

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 16-25

For the purpose amending the contract with LMN Architects for the Oregon Convention Center – “Facility Interior Finishes Master Plan – Consulting and Design Services” to include the Oregon Convention Center (OCC) entries design project and Plaza design project and authorizing the General Manager of Visitor Venues to amend the contract with LMN Architects.

WHEREAS, it is in the best interest of the Metropolitan Exposition Recreation Commission (MERC) and the OCC to have one architectural firm oversee the design of the entryways and the design of the Plaza; and

WHEREAS, this approach will likely result in lower fees, fewer change orders, promote efficient use of public funds and result in cost savings; and

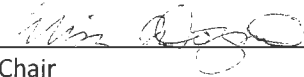
WHEREAS, In accordance with applicable public contracting law, MERC may amend the LMN contract to add the OCC entries design project and Plaza design project to LMN’s agreement, if MERC makes certain findings regarding the original procurement.

WHEREAS, MERC staff recommend that MERC use a more robust contract (the Amendment) for the full scale architectural and engineering services required for future projects provided by LMN; and

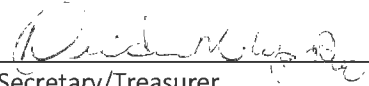
WHEREAS, the scope of the projects contemplated under the Interior Finishes Master Plan will require additional time and MERC staff thereby recommend that MERC extend the term of the Agreement through June 30th of 2022.

BE IT THEREFORE RESOLVED as follows:

1. MERC finds that:
 - a. The Amendment is within the scope of the original Request for Proposals; and
 - b. The Amendment would not materially impact the field of competition for award of the original contract; and
 - c. It is unlikely that the number of proposers would significantly increase if the RFP were re-issued to include the entries design and Plaza design work.
2. MERC approves the Amendment to include the OCC Plaza and Exterior Entries design project and extend the term in a form substantially similar to the attached Exhibit 1.
3. MERC delegates authority to the Metro General Manager of Visitor Venues to execute the Amendment.




Chair



Secretary/Treasurer

Approved As to Form:
Alison R. Kean, Metro Attorney

By: 

Nathan A. S. Sykes
Deputy Metro Attorney

Amendment for Design Services Price Agreement

MERC Contract No. 306000

THIS AMENDMENT FOR DESIGN SERVICES PRICE AGREEMENT ("Amendment") is between Metro Exposition Recreation Commission (MERC), an appointed commission of Metro, located at 600 N.E. Grand Avenue, Portland, OR 97232-2736, and LMN Architects, referred to herein as "Contractor," located at 801 Second Avenue, Suite 501, Seattle, WA 98104 and amends that certain Professional Services Agreement between MERC and Contractor dated _____ and referenced above, and shall supersede and be a complete substitution of said Professional Services Agreement's terms for all future work.

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

1. Duration. This Amendment shall be effective _____, 2016 and shall remain in effect until and including June 30, 2022, unless terminated or extended as provided in this Amendment.
2. General Scope of Services. Contractor shall provide all phases of design development for interior and exterior remodeling and renovation projects at the Oregon Convention Center, from scoping and concept design to full construction drawings and building permit land use permit/entitlement processes. A series of design projects will be individually scoped and commissioned by MERC Project Work Order. All services and materials shall be provided by Contractor in accordance with the General Scope of Services, the Project Work Order and detailed scope of work, in a competent and professional manner.
3. Standard Form Professional Design Services Contract. All terms of the Standard Form Professional Design Services Contract attached as Exhibit A are hereby incorporated by reference.
4. Project Work Orders. Individual design projects will be scoped and commissioned by written Project Work Order. Each Project Work Order will contain the Contractor's scope of work and performance schedule, including completion date, payment methodology and a maximum amount payable to the Consultant for the design services required. No services may be provided under this Amendment unless commissioned by Project Work Order. Certain terms and provisions of the Standard Form Professional Design Services Contract, including but not limited to provisions relating to CM/GC contracting, may be removed or adapted by agreement of MERC and Contractor, as part of the Project Work Order, to make the governing terms project specific (the "Professional Design Services Contract"). Each Project Work Order shall contain language stating that the Project Work Order is subject to and includes all the terms of this Amendment and the terms of the Professional Design Services Contract. Project Work Orders shall be subject to MERC Commission approval and signed by both MERC and Contractor.
5. Price/Payment. The precise quantity of services required during the duration of this Amendment cannot be determined. MERC shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Project Work Orders in the maximum stated in each Project Work Order. Payment shall be made by MERC on a Net 30 day basis upon approval of Contractor invoice.
6. Project Information. Contractor shall share all project information and fully cooperate with MERC, informing MERC of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of MERC.
7. Tax Status and Tax Identification Number. Contractor shall identify and certify its tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to MERC.
8. Notice.

To Contractor: Brian Tennyson
LMN Architects
801 Second Ave, Suite 501
Seattle, WA 98104

To MERC: Metro Procurement Services
600 NE Grand Ave
Portland, Oregon 97232

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With Copy to: Nancy Strening
600 NE Grand Ave.
Portland, OR 97232

LMN Architects

By _____

Print Name _____

Date _____

METROPOLITAN EXPOSITION RECREATION
COMMISSION

By _____

Print Name _____

Date _____

Standard Form Professional Design Services Contract – Attachment A

MERC Contract No. 306000

PROFESSIONAL DESIGN SERVICES CONTRACT (Architectural, Engineering, Land Surveying, and Related Services)

THIS CONTRACT is between Metro Exposition Recreation Commission (“MERC”), an appointed commission of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter (“Metro”), located at 600 NE Grand Avenue, Portland, OR 97232-2736, and LMN Architects (“Consultant”) (MERC and Consultant are collectively the “Parties”).

ARTICLE 1

Initial Contract Information

1.1 Term. This Contract shall become effective on the date that the Contract is fully executed by the Parties. No work shall be performed under the Contract prior to the effective date. This Contract shall expire, unless otherwise terminated or extended, on June 30, 2022. Passage of the Contract expiration date shall not extinguish, prejudice, or limit either Party’s right to enforce this Contract with respect to any default or defect in the performance that has not been corrected.

1.2 Initial Project Information.

1.2.1 Project Name: _____

1.2.2 General Project Description: _____. The Project details are set forth in the Project Work Order and Scope of Work set out in Exhibit A.

1.2.3 Construction Cost Budget: _____.

1.2.4 Design Schedule _____.

1.2.5 LEED: The Project will be designed to obtain a Green Building Council’s (USGBC’s) Leadership in Energy and Environmental Design (LEED) certification at the silver certification level, at a minimum.

1.3 MERC’s Anticipated Design and Construction Schedule.

1.3.1 Design Phase Milestone Dates: _____

1.3.2 Start of Construction: _____

1.3.3 Substantial Completion: _____

1.4 Form of Construction Contract. MERC intends to utilize the Construction Manager/General Contractor (“CM/GC”) alternative contracting method of construction contracting pursuant to Oregon’s Public Contract Rules. For the purposes of this Contract, any reference to the “Contractor” shall mean the CM/GC.

1.5 Contract Documents. The Contract consists of:

1.5.1 This Contract and the Amendment for Design Services Price Agreement, dated _____, 2016.

Standard Form Professional Design Services Contract – Attachment A

MERC Contract No. 306000

- 1.5.2 Exhibit A. MERC's Project Work Order and Scope of Work.
- 1.5.3 Exhibit B. MERC's Request for Work Order Proposals dated _____.
- 1.5.4 Exhibit C. Consultant's Project Work Order Proposal dated _____.
- 1.5.5 Exhibit D. Consultant and sub-consultant rates for additional services.
- 1.5.6 [Other Exhibits that should be part of the Contract.]

1.6 Order of Precedence. In the event of any apparent or alleged conflict in the Contract documents, such conflict shall be resolved in the order of precedence listed in Section 1.5, except that any subsequent Contract amendments approved by both Parties shall take precedence over the documents listed in Section 1.5 and one another by date, latest first.

ARTICLE 2

Relationship of the Parties

2.1 Consultant shall provide the Services for the Project in accordance with the terms and conditions of this Contract. Consultant's performance of Services shall be as a professional consultant to MERC to carry out the Project and to provide the technical documents and supervision to achieve MERC's Project objectives.

2.2 In administering this Contract, MERC may retain the services of an independent project manager and other consultants as needed to fulfill MERC's objectives.

2.3 Consultant shall provide a list of all sub-consultants that Consultant intends to utilize on the Project (the "Sub-consultants"). This list shall include such information on the qualifications of the Sub-consultants as may be requested by MERC. MERC reserves the right to review the Sub-consultants proposed. Consultant shall not retain a Sub-consultant to which MERC has a reasonable objection.

2.4 Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Sub-consultants identified by Consultant (collectively, the "Key Personnel" and individually, the "Key Person"). Therefore, Consultant shall make available Key Personnel as identified in its proposal. Consultant shall provide to MERC a list of the proposed Key Personnel to be assigned to the Project. This list shall include such information on the professional background of each Key Person as may be requested by MERC. If any Key Person becomes unavailable to Consultant, the Parties shall mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of MERC, Consultant shall not: (i) re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Contract; (ii) allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Contract; or (iii) substitute any Key Person. Any of these actions shall constitute a material breach of the Contract. Consultant shall remove any individual or Sub-consultant from the Project if so directed by MERC in writing following discussion with Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

ARTICLE 3

Consultant's Responsibilities; Representations and Warranties

Standard Form Professional Design Services Contract – Attachment A

MERC Contract No. 306000

3.1 Consultant agrees that:

3.1.1 The phrase “Standard of Care” that is used in this Contract is defined as follows: the same professional skill, care, diligence, and standards as similar professionals performing similar services in the Portland Metropolitan Area under similar circumstances (the “Standard of Care”);

3.1.2 Notwithstanding Section 3.1.1 above, if the services are so specialized that there are no similar professionals performing similar services in the Portland Metropolitan Area, the “Standard of Care” that is used in this Contract is the same professional skill, care, diligence, and standards as similarly skilled professionals performing similar specialized services in the United States under similar circumstances.

