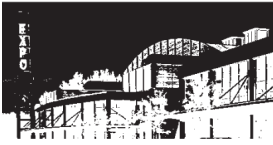

MERC Commission Meeting

November 1, 2017
12:15 pm

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



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

www.oregonmetro.gov



Metro | *Exposition Recreation Commission*

Agenda

Meeting: Metro Exposition Recreation Commission Meeting
Date: Wednesday, November 1, 2017
Time: 12:15 – 1:00p.m.
Place: Oregon Convention Center, VIP Suite B

CALL TO ORDER

12:15 1. QUORUM CONFIRMED

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

12:25 3. COMMISSION/COUNCIL LIAISON COMMUNICATIONS **Karis Stoudamire-Phillips, Sam Chase**

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

- Financial Report, pages 4-20
- Venue Business Reports, pages 22-26

12:35 5. CONSENT AGENDA

- Record of MERC Actions, October 4, 2017, pages 28-30

12:40 6. ACTION AGENDA **Brent Shelby**

6.1 Resolution 17-35: For the purpose of approving a contract with Banlin Construction LLC for construction of the Oregon Convention Center loading dock improvements project and delegating authority to the General Manager of Visitor Venues to execute the contract. Resolution page 32, Exhibit A page 33-87, Staff Report page 88-89.

6.2 Resolution 17-36: For the purpose of approving the Scope of Work and Cost Proposals from KONE, Inc. for the Arlene Schnitzer Concert Hall (ASCH) Front-of-House and Back-of-House Elevator Modernization and authorizing the General Manager of Visitor Venues to execute the contract documents with KONE, Inc. Resolution page 90, Exhibit A page 91-152, Staff Report page 153-154. **Nancy Strening**

6.3 Resolution 17-37: For the purpose of approving the contract with Carleton Hart Architecture, PC, for the Antoinette Hatfield Hall Roof Replacement and Parapet Repair and authorizing the General Manager of Visitor Venues to execute the contract. Resolution page 155, Exhibit A page 156-197, Staff Report page 198. **Nancy Strening**

ADJOURN

MERC Commission Meeting

November 1, 2017
12:15 pm

Financial Report

SEPTEMBER 2017

FINANCIAL INFORMATION

For Management Purposes only



OREGN

Oregon
Convention
Center



Memo



Date: November 1, 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 Dañel Malán

From: Rachael Lembo – MERC Finance Manager
Re: Financial Updates for September 2017

Total MERC Venues – September Financial Statistics

MERC Venues Events & Attendance

Cirque du Soleil’s “Kurios” had 37 performances and nearly 60,000 attendees in September. Rose City Comic Con had approx. 55,000 attendees, up from 42,000 in 2016. These two events drove attendance increases at Expo and OCC. At Portland’5 there were no Broadway events in September, which resulted in lower attendance than the prior year. The FY2017-18 Broadway season begins in November 2017.

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%)
September	107	148,832	136	190,916	29, 27%	42,084, 28%
Q1 Total	284	342,829	281	322,419	(3), (1%)	(20,410), (6%)

MERC Venues Revenues & Expense

Total venue event revenues (charges for services and food & beverage) through September are \$8.5 million, 18% of annual budget. Overall operating expenses through August are \$12.8 million, 20% of annual budget.

Food & Beverage

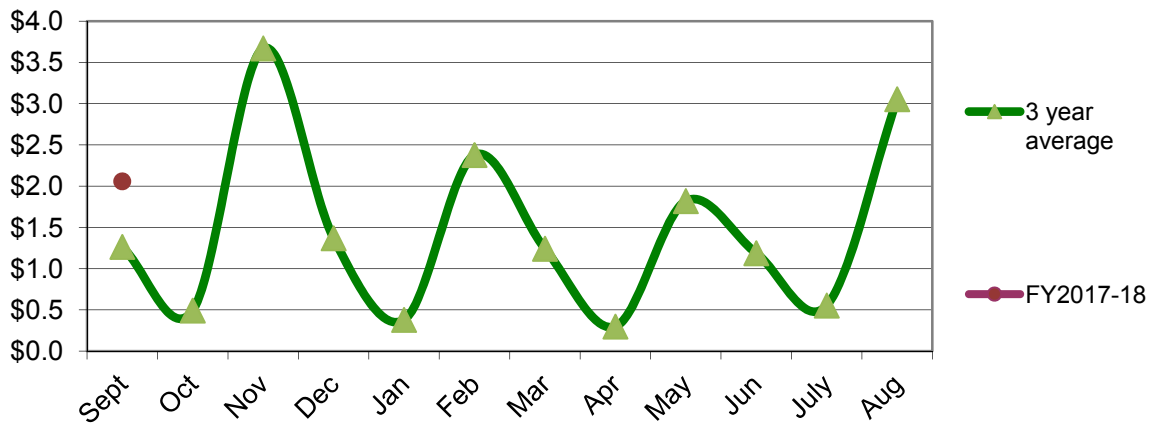
All venues had strong food and beverage sales in September, though Expo’s sales look low because the Cirque sales will be reflected in October when the event closed. The current YTD food and beverage margin for all venues combined is 10.1%, a huge turnaround from August.

Net Operations

Total MERC net operations through September are negative \$1.6 million, slightly more than the prior year. This is discussed in more detail by venue below.

Transient Lodging Tax (TLT)

The first TLT payment of the fiscal year was received in September, and was \$395k higher than September 2016, a 24% increase. The November payment, which includes the bulk of the July-Sept collections, is usually the largest of the year and will provide a good sense of what to expect from TLT this year.



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. Average	% Var Average	% Var PY
Revenues	YTD	YTD	YTD	YTD			
Food and Beverage	3,962,339	5,871,773	3,886,229	3,661,272	4,573,447	-19.9%	-5.8%
Charges for Services	4,746,085	5,820,033	5,395,376	4,860,562	5,320,498	-8.6%	-9.9%
Lodging Tax	1,120,046	1,010,102	1,661,817	2,059,874	1,263,988	63.0%	24.0%
Other	88,076	42,765	(55,523)	577,508	25,106	2200.3%	-1140.1%
Total Revenues	9,916,545	12,744,674	10,887,899	11,159,217	11,183,039	-0.2%	2.5%
Expenses							
Food and Beverage	2,926,216	4,012,011	3,140,964	3,290,380	3,359,730	-2.1%	4.8%
Personnel Services	4,179,376	4,536,292	4,688,255	4,873,448	4,467,974	9.1%	4.0%
Materials and Services	2,707,383	3,149,178	3,450,885	3,442,907	3,102,482	11.0%	-0.2%
Other Operating Expense	1,001,788	1,138,094	796,073	1,157,788	978,651	18.3%	45.4%
Total Operating Expense	10,814,763	12,835,576	12,076,176	12,764,523	11,908,838	7.2%	5.7%
Net Operations	(898,218)	(90,902)	(1,188,277)	(1,605,306)	(725,799)	121.2%	35.1%
Food & Beverage Margin \$	1,036,123	1,859,762	745,265	370,892	1,213,717	-69.4%	-50.2%
Food & Beverage Margin %	26.1%	31.7%	19.2%	10.1%	25.7%		

Oregon Convention Center

September total revenues closed at \$4.7 million, \$724k above September 2016, almost half of which is from the higher TLT payment. Attendance increased a net 22,000, primarily due to the growth of the Rose City Comic Con event. Food and beverage sales were up and produced a margin of 30% for the month. Operating expenses for the month were \$3.1 million.

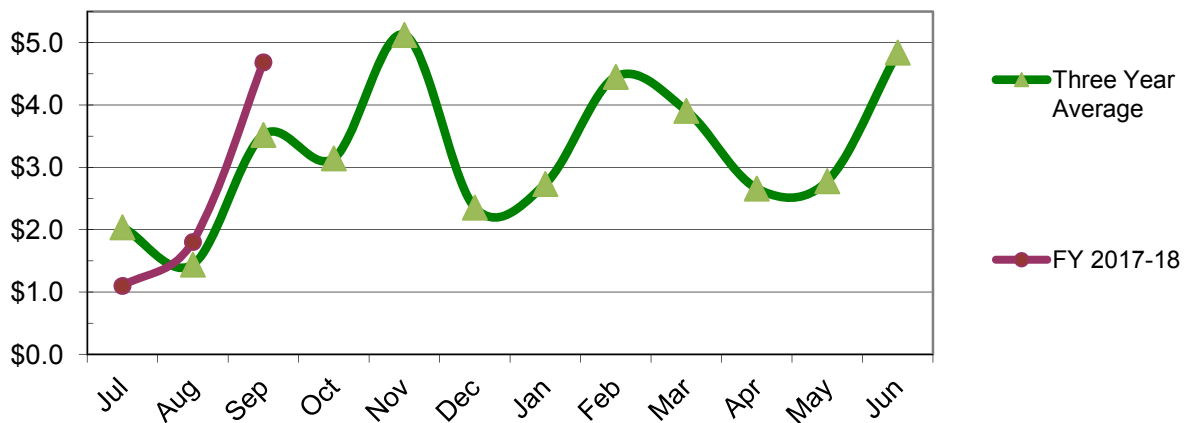
Highest Grossing Events

Event*	Gross Event Revenue	% of Event Revenue
North American Assoc of State & Provincial Lotteries	\$453,796	16%
Rose City Comic Con 2017	450,469	16%
USA/Canada Lions Leadership Forum	373,099	13%
2B Tualatin Party	353,737	13%
All other Events	1,137,367	41%
Total Event Revenues	\$2,768,468	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.

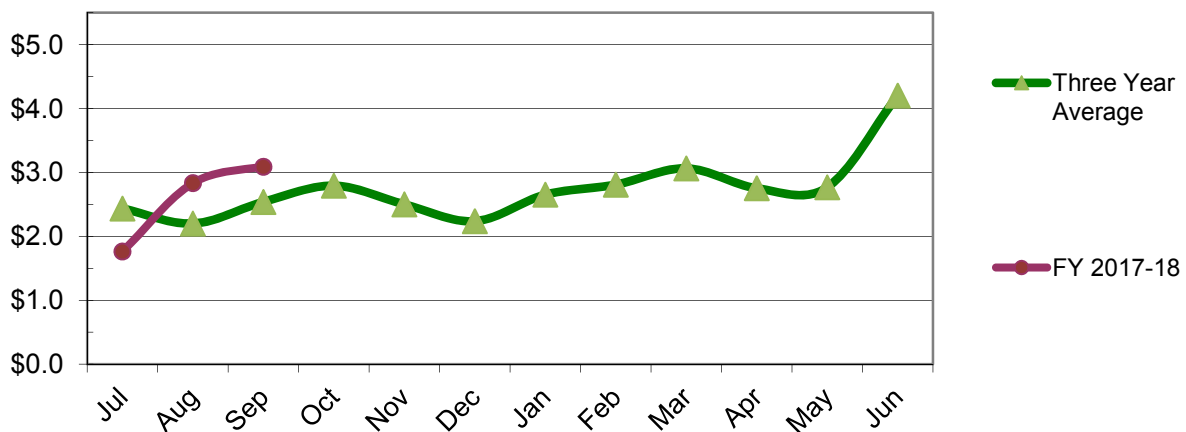
OCC Program Revenues by Month

Shown in Millions



OCC Program Expense by Month

Shown in Millions



Portland's Centers for the Arts

September total revenues closed at \$1.1 million, slightly below September 2016 which included the final performances of The Lion King. Food and beverage sales were up and produced a margin of 30% for the month. Operating expenses for the month were \$1.2 million.

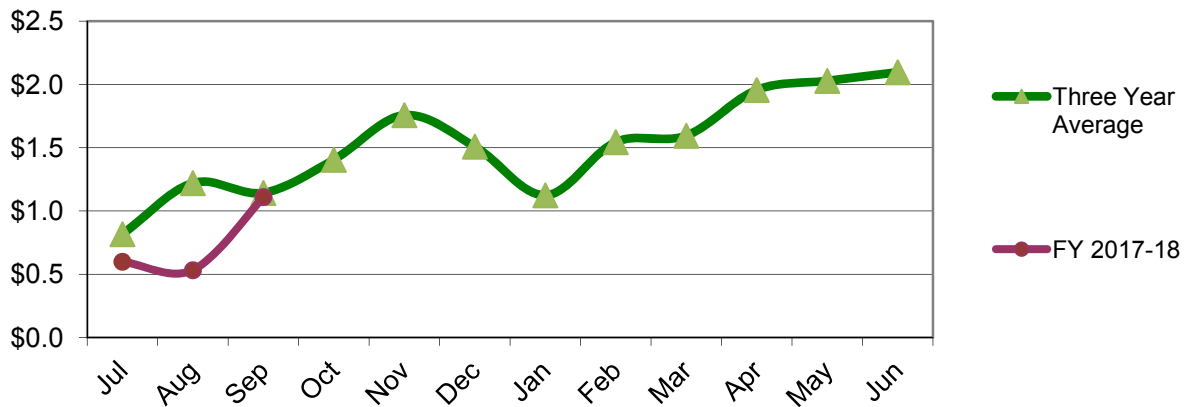
Highest Grossing Events

Event*	Gross Event Revenue	% of Event Revenue
Sturgill Simpson	\$103,781	12%
Billy Elliot	93,214	11%
Hillary Rodham Clinton	69,804	8%
The Together Tour	57,354	7%
All other Events	533,113	62%
Total Event Revenues	\$857,266	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.

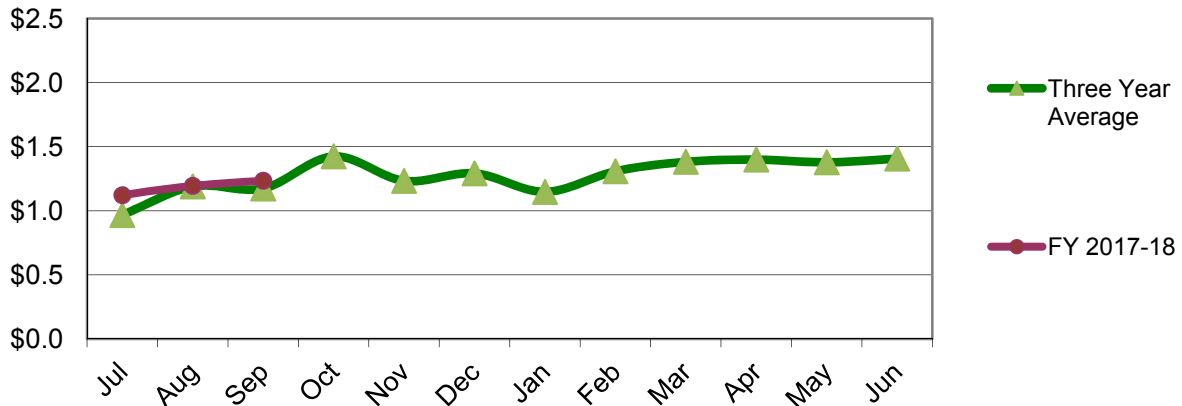
P5CA Program Revenue by Month

Shown in Millions



P5CA Program Expense by Month

Shown in Millions



Portland Expo Center

September total revenues closed at \$296 thousand. This does not include all of the Cirque du Soleil event revenues, which closed in October, and has anticipated revenues of over \$1 million. Operating expenses for the month were \$456 thousand.

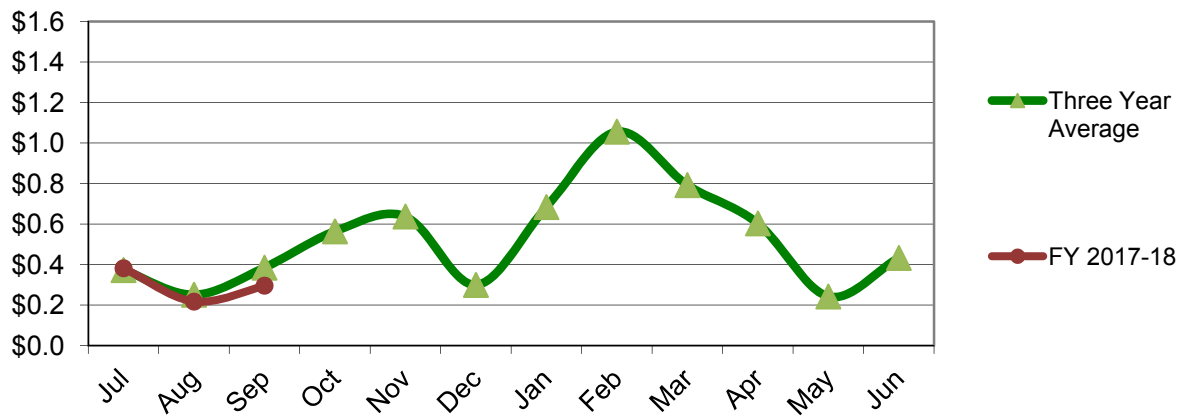
Highest Grossing Events

Event*	Gross Event Revenue	% of Event Revenue
Cirque du Soleil Kurios	\$188,369	44%
2017 Portland Fall RV & Van Show	104,050	24%
Northwest Quilting Expo	71,893	17%
Rose City Gun and Knife Show	23,360	5%
All other Events	37,420	9%
Total Event Revenues	\$425,092	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.

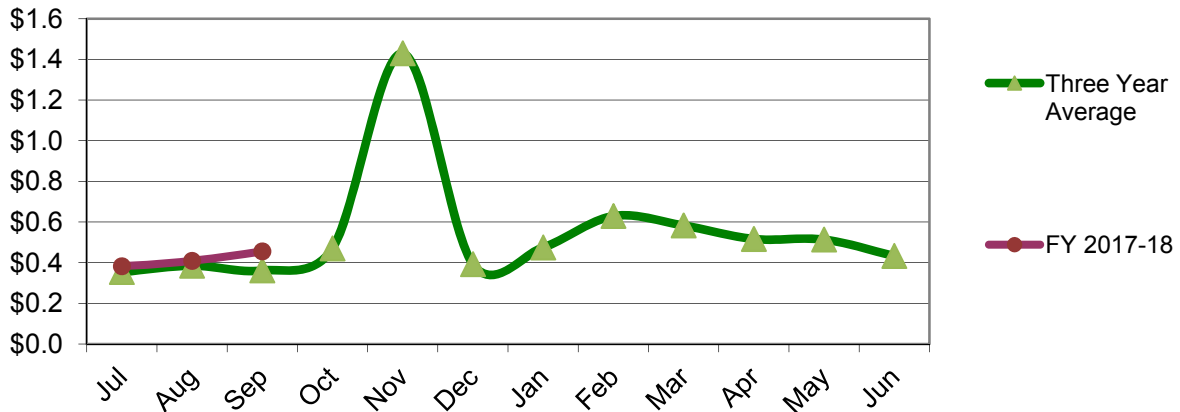
Expo Program Revenue by Month

Shown in Millions



Expo Program Expense by Month

Shown in Millions



MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

All Departments

September 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actual	Prior Year to Date Actual	Current Year Budget	% of Prior Year	% of Annual Budget
Operations							
Charges for Services	2,102,734	2,357,138	4,860,562	5,395,376	28,783,091	90.09%	16.89%
Contributions from Governments	-	-	-	-	889,441	0.00%	0.00%
Contributions from Private Sources	-	-	300,000	-	75,000	0.00%	400.00%
Enhanced Marketing VDF	-	-	-	-	491,122	0.00%	0.00%
Food and Beverage Revenue	1,981,605	1,943,817	3,661,272	3,886,229	18,524,543	94.21%	19.76%
Grants	-	1,000	50,000	2,000	38,000	2500.00%	131.58%
Interest Earnings	58,837	(77,719)	109,238	(148,751)	445,000	-73.44%	24.55%
Lodging Tax	2,059,874	1,661,817	2,059,874	1,661,817	13,052,470	123.95%	15.78%
Miscellaneous Revenue	4,895	15,340	18,271	21,229	113,765	86.07%	16.06%
Transfers-R	33,333	23,333	99,999	69,999	400,000	142.86%	25.00%
Visitor Development Fund Alloc	-	-	-	-	4,488,395	0.00%	0.00%
Total Revenues	6,241,278	5,924,725	11,159,217	10,887,899	67,300,827	102.49%	16.58%
Food & Beverage Services	1,509,174	1,458,135	3,290,380	3,140,964	15,252,656	104.76%	21.57%
Materials and Services	1,254,262	1,176,484	3,442,907	3,450,885	18,326,503	99.77%	18.79%
Personnel Services	1,730,830	1,619,085	4,873,448	4,688,255	22,106,786	103.95%	22.05%
Transfers-E	384,096	(163,947)	1,157,788	796,073	5,830,412	145.44%	19.86%
Visitor Development Marketing	-	-	-	-	2,508,282	0.00%	0.00%
Total Expenditures	4,878,362	4,089,757	12,764,523	12,076,176	64,024,639	105.70%	19.94%
Net Operations	1,362,916	1,834,968	(1,605,306)	(1,188,277)	3,276,188		
Capital							
Contributions from Private Sources	-	-	-	-	762,501	0.00%	0.00%
Grants	-	1,000	-	17,464	-	0.00%	0.00%
Lodging Tax	-	-	-	-	6,741,441	0.00%	0.00%
Miscellaneous Revenue	-	1,732	-	1,732	-	0.00%	0.00%
Transfers-R	-	26,667	-	80,001	-	0.00%	0.00%
Total Revenues	-	29,399	-	99,197	7,503,942	0.00%	0.00%
Capital Outlay	1,121,945	261,959	1,509,381	1,036,908	14,071,310	145.57%	10.73%
Materials and Services	101,306	88	501,012	88	1,130,000	571278.95%	44.34%
Total Expenditures	1,223,252	262,047	2,010,393	1,036,996	15,201,310	193.87%	13.23%
Net Capital	(1,223,252)	(232,648)	(2,010,393)	(937,799)	(7,697,368)		
12 Month Fund Balance Increase	139,664	1,602,320	(3,615,699)	(2,126,076)	(4,421,180)		

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Convention Center Operating Fund

September 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Charges for Services	1,206,259	1,058,498	2,633,184	2,067,496	11,789,193	127.4%	22.3%
Contributions from Private Sources	-	-	300,000	-	-	0.0%	0.0%
Enhanced Marketing VDF	-	-	-	-	491,122	0.0%	0.0%
Food and Beverage Revenue	1,709,942	1,511,420	3,002,610	2,738,064	13,050,157	109.7%	23.0%
Grants	-	1,000	-	2,000	-	0.0%	0.0%
Interest Earnings	24,434	(28,824)	45,788	(58,582)	190,000	-78.2%	24.1%
Lodging Tax	1,832,225	1,477,951	1,832,225	1,477,951	11,661,784	124.0%	15.7%
Miscellaneous Revenue	1,876	9,275	9,803	6,270	17,700	156.3%	55.4%
Transfers-R	(88,925)	(67,396)	(234,482)	(202,188)	(937,926)	116.0%	25.0%
Visitor Development Fund Alloc	-	-	-	-	3,784,454	0.0%	0.0%
Total Revenues	4,685,810	3,961,924	7,589,127	6,031,012	40,046,484	125.8%	19.0%
Food & Beverage Services	1,188,798	1,118,844	2,540,066	2,252,741	10,840,964	112.8%	23.4%
Materials and Services	735,919	606,461	1,829,716	1,752,752	9,848,744	104.4%	18.6%
Personnel Services	944,073	838,977	2,656,352	2,477,363	11,199,173	107.2%	23.7%
Transfers-E	219,750	(78,719)	659,250	453,691	2,830,488	145.3%	23.3%
Visitor Development Marketing	-	-	-	-	2,491,122	0.0%	0.0%
Total Expenditures	3,088,540	2,485,563	7,685,384	6,936,547	37,210,491	110.8%	20.7%
Net Operations	1,597,270	1,476,361	(96,256)	(905,534)	2,835,993		
Capital							
Contributions from Private Sources	-	-	-	-	476,563	0.0%	0.0%
Grants	-	-	-	7,500	-	0.0%	0.0%
Miscellaneous Revenue	-	1,732	-	1,732	-	0.0%	0.0%
Transfers-R	-	26,667	-	80,001	16,000,000	0.0%	0.0%
Total Revenues	-	28,399	-	89,233	16,476,563	0.0%	0.0%
Capital Outlay	147,862	207,441	369,148	376,551	9,200,500	98.0%	4.0%
Materials and Services	19,319	88	50,675	88	355,000	57782.2%	14.3%
Total Expenditures	167,181	207,529	419,823	376,639	9,555,500	111.5%	4.4%
Net Capital	(167,181)	(179,130)	(419,823)	(287,406)	6,921,063		
12 Month Fund Balance Increase	1,430,089	1,297,231	(516,080)	(1,192,941)	9,757,056		

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Portland's 5 Centers for the Arts Fund

September 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Charges for Services	706,814	965,808	1,681,697	2,646,225	12,170,223	63.6%	13.8%
Contributions from Governments	-	-	-	-	889,441	0.0%	0.0%
Contributions from Private Sources	-	-	-	-	75,000	0.0%	0.0%
Food and Beverage Revenue	202,022	271,467	418,328	769,301	3,175,764	54.4%	13.2%
Grants	-	-	-	-	38,000	0.0%	0.0%
Interest Earnings	16,035	(27,031)	30,377	(46,547)	170,000	-65.3%	17.9%
Lodging Tax	227,650	183,866	227,650	183,866	1,390,686	123.8%	16.4%
Miscellaneous Revenue	2,352	5,149	4,732	10,272	61,590	46.1%	7.7%
Transfers-R	(44,185)	(36,852)	(121,556)	(110,557)	(486,226)	109.9%	25.0%
Visitor Development Fund Alloc	-	-	-	-	703,941	0.0%	0.0%
Total Revenues	1,110,688	1,362,407	2,241,227	3,452,559	18,188,419	64.9%	12.3%
Food & Beverage Services	142,261	215,205	353,635	568,273	2,503,553	62.2%	14.1%
Materials and Services	439,223	465,144	1,346,806	1,368,451	6,323,561	98.4%	21.3%
Personnel Services	543,056	562,788	1,519,898	1,600,018	7,862,673	95.0%	19.3%
Transfers-E	110,177	(45,409)	330,531	224,457	1,322,109	147.3%	25.0%
Total Expenditures	1,234,718	1,197,728	3,550,870	3,761,199	18,011,896	94.4%	19.7%
Net Operations	(124,030)	164,679	(1,309,642)	(308,640)	176,523		
Capital							
Contributions from Private Sources	-	-	-	-	114,375	0.0%	0.0%
Grants	-	1,000	-	9,964	-	0.0%	0.0%
Total Revenues	-	1,000	-	9,964	114,375	0.0%	0.0%
Capital Outlay	916,002	25,651	957,111	630,934	2,004,120	151.7%	47.8%
Materials and Services	-	-	1,150	-	325,000	0.0%	0.4%
Total Expenditures	916,002	25,651	958,260	630,934	2,329,120	151.9%	41.1%
Net Capital	(916,002)	(24,651)	(958,260)	(620,970)	(2,214,745)		
12 Month Fund Balance Increase	(1,040,032)	140,027	(2,267,903)	(929,610)	(2,038,222)		

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Expo Fund

September 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Charges for Services	189,661	332,832	545,681	681,655	4,823,675	80.1%	11.3%
Food and Beverage Revenue	69,640	160,930	240,334	378,864	2,298,622	63.4%	10.5%
Interest Earnings	2,737	(5,453)	5,556	(11,430)	35,000	-48.6%	15.9%
Miscellaneous Revenue	667	915	3,737	4,687	34,475	79.7%	10.8%
Transfers-R	33,333	23,333	99,999	69,999	400,000	142.9%	25.0%
Total Revenues	296,038	512,556	895,307	1,123,775	7,591,772	79.7%	11.8%
Food & Beverage Services	178,115	124,086	396,679	319,950	1,908,139	124.0%	20.8%
Materials and Services	63,627	100,333	231,903	246,730	1,615,813	94.0%	14.4%
Personnel Services	159,824	148,336	456,202	419,025	1,939,455	108.9%	23.5%
Transfers-E	53,984	(39,994)	161,952	112,400	1,670,090	144.1%	9.7%
Visitor Development Marketing	-	-	-	-	17,160	0.0%	0.0%
Total Expenditures	455,550	332,761	1,246,736	1,098,105	7,150,657	113.5%	17.4%
Net Operations	(159,512)	179,795	(351,429)	25,670	441,115		
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	58,082	28,867	183,122	29,422	2,616,690	622.4%	7.0%
Materials and Services	81,987	-	449,187	-	450,000	0.0%	99.8%
Total Expenditures	140,068	28,867	632,309	29,422	3,066,690	2149.1%	20.6%
Net Capital	(140,068)	(28,867)	(632,309)	(29,422)	(45,127)		
12 Month Fund Balance Increase	(299,580)	150,929	(983,738)	(3,753)	395,988		

MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

MERC Admin Sub Fund

September 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
Operations							
Grants	-	-	50,000	-	-	0.0%	0.0%
Interest Earnings	15,631	(16,410)	27,517	(32,192)	50,000	-85.5%	55.0%
Transfers-R	133,111	104,248	356,038	312,744	1,424,152	113.8%	25.0%
Total Revenues	148,742	87,838	433,555	280,552	1,474,152	154.5%	29.4%
Materials and Services	15,493	4,546	34,482	82,952	538,385	41.6%	6.4%
Personnel Services	83,876	68,984	240,996	191,848	1,105,485	125.6%	21.8%
Transfers-E	185	175	6,055	5,525	7,725	109.6%	78.4%
Total Expenditures	99,554	73,705	281,533	280,325	1,651,595	100.4%	17.0%
Net Operations	49,188	14,133	152,022	227	(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	49,188	14,133	152,022	227	(12,536,002)		

MERC Food and Beverage Margins

September 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date	Prior Year to Date Actual	Annual Budget
Convention Center Operating Fund					
Food and Beverage Revenue	1,709,942	1,511,420	3,002,610	2,738,064	13,050,157
Food & Beverage Services	1,188,798	1,118,844	2,540,066	2,252,741	10,840,964
Food and Beverage Gross Margin	521,144	392,576	462,544	485,323	2,209,193
Food and Beverage Gross Margin %	30.48%	25.97%	15.40%	17.73%	16.93%
Portland'S Centers for the Arts Fund					
Food and Beverage Revenue	202,022	271,467	418,328	769,301	3,175,764
Food & Beverage Services	142,261	215,205	353,635	568,273	2,503,553
Food and Beverage Gross Margin	59,761	56,262	64,694	201,028	672,211
Food and Beverage Gross Margin %	29.58%	20.73%	15.46%	26.13%	21.17%
Expo Fund					
Food and Beverage Revenue	69,640	160,930	240,334	378,864	2,298,622
Food & Beverage Services	178,115	124,086	396,679	319,950	1,908,139
Food and Beverage Gross Margin	(108,475)	36,844	(156,345)	58,914	390,483
Food and Beverage Gross Margin %	-155.76%	22.89%	-65.05%	15.55%	16.99%
MERC Fund Total					
Food and Beverage Revenue	1,981,605	1,943,817	3,661,272	3,886,229	18,524,543
Food & Beverage Services	1,509,174	1,458,135	3,290,380	3,140,964	15,252,656
Food and Beverage Gross Margin	472,431	485,682	370,892	745,265	3,271,887
Food and Beverage Gross Margin %	23.84%	24.99%	10.13%	19.18%	17.66%

MERC Statement of Fund Balances and Reserves

September 2017

	Annual Basis			Monthly Basis	
	FY 2016-17 Actuals	FY 2017-18 Budget	FY 2017-18 YTD Actuals	FY 2016-17 September	FY 2017-18 September
<u>Oregon Convention Center</u>					
Beginning Fund Balance	21,770,042	24,966,039	25,203,578	18,383,900	23,257,409
Fund Balance Inc (Dec)	3,433,536	9,757,056	(516,080)	(1,192,941)	1,430,089
Ending Fund Balance	25,203,578	34,723,095	24,687,498	17,190,959	24,687,498
<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	11,661,288	11,715,833
Fund Balance Inc (Dec)	(234,956)	(2,038,222)	(2,267,903)	(929,610)	(1,040,032)
Ending Fund Balance	12,943,704	11,254,813	10,675,801	10,731,678	10,675,801
<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	2,703,113	1,288,218
Fund Balance Inc (Dec)	(870,728)	395,988	(983,738)	(3,753)	(299,580)
Ending Fund Balance	1,972,376	2,923,000	988,638	2,699,360	988,638
<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	14,179,839	16,048,362
Fund Balance Inc (Dec)	1,774,125	(12,536,002)	152,022	227	49,188
Ending Fund Balance	15,945,528	6,221,583	16,097,549	14,180,066	16,097,549
<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	46,928,142	52,309,822
Fund Balance Inc (Dec)	4,101,976	(4,421,180)	(3,615,699)	(2,126,075)	139,664
Ending Fund Balance	56,065,185	55,122,491	52,449,487	44,802,067	52,449,487

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

OCC	September 2014		September 2015		September 2016		September 2017		Net Change from Prior Year		September 2017	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Tradeshows/Conventions	8	9,039	7	7,686	8	10,720	7	8,050	(1)	(2,670)	1,513,184	55%
Consumer Public Shows	2	25,832	1	30,000	3	33,570	4	57,917	1	24,347	533,417	19%
Miscellaneous									-	-	-	0%
Miscellaneous -In-House	18	257	14	260	12	375	13	165	1	(210)	5,190	0%
Meetings	15	3,858	14	8,566	13	7,560	14	6,570	1	(990)	160,746	6%
Catering	7	2,859	5	2,926	9	3,345	5	5,216	(4)	1,871	555,931	20%
Totals	50	41,845	41	49,438	45	55,570	43	77,918	(2)	22,348	\$ 2,768,468	100%

Expo Center	September 2014		September 2015		September 2016		September 2017		Net Change from Prior Year		September 2017	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
Consumer Public Shows	7	21,208	6	20,152	6	20,786	3	17,095	(3)	(3,691)	215,108	51%
<i>Cirque Du Soleil</i>	-	-	-	-	-	-	37	59,273	37	59,273	188,369	44%
Miscellaneous	-	-	3	37	4	2,731	2	90	(2)	(2,641)	12,107	3%
Meetings	2	30	1	20	-	-	2	38	2	38	391	0%
Catering	-	-	-	-	-	-	-	-	-	-	-	0%
Tradeshows/Conventions	1	50	1	50	2	5,884	1	50	(1)	(5,834)	9,118	2%
Totals	10	21,288	11	20,259	12	29,401	8	17,273	(4)	(12,128)	\$ 236,723	56%
Totals w/Cirque du Soleil	10	21,288	11	20,259	12	29,401	45	76,546	33	47,145	\$ 425,092	100%

Portland '5	September 2014		September 2015		September 2016		September 2017		Net Change from Prior Year		September 2017	
	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Revenue	% of Rev.
Commercial (Non-Broadway)	23	22,980	9	18,133	15	26,611	20	18,243	5	(8,368)	637,950	74%
Broadway	-	-	8	14,660	6	16,550	-	-	(6)	(16,550)	-	0%
Resident Company	9	15,903	9	12,849	9	15,375	8	13,176	(1)	(2,199)	131,699	15%
Non-Profit	23	4,234	24	3,456	12	2,300	16	4,416	4	2,116	64,764	8%
Promoted/Co-Promoted	1	103	2	607	5	2,138	3	599	(2)	(1,539)	20,016	2%
Student	-	-	-	-	1	750	-	-	(1)	(750)	2,838	0%
Miscellaneous	1	57	1	130	2	137	1	18	(1)	(119)	-	0%
Totals	57	43,277	53	49,835	50	63,861	48	36,452	(2)	(27,409)	\$ 857,266	100%

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		
			Amended	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	303,592	5,696,408
Building Envelop Assessment	CPMO	Planning	150,000	-	150,000
Cooling System Design Consulting (Cooling Towers & Chillers)	CPMO	Planning	80,000	5,187	74,813
Loading Dock Improvements (Dock Locks, Enclosures, Levelers)	CPMO	Planning	360,000	11,260	348,741
Movable Partition Refurbishment	OCC	In Progress	180,000	18,491	161,509
Staff & Setup Supervisor Support Space Renovation	CPMO	Contracting	644,000	37,094	606,906
Security & Access					
Security Camera Replacements	CPMO	Design	450,000	-	450,000
Alerton Global Controller & Software Upgrade	OCC	In Progress	70,000	61,661	8,339
Integrated Door Access Controls	CPMO	Planning	300,000	-	300,000
Life & Safety					
Telecom MDF Fire Suppression Upgrade	OCC	On hold	55,000	-	55,000
Emergency Notification Upgrade	OCC	Complete	41,000	21,841	19,159
Fire Sprinkler System Design Consulting	OCC	Planning	50,000	-	50,000
Lighting & Electrical					
Exhibit Hall Lighting Control Replacement	CPMO	Design	275,000	-	275,000
Technology					
Telephone - Voice Over Internet Protocol (VOIP) Implementation	IS	Construction	352,500	12,555	339,945
Equipment					
AV Equipment	OCC	On going	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	626,562	8,928,938
% of Budget				7%	93%

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 2017-18 Budget		
			Amended	Actuals	Remaining
Food & Beverage					
85108 ArtBar Bar Replacement (Aramark)	CPMO	On hold	75,000	-	75,000
85110 Aramark Point Of Sale System Replacement	ARA / IS	Contracting	130,000	-	130,000
Venue Management					
8R089 Newmark Lighting Overhaul	P5	Complete	673,063	474,390	198,673
8R090 Winningstad - House Lighting Control & Dimmers	P5	Construction	273,550	149,042	124,508
8R143 Newmark LED Cyclorama Light Fixtures	P5	Complete	70,000	69,810	190
8R176 AHH Brunish Theater Electrical Improvements	P5	Construction	50,000	-	50,000
8R181 AHH, ASCH, Keller Assisted Listening System	P5	Complete	58,000	-	58,000
8R182 AHH, ASCH, Keller ADA Signage	P5	Planning	50,000	-	50,000
8R183 ASCH Soft Goods	P5	Design	100,000	-	100,000
8R184 Keller Balcony Front Fill Speakers	P5	Planning	50,000	-	50,000
8R185 Aerial Work Platform (Scissor lift)	P5	Complete	20,000	-	20,000
8R186 Banquet Chairs Replacement	P5	Planning	20,000	-	20,000
8R201 Keller light replacements	P5	Planning	12,000	-	12,000
CpMO Management					
8R098 Keller - Roof & Drains Replacement	CPMO	Complete	90,000	1,136	88,864
8R099 ASCH - Portland Sign Assessment & Refurb Scoping	CPMO	Complete	150,000	147,700	2,300
8R092 Schnitzer Orchestra Shell Replacement	CPMO	Planning	1,355,000	34,339	1,320,661
8R178 All Buildings Access Controls CCTV Replacement	CPMO	Planning	200,000	-	200,000
8R179 AHH Roof, Green Roof	CPMO	Design	150,000	-	150,000
8R120 ASCH - Cooling System Replacement	CPMO	Design	10,000	-	10,000
8R177 ASCH Audience Chamber Lighting	CPMO	Contracting	25,000	-	25,000
Information Technology					
65701B AHH/ASCH/Keller VOIP Implementation	IS	Design	72,600	-	72,600
65701C AHH/ASCH/Keller VOIP Implementation	IS	Design	141,520	-	141,520
Total			3,775,733	876,417	2,899,316
% of Budget				23%	77%

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	FY 2017-18 Budget		
			Amended	Actuals	Remaining
Food & Beverage					
85106 Connector Glass Door (ARA)	CPMO	Design	120,000	-	120,000
85107 Concessions Upgrades (ARA)	EXPO	Planning	50,000	-	50,000
85110 Aramark Point of Sale System Replacement	IS	Contracting	160,000	-	160,000
Renewal & Replacement					
8N020 Audio Visual Equipment	EXPO	On going	11,867	-	11,867
8R040 Parking Lot Asphalt	CPMO	On going	135,000	-	135,000
8R151 Expo Water Efficiency Upgrades	EXPO	Construction	80,000	-	80,000
8R169 Halls ABCDE Lighting Controls study and Replacement	CPMO	Planning	20,000	-	20,000
8R170 New Hall A Shore Power	EXPO	Complete	150,000	186,042	(36,042)
8R171 Interior & Exterior Lighting Replacements	EXPO	Planning	70,000	-	70,000
8R172 Hall C HVAC Study	EXPO	Planning	35,000	-	35,000
8R173 Halls ABCDE HVAC Controls Replacement	EXPO	Planning	60,000	-	60,000
8R202 PGE Upgrades	EXPO	Planning	100,000	-	100,000
Roofing					
8R135 ABC Roof Repairs (R&R)	EXPO	On going	80,000	-	80,000
8R136 Halls D & E Roof Replacement (R&R)	CPMO	Construction	1,919,689	448,827	1,470,862
Equipment					
8N011 Electronic Signage	CPMO	In Progress	47,548	-	47,548
8R112 Security Camera Access Control System	EXPO	In Progress	82,138	-	82,138
8R150 Radio Replacements	EXPO	On going	20,000	-	20,000
Information Technology					
65701C Voice Over IP (VoIP) Infrastructure	IS	In Progress	107,940	-	107,940
8R139 WiFi Upgrade	EXPO	On going	80,000	-	80,000
Total			3,329,182	634,869	2,694,313
% of Budget				19%	81%

MERC Commission Meeting

November 1, 2017
12:15 pm

Venue Business Reports

**Portland's
MERC Monthly Business Report
Nov. 1, 2017**

CAPITAL PROJECTS UPDATE FY17/18	
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Year over year comparisons show a 52% increase in the dollar amount of projects ongoing or completed. The current year to date spend is \$957,111, up from the prior year spend of \$630,934. The percentage of the annual budget spent to date is 47.76%.

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

FY 17/18 Update

- Keller Roof – Substantially completed in July. Budgeted at \$1,509,793. Holding retainage until punch list items are complete.
- Keller Main Switchgear and elect. Panels (design and engineering only) –Complete. Actual panel replacement will be in the 2018/2019 budget.
- Engineering study-ASCH Cooling Tower and Piping Replacement- 50K Design –Complete.
- AHH Fire Alarm -175K Budget. Complete.
- ASCH Backstage Entry-Door replacement. Final budget \$90,480. Complete.
- BR Electrical Improvements-\$50K Budget. Design is complete. Construction is underway. The project will be completed by the end of the year.
- NMK Cyc Light Conversion –Complete. Under budget with the actual at \$69,810. The initial budget was \$75,000.
- PDX Sign-Complete. Actual cost was \$566,971.
- ASCH Orchestra Shell Replacement-\$3.2M. Full shell replacement anticipated with the Meyer Sound electro-acoustic system. Interim rigging (\$60K) was completed in July to enhance safety until the shell can be replaced in July 2018.
- FOH lighting NMK and Winni
 - The NMK project is complete. Budget Amount is \$689,250.
 - The Winni lighting project has started. It is scheduled for completion in December. Budget amount is \$280,000.

- Voice over internet protocol (VoIP) 215K
 - This is an IS driven project that is in the design phase.
 - Not considered a public improvement so it needs to be bid.
- AHH, ASCH, Keller Assisted Listening System-Complete. Actual spend was 58K. The budget was \$70K.
- ASCH-BOH and FOH Elevator Overhaul-700K Budget for both. In the contracting/procurement phase. The project will be completed in August of 2018.
- AHH Roof Design-150K-Design bidding complete and bid awarded to Carleton Hart a DBE/MBE certified firm. Design work and bidding to be completed in the 17/18 fiscal year. Work to be completed in the 18/19 fiscal year.
- AHS, ASCH, Keller Access Controls CCTV Replacement-\$200K. This is in the pricing/contract stage. Scheduled to be completed 1st quarter of 2018.
- ASCH Soft Goods-\$100K-Design contract phase. Planning for a 2018 installation date. The design is inspired by the original Paramount curtain.
- Keller Balcony Front Fill Speakers-\$50K-In the planning stage.
- Aerial Work Platform-\$20K-Complete.
- BOH Furniture-\$20K-In the design phase. This is office furniture for new staff and potential office build outs.

MISC. UPDATES	
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- Keller 100th Birthday celebration brought in an estimated 1000 on a very rainy day on Oct. 21. Members of the public enjoyed a variety of performances by resident company and local community groups, face painting, an instrument petting zoo and a variety of other family activities and ticket give aways.
- So far, 5 educational shows have been presented:
 1. A family show at Billy Elliot
 2. National Geographic Live with Terry Virts
 3. Three performances of Hands Up
 4. American Brass Quintet went to Meadows Elementary
 5. Las Migas goes to Cesar Chavez Elementary
- Hip Hop Nutcracker will be Nov. 15th and a community conversation will take place following the student performance. Their Asst. producer/choreographer is doing a master class for students at Jefferson High school. Public show is at 8pm in the Schnitz.

**Expo
MERC Monthly Business Report
November 1, 2017**

SALES AND EVENTS	
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- Cirque du Soleil’s KURIOS finished its Portland run the first weekend of October. An extremely successful run with 57 performances, 101,000 attendees and very strong revenues – it was a record-breaking Cirque year for us. With the addition of our new shore-power project, we anticipate a long-term agreement for Cirque’s future shows. Following that negotiation, staff will provide a detailed presentation at the December MERC meeting that illustrates the successes of the event from a multitude of levels for parking, beverages, rent and utilities. We are proud of our efforts.
- While the impact of Cirque is generally positive, we are limited on what we can book at the facility while they are on site due mainly to the potential of triggering costly shuttle impacts for both Cirque and other events. Expo’s general event line-up suffered during the first quarter due to those limitations. However, our sales team is hard at work to make-up for missed revenue opportunities
- The Expo hosted two days of evening rehearsal use in Hall E Lobby by the Columbia Symphony. This creative use of the space provided a useful evening alternative for their rehearsals and ample parking for their musicians prior to their performance in their normal performance space.
- Standout events for the month include the Portland Tattoo Show, which increased 7% over FY17.

CAMPUS PROJECTS	
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Hall D & E Roofing Project

The Expo Center embarked on a roofing project over the summer. After much analysis, the roofs for both Halls D and E were determined to be good candidates for a material from TREMCO that carries with it a 20 year warranty for restoration rather than replacement. The Expo staff opted to increase the warranty by another ten years (30 yr. warranty) with some options of added material and labor approaches. New gutters, sheet metal and spouts were added as well as new safety access ladders. Due to weather, the project has to wait until weather allows for Connector roof restoration before the project is completed; but we are 85% there with a variety of punch list items to complete. cPMO lead Jesse Flores continues to lead this project in a very positive way.

Various other projects

Expo and cPMO teams continue to work on a variety of projects – most are weather dependant or moving on regardless – Cirque lot restoration and asphalt repair, Shore power housing (per PGE requirements), Fire marshal required door replacements – Halls A and C, Security camera improvements, Parking entry electronic signage and finalization of the stormwater greenwall plaza improvements. Other flat purchases such as AV and Radios are under bid or contract review.

COMMUNITY/DEI	
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- The Expo Center, along with MERC Chair Stoudamire-Phillips hosted a group of students from SEI (Self-Enhancement Inc.) for a performance during the final week of KURIOS. Additionally, through the Children’s Cancer Society, we were able to make a wish come true for MacKenzie, her family and her “chemo pal” with tickets to the performance.
- The Expo Center team has met with both DEI team members, Nathan Baptiste and Raahi Ready as we begin our work internally to meet goals and objectives related to the Diversity Action Plan.

OCC
MERC Monthly Business Report
November 1, 2017

COMPLETED EVENTS	
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Having six conventions in the month pushed OCC to record revenues of \$2,914,539 for September.

- Rose City ComicCon
 - 60,000 attendees
 - \$240,000 in concessions
 - Total revenue: \$550,000+
 - According to show organizers, the Rose City ComicCon is now the 6th largest ComiCon in the US.

- North American State and Provincial Lotteries
 - 1,200 attendees from all over the US and Canada
 - Total revenues: \$489,883
 - The lottery business generates \$80 billion dollars annually for the US and Canada

- USA/Canada Lions
 - 1,650 attendees from the US and Canada
 - Total revenue: \$389,000
 - They raved about OCC and Portland's service and loved our food and beverage.

- LAM research held a celebration for Oregon employees of their company headquartered in California.
 - 3,500 staff members attended
 - Total revenue: \$382,000

- Institute of Navigation
 - 1,000 attendees
 - Total revenue: \$329,000
 - The show has returned to Portland 8 times over the past 25 years

CURRENT PROJECTS	
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- The OCC will start work on the Staff and Setup Supervisor Support Space Renovation. Temporary supervisor spaces and a staff break room have been set up in unrented meeting rooms. Staff are excited to see this multi-tiered project launch.

FACILITY WIDE	
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- On October 31, OCC ran the first color displays through the newly installed spire and crescent lights. Choosing a festive orange and black, the lights lit up the night sky. Staff have worked to establish possible colors, display techniques, combinations and movements. The OCC aims to start selling these abilities to clients this month.
- Craig Stroud, Executive Director, will join the Central City in Motion team. Central City in Motion is a planning and prioritization effort designed to help Portland design an effective transportation system that promotes safe and convenient access to the region's economic and cultural hub as it grows. The team will work together to identify a network of new protected bikeways, pedestrian safety improvements, and transit priority projects and make a recommendation to the Portland Bureau of Transportation next year.
- The OCC, working with our partners, has already capitalized on the new Hyatt Regency Portland hotel. To date, the team has submitted 12 bids for conferences that we previously did not have the capability to host due to lack of a headquarters hotel. Two events have confirmed for 2023.

MERC Commission Meeting

November 1, 2017
12:15 pm

5.0 Consent Agenda

Metropolitan Exposition Recreation Commission

Record of MERC Commission Actions

October 4, 2017

Oregon Zoo, Conservation Hall

Present:	Karis Stoudamire-Phillips, Deidra Krys-Rusoff, Judie Hammerstad, Deanna Palm
Absent:	Damien Hall, Ray Leary, Danel Malan, (excused)
	A regular meeting of the Metropolitan Exposition-Recreation Commission was called to order by Chair Karis Stoudamire-Phillips at 12:38 p.m.
1.0	QUORUM CONFIRMED A quorum of Commissioners was present. Before beginning the meeting, Chair Stoudamire-Phillips welcomed Metro Council President, Tom Hughes, and Zoo Director, Don Moore, who were in attendance as guests.
2.0	OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS None
3.0	COMMISSION AND COUNCIL COMMUNICATIONS <ul style="list-style-type: none"> Chair Stoudamire-Phillips shared a few details about her trip with Travel Portland to Washington DC to attend multicultural events including the Congressional Black Caucus. She also noted that Karol Collymore will be leaving Metro for a new position at Nike.
4.0	GM COMMUNICATIONS Scott Cruickshank updates included: <ul style="list-style-type: none"> Demolition is complete at the site of The Hyatt Regency Portland and excavation has been done. Crews are beginning to pour foundations. To date they have 21.9% social equity contracting and are meeting expectations to utilize COBID firms. Sub-contractors are utilizing COBID firms as well. Hyatt is working with OCC to book groups and plan to have a local person dedicated to bookings at the Hyatt Regency in November. The November 1 MERC meeting will include a Budget Retreat. Staff is working to set a MERC retreat and hope to schedule it for some time in the next 30 to 60 days.
5.0	FINANCIAL REPORT Rachael Lembo reported on venue financials. <ul style="list-style-type: none"> Commissioner Krys-Rusoff inquired about the projected growth of TLT for this fiscal year. Lembo responded that she recalled 4% growth was projected.
6.0	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.
7.0	CONSENT AGENDA <ul style="list-style-type: none"> Record of MERC Actions, September 6, 2017 A motion was made by Commissioner Krys-Rusoff and seconded by Commissioner Palm to approve the Consent Agenda. VOTING: AYE: 4 (Hammerstad, Krys-Rusoff, Stoudamire-Phillips, Palm) NAY: 0 MOTION PASSED
8.0 8.1	ACTION AGENDA Resolution 17-28: For the purpose of recognizing the 100 th anniversary of the Keller Auditorium. Robyn Williams, Executive Director of P’5, presented the resolution. A motion was made by Commissioner Hammerstad and seconded by Commissioner Krys-Rusoff to approve the Resolution.

	<p>VOTING: AYE: 4 (Hammerstad, Krys-Rusoff, Stoudamire-Phillips, Palm) NAY: 0 MOTION PASSED</p> <p>8.2</p> <p>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. MERC Finance Manager, Rachael Lembo, presented the resolution.</p> <ul style="list-style-type: none"> • Commissioner Krys-Rusoff asked if there was a projected number for expected cost escalation in construction. Lembo responded that she will research the number and get back to the commissioner. • Krys-Rusoff noted that, given the rate of construction in the metro area as well as with crews leaving to work to repair hurricane damage, construction estimates should be looked at more carefully as budgets are prepared for the next fiscal year. • Also, referring to the elevator project at the Schnitzer, Krys-Rusoff inquired whether it will impact revenue since the theater will be shut down during the repairs. Williams noted that it will be completed in the next fiscal year and that the work will be done while the theater is slow in the summer. <p>A motion was made by Commissioner Hammerstad and seconded by Commissioner Palm to approve the Resolution.</p> <p>VOTING: AYE: 4 (Hammerstad, Krys-Rusoff, Stoudamire-Phillips, Palm) NAY: 0 MOTION PASSED</p>
	<p>8.3</p> <p>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. Nancy Strening of the Metro Construction Project Management Office presented the resolution. A motion was made by Commissioner Palm and seconded by Commissioner Krys-Rusoff to approve the Resolution.</p> <p>VOTING: AYE: 4 (Hammerstad, Krys-Rusoff, Stoudamire-Phillips, Palm) NAY: 0 MOTION PASSED</p>
	<p>8.4</p> <p>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. Craig Stroud presented the resolution. A motion was made by Commissioner Hammerstad and seconded by Commissioner Palm to approve the Resolution.</p> <p>VOTING: AYE: 4 (Hammerstad, Krys-Rusoff, Stoudamire-Phillips, Palm) NAY: 0 MOTION PASSED</p>
	<p>8.5</p> <p>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. Craig Stroud presented the resolution.</p> <ul style="list-style-type: none"> • Commissioner Krys-Rusoff inquired whether it made sense to look at cross-marketing with the

	<p>Expo Center. Stroud noted that that he would look into the possibility. A motion was made by Commissioner Hammerstad and seconded by Commissioner Kryz-Rusoff to approve the Resolution. VOTING: AYE: 4 (Hammerstad, Kryz-Rusoff, Stoudamire-Phillips, Palm) NAY: 0 MOTION PASSED</p> <p>8.6</p> <p>Resolution 17-33: For the purpose of approving changes to MERC personnel policies. Terry Smith of Metro Human Resources presented the resolution. A motion was made by Commissioner Palm and seconded by Commissioner Hammerstad to approve the Resolution. VOTING: AYE: 4 (Hammerstad, Kryz-Rusoff, Stoudamire-Phillips, Palm) NAY: 0 MOTION PASSED</p> <p>8.7</p> <p>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. Mikki Nutt of Metro Human Resources presented the resolution.</p> <ul style="list-style-type: none"> • Commissioner Kryz-Rusoff inquired how many employees were affected by the agreement. Nutt responded that it affected approximately 40 employees. <p>A motion was made by Commissioner Kryz-Rusoff and seconded by Commissioner Palm to approve the Resolution. VOTING: AYE: 4 (Hammerstad, Kryz-Rusoff, Stoudamire-Phillips, Palm) NAY: 0 MOTION PASSED</p>
	<p>As there was no further business to come before the Commission, the meeting was adjourned at 1:25 p.m.</p>

MERC Commission Meeting

November 1, 2017
12:15 pm

6.0 Action Agenda

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 17-35

For the purpose of approving a contract with Banlin Construction LLC for construction of the Oregon Convention Center loading dock improvements project and delegating authority to the General Manager of Visitor Venues to execute the contract.

WHEREAS, the current hook-style dock locks attached to the Oregon Convention Center (OCC) loading dock bays do not work on all types of trailers, with some being missing, damaged and in need of extensive repair; and

WHEREAS, there is a safety risk when the trailers are not secured properly while being unloaded by a forklift; and

WHEREAS, three bids were received in response to an Invitation to Bid for loading dock improvements construction; and

WHEREAS, Banlin Construction LLC’s base bid total was the lowest responsive responsible bid; and

WHEREAS, the Metropolitan Exposition Recreation Commission (MERC) has the authority to approve certain contracts for MERC facilities under Metro Code Section 2.04.040; and

WHEREAS, MERC staff recommend approving a contract with Banlin Construction LLC for construction of the Oregon Convention Center loading dock improvements project.

BE IT THEREFORE RESOLVED that:

1. MERC approves the contract with Banlin Construction LLC in an amount not to exceed a maximum price of THREE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED EIGHTY AND 00/100 DOLLARS (\$370,780.00) in a form substantially similar to the attached Exhibit A; and
2. MERC delegates authority to the General Manager of Visitor Venues to execute the contract with Banlin Construction.

Passed by the Commission on November 1, 2017

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

Chair

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

Secretary/Treasurer

Exhibit A to MERC Resolution 17-35

Construction Agreement



METRO CONTRACT NO. 308004

THIS CONSTRUCTION AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and Banlin Construction LLC, referred to herein as "Contractor," located at 320 W Columbia Drive, Kennewick WA 99336.

