

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 17-24

For the purpose of authorizing the General Manager of Visitor Venues to execute a contract with Inici Group. Inc. for owner's representative/project management services for the Oregon Convention Center plaza, entries and interior renovations project.

WHEREAS, the Oregon Convention Center (OCC) requires renovations and improvements to the interior of the facility to coincide with the proposed Convention Headquarters Hotel; and

WHEREAS, the Metropolitan Exposition Recreation Commission (MERC) approved a contract with LMN Architects to provide all phases of design development for interior and exterior remodeling and renovation projects at OCC; and

WHEREAS, six proposals were received in response to a Request for Proposals for owner's representative/project management for the project; and

WHEREAS, Inici Group, Inc.'s proposal for owner's representative/project management services was the highest-ranked by the proposal evaluation team; and


WHEREAS, MERC has the authority to approve certain contracts for MERC facilities under Metro Code Section 2.04.040; and

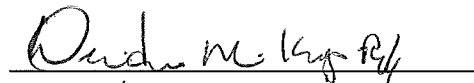
WHEREAS, MERC staff recommend authorizing the General Manager of Visitor Venues to execute a contract with Inici Group. Inc. for owner's representative/project management services for the Oregon Convention Center plaza, entries and interior renovations project.

BE IT THEREFORE RESOLVED as follows:

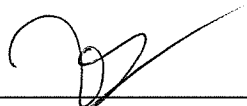
1. MERC delegates authority to the General Manager of Visitor Venues to execute a contract with Inici Group, Inc. not to exceed a maximum price of FOUR HUNDRED THIRTY-EIGHT THOUSAND EIGHT HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$438,825.00) in a form substantially similar to the attached Exhibit A.

Passed by the Commission on July 12, 2017


Chair


Secretary/Treasurer

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

By: 
Nathan A. Schwartz Sykes
Deputy Metro Attorney



OWNER'S REPRESENTATIVE
Personal Services Agreement

This Owner's Representative Personal Services Agreement (the "Agreement" or "Contract") is between Metro, a metropolitan service district organized under Chapter 268 of the Oregon Revised Statutes and the Metro Charter ("Metro" or "Owner"), located at 600 NE Grand Avenue, Portland, OR 97232-2736, and Inici Group, Inc. ("Consultant"), located at 5100 SW Macadam Ave., Suite 330, Portland, OR 97239 (Metro and Consultant are collectively the "Parties"),

Recitals

A. Metro intends to renovate and redevelop the entry Plaza and entries to the Oregon Convention Center ("OCC"), and perform substantial interior renovations to the OCC (the "Project") using a Construction Manager/General Contractor method of project delivery.

B. Metro desires the services of an Owner's Representative having special expertise and experience to provide Project management and administration assistance.

In consideration of the foregoing and the mutual covenants contained in this Agreement, Metro and Consultant agree as follows:

ARTICLE 1
Initial Contract Information

1.1 Project Information.

1.1.1 Project Name: Convention Center Plaza, Entries and Interior Remodel.

1.1.2 General Scope of Services Description: Provide sufficient organization, personnel and management to perform the services Owner's Representative Services during the CM/GC procurement process, all design phases, CM/GC preconstruction, construction, and project close out, including providing technical expertise to all such matters and contract management services including but not limited to all aspects of design, architecture, engineering, sustainable practices and cost estimating to complete the Project. The Scope of Work is set out in more detail in Exhibit A.

1.1.3 Construction Cost Budget: \$24,000,000.00

1.1.4 Term: This Agreement is effective on the Effective Date and shall expire, unless otherwise terminated or extended, on June 30, 2019. Notwithstanding the passage of the foregoing date, this Agreement shall remain in effect and be automatically extended for additional six-month terms until all obligations set forth in this Agreement have been satisfactorily fulfilled (the "Term"). No work shall be performed under the Contract prior to the Effective Date. Consultant shall have a continuing obligation, after the Term, to comply with any provision of this Agreement intended for Metro's protection or benefit, or that that by its sense and context, is intended to survive

the completion, expiration or termination of this Agreement. 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 correct

1.2 Metro's Anticipated Design and Construction Schedule.

1.2.1 Design Phase Milestone Dates: See Exhibit E.

1.2.2 Start of Construction: See Exhibit E

1.2.3 Substantial Completion: See Exhibit E.

1.3 Contract Documents. The Contract consists of the flowing documents, in order of precedence:

1.3.1 This Agreement.

1.3.2 Exhibit A. Detailed Scope of Services.

1.3.3 Exhibit B. Metro's Request for Proposals dated April 7, 2017 and the following addenda: Addendum 1 (issued April 19, 2017); Addendum 2 (issued May 4, 2017).

