

Penguin Life Support System Upgrade

Request for Bids Project Manual

RFB # 11-1717

August 2010



OREGON ZOO
4001 SW Canyon Road
Portland, Oregon 97221

**Oregon Zoo
Penguin Life Support System Upgrade
Request for Bids (RFB # 11-1717)**

OWNER

Oregon Zoo
4001 SW Canyon Road
Portland, Oregon 97221
Lee Campbell, Project Manager
503.220.2794

Metro
600 NE Grand Avenue
Portland, Oregon 97232

CIVIL ENGINEER

KPFF Consulting Engineers
111 SW Fifth Avenue, Suite 2500
Portland, Oregon 97204
Paul Dedyo, PE
503.227.3251

STRUCTURAL ENGINEER

KPFF Consulting Engineers
111 SW Fifth Avenue, Suite 2500
Portland, Oregon 97204
Jason Thompson, PE
503.227.3251

ELECTRICAL ENGINEER

MFIA Inc
2007 SE Ash Street
Portland, Oregon 97214
Adam Ritenour, PE
503.234.0548

MECHANICAL ENGINEER

MFIA Inc
2007 SE Ash Street
Portland, Oregon 97214
Scott Miller, PE
503.234.0548

ARCHITECT

Design Department Architecture
1315 SE 9th Avenue
Portland, Oregon 97214
Eric Black
503.819.8149

LIFE SUPPORT SYSTEM DESIGNER

T.A. Maranda Consultants
8616 Blue Grouse Way
Blaine, Washington 98230
Ted Maranda, PE
360.371.3107

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600 NE Grand Avenue
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(503) 797-1700

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END OF SECTION

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SECTION 00 11 16 INVITATION BIDS

Metro is requesting bids from bidders for the Penguin Life Support System Upgrade.

Sealed bids must be delivered to Metro, 600 NE Grand Ave, Portland, OR 97232-2736 to the attention of Angela Watkins, Procurement Analyst, no later than 2:00 PM, Tuesday, September 7, 2010. Bids will be accepted at the main reception desk and will be publicly opened in Room 270, located on the first floor.

SUMMARY OF WORK

Metro requires the services of an experienced Contractor, with a varied set of construction disciplines, for the construction of the Penguin Life Support System Upgrade.

The work consists of:

Updating the antiquated aquatic life support system to improve water quality and conserve water. A new recirculating filtration system will avoid dumping the 25,000 gallon penguin pool weekly to City sewer system.

Project work includes, of but is not limited to, the following:

1. The existing building and exhibit will remain, with the mechanical area expanded to accommodate a new aquatic life support system.
2. Partial demolition of existing basement mechanical room to accommodate life support system components.
3. Site work and tree removal is required for the mechanical room addition. Landscape and irrigation restoration is required for areas disturbed by construction.
4. Old filtration equipment will be demolished and removed; a new aquatic life support system will be installed.
5. System piping and skimmer trench will be constructed inside the exhibit space.
6. Portions of the existing interior exhibit rockwork will be demolished and replaced as necessary for the life support system modifications and to patch existing rockwork.
7. A chiller will be added to the process water system.
8. HVAC and electrical systems will be enhanced.
9. Add Alternates are included in the bid document for other penguin exhibit renovations.

The construction will be in accordance with all applicable building standards, and the attached Drawings and Specifications.

Construction mobilization and permits required for this Work must be available before starting.

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Construction shall not hinder the operations of the Oregon Zoo. Weekend and evening work may be permitted with appropriate notice to arrange for access and security.

The area of construction shall be fenced and separated off from the general public in order to minimize disruption and inconvenience to Zoo operations and Zoo patrons.

Drawings and Specifications may be examined and additional copies requested at Ford Graphics.

CONTRACTOR QUALIFICATIONS

Examination of the proposed work is MANDATORY for all General Contractors bidding the Work.

Bidders must register with Ford Graphics to obtain sets of Drawings and Specifications for a \$45 refundable deposit for each complete set. The deposit will be refunded if the Plans are returned to Ford Graphics within 10 business days from bid date, in good condition, free from mark-ups and bound. Sets may be purchased from Ford Graphics PlanWell.

A MANDATORY pre-bid meeting for all potential prime contractors will be held 9:00 a.m., Thursday, August 19, 2010, in the Skyline Room. Interested subcontractors may attend pre-bid meeting, but attendance is not mandatory. Preregistration is mandatory, through Ford Graphics. Registrations must be received by 5:00 PM, Tuesday, August 17, 2010 (in order to prepare zoo admission tickets).

Navigate to Ford Graphics Home page (www.fordgraphics.com)

Click on "Portland or Oregon / SW Washington"

Towards the left portion of the page, select the option, "Public Projects"

Once in the Public Planroom, browse or search for the project number or name:

Project Number	Project Name
Zoo Penguin LSS Upgrade	Oregon Zoo Penguin Life Support System Upgrade
Zoo Penguin Mandatory Pre Bid Registration	Oregon Zoo Penguin Mandatory Pre Bid Registration

All Contractors must submit the First-Tier Subcontractors Form within two hours of the bid due time, listing all First-Tier Subcontractors supplying labor, or labor and materials with a contract amount greater than or equal to; 1) five percent of the Project base bid, but at least \$15,000, or 2) \$350,000 regardless of the percentage. Bids submitted without these forms will be considered non-responsive.

Each bid must be accompanied by a certified check or cashier's check or bid bond executed on the prescribed form, payable to Metro in the amount of ten percent (10%) of



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the total bid amount. The bid and bid security should be delivered in a sealed envelope marked "Oregon Zoo Penguin Life Support System Upgrade RFB #11-1717, Attn: Angela Watkins, Procurement Analyst."

The successful bidders will be required to furnish the necessary additional bonds for the faithful performance of the Contract and for the payment of all persons supplying labor and materials as prescribed in the Contract Documents.

After August 3, 2010, Bid Documents may also be viewed at the following plan centers:

Oregon Association of Minority
Entrepreneurs
4134 North Vancouver Avenue
Portland, Oregon 97217
(503) 249-7744
plancenter@oame.org

Salem Contractors Exchange
2256 Judson Street SE
Salem, Oregon 97302
(503) 363-7957
info@sceonline.org

Daily Journal of Commerce Plan Center
2840 NW 35th Avenue
Portland, Oregon 97210
(503) 274-0624
www.djcoregon.com

Southwest Washington Contractors
Association
7017 NE Highway 99, Suite 214
Vancouver, Washington 98665
(360) 694-7922
www.swca.org

Contractor Plan Center
14625 SE 82nd Drive
Clackamas, Oregon 97015
(503) 650-0148
www.contractorplancenter.com

BASIS OF AWARD

The award shall be made to the responsible Bidder submitting the lowest responsive bid. Any determination of bidder's responsibility or responsiveness is subject to review and determination by the Office of the Metro Attorney as to legal sufficiency. Metro reserves the right to accept or reject any and all bids in whole or in part, and to waive any irregularities in the best interest of Metro.

Before a contract is awarded, Metro may conduct such additional investigations as are necessary to determine whether a Contractor is qualified. Upon request, the Contractor shall promptly submit such additional information as deemed necessary by Metro to evaluate the Contractor's qualifications.

Bidders shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.



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This is a public works project. The Contractor and all subcontractors and suppliers, shall be required to comply with ORS 279C.800 through 279C.870 and ensure that all workers are paid not less than, and in accordance with, the Prevailing Wages published by the Oregon Bureau of Labor and Industries. In order to insure compliance of prevailing wage requirements, under Chapter 279, Metro will require that all payrolls be submitted on a schedule to be determined by Metro.

The applicable rates for Region 2 (Clackamas, Multnomah, and Washington Counties) can be found at www.oregon.gov/BOLI.

In accordance with BOLI requirements for projects advertised after January 1, 2008, the PWR Fee, previously paid by the Contractor, shall be paid by Metro.

Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279A.120. Bidders and Subcontractors must be registered with the Oregon Construction Contractor's Board pursuant to ORS 701.035–90.

Bidders must comply with Metro's Minority, Women-Owned and Emerging Small Business Enterprise Program. The purpose of the program is to establish and implement a program to encourage the utilization by Metro of minority, women-owned and emerging small businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally funded Metro contracting activities. All bidders must certify and document compliance with the Minority, Women-Owned and Emerging Small Business Enterprise Program. Failure to complete and submit the Program Compliance Forms, Utilization Forms, and adequately document good faith efforts will constitute a non-responsive bid. See Section 00 21 13–Instructions to Bidders, for references to applicable procedures and further details concerning this program. Any questions regarding MBE/WBE/ESB requirements should be addressed to the Metro MBE/WBE/ESB Program Advocate, Angela Watkins, (503) 797-1816.

The Economic Feasible Units (EFU) identified for the MBE/WBE/ESB program by Metro for this Project are tree removal, demolition, paving, retaining walls, HVAC, plumbing, electrical, steel fabrication and landscaping.

Metro reserves the right to reject all bids or any bids not conforming to the intent and purpose of the Contract Documents, to reject for good cause any and all bids upon a finding of Metro that it is in the public interest to do so or to waive any informality or irregularity in any bid or bids. Metro further reserves the right to award the Contract at any time within 60 days following the bid opening date.

END OF SECTION

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600 NE Grand Avenue
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(503) 797-1700

SECTION 00 21 13 INSTRUCTIONS TO BIDDERS

1. DESCRIPTION OF WORK

Project:

1. Title: Penguin Life Support System Upgrade
2. Location: Oregon Zoo.
3. Owner: Metro.
4. Project Objective: Update the antiquated aquatic life support system to improve water quality and conserve water. A new recirculating filtration system will avoid dumping the 25,000 gallon penguin pool weekly to City sewer system.
5. Project consists, of but is not limited to, the following:
 - a. The existing building and exhibit will remain, with the mechanical area expanded to accommodate a new aquatic life support system.
 - b. Partial demolition of existing basement mechanical room to accommodate life support system components.
 - c. Site work and tree removal is required for the mechanical room addition. Landscape and irrigation restoration is required for areas disturbed by construction.
 - d. Old filtration equipment will be demolished and removed; a new aquatic life support system will be installed.
 - e. System piping and skimmer trench will be constructed inside the exhibit space.
 - f. Portions of the existing interior exhibit rockwork will be demolished and replaced as necessary for the life support system modifications and to patch existing rockwork.
 - g. A chiller will be added to the process water system.
 - h. HVAC and electrical systems will be enhanced.
 - i. Add Alternates are included in the bid document for other penguin exhibit renovations.

2. DEFINITIONS

Except as otherwise specifically provided, herein all words and phrases defined in the General Conditions shall have the same meaning and intent in this Section. Bidders should refer to those definitions as they read these Instructions.

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3. DOCUMENT INTERPRETATION

The Contract Documents are intended to be complementary and to provide all details reasonably required for execution of the proposed Work. Any person contemplating the submission of a bid shall have thoroughly examined all of the various parts of these Contract Documents. If the bidder has any doubt as to the meaning or the intent of the Contract Documents or finds any inconsistency or discrepancy within the Contract Documents, the bidder must provide and Metro must receive a written request for interpretation, **at least five working days' prior to bid opening**. Likewise, the bidder may request substitutions for materials, processes or equipment as described in the Contract Documents. Such requests for interpretation or substitution shall be mailed or delivered to; Oregon Zoo, 4001 SW Canyon Road, Portland, OR 97221, Attn: Lee Campbell, Bond Construction Manager.

Any interpretations or changes in the Contract Documents will be made only in writing, in the form of Addenda to the Contract Documents which will be furnished to all bidders receiving a set of the Bid Documents and which shall be binding upon all bidders as if set forth in the original Contract Documents. Bidders shall indicate receipt of all Addenda on their bids. Metro will not be responsible for any other explanation or interpretation of the Bidding documents. Bidders shall have no right to rely on any oral interpretation or instructions made by Metro or the Architect/Engineer, unless it is also committed to writing and issued as an addendum.

In the absence of any pre-bid request for clarification, or any interpretation of the Contract Documents, as outlined above, any subsequent interpretation shall be made by Metro, and shall be final and binding on a successful bidder, and Metro shall pay no extra costs or expenses to such bidder resulting from such interpretation.

4. EXAMINATION OF CONTRACT DOCUMENTS AND SITE AND COMPLIANCE WITH LAWS

Before submitting a bid, bidders shall fully examine and read the Contract Documents; visit the site of the proposed Work, and examine the site and the surrounding areas; and fully inform themselves of all conditions on, in, at and around the site, the surrounding areas, and any work that may have been done thereon. The Bidder acknowledges by the submission of its bid that it understands the nature and location of the Work, the General and local conditions, conditions of the site, availability of labor, electric power, water, and the kind of surface materials on the site, the kind of equipment needed, and all other matters which may in any way affect the Work or the Cost of the Work.

Information derived from inspection of the Contract Documents and any specific Specification or sections thereof showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the site and

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making such additional investigations as it may elect, or from properly fulfilling all the terms of the Contract Documents.

Any failure of a bidder to acquaint itself with all of the available information concerning conditions or having such additional investigations of site and soil conditions conducted, as may be necessary, will not relieve it from responsibility for estimating properly the difficulties or Cost of the Work and the bidder shall, regardless of such failure, be bound to its bid.

Each bidder shall inform itself of, and the bidder awarded the Contract shall comply with, federal, state, and local laws, codes, statutes, ordinances, and regulations, as amended, relative to the execution of the Work. Each bidder shall prepare its bid in accordance with, and all bid prices shall assume compliance with, such laws, codes, statutes, ordinances and regulations. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, prevailing wage rates, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non burning requirements, permits, fees, and similar subjects.

If any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations as amended, the bidder shall so advise Metro in writing at least seven days before bids are due. If it is shown that the Contractor, as bidder, knew or should have known that any portion of the Contract Documents does not conform to such laws, codes, statutes, ordinances or regulations and had failed to so advise Metro, it shall be liable for costs of making any deviation(s) required for compliance with such laws, codes, statutes, ordinances or regulations.

Each bidder, in submitting its bid, certifies that the bidder is eligible to bid on and to receive a contract for a public work, as set forth in ORS 279C.860 and agrees, if awarded the Contract, that each of its subcontractors will be required to certify such compliance, and certification will be filed with Metro prior to such subcontractor commencing any Work.

5. MINORITY, WOMEN-OWNED AND EMERGING SMALL BUSINESS PROGRAM COMPLIANCE

Minority, Women and Emerging Small Business Enterprise Program

In the event that any subcontracts are to be utilized in the performance of this Agreement, the bidders/proposer's attention is directed to Metro Code Section 2.04.100.

The following program information is intended to succinctly outline the prime action steps required of all bidders/proposers. It is not a substitute for and shall not be construed as a complete recital of all issues, concerns, and program instructions contained within that ordinance. Therefore, all bidders/proposers are specifically



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advised to consult the original document for definition of the specific terminology contained herein and complete insight into all program requirements.

