

Construction Trade Services Agreement (on-call) Routine Servicing, Maintenance, and Minor Alterations



Metro Contract #940373
ITB4442

This Construction Trade Services Agreement (the "Agreement") 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 7700 SW Hyland Way, Beaverton, OR 97008 ("Contractor").

TERMS AND CONDITIONS

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

1. Effective Date

This Agreement is effective on the date last executed by the parties below.

2. Term

Unless terminated or extended as set forth herein, this Agreement expires on July 31, 2030.

3. On-Call Ordinary Construction Services

This Agreement governs Contractor's on-call provision of construction services for routine servicing, maintenance, diagnosis, repair, and/or minor alterations of equipment or fixtures. This Agreement is not a Public Improvement Contract governed by the procurement provisions of ORS 279C. The ordinary construction services provided under this Agreement may not involve subcontractors or use, require, or rely on Metro-provided project design documents. Contractor acknowledges that Metro has on-call contracts with competing providers and that this Agreement does not establish an exclusive arrangement between Metro and Contractor. Until a Work Order is signed, Metro is not required to purchase any goods or services under this Agreement.

3.1. Work Orders. Contractor will perform the construction services and/or deliver to Metro the goods, materials and equipment described in the Master Scope of Work and Rate Schedule (Attachment A). It is anticipated that the construction services provided under this Agreement will be on a routine and recurring basis, and as a series of individual repair or replacement projects each of which must be contracted for in a "Work Order" (Attachment B). Each Work Order must have its own defined scope of work (the "Work"), project schedule, unit prices and schedule of values and maximum price. Each Work Order must be mutually agreed upon between Metro and Contractor consistent with this Agreement.

3.2. Agreement Documents. All Work must be consistent with the Master Scope of Work and Rate Schedule as further refined via the project scope of work and specifications included in the applicable Work Order. The "Agreement Documents" include the following, in order of precedence: (1) Executed Construction Trade Services Agreement; (2) Public Benefit Program Contract Requirements; (3) Master Scope of Work and Rate Schedule (Attachment A); (4) Work Order (Attachment B); (5) Contractor's submitted Bid or Proposal submitted in response to Metro's solicitation.

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4. Payment

The maximum amount Metro will pay under this Agreement will not exceed \$250,000.00 ("Maximum Contract Price"). Each project will have its own defined scope of work and schedule of values and maximum price, which must be agreed upon between Metro and Contractor in a written Work Order consistent with Master Scope of Work and the Rate Schedule. Payments to Contractor will be based on the Work Order. Each payment will be proportional to the percentage of the Work Contractor accomplished during the billing period.

5. Public Works and Clean Air Construction

5.1. Certified Payroll. To comply with the Public Works requirements of ORS 279C and in an effort to broaden the local workforce, Contractor is required to submit Certified Payroll Reports and workforce demographic information through LCP Tracker (software/software access to be provided by Metro).

5.2. Clean Air Construction. All diesel non-road equipment over 25 horsepower and all diesel concrete mixers and dump trucks used for any Work will need to meet the CAC requirements (link below). These requirements include engine registration and pollution reduction requirements that must be met by Contractor and suppliers.
<https://www.portland.gov/omf/brfs/procurement/clean-air-construction/overview-and-requirements>

6. Independent Contractor

Metro and Contractor enter into this Agreement for the purpose of establishing an independent contractor relationship. The parties agree that nothing in this Agreement may be construed as an employment, partnership, joint venture, or joint employer relationship between Metro and Contractor. Contractor must provide all tools or equipment necessary to carry out this Agreement and will exercise complete control in achieving the results specified in the Master Scope of Work and applicable Work Order. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for paying any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor must identify and certify tax status and identification number by executing an IRS Form W-9 prior to submitting any request for payment to Metro.

7. Construction Services Terms and Conditions

7.1. Manner of Work.

7.1.1. Supervision and Coordination. Contractor must supervise, coordinate, and perform the Work in accordance with the Agreement Documents in a professional, safe, and

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workmanlike manner and in accordance with all laws, codes, and professional standards applicable to the industries and trades involved, including without limitation compliance with all applicable federal, state, and local building codes, Metro's construction and life safety policies and procedures, certification requirements applicable to the Work, and other policies or standards incorporated by reference herein. Contractor must identify an authorized supervisory representative who must be present at the site while work is performed. Hourly rates commence upon arrival on site. Travel time will not be reimbursed. Contractor must arrive at the work site prepared to conduct the work described. Metro reserves the right to pre-approve overtime and swing shift hours if deemed necessary. Contractor must coordinate with Metro and establish a written plan for access to the site to execute the work. The work site may be in operation by Metro and open to the public during the Work. Work in and around Metro's buildings occupied by Metro personnel or frequented by the public must be conducted in such a manner as to permit such operation without jeopardy and with the absolute minimum of inconvenience to occupants and the public. Metro may restrict hours of work to accommodate Metro activities or public events.