3.1.3 Consultant shall perform all Services in accordance with the Standard of Care;

3.1.4 Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables, and other documents so that they accurately reflect, fully comply with, and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies that are due to causes beyond the control of Consultant;

3.1.5 Consultant shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables, and other documents prepared by Consultant at no additional cost to Metro;

3.1.6 Metro’s review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents. Any review or acceptance by MERC will not relieve Consultant of any responsibility for complying with the Standard of Care;

3.1.7 Consultant shall, at no additional cost to MERC, render assistance to MERC in resolving problems or other issues relating to the Project design or to specified materials;

3.1.8 During the term of the Contract, Consultant shall obtain, hold, maintain, and fully pay for all licenses and permits required by law for Consultant to conduct its business and perform the Services. During the term of the Contract, MERC shall pay for and Consultant shall obtain, hold, and maintain all licenses and permits required for the Project, unless otherwise specified in the Contract. Consultant shall review the Project site and the nature of the Services and advise MERC throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

3.2 Subconsultants.

3.2.1 Consultant shall provide in all subconsultant agreements that the Sub-consultant will be bound by the terms and conditions of this Contract to the extent that they relate to the Sub-consultant’s work. Consultant shall require each Sub-consultant to enter into similar agreements with lower tier sub-consultants. Consultant shall make available to each proposed Sub-consultant, prior to the execution of the subconsultant agreement copies of this Contract. Sub-consultants shall similarly make copies of applicable portions of such documents available to their respective proposed sub-tier sub-consultants.

3.2.2 All Sub-consultant agreements shall also provide that they are assignable to MERC at MERC’s option, in the event that MERC terminates the Contract. Consultant will provide to MERC a copy of all subconsultant agreements.

Standard Form Professional Design Services Contract – Attachment A

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3.2.3 Consultant shall pay all Sub-consultants and other subcontractors as required by Consultant's contracts with those Sub-consultants and subcontractors. Consultant agrees that MERC has no direct or indirect contractual obligation or other legal duty whatsoever to pay the Sub-consultants and other subcontractors of Consultant or otherwise ensure that Consultant makes full and timely payment to those Sub-consultants and subcontractors for Services performed on the Project.

3.2.4 The Consultant will hire a commissioning agent or agents as a Sub-consultant.

3.3 Consultant represents and warrants to MERC that:

3.3.1 Consultant has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Consultant have the actual authority to bind Consultant to the terms of this Contract;

3.3.2 When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms; the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon Consultant and do not result in a violation of any law, regulation, court decree or court order, or other legal process applicable to Consultant;

3.3.3 Consultant shall, at all times during the term of this Contract, be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;

3.3.4 Consultant is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Contract and to design and administer a project having the scope and complexity of the Project;

3.3.5 Consultant has the capabilities and resources necessary to perform Consultant's obligations under this Contract;

3.3.6 Consultant is, or shall become, in a manner consistent with the Standard of Care, familiar with all current laws, rules, and regulations that are applicable to the design and construction of the Project;

3.3.7 All Services shall be performed in accordance with the Standard of Care;

3.3.8 The Project, when completed and if constructed in accordance with the intent established by the drawings, specifications, deliverables, and other documents prepared by Consultant pursuant to this Contract, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended; and

3.3.9 The published specifications of the "Automated Systems" that Consultant has specified, designated, and planned pursuant to this Contract conform to the Contract requirements. For the purposes of this subsection, "Automated Systems" shall mean any computers, software, firmware, HVAC systems, elevators, electrical systems, fire or life safety systems, security systems, and any other electrical, mechanized, or computerized devices serving the Project.

3.4 Consultant will provide its services in conjunction with the services of a CM/GC as provided in MERC's Construction Manager/General Contractor Contract and MERC General Conditions as they are constituted on the date of this Contract.

3.5 The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided in this Contract or at law.

ARTICLE 4

Metro’s Responsibilities and Authority

4.1 Authority and Relationships of MERC and CM/GC. MERC shall appoint a MERC representative (“Project Manager”). Except as specifically provided in this Section, no individual other than the duly appointed Project Manager acting or purporting to act as an officer, agent, representative, consultant, or employee of MERC/Metro or Consultant shall have any authority to make representations, statements, or decisions of whatever nature binding MERC or the CM/GC regarding any aspect of this Contract. Consultant shall have no right to, and shall not rely on any such representation, statement, or decision. Any reference to action by MERC in this Contract requires the written approval of Metro’s Chief Operating Officer or the Project Manager designated in writing by MERC as having authority to act for MERC, but only to the extent that such authority is expressly delegated in writing.

4.2 MERC’s Consultants. Metro shall provide a list to Consultant of its independent consultants that MERC intends to utilize on the Project.

ARTICLE 5

General Contract Provisions

5.1 Contract Performance. Consultant shall at all times perform the Services diligently and without delay and shall punctually fulfill all Contract requirements consistent with the schedule for the performance of Services set forth in this Contract. Expiration or termination of the Contract shall not extinguish, prejudice, or limit either Party’s right to enforce this Contract with respect to any default or defect in performance. Time is of the essence in the performance of this Contract.

5.2 Records.

5.2.1 Consultant and sub-consultants shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant and sub-consultants shall maintain any other records necessary to clearly document:

5.2.1.1 The performance of Consultant, including but not limited to Consultant’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 Contractor or subcontractor under the terms of the Contract or subcontract;

5.2.1.2 Any claims arising from or relating to the performance of Contractor or subcontractor under this Contract;

5.2.1.3 Any cost and pricing data relating to the Contract; and

5.2.1.4 Payments made to all suppliers and sub-consultants.

5.2.2 The records described in Section 5.2.1 are the Contract Records.

5.2.3 Consultant and sub-consultants shall maintain the Contract Records for the longer period of (a) six years from the date of final completion of the Contract to which the Contract Records relate or (b) until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract.

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5.2.4 Consultant and sub-consultants shall make Contract Records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of Metro's 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 Contract Records are not made available within the boundaries of Metro, 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 Contractor elects to have such Contract Records outside these boundaries, the costs paid by Contractor to Metro for inspection, auditing, examining, and copying those records shall not be recoverable costs in any legal proceeding.

5.2.5 Consultant and sub-consultants authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of Metro Auditor, to inspect, examine, copy, and audit the books and records of Contractor or subcontractor relating to this Contract, 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.

5.2.6 Consultant and sub-consultants agree to disclose the Contract Records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and Consultant and sub-consultants, including but not limited to a court proceeding, arbitration, mediation, or other alternative dispute resolution process.

5.2.7 Consultant and sub-consultants agree that in the event such Contract Records or any audit disclose that MERC is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, Consultant and sub-consultants 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.

5.2.8 Failure of Consultant and sub-consultants to keep or disclose Contract Records as required by this Contract or any solicitation document may result in debarment as a bidder or proposer for future MERC/Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that Consultant or sub-consultant is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

5.3 Indemnity.

5.3.1 Claims For Other Than Professional Liability. Consultant shall indemnify, defend, save, and hold harmless MERC/Metro, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the negligent acts or negligent omissions of Consultant or its sub-consultants, or employees under this Contract.

5.3.2 Claims For Professional Liability. Consultant shall indemnify, save, and hold harmless MERC/Metro, and its officers, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of whatsoever nature caused by the professionally negligent acts, negligent errors, or negligent omissions of Consultant or its sub-consultants, or employees in the performance of professional services under this Contract. Consultant shall reimburse MERC/Metro, and its officers and employees for any defense costs incurred by MERC/Metro, and its officers and employees that are caused by Consultant's negligence.

5.3.3 Exception. Nothing in this Sections 5.3 or 5.4 requires Consultant or Consultant's surety or insurers to indemnify MERC/Metro, its officers, and employees against liability for damages for death or bodily injury to persons or damage to property caused in whole or in part by the negligence of MERC/Metro, its officers and employees. Nothing in the foregoing limits or otherwise affects any requirement in Section 5.3 or 5.4 that requires Consultant to

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indemnify MERC/Metro, its officers, and employees against liability for damages for death or bodily injury to persons or damage to property caused by the negligence of the Consultant or Consultant's agents, representatives, employees, or subconsultants.

5.4 Insurance.

5.4.1 The Consultant, at its sole cost, shall procure and maintain at all times while performing Services under this Contract, policies of insurance issued by responsible carriers rated A VII or better by A.M. Best's rating service (unless otherwise approved by MERC/Metro) and in a form and substance reasonably satisfactory to MERC/Metro, which afford at least the following minimum coverages:

5.4.1.1 Workers' Compensation. Workers' compensation coverage sufficient to meet statutory liability limits.

5.4.1.2 Employer's Liability. Employer's liability insurance in addition to its workers' compensation coverage in the following minimum amounts:

5.4.1.2.1 Bodily Injury by Accident, Each Accident: \$1,000,000

5.4.1.2.2 Each Bodily Injury/Disease, each employee: \$1,000,000

5.4.1.2.3 Aggregate Bodily Injury/Disease, policy limit: \$1,000,000

5.4.1.3 Commercial General Liability. The Consultant shall purchase and maintain commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 0001 (12/04 or later) or an equivalent form approved in advance by MERC/Metro. CGL coverage shall include all major coverage categories including bodily injury, property damage, and products/completed operations coverage maintained for at least six years following final payment. The CGL insurance will also include the following: (1) separation of insured; (2) incidental medical malpractice; and (3) per-Project aggregate for premises operations.

5.4.1.3.1 Each Occurrence: \$1,000,000

5.4.1.3.2 General Aggregate: \$2,000,000

5.4.1.3.3 Product/Completed Operations: \$2,000,000

5.4.1.3.4 Personal & Advertising Injury: \$1,000,000

5.4.1.4 Professional Liability/Errors and Omissions: The Consultant shall purchase and maintain professional liability/errors and omissions insurance or cause that those subconsultants providing design services do so.

