Cooling Tower and Piping Replacement
Antoinette Hatfield Hall

RFB 13-2214

Portland Center for the Performing Arts
Antoinette Hatfield Hall
1111 SW Broadway
Portland, OR 97205

Project Manager
Josh Lipscomb
Josh.lipscomb@oregonmetro.gov
503-797-1929

Procurement Analyst
Karen Slusarenko, CPPB
Karen.slusarenko@oregonmetro.gov
503-797-1809

Notice is hereby given that bids for RFB 13-2214 for Cooling Tower and Piping Replacement -Antoinette Hatfield Hall shall be received by Metro, 600 NE Grand Avenue, Portland OR 97232 until 2:00 p.m. on December 11, 2012. It is the sole responsibility of the bidder to ensure that Metro receives the Bid by the specified date and time. All late Bids shall be rejected. Bidders shall review all instructions and contract terms and condition.

Cooling Tower and Piping Replacement
Antoinette Hatfield Hall
Request for Bid (RFB 13-2214)

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

Metro Properties and Project Management Office hereby requests sealed bids for Cooling Tower and Piping Replacement - Antoinette Hatfield Hall. Bids are due (postmarks and faxes are not accepted for formal bids) no later than the date and time indicated on the RFB cover page, at Metro, 600 NE Grand Avenue, Portland, OR 97232. All bids must be submitted in sealed envelopes that clearly identify the item(s) as stated in the RFB. First Tier Subcontractor and Good Faith Effort forms are required from all bidders within two (2) hours of the bid closing time or the bid will be considered non-responsive.

Bidding documents, (including plans and specifications depicting the work) may be viewed at the Metro website, www.oregonmetro.gov under "Doing Business".

All bids must conform to the RFB format and be complete including the use of any required forms. Metro may accept or reject any or all bids, in whole or in part, or waive irregularities not affecting substantial rights if such action is deemed in the public interest.

Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, creed, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.oregonmetro.gov.

Metro extends equal opportunity to all persons and specifically encourages minority, women-owned, and emerging small businesses to access and participate in this and all Metro projects, programs and services.

A voluntary Pre-Bid Conference is scheduled for all potential prime and sub-contractors on December 3, 2012, at 10:00 a.m. **at the Lobby of the Antoinette Hatfield Hall, located at 1111 SW Broadway, Portland, OR**. Interested sub-contractors are also invited.

This project will be subject to prevailing wage requirements as established by the Oregon Bureau of Labor and Industries (BOLI). By submitting a bid, all bidders certify that they will pay and comply with minimum prevailing wage requirements of ORS 279C.800-279C.870. If project is subject to both ORS 279C.800-279C.870 and the Davis Bacon Act (40 U.S.C 276a), bidders certify that they will pay the higher of the applicable state or federal rate.

For all construction projects over $25,000, all bidders must be appropriately licensed with the Construction Contractors Board or the State Landscape Contractors Board. (ORS 279C.365 (1)(k)). In addition, for this public work 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.

Metro Code provisions 2.04.100 and 200 require all Bidders to follow and document a specific good faith outreach effort to State certified Minority, Women and Emerging Small Businesses. Certification of good faith compliance and a declaration of any actual utilization pursuant to both programs are required within two (2) hours of Bid closing.

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

TABLE OF CONTENTS

INVITATION TO BID 3

INSTRUCTIONS TO BIDDERS 4
- BID 4
- COST OF BID 4
- ERRORS/OMISSIONS 4
- ADDENDA TO PLANS OR SPECIFICATIONS 4
- MODIFICATION OF BID 4
- WITHDRAWAL OF BIDS 4
- LATE BID 5
- EXECUTION 5
- EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK 5
- COMPLIANCE 5
- ELIGIBILITY 5
- EQUAL EMPLOYMENT AND NONDISCRIMINATION 5
- PERMITS AND LICENSES 5
- CONFLICT OF INTEREST 6
- IMMATERIAL VARIANCES 6
- LATEST MODEL 6
- "OR APPROVED EQUAL" CLAUSE 6
- RECYCLABLE PRODUCTS 6
- RECYCLED PRODUCTS AS BID ITEMS 6
- TERMS 7
- PRICES 7
- WARRANTY/GUARANTY 7
- SERVICE 7
- BID SECURITY 7
- RESIDENT/NON-RESIDENT BIDDER 7
- EXPERIENCE AND ABILITY TO PERFORM THE WORK 7
- BASIS OF AWARD 8
- NOTICE OF AWARD 8
- APPEAL OF CONTRACT AWARD 8
- CONTRACT 8
- BONDS 8
- INSURANCE AND WORKERS COMPENSATION 8
- COMMENCEMENT OF WORK 9
- FOREIGN CONTRACTOR 9
- NOTICE OF ASSIGNMENT 9
- HAZARD COMMUNICATION 9
- FAILURE TO PERFORM 9
- PATENTS 9
- INVOICES, PAY APPLICATIONS 9
- LAW OF STATE OF OREGON 9
- PREVAILING WAGE 10
- CERTIFIED PAYROLL 10
- MINORITY, WOMEN AND EMERGING SMALL BUSINESS PROGRAM 10

NOTICE TO ALL BIDDERS 10
- BID RESPONSE FORMS
- CONSTRUCTION AGREEMENT
- SECTION 00700 - GENERAL CONDITIONS

ATTACHMENTS
- DIVISION 23 TECHNICAL SPECIFICATIONS
- CONTRACT DRAWINGS –
  - R & W Engineering, Inc. - "PCPA Hatfield Hall Tower Replacement", dated 8/24/12

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

INVITATION TO BID

Metro is requesting bids for Cooling Tower and Piping Replacement - Antoinette Hatfield Hall. Sealed bids must be enclosed in a sealed envelope and mailed or delivered to Metro, 600 NE Grand Avenue, Portland, Oregon 97232-2736, no later than the date and time indicated on the RFB cover page, and will be publicly opened and read at that time in Room 270.

Description of Work

The Antoinette Hatfield Hall (AHH), located within the Portland Center for Performing Arts (PCPA) complex, has a cooling tower that is 25 years old and is beyond its useful life. This bid is for the removal and replacement of the existing cooling tower.

- Contractor is to provide all equipment, labor and materials necessary for the removal of the existing open loop cooling tower, installation of a new closed loop cooling tower, associated piping, VFD for fan, base rail, condenser water pump impellers, chilled water pumps and VFD's, piping in pump room, water treatment/flushing and any control modifications; as defined in this request for bid (RFB); and including the attached Division 23 Specifications and R & W Engineering, Inc "PCPA Hatfield Hall Tower Replacement" drawings, dated 8/24/12, hereto attached as *Attachment A and Attachment B* respectfully. Antoinette Hatfield Hall is located at 1111 SW Broadway, Portland, OR 97205.
- Contractor is responsible for cleanliness of work areas and should plan to pick up debris created during construction. Contractor is responsible for cover up and protection of existing equipment/building materials to remain. Contractor is to maintain a worksite free of hazardous work conditions and construction debris. Contractor shall not interfere with scheduled events or prohibit any tenants or clients from accessing other spaces in the building. Loud noise can be an issue in the facility; therefore any work that may be louder than a hand drill or similar will need to be coordinated with PCPA, so as to not disturb events/clients. Dust control is the responsibility of the Contractor. Although work is expected to be in areas without impact on events, work will need to be done around building schedule. Schedule will need to be coordinated with PCPA project manager. Contractor shall work with PCPA provided schedule of events. This project may require Contractor to work "off hours" in order to complete the project in a timely manner as agreed upon with the PCPA.
- To support the MERC's sustainability goals, materials being removed from the worksite shall be recycled and receipts provided to the MERC project manager. If recycling is not possible, then approval must be obtained from the MERC project manager for disposal.
- Material submittals are required before materials are ordered and must be approved by PCPA.
- PCPA will provide the necessary building permits with Contractor input.
- Contractor is to provide one (1) set of Red Line drawings, and three (3) hard copies and one (1) electronic copy Operation and Maintenance manuals upon project completion.

PCPA reserves the right to reduce or increase the scope of work depending on the available budget and subsequent bid prices. Reduction, or increase in the scope of work are subject to agreement between PCPA and Contractor prior to or following the start of work. Contractor is responsible for field measuring PCPA designated areas for exact square footage areas for exact square footage area to be calculated in bid.

Tentative contract dates are December 12, 2012 through May 31, 2013, with substantial completion of work by March 1, 2013.

Qualifications

Contractor must have five (5) or more years of successful experience in the area of Commercial Closed Loop Cooling Tower systems. Qualifications and references shall be supplied with bid. Metro reserves the right to evaluate, approve or reject firms on the basis of their review.

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

INSTRUCTIONS TO BIDDERS

BID
Metro is soliciting Bids for Cooling Tower and Piping Replacement - Antoinette Hatfield Hall. Bids must be enclosed in a sealed envelope and mailed or delivered to, Metro, 600 NE Grand, Portland, Oregon 97232-2736, Attention: Karen Slusarenko, RFB 13-2214.

All bids must be received no later than the date and time indicated on the RFB cover page, and will be publicly opened and read at that time. First Tier Subcontractor and Good Faith Effort forms are due from all bidders within two (2) hours of the bid closing time or the bid will be considered non-responsive. A bid may not be submitted by facsimile (FAX) transmittal or electronically by email.

The outside of the envelope shall plainly identify the subject of the Bid, the opening date, and the Bid number.