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 November 1, 2017 through and including June 30, 2018. Substantial completion per Section 9.4 of the General Conditions is March 31, 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 THREE HUNDRED SEVENTY THOUSAND, SEVEN HUNDRED EIGHTY AND NO/100THS DOLLARS (\$370,780.00) (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.

**Exhibit A to MERC Resolution 17-35
Construction Agreement**



METRO CONTRACT NO. 308004

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: Larry Brooks
Banlin Construction LLC
320 W Columbia Drive
Kennewick, WA 99336
509-586-7777 fax

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

With Copy to: Brent Shelby
600 NE Grand Ave
Portland, Oregon 97232
503-797-1795 fax

CONTRACTOR

METRO

By _____

By _____

Print Name _____

Print Name _____

**Exhibit A to MERC Resolution 17-35
Construction Agreement**



METRO CONTRACT NO. 308004

Date _____

Date _____

ATTACHMENT A TO CONSTRUCTION AGREEMENT – SCOPE OF WORK

1. Purpose and Goal of Work

Metro is contracting for the restoration of 21 loading docks at the Oregon Convention Center, located at 777 NE NLK Jr Blvd, Portland, OR 97232. Work is to include controllers, vehicle restraints, bumpers, dock shelters & weatherproofing, security lights, equipment electrical rework for above items and concrete repair with the goal of improved dock security equipment, safety and long term maintenance resilience.

The Oregon Convention Center will be occupied and operating throughout construction and the loading docks are an essential component of building operations. Contractor will be required to coordinate work with Owner and sequence/phase work to minimize impact to operations.

2. Scope of Work

Description of the Work

Contractor is to provide all equipment, materials and labor for the restoration of 21 loading docks, including, controllers, vehicle restraints, bumpers, dock shelters & weatherproofing, security lights, equipment electrical rework for above items and concrete repair. Work shall be completed as detailed here and according to the plans and specifications attached hereto and referenced below.

Work includes, but is not limited to:

- Selective demolition and site preparation at 21 loading docks as required for restoration work
- 19 new truck standard vehicle restraint device replacements as noted
- One new vehicle wheel lock restraint device and combo shelter as noted
- New dock shelters and weatherproofing as noted at all loading docks
- New bumpers as noted at all loading docks
- New controllers and security lights as noted at all loading docks
- New corner guards as noted
- Rewire all conduits and boxes to avoid collision with trucks, including tires and all trailer components as noted at all loading docks
- Repair concrete at cracked or cracking out locations below and around all loading docks as noted
- Surface coating and sealant around specified loading docks

Clarifications

Contractor shall use reasonable measures to repair damaged/missing concrete and cracks in the concrete below/around the dock leveler, walls and corners adjacent to dock bays. Remove all cracking and loose concrete as possible using a screw driver and small hammer using minimal force. Voids larger than a dime in diameter, cracks wider than a dime in thickness, shall be patched. All bolt holes and visible damage from removal, installation, relocation, and/or repair of conduit, dock lock, bumpers, levelers and shelters shall be repaired. Hairline cracks will be covered by elastomeric coating.

Prior to start of work Contractor, Owner and/or Owner's Representative shall walk site to determine specific location and extent of 280 square feet of concrete repair and whether or not additional repair is required.)

Contractor shall not be responsible for any masonry repair.

At dock bays 1-9 the elastomeric coating shall stop on the columns as shown on drawing sheet A3, aligned with the joint above dock bays at the columns to the left of dock bay #1 and right of dock bay 9. At the columns between dock bays 3 & 4 and 6 & 7 the elastomeric coating shall stop at the bottom of the parapet flashing at the "TOP OF COPING" on elevation 1/ A3.

METRO CONTRACT NO. 308004

At dock bays 10-15 the elastomeric coating shall stop horizontally just around the corner of bay 15, at the joint, and shall be applied no higher than the bottom of the existing canopy.

At dock bays 10-15 Contractor to install seven (7) quantity galvanized steel corner angles L5" x 5" x 1/4" at outside corner of saw-tooth concrete walls, 8'-0" high from grade starting at the outside corner in front and left of dock bay 10 and ending right of dock bay door 15. They shall be attached with four (4) total 3/4" x 4-1/4" galvanized steel wedge anchors located at 6" from the top and bottom of the angle and equally spaced vertically in between, also alternating from one angle leg to the other vertically. The holes shall be centered 1" from the end of each angle leg.

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

ATTACHMENT C: Plan Set, titled "Oregon Convention Center Loading Docks Renovation", dated August 1, 2017;

ATTACHMENT D: Specifications, titled "Project Manual for Oregon Convention Center Loading Docks Renovation", dated August 1, 2017;

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.

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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:

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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 Oregon Convention Center. 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.

10.8.1.3.1 Contractors shall wear such vests and contractor ID badges 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.

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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 two (2) years 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 _____

METRO CONTRACT NO. 308004

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

METRO CONTRACT NO. 308004

METRO GENERAL CONDITIONS - EXHIBIT 5

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

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

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

3. The Undersigned hereby certifies as follows:

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

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

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

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

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

STATE OF OREGON)
) ss.
County of Multnomah)

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

Notary Public - State of Oregon

MERC STAFF REPORT

Agenda Item/Issue: Metropolitan Exposition and Recreation Commission approval of a contract with Banlin Construction LLC for construction of the Oregon Convention Center loading dock improvements project and authorization of the General Manager of Visitor Venues to execute the contract.

Resolution No: 17-35

Presented by: Craig Stroud

Date: November 1, 2017

BACKGROUND: In April 2017 the Oregon Convention Center (OCC) contracted with OTAK Inc. to address safety and operational concerns at the OCC loading docks. Many of the existing hook-style dock locks attached to the dock bays are missing, damaged and in need of extensive replacement or repair. There is a safety risk when the trailers are not secured properly at dock bay doors while being unloaded by a forklift. In an attempt to mitigate cost risk, the project was designed with a base scope package to address essential safety and operational concerns. The base bid scope of work detailed in bid documents included: Replacement of 21 dock bay locking devices and bumpers.

New lock status indicator lights to let operators know when dock locks are safely secured.
Replacement and or/re-routing of damaged and at-risk surface mounted electrical conduit.
Repair of damaged concrete and exterior finishes associated with the loading dock.
Installation of new dock enclosures and skirts to seal edges of openings around vehicles to minimize drafts and exhaust inside the building.

Additional amenities were designated as bid alternates, including additional lighting fixtures and new dock bay roll-up doors to be added to the project scope pending available funding.

A public Invitation to Bid (ITB) was advertised on the Oregon Procurement Information Network (ORPIN), Portland Business Tribune and El Hispanic News on September 6, 2017. Additionally, the project manager solicited the help of Nate McCoy, executive director of the local affiliate of the National Association of Minority Contractors, to generate interest in the ITB among its members. General contractors and subcontractors attending the pre-bid conference were strongly encouraged to seek out respective partners from firms certified by the Oregon Certification Office of Business Inclusion and Diversity (COBID). Three bids were received. Only one of the three bids—the highest—was from a COBID-certified firm.

The lowest responsive responsible bidder for the base bid scope was Banlin Construction LLC. More than 75 percent of their bid cost is for the installation of the specified loading dock equipment. (All three bidders had the same specified equipment supplier/installer at the same cost.) Additional costs are for electrical, concrete and surface coating work as well as overhead and profit. Despite Metro's outreach and Banlin Construction's reported good faith effort, neither of their two subcontractors are COBID-certified. The project budget for construction is \$306,000. The base bid from Banlin Construction of \$370,780 exceeds the budget by \$64,780. None of the six bid alternates will be included in the project scope. The additional cost can be covered by \$65,000 in savings from other projects budgeted this fiscal year.

The base project scope is deemed essential to loading dock safety and operations. Therefore, staff recommend contracting with Banlin Construction LLC to construct the loading dock improvements at the Oregon Convention Center.

FISCAL IMPACT: Total project budget is \$380,000, spanning FY 2016-17 and FY 2017-18, including construction, design and owner contingency. The base bid exceeds the construction budget by \$64,780. The total project increase does not exceed 20 percent of the total project budget so a CIP update is not required unless additional appropriation is needed. There are savings from other projects that offset this additional spending. Additional appropriation is not required.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition and Recreation Commission, by Resolution No. 17-35, authorize the General Manager of Visitor Venues to execute a contract with Banlin Construction LLC not to exceed a maximum price of THREE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED EIGHTY AND 00/100 DOLLARS (\$370,780.00) for construction of the Oregon Convention Center loading dock improvements project.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 17-36

For the purpose of approving the Scope of Work and Cost Proposals from KONE, Inc. for the Arlene Schnitzer Concert Hall (ASCH) Front-of-House and Back-of-House Elevator Modernization and authorizing the General Manager of Visitor Venues to execute the contract documents with KONE, Inc.

WHEREAS, major components of the Front-of-House and Back-of-House elevators at the ASCH have reached the end of their useful life; and

WHEREAS, elevator controls and notification systems do not meet current codes; and

WHEREAS, the work required on the elevators must be performed during the scheduled closure of the ASCH between July 1 and August 31, 2017; and

WHEREAS, this project will have a positive impact on the safety and comfort of patrons and employees of the ASCH; and

WHEREAS, MERC may use the US Communities Joint Cooperative Agreement #20141653 with KONE, Inc. (the Agreement) in accordance with Metro Procurement Rule 46-0400 and ORS 297A.210; and

WHEREAS, the proposals submitted by KONE, Inc. under the Agreement are in the amount of \$264,631.55 for the two Front-of-House Elevators and \$356,994.31 for the two Back-of-House Elevators; and

WHEREAS, MERC staff evaluated the Scope of Work and Cost Proposals submitted by KONE, Inc. under the Agreement and recommends their approval for the reasons provided in the Staff Report.

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

1. Approves the Scope of Work and Cost Proposals, attached as Exhibit A, under the terms of the Joint Cooperative Agreement.
2. Authorizes the General Manager of Visitor Venues to execute the contract documents on behalf of the Commission.

Passed by the Commission on November 1, 2017.

Approved as to form:

Alison R. Kean, Metro Attorney

_____ Chair

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

_____ Secretary/Treasurer



Attachment A

KONE Inc. Proposal to Supply Elevator, Escalator, Moving Walkway Services, repair or modernization under the U.S. Communities Program utilizing the Terms and Conditions of the City and County of Denver Master Contract (Reference GENRL-201414653-00 dated April 1st, 2014)

PROPOSED SCOPE OF WORK:

Modernization of two hydraulic elevators (1 & 2) located in Arlene Schnitzer Hall in Portland, OR: Please refer to the attached proposal as the scope of work.

Pricing per the following breakdown per the U.S. Communities Labor Rates and Mark Up:

LOCATION		POSITION					
Schnitzer Hall-Portland, OR		2018 LICENSED MECHANIC			2018 MECHANIC HELPER		
IUEC LOCAL UNION NO	CITY/CITIES AND SURROUNDING AREAS	NORMAL HOURS	OVERTIME	SUNDAYS/HOLIDAYS	NORMAL HOURS	OVERTIME	SUNDAYS/HOLIDAYS
23	Portland, OR	\$215.23	\$365.88	\$430.45	\$182.69	\$310.56	\$365.37
IUEC LOCAL UNION NO	CITY/CITIES AND SURROUNDING AREAS	PERCENTAGE MARK-UP FOR MATERIALS AND PARTS					
23	Portland, OR	10% profit and 15% overhead from list					

USC Estimate	Hours	Rate	Sell
Regular Time Mechanic	420.13	\$151.37	\$63,595.08
Regular Time Helper	420.13	\$127.84	\$53,709.42
Overtime Premium Mechanic	0	\$0.00	\$0.00
Overtime Premium Helper	0	\$0.00	\$0.00
Material	\$125,964.63	5%+10%	\$147,327.05
		0%	\$0
Storage			\$0
Total for all Units			\$264,631.55

APPLICABLE LAW

This Agreement shall be construed and enforced in accordance with, and the validity and performance of shall be governed by, the laws of the State of Oregon

ACCEPTANCE

Service Agreement Effective Date:

Service Agreement Number: **TBD**

The parties to this service agreement agree to the conditions contained herein:

Sign for on behalf of Participating Public Agency

(Signature)

(Print Name)

(Print Title)

Date: ___/___/___

Respectfully submitted,
KONE Inc.

(Submitted By)

(Approved By) Authorized Representative

(Title)

Date: ___/___/___



08/21/2017

KONE Inc.
Elevators & Escalators

4265 SE International Way
Milwaukie, OR, 97222
Mobile 503-432-5216
Work 503-652-1011
steven.hobbs@kone.com
www.kone.us

Dear Nancy Strening,

We are pleased to enclose, for your review and consideration, KONE's proposal to modernize your equipment located at the following address for the amount of \$264,631.55 (excl. tax):

Schnitzer Hall (Elevators 1 & 2)
Portland, Oregon

Please know that we are available to assist you in coordinating the work by others as further described in our "Bid Attachment B". Should you have any questions or require additional information, please feel to contact me directly. We look forward to hearing from you and working together on this project.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Steven Hobbs".

Steven Hobbs
Modernization Sales Executive
KONE Inc.

1 Solution Specification

Elevators 1 - 2

Equipment number	#1 & #2
Rated load	2500 lbs / 5000 lbs
Rated speed	125 fpm
Travel height	40 ft 0 in
Number of floors	4

Offered Components

Door Panels New satin stainless steel car door panels shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.

ReNova Door Operator A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.

Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.

Curtain of Light The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

KCM831 Hydraulic Controller KONE KCM831 is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE KCM831 is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller

**Field Pipe & Accessories
Hydraulic Power Unit**

cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, troubleshooting, and adjusting without requiring the use of an outside service tool.

New field pipe and or accessories shall be provided as required. A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.

An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.

An automatic Safety Valve will be supplied in the oil line at the jack unit (pit) designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.

Additional items

Two (2) manual shut off valves will also be provided.

Pit Ladders

Permit and Inspections

New hydraulic oil

Signalization

New signalization shall be provided as required.

Cab Interior and Ceiling

Cab Interiors for each elevator: Eastlake, Montlake or Newcastle

Cab Interior Design:

- Provide drawings prior to manufacturing for approval.
- Provide three (3) #4 brushed stainless steel true vent base supports.
- Provide seven (7) lower plastic laminate panels.
- Provide three (3) #4 brushed stainless steel handrail backer panels.
- Provide seven (7) upper plastic laminate Laminate panels.
- Provide #4 brushed stainless steel reveals.
- Provide three (3) 1 ¼" round #4 brushed stainless steel sectional handrails.
- Provide three (3) #4 brushed stainless steel frieze.
- Provide aluminum pad studs for three walls
- Provide custom protective pads for three (3) walls if requested.

Stainless Steel Suspended Ceiling:

- Provide submittal drawings prior to manufacturing for approval.
- Provide three (3) or six (6) pan #4 brushed stainless steel suspended ceiling with Man-D-Tec Illuminator LED lighting.
- **Note:** ANSI code restricts any increase in the dead weight of the car plus capacity to no more than 5% over what was originally engineered. If the weights are increased by more than the 5% allowable, a complete structural review including building supports will be required. Our bid does not include any labor, material, engineering, or calculations should the dead weight of the car plus capacity be increased by more than 5%.

2 DETAILED SPECIFICATION

Small Car

Door Panels

Number of car entrances
Car Panel Finishing Material

New door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.

Front Opening Only

New car door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour. Finish will be #4 stainless steel.

Door Type
Door Width (Inches)
Door Height (Inches)
Qty of sets of Car door panel (per car)

Two Speed Side Opening

36

84

1

ReNova Door



A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.

Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.

Hoistway NEMA Rating
Number of car entrances
Number of front openings
Door Type
Door Width (Inches)

Hoistway rating is NEMA 1.

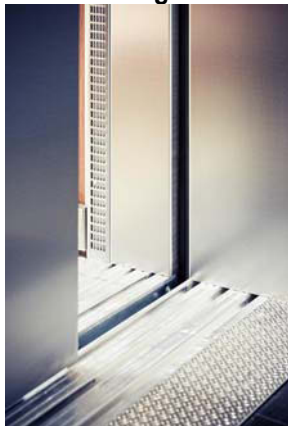
Front Opening Only

4

Two Speed Side Opening

36

Curtain of Light

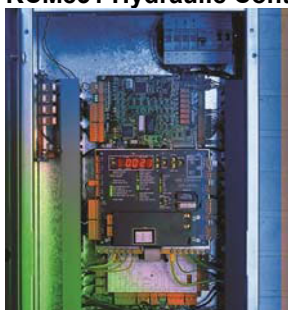


Hoistway NEMA Rating
Number of car entrances

The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

Hoistway rating is NEMA 1.
Front Opening Only

KCM831 Hydraulic Controller



KONE KCM831 is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE KCM831 is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, troubleshooting, and adjusting without requiring the use of an outside service tool.

Elevator Group Size	Duplex
Number of floors served	4
Travel (in)	480
Rated Speed (fpm)	125
Hoistway NEMA Rating	Hoistway rating is NEMA 1.
Machine Room NEMA Rating	Machine room rating is NEMA 1.
Power Supply Voltage	208
Pit depth (in)	48
Overhead height (in)	156
Machine Room Duct	KONE will remove all existing wiring, conduit and duct from the machine room. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)
Existing Motor Size (hp)	25



New Motor Size	40
Motor Starts per Hour	120
Number of car entrances	Front Opening Only
Number of front openings	4
Card Reader Provisions	Controller will be equipped with card reader interface logic.
Signalization Type	Serial
COP quantity	1
Battery Backup	KONE will provide battery backup which will allow passengers to safely exit an elevator in the event of a power outage.
Hoistway Duct	KONE will remove all existing wiring, conduit and duct from the hoistway. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)
New Minimum Fusetron Size	150
Qty extra long flrs, 13-39ft	2
Qty Option Board	1
Work light under the car	Yes
Field Pipe & Accessories	New field pipe and or accessories shall be provided as required.
Field Pipe Accessories Make	Victaulic
Field Pipe Length (in)	240
Field Pipe Size	2"
Isolation Coupling (Pair)	Two (2) sound isolation couplings will be provided in the oil line between the power unit and the hydraulic cylinder(s). Each coupling will consist of flanges separated by a neoprene seal to absorb vibration.
Mainline Shutoff Valves	Two automatic safety valves will be supplied in the oil line at the jack unit (pit) and in the machine room designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.
Qty of couplings	16
Qty of elbows	3
Seismic Rupture Valve	A rupture valve will be provided which provides protection against supply line failure that causes overspeed in the down direction.

Hydraulic Power Unit

A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.

An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.

An automatic Safety Valve will be supplied in the oil line at the jack unit (pit) designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.

Two (2) manual shut off valves will also be provided.

Travel (in)	480
Rated Load (lb)	2500
Rated Speed (fpm)	125
Existing Motor Size (hp)	25
New Motor Size	40
Motor Starts per Hour	120
Existing Piston Diameter [in.]	5
Control Valve OEM	Maxton
Empty Car Weight [lbs]	3000
Field Pipe Length (in)	240
Field Pipe Size	2"
FL Working Pressure at Pump	407.257197
Jack location	Inground
Jack type	Single Stage
Load Class	Passenger
Low Oil Switch	An Up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective
NL Static Pressure [Single Stage]	182.683197
Piston Wall	0.4375
Qty Jacks per Car	1

Seismic Restraints	Yes
Seismic Rupture Valve	A rupture valve will be provided which provides protection against supply line failure that causes overspeed in the down direction.
Number of car entrances	Front Opening Only
Car Top Handrail	A top of car handrail will be provided as required by code.
Toe Guard	A new code compliant toe guard will be provided.
Layout Type Required	An engineered machine room layout will be provided for informational purposes only.
Signalization	New signalization shall be provided as required.
Number of floors served	4
Number of car entrances	Front Opening Only
Number of front openings	4
Card Reader Provisions	Controller will be equipped with card reader interface logic.
Signalization Type	Serial
COP quantity	1
Qty of New Hall Station	4
Qty hall call lockout sws	2
Qty of car direction lanterns	1
Qty Hoistway Access Switch	2
Layout Drawings	Machine Room Only Mechanical Layout Drawing

Large Car

Door Panels	New door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.
Number of car entrances	Front Opening Only
Car Panel Finishing Material	New car door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 ½ hour. Finish will be #4 stainless steel.
Door Type	Two Speed Center Opening
Door Width (Inches)	72
Door Height (Inches)	84
Qty of sets of Car door panel (per car)	1

ReNova Door



Hoistway NEMA Rating
 Number of car entrances
 Number of front openings
 Door Type
 Door Width (Inches)

A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.

Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.

Hoistway rating is NEMA 1.
 Front Opening Only
 4
 Two Speed Center Opening
 72

Curtain of Light

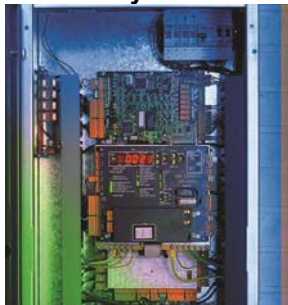


Hoistway NEMA Rating
 Number of car entrances

The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

Hoistway rating is NEMA 1.
 Front Opening Only

KCM831 Hydraulic Controller



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Elevator Group Size	Duplex
Number of floors served	4
Travel (in)	480
Rated Speed (fpm)	125
Hoistway NEMA Rating	Hoistway rating is NEMA 1.
Machine Room NEMA Rating	Machine room rating is NEMA 1.
Power Supply Voltage	480
Pit depth (in)	48
Overhead height (in)	156
Machine Room Duct	KONE will remove all existing wiring, conduit and duct from the machine room. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)
Existing Motor Size (hp)	50
New Motor Size	60
Motor Starts per Hour	120
Number of car entrances	Front Opening Only
Number of front openings	4
Card Reader Provisions	Controller will be equipped with card reader interface logic.
Signalization Type	Serial
COP quantity	2
Battery Backup	KONE will provide battery backup which will allow passengers to safely exit an elevator in the event of a power outage.
Hoistway Duct	KONE will remove all existing wiring, conduit and duct from the hoistway. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)
New Minimum Fusetron Size	100
Qty extra long flrs, 13-39ft	2
Qty Option Board	1
Work light under the car	Yes
Field Pipe & Accessories	New field pipe and or accessories shall be provided as required.

Field Pipe Accessories Make	Victaulic
Field Pipe Length (in)	240
Field Pipe Size	3"
Isolation Coupling (Pair)	Two (2) sound isolation couplings will be provided in the oil line between the power unit and the hydraulic cylinder(s). Each coupling will consist of flanges separated by a neoprene seal to absorb vibration.
Mainline Shutoff Valves	Two automatic safety valves will be supplied in the oil line at the jack unit (pit) and in the machine room designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.
Qty of couplings	16
Qty of elbows	3
Seismic Rupture Valve	A rupture valve will be provided which provides protection against supply line failure that causes overspeed in the down direction.
Hydraulic Power Unit	<p>A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.</p> <p>Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.</p> <p>An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.</p> <p>An automatic Safety Valve will be supplied in the oil line at the jack unit (pit) designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.</p> <p>Two (2) manual shut off valves will also be provided.</p>
Travel (in)	480
Rated Load (lb)	5000
Rated Speed (fpm)	125
Existing Motor Size (hp)	50
New Motor Size	60
Motor Starts per Hour	120
Existing Piston Diameter [in.]	6.5
Control Valve OEM	Maxton
Empty Car Weight [lbs]	5500
Field Pipe Length (in)	240

Field Pipe Size	3"
FL Working Pressure at Pump	403.82031
Jack location	Inground
Jack type	Single Stage
Load Class	Passenger
Low Oil Switch	An Up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective
NL Static Pressure [Single Stage]	176.408091
Piston Wall	0.3125
Qty Jacks per Car	1
Seismic Restraints	Yes
Seismic Rupture Valve	A rupture valve will be provided which provides protection against supply line failure that causes overspeed in the down direction.
Number of car entrances	Front Opening Only
Car Top Handrail	A top of car handrail will be provided as required by code.
Toe Guard	A new code compliant toe guard will be provided.
Layout Type Required	An engineered machine room layout will be provided for informational purposes only.
Signalization	New signalization shall be provided as required.
Number of floors served	4
Number of car entrances	Front Opening Only
Number of front openings	4
Card Reader Provisions	Controller will be equipped with card reader interface logic.
Signalization Type	Serial
COP quantity	2
Qty hall call lockout sws	2
Qty of car direction lanterns	1
Qty Hoistway Access Switch	2
Layout Drawings	Machine Room Only Mechanical Layout Drawing



Project notes KONE has included in our bid the following electrical work that will be performed by Stoner Technology Services.

- Replace the existing disconnects with Bussmann Shunt Trip Disconnects.
- Insure pit and machine room 120-volt circuits are dedicated as required.
- Insure pit, machine room, and lobby lighting are up to code levels
- Install fused lockable cab lighting disconnect switches as necessary
- Install GFCI receptacles in the pits and machine rooms
- Install wiring for Battery lowering
- Install phone lines in conduit within the machine room
- Install wiring to indicate when the elevators are on emergency power
- Install wiring for a ductless split HVAC system
- Disconnect existing equipment and re-connect new, including temporary power if required
- Add fire alarm devices to the existing Silent Knight system to perform shunt trip, hat flash, and power monitoring

Handover date Mutually agreeable project schedule will be determined at time of proposal acceptance. Current delivery lead time is 8 weeks from order receipt, deposit and approval of drawings.

Downtime period 4-5 weeks per unit

Price Overview

Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon purchaser's approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to the purchaser with recommendations and cost for corrective action.

Total Sales Price (excl. tax) \$264,631.55

Pricing Conditions This offer is valid for 90 days.

Maintenance The existing maintenance billing will be adjusted to reflect when each elevator is out of service. It will then be returned to normal once the elevators have been returned to normal operation.



Component Overview

Equipment number

Door Panel(s)
ReNova Door Equipment
Curtain of Light
KCM831
Field Pipe & Accessories
Power unit
Additional items

Custom Fixtures

Sales price **\$ 125,028.19**

Component Overview

Equipment number

Door Panel(s)
ReNova Door Equipment
Curtain of Light
KCM831
Field Pipe & Accessories
Power unit
Additional items

Custom Fixtures

Sales price **\$ 139,603.36**

Total Sales Price, excl. tax **\$ 264,631.55**



3 Tender Approval

Receiver:

KONE Inc.
Steven Hobbs
4265 SE International Way
Milwaukie, OR, 97222
steven.hobbs@kone.com

Sender:

Nancy Strening
METRO
600 NE GRAND AVE
Oregon, PORTLAND, 97232

Submitted by:

Steven Hobbs
Modernization Sales Executive
08/21/2017

We accept the offer constituted by this proposal (total sales price of \$264,631.55, excl. tax) and agree to the conditions contained therein.

Approved by KONE Corporate Officer

Approved by Purchaser

Signature: _____

Signature: _____

Printed Name:

Printed Name:

Title:

Title:

Date:

Company Name:

Date:



Alternates

Alternate #1: New hoistway doors and cladding of the entrance frames of each elevator

KONE will install new satin stainless steel hoistway doors at each landing. In addition to new hoistway doors, we will subcontract a steel company to wrap the existing painted entrance frames in satin stainless steel.