7.1.2. Responsibility for Materials and Equipment. All services, materials and equipment must be FOB delivered to the Metro jobsite. Should installation or assembly be required, offered prices must include all costs associated with delivery, assembly, setup, and proper disposal of packaging material. The Contractor must receive prior approval from Metro before delivering or storing any materials or tools on Metro's premises. Upon approval, materials and tools will be stored so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard. Until the Work is completed and accepted by Metro, the Contractor is responsible for any damage it causes to either permanent or temporary work, utilities, materials, plants, and equipment, all of which must be repaired to Metro's satisfaction at the Contractor's expense. If the Contractor removes Metro's property, fixtures, materials, or other equipment to perform the Work, the Contractor is responsible for the safekeeping of all such property, fixtures, materials, or other equipment including without limitation assuring that such items are not lost, damaged, or destroyed, and are upon Metro's directive are either returned to their original location, reinstalled, replaced, or repaired as necessary.

7.1.3. Permits. Contractor must have or obtain, at their expense, any and all permits and licenses required by the city, county, state and federal government pertaining to the Contractor's business. If any work under this Agreement requires permit(s), the responsibility for obtaining permits prior to commencing work will be determined by agreement in writing between Metro or the Contractor in the Work Order. Contractor will work under the Metro facilities' Master Permit Log (if any) as required. For Metro facilities without a master log, unless otherwise agreed in writing, Contractor will be responsible for obtaining all required trade and building permits and final inspections. Contractor may pass the cost to obtain permits related to the Scope of Work through to Metro via invoice to Metro referencing the Work Order and Metro facility on the invoice.

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7.1.4. Additional Conditions. Because of the varied nature of the work and Metro facilities, additional conditions may apply to certain work orders, some examples of other possible conditions that may apply are listed below:

- a) Work may be required to be performed AFTER regular business hours. The Metro Work Site Manager may plan and permit weekend work as needed.
- b) In most cases, if utility service needs to be interrupted, Metro and Contractor will schedule these interruptions after normal business hours. Metro and Contractor will discuss the schedule and interruption and make plans at the time of service. As arranged by Metro and Contractor, utilities and / or services must be back online at the start of each business day.
- c) Work must not hinder the operations of any sites or disturb the working environment of employees located in the vicinity of the work site, as determined by Metro.
- d) Contractor must contain all dust and debris within the work site, and may not store tools, equipment or materials outside the work site during ordinary business hours unless approved by Metro.
- e) Contractor must clean the work area and all interior and exterior surfaces, including all labels, marks and fingerprints; work area must be free from grease, dirt, stains, soiling and defacement of any kind.
- f) Use of 'green' products and materials may be specified for use by Metro.
- g) At some locations Contractors will be required to sign in and out and follow specific security and safety requirements.
- h) Any routine scheduled Work will be scheduled in advance with not less than five days prior notice to Contractor and must be performed during regular work hours.

7.2. Quality of Goods and Services. Unless otherwise directed by Metro, Contractor must perform all Work in accordance with product manufacturers' recommendations or directions for best results. Unless otherwise specified, all materials must be new, the latest model, and both workmanship and materials must be of the highest quality. All workers must be skilled in their trades.

7.3. Rates and Rate Changes. Rates are set forth in the Master Scope of Work and Rate Schedule. Rates are fixed for one year following the date of Metro's Notice of Intent to Award. Contractor rate escalation will be allowed on an annual basis thereafter, but only if Contractor included a written formula for future price escalation in its proposal that is based on the application of specific escalation factors tailored to components of the work, such as "increases in fuel costs," "prevailing wage increases," "increased labor burden," "new or increased taxes and tariffs," and "increases in specific materials costs," but only if said material costs have increased more than 10%. A general commercially reasonable and accepted escalating multiplier such as CPI may be applied, but only singly, in the absence of all other factors. In no case will an increase in

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profit ratio be part of the formula. Contractor must submit any proposed pricing revisions in writing to Metro for consideration at least thirty (30) days' before the proposed effective date. If Metro, in its sole discretion, does not agree that the escalation is reasonable, Metro may terminate the Agreement upon ten days written notice. No other pricing increases will be permitted. Price adjustments will be accomplished by written amendment and will become effective thirty (30) days from the date of last signature on the Amendment or as otherwise stated therein. Contractor agrees to provide further pricing for all other products and materials not priced in this Agreement for which Contractor is an authorized distributor, if and when requested by Metro.

7.4. Modifications. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, reduce Metro's operating cost or expenses, or otherwise result in a better or more efficient services or systems. If such changes are approved by Metro, they will be executed by written Work Order amendment signed by both parties. Such changes will not relieve Contractor of any obligation or warranty under the Agreement.

