Outcomes

Provide service as requested by MERC.

The following hourly rates apply to work beyond the scope of the Service Agreement, including system modifications, emergency response, additional training, etc. Labor rates are published and revised annually, as increases occur, the rates included in this agreement shall be amended as agreed upon between Environmental Controls and MERC.

The current labor rates are as follows:

Time & Material Rates			
October 1, 2016 – September 30, 2017			
Trade	Straight Time	Overtime	Double Time
DDC / Programmer	\$157.50	\$236.25	\$315
Fitter (Mechanical)	\$130.50	\$195.75	\$261
Electrician	\$126	\$189	\$252

Discount on Material: As a service contract customer you will receive a **60% discount** off the Alerton published list price schedule (.4 multiplier) for parts and software sales and a **65% discount** off the Belimo list price schedule (.35 multiplier).



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Memo

Date: September 19, 2017

To: Gabriele Schuster, Procurement Manager

From: Josh Lipscomb, OCC Facilities Manager

Subject: Special Procurement Memo for Alerton Controls Service Support Agreement

The Oregon Convention Center seeks approval for Alerton Controls Service Support Agreement as a Special Procurement pursuant to Metro's LCRB Rule 47-0288 (11).

Estimated project term: October 4, 2017 through October 3, 2022

Estimated contract amount: \$250,000.00

Proposed contractor: Environmental Controls Corporation

This project meets the specific requirements for the pre-approved class of Special Procurement as follows:


During the expansion of OCC in 2003, a new Building Automation System (BAS) was installed. The BAS is manufactured by Alerton and is a control system for the HVAC system in the facility. The BAS is manufactured by and maintained by Alerton Controls. Environmental Controls Corporation is the regional provider for the proprietary Alerton control system. The Alerton BAS is the control system for the entire HVAC system in the facility. This agreement is necessary to ensure the ongoing and efficient operation of the Alerton BAS.

Per Rule 14-0288 (11) (c) OCC is permitted to acquire the parts and service for the Alerton BAS from Environmental Controls Corporation in order to maintain compatibility, preserve warranties, and to provide the best possible service as no other contractors in this region are as well-trained or experienced.


This project meets the basic requirements for Special Procurement as follows:

- **No favoritism:** unlikely to encourage favoritism or substantially diminish competition because there is only one provider in the region for certified service and maintenance.
- **Promotes public interest:** in the best interest of Metro in a manner that cannot be practicably realized by complying with competitive solicitation rules.

Approved:



 Gabriele Schuster, Procurement Manager



 Date

MERC Staff Report

Agenda Item/Issue: For the purpose of approving the contract with Environmental Controls for “Alerton Control Services Support” for the Oregon Convention Center, and authorizing the General Manager of Visitor Venues to execute the contract.

Resolution No.: 17-31

Presented By: Craig Stroud, Executive Director

Date: October 4, 2017

Background and Analysis:

The Oregon Convention Center (OCC) opened in 1990 and expanded in 2003. With the expansion, OCC installed a new Building Automation System (BAS). The BAS controls the heating, ventilation and air conditioning (HVAC) system for the whole building and is manufactured and maintained by Alerton Controls. Alerton Controls uses Environmental Controls Corporation as the regional provider for their proprietary systems.

Environmental Controls is the only company directly authorized to sell, install and service Alerton Control products in specific Oregon and Washington counties, including Multnomah County. As the Alerton dealer for Oregon, Environmental Controls has factory-trained personnel on staff and access to proprietary products and information that are part of the Alerton BAS.

This service agreement is necessary to ensure the ongoing and efficient operation of the Alerton BAS. Under Metro Code Provision 2.04.053(6) Special Procurement, the Oregon Convention Center is requesting to contract with Environmental controls for Alerton Control Service Support.

Fiscal Impact: Work performed under this contract scope will be funded from OCC operations and maintenance budget, pending adoption each budget year through the contract term of October 3, 2022.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution 17-31, approve the contract award and written contract (attached hereto) with Environmental Controls, for an amount not to exceed two hundred fifty thousand and 00/100 dollars (\$250,000.00) for Alerton Control Services Support for the Oregon Convention Center and authorize the General Manager of Visitor Venues to execute the contract.

METROPOLITAN EXPOSITION RECREATION COMMISSION
Resolution No. 17-32

For the purpose of approving the contract with Grady Britton for “On-call Marketing, Promotions and Creative Services,” at the Oregon Convention Center (OCC), and authorizing the General Manager of Visitor Venues to execute the contract.

WHEREAS, OCC is one of the largest convention facilities in the Pacific Northwest and most sustainable in the world; and

WHEREAS, the long-awaited Hyatt Regency Portland at the Oregon Convention Center hotel starts construction this year, placing the OCC in a position to bid for more and/or larger, more complex events and conventions; and

WHEREAS, this contract allows for the OCC to partner with a local marketing group, to reach a broader target audience and with budget approved as part of the OCC’s fiscal year 2017-2018 regular Sales and Marketing budget; and

WHEREAS, the OCC will use this on-call contractor to provide marketing expertise, strategies, research, insight and consultation services that promote the OCC and increase sales; and

WHEREAS, the OCC may use the on-call contractor for creative services such as copy writing, graphic design, and multimedia production; and

WHEREAS, Metro issued a Request for Proposals (RFP) in accordance with Section VII of the Metro Personal Services Contracting Rules for “On-Call Marketing, Promotions and Creative Services;” and

WHEREAS, staff received six responsive, responsible proposals before the RFP submittal deadline; and

WHEREAS, Staff selected Grady Britton as the highest scoring proposer in accordance with the applicable criteria in the RFP; and

WHEREAS, no appeals or protests were received within the allotted appeal period; and

WHEREAS, MERC staff negotiated the scope of work with a not to exceed contract amount of Four Hundred Fifty Thousand and 00/100 (\$450,000.00); and

WHEREAS, the contract includes a single two (2) year extension that may be negotiated depending on future needs.

BE IT THEREFORE RESOLVED that the Metropolitan Exposition Recreation Commission:

1. Approves the contract with Grady Britton for “On-call Marketing, Promotions and Creative Services” for an amount not to exceed \$450,000.00 in the form substantially similar to the attached Exhibit A.
2. Authorizes the General Manager of Visitor Venues to execute the contract on behalf of the Metropolitan Exposition Recreation Commission.

Passed by the Commission on October 4, 2017.

Chair

Secretary/Treasurer

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

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

Personal Services Agreement

Metro Contract No. 208005

Personal Service Agreement over \$50,000

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws Grady Britton, referred to herein as "Contractor," located at 107 SE Washington St, Ste 300, Portland, OR 97214.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective August 1, 2017 and shall remain in effect until and including June 30, 2020, unless terminated or extended as provided in this Agreement. This agreement may be renewed or extended for two additional one-year periods at Metro's sole discretion.

2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Attachment A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

3. Work Orders. During the term of this Agreement Metro may provide Contractor with written requests for estimates for specific assignments pursuant to this Agreement on an as-needed basis ("Work Order Request"). The Work Order Request will include a detailed description of the services to be provided, products produced, specifications and a time period in which to complete the services requested. After receiving a Work Order Request, Contractor shall provide Metro staff with a written, "not-to-exceed" Proposal including all cost and fees to complete the specified work. Contractor may not proceed with any work until a written Work Order has been provided by Metro to Contractor setting forth the specifics of the work to be produced and "not to exceed" amount to be charged by Contractor. See *Attachment B to the Standard Agreement: Work order example* for example Work Order form.

4. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed One Hundred Forty Five Thousand AND 00/100THS DOLLARS (\$145,000.00). Payment shall be made by Metro on a Net 30 day basis upon receipt of Contractor invoice.

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

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

Contractor shall provide Metro with a Certificate of Insurance complying with this article upon return of the Contractor signed agreement to Metro. Contractor shall email Certificate of Insurance to submitdocuments@oregonmetro.gov. Certificate of Insurance shall identify the Metro contract number.