Copies of that document are available from the Contracts Services Division of the Administrative Services Department, Metro Regional Center, 600 NE Grand Avenue, Portland, OR 97232, or call Angela Watkins, (503) 797-1816.

Metro Extends Equal Opportunity to all persons and specifically encourages MBE/WBE/ESB to access and participate in this and all Metro projects, programs and services.

Metro Prohibits Discrimination against any person or firm based upon race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

Metro Specifically Requires all bidders/proposers to demonstrate and document good faith efforts reasonably expected to produce and maximize the opportunities for subcontractor and supplier involvement by MBE/WBE/ESBs.

For purposes of this program, performing, documenting, and certifying compliance with all of the actions outlined on the attached forms shall constitute a rebuttable presumption that the bidder/proposer has made the good faith efforts required by this program.

The attached Compliance Forms are the basis for recording and documenting the completion of the above-listed actions. Completion of the Compliance Form and Documentation of all six actions outlined therein is mandatory. Failure to complete and submit the forms and all required support documentation at the time of bid opening/proposal submission and all required documentation subsequently requested, will result in rejection of the bid/proposal as nonresponsive to Metro's procurement requirements.

By signing the forms, the bidder/bidders thereby certifies that it has not discriminated against MBE/WBE/ESB in obtaining any subcontracts for this Project, and that it has documented good faith efforts were reasonably expected to result in participation by those enterprises in this Project.

Conversely, failure to provide such documentation by the bid or submission deadline shall create a rebuttable presumption that the respondent has not made a good faith effort as required by the program.

Furthermore, Metro reserves the right, at all times during the subsequent course of any awarded contract, to monitor compliance with the terms of this program, require additional written documentation or proof of good faith efforts, and depend upon the Contractor's immediate compliance.

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6. PREPARATION OF BIDS

All blank spaces in the bid forms must be completed either by typing or in ink. Amounts shall be shown in both words and figures. Any bid that does not include prices on all bid items will be considered non-responsive and will be rejected. No changes shall be made in the phraseology of the forms.

Metro reserves the right to declare any bid non-responsive and reject it without further consideration if it is deemed to contain errors, omissions, erasures, alterations, additions, deletions, unbalanced pricing, is conditioned by the bidder, or in any manner, extent or way fails to conform to each and every specific requirement(s) of these Contract Documents.

Each bid shall give the full business address of the bidder and be signed by it with its legal signature.

- a. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership authorized to sign contracts on behalf of the partnership, or by an authorized representative, followed by the printed name and title of the person signing.
- b. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. When requested by Metro, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
- c. If a bid is submitted by a joint venture, a certified copy of the legal agreement constituting the joint venture shall be attached to the bid.

The name of each person signing shall also be typed or printed below the signature. Signatures of all individuals must be in longhand. Failure to fulfill any of the above requirements may render the bid non-responsive.

7. SUBMISSION OF BIDS

All bids must be submitted not later than the time prescribed, at the place, and in the manner set forth in the REQUEST FOR BIDS. Bids must be made on the forms contained herein as the bid forms. Each bid and all other documentation required to be submitted with the bid must be submitted in a sealed envelope, so marked as to indicate its contents without being opened, and addressed in conformance with the instructions in the REQUEST FOR BIDS and the ADVERTISEMENT FOR BIDS.

8. MODIFICATION OR WITHDRAWAL OF BIDS

Any bid may be modified after delivery to the location specified in the invitation to bid by delivering to the same location before the time fixed for the bid opening, a written

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sealed supplement to the original bid, marked "Supplement to Bid of (Name of Bidder) for the Oregon Zoo Penguin Life Support System Upgrade Attn: Lee Campbell, Bond Construction Manager". A supplement shall clearly identify the bid item(s) that are changed by setting forth the original bid item(s), and the modified item(s). Metro may reject any bid supplement that, in its opinion, does not set forth the proposed modifications clearly enough to determine the definiteness and certainty of the item(s) offered by the bidder. No bidder shall be allowed to submit more than one bid for this Contract.

Bids may be withdrawn by the bidder prior to the time fixed for the receipt of bids by having an authorized representative of the bidder with sufficient identification, personally pick up the bid. Bids may not be withdrawn for a period of 60 days from and after the opening of bids or on or prior to the last date of any extension of such time as may be agreed upon between Metro and the bidder.

9. BID SECURITY

Bids must be accompanied by a certified check or cashier's check drawn on a bank in good standing, or a bid bond on the form provided herein by Metro, issued by a surety authorized to issue such bonds in Oregon, named on the current list of approved surety companies acceptable on federal bonds, and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department, in the amount of not less than ten percent of the bid amount. This bid security shall be given as a guarantee that the bidder will not withdraw its bid for a period of 60 days after bid opening, and that if awarded the Contract, the successful bidder will execute the attached Agreement and furnish a properly executed performance bond and a properly executed labor and materials payment bond, each in the full amount of the bid, within the time specified. Bid security deposited in the form of a certified check or cashier's check shall be subject to the same requirements as a bid bond.

The Attorney-in-Fact (Resident Agent) who executes these bonds on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

10. ABILITY TO PERFORM THE WORK

No bidder will be considered for contract award unless such bidder is authorized by law to execute the Contract or perform the Work for which such bid is received. Should it appear, at any time, that any bidder is not or might not be authorized by law to execute the Contract or perform such Work, then such bidder may at any time be rejected and Metro may refuse to execute any contract with such bidder regardless of whether or not the Contract had been previously awarded by the Metro Council and without any liability whatever on the part of Metro, its Council, or any member of its Council, or Metro's officer, employees, or its agents, either as individuals or in official capacities.



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11. REJECTION OF BIDS

Metro reserves the right to reject all bids or any bid not conforming to the intent and purpose of the Contract Documents, to waive any informality or irregularity in any bid or bids, to reject any bid not in compliance with all prescribed public bidding procedures and requirements and, for good cause, to reject any or all bids upon a finding by Metro that it is in the public interest to do so.

12. BASIS OF AWARD

Metro reserves the right to make award of this Contract to the lowest responsible bidder submitting the lowest responsive bid, which shall include the base bid plus any owner selected alternates.

Under Oregon Law ORS 279A.125, public agencies, including Metro, must give preference to the purchase of materials and supplies manufactured from recycled materials. All bidders are required to specify the minimum, if not exact, percentage of recycled product in each product offered, and both the post-consumer and secondary waste content of each product offered. A bidder may also specify that none of the products offered contain any recycled product. The definitions of "recycled product", "post-consumer waste", and "secondary waste material", as well as other explanatory materials are included in the Appendix.

A form is included for submittal of recycled product information. The form allows a bidder to specify that different portions of a single bid item contain different amounts of recycled product. If the recycling information form is not submitted with the bid, Metro will assume that none of the products offered contain any recycled product. In addition, Metro will assume that a bid item contains no recycled product if information submitted for the item is in Metro's opinion incomplete, incorrect, or unintelligible.

Metro will calculate the recycled product preference as follows: If any bidder submits a bid price for an item that 1) meets the definition of "Recycled Product" (see Oregon Laws 1991, Chapter 385, Section 59, in Appendix), 2) meets applicable standards, and 3) can be substituted for a comparable non-recycled product, Metro will subtract five percent of that item's materials cost from the total bid price for the purpose of comparing bids. It is Metro's responsibility to calculate any preferences required under Oregon law and to establish the materials cost of any proposed bid item. A bidder who claims a recycled product preference shall utilize in this Work, all of the recycled product claimed.

In determining the lowest responsive bid and responsible bidder, Metro shall, for the purpose of awarding the Contract, add a percent increase on the bid of a non-resident bidder, equal to the percent, if any, of the preference given to that non-resident bidder in the state in which that bidder resides. For purposes of determining the percent increases to be applied pursuant to this section, Metro shall rely on the list published by

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the Oregon Department of General Services, and Metro shall not incur any liability to any bidder by relying on such list.

13. ADD ALTERNATES

Metro will select, at its discretion, any of the proposed add alternates described in Section 01 23 00–Alternates.

14. FIRST-TIER SUBCONTRACTOR DISCLOSURE

Bidders are required by law (ORS 279C.370) to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is greater than \$75,000. Specifically, when the contract amount of a first-tier subcontractor furnishing labor, or labor and materials is greater than or equal to: 1) five percent of the Project bid, but at least \$15,000, or 2) \$350,000 regardless of the percentage, Contractor must disclose the following information about that subcontract in its bid submission or within two working hours after bid closing:

- a) The subcontractor's name and,
- b) The category of work that the subcontractor would be performing.

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, you are required to indicate "NONE" on the form supplied in Section 00 41 00–Bid Forms.

Metro must reject a bid if the bidder fails to submit the disclosure form with this information by the stated deadline. Compliance with the disclosure and submittal requirements of ORS 279C.370(1) and these instructions is a matter of responsiveness. Bids that are submitted by bid closing, but for which the separate disclosure submittal of first-tier subcontractors has not been made by the specified deadline, shall be considered non-responsive and shall not be considered for Contract award.

Metro shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and shall also provide copies of the forms to the Bureau of Labor and Industries as required by ORS 279C.385. Metro is not required to determine the accuracy or completeness of the information submitted. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585.

15. LIST OF PROPOSED SUBCONTRACTORS

Within five days after Notice of Award and as a condition precedent to the award of the Contract, the apparent low responsible bidder shall submit to Metro in writing the names of all Subcontractors and Suppliers which Bidder proposes to use in completing the Work along with a brief description of the subcontract or supply work involved and the subcontract or supply work dollar amount. Metro will notify the bidder in writing

REQUEST FOR BIDS # 11-1717

PENGUIN LIFE SUPPORT SYSTEM UPGRADE

within ten days following receipt from bidder of the above described information if Metro has any reasonable objection to any such proposed Subcontractor or Supplier.

The bidder shall not subcontract with any proposed subcontractor or supplier to whom Metro has made a reasonable objection. In the event of such objection, bidder shall propose another entity to which Metro has no reasonable objection. No amounts or prices bid by the bidder shall be increased by any difference occasioned by such substitution. Failure of Metro to reply within the above-described time period shall be construed to mean that Metro has no objection at that time. Failure of the bidder to comply with this section shall be cause for rejection of bidder's bid and, in such event the bid security submitted by bidder shall be taken by Metro and considered as liquidated damages.

Prospective bidders are encouraged to verify the qualifications of proposed subcontractors/suppliers and be prepared to furnish Metro with a list of similar projects performed by the proposed subcontractors/suppliers.

16. AWARD AND EXECUTION OF CONTRACT

Within 60 days after the opening of bids, Metro will accept one of the bids or reject all of the bids. The acceptance of the bid will be by written Notice of Award, mailed or delivered to the office designated in the bid. The Notice of Award shall not entitle the party to whom it is delivered to any rights whatsoever.

The successful bidder shall, within seven days after award of the Contract by the Metro Council, sign and deliver to Metro the Agreement attached hereto together with an acceptable performance bond and a labor and materials payment bond, certificates of insurance and certified copies of insurance policies as required in these Contract Documents.

Upon receipt of the signed Agreement and all other documents required to be submitted by the successful bidder, as prescribed herein, Metro shall sign the Agreement and issue a written Notice to Proceed to Contractor. Contractor shall commence Work within five days of issuance of the Notice to Proceed.

In the event of failure of the lowest responsible bidder to sign and return the construction Agreement and all other documents required to be submitted, as prescribed herein, Metro may award the Contract to the next lowest responsible bidder.

17. PERFORMANCE BOND AND LABOR AND MATERIALS PAYMENT BOND

The successful bidder shall file with Metro a performance bond on the form bound herewith and in the amount described below, as security for the faithful performance of this Contract and to cover all guarantees against defective workmanship or materials, or both. The successful bidder shall additionally file a labor and materials payment bond on the form bound herewith and in the amount described below, as security for

REQUEST FOR BIDS # 11-1717

PENGUIN LIFE SUPPORT SYSTEM UPGRADE

the payment of all persons supplying labor and materials for the performance of the Work. The surety furnishing these bonds shall have a sound financial standing and a record of service satisfactory to Metro, shall be authorized to do business in the State of Oregon, and shall be named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and U.S. Treasury Department. If more than one surety is on a bond, then each surety must agree that it is jointly and severally liable on the bond for all obligations on the bond. A letter of credit, in a form suitable to Metro and otherwise in conformance with the Contract, may be substituted for a bond.

The amount of each bond described above shall be a sum not less than 100 percent of the Contract amount. The Attorney-in-Fact (Resident Agent) who executes the performance bond and the labor and materials payment bond on behalf of the surety must attach a notarized copy of his/her Power of Attorney as evidence of his/her authority to bind the surety on the date of execution of the bond.

Cost of required bonds is to be borne by Contractor and is to be included in bid price.

18. FAILURE TO EXECUTE CONTRACT AND FURNISH BONDS

The bidder to whom a contract is awarded who fails to promptly and properly execute this Contract and furnish the required bonds, certificates of insurance and certified copies of insurance policies shall forfeit the bid security that accompanied its bid and the bid security shall be retained as liquidated damages by Metro. It is agreed that this sum is a fair estimate of the amount of damages Metro will sustain if the bidder fails to enter into a contract and furnish the bonds, certificates of insurance and certified copies of insurance policies required.

19. BID BACKUP (BID PREPARATION DOCUMENTS)

Within five days after Notice of Award and as a condition precedent to the award of the Contract, the apparent low responsible bidder shall submit to Metro in a sealed envelope their complete bid summary, along with corresponding back-up including, but not limited to: quantity take-off sheets, pricing sheets and information/data substantiating the total bid amount. The back-up data provided shall include that of all Subcontractors listed in the bid, as well as all lower-tier Subcontractors. This bid summary and back-up data will be held in strict confidence by Metro in its original sealed envelope and will not be opened except in the event of dispute between Metro and Contractor. Bid back-up shall be enclosed in a double envelope to prevent accidental opening. Bid back-up shall be delivered to the Oregon Zoo, 4001 SW Canyon Road, Portland, OR 97221, Attn: Lee Campbell, Bond Construction Manager; enclosed in a double envelope to prevent accidental opening. The envelope shall be marked "Bid Backup Documents of (Name of Bidder) for Oregon Zoo Penguin Life Support System Upgrade".

REQUEST FOR BIDS # 11-1717
PENGUIN LIFE SUPPORT SYSTEM UPGRADE



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20. DRUG TESTING PROGRAM

Bidders are required by law (ORS 279C.505) to demonstrate that it has an employee drug-testing program. Bidders must certify to Metro that they have an employee drug-testing program by completing the form provided in Section 00 41 00–Bid Forms, and including it in the bid book.