1.3.4 Exhibit C. Consultant's Proposal dated May 11, 2017.

1.3.5 Exhibit D. Consultant's Fee Proposal including Consultant and Subconsultant rates for additional services dated May 11, 2017.

1.3.6 Exhibit E. Metro's project design schedule dated June 15, 2017.

1.4 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 1.3, except that any subsequent Contract amendments approved by both Parties shall take precedence over the documents listed in Section 1.3 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 Metro to assist the Metro cPMO Project Manager (PM) to carry out the Project, having a fiduciary duty to further Metro's governmental and business interests by providing the technical documents and supervision to achieve Metro's Project objectives.

2.2 Consultant has or will perform the Services under the direction of the cPMO Project Manager and in cooperation with Metro and the "Project Team". The Project Team includes the "Architect", which means (as appropriate to the context) the design architect, the architect or engineer who prepares the plans and specifications, the inspecting architect, or such other design and design-related consultants as may be appropriate; the Construction Manager/General Contractor ("CM/GC") with whom Metro has contracted to construct the entire or a portion of the Project and CM/GC's subcontractors, suppliers, and materialmen, the "Owner", which includes the cPMO Project Manager and cPMO Project Manager designated stakeholders and subject matter experts from the Oregon Convention Center assigned to the Project; and "Metro Consultants", which means such other consultants and professionals that perform consulting services for the Project, including without limitation, testing laboratories and surveyors. Nothing contained in this Agreement shall create any obligation or contractual

relationship between An Owner's Representative and any third party, including without limitation any other member of the Project Team.

ARTICLE 3

Consultant's Responsibilities, Representations and Warranties

3.1 Consultant will establish a full-time, on-site staff of competent management and technical professionals to provide comprehensive services in the organization, coordination, management and administration required for all aspects of the development of the Project, including, without limitation, planning, programming, design, preconstruction work, construction administration, including contractor diversity monitoring and compliance, and Project closeout, as more fully set forth herein ("Services"). Consultant shall supply sufficient organization, personnel and management to perform the Services in an expeditious and economical manner at the highest standards of Consultant's profession or business to further Metro's interests (the "Standard of Care"). An Consultant shall furnish all services, supplies, materials and equipment required to complete the Work using Consultant's best efforts, skill, judgment, and abilities in accordance with this Agreement. Consultant accepts the fiduciary relationship of trust and confidence established between it and Metro by this Agreement.

3.2 Key Personnel. Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Subconsultants 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 Metro 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 Metro. 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, Metro, 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 Metro in writing following discussion with Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

3.3 Subconsultants. Consultant shall provide a list of all Subconsultants that Consultant intends to utilize on the Project (the "Subconsultants"). This list shall include such information on the qualifications of the Subconsultants as may be requested by Metro. Metro reserves the right to review the Subconsultants proposed. Consultant shall not retain a Subconsultant to which Metro objects.

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

3.3.2 All subconsultant agreements shall also provide that they are assignable to Metro at Metro's option, in the event that Metro terminates the Contract. Consultant will provide to Metro a copy of all subconsultant agreements.

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

3.3.4 Consultant shall maintain and shall require that its subcontractors, if any, maintain any and all required governmental licenses, certificates, approvals, and permits that are required of Consultant for the performance of the Work. Consultant agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the Term.