Personal Services Agreement

Metro Contract No. 208005

6. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

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

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

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

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

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

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Personal Services Agreement

Metro Contract No. 208005

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 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.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapters 279A, 279B and 279C, and the recycling provisions of ORS 279B.025 to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. 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.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party without Metro's written consent.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven (7) days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties. Metro may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose

Personal Services Agreement

Metro Contract No. 208005

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

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

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

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

19. 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: Jill Hrycyk
Grady Britton
107 SE Washington St, Ste 300,
Portland, OR 97214.

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

With Copy to: Cindy Wallace
777 NE MLK JR Blvd
Portland, OR 97232

CONTRACTOR

METRO

By _____

By _____

Print Name _____

Print Name _____

Date _____

Date _____

Personal Services Agreement

Metro Contract No. 208005

Attachment A – Scope of Work

1. Purpose and Goal of Work

The Oregon Convention Center has awarded this contract to Grady Britton to provide strategic marketing services for the promotion of the Oregon Convention Center to the Pacific Northwest region.

Work will be provided on an as-needed basis beginning July 2017 through June 2020. One two-year extension may be negotiated depending on future needs. The Oregon Convention Center reserves the right to award additional contracts from this RFP during the above stated term.

During the contract term, Oregon Convention Center staff, at its sole discretion, will provide Contractor with written requests or work orders for specific assignments. These requests will include a detailed description of the services to be provided, deliverables, specifications and a time period in which to complete requested services. The work orders clarify work expectations, fees for services and serve as a further agreement for work to be performed within the awarded contract.

2. Description of the Scope of Work

- A. **Kickoff meeting.** Grady Britton will initiate planning for our partnership with a meeting focused on determining your numerous and varied marketing and communications needs. Talking through these and mapping them out, in the context of our goals, our audiences and our competition will allow Grady Britton to collectively determine near and long-term priorities. It will also help them assess what type or research may be most needed, as well as the appropriate breadth and depth of the marketing plan that's needed. Coming out of this kick-off meeting, Grady Britton will be able to develop a work plan for our review that will map out their recommended approach and inform a Statement of Work for the partnership.
- B. **Research.** Based upon our initial discussion, Grady Britton will provide Oregon Convention Center with recommendations around what information and research would be most helpful in informing our marketing plan and campaign strategy development. If there are learnings available from other research we've completed, they'll use that as a foundation and decide if any other information will be important to gather. After conducting and analyzing the needed research, Grady Britton will document and present insights, findings and recommendations for consideration to Oregon Convention Center.
- C. **Marketing plan development.** The Grady Britton team knows that understanding our target audience and uncovering insights about them, their beliefs, and tendencies is the foundation of an effective marketing plan. Based upon existing information and insight we have, along with whatever else they are able to realize through the research they conduct. They'll be ready to develop our marketing plan. This plan serves as our go-to market strategy. It will help us collectively balance budget, priorities and marketing objectives that are the keys to a successful overall strategy. This plan includes both paid media and earned media (social strategy and public relations) plans. Marketing plans typically include:
 - Objectives
 - Audiences
 - Strategies / tactics
 - Measurement: plans and tools
 - Media schedules
 - Budget allocation
- D. **Develop campaign brief.** Once we have an approved marketing plan, Grady Britton proceed with development of a new campaign and/or whatever assets are indicated in the marketing plan. To start the process, Grady Britton will develop a campaign brief to inform the creative development for Oregon

Personal Services Agreement

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Convention Center's new campaign and the assets it requires. This brief aligns everyone on the strategy, content and tone of the campaign, and lays the foundation for starting creative development. A key driver of this brief will be the input gathered by the research conducted earlier, as well the priorities set in the approved marketing plan.

- E. **Develop and present creative concepts and key messages.** To demonstrate the various options Grady Britton is strategizing for the campaign, they produce "vision boards." These boards showcase a variety of images, font treatments, color palettes, design examples and photography styles that combine into a collage treatment that effectively shows the aesthetic feel that the campaign will have across all the materials developed. They'll also include key messages for the campaign at this stage of the process, as well as how they plan to address your diverse audiences.
- F. **Develop all creative executions.** Once we've reached consensus on the campaign approach (selected a vision board and aligned on key messages), Grady Britton will create the materials identified to be part of the campaign (i.e. print, direct mail, online, video, collateral, etc.). The creative development process includes two rounds of review for Oregon Convention Center to provide feedback and for Grady Britton to make revisions based on that feedback.
- G. **Media buying, earned media outreach, social content development.** On a parallel path to creative development, our paid and earned media teams will be buying media and completing outreach to publications based upon what was approved in the paid and earned media plans developed earlier in the process. Once key messages are identified, our earned team will also develop content for socials to work seamlessly with other campaign channels and tactics.
- H. **Finalize materials to be production ready.** Work with Oregon Convention Center and/or your approved contractors to coordinate production to better understand what exact formats for these assets are needed and how they will be distributed. Grady Britton has an in-house production team with deep experience and expertise working across all types of production work including print, digital, video, large format, etc.
- I. **On-going support.** Beyond the initial campaign development, there will be on-going needs for Oregon Convention Center. We can discuss what those on-going needs might be and ensure the expertise and knowledge developed in the original campaign continue to be leveraged. They'll also be working with us to measure the success of the campaign based upon pre-established metrics. They'll be monitoring those on an on-going basis to inform how to tweak and evolve our marketing efforts moving forward based upon in-market performance.

3. Deliverables/Outcomes

- Provide marketing expertise and strategies that promote the Oregon Convention Center and increase sales.
- Provide market research and consultation services to provide analysis, interpretation and presentation of research findings for recommendations and adjustments to marketing efforts.
- Provide marketing and audience insights and best-practice information.
- Create, write and execute marketing plans.
- Provide support and guidance for social media strategies, including content development, writing and planning, monitoring, response, tracking and recommendations.

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- Provide campaign execution from start to finish, including development, testing, creative execution, media buying, partnership and outreach development, tracking and measurement and campaign evaluation.
- Recommend, negotiate, purchase and place media buys. Negotiate value-add.
- Provide evaluation and measurement framework to assess effectiveness of campaigns.
- Coordination with Oregon Convention Center Director of Sales and marketing staff to meet project goals and timelines
- Provide the following related to creative services:
 - Strategic creative development for a variety of online and print marketing materials including but not limited to: print, digital and rich media ads; print materials such as rack cards and brochures; and large format billboard and bus ads.
 - Design comps, mood boards, sketches and concepts.
 - Message strategy, development and testing
 - Copy writing and editing
 - Graphic design and production
 - Multimedia production services, including video production and editing.
 - Developing marketing presentations

4. Payment and Billing


Contractor shall perform the above work for a maximum price not to exceed One Hundred Fifty Thousand AND XX/100TH DOLLARS (\$150,000.00).

Hourly rates:

Account Management - \$160
Marketing Strategy and Consultation - \$200
Creative Direction - \$200
Graphic Design - \$160
Production - \$130
Copywriting and Editing- \$160
Half Day Filming Rate for four Hours with One Assistant -\$1,000

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 approval of Contractor invoice.

Attachment B – Work Order Sample

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

WORK ORDER
Personal Services Agreements

CONTRACT NUMBER: _____ CONTRACT RELEASE # _____
CONTRACTOR: _____
CONTRACTOR EMAIL _____

PROJECT NAME: _____ PROJECT MANAGER: _____

PROJECT SUMMARY

SCOPE OF WORK

DELIVERABLES

SCHEDULE

COST

See Contractor's estimate. Total invoice amount not to exceed: _____

Contractor: Please e-mail all invoices to metroaccountspayable@oregonmetro.gov. Include contract release number listed above on invoices to ensure timely processing of your payment.

Contractor	Metro staff
Signature: _____	Signature: _____
Date: _____	Date: _____
Telephone: _____	Telephone: _____

Metro staff signing the agreement should have authorized signature authority for the agreement amount.

DPC instructions

CONTRACT RELEASE

1. Enter into PeopleSoft as a contract release and route for appropriate signature and approval work flow.
2. Scan in work order form and email to project manager listed to notify that work can begin.