5.4.1.4.1 Each Claim/Aggregate: \$5,000,000

5.4.1.5 Automobile Liability. The Consultant shall purchase and maintain automobile liability insurance with coverage for owned, hired, and non-owned vehicles on ISO form CA 00 01 or an equivalent form approved in advance by MERC/Metro. The automobile liability insurance shall include pollution liability coverage with vehicle overturn and collision.

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5.4.1.5.1 Combined Single Limit: \$1,000,000

5.4.2 Consultant will maintain any combination of primary and Excess or Umbrella coverage bringing total coverage for Commercial General Liability and Automobile liability to at least \$5,000,000 per occurrence/\$5,000,000 general aggregate.

5.4.3 Additional Insureds. The Consultant's third-party liability insurance, except for Workers' Compensation and Professional Liability/Errors and Omissions policies shall include MERC/Metro and its officers, employees, agents, volunteers, partners, successors, and assigns as additional insureds. The policy endorsement must extend premise operations and products/completed operations to the additional insureds. The additional insured endorsement for the CGL must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

5.4.4 Certificates of Insurance. Certificates of Insurance acceptable to MERC/Metro shall be filed with MERC/Metro prior to commencement of the Services of this Contract. The Certificates of Insurance must demonstrate the coverage dates, amount, and type of insurance required by this Section 5.4 or by law; and the insurers providing the coverage. All policies and Certificates of Insurance shall expressly provide that coverage shall not be cancelled, allowed to lapse, or be materially changed by endorsement or through issuance of other policies of insurance without at least forty-five (45) days' written notice to MERC/Metro. All insurance policies, certificates, and binders of insurance (except Workers' Compensation and professional liability) shall show MERC/Metro as additional insured. Upon MERC/Metro's request, the Consultant will deliver to MERC/Metro copies of any policy (together with all endorsements, schedules, and other attachments) for any coverage provided pursuant to this Contract.

5.4.4.1 If the Consultant has any self-insured retention or deductibles for any of the required coverages, the Consultant must identify on the Certificate of Insurance the nature and amount of such self-insured retention or deductibles and provide satisfactory evidence of financial responsibility for such obligations. Satisfaction of all self-insured retentions or deductibles shall be the sole responsibility of the Consultant.

5.4.4.2 MERC/Metro shall have the right, but not the obligation, to prohibit the Consultant from entering the Project site until the required Certificates of Insurance (or other competent evidence that insurance has been obtained) in complete compliance with this Section 5.4.3 are received and approved by MERC/Metro.

5.4.5 Consultant Insurance. The Consultant shall cause all its sub-consultants to carry and maintain workers' compensation coverage required by law and Commercial General liability and professional liability insurance coverage with limits mutually agreed upon by MERC/Metro and the Consultant. In the absence of any such agreement, the limits shall be the same as those required of the Consultant.

5.4.6 Maintaining Insurance. The Consultant must maintain the same or better insurance coverage throughout the Project. Unless otherwise agreed in writing, the tail-out period for insurance coverage may not be less than two years from the date of Substantial Completion of the Project.

5.4.7 Failure to Maintain Insurance. The Consultant's maintenance of its and its sub-consultants' insurance coverage in full force and effect for the Project is a condition precedent to the Consultant's right to exercise or enforce any right or remedy for money damages against MERC/Metro. Failure by the Consultant to procure and maintain the insurance policies required above in full force and effect during the performance of Services under this Contract, and during any extensions or additional Services hereunder, shall constitute a breach of this Contract, in which case MERC/Metro shall have the right, in addition to and without prejudice to any other rights, to purchase such insurance on behalf of the Consultant, and the Consultant shall reimburse MERC/Metro upon demand and shall furnish such

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information needed by MERC/Metro to obtain such insurance or, alternatively, MERC may immediately terminate this Contract for cause pursuant to Section 5.13.3 of this Contract.

5.4.8 No representation on coverages: By requiring insurance, MERC/Metro does not represent that coverage and limits will necessarily be adequate to protect the Consultant. Insurance in effect or procured by the Consultant will not reduce or limit the Consultant's contractual obligations to indemnify and defend MERC/Metro for claims or suits that result from or are connected with the Services provided under this Contract.

5.5 Consultant's Status.

5.5.1 It is understood and agreed that the relationship of Consultant to MERC shall be that of an independent contractor under ORS 670.600. The Consultant further agrees that Consultant, its officers, agents, and employees, any sub-consultants or supplier of consultant of any tier, or its officers, agents, or employees, are not officers, employees, or agents of MERC under the Oregon Tort Claims Act (ORS 30.260 through 30.300). Consultants and its officers, agents, employees, and its sub-consultants and suppliers of any tier and their officers, agents, and employees will make no claim whatsoever against MERC for indemnification pursuant to ORS 30.260 to 30.300. Consultant agrees to hold MERC/Metro harmless and indemnify MERC/Metro from any such claims.

5.5.2 Consultant shall not have control or charge of, and shall not be responsible for, the acts or omissions of other consultants or contractors under contract with MERC who are performing Services or construction work on the Project. However, this provision does not in any way change Consultant's professional responsibility to report to MERC any information, including information on the performance of consultants or contractors outside the control or charge of Consultant, concerning activities or conditions that have or could have an adverse effect on MERC or the Project.

5.5.3 Consultant is not a contributing member of the Public Employee's Retirement System and will be responsible for any federal, state, or other taxes applicable to any compensation or payments paid to Consultant under this Contract. Consultant will not be eligible for any benefits from any payments made under this Contract for federal Social Security, unemployment insurance, or workers' compensation, except as a self-employed individual. If any payment under this Contract is to be charged against federal funds, Consultant certifies that it is not currently employed by the federal government.

5.6 Successors & Assignments. The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Contract is executed, Consultant shall not enter into any sub-consultant agreements for any of the Services or assign or transfer any of its interest in this Contract, without the prior written consent of MERC.

5.7 Compliance with Applicable Law. Consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Services, including the following provisions of the Oregon Public Contracting Code.

5.7.1 Payment of Labor. As required by ORS 279B.220, Consultant shall:

5.7.1.1 Make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of the Services provided for in this Contract;

5.7.1.2 Pay all contributions or amounts due the Industrial Accident Fund from Consultant or sub-consultant incurred in the performance of this Contract;

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5.7.1.3 Not permit any lien or claim to be filed or prosecuted against MERC on account of any labor or material furnished; and

5.7.1.4 Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

5.7.2 Payment for Medical Care and Workers' Compensation. As required by 279B.230:

5.7.2.1 Consultant shall promptly, as due, make payment to any person, copartnership, 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 Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.

5.7.2.2 All subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

5.7.3 Hours of Labor. As required by ORS 279B.020(5), 279B.235(3), and 279C.540(6), for Consultant's employees subject to Oregon employment laws:

5.7.3.1 Maximum Hours. Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).

5.7.3.2 Exemption. These requirements do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

5.7.3.3 Notice to Employees. Consultant shall give notice in writing to its employees who perform work under this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

5.7.4 Limitation on Claims. This provision is required by statute. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Contract, providing Consultant has:

5.7.4.1 Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and

5.7.4.2 Maintained such circular continuously posted from the inception to the completion of this Contract on which workers are or have been employed.

5.7.5 Non-discrimination. Consultant shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Contract.

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5.7.6 Metro Charter and MERC and Metro Code. Consultant shall comply with all provisions of the Metro Charter, MERC and Metro Codes applicable to this Contract.

5.7.7 Governing Law; Jurisdiction; Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively “Claim”) between MERC and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this “Governing Law; Jurisdiction; Venue” section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. Consultant, by execution of this Contract, hereby consents to the in personam jurisdiction of said courts.

5.8 Severability. The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

5.9 Force Majeure. Neither Party shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including but not limited to fire, riot, acts of God, terrorist acts, or war where such cause was beyond such Party’s reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

5.10 Waiver. The failure of MERC to enforce any provision of this Contract shall not constitute a waiver by MERC of that or any other provision.

5.11 Third-Party Beneficiaries. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against MERC or Consultant. Consultant’s Services under this Contract shall be performed solely for MERC’s benefit and no other entity or person shall have any claim against Consultant because of this Contract for the performance or nonperformance of Services hereunder.

5.12 Ownership of Work Product.

5.12.1 Definitions. As used in this Contract, the following terms have the meanings set forth below:

5.12.1.1 “Consultant Intellectual Property” means any intellectual property that is owned by Consultant and developed independently from this Contract and that is applicable to the Services or included in the Work Product.

5.12.1.2 “Third-Party Intellectual Property” means any intellectual property that is owned by parties other than MERC or Consultant and that is applicable to the Services or included in the Work Product.

5.12.1.3 “Work Product” means the Services Consultant delivers or is required to deliver to MERC under this Contract. Work Product includes every invention, discovery, work of authorship, trade secret, or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports, and other materials, whether completed, partially completed, or in draft form.

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5.12.2 Work Product. For Consultant Work Product, Consultant hereby grants to MERC an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of MERC to authorize contractors, consultants and others to use Consultant Intellectual Property, for the purposes described in this Contract. The license granted under this Section permits MERC to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as MERC's consultants and separate contractors, to reproduce applicable portions of Consultant Intellectual Property solely and exclusively for use in performing Services or construction for the Project. If and upon the date the Consultant is in default of this Contract, the foregoing license shall be supplemented by a second, nonexclusive license permitting MERC to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Consultant Intellectual Property solely for purposes of completing, using, and maintaining the Project. Consultant Intellectual Property may be continuously used for construction of the Project until the Project is complete, regardless of any dispute between the Parties, including without limitation any dispute for payment

5.12.3 Consultant Intellectual Property. In the event that Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to MERC an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of MERC to authorize contractors, consultants and others to use Consultant Intellectual Property, for the purposes described in this Contract. The license granted under this Section permits MERC to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as MERC's consultants and separate contractors, to reproduce applicable portions of Consultant Intellectual Property solely and exclusively for use in performing Services or construction for the Project. If and upon the date the Consultant is in default of this Contract, the foregoing license shall be supplemented by a second, nonexclusive license permitting MERC to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Consultant Intellectual Property solely for purposes of completing, using, and maintaining the Project. Consultant Intellectual Property may be continuously used for construction of the Project until the Project is complete, regardless of any dispute between the Parties, including without limitation any dispute for payment.