3.3.5 Metro may modify the Scope of Services without invalidating this Agreement. To avoid delay in the Project, upon receipt of a Metro-requested change in the Scope of Services, Consultant shall promptly proceed with the change in Scope of Services. If Consultant believes it is entitled to additional compensation for the change in Scope of Services, or Metro believes Consultant is entitled to less compensation for the change, a party shall promptly notify the other party in writing and submit a proposed amendment. Any change in Consultant's compensation shall be made by a written agreement signed by both parties.

3.3.6 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, Metro 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 Metro 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.

3.4 Warranties. Consultant represents and warrants to Metro that:

3.4.1 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;

3.4.2 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;

3.4.3 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;

3.4.4 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 manage and administer a project having the scope and complexity of the Project;

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

3.4.6 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 construction of the Project;

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

3.4.8 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.

3.4.9 If any of the foregoing warranties is breached, Consultant agrees to correct all defects and nonconformities at Consultant's sole expense, to be liable for all direct damages suffered by Owner and to defend, indemnify, and hold harmless Owner from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by Owner.

ARTICLE 4

Metro's Responsibilities and Authority

4.1 Authority and Relationship of Metro. Metro's Chief Operating Officer shall appoint a Metro representative (the "cPMO Project Manager"). Except as specifically provided in this Section, no individual other than the duly appointed cPMO Project Manager acting or purporting to act as an officer, agent, representative, consultant, or employee of Metro or Consultant shall have any authority to make representations, statements, or decisions of whatever nature binding Metro 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 Metro in this Contract requires the written approval of Metro's Chief Operating Officer or the cPMO Project Manager designated in writing by Metro's Chief Operating Officer as having authority to act for Metro, but only to the extent that such authority is expressly delegated in writing.

The cPMO Project Manager will establish consistent procedures and ensure they are followed; will establish Owner controls over scope, schedule and budget; and will consistently monitor and direct work. The cPMO Project Manager will be the principal conduit for communications between Owner and Consultant. During the course of the work informal lines of communication between Project Team members will develop and are encouraged, so long as they don't circumvent official procedures, to ensure teamwork and efficiency.

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

4.3 Information and Decision-making. Metro shall provide ongoing regular information and feed-back to Consultant regarding its design requirements, construction requirements, and ongoing operational requirements during construction on a timely fashion. The cPMO Project Manager will provide decision-making approvals or acquires the required decision-making approvals for work to proceed. All activities by the Project Team will be under control and at the direction of the cPMO Project Manager. Metro shall respond to Consultant's requests for decision-making promptly and without delay.

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. Time is of the essence in the performance of this Contract.

5.2 Records.

5.2.1 Consultant and Subconsultants shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant and Subconsultants 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 Consultant or Subconsultant under the terms of the Contract or subcontract;

5.2.1.2 Any claims arising from or relating to the performance of Consultant or Subconsultant 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 Subconsultants.

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

5.2.3 Consultant and Subconsultants 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.

5.2.4 Consultant and Subconsultants 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, Consultant or Subconsultant 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 Metro Consultants to examine, audit, inspect, and copy those records. If Consultant elects to have such Contract Records outside these boundaries, the costs paid by Consultant to Metro for inspection, auditing, examining, and copying those records shall not be recoverable costs in any legal proceeding.

5.2.5 Consultant and Subconsultants 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 Consultant or Subconsultant 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 Subconsultants 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 Subconsultants, including but not limited to a court proceeding, arbitration, mediation, or other alternative dispute resolution process.

5.2.7 Consultant and Subconsultants agree that in the event such Contract Records or any audits disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, Consultant and Subconsultants 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 Subconsultants 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 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 Subconsultant 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 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 acts or omissions of Consultant or its Subconsultants, Subcontractors, agents, or employees under this Contract.

5.3.2 Claims for Professional Liability. Consultant shall indemnify, defend, save, and hold harmless Metro, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of whatsoever nature arising out of the professionally negligent acts, errors, or omissions of Consultant or its Subconsultants, Subcontractors, agents, or employees in the performance of professional services under this Contract.

5.3.3 Exception. Nothing in this Sections 5.3 or 5.4 requires Consultant or Consultant's surety or insurers to indemnify Metro, its officers, agents, 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 Metro, its officers, agents, and employees. Nothing in the foregoing limits or otherwise affects any requirement in Section 5.3 or 5.4 that requires Consultant to indemnify Metro, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property arising from the fault of the Consultant or Consultant's agents, representatives, employees, or Subconsultants.