All bids must be clearly and distinctly typed or written with ink or indelible pencil. All blank spaces must be completed. No erasures are permitted. Mistakes must be crossed out and corrections typewritten or written in ink adjacent thereto, and initialed in ink by the party signing the Bid, or their authorized representative.

Written amounts shall be shown in both words and figures. Words shall govern in cases of discrepancy between the amounts stated in words and the amounts stated in figures.

All bids must be on the form furnished by Metro or they may be rejected by Metro. Where plans and specifications are attached to the bid, the Bidder must return them with the bid response.

COST OF BID
This Request for Bid does not commit Metro to pay any costs incurred by any Bidder in the submission of a bid, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the invitation to bid.

ERRORS/OMISSIONS
Any Bid may be deemed non-responsive by the Procurement Officer if it is: Not on the Bid forms provided; contains errors or omissions, erasures, alterations, or additions of any kind; proposes prices which are unsolicited or obviously unbalanced; or not in complete conformance with any and all conditions of the bidding documents.

ADDENDA TO PLANS OR SPECIFICATIONS
Requests for additional information or interpretation of the contract documents shall be delivered to the Procurement Analyst at Karen.slusarenko@oregonmetro.gov, in writing at least five (5) business days prior to the Bid opening date and time. If, in the opinion of Metro, additional information or interpretation is needed by the Bidders, an addendum will be issued to all known specification holders. The provisions of any written addenda issued by the Procurement Officer at least seventy two (72) hours prior to the Bid opening date and time shall be binding upon the Bidders, and failure of a Bidder to obtain such addenda shall not excuse compliance therewith by the successful bidder.

MODIFICATION OF BID
An offer to modify the bid that is received from the successful Bidder after award of contract that makes the terms of the Bid more favorable or advantageous to Metro will be considered, and may thereafter be accepted. To be effective, every modification must be made in writing over the signature of the Bidder.

WITHDRAWAL OF BIDS
A Bidder may withdraw its bid in person, or by written or telegraphic request, which are received prior to the scheduled closing time for filing Bids. A bid may not be withdrawn by facsimile (FAX). Negligence on the part of the Bidder in preparing his bid confers no right to withdraw the bid after the scheduled closing time for filing Bids.

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

LATE BID
Bids received after the scheduled closing time for filing Bids will be returned to the Bidder unopened, unless such closing time is extended by Metro in writing.

EXECUTION
Each Bid shall give the Bidder's full business address and bear its legal signature.

Bids by partnerships must list the full name of all partners and be signed by a partner or agent authorized to execute the contract on behalf of the partnership and identified by printed name and title.

Bids by corporations must bear the legal name of the corporation, the name of the state of incorporation, and the signature of the officer or agent authorized to legally bind the corporation.

Upon request by Metro, satisfactory evidence of the authority of the partner or officer shall be furnished.

If an agent who is not an officer of the corporation or a member of the partnership signs the Bid, a notarized Power of Attorney must be on file with Metro prior to the opening of Bids or be submitted with the Bid. Without such notice of authority, the Bid shall be considered improperly executed, defective and therefore non-responsive.

A Bid submitted by a joint venture must include a certified copy of the terms and conditions of the agreement creating the joint venture.

EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK
It is understood that the Bidder, before submitting a Bid, has made a careful examination of the plans, specifications, and contract; that it has fully informed itself as to the quality and quantity of materials and the character of the work required; and that it has made a careful examination of the location and condition of the work and the sources of supply for materials.

COMPLIANCE
Each Bidder shall inform itself of, and the Bidder awarded a contract 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, nondiscrimination in the employment of labor, protection of public and employee safety and health, environmental protection, waste reduction and recycling, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and similar subjects.

ELIGIBILITY
Prior to submitting a Bid, all Bidders (and subcontractors of bidders) on public works/construction projects are required to be appropriately registered with the State of Oregon Construction Contractors Board pursuant to ORS 701.035.

EQUAL EMPLOYMENT AND NONDISCRIMINATION
Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, color, religion, sex, national origin, age, marital status, familial status, gender identity, sexual orientation, disability for which a reasonable accommodation can be made, or any other status protected by law. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.oregonmetro.gov.

PERMITS AND LICENSES
Each Bidder shall obtain and include in their Bid the cost for street closure permits and licenses, which may be required to perform the contract. Metro will provide all necessary building permits and special inspections. The Contractor shall receive a Notice to Proceed once all Owner secured permits have been issued by the relevant regulatory agencies.

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

CONFLICT OF INTEREST
A Bidder filing a bid thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this Bid or has participated in contract negotiations on behalf of Metro; that the bid is made in good faith without fraud, collusion, or connection of any kind with any other Bidder for the same call for Bids; the Bidder is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

IMMATERIAL VARIANCES
Metro reserves the right to determine whether equipment or materials that comply substantially in quality and performance with the specifications are acceptable to Metro, and whether any variance listed by the Bidder in a bid is material or immaterial.

LATEST MODEL
Parts and materials must be new, of latest model, of current date, and meet specifications. This provision excludes all surplus, remanufactured, and used products, unless such material is proposed in lieu of items specified.

"OR APPROVED EQUAL" CLAUSE
In order to establish a basis of quality, certain processes, types of machinery and equipment, or kinds of materials may be specified, either by description of process or by designating a manufacturer by name and referring to his brand or product designation, or by specifying a kind of material. It is not the intent of these specifications to exclude other processes, equipment, or materials of equal value, utility or merit.

Whenever a process is designated or a manufacturer's name, brand, or product is described, it shall be understood that the words, "or approved equal" follow such name, designation, or description, whether in fact they do so or not.

If a Bidder proposes to furnish an item, process or material which it claims to be of equal utility to the one designated, then:

1. Bidder shall submit as part of their Bid, a written statement describing it together with supporting data and details sufficient to permit Metro to evaluate the same. If the product contains chemical properties, the relevant Material Safety Data Sheets (MSDS) shall be included to document all health and physical hazards, chemical ingredients, exposure limits, personal protective equipment for handling and use, and emergency procedures in response to unanticipated spills or environmental release.
2. Metro may require demonstration, additional tests, and additional data, all to be supplied at the expense of the Bidder.
3. Metro shall in its sole discretion determine if an item submitted as an alternate or approved equal is “equal” or “equivalent”.

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

RECYCLED PRODUCTS AS BID ITEMS
Oregon Law (ORS 279A.125) requires Metro and all public agencies to give preference to materials and supplies manufactured from recycled materials.

All Bidders are therefore required to specify the exact or minimum percentage of recycled paper and fiber type in all paper products or recycled content in all other products offered, plus both the post-consumer and secondary waste content of the products offered.

Only Bids submitted with such information shall receive preference consideration and post Bid declaration or discovery shall not be allowed.

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

TERMS
A Bid may be rejected if it requires payment in less than thirty (30) calendar days after an approved invoice date or if it requires payment, in whole or in part, less than fifteen (15) days after invoice approval prior to delivery.

PRICES
All prices submitted shall be firm during the contract period. If unit prices are requested, they should be provided for each unit on which there is a Bid. In case of mistake in extension of price, unit prices shall govern. All prices shall be Freight on Board (F.O.B.) the destination designated by Metro.

WARRANTY/GUARANTY
Each Bid for the furnishing of materials and equipment shall provide an explanation of both the Bidder's and manufacturer's warranties on materials and workmanship.

Every Bid shall indicate any warranty costs to Metro, including but not limited to, all parts, labor, and shipping costs required for compliance with any specific requirement(s) contained in the special conditions.

Each Bidder on a public works/construction project shall provide at minimum a one-year guaranty on all materials and workmanship.

SERVICE
Each Bidder shall furnish detailed information on any service facilities, locations, and procedures as well as information on any maintenance agreements or contracts available to Metro.

BID SECURITY
All bids must be accompanied by bid security in the form of a cashier's check, certified check, irrevocable letter of credit, or a bid bond issued by a surety authorized to conduct such business in Oregon. Security shall be in the amount of five percent (5%) of the total bid price. The bid security shall serve as a guarantee that the bidder will not withdraw the bid for a period of sixty (60) days after bid opening, and if awarded the contract, will execute the Metro contract and furnish all required bonds and insurance within the time frame specified.

The Attorney-in-Fact who executes any bond on behalf of the surety must attach a notarized copy of his or her Power of Attorney as evidence of authority to bind the surety on the date of bond execution.

Bid securities will be held until the Contract has been fully executed, after which all Bid securities, other than those which have been forfeited, will be returned to the respective Bidders whose Bid they accompanied.

RESIDENT/NON-RESIDENT BIDDER
Oregon law requires Metro, in determining the lowest responsive Bidder, to add a percent increase on the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides. Therefore, each Bidder must indicate whether it is a resident or non-resident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the last twelve (12) months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid that it is a “resident Bidder.”

EXPERIENCE AND ABILITY TO PERFORM THE WORK
Upon request, Bidders must present all necessary information indicating that the Bidder has met the standards of responsibility set forth in ORS 279B.110. Metro will make the final determination as to whether or not the Bidder is qualified to perform the work.

The Contractor and/or First Tier sub-contractor shall provide a list of three (3) different project references with their Bid submission. These references will be contacted regarding the quality of workmanship and service that the Bidder or sub-contractors have provided on projects of comparable size and scope. The Bidder shall submit this information using the Contractor Qualification Statement.

