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AGREEMENT FOR SOLE SOURCE PURCHASE

THIS CONTRACT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **PARKING AUTHORITY OF RIVER CITY,** herein referred to as **"METRO GOVERNMENT",** and **POM, INCORPORATED,** with offices located at 200 South Elmira Avenue, Russelville, Arkansas 72811, herein referred to as **"CONTRACTOR",**

W I T N E S S E T H:

WHEREAS, the Metro Government wishes to purchase parking meter replacement parts; and

WHEREAS, the Contractor has been determined by the Metro Government to be a sole source to provide same,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF SERVICES

A. Contractor shall, at the request of the Metro Government, provide goods under the terms of this Agreement.

B. The services of Contractor shall include but not be limited to the following:

1. Parking meter replacement parts as described on Attachment A attached hereto and fully incorporated herein.

II. FEES AND COMPENSATION

A. The Metro Government shall pay Contractor for goods as priced on Attachment A. Total compensation payable to Contractor for services rendered pursuant to this Agreement shall not exceed **SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00).**

B. Payment shall be made pursuant to Attachment A.

C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

III. DURATION

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A. This Agreement shall begin July 1, 2022 and shall continue through and including June 30, 2023.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement.

IV. RECORDS-AUDIT

Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

V. INSURANCE REQUIREMENTS

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Insurance coverage shall be required of Contractor in accordance with Schedule B attached hereto.

VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

The Contractor shall indemnify, hold harmless, and defend Metro Government, its elected and appointed officials, employees, agents, successors in interest, agencies, departments, affiliates, and assigns from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's Subcontractors, if any) performance or breach of the contract provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

VII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of $600.00 paid to non-corporate contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

VIII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the

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Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

IX. AUTHORITY

The Contractor, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

X. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

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(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent

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written agreement duly executed by all of the parties hereto. In the event of a conflict between the terms of this Agreement and the terms in any of the Attachments, this Agreement shall govern.

XIII. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XIV. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XV. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XVI. CALCULATION OF TIME Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Contractor is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVII. CAPTIONS The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

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XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS The Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND LEGALITY CONTINGENT UPON APPROVAL OF OF THE APPROPRIATION FOR THIS CONTRACT BY THE METRO COUNCIL

DocuSigned by:
Paul Rutherford
2C1BED9DF1BB454...

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

Date: 7/22/2022

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

DocuSigned by:
Joel Neaveill
B4B4C603FB3A42D...

JOEL NEAVEILL, DIRECTOR, PURCHASING DEPARTMENT

Date: 7/26/2022

DocuSigned by:
Tracey Mathews 7/26/2022
2BFD1429F7E04CA...

PARKING AUTHORITY OF RIVER CITY

DocuSigned by:
Tiffany Peebles
B6DD3356541C847B...

TIFFANY PEEBLES, DIRECTOR

Date: 7/26/2022

POM, INCORPORATED

By: DocuSigned by:
Terry Henderson
398EE0E7029C490...
Terry Henderson

Title: Marketing Manager

Date: 7/29/2022

Taxpayer Identification No. (TIN): _____

Louisville/Jefferson County Revenue Commission Account No.: _____

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ATTACHMENT A

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POM Incorporated

NCPA Cooperative Pricing as of July 16, 2019

	A	B	D	E	F	G	H	I	J	K
1	Specification Ref.	Description	1-10 LIST	11-25 7% disc	26-100 10% disc	101-500 15% disc	501-1000 20% disc	1000-5000 25% disc	COMMENTS	Photos
2	1.1	Zinc meter housing only, no dome, no mechanism; PN CFG-EMETER/ZTPHOUS-DOME	$ 311.79	$ 289.97	$ 280.61	$ 265.02	$ 249.43	$ 233.84	Add a mechanism and dome to make a complete meter. Base model, has open-top inner coin box and standard locks; black or gray powder paint finish.	
3	1.1.a	Zinc smart meter dome; PN 500-011	$ 83.81	$ 79.62	$ 75.43	$ 71.23	$ 67.04	$ 62.85		
4	1.1.a.1	Zinc conventional meter dome; PN CFG-DOMETP	$ 49.60	$ 47.12	$ 44.64	$ 42.16	$ 39.68	$ 37.20		
5	2.1-2.11	Solar Smart Mechanism; PN 500-016	$ 871.81	$ 828.22	$ 784.63	$ 741.04	$ 697.45	$ 653.86	Accepts all major credit and debit cards, as well as prepaid smart cards, tokens, US coins, pay-by-cell at no additional charge. Meter one or two (left-right) spaces AT THE SAME PRICE.	
6	**2.12**	**Complete solar smart meter (housing, mechanism, and dome); PN CFG-EMETER/PARKTEL**	$ 1,267.41	$ 1,204.04	$ 1,140.67	$ 1,077.30	$ 1,013.93	$ 950.56		
7	3	MeterManager.Net Cloud Management Software; PN 301-001	$ 1,200.00	$ 1,200.00	$ 1,200.00	$ 1,020.00	$ 1,200.00	$ 1,200.00	Annual fee, for conventional coin meters; this fee is covered for the smart meters in the monthly wireless plan/backoffice hosting fee.	
8	4.1	Conventional APM-E coin mechanism; PN CFG-APME	$ 233.13	$ 221.48	$ 209.82	$ 198.16	$ 186.51	$ 174.85	Model APM-E single-space, base model	
9	4.1+1.1+1.1.a.1	**Complete conventional APM-E coin meter (housing, mechanism, and dome); PN CFG-EMETER/APME**	$ 594.53	$ 564.80	$ 535.08	$ 505.35	$ 475.62	$ 445.90	Base model housing and mechanism	
10	4.1.a	Add-on for conventional coin mechanism to meter 2 left-right spaces; PN-CFG-APME/2X	$ 225.00	$ 209.25	$ 202.50	$ 191.25	$ 180.00	$ 168.75	Becomes Model APM-2X two-space mechanism	