7.5. Rules of Conduct. Contractor will enforce strict discipline and good order among Contractor's employees and will exclude from the site all employees, agents, suppliers or other persons Metro determines threatens the safety of others or are otherwise disruptive. Contractor and employees performing work hereunder will carry photo identification and present it on request. Contractors that do not have specific uniforms for employees must provide identification tags or another mechanism approved by Metro in its sole discretion. Smoking is prohibited in and on all Metro facilities. The following items are prohibited on the work site: firearms, weapons, fireworks or explosive devices, alcohol, intoxicants, narcotics or other controlled substances, and pets. Possessing, using, transferring, offering, or being under the influence of any intoxicants or narcotics during working hours is prohibited. Prejudicial remarks, actions, slurs, and jokes in the workplace that are offensive to people relative to their race, color, religion, national origin, gender, gender identification, age, marital status, veteran status, disability, or sexual orientation are prohibited. Sexual harassment is prohibited. No person will be subjected to deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature, or that which is offensive, hostile, or intimidating. Harassment, discourteous treatment of any kind, or discrimination to staff, volunteers, or members of the public is prohibited. Obscenities, profanity, yelling, shouting, abusive, or maligning tone of voice and/or language is considered discourteous and is prohibited.

7.6. Coordination with Other Contractors and Other Services. Contractor must cooperate fully with other contractors and Metro employees providing systems or support to Metro during installation, operation, or maintenance of the goods and services. This includes planning for and integrating the goods and services provided under this Agreement with those provided by others. Further, Contractor must make every reasonable effort to cooperate with Metro to minimize and/or prevent any degradation of the other building systems, equipment, or services of Metro by the installation, operation, or maintenance of the HVAC materials, equipment and services.

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Contractor's failure to cooperate with Metro and other contractors may be grounds for termination.

7.7. Safety. In addition to all applicable local, state and federal laws and regulations, including federal and state OSHA safety codes, Contractor must comply with all health and safety rules and policies adopted by Metro that govern the provision of goods and services hereunder and are designed to protect the safety and health of Metro employees, customers, and the public, including said requirements adopted as of the commencement of this Agreement and any such requirements adopted by Metro during the Term. Metro will provide Contractor with prior written notice of the application of newly adopted health and safety rules and policies governing the provision of the goods and services that is reasonable under the circumstances, as determined by Metro in its sole discretion. Contractor will be solely and completely responsible for ensuring safety of all persons and property in providing services hereunder. Metro and Contractor will conduct a safety briefing prior to commencing work, and Metro will provide Contractor with all such applicable rules and policies.

7.8. State Law Required Contract Provisions. Contractor must 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.

7.8.1. ORS 279C.520. Contractor will not employ any person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the laborer must be paid at least time and a half pay and:

- All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
- For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(b).
- The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week will not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
- Contractor will give notice to their employees who work under this Agreement in writing, either at the time of hire or before commencement of Work on the Agreement, or by posting a notice in a location frequented by employees, of the

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number of hours per day and days per week that the employees may be required to work.

7.8.2. Contractor must comply with ORS 653.220 on wage rates and prohibiting wage rate discrimination, and failure to do so is cause for termination. Contractor may not prohibit any of the Contractor employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who does so.

7.8.3. ORS 279C.530. To the extent any of Contractor's employees are covered by the Oregon employment laws, Contractor and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and must comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

7.8.4. ORS 279C.800 to 279C.870. This Agreement is a contract for "public works," subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker the Contractor, or other person who is party to the Agreement uses in performing all or part of the Agreement must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon. The prevailing wage rates for public works contracts in Oregon are contained in the following publications in effect on the date Metro filed first published the solicitation for this Agreement. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml and are hereby incorporated as part of the Agreement Documents.

7.8.5. If this Agreement is subject to payment of prevailing wages under the Federal Davis-Bacon Act, Contractor must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in this Section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.dol.gov/Index.aspx>. (search for Oregon, Multnomah County, Building Construction Type) and are hereby incorporated by reference as part of the Agreement Documents. Contractors will follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>. Contractor will post the prevailing wage rates in a conspicuous and accessible place in or about the work site.

7.8.6. ORS 279C.845: Contractor or Contractor's must file with Metro a certified statement on a form provided by BOLI certifying the hourly rate of wage paid each worker employed by Contractor on the Work and that no such worker has been paid less than the prevailing rate of wage or wage specified under the Agreement. Notwithstanding ORS 279C.555 or

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279C.570(7), Metro will retain 25% of all amounts earned by Contractor until Contractor has filed the certified statements as required by ORS 279C.845. Metro and/or Contractor must pay any such retained amounts within 14 days after such certified statements are filed.

7.8.7. Contractor must file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting Work under this Agreement, unless Contractor is an COBID certified business exempt under ORS 279C.836(7).

7.8.8. ORS 468A.710. If this Agreement requires asbestos abatement, Contractor must possess an asbestos abatement license as required by ORS 468A.700 et seq.

7.8.9. ORS 279B.220. Contractor must make payment promptly, as due, to all persons supplying to Contractor labor or materials for the performance of the work provided for in the Agreement; pay any and all contributions or amounts due the Industrial Accident Fund from Contractor in the performance of the Agreement; not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or materials furnished; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

7.8.10. As required by ORS 279B.230, Contractor must promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services. Furthermore, all subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. Contractor must demonstrate that an employee drug-testing program is in place.

