

Standard Public Contract



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

METRO CONTRACT NO. 936199

For Public Contracts \$50,000 & Above

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Empower Digital Solutions, whose address is 1271 NE Hwy 99W, Suite 145, McMinnville, OR 97128, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

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

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing July 1, 2019 through and including June 30, 2024,

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

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

Contractor's billing invoices shall be sent to metroaccountspayable@oregonmetro.gov. The Metro contract number and contractor name shall be referenced in the email subject line. Metro requests that contractors submit billing invoices for services within 10 business days of performance. Payment shall be made by Metro on a Net 30 day basis upon receipt of Contractor invoice.

ARTICLE IV LIABILITY AND INDEMNITY

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

ARTICLE V TERMINATION

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

ARTICLE VI INSURANCE & BONDS

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

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

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

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

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

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

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

ARTICLE VII PUBLIC CONTRACTS

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

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

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

ARTICLE VIII MODIFICATIONS

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

ARTICLE IX QUALITY OF GOODS AND SERVICES

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

ARTICLE X OWNERSHIP OF DOCUMENTS

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

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

of the costs for METRO employees, and any necessary consultants hired by METRO, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the CONTRACTOR elects to have such records outside these boundaries, the costs paid by the CONTRACTOR to METRO for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

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

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

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

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

ARTICLE XI SUBCONTRACTORS

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

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

ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

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

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

ARTICLE XIII
SAFETY

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

ARTICLE XIV
INTEGRATION OF CONTRACT DOCUMENTS

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

ARTICLE XV
COMPLIANCE

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

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

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

ARTICLE XVII
INTERGOVERNMENTAL COOPERATIVE AGREEMENT

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

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ARTICLE XVIII SITUS

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

ARTICLE XIX ASSIGNMENT

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

ARTICLE XX SEVERABILITY

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

ARTICLE XXI COUNTERPARTS

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

ARTICLE XXII DELIVERY OF NOTICES

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

To Contractor: Erik Hopkins
Empower Digital Solutions
1271 NE Hwy 99W, Ste 415
McMinnville, OR 97128
503-806-0530 (voice)
Erik.Hopkins@empowerdigital.com

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

With Copy to: Ed Williams
1111 SW Broadway
Portland, OR 97205
503-274-6586 (voice)
edwilliams@portland5.com

CONTRACTOR

By 

Print Name Erik J. Hopkins

Date 11 July 2019

METRO

By _____

Print Name _____

Date _____

1. Purpose and Goal of Work

This contract is intended to provide Portland's Centers for the Arts (Portland's) with general structured voice and data cabling and hardware installation, maintenance and repair services at the Portland's venues:

- Arlene Schnitzer Concert Hall 1037 SW Broadway, Portland, OR 97205
- Antoinette Hatfield Hall, 1111 SW Broadway, Portland, OR 97205
- Keller Auditorium, 222 SW Clay Street, Portland, OR 97201
 - NOTE: Keller Auditorium is known to contain Asbestos Containing Materials (ACM). Please refer to the Asbestos notification form included as Attachment B

2. Description of the Scope of Work

Types of work to be performed under this contract shall include, but shall not necessarily be limited to:

- Installation, termination, test and labelling of:
 - New category 6, 6A, 7 and similar copper cabling, cable management, RJ45 patch fields, RJ45 building infrastructure wall plates, jacks and similar hardware
 - New multimode optical fiber cable, optical shelves, fiber patch hardware, connectors and fiber splices
- Installation of:
 - New floor standing and wall hung data equipment racks, including power and cable management
 - Selected network hardware such as enterprise Wireless Access Points, Switches, firewalls, routers and similar appliances
- Removal / demolition of:
 - Abandoned cabling such as Category 3 analog voice cabling, as well as the hardware associated with this cabling such as "66" and "110" punch blocks, back boards, wall plates, junction boxes, and similar items
 - This work shall include proper disposal or recycling of all removed wire and hardware
- Assist with troubleshooting and service on an as-needed basis. This work may include:
 - Cable and termination locate services
 - General cable / patch testing and verification
 - Repair broken or damaged cable and cabling related hardware
- Work specifically excluded under this contract shall include:
 - New electrical service installation (rack power requirements shall be limited to on-rack pluggable power distribution, power strips, etc. Source power service shall be existing or installed by a Portland's general electrical contractor or electrician)
 - Patching, painting or repairs required due to demolition of existing cabling or infrastructure