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

BASIS OF AWARD
The award shall be made to the responsible Bidder submitting the lowest responsive bid submitting the lowest total BASE BID. Metro reserves the right to consider any and all alternates offered by the selected Bidder.

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. Only those bidders that, in the sole opinion of Metro, meet the minimum experience requirements shall be considered to be responsible bidders.

In the event all Bids exceed the engineer's estimate, Metro reserves the right to negotiate with the selected low Bidder in an effort to meet the project budget.

NOTICE OF AWARD
Within twenty (20) calendar days after the opening of Bids, Metro will accept one of the Bids, or combination of Bids, or reject all Bids in accordance with the Basis of Award. 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.

APPEAL OF CONTRACT AWARD
Aggrieved bidders who wish to appeal the award of this contract must do so in writing within seven (7) days of issuance of the notice of intent to award by Metro. Appeals must be submitted to Gabriele Schuster, Procurement Manager, 600 NE Grand Avenue, Portland, OR 97232 and must state the specific deviation of rule or statute in the contract award. Metro will issue a written response to the appeal in a timely manner.

CONTRACT
Within seven (7) business days of receipt of the contract from Metro, the Successful Bidder shall sign and deliver the Contract to Metro, along with all required insurance certificates and bonds listed below.

BONDS
Contractor shall provide the following on Metro's standard bond forms:

- A Performance Bond in an amount equal to 100 percent of the contract price.
- A Labor and Materials bond in an amount equal to 100 percent of the contract price.

INSURANCE AND WORKERS COMPENSATION
Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:

1. The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than $1,000,000 per occurrence and $1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Contractor's coverage will be primary as respects Metro;
2. Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of $1,000,000 per occurrence;
3. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than $500,000 per accident or disease; and
4. If required, Professional Liability Insurance, with limits of not less than $1,000,000 per occurrence, covering personal injury and property damage arising from errors, omissions or malpractice.

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

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

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

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

Contractor, and all subsequent subcontractors and suppliers performing work pursuant to this contract shall provide Workers' Compensation benefits as required by and in accordance with all applicable state and federal laws.

COMMENCEMENT OF WORK
Prior to starting work on a contract or sub-contract for a public works project, a contractor or sub-contractor shall file a public works bond with the Construction Contractors Board. Bond shall be from a corporate surety authorized to do business in the state of Oregon and be in the amount of $30,000 and shall comply with all other requirements of ORS 279C.800 to 279C.870. Contractor shall provide written documentation of bond number(s) of bond(s) for contractor and all sub contractor(s) to Metro Project Manager with original bid or prior to starting project work.

Contractor shall only commence work on this project upon receipt of a Notice to Proceed issued by Metro.

FOREIGN CONTRACTOR
A Contractor that is not domiciled in or registered to do business in the State of Oregon shall, upon execution of a contract in excess of $10,000, promptly report the total contract price, terms of payment, length of contract and all other required information to the Oregon Department of Revenue. Compliance shall be documented and Metro shall be fully satisfied as to complete compliance prior to release of final payment.

NOTICE OF ASSIGNMENT
Metro will not recognize any assignment or transfer of any interest in this contract without the prior written consent of the Procurement Officer and the Metro Attorney.

HAZARD COMMUNICATION
The Contractor shall be required to strictly adhere to, coordinate with Metro and document full compliance with the policies and procedures of the Oregon Occupational Health and Safety Code, OAR Chapter 437, Division 155, Hazard Communication. Therefore, the Contractor and all subcontractors and suppliers within his or her control shall notify Metro and all parties to the agreement as to:

- Hazardous materials to which they may be exposed on site;
- Employee measures to lessen the possibility of exposure;
- All contractor measures to reduce the risk;
- Procedures to follow if exposed.

The Contractor shall provide Metro with all Material Safety Data Sheets (MSDS) prior to delivery or introduction of the material on site. For further information or clarification, contact the Metro Risk Management Division at 503-797-1622.

PATENTS
The Contractor agrees to protect, to defend (if Metro requests) and save the agency harmless against any demand for payment for wrongful or unauthorized use of any patented material, process, article, or device that may enter into manufacture, construction, or forms a part of the work covered by this contract.

INVOICES, PAY APPLICATIONS
Invoices/pay applications shall be prepared and submitted to Project Manager unless otherwise specified. Invoices shall contain the following information: Metro contract number, item numbers, description of supplies or services, sizes, quantities, unit prices and extended totals. Payment shall be made by Metro on a Net 30 day basis upon approval of Contractor invoice.

LAW OF STATE OF OREGON
This contract is entered into within the state of Oregon, and the law of said State, whether substantive or procedural, shall apply and be followed with respect to this contract.

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

PREVAILING WAGE
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. This project is covered by appropriate Bureau of Labor and Industries (BOLI) prevailing wage rates available at http://www.boli.state.or.us or by calling the State of Oregon Bureau of Labor and Industries at 971-673-0839. If the project is subject to Davis-Bacon Act (40U.S.C. 276A), Contractor and all sub-contractors shall pay the higher rate of state or federal prevailing wages.

Bureau of Labor and Industries
Wage and Hour Division, Prevailing Wage Unit
800 NE Oregon Street, #32
Portland, OR 97232

CERTIFIED PAYROLL
The Contractor and all sub-contractors, in compliance with ORS 279C.845, shall file certified payroll statements with Metro Project Manager to be due once per month by the fifth business day of the following month. Metro shall retain 25% of any amount earned by Contractor if certified payrolls are not submitted as required. Contractor shall retain 25% of sub-contractor earnings if sub-contractor certified payrolls are not submitted as required. Upon receipt of appropriate certified payrolls, Metro and Contractor shall release any amounts so retained within fourteen (14) days.

MINORITY, WOMEN AND EMERGING SMALL BUSINESS PROGRAM
In the event that any subcontracts are to be utilized in the performance of this agreement, the Bidder's attention is directed to Metro Code Section 2.04.100, which encourages the use of minority, women and emerging small businesses (MWESB) sub-contractors to the maximum extent practical. Metro Code 2.04.100 is available http://library.oregonmetro.gov/files//chap2.04_clean_eff._042111_revised_version_081711.pdf.

FIRST OPPORTUNITY TARGET AREA (FOTA) PROGRAM
In the event that any subcontracts are to be utilized in the performance of this agreement, the Bidder's attention is directed to MERC's First Opportunity Area (FOTA) Program which is intended to provide maximum employment for economically disadvantages residents living in the target area, for contracts and employment, in accordance with House Bill 3075, passed by the Oregon Legislature in 1989. Additional information regarding the FOTA Program is available http://www.oregonmetro.gov/index.cfm/go/by.web/id=6094.

NOTICE TO ALL BIDDERS
The attached agreement included herein reflects preliminary, draft contract language and selected, proposed contract terms for this procurement. Bidders should be aware that such language terms and provisions are for illustrative purposes only and that Metro reserves the right, following submission and ranking of all bids submitted in response to this procurement, to amend, modify or negotiate over any and all such contract language, terms and provisions before making a final determination regarding the issuance of the Notice of Intent to Award the agreement rising from this procurement. By submitting a bid in response to this procurement, bidders acknowledge that they are aware of and do not object to any later, potential amendment and modification of such preliminary, draft language and terms. In addition, by responding to this procurement, bidders acknowledge that they are aware of their ability to offer alternatives to any of the preliminary, draft contract language and proposed contract terms set forth herein.

Cooling Tower and Piping Replacement
Antoinette Hatfield Hall
Request for Bid (RFB 13-2214)

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

CONTENTS

Note: The following documents (1-13) **must be returned** as part of the bid response or the bid will be considered non-responsive.

	Bid Response Packet Contents	Due By Bid Due Date and Time	Due Within Two Hours of Bid Closing	Due Within Seven Days of Award Notification
1	Bidder's Checklist	✓		
2	Bid Forms	✓		
3	Schedule of Bid Prices and Schedule of Values	✓		
4	Bid Bond	✓		
5	Addenda/Surety	✓		
6	Resident/Non-Resident Bidder Status	✓		
7	Contractor Qualification Statement	✓		
8	Certificate of Compliance for Recycling	✓		
9	Drug Certification Form	✓		
10	Signature Page	✓		
11	Non-Collusion Affidavit	✓		
12	First-Tier Subcontractor Disclosure Form		✓	
13	Good Faith/ MBE/WBE/ESB/FOTA Program Form		✓	
14	Labor & Material Payments Bond			✓
15	Performance Bond			✓
16	Standard Public Contract			✓
17	Scope of Work- Attachment A			✓

Cooling Tower and Piping Replacement
Antoinette Hatfield Hall
Public Improvement Bid Response (RFB 13-2214)

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

BIDDER'S CHECKLIST

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

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

To Be Submitted by Bid Due Date and Time as indicated on the RFB cover page
BID WILL BE CONSIDERED NON-RESPONSIVE WITHOUT THE FOLLOWING DOCUMENTS AND INFORMATION

1 **BIDDER'S CHECKLIST**

2 **BID FORMS**

3 **SCHEDULE OF BID PRICES and SCHEDULE OF VALUES**

4 **BID BOND** Bidder has complied with Metro's requirements for 5% bid surety and guarantees that this bid is irrevocable for the period specified herein.