7.9. Time Is of the Essence/Delays. Time is of the essence of this Agreement. Contractor must make every reasonable effort to meet delivery dates and other deadlines established in the Work Order. Circumstances that may delay the delivery of goods and services from established delivery dates and other deadlines, including delays that are not the responsibility of Contractor and force majeure events, must be reported to Metro immediately upon discovery. Metro and Contractor will mutually agree in writing upon any extended schedule or pricing changes due to delays that are not the responsibility of Contractor, including force majeure events. In the event Contractor does not meet the established delivery dates or other deadlines, and Contractor has either failed to obtain written agreement from Metro to extend the time for performance or failed to cure such breach within thirty (30) days of written notice by Metro, Metro may obtain the undelivered goods and/or non-performed services from another source. Contractor will be liable for the excess costs incurred, including the difference in service pricing, and no recurring charges, one-time charges, or termination charges nor other penalties will be applied by Contractor. Additional or repeated service delivery problems may be cause for termination. Service delivery

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will not be considered complete until all discrepancies or errors have been corrected. Services not meeting Work Order specifications must be corrected at Contractor's expense. Acceptance occurs when Metro authorizes payment of the invoice. If Metro makes a payment prior to Final Acceptance, the payment will not grant a waiver of any Contractor representation or warranty, by implication or otherwise.

7.10. Remedies. The remedies provided in this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy will not constitute an election of one remedy to the exclusion of any other. The provisions of this Agreement are not to be construed as exclusive remedies or as a limitation upon rights or remedies that may be or may become available under ORS Chapter 71-83 (Uniform Commercial Code).

7.11. Liquidated Damages. Liquidated damages *may be* applicable to Work Orders for services and repair that are non-emergency and not routine maintenance. If Contractor fails to complete the work or to deliver the materials and equipment and perform the services within the time specified in the Work Order, liquidated damages may be imposed. The actual damage to Metro for delays will be substantial but is difficult or impractical to determine. It is therefore agreed that Metro will be entitled to deduct from the payments due to Contractor the sum set forth in the Work Order for each calendar day of delay past the completion date established by Metro, not to exceed \$500 per day. Payment or assessment of liquidated damages does not release Contractor from the obligations to perform under the Agreement, nor will the payment of such liquidated damages constitute a waiver of Metro's right to collect any additional damages which may be sustained by failure of the Contractor.

7.12. Suspension of the Work. Metro may at any time give notice to Contractor suspending the Work. The notice of suspension will specify the date of suspension and the estimated duration of the suspension. In no event will Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

7.13. Early Termination. In the event of a material breach, Metro may terminate this Agreement. Prior to such termination, Metro will provide Contractor with written notice of the breach and Metro's intent to terminate. If the Contractor has not entirely cured the breach within thirty (30) days of the notice, or such earlier time specified by Metro if reasonable and necessary under the circumstances as determined by Metro in its sole discretion, then Metro may terminate the Agreement at any time thereafter by giving a written notice of termination. In the event of termination hereunder, Metro will pay Contractor for undamaged materials and equipment delivered and services properly performed in accordance with the Agreement prior to the termination date, subject to set off for excess costs, as provided below. In the event of early termination, all of Contractor's Work and Work Product will become and remain property of Metro. Under no circumstances will Metro be subject to early termination penalties for recurring charges for goods or services that Metro cancels during the term of this Agreement. In the event of termination by Metro due to a breach by Contractor, then Metro may procure materials,

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equipment and services necessary to complete the project from another contractor and Contractor will be liable for the difference in cost incurred by Metro vs. Contractor's prices. Metro also will be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Agreement, the remedies for a breach of this Agreement are not exclusive or construed as a limitation on any other equitable and legal remedies that are available or may become available.

7.14. Right to Withhold Payments. Metro has 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 laborers or suppliers.

7.15. Force Majeure. Neither Metro nor Contractor will be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the party's reasonable control, including, but not limited to, fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; epidemics or pandemics, or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control. If delay in delivery due to a Force Majeure Event does not exceed thirty (30) days, such delays in delivery will automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event will likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) days. If delay in delivery due to Force Majeure Event is longer than thirty (30) days, Metro will have the right to terminate this Agreement, a Work Order or routine maintenance upon written notice to Contractor.

7.16. Compliance with Tax Laws. Contractor represents and warrants that Contractor complies with all applicable local, regional, and state Tax Laws as of the effective date of this Agreement Contractor agrees to continue to comply with all Tax Laws throughout the duration of this Agreement 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 Agreement will constitute a material breach of this Agreement. Such breach will entitle Metro to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies against Contractor available under this Agreement, 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.

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7.17. Recycling. If the Work is performed within the City of Portland, Contractor must divert a minimum of 75% of all construction and demolition waste to recycling and reuse markets, and otherwise comply with City of Portland Code 17.102.270 and related administrative rules.