3. Deliverables/Outcomes

- All new installations shall adhere to the most current version of Metro's Telecommunications Infrastructure Standards. Version 1 of this standard, dated October 2017, is included as Attachment C.
- All work areas shall be left in a neat, clean and presentable condition at the end of each work session or day
- Contractor is responsible for any permits that may be required for the performance of work under this contract

Attachment A – Scope of Work



Metro Contract No. 936199

- All work shall meet or exceed all applicable safety and network codes (ANSI/TIA 568 standards) and/or any other applicable code requirements including City of Portland regulations
- Contractor shall provide Portland’s with documentation, drawings or network maps of work installed, when necessary.
- Contractor shall invoice Metro within 10 days of the completion of each approved job. Payment terms shall be Net 30 days
- Contractor shall provide a 90 day warranty on equipment and labor

4. Pricing and Cost Escalation

- The maximum price for all work performed during the term of this contract shall not exceed ONE HUNDRED THOUSAND AND 00/100ths DOLLARS (\$100,000.00)
- Pricing shall adhere to the table of pricing below for the first two years of the contract. Request for increase shall be submitted by no less than 90 days before the two year anniversary of the contract. Pricing increases shall be accepted only to cover increases in Contractor labor and material costs and shall not be submitted to increase profit.

TABLE OF PRICING

Description	Units	Rate
Journeyman LEA	Per Hour	\$95.00
Journeyman LEA	Per Hour, Overtime	\$142.50
Apprentice	Per Hour	\$70.00
Apprentice	Per Hour, Overtime	\$105.00
Materials, Supplies and Consumables	Cost Plus 20%	

5. Work Scheduling

- Contractor shall be available 24 hours a day, seven days a week when needed. Metro reserves the right to approve overtime, swing or graveyard shift hours if deemed necessary during the performance of the contract
- Each job shall be scheduled with Portland’s Operations staff in advance and an estimate shall be provided by Contractor prior to work beginning on each job
- As most of the work areas covered by this contract are in very busy public performance venues, agreed upon work schedule for each job must be strictly adhered to by Contractor at all times. Contactor acknowledges that at times there may be areas in the facilities that will not be accessible due to client or performer activity or presence.

Attachment B – Asbestos Notification, Keller Auditorium



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

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CONTRACTOR NOTIFICATION FORM

To comply with relevant federal and state laws and the State's Operation and Maintenance Policies and Procedures, Keller Auditorium will provide outside contractors with data regarding the locations of asbestos containing material (ACM) known to Keller Auditorium. This will be done prior to the contractor entering any building under Keller Auditorium jurisdiction.

Please complete this form and return to: Edward Williams, Facility Manager, Portland's Centers for the Arts, 1111 SW Broadway, Portland, Oregon 97205

Company Name: Empower Digital Solutions

Authorized Representative: Erik J. Hopkins

Keller Auditorium Representative: Edward Williams

Title: Facility Manager

Facility: Keller Auditorium

I hereby indicate and agree that a representative of Keller Auditorium has provided me with information regarding Keller Auditorium personnel's knowledge of the specific locations and materials that are asbestos containing and which may be encountered or have the potential for being encountered during the course of activities on this project.

I agree that neither I, nor any of my employees, agents, subcontractors or other individual or entities over whom I have any responsibility or control, will disturb ACM as found in the asbestos survey for the above mentioned project.

I further understand and agree that should I, my employees, agents, subcontractors or other individuals or entities over whom I have control encounter any material(s) suspected of containing asbestos, said material(s) shall not be disturbed without first notifying the Keller Auditorium Plan Coordinator, or appointed designee, for directions on how to proceed.

Name (print): Erik J. Hopkins Signature: [Signature]

Company: Empower Digital Solutions Inc. Title: President

Date: 11 July 2019

NOTE: Keller Auditorium test reports are supplied as separate documents.

**Attachment C –
Metro Telecommunications Infrastructure Standards**



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