5 **ADDENDA ACKNOWLEDGEMENT and SURETY**

6 **RESIDENT/NON-RESIDENT BIDDER STATUS** Undersigned Bidder states that it is a ☐ resident or ☐ non-resident of the state of Oregon. State in which Bidder resides: _____

7 **CONTRACTOR QUALIFICATION STATEMENT**

8 **CERTIFICATE OF COMPLIANCE FOR RECYCLING**

9 **DRUG CERTIFICATION FORM**

10 **SIGNATURE PAGE**

11 **NON-COLLUSION AFFIDAVIT**

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.

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)

REGISTRATION NO: _____ with Construction Contractors Board.

OREGON LICENSE: If a corporation, ☐ it is, or ☐ is not, licensed with Oregon Corporation Commission

DOING BUSINESS AS: Provide any assumed names utilized

TO BE SUBMITTED IN SEPARATE ENVELOPE WITHIN TWO HOURS OF BID DUE DATE AND TIME
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.

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

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

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: Metro Procurement Office, 600 N.E. Grand Avenue, Portland, OR 97232

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- (60) days following the date of the opening of Bids.

BID SECURITY

Bid security in the form of a certified check, cashier's check, irrevocable letter of credit or bid bond as further described in the Instructions for Bidders and in the amount of five percent (5%) of the total bid price is enclosed herewith and is subject to all the conditions stated in the Instructions for Bidders.

CONTRACT EXECUTION, BONDS AND INSURANCE

The Bidder agrees that if this Bid is accepted, it will, within seven (7) 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, 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

COMMENCEMENT OF WORK AND CONTRACT COMPLETION TIME

The time frame for the award and execution of this Contract shall be as described in the Instructions for Bidders and other Contract Documents. The Successful Bidder further agrees to commence the Work within five (5) 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 279C.800 - 279C.870, regarding prevailing wages, shall be complied with on this project.

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

SCHEDULE OF BID PRICES

The Bidder, whose legal signature binding the Bidder to the bid process indicated on these pages is found on the signature page, hereby bids as follows:

Description	Total Amount
Removal of the existing open loop cooling tower, installation of a new closed loop cooling tower, associated piping, VFD for fan, base rail, condenser water pump impellers, chilled water pumps and VFD's, piping in pump room, water treatment/flushing and any control modifications as specified.	$
Construction Cost - Base Bid Price	$
Total Base Bid Price (in words) DOLLARS	

NOTE: Pricing to include all labor & materials, and any related shipping costs

SCHEDULE OF VALUES

In addition to Lump Sum Pricing above, Bidder must also submit a Schedule of Values; to be submitted in Bidder's format and form

Note: If any of the items listed on the Bid Schedule contain recycled product (see Certificate of Compliance for Recycling), the bidder shall specify the amounts of such product in an attachment to the Bid Form. If no attachment is included, the amount of recycled product in the items listed will be considered to be zero for the purpose of this bid. Metro reserves the right to reject any or all bids.

Print Name of Company _____

Print Name of Bidder _____

Signature _____

Title _____

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

BID BOND

BOND NO._____

AMOUNT: $_____

NOTE: Bidders must use this form, not a surety company form

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 Cooling Tower and Piping Replacement – PCPA-Antoinette Hatfield Hall** 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 _____, 2012.

By:_____

PRINCIPAL

By:_____

Attorney-in-Fact

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

ADDENDA ACKNOWLEDGEMENT

The Bidder is presumed to have read and hereby acknowledges receipt and acceptance of Addenda Numbers:

(Insert No. and Date of Each Addendum 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. _____	_____

Print Name of Company _____

Print Name of Bidder _____

Signature _____

Title _____

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

RESIDENT/NON-RESIDENT BIDDER STATUS

Oregon law requires that Metro, in determining the lowest responsive Bidder, must add a percent increase on the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which that Bidder resides.

Consequently, each Bidder must indicate whether it is a resident or non-resident Bidder. A resident Bidder is a Bidder that has paid unemployment taxes or income taxes in the state of Oregon during the twelve (12) calendar months immediately preceding submission of this Bid, has a business address in Oregon, and has stated in its Bid that the Bidder is a "resident Bidder." A "non-resident Bidder" is a Bidder who is not a resident Bidder (ORS 279A.120).

The undersigned Bidder states that it is: (check one)

1._____ A resident Bidder

2._____ A non-resident Bidder

Indicate state in which Bidder resides:_____

Print Name of Company _____

Print Name of Bidder _____

Signature _____

Title _____

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

CONTRACTOR QUALIFICATION STATEMENT

NOTE: The prime contractor or first tier sub-contractor proposed to conduct the following work must complete this Contractor Qualification Statement: (list type of work applicable)

_____

_____

_____

The undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading:

Contractor Name_____

Address_____

Telephone_____ Fax_____ E-Mail_____

ORGANIZATION_____

How many years has your organization been in business as a Contractor?_____

Under what former names has your organization operated? _____

_____

_____

LICENSING AND BONDING

Oregon CCB#_____ Public Works Bond #_____

Other licenses _____

_____

_____

EXPERIENCE

List the type of work your organization normally performs with its own forces and the number of full time employees to be assigned to the project? _____

_____

_____

_____

Does your firm own or able to obtain the necessary equipment for this job? Please indicate equipment available to conduct the work. _____

_____

_____

_____

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

CONTRACTOR QUALIFICATION STATEMENT continued

CLAIMS AND SUITS

Has your organization ever failed to complete any work awarded to it?_____

_____

_____

_____

Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or officers? _____

_____

_____

_____

Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? Provide information _____

_____

_____

_____

_____

Have any officers or employees been convicted of any crimes relative to a project such as this? _____

_____

_____

_____

_____

REFERENCES

List the major construction projects your organization has **in progress**

Project Name	Owner	Architect/ Engineer	Amount	% Complete	Completion Date	Contact Person	Phone #

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

CONTRACTOR QUALIFICATION STATEMENT continued

List the similar projects your organization has **completed in last 5 years**

Project Name	Owner	Architect/ Engineer	Amount	% Complete	Completion Date	Contact Person	Phone #

List 3 subcontractors Metro can contact for a reference.

Name	Specialty	Contact Name	Phone #

List 3 suppliers Metro can contact for a reference.

Name	Specialty	Contact Name	Phone #

Bank Reference

Name: _____

Address: _____

Contact Name:_____ Phone number: _____

Bidder signature
This information provided is true and complete.

Print Name of Company _____

Print Name of Bidder _____

Signature _____

Title _____

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

CERTIFICATE OF COMPLIANCE FOR RECYCLING

I, the undersigned duly authorized representative of the Bidder, hereby certify that the products offered in this bid contain the following minimum percentages:

(A) _____Percentage of post-consumer waste as defined in ORS 279A.010(s) (formerly ORS 279.545(1))

(B) _____Percentage of secondary waste materials as defined in ORS 279A.010 (hh) (formerly ORS 279.545(6))

It is the bidder's responsibility to provide additional signed copies of this Certification of Compliance for each item which contains a different percentage of recycled materials than listed above.

DEFINITIONS:

ORS 279A.010(s): "'Post Consumer Waste' means a finished materials that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. 'Post-consumer waste' does not include manufacturing waste."

ORS 279A.010(hh): "'Secondary Waste Materials' is defined as fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper, 'secondary waste materials' does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process."

I, the undersigned duly authorized representative of the bidder, understand that the bid must be signed in ink by the bidder or an authorized representative of the bidder and that any alterations or erasures must be initialed in ink by the person signing the bid. Further, I acknowledge that I have read and understand all bid instructions, specifications, terms and conditions (including the attachments indicated above and agree, on behalf of myself and the bidder to be bound by them.

I, the undersigned duly authorized representative of the bidder certify that the information provided in this bid is true and accurate. Further, I understand and acknowledge that providing incorrect or incomplete information may be cause for bid rejection or contract termination.

Signature:_____ Title:_____

Company:_____ Telephone:_____

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

CERTIFICATION OF EMPLOYEE DRUG TESTING FORM

Please describe your Drug Testing Program:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

BIDDER SIGNATURE

Print Name of Company _____

Print Name of Bidder _____

Signature _____

Title _____

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

SIGNATURE PAGE

The name of the Bidder submitting this Bid is _____doing business at

_____
Street City State Zip

which is the full business address to which all communications concerned with this Bid and with the Contract shall be sent.

The names of the principal officers of the corporation submitting this Bid, or of all of the partners, if the Bidder is a partnership or joint venture, or of all persons interested in this Bid as individuals are as follows:

_____ _____

If Individual
IN WITNESS hereto the undersigned has set his/her hand this _____ day of _____ 2012.

Signature of Bidder _____

Printed Name of Bidder _____

Title _____

If Partnership or Joint Venture
IN WITNESS hereto the undersigned has set his/her hand this _____ day of _____ 2012.

_____
Name of Partnership or Joint Venture

By: _____

_____
Printed Name of Person Signing

Title: _____

If Corporation
IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this _____ day of _____2012.

_____
Name of Corporation

_____
State of Incorporation

By: _____

_____
Printed Name of Person Signing

Title: _____

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

NON-COLLUSION AFFIDAVIT

STATE OF _____ County of _____

I state that I am _____(Title) of _____ (Name of Bidder) and that I am authorized to make this Affidavit on behalf of the Bidder. I am the person authorized by the Bidder and responsible for the price(s) and the amount of this Bid.