7.18. Warranties.

7.18.1. Materials and Equipment. Contractor warrants to Metro that materials and equipment provided under the Agreement will be the highest quality, latest model and new unless otherwise required or permitted herein, and free from material defects in materials and workmanship, given normal use and care, for period of one (1) year, or for the period of the Manufacturer's Warranty, if longer than one (1) year. All guarantees and warranties of goods furnished to Contractor by any manufacturer or supplier will be deemed to run to the benefit of Metro and are hereby assigned to Metro. Contractor will deliver to Metro original copies of all guarantees and warranties on equipment and material furnished by all manufacturers and suppliers hereunder, with duly executed instruments properly assigning the guarantees and warranties to Metro. The documentation must also include all maintenance and operational documentation required to sustain the warranties.

7.18.2. Work. Contractor warrants to Metro that the Work will be free from deficiency and defects not inherent in the quality required or permitted, and that the Work will conform to the performance requirements of the Agreement Documents, for two (2) years following installation or completion. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty does not cover damage caused by abuse, defects due to modifications not executed by Contractor, damage due to improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. All work and equipment, its performance, use, inspection, testing and maintenance must comply with all applicable local, state and federal codes and jurisdictional requirements, including but not limited to the most recent amendment of the OR-OSHA and ANSI codes.

8. Insurance

Contractor must purchase and maintain for the duration of the Agreement, at Contractor's expense, the following types of insurance, covering Contractor, its employees, and Agents:

8.1. ISO (Insurance Services Office) approved Commercial General Liability policy, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence. The policy must include coverage for bodily injury, death, property damage, personal injury, products/completed operations, contractual liability assumed under this Agreement;

8.2. Automobile insurance with coverage for bodily injury and property damage and with limits not less than \$1,000,000 per accident or combined single limit; and

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8.3. Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$1,000,000 per accident or disease.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, Metro is entitled to the broader coverage and/or higher limits maintained by Contractor. Coverage will be primary and noncontributory with any other insurance and self-insurance. Contractor waives subrogation rights under all insurance policies. Insurance is to be placed with insurers authorized to conduct business in the state of Oregon with current A.M. Best's rating of no less than A:VII or Standard & Poor's BBB. Metro reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Contractor must provide Metro with a Certificate of Insurance and additionally insured endorsements as evidence of compliance with these coverage requirements prior to commencing work. Contractor must e-mail the Certificate of Insurance (referencing this Metro Contract number) to submitdocuments@oregonmetro.gov. Metro reserves the right to require, at any time, complete, certified copies of required insurance policies.

9. Indemnification

Contractor must defend, indemnify and hold harmless, Metro, and its agents, employees and officials (the "indemnitees") from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any attorney's fees in defense of Metro or any attorney's fees incurred in enforcing this provision) on account of personal injury, death, violation of any intellectual property rights, claim of infringement, or any damage to or loss of property or revenues arising out of or in any way connected with its performance of this Agreement, or resulting in whole or in part from any act, omission, negligence, fault or violation of law or ordinance by Contractor, its employees, agents, sub-contractors, directors or officers. If Contractor is required to defend the indemnitees, Metro is entitled to select the legal counsel used. If Contractor refuses or fails to defend as required, the indemnitees may, at their sole option, settle or defend any claims, and Contractor must, upon demand, pay to Metro the full costs of any settlement, judgment, or defense, including all expenses and attorney's fees. This indemnification provision will not apply to claims resulting from the sole negligence of Metro. This indemnification provision will be interpreted in the broadest possible scope in favor to Metro and survives expiration or earlier termination of this Agreement.

10. Ownership of Documents

Unless otherwise provided in this Agreement, all Work Product produced by Contractor under this Agreement, whether completed, partially completed, or in draft form, is the exclusive property of Metro. "Work Product" is defined to include all research, reports, programs, drawings, recordings, photographs, data, inventions, discovery, work of authorship, trade secret, or other tangible or intangible item and all intellectual property rights therein. Metro and Contractor agree that all Work Product is deemed "work made for hire," authored by Metro. If for any reason the Work

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Product is deemed not to be "a work made for hire," Contractor irrevocably assigns and transfers to Metro all its rights, title, and interest in the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Metro's request, Contractor must promptly provide Metro with electronic versions of all Work Product produced or recorded in electronic media.

Notwithstanding the above, all pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other property of Contractor are and will remain exclusive property of Contractor, and Contractor grants Metro a royalty-free, irrevocable, transferable, sublicensable, worldwide, perpetual license to use, reproduce, and modify all such pre-existing intellectual property rights embedded in the work product.

11. Retention and Access to Records; Audits

Contractor must maintain and retain all "Agreement Records" for six years following termination or expiration of this Agreement. For purposes of this section, "Agreement Records" is defined to include all books, documents, papers, plans, records, electronic or otherwise necessary to clearly document Contractor's performance and compliance with all requirements imposed on Contractor under this Agreement. Contractor must maintain fiscal records in accordance with Generally Accepted Accounting Principles.