Cost to add Alternate #1 to the base bid: Thirty-Six Thousand Five Hundred Ninety-Seven and 00/100 Dollars (\$36,597.00)

Sign here for acceptance of Alternate #1: X _____

Clarifications

Our proposal is based on the following clarifications:

- Contract terms between KONE Inc. and Purchaser shall be based on our Proposal and



Attachments. (See Attachment "A" and "B")

- All new elevator equipment provided shall meet applicable ASME A17.1 code requirements. Any provisions of codes applicable to out-of-scope items shall be the Purchaser's responsibility. Cost of any future code changes adopted prior to permitting and completion are excluded.
- The existing cab and entrance dimensions, which may not meet current ADA or stretcher access rules, will be retained as is.
- Our proposal includes inspections and testing as required by the AHJ. However, any re-testing required due to other trades' failures to complete their work or tests in a timely manner will be billed at our regular billing rates.
- No costs for preventive maintenance services are included in this capital improvement pricing.
- The ASME code limits changes to the empty car weight + capacity of each elevator to 5% of the originally installed value. If past or proposed changes result in a change to the weight or system pressure (for hydraulic) greater than 5% above the original design values, the cost of any engineering and of any required modifications to the elevator system or structure shall be extra to this proposal scope and pricing. If this situation is discovered during the engineering process, KONE will notify purchaser and recommend an alternate design or other changes.
- In order to provide best pricing, proposal excludes any extra demobilizations and remobilizations. If we must demobilize from the jobsite for any reason outside our control, we shall be compensated at our regular billing rates.
- Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon Purchaser's approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to purchaser with recommendations and cost for corrective action.
- Asbestos: Notwithstanding anything contained to the contrary within this bid or contract, KONE's work shall not include any abatement or disturbance of asbestos containing material (ACM) or presumed asbestos containing materials (PACM). Any work in a regulated area as defined by Section 1910 or 1926 of the Federal OSHA regulations is excluded from KONE's scope of work without an applicable change order to reflect the additional costs and time. In accordance with OSHA requirements, the Customer shall inform KONE and its employees who will perform work activities in areas which contain ACM and/ or PACM of the presence and location of ACM and/or PACM in such areas which may be contacted during work before entering the area. Other than as expressly disclosed in writing, Customer warrants that KONE's work area at all times meets applicable OSHA permissible exposure limits (PELs). KONE shall have the right to discontinue its work in any location where suspected ACM or PACM is encountered or disturbed. Any asbestos removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be the Customer's sole responsibility and expense. After any removal or abatement, customer shall provide documentation that the asbestos has been abated from the KONE work area and air clearance reports shall be made available upon request prior to the start of KONE's work.
- Purchaser shall provide any security, escort or other building service support personnel required during demolition, installation, testing, and inspections.
- For hydraulic elevators, we can assume no responsibility for unusual conditions such as hole cave in and complete hydraulic cylinder assembly embedded in concrete. The excavation of the hole to accommodate the new hydraulic cylinder assembly is based on encountering soil free of rocks, boulders, building construction members, sand, water, quicksand, underground caves and/or any other obstructions or unusual conditions. Should such obstructions or unusual conditions be encountered, additional time above or beyond the working days estimated to complete this project may be required. We will proceed with this portion of the project on a time and material basis, based on our normal billing rates.

Bid Attachment "A" / KONE Inc. General Terms and Conditions (Modernization)

1. APPLICATION OF THESE TERMS

The parties agree to be bound by the terms and conditions contained in the Bid Letter, this Bid Attachment A and Bid Attachment B, including the documents incorporated herein by reference



(collectively, the "Proposal").

2. SPECIAL PURCHASING REQUIREMENTS

This Proposal is made without regard to compliance with any special sourcing and/or manufacturing requirements including, but not limited to, Buy America, Buy American, U.S. Steel, FAR clauses, minority / disadvantaged supplier requirements or similar federal and/or state procurement laws. Should such requirements be applicable to this Project, KONE reserves the right to modify and/or withdraw its Proposal.

3. PROPOSAL CONDITIONS

The Proposal shall be open for acceptance within the period stated in the Bid Letter or, when no period is stated, for a period of 30 days from the date of the Bid Letter. Prior to commencing manufacture of the equipment described in the Bid Letter ("Equipment"), KONE must have (i) a fully executed contract; (ii) a schedule acceptable to KONE identifying the Equipment installation start date, or alternatively, KONE's letter specifying the ship date ("Ship Date Letter") signed by Customer, which, as applicable, is incorporated by reference herein; (iii) the first payment in Section 4 herein; and (iv) fully approved KONE layouts.

4. PAYMENT TERMS

Payment of the total Price is due within 30 days from invoice date, based on benchmarks as follows:

- 30% of the Price for engineering, site management, and overhead, billable and due upon execution of this Proposal or receipt of the subcontract;
- 50% of the Price for material and shipping, billable and due upon delivery of material to the jobsite or KONE Distribution Center;
- 20% of the Price for Equipment installation, billable and due at the billing cycle following the start of installation.

KONE reserves the right to delay, suspend, or stop the work, including manufacturing, delivery, installation and/or Equipment turnover, for non-payment, without liability to KONE or being held in default. Simple interest at 1.5% per month shall be charged on amounts not paid when due. Payments to KONE are not contingent on any third party payments to Customer. Customer shall reimburse KONE for all costs of collection, including courts costs and reasonable attorneys' fees.

Prior to turnover, KONE must be paid in full, less 10% maximum retention, the Price including all change orders. Retention shall be due and payable within 30 days of execution of the Uniform Final Acceptance or Equipment turnover, whichever occurs first.

If certified payroll reporting is required, KONE will submit the requested reporting in the format of the U.S. Department of Labor form WH 347 & WH 348. The Price does not include Textura or any other special billing requirements, which can be added via change order at a rate of 0.3% of the Price.

5. INSTALLATION

Customer shall be responsible for procurement and cost of all permits, except permits related to installation of the Equipment. Where KONE's scope of work or other responsibilities include the obligation to utilize materials and/or finishes resembling or identical to those pre-existing in the building, KONE shall use reasonable efforts to procure such materials and Customer acknowledges and accepts that the materials and/or finishes reasonably available may not be in all respects



identical to those pre-existing in the building. This Proposal is conditioned upon KONE using its standard installation method. The installation of the Equipment shall start after Customer has completed all work set forth in Bid Attachment B and any other documents describing site requirements ("Site Requirements"), all of which are incorporated by reference herein. Within two (2) weeks prior to the scheduled delivery date for KONE's materials, KONE shall conduct a standard visual site survey to verify that the Site Requirements are complete and notify Customer if there are outstanding deficiencies preventing KONE from beginning installation. KONE's site survey may include, but is not limited to, inspection of site access, working and safety conditions on site, wear and tear of any existing structures or surfaces, and planning of any dismantling or removal of existing equipment, components and materials, where applicable. KONE shall not be deemed to have surveyed any hidden structures, latent defects, subsurface conditions, or other non-visible matters, including but not limited to searching for hazardous substances and/or materials, which shall be subject to Section 16. If KONE's site survey reveals any deficiencies, KONE shall be entitled to delay the start of installation and Customer shall be responsible for all additional costs incurred by KONE, including without limitation, costs associated with: labor reallocation, re-directing materials to and storage in a KONE Distribution Center, additional labor for double handling of materials, and additional trucking, freight and insurance. Once the Site Requirements are completed, the start of installation shall be subject to the availability of labor and the delivery of material, if applicable.

KONE's work shall be performed during regular union working hours of regular working days, Monday to Friday, statutory holidays excluded. If overtime is mutually agreed upon and performed, the additional costs for such work shall be added to the Price at KONE's standard overtime rates. If the installation cannot be performed in an uninterrupted manner for any reason beyond KONE's control, Customer shall store the Equipment at Customer's cost and compensate KONE for any costs caused by such delay including, but not limited to, double handling of Equipment and demobilization.

KONE shall not be required to perform overtime or any Customer directed change to its work ("Extra Work") without an executed change order. No action by KONE, including but not limited to, performing Extra Work without an executed change order, shall be a waiver of KONE's right to seek payment for Extra Work performed. KONE shall be entitled to an extension of time and an equitable adjustment in the Price, including but not limited to, any increased costs of labor, including overtime, resulting from any change of schedule, re-direction of KONE personnel to another work area, acceleration, or out of sequence work.

KONE shall take reasonable methods to protect its work-in-place while KONE is actively on site and until execution of a KONE Uniform Final Acceptance, which is incorporated by reference herein. Should damage occur to KONE property, material or work-in-place by fire, theft or vandalism, Customer shall compensate KONE for said damages. Additionally, the Customer is solely responsible for ensuring that the equipment maintenance contractor, if not KONE, does not disturb, delay or interfere with KONE's work. KONE shall abide by Customer's safety policies and procedures to the extent such policies and procedures are not in conflict with KONE's Safety Policy. Testing and/or security features of Equipment must be completed before Equipment turnover. KONE is not responsible for damages, either to Equipment or the building, or for any personal injury or death, arising out of or resulting from any code required safety tests performed on Equipment or hoistway access granted by Customer to other trades.

6. TEMPORARY USE

Temporary use of certain types of Equipment may be permitted, provided the use period allows adequate time for Equipment restoration for final turnover and Customer executes KONE's Temporary Use Agreement. Temporary use shall be invoiced separately and subject to payment terms in Section 4 herein. At the end of temporary use, Customer shall return the Equipment to KONE in "like new" condition.



7. HAZARDOUS MATERIALS

KONE's work shall not include any abatement or disturbance of asbestos containing material ("ACM"), presumed asbestos containing materials ("PACM"), or other hazardous materials (i.e. lead, PCBs) (collectively "HazMat"). KONE shall have the right to discontinue its work in any location where suspected HazMat is encountered or disturbed. Any HazMat removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be Customer's sole responsibility and expense. Should any HazMat abatement occur within the shaft or machine room, Customer shall execute KONE's Hoistway or Pit Access Request. If any HazMat is known to be present on site before the start of work, HazMat removal or abatement shall be completed prior to KONE scheduling installation and delivering material.

8. TITLE AND RISK TO EQUIPMENT

Title to and ownership of all Equipment intended for incorporation in KONE's work, whether installed or stored on or off site, shall remain with KONE until final payment is made and, in the case of suspension or termination for non-payment, the parties agree that KONE may retake possession and remove any or all of KONE's works, Equipment or apparatus without material damage to the property and irrespective of the manner in which the same is attached or affixed. Risk of loss in KONE's work and Equipment passes to Customer upon delivery to the site or off-site storage.

Any tools, devices, or other equipment that KONE uses to perform its work or monitor the Equipment remains the sole property of KONE. If this Proposal terminates or expires for any reason, Customer will give KONE access to the premises to remove such tools, devices or equipment at KONE's expense.

9. TURNOVER

Prior to turnover, KONE must receive a final punchlist. Upon turnover, KONE requires a signed Uniform Final Acceptance. KONE shall provide its standard electronic O&M manuals with CD-ROMs in electronic format, if applicable, upon execution of the Uniform Final Acceptance. Standard KONE samples shall be provided upon request. No mock-ups or video training are included in the Price.

10. DELAY

KONE shall not be liable for any loss, damage, claim, or delay due to any cause beyond KONE's control, including, but not limited to, acts of government, strikes, lockouts, work interruption or other labor disturbance, delays caused by others, fire, explosion, theft, floods, inclement weather, riot, civil commotion, war, malicious mischief, or acts of God. In the event of such delays, KONE shall be entitled to an extension in time equal to the length of such delay and an equitable adjustment in the Price. Customer shall compensate KONE for labor and material cost escalations resulting from Project delays not caused by KONE, which extend completion of KONE's work beyond the end of the current calendar year. Customer is on notice that IUDEC labor rates increase annually.

11. LIMITED WARRANTY

For one (1) year after the acceptance date set forth in the signed Uniform Final Acceptance, date of Equipment turnover, or date of Customer's use of Equipment (unless such use is pursuant to the Temporary Use Agreement), whichever occurs first, KONE warrants Equipment against defect in workmanship and material. The warranty excludes remedy for damage or defect caused by abuse, misuse, vandalism, neglect; repairs, alteration or modifications not executed by KONE; improper or



insufficient maintenance, improper operation, characteristics of the building such as electrical power or security features, natural or other catastrophe such as flood, fire, or storm, or normal wear and tear and normal usage. The warranty excludes training or instruction in the proper operation or maintenance of Equipment. Specific noise ratings and energy efficiencies cannot be guaranteed due to different building characteristics and ambient noise levels. Customer's remedy is limited to repair or replacement of a defective part, in KONE's sole discretion, and excludes labor. KONE DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

12. IDEMNIFICATION

KONE shall only indemnify and hold Customer harmless for claims, damages, losses or expenses, but excluding loss of use ("Claims") due to bodily injury, including death, or tangible property damage (other than the Project or KONE's work itself) to the extent caused by KONE's negligent acts or omissions. KONE shall not indemnify Customer for any other Claims. Customer agrees to indemnify and hold KONE harmless from any Claim for bodily injury, including death, or tangible property damage in connection with the use or operation of the Equipment. Each party shall defend itself in the event of a Claim.

13. INTELLECTUAL PROPERTY

KONE shall retain title and ownership of all intellectual property rights relating (directly or indirectly) to the Equipment provided by KONE, including but not limited to software or firmware (whether in the form of source code, object code or other), drawings, technical documentation, or other technical information delivered under the Proposal. KONE grants Customer a non-exclusive and non-transferable license and right to use the software and firmware in connection with the use and maintenance of the Equipment. Customer shall not use any drawings, technical documentation or other technical information supplied by or on behalf of KONE for any purposes other than those directly related to the Proposal or to the use and maintenance of the Equipment. Customer shall not in any form copy, modify or reverse engineer the software, or give access to the software for such use to any third party without KONE's prior written consent. KONE shall not provide any information such as KONE's internal manuals, manufacturing drawings, source codes, or other proprietary and confidential information, all of which are excluded from the Proposal.

14. INSURANCE

In lieu of any Customer insurance requirements, KONE shall provide its standard certificate of insurance, which shall be deemed to satisfy all insurance requirements for this Project. KONE shall not provide loss runs or copies of its insurance policies. KONE shall not provide coverage for professional (E&O) liability, pollution liability, data privacy/security, or no-fault medical payments. If the Project is covered by an Owner/Contractor Controlled Insurance Program, KONE agrees to participate provided there is no cost to KONE, no reduction in the Price, and subject to KONE's review of the proposed program.

15. LIMITATION OF LIABILITY

In no event shall either party be liable to the other party for any consequential, special, punitive, exemplary, liquidated, incidental, or indirect damages (including, but not limited to, loss of profits or revenue, loss of goodwill, loss of use, increase in financing costs) (collectively, "Consequential Damages") that arise out of or relate to this Proposal even if such party has been advised of the possibility of such Consequential Damages. The limitation set forth in this section shall apply whether the claim is based on contract, tort or other theory. The limitation set forth in this section shall not,



however, apply to any (i) indemnification obligations for third-party Claims; or (ii) breach by either party of any confidentiality obligations.

16. CONCEALED OR UNKNOWN CONDITIONS

If during the course of its work, KONE encounters conditions at the site that are subsurface, differ materially from what is represented in the contract documents, or otherwise concealed physical conditions, KONE shall be entitled to an extension of time and additional costs for the performance of its work, which shall not be subject to any payment conditions or contingencies.

17. TECHNICAL SURVEY

KONE's Price and obligations under this Proposal are subject to a technical survey to be performed on Customer's existing units within 90-days of the effective contract start date. If a safety hazard or code violation is identified during KONE's technical survey, Customer shall immediately remove the unit from service until repairs are performed. KONE is not obligated to perform tests, correct outstanding violations or deficiencies that were not addressed by the prior service provider and/or the owner, or make related necessary repairs or component replacements on the unit. If additional work is necessary, KONE shall provide a separate proposal or recommendation for such work. Customer agrees to indemnify, defend, and hold KONE harmless for any claims arising out of Customer's failure to comply with KONE's recommendations and proposal, and any obligation on the part of KONE to indemnify or defend Customer with regard to such claim shall be null and void. If Customer does not immediately approve KONE's proposal or recommendation, KONE reserves the right to terminate this Proposal/contract without penalty.

18. TERMINATION

If a party materially breaches this Proposal, the other party shall provide written notice of the breach and a reasonable time to cure the breach, but in no event less than 30 days. If the breaching party fails to cure the breach within the specified time period, the non-breaching party may terminate the Proposal upon 15 days written notice to the other party. If KONE notifies Customer of a material breach pursuant to this paragraph, KONE may temporarily suspend its work without liability.

19. GOVERNING LAW AND DISPUTE RESOLUTION

The parties agree that this Proposal shall be governed by the laws of the state where the Project is located, and venue for disputes shall be located in that state. KONE does not agree to participate in arbitration proceedings.

20. MISCELLANEOUS

This Proposal, including the documents incorporated herein by reference, constitutes the entire agreement of the parties and supersedes all prior negotiations, understandings, and representations whether written or oral in relation to the subject matter hereof. Where a conflict or ambiguity exists between this Proposal and any other contract document (including but not limited to, Customer's drawings and specifications), the terms and conditions of this Proposal shall control. This Proposal may be amended only in writing by the duly authorized representative of both parties. This Proposal may be executed in one or more counterparts. Each counterpart shall be considered an original and all of the counterparts shall constitute a single agreement binding all the parties as if all had signed a single document. For purposes of executing this Proposal, a document signed by electronic means is to be treated as an original document. The failure of either party to insist upon performance or strict performance of any of the terms or conditions of this Proposal shall not be deemed a waiver of any



rights or remedies that such party may have or a waiver of any subsequent breach or default under this Proposal. Neither party may assign or transfer the benefit or burden of this Proposal without prior written consent of the other party.



Bid Attachment “B” / Site Requirements & Work by Other Trades

The work described below is a summary of work to be performed by others (“Work by Other Trades”) that may be required in conjunction with the elevator modernization performed by KONE (the “Work”). Purchaser shall provide any and all building electrical, structural and mechanical system upgrades required for code compliance, life safety, and proper equipment installation and operation. The Authorities Having Jurisdiction (AHJ) may require additional remedial or preparatory work. All required remedial or preparatory work shall be performed by properly licensed trade contractors in compliance with applicable codes and based on a schedule of performance that allows for uninterrupted progress of the Work. Under no circumstances shall KONE be responsible for any cost associated with the performance of remedial work by others.

Purchaser shall provide the following unless specifically included in KONE’s Work:

Electrical

- A properly rated three phase fused disconnect switch, externally operable and lockable in the open position, located as required by code. Accommodate any increases in motor size or feeder loads.
- A dedicated 110 VAC fused disconnect switch, externally operable and lockable in the open position adjacent to the machine room door for cab lighting and ventilation, located as required by code
- Shunt-trip disconnect if fire sprinklers are present in machine room or hoistway.
- GFI 120 VAC convenience outlets in machine room and pit.
- Separate outlet in the pit area if a sump pump is installed.
- Telephone line service brought to the elevator machine room for emergency communication device.
- Any required RF shielding of TV or radio transmitters, antennae and/or wave-guides.
- Conduit with pull boxes from each elevator bank to any remote fire control or communication panels specified
- If required by building code, standby/emergency power , sufficiently sized to provide power of permanent characteristics to each elevator’s disconnect, simultaneously, upon loss of regular power, including feeders, transfer switches and auxiliary contact signal outputs to elevator controllers.

Machine Room

- A code-compliant machine room. Provide or maintain fire rating as required by building code.
- Fire-rated door for access into the machine room. Door shall be self-closing and self-locking, operable from inside the room without the use of a key.
- Independent ventilation or an air conditioning system for the elevator machine room, to assure temperature is maintained between 65 degrees and 95 degrees Fahrenheit.
- Fire extinguisher inside machine room.
- Minimum clear machine room height of 7’-0”.
- Suitable lighting that provides a minimum of 19 ftc at floor.
- Removal of any non-elevator related equipment and materials from within the machine room and proper disposal of oil and other hazardous or non-hazardous substances and materials.

Hoistway

- A code-compliant hoistway, constructed in accordance with KONE’s requirements and specifications. Provide or maintain fire rating as required by building code.
- Patching of all holes in hoistway walls with fire rated material.
- Beveling all ledges within hoistway measuring over 4”.
- Removal of any non-elevator related equipment and materials from within the hoistway and proper disposal of oil and other hazardous or non-hazardous substances and materials.
- A guarded light fixture and light switch in pit. Switch must be located 42” above the lowest landing floor level.
- A means of displacing water located in the pit and containing and disposing of oil, chemicals, and other substances in compliance with environmental laws and regulations (KONE assumes no responsibility for discharge of oil, chemicals, and other substances into storm water systems, sanitary

sewer systems, retention ponds, etc.).

- Elevator hoistway ventilation to the outside atmosphere as required by building code

Fire Service

- Fire alarm smoke detectors with wiring and relays in the machine room terminating at elevator controller.
- Fire alarm initiating devices must be located in front of each elevator entrance as well as in the machine room and at the top of the hoistway.
- Where sprinklers exist in the machine room and/or hoistway, a fire alarm initiating device within 12" of each sprinkler head.

Access Integration/Security

- Our proposal includes KONE logic and provisions for the specified Touchscreen(s), Keypad Destination Operating Panel(s), Monitoring System(s) and Multi-Media Equipment.
- Card Readers and/or any additional required hardware & software for proper functionality of access control/security system(s) shall be furnished and installed by others.
- Any required software to ensure proper communication between KONE control system(s) and building system(s) shall be the responsibility of others.
- A designated 115V 15A circuit is required at each of the remote monitoring stations.
- KONE recommends a minimum 100 Mbit/s Ethernet for each of the following application(s): Integrated Touchscreen/Keypad Destination Operating Panels, Monitoring System, Multi-Media Equipment, and Card Readers.

Counterweighting

- Pricing is based upon the existing car to counterweight weight ratio being consistent with elevator industry standards. This is defined as the counterweight weight being equal to the empty car weight plus 40%. The actual assemblies will be weighed during the modernization process. If modifications are required to correct the existing weight balance, these modifications will be provided at additional cost.

RK1 Fuses and Circuit Breakers

- Fuses are to be current limiting class RK1 or equivalent. Circuit breakers are to have current limiting characteristics equivalent to RK1 fuses. Provisions of these fuses are the responsibility of others, not KONE.

General

- Access to the building to perform the Work and for deliveries with dry, protected storage adjacent to the hoistway.
- Cutting of existing walls, floors and finishes, together with all repairs made necessary by such cutting or changes, e.g. cutting of lobby walls for flush hall fixtures and removal of encroaching lobby features such as wall-mounted ashtrays. Removal, replacement, and/or repair of any mirrors, millwork, plaster, stone or other special hall finishes.
- All work of other trades must be complete and ready at time of first elevator inspection, or elevator will not be released for operation by the AHJ. If the AHJ does allow temporary operation under a Temporary Operating Inspection (TOI), any associated costs shall be Purchaser's responsibility.
- Our tender is based on suitable site conditions, material and tooling storage space, and bathroom access being available on site.
- Safe working environment must be provided and supported by provision for adequate entrance protection, means of hoisting, hoistway dividing screens, and protection of floors walls and doors etc.
- Emergency evacuation procedures to be clearly defined where required. Subject to site survey and actions agreed.
- Any portion of the Work that is subject to the permissions of local authorities beyond the elevator permits must be identified to KONE. Responsibility for permits to be agreed. Permits and appropriate signage indicating any changes to pedestrian access routes for building users must be in place prior



to start of the Work.

- Elevator installation methods requires the integrity of the existing Safety Gear and Overspeed protection devices, and are therefore subject to verification of suitability prior to commencement of the work. Any remedial work required or alternative solution is not included in this tender.



Attachment A

KONE Inc. Proposal to Supply Elevator, Escalator, Moving Walkway Services, repair or modernization under the U.S. Communities Program utilizing the Terms and Conditions of the City and County of Denver Master Contract (Reference GENRL-201414653-00 dated April 1st, 2014)

PROPOSED SCOPE OF WORK:

Modernization of one traction elevator (#3) and one hydraulic elevator (#4) located in Arlene Schnitzer Hall in Portland, OR: Please refer to the attached proposal as the scope of work.

Pricing per the following breakdown per the U.S. Communities Labor Rates and Mark Up:

LOCATION		POSITION					
Schnitzer Hall-Portland, OR		2018 LICENSED MECHANIC			2018 MECHANIC HELPER		
IUEC LOCAL UNION NO	CITY/CITIES AND SURROUNDING AREAS	NORMAL HOURS	OVERTIME	SUNDAYS/HOLIDAYS	NORMAL HOURS	OVERTIME	SUNDAYS/HOLIDAYS
23	Portland, OR	\$215.23	\$365.88	\$430.45	\$182.69	\$310.56	\$365.37
IUEC LOCAL UNION NO	CITY/CITIES AND SURROUNDING AREAS	PERCENTAGE MARK-UP FOR MATERIALS AND PARTS					
23	Portland, OR	10% profit and 15% overhead from list					

USC Estimate	Hours	Rate	Sell
Regular Time Mechanic	654.72	\$151.37	\$99,104.97
Regular Time Helper	654.72	\$127.84	\$83,699.40
Overtime Premium Mechanic	0	\$0.00	\$0.00
Overtime Premium Helper	0	\$0.00	\$0.00
Material	\$148,932.40	5%+10%	\$174,189.94
		0%	\$0
Storage			\$0
Total for all Units			\$356,994.31

APPLICABLE LAW

This Agreement shall be construed and enforced in accordance with, and the validity and performance of shall be governed by, the laws of the State of Oregon

ACCEPTANCE

Service Agreement Effective Date:

Service Agreement Number: **TBD**

The parties to this service agreement agree to the conditions contained herein:

Sign for on behalf of Participating Public Agency

(Signature)

(Print Name)

(Print Title)

Date: ___/___/___

Respectfully submitted,
KONE Inc.

(Submitted By)

(Approved By) Authorized Representative

(Title)

Date: ___/___/___



08/22/2017

KONE Inc.
Elevators & Escalators

4265 SE International Way
Milwaukie, OR, 97222
Mobile 503-432-5216
Work 503-652-1011
steven.hobbs@kone.com
www.kone.us

Dear Nancy Strening,

We are pleased to enclose, for your review and consideration, KONE's proposal to modernize your equipment located at the following address for the amount of \$356,994.31.00 (excl. tax):

Schnitzer Hall
Portland, Oregon

Please know that we are available to assist you in coordinating the work by others as further described in our "Bid Attachment B". Should you have any questions or require additional information, please feel to contact me directly. We look forward to hearing from you and working together on this project.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Steven Hobbs", is written over a light blue horizontal line.

Steven Hobbs
Modernization Sales Executive
KONE Inc.

1 Solution Specification

Elevator # 3 – Traction Elevator

Equipment number	#3
Rated load	2000 lbs
Rated speed	100 fpm
Travel height	Retain
Number of floors	7

Offered Components

Door Panels	New satin stainless steel car door panels shall be provided where applicable. New doors shall be UL fire rated 1 1/2 hour.
Curtain of Light	The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.
Door Operator	A new car door operator shall be installed and arranged to automatically open and close the car door panel. The opening and closing shall be made smoothly and shall be cushioned at both final limits of travel. The door operator shall be arranged so that, in the event of a power failure of the operating circuits, the car doors cannot be readily opened by hand from within the elevator cab. The elevator shall not be able to move away from a landing until the car door panel is fully closed. The car door shall be equipped with a contact, which will prevent operation of the car unless the car door is closed. The contact shall be of the approved type and tested as required by code.
KONE ReSolve	<p>KONE ReSolve is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE ReSolve is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.</p> <p>A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading.</p> <p>The control for the hoist motor will be by means of a solid-state drive system. The system will be a controlled pulse-width modulated AC vector drive. The variable voltage variable frequency drive will convert the AC power supply using a two-step process to a variable voltage variable frequency power supply for use by the hoist motor. Varying the frequency and voltage of the motor will automatically and continuously control the speed, acceleration and deceleration. The system will be closed loop.</p>

Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, trouble-shooting, and adjusting without requiring the use of an outside service tool.

MX Machine

A new AC Gearless machine, with permanent magnet synchronous motor, direct current electro-mechanical disc brakes and integral traction drive sheave shall be provided. Brake shall be spring applied and electrically released and designed to hold car at the floor level after coming to rest. The drive sheave shall be accurately turned and grooved for the quantity and size of hoist ropes applicable to service.

Additional items

Pit Ladder
 Permit and Inspection
 Earthquake Shaker Box
 Battery Lowering Device

Compensation Guides Governor

New compensation (ropes or encapsulated chain) as required.
 New slide guide assemblies shall be provided.
 The car safety will be activated by a new speed governor located overhead, driven by a governor rope suitably connected to the car safety. The governor will be equipped with rope grip jaws designed to clamp the governor rope so as to actuate the car safety upon a predetermined over speed downward. The governor will be set at not less than 115% of specified rated car speed and not more than the maximum governor tripping speed specified in the code for the specified rated car speed.

The rope grip jaws must be positively tripped within the permitted range of speed. The governor rope-tripping device will be so designed that no appreciable damage to or deformation of the governor rope will result from the stopping action of the device in operating the car safety. The governor over speed switches will conform to ANSI A17.1 code requirements and be so located and enclosed that excess lubricant will not enter the switch enclosure.

Upon activation of the safety switch, the switch will remain in the open position until manually reset. The governor will be accurately adjusted and sealed with tripping speed specified. Date tags indicating the test date will be applied.

Hoist Ropes

New hoist cables shall be provided. The hoisting cables will be designed for elevator service, compatible with the hoist machine, and having a factor of safety at least equal to that specified in the ANSI Code.

Counterweight

A new counterweight frame and/or filler weights shall be provided as applicable.

Governor Ropes

A new governor cable(s) compatible with the specifications for the new governor will be provided. The governor cable is to pass over the governor sheave and under a weighted tension device at the bottom of the hoist way. During normal operation of each elevator, the governor rope will run free and clear of the governor gripping jaws, cable guards and all other stationary parts. A metal tag will be

**Signalization
Layout Drawings**

attached to the top of the car-releasing carrier, giving the diameter, material of cable, and with date of cable installation. Tags will be attached in an approved manner.

New signalization shall be provided as required.