INVOICING

1. Obtain project manger approval on invoice.
2. Receive on the invoice in PeoplSoft.
3. Forward to Accounting staff for processing

DPC initials and date: _____

Updated Aug 2012

MERC Staff Report

Agenda Item/Issue: For the purpose of approving the contract with Grady Britton for “On-call Marketing, Promotions and Creative Services” at the Oregon Convention Center, and authorizing the General Manager of Visitor Venues to execute the contract.

Resolution No.: 17-32

Presented By: Craig Stroud, Executive Director

Date: October 4, 2017

Background and Analysis:

The Oregon Convention Center (OCC) is one of the largest convention facilities in the Pacific Northwest and most sustainable in the world. With exhibit space, meeting space, onsite parking, full-service catering and easy public transportation options to both downtown and to the Portland International Airport, the OCC is well positioned as an excellent option for meetings and conventions in the region.

After almost 30 years, a long-awaited convention center hotel is being constructed adjacent to the OCC. Construction of the Hyatt Regency Portland at the Oregon Convention Center starts this year with a grand opening in spring 2020. This game-changing development for the OCC will allow the team to attract more and/or larger conventions and events, while building upon the current strengths of OCC and the region.

In preparation for the Hyatt Regency Portland at the Oregon Convention Center, the OCC published in April 2017 a Request for Proposals (RFP) for an On-Call Marketing, Promotions and Creative Services agency. MERC staff issued the RFP in accordance with MERC's purchasing and contracting rules, in compliance with Metro policy and all statutory requirements. The RFP was published in the Daily Journal of Commerce, the Skanner, Oregon Procurement Information Network (ORPIN) and on the Metro website.

The intent of the On-Call Services contract is to provide marketing expertise, strategies, research, insight and consultation services that promote the Oregon Convention Center and increase sales. The market research, analysis, interpretation and presentation of research findings will result in recommendations and adjustments to marketing efforts. Specific areas of focus include the creation and execution of a marketing plan; campaign development and implementation; and social media support and guidance. The contract allows for related creative services such as copy writing, graphic design, and multimedia production.

The OCC received six responses to the On-Call Services RFP and Grady Britton was awarded the contract in June 2017. This personal services agreement will be effective upon signature and will remain in effect until and including June 30, 2020, unless terminated or extended as provided in the agreement. The agreement may be renewed or extended for one additional two-year period at Metro's sole discretion.

Grady Britton has shown a strong commitment to diversity and is a woman majority-owned business currently awaiting notice from the state of Oregon for their Woman Business Enterprise (WBE) certification. Grady Britton frequently partners with other Certification Office for Business Inclusion and Diversity (COBID) businesses to provide additional opportunities throughout the community as part of their core values.

Fiscal Impact: The Oregon Convention Center's approved Sales and Marketing budget for 2017-2018 includes appropriation for services rendered by Grady Britton under this contract.

Recommendation: Staff recommends that the Metropolitan Exposition-Recreation Commission adopt Resolution 17-32 for On-call Marketing, Promotions and Creative Services Contract and delegate authority to the General Manager to execute this contract between MERC and Grady Britton.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 17-33

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

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

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

THEREFORE BE IT RESOLVED:

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

Passed by the Commission on October 4, 2017.

Chair

Secretary-Treasurer

Approved As to Form:

Alison R Kean, Metro Attorney

By: _____

Nathan A.S. Sykes, Deputy Metro Attorney

**EXHIBIT A: SUMMARY OF PROPOSED PERSONNEL POLICIES FOR PRESENTATION TO MERC COMMISSION
SEPTEMBER 6, 2017**

Below is a list of draft policies for your review. These proposed policies are intended to supersede those listed from the Metro Employee Handbook (EO #88) and the MERC Personnel Policies Handbook (8/1/07).

Policy	Existing MERC Policy	Existing Metro Policy	Applicable Legal Provisions	Policy Summary/Explanation of Change	Fiscal Impact	Business Impact
Vacation	MERC Personnel Policies (2007) §16.2	Vacation Leave for Non-Represented Health Benefits – Eligible Employees	None	<p>Consolidates current MERC Non-Represented employees with the same vacation policy as the Metro Non-Represented employees.</p> <p>Caps amount of vacation that can be accrued and the amount that can be paid out at time of an employee’s departure from 250 hours to 275 hours.</p> <p>Allows the use of vacation leave as a recruitment incentive tool.</p> <p>Allows probationary employees to utilize their accrued vacation.</p>	<p>Some indirect impact costs for backfilling while employees are on vacation.</p> <p>Additional 25 hours paid out per departing employee</p>	<p>Promotes consistency across agency.</p> <p>Increases employee flexibility to use vacation time.</p>



Policies and procedures

EXHIBIT B TO MERC RESOLUTION 17-33

Subject Vacation Leave for Non-Represented Health Benefits-Eligible Employees
Section Human Resources
Approved by Martha Bennett, Chief Operating Officer

POLICY

Metro provides non-represented health benefits-eligible regular and limited duration employees with paid vacation leave.

Applicable to

All Metro non-represented regular and limited duration employees who work 20 hours or greater and are eligible for health insurance and vacation accrual.

Paid vacation leave may be available for represented employees as determined by the applicable collective bargaining agreement.

Definitions

Benefits eligible refers to those who are eligible for health insurance and vacation accrual.

Guidelines

1. Employees are eligible to use accrued vacation leave subject to supervisory approval.
2. Employees shall not accumulate more than 275 hours of vacation leave.
3. **Accrual cap:** *The 275-accrual cap is firm. Employees who reach the accrual cap stop accruing vacation leave until they use vacation leave and reduce their accrual level below 275 hours. Once the accrual level drops below the 275-hour maximum, they will then accrue leave based on the accrual schedule below.*
4. Managers shall schedule vacation leave requests consistent with the operational needs of the department. Vacation schedules may be amended to allow the department to meet emergency situations.
5. An employee who has successfully completed their initial probationary period and terminates for any reason, shall be entitled to payment for accrued unused vacation leave. In no case shall payment be for more than the maximum allowable 275-hour accrual limit.
6. Employees shall accrue vacation leave according to the following schedule:

Level	Total Years of Continuous Service	Accrual Rate per hour paid	Equivalent Annual Hours for Full-time Employees working 2080 hours per year
Level 1	Date of hire through completion of 3 rd year	.0577 hours	120 hours
Level 2	4 th years through completion of 7 th year	.0692 hours	144 hours
Level 3	8 th year through completion of 11 th year	.0808 hours	168 hours
Level 4	12 th year or more	.0923 hours	192 hours

Part time eligible employees shall accrue vacation leave under the above hourly accrual rate for hours worked.

Probationary Employees

1. An employee who terminates for any reason during the initial probationary period shall not be paid out any vacation leave at time of departure.
2. Probationary employees may use accrued vacation. However, consistent with the Probation Policy, if an employee is absent from work for a total of 10 or more days during probation, the probationary period will be extended by the number of days the employee was absent.

Recruitment Incentive Vacation Leave

1. As part of an employment offer when recruiting a candidate, Department Directors with the approval of the HR Director may provide additional vacation leave as a recruitment incentive to new non-represented employees covered by this policy.
 - a. Recruitment Incentive Vacation Leave
 - i. Eligible individuals may be offered vacation leave starting at level 2 or in some instances level 3. The employee will then stay at that level until they have reached the number of years of service to move them to the next level. For example, if an employee starts at level 2, the employee will stay at that level until the start of the employee’s 8th year of employment.
2. If hiring offer is to include recruitment incentive leave, it is to be noted on New Hire Form.

PROCEDURES

1. Use of Vacation Leave:
 - a. Employees must submit requests to use vacation leave per their department or work unit procedures and receive approval prior to taking time off.
 - b. For full-time exempt employees, absences of four hours or more will be tracked in the leave management system and covered through the use of available vacation leave accruals. Part-time exempt employees and exempt employees who work a flex schedule, must enter vacation leave in the leave management system when they take vacation leave for one-half (1/2) or more of their regularly scheduled shift.
2. Infrequent Absences of Exempt Employees: When an exempt employee has an absence of four or more hours, such absences will be tracked in the leave management system and covered through the use of available leave accruals as appropriate for the situation.