5.12.4 Third-Party Intellectual Property. In the event that Third-Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on MERC's behalf and in the name of MERC, an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use the Third-Party Intellectual Property in the same manner as provided for Consultant Intellectual Property under Section 5.12.3, for the purposes described in this Contract.

5.12.5 Consultant Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to MERC an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, in the same manner as provided for Consultant Intellectual Property under Section 5.12.3, for the purposes described in this Contract.

5.12.6 Third-Party Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Third-Party Intellectual Property, or is a compilation that includes Third-Party Intellectual Property, Consultant shall secure on MERC's behalf and in the name of MERC an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, in the same manner as provided for Consultant Intellectual Property under Section 5.12.3, for the purposes described in this Contract.

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5.12.7 Limited MERC/Metro Indemnity. To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.397, Consultant shall be indemnified and held harmless by MERC/Metro from liability arising out of re-use or alteration of the Work Product by MERC/Metro that was not specifically contemplated and agreed to by the Parties in this Contract or under separate contract.

5.13 Termination.

5.13.1 Parties' Right to Terminate by Agreement. This Contract may be terminated at any time, in whole or in part, by written mutual consent of the Parties.

5.13.2 MERC's Right to Terminate for Convenience. MERC may, at its sole discretion, terminate this Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.

5.13.3 MERC's Right to Terminate for Cause. MERC may terminate this Contract immediately, in whole or in part, upon written notice to Consultant, or such later date as MERC may establish in such notice, upon the occurrence of any of the following events:

5.13.3.1 Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that either the Services under this Contract are prohibited or MERC is prohibited from paying for such Services from the planned funding source;

5.13.3.2 Consultant no longer holds all licenses or certificates that are required to perform the Services; or

5.13.3.3 Consultant fails to provide Services within the times specified or allowed under this Contract; fails to perform any of the provisions of this Contract; or so fails to perform the Services as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from MERC, does not correct such failures within the time that MERC specifies (which shall not be less than ten (10) calendar days, except in the case of emergency).

5.13.4 Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by MERC, Consultant shall immediately cease all activities related to the Services or the Project.

5.13.5 Delivery of Work Product/Retained Remedies of MERC. As directed by MERC, Consultant shall, upon termination, promptly deliver to MERC all documents, information, works in progress, and other property that are deliverables or would be deliverables if the Contract had been completed. By Consultant's signature on this Contract, Consultant allows MERC to use Work Product and other property for MERC's intended use. The rights and remedies of MERC provided in this Section 5.13.5 are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

5.13.6 Payment upon Termination.

5.13.6.1 In the event of termination pursuant to Sections 5.13.1, 5.13.2, or 5.13.3.1, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by MERC, plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim(s) that MERC has against Consultant. Within thirty (30) days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Services completed before termination and all Contract close-out costs actually incurred by Consultant. MERC shall not be obligated to pay for any such costs invoiced to and received by

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MERC later than thirty (30) days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall promptly refund any excess amount upon demand.

5.13.6.2 In the event of termination pursuant to Sections 5.13.3.2 or 5.13.3.3, MERC shall have any remedy available to it in law or equity. Such remedies may be pursued separately, collectively, or in any order whatsoever. If it is determined for any reason that Consultant was not in default under Sections 5.13.3.2 or 5.13.3.3, the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 5.13.2.

5.14 Foreign Consultant. If Consultant is not domiciled in or registered to do business in the State of Oregon as of the Effective Date, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State's Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.

5.15 Notice. Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, mail, postage prepaid, or e-mail to Consultant or MERC, addressed below:

Contractor: Brian Tennyson
LMN Architects
801 Second Ave, Suite 501
Seattle, WA 98104

MERC: Metro Procurement Services
600 NE Grand Ave
Portland, Oregon 97232

With Copy to: Nancy Strening
600 NE Grand Ave.
Portland, OR 97232

Any notice sent by e-mail must also be sent by mail, postage prepaid. Any notice personally given shall be effective upon receipt. Any notice sent by e-mail shall be effective the day after receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be 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.

5.16 Media Contacts; Confidentiality. Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without MERC's prior written authorization.

5.17 Conflict of Interest. Except with MERC's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest, or contribution that would, or would reasonably appear to, compromise Consultant's professional judgment with respect to this Project, including without limitation concurrent employment on any project in direct competition with this Project.

5.18 Modification. Notwithstanding and succeeding any and all prior agreement(s) or practices, and except as otherwise set forth specifically herein and in the Amendment for Design Services Price Agreement, this Contract constitutes the entire contract of the Parties, and may only be modified in writing, signed by both Parties. MERC may approve changes and modifications to the original Contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Contractor may propose changes in the work that Contractor believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by MERC, they shall be

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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 6

Consultant Services

6.1 Services Generally.

6.1.1 Upon final execution of this Contract and Project Work Order with MERC, Consultant shall:

6.1.1.1 Within the first week following execution of this Contract, review the Project Work Order and proposed Project Schedule and prepare a detailed Services list and work plan to MERC's satisfaction. Consultant shall also identify milestone activities or dates, specific task responsibilities, additional definition of deliverables, and required completion times necessary for the review and approval by MERC and by all regulatory agencies.

6.1.1.2 Review the developed work plan with MERC and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

6.1.2 The Consultant will manage the Consultant's Services, research applicable design criteria, attend project meetings, communicate with members of the Project team, and report progress to MERC. Throughout all phases of its Services, Consultant will consult with MERC and the CM/GC.

6.1.3 Programming Services. Consultant shall prepare for MERC's review and acceptance an architectural program, in narrative and diagrammatic form, that identifies and analyzes functional and operational parameters that will guide the Project's design. Consultant shall develop the program narrative in conjunction with MERC's staff and consultants and shall be responsible for the following:

6.1.3.1 Review MERC's program objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements to establish appropriate guidelines around which and within which the Project will be designed.

6.1.3.2 Review all data pertinent to the Project including survey, site maps, geotechnical reports and recommendations, soil testing results reports, and pertinent historical data, and other relevant information provided by MERC.

6.1.3.3 Investigate and review applicable federal, state, and MERC standards, codes, and regulations pertaining to the proposed Project and identify design issues relating to functional opportunities, needs, directives, and constraints imposed thereby.

6.1.3.4 Review such other reference information MERC may provide.

6.1.4 Public Participation. Consultant shall, in conjunction with MERC, develop and implement a public participation program that provides opportunities for MERC to present the Project to stakeholders solicit questions, comments, and suggestions in an open and collaborative forum. Consultant shall be responsible to prepare, facilitate, and document at least six (6) such meetings, and following each, shall prepare a written report of the proceedings, along with recommendations to MERC with respect to follow-up actions or communications, if any.

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6.1.5 Construction Cost Estimates. Consultant shall develop and maintain Construction Cost Estimates within the parameters of MERC's Construction Cost Budget (as hereinafter defined) through all phases of its Services. The term, "Construction Cost Budget," shall mean the Construction Cost Budget established by MERC for the Project. Consultant shall base all Construction Cost Estimates on the most current architectural program as approved by MERC and shall prepare updated Construction Cost Estimates at each phase of the Project, as provided below. The following conditions apply to each Construction Cost Estimate prepared by Consultant:

6.1.5.1 Base all costs on current price information appropriate to the level of design detail with escalation rate and duration clearly identified as a separate line item. Cost escalation rates and projected bid and construction dates shall be as approved by MERC.

6.1.5.2 Present each Construction Cost Estimate in a building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems, etc.) for new buildings, and summarized by the Construction Specification Institute ("CSI") category.

6.1.5.3 Include contingencies for design, bidding, and construction as individual line items, with the percentage and base of calculation clearly identified.

6.1.5.4 Include all information and estimates from MERC and MERC's consultants that are intended to be part of the Construction Cost Budget.

6.1.5.5 Reconcile each Construction Cost Estimate with MERC's Construction Cost Budget. Consultant shall present no estimate that exceeds the Construction Cost Budget. Consultant shall be responsible for the accuracy of each Construction Cost Estimate.

6.2 Schematic Design Phase.

6.2.1 Consultant shall review the architectural program and information furnished by MERC, and shall review laws, codes, and regulations applicable to Consultant's Services.

6.2.2 Consultant shall prepare a preliminary evaluation of MERC's program, schedule, budget for the work, Project site, and the proposed procurement or delivery method and other information provided by MERC in Article I of this Contract entitled, "Initial Project Information," each in terms of the other, to ascertain the Project requirements. Consultant shall notify MERC of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

6.2.3 Consultant shall present its preliminary evaluation to MERC and CM/GC and shall discuss with MERC and CM/GC alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. Consultant shall reach an understanding with MERC regarding the requirements of the Project.

6.2.4 Based on the Project's requirements agreed upon with MERC, Consultant shall prepare and present for MERC's approval a preliminary design illustrating the scale and relationship of the Project components.

6.2.5 Based on CM/GC's review and MERC's approval of the preliminary design, Consultant shall prepare Schematic Design Documents (as further described below in this Section 6) for MERC's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections, and elevations, and may include some combination of study models, perspective

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sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

6.2.5.1 Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with MERC's program, schedule and budget for the cost of the work.

6.2.5.2 Consultant shall consider the value of alternative materials, building systems, and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with MERC's program, schedule, and budget for the cost of the work.