Mechanical Layout Engineering - Complete Layout

Cab Interior and Ceiling

Cab Interiors for the elevator: Eastlake, Montlake or Newcastle

Cab Interior Design:

- Provide drawings prior to manufacturing for approval.
- Provide three (3) #4 brushed stainless steel true vent base supports.
- Provide seven (7) lower plastic laminate panels.
- Provide three (3) #4 brushed stainless steel handrail backer panels.
- Provide seven (7) upper plastic laminate Laminate panels.
- Provide #4 brushed stainless steel reveals.
- Provide three (3) 1 1/4" round #4 brushed stainless steel sectional handrails.
- Provide three (3) #4 brushed stainless steel frieze.
- Provide aluminum pad studs for three walls
- Provide custom protective pads for three (3) walls if requested.

Stainless Steel Suspended Ceiling:

- Provide submittal drawings prior to manufacturing for approval.
- Provide three (3) or six (6) pan #4 brushed stainless steel suspended ceiling with Man-D-Tec Illuminator LED lighting.
- **Note:** ANSI code restricts any increase in the dead weight of the car plus capacity to no more than 5% over what was originally engineered. If the weights are increased by more than the 5% allowable, a complete structural review including building supports will be required. Our bid does not include any labor, material, engineering, or calculations should the dead weight of the car plus capacity be increased by more than 5%.

Elevator #4 - Hydraulic

Equipment number	#4
Rated load	4000 lbs
Rated speed	125 fpm
Travel height	40 ft 0 in
Number of floors	5

Offered Components

Door Panels

New satin stainless steel car door panels shall be provided where applicable. New doors shall be UL fire rated 1 1/2 hour.

ReNova Door Operator

A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.

Curtain of Light

Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.

The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

KCM831 Hydraulic Controller

KONE KCM831 is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE KCM831 is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to

**Field Pipe & Accessories
Hydraulic Power Unit**

accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, troubleshooting, and adjusting without requiring the use of an outside service tool.

New field pipe and or accessories shall be provided as required. A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.

An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.

An automatic Safety Valve will be supplied in the oil line at the jack unit (pit) designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.

Additional items

Two (2) manual shut off valves will also be provided.

New pit ladder
Permit and inspection
New oil

**Signalization
Layout Drawings**

Battery Lowering Device
New signalization shall be provided as required.
Mechanical Layout Engineering - Machine Room Only

Cab Interior and Ceiling

Cab Interiors for the elevator: Eastlake, Montlake or Newcastle

Cab Interior Design:

- Provide drawings prior to manufacturing for approval.
- Provide three (3) #4 brushed stainless steel true vent base supports.
- Provide seven (7) lower brushed stainless steel panels.
- Provide three (3) #4 brushed stainless steel handrail backer panels.
- Provide seven (7) upper plastic laminate Laminate panels.
- Provide #4 brushed stainless steel reveals.
- Provide three (3) 1 ¼" round #4 brushed stainless steel sectional handrails.
- Provide three (3) #4 brushed stainless steel frieze.
- Provide aluminum pad studs for three walls
- Provide custom protective pads for three (3) walls if requested.

Stainless Steel Suspended Ceiling:

- Provide submittal drawings prior to manufacturing for approval.
- Provide three (3) or six (6) pan #4 brushed stainless steel suspended ceiling with Man-D-Tec Illuminator LED lighting.
- **Note:** ANSI code restricts any increase in the dead weight of the car plus capacity to no more than 5% over what was originally engineered. If the weights are increased by more than the 5% allowable, a complete structural review including building supports will be required. Our bid does not include any labor, material, engineering, or calculations should the dead weight of the car plus capacity be increased by more than 5%.

2 DETAILED SPECIFICATION

Elevator #3 - Traction

Door Panels

Number of car entrances
Car Panel Finishing Material

New door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.

Front Opening Only

New car door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour. Finish will be #4 stainless steel.

Door Type
Door Width (Inches)
Door Height (Inches)
Qty of sets of Car door panel (per car)

Two Speed Side Opening

36

84

1

Curtain of Light



Hoistway NEMA Rating
Number of car entrances

The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

Hoistway rating is NEMA 1.
Front Opening Only

Door Operator

Elevator Group Size
Hoistway NEMA Rating
Number of car entrances
Number of front openings
Car Door Clutch locking
Door Type
Door Width (Inches)
Hatch Door Closer

A new car door operator shall be installed and arranged to automatically open and close the car door panel. The opening and closing shall be made smoothly and shall be cushioned at both final limits of travel. The door operator shall be arranged so that, in the event of a power failure of the operating circuits, the car doors cannot be readily opened by hand from within the elevator cab. The elevator shall not be able to move away from a landing until the car door panel is fully closed. The car door shall be equipped with a contact, which will prevent operation of the car unless the car door is closed. The contact shall be of the approved type and tested as required by code.

Simplex

Hoistway rating is NEMA 1.

Front Opening Only

7

A new restrictive style car door clutch will be provided.

Two Speed Side Opening

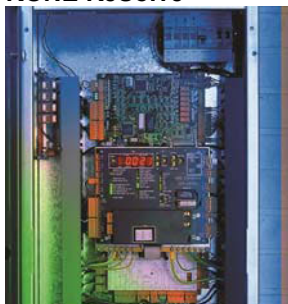
36

New hatch door closers will be provided at the specified number of openings.

Hatch Door Drive and interlock

New hatch door drives and interlocks will be provided at the specified number of openings.

KONE ReSolve



KONE ReSolve is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE ReSolve is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading.

The control for the hoist motor will be by means of a solid-state drive system. The system will be a controlled pulse-width modulated AC vector drive. The variable voltage variable frequency drive will convert the AC power supply using a two-step process to a variable voltage variable frequency power supply for use by the hoist motor. Varying the frequency and voltage of the motor will automatically and continuously control the speed, acceleration and deceleration. The system will be closed loop.

Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, trouble-shooting, and adjusting without requiring the use of an outside service tool.

Elevator Group Size	Simplex
Number of floors served	7
Travel (in)	780
Rated Load (lb)	2000
Rated Speed (fpm)	100
Hoistway NEMA Rating	Hoistway rating is NEMA 1.
Machine Room NEMA Rating	Machine room rating is NEMA 1.
Roping Ratio	1:1
Power Supply Voltage	208
Pit depth (in)	72
Overhead height (in)	240
Machine Room Location	Overhead
Machine Room Duct	KONE will remove all existing wiring, conduit and duct from the machine room. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)
Number of car entrances	Front Opening Only
Number of front openings	7
Card Reader Provisions	Controller will be equipped with card reader interface logic.
COP quantity	1

New hall monitor intercom (NOT by factory)	Yes
Traveling Cable(s)	KONE will remove the existing traveling cables and replace with new traveling cables designed for elevator service. In addition to our standard traveling cable, a second traveling cable be provided for security and/or card reader provisions.
Battery Backup	KONE will provide battery backup which will allow passengers to safely exit an elevator in the event of a power outage.
Loadweigh Device	A Load Weighing device will be provided which will continuously monitor the load in the elevator car. The load-weighing device provides information necessary for the Bypass Load Feature, and the Overload Feature to operate. The loadweigh device is also used to provide pre-torqueing so higher performance can be achieved.
Hoistway Duct	KONE will remove all existing wiring, conduit and duct from the hoistway. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)
Qty Option Board	2

MX Machines



A new AC Gearless machine, with permanent magnet synchronous motor, direct current electro-mechanical disc brakes and integral traction drive sheave shall be provided. Brake shall be spring applied and electrically released and designed to hold car at the floor level after coming to rest. The drive sheave shall be accurately turned and grooved for the quantity and size of hoist ropes applicable to service.

Rated Load (lb)	2000
Rated Speed (fpm)	100
Machine Room NEMA Rating	Machine room rating is NEMA 1.
Existing Roping Ratio	1:1
Roping Ratio	1:1
MX Check Req'd from Duty Table?	Yes
MX Machine Engr Check Req'd?	Yes
Machine Room Location	Overhead
Machine Type Approved by Engr?	Yes
Number of car entrances	Front Opening Only
Car Top Handrail	A top of car handrail will be provided as required by code.
Seismic Ring and String	A seismic ring and string will be provided.
Toe Guard	A new code compliant toe guard will be provided.
Elevator Group Size	Simplex
Layout Type Required	An engineered machine room layout will be provided for approval.
Compensation	New compensation (ropes or encapsulated chain) as required.
Travel (in)	780
Rated Speed (fpm)	100

Roping Ratio 1:1
 Compensation Type New Whisperflex style compensation will be provided to insure proper counter balance in accordance with application criteria.
 Compensation Quantity 1

Guides New roller guide assemblies shall be provided.

Rated Load (lb) 2000
 Rated Speed (fpm) 100
 Car Guide Seismic Retainers Yes
 Car guide shoes adapters Yes
 Car Guideshoe Type HW #382 (Slide)
 Counterweight guide shoes adapters Yes
 CWT Guide Seismic Retainers Yes
 CWT Guideshoe Type HW #383 (Slide)
 New CWT Guideshoes New slide guide shoes will be provided.
 New Car Guideshoes New slide guide shoes will be provided.

Governor

The car safety will be activated by a new speed governor located overhead, driven by a governor rope suitably connected to the car safety. The governor will be equipped with rope grip jaws designed to clamp the governor rope so as to actuate the car safety upon a predetermined over speed downward. The governor will be set at not less than 115% of specified rated car speed and not more than the maximum governor tripping speed specified in the code for the specified rated car speed.

The rope grip jaws must be positively tripped within the permitted range of speed. The governor rope-tripping device will be so designed that no appreciable damage to or deformation of the governor rope will result from the stopping action of the device in operating the car safety. The governor over speed switches will conform to ANSI A17.1 code requirements and be so located and enclosed that excess lubricant will not enter the switch enclosure.

Upon activation of the safety switch, the switch will remain in the open position until manually reset. The governor will be accurately adjusted and sealed with tripping speed specified. Date tags indicating the test date will be applied.

Rated Speed (fpm) 100
 Hoistway NEMA Rating Hoistway rating is NEMA 1.
 Machine Room NEMA Rating Machine room rating is NEMA 1.
 Type of Governor(s) Car
 Governor Location Machine Room
 Tension Weight For Car

Hoist Ropes

New hoist cables shall be provided. The hoisting cables will be designed for elevator service, compatible with the hoist machine, and having a factor of safety at least equal to that specified in the ANSI Code.

Travel (in) 780
 Roping Ratio 1:1
 Pit depth (in) 72
 Overhead height (in) 240
 Machine Room Location Overhead

Shackles	New shackles will be provided.
Wrapping	Single
Counterweight	A new counterweight frame and/or filler weights shall be provided as applicable.
Rated Load (lb)	2000
Rated Speed (fpm)	100
Hoistway NEMA Rating	Hoistway rating is NEMA 1.
Roping Ratio	1:1
Compensation Type	New Whisperflex style compensation will be provided to insure proper counter balance in accordance with application criteria.
Counterweight DGB (in)	[USEL_DGB(36)]
Cwt Frame and middleweights	A counterweight frame and middleweights will be provided.
Rope Comp Cwt Hitch	Yes
Calculated Middleweight (lbs)	4970
Empty Car Weight [lbs]	4600
Governor Ropes	A new governor cable(s) compatible with the specifications for the new governor will be provided. The governor cable is to pass over the governor sheave and under a weighted tension device at the bottom of the hoist way. During normal operation of each elevator, the governor rope will run free and clear of the governor gripping jaws, cable guards and all other stationary parts. A metal tag will be attached to the top of the car-releasing carrier, giving the diameter, material of cable, and with date of cable installation. Tags will be attached in an approved manner.
Travel (in)	780
Governor Rope	A new traction steel governor rope of appropriate size to insure proper operation, will be provided. As a minimum, the governor rope will comply with the factor of safety requirements of the ASME A17.1 Safety Code for Elevators.
Governor Rope Diameter	1/2in
Pit depth (in)	72
Overhead height (in)	240
Signalization	New signalization shall be provided as required.
Number of floors served	7
Number of car entrances	Front Opening Only
Number of front openings	7
Card Reader Provisions	Controller will be equipped with card reader interface logic.
Signalization Type	Serial
COP quantity	1
Qty of New Hall Station	7
Qty of car direction lanterns	1
Qty Hoistway Access Switch	2
Layout Drawings	Complete Mechanical Layout Drawings

Elevator #4 - Hydraulic

Door Panels

Number of car entrances
Car Panel Finishing Material

New door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.

Front Opening Only
New car door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour. Finish will be #4 stainless steel.

Door Type
Door Width (Inches)
Door Height (Inches)
Qty of sets of Car door panel (per car)

Two Speed Side Opening
48
84
1

ReNova Door



A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.

Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.

Hoistway NEMA Rating
Number of car entrances
Number of front openings
Door Type
Door Width (Inches)

Hoistway rating is NEMA 1.
Front Opening Only
5
Two Speed Side Opening
48

Curtain of Light



The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

Hoistway NEMA Rating
Number of car entrances

Hoistway rating is NEMA 1.
Front Opening Only

KCM831 Hydraulic Controller



KONE KCM831 is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE KCM831 is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, troubleshooting, and adjusting without requiring the use of an outside service tool.

Elevator Group Size
Number of floors served
Travel (in)
Rated Speed (fpm)
Hoistway NEMA Rating
Machine Room NEMA Rating
Power Supply Voltage
Pit depth (in)
Overhead height (in)
Machine Room Duct

Simplex
5
480
125
Hoistway rating is NEMA 1.
Machine room rating is NEMA 1.

Existing Motor Size (hp)

40
KONE will remove all existing wiring, conduit and duct from the machine room. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)



New Motor Size	50
Motor Starts per Hour	120
Number of car entrances	Front Opening Only
Number of front openings	5
Card Reader Provisions	Controller will be equipped with card reader interface logic.
Signalization Type	Serial
COP quantity	1
Battery Backup	KONE will provide battery backup which will allow passengers to safely exit an elevator in the event of a power outage.
Hoistway Duct	KONE will remove all existing wiring, conduit and duct from the hoistway. New conduit and duct properly sized and constructed for the job requirements will be installed (in accordance with applicable codes)
New Minimum Fusetron Size	175
Qty Option Board	1
Field Pipe & Accessories	New field pipe and or accessories shall be provided as required.
Field Pipe Accessories Make	Victaulic
Field Pipe Length (in)	240
Field Pipe Size	2"
Isolation Coupling (Pair)	Two (2) sound isolation couplings will be provided in the oil line between the power unit and the hydraulic cylinder(s). Each coupling will consist of flanges separated by a neoprene seal to absorb vibration.
Mainline Shutoff Valves	Two automatic safety valves will be supplied in the oil line at the jack unit (pit) and in the machine room designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.
Qty of couplings	16
Qty of elbows	3
Seismic Rupture Valve	A rupture valve will be provided which provides protection against supply line failure that causes overspeed in the down direction.

Hydraulic Power Unit

A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.

An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.

An automatic Safety Valve will be supplied in the oil line at the jack unit (pit) designed to shut off the flow of oil from the cylinder and bring the car to rest in case the car attains excessive down speed.

Two (2) manual shut off valves will also be provided.

Travel (in)	480
Rated Load (lb)	4000
Rated Speed (fpm)	125
Existing Motor Size (hp)	40
New Motor Size	50
Motor Starts per Hour	120
Existing Piston Diameter [in.]	6
Control Valve OEM	Maxton
Empty Car Weight [lbs]	4500
Field Pipe Length (in)	240
Field Pipe Size	2"
FL Working Pressure at Pump	447.510197
Jack location	Inground
Jack type	Single Stage
Load Class	Passenger
Low Oil Switch	An Up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective
NL Static Pressure [Single Stage]	177.056035
Piston Wall	0.375
Qty Jacks per Car	1



Seismic Restraints	Yes
Seismic Rupture Valve	A rupture valve will be provided which provides protection against supply line failure that causes overspeed in the down direction.
Number of car entrances	Front Opening Only
Layout Type Required	An engineered machine room layout will be provided for informational purposes only.
Signalization	New signalization shall be provided as required.
Number of floors served	5
Number of car entrances	Front Opening Only
Number of front openings	5
Card Reader Provisions	Controller will be equipped with card reader interface logic.
Signalization Type	Serial
COP quantity	1
Qty of New Hall Station	5
Qty of car direction lanterns	1
Qty Hoistway Access Switch	2
Layout Drawings	Machine Room Only Mechanical Layout Drawing



Project notes KONE has included in our bid the following electrical work that will be performed by Stoner Technology Services.

Replace the existing disconnects with Bussmann Shunt Trip Disconnects.
Insure pit and machine room 120-volt circuits are dedicated as required.
Insure pit, machine room, and lobby lighting are up to code levels
Install fused lockable cab lighting disconnect switches as necessary
Install GFCI receptacles in the pits and machine rooms
Install wiring for Battery lowering
Install phone lines in conduit within the machine room
Install wiring to indicate when the elevators are on emergency power
Install wiring for a ductless split HVAC system (Elevator #3 only)
Disconnect existing equipment and re-connect new, including temporary power if required
Add fire alarm devices to the existing Silent Knight system to perform shunt trip, hat flash, and power monitoring

Handover date Mutually agreeable project schedule will be determined at time of proposal acceptance. Current delivery lead time is 16 weeks from order receipt, deposit and approval of drawings.

Downtime period Elevator #3 (9-11 weeks)
Elevator #4 (4-5 weeks)

Price Overview

Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon purchaser's approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to the purchaser with recommendations and cost for corrective action.

Total Sales Price (excl. tax) \$356,994.31

Pricing Conditions This offer is valid for 90 days.

Maintenance The existing maintenance billing will be adjusted to reflect when each elevator is out of service. It will then be returned to normal once the elevators have been returned to normal operation.

**Elevator #3 - Traction****Equipment number**

Door Panel(s)
Curtain of Light
GAL Door Equipment
KONE ReSolve
MX Machines
Additional items
Comp. Ropes & chains
Guide shoes
Governor
Traction Ropes
Counterweight
Governor Ropes
Custom Fixtures

Sales price **\$ 229,368.13**

Component Overview**Equipment number**

Door Panel(s)
ReNova Door Equipment
Curtain of Light
KCM831
Field Pipe & Accessories
Power unit
Additional items
Custom Fixtures

Sales price **\$ 127,626.18**

Total Sales Price, excl. tax **\$ 356,994.31**



3 Tender Approval

Receiver:

KONE Inc.
Steven Hobbs
4265 SE International Way
Milwaukie, OR, 97222
steven.hobbs@kone.com

Sender:

Nancy Strening
METRO
600 NE GRAND AVE
Oregon, PORTLAND, 97232

Submitted by:

Steven Hobbs
Modernization Sales Executive
08/22/2017

We accept the offer constituted by this proposal (total sales price of \$356,994.31, excl. tax) and agree to the conditions contained therein.

Approved by KONE Corporate Officer

Approved by Purchaser

Signature: _____

Signature: _____

Printed Name:

Printed Name:

Title:

Title:

Date:

Company Name:

Date:



Alternates

Alternate #1: New hoistway doors and cladding of the entrance frames

KONE will install new satin stainless steel hoistway doors at each landing. In addition to new hoistway doors, we will subcontract a steel company to wrap the existing painted entrance frames in satin stainless steel.

Cost to add Alternate #1 to the base bid: Twenty-Nine Thousand Six Hundred Ninety-Two and 00/100 Dollars (\$29,692.00)

Sign here for acceptance of Alternate #1: X _____

Clarifications

Our proposal is based on the following clarifications:

- Contract terms between KONE Inc. and Purchaser shall be based on our Proposal and Attachments. (See Attachment “A” and “B”)
- All new elevator equipment provided shall meet applicable ASME A17.1 code requirements. Any provisions of codes applicable to out-of-scope items shall be the Purchaser’s responsibility. Cost of any future code changes adopted prior to permitting and completion are excluded.
- The existing cab and entrance dimensions, which may not meet current ADA or stretcher access rules, will be retained as is.
- Our proposal includes inspections and testing as required by the AHJ. However, any re-testing required due to other trades’ failures to complete their work or tests in a timely manner will be billed at our regular billing rates.
- No costs for preventive maintenance services are included in this capital improvement pricing.
- The ASME code limits changes to the empty car weight + capacity of each elevator to 5% of the originally installed value. If past or proposed changes result in a change to the weight or system pressure (for hydraulic) greater than 5% above the original design values, the cost of any engineering and of any required modifications to the elevator system or structure shall be extra to this proposal scope and pricing. If this situation is discovered during the engineering process, KONE will notify purchaser and recommend an alternate design or other changes.
- In order to provide best pricing, proposal excludes any extra demobilizations and remobilizations. If we must demobilize from the jobsite for any reason outside our control, we shall be compensated at our regular billing rates.
- Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon Purchaser’s approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to purchaser with recommendations and cost for corrective action.
- Asbestos: Notwithstanding anything contained to the contrary within this bid or contract, KONE’s work shall not include any abatement or disturbance of asbestos containing material (ACM) or presumed asbestos containing materials (PACM). Any work in a regulated area as defined by Section 1910 or 1926 of the Federal OSHA regulations is excluded from KONE’s scope of work without an applicable change order to reflect the additional costs and time. In accordance with OSHA requirements, the Customer shall inform KONE and its employees who will perform work activities in areas which contain ACM and/ or PACM of the presence and location of ACM and/or PACM in such areas which may be contacted during work before entering the area. Other than as expressly disclosed in writing, Customer warrants that KONE’s work area at all times meets applicable OSHA permissible exposure limits (PELs). KONE shall have the right to discontinue its work in any location where suspected ACM or PACM is encountered or disturbed. Any asbestos removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be the Customer’s sole responsibility and expense. After any removal or abatement, customer shall provide documentation that the asbestos has been abated from the KONE work area and air clearance reports shall be made available upon request prior to the start of KONE’s work.
- Purchaser shall provide any security, escort or other building service support personnel required during demolition, installation, testing, and inspections.
- For hydraulic elevators, we can assume no responsibility for unusual conditions such as hole cave in and complete hydraulic cylinder assembly embedded in concrete. The excavation of the hole to accommodate the new hydraulic cylinder assembly is based on encountering soil free of rocks, boulders, building construction members, sand, water, quicksand, underground caves and/or any other obstructions or unusual conditions. Should such obstructions or unusual conditions be encountered, additional time above or beyond the working days estimated to complete this project may be required. We will proceed with this portion of the project on a time and material basis, based on our normal billing rates.



Bid Attachment “A” / KONE Inc. General Terms and Conditions (Modernization)

1. APPLICATION OF THESE TERMS

The parties agree to be bound by the terms and conditions contained in the Bid Letter, this Bid Attachment A and Bid Attachment B, including the documents incorporated herein by reference (collectively, the “Proposal”).

2. SPECIAL PURCHASING REQUIREMENTS

This Proposal is made without regard to compliance with any special sourcing and/or manufacturing requirements including, but not limited to, Buy America, Buy American, U.S. Steel, FAR clauses, minority / disadvantaged supplier requirements or similar federal and/or state procurement laws. Should such requirements be applicable to this Project, KONE reserves the right to modify and/or withdraw its Proposal.

3. PROPOSAL CONDITIONS

The Proposal shall be open for acceptance within the period stated in the Bid Letter or, when no period is stated, for a period of 30 days from the date of the Bid Letter. Prior to commencing manufacture of the equipment described in the Bid Letter (“Equipment”), KONE must have (i) a fully executed contract; (ii) a schedule acceptable to KONE identifying the Equipment installation start date, or alternatively, KONE’s letter specifying the ship date (“Ship Date Letter”) signed by Customer, which, as applicable, is incorporated by reference herein; (iii) the first payment in Section 4 herein; and (iv) fully approved KONE layouts.

4. PAYMENT TERMS

Payment of the total Price is due within 30 days from invoice date, based on benchmarks as follows:

- 30% of the Price for engineering, site management, and overhead, billable and due upon execution of this Proposal or receipt of the subcontract;
- 50% of the Price for material and shipping, billable and due upon delivery of material to the jobsite or KONE Distribution Center;
- 20% of the Price for Equipment installation, billable and due at the billing cycle following the start of installation.

KONE reserves the right to delay, suspend, or stop the work, including manufacturing, delivery, installation and/or Equipment turnover, for non-payment, without liability to KONE or being held in default. Simple interest at 1.5% per month shall be charged on amounts not paid when due. Payments to KONE are not contingent on any third party payments to Customer. Customer shall reimburse KONE for all costs of collection, including courts costs and reasonable attorneys’ fees.

Prior to turnover, KONE must be paid in full, less 10% maximum retention, the Price including all change orders. Retention shall be due and payable within 30 days of execution of the Uniform Final Acceptance or Equipment turnover, whichever occurs first.

If certified payroll reporting is required, KONE will submit the requested reporting in the format of the U.S. Department of Labor form WH 347 & WH 348. The Price does not include Textura or any other special billing requirements, which can be added via change order at a rate of 0.3% of the Price.

5. INSTALLATION



Customer shall be responsible for procurement and cost of all permits, except permits related to installation of the Equipment. Where KONE's scope of work or other responsibilities include the obligation to utilize materials and/or finishes resembling or identical to those pre-existing in the building, KONE shall use reasonable efforts to procure such materials and Customer acknowledges and accepts that the materials and/or finishes reasonably available may not be in all respects identical to those pre-existing in the building. This Proposal is conditioned upon KONE using its standard installation method. The installation of the Equipment shall start after Customer has completed all work set forth in Bid Attachment B and any other documents describing site requirements ("Site Requirements"), all of which are incorporated by reference herein. Within two (2) weeks prior to the scheduled delivery date for KONE's materials, KONE shall conduct a standard visual site survey to verify that the Site Requirements are complete and notify Customer if there are outstanding deficiencies preventing KONE from beginning installation. KONE's site survey may include, but is not limited to, inspection of site access, working and safety conditions on site, wear and tear of any existing structures or surfaces, and planning of any dismantling or removal of existing equipment, components and materials, where applicable. KONE shall not be deemed to have surveyed any hidden structures, latent defects, subsurface conditions, or other non-visible matters, including but not limited to searching for hazardous substances and/or materials, which shall be subject to Section 16. If KONE's site survey reveals any deficiencies, KONE shall be entitled to delay the start of installation and Customer shall be responsible for all additional costs incurred by KONE, including without limitation, costs associated with: labor reallocation, re-directing materials to and storage in a KONE Distribution Center, additional labor for double handling of materials, and additional trucking, freight and insurance. Once the Site Requirements are completed, the start of installation shall be subject to the availability of labor and the delivery of material, if applicable.

KONE's work shall be performed during regular union working hours of regular working days, Monday to Friday, statutory holidays excluded. If overtime is mutually agreed upon and performed, the additional costs for such work shall be added to the Price at KONE's standard overtime rates. If the installation cannot be performed in an uninterrupted manner for any reason beyond KONE's control, Customer shall store the Equipment at Customer's cost and compensate KONE for any costs caused by such delay including, but not limited to, double handling of Equipment and demobilization.

KONE shall not be required to perform overtime or any Customer directed change to its work ("Extra Work") without an executed change order. No action by KONE, including but not limited to, performing Extra Work without an executed change order, shall be a waiver of KONE's right to seek payment for Extra Work performed. KONE shall be entitled to an extension of time and an equitable adjustment in the Price, including but not limited to, any increased costs of labor, including overtime, resulting from any change of schedule, re-direction of KONE personnel to another work area, acceleration, or out of sequence work.

KONE shall take reasonable methods to protect its work-in-place while KONE is actively on site and until execution of a KONE Uniform Final Acceptance, which is incorporated by reference herein. Should damage occur to KONE property, material or work-in-place by fire, theft or vandalism, Customer shall compensate KONE for said damages. Additionally, the Customer is solely responsible for ensuring that the equipment maintenance contractor, if not KONE, does not disturb, delay or interfere with KONE's work. KONE shall abide by Customer's safety policies and procedures to the extent such policies and procedures are not in conflict with KONE's Safety Policy. Testing and/or security features of Equipment must be completed before Equipment turnover. KONE is not responsible for damages, either to Equipment or the building, or for any personal injury or death, arising out of or resulting from any code required safety tests performed on Equipment or hoistway access granted by Customer to other trades.



6. TEMPORARY USE

Temporary use of certain types of Equipment may be permitted, provided the use period allows adequate time for Equipment restoration for final turnover and Customer executes KONE's Temporary Use Agreement. Temporary use shall be invoiced separately and subject to payment terms in Section 4 herein. At the end of temporary use, Customer shall return the Equipment to KONE in "like new" condition.