Metro may inspect, examine, or audit the Agreement Records at any time during the six-year period, upon reasonable notice. If the original Agreement Records are located outside the boundaries of the Metro region or upon Metro's request, Contractor will provide Metro with copies of the Agreement Records. If Metro's inspection, examination, or audit reveals that Metro is owed any sum of money or establishes that any portion of any claim made against Metro by Contractor is not warranted, Contractor will pay all costs incurred by Metro in conducting the inspection, examination, or audit. Metro may withhold these costs from any sum that is due or that becomes due from Metro.

12. Compliance with Law

Contractor must comply with all federal, state, and local laws, rules, regulations, orders, and ordinances applicable to this Agreement and/or Contractor's performance of its obligations under this Agreement. This requirement includes, but is not limited to, compliance with ORS Chapters 72 and 279, 279A-C, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, ORS 659A.142, and all amendment of and regulations and administrative rules established pursuant to those laws. Contractor may not discriminate against any person(s), employee, applicant for employment or subcontractors, including procurement of materials or leases of equipment 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.

Construction Trade Services Agreement (on-call) Routine Servicing, Maintenance, and Minor Alterations



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13. Notice

Except as otherwise expressly provided in this Agreement, notices must be given in writing by personal delivery, mail, postage prepaid, or e-mail to Contractor or Metro, addressed below:

Metro:

Metro
Attn: Matthew Uchtman
777 NE Martin Luther King Jr. Blvd
Portland, OR 97232

Contractor:

Empower Digital Solutions
Attn: Erik Hopkins
7700 SW Hyland Way
Beaverton, OR 97008

with a copy to:

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

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

14. Invoices

To receive payment, Contractor's billing invoices must include the Metro Contract number, Contractor name, remittance address, Work Order number, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and reimbursable expenses incurred during the billing period in sufficient detail to support Metro's allocation of services rendered and reimbursable expenses to specific project components. Invoices cannot be submitted more frequently than once a month. Invoices must be sent to metroaccountspayable@oregonmetro.gov. Contractor must reference the Metro Contract number and the Contractor name in the e-mail subject line. The parties agree that all payments due and owing under this Agreement will be made through automated clearing house ("ACH") transfers from Metro's designated account directly to Contractor's designated account. To initiate payment of invoices, Contractor will execute Metro's standard Vendor Payment Authorization Agreement, which will authorize Metro to deposit payment for services rendered directly into Contractor's accounts with Contractor's financial institution.

15. Payment

Metro will pay Contractor within thirty (30) days of receipt of a complete invoice or within fifteen (15) days after approval of Contractor's invoice. If Metro determines that Contractor's invoice is

Construction Trade Services Agreement (on-call) Routine Servicing, Maintenance, and Minor Alterations



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not complete, Metro will send a written notice to Contractor requesting the necessary information to complete the invoice. Payment is not considered acceptance or approval of work or waiver of any defects.

16. Governing Law; Venue

This Agreement is governed by the laws of the State of Oregon without reference to its conflict of law provisions that might otherwise require the application of the law of any other jurisdiction. The parties must bring any action or suits involving this Agreement in the appropriate court in Multnomah County, Oregon.

17. No Subcontractors or Assignment.

Contractor may not subcontract any obligation under this Agreement. Contractor may not assign or transfer any obligation under this Agreement without the prior written consent of Metro. If Metro consents to an assignment, Contractor remains obligated for the full performance of this Agreement and Metro incurs no additional obligations to assignee other than its obligations to Contractor in this Agreement.

18. No Waiver of Claims

Metro cannot waive any term or condition of this Agreement unless the waiver is in writing and signed by Metro. Waiver by Metro of any breach of this Agreement is not a waiver of any subsequent breach of the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy of Metro upon default by Contractor will impair that right or remedy, or be construed as a waiver.

19. Merger; Modification

This Agreement encompasses the entire agreement of the parties and supersedes all previous understanding and practices between the parties. All changes to this Agreement, including modifications to the Scope of Work and payment schedule, must be made by written amendment signed by both parties. Subject to the foregoing, Metro may approve changes and modifications to this Agreement, including deletions of work and additional services reasonably related to the original Scope of Work.

20. Severability

If any term of this Agreement is held to be illegal, invalid, or unenforceable, it will not affect the remainder of this Agreement, which will be construed as if the illegal, invalid, or unenforceable term had never been contained in this Agreement. Notwithstanding the foregoing, if an essential purpose of this Agreement would be defeated by the loss of the illegal, invalid, or unenforceable term, then the parties will seek in good faith to agree on replacing the removed term or condition with a valid provision that will most nearly and fairly approach the effect of the removed term and the intent of the parties in entering this Agreement.

Construction Trade Services Agreement (on-call) Routine Servicing, Maintenance, and Minor Alterations



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21. No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement. Only Metro and Contractor are entitled to enforce its terms.