Infrequent absences of less than four hours by an exempt employee that does not negatively impact expected work performance or productivity will not be covered through the use of leave accruals. In

addition, this section would not apply if an employee has received prior approval from their manager to flex their schedule in a given workweek.

3. Rate of Pay: Vacation leave will be paid at the employee's regular rate of pay for that job for the number of hours the employee requested to use.
4. Written Notification of Accruals: Metro will provide notification on employees' pay statements of the amount of accrued and unused vacation leave available for use by an employee.

Responsibilities

Employees:

- Submit request for use of vacation leave in accordance with work unit or department procedures, when possible, provide at least ten (10) business days advance notice.
- Code leave appropriately in Metro's timekeeping system.

Supervisors:

- Approve or deny advance requests for use of vacation leave and notify the employee as soon as possible.
- Notify HR of approved recruitment incentive vacation leave prior to the employee's start date.
- Notify employees as soon as possible if approved vacation schedules need to be amended for emergency reasons.
- Ensure that leave is coded appropriately in Metro's timekeeping system.

Department Director:

- Ensure supervisors are approving vacation leave equitably and in a timely manner.
- Prior to approving, consult with HR Director for requests to grant recruitment incentive vacation leave to potential new hires.

Human Resources:

- Provide guidance and information as needed.
- Consult with hiring managers and department directors on recruitment incentive vacation leave.

References

Metro Family and Medical Leave Policy

Domestic Violence, Sexual Assault, Criminal Harassment and Stalking Protections Policy

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of approving MERC non-represented employees move to the metro vacation leave policy.

Resolution No.: 17-33

Presented by: Terry Smith, Employee Engagement Manager, Human Resources

Date: 10/4/17

Background and Analysis: To align the non-represented employees of Metro and MERC venues, there has been an interest in combining the vacation schedules into one. Current Metro non-reps are under the following vacation schedule:

Level	Total Years of Continuous Service	Accrual Rate per hour paid	Equivalent Annual Hours for Full-time Employees working 2080 hours per year
Level 1	Date of hire through completion of 3 rd year	.0577 hours	120 hours
Level 2	4 th years through completion of 7 th year	.0692 hours	144 hours
Level 3	8 th year through completion of 11 th year	.0808 hours	168 hours
Level 4	12 th year or more	.0923 hours	192 hours

Metro non-rep employees also receive 2 floating holidays each fiscal year. Maximum vacation accrual is 275 hours with the recent changes to the Metro Vacation Policy for non-represented employees.

The MERC vacation schedule is as follows:

1. Vacation leave with pay for full-time employees shall accrue at the rate shown below:

TOTAL YEARS OF SERVICE	ACCRUAL RATE AT 24 PAY PERIODS PER YEAR	VACATION RATE PER YEAR
0 through 4	3.34 hours	80 hours
5 through 9	5.00 hours	120 hours
10 through 14	5.84 hours	140 hours
15 through 19	6.67 hours	160 hours
20 through 24	7.50 hours	180 hours
25 or more	8.34 hours	200 hours

MERC non-rep employees also receive 3 personal days (or prorated amounts based on date of hire). Maximum vacation accrual is 250 hours.

After reviewing the MERC employees and how they would be impacted, the follow results were found:

Length of Service	# of employees impacted	Additional vacation/Personal Leave Combined
0-3 years of service	30	32
3-4 years of service	5	56
5-7 years of service	5	16
7-8 years of service	5	40
9-10 years of service	6	20
10-14 years of service	5	44
15-19 years of service	5	24
20-24 years of service	6	4
25+ years of service	14	-16

In 2016, 11 MERC employees forfeited personal leave hours due to non-use within the fiscal year.

Staff recommends the Commission adopt the updated Metro Vacation Policy for non-represented employees, which will move MERC non-represented employees to the METRO non-rep schedule. It is recommended that MERC non-represented employees with 20+ years of service will remain on the MERC schedule until they are retired or leave employment. This way, those in the 20-24 years of service range who may be anticipating increased accrual rates will not lose any benefits. The

MERC vacation schedule will sunset after the last of the 20 employees either retire or leave employment.

By adopting the new policy, this allows probation employees the ability to use earned leave before they are off probation and also allows managers to grant additional vacation as a recruitment incentive. Both of these changes have been found to be a very attractive recruitment incentives amongst those joining our workforce.

LONG RANGE FISCAL IMPACT: There is limited direct fiscal impact with the potential for non-represented employees to be paid out up to 25 additional hours of vacation leave at time of departure. There is some indirect impact in that non-represented employees will have additional time off. However, it is anticipated that both of these costs will be outweighed by the increased morale of the equity this brings amongst non-represented employees across the agency.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition-Recreation Commission approve the movement of non-represented MERC employees to the METRO vacation policy effective 11/1/2017.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 17-34

For the purpose of ratifying the collective bargaining agreement with the Custodial and Utility Employees of the International Union of Operating Engineers, Local 701-1.

WHEREAS, the Metropolitan Exposition Recreation Commission’s (MERC) designated representatives for labor relations and IUOE have negotiated in good faith; and

WHEREAS, the parties have reached an agreement for a three year collective bargaining agreement; and

WHEREAS, the Union membership ratified the collective bargaining agreement on September 27, 2017; and

WHEREAS, MERC believes that the collective bargaining agreement is fair, reasonable, and in the public interest.

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

- 1) Approves the collective bargaining agreement attached to this Resolution as Exhibit A.
- 2) Authorizes and directs the General Manager of Visitor Venues to execute the collective bargaining agreement and forward it to the Union for signature.

Adopted by the Commission on October 4, 2017.

Approved as to form:

Alison R. Kean, Metro Attorney

Chair

By: _____

Nathan A. S. Sykes, Deputy Metro Attorney

Secretary/Treasurer

Memo



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

MS
(MP)

9-21-17
9-21-17

Date: September 21, 2017
To: Nate Stokes, IUOE 701-1 Field Representative Coordinator
Copy: Jack Miller, IUOE 701-1 Business Agent
From: Mikki Nutt, Labor Relations Program Manager
Subject: Amended Conditional Metro Supposal

As per our conversation, the attached document is Metro's amended conditional supposal to the International Union of Operating Engineers Local 701-1 for a successor to the parties' 2018 – 2020 Collective Bargaining Agreement. To establish tentative agreement, please initial the attached amended articles, scan and return. I will send then initial and return to you.

A summary of the conditional supposal is as follows:

- 1) Wages (*Article 17*):
 - a) Effective 7/1/2018: ~~2.0%~~ 2.5% wage increase
 - b) Effective 7/1/2019: 2.5% wage increase
 - c) Effective 7/1/2020: 2.5% wage increase
- 2) Hours of Work & Overtime (*Article 8*): Defines work day and work week. Adds allowance for 4 x 10 work week for full-time employees, providing daily overtime for time worked over 10 hours. Clarifies overtime compensation for working 6 or more consecutive days that cross over two workweeks.
- 3) Sick Leave (*Article 19*): Ensures sick leave accrues on overtime hours; removes the waiting period for using sick leave; expands the reasons for sick leave usage; and eliminates the sick leave incentive.
- 4) Terms of Agreement (*Article 30*): Duration – 3 year agreement expiring December 31, 2020. The Agreement shall be automatically renewed from year to year unless either party gives written notice of its intention to renegotiate the terms and provisions of this Agreement.
- 5) Evaluation Leave (*Article 17*): Remove Section 4, Evaluation Leave.
- 6) Holiday (*Article 20*): Eligible part-time event custodians will accrue personal holiday leave on July 1 to be used during the fiscal year. 32 hour (.8 FTE) designated employees will accrue sixteen (16) hours personal holiday. Employees designated 32 hours on or after November 1 will accrue eight (8) hours of personal holiday. Variable hour employees who work 960 hours in a fiscal year will accrue eight (8) hours personal holiday time.