7. HAZARDOUS MATERIALS

KONE's work shall not include any abatement or disturbance of asbestos containing material ("ACM"), presumed asbestos containing materials ("PACM"), or other hazardous materials (i.e. lead, PCBs) (collectively "HazMat"). KONE shall have the right to discontinue its work in any location where suspected HazMat is encountered or disturbed. Any HazMat removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be Customer's sole responsibility and expense. Should any HazMat abatement occur within the shaft or machine room, Customer shall execute KONE's Hoistway or Pit Access Request. If any HazMat is known to be present on site before the start of work, HazMat removal or abatement shall be completed prior to KONE scheduling installation and delivering material.

8. TITLE AND RISK TO EQUIPMENT

Title to and ownership of all Equipment intended for incorporation in KONE's work, whether installed or stored on or off site, shall remain with KONE until final payment is made and, in the case of suspension or termination for non-payment, the parties agree that KONE may retake possession and remove any or all of KONE's works, Equipment or apparatus without material damage to the property and irrespective of the manner in which the same is attached or affixed. Risk of loss in KONE's work and Equipment passes to Customer upon delivery to the site or off-site storage.

Any tools, devices, or other equipment that KONE uses to perform its work or monitor the Equipment remains the sole property of KONE. If this Proposal terminates or expires for any reason, Customer will give KONE access to the premises to remove such tools, devices or equipment at KONE's expense.

9. TURNOVER

Prior to turnover, KONE must receive a final punchlist. Upon turnover, KONE requires a signed Uniform Final Acceptance. KONE shall provide its standard electronic O&M manuals with CD-ROMs in electronic format, if applicable, upon execution of the Uniform Final Acceptance. Standard KONE samples shall be provided upon request. No mock-ups or video training are included in the Price.

10. DELAY

KONE shall not be liable for any loss, damage, claim, or delay due to any cause beyond KONE's control, including, but not limited to, acts of government, strikes, lockouts, work interruption or other labor disturbance, delays caused by others, fire, explosion, theft, floods, inclement weather, riot, civil commotion, war, malicious mischief, or acts of God. In the event of such delays, KONE shall be entitled to an extension in time equal to the length of such delay and an equitable adjustment in the Price. Customer shall compensate KONE for labor and material cost escalations resulting from Project delays not caused by KONE, which extend completion of KONE's work beyond the end of the current calendar year. Customer is on notice that IUEC labor rates increase annually.



11. LIMITED WARRANTY

For one (1) year after the acceptance date set forth in the signed Uniform Final Acceptance, date of Equipment turnover, or date of Customer's use of Equipment (unless such use is pursuant to the Temporary Use Agreement), whichever occurs first, KONE warrants Equipment against defect in workmanship and material. The warranty excludes remedy for damage or defect caused by abuse, misuse, vandalism, neglect; repairs, alteration or modifications not executed by KONE; improper or insufficient maintenance, improper operation, characteristics of the building such as electrical power or security features, natural or other catastrophe such as flood, fire, or storm, or normal wear and tear and normal usage. The warranty excludes training or instruction in the proper operation or maintenance of Equipment. Specific noise ratings and energy efficiencies cannot be guaranteed due to different building characteristics and ambient noise levels. Customer's remedy is limited to repair or replacement of a defective part, in KONE's sole discretion, and excludes labor. KONE DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

12. IDEMNIFICATION

KONE shall only indemnify and hold Customer harmless for claims, damages, losses or expenses, but excluding loss of use ("Claims") due to bodily injury, including death, or tangible property damage (other than the Project or KONE's work itself) to the extent caused by KONE's negligent acts or omissions. KONE shall not indemnify Customer for any other Claims. Customer agrees to indemnify and hold KONE harmless from any Claim for bodily injury, including death, or tangible property damage in connection with the use or operation of the Equipment. Each party shall defend itself in the event of a Claim.

13. INTELLECTUAL PROPERTY

KONE shall retain title and ownership of all intellectual property rights relating (directly or indirectly) to the Equipment provided by KONE, including but not limited to software or firmware (whether in the form of source code, object code or other), drawings, technical documentation, or other technical information delivered under the Proposal. KONE grants Customer a non-exclusive and non-transferable license and right to use the software and firmware in connection with the use and maintenance of the Equipment. Customer shall not use any drawings, technical documentation or other technical information supplied by or on behalf of KONE for any purposes other than those directly related to the Proposal or to the use and maintenance of the Equipment. Customer shall not in any form copy, modify or reverse engineer the software, or give access to the software for such use to any third party without KONE's prior written consent. KONE shall not provide any information such as KONE's internal manuals, manufacturing drawings, source codes, or other proprietary and confidential information, all of which are excluded from the Proposal.

14. INSURANCE

In lieu of any Customer insurance requirements, KONE shall provide its standard certificate of insurance, which shall be deemed to satisfy all insurance requirements for this Project. KONE shall not provide loss runs or copies of its insurance policies. KONE shall not provide coverage for professional (E&O) liability, pollution liability, data privacy/security, or no-fault medical payments. If the Project is covered by an Owner/Contractor Controlled Insurance Program, KONE agrees to participate provided there is no cost to KONE, no reduction in the Price, and subject to KONE's review of the proposed program.



15. LIMITATION OF LIABILITY

In no event shall either party be liable to the other party for any consequential, special, punitive, exemplary, liquidated, incidental, or indirect damages (including, but not limited to, loss of profits or revenue, loss of goodwill, loss of use, increase in financing costs) (collectively, "Consequential Damages") that arise out of or relate to this Proposal even if such party has been advised of the possibility of such Consequential Damages. The limitation set forth in this section shall apply whether the claim is based on contract, tort or other theory. The limitation set forth in this section shall not, however, apply to any (i) indemnification obligations for third-party Claims; or (ii) breach by either party of any confidentiality obligations.

16. CONCEALED OR UNKNOWN CONDITIONS

If during the course of its work, KONE encounters conditions at the site that are subsurface, differ materially from what is represented in the contract documents, or otherwise concealed physical conditions, KONE shall be entitled to an extension of time and additional costs for the performance of its work, which shall not be subject to any payment conditions or contingencies.

17. TECHNICAL SURVEY

KONE's Price and obligations under this Proposal are subject to a technical survey to be performed on Customer's existing units within 90-days of the effective contract start date. If a safety hazard or code violation is identified during KONE's technical survey, Customer shall immediately remove the unit from service until repairs are performed. KONE is not obligated to perform tests, correct outstanding violations or deficiencies that were not addressed by the prior service provider and/or the owner, or make related necessary repairs or component replacements on the unit. If additional work is necessary, KONE shall provide a separate proposal or recommendation for such work. Customer agrees to indemnify, defend, and hold KONE harmless for any claims arising out of Customer's failure to comply with KONE's recommendations and proposal, and any obligation on the part of KONE to indemnify or defend Customer with regard to such claim shall be null and void. If Customer does not immediately approve KONE's proposal or recommendation, KONE reserves the right to terminate this Proposal/contract without penalty.

18. TERMINATION

If a party materially breaches this Proposal, the other party shall provide written notice of the breach and a reasonable time to cure the breach, but in no event less than 30 days. If the breaching party fails to cure the breach within the specified time period, the non-breaching party may terminate the Proposal upon 15 days written notice to the other party. If KONE notifies Customer of a material breach pursuant to this paragraph, KONE may temporarily suspend its work without liability.

19. GOVERNING LAW AND DISPUTE RESOLUTION

The parties agree that this Proposal shall be governed by the laws of the state where the Project is located, and venue for disputes shall be located in that state. KONE does not agree to participate in arbitration proceedings.

20. MISCELLANEOUS

This Proposal, including the documents incorporated herein by reference, constitutes the entire agreement of the parties and supersedes all prior negotiations, understandings, and representations



whether written or oral in relation to the subject matter hereof. Where a conflict or ambiguity exists between this Proposal and any other contract document (including but not limited to, Customer's drawings and specifications), the terms and conditions of this Proposal shall control. This Proposal may be amended only in writing by the duly authorized representative of both parties. This Proposal may be executed in one or more counterparts. Each counterpart shall be considered an original and all of the counterparts shall constitute a single agreement binding all the parties as if all had signed a single document. For purposes of executing this Proposal, a document signed by electronic means is to be treated as an original document. The failure of either party to insist upon performance or strict performance of any of the terms or conditions of this Proposal shall not be deemed a waiver of any rights or remedies that such party may have or a waiver of any subsequent breach or default under this Proposal. Neither party may assign or transfer the benefit or burden of this Proposal without prior written consent of the other party.



Bid Attachment “B” / Site Requirements & Work by Other Trades

The work described below is a summary of work to be performed by others (“Work by Other Trades”) that may be required in conjunction with the elevator modernization performed by KONE (the “Work”). Purchaser shall provide any and all building electrical, structural and mechanical system upgrades required for code compliance, life safety, and proper equipment installation and operation. The Authorities Having Jurisdiction (AHJ) may require additional remedial or preparatory work. All required remedial or preparatory work shall be performed by properly licensed trade contractors in compliance with applicable codes and based on a schedule of performance that allows for uninterrupted progress of the Work. Under no circumstances shall KONE be responsible for any cost associated with the performance of remedial work by others.

Purchaser shall provide the following unless specifically included in KONE’s Work:

Electrical

- A properly rated three phase fused disconnect switch, externally operable and lockable in the open position, located as required by code. Accommodate any increases in motor size or feeder loads.
- A dedicated 110 VAC fused disconnect switch, externally operable and lockable in the open position adjacent to the machine room door for cab lighting and ventilation, located as required by code
- Shunt-trip disconnect if fire sprinklers are present in machine room or hoistway.
- GFI 120 VAC convenience outlets in machine room and pit.
- Separate outlet in the pit area if a sump pump is installed.
- Telephone line service brought to the elevator machine room for emergency communication device.
- Any required RF shielding of TV or radio transmitters, antennae and/or wave-guides.
- Conduit with pull boxes from each elevator bank to any remote fire control or communication panels specified
- If required by building code, standby/emergency power , sufficiently sized to provide power of permanent characteristics to each elevator’s disconnect, simultaneously, upon loss of regular power, including feeders, transfer switches and auxiliary contact signal outputs to elevator controllers.

Machine Room

- A code-compliant machine room. Provide or maintain fire rating as required by building code.
- Fire-rated door for access into the machine room. Door shall be self-closing and self-locking, operable from inside the room without the use of a key.
- Independent ventilation or an air conditioning system for the elevator machine room, to assure temperature is maintained between 65 degrees and 95 degrees Fahrenheit.
- Fire extinguisher inside machine room.
- Minimum clear machine room height of 7’-0”.
- Suitable lighting that provides a minimum of 19 ftc at floor.
- Removal of any non-elevator related equipment and materials from within the machine room and proper disposal of oil and other hazardous or non-hazardous substances and materials.

Hoistway

- A code-compliant hoistway, constructed in accordance with KONE’s requirements and specifications. Provide or maintain fire rating as required by building code.
- Patching of all holes in hoistway walls with fire rated material.
- Beveling all ledges within hoistway measuring over 4”.
- Removal of any non-elevator related equipment and materials from within the hoistway and proper disposal of oil and other hazardous or non-hazardous substances and materials.
- A guarded light fixture and light switch in pit. Switch must be located 42” above the lowest landing floor level.
- A means of displacing water located in the pit and containing and disposing of oil, chemicals, and other substances in compliance with environmental laws and regulations (KONE assumes no responsibility for discharge of oil, chemicals, and other substances into storm water systems, sanitary

sewer systems, retention ponds, etc.).

- Elevator hoistway ventilation to the outside atmosphere as required by building code

Fire Service

- Fire alarm smoke detectors with wiring and relays in the machine room terminating at elevator controller.
- Fire alarm initiating devices must be located in front of each elevator entrance as well as in the machine room and at the top of the hoistway.
- Where sprinklers exist in the machine room and/or hoistway, a fire alarm initiating device within 12" of each sprinkler head.

Access Integration/Security

- Our proposal includes KONE logic and provisions for the specified Touchscreen(s), Keypad Destination Operating Panel(s), Monitoring System(s) and Multi-Media Equipment.
- Card Readers and/or any additional required hardware & software for proper functionality of access control/security system(s) shall be furnished and installed by others.
- Any required software to ensure proper communication between KONE control system(s) and building system(s) shall be the responsibility of others.
- A designated 115V 15A circuit is required at each of the remote monitoring stations.
- KONE recommends a minimum 100 Mbit/s Ethernet for each of the following application(s): Integrated Touchscreen/Keypad Destination Operating Panels, Monitoring System, Multi-Media Equipment, and Card Readers.

Counterweighting

- Pricing is based upon the existing car to counterweight weight ratio being consistent with elevator industry standards. This is defined as the counterweight weight being equal to the empty car weight plus 40%. The actual assemblies will be weighed during the modernization process. If modifications are required to correct the existing weight balance, these modifications will be provided at additional cost.

RK1 Fuses and Circuit Breakers

- Fuses are to be current limiting class RK1 or equivalent. Circuit breakers are to have current limiting characteristics equivalent to RK1 fuses. Provisions of these fuses are the responsibility of others, not KONE.

General

- Access to the building to perform the Work and for deliveries with dry, protected storage adjacent to the hoistway.
- Cutting of existing walls, floors and finishes, together with all repairs made necessary by such cutting or changes, e.g. cutting of lobby walls for flush hall fixtures and removal of encroaching lobby features such as wall-mounted ashtrays. Removal, replacement, and/or repair of any mirrors, millwork, plaster, stone or other special hall finishes.
- All work of other trades must be complete and ready at time of first elevator inspection, or elevator will not be released for operation by the AHJ. If the AHJ does allow temporary operation under a Temporary Operating Inspection (TOI), any associated costs shall be Purchaser's responsibility.
- Our tender is based on suitable site conditions, material and tooling storage space, and bathroom access being available on site.
- Safe working environment must be provided and supported by provision for adequate entrance protection, means of hoisting, hoistway dividing screens, and protection of floors walls and doors etc.
- Emergency evacuation procedures to be clearly defined where required. Subject to site survey and actions agreed.
- Any portion of the Work that is subject to the permissions of local authorities beyond the elevator permits must be identified to KONE. Responsibility for permits to be agreed. Permits and appropriate signage indicating any changes to pedestrian access routes for building users must be in place prior



to start of the Work.

- Elevator installation methods requires the integrity of the existing Safety Gear and Overspeed protection devices, and are therefore subject to verification of suitability prior to commencement of the work. Any remedial work required or alternative solution is not included in this tender.

MERC STAFF REPORT

Agenda Item: For the purpose of approving the scope and fee proposals from Kone, Inc. for the Arlene Schnitzer Concert Hall Front-of-House and Back-of-House Elevator Equipment Modernization and authorizing the General Manager of Visitor Venues to execute the contract documents.

Resolution No: 17-36

Date: November 1, 2017, 2017

Presented by: Nancy Strening

BACKGROUND: In December of 2013 Elevator Consulting Services (ECS) issued an Elevator Modernization Report for two (2) Hydraulic Front of House passenger elevators, one (1) Hydraulic Back of House elevator, and one (1) Overhead Geared Back of House passenger/service elevator at the Arlene Schnitzer Concert Hall.

The report noted that for each elevator, major components, including controller, pump unit, valves, oil lines and door operator had reached the end of useful life, and in many cases replacement parts are no longer available. The report also noted that while the elevators complied with the codes under which they were installed, they do not comply with current mandated code enforced by the State of Oregon.

A decision has been made to close the ASCH between July 1 and August 31 2018 in order to replace the orchestra shell. This is the optimal time to do the elevator work as well, since they need to be taken out of service for 8 weeks during the work.

The amount of time required for elevator equipment manufacturing, workforce scheduling, and installation is such that contracts must be in place before the end of 2017 in order to start and complete the work during the closure of the ASCH between July 1 and August 31 2018. This would not be possible if the project delivery method were the standard design-bid-build.

In the interest of expediting the project, Metro's Construction Project Management Office (cPMO) staff proposed utilizing a Cooperative Procurement, which is authorized under Metro Local Contract Review Board Administrative Rules Division 46-0400. cPMO and Procurement staff investigated existing US Communities Joint Cooperative contracts and identified an existing contract between the City of Denver and KONE, Inc., one of the few companies capable of doing this specialized work. Going directly to this contract will allow the project to meet the schedule constraints. The Office of Metro Attorney confirmed that it was appropriate to utilize this contract.

KONE, Inc. staff provided scope of work and cost proposals for the elevator modernization work. These scope and cost proposals are consistent with the information provided in the 2013 study.

There are no COBID firms capable of performing the elevator modernization work. KONE, Inc.'s hiring is through the Local 23 brand of the International Union of Elevator Constructors (IUEC). KONE, Inc. cannot directly control the hiring options as all of their labor is required to be taken directly from this Union and in accordance with Journeyman and Apprentice rules of the Union. KONE has advised that when they have added a new employee to their field crews, they have found the Union is typically without minority and female members who are available for hire. They currently have one female apprentice in on the labor team that was provided through the IUEC, and have committed to schedule this apprentice, if possible, on the ASCH Elevator Modernization Project.

FISCAL IMPACT: The Schnitzer Elevator modernization projects are included in the FY18-19 5-year Capital Improvement Plan (CIP) and will part of the FY18-19 budget request.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition Recreation Commission, by Resolution No 17-36, approve the Attachment A proposals to the US Communities Joint Cooperative Contract #201414653 (attached hereto) with KONE, Inc., for the amounts of Two Hundred Sixty Four Thousand, Six Hundred Thirty One and 55/100 dollars (\$264,631.55) for the two (2) Front-of-House Elevators and Three Hundred Fifty Six Thousand, Nine Hundred Ninety Four and 31/100 dollars (\$356,994.31) for the two (2) Back-of-House Elevators at the Arlene Schnitzer Concert Hall and authorize the General Manager of Visitor Venues to execute the contract documents.

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 17-37

For the purpose of approving the contract with Carleton Hart Architecture, PC for the Antoinette Hatfield Hall Roof Replacement and Parapet Repair and authorizing the General Manager of Visitor Venues to execute the contract.

WHEREAS, the roof at Antoinette Hall has reached the end of useful life and is in need of replacement; and

WHEREAS, incorrectly designed and installed details at the roof perimeter and parapet walls are allowing water infiltration and would impede the performance of a new roof; and

WHEREAS, a comprehensive overall design of the roof and wall assemblies is necessary to determine the appropriate budget allocation for the work and ensure that new work is done correctly; and

WHEREAS, staff has completed a thorough Request for Proposal process in accordance with Division 48 of Metro’s Local Contract Review Board Administrative Rules, selected the most qualified respondent, and negotiated an agreement for the requested services to the satisfaction of both parties; and

WHEREAS, the Metropolitan Exposition Recreation Commission has the authority to approve contracts for the Portland’s Centers for the Arts, and;

WHEREAS, staff recommend approving a contract with Carleton Hart Architects in an amount not to exceed One Hundred Ninety-Six Thousand, Seven Hundred Twenty Two and NO/Dollars (\$196,722.00).

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

1. Approves the contract with Carleton Hart Architects 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 Commission.

Passed by the Commission on November 1, 2017.

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

Chair

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

Secretary/Treasurer



**PROFESSIONAL SERVICES CONTRACT
(Architectural, Engineering, and Related Services)
Contract Reference Number: 308001**

THIS CONTRACT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter (“Metro”), located at 600 NE Grand Avenue, Portland, OR 97232-2736, and Carleton Hart Architecture (“Consultant”), located at 830 SW 10th Avenue, Portland, Oregon 97205 (Metro and Consultant are collectively the “Parties”).

ARTICLE 1

Initial Contract Information

1.1 Term. This Contract shall become effective on the date that the Contract is fully executed by the Parties. No work shall be performed under the Contract prior to the effective date. This Contract shall expire, unless otherwise terminated or extended, on June 20 2019. Passage of the Contract expiration date shall not extinguish, prejudice, or limit either Party’s right to enforce this Contract with respect to any default or defect in the performance that has not been corrected.

1.2 Initial Project Information.

1.2.1 Project Name: Antoinette Hatfield Hall Roof Replacement and Parapet Wall Repair

1.2.2 General Project Description: Provide design, consulting and contract administration services including but not limited to all aspects of design, architecture, engineering, sustainable practices and cost estimating to complete the Roof Replacement and Parapet Wall Repair for Antoinette Hatfield Hall. The Scope of Work is set out in more detail in Exhibit A.

1.2.3 Construction Cost Budget: TBD

1.2.4 Design Schedule: See Exhibit E.

1.2.5 *Intentionally Omitted*

1.3 Metro’s Anticipated Design and Construction Schedule.

1.3.1 Design Phase Milestone Dates: See Exhibit E.

1.3.2 Start of Construction: See Exhibit E

1.3.3 Substantial Completion: See Exhibit E.

1.4 Contract Documents. The Contract consists of the following documents, in order of precedence:

1.4.1 This Contract.

1.4.2 Exhibit A. Scope and Fee by Phase.

1.4.3 Exhibit B. Metro's Request for Proposals dated August 22, 2017 and the following addenda: Addendum 1 dated September 8, 2017.

1.4.4 Exhibit C. Consultant's Proposal dated September 21, 2017

1.4.5 Exhibit D. Consultant's Fee Proposal including Consultant and Subconsultant rates for additional services dated October 23, 2017.

1.4.6 Exhibit E. Consultant's project design schedule dated October 24, 2018.

1.5 Order of Precedence. In the event of any apparent or alleged conflict in the Contract documents, such conflict shall be resolved in the order of precedence listed in Section 1.4, except that any subsequent Contract amendments approved by both Parties shall take precedence over the documents listed in Section 1.4 and one another by date, latest first.

ARTICLE 2

Relationship of the Parties

2.1 Consultant shall provide the Services for the Project in accordance with the terms and conditions of this Contract. Consultant's performance of Services shall be as a professional consultant to Metro to carry out the Project and to provide the technical documents and supervision to achieve Metro's Project objectives.

2.2 In administering this Contract, Metro may retain the services of an independent project manager and other consultants as needed to fulfill Metro's objectives.

2.3 Consultant shall provide a list of all Subconsultants that Consultant intends to utilize on the Project (the "Subconsultants"). This list shall include such information on the qualifications of the Subconsultants as may be requested by Metro. Metro reserves the right to review the Subconsultants proposed. Consultant shall not retain a Subconsultant to which Metro has a reasonable objection.

2.4 Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Subconsultants identified by Consultant (collectively, the "Key Personnel" and individually, the "Key Person"). Therefore, Consultant shall make available Key Personnel as identified in its proposal. Consultant shall provide to Metro a list of the proposed Key Personnel to be assigned to the

Project. This list shall include such information on the professional background of each Key Person as may be requested by Metro. If any Key Person becomes unavailable to Consultant, the Parties shall mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of, Metro, Consultant shall not: (i) re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Contract; (ii) allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Contract; or (iii) substitute any Key Person. Any of these actions shall constitute a material breach of the Contract. Consultant shall remove any individual or Sub-consultant from the Project if so directed by Metro in writing following discussion with Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

ARTICLE 3

Consultant's Responsibilities; Representations and Warranties

3.1 Consultant agrees that:

3.1.1 The phrase "Standard of Care" that is used in this Contract is defined as follows: the same professional skill, care, diligence, and standards as similar professionals performing similar services in the Portland Metropolitan Area under similar circumstances (the "Standard of Care");

3.1.2 Notwithstanding Section 3.1.1 above, if the services are so specialized that there are no similar professionals performing similar services in the Portland Metropolitan Area, the "Standard of Care" that is used in this Contract is the same professional skill, care, diligence, and standards as similarly skilled professionals performing similar specialized services in the United States under similar circumstances.

3.1.3 Consultant shall perform all Services in accordance with the Standard of Care;

3.1.4 Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables, and other documents so that they accurately reflect, fully comply with, and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies that are due to causes beyond the control of Consultant;

3.1.5 Consultant shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables, and other documents prepared by Consultant at no additional cost to Metro;

3.1.6 Metro's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents.

Any review or acceptance by Metro will not relieve Consultant of any responsibility for complying with the Standard of Care;

3.1.7 Consultant shall, at no additional cost to Metro, render assistance to Metro in resolving problems or other issues relating to the Project design or to specified materials;

3.1.8 During the term of the Contract, Consultant shall obtain, hold, maintain, and fully pay for all licenses and permits required by law for Consultant to conduct its business and perform the Services. During the term of the Contract, Metro shall pay for and Consultant shall obtain, hold, and maintain all licenses and permits required for the Project, unless otherwise specified in the Contract. Consultant shall review the Project site and the nature of the Services and advise Metro throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

3.2 Subconsultants.

3.2.1 Consultant shall provide in all subconsultant agreements that the Subconsultant will be bound by the terms and conditions of this Contract to the extent that they relate to the Subconsultant's work. Consultant shall require each Subconsultant to enter into similar agreements with lower tier Subconsultants. Consultant shall make available to each proposed Subconsultant, prior to the execution of the subconsultant agreement copies of this Contract. Subconsultants shall similarly make copies of applicable portions of such documents available to their respective proposed sub-tier Subconsultants.

3.2.2 All subconsultant agreements shall also provide that they are assignable to Metro at Metro's option, in the event that Metro terminates the Contract. Consultant will provide to Metro a copy of all subconsultant agreements.

3.2.3 Consultant shall pay all Subconsultants and other Subcontractors as required by Consultant's contracts with those Subconsultants and Subcontractors. Consultant agrees that Metro has no direct or indirect contractual obligation or other legal duty whatsoever to pay the Subconsultants and other Subcontractors of Consultant or otherwise ensure that Consultant makes full and timely payment to those Subconsultants and Subcontractors for Services performed on the Project.

3.2.4 *Intentionally Omitted*

3.3 Consultant represents and warrants to Metro that:

3.3.1 Consultant has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Consultant have the actual authority to bind Consultant to the terms of this Contract;

3.3.2 When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms; the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon Consultant and do not result in a violation of any law, regulation, court decree or court order, or other legal process applicable to Consultant;

3.3.3 Consultant shall, at all times during the term of this Contract, be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;

3.3.4 Consultant is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Contract and to design and administer a project having the scope and complexity of the Project;

3.3.5 Consultant has the capabilities and resources necessary to perform Consultant's obligations under this Contract;

3.3.6 Consultant is, or shall become, in a manner consistent with the Standard of Care, familiar with all current laws, rules, and regulations that are applicable to the design and construction of the Project;

3.3.7 All Services shall be performed in accordance with the Standard of Care;

3.3.8 The Project, when completed and if constructed in accordance with the intent established by the drawings, specifications, deliverables, and other documents prepared by Consultant pursuant to this Contract, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended; and

3.3.9 The published specifications of the "Automated Systems" that Consultant has specified, designated, and planned pursuant to this Contract conform to the Contract requirements. For the purposes of this subsection, "Automated Systems" shall mean any computers, software, firmware, HVAC systems, elevators, electrical systems, fire or life safety systems, security systems, and any other electrical, mechanized, or computerized devices serving the Project.

3.4 The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided in this Contract or at law.

ARTICLE 4

Metro's Responsibilities and Authority

4.1 Authority and Relationship of Metro. Metro's Chief Operating Officer shall appoint a Metro representative ("Project Manager"). Except as specifically provided in this Section, no individual other than the duly appointed Project Manager acting or purporting to act

as an officer, agent, representative, consultant, or employee of Metro or Consultant shall have any authority to make representations, statements, or decisions of whatever nature binding Metro regarding any aspect of this Contract. Consultant 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 Metro's Chief Operating Officer or the Project Manager designated in writing by Metro's Chief Operating Officer as having authority to act for Metro, but only to the extent that such authority is expressly delegated in writing.

4.2 *Intentionally Omitted*

ARTICLE 5

General Contract Provisions

5.1 Contract Performance. Consultant shall at all times perform the Services diligently and without delay and shall punctually fulfill all Contract requirements consistent with the schedule for the performance of Services set forth in this Contract. Expiration or termination of the Contract shall not extinguish, prejudice, or limit either Party's right to enforce this Contract with respect to any default or defect in performance. Time is of the essence in the performance of this Contract.

5.2 Records.

5.2.1 Consultant and Subconsultants shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant and Subconsultants shall maintain any other records necessary to clearly document:

5.2.1.1 The performance of Consultant, including but not limited to Consultant'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 Consultant or Subconsultant under the terms of the Contract or subcontract;

5.2.1.2 Any claims arising from or relating to the performance of Consultant or Subconsultant under this Contract;

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

5.2.1.4 Payments made to all suppliers and Subconsultants.

5.2.2 The records described in Section 5.2.1 are the Contract Records.

5.2.3 Consultant and Subconsultants 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.

5.2.4 Consultant and Subconsultants 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, Consultant or Subconsultant 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 Consultant elects to have such Contract Records outside these boundaries, the costs paid by Consultant to Metro for inspection, auditing, examining, and copying those records shall not be recoverable costs in any legal proceeding.

5.2.5 Consultant and Subconsultants 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 Consultant or Subconsultant 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.