6.2.6 Consultant shall prepare and submit to MERC a Construction Cost Estimate for the approved Schematic Design Documents based on area, volume, or similar conceptual estimating techniques and prepared in accordance with the provisions of this Contract.

6.2.7 Consultant shall submit the Schematic Design Documents and the Construction Cost Estimate to MERC, and request MERC's approval.

6.3 Design Development Phase.

6.3.1 Based on MERC's approval of the Schematic Design Documents, and on MERC's authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Design Development Documents for MERC's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications identifying major materials, components, and systems and establishing general quality levels. Consultant's Services during the Design Development Phase shall consist of the following:

6.3.1.1 Architectural Design/Document Services. On an ongoing basis, Consultant shall develop and expand architectural Schematic Design Documents to establish the scope, relationship, forms, size and appearance of the Project through: plans, sections and elevations; typical construction details; and equipment layouts. These Services may also include the following:

- 6.3.1.1.1 Floor plans with final room locations including all openings and building fenestration.
- 6.3.1.1.2 Building sections showing coordination and relationship between components.
- 6.3.1.1.3 Wall sections showing final dimensional relationships, materials, and component relationships.
- 6.3.1.1.4 Identification of all fixed and loose equipment to be installed.
- 6.3.1.1.5 Finish schedule identifying all finishes.

- 6.3.1.1.6 Door and hardware schedule showing final quantity plus type and quality levels.
- 6.3.1.1.7 Site plan, including grading and drainage.
- 6.3.1.1.8 Preliminary development of details and large scale blow-ups.
- 6.3.1.1.9 Legend showing all symbols used on the drawings.
- 6.3.1.1.10 Outline specifications, in accordance with the CSI standards.
- 6.3.1.1.11 Reflected ceiling development including ceiling grid and all devices that penetrate ceiling (i.e., light fixtures, sensors, sprinkler heads, ceiling register, or diffusers, etc.).
- 6.3.1.1.12 Equipment layouts.
- 6.3.1.1.13 Building cross-sections with floor-to-floor heights indicated.

6.3.1.2 Structural Design Documentation Services. On an ongoing basis, Consultant shall develop the specific structural system(s) and Schematic Design Documents in sufficient detail to establish basic structural system and dimensions, final structural design criteria, foundation design criteria, preliminary sizing of additional major structural components, critical coordination clearances, and outline specifications or materials lists. These Services may also include the following:

- 6.3.1.2.1 Plan drawings with all structural members located and sized.
- 6.3.1.2.2 Footing, beam, column, and connection schedule.
- 6.3.1.2.3 Final building elevations.
- 6.3.1.2.4 Final structural design criteria.
- 6.3.1.2.5 Outline specifications.
- 6.3.1.2.6 Foundation drawings.
- 6.3.1.2.7 Soil retainage system.
- 6.3.1.2.8 Critical coordination clearances.
- 6.3.1.2.9 Drawings and Specifications and materials lists.
- 6.3.1.2.10 Typical sections.

6.3.1.3 Mechanical Design/Documentation Services. On an ongoing basis, Consultant shall develop and expand mechanical Schematic Design Documents and develop outline specifications or materials lists to establish approximate equipment sizes and capabilities, preliminary equipment layouts, required space for equipment,

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required chases and clearances, acoustical and vibration control, visual impacts, and energy conservation measures. These Services also include the following:

- 6.3.1.3.1 Heating and cooling load calculations for each space and major duct or pipe runs sized to interface with structural elements.
- 6.3.1.3.2 Major mechanical equipment scheduled indicating size and capacity.
- 6.3.1.3.3 Duct work and piping systems substantially located and sized.
- 6.3.1.3.4 Water systems including solar heating and bio-reacted waste water.
- 6.3.1.3.5 Plumbing and irrigation systems.
- 6.3.1.3.6 Devices in ceiling located.
- 6.3.1.3.7 Legend showing all symbols used on the drawings.
- 6.3.1.3.8 Outline specifications.

6.3.1.4 Electrical Design/Documentation Services. On an ongoing basis, Consultant shall develop and expand electrical Schematic Design Documents and develop outline specifications or materials lists to establish criteria for lighting, electrical, security, and telecommunications systems, approximate sizes and capacities of major components and Direct Digital Controls (DDC), preliminary equipment layouts, required space for equipment, and required chases and clearances. These Services also include the following:

- 6.3.1.4.1 All power consuming equipment and load characteristics.
- 6.3.1.4.2 Total electrical load.
- 6.3.1.4.3 Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned, showing capacities, and drawn to scale into the space allocated.
- 6.3.1.4.4 Complete preliminary site lighting design.
- 6.3.1.4.5 Outline specifications.
- 6.3.1.4.6 Lighting, power, telecommunications, and office automation devices and receptacles shown on the plan.
- 6.3.1.4.7 Final light fixture schedule.
- 6.3.1.4.8 Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas.
- 6.3.1.4.9 Riser diagrams.
- 6.3.1.4.10 Fire alarm riser system.

6.3.1.4.11 Energy management riser system.

6.3.1.4.12 Photovoltaic alternative energy systems.

6.3.1.4.13 Service entry feeds and generator relocations.

6.3.1.4.14 Energy conservation measures related to lighting and other potentials.

6.3.1.5 Civil Design/Documentation Services. On an ongoing basis, Consultant shall develop and expand civil Schematic Design Documents and develop outline specifications or materials lists to establish the final scope and preliminary details for on-site engineering services to establish:

6.3.1.5.1 Site plans showing buildings and exhibits, paving, sidewalks, curbs, walkways, driveways, landscaped areas, retaining walls, service areas and special features.

6.3.1.5.2 Plan showing existing grades (data provided by MERC).

6.3.1.5.3 Soil retainage systems.

6.3.1.5.4 Stormwater system – Site drainage layout and location of utilities and points from which services will be run to the building.

6.3.1.5.5 Sanitary sewer system.

6.3.1.5.6 Irrigation system.

6.3.1.5.7 Domestic water system.

6.3.1.5.8 Site lighting and distribution from sources.

6.3.1.5.9 Extra conduit for telecom/data system (provided by MERC).

6.3.1.6 Landscape Design/Documentation Services. On an ongoing basis, Consultant shall develop and expand landscape Schematic Design Documents and develop outline specifications or materials lists to establish final scope and preliminary details for landscape work.

6.3.1.7 Materials Research/Specifications Services. Consultant shall prepare for MERC's approval the proposed Special Conditions of the construction contract (the "Construction Contract"); develop architectural outline specifications or itemized lists and brief form identification of significant architectural materials, systems, and equipment and their criteria and quality standards; coordinate similar activities of other disciplines; produce a design manual, including design criteria and outline specifications or materials lists.

6.3.1.8 Project Development Scheduling Services. Consultant shall review and update previously established schedules for the Project.

6.3.1.9 Statement Of Probable Construction Cost Services. Consultant shall update and refine the Schematic Design Phase Statement of Probable Construction Cost of the Project as it is related to the Construction Cost Budget and taking into consideration availability of materials and labor, Project delivery procedures, construction

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sequencing and scheduling, changes in the scope of the Project, and adjustments in quality standards. Completion of these Services shall result in the “Design Development Phase Statement of Probable Construction Cost.” If the Statement of Probable Construction Costs exceeds the approved budget, the Consultant shall, at the Consultant’s expense, redraw, revise, and/or value engineer the Project, if so directed by MERC, so that said estimate does not exceed the approved budget as adjusted by MERC. If MERC concludes that Consultant’s budget is inaccurate, program adjustments and/or alternates shall be prepared.

6.3.1.10 Value Engineering Services. Consultant shall lead a review team during the design development phase of the Project. Consultant shall provide an intensive analysis of the entire Project.

6.3.1.11 Commissioning Process Integration Services. Consultant shall provide Services to coordinate those activities directly related to the commissioning of the building at the Project. These Services include working with the Project Manager to develop a clearly defined design intent for the Project building and its systems. Consultant shall review and respond to all Project Manager input provided throughout the Project. Consultant shall collaborate with the Project Manager and provide specifications that list and describe the Contractor’s duties in the commissioning processes.

6.3.1.12 LEED Design Services. If required as part of a Project Work Order, Consultant shall provide the Services performed during phases set forth in sections 6.1. through 6.6 that are related to the preparation of a comprehensive LEED analysis of the Project, all documentation required for a LEED certification at the silver certification level to MERC for the Project, and all other Services for the Project that are required under the USGBC’s LEED certification program.

6.3.1.13 Land Use Planning and Building Permitting Services. Consultant will consult with the City of Portland as required to obtain land use approvals and building permits. Consultant will conduct informal meetings with City Planning staff to solicit and receive their comments with respect to the projects and any land use approvals that may be required. Consultant shall prepare written and graphic explanatory materials and appear as may be required on MERC’s behalf at all permitting agency meetings. If required, Consultant shall appear and represent MERC and City of Portland land use hearings proceedings.

6.3.1.14 Percent for Art Program. Metro Code Chapter 2.07 (One Percent for Art Program) provides that 1 percent of the construction of major projects shall be used for the acquisition and display of art in conjunction with the projects. Consultant shall serve on the selection committee for the fine art works for this project. The Consultant is responsible for coordinating the acquisition and installation of art within the project and shall ensure that necessary infrastructure is in place pursuant to Metro’s Art Guideline documents.

6.3.2 If MERC elects to proceed with value engineering, Consultant and its sub-consultants shall cooperate with MERC’s value engineer by providing requested information and advising MERC and its value engineer, in good faith, concerning design changes that the value engineer may propose. Consultant shall make such changes as MERC may direct. Substantial changes inconsistent with previous MERC approvals may be compensated as Additional Services.

6.3.3 Consultant shall prepare and submit an updated Construction Cost Estimate based on an itemization of major categories within each specification division and otherwise in accordance with the provisions of this Contract.

6.3.4 Consultant shall submit the Design Development Documents to MERC, advise MERC of any adjustments to the Construction Cost Estimate, and request MERC’s approval.