22. Attorney Fees

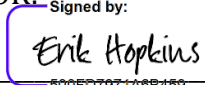
Each party is responsible for its own attorney fees, expenses, and costs in any action, suit, proceeding, or appeal.

23. Confidentiality; Media Contacts

All information relating to financial, accounting and investment matters of Metro is confidential, and Contractor cannot disclose that information. Contractor is prohibited from providing news releases, press releases, or any other written statement to a member of the news media regarding this project, without Metro's prior written authorization.

24. Counterparts; Signatures

This Agreement may be executed in counterparts or multiples, any one of which has the full force of an original. Metro and Contractor may conduct this transaction, including any amendments, by electronic means, including the use of electronic signature. The undersigned represent that they are authorized to execute this Agreement on behalf of the entity for whom they are signing.

CONTRACTOR: Signed by:
 Signature: 
500FD7971A8B459...
 Printed Name: Erik Hopkins
 Title: President
 Date: September 24, 2025

METRO: DocuSigned by:
 Signature: 
88F1CC8CDD38493...
 Printed Name: Cindy Wallace
 Title: Executive Director
 Date: September 24, 2025

Attachments:

- A: Master Scope of Work and Rate Schedule
- B: Form of Work Order

Master Scope of Work Attachment A to Construction Trade Services Contract (on-call)



Metro Contract #940373
ITB 4442

Master Scope of Work - Attachment A

Metro Project Manager:

Name: Steve Ebner

Email: SteveEbner@oregoncc.org

Telephone: 503-731-7834

Contractor Project Manager:

Name: Erik Hopkins

Email: erik.hopkins@empowerdigital.com

Telephone: 503-806-0530

General Purpose and Goal of Work:

Provide low-voltage services, repair and installation for the Oregon Convention Center (OCC) and Portland Expo Center (Expo).

Detailed Description of the Scope of Services to be Provided:

Low Voltage Services Description of Work General:

- Low voltage repair, maintenance, and new installation must be performed by licensed LEA/LEB technicians. See details below and Schedule C under Schedule of Bid Prices.
- Plan, design and install wiring and equipment for low-voltage systems.
- Furnish, install, repair and replace a variety of low voltage voice and data/telecommunications components and equipment including but not limited to low voltage conductors, telephone/communication wiring, fiber optic lines, racks, patch panels, circuits, work area outlets, and any other voice and data cables Metro may require. Terminations included as required.
- Provide maintenance and repair services to ensure site systems function correctly and safely.
- Troubleshoot, diagnose and fix problems within low-voltage systems.
- Provide programming services as needed to low-voltage systems that may require it.
- Ensure all work complies with relevant electrical and building codes.

Low voltage systems may include but are not limited to:

- Security Systems: including alarm systems, access control, and CCTV (closed-circuit television).
- Fire Alarm Systems
- Data Networks including ethernet and fiber optic cabling for internet and local area networks.
- Audio/Visual Systems including speaker systems, projectors, and other AV equipment in homes and businesses.
- Building Automation Systems that control lighting, thermostats, and other devices.
- Telephone Systems: PBX (Private Branch Exchange) and other communication systems.
- Industrial Control Systems (ICS) – examples include Programmable Logic Controllers (PLCs), Supervisory Control and Data Acquisition (SCADA) systems, and Distributed Control Systems (DCSs).

**Master Scope of Work
Attachment A to Construction Trade Services Contract (on-call)**



Metro Contract #940373
ITB 4442

Work will include but is not limited to:

- Providing structured cabling for computer networks
- Installing ethernet cables from a central rack or closet to network ports
- Providing neatly arranged, labeled, tested, and connected finished work
- Installing modular patch panels and network switches, wireless access points
- Pulling cables and terminating jacks for Voice over IP (VoIP) phone lines and handsets
- Installing and splicing fiber optic cables for networks and internet connections
- Installing wiring for video displays, speakers, microphones, projectors, and other audio-video equipment
- Run AV cables through walls, ceilings, and conduit to connect various AV components.
- Installation and cabling for signage such as digital signage platforms
- Install smart lighting switches, occupancy sensors, temperature sensors, and motorized shading controllers
- Install cables and devices for access control, camera surveillance, intrusion detection, and fire alarms
- Run wires to card readers, keypads, security cameras, motion sensors, intercom stations, and fire detection devices.
- Integrate systems and program settings and logic as required.
- Maintain and/or provide records, reports, documentation, plans, instructions and estimates.

Unit Price Rate Schedule, Including Emergency Labor Rates:

Journeyman Limited Energy (LEA/LEB) Technician		
<i>Time Designation</i>	<i>Description</i>	<i>Hourly Rate</i>
Regular Time	Mon - Fri 8:00 am- 5:00 pm	\$150.00
Overtime	Mon – Fri before 8 am, after 5 pm, weekends, holidays)	\$225.00
Apprentice Limited Energy (LEA/LEB) Technician		
<i>Time Designation</i>	<i>Description</i>	<i>Hourly Rate</i>
Regular Time	Mon - Fri 8:00 am- 5:00 pm	\$125.00
Overtime	Mon – Fri before 8 am, after 5 pm, weekends, holidays)	\$187.50
Material Markup		20%

Escalation Clause

Metro expects firm pricing for the first year of the contract counting from the date on the Notice of Intent to Award. Requests for pricing changes must be submitted in writing to Metro 45 days prior to price changes going into effect. Increases may only occur with the express written approval of Metro in the form of written contract amendment.