I state that: (1) the price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder, except as disclosed in the attached appendix.
(2) Neither the price(s) nor the amount of this Bid, and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other person who is a Bidder or potential Bidder, and they will not be disclosed before bid opening.
(3) No attempt has been made or will be made to induce any person to refrain from bidding on this contract, or to submit a Bid higher than this Bid, or to submit any intentionally high or non-competitive bid or other form of complementary Bid.
(4) This Bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any person to submit a complementary or other noncompetitive Bid.
(5) _____ (Name of Bidder), its affiliates, subsidiaries, officers, directors and employees (as applicable) are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as listed and described in the attached appendix.

I state that I and _____ (Name of Bidder) understand and acknowledge that the above representations are material and important, and will be relied on by Metro in awarding the Contract for which this Bid is submitted. Any misstatement in this Affidavit will be treated as fraudulent concealment from Metro of the true facts relating to the submission of Bids for this Contract.

_____
Signature of Affiant

_____
Printed Name of Affiant

Sworn to and subscribed before me this _____day of _____ 2012.

Notary Public for _____ **My Commission Expires: __/___/____**

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

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

BID: Cooling Tower and Piping Replacement – PCPA-Antoinette Hatfield Hall

BID CLOSING: As indicated on the RFB cover page

DISCLOSURE DEADLINE WITHIN TWO (2) WORKING HOURS OF THE ADVERTISED CLOSING DATE AND TIME

This form must be submitted at the location specified in the Invitation to Bid within two (2) working hours of the advertised bid closing date and time

List below the Name, Address, Dollar Value, Contact Name, Telephone Number, Construction Contractor Board (CCB) number (if required), and Public Works Bond number (if public improvement) of each subcontractor that will be furnishing labor and materials that are required to be disclosed. Enter "NONE" if there are no subcontractors that need to be disclosed. (**ATTACH ADDITIONAL SHEETS IF NEEDED.)**

Name, Address, Phone, CCB #, Public Works Bond #	Dollar Value	Category of Work

The above listed first-tier subcontractor(s) are providing labor and materials with a dollar value equal to or greater than:

a) 5% of the total Contract Price, but at least $15,000 of the Bid Price,
b) $350,000 regardless of the percentage of the total Bid Price.

Failure to submit this form in a separate envelope by the disclosure deadline
will result in a bid submitted becoming non-responsive, and such bid shall not be considered for award.

Form Submitted by (Name of Bidder) _____ Name of Company _____

Contact Name _____ Phone # _____

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

GOOD FAITH PROGRAM

The Metro Council is committed to doing business with minority, woman-owned firms and emerging small businesses (MBE/WBE/ESB). 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, WBE's and ESBs for Metro projects. The following steps are required to help Metro monitor the usage of these firms.

Good Faith Efforts Steps:
1. Identify areas in which Bidder intends 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 Procurement Services can provide Bidder with a list of firms upon request 503-797-1648.)
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 Bidder intend to use on this project.

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

The following MBE/WBE/ESB Program forms are to be completed and returned as part of your Bid submission. Please contact Procurement Services at 503 797-1648 if additional information is required.

FIRST OPPORTUNITY TARGET AREA

MERC's First Opportunity Target Area (FOTA) program is intended to provide maximum employment for economically disadvantages residents living in the target area, for contracts and employment, in accordance with House Bill 3075, passed by the Oregon Legislature in 1989.

Accordingly MERC aspires to utilize 10% (by dollar value) of subcontractors within the First Opportunity Target Area (FOTA) on this project. First Opportunity recruitments are openings for target area Applicants for vacant positions. In addition to standard recruiting techniques, good faith outreach efforts will be made through target area jobs training and economic development agencies to identify recruit and refer such applicants. First Opportunity applicants will be given consideration for employment after the internal recruitment process has concluded

First Opportunity Target Area

North boundary: Columbia Boulevard
East boundary: 42nd Avenue
South boundary: Banfield Freeway (I-84)
West boundary: Chatauqua Avenue to Willamette Boulevard; follow the Willamette River and Greeley Avenue by Fremont Bridge; west on Fremont Bridge to Albina Community and Northwest target area but continue south along Willamette River to I-5 and I-84 boundaries but continue south along Willamette River to I-5 and I-84.

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

MBE/WBE/ESB PROGRAM FORM

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

Bidder/Proposer _____

Address _____

Phone _____ Fax _____ Email _____

Bid Closing Date and Time: AS INDICATED ON THE RFB COVER PAGE.

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

Step 1. Identify areas in which you intend to use sub-contractors.

_____

_____

_____

Step 2. Attend the Pre-Bid meeting if held. Meet any MBE/WBE/ESB firms at the Pre-Bid meeting.

Name of person who attended pre-bid _____

Steps 3. List all firms contacted for sub-contracting work. (use more sheets if necessary)

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

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

MBE/WBE/ESB PROGRAM FORM CONTINUED

Sub contract for _____

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

Step 4: List all sub-contractors used for this project.

BIDDER INTENDS TO SUBCONTRACT WITH THE FOLLOWING:

MBE, WBE, ESB, Other	Certification #	Name of Firm, Address, Phone	CCB#*	Nature of Work	Dollar Value of Participation

**Please include Construction Contractors Board Number*

Total Bid Amount _____

Authorized Signature_____ Date _____

Print Name of Bidder _____

Print Name of Company _____

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

LABOR AND MATERIAL PAYMENTS BOND

(NOTE: CONTRACTOR MUST USE THIS FORM, NOT A SURETY COMPANY FORM)
KNOW ALL MEN BY THESE PRESENT:

We the Undersigned _____ as PRINCIPAL and _____a corporation organized and existing under and by virtue of the laws of the state of _____, and 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 which carries an "A" rating 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, unto METRO, as OBLIGEE, in the sum of _ _____ Dollars ($_____) in lawful money of the United States of America, for the payment of that sum for the use and benefit of claimants as defined below.

The condition of this obligation is such that whereas the PRINCIPAL entered into a contract with METRO dated _ _____, 2012, which contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: Cooling Tower and Piping Replacement – PCPA-Antoinette Hatfield Hall.

NOW THEREFORE, if the PRINCIPAL shall promptly make payments to all persons, firms, subcontractors, corporations and/or others furnishing materials for or performing labor in the prosecution of the Work provided for in the aforesaid _____, and any authorized extension or modification thereof, including all amounts due for materials, equipment, mechanical repairs, transportation, tools and services consumed or used in connection with the performance of such Work, and for all labor performed in connection with such Work whether by subcontractor or otherwise, and all other requirements imposed by law, then this obligation shall become null and void; otherwise this obligation shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is as specified in ORS 279C.600.

2. The above-named PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE and its assigns that every claimant as above-specified, who has not been paid in full, may sue on this bond for the use of such claimant, prosecute the suit to final judgment in accordance with ORS 279C.610 for such sum or sums as may be justly due claimant, and have execution thereon. The OBLIGEE shall not be liable for the payment of any judgment, costs, expenses or attorneys' fees of any such suit.

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

PROVIDED, FURTHER, that SURETY for the value received, hereby stipulates and agrees that all changes, extensions of time, alterations to the terms of the _____ or to Work to be performed thereunder or the Specifications accompanying the same shall be within the scope of the SURETY's undertaking on this bond, and SURETY does hereby waive 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 contract or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that the total of such increases shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted, or if the full amount of the obligation is not exhausted and no claim is pending resolution, until such time as no further claims can be made pursuant to law with regard to the above-described project, by any claimant specified in ORS 279C.600.

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

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____ 2012.

_____	_____
SURETY	CONTRACTOR
By:_____	By:_____
Title:_____	Title:_____
_____	_____
Street Address	Street Address
_____	_____
City, State ZIP	City, State ZIP
_____	_____
Phone Number	Phone Number

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

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 _____, 2012, which Contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: Cooling Tower and Piping Replacement – PCPA-Antoinette Hatfield Hall.

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.

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

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 _____, 2012.

_____	_____
SURETY	CONTRACTOR
By:_____	By:_____
Title:_____	Title:_____
_____	_____
Street Address	Street Address
_____	_____
City State ZIP	City State ZIP
_____	_____
Phone Number	Phone Number

Cooling Tower and Piping Replacement
Antoinette Hatfield Hall
Public Contract **(RFB 13-2214)**

Metro | Exposition Recreation Commission
600 NE Grand Ave.Portland, OR 97232-2736
503-797-1700

MERC CONTRACT NO. XXXXXX

For Public Contracts $50,000 & Above

THIS Contract is entered into between Metropolitan Exposition Recreation Commission (MERC), an appointed commission of Metro, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and _____ 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 MERC the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II
TERM OF CONTRACT

The term of this Contract shall be for the period commencing _____20, ____ through and including _____, 20_____, with substantial completion by _____, 20___. This agreement may be extended at MERC's sole discretion. By executing this Contract, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work. The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the work by the date specified.

ARTICLE III
CONTRACT SUM AND TERMS OF PAYMENT

Contractor shall perform the above work for _____ AND NO/100TH DOLLARS ($_____). INCLUDE HOURLY RATES OR TASK BASED PAYMENTS IF APPLICABLE

The maximum price includes all fees, costs and expenses of whatever nature. Each of MERC's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices shall include the MERC contract number, Contractor name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and expenses incurred during the billing period, and will not be submitted more frequently than once a month. Contractor's billing invoices shall be sent to metroaccountspayable@oregonmetro.gov, or Metro Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736. The MERC contract number shall be referenced in the email subject line. Contractor's invoice must breakout 5% retainage, and Contractor must submit Certified Payroll with invoices per ARTICLE XII below. Contractor's billing invoices for services through June 30 shall be submitted to MERC by July 15. Payment shall be made by MERC on a Net 30 day basis upon approval of Contractor invoice.