5.2.6 Consultant and Subconsultants 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 Consultant and Subconsultants, including but not limited to a court proceeding, arbitration, mediation, or other alternative dispute resolution process.

5.2.7 Consultant and Subconsultants agree that in the event such Contract Records or any audits disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, Consultant and Subconsultants 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.

5.2.8 Failure of Consultant and Subconsultants 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 Consultant or Subconsultant is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

5.3 Indemnity.

5.3.1 Claims For Other Than Professional Liability. Consultant shall indemnify, defend, save, and hold harmless Metro, and its officers, agents, and employees, from

and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the acts or omissions of Consultant or its Subconsultants, Subcontractors, agents, or employees under this Contract.

5.3.2 Claims for Professional Liability. Consultant shall indemnify, defend, save, and hold harmless Metro, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of whatsoever nature arising out of the professionally negligent acts, errors, or omissions of Consultant or its Subconsultants, Subcontractors, agents, or employees in the performance of professional services under this Contract.

5.3.3 Exception. Nothing in this Sections 5.3 or 5.4 requires Consultant or Consultant’s surety or insurers to indemnify Metro, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property caused in whole or in part by the negligence of Metro, its officers, agents, and employees. Nothing in the foregoing limits or otherwise affects any requirement in Section 5.3 or 5.4 that requires Consultant to indemnify Metro, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property arising from the fault of the Consultant or Consultant’s agents, representatives, employees, or Subconsultants.

5.4 Insurance.

5.4.1 The Consultant, at its sole cost, shall procure and maintain at all times while performing Services under this Contract, policies of insurance issued by responsible carriers rated A VII or better by A.M. Best’s rating service (unless otherwise approved by Metro) and in a form and substance reasonably satisfactory to Metro, which afford at least the following minimum coverages:

5.4.1.1 Workers’ Compensation. Workers’ compensation coverage sufficient to meet statutory liability limits.

5.4.1.2 Employer’s Liability. Employer’s liability insurance in addition to its workers’ compensation coverage in the following minimum amounts:

5.4.1.2.1	Each Accident:	\$1,000,000
5.4.1.2.2	Each Bodily Injury/Disease:	\$1,000,000
5.4.1.2.3	Aggregate Bodily Injury/Disease:	\$1,000,000

5.4.1.3 Commercial General Liability. The Consultant shall 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 Metro. CGL coverage shall 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: (1) separation of insured; (2) incidental medical malpractice; and (3) per-Project aggregate for premises operations.

- 5.4.1.3.1 Each Occurrence: \$1,000,000
- 5.4.1.3.2 General Aggregate: \$2,000,000
- 5.4.1.3.3 Product/Completed Operations: \$2,000,000
- 5.4.1.3.4 Personal & Advertising Injury: \$1,000,000

5.4.1.4 Professional Liability/Errors and Omissions: The Consultant shall purchase and maintain professional liability/errors and omissions insurance or cause that those Subcontractors providing design services do so.

- 5.4.1.4.1 Each Claim/Aggregate: \$1,000,000

5.4.1.5 Automobile Liability. The Consultant shall 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 Metro. The automobile liability insurance shall include pollution liability coverage with vehicle overturn and collision.

- 5.4.1.5.1 Combined Single Limit: \$1,000,000

5.4.2 Additional Insureds. The Consultant’s third-party liability insurance policies shall include Metro 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 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 shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

5.4.3 Certificates of Insurance. Certificates of Insurance acceptable to Metro shall be filed with Metro prior to commencement of the Services of this Contract. The Certificates of Insurance must demonstrate the coverage dates, amount, and type of insurance required by this Section 5.4 or by law; all exclusions or limitations applicable thereto; and the insurers providing the coverage. All policies and Certificates of Insurance shall expressly provide that coverage shall not be cancelled, allowed to lapse, or be materially changed by endorsement or through issuance of other policies of insurance without at least forty-five (45) days’ written notice to Metro. All insurance policies, certificates, and binders of insurance (except professional liability) shall show Metro as additional insured. Upon Metro’s request, the Consultant will deliver to Metro copies of any policy (together with all endorsements, schedules, and other attachments) for any coverage provided pursuant to this Contract.

5.4.3.1 If the Consultant has any self-insured retention or deductibles for any of the required coverages, the Consultant must identify on the Certificate of Insurance the nature and amount of such self-insured retention or deductibles and provide satisfactory evidence of financial responsibility for such obligations. Satisfaction of all self-insured retentions or deductibles shall be the sole responsibility of the Consultant.

5.4.3.2 Metro shall have the right, but not the obligation, to prohibit the Consultant from entering the Project site until the required Certificates of Insurance (or other competent evidence that insurance has been obtained) in complete compliance with this Section 5.4.3 are received and approved by Metro.

5.4.4 Consultant Insurance. The Consultant shall cause all its Subconsultants to carry and maintain workers' compensation coverage required by law and general and professional liability insurance coverage with limits mutually agreed upon by Metro and the Consultant. In the absence of any such agreement, the limits shall be the same as those required of the Consultant.

5.4.5 Maintaining Insurance. The Consultant must maintain the same or better insurance coverage throughout the Project and the applicable tail-out period. Unless otherwise agreed in writing, the tail-out period for insurance coverage may not be less than two years from the date of Substantial Completion of the Project.

5.4.6 Failure to Maintain Insurance. The Consultant's maintenance of its and its Subconsultants' insurance coverage in full force and effect for the Project is a condition precedent to the Consultant's right to exercise or enforce any right or remedy for money damages against Metro. Failure by the Consultant to procure and maintain the insurance policies required above in full force and effect during the performance of Services under this Contract, and during any extensions or additional Services hereunder, shall constitute a breach of this Contract, in which case Metro shall have the right, in addition to and without prejudice to any other rights, to purchase such insurance on behalf of the Consultant, and the Consultant shall reimburse Metro upon demand and shall furnish such information needed by Metro to obtain such insurance or, alternatively, Metro may immediately terminate this Contract for cause pursuant to Section 5.13.3 of this Contract.

5.4.7 No representation on Coverages: By requiring insurance, Metro does not represent that coverage and limits will necessarily be adequate to protect the Consultant. Insurance in effect or procured by the Consultant will not reduce or limit the Consultant's contractual obligations to indemnify and defend Metro for claims or suits that result from or are connected with the Services provided under this Contract.

5.5 Consultant's Status.

5.5.1 It is understood and agreed that the relationship of Consultant to Metro shall be that of an independent contractor under ORS 670.600. The Consultant further agrees

that Consultant, its officers, agents, and employees, any Subconsultants or supplier of consultant 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). Consultants and its officers, agents, employees, and its Subconsultants 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. Consultant agrees to hold Metro harmless and indemnify Metro from any such claims.

5.5.2 Consultant shall not have control or charge of, and shall not be responsible for, the acts or omissions of other consultants or contractors under contract with Metro who are performing Services or construction work on the Project. However, this provision does not in any way change Consultant's professional responsibility to report to Metro any information, including information on the performance of consultants or contractors outside the control or charge of Consultant, concerning activities or conditions that have or could have an adverse effect on Metro or the Project.

5.5.3 Consultant is not a contributing member of the Public Employees Retirement System and will be responsible for any federal, state, or other taxes applicable to any compensation or payments paid to Consultant under this Contract. Consultant will not be eligible for any benefits from any payments made under this Contract for federal Social Security, unemployment insurance, or workers' compensation, except as a self-employed individual. If any payment under this Contract is to be charged against federal funds, Consultant certifies that it is not currently employed by the federal government.

5.6 Successors & Assignments. The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Contract is executed, Consultant shall not enter into any Subconsultant agreements for any of the Services or assign or transfer any of its interest in this Contract, without the prior written consent of Metro.

5.7 Compliance with Applicable Law. Consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Services, including the following provisions of the Oregon Public Contracting Code.

5.7.1 Payment of Labor. As required by ORS 279B.220, Consultant shall:

5.7.1.1 Make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of the Services provided for in this Contract;

5.7.1.2 Pay all contributions or amounts due the Industrial Accident Fund from Consultant or Subconsultant incurred in the performance of this Contract;

5.7.1.3 Not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or material furnished; and

5.7.1.4 Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

5.7.2 Payment for Medical Care and Workers' Compensation. As required by 279B.230:

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

5.7.2.2 All subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

5.7.3 Hours of Labor. As required by ORS 279B.020(5), 279B.235(3), and 279C.540(6), for Consultant's employees subject to Oregon employment laws:

5.7.3.1 Maximum Hours. Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).

5.7.3.2 Exemption. These requirements do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

5.7.3.3 Notice to Employees. Consultant shall give notice in writing to its employees who perform work under this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

5.7.4 Limitation on Claims. This provision is required by statute. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Contract, providing Consultant has:

5.7.4.1 Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section to be posted in a prominent place alongside the door of the

timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and

5.7.4.2 Maintained such circular continuously posted from the inception to the completion of this Contract on which workers are or have been employed.

5.7.5 Non-discrimination. Consultant shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Contract.

5.7.6 Metro Charter and Code. Consultant shall comply with all provisions of the Metro Charter and Code applicable to this Contract, including without limitation the provisions of Metro Code Chapter 2.04 (Metro Contract Policies).

5.7.7 Governing Law; Jurisdiction; Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively "Claim") between Metro and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this "Governing Law; Jurisdiction; Venue" section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. Consultant, by execution of this Contract, hereby consents to the in personam jurisdiction of said courts.

5.8 Severability. The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

5.9 Force Majeure. Neither Party shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including but not limited to fire, riot, acts of God, terrorist acts, or war where such cause was beyond such Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

5.10 Waiver. The failure of Metro to enforce any provision of this Contract shall not constitute a waiver by Metro of that or any other provision.

5.11 Third-Party Beneficiaries. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against Metro or Consultant. Consultant's Services under this Contract shall be performed solely for Metro's benefit and no other entity or person shall have any claim against Consultant because of this Contract for the performance or nonperformance of Services hereunder.

5.12 Ownership of Work Product.

5.12.1 Definitions. As used in this Contract, the following terms have the meanings set forth below:

5.12.1.1 "Consultant Intellectual Property" means any intellectual property that is owned by Consultant and developed independently from this Contract and that is applicable to the Services or included in the Work Product.

5.12.1.2 "Third-Party Intellectual Property" means any intellectual property that is owned by parties other than Metro or Consultant and that is applicable to the Services or included in the Work Product.

5.12.1.3 "Work Product" means the Services Consultant delivers or is required to deliver to Metro under this Contract. Work Product includes every invention, discovery, work of authorship, trade secret, or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports, and other materials, whether completed, partially completed, or in draft form.

5.12.2 Work Product. Except as provided in Sections 5.12.3 through 5.12.6, all Work Product created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire" or an employment to invent, shall be the exclusive property of Metro. Metro and Consultant agree that such original works of authorship are "work made for hire" of which Metro is the author within the meaning of the United States Copyright Act. To the extent that Metro is not the owner of the intellectual property rights in such Work Product, Consultant hereby irrevocably assigns to Metro any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Metro's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Metro. Consultant forever waives any and all rights relating to original Work Product created pursuant to this Contract, including without limitation any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use or subsequent modifications.

5.12.3 Consultant Intellectual Property. In the event that Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to Metro an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use Consultant

Intellectual Property, including the right of Metro to authorize contractors, consultants and others to use Consultant Intellectual Property, for the purposes described in this Contract. The license granted under this Section permits Metro to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as Metro's consultants and separate contractors, to reproduce applicable portions of Consultant Intellectual Property solely and exclusively for use in performing Services or construction for the Project. If and upon the date the Consultant is in default of this Contract, the foregoing license shall be supplemented by a second, nonexclusive license permitting Metro to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Consultant Intellectual Property solely for purposes of completing, using, and maintaining the Project. Consultant Intellectual Property may be continuously used for construction of the Project until the Project is complete, regardless of any dispute between the Parties, including without limitation any dispute for payment.

5.12.4 Third-Party Intellectual Property. In the event that Third-Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on Metro's behalf and in the name of Metro, an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use the Third-Party Intellectual Property in the same manner as provided for Consultant Intellectual Property under Section 5.12.3, for the purposes described in this Contract.

5.12.5 Consultant Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Metro an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, in the same manner as provided for Consultant Intellectual Property under Section 5.12.3, for the purposes described in this Contract.

5.12.6 Third-Party Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Third-Party Intellectual Property, or is a compilation that includes Third-Party Intellectual Property, Consultant shall secure on Metro's behalf and in the name of Metro an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, in the same manner as provided for Consultant Intellectual Property under Section 5.12.3, for the purposes described in this Contract.

5.12.7 Limited Metro Indemnity. To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.397, Consultant shall be indemnified and held harmless by Metro from liability arising out of re-use or alteration of the Work Product by Metro that was not specifically contemplated and agreed to by the Parties in this Contract or under separate contract.

5.13 Termination.

5.13.1 Parties' Right to Terminate by Agreement. This Contract may be terminated at any time, in whole or in part, by written mutual consent of the Parties.

5.13.2 Metro's Right to Terminate for Convenience. Metro may, at its sole discretion, terminate this Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.

5.13.3 Metro's Right to Terminate for Cause. Metro may terminate this Contract immediately, in whole or in part, upon written notice to Consultant, or such later date as Metro may establish in such notice, upon the occurrence of any of the following events:

5.13.3.1 Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that either the Services under this Contract are prohibited or Metro is prohibited from paying for such Services from the planned funding source;

5.13.3.2 Consultant no longer holds all licenses or certificates that are required to perform the Services; or

5.13.3.3 Consultant fails to provide Services within the times specified or allowed under this Contract; fails to perform any of the provisions of this Contract; or so fails to perform the Services as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from Metro, does not correct such failures within the time that Metro specifies (which shall not be less than ten (10) calendar days, except in the case of emergency).

5.13.4 Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by Metro, Consultant shall immediately cease all activities related to the Services or the Project.

5.13.5 Delivery of Work Product/Retained Remedies of Metro. As directed by Metro, Consultant shall, upon termination, promptly deliver to Metro all documents, information, works in progress, and other property that are deliverables or would be deliverables if the Contract had been completed. By Consultant's signature on this Contract, Consultant allows Metro to use Work Product and other property for Metro's intended use. The rights and remedies of Metro provided in this Section 5.13.5 are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

5.13.6 Payment upon Termination.

5.13.6.1 In the event of termination pursuant to Sections 5.13.1, 5.13.2, or 5.13.3.1, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Metro, plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim(s)

that Metro has against Consultant. Within thirty (30) days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Services completed before termination and all Contract close-out costs actually incurred by Consultant. Metro shall not be obligated to pay for any such costs invoiced to and received by Metro later than thirty (30) days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall promptly refund any excess amount upon demand.

5.13.6.2 In the event of termination pursuant to Sections 5.13.3.2 or 5.13.3.3, Metro shall have any remedy available to it in law or equity. Such remedies may be pursued separately, collectively, or in any order whatsoever. If it is determined for any reason that Consultant was not in default under Sections 5.13.3.2 or 5.13.3.3, the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 5.13.2.

5.14 Foreign Consultant. If Consultant is not domiciled in or registered to do business in the State of Oregon as of the Effective Date, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State's Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.

5.15 Notice. Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, mail, postage prepaid, or e-mail to Consultant or Metro, addressed below:

Metro:

Nancy Strening
Project Manager
Metro
600 NE Grand Ave
Portland, OR 97232

Consultant:

Bill Hart
Principal
Carleton Hart Architecture
830 SW 10th Ave, #200
Portland, OR 97206

and

Joel Morton
Office of Metro Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232

Any notice sent by e-mail must also be sent by mail, postage prepaid. Any notice personally given shall be effective upon receipt. Any notice sent by e-mail shall be effective the day after receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective three (3) days after deposit in the United States mail. Either Party may change the person or address to whom notice is given by providing written notice to the other Party prior to the effective date of the change.

5.16 Media Contacts; Confidentiality. Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Metro's prior written authorization.

5.17 Conflict of Interest. Except with Metro's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest, or contribution that would, or would reasonably appear to, compromise Consultant's professional judgment with respect to this Project, including without limitation concurrent employment on any project in direct competition with this Project.

5.18 Modification. Notwithstanding and succeeding any and all prior agreement(s) or practices, this Contract constitutes the entire contract of the Parties, and may only be modified in writing, signed by both Parties.

ARTICLE 6

Consultant Services

6.1 Services Generally.

6.1.1 Upon final execution of this Contract with Metro, Consultant shall:

6.1.1.1 Within the first week following execution of this Contract, review the proposed Project Schedule and prepare a detailed Services list and work plan to Metro's satisfaction. Consultant shall also identify milestone activities or dates, specific task responsibilities, additional definition of deliverables, and required completion times necessary for the review and approval by Metro and by all regulatory agencies.

6.1.1.2 Review the developed work plan with Metro and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

6.1.1.3 The Consultant will manage the Consultant's Services, research applicable design criteria, attend project meetings, communicate with members of the Project team, and report progress to Metro. Throughout all phases of its Services, Consultant will consult with Metro.

6.1.2 *Intentionally Omitted*

6.1.3 *Intentionally Omitted*

6.1.4 Construction Cost Estimates. Consultant shall develop and maintain Construction Cost Estimates within the parameters of Metro’s Construction Cost Budget (as hereinafter defined) through all phases of its Services. The term, “Construction Cost Budget,” shall mean the Construction Cost Budget established by Metro for the Project. Consultant shall base all Construction Cost Estimates on the most current architectural program as approved by Metro and shall prepare updated Construction Cost Estimates at each phase of the Project, as provided below. The following conditions apply to each Construction Cost Estimate prepared by Consultant:

6.1.4.1 Base all costs on current price information appropriate to the level of design detail with escalation rate and duration clearly identified as a separate line item. Cost escalation rates and projected bid and construction dates shall be as approved by Metro.

6.1.4.2 Present each Construction Cost Estimate in a building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems, etc.) for new buildings, and summarized by the Construction Specification Institute (“CSI”) category.

6.1.4.3 Include contingencies for design, bidding, and construction as individual line items, with the percentage and base of calculation clearly identified.

6.1.4.4 Include all information and estimates from Metro and Metro’s consultants that are intended to be part of the Construction Cost Budget.

6.1.4.5 Reconcile each Construction Cost Estimate with Metro’s Construction Cost Budget. Consultant shall present no estimate that exceeds the Construction Cost Budget. Consultant shall be responsible for the accuracy of each Construction Cost Estimate.

6.1.5 Investigation & Feasibility

6.1.5.1 Consultant shall:

- Meet with Metro to review and confirm project scope
- Refine and review project schedule with Metro
- Visit site to review existing conditions; perform roof structure investigation and documentation
- Conduct a roof analysis and re-roofing conditions coordination
- Review fall projection systems
- Coordinate structural analysis and prepare report
- Coordinate with subconsultants and prepare project scoping, roof options and cost analysis document for

review with Metro

- Review Metro OSHA requirements
- Meet with Metro to review scoping document and select preferred roofing system

6.1.5.2 Eco roof Feasibility – Consultant Shall

- Perform structural analysis to determine if structural capacity exists for an Eco roof installation
- Review on-roof existing conditions for Eco roof viability
- Review design review requirements
- Provide Eco roof options
- Provide Eco roof cost estimates
- If an Eco roof is feasible, provide a cost benefit analysis of energy savings
- Compile a summary report
- Review feasibility study with Metro

6.2 Schematic Design Phase.

6.2.1 Consultant shall review the architectural program and information furnished by Metro, and shall review laws, codes, and regulations applicable to Consultant's Services.

6.2.2 Consultant shall prepare a preliminary evaluation of Metro's program, schedule, budget for the work, Project site, and the proposed procurement or delivery method and other information provided by Metro in Article I of this Contract entitled, "Initial Project Information," each in terms of the other, to ascertain the Project requirements. Consultant shall notify Metro of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

6.2.3 Consultant shall present its preliminary evaluation to Metro and shall discuss with Metro alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. Consultant shall reach an understanding with Metro regarding the requirements of the Project.

6.2.4 Based on the Project's requirements agreed upon with Metro, Consultant shall prepare and present for Metro's approval a preliminary design illustrating the scale and relationship of the Project components.

6.2.5 Based on Metro's approval of the preliminary design, Consultant shall prepare Schematic Design Documents (as further described below in this Section 6) for Metro's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections, and elevations, and may include some combination of study models, perspective sketches, or digital modeling.

Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

6.2.5.1 Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with Metro's program, schedule and budget for the cost of the work.

6.2.5.2 Consultant shall consider the value of alternative materials, building systems, and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with Metro's program, schedule, and budget for the cost of the work.

6.2.6 Consultant shall prepare and submit to Metro a Construction Cost Estimate for the approved Schematic Design Documents based on area, volume, or similar conceptual estimating techniques and prepared in accordance with the provisions of this Contract.

6.2.7 Consultant shall submit the Schematic Design Documents and the Construction Cost Estimate to Metro, and request Metro's approval.

6.3 Design Development Phase.

6.3.1 Based on Metro's approval of the Schematic Design Documents, and on Metro's authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Design Development Documents for Metro's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications identifying major materials, components, and systems and establishing general quality levels. Consultant shall not include in its Specifications, Special and/or Supplemental Conditions legal language establishing rights and/or duties inconsistent with Metro's Standard Form Construction Contract and General Conditions, without written acknowledgement and approval from Metro. Consultant's Services during the Design Development Phase shall consist of the following:

6.3.1.1 Architectural Design/Document Services. On an ongoing basis, Consultant shall develop and expand architectural Schematic Design Documents to establish the scope, relationship, forms, size and appearance of the Project through: plans, sections and elevations; typical construction details; and equipment layouts. These Services shall also include the following:

- 6.3.1.1.1 Development and Preparation of Base Sheets, including Existing Conditions Drawings
- 6.3.1.1.2 Complete Roof Drain Analysis
- 6.3.1.1.3 Preparation of preliminary proposed material and system specifications
- 6.3.1.1.4 Preliminary development of details and specifications
- 6.3.1.1.5 *Intentionally Omitted*
- 6.3.1.1.6 *Intentionally Omitted*
- 6.3.1.1.7 Site plan, including grading and drainage.
- 6.3.1.1.8 Preliminary development of details and large scale blow-ups.
- 6.3.1.1.9 Legend showing all symbols used on the drawings.
- 6.3.1.1.10 Outline specifications, in accordance with the CSI standards.
- 6.3.1.1.11 *Intentionally Omitted*
- 6.3.1.1.12 *Intentionally Omitted*
- 6.3.1.1.13 *Intentionally Omitted*
- 6.3.1.1.14 *Intentionally Omitted*

6.3.1.2 Structural Design Documentation Services. Where applicable, and on an ongoing basis, Consultant shall develop the specific structural system(s) and Schematic Design Documents in sufficient detail to establish basic structural system and dimensions, final structural design criteria, foundation design criteria, preliminary sizing of additional major structural components, critical coordination clearances, and outline specifications or materials lists. These Services shall also include the following:

- 6.3.1.2.1 Plan drawings with all structural members located and sized.
- 6.3.1.2.2 Footing, beam, column, and connection schedule.
- 6.3.1.2.3 Final building elevations.

- 6.3.1.2.4 Final structural design criteria.
- 6.3.1.2.5 Outline specifications.
- 6.3.1.2.6 Foundation drawings.
- 6.3.1.2.7 Soil retainage system.
- 6.3.1.2.8 Critical coordination clearances.
- 6.3.1.2.9 Drawings and Specifications and materials lists.
- 6.3.1.2.10 Typical sections.

6.3.1.3 Mechanical Design/Documentation Services. Where applicable, and on an ongoing basis, Consultant shall develop and expand mechanical Schematic Design Documents and develop outline specifications or materials lists to establish approximate equipment sizes and capabilities, preliminary equipment layouts, required space for equipment, required chases and clearances, acoustical and vibration control, visual impacts, and energy conservation measures. These Services also include the following:

- 6.3.1.3.1 Heating and cooling load calculations for each space and major duct or pipe runs sized to interface with structural elements.
- 6.3.1.3.2 Major mechanical equipment scheduled indicating size and capacity.
- 6.3.1.3.3 Duct work and piping systems substantially located and sized.
- 6.3.1.3.4 Water systems including solar heating and bio-reacted waste water.
- 6.3.1.3.5 Plumbing and irrigation systems.
- 6.3.1.3.6 Devices in ceiling located.
- 6.3.1.3.7 Legend showing all symbols used on the drawings.
- 6.3.1.3.8 Outline specifications.

6.3.1.4 Electrical Design/Documentation Services. Where applicable, on an ongoing basis, Consultant shall develop and expand electrical Schematic Design Documents and develop outline specifications or materials lists to establish criteria for lighting,

electrical, security, and telecommunications systems, approximate sizes and capacities of major components and Direct Digital Controls (DDC), preliminary equipment layouts, required space for equipment, and required chases and clearances. These Services also include the following:

- 6.3.1.4.1 All power consuming equipment and load characteristics.
- 6.3.1.4.2 Total electrical load.
- 6.3.1.4.3 Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned, showing capacities, and drawn to scale into the space allocated.
- 6.3.1.4.4 Complete preliminary site lighting design.
- 6.3.1.4.5 Outline specifications.
- 6.3.1.4.6 Lighting, power, telecommunications, and office automation devices and receptacles shown on the plan.
- 6.3.1.4.7 Final light fixture schedule.
- 6.3.1.4.8 Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas.
- 6.3.1.4.9 Riser diagrams.
- 6.3.1.4.10 Fire alarm riser system.
- 6.3.1.4.11 Energy management riser system.
- 6.3.1.4.12 Photovoltaic alternative energy systems.
- 6.3.1.4.13 Service entry feeds and generator relocations.
- 6.3.1.4.14 Energy conservation measures related to lighting and other potentials.
- 6.3.1.5 *Intentionally Omitted*
- 6.3.1.6 *Intentionally Omitted*

6.3.1.7 Materials Research/Specifications Services. Consultant shall prepare for Metro’s approval the proposed Special and/or Supplemental Conditions of the construction contract (the “Construction Contract”); develop architectural outline specifications or itemized lists and brief form identification of significant architectural materials, systems, and equipment and their criteria and quality standards; coordinate similar activities of other disciplines; produce a design manual, including design criteria and outline specifications or materials lists.

6.3.1.8 *Intentionally Omitted*

6.3.1.9 Project Development Scheduling Services. Consultant shall review and update previously established schedules for the Project.

6.3.1.10 Statement of Probable Construction Cost Services. Consultant shall update and refine the Schematic Design Phase Statement of Probable Construction Cost of the Project as it is related to the Construction Cost Budget and taking into consideration availability of materials and labor, Project delivery procedures, construction sequencing and scheduling, changes in the scope of the Project, and adjustments in quality standards. Completion of these Services shall result in the “Design Development Phase Statement of Probable Construction Cost.” If the Statement of Probable Construction Costs exceeds the approved budget, the Consultant shall, at the Consultant’s expense, redraw, revise, and/or value engineer the Project, if so directed by Metro, so that said estimate does not exceed the approved budget as adjusted by Metro. If Metro concludes that Consultant’s budget is inaccurate, program adjustments and/or alternates shall be prepared.

6.3.1.11 Value Engineering Services. Consultant shall lead a review team during the design development phase of the Project. Consultant shall provide an intensive analysis of the entire Project.

6.3.1.12 *Intentionally Omitted*

6.3.1.13 *Intentionally Omitted*

6.3.1.14 Land Use Planning and Building Permitting Services. Consultant shall coordinate its work with the work of Metro’s separate Metro contracts. Consultant will consult with the City of Portland as required to obtain building permits. Consultant will conduct informal meetings with City Planning staff to solicit and receive their comments with respect to the projects and any land use approvals that may be required. Consultant shall prepare written and graphic explanatory materials and appear as may be required on Metro’s behalf at all permitting agency meetings.

6.3.1.15 *Intentionally Omitted*

6.3.1.16 *Intentionally Omitted*

6.3.2 If Metro elects to proceed with value engineering, Consultant and its Subconsultants shall cooperate with Metro's value engineer by providing requested information and advising Metro and its value engineer, in good faith, concerning design changes that the value engineer may propose. Consultant shall make such changes as Metro may direct. Substantial changes inconsistent with previous Metro approvals may be compensated as Additional Services.

6.3.3 Consultant shall prepare and submit an updated Construction Cost Estimate based on an itemization of major categories within each specification division and otherwise in accordance with the provisions of this Contract.

6.3.4 Consultant shall submit the Design Development Documents to Metro, advise Metro of any adjustments to the Construction Cost Estimate, and request Metro's approval.

6.3.5 Consultant shall provide seven (2) sets of copies of all final drawings and written material.

6.4 Construction Documents Phase.

6.4.1 Based on Metro's approval of the Design Development Documents, and on Metro's authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Construction Documents based on the approved Design Development Documents for Metro's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of drawings and specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Project. Metro and Consultant acknowledge that in order to construct the Project, Metro's contractors will be required to provide additional information, including shop drawings, product information, product samples, and other similar submittals, which Consultant shall review.