Housekeeping Items:

- 7) Holiday (*Article 20*): Edits minimally for clarification.
- 8) Other Leaves (*Article 21*): Deletes redundant benefit paragraph that is found in Article 22.
- 9) Insurance (*Article 22*): Removes expired language.

If this conditional supposal is not accepted by the International Union of Operating Engineers Local 701-1, Metro will withdraw their conditional supposal and this memo will serve as written notification of Metro's intention to engage in successor bargaining.

Should you have any questions about the Metro's conditional supposal please contact me.

Enclosures: Article 8, Hours of Work & Overtime; Article 17, Wages; Article 19, Sick Leave; Article 20, Holidays; Article 21, Other Leaves; Article 22, Insurance; Article 30, Terms of Agreement; Exhibit A, Pay Schedule

Article 8: Hours of Work & Overtime

Section 1.

Because of the nature of the Employer's operation, it is recognized that employee scheduling requirements and assignments must be determined by the Employer based upon the nature of each event and related considerations. A day is the twenty-four (24) hour period beginning at 12:01 a.m. each day and ending at 12:00 midnight. Eight (8) hours per day shall constitute the normal work day. The workweek shall ~~consist of Thursday 12:01 a.m. through Wednesday midnight with~~ include two (2) consecutive days off.

All employees shall be compensated at the rate of time and one-half for all authorized work performed in excess of eight (8) hours in any workday, or forty (40) hours in any workweek. For full-time employees working a four day workweek, overtime will be provided for all authorized work performed in excess of ten (10) hours in any workday or forty (40) hours in any workweek. Overtime compensation shall be in the form of overtime pay at the rate of one and one-half hours for each overtime hour worked. If an employee is authorized to work six (6) or more consecutive days, crossing into the following regular workweek, overtime pay will be given for ~~every hour~~ all time worked over forty (40) hours until a day off is provided. ~~however a~~ At no time shall an employee's wages exceed time and one half (1.5x) as a result of ~~this~~ these provisions.

Section 2.

If an employee cannot report to work as scheduled, the employee must call the designated supervisor or message telephone number if the supervisor is unavailable, a minimum of ninety (90) minutes before their scheduled shift starts.

Section 3.

Any employee required to return to work with less than nine (9) hours from the end of their last shift shall be paid at a rate of time and one-half (1.5x) for the first hours worked of their incoming shift until nine (9) hours have elapsed since the end of their last shift. This section shall not apply if an employee volunteers to come in with less than nine (9) hours between shifts.

Example: If an employee's shift ends at 11:00 p.m., and they are required to return to work at 7:00 a.m. the following morning, that employee will earn time and one-half for the first hour of that shift.

Article 17: Salary Administration

Section 1.

Effective July 1, 2015-2018 and each July 1st thereafter, during the term of the contract, wages will be increased by 2.50%. Effective July 1, 2019 wages will be increased 2.50% and effective July 1, 2020 wages will be increased 2.50%.

~~the rates set in Exhibit A shall increase in accordance with the Portland-Salem OR Consumer Price Index all Urban Consumers (CPI-U) measured by the average of January to June and July to December of the preceding year before the July 1 effective date of the wage schedule. This index will be used for determining the schedule adjustment with a minimum of 1.5% and maximum of 2.5%.~~

Section 2.

The probationary period for employees shall be six (6) months. If an employee takes a leave of absence during the probationary period, their probationary period shall be extended for the equivalent period of time. Upon successful completion of probation an employee shall move to the non-probationary pay rate for their classification.

Section 3.

~~Standard paydays will be on the 10th and the 25th of each month or the immediately preceding business day in the case where a payday falls on a holiday or weekend.~~

Section 4.

~~Event custodians shall receive a written performance evaluation every six months provided the employee has worked a minimum of 480 hours during this period (average 18.5 hours per week). If upon review the employee earns an overall performance rating of "meets" or "exceeds" standards, the employee will be awarded four (4) hours of leave. A member that earns an overall performance rating of "requires improvement" or "not satisfactory" is not eligible for the award.~~

~~A member must use this leave within one (1) year of the award. Hours not taken by an employee shall be lost and not compensable. If a member terminates employment prior to use of the leave, the leave is not compensable.~~

Article 19: Sick Leave

Section 1.

Full-time bargaining unit members shall earn sick leave with pay at a rate of .05 hours per hour paid, ~~excluding~~ **including** overtime accrued in an unlimited amount. Part-time bargaining unit members shall accrue sick leave at a rate of .050 hours per hour paid, ~~excluding~~ **including** overtime, up to a 40 hour maximum. Qualified employees shall be eligible for use of earned sick leave after ninety (90) days of employment with the Employer.

Section 2.

Employees are eligible to use sick leave for the following reasons:

- a) ~~Personal illness or physical disability.~~
- b) ~~Illness or physical disability in the employee's immediate family which includes an employee's spouse, domestic partner, parent, parent-in-law, and step parent; biological, adopted, step and foster child; grandchild; and any other person for which the employee is a legal guardian.~~
- c) ~~Medical appointments and office visits.~~
- a) For mental or physical illness, injury or health condition, medical care, diagnosis and treatment, or preventive medical care of a mental or physical illness, injury or health condition, for themselves or for a qualifying family member. A qualifying family member includes an employee's spouse, domestic partner, parent, parent-in-law, step parent, and in loco parentis; biological, adopted, step and foster child; grandchild, grandparent and grandparent-in-law; sibling and any other person for which the employee is a legal guardian; or as otherwise required by law or regulation.
- b) When leave is requested in accordance with policy and authorized by Human Resources under the federal Family and Medical Leave Act (FMLA) or Oregon Family Leave Act (OFLA).
- c) To address domestic violence, harassment, sexual assault, or stalking in accordance with state law and Metro's Domestic Violence, Sexual Assault, Criminal Harassment and Stalking Protections Policy.
- d) In the event of a public health emergency, which includes closure of the school or place of care of the employee's child, or by order of a public official due to a public health emergency.
- e) For up to two weeks of bereavement leave taken by an OFLA eligible employee to grieve the death of an immediate family member; to make necessary arrangements related to the death; and/or to attend the funeral or alternative ceremony. Leave must be completed within 60 days from the date on which the employee receives notice of the death. OFLA bereavement leave is concurrent with the use of sick leave, which would be applied after any paid bereavement leave an employee may be eligible for under Article 21.

Section 3.

As described in Article 7 employees unable to report to work due to illness will report the reason for the absence to their supervisor ninety (90) minutes prior to the scheduled beginning of their shift. The supervisor

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may require sick leave beyond three (3) days to be supported by a physician's statement attesting to the illness.

Section 4.

The Employer and the Union agree that no employee should receive full wages in paid sick leave while also receiving time loss payments on an insured disability or Workers' Compensation claim. The parties therefore agree as follows:

Where the dual payment would result from the employee filing a claim for time loss payments for an injury or disease, the employee shall receive only the paid sick leave, if any, for the same condition necessary to bring the employee to full pay for the pay period. The Employer may recoup any overpayment of sick leave paid, either by deductions from gross wages per pay period in an amount not exceeding twenty (20) percent gross wages until the total overpayment is recouped, or the Employer and the employee may, by mutual agreement, provide for some other means for repayment. Upon repayment of the total amount of the excess, the employee's sick leave account shall be credited with that portion of the sick leave repaid.

Section 5.

Sick leave shall not continue to accrue during periods of leave unpaid by the Employer.

Section 6.

~~Full-time employees who use twenty-four (24) hours or less of sick leave within one fiscal year period shall accrue eight (8) additional hours of vacation leave in exchange of eight (8) hours of sick leave at the end of the fiscal year.~~

ARTICLE 20: Holidays

Section 1.

The following shall be considered holidays: ~~for full-time and part-time employees:~~

New Year's Day	January 1st
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4th
Labor Day	First Monday in September
Veteran's Day	November 11th
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25th

Full-time employees shall receive eight (8) hours of straight time pay for each of the holidays enumerated above on which they perform no work. ~~¶¶~~

If a full-time or part-time employee works on a holiday as enumerated above, the employee shall receive one and one-half (1 ½) time compensation for the time worked in addition to regular holiday pay.