21. PROMPT PAYMENT TO SUBCONTRACTORS

Contractor and all First-Tier Subcontractors must pay, within thirty days of receipt of payment from Metro or contractor, any person furnishing labor or materials in connection with this Contract. If Contractor or First-Tier Subcontractor fails, neglects or refuses to make such payment within the thirty-day period, the Contractor or First-Tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or First-Tier Subcontractor on the amount due shall equal three times the discount rate on ninety day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payments was received from Metro or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived. If the Contractor or First-Tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this 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.

END OF SECTION

REQUEST FOR BIDS # 11-1717
PENGUIN LIFE SUPPORT SYSTEM UPGRADE



SECTION 00 31 00
SUPPLEMENTAL DATA

PART 1 GENERAL

1.01 SUMMARY

A. Section Includes:

1. Identification of investigation data of the site.
2. Use of data resulting from that investigation including:
 - a. Geotechnical data.
 - b. Record drawings.

1.02 GEOTECHNICAL INVESTIGATION REPORT

- A. Investigation reports have been prepared for the site of this Work.
- B. Report is available from Ford Graphics in Portland through the PlanWell System.

1.03 DRAWINGS OF EXISTING BUILDINGS

- A. Record drawings for original 1957 Penguin Pool construction available from Ford Graphics in Portland through the PlanWell System.
- B. Record drawings for the 1982 Renovations & Additions to the Penguinarium Exhibit available from Ford Graphics in Portland through the PlanWell System.

1.04 USE OF DATA

- A. Reports were obtained for Architect's use in design and are not a part of Contract Documents.
- B. Reports are available for bidder's information, but are not a warranty of subsurface conditions.
- C. Bidders should visit site and acquaint themselves with existing conditions.
- D. Prior to bidding, bidders may make their own subsurface investigations to satisfy themselves as to site and subsurface conditions, but such



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investigations may be performed only under time schedules and arrangements approved in advance by Architect or Owner.

1.05 QUALITY ASSURANCE

- A. Adjust work performed that does not meet technical or design requirements, but make no deviation from Contract Documents without written approval from Architect.

END OF SECTION



BID FORMS

**SECTION 00 41 00
 BID FORMS**

NOTE TO BIDDER: Bidders must provide all of the information requested in this bid. Bidder should type or use ink for completing this bid.

To: Oregon Zoo

Address: 4001 SW Canyon Road
 Portland, OR 97221

Contract: Oregon Zoo Penguin Life Support System Upgrade, (RFB# 11-1717)

Bidder: _____

Address: _____

Bidder's Contact: _____

Telephone: () _____

Date: _____

BIDDER'S DECLARATION AND UNDERSTANDING

The undersigned, hereinafter called the bidder, declares that the only persons or parties interested in this bid are those named herein, that this bid is, in all respects, fair and without fraud, that it is made without collusion with any official of Metro, and that the bid is made without any connection or collusion with any person submitting another bid on this Contract.

The bidder further declares that it has carefully examined the Contract Documents for the completion of the Work, has personally inspected the site, has satisfied itself as to the Work involved, and that this bid is made in accordance with the provisions and under the terms of the Contract Documents which are hereby made a part of this bid.

Any printed matter on any letter or paper enclosed herewith which is not part of the Bidding Documents or which was not requested by Metro is not to be considered a part of this bid, and the undersigned agrees that such printed matter shall be entirely disregarded and, notwithstanding such printed matter, that the bid is a bid to do the Work and furnish the labor and materials and all other things required by the Contract Documents strictly within the time and in accordance with such Specifications. This bid is irrevocable for sixty days following the date of the opening of bids.

BID SECURITY

Bid security in the form of a certified check, cashier's check or bid bond as further described in the Instructions to Bidders and in the amount of TEN PERCENT (10%) of the total bid amount is enclosed herewith and is subject to all the conditions stated in the Instructions to Bidders.

CONTRACT EXECUTION, BONDS AND INSURANCE

The bidder agrees that if this bid is accepted, it will, within seven days after award of the Contract by the Metro Council, sign the Construction Agreement in the form annexed hereto, and will at that time deliver to Metro the performance bond and the labor and materials payment bond required herein and in the form annexed hereto,



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BID FORMS

along with all certificates of insurance and certified copies of insurance policies specified and required in these Contract Documents, and will, to the extent of its bid, furnish all machinery, tools, apparatus, and other means of operation and construction and do the work and furnish all the materials necessary to complete all work as specified or indicated in the Contract Documents.

Cost of required bonds is to be borne by Contractor and is to be included in bid price.

COMMENCEMENT OF WORK AND CONTRACT COMPLETION TIME

The time frame for the award and execution of this Contract shall be as described in the Specifications for bidders and other Contract Documents. The successful bidder further agrees to commence the Work within five days of issuance of the Notice to Proceed and to diligently prosecute the Work to its final completion in accordance with the Contract Documents.

ADJUSTED PAYMENTS

In the event the bidder is awarded the Contract and fails to complete the Work in compliance with the time required by the Contract Documents, adjusted payments shall be paid to Metro as described in the General Conditions.

SALES AND USE TAXES

The bidder agrees that all applicable federal, state and local sales and use taxes are included in the stated bid prices for the Work.

LUMP SUM AND UNIT PRICE WORK

The bidder further proposes to accept as full payment for the Work proposed herein the amounts computed under the provisions of the Contract Documents and based on the listed lump sum and unit price amounts. The amounts shall be shown in both words and figures. In case of a discrepancy, the amount shown in words shall govern.

PREVAILING WAGES FOR PUBLIC WORK

Bidder hereby certifies that the provisions of ORS 279C800 – 279C.870, regarding Prevailing Wages, shall be complied with on this Project.



BID FORMS

SCHEDULE OF BID PRICES

Bidder to reference Specifications of Division 01, Section 01 11 00–Summary of Work; Section 00 11 16–Invitation to Bid.

PART A –PENGUIN LIFE SUPPORT SYSTEM UPGRADE

Item	Description	Qty	Unit	Unit Cost	Total Amount
1	Complete Base Bid Project Less Artificial Rockwork Repair	NA	NA	NA	
2	Artificial Rockwork Repair	150	SF		
Total Base Bid					

(_____ **DOLLARS**)
BASE BID (in words)

(_____ **DOLLARS**)
ADD ALTERNATE #1 BID – BACKWASH RECOVERY SYSTEM (in words)

(_____ **DOLLARS**)
ADD ALTERNATE #2 BID – MECHANICAL ROOM STAIR MODIFICATIONS (in words)

(_____ **DOLLARS**)
ADD ALTERNATE #3 BID – AIR QUALITY IN VISITOR VIEWING AREA (in words)

(_____ **DOLLARS**)
ADD ALTERNATE #4 BID – EXHIBIT ROCKWORK LIGHTING (in words)

(_____ **DOLLARS**)
ADD ALTERNATE #5 BID – EXHIBIT VIEWING WINDOW SOFFIT LIGHTING (in words)

(_____ **DOLLARS**)
ADD ALTERNATE #6 BID –EXHIBIT POOL COATING (in words)

(_____ **DOLLARS**)
ADD ALTERNATE #7 BID – RUBBERIZED SURFACING ON EXHIBIT ROCKWORK (in words)



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BID FORMS



BID FORMS

ADDENDA

The bidder is presumed to have read and hereby acknowledges receipt and acceptance of Addenda numbers:

(Insert number and date of each Addenda received)

SURETY

If the bidder is awarded a Contract on this bid, the surety or sureties who provide(s) the performance bond and labor and materials payment bond will be:

SURETY

ADDRESS

1. _____

2. _____



BID FORMS

GOOD FAITH PROGRAM

The Metro Council is committed to doing business with minority, woman-owned firms and emerging small businesses. The Council recognizes that supporting these firms will result in a stronger economy and increased competition.

To this end, Metro has established these procedures to maximize utilization of MBEs, WBEs and ESBs for Metro projects. The following six steps are required to help us monitor the usage of these firms.

Good Faith Efforts Steps:

1. Identify areas in which you intend to use sub-contractors.
2. Attend the Pre-Bid meeting if held. Meet any MBE/WBE/ ESB firms at the Pre-Bid meeting.
3. Contact several (or all) certified MBE/ WBE/ ESB firms listed (with the State of Oregon) to perform the work needed. (Metro's Purchasing & Contracts Office will be happy to provide you with a list of firms upon request (503) 797-1816.)
4. Negotiate with interested, available and capable MBE/WBE/ ESB firms who submit competitive bids.
5. Report to Metro all sub-contractors contacted. Please include their response and price quoted.
6. List all sub-contractors that you intend to use on this project.

Please note a selected MBE/WBE/ESB firm must be used unless Metro authorizes a substitution.

Thank you for your assistance in this important area. Attached are forms to complete and return as part of your bid document. Please contact our Purchasing and Contracts Division at (503) 797-1816 if you have any questions.



BID FORMS

MBE/WBE/ESB

THIS IS A REQUIRED FORM TO BE SUBMITTED WITHIN TWO HOURS OF BID CLOSING

Project Name _____

Bidder/Proposer _____

Address _____

Phone _____ Fax _____

Bid Closing Date: _____ Time: _____

YOU MUST SUBMIT THIS FORM WITHIN TWO (2) HOURS OF THE ABOVE CLOSING DATE

Step 1. Identify areas in which you intend to use subcontractors:

Step 2. Attend the pre-bid meeting (if held). Meet any MBE/WBE/ESB firms at the meeting.

Name of person who attended pre-bid meeting.

Step 3, 4 & 5. List all firms contacted for subcontracting work (use more sheets if necessary).



BID FORMS

Sub contract for _____

MBE, WBE, ESB, Other	Certification #	Name of Firm	Date Contacted	Mode of Communication	Amount of Bid	Comments

Sub contract for _____

MBE, WBE, ESB, Other	Certification #	Name of Firm	Date Contacted	Mode of Communication	Amount of Bid	Comments

Sub contract for _____

MBE, WBE, ESB, Other	Certification #	Name of Firm	Date Contacted	Mode of Communication	Amount of Bid	Comments



BID FORMS

Sub contract for _____

MBE, WBE, ESB, Other	Certification #	Name of Firm	Date Contacted	Mode of Communication	Amount of Bid	Comments

Step 5. List all sub-contractors used for this project.

BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING:

Subcontractor/ Supplier	Non **MBE, WBE, ESB	Nature Of Work	Dollar Value Of Participation
Contact Name Address Phone			CCB #*
Contact Name Address Phone			CCB #*
Contact Name Address Phone			CCB #*
Contact Name Address Phone			CCB #*



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BID FORMS

*Please include Construction Contractors Board Number

** Non W/W/ESB Sub-Contractors

Total Bid/Proposal Amount _____

Authorized Signature _____ Date _____

BID FORMS

FIRM _____
 NAME _____
 MAILING ADDRESS _____
 PHONE () _____ FAX () _____ EMAIL _____

BIDDER REPRESENTS/CERTIFIES/ACKNOWLEDGES AS PART OF THIS OFFER THAT:

(Contractor shall check or complete all applicable boxes)

(To Be Submitted by 2:00 p.m. on Bid Due Date)

(BID WILL BE CONSIDERED NON-RESPONSIVE WITHOUT THE FOLLOWING DOCUMENTS*)

1. **BID***
2. **BID BOND***: Bidder has complied with Metro's requirements for \$_____ bid surety and guarantees that this bid is irrevocable for the period specified herein. *(enter surety amount)*
3. **CONFLICT OF INTEREST***: Bidder hereby certifies that no officer, agent, or employee of Metro has participated on behalf of Metro in preparation of this bid, that the bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same work, and the Bidder is competing solely in its own behalf without connection or obligation to any undisclosed person or firm.
4. **RESIDENT/NON-RESIDENT***: Undersigned Bidder states that it is a resident or non-resident of the state of Oregon. State in which Bidder resides: _____
5. **TYPE OF BUSINESS ORGANIZATION***: Bidder operates as an individual, a corporation, incorporated under the laws of the state of _____, a non-profit organization, a partnership. (If partnership, attach names of the partners)
6. **OREGON LICENSE***: If a corporation, it is, or is not, licensed with Oregon Corporation Commission
7. **REGISTRATION NO***: _____ with Construction Contractors Board.
8. **METRO CONTRACTOR QUALIFICATION STATEMENT***
9. **CERTIFICATE OF COMPLIANCE*** for recycling.
10. **CERTIFICATE OF EMPLOYEE DRUG TESTING PROGRAM***
11. **DOING BUSINESS AS***: Provide any assumed names utilized.

TO BE SUBMITTED IN SEPARATE ENVELOPE BY BID DUE DATE AND TIME OF 4:00 P.M.

1. **FIRST TIER SUBCONTRACTOR DISCLOSURE FORM***

2. **MBE/WBE/ESB PROGRAM FORMS***

PRIOR TO AWARD:

Financial records and other information in accordance with ORS 279C at the option of Metro's Project Manager

Performance Bond: Cost of the Bond shall be included in the Bid.

Labor and Materials Bond: Cost of the Bond shall be included in the Bid.

Bond amounts shall each equal 100% of contract total, or as stated in RFB. (Below \$50K Performance and Labor, and Materials Bonds may be combined)

 NAME AND TITLE OF PERSON AUTHORIZED TO SIGN
 CONTRACT/OFFER (TYPE OR PRINT)

 SIGNATURE OF AUTHORIZED PERSON

Bids must be enclosed in a sealed envelope, endorsed on the outside, indicate the bid subject, Request for Bid number and opening date, and delivered to Metro on or before the date and time the bid is due. (See Instructions to Bidders)

END OF SECTION



CONSTRUCTION AGREEMENT

**SECTION 00 52 00
 CONSTRUCTION AGREEMENT**

For Public Contracts \$50,000 & Up

CONTRACT NO. _____

PUBLIC CONTRACT

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and _____, whose address is _____, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

**ARTICLE I
 SCOPE OF WORK**

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

**ARTICLE II
 TERM OF CONTRACT**

The term of this Contract shall be for the period commencing _____, 20__ through and including _____, 20__.

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

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in the Scope of Work. 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.

**ARTICLE IV
 LIABILITY AND INDEMNITY**

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



CONSTRUCTION AGREEMENT

ARTICLE V TERMINATION

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

ARTICLE VI INSURANCE & BONDS

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

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. **Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. **METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.** Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

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

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



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CONSTRUCTION AGREEMENT

ARTICLE VII PUBLIC CONTRACTS

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

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

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

ARTICLE VIII ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by



CONSTRUCTION AGREEMENT

METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

ARTICLE X OWNERSHIP OF DOCUMENTS

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

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

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

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

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



CONSTRUCTION AGREEMENT

boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

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

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

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

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

ARTICLE XI SUBCONTRACTORS

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

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

ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in METRO's sole opinion, to protect METRO against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to



CONSTRUCTION AGREEMENT

any suppliers or subcontractors. In addition for public improvement work, if a CONTRACTOR is required to file certified statements under ORS 279C.845, METRO shall retain 25 percent of any amount earned by the CONTRACTOR on the public works until the contractor has filed all required certified statements with METRO.