5.3.4 Subcontractors. Each agreement between Consultant and its subcontractors shall include provisions requiring Consultant's subcontractors, to the fullest extent allowed by law, to indemnify, defend (with counsel reasonably acceptable to Owner), and hold harmless Owner and the Consultant from and against all injuries, loss, causes of action, claims, liability, damages or judgments, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of negligent acts and/or errors and/or omissions of Consultant's subcontractor's performance of the Services.

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 Metro) and in a form and substance reasonably satisfactory to 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	Each Accident:	\$1,000,000
5.4.1.2.2	Each Bodily Injury/Disease:	\$1,000,000
5.4.1.2.3	Aggregate Bodily Injury/Disease:	\$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 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:	\$2,000,000
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 Subcontractors providing design services do so.

5.4.1.4.1	Each Claim/Aggregate:	\$2,000,000
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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 Metro. The automobile liability insurance shall include pollution liability coverage with vehicle overturn and collision.

5.4.1.5.1	Combined Single Limit:	\$1,000,000
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5.4.2 Additional Insureds. The Consultant’s third-party liability insurance policies shall include 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).

5.4.3 Certificates of Insurance. Certificates of Insurance acceptable to Metro shall be filed with 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; all exclusions or limitations applicable thereto; 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 Metro. All insurance policies, certificates, and binders of insurance (except professional liability) shall show Metro as additional insured. Upon Metro’s request, the Consultant will deliver to Metro copies of any policy (together with all endorsements, schedules, and other attachments) for any coverage provided pursuant to this Contract.

5.4.3.1 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.

5.4.3.2 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 5.4.3 are received and approved by Metro.

5.4.4 Consultant Insurance. The Consultant shall cause all its Subconsultants to carry and maintain workers' compensation coverage required by law and general and professional liability insurance coverage with limits mutually agreed upon by Metro and the Consultant. In the absence of any such agreement, the limits shall be the same as those required of the Consultant.

5.4.5 Maintaining Insurance. The Consultant must maintain the same or better insurance coverage throughout the Project and the applicable tail-out period. 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.

5.4.6 Failure to Maintain Insurance. The Consultant's maintenance of its and its Subconsultants' 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 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 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 Metro upon demand and shall furnish such information needed by Metro to obtain such insurance or, alternatively, Metro may immediately terminate this Contract for cause pursuant to Section 5.15.3 of this Contract.

5.4.7 No representation on Coverages: By requiring insurance, 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 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 Metro shall be that of an independent contractor under ORS 670.600. The Consultant further agrees that Consultant, its officers, agents, and employees, any Subconsultants or supplier of consultant of any tier, or its officers, agents, or employees, are not officers, employees, or agents of Metro under the Oregon Tort Claims Act (ORS 30.260 through 30.300). Consultant and its officers, agents, employees, and its Subconsultants and suppliers of any tier and their officers, agents, and employees will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300. Consultant agrees to hold Metro harmless and indemnify 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 Metro Consultants or contractors under contract with Metro 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 Metro 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 Metro or the Project.

5.5.3 Consultant is not a contributing member of the Public Employees 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 Subconsultant agreements for any of the Services or assign or transfer any of its interest in this Contract, without the prior written consent of Metro.

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 Subconsultant incurred in the performance of this Contract;

5.7.1.3 Not permit any lien or claim to be filed or prosecuted against Metro 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, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of 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.

5.7.6 Metro Charter and Code. Consultant shall comply with all provisions of the Metro Charter and Code applicable to this Contract, including without limitation the provisions of Metro's Local Contract Review Board Administrative Rules.