Event Custodians shall receive one and one-half (1 ½) times compensation for actual time worked on the holiday. If a shift crosses both a non-holiday and holiday only the time worked on the holiday will be compensable at the one and one-half (1 ½) time regular hourly pay rate.

In addition to the above holidays, full-time employees who complete their initial probationary period will be eligible to take up to twenty-four (24) hours of personal holiday time. The personal holiday hours must be used within the fiscal year in which they accrue. Employees hired before November 1 will receive twenty-four (24) hours leave. Employees hired on or after November 1 but before December 24 will receive sixteen (16) hours leave.

Part-time employees assigned to a position of at least .8 FTE before November 1 and have completed their initial probationary period will accrue sixteen (16) hours of personal holiday time on July 1. Part-time employees assigned to a position of at least .8 FTE on or after November 1 and have completed their initial probationary period will be accrue eight (8) hours of personal holiday time on July 1. The personal holiday hours must be used within the fiscal year in which they accrue.

Variable hour employees who work 960 or more hours during the fiscal year and have completed their initial probationary period will accrue eight (8) hours of personal holiday time on July 1. The personal holiday hours must be used within the fiscal year in which they accrue.

An employee can use personal holiday hours in no less than four (4) hour blocks of time. An employee must request and obtain prior approval before taking such leave. Personal holiday hours not taken by an employee during the fiscal year shall be lost and are not compensable.

Section 2.

Holidays that occur during vacation or paid sick leave shall not be charged against leave.

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Section 3.

No employee shall receive holiday pay if the employee is absent for all or part of their scheduled workday either immediately preceding or immediately following the holiday or adjacent, single, or consecutive days off unless they have applied to their supervisor in writing for permission to be absent and such written request has been applied for and approved by the Operations Manager within that pay period.

Section 4.

For full-time employees, whenever one of the holidays listed in **Section 1** of this Article falls on a regularly scheduled day off, the day prior to or the day following the holiday will be scheduled off in accordance with building or event needs pursuant to **Section 6** of this article or as mutually agreed.

Section 5.

The holiday shift is the shift on which at least one-half of the hours of the shift are worked.

Section 6.

Employees shall normally be notified of holiday work schedules at least fourteen (14) days in advance, except in situations over which the Employer has no control.

Article 21: Other Leaves

Section 1. ADA and Family Medical Leave

- a) Employer abides by the Americans with Disabilities Act (ADA), ADA Amendments Act (ADAAA), Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA) when administering qualifying leave for employees. Employees must use accrued leave balances (sick leave, compensatory time, personal holiday and vacation) for FMLA and OFLA leave.
- b) If a leave of absence for a disability extends beyond the authorized FMLA or OFLA leave and the employee is on an authorized leave without pay, the employee may elect COBRA if he/she wishes to continue health benefits. An employee shall be notified of eligibility for COBRA benefits as required by law.

~~Section 2. Benefit Eligibility~~

~~Full-time employees working forty (40) hours a week are eligible for benefits. Eligibility will begin on the first of the month following thirty days of employment for all benefit-eligible employees who elect to participate in one of the Metro plans.~~

Section 3 2. Leave Without Pay

In instances where the work will not be seriously handicapped by the temporary absence of a full-time employee, the Operations Manager may grant a leave of absence without pay not to exceed ninety (90) calendar days. Leaves of absence without pay for periods in excess of ninety(90) calendar days, but not exceed six (6) months, must be approved by the General Manager of Visitor Venues, Metro. Requests for such leave must be submitted ten (10) working days before the first day of the requested leave unless there is an unforeseen emergency that is outside the employee's control. The request must be in writing and must establish reasonable justification for approval of the request.

The employee may elect to continue insurance benefits; however, premiums for such extended benefits shall be paid by the employee. Any and all such extension of insurance benefits shall be subject to any and all restrictions and conditions that may exist in each applicable benefit policy or plan. No employee may be denied leave without pay for arbitrary or capricious reasons. Any employee returning from an approved leave shall be reinstated with no greater or lesser employment rights than if the employee had not taken the leave.

Section 4 3. Union Business Leave

The Employer recognizes that from time to time employees may need an unpaid leave of absence to conduct Union business. Therefore no more than two (2) employees may be granted leave of absence for Union business at any one time. Requests for the leave of absence must follow the regular leave of absence approval process outlined in ~~Section 3-2~~ above.

Section 5 4. Jury Duty

Upon the presentation of written documentation, full-time employees shall be granted leave with pay when called for jury duty or subpoenaed as a witness to attend court in connection with the employee's officially assigned duties subject to the following:

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- a) The employee granted such leave shall pay all money received except travel allowance, to the Employer.
- b) An employee on jury duty who is on other than a day shift shall be temporarily assigned to day shift for the duration of jury duty. An employee, whose shift is temporarily changed, as a result of jury duty shall waive all overtime and other premium pay as a result of the schedule change. Nothing in this Agreement shall prohibit the Employer from requesting the court to excuse the employee from jury duty.

Section-6 5. Military Leave

Eligible employees shall be granted military leave with pay, as required by law. Any remaining leave shall be without pay, as required by law.

Section-7 6. Bereavement Leave

- a) A full-time employee absent from duty by reason of the death of his or her spouse, domestic partner, parents, children, sister, brother, grandparents, grandchildren, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law or relative of domestic partners that are equivalent to those in-laws or other household member shall be allowed not to exceed three (3) days of leave with pay within ninety (90) days of notification of the event. Additional leave may be granted upon approval. However, such leave shall be charged to the employee's sick leave, personal holiday or vacation hours at the employee's request. Employees will provide written notification to the Operations Manager of their request for bereavement leave within a week of their return to work.
- b) If travel is required, two (2) additional days, chargeable to sick leave may be allowed upon approval of the Operations Manager.
- c) A full-time employee may be granted four (4) hours of paid leave to attend a funeral ceremony for another PCPA employee. This leave is subject to the Employer's operating needs.

Metro Amended Conditional Supposal
September 21, 2017

Tentative Agreement
For Union: MB Date: 9-21-17
For Management: MB Date: 9-21-17

Article 22: Insurances

Section 1. Joint Labor Management Committee

A Metro Joint Labor Management Committee (JLMC) for health benefits comprised in accordance with adopted by-laws shall review health, dental and vision insurance plans and costs and make plan offering recommendations to the Metro Human Resources Director and Chief Operating Officer in an effort to keep health care costs at a minimum for employees and for Metro. The Union is entitled to select one voting member to serve on the Joint Labor- Management Committee on Health Benefits. This bargaining unit will be represented by IUOE 701.

Metro shall make available to the committee current information regarding insurance premium rates and projected increases as such information becomes available to Metro. The committee shall meet to maintain an ongoing review of health benefit related issues for employees of Metro.

A lawful meeting shall be comprised of an equal number of Union and Metro Committee members with not less than two of each group. The Committee shall make recommendations to the Human Resource Director and Chief Operating Officer. The Chief Operating Officer shall consider the committee's recommendations and have the authority to make Plan modifications as necessary.

Section 2. Benefit Eligibility

Full-time employees working forty (40) hours a week are eligible for benefits. Eligibility will begin on the first of the month following thirty days of employment for all benefit eligible employees who elect to participate in one of the Metro plans.

Prorated insurance will be available to employees who work thirty (30) hours a week or more during a twelve month (12) measurement period. Their premium share will be calculated based on the total cost of the health insurance premium for the plan selected by the employee, less the employee's FTE status (based on average weekly hours) multiplied by Metro's full-time employee premium portion for that plan.

Example: Using a health insurance premium of \$1,000 and Metro's portion for a full-time employee of \$920.