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6.3.5 Consultant shall provide seven (7) sets of copies of all final drawings and written material.

6.4 Construction Documents Phase.

6.4.1 Based on MERC's approval of the Design Development Documents, and on MERC's authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Construction Documents based on the approved Design Development Documents for MERC's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of drawings and specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Project. MERC and Consultant acknowledge that in order to construct the Project, MERC's contractors will be required to provide additional information, including shop drawings, product information, product samples, and other similar submittals, which Consultant shall review.

6.4.2 The Consultant shall present Construction Documents at 85% and final stages for MERC's review and comment. The Consultant shall provide evaluation of budget, schedule, and response to program and design objectives at each stage.

6.4.3 The Consultant shall advise MERC of any recommended adjustments to the Project's "Approved Design Budget" indicated by changes in Project scope requirements or general market conditions.

6.4.4 The Consultant shall provide an independent estimate based on the 85% Construction Document stage. If the Consultant's estimate exceeds the "Approved Design Budget," the Consultant, at its expense, shall redraw, revise, and/or value engineer the Project, if so directed by MERC, so that the estimate is within the "Approved Design Budget." If MERC concludes that Consultant's budget is inaccurate, program adjustments and/or alternates shall be prepared.

6.4.5 The Consultant shall assist MERC in connection with MERC's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

6.4.6 Intentionally Omitted

6.4.7 The Consultant shall attend governing agency meetings with MERC as required to assist MERC in obtaining guidelines for the Project from regulatory agencies having approval jurisdiction.

6.4.8 The Consultant will work with Energy Trust of Oregon ("ETO") on any portions of the Project which receive funding or other assistance from ETO.

6.4.9 The Consultant shall prepare written and graphic materials as may be required from time to time for MERC to obtain necessary uses, appeals, site, and other governmental permits and approvals.

6.4.10 Consultant shall assist MERC in preparing a Project Procedures Manual outlining all procedures to be followed for the processing, change orders, reporting, and control of all shop drawings, transmittals, submittals, substitutions, catalogs, Project reports, field orders, test reports, inspections, maintenance manuals, and other construction documentation. The Consultant is responsible for all Requests for Information and shall answer them as previously described in this Contract and MERC's General Conditions.

6.4.11 Consultant shall prepare a complete set of signed reproducible Construction Documents and Specifications as the deliverable Work Product of this phase and suitable for use as bidding documents.

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6.4.12 Consultant shall prepare upon completion of Construction Document Phase, an assessment of the estimated cost of construction based on these final documents as compared to those documents used for the 85% Construction Document Phase estimate for use in negotiating the Guaranteed Maximum Price (GMP) with the CM/GC.

6.4.13 The Consultant shall provide final selection and obtain approval, by MERC, of colors and materials.

6.4.14 Consultant shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

6.4.15 Consultant shall prepare and submit an updated Construction Cost Estimate based on the work depicted in the Construction Documents and in accordance with the provisions of this Contract.

6.4.16 Consultant shall submit the Construction Documents to MERC, advise MERC of any adjustments to the Construction Cost Estimate, and request MERC's approval.

6.4.17 MERC will conduct a constructability review of the completed Construction Documents with its own consultant. A report shall be provided to Consultant and Consultant shall revise the Construction Documents accordingly and shall respond in writing to each comment made by the constructability reviewer in one of the following ways:

6.4.17.1 Indicate where or how the comment is reflected in a change to the Construction Documents, or

6.4.17.2 Explain why the comment is not reflected in a change to the Construction Documents.

6.4.18 MERC may require Consultant to supplement its submittal or to prepare an additional submittal if Consultant's response is insufficient to allow the constructability reviewer to confirm the changes.

6.5 Procurement Phase.

6.5.1 The Consultant shall assist MERC with the solicitation process for the selection of the CM/GC, and shall assist MERC and the CM/GC with solicitation and obtaining bids or proposals from trade contractors. These duties shall include:

6.5.1.1 Assisting MERC in conducting pre-solicitation conferences with prospective contractors to familiarize contractors with the procurement documents and management techniques and with any special systems, materials, or methods called for by the documents.

6.5.1.2 Answering questions and evaluating substitution requests and issuing solicitation document addenda.

6.5.1.3 Assisting MERC and/or the CM/GC with the preparation of all procurement packages including alternates if required, General Conditions, Instructions to Bidders/Requests for Proposals, solicitation forms, and other similar documents. MERC shall advertise, issue addenda, and print and distribute plans and specifications for bid.

6.5.1.4 Assisting MERC's and/or the CM/GC's review and analysis of solicitation responses and participation in pre-award conferences with the successful offeror to discuss procedures and applicable regulations.

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6.5.2 The “Procurement Documents” shall consist of all procurement requirements and proposed Contract Documents that include the Construction Documents.

6.5.3 Upon completion of the Procurement Phase, Consultant shall produce a conforming set of the Construction Documents incorporating all addenda issued. Consultant shall provide MERC with two (2) complete, reproducible sets of plans and specifications marked as a “Conforming Set”.

6.5.4 Consultant shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

6.6 Construction Phase.

6.6.1 MERC’s Project Manager will be the lead construction administrator. Consultant will assist the Project Manager with construction administration, but will have sole responsibility for design. For the purposes of this section, “Contractor” means the CM/GC.

6.6.2 Consultant shall advise and consult with MERC during the Construction Phase as provided in this Contract and in MERC’s CM/GC Contract and General Conditions as of the date of this Contract. Consultant shall have authority to act on behalf of MERC only to the extent provided in this Contract. Consultant will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the construction work, nor will Consultant be responsible for the failure of others to perform the construction work in accordance with the requirements of the Construction Contract Documents. Consultant shall be responsible for Consultant’s negligent acts or omissions, but shall not have control over or charge of, and will not be responsible for, acts or omissions of Contractor or of any other persons or entities performing portions of the construction work.

6.6.3 Consultant’s responsibility to provide Construction Phase Services commences with the execution of the GMP Amendment to the CM/GC Contract and ends on the date MERC issues the final certificate for payment.

6.6.4 Compliance with Construction Schedule. Consultant shall review and become knowledgeable with the Contractor’s construction schedule as accepted by MERC. Consultant’s reviews, approvals, investigations, clarifications, interpretations, and all other activities needed shall be carried out in a prompt manner so as not to delay the Project in any way except if authorized in advance in writing by MERC.

6.6.5 Evaluation of the Work. Consultant shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the construction work completed, and to determine, in general, if the work observed is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Construction Documents. On the basis of the site visits, Consultant shall keep MERC reasonably informed about the progress and quality of the construction work as it is completed, and report to MERC (1) known deviations from the Construction Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the work.

6.6.6 Interpretation of Contract Documents. Consultant shall be the interpreter of the requirements of the Contract Documents in regard to compliance and workmanship in accordance with the Design Documents. Consultant shall render interpretations necessary for the proper execution or progress of the work upon written request of MERC. Unless a longer period is agreed to by MERC, Consultant shall render written decisions within five (5) working days of

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receipt thereof on all claims disputes and other matters in question between MERC and the Contractor relating to the compliance with design of the work or the interpretation of the Contract Documents.

6.6.7 Change Orders.

6.6.7.1 Consultant shall review all of Contractor's change order requests to determine if those requests are valid and appropriate. Consultant shall provide a recommendation to MERC as to whether the change should be approved, partially approved, returned to the Contractor for clarification, or rejected.

6.6.7.2 Consultant shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. MERC shall request these drawings from Consultant, who shall provide the drawings at no additional cost unless MERC designates the request as Additional Services. Consultant shall submit original tracing(s) and/or drawings and contract wording for change orders to MERC and CM/GC for duplication and distribution.

6.6.8 Submittals.

6.6.8.1 For the purposes of this Contract, "Submittals" include any document or item submitted by the Contractor for review by MERC and/or the Consultant, including without limitation change orders, payment requests, requests for information, requests for substitution, shop drawings, project data, and samples.

6.6.8.2 Consultant shall review and approve or take other appropriate action upon Contractor's submittals but, except as otherwise provided by this Contract, only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

6.6.8.3 Consultant shall review Contractor's schedule of submittals and advise MERC on whether that schedule is complete. Consultant shall provide MERC with proposed revisions to this schedule and advise MERC on whether MERC should approve this schedule.

6.6.8.4 Consultant shall establish and implement procedures for expediting the processing, review and acceptance of Contractor's submittals. Consultant's action upon Contractor's submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of separate contractors, while allowing sufficient time in Consultant's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed ten (10) calendar days from its receipt by Consultant. Consultant's response to each submittal shall be a substantive and acceptable response.

6.6.9 Requests for Information. During the course of construction as part of the Services, all Requests for Information ("RFI") must be responded to as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed five (5) working days from its receipt by Consultant. Consultant's response to each RFI shall be a substantive and acceptable response. This five-day time period shall not include time when a submittal is within MERC's control or if the submittal is being reviewed by regulatory agencies. In no way does this provision reduce Consultant's liability if it fails to prepare acceptable documents. If Consultant fails to respond to an RFI within the time required by this Section 6.6.9, Consultant shall be liable for any increase in construction cost as a result of the delay.

6.6.10 Testing.

6.6.10.1 Consultant shall review the testing and inspection reports of independent testing agencies, and make written recommendations to MERC as the evaluation of the report data dictates.

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6.6.10.2 Consultant shall review and become knowledgeable with the Contractor's construction schedule as accepted by MERC. Its reviews, approvals, investigations, clarifications, interpretations and all other activities needed shall be carried out in a prompt manner so as not to delay the Project in any way except if authorized in advance in writing by MERC.

6.6.11 Requests for Substitution. In consultation with the Project Manager, Consultant shall review the Contractor's written requests for substitutions for specific products, materials, equipment, or systems, and other departures from the Construction Documents. Consultant shall promptly complete its review so as to not unnecessarily disrupt the orderly progress of the work as represented by the current construction schedule maintained by Contractor. Consultant shall provide to MERC a written recommendation on the subject request, explaining the basis for the recommendation.