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NCPA Cooperative Pricing as of July 16, 2019

	A	B	D	E	F	G	H	I	J	K
1	Specification Ref.	Description	1-10 LIST	11-25 7% disc	26-100 10% disc	101-500 15% disc	501-1000 20% disc	1000-5000 25% disc	COMMENTS	Photos
11	4.1.b	Rotary high-visibility display option for conventional coin mechanism, in lieu of base model LCD display; PN CFG-EMETER/WHEELOPT	$ 35.43	$ 32.95	$ 31.89	$ 30.12	$ 28.34	$ 26.57		
12	4.1.c	Add-on for prepaid smart card reader, for conventional coin mechanism; PN 301-002	$ 27.73	$ 25.79	$ 24.96	$ 23.57	$ 22.18	$ 20.80	involves adding card slot, inner card reader, and firmware to handle card acceptance and refunding	
13	4.2	SmartLock add-on to housing, any housing version; PN 103-502	$ 22.46	$ 20.89	$ 20.22	$ 19.09	$ 17.97	$ 16.85	Includes solenoid, all cable, and modification to the vault door	
14	4.2.a	SmartLock add-on to conventional coin mechanism, PN 300-806. Audit with Item 7 handheld pda; add item 4.1.c smart card reader if auditing with a smart card.	$ 5.91	$ 5.49	$ 5.31	$ 5.02	$ 4.72	$ 4.43	cable coming from the mechanism, and firmware code to handle the SmartLock function	
15	4.3.a	Add-on for iron vault, rectangular door style, $65 coin capacity; PN CFG-VAULTTP/IRON	$ 85.03	$ 79.08	$ 76.53	$ 72.28	$ 68.03	$ 63.78	Iron Tamperproof vault	
16	4.3.a.1	Add-on for iron vault, rectangular door style, $118 coin capacity; PN CFG-VAULTTP/MAGNUM	$ 170.07	$ 158.16	$ 153.06	$ 144.56	$ 136.05	$ 127.55	Magnum vault	
17	4.3.b	Add-on for iron vault, round door style, $65 coin capacity; PN CFG-VAULT95	$ 44.88	$ 41.74	$ 40.39	$ 38.15	$ 35.90	$ 33.66	Iron 95 vault	
18	4.4	Add-on for security inner coin box in lieu of open-top cup, $65 coin capacity (vaults 1.1, 4.3.a, or 4.3.b); PN 108-006	$ 42.52	$ 39.54	$ 38.27	$ 36.14	$ 34.01	$ 31.89	Specify lock code if matching an existing collection system	
19	4.4	Add-on for security inner coin box in lieu of open-top cup, $118 coin capacity (vault 4.3.a.1); PN 108-914	$ 37.79	$ 35.15	$ 34.01	$ 32.12	$ 30.23	$ 28.34	Magnum size, specify lock code if matching an existing collection system	
20	4.5	Add-on for iron upper housing in lieu of zinc.	$ 40.00	$ 37.20	$ 36.00	$ 34.00	$ 32.00	$ 30.00	Does not accommodate solar smart mechanism.	