- *An employee working a 32 hour weekly average would pay $\$1,000 - (.8 \times \$920) = \$264.00$*
- *An employee working a 30 hour weekly average would pay $\$1,000 - (.75 \times \$920) = \$310.00$*

Section 3. Premium Sharing

~~Metro shall contribute ninety-four percent (94%) of the insurance premium costs per plan and employees shall pay six percent (6%) of the premium costs per plan selected by the employee.~~

Beginning July 1, 2016, Metro shall contribute ninety-two percent (92%) of the insurance premium costs per plan and employees shall pay eight percent (8%) of the premium costs per plan selected by the employee.

The premium cost used in these calculations shall be the amount agreed to with the carriers. No cost sharing between plans or any other premium cost adjustments shall be made.

These premiums will be paid through payroll deduction for medical, dental, and vision plans provided by an FMO and/or indemnity carrier.

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Metro agrees to pay an amount up to \$150 per month to benefits eligible employees who provide proof of other medical coverage and who opt out of medical and dental coverage through Metro.

Section 4. Life, Long Term Disability and Accidental Death and Dismemberment Insurance Life insurance and accidental death and dismemberment and long term disability coverage shall be provided to all employees who are health insurance benefit eligible and shall be maintained at current levels at no cost to the employee.

Metro Amended Conditional Supposal
September 21, 2017

Tentative Agreement
For Union: *28* Date: 9-21-17
For Management: *AK* Date: 9-21-17

Article 30: Term of Agreement

This Agreement shall remain in full force and effect from the signing of this Agreement to December 31, 2017
2020. This Agreement shall be automatically renewed from year to year thereafter unless either party may
give gives written notice at least ninety (90) days prior to the expiration of the Agreement of its intention to
renegotiate the terms and provisions of this Agreement.

Metro Amended Conditional Supposal
September 21, 2017

Tentative Agreement
For Union: 212 Date: 9-21-17
For Management: NO Date: 9-21-17

Exhibit A

METROPOLITAN EXPOSITION RECREATION COMMISSION INTERNATIONAL
UNION OF OPERATING ENGINEERS, LOCAL 701-1 PAY SCHEDULE

July 1, 2017 to June 30, 2018: Current Rates of Pay

Pay Range	Job Code	Job Classification	Step 1	Step 2
110	8610	Event	\$14.54	\$16.43
130	8632	Custodian Utility	\$19.55	\$21.34
134	8636	Maintenance Technician Utility Lead	\$21.56	\$22.57

July 1, 2018 to June 30, 2019: Amended increase: 2.5%

Pay Range	Job Code	Job Classification	Step 1	Step 2
110	8610	Event	<u>\$14.90</u>	<u>\$16.84</u>
130	8632	Custodian Utility	<u>\$20.04</u>	<u>\$21.87</u>
134	8636	Maintenance Technician Utility Lead	<u>\$22.10</u>	<u>\$23.13</u>

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of ratifying a collective bargaining agreement with the International Union of Operating Engineers, Local 701-1.

Resolution No.: 17-34

Presented by: Mikki Nutt, Labor Relations Program Manager

Date: October 4, 2017

Background and Analysis: The MERC – IOUE 701-1 collective bargaining agreement represents a contract of the terms and conditions of employment for 2 full time Utility Leads, 1 full time Utility Maintenance Technician and approximately 36 part time Event Custodians. These employees work at Portland’s Centers for the Performing Arts (Portland’s) and support the Portland’s venues by maintaining clean and safe environments, ensuring a positive experience for patrons and clients. The current collective bargaining agreement between MERC and IOUE 701-1 expires on December 31, 2017.

Management entered into a discussion with the Union on August 11, 2017 to renew the contract with a limited number of changes in lieu of entering into successor bargaining. Negotiations continued in an efficient and productive manner and tentative agreement was reached on September 21, 2017. IOUE 701-1 membership ratified this agreement on September 27, 2017.

This staff report and resolution are respectfully submitted to ratify the contract between IOUE 701-1 and MERC/Metro for the period January 1, 2018 through December 31, 2020. This three-year agreement contains the following key economic elements:

Wages

Annual Adjustments: Wages will increase by 2.5% on July 1, 2018, July 1, 2019 and July 1, 2020

Personal Holiday

Eight hours of Personal Holiday for part-time Event Custodians replaces “Evaluation Leave”. The ten part-time positions designated .8 FTE will accrue an additional 8 hours of personal holiday for a total of 16 hours.

Sick Leave Incentive

Eliminate the sick leave incentive.

Renewal

Terms of Agreement will automatically renew if neither party gives notice to renegotiate.

Short range fiscal impact: There is sufficient budget allocation in the FY 2017-18 Budget to accommodate the proposed contract changes.

Long range fiscal impact: The costs of the collective bargaining agreement will be reflected in future budget years and are viewed as reasonable and consistent with other employee compensation.

Recommendation: Recommend approval of Resolution No. 17-34 which states the MERC Commission approves ratification of the contract.

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

OCTOBER

AS OF: 10/6/2017 16:16

		Tentative calendar for the month of				Tentative calendar for the month of				
		SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY		
ASCH		Live Nation Nick Offerman 5:30pm and 8:00pm	PAL Francis Ford Coppola 7:30pm	OSO Special Amos Lee 7:30pm	OSO Presentation Paul Anka & His Big Band 7:30pm	JR Affiliates LLC Joe Bonamassa 8:00pm	True West The Piano Guys 8:00pm	OSO Special Harry Potter Part 2 7:30pm		
KA							OBT Rhapsody in Blue 7:00pm Open Rehearsal	OBT Rhapsody in Blue 7:30pm		
NMK		Pixie Dust Productions Billy Elliot 2:00pm	Portland'5 Presents Nat Geo/Terry Virts 11:00am and 7:30pm	Powell's Books Stephen & Owen King 7:30pm		White Bird Complexions 7:30pm	White Bird Complexions 7:30pm	White Bird Complexions 7:30pm		
WIN				Portland'5 Presents Hands Up 9:00am and 12:00pm	Portland'5 Presents Hands Up 9:00am	Portland'5 Presents Hands Up 9:00am	Portland'5 American Brass Quintet 7:30pm	Rasika Dance of the Hummingbirds 7:00pm		
AHH		Stumptown Stages Phantom 2:00pm Brunish Theatre				Stumptown Stages Phantom 7:30pm Brunish Theatre	Stumptown Stages Phantom 7:30pm Brunish Theatre	Stumptown Stages Phantom 7:30pm Brunish Theatre		
OCC	EXPO									
ASCH		OSO Special Harry Potter Part 2 2:00pm & 7:30pm	Live Nation Alt-J 8:00pm	Live Nation Alt-J 8:00pm	AEG Live The War on Drugs 8:00pm	PAL George Saunders 7:30pm	Warren Miller Warren Miller 7:30pm	OSO Classical Shostakovich 10:00am Open Rehearsal 7:30pm Performance		
KA		OBT Rhapsody in Blue 2:00pm				OBT Rhapsody in Blue 12pm Student Performance 7:30pm Performance	OBT Rhapsody in Blue 7:30pm	OBT Rhapsody in Blue 7:30pm		
NMK			Emporium Presents Gillian Welch 8:00pm	Emporium Presents Gillian Welch 8:00pm		White Bird Paul Taylor Dance 7:30pm	White Bird Paul Taylor Dance 7:30pm	White Bird Paul Taylor Dance 7:30pm		
WIN							NASAA NASAA Conference 2:00pm	Portland'5 Presents Kaki King 7:30pm		
AHH		Stumptown Stages Phantom 2:00pm Brunish Theatre				Stumptown Stages Phantom 7:30pm Brunish Theatre	Stumptown Stages Phantom 7:30pm Brunish Theatre	Stumptown Stages Phantom 7:30pm Brunish Theatre		
OCC	EXPO									
ASCH		OSO Classical Shostakovich 7:30pm	OSO Classical Shostakovich 7:30pm		OSO Presentation Take Me to the River 7:30pm		Monqui Kurt and Courtney 8:00pm	OSO Pops #1 Phantoms of Orchestra 7:30pm		
KA				Portland'5 Presents A Night w/Janis Joplin 7:30pm				Portland'5 Presents Keller Centennial Celebration 1:00pm		
NMK		Portland'5 Presents Yolanda Del Rio 6:00pm					OCT Judy Moody 7:00pm Open Rehearsal	OCT Judy Moody 2:00pm and 5:00pm		
WIN				Portland'5 Presents Simply Three 7:30pm			Portland'5 Presents One Woman Sex in the City 7:30pm	Portland'5 Presents One Woman Sex in the City 1:00pm and 7:30pm		
AHH		Stumptown Stages Phantom 2:00pm BT Latino Art Wrkshp/Recep 2:00pm Rotunda/Main St/Win Lob								
OCC	EXPO									
ASCH		OSO Pops #1 Phantoms of Orchestra 2:00pm			Portland'5 Presents Dracula 7:30pm			OSO Classical #3 Mozart's Jupiter Symphony 7:30pm		
KA										
NMK		OCT Judy Moody 11:00am and 2:00pm	Portland'5 Presents Hudson 7:30pm	All Staff Meeting 6:00pm	OCT/Judy Moody 9:45am and 11:45am Powell's/Rupi Kaur 7:30pm	OCT Judy Moody 9:45am and 11:45am Two shows, one call time	OCT Judy Moody 9:45am and 11:45am Two shows, one call time	OCT Judy Moody 2:00pm and 5:00pm		
WIN		Portland'5 Presents One Woman Sex in the City 1:00pm						Japanese Cool Nature Japanese 5:30pm		
AHH										
OCC	EXPO									
ASCH		OSO Classical #3 Mozart's Jupiter Symphony 2:00pm	OSO Classical #3 Mozart's Jupiter Symphony 7:30pm	Double Tee Morrissey 8:00pm						
KA										
NMK		OCT Judy Moody 11:00am and 2:00pm	Kaise Permanente Saward Lecture Frances Jensen 7:30pm							
WIN		Portland'5 Presents Las Migas 7:30pm								
AHH										
OCC	EXPO									