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

ARTICLE XIII SAFETY

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

ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

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

ARTICLE XV COMPLIANCE

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

ARTICLE XVI INTERGOVERNMENTAL COOPERATIVE AGREEMENT

(Requires competitive solicitation) – Pursuant to ORS 279A and the Metro public contract code, Metro participates in an Intergovernmental Cooperative Purchasing program by which other public agencies shall have the ability to purchase the goods and services under the terms and conditions of this awarded contract. Any such purchases shall be between the Contractor and the participating public agency and shall not impact the Contractor's



CONSTRUCTION AGREEMENT

obligation to Metro under this agreement. Any estimated purchase volumes listed herein do not include volumes for other public agencies, and Metro makes no guarantee as to their participation in any purchase. Any bidder may decline to extend the prices and terms of this solicitation to any or all other public agencies upon execution of this contract. Unless the bidder specifically declines to participate in the program by marking the box below, the bidder agrees to participate in the Intergovernmental Cooperative Purchasing program. **Bidder declines to participate in Intergovernmental Cooperative Purchasing.**

ARTICLE XVII
 ASSIGNMENT

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

 CONTRACTOR NAME

METRO

By _____

By _____

Date _____

Date _____

Revised January 1, 2006
 Form 601-1-A

END OF SECTION



PERFORMANCE BOND

**SECTION 00 61 13
 PERFORMANCE BOND**

(NOTE: CONTRACTORS MUST USE THIS FORM, NOT A SURETY COMPANY FORM).

KNOW BY ALL MEN BY THESE PRESENT

We the undersigned _____ as PRINCIPAL (hereinafter called CONTRACTOR), and _____ a corporation organized and existing under and by virtue of the laws of the state of _____ duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to METRO as OBLIGEE (hereinafter called METRO), the amount of _____ Dollars (\$ _____) in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with METRO dated _____, 20____, which Contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: _____

NOW, THEREFORE, the condition of this obligation is such that if the CONTRACTOR shall promptly, truly and faithfully perform all the undertakings, covenants, terms, conditions, and agreements of the aforesaid _____, METRO having performed its obligations thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by METRO to be in default under the Contract Documents for the project described herein, the SURETY may promptly remedy the default, or shall promptly complete the _____ in accordance with the Contract Documents and the project Specifications. SURETY, for value received, further stipulates and agrees that all changes, extensions of time, alterations, or additions to the terms of the Contract or Specifications for _____ are within the scope of the SURETY's undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the _____ or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the _____ or to the Work or to the Specifications shall automatically increase the obligation of the Surety hereunder in a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the Surety.



PERFORMANCE BOND

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the use of any person or corporation other than METRO or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20_____.

 SURETY

By: _____

Title: _____

 Street Address

 City State ZIP

 Phone Number

 CONTRACTOR

By: _____

Title: _____

 Street Address

 City State ZIP

 Phone Number

Revised July 10
 Form 2201

END OF SECTION



BID BOND

**SECTION 00 61 26
BID BOND**

BOND NO. _____

AMOUNT: \$ _____

KNOW ALL MEN BY THESE PRESENT, that _____ hereinafter called the PRINCIPAL, and _____ a corporation duly organized under the laws of the State of _____ having its principal place of business at _____ in the state of _____, and authorized to do business in the state of Oregon, as SURETY, are held and firmly bound unto _____ hereinafter called the OBLIGEE, in the penal sum of _____ DOLLARS (\$ _____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS PRINCIPAL IS SUCH THAT:

WHEREAS the PRINCIPAL is herewith submitting a **BID FOR** _____ said Bid, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the Bid submitted by the PRINCIPAL is accepted, and the Contract awarded to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Contract and shall furnish any bond(s) required by the Contract Documents within the time fixed by the Documents, then this obligation shall be void; if the PRINCIPAL shall fail to execute the proposed Contract and furnish the bond(s), the SURETY hereby agrees to pay to the OBLIGEE the penal sum as liquidated damages, within ten (10) days of such failure.

Signed and sealed this _____ day of _____, 20_____.

By: _____
PRINCIPAL

By: _____
Attorney-in-Fact

END OF SECTION

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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. Act of God -- means an earthquake, flood, typhoon, cyclone or other natural phenomenon of catastrophic proportions or intensity.
 - 1.1.2. Addendum (Plural: Addenda) -- means a document issued by Metro during the bidding period, which modifies, interprets, supersedes or supplements the Contract Documents and becomes a part of the Contract Documents. It is the Bidder's responsibility to determine how addenda impact the Work. All Bids submitted shall include the cost of the Work included in any addenda issued prior to award.
 - 1.1.3. Add Alternate Bids -- are portions of the Work for which a Bidder must submit a separate Bid amount. Add Alternate Bid items may or may not be awarded at Metro's discretion.
 - 1.1.4. Architect -- is the firm representing Metro as designers and its agents, representatives, employees and consultants or such other firm as Metro may appoint. The Architect will have authority to act on behalf of Metro only to the extent provided in these Contract Documents.
 - 1.1.5. "As-Builts" or Record Documents -- are 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.
 - 1.1.6. Authorized Representative -- is a person, corporation, partnership or other legal entity acting on behalf of another through expressly delegated authority as specified in these Contract Documents.
 - 1.1.7. Bid -- is the written offer of a Bidder to perform the Work as defined in these Contract Documents, when made out in accordance with all of the Contract Documents and submitted on the appropriate Bid Forms.
 - 1.1.8. Bidder -- is any individual, partnership, corporation, or joint venture, acting directly or through a duly and legally authorized representative, submitting or intending to submit a Bid for the Work as described in these Contract Documents.
 - 1.1.9. Bidding Documents -- See "Contract Documents."
 - 1.1.10. Bid Forms -- include the following: the Bid proposal (including Schedule of Bid Prices and Recycled Product Attachment), Surety; Minority, Women-Owned and Emerging Small Business Program Compliance Form; Resident/Non-Resident Bidder Status form; Signature Page; the Non-Collusion Affidavit; and Bid Bond.
 - 1.1.11. City or County -- means the city or county in which the Work is located.
 - 1.1.12. Change Order -- is a written document signed by Metro and Contractor stating their agreement upon all of the following:
 - 1.1.12.1. a change in the Work;
 - 1.1.12.2. the amount of the increase or decrease in the Contract Amount, if any; and

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- 1.1.12.3. the extent of the adjustment to the Contract Time, if any.
- 1.1.13. Clarification -- is a written document consisting of supplementary details, instruction or information issued by Metro after the award of Contract which 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.
- 1.1.14. Completion -- See "Substantial Completion" and "Final Completion and Acceptance."
- 1.1.15. Construction Manager -- is the Metro representative on the construction site. The Construction 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 terms "Construction Manager" will refer to the on-site Metro representative and to any duly appointed assistants who may be designated in writing. The Architect of Record will be called upon as required by and at the direction of Metro for technical assistance and for interpretation of the Contract Documents.
- 1.1.16. Construction Schedule or Schedule -- is the timeline described in Section 01310 of the Specifications.
- 1.1.17. Contract Amount -- is the total amount shown in the Construction Agreement as revised by Change Orders.
- 1.1.18. Contract Documents or Contract or Bidding Documents -- consist of 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.
- 1.1.19. Contractor -- is the party who has 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.
- 1.1.20. Contract Time -- is the period of time, including adjustments approved by Metro, which is allowed in the Contract Documents for Contractor to substantially complete the Work.
- 1.1.21. Critical Path Method or CPM -- means the critical path method of scheduling as understood and interpreted by standard industry practice.
- 1.1.22. Days -- means calendar day including Saturdays, Sundays and legal holidays.
- 1.1.23. Direct Costs -- are those costs of labor (including benefits), material and equipment incurred by the person, corporation, partnership or joint venture whose employees are actually performing the task.
- 1.1.24. Minority Business Program -- is 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.
- 1.1.25. Drawings -- means 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.
- 1.1.26. Equal, Approved, Approved Equal -- is used to indicate that the material or product to be supplied or installed must be equal to or better than that named in function, performance, reliability, quality and

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general configuration and that the substitute must be approved by Architect. Equality in reference to the Project design requirements shall be determined by Architect 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.

- 1.1.27. Final Completion and Acceptance -- means the completion by Contractor of all of the Work called for under the Contract, whether expressly or impliedly required, including but not limited to, satisfactory operation of all equipment, completion and correction of all punch list items to the satisfaction of Metro, settlement of all claims, delivery of all warranties and agreements to correct Work, equipment operation and maintenance manuals, as-built drawings, required approvals and acceptances by federal, state or local governments or other authorities having jurisdiction over the Work, and removal of all rubbish, tools, scaffolding and surplus materials and equipment from the Site.
- 1.1.28. Final Payment -- is the balance of the Contract Amount to be paid to the Contractor upon Final Completion and Acceptance of the Work.
- 1.1.29. Force Account Work -- is work, ordered in writing by Metro, for which Contractor must report its actual costs in accordance with Paragraph 8.4 of the General Conditions.
- 1.1.30. Furnish -- means, unless the context requires otherwise, supply and deliver materials, systems and equipment to the Site, ready for unpacking, assembly, installation, etc., as applicable in each instance.
- 1.1.31. General Contractor -- is the party who enters into the Contract with Metro. See also "Contractor".
- 1.1.32. Geotechnical Engineer -- The Geotechnical Engineer is an agent of the Engineer.
- 1.1.33. Install -- includes, unless the context requires otherwise, unload, unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, protect, clean, connect to electrical power and/or piping, and similar operations at the Site, as applicable in each instance.
- 1.1.34. Lump Sum -- means all costs and expenses of whatever nature, including Overhead and Profit, associated with the Work involved.
- 1.1.35. Material or Materials -- shall be construed to include machinery, equipment, manufactured articles, materials of construction such as formwork, fasteners, etc., and any other classes of items to be provided in connection with the Contract, except where a more limited meaning is indicated by the context.
- 1.1.36. Metro -- is a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter.
- 1.1.37. Metro Chief Operating Officer or COO -- means the Chief Operating Officer of Metro.
- 1.1.38. Metro Council or Council -- means the elected Council of Metro.
- 1.1.39 Miscellaneous Phrases -- in the Contract Documents shall be interpreted as follows:

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.

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

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

- 1.1.40. Notice of Award -- is the document issued by Metro to the lowest responsive, responsible Bidder whose Bid complies with all the requirements prescribed by the Contract Documents. The Notice of Award shall be given pursuant to the provisions of the Instructions to Bidders. It shall not entitle the party to whom it is given to any payment under the Contract, nor shall Metro be liable to such party or to any person for any alleged damages for any action taken in reliance upon such notice.
- 1.1.41. Notice to Proceed -- is the written notice given Contractor to commence the prosecution of its Work as defined in the Contract Documents. The Notice to Proceed will also establish the date and time of a preconstruction conference.
- 1.1.42. Other Metro Contractors -- are all individuals, corporations, partnerships, or joint ventures (except Contractor or Architect) with whom Metro has a contract to perform work on, or related to, the Project.
- 1.1.43. Overhead -- when applied to the cost of the work, shall include the following items, when reasonable and necessary for completion of the work:
- 1.1.43.1. 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.
 - 1.1.43.2. Small tools (less than \$250 capital cost per item).
 - 1.1.43.3. Contractor Owned Equipment.
 - 1.1.43.4. Equipment maintenance and repairs.
 - 1.1.43.5. Temporary construction, utilities, and safety requirements.
 - 1.1.43.6. Transportation of materials other than direct identifiable cost of specific deliveries, or as included in price of material.
 - 1.1.43.7. Parking fees for workers (if applicable).
 - 1.1.43.8. Permit fees.
 - 1.1.43.9. Cost of reproduction.
 - 1.1.43.10. 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:
- 1.1.43.10.1. Accounting functions of Contractor's Home and Branch Office.
 - 1.1.43. 10.2. General expenses of Contractor's Home and Branch Office.
 - 1.1.43. 10.3. Interest on capital.
 - 1.1.43. 10.4. Salaries of any home and branch office estimators and administration..

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- 1.1.44. Owner -- means Metro.
- 1.1.45. Plans -- means Drawings.
- 1.1.46. Profit -- means that portion of Contractor's Bid price that is not Direct Costs or Overhead
- 1.1.47. Project -- means the Work described in the Contract Documents.
- 1.1.48. Provide -- means furnish and install complete and in place and ready for operation and use.
- 1.1.49. Punch List -- is the list prepared by the Architect and/or Construction Manager at the time of Substantial Completion, which reflects Contractor's incomplete, nonconforming work. Punch list items must be completed to the satisfaction of the Architect and Metro in order for the Project to reach Final Completion and Acceptance.
- 1.1.50. Request for Clarification -- is a written request made by Contractor for additional information to clarify an ambiguity in the Contract Documents.
- 1.1.51. Retainage or Retention -- is the difference between the amount earned by Contractor on the Contract and the amount paid on the Contract by Metro.
- 1.1.52. Schedule of Values -- is the detailed breakdown of a lump sum contract amount as required in Section 012900 of the Specifications.
- 1.1.53. Separate Contract -- is a contract between Metro and a party other than Contractor for the construction or furnishing of a portion of the Project.
- 1.1.54. Shown, As Shown -- work shown on the Drawings which is a part of the Contract Documents.
- 1.1.55. Site -- is the real property upon which the Project is located.
- 1.1.56. Special Inspector -- is a representative of the Owner, Architect, Engineer or Geotechnical Engineer with specialized knowledge applicable to the installation of certain elements of the work.
- 1.1.57. Specifications -- are 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.
- 1.1.58. Subcontractor -- means a person, partnership, corporation or joint venture, which has a direct contract with Contractor to perform a portion of the Work at the Site.
- 1.1.59. Submittals -- include 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, which Contractor is required to submit to the Architect.
- 1.1.60. Substantial Completion -- is 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 occupy or use the Work for its intended use.

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- 1.1.61. Supplier -- means an individual, partnership, corporation or joint venture entering into an agreement with Metro or Contractor for furnishing a portion of the Work which requires no labor at the Site, other than common carriers.
- 1.1.62. Unit Prices -- are the costs for specific units of work as defined in the Bid and Supplementary Conditions and include all costs, including, but not limited to, equipment, labor, materials, incidentals, Overhead and Profit, for the unit of work described.
- 1.1.63. Unusually Persistent Severe Weather -- Severe weather conditions exist when the average day time temperature at the Project is less than 32°F, and is accompanied by an accumulation of ice or snow. Such conditions are unusually persistent when they continue for a number of consecutive days, in excess of the annual average. Contractor shall determine the annual average number of consecutive days severe weather conditions occur for the part of the Metro region where the Project is located, based upon ten-year averages, with reference to the annual publication of 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.
- 1.1.64. Work -- means, 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. Intent and Interpretation of Contract Documents

- 1.2.1. Intent -- The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the Contract Documents is to include in the Contract price the cost of all labor and materials, water, fuel, tools, plant, scaffolding, equipment, power, light, transportation, and all other facilities, services and expense as may be necessary for the proper execution of the Work, unless otherwise indicated in these Contract Documents. In interpreting the Contract Documents, words describing materials or work which have a well known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning recognized by Architect and Metro.
- 1.2.2. Divisions and Headings -- Titles and headings are for the convenience of organizing the Contract Documents and shall not be construed to limit Contractor's obligations hereunder. The General Conditions are divided into fifteen (15) Articles. The first-tier subheadings of each Article shall be referred to as Paragraphs; the second-tier sub-headings shall be referred to as Subparagraphs; and the third-tier subheadings shall be referred to as Clauses.
- 1.2.3. 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 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.