ARTICLE IV
LIABILITY AND INDEMNITY

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

MERC CONTRACT NO. XXXXXX

ARTICLE V
TERMINATION

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

ARTICLE VI
INSURANCE & BONDS

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

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

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

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

CONTRACTOR shall provide MERC with a Certificate of Insurance complying with this article upon return of the CONTRACTOR signed agreement to MERC. Certificate of Insurance shall identify the MERC contract number.

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

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

ARTICLE VII
PUBLIC CONTRACTS

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

For public work subject to ORS 279C.800 to 279C.870, the CONTRACTOR shall pay prevailing wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, the CONTRACTOR and every subcontractor on such public work shall pay at least the higher prevailing wage. The CONTRACTOR and each subcontractor shall pay workers not less than the specified minimum hourly rate of wage in accordance with Section 7 of 2005 Oregon Laws Chapter 360. MERC shall pay an administrative fee as provided in ORS 279C.825(1) to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. CONTRACTORS must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the CONTRACTOR or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the CONTRACTOR or first-tier subcontractor shall owe the

person the amount due plus shall pay interest in accordance with ORS 279C.515. If the CONTRACTOR or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. CONTRACTOR must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against MERC on account of any labor or material furnished. CONTRACTORS are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

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

ARTICLE VIII
MODIFICATIONS

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

ARTICLE IX
QUALITY OF GOODS AND SERVICES

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

ARTICLE X
OWNERSHIP OF DOCUMENTS

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

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

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

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

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

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

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

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

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

ARTICLE XI
SUBCONTRACTORS

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

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

ARTICLE XII
RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors. In addition for public improvement work, if a CONTRACTOR is required to file certified statements under

ORS 279C.845, MERC shall retain 25 percent of any amount earned by the CONTRACTOR on the public works until the contractor has filed all required certified statements with MERC.

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

ARTICLE XIII
SAFETY

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

ARTICLE XIV
FULL AND INTERGRATED AGREEMENT

This Contract represents the entire and integrated agreement between MERC and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both MERC and CONTRACTOR. The laws of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV
COMPLIANCE

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

ARTICLE XVI
INTERGOVERNMENTAL COOPERATIVE AGREEMENT

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

ARTICLE XVII
SITUS

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

ARTICLE XVIII
ASSIGNMENT

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

MERC CONTRACT NO. XXXXXX

ARTICLE XIV
SEVERABILITY

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

ARTICLE XX
COUNTERPARTS

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

ARTICLE XXI
GENERAL CONDITIONS

All services and materials provided by Contractor shall be of good quality, and in accordance with the Scope of Work and in compliance with the Owner's schedule. Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation and every other item and service necessary to perform the work described in the contract documents. Contractor shall provide all services and materials necessary to complete the work in a professional manner, in compliance with applicable building codes and per industry standards and practices. Contractor agrees to comply with each and every term, condition and provision of the contract documents. Contractor may be subject to liquidated damages if work not in compliance with Contract Agreement and any and all attachments.

All work included in this Contract is subject to Prevailing Wage Laws and Rates

Contractor shall bring the Work to substantial completion by date listed in ARTICLE II - TERM OF CONTRACT, or at such date as may be extended by Change Order approved by Contractor and Owner. By executing this Contract, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work. The end date of the Contract Term is intended to allow for finalization of all closeout requirements, receipt of warranties, manuals and final payment, but does not alter requirements for substantial completion of the work by the date specified. Contractor shall be liable to incur liquidated damages if not substantially complete by contract terms. *Liquidated damages shall be assessed at no less than _____($____.00) per day.*

The Portland Center of the Performing Arts (PCPA) is a member of the Facility Permit Program with the City of Portland. PCPA will be providing permits as necessary, with coordination from contractor. If any special inspections are required PCPA shall provide them**.**

Contractor is to maintain a worksite free of hazardous work conditions and construction debris and is responsible for cover up and protection of existing equipment/building materials. Contractor is responsible for cleanliness of work areas and should plan to pick up debris created during construction. Dust control is the responsibility of the Contractor. Contractor is to coordinate work with Project Manager and building staff and be prepared to section off and sign work areas as appropriate

A facility events schedule will be provided for the duration of the work. This schedule indicates the dates and approximate shifts that are currently available and unavailable to the Contractor to perform the required work, depending on the location in the building of the scheduled event, the type of event and the work being conducted simultaneously with the event. Contractors work will be scheduled in accordance with the building's events schedule. Due to the likely possibility of additional "bookings" or cancellations of events in the building, this schedule may be modified, which may positively or negatively impact the work schedule. In the event of a schedule change, the Owner will notify the Contractor directly following the implementation of the change so that work plans may be modified accordingly. A formal

project schedule is to be provided by the Contractor in accordance with the building event schedule and coordinated with the Project Manager prior to the start of any work.

Due to the nature of the Public Events Facility Industry, it will be necessary for the contractor to work closely with the Project Manager to coordinate day-to-day logistical requirements for the benefit of the Contractor and to afford Owner staff the necessary time to perform event or non-event related functions. Contractor shall coordinate all work with Project Manager and schedule his work so as to minimize any disruption to the ongoing operations of the Antoinette Hatfield Hall. Specific utilization of work areas on a day-to-day basis will be coordinated by the Project Manager or his designee and the Contractor Representative. Contractor shall not interfere with scheduled events or prohibit any tenants or clients from accessing other spaces in the building. Generally, Contractor will be able to conduct work activities at any time as long as those activities do not impact or impede events in progress by noise, dust or construction material blocking access routes to events or facilities. Loud noise can be an issue in the facility; therefore any work that may be louder than a hand drill or similar will need to be coordinated with PCPA, so as to not disturb events/clients. This project may require Contractor to work “off hours” in order to complete the project in a timely manner as agreed upon with the PCPA. Contractor will be working in an occupied functioning building and could expect to perform work in some areas prior to the building opening at 8:00 AM. It may be possible for the Contractor to work on weekends if the area is available and scheduled with the owner in advance and at no additional cost to the Owner. Safety for Contractor as well as general public and staff is a major concern. .

Owner will provide Contractor access to all areas as necessary to complete the work and access to on-site parking. Contractor shall be responsible for all of Contractor’s equipment, tools and materials at all times, Owner shall not be held responsible for any theft

ARTICLE XXI
DELIVERY OF NOTICES

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

To CONTRACTOR:	Contractor Contact Contractor Name Address City State Zip _____ fax	To MERC:	Project Manager Name MERC 600 NE Grand Ave. Portland, Oregon 97232 503-797-1795 fax

CONTRACTOR	METROPOLITAN EXPOSITION RECREATION COMMISSION
By_____	By_____
Print Name_____	Print Name_____
Date_____	Date_____

Metro | Exposition Recreation Commission
600 NE Grand Ave.Portland, OR 97232-2736
(503) 797-1700

MERC Contract No. XXXXXX

Attachment A to Standard Public Contract

1. **Purpose and Goal of Work**

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

3. **Deliverables/Outcomes**

4. **Clarifications**

5. **Exclusions**

Cooling Tower and Piping Replacement
Antoinette Hatfield Hall
Section 00700 -
General Conditions (RFB 13-2214)

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

INDEX

ARTICLE 1 - GENERAL PROVISIONS 1

1.1 DEFINITIONS 1
1.1.1 ACT OF GOD 1
1.1.2 ADDENDUM 1
1.1.3 ALTERNATE BIDS 1
1.1.4 ENGINEER 1
1.1.5 "AS-BUILTS" OR RECORD DOCUMENTS 1
1.1.6 AUTHORIZED REPRESENTATIVE 1
1.1.7 BID 1
1.1.8 BIDDER 1
1.1.9 BIDDING DOCUMENTS 1
1.1.10 BID FORMS 1
1.1.11 CITY 1
1.1.12 CHANGE ORDER 1
1.1.13 CLARIFICATION (REQUEST FOR INFORMATION) 2
1.1.14 COMPLETION 2
1.1.15 CONSTRUCTION MANAGER 2
1.1.16 CONSTRUCTION SCHEDULE OR SCHEDULE 2
1.1.17 CONTRACT AMOUNT 2
1.1.18 CONTRACT DOCUMENTS OR CONTRACT OR BIDDING DOCUMENTS 2
1.1.19 CONTRACTOR 2
1.1.20 CONTRACT TIME 2
1.1.21 CRITICAL PATH METHOD OR CPM 2
1.1.22 DAYS 2
1.1.23 DIRECT COSTS 2
1.1.24 MINORITY BUSINESS PROGRAM 2
1.1.25 DRAWINGS 2
1.1.26 EQUAL, APPROVED, APPROVED EQUAL 2
1.1.27 FINAL COMPLETION AND ACCEPTANCE 3
1.1.28 FINAL PAYMENT 3
1.1.29 FORCE ACCOUNT WORK 3
1.1.30 FURNISH 3
1.1.31 GENERAL CONTRACTOR 3
1.1.32 GEOTECHNICAL ENGINEER 3
1.1.33 INSTALL 3
1.1.34 LUMP SUM 3
1.1.35 MATERIAL OR MATERIALS 3
1.1.36 METRO 3
1.1.37 METRO CHIEF OPERATING OFFICER 3
1.1.38 METRO COUNCIL OR COUNCIL 3
1.1.39 MISCELLANEOUS PHRASES 3
1.1.40 NOTICE OF AWARD 3
1.1.41 NOTICE TO PROCEED 4
1.1.42 OTHER METRO CONTRACTORS 4
1.1.43 OVERHEAD 4
1.1.44 OWNER 4
1.1.45 PLANS 4
1.1.46 PROFIT 5
1.1.47 PROJECT 5
1.1.48 PROVIDE 5
1.1.49 PUNCH LIST 5
1.1.50 REQUEST FOR CLARIFICATION 5
1.1.51 RETAINAGE OR RETENTION 5