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 Metro 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 Metro to enforce any provision of this Contract shall not constitute a waiver by Metro 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 Metro or Consultant. Consultant's Services under this Contract shall be performed solely for Metro'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 Records. Consultant shall comply with records retention requirements of Oregon Public Records law with regard to any records created or received hereby, including, but not limited to data, information and images in electronic, print or other media formats

5.13 Confidential Information. Consultant acknowledges and agrees that any Confidential Information disclosed to it, its subcontractors or other representatives pursuant to this Agreement shall be used only for the purposes contemplated in this Agreement, shall be kept confidential by Consultant, and shall remain the Owner's property. The term "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Consultant and its agents, employees, contractors and Subconsultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, (2) released by Owner in response to public records request, or (3) that Consultant can show (by contemporaneous written records) that Consultant had it in its possession before beginning the Project and before disclosure by Owner. Owner's Representative agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section. Owner's Representative agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section. Owner's Representative and its employees, agents, contractors and Subconsultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the Owner's prior written approval.

5.13.1 Within thirty (30) days of the completion or earlier termination of this Agreement, or upon earlier request of Owner, Consultant shall return all documents, data and other information provided by Owner and/or created by Consultant, or Consultant's employees or agents in connection with this Agreement. Additionally, Consultant, upon the request of Owner, shall forward all original documents, data and other information related to the Services provided hereunder and the Project to Owner.

5.14 Ownership of Work Product.

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

5.14.1.1 "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.

5.14.1.2 "Third-Party Intellectual Property" means any intellectual property other than that of the Architect, that is owned by parties other than Metro or Consultant, that is applicable to the Services or included in the Work Product.

5.14.1.3 "Work Product" 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, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature and other materials, whether completed, partially completed, or in draft form Consultant delivers or is required to deliver to Metro under this Contract..

5.14.2 Work Product. Except as provided in Sections 5.15.3 through 5.15.6, all Work Product created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire” or an employment to invent, shall be the exclusive property of Metro. Metro and Consultant agree that such original works of authorship are “work made for hire” of which Metro is the author within the meaning of the United States Copyright Act. To the extent that Metro is not the owner of the intellectual property rights in such Work Product, Consultant hereby irrevocably assigns to Metro any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Metro’s reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Metro. Consultant forever waives any and all rights relating to original Work Product created pursuant to this Contract, including without limitation any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use or subsequent modifications.

5.14.3 Consultant Intellectual Property. In the event that Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to Metro an irrevocable, nonexclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of Metro 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 Metro to authorize the CM/GC, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as Metro’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 Metro 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.

5.14.4 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 Metro’s behalf and in the name of Metro, 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 5.14.3, for the purposes described in this Contract.

5.14.5 Instruments of Service. Owner shall be the owner of and have all common law, statutory, and other reserved rights in all representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements, including, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials (the “Instruments of Service”). Consultant shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner’s reserved rights. Consultant is authorized to use and reproduce the Instruments of Service provided to it solely and exclusively for execution of the work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. Consultant may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the work without the specific written consent of the Owner and Architect, which either may withhold at their sole discretion.

5.14.6 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 Metro 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 5.14.3, for the purposes described in this Contract.

5.14.7 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 Metro's behalf and in the name of Metro 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 5.14.3, for the purposes described in this Contract.

5.14.8 Limited 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 Metro from liability arising out of re-use or alteration of the Work Product by Metro that was not specifically contemplated and agreed to by the Parties in this Contract or under separate contract.

5.15 Termination.

5.15.1 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.

5.15.2 Metro's Right to Terminate for Convenience. Metro 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.

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

5.15.3.1 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 Metro is prohibited from paying for such Services from the planned funding source;

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

5.15.3.3 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 Metro, does not correct such failures within the time that Metro specifies (which shall not be less than ten (10) calendar days, except in the case of emergency).

5.15.4 Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by Metro, Consultant shall immediately cease all activities related to the Services or the Project, and unless the notice directs otherwise, the Owner's Representative shall do the following: discontinue all Work, placing orders, or entering into contracts for supplies, assistance,

facilities, and materials, cause its suppliers and/or subcontractors to cease their work for this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement.