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1.2.4. Precedence of Contract Documents -- all determination of the precedence of, or discrepancy 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:

1.2.4.1. Signed Construction Agreement.

1.2.4.2. Supplementary Conditions.

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

1.2.4.4. Specifications

1.2.4.5. Drawings.

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

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

1.2.5. 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 clarification to Metro pursuant to Paragraph 3.2. If Contractor proceeds with any such work without receiving a Clarification, Contractor shall be responsible for all resulting damage and defects, and shall perform any work necessary to comply with Metro's Clarifications at no cost to Metro. Any work or material not indicated in the Contract Documents, which 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.

1.2.6. Standards to 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.

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.

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- 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. 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.
- 1.7. 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. 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 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'S ORGANIZATION

- 2.1. Contractor's Authorized Representatives -- prior to commencing any work under this Contract, Contractor shall submit in writing to Metro a list of Contractor's authorized representatives. Such list 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 which the individual may authorize, whether the individual may respond to Request for Proposals and for what maximum dollar amount and whether the individual may submit a claim pursuant to Paragraph 3.3. Contractor shall be fully liable for the acts, omissions and decisions of such representatives to the extent stipulated in the written list submitted to Metro.

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 or related to this Contract. In the event that Contractor does not comply with this paragraph and, consequently, is not fully represented at the Site at all times, Contractor shall be deemed to acquiesce in all actions taken by Metro which pertain or relate to this Contract.

- 2.2. 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 Construction 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 Construction Manager on behalf of Metro or the Architect 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.

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- 2.2.1 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 the Owner'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 shall 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 the Owner and emergency vehicles at all times. Do not use these areas for parking or storage of materials. Schedule delivery of materials to minimize space and time requirements for storage of materials and equipment on site. Keep roadway pavement clean, free of mud, rocks, debris associated with materials and vehicles. Coordinate use of the premises under the direction of the Architect and Owner. 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 the owner, move any stored products which interfere with operations of the Owner or construction activities. Obtain and pay for the use of additional storage or work areas needed for operations.
- 2.2.2 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.
- 2.2.3 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.
- 2.3. 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.
- 2.4. Contractor's Employees -- Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- Whenever Metro shall notify Contractor that any employee on the Work is, in the judgment of Metro, incompetent, unfaithful, disorderly or refuses to carry out the provisions of the Contract, such employee shall be discharged or transferred from the Work.
- 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.
- 2.5. 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 herein required 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.

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- 2.6. Construction Plant, Equipment and Methods --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 which 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 regulation during construction.

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, appears 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 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.

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

- 2.7. 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.

ARTICLE 3 ADMINISTRATION OF THE CONTRACT

- 3.1. Authority and Relationships of Metro and Architect -- the following provisions shall govern the authority of the various officers, agents, representatives, consultants and employees of Metro, and Architect. Except as specifically provided in this section, no individual acting or purporting to act as an officer, agent, representative, consultant or employee of Metro or Architect shall have any authority to make representations, statements or decisions of whatever nature binding Metro or Architect 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 a person who is 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.

- 3.1.1. Authority of Metro -- except as otherwise provided herein, Metro shall determine the amount, quality, acceptability, fitness, and progress of the Work covered by the Contract. Metro and Architect will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and they will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents. Metro and Architect will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work. Nothing contained in this Contract is intended nor shall be construed to create any third party beneficiary relationship between Metro and Contractor's subcontracting agents or employees.

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

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.

Contractor shall immediately comply with any and all orders and instructions given in accordance with the terms of this Contract by Metro.

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 or Architect, unless such individual has been specifically and expressly delegated authority to make such representations pursuant to these Contract Documents. Likewise Contractor has no right, 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.

Nothing contained in this Paragraph shall obligate Metro or Architect 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.

- 3.2. Request for Information -- should it appear 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 should there be any questions which may arise as to the meaning or intent of the Contract Documents, Contractor shall immediately submit to Architect and Metro a written Request for Information (RFI) which shall fully describe the information sought. All correspondence shall be directed to the Construction Manager. Subcontractors shall direct correspondence through the Contractor to the Construction Manager. 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, RFI number, 5) subject, 6) initiator of the question, 7) indication of the costs, 8) contract drawings reference, 9) contract specification section and paragraph, 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 by phone and the contractor shall follow-up with a confirming RFI.

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

The Architect, in consultation with Metro, shall interpret the meaning and intent of the Contract Documents and shall issue, within seven (7) working days of receiving an RFI from Contractor, a written Clarification describing such meaning and intent. Additionally, the Architect, after consulting with Metro, may at any time issue written RFI as deemed necessary to carry out the Work included in the Contract Documents. Notwithstanding any dispute or disagreement which Contractor may have concerning any such RFI, Contractor shall perform the Work as prescribed and in accordance with all such RFI.

If notified by Metro 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 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.

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

3.3. Contractor's Claims

3.3.1. Generally -- No claims of any sort whatsoever by Contractor shall be considered or allowed under this Contract except as specifically provided and prescribed under this Paragraph. Failure to make a claim as specifically prescribed by this Paragraph or failure to perform disputed work, if any, as directed by Metro shall bar Contractor from any recovery of any sort or extension of time resulting from the facts surrounding the claim. Contractor's full and complete compliance with this Paragraph 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 Paragraph.

3.3.2. Types of Claims -- Contractor claims are limited to the following:

3.3.2.1 Claims based upon Excusable Delays as described in Subparagraph 3.3.3

3.3.2.2. Claims based upon differing Site conditions as described in Subparagraph 3.3.4;

3.3.2.3. Claims based upon Clarifications or Change Orders issued by Metro or any other decision, action or failure to act by Metro as described in subparagraph 3.3.5.

As a condition precedent to any such claim, Contractor shall comply with all applicable procedural and substantive requirements of this Contract.

3.3.3 Claims For Excusable Delays

3.3.3.1. 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:

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

(b) 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

(c) Could not have been reasonably anticipated by Contractor.

3.3.3.2 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.

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

- (a) An Act of God.
- (b) Unusually Severe Weather. No claim for extension of the Contract Time will be considered for Unusually Severe Weather unless Contractor submits documentation satisfactory to Metro establishing that the weather at the Project satisfied the definition of Unusually Severe Weather set forth herein.
- (c) Acts of a public enemy, war (whether or not declared) or governmental intervention resulting there from, blockage, embargo, insurrection, riot or civil disturbance.
- (d) 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).
- (e) 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, which are required for and essential to the Work.
- (f) Epidemics or quarantines.
- (g) Material, equipment or fuel shortages or freight embargoes.
- (h) 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.

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

- (a) Changes in the work ordered by Metro if they require additional time to complete the work and adversely impact the Critical Path.
- (b) The prevention by Metro of Contractor from commencing or prosecuting the Work.

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

- (a) Any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Contractor.
- (b) Any delay in the prosecution of parts of the Work, which may in itself be unavoidable but which 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.

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(c) 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.

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

(e) 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.

(f) Any delays in delivery of equipment or material purchased by Contractor or its Subcontractors or Suppliers (including Metro selected equipment) if timely ordering would have made the equipment available. Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

- 3.3.3.6. Excusable Delay Claims Procedure -- Contractor shall, within twenty-four (24) hours of the start of the occurrence or Contractor's first knowledge of the occurrence which 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 Construction 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;

Within twenty one (21) days after Contractor submits to the Construction Manager such a written notice for an extension of Contract Time and/or increase in the Contract Amount, the Construction 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 Subparagraph 3.3.6.

- 3.3.4. Claims for Differing Site Conditions -- Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Construction Manager of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in this Contract, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

The Construction 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 Construction Manager under this Subparagraph, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.3.6.

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

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Subparagraph. Contractor shall, within twenty four (24) hours following discovery of the facts, which give rise to its claim, notify the Construction Manager in writing of its intent to make the claim. Within ten (10) days following discovery of the facts, which 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 Construction Manager. Contractor's formal claim shall include a description of:

- 3.3.5.1. 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;
- 3.3.5.2. How Metro's decision, action or failure to act has affected Contractor's performance or otherwise affected Contractor;
- 3.3.5.3. 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;
- 3.3.5.4. The provisions of the Contract upon which the claim is based.

Submission of written notice of intent to make a claim and 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.

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 Construction Manager, Contractor shall proceed without delay to perform the work pursuant to the direction of the Construction 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.

Provided the claim or claims have been submitted in accordance with the requirements of this Article, the Construction 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 Construction Manager will advise Contractor of the Construction 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 Construction Manager under this Subparagraph, Contractor may preserve its claim as provided and prescribed by Subparagraph 3.3.6.

- 3.3.6. Preservation of Claims -- Within thirty (30) days after a rejection of claim, in whole or in part, by Metro under Subparagraphs 3.3.3, 3.3.4 or 3.3.5, Contractor may preserve its claim by submitting a fully documented claim package to Contracts Manager of Finance and Administrative Services Department, Metro. That package shall include substantiating documentation with an itemized breakdown of Contractor and Contractor's Subcontractor's costs on a daily basis which 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.

3.4. Metro's Right to Adjust Payments

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- 3.4.1. 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 after 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) by collection of liquidated damages as designated in Section 007300, Supplementary Conditions of this document.

Permitting Contractor to continue and finish the work or any part thereof after the Contract Time has expired shall in no way operate as a waiver on the part of Metro of any of its rights under this subparagraph or the balance of the Contract Documents.

- 3.4.2. 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 which 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 which Metro may incur due to Contractor's failure to perform in strict accordance with this Contract.

- 3.5. Mediation -- Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Contract. It is agreed, subject to the conditions and limitations of this paragraph, that any controversy or claim arising out of or relating to this Contract, which remains unresolved after such negotiations, shall submit to mediation prior to the commencement of litigation. The mediator shall be an individual mutually acceptable to both parties. Should the parties lack specific recommendations for a mediator, the parties shall look to the local circuit court or the Oregon Dispute Resolution Commission. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement on both the Owner and Contractor. The schedule and time allowed for mediation shall be mutually acceptable. The mediation process is nonbinding.

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

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.

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 Subparagraph 3.4.1, and/or terminate the Contract pursuant to Article 15 of this Contract.

ARTICLE 4 SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT

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- 4.1. Contractor's Responsibility for the Work -- 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.

Contractor shall take and assume all risk for all work and material involved in the Project until the entire Project has been finally accepted by Metro.

Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

- 4.2. 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.

- 4.2.1. 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 which 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. The Contract Amount shall not be increased by any difference in cost occasioned by such substitution, nor shall the Contract Time be extended.

- 4.2.2. 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.

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.

- 4.2.3. 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.

- 4.2.4. 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.

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4.2.5. Contractor's Agreements with Subcontractors -- 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. Where appropriate, 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, which 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.

All Subcontractor's and Supplier's 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.

Nothing contained in this Subparagraph shall be construed as creating a direct or indirect contractual relationship between Metro and any of Contractor's Subcontractors or Suppliers. No such Subcontractor or Supplier shall have, or shall claim to have, any third party beneficiary rights or status in relations to this Contract, save and except in relation to the Labor and Materials Payment Bond provided by Contractor.

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

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.

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 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. 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 -- Whenever, in the opinion of Metro, the Work or any part thereof is in a condition suitable for use and it is in the best interest of Metro to require such use, Metro may

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take possession of, connect to, open for public use, or use the Work or a part thereof. When so used, maintenance and repair due to ordinary wear and tear or vandalism will be made at Metro's expense and Metro will defend liability claims, which may result from such use by Metro. The use by Metro of the Work or part thereof as contemplated in this Paragraph shall in no case be construed as constituting acceptance of the Work or any part thereof. Such use shall neither relieve Contractor of any of its responsibilities under the Contract Documents, nor act as a waiver by Metro of any of the conditions thereof.

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 afford all such Other Metro Contractors reasonable opportunity for storage of their materials and execution of their Work, shall provide 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 the end of facilitating 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, which 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 Contractor's 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 a Request for Information to Metro pursuant to Paragraph 3.2. If Contractor proceeds without examining or inspecting the work and submitting a Request for Clarification, Contractor shall be held to have accepted the Other Metro Contractors' work or material and the existing conditions, and 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.

The foregoing 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.

6.3. 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.

6.4. Failure to Maintain Schedule -- 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 which 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

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Contractors. Contractor shall submit operation plans to Metro, which plans shall fully demonstrate the manner of intended compliance with this Paragraph. The steps referred to above shall include, but not be limited to:

- 6.4.1. Increase manpower in such quantities and crafts as will substantially eliminate the backlog of work.
- 6.4.2. 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.
- 6.4.3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
- 6.4.4. Expedite delivery of materials and equipment such as use of airfreight.

If Metro directs Contractor to take measures described in this Paragraph, 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 this Contract.

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 of all or part of the monthly progress payments.

- 6.5. 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:
 - 6.5.1. Withhold any payment otherwise due hereunder until Contractor complies with Metro's directions.
 - 6.5.2. 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.
 - 6.5.3. Terminate any or all portions of the Work for Contractor's failure to perform in accordance with the Contract.
- 6.6. 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 immediately and before performing any affected Work submit a Request for Clarification to Metro pursuant to Paragraph 3.2.
- 6.7. 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 manner as may be prescribed by Metro when such suspension or prosecution is necessary to facilitate the work of Other Metro Contractors.
- 6.8. 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, which may arise.

Owner Responsibilities for FOIC Items -- Owner furnished products/items are indicated on the drawings as FOIC (Furnished by Owner, Installed by Contractor). Owner's responsibilities include: 1) arrange for and deliver necessary shop drawings, product data, and samples to the contractor, 2) Arrange and pay for Product delivery to the site, 3) Deliver supplier's bill of materials to Contractor, 4) Inspect deliveries jointly with the Contractor, record shortages, damaged or defective items, 5) Submit claims for transportation damage, 6) Arrange for replacement of damaged, defective or missing

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items, 7) Arrange for manufacturer's warranties, bonds, service and inspections as required and 8) Owner is responsible for scheduling all FOIC items in accordance with Contractor's Construction Schedule.