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

1.1.52 SCHEDULE OF VALUES ... 5
1.1.53 SEPARATE CONTRACT ... 5
1.1.54 SHOWN, AS SHOWN ... 5
1.1.55 SITE ... 5
1.1.56 SPECIAL INSTRUCTIONS ... 5
1.1.57 SPECIFICATIONS ... 5
1.1.58 SUBCONTRACTOR ... 5
1.1.59 SUBMITTALS ... 5
1.1.60 SUBSTANTIAL COMPLETION ... 5
1.1.61 SUPPLIER ... 5
1.1.62 UNIT PRICES ... 5
1.1.63 UNUSUALLY PERSISTENT SEVERE WEATHER ... 6
1.1.64 WORK ... 6
1.2 INTENT AND INTERPRETATION OF CONTRACT DOCUMENTS ... 6
1.2.1 INTENT ... 6
1.2.2 DIVISIONS AND HEADINGS ... 6
1.2.3 MANDATORY NATURE OF SPECIFICATIONS AND DRAWINGS ... 6
1.2.4 PRECEDENCE OF CONTRACT DOCUMENTS ... 6
1.2.5 DISCREPANCIES, ERRORS AND OMISSIONS ... 7
1.2.6 STANDARDS TO APPLY WHERE DETAILED SPECIFICATIONS ARE NOT FURNISHED ... 7
1.3 SUPPLY OF CONTRACT DOCUMENTS ... 7
1.4 USE OF CONTRACT DOCUMENTS ... 7
1.5 COPYRIGHT ... 7
1.6 SEVERABILITY CLAUSE ... 7
1.7 NOTICE OF SERVICE ... 8

ARTICLE 2 – CONTRACTOR'S ORGANIZATION ... 8

2.1 CONTRACTOR'S AUTHORIZED REPRESENTATIVES ... 8
2.2 CONTRACTOR'S OFFICE AT THE SITE ... 8
2.2.1 USE OF THE SITE BY THE CONTRACTOR ... 8
2.2.2 CONSTRUCTION STAKING ... 8
2.2.3 CONSTRUCTION STAGING AREA ... 9
2.3 KEY PERSONNEL ... 9
2.4 CONTRACTOR'S EMPLOYEES ... 9
2.5 CONTRACTOR TO SUPPLY SUFFICIENT MATERIALS AND WORKERS ... 9
2.6 CONSTRUCTION PLANT, EQUIPMENT AND METHODS ... 9
2.7 CONTRACTOR'S TEMPORARY STRUCTURES ... 9

ARTICLE 3 – ADMINISTRATION OF THIS CONTRACT ... 10

3.1 AUTHORITY AND RELATIONSHIPS OF METRO AND ENGINEER ... 10
3.1.1 AUTHORITY OF METRO ... 10
3.2 REQUEST FOR INFORMATION ... 10
3.3 CONTRACTOR'S CLAIMS ... 11
3.3.1 GENERALLY ... 11
3.3.2 TYPES OF CLAIMS ... 11
3.3.3 CLAIMS FOR EXCUSABLE DELAYS ... 11
3.3.3.1 DEFINITION OF EXCUSABLE DELAY ... 12
3.3.3.2 TYPES OF EXCUSABLE DELAY CLAIMS ... 12
3.3.3.3 NON-COMPENSABLE EXCUSABLE DELAY CLAIMS ... 12
*3.3.3.4 COMPENSABLE EXCUS*ABLE DELAY CLAIMS ... *13*
3.3.3.5 *INEXCUSABLE DELAYS ... 13*
3.3.3.6 EXCUSABLE DELAY CLAIMS PROCEDURE ... 13
3.3.4 CLAIMS FOR DIFFERING SITE CONDITIONS ... 14
3.3.5 OTHER CONTRACTOR CLAIMS ... 14
3.3.6 PRESERVATION OF CLAIMS ... 14

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

3.4 METRO'S RIGHT TO ADJUST PAYMENTS 15
3.4.1 ADJUSTED PAYMENTS FOR DELAY 15
3.4.2 ADJUSTED PAYMENTS NOT A BAR TO METRO'S RIGHT TO OTHER DAMAGES 15
3.5 MEDIATION 15

ARTICLE 4 – SUBCONTRACTING AND ASSIGNMENT OF THE CONTRACT 16

4.1 CONTRACTOR'S RESPONSIBILITY FOR THE WORK 16
4.2 SUBCONTRACTING 16
4.2.1 OBJECTION TO SUBCONTRACTORS OR SUPPLIERS 16
4.2.2 SUBSTITUTION, CHANGE OR ADDITION OF SUBCONTRACTORS OR SUPPLIERS 16

4.2.3 METRO NOT OBLIGATED TO DETECT UNSATISFACTORY WORK 17
4.2.4 NO CONTRACTURAL RELATIONSHIPS BETWEEN METRO AND CONTRACTOR'S SUBCONTRACTORS OR SUPPLIERS 17
4.2.5 CONTRACTOR'S AGREEMENTS WITH SUBCONTRACTORS 17
4.3 ASSIGNMENT 17

ARTICLE 5 – TIME OF COMPLETION AND SCHEDULE FOR THE WORK 17

5.1 PROSECUTION OF WORK GENERALLY 17
5.2 TIME OF COMPLETION 17
5.3 EXTENSIONS OF TIME 18
5.4 PROJECT SCHEDULING 18
5.5 USE OF COMPLETED PARTS OF THE WORK BEFORE ACCEPTANCE 18

ARTICLE 6 – COORDINATION WITH OTHER METRO CONTRACTORS 18

6.1 OTHER METRO CONTRACTORS GENERALLY 18
6.2 DUTY TO INSPECT OTHER METRO CONTRACTORS' WORK 18
6.3 DUTY TO MAINTAIN SCHEDULE 18
6.4 FAILURE TO MAINTAIN SCHEDULE 19
6.5 FAILURE TO COORDINATE WORK 19
6.6 OTHER METRO CONTRACTORS' FAILURE TO COORDINATE 19
6.7 CONFLICTS AMONG CONTRACTORS 19
6.8 COORDINATION DRAWINGS 19
6.8.1 OWNER RESPONSIBLE FOR FOIC ITEMS 20
6.8.2 CONTRACTOR RESPONSIBLE FOR FOIC ITEMS 20
6.9 CONFERENCES 20
6.9.1 PROJECT MEETINGS 20
6.9.2 PRE-CONSTRUCTION CONFERENCE 20
6.9.3 PRE-INSTALLATION CONFERENCE 20

ARTICLE 7 – CONTROL AND QUALITY OF WORK AND MATERIAL 21

7.1 QUALITY CONTROL 21
7.1.1 GENERALLY 21
7.1.2 QUALITY CONTROL PLAN 21
7.1.3 QUALITY CONTROL MANAGER 21
7.2 INSPECTION 21
7.2.1 GENERALLY 21
7.2.2 SPECIAL INSPECTIONS 21
7.2.3 NOTICE TO METRO FOR CERTAIN WORK DAYS 22
7.2.4 CORRECTION OF DEFECTIVE WORK BEFORE ACCEPTANCE 22
7.2.5 ACCEPTANCE NOT IMPLIED BY FAILURE TO OBJECT 22
7.3 UNSATISFACTORY MATERIALS AND WORKMANSHIP 22
7.3.1 GENERALLY 22

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

7.3.2 REMOVAL OF REJECTED OR NON-CONFORMING WORK OR MATERIAL ... 22
7.4 GENERAL WARRANTY OF CONTRACTOR ... 22
7.5 CORRECTION OF WORK BY CONTRACTOR ... 22
7.6 WARRANTY AND CORRECTION AGREEMENTS BY SUBCONTRACTORS ... 23
7.6.1 GENERALLY ... 23
7.6.2 FORM OF SUBMISSIONS ... 23
7.7 REMEDIES NOT RESTRICTIVE ... 23
7.8 PROOF OF COMPLIANCE WITH CONTRACT PROVISIONS ... 24
7.9 PATENTS, COPYRIGHTS, TRADEMARKS ... 24
7.10 ANTI-TRUST CLAIMS ... 24