Permits:

Unless otherwise set forth in the Work Order, Contractor is responsible for all obtaining all permits, to be reimbursed by Metro.

Master Scope of Work Attachment A to Construction Trade Services Contract (on-call)



Metro Contract #940373
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Routine on-call repair services (non-emergency) will be provided as follows:

- 5-day service availability (Mon-Fri) during normal contractor shop hours

Liquidated Damages:

Optional at Metro's discretion, to be set forth in the Work Order, not to exceed \$500 per day

Hours of work:

- Contractor will be available for work 24 hours a day, seven (7) days a week. Hourly rates will commence upon arrival on site.
- Contractor will provide an emergency telephone number for off hour services requests.

Scheduling Expectations:

Due to very busy schedules at the Oregon Convention Center and Portland Expo Center locations, Contractor must adhere to very strict timetables and schedules for all work. Work may take place during odd hours seven days a week and work periods may be severely restricted and may have to be split into multiple days to avoid interfering with events. Contractor must understand that periods available for offloading materials and supplies may also be limited at times. It is vital that Contractor show up on time for appointments, stick to the required schedules, and be cleaned up and out of the work area on time when required.

Scheduled Projects:

Metro may request written estimates for non-emergency projects. Estimates will be at no cost to Metro. If estimate is accepted work will be specified in written work order prior to commencement of work. The work hours for non-emergency projects will be estimated and placed on a work order for that project. Work will be specified in the written work order. Materials needed for the project will either be purchased by Metro or by the Contractor, as agreed upon for each project. If any project requires permit(s), the decision whether Metro or the Contractor will obtain such permit(s) will be agreed to in advance and stated on the work order. The Contractor will invoice Metro, and reference the original work order number on the invoice.

All work and equipment, its performance, use, inspection, testing and maintenance will comply with all applicable codes and jurisdictions, including but not limited to the most recent amendment of the OR-OSHA and ANSI codes.

**Form of Work Order
Attachment B to
Construction Trade Services Agreement (on-call)**



Metro Contract #940373
ITB 4442

Form of Work Order - Attachment B

METRO CONTRACT NUMBER: _____ WORK ORDER # _____ PO # _____
Contractor company: _____ Type of services: _____
Contractor contact: _____ Contractor email: _____
Project Name: _____ Project # _____
Metro Project Manager: _____ Email: _____

PROJECT SUMMARY

Summary of project here

DESCRIPTION OF WORK/PROJECT

Description of work

DELIVERABLES

(to be completed by project manager and Contractor)

- √ Required features:
- √ Project broken down by tasks including: project initiation, product requirements, product user interface design, product technical requirements, and product development and delivery.
- √ System Performance standards.

Project product deliverables include _____

Additional service deliverables include: **training for Metro staff on how to access and use the systems.**

SCHEDULE

Project start, completion and milestones

PAYMENT AND BILLING

Contractor agrees to bill Metro on an hourly basis for services and deliverables outlined in this work order as per Agreement Rate Schedule up to a not-to-exceed amount of \$_____.

**Form of Work Order
Attachment B to
Construction Trade Services Agreement (on-call)**



Metro Contract #940373
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Payment shall be based on completion of project milestones, based on the following schedule of values:

(to be completed by project manager and Contractor)

The maximum price includes all fees, costs and expenses of whatever nature. Each Metro payment to Contractor will equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing invoices must 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. Invoices cannot be submitted more frequently than once a month. Invoices must be sent to metroaccountspayable@oregonmetro.gov. Contractor must reference the Metro contract number and the Contractor name in the email subject line. Contractor's billing invoices for services through June 30 must be submitted to Metro by July 15.

Metro will pay Contractor within thirty (30) days of receipt of a complete invoice or within fifteen (15) days after approval of Contractor's invoice. If Metro determines that Contractor's invoice is not complete, Metro will send a written notice to Contractor requesting the necessary information to complete the invoice. Payment is not considered acceptance or approval of work or waiver of any defects.

Contractor: Email all invoices to metroaccountspayable@oregonmetro.gov.

Invoices must include the PO number provided by Metro staff to ensure timely processing of your payment. Invoice Metro on a monthly basis and include detailed timesheets that include specific tasks as they relate to the scope of work, hours for each task, rates, and staff assigned. Not-to-exceed cost includes all expenses. All requested reimbursable expenses must be billed at cost. No mark-ups, commissions or percentage of costs allowed.

CONTRACTOR

METRO

Signature: _____

Signature : _____

Date : _____

Date : _____

Metro staff signing work order must have signature authority for stated budget/budget coding.