6.4.2 The Consultant shall present Construction Documents at 85% and final stages for Metro's review and comment. The Consultant shall provide evaluation of budget, schedule, and response to program and design objectives at each stage.

6.4.3 The Consultant shall advise Metro of any recommended adjustments to the Project's "Approved Design Budget" indicated by changes in Project scope requirements or general market conditions.

6.4.4 The Consultant shall provide an independent estimate based on the 50% Construction Document stage. If the Consultant's estimate exceeds the "Approved Design Budget," the Consultant, at its expense, shall redraw, revise, and/or value engineer the Project, if so directed by Metro, so that the estimate is within the "Approved Design Budget." If Metro

concludes that Consultant's budget is inaccurate, program adjustments and/or alternates shall be prepared.

6.4.5 The Consultant shall assist Metro in connection with Metro's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

6.4.6 The Consultant shall participate in preapplication conferences and other formal and informal meetings with the governing local jurisdiction's planning and development staff to solicit and receive their comments with respect to the Project and any applicable land use approval conditions.

6.4.7 The Consultant shall attend governing agency meetings with Metro as required to assist Metro in obtaining guidelines for the Project from regulatory agencies having approval jurisdiction.

6.4.8 The Consultant will work with Energy Trust of Oregon ("ETO") on any portions of the Project which receive funding or other assistance from ETO.

6.4.9 The Consultant shall prepare written and graphic materials as may be required from time to time for Metro to obtain necessary uses, appeals, site, and other governmental permits and approvals.

6.4.10 Consultant shall assist Metro in preparing a Project Procedures Manual outlining all procedures to be followed for the processing, change orders, reporting, and control of all shop drawings, transmittals, submittals, substitutions, catalogs, Project reports, field orders, test reports, inspections, maintenance manuals, and other construction documentation. The Consultant is responsible for all Requests for Information and shall answer them as previously described in this Contract and Metro's General Conditions.

6.4.11 Consultant shall prepare a complete set of signed reproducible Construction Documents and Specifications as the deliverable Work Product of this phase and suitable for use as bidding documents.

6.4.12 The Consultant shall provide final selection and obtain approval, by Metro, of colors and materials.

6.4.13 Consultant shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

6.4.14 Consultant shall prepare and submit an updated Construction Cost Estimate based on the work depicted in the Construction Documents and in accordance with the provisions of this Contract.

6.4.15 Consultant shall submit the Construction Documents to Metro, advise Metro of any adjustments to the Construction Cost Estimate, and request Metro's approval.

6.4.16 Consultant shall not include in its Construction Documents Specifications, Special and/or Supplemental Conditions legal language establishing rights and/or duties inconsistent with Metro's standard form Construction Contract and General Conditions, without written acknowledgement and approval from Metro.

6.4.17 *Intentionally Omitted*

6.4.18 *Intentionally Omitted*

6.5 Procurement Phase.

6.5.1 The Consultant shall assist Metro with the solicitation process for the selection of the General Contractor. These duties shall include:

6.5.1.1 Assisting Metro in conducting pre-solicitation conferences with prospective contractors to familiarize contractors with the procurement documents and management techniques and with any special systems, materials, or methods called for by the documents.

6.5.1.2 Answering questions and evaluating substitution requests and issuing solicitation document addenda.

6.5.1.3 Assisting Metro with the preparation of all procurement packages including alternates if required, General Conditions, Instructions to Bidders/Requests for Proposals, solicitation forms, and other similar documents. Metro shall advertise, issue addenda, and print and distribute plans and specifications for bid.

6.5.1.4 Assisting Metro's review and analysis of solicitation responses and participation in pre-award conferences with the successful offeror to discuss procedures and applicable regulations.

6.5.2 The "Procurement Documents" shall consist of all procurement requirements and proposed Contract Documents that include the Construction Documents.

6.5.3 Upon completion of the Procurement Phase, Consultant shall produce a conforming set of the Construction Documents incorporating all addenda issued. Consultant shall provide Metro with two (2) complete, reproducible sets of plans and specifications marked as a "Conforming Set".

6.5.4 Consultant shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

6.6 Construction Phase.

6.6.1 Metro's Project Manager will be the lead construction administrator. Consultant will assist the Project Manager with construction administration, but will have sole responsibility for design. For the purposes of this section, "Contractor" means the General Contractor.

6.6.2 Consultant shall advise and consult with Metro during the Construction Phase as provided in this Contract and in Metro's General Contractor Contract and General Conditions as of the date of this Contract. Consultant shall have authority to act on behalf of Metro only to the extent provided in this Contract. Consultant will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the construction work, nor will Consultant be responsible for the failure of others to perform the construction work in accordance with the requirements of the Construction Contract Documents. Consultant shall be responsible for Consultant's negligent acts or omissions, but shall not have control over or charge of, and will not be responsible for, acts or omissions of Contractor or of any other persons or entities performing portions of the construction work.

6.6.3 Consultant's responsibility to provide Construction Phase Services commences with the execution of the General Contractor Contract and ends on the date Metro issues the final certificate for payment.

6.6.4 Compliance with Construction Schedule. Consultant shall review and become knowledgeable with the Contractor's construction schedule as accepted by Metro. Consultant's reviews, approvals, investigations, clarifications, interpretations, and all other activities needed shall be carried out in a prompt manner so as not to delay the Project in any way except if authorized in advance in writing by Metro.

6.6.5 Evaluation of the Work. Consultant shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the construction work completed, and to determine, in general, if the work observed is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Construction Documents. On the basis of the site visits, Consultant shall keep Metro reasonably informed about the progress and quality of the construction work as it is completed, and report to Metro (1) known deviations from the Construction Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the work.

6.6.6 Interpretation of Contract Documents. Consultant shall be the interpreter of the requirements of the Contract Documents in regard to compliance and workmanship in accordance with the Design Documents. Consultant shall render interpretations necessary for the proper execution or progress of the work upon written request of Metro. Unless a longer period is agreed to by Metro, Consultant shall render written decisions within five (5) working days of

receipt thereof on all claims disputes and other matters in question between Metro and the Contractor relating to the compliance with design of the work or the interpretation of the Contract Documents.

6.6.7 Change Orders.

6.6.7.1 Consultant shall review all of Contractor's change order requests to determine if those requests are valid and appropriate. Consultant shall provide a recommendation to Metro as to whether the change should be approved, partially approved, returned to the Contractor for clarification, or rejected.

6.6.7.2 Consultant shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. Metro shall request these drawings from Consultant, who shall provide the drawings at no additional cost unless Metro designates the request as Additional Services. Consultant shall submit original tracing(s) and/or drawings and contract wording for change orders to Metro and Contractor for duplication and distribution.

6.6.8 Submittals.

6.6.8.1 For the purposes of this Contract, "Submittals" include any document or item submitted by the Contractor for review by Metro and/or the Consultant, including without limitation change orders, payment requests, requests for information, requests for substitution, shop drawings, project data, and samples.

6.6.8.2 Consultant shall review and approve or take other appropriate action upon Contractor's submittals but, except as otherwise provided by this Contract, only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

6.6.8.3 Consultant shall review Contractor's schedule of submittals and advise Metro on whether that schedule is complete. Consultant shall provide Metro with proposed revisions to this schedule and advise Metro on whether Metro should approve this schedule.

6.6.8.4 Consultant shall establish and implement procedures for expediting the processing, review and acceptance of Contractor's submittals. Consultant's action upon Contractor's submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of separate contractors, while allowing sufficient time in Consultant's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed ten (10) calendar days from its receipt by Consultant. Consultant's response to each submittal shall be a substantive and acceptable response.

6.6.9 Requests for Information. During the course of construction as part of the Services, all Requests for Information (“RFI”) must be responded to as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed five (5) working days from its receipt by Consultant. Consultant’s response to each RFI shall be a substantive and acceptable response. This five-day time period shall not include time when a submittal is within Metro’s control or if the submittal is being reviewed by regulatory agencies. In no way does this provision reduce Consultant’s liability if it fails to prepare acceptable documents. If Consultant fails to respond to an RFI within the time required by this Section 6.6.9, Consultant shall be liable for any increase in construction cost as a result of the delay.

6.6.10 Testing.

6.6.10.1 Consultant shall review the testing and inspection reports of independent testing agencies, and make written recommendations to Metro as the evaluation of the report data dictates.

6.6.10.2 Consultant shall review and become knowledgeable with the Contractor’s construction schedule as accepted by Metro. Its reviews, approvals, investigations, clarifications, interpretations and all other activities needed shall be carried out in a prompt manner so as not to delay the Project in any way except if authorized in advance in writing by Metro.

6.6.11 Requests for Substitution. In consultation with the Project Manager, Consultant shall review the Contractor’s written requests for substitutions for specific products, materials, equipment, or systems, and other departures from the Construction Documents. Consultant shall promptly complete its review so as to not unnecessarily disrupt the orderly progress of the work as represented by the current construction schedule maintained by Contractor. Consultant shall provide to Metro a written recommendation on the subject request, explaining the basis for the recommendation.

6.6.12 Notices of Deficient Work. On the basis of on-site observations, Consultant shall keep Metro informed of the progress and the quality of the work, and shall endeavor to guard Metro against defects and deficiencies in the work. Consultant shall notify Metro in writing of any defects or deficiencies in the work by the Contractor or Contractor’s Subcontractors that Consultant may observe. However, Consultant will not be a guarantor of the Contractor’s performance.

6.6.13 As-Built Drawings. Consultant shall review and evaluate for Metro, Contractor’s as-built documentation of the actual construction performed during the Project that Contractor prepares and submits. As-builts are documents that show the actual construction performed during the Project, including changes necessitated by change orders, RFIs, and supplemental drawings/documents, detailed by Contractor.

6.6.14 Record Drawings. Consultant shall incorporate all construction information from as-built drawings, sketches, details, and clarifications, and prepare two sets of final record drawings (“Record Drawings”) for Metro. In addition, Consultant shall provide to Metro as-built drawings on AutoCAD. The final record drawings, specifications, and CAD discs shall be delivered to Metro within sixty (60) calendar days after receipt of all necessary written information. Consultant may insert the following notice on the Record Drawings: “These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. Consultant has provided a review of such information consistent with its legal Standard of Care.”

6.6.15 Manuals / Warranties. Consultant shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications.

6.6.16 Payment Statements. Consultant shall, in consultation with the Project Manager, review and certify the amounts due the Contractor and shall issue certificates in such amounts. Consultant’s certification for payment will constitute a representation to Metro, based on Consultant’s evaluation of the work and on the data comprising the Contractor’s application for payment, that, to the best of Consultant’s knowledge, information, and belief, the work has progressed to the point indicated and that the quality of the work is in accordance with the Construction Contract Documents. The foregoing representations are subject to (1) an evaluation of the work for conformance with the Construction Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Construction Contract Documents prior to completion, and (4) specific qualifications expressed by Consultant.

6.6.17 Project Completion. Consultant shall conduct inspections to establish or confirm the date of Substantial Completion and the date of Final Completion of the Contractor’s work. At Substantial Completion, Consultant shall review the Contractor’s punch list, conduct a visual inspection of the completed work, and prepare an updated punch list of conditions observed and recommending correction, completion, or replacement by the Contractor. Consultant shall review the Project again upon Final Completion to confirm compliance with the Construction Contract Documents, and shall issue a final certificate for payment representing to Metro to the best of Consultant’s knowledge and belief that the work is completed and in compliance with the requirements of the Construction Contract Documents.

6.6.18 Upon request of Metro and prior to the expiration of one year from the date of Substantial Completion, Consultant shall, without additional compensation, conduct a meeting with Metro to review the facility operations and performance.

6.6.19 Consultant’s mechanical, electrical, and specialty engineers and designers in conjunction with the Contractor’s specified training sessions will conduct a walk-through seminar of appropriate length and detail to explain to Metro personnel the specific operation of equipment and systems and assist in building start-up.

6.6.20 Consultant shall advise Metro of changes in applicable codes and regulations that have taken place after the Building Permit is issued as the Consultant becomes aware of them.

6.7 Additional Services. Consultant shall perform the following Additional Services when authorized or requested to do so in writing by Metro:

6.7.1 Make revisions in drawings, specifications, or other documents when such revisions are:

6.7.1.1 Inconsistent with approvals or instructions previously given by Metro.

6.7.1.2 Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Construction Documents.

6.7.1.3 Due to changes required as a result of Metro's failure to respond to a written request from Consultant within a reasonable time.

6.7.2 Provide Services made necessary by significant documented Metro-initiated changes in the Project, including but not limited to size, quality, complexity, Metro's schedule, or method of bidding and contracting for construction.

6.7.3 Provide consultation concerning replacement of work damaged by fire or other cause during construction and furnishing Services required in connection with replacement of that work.

6.7.4 Provide Services made necessary by the default of contractor(s), major defects, or deficiencies in the work of contractor(s).

6.7.5 Provide Services as directed by Metro that are not part of the Services of this Contract. Consultant shall notify Metro, in writing, prior to starting any of the Services that it considers the Services it has been directed to do as not part of the Services under this Contract.

6.7.6 Provide Services as an expert and/or witness for Metro in any mediation, arbitration, and/or trial in which Consultant is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.

6.7.7 Provide training, adjusting, or balancing of systems and/or equipment.

6.7.8 For Consultant's Additional Services, the fee to be paid shall be determined in one of the following manners and identified as a part of the extra service authorization.

6.7.8.1 Metro may elect to negotiate a fixed fee for Additional Services.

6.7.8.2 Metro may elect to compensate Consultant on a time-and-material basis for the Additional Services based on the following criteria: (1) additional labor fee shall be calculated based on the approved hourly billing rates as listed below and an agreed upon level of efforts for the principals and employees of Consultant, and (2) actual expenditures made by Consultant on the Project and supported by receipts.

6.7.8.3 Metro may elect to negotiate a fixed fee for a portion of the Additional Services and agree on a time-and-material compensation for the remainder portion of the Additional Services.

6.7.8.4 Metro may elect to compensate Consultant on a percentage basis of the final negotiated pricing on change order work accomplished by the Contractor.

6.7.9 Rates for the Consultant and Subconsultants that include overhead, administrative cost, and profit as set forth in Exhibit D shall be utilized to calculate the fee for Additional Services. Sub-consultants' hourly rates indicated in Exhibit D include Consultant's administration fee/mark-up fee.

ARTICLE 7

Payment and Billing

7.1 Contract Price. Consultant shall perform the Services described in this Contract for a maximum price not to exceed ONE HUNDRED NINETY-SIX THOUSAND, SEVEN HUNDRED TWENTY-TWO AND NO/100 DOLLARS (\$196,722.00); including Reimbursable Expenses not to exceed three THOUSAND EIGHT HUNDRED NINETY AND NO/100 DOLLARS (\$3,890.00). The Contract Price includes all fees, costs, and expenses of whatever nature. Nothing in this Contract requires Metro to pay for work that does not meet the Standard of Care or other requirements of the Contract. The actual amount paid to Consultant may be less than this amount.

7.2 Statement of Services. Payments on account of Services rendered and for reimbursable expenses authorized under this Contract shall be made monthly upon presentation of Consultant's proper Statement of Services, as follows:

7.2.1 Payment for Services will be based on the percentage of the Services performed by Consultant during the billing period. Contractor's Statement of Services will include an itemized statement of Services completed and Metro contract reference number. The Consultant will provide Statement of Services itemized in a manner specified by Metro to support Metro's allocation of services rendered and reimbursable expenses to specific project components.

7.2.2 Consultant's Statement of Services shall also provide Metro with statements of Additional Services rendered and Reimbursable Expenses incurred in the

preceding month. Consultant expressly waives any right to additional payment for any change in Services (“Change in Service”) if Consultant does not give timely written notice of the Change in Services and if such Services are not billed as Change in Services within sixty (60) days following their rendition.

7.2.3 No deductions shall be made from Consultant’s compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors, or on account of the cost of construction changes other than those for which Consultant is liable.

7.2.4 Metro will pay Consultant based on these Statements of Service until the maximum Contract Price in Section 7.1 is reached. Thereafter, Consultant must complete work based on the Contract without additional compensation unless Metro agrees to a change in the Scope of Work. If work is completed before the maximum Contract Price is reached, the Consultant’s compensation will be based on the Consultant’s Statements of Service previously submitted and approved by Metro.

7.2.5 Statements of Services will be sent to Metro, Attention: Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or to metroaccountspayable@oregonmetro.gov.

7.3 Reimbursable Expenses. “Reimbursable Expenses” are the direct costs expended by Consultant, Consultant’s employees, and Subconsultants for performance of Services rendered to complete the Project. Reimbursable expenses are in addition to compensation for Services and shall not exceed the maximum amount stated in Section 7.1 without prior authorization by Metro. Reimbursable expenses must be evidenced by copies of third-party itemized invoices or receipts delivered to Metro, and are limited to the types of actual expenses listed below:

7.3.1 General Reimbursable Expenses.

7.3.1.1 Long distance communications for which Consultant is charged an additional fee by Consultant’s communications provider.

7.3.1.2 Reproductions, postage, and handling of drawings and specifications and other documents, excluding reproductions of drawings, specifications, and other documents used by Consultant and Consultant’s Subconsultants.

7.3.1.3 Data processing and photographic production techniques when used in connection with Additional Services.

7.3.1.4 Third-party models and mock-ups requested by Metro.

7.3.1.5 The printing of master or reproducible sets of plans and project manuals including specifications.

7.3.2 Travel Expenses. All travel expenses must be approved in advance by Metro. Metro will only allow travel expenses when the travel is essential to the normal discharge of Consultant's responsibilities under the Contract. All Consultant travel shall be conducted in the most efficient and cost-effective manner resulting in the best value to Metro.

7.3.2.1 Mileage. Mileage will be reimbursed at the IRS-approved rate applicable to Metro employees.

7.3.2.2 Meals. The standard rate for meals is \$66.00 per day, subject to the following allocation: Breakfast (25%), Lunch (25%), Dinner (50%). Except in the event of necessary overnight travel as provided below, breakfast and dinner expenses shall be reimbursed only if Consultant, while acting within the course and scope of his/her duties under this Contract, is required to travel more than two (2) hours (a) before the start (for breakfast expense reimbursement), or (b) after the end (for dinner expense reimbursement) of Consultant's regular workday (8:00 a.m. to 5:00 p.m.). Lunch expense is reimbursable only if Consultant, while acting within the course and scope of his/her duties under this Contract, is required to travel overnight and begins or ends the journey, respectively, before or after 11:00 a.m. Breakfast and dinner expenses are reimbursable during Consultant's necessary overnight travel while acting within the course and scope of his/her duties under this Contract. Metro will not reimburse for cost of alcoholic beverages.

7.3.2.3 Lodging. Metro will reimburse Consultant for Consultant's actual cost of lodging up to the U.S. General Services Administration specified per-diem lodging rates for the locality. The standard per-diem rate for lodging in Portland is \$113.00 per day. Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.

7.3.2.4 Other Travel Expenses. In addition to meals and lodging, travel expenses will be reimbursed for airfare and rental vehicles only if Consultant is acting within the course and scope of his/her duties under this Contract. Receipts are required for all out-of-state travel expenses. All Consultant representatives will fly "coach class," unless Consultant personally pays the difference. All Consultant representatives will be limited to economy or compact size rental vehicles, unless Consultant personally pays the difference.

7.3.3 Special Expenses. For any exceptions to the expense items listed above, Consultant must obtain the separate written approval of Metro prior to incurring any expense for which reimbursement will be sought. Metro will not pay any mark-up over actual allowable reimbursement costs. Any costs associated with recordkeeping or labor to create reproductions of receipts is considered indirect overhead and therefore part of Consultant's Professional Hourly Rates.

7.4 Payment. Metro will pay Consultant within 30 days of receipt of a complete Statement of Services or within 15 days after approval of Consultant's Statement of Services. If Metro determines that Consultant's Statement of Services is not complete, Metro will send a

written notice to Consultant requesting the necessary information to complete the Statement of Services. The time periods provided in this Section will run from the date Metro receives the necessary information to complete the Statement of Services.

7.5 No increase in Consultant's fee will be due from change orders generated during construction to the extent caused by Consultant's error or omission.

7.6 Regardless of the structure of Consultant's fee, the fee may be adjusted downward if the Services to be provided under this Contract are reduced by Metro in accordance with this Contract.

7.7 Metro's Right to Withhold Payments. Notwithstanding the other provisions in this Article 7, Metro shall have the right to withhold from payments due to Consultant such sums as necessary, in Metro's sole determination, to protect Metro against any loss, damage, or claim that may result from Consultant's performance or failure to perform under this Contract, or failure of Consultant to make proper or timely payment to any supplier or Subconsultant.

ARTICLE 8

Dispute Resolution

8.1 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.

8.1.1 The mediator shall be an individual mutually acceptable to both Parties. Should the Parties lack specific recommendations for a mediator, the Parties shall look to the local circuit court or the Oregon Dispute Resolution Commission. Each Party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two Parties. If the Parties cannot agree on a mutually acceptable mediator within 60 days of the date one party submits a written request for mediation to the other party, a party or parties may proceed to litigation pursuant to Section 8.2.

8.1.2 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 Consultant. The schedule and time allowed for mediation shall be mutually acceptable. The mediation process is nonbinding.

8.1.3 Consultant agrees to consolidation of any mediation between Metro and Consultant with any other mediation involving, arising from, or relating to this Contract or the Project.

8.2 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.

8.3 Work to Continue Notwithstanding Dispute. In no event shall submission of a dispute arising out of this Contract by either Party relieve Consultant 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 that Consultant, 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 6.7, and/or terminate the Contract pursuant to Section 5.13.

Having read and fully understood all terms and conditions of this Contract, the parties have executed this Agreement, effective as of the last date of signature set forth below.

CONSULTANT

METRO

Name of Consultant Firm

Signature

Printed Name and Title

Date

Signature

Printed Name and Title

Date

APPROVED AS TO LEGAL FORM

Metro Attorney

Hatfield Hall Roof Replacement & Parapet Repairs

Exhibit A - 308001 Carleton Hart Architecture – Scope & Fee by Phase

Phase 1 – Preliminary	\$35,444.00
<ul style="list-style-type: none">• Meet with Metro to review and confirm project scope• Refine and review project schedule with Metro• Site visit to review existing conditions• Roof analysis and re-roofing options coordination• Review of fall protections systems.• Structural analysis coordination• On-site roof structure investigation and documentation• Off-site documentation• Structural analysis and report preparation• Coordination with consultants and preparation of project scoping, roof options and cost analysis document for review with Metro• Review Metro OSHA requirements• Meet with Metro to review scoping document and select preferred roofing system• Structural analysis to determine if structural capacity exists for an Eco roof installation• Review on-roof existing conditions for Eco roof viability• Review design review requirements• Provide Eco roof options• Provide Eco roof cost estimates• If an Eco roof is feasible [provide a cost/benefit analysis of energy savings• Compile a summary report• Review feasibility study with Metro	
Phase 2 – Schematic Design	\$19,599.00
<ul style="list-style-type: none">• Visit site to begin existing conditions drawings• Perform invasive investigations of existing details and conditions as required to verify existing conditions and understand underlying conditions• Complete roof drain analysis• Develop existing base sheets• Begin preparing proposed material and system specifications• Begin development of details and specifications• Prepare preliminary budget numbers• Meet with Metro to review progress and initial cost estimate	

Hatfield Hall Roof Replacement & Parapet Repairs

Phase 3 – Design Development **\$33,928.00**

- Visit site to review details and clarify existing conditions as required
- Document set drawing sheet requirements and number established
- Continue development of details and specifications
- Specifications ready for team review - clarify and coordinate Division 1 section
- Develop a statement of probably cost based on unit costs.
- Meet with Metro to review progress and cost statement

Phase 4 – Construction Documents **\$55,415.00**

- Visit site to review details and clarify existing conditions as required
- Complete development of contract documents and bidding documents package, including drawings and specifications
- Finalize fall protection system requirements and methods with Metro
- Coordinate bidding information required in specifications with Metro
- Update the statement of probably cost as required plus 10%
- Meet with Metro to review documents and final cost statement
- Provide metro with full set of drawings and specifications

Phase 5 – Permitting & Bidding **\$ 6,511.00**

- Respond to plans examiner questions with corrections/clarifications and document revisions as required
- Assist owner with bid request language
- Attend contractor pre-bid conference
- Receive and process bidding questions and requests
- Assist with preparation of addenda as necessary in response to contractor questions
- Review substitution requests
- Assist Metro in reviewing bids and evaluation of bidder qualifications

Phase 6 – Construction Administration **\$41,935.00**

- Attend pre-construction “kick-off” meeting
- Serve as point of contact for contractor communications
- Attend twelve (12) weekly construction meetings during construction
- Provide weekly on-site observation and summary reports after each visit. Provide revisions to documents as required by changes in the work or due to unknown conditions.
- Answer requests for information (RFI's) to clarify contractor's questions during construction
- Review shop drawings and submittals
- Assist with change orders and prepare construction change directives
- Review General Contractor's Certificate of Payment if requested

Hatfield Hall Roof Replacement & Parapet Repairs

- Prepare and perform punch list
- Prepare certificate of substantial completion for work
- Perform final inspection
- Review project close out documents
- Record drawings: prepare Auto CAD record documentation recording any redlines from contractor's permitted set and responding to Owner's comments

Hatfield Hall Roof Replacement and Parapet Repairs

Exhibit E - 308001

Carelton Hart Architecture - Design Schedule

October 24, 2017

Preliminary Design/Eco Roof Feasibility	11/1/2017 – 12/8/2017
Schematic Design	12/11/2017 – 1/9/2018
Design Development	1/12/2018 – 2/16/2018
Construction Documents	2/19/2018 – 3/13/2018
Bidding	3/13/2018 – 4/19/2018
Contract Execution	5/7/2018
Commencement of Work	7/1/2018
Substantial Completion	10/31/2018

MERC STAFF REPORT

Agenda Item: For the purpose of approving the scope and fee proposals from Carleton Hart Architects for the Antoinette Hatfield Hall Roof Replacement and Parapet Wall Repair and authorizing the General Manager of Visitor Venues to execute the contract.

Resolution No: 17-37

Date: November 1, 2017

Presented by: Nancy Strening

BACKGROUND: The Antoinette Hatfield Hall roof is original to the building from 1987 and has undergone decades of patching and partial repairs. It has reached the end of its useful life. The Exterior Insulated Finish System (EIFS) parapet wall panels are damaged by water infiltration, which is caused by a faulty construction detail where the roof system meets the parapet wall. Water has also infiltrated the space between the roof deck and the lightweight concrete insulation, causing leaks into the interior of the building. A new roof will not be effective in preventing water infiltration if the parapet wall correction is not made, therefore the design recommendations for those repairs shall be included in the scope.

This is a project spanning two Fiscal Years. Year one is devoted to Design and Engineering. Construction to be completed in year two. Design and Engineering effort shall result in a recommendation for the construction/detailing of the back side of the parapet walls in addition to the roof system itself. An eco-roof design, as required by the City of Portland as well as Metro's sustainability initiative, should be explored and estimated.

The RFP was issued in accordance with MERC's Purchasing and Contracting Rules and in compliance with Metro Policy and any and all state (ORS) requirements. The RFP was published on ORPIN, in The Asian Reporter and on the Metro website. On September 21, 2017, MERC received five proposals. Proposals were evaluated and scored by cPMO and P-5 staff based on Project Work Plan & Approach and Project Staffing Experience. Procurement Staff evaluated and scored the proposals based on Diversity in Employment and Contracting and Sustainable Business Practices. Carleton Hart had the highest score for Diversity in Employment and Contracting and the highest score overall. Carleton Hart is a COBID firm as are two of their proposed subconsultant firms.

Carleton Hart Architects submitted a fee proposal to cPMO staff and after negotiations the parties clarified scope and agreed to a price not to exceed of One Hundred Ninety-Six Thousand, Seven Hundred Twenty-Two and NO/Dollars (\$196,722.00)

FISCAL IMPACT: The contract amount presented for approval is not to exceed \$196,722.00. Of that amount, \$150,000 is expected to be incurred in FY2017-18 for the Preliminary Design through Bidding/Permitting phases. There is sufficient appropriation to cover the FY2017-18 costs. The total project budget on the FY 17-18 5 year CIP is \$450,000, which includes construction costs beginning in FY2018-19. The cost estimate that will be provided at the end of the Schematic Design phase of this contract will inform the revised construction estimate to be included in the FY 18-19 revised 5 year CIP.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition Recreation Commission, by Resolution No 17-37, approve the scope and fee proposal submitted by Carleton Hart Architects and authorize the General Manager of Visitor Venues to execute the contract.