ARTICLE 8 – CHANGES IN THE WORK ... 25

8.1 CHANGE ORDERS GENERALLY ... 25
8.2 PROCEDURES FOR DETERMINING IMPACT OF CHANGE ORDERS ON CONTRACT ... 25
8.2.1 PRICE BEFORE PROCEEDING ... 25
8.2.2 PROCEED WHILE PRICING ... 25
8.2.3 UNIT PRICES ... 25
8.3 LIMITATIONS WHEN CHANGE ORDERS IMPACT CONTRACT AMOUNT ... 25
8.3.1 OVERHEAD AND PROFIT ... 26
8.3.2 TAXES AND INSURANCE ... 26
8.3.3 BOND PREMIUMS ... 26
8.3.4 EQUIPMENT COSTS ... 26
8.4 FORCE ACCOUNT WORK ... 26
8.5 ORAL MODIFICATIONS ... 27
8.6 CONTRACTOR PROPOSALS FOR CHANGES IN WORK ... 27
8.6.1 GENERALLY ... 27
8.6.2 PURPOSE ... 27
8.6.3 APPLICATION ... 27
8.6.4 DOCUMENTATION ... 27
8.6.5 SUBMISSION ... 27
8.6.6 ACCEPTANCE ... 24
8.6.7 SHARING ... 27
8.6.8 SUBCONTRACTS ... 28
8.6.9 DISCLOSURE RESTRICTIONS ... 28
8.7 IMPACT OF AUTHORIZED CHANGES IN THE CONTRACT ... 28

ARTICLE 9 – PAYMENTS AND COMPLETION ... 29

9.1 SCOPE OF PAYMENT ... 29
9.2 SCHEDULE OF VALUES ... 29
9.2.1 GENERALLY ... 29
9.2.2 REVIEW OF SCHEDULE OF VALUES ... 29
9.3 PROGRESS PAYMENT PROCEDURE ... 29
9.3.1 GENERALLY ... 29
9.3.2 RETAINAGE ... 29
9.3.3 PAYMENT FOR MATERIAL STORED OFF-SITE ... 30
9.3.4 OTHER CONDITIONS PRECEDENT TO PAYMENT ... 30
9.3.5 PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK ... 31
9.3.6 OFFSET OF SUMS DUE METRO FROM SUBCONTRACTOR ... 31
9.3.7 TIME OF THE ESSENCE ... 31
9.4 SUBSTANTIAL COMPLETION ... 31
9.5 FINAL COMPLETION AND ACCEPTANCE ... 31
9.6 CLOSEOUT SUBMITTALS ... 32
9.7 RELEASES ... 32
9.8 FINAL PAYMENT ... 33
9.9 NO WAIVER OF RIGHTS ... 33

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

ARTICLE 10 – SAFETY AND PROTECTION OF THE WORK 33

10.1 SAFETY REQUIREMENTS 33
10.1.1 SAFETY GENERALLY 33
10.1.2 HEALTH AND SAFETY PROGRAM 34
10.1.3 HEALTH AND SAFETY OFFICER 34
10.2 FIRST AID 34
10.3 PROTECTION OF WORK, PERSONS AND PROPERTY AGAINST DAMAGES 34

ARTICLE 11 – INDEMNIFICATION AND INSURANCE 34

11.1 INDEMNIFICATION 34
11.2 INSURANCE 35
11.2.1 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE 35
11.2.2 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE 36
11.2.3 FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS 36
11.3 BUILDER'S ALL RISK INSURANCE 36
11.4 LABOR AND MATERIALS AND PERFORMANCE BOND 37

ARTICLE 12 – MINORITY BUSINESS PROGRAM 37

ARTICLE 13 – EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION REQUIREMENT 37

ARTICLE 14 – MISCELLANEOUS STATUTORY RESPONSIBILITIES OF CONTRACTOR 38

14.1 GENERALLY 38
14.2 ENVIRONMENTAL LAWS 38
14.3 OTHER PROVISIONS OF OREGON LAW 39
14.3.1 GENERALLY 39
14.3.2 PAYMENT TO SUBCONTRACTORS AND LABORERS 39
14.3.3 FAILURE TO MAKE PAYMENT FOR LABOR OR SERVICES 39
14.3.4 HOURS OF WORK 39
14.3.5 PAYMENT FOR MEDICAL CARE 39
14.3.6 REQUIREMENTS FOR NON-RESIDENT BIDDER 39
14.3.7 PREVAILING WAGE 40
14.3.8 SANITARY FACILITIES 40
14.3.9 ROYALTY PAYMENTS 40
14.4 WORK TO COMPLY WITH CODES 40
14.5 NO ADDITIONAL COMPENSATION ALLOWED FOR COMPLIANCE WITH LAWS 40

ARTICLE 15 – TERMINATION OR SUSPENSION OF THE WORK 40

15.1 FOR DEFAULT OF CONTRACTOR 40
15.2 TERMINATION IN THE PUBLIC INTEREST 41

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

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

1.1.4. Engineer -- is the firm representing Metro as designers and its agents, representatives, employees and consultants or such other firm as Metro may appoint. The Engineer 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

1.1.12.3. the extent of the adjustment to the Contract Time, if any.

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

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

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

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.

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

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

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) 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..

1.1.44. Owner -- means Metro.

1.1.45. Plans -- means Drawings.

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

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 Metro 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 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 Contact 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 01025 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, Landscape 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 Metro.

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.

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.

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

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 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.

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

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

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.

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.

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

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 and to act on Change Orders or other actions. Such notices, instructions, drawings or other communications given to such a representative or delivered to Contractor's site office in his/her absence shall be deemed to have been given to Contractor.

2.2.1 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 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 Engineer’s original control points.

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

2.2.3 Construction Staging Area -- Coordinate use of the site with Metro 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.

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.

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

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 Engineer -- the following provisions shall govern the authority of the various officers, agents, representatives, consultants and employees of Metro, and Engineer. 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 Engineer shall have any authority to make representations, statements or decisions of whatever nature binding Metro or Engineer regarding any aspect of this Contract. Except as specifically provided in this Article, Contractor shall have no right to, and shall not rely on any such representation, statement or decision. Any reference to action by Metro in this Contract requires the written approval of the Metro Chief Operating Officer or 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 Engineer 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 Engineer 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.

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 Engineer, 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 Engineer to supervise Contractor's work under this Contract and Contractor shall remain fully responsible for the complete and proper supervision of all of the Work.

3.2. 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 Metro a written Request for Information (RFI) which shall fully describe the information sought. All correspondence shall be directed to

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

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 Engineer 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 Engineer and Metro so that the orderly progress and prosecution of the Work is not delayed.

The Engineer, 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 Engineer, 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.

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

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

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.

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.

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

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.

(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.

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

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 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.

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

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

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 00800, 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.

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

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

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.

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

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.

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.

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

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 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 there from 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.

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

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 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.

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

6.8.1 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 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.

6.8.2 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 Construction Manager 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. Construction Manager 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 Metro but no later than 5 days after execution of the Agreement. The conference will be held at the project site on another convenient location. The purpose of the meeting is to review responsibilities and personnel assignments. Attendees: Authorized representatives of the Metro, 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. Metro shall record significant conference discussions, agreements and disagreements including corrective action measures and action.

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

ARTICLE 7 CONTROL AND QUALITY OF WORK AND MATERIAL

1.1. 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, 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, 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, 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 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.

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

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, 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.

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

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

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 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.

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

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 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.

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.

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

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, Metro 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.

A unit price schedule is as follows:
Unit Price No. 1 – XXXXXXXXXXXXXX.
Description: XXXXXXXXXXXXX
Unit of Measurement: XXXXXXXXXXX

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:

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

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 twenty percent (20%) 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 or inferior Subcontractor, the total Overhead and Profit for all tiers shall in no event exceed thirty percent (30%) 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 Dataquest Incorporated, 1290 Ridder Park Drive, San Jose, California 95131-2398, (800) 227-8444.

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.

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)

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

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.

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:

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

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:

Reduction = 0.5 (NS) + 0.5 (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 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.

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

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 01025 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 01025 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 Manger 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 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.

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

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.<u>Payment for Material Stored Off Site</u> -- 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 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.<u>Other Conditions Precedent to Payment</u> -- 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

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

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 will review the Work, including a physical inspection, to determine the status of completion. Should 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, substantially complete. At that point:

9.4.2.1. Metro will prepare a Certification of Substantial Completion on AIA Document G704, accompanied by the approved punch list of items to be completed or corrected.

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.

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

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

9.5.5. Work is ready for final inspection.

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 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.

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

The above-described procedure shall be followed until the Work is, in the opinion of Metro, finally complete. Contractor shall immediately thereafter prepare and submit Closeout Submittals as described below.

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

9.6.1. Evidence of Compliance with Requirements of Governing Authorities.

9.6.2. Project record documents in accordance with the Specifications.

9.6.3. Operation and maintenance data in accordance with the Specifications.

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

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

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

9.6.7. Consent of surety to Final Payment.

9.6.8.Certificates of insurance for products and completed operations in accordance with Article 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 of and from all liabilities, obligations and claims arising under this Contract.

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

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.

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.

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

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 Contractors 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.

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

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

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, 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.

Contractor shall assume the defense, if requested, indemnify and hold harmless Metro 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 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.

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

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

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.

C. Subcontractor's Insurance – Contractor shall require that all of its Subcontractors and Suppliers of any tier provide insurance coverage and 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.

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 -- In addition to filing any other insurance certificates specified elsewhere in these Contract Documents, Contractor shall, within seven (7) days following Notice of Award of Contract, provide Metro two (2) certified copies of the policies of all insurance herein required to be obtained by Contractor except that Worker's Compensation Insurance may be evidenced by a Certificate of Insurance. At Metro's request, Contractor shall immediately deliver to Metro the receipts for payment of premiums on any or all such policies.

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

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

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

11.4.1Contractor 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.

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

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, 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

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

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

14.3. Other Provisions of Oregon Law

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, 279C530, 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.

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

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 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.

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.

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

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.

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

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

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 ***