Contractor Responsibilities for FOIC Items – The following outlines the responsibilities of the Contractor for FOIC items: 1) Designate a delivery date for each item in the Construction Schedule, 2) Review shop drawings, product data and samples, 3) Immediately notify the Construction Manager of any discrepancies or problems anticipated in the use of this product, 4) Review and unload products at the site, 5) Promptly inspect products jointly with Owner, record shortages, damaged or defective items, 6) Handle products at the site, including uncrating, and storage, 7) Protect products from exposure to elements and damage, 8) Assemble, install, connect, adjust and finish product as stipulated in the respective Section of Specifications and 9) Repair or replace items damaged by Contractor.

6.9. 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 Contractors engaged in the Project or related projects.

6.9.1. Project Meetings – The Contractor will schedule and chair meetings and conferences at the Project site unless otherwise indicated. Inform participants and others involved, and 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 the owner within three days of the meeting.

6.9.2. Pre-construction Conference – A pre-construction conference before starting construction, at a time convenient to the Owner and Architect but no later than 5 days after execution of the Agreement. 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: Authorized representatives of the Owner, Architect and their consultants, Contractor and its superintendent, major subcontractors, suppliers and other concerned parties shall attend the conference. All participants shall be familiar with the project and authorized to conclude matters relating to the work. The agenda shall include the following items: 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 requests for interpretations (RFI's), 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, working hours.

6.9.3. Pre-installation Conferences – 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 and shall occur on the same date as progress meetings if possible. Attendees shall include the installer 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 RFI's, related change orders, purchases, deliveries, submittals, review of mock-ups, possible conflicts, compatibility problems, time schedules, weather limitations, manufacturer's 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, protection of the sites and its elements. Architect shall record significant conference discussions, agreements and disagreements including corrective action measures and action.

ARTICLE 7 CONTROL AND QUALITY OF WORK AND MATERIAL

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

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, Additionally, during the performance of the Work, Metro, the Architect, and Special Inspectors, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, including representatives of federal, state, and local agencies having jurisdiction over the Work, may at any time, and for any purpose, enter upon the Site, the shops where any part of such Work may be in preparation, or the factories or sites where any materials for use in the Work are being or are to be manufactured or derived. Contractor shall provide proper and safe facilities therefore, 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 Paragraph.

7.1.2. Quality Control Plan -- Contractor shall prepare and submit to the Construction Manager within thirty (30) days following Notice to Proceed a Quality Control Plan, which describes Contractor's, procedures for implementing the Quality Control Program. The Plan shall include, but not be limited to, 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 or 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 days (30) 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 Construction 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 -- Contractor shall at all times commencing with the issuance of the Notice to Proceed until Final Completion and Acceptance of the Work, permit Metro, the Architect, and Special Inspectors, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, including 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 -- Contractor shall at all times, commencing with the issuance of the Notice to Proceed until Final Completion and Acceptance of the Work, permit Metro, the Architect, and Special Inspectors, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, including 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. Where the Contract requires work to be inspected or tested, it shall not be covered up until inspected, tested and approved by Metro. Contractor shall be solely responsible for notifying Construction Manager at least two (2) working days prior to performing such work, so that

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necessary arrangements for inspection and testing can be made. Should any work be covered without such inspection or test and approval, it shall be uncovered and repaired at Contractor's expense.

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 which otherwise fails to conform to the Contract Documents, which 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 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.

7.3. Unsatisfactory Materials and Workmanship

7.3.1. Generally -- Material, work or workmanship which, in the opinion of the Construction Manager, does not conform to the Contract Documents, or is not equal to the samples submitted to and approved by the Construction 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, work or 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 Paragraph shall be in addition to any other specific warranties and certifications required elsewhere in these Contract Documents.

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

- 7.5. Correction of Work by Contractor -- Contractor shall be responsible for and shall promptly correct or replace any defective Work, whether due to faulty or contaminated materials or errors in workmanship, or Work failing to conform to the requirements of the Contract Documents which may be discovered or which may develop within one (1) year after the date of Substantial Completion or within such longer period as is specified below or otherwise in these Contract Documents.

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 which 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.

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.

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

- 7.6. Warranty and Correction Agreements by Subcontractors

7.6.1. 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 Paragraph 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 Paragraph 7.5.

7.6.2. Form of Submissions -- Contractor shall require all of its Subcontractors and Suppliers of any tier to sign documents evidencing the promises made pursuant to Subparagraph 7.6.1 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 following form:

"We the undersigned hereby warrant that the _____

(described work performed and/or materials provided)

which 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 Contract Documents.

"We agree to correct or remove and replace any or all of our work, together with any other adjacent work which may be displaced or affected by so doing, that may be defective in its workmanship or materials or which may fail to conform to the requirements of the Contract Documents within a period of one (1) year following the applicable date described in Paragraph 7.5 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

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proceed to have said defects repaired and corrected at our expense and we will honor and pay the costs and to dispose of nonconforming materials and charges therefore upon demand."

- 7.7. Remedies Not Restrictive -- The remedies provided for in this Article shall not be restrictive of but shall be cumulative and in addition to all other remedies of Metro in respect to latent defects, frauds or failure to perform all work as required by the Contract Documents.
- 7.8. Proof of Compliance with Contract Provisions -- For Metro to determine whether Contractor has complied or is complying with the requirements of the Contract which 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.
- 7.9. 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 for doing the Work. Contractor shall save, keep, hold harmless, and fully indemnify Metro and Architect from all damages, claims for damage, lawsuits, costs, expenses or liabilities of whatever nature in law or equity, including attorney's fees and court costs, which 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.
- 7.10. Anti-Trust Claims -- 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 which Contractor now has or which 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.

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.

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 which 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:

- 7.10.1. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- 7.10.2. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the impendency of such action; and
- 7.10.3. 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.

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Furthermore, it is understood and agreed that 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 hereunder.

ARTICLE 8 CHANGES IN THE WORK

- 8.1. Change Orders Generally -- Metro may order changes in the Work herein required, including deletions of work, and may order additional materials and work in connection with the performance of the Work.

If such changes in the Work increase or decrease the cost of any part of the Work or change the time necessary to complete the Work, the Contract Amount shall be increased or decreased by such amount and the Contract Time changed as Contractor and Metro may agree upon as reasonable in a written Change Order. Contractor shall promptly comply with such Change Orders and carry them out in accordance with the Contract Documents.

No order for any alteration, modification or additional work which shall increase or decrease the Contract Amount or change the Contract Time shall become part of the Contract unless the resulting Change Order shall have been agreed upon in writing and the Change Order signed by Contractor and Metro, unless the work is Force Account work. 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 shall have approved any design modifications entailed thereby.

Owner anticipates generating not more than one change order per month.

- 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 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, affect 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 Paragraph. 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, which Contractor shall not exceed without further authorization by Metro. Within fourteen (14) days after issuance of such by Metro, Contractor shall furnish three 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, affect 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 Paragraph. 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.

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- 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 -- 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, which 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.
- Overhead and Profit for the entity performing the work with its own crews shall not exceed fifteen percent (15%) of the Direct Cost of the changed work.
- 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.
- If the Work is performed by a second-tier Subcontractor, the total Overhead and Profit for all tiers shall in no event exceed twenty-five percent (25%) 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 and 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 as well as Contractor-owned equipment) shall be limited to those rates in the Rental Rate Bluebook published by EquipmentWatch, 181 Metro Drive, San Jose, California 95110, (800) 669-3282.
- 8.4. Force Account Work -- 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. Actual labor cost, including premium on compensation insurance and charge for social security taxes, and other taxes pertaining to labor.
- 8.4.2. 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.
- 8.4.3. Actual cost of material, including applicable taxes pertaining to materials.
- 8.4.4. Actual cost of plant and equipment rental, at rates to be agreed upon in writing before the work is begun or at rates per Subparagraph 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.

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8.4.5. Overhead and Profit as provided and limited in Paragraph 8.3.

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

Whenever any Force Account work is in progress, Contractor shall furnish each working day to Metro a detailed written report signed by Contractor and Metro's representative 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. Oral Modifications -- No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.

8.6. Contractor Proposals for Changes in Work

8.6.1. Generally -- At any time during the performance of the Work, Contractor may propose to Metro changes in work which 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.

8.6.2. 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 instructions herein. Contractor is encouraged to submit VECPs whenever he identifies an area which can be improved, using the format described herein.

8.6.3. Application -- This clause applies to a contractor developed and documented VECP which: (1) requires a change to this Agreement 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.

8.6.4. 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 which 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 which 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 his lump sum breakdown and proposed changed requirements. Costs of development and implementation by Contractor shall be identified. Estimated Metro costs (e.g., cost of testing and redesign) shall also be identified.

8.6.5. 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.

8.6.6. 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 Agreement. 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.

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- 8.6.7. 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:

Definitions

- 8.6.7.1. 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.
- 8.6.7.2. Contractor Costs (CC): Reasonable costs incurred by Contractor in preparing the VECP and making the change such as cancellation or restocking charges where required.
- 8.6.7.3. Estimated Net Savings to Contractor (NS): Gross savings (GS) less Contractor costs (CC).
- 8.6.7.4. Metro's Costs (OC): Reasonable costs incurred by Metro for evaluating and implementing the VECP, such as testing and redesign, where required.

Calculations

- 8.6.7.5. The Contract Price shall be reduced by an amount equal to 50 percent of (NS) plus 50 percent of (OC), expressed by the formula:
- $$\text{Reduction} = 0.5 (\text{NS}) + 0.5 (\text{OC}).$$
- 8.6.7.6. Contractor's profit will not be reduced by application of the VECP.
- 8.6.8. Subcontracts -- Contractor shall include appropriate value engineering incentive provisions in all subcontracts of \$25,000 or greater. He 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 Paragraph 6.45 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.
- 8.6.9. Disclosure Restrictions -- Contractor may restrict Metro's right to use any sheet of a VECP or of the supporting data submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet:

Legend

To the extent allowed by law, data furnished pursuant to the value engineering incentive clause of the Agreement shall not be: (1) disclosed to any outside person or agency, (2) duplicated, or (3) used. Metro may disclose, duplicate, or use furnished data to evaluate a VECP submitted under said clause. This restriction does not limit Metro's right to use information that has been obtained, or is otherwise available, from Contractor or from another source without limitations. If such a VECP is accepted, Metro shall have the right to duplicate, use, and disclose any data reasonably necessary to the full utilization of such VECP as accepted, in any manner and for any purpose whatsoever, and have others so do.

- 8.7. 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

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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 herein that Contractor is to do work or provide materials of any class for which no price is fixed in the Contract, it shall be understood that Contractor is to 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.

9.2. Schedule of Values

- 9.2.1. Generally -- Within fifteen (15) days after the Notice to Proceed, Contractor shall submit a detailed breakdown of its lump sum bid items. The format and detail of the breakdown shall be as directed by Metro and in accordance with Section 01 29 00 of the Specifications to facilitate and clarify future progress payments to Contractor. 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 upon 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 01 29 00 of the Specifications.

Before the end of each calendar month, Contractor shall file with the Construction 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 Construction Manager shall review Contractor's estimate and shall determine the value of Contractor's work based upon the Schedule of Values and incorporated labor and materials for the payment period. Contractor shall not be paid for any work, which 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

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the Contract Documents, and Metro shall have the right subsequently to correct any error made in any estimate for progress payments.

- 9.3.2. Retainage -- If, in Metro's opinion, work on the Project is progressing satisfactorily, Metro may eliminate additional Retainage on any remaining monthly progress payments after 50 percent (50%) of the Work under the Contract is, in Metro's opinion, completed. Elimination of additional Retainage under this Subparagraph shall be allowed by Metro only upon written application by Contractor, which application shall include written approval of Contractor's surety.

If after Metro allows such an elimination of additional Retainage, Metro determines that progress of the Work is not satisfactory or that Contractor has breached any provision of the Contract, Metro may again retain and continue to retain, in addition to that Retainage already being held by Metro, five percent (5%) of any future progress payments made to Contractor.

When Metro determines that the Work is 97-½ percent (97-½%) complete, Metro may, at its discretion and without application by Contractor reduce the retained amount to 100 percent (100%) of the value of the Work remaining to be done.

All funds retained by Metro under this section shall be retained in a fund by Metro and paid in accordance with ORS 279C.570.

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 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 Director of Oregon's Department of General Services including, but not limited to:

- 9.3.2.1 Bills, certificates, notes or bonds of the United States.
- 9.3.2.2 Other obligations of the United States or its agencies.
- 9.3.2.3 Obligations of any corporation wholly owned by the federal government.
- 9.3.2.4 Indebtedness of the Federal National Mortgage Association.

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.

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.

- 9.3.3. 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 appropriate insurance coverage will be required for payment. Title to all equipment and materials shall pass to Metro upon payment therefore or incorporation in the Work, whichever shall first occur, and Contractor shall prepare and execute all

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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.

- 9.3.4. Other Conditions Precedent to Payment -- 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, if requested by Metro, Contractor shall submit a claims release before any payment, and a final claims release stating Contractor has been paid in full prior to the Final Payment.

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.

- 9.3.5. 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

- 9.3.6. 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.

- 9.3.7. Time of the Essence --Time is of the essence for the performance of the Work under this Contract.

- 9.4. Substantial Completion -- When Contractor considers the Work to be substantially complete, Contractor shall submit to Metro a written notice that the Work is substantially complete and a punch list of items to be completed or corrected. Within a reasonable time after receipt of such notice, Metro and Architect will review the Work, including a physical inspection, to determine the status of completion. Should the Architect and Metro determine that the Work is not substantially complete:

- 9.4.1. Construction Manager will promptly notify Contractor in writing, giving the reasons therefore.
- 9.4.2. Contractor shall remedy the deficiencies in the Work, and thereafter send a second written notice of Substantial Completion to Metro.

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

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9.4.2.1. The Architect will prepare a Certification 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.

9.4.2.2. Metro shall submit the Certificate of Substantial Completion to Contractor for signature. Contractor shall complete the items on the approved punch list.

9.5. Final Completion and Acceptance -- When Contractor considers the Work to be finally complete, Contractor shall submit written certification to Metro that:

9.5.1. Contract Documents have been reviewed.

9.5.2. Work has been inspected for compliance with Contract Documents.

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

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

9.5.5. Work is ready for final inspection.

Architect 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.

Should the Architect and Metro consider that the work is incomplete or defective:

9.5.5.1. Construction Manager will promptly notify Contractor in writing, listing the incomplete or defective work.

9.5.5.2. 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.

9.5.5.3. Architect and Metro will review and re-inspect the Work.

The above-described procedure shall be followed until the Work is, in the opinion of Metro and Architect, 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.

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- 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 11 of these General Conditions.
 - 9.6.9. If Contractor is a non-resident bidder as that term is defined in Subparagraph 14.3.6, 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, a release in form and substance satisfactory to Metro, discharging and releasing Metro and the Architect of and from all liabilities, obligations and claims arising under this Contract.