NOTE: ALL LISTED EVENTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

ASCH = Arlene Schnitzer Concert Hall KA = Keller Auditorium NMK = Newmark Theatre WIN = Dolores Winningstad Theatre AHH = Antoinette Hatfield Hall BT = Brunish Theatre

NOVEMBER

AS OF: 10/6/2017 16:16

		Tentative calendar for the month of					Tentative calendar for the month of			
		SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY		
ASCH					1	2	3	OSO Classical #4 Gershwin 7:30pm		
KA							Emporium Presents Tedeschi Trucks Band 7:30pm	Emporium Presents Shopkins 1:00pm		
NMK					OCT Judy Moody 9:45am and 11:45am Two shows, one call time	OCT Judy Moody 9:45am and 11:45am Two shows, one call time	OCT Judy Moody 9:45am and 11:45am Two shows, one call time	OCT Judy Moody 2:00pm and 5:00pm		
WIN								Marathon Scholars Rally on the Risers 7:00pm		
AHH										
OCC	EXPO				Design-2-Part	Design-2-Part	NW Martial Arts Fest Time Out for Women Ski Fever & Snowboard	NW Martial Arts Fest Time Out for Women Ski Fever & Snowboard		
ASCH		OSO Classical #4 Gershwin 7:30pm	OSO Classical #4 Gershwin 7:30pm	7	8	OSO Special Music of Michael Jackson 7:30pm	9	10	11 PAL/Wordstock 10:00am and 12:00pm Two shows, one call time PYP/PYP #1 7:30pm	
KA				Broadway Across America The Bodyguard 7:30pm	Broadway Across America The Bodyguard 7:30pm	Broadway Across America The Bodyguard 7:30pm	Broadway Across America The Bodyguard 7:30pm	Broadway Across America The Bodyguard 2:00pm and 7:30pm		
NMK		OCT/Judy Moody 2:00pm Steve Litman Presents Mike Birbiglia 7:30pm and 9:45pm Two shows, one call time			OCT Judy Moody 9:45am and 11:45am Two shows, one call time	OCT Judy Moody 9:45am and 11:45am Two shows, one call time		OCT Judy Moody 2:00pm and 5:00pm		
WIN						Gavin Bondy Kate & The Crocodiles 8:00pm	PAL Back Fence 8:00pm	PAL/Wordstock 9:45am, 11:30am, 1:15pm, 3:00pm, & 4:45pm		
AHH							Portland'5 Presents Lit Crawl 6:00pm Rotunda Lobby	PAL/Wordstock 10:00am, 11:45am, 1:45pm, 3:30pm, 5:15pm Brunish Theatre		
OCC	EXPO	NW Martial Arts Fest Abbey Foundation Ski Fever & Snowboard				Simon Benson Awards Metro RV Show	Holiday Food & Gift Hot Tub Metro RV Show	Holiday Food & Gift Hot Tub/NW Food & Wine Metro RV Show		
ASCH		OSO Kids #1 Star Wars 2:00pm MYS/MYS #1 7:30pm	13	MagicSpace Ent. David Sedaris 7:30pm	14	Portland'5 Presents Hip Hop Nutcracker 11:00am and 8:00pm	15	16	17	18
KA		Broadway Across America The Bodyguard 1:00pm and 6:30pm								
NMK		OCT Judy Moody 2:00pm		OHSU Foundation Tanabe Lecture 7:00pm	OCT Judy Moody 9:45am and 11:45am Two shows, one call time	OCT Judy Moody 9:45am and 11:45am Two shows, one call time	OCT/Judy Moody 9:45am and 11:45am Jones Entertainment David Feherty 7:30pm	OCT Judy Moody 2:00pm and 5:00pm		
WIN		PDX Jazz Jason Moran 7:30pm						Portland Playhouse Fall Fest Shakespeare 12:00pm and 5:00pm		
AHH			Portland'5 Ctrs for the Arts Noontime Showcase Liv Wisler 12:00pm Rotunda Lobby							
OCC	EXPO	Holiday Food & Gift Hot Tub/Amer Water Works Metro RV Show	American Water Works	American Water Works				Gem Faire	Gem Faire/Holiday Junk Fest Denim & Diamonds Gun & Knife/Cat Fanciers	
ASCH		OSO Classical #5 Beethoven 2:00pm	20	OSO Special The Tenors Christmas 7:30pm	21	True West Tori Amos 8:00pm	22	23	24	25
KA						Ptld's Singing Xmas Tree Ptld's Singing Xmas Tree 7:30pm Open Rehearsal		Ptld's Singing Xmas Tree Ptld's Singing Xmas Tree 2:00pm	Ptld's Singing Xmas Tree Ptld's Singing Xmas Tree 2:00pm and 7:00pm	
NMK		OCT Judy Moody 2:00pm	Portland'5 Presents Nat Geo Live David Doublet/Jennifer Hayes 11:00am and 7:30pm						Portland Choir & Orchestra Portland Choir & Orchestra 2:00pm and 7:00pm	
WIN		Portland Playhouse Fall Fest Shakespeare 12:00pm and 5:00pm								
AHH										
OCC	EXPO	Gem Faire Cat Fanciers Rose City Gun & Knife						Christmas Bazaar	Christmas Bazaar	
ASCH		OSO Pops #2 A Pops Holiday 2:00pm	26	Monqui Presents The National 8:00pm	27	OSO Presentation Bill Murray 7:30pm	28	29	30	
KA		Ptld's Singing Xmas Tree Ptld's Singing Xmas Tree 2:00pm						Ptld's Singing Xmas Tree Ptld's Singing Xmas Tree 7:30pm		
NMK			Portland'5 Presents Bela Fleck and Abigail Washburn 7:30pm	Portland'5 Presents Jane Lynch 7:30pm						
WIN										
AHH							Stumptown Stages A Christmas Carol 7:30pm			
OCC	EXPO			JLC Live	JLC Live		JLC Live Festival of the Trees			
		Christmas Bazaar								

NOTE: ALL LISTED EVENTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

ASCH = Arlene Schnitzer Concert Hall KA = Keller Auditorium NMK = Newmark Theatre WIN = Dolores Winningstad Theatre AHH = Antoinette Hatfield Hall BT = Brunish Theatre

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