6.6.12 Notices of Deficient Work. On the basis of on-site observations, Consultant shall keep MERC informed of the progress and the quality of the work, and shall endeavor to guard MERC against defects and deficiencies in the work. Consultant shall notify MERC in writing of any defects or deficiencies in the work by the CM/GC or GC/GC's subcontractors that Consultant may observe. However, Consultant will not be a guarantor of the CM/GC's performance.

6.6.13 As-Built Drawings. Consultant shall review and evaluate for MERC, CM/GC's as-built documentation of the actual construction performed during the Project that Contractor prepares and submits. As-builts are documents that show the actual construction performed during the Project, including changes necessitated by change orders, RFIs, and supplemental drawings/documents, detailed by Contractor.

6.6.14 Record Drawings. Consultant shall incorporate all construction information from as-built drawings, sketches, details, and clarifications, and prepare two sets of final record drawings ("Record Drawings") for MERC. In addition, Consultant shall provide to MERC as-built drawings on AutoCAD. The final record drawings, specifications, and CAD discs shall be delivered to MERC within sixty (60) calendar days after receipt of all necessary written information. Consultant may insert the following notice on the Record Drawings: "These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. Consultant has provided a review of such information consistent with its legal Standard of Care."

6.6.15 Manuals / Warranties. Consultant shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the plans and specifications.

6.6.16 Payment Statements. Consultant shall, in consultation with the Project Manager, review and certify the amounts due the Contractor and shall issue certificates in such amounts. Consultant's certification for payment will constitute a representation to MERC, based on Consultant's evaluation of the work and on the data comprising the Contractor's application for payment, that, to the best of Consultant's knowledge, information, and belief, the work has progressed to the point indicated and that the quality of the work is in accordance with the Construction Contract Documents. The foregoing representations are subject to (1) an evaluation of the work for conformance with the Construction Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Construction Contract Documents prior to completion, and (4) specific qualifications expressed by Consultant.

6.6.17 Project Completion. Consultant shall conduct inspections to establish or confirm the date of Substantial Completion and the date of Final Completion of the Contractor's work. At Substantial Completion, Consultant shall review the Contractor's punch list, conduct a visual inspection of the completed work, and prepare an

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updated punch list of conditions observed and recommending correction, completion, or replacement by the Contractor. Consultant shall review the Project again upon Final Completion to confirm compliance with the Construction Contract Documents, and shall issue a final certificate for payment representing to MERC to the best of Consultant's knowledge and belief that the work is completed and in compliance with the requirements of the Construction Contract Documents.

6.6.18 Upon request of MERC and prior to the expiration of one year from the date of Substantial Completion, Consultant shall, without additional compensation, conduct a meeting with MERC to review the facility operations and performance.

6.6.19 Consultant's mechanical, electrical, and specialty engineers and designers in conjunction with the Contractor's specified training sessions will conduct a walk-through seminar of appropriate length and detail to explain to MERC personnel the specific operation of equipment and systems and assist in building and exhibit start-up.

6.6.20 Consultant shall advise MERC of changes in applicable codes and regulations that have taken place after the Building Permit is issued as the Consultant becomes aware of them.

6.7 Additional Services. Consultant shall perform the following Additional Services when authorized or requested to do so in writing by MERC:

6.7.1 Make revisions in drawings, specifications, or other documents when such revisions are:

6.7.1.1 Inconsistent with approvals or instructions previously given by MERC.

6.7.1.2 Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of the Construction Documents.

6.7.1.3 Due to changes required as a result of MERC's failure to respond to a written request from Consultant within a reasonable time.

6.7.2 Provide Services made necessary by significant documented MERC-initiated changes in the Project, including but not limited to size, quality, complexity, MERC's schedule, or method of bidding and contracting for construction.

6.7.3 Provide consultation concerning replacement of work damaged by fire or other cause during construction and furnishing Services required in connection with replacement of that work.

6.7.4 Provide Services made necessary by the default of contractor(s), major defects, or deficiencies in the work of contractor(s).

6.7.5 Provide Services as directed by MERC that are not part of the Services of this Contract. Consultant shall notify MERC, in writing, prior to starting any of the Services that it considers the Services it has been directed to do as not part of the Services under this Contract.

6.7.6 Provide Services as an expert and/or witness for MERC in any mediation, arbitration, and/or trial in which Consultant is (1) not a party, and (2) did not in any way cause the dispute that is being adjudicated.

6.7.7 Provide training, adjusting, or balancing of systems and/or equipment.

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6.7.8 For Consultant's Additional Services, the fee to be paid shall be determined in one of the following manners and identified as a part of the extra service authorization.

6.7.8.1 MERC may elect to negotiate a fixed fee for Additional Services.

6.7.8.2 MERC may compensate Consultant on a time-and-material basis for the Additional Services based on the following criteria: (1) additional labor fee shall be calculated based on the approved hourly billing rates as listed below and an agreed upon level of efforts for the principals and employees of Consultant, and (2) actual expenditures made by Consultant on the Project and supported by receipts.

6.7.8.3 MERC may negotiate a fixed fee for a portion of the Additional Services and agree on a time-and-material compensation for the remainder portion of the Additional Services.

6.7.8.4 MERC may compensate Consultant on a percentage basis of the final negotiated pricing on change order work accomplished by the Contractor.

6.7.9 No adjustment in Consultant fee shall be made based on a net change to the GMP.

6.7.10 Rates for the Consultant and sub-consultants that include overhead, administrative cost, and profit as set forth in Exhibit D shall be utilized to calculate the fee for Additional Services. Sub-consultants' hourly rates indicated in Exhibit D include Consultant's administration fee/mark-up fee.

ARTICLE 7

Payment and Billing

7.1 Contract Price. Consultant shall perform the Services described in this Contract for a maximum price not to exceed _____. The Contract Price includes all fees, costs, and expenses of whatever nature. Nothing in this Contract requires MERC to pay for work that does not meet the Standard of Care or other requirements of the Contract. The actual amount paid to Consultant may be less than this amount.

7.2 Statement of Services. Payments on account of Services rendered and for reimbursable expenses authorized under this Contract shall be made monthly upon presentation of Consultant's proper Statement of Services, as follows.

7.2.1 Payment for Services will be based on the percentage of the Services performed by Consultant during the billing period. Contractor's Statement of Services will include an itemized statement of Services completed.

7.2.2 Consultant's Statement of Services shall also provide MERC with statements of Additional Services rendered and Reimbursable Expenses incurred in the preceding month. Consultant expressly waives any right to additional payment for any change in Services ("Change in Service") if Consultant does not give timely written notice of the Change in Services and if such Services are not billed as Change in Services within sixty (60) days following their rendition.

7.2.3 No deductions shall be made from Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors, or on account of the cost of construction changes other than those for which Consultant is liable.

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7.2.4 MERC will pay Consultant based on these Statements of Service until the maximum Contract Price in Section 7.1 is reached. Thereafter, Consultant must complete work based on the Contract without additional compensation unless MERC agrees to a change in the Scope of Work. If work is completed before the maximum Contract Price is reached, the Consultant's compensation will be based on the Contractor's Statements of Service previously submitted and approved by MERC.

7.2.5 Statements of Services will be sent to Metro Accounts Payable, Attention: Nancy Streng, 600 NE Grand Avenue Portland Oregon 97232.

7.3 Reimbursable Expenses. "Reimbursable Expenses" are the direct costs expended by Consultant, Consultant's employees, and sub-consultants for performance of Services rendered to complete the Project. Reimbursable expenses are in addition to compensation for Services and shall not exceed the maximum amount stated in Section 7.1 without prior authorization by MERC. Reimbursable expenses must be evidenced by copies of third-party invoices or receipts delivered to MERC, and are limited to the types of actual expenses listed below:

7.3.1 General Reimbursable Expenses.

7.3.1.1 Long distance communications for which Consultant is charged an additional fee by Consultant's communications provider.

7.3.1.2 Reproductions, postage, and handling of drawings and specifications and other documents, excluding reproductions of drawings, specifications, and other documents used by Consultant and Consultant's subconsultants.

7.3.1.3 Data processing and photographic production techniques when used in connection with Additional Services.

7.3.1.4 Third-party models and mock-ups requested by MERC.

7.3.1.5 The printing of master or reproducible sets of plans and project manuals including specifications.

7.3.2 Travel Expenses. All travel expenses must be approved in advance by MERC. MERC will only allow travel expenses when the travel is essential to the normal discharge of Consultant's responsibilities under the Contract. All Consultant travel shall be conducted in the most efficient and cost-effective manner resulting in the best value to MERC.

7.3.2.1 Mileage. Mileage will be reimbursed at the IRS-approved rate applicable to MERC employees.

7.3.2.2 Meals. The standard rate for meals is \$64.00 per day, subject to the following allocation: Breakfast (25%), Lunch (25%), and Dinner (50%). Except in the event of necessary overnight travel as provided below, breakfast and dinner expenses shall be reimbursed only if Consultant, while acting within the course and scope of his/her duties under this Contract, is required to travel more than two (2) hours (a) before the start (for breakfast expense reimbursement), or (b) after the end (for dinner expense reimbursement) of Consultant's regular workday (8:00 a.m. to 5:00 p.m.). Lunch expense is reimbursable only if Consultant, while acting within the course and scope of his/her duties under this Contract, is required to travel overnight and begins or ends the journey, respectively, before or after 11:00 a.m. Breakfast and dinner expenses are reimbursable during Consultant's necessary overnight travel while acting within the course and scope of his/her duties under this Contract.

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7.3.2.3 Lodging. The standard rate for lodging is \$151.00 per day. MERC will reimburse Consultant for Consultant's actual cost of lodging up to the specified per-diem lodging rates for the locality. Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.