In addition to the above-described release, Contractor shall:

- 9.7.1. Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales, and employee withholding taxes.
 - 9.7.2. Deliver to Metro written releases of all rights to file claims against Metro or to file claims on any bonds in connection with the Contract, signed by each Subcontractor and Supplier who performed labor or furnished materials in connection with the work.
 - 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 which 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 Paragraphs and settle of all claims arising from the agreement including claims that Metro may have against Contractor, Metro shall pay Contractor the balance of the Contract Amount subject to the availability of monies in the Construction Fund as described in Paragraph 9.1 and less any previous payments, offsets and withholdings allowed Metro under this Contract and Retainage which has been returned to Contractor.

Acceptance of Final Payment by Contractor shall constitute a waiver of all claims of whatever nature which 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, which it would in any case have.

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ARTICLE 10 SAFETY AND PROTECTION OF THE WORK

10.1. Safety Requirements

10.1.1. Safety Generally -- 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.

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.

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.

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.

10.1.2. Health and Safety Program -- Contractor shall develop, publish and implement the overall Health and Safety Program for the Project. Refer to Section 01500 of the Technical Specifications. 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. The Program, as approved by Metro, 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 approved Safety Program.

10.1.3. 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 Construction 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.

10.2. First Aid -- 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 Construction Manager.

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, safety belts as required for the type of work being done.

10.3. Protection of Work, Persons and Property Against Damages -- 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.

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Contractor shall protect all public and private property insofar as it may be endangered by operations of Contractor including adjoining lands, air and waterways, and shall be fully responsible for taking proper precautions for the prevention of accidents to persons and/or damage to such property at, on or near the Site.

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.

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.

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

ARTICLE 11 INDEMNIFICATION AND INSURANCE

11.1. Indemnification -- Contractor agrees that for purposes of the Oregon Tort Claims Act (ORS 30.260 through 30.300), neither Contractor, its officers, agents and employees nor any Subcontractor or Supplier of Contractor of any tier, or its officers, agents or employees, are agents of Metro. Contractor for itself 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 and Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.

Contractor shall assume all responsibility for the Work and shall bear all losses and damages directly or indirectly resulting to Contractor, Metro, Architect, their officers, agents and employees, or to others on account of the character or performance of the Work, or accidents, unless such cause is due to the sole negligence of Metro or Architect.

Contractor shall assume the defense, if requested, indemnify and hold harmless Metro and Architect 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 or in any way arising out of the Contract, irrespective of whether fault is the basis of the liability or claim.

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 Paragraph.

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

11.1.1. 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.

11.1.2. 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 time under any provisions of the Contract Documents which cause other Metro Contractors to fall behind the

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Construction Schedule and who must then accelerate the performance of the work, as directed by Metro, in order to maintain progress.

11.1.3. 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 which might affect this Contract.

11.1.4. 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's fees and court costs incident thereto.

11.2. Insurance

11.2.1. Public Liability and Property Damage Insurance

Contractor shall purchase and maintain, at the Contractor's expense, the following types of insurance covering the Contractor, its employees and agents.

A. Broad form comprehensive general liability insurance covering bodily injury, property damage, and personal injury with automatic coverage for premises/completed operations and product liability. The policy must be endorsed with contractual liability coverage.

B. Automobile bodily injury and property damage liability insurance.

Insurance coverage shall be on an occurrence basis with an annual aggregate limit of at least \$1,000,000.

Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED. Contractor shall, within seven (7) days following notice of award of contract, provide insurance certificates and copies of endorsements confirming all coverage required to be obtained by Contractor herein, including a the requirement that notice of any material change or policy cancellation shall be provided to Metro thirty (30) days prior to the change.

C. Subcontractor's Insurance -- With the exception of completed operations coverage, Contractor shall require that all of its Subcontractors and Suppliers of any tier provide continuing insurance coverage on conditions identical to Contractor's insurance coverage, except that the policy limits of all Subcontractors' insurance coverage shall be at least \$1,000,000 combined single limit for each occurrence and in the aggregate. Contractor hereby represents and warrants that its Subcontractors Suppliers shall carry said continuing insurance coverage at all times while performing work under this Contract.

11.2.2. Workers' Compensation and Employer's Liability Insurance

The Contractor, its subcontractors, and all employers working under this contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. The Contractor shall provide Metro with certification of workers' compensation insurance including employer's liability of \$1,000,000.

11.2.3. Forms of Policies and Other Insurance Requirements -- At Metro's request, Contractor shall immediately deliver to Metro two (2) certified copies of the policies of all insurance herein required to be obtained by Contractor, and the receipts for payment of premiums on any or all such policies.

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All policies of insurance and Certificates of Insurance shall be satisfactory to Metro. Approval of the insurance by Metro shall not relieve or decrease the extent to which Contractor or Contractor's Subcontractors and Suppliers of any tier may be held responsible for payment of any and all damages resulting from performance of the Work.

Each such policy or Certificate of Insurance shall bear an endorsement precluding its cancellation, expiration or any reduction in its coverage without giving to Metro at least sixty (60) days prior written notice. Contractor shall file with Metro two (2) certified copies of the required new or renewed policy or two (2) Certificates of Insurance for each such policy, as applicable, before the effective date of such cancellation, change or expiration.

If Contractor neglects to obtain or maintain in force any such insurance or to deliver such policy or policies, certificates and receipts to Metro, then Metro may, at its option, obtain and maintain such insurance. Contractor hereby appoints Metro its true and lawful attorney, to do all things necessary to obtain and maintain such insurance. All monies expended by Metro for such insurance shall be charged to Contractor and Metro may offset its costs in obtaining and/or maintaining such policies from sums due or to become due Contractor under the Contract or otherwise collect such sums from Contractor. Failure of Metro to obtain or maintain such insurance shall in no way relieve Contractor of any of its responsibilities under this Contract.

Contractor's failure to maintain any item of the required insurance shall be sufficient cause for termination or suspension of this Contract.

All insurance required shall be obtained through a company or companies having a policyholders surplus of at least ten (10) times the amount or limit of liability afforded by such insurance company on policies issued for this Contract. Such company shall be duly and legally licensed to transact business in the state of Oregon and shall be acceptable to Metro. Said insurance shall be primary over any insurance or self-insurance of Metro.

11.3. Builder's All Risk Insurance

11.3.1. 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 interests in the work. Contractor's interest and the subcontractor's interests, 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 which are used in or are incidental to but which 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.

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

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

11.4. Labor and Materials and Performance Bonds

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- 11.4.1 Contractor shall provide continuous coverage of a separate Performance Bond and a Labor and Materials Bond for the duration of the Contract. The Bonds shall be in the forms provided in these Contract Documents.
- 11.4.2 As an alternative to providing either or both of the bonds specified in this section 11.03, Contractor may provide a Letter or Letters of Credit, issued by a sound financial institution satisfactory to Metro. Such Letter or Letters of Credit shall be in a form acceptable to Metro. The Letter or Letters of Credit shall be in an amount equivalent to the bonds required under this section.

ARTICLE 12 MINORITY BUSINESS PROGRAM

Contractor shall comply with all pertinent provisions of Metro's Minority Business Program which are contained in Metro Code 2.04 and which are by this reference expressly incorporated herein and made a part of this Contract.

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.

Metro reserves the right, at all times during the period of this Contract, to monitor Contractor's compliance with the terms of the Minority 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.

ARTICLE 13 EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION REQUIREMENT

Contractor shall be certified as Equal Employment Opportunity Affirmative Action Employers by the City of Portland, Oregon, for the entire term of the Contract. Contractor's Subcontractors and Suppliers shall be certified prior to commencement of any of their Work on the Project and shall remain certified for the entire duration of the Contract.

ARTICLE 14 MISCELLANEOUS STATUTORY RESPONSIBILITIES OF CONTRACTOR

- 14.1. Generally -- 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, city or taxes of any other governmental entity applicable to the work performed or materials provided under this Contract.
- 14.2. Environmental Laws -- Contractor shall fully comply with all federal, state and local laws, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources and all amendments thereto. Contractor shall also fully comply with all rules, regulations and ordinances enacted or to be enacted by any federal, state or local agency dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the Contract. Such statutes, rules, regulations and ordinances shall include, but are not limited to those in 7 USCA Sections 136 to 136Y, 15 USCA Sections 2601 to 2629, 33 USCA Sections 1251 to 1376, 33 USCA Sections 1401 to 1445, 42 USCA Sections 300f to 300j-11, 42 USCA Sections 4321 to 4370a, 42 USCA Sections 4901 to 4918, 42 USCA Sections 6901 to 6991i,

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42 USCA Sections 7401 to 7642, 42 USCA Sections 9601 to 9675, 29 USCA Sections 651 et seq., Oregon Administrative Rules Chapter 61, and Title 18 of the City of Portland Code.

Such agencies shall include, but not be limited to, the following:

FEDERAL AGENCIES

Agriculture, Department of
 Forest Service
 Soil Conservation Service
Defense, Department of
 Army Corps of Engineers
Energy, Department of
Environmental Protection Agency
Health and Human Services, Department of
Interior, Department of
 Fish and Wildlife Service
 Heritage Conservation and Recreation Service
 Bureau of Land Management
 Bureau of Indian Affairs
 Water and Power Resource Service
 Office of Surface Mining
Labor, Department of
 Occupational Safety and Health Administration
 Mine Safety and Health Administration
Transportation, Department of
 Coast Guard
 Federal Highway Administration

STATE AGENCIES

Agriculture, Department of
Energy, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Land Conservation and Development, Department of
Soil and Water Conservation Commission
State Engineer
State Land Board and Division of State Lands
Water Resources Board, Department of
Bureau of Labor and Industries

LOCAL AGENCIES

Clackamas County
Metro
North Clackamas Parks and Recreation District

14.3. Other Provisions of Oregon Law

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- 14.3.1. Generally -- The provisions set out in Oregon Revised Statutes Chapters 187 and 279A, 279 B and 279C, as amended or superseded, including the latest additions and revisions, are incorporated by reference as part of these Contract Documents. Such sections include, but are not necessarily limited to, ORS 187.010, 187.020 279A.120 279C.505 , 279C.515, 279C.520, 279C.525, 279C.530, 279C.540,, 279C.800, 279C.840, 279.352 279C.830, 279C.845, 279C.850, 279C.855, 279C.815, 279C.860, 279C.870, and 279C.550 through 279C.570. Contractor shall fully comply with all applicable provisions of these statutes. The specific requirements of certain of these sections are set out below.
- 14.3.2. Payment to Subcontractors and Laborers -- Pursuant to ORS 279C.505, Contractor shall make payment promptly, as due, to all persons supplying such Contractor labor or material for the projection of the Work provided in this Contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund (IAF) from such Contractor, Subcontractor or Supplier incurred in the performance of the Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against Metro, the State, County, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 14.3.3. Failure to Make Payment for Labor or Services -- Pursuant to ORS 279C.515, if Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with this Contract as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of such Contract. Metro's payment of such a claim in the manner authorized by ORS 279C.515 shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.
- 14.3.4. Hours of Work -- Except as provided in ORS 279C.540 no person shall be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of ten (10) hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279C.540 Contractor shall furthermore comply with any applicable provisions of ORS , 279C.520 279C.540, and 279C.545
- 14.3.5. Payment for Medical Care -- Pursuant to ORS 279C.530 , Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying such service.
- 14.3.6. Requirements for Non-resident bidder-- Pursuant to ORS279A.120, any "non-resident bidder awarded a public contract with a price exceeding \$10,000, shall promptly report to the Department of Revenue, on forms to be provided by the Oregon Department of Revenue, the total contract price, terms of payment, length of contract and such other information as may be required before Final Payment can be received on the public contract. Final Payment shall not be made until this provisions has been complied with.
- For purposes of this paragraph, a "foreign contractor" is one who is not domiciled in or registered to do business in the state of Oregon.
- 14.3.7. Prevailing Wage -- Except as limited by Oregon Revised Statutes, Contractor shall pay his/her workers and require his/her Subcontractors to pay its workers the prevailing rate of wage as required in ORS

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279C.840 , and shall comply with all other requirements contained therein. The Appendix to this Contract contains a schedule of the existing prevailing rate of wage which may be paid to workers in each trade or occupation required to perform the Work, either by Contractor or its Subcontractors or any other person doing or contracting to do the whole or any part of the Work contemplated by this Contract, and such workers shall be paid not less than such specified minimum hourly rate of wage. The specifications for each subcontract shall include a copy of the prevailing wage schedule applicable to this project, and each subcontract shall include a clause regarding conformance to the schedule. In order to insure compliance of prevailing wage requirements, under Chapter 279C, Metro will require that all certified payrolls be submitted by contractor and subcontractor on a schedule to be determined by Metro. If project is subject to Davis-Bacon Act (40 U.S.C. 276a) contractor and all subcontractors shall pay higher of state or federal prevailing wages.

14.3.8. Sanitary Facilities -- Contractor shall be responsible for all costs that may be incurred in complying with ORS 654.150 and the rules adopted pursuant thereto including, but not limited to, securing exemption or partial exemption from the requirements of ORS 654.150, (sanitary facilities at construction projects; standards, exemptions).

14.3.9. Royalty Payments -- Contractor shall promptly pay when due, all royalties owed to the State of Oregon or other governmental entity under ORS Chapter 274 or other provision of law.

14.4. Work to Comply with Codes -- All Work shall be in full compliance with any and all codes specified in the Contract Documents and all federal, state and local laws, ordinances, rules, regulations and orders and all amendments to such codes, laws, ordinances, rules, regulations and orders. If Contractor observes or discovers that any portion or portions of the Contract Documents are at variance with any such requirements, Contractor shall promptly submit a written Request for Clarification to Metro pursuant to Paragraph 3.2, which shall fully describe the variance. If Contractor performs Work contrary to codes, laws, ordinances, rules, regulations or orders without submitting such Request to Metro, Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

Persons authorized by Metro or any governmental body having jurisdiction over the Project may at any time enter upon any part of the work to ascertain whether Contractor is complying with such laws, ordinances, regulations or orders.

14.5. No Additional Compensation Allowed for Compliance with Laws -- The Contract Amount includes full compensation for compliance with all applicable laws, rule, regulations, ordinances and orders and all amendments thereto and Contractor shall not make claim for nor be allowed any additional compensation for such compliance.

ARTICLE 15 TERMINATION OR SUSPENSION OF THE WORK

15.1. For Default of Contractor -- 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.

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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 finish the Work or the portion terminated by whatever method it may deem expedient.

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 his/her surety. If only a portion of the Contract is terminated, this paragraph shall be deemed to apply to that portion of the Work only.

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 which 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.

After receipt of a notice of termination or suspension, and except as otherwise directed by Metro, Contractor shall as regards those portions of the Contract terminated or suspended:

- 15.1.1. Stop work under the Contract on the date and to the extent specified in the notice of termination or suspension.
- 15.1.2. 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, which is not terminated or suspended.
- 15.1.3. Terminate or suspend, as applicable, all orders and subcontracts to the extent that they relate to the performance of such work terminated or suspended.