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POM Incorporated

NCPA Cooperative Pricing as of July 16, 2019

	A	B	D	E	F	G	H	I	J	K
1	Specification Ref.	Description	1-10 LIST	11-25 7% disc	26-100 10% disc	101-500 15% disc	501-1000 20% disc	1000-5000 25% disc	COMMENTS	Photos
21	4.6	Add-on for free time button added to APM-E Mechanism	$ 47.06	$ 43.77	$ 42.35	$ 40.00	$ 37.65	$ 35.30	This add-on is not required for 2-space (APM-2X) nor for solar smart mechanism because those meters already have a button that can be programmed to give free time when selecting left or right parking space.	
22	5	**ACCESSORIES**								
23	5.1	Coin collection cart, price includes 5.1.a canister with security collection head; PN CFG-COLLECTCART	$ 1,884.92	$ 1,752.98	$ 1,696.43	$ 1,602.18	$ 1,507.94	$ 1,413.69	Specify key code if matching existing system; base model: solid rubber cart wheels & solid stop front; options: swivel caster on front (add $50 all qtys), pneumatic tires (add $100 all qtys). Although a volume purchase of carts is unlikely, volume discounts may apply when buying cart(s) with a volume of meters.	
24	5.1.a	Spare coin canister with security collection head; PN CFG-COLLECTBOX	$ 850.34	$ 790.82	$ 765.31	$ 722.79	$ 680.27	$ 637.76	Specify key code if matching an existing collection system. Although a volume purchase of spare canisters is unlikely, volume discounts may apply when buying spare canisters with a volume of meters.	
25	5.2, 5.2.a	Smart Cards, minimum order 1,000; preprinted full color 1 side/1 color reverse, loaded with customer specified value, with serial numbers, shrink-wrapped in packages of 100); PN 301-022	$ 4.85	see note	see note	see note	see note	see note	Prepaid Atmel Cryptomemory chip cards; price shown is 1,000-card min order and includes full color custom artwork one side, one color reverse, sequential inventory control numbers, preloaded with specified value or set to $0 so that city may load them as they are sold. Volume discounts: 2K - 5%, 3K - 10%, 5K - 15%, and 10k - 20%	
26	5.3	Vintage post sleeve and base set; PN 103-542-POW/103-543-POW	$ 77.95	$ 72.49	$ 70.15	$ 66.26	$ 62.36	$ 58.46	Specify paint color gray or black when ordering; any other color, add $5 and provide Pantone or PMS color number.	
27	5.4	Aluminum twin mounting adapter; PN 100-556	$ 61.41	$ 57.11	$ 55.27	$ 52.20	$ 49.13	$ 46.06	Raw finish; if painted, add $5 and specify gray or black powder paint. Any other color, add an additional $1 and provide PMS or Pantone color number.	
28	5.4.a	Iron twin mounting adapter; PN 108-326	$ 103.93	$ 96.66	$ 93.54	$ 88.34	$ 83.14	$ 77.95	Powder painted gray or black. Any other color, add $6 and provide PMS or Pantone color number.	
29	6	Meter post, specify length; PN 100-534	$ 59.05	$ 54.92	$ 53.15	$ 50.19	$ 47.24	$ 44.29	With weephole. See specs for recommended length.	
30	7	Handheld PDA kit; PN 301-250/301-267	$ 2,770.00	$ 2,576.10	$ 2,493.00	$ 2,354.50	$ 2,216.00	$ 2,077.50	Archer 2 field PC with POMComm application and proprietary IRED interface for communications with APM-E or APM-2X convention coin meters. High volume purchase is not likely for these, but they may be discounted further when purchased with high volume of meters. Although a volume purchase of handheld kits is unlikely, volume discounts may apply when buying handheld kits with a volume of meters.	

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NCPA Cooperative Pricing as of July 16, 2019

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1	Specification Ref.	Description	1-10 LIST	11-25 7% disc	26-100 10% disc	101-500 15% disc	501-1000 20% disc	1000-5000 25% disc	COMMENTS	Photos
31		**RECURRING FEES: (all billed direct from POM outside the national contract and may change with time based on volume and mutual negotiations).**								
32		**Monthly, per-smart meter fee for wireless plan/backoffice hosting**	$5.00 per meter per month						Provider: Kore Telematics	
33		**Monthly, per credit card transaction fee, for PCI secure gateway services**	$0.10 per settled credit card transaction						Provider: CreditCall (an NMI company)	
34		**Annual fee for cloud backoffice (when meters are not smart wireless meters, but rather conventional coin meters)**	$1,200 per year						MeterManager.Net	

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SCHEDULE B

INSURANCE REQUIREMENTS

Prior to award of contract and commencing work, the Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to the Division of Purchasing and approved by the Louisville/Jefferson County Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by the Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Louisville/Jefferson County Metro Government (Metro). Metro may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro's option, actual copies of policies.

A. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the contractors or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form – Primary, non-contributory, with a **$1,000,000** Combined Single Limit for any one Occurrence and **$2,000,000** aggregate for Bodily Injury, Personal Injury and Property Damage, and Products/Completed Operations including:

   a. Premises - Operations Coverage
   b. Products and Completed Operations
   c. Contractual Liability

III. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

IV. MISCELLANEOUS

A. The Contractor shall procure and maintain insurance policies as described herein and for which the Purchasing Division shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro at least 15 days prior to the expiration of any policy(s).

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B. **Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Purchasing Division
611 West Jefferson Street
Louisville, KY 40202

AND

C. **Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

D. CANCELLATION OR MATERIAL CHANGE OF COVERAGE: **Contractor shall notify Metro's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro's Risk Management Division within two business days. If Contractor fails to notify Metro as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.**

E. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.