7.3.2.4 Other Travel Expenses. In addition to meals and lodging, travel expenses will be reimbursed for airfare and rental vehicles only if Consultant is acting within the course and scope of his/her duties under this Contract. Receipts are required for all out-of-state travel expenses. All Consultant representatives will fly "coach class," unless Consultant personally pays the difference. All Consultant representatives will be limited to economy or compact size rental vehicles, unless Consultant personally pays the difference.

7.3.3 Special Expenses. For any exceptions to the expense items listed above, Consultant must obtain the separate written approval of MERC prior to incurring any expense for which reimbursement will be sought. MERC will not pay any mark-up over actual allowable reimbursement costs. Any costs associated with recordkeeping or labor to create reproductions of receipts is considered indirect overhead and therefore part of Consultant's Professional Hourly Rates.

7.4 Payment. MERC will pay Consultant within 30 days of receipt of a complete Statement of Services or within 15 days after approval of Consultant's Statement of Services. If MERC determines that Consultant's Statement of Services is not complete, MERC will send a written notice to Consultant requesting the necessary information to complete the Statement of Services. The time periods provided in the Section will run from the date MERC receives the necessary information to complete the Statement of Services.

7.5 No increase in Consultant's fee will be due from change orders generated during construction to the extent caused by Consultant's error or omission.

7.6 Regardless of the structure of Consultant's fee, the fee may be adjusted downward if the Services to be provided under this Contract are reduced by MERC in accordance with this Contract.

7.7 MERC's Right to Withhold Payments. Notwithstanding the other provisions in this Article 7, MERC shall have the right to withhold from payments due to Consultant such sums as necessary, in MERC's sole determination, to protect MERC against any loss, damage, or claim that may result from Contractor's performance or failure to perform under this Contract, or failure of Consultant to make proper or timely payment to any supplier or sub-consultant.

ARTICLE 8

Dispute Resolution

8.1 Mediation. Both Parties shall endeavor to negotiate resolutions to all disputes arising out of this Contract. Any controversy or claim arising out of or relating to this Contract that remains unresolved after such negotiations shall be submitted to mediation prior to the commencement of litigation.

8.1.1 The mediator shall be an individual mutually acceptable to both Parties. Should the Parties lack specific recommendations for a mediator, the Parties shall look to the local circuit court or the Oregon Dispute Resolution Commission. Each Party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two Parties. If the Parties cannot agree on a mutually acceptable mediator within 60 days of the date one party submits a written request for mediation to the other party, a party or parties may proceed to litigation pursuant to Section 8.2.

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8.1.2 Both Parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement on both MERC and Consultant. The schedule and time allowed for mediation shall be mutually acceptable. The mediation process is nonbinding.

8.1.3 Contractor agrees to consolidation of any mediation between MERC and Consultant with any other mediation involving, arising from, or relating to this Contract or the Project.

8.2 Litigation. All disputes not resolved by mediation shall be decided exclusively by a court of competent jurisdiction in Multnomah County under the laws of the State of Oregon.

8.3 Work to Continue Notwithstanding Dispute. In no event shall submission of a dispute arising out of this Contract by either Party relieve Consultant of its obligation to fully perform the requirements of the Contract as directed by MERC pending resolution of the dispute pursuant to the procedures set forth in this Article. In the event that Consultant, in MERC's opinion, fails to fully perform the requirements of the Contract pending resolution of a dispute, MERC shall be entitled to exercise its rights to impose adjusted payments, and/or terminate the Contract.

Consultant has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Consultant have the actual authority to bind Consultant to the terms of this Contract

LMN Architects

MERC

Signature

Signature

Printed Name and Title

Printed Name and Title

Date

Date

APPROVED AS TO LEGAL FORM

Office of the Metro Attorney

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

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METRO PROFESSIONAL SERVICES CONTRACT

EXHIBIT A

Project Work Order and Detailed Scope of Work.

MERC STAFF REPORT

Agenda Item/Issue: Metropolitan Exposition and Recreation Commission approval of the modifications to the scope, contract terms, and expiration date of Contract 306000, "OCC Interior Finishes Master Plan" with LMN Architects and authorization for the GM of visitor venues to execute the contract modifications.

Resolution No: 16-25

Date: September 7, 2016

Presented by: Scott Cruickshank

BACKGROUND: OCC and the Portland Development Commission entered into an IGA to explore how the plaza could be redesigned to better accommodate the additional convention traffic resulting from the forthcoming convention center hotel.

The main goals of the IGA were to conceptually explore a potential redesign that:

- 1) Presents a plaza that is more outward facing towards the hotel and the transit station, emphasizing the two main lobbies on NE Holladay and NE MLK, Jr. Blvd. through design;
- 2) Provides improved wayfinding solutions and;
- 3) Artfully captures storm water runoff that complies with Salmon-Safe green infrastructure standards.

Mayer-Reed was assigned to the exploration project as part of a flexible services agreement with the PDC. Their exploration of the plaza connection to the upcoming convention center hotel and analysis of the property called attention to the following deficiencies: the approach to and navigation of the plaza is confusing; visual access to the entries is difficult to identify; the existing landscaping is overgrown and/or difficult to maintain; and the Plaza lacks outdoor programmable space. As a result of Mayer-Reed's recent work, OCC now desires to proceed with a full Plaza redesign and renovation.

OCC Entries Project

The OCC is a 25 year old facility. Updates and improvements are needed in anticipation of and integration with the forthcoming Convention Center hotel. In 2015, the OCC identified a need for consulting and design services to create a cohesive plan for the execution of future capital improvement projects. That summer, a competitive RFP was prepared for the selection of a multi-disciplinary design team to compose a master plan to identify the improvements needed to remain competitive with similar convention centers across the United States. The RFP for the facility master plan was titled "Facility Interior Finishes Master Plan – Consulting and Design Services." The Scope of Work in the RFP included an initial phase involving the development of recommendations and budget estimates for those recommendations, as well as a provision for subsequent design development, construction documentation, and construction administration for the identified projects. The Scope of Work did not include provisions for consulting and design service for *exterior* work. The RFP drew robust competition from both national and local firm. LMN Architects was the successful proposer and was awarded the design services agreement (alternatively the "Contract" or "Agreement"). The LMN team includes four women-owned firms.

LMN conducted the initial phase project recommendations and cost estimating. One of the priority issues LMN identified was the confusion in navigation and ambiguity surrounding the visual identification of the OCC's main entrances. As a result, LMN proposed an *exterior* design project to modify the main entrances to be more visually identifiable. The OCC now wishes to amend the LMN contract to proceed with the design of these entry modifications. Because the proposed new entries must integrate with LMN's master plan design of the interior spaces, including the entry lobbies, procuring a new contract with a different design firm would likely be counterproductive, adding contract management and coordination costs. Additionally the selection of another firm would be unlikely in any case, given the clear competitive advantage LMN would have in any forthcoming RFP process for the design of the entries. Under Oregon public contracting law, such an amendment is allowed if

MERC determines that, had MERC described the changes to be made by the amendment in the original procurement, it would have been unlikely to have produced increased competition for the work or caused the award of the contract to another firm. (OAR 137-047-0800 and OAR 137-048-0320) *Therefore, OCC seeks approval from the Commission to amend LMN's Contract to add the entries design project.*

The outcome of the entry design project will necessarily impact the plaza design, which is intended to provide better and more intuitive connection, access, and wayfinding between the Convention Center entries, the hotel, and the MAX station. Because the entries design project and plaza design project must integrate perfectly and are expected to proceed simultaneously, the preferred approach, and a best practice, would be for design processes and design subcontracts for these projects to be conducted and managed by one architectural design firm. Accordingly, OCC now wishes to amend the LMN contract to also include the design of the plaza. This approach will likely result in lower fees, fewer change orders, promote efficient use of public funds and result in cost savings. Procuring a new contract for the plaza design with a different design firm would likely be counterproductive, adding contract management and coordination costs. Additionally the selection of another firm would be unlikely in any case, given the clear competitive advantage LMN would have in any forthcoming RFP process for the design of the plaza. Under Oregon public contracting law, such an amendment is allowed and considered to be within the scope of the original contract if MERC determines that, had it described in the original procurement the changes to be made by the amendment, it would have been unlikely to result in increased competition or caused the award of the contract to another firm. (OAR 137-047-0800 and OAR 137-048-0320) Consequently, *OCC seeks approval from the Commission to amend LMN's contract to add the plaza design project.*

FISCAL IMPACT: There is no fiscal impact from this particular action. When the work order for future services is authorized, there will be fees for the services once they are rendered.

RECOMMENDATION: For the reasons stated above, the project team requests that the Commission amend the LMN Contract to add the entry design and plaza design projects.

Procurement and OMA have reviewed the LMN procurement and advise that based on OAR 137-047-0800(1)(a), OAR 137-048-0270 and OAR 137-048-0320, the Commission may amend the LMN contract to add the Convention Center entries design project and plaza design project to LMN's agreement, if the Commission finds in its sole discretion that:

- 1) The Amendment is within the scope of the original Request for Proposals;
- 2) The Amendment would not materially impact the field of competition for award of the original contract (it is unlikely that the inclusion of the entries and plaza design projects to the RFP when issued would have caused the award of the contract to another firm);
- 3) It is unlikely that the number of proposers would significantly increase if the RFP were re-issued to include the entries design and plaza design work.

Additionally, OMA recommends the following changes to the LMN contract, to comport with the original intent of the LMN procurement:

1. Amend the LMN contract to establish it as a "Price Agreement" consistent with OAR 137-048-0270, allowing future work within the scope of the Contract to be authorized by work order, subject to approval by resolution of the Commission.
2. Amend the simple standard form personal service agreement currently in effect to comport with the more robust standard form contract language appropriate to significant design services agreements.

Finally, the project team requests that the Commission amend the contract term for an additional two years to run through 2022. The intent is to complete the entries by 2019, but some of the other projects may take longer.