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.

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 -- It is hereby agreed that Metro has the right to terminate the Contract in whole or in part when Metro considers it to be in the public interest.

Section 00 72 00 **General Conditions**



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

In the event the Contract is terminated as being in the public interest, Contractor shall be entitled to a reasonable amount of compensation for preparatory work and for all reasonable costs and expenses arising out of the termination, excluding lost profits.

In the event of termination under this Paragraph, the amount to be paid to Contractor shall be determined on the basis of the Schedule of Values in the case of any fully completed separate item or portion of the Work for which there is a separate or unit contract price and in respect to any other work under the Contract, Contractor will be paid a percent of the Contract price equal to the percentage of the work completed.

END OF SECTION

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SECTION 00 73 00
SUPPLEMENTARY CONDITIONS

1.01 GENERAL COORDINATION:

- A. All conditions as set forth in the General Conditions and in the Specifications of Division 01 are applicable to all Contractors and shall apply to such extent that they are not in conflict with these Supplementary Conditions. In the event of such conflict, the most stringent requirement will apply, unless written deferral is obtained from the Project Manager
- B. General Contractor Responsibility:
1. The General Contractor is responsible for overall coordination of the project, as defined in Division 1 of the Specifications, and the General Conditions.
 2. The General Contractor is responsible for all Sub-contractors compliance with all aspects of the contract, including these Supplementary Conditions. The Zoo will hold the General Contractor responsible for the non-compliance of sub-contractors.
 3. *The General Contractor will insure familiarity with these conditions by obtaining a signed a document, from every subcontractor on site, verifying understanding and intent to comply with the conditions.*
- C. Project Site:
1. Construction site boundaries will be clearly defined in the contract documents. The Contractor is responsible for maintaining a secure perimeter around the construction site.
 2. Zoo staff will notify the contractor of any need to be within the boundaries of the construction site, and will abide by all contractor rules and regulations within those boundaries.
 3. The Zoo reserves the right to occupy portions of the Project Site and have work done by other contractors or staff before Substantial Completion of the work. The logistics will be coordinated with the contractor. Such use shall not negate any provisions of the contract.



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4. Access to the site may occur through public areas so special caution is advised. Any damage done to existing grounds or facilities must be replaced to pre-construction status.
5. When contractors need access throughout the day to an area that is normally secured to visitors, the Zoo will provide "contractor locks" and keys so that the area is secure.

D. Disruption due to Construction:

1. Construction work in and around areas occupied by Zoo staff or frequented by the public shall be conducted in such manner as to permit Zoo operations without jeopardy and with a minimum of inconvenience to occupants and public.
2. Restrictions on the hours of work may occur to accommodate Zoo activities or special events.
3. Construction work that requires coordination with Zoo staff activities will be planned in advance with the Zoo project manager. A meeting will be held with Zoo staff to identify a plan for the activity.
4. Take every precaution to minimize noise, spreading of dust and debris, causing undue vibrations or impacts and other nuisances. Do no structural or other damage to any in-place improvements.

E. Zoo Tools, Vehicles And Equipment:

1. Zoo owned tools, vehicles and other equipment may not be used at any time.

1.02 CONTRACT

- A. All work described by the Construction Documents will be constructed under a single, fixed-price contract. Contract includes all Work identified in the base bid and selected add alternates, if any occur.
- B. Administration of the Contract will be monitored by the Project Manager, designated by the Oregon Zoo, as the Owner's Representative.
- C. All required special testing will be by a certified testing agency contracted and paid by the Oregon Zoo.
- D. The Oregon Zoo shall submit Contract Documents to the City of Portland and pay all plan check fees and general building permit fees. The Contractor is



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responsible for obtaining and paying for all other permit fees, including but not limited to, disposal, flagging, and traffic control.

- E. Contractors shall familiarize themselves with Metro's policies pertaining to recycling of construction waste.
- F. All references to Architect in these documents shall refer to the lead consultant who is an Engineer.

1.03 CONTRACT TIME

- A. Time is a basic consideration of this Contract. Pursuant to the provisions of the Time of Completion and Schedule for the Work (Article 5 of the General Conditions of these Contract documents), Work shall commence within five calendar days after issuance of written Notice to Proceed from Metro.
- B. The project shall be Substantially Completed within one-hundred and forty (140) calendar days after receipt of Notice to Proceed from Metro. All Commissioning, Training, etc. shall occur prior to Substantial Completion. Upon approval of Substantial Completion the penguins shall be reintroduced to the exhibit to allow the water system chemistry to balance with the penguin waste loads prior to opening the exhibit to the public and before Final completion.
- C. Final Completion for the project shall be completed within one-hundred and eighty five (185) calendar days after receipt of Notice to Proceed from Metro. The Final Completion date will be determined through a mutually agreed upon construction schedule.
- D. If Contractor exceeds this time, the actual damage to Metro for the delay will be substantial but will be difficult or impractical to determine. It is therefore agreed that Contractor will pay to Metro, not as a penalty but as liquidated damages, the per diem amount of \$600.00 per day for each and every day that the Work is incomplete.

1.04 SCHEDULE

- A. Critical Path Schedule is required.

1.05 SITE CONDITIONS

- A. Tree Protection:
 - 1. Protection of existing trees is critical. Refer to Section 01 56 39—Temporary Tree and Plant Protection.



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2. Root systems of all trees must be protected.
3. Where trenching or excavation is required within the drip-line of tree, tunnel under or around roots by hand digging or boring.
4. Owner's Representative will inspect and consult the Contractor if any Work will impact the health of an existing tree.

B. Utilities:

1. Consult with Owner and other private and public utility companies, departments or districts as required for locations, extent, and disposition of all required services related to same. 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. Notify all known potentially affected utility companies, departments of districts at least 48 hours in advance of intended excavation in the approximate locations of underground active utilities.
2. Carefully probe and/or hand dig when excavations approach approximate locations of such utilities. Arrange for and pay cost of disconnecting, removing, relocating, capping, replacing or abandoning all public and private utilities impeding construction operations, all per servicing utilities' regulations and governing codes. Cap abandoned utilities. Provide maintenance of all on-site active above-grade and below-grade services to others than Owner. Any damaged utilities shall be repaired immediately to Owner's satisfaction.

1.06 SAFETY AND HEALTH PRECAUTION

- A. **FIRE PROTECTION:** Take all precautions to prevent the possibility of fire resulting from construction operations. Particularly avoid hazardous accumulations of rubbish and unsecured flammable sheeting used in and around the Project site when so specifically required by Fire Marshal having jurisdiction. Provide emergency fire extinguishing equipment of adequate type and quantity, readily available, and properly maintained. Do not store paint cans on the site except where specifically approved by Fire Marshal. Contractor shall follow the Zoo's operations requirements for welding, which requires a fire watch and screening whenever welding is in progress.
- B. All contracted employees are expected to follow established safety procedures in the General Contractors Safety Plan and report any safety violation or unsafe work practice to a lead worker or project manager. Every person working for the zoo plays a role in providing a safe work environment for staff,



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visitors and animals. 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 resolution action.

- C. Vests and Hardhats (as well as other Personal Protection attires as required by the General Contactor) are required to be worn at construction worksites. Vests should remain on outside of the construction site while on zoo grounds to help identify contractors from regular visitors (along with the contractor's identification).
- D. Contractors are not allowed in areas occupied by animals (off-exhibit areas, included), unless specific approval is granted and a designated Zoo representative is in attendance. Always assume the extreme in animal behavior.
- E. A Lock-out/Tag-out policy is established for all animal-occupied areas. The policy is intended to protect all non-animal-care staff that requires access to areas that are routinely occupied by dangerous animals. The policy, as followed, insures a safe working environment and will prevent the unintentional release of dangerous animals into an area where work is occurring. The procedures outlined in the policy are mandatory.
- F. Any physical, mental, or emotional condition that may affect an 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.
- G. For safety reasons, Ipods, MP3 players and other sound devices requiring earphones are prohibited during working hours.
- H. The contractor will provide warning signs, flagger(s) and other safety and health precautions which 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 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.

1.07 COMMUNICATION:

- A. The General Contractor will receive a phone number for Security, to be used only for emergencies.



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- B. The General Contractor will communicate directly with the designated Zoo Project Manager who is responsible for coordination with all other Zoo staff.
- C. Sub-contractors will take direction from the General Contractor, not from Zoo staff.

1.08 ACCESS:

- A. The Oregon zoo is a fee based venue. Unauthorized entry is considered trespassing and theft of service. For this reason it is essential that all contract employees are aware of the access control policy. Additionally, it is important to know who is on grounds in case of emergencies.
- B. General Contractor representatives are always to be on-grounds when sub-contractors are working. Identification will be issued and worn for General Contractor Representatives.
- C. The General Contractor is responsible for keeping a log of all sub-contractors that are working on-site each day. Sub-contractors must always sign-in with the General Contractor and wear identification issued by the General Contractor.
- D. Access to zoo grounds is limited to the official representatives of the construction project.
- E. Friends, family members or contracted employees with no official business are prohibited from entering the zoo other than by paid admission during open hours.
- F. Pets are not allowed on Zoo grounds.
- G. Normal construction hours are 6:30 am to 3:30 pm, Monday through Friday.
- H. If other hours or weekends are approved by the zoo project manager, zoo security should be notified upon arrival and when leaving. Contractors are prohibited from entering zoo employee areas, including break -rooms, unless special arrangements have been made with the zoo project manager.



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1.09 VEHICLE USE / PARKING / DELIVERIES:

- A. Personal vehicles are prohibited on Zoo grounds unless specific arrangements have been made with the Zoo project manager for temporary assigned parking.
- B. Personal and/or contract vehicles authorized to drive on zoo grounds (public areas) must be escorted by a general contractor employee during open hours. In addition the vehicle must have a Contractor Parking Permit, visible on the dashboard of the vehicle. A current contact number must be written on the permit in case security needs to contact the Zoo.
- C. The speed limit on Zoo grounds is five miles per hour. This is strictly enforced.
- D. Contractors may park only in designated areas and must display a Parking Permit, issued by the Zoo. The permit will identify the Zoo project manager and the General Contractor information.
- E. All operators of any vehicle driven on grounds must have a valid operator's license.
- F. All deliveries to the Zoo must be made directly to the contractor. Zoo staff cannot take delivery of contractor material, or store it.

1.10 SPECIAL PRECAUTIONS

- A. Construction work in and around such areas of the Owner's building occupied by operations personnel or frequented by the public and to remain in continued operation shall be conducted in such manner as to permit such operation without jeopardy and with absolute minimum of inconvenience to occupants and public.
- B. Restrictions on the hours of work may occur from time to time to accommodate Zoo activities or special events.
- C. Access and parking locations shall be designated by the Project Manager.
- D. Take every precaution to minimize noise, spreading of dust and debris, causing undue vibrations or impacts, and other nuisances. Do no structural or other damage to any in-place improvements to remain.
- E. Access to the site may occur through public areas so special caution is advised. Any damage done to existing grounds or facilities must be replaced to pre-construction status.



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- F. Any work taking place in planting areas will be coordinated with the Project Manager. Any moving, pruning or other alterations must have prior approval by the Project Manager.
- G. The Contractors are advised that the Work adjoins existing exhibits. Work will need constant supervision and coordination to assure animal health and welfare, Zoo operations, and staff safety.

1.11 ANIMAL WELL BEING:

- A. Contractors are prohibited from feeding any Zoo animals.
- B. Contractors must be aware that animals in zoo environments have limited ability to mitigate stress and need to feel safe. Unusual sounds, unfamiliar people, being startled are all stressful and can be harmful to well-being.
- C. Contractors must notify the Zoo project manager of any activity that needs to occur in the immediate vicinity of an animal area. An animal in the work area may be out of immediate view, but still impacted by construction. Not all animal responses to stress will be visible or obvious.

1.12 BEHAVIOR:

- A. All contracted employees are expected to be courteous and respectful to fellow employees, Zoo employees and our visiting public. Whether eating at one of the Zoo's food service facilities or out among the Zoo's visitors, contracted employees are to maintain a professional, courteous, and friendly demeanor. Horseplay, profanity, inappropriate discussions are not allowed at this facility. Contractors will comply with directives the Zoo project manager and from Safety and Security personnel.
- B. **Smoking is prohibited in all areas of the zoo except in designated smoking areas. (see project manager for special designated locations)**
The four (4) areas listed below are designated smoking areas for use:
 1. Facilities Management: Between plumbing shop and woodworking shop.
 2. Africafe: The table behind the café by the loading dock on the upper service road.
 3. Cascade Crest: Picnic table behind Gate G.
 4. Research Building: By the generator on west side of building.



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- C. Physical acts of aggression, such as fighting, pushing, spitting, or shoving will be viewed as assault, regardless of who initiated the act, anytime on-grounds, Such acts seriously threaten a safe work environment and warrant disciplinary action and possible criminal charges.
- D. Threats of any kind, slurs, intimidation, sexual harassment, or other hostile behaviors are inconsistent with maintaining a positive work environment and will not be tolerated.
- E. The Zoo will not condone or tolerate 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. Sexual harassment is an unacceptable and illegal behavior which decreases morale, affects productivity, and creates a hostile work environment. 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.

1.13 RESTRICTIONS:

- A. Contractors are not allowed to bring the following items onto Zoo grounds:
 - 1. Weapons
 - 2. Alcohol, narcotics
 - 3. Skates / Skateboards/Rollerblades/ Wheelies
 - 4. Balloon, Balls, Hacky Sacks, Frisbees
 - 5. Fireworks
 - 6. Musical Instruments / Radios
 - 7. Illicit Materials
 - 8. Bicycles (if a contractor is commuting to the Zoo via bicycle, arrangements can be made for appropriate parking and use).
 - 9. Pets



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1.14 UNACCEPTABLE TRANSGRESSIONS:

- A. The following are strictly forbidden and will be grounds to exclude any contracted employee or vender from Zoo property.
1. Possessing, using, transferring, offering or being under the influence of any intoxicants or narcotics during working hours.
 2. Willful deceit, gross negligence, theft, including personal or public property.
 3. Neglect of duty, violation of Zoo ordinances, regulations and directives.
 4. Willful violation of established safety policies and procedures.
 5. Possessing a firearm, illegal weapons, fireworks, or explosive device on Zoo property
 6. Harassment, discourteous treatment of any kind, or discrimination to staff, volunteers, or members of the public, includes but not limited to intentional tortuous conduct. Obscenities, profanity, yelling, shouting, abusive or maligning tone of voice and/or language is considered discourteous and will not be tolerated.
 7. Misuse of Zoo property,
 8. Gambling on Zoo premises, including, but not limited to, card games and dice games.

END OF SECTION