5.15.5 Delivery of Work Product/Retained Remedies of Metro. As directed by Metro, Consultant shall, upon termination, promptly deliver to Metro 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 Metro to use Work Product and other property for Metro's intended use. The rights and remedies of Metro provided in this Section are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

5.15.6 Payment upon Termination.

5.15.6.1 In the event of termination pursuant to Sections 5.15.1, 5.15.2, or 5.15.3.1, Consultant's sole remedy shall be a claim for payment, calculated on a pro rata or other equitable basis determined by Owner in its sole discretion, for services satisfactorily performed prior to termination, together with reimbursable expenses then due, plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim(s) that Metro 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. In no event shall Owner's Representative be paid for Work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which could have been avoided. Owner will not pay the Owner's Representative for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Metro shall not be obligated to pay for any such costs invoiced to and received by Metro 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 to Metro upon demand.

5.15.6.2 In the event of termination pursuant to Sections 5.15.3.2 or 5.15.3.3, Metro shall retain 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 5.15.3.2 or 5.15.3.3, the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 5.15.2

5.16 Suspension by Owner. Owner may, without cause, order Consultant in writing to suspend its services in whole or in part for such period of time as the Owner may determine. If the Owner suspends the Project, without cause, for more than 30 consecutive days, the Owner's Representative shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Owner's Representative shall be compensated for reasonable expenses incurred as a direct result of the interruption and resumption of the Owner's Representative's services. If appropriate, the Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted. If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Owner's Representative, the Owner's Representative may terminate this Agreement by giving not less than 30 days' written notice.

5.17 Suspension by Owner's Representative. If the Owner fails to make payments to Owner's Representative in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Owner's Representative's option, cause for suspension of performance of services under this Agreement. If the Owner's Representative elects to suspend services, Owner's Representative shall give 30 days' written notice to the Owner due to the Owner's failure to make payment before suspending services. If Owner's Representative suspends services, Owner's Representative shall have no liability to Owner to the extent of any delay or damage caused the Owner because of such suspension of services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by Owner's Representative was otherwise not warranted.

Before resuming services, Owner's Representative shall be paid all sums due prior to suspension and any reasonable expenses incurred as a direct result of the interruption and resumption of the Owner's Representative's services (if such suspension was warranted) and if appropriate, the Owner's Representative's compensation for the remaining services shall be equitably adjusted.

5.18 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.

5.19 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 Metro, addressed below:

Metro:

Brent Shelby
cPMO Project Manager
and
Office of Metro Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232

Consultant:

Karl Schulz
Inici Group, Inc.
5100 SW Macadam Ave., Suite 330
Portland, OR 97239

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.

5.20 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 Metro's prior written authorization.

5.21 Conflict of Interest. Except with Metro'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. Consultant affirms that, to the best of its knowledge, no actual or potential conflict exists between Consultant's and its principals', officers', and employees' family, business or financial interests and its services under this Agreement, and that it shall raise with Owner any questions regarding possible conflict of interest that may arise. Consultant further affirms that it shall not hire any officer or employee of Owner to perform any service covered by this Agreement.

5.22 Modification. Notwithstanding and succeeding any and all prior agreement(s) or practices, this Contract constitutes the entire contract of the Parties, and may only be modified in writing, signed by both Parties.

ARTICLE 6
Consultant Services

6.1 Services Generally.

6.1.1 Upon final execution of this Contract with Metro, Consultant shall:

6.1.1.1 Within the first week following execution of this Contract, review the proposed Project Schedule and prepare a detailed Services list and work plan to Metro'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 Metro and by all regulatory agencies.

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

6.1.1.3 The Consultant will manage the Consultant's Services schedule and, coordinate and attend project meetings, issue meeting notes, communicate with members of the Project Team, and report progress to Metro. Throughout all phases of its Services, Consultant will consult with Metro.

6.1.2 Consultant shall be responsible for the following:

6.1.2.1 Review Metro'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.

6.1.2.2 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 Metro.

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

6.1.2.4 Review such other reference information Metro may provide.

6.1.3 Public Participation. Consultant shall, as required by and in conjunction with Metro, develop and implement a public participation program that provides opportunities for Metro 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 Metro with respect to follow-up actions or communications, if any.

6.1.4 Construction Cost Estimating. Consultant shall manage and coordinate the Construction Cost Estimating process and Construction Cost Budget with the Architect and CM/GC through all phases of its Services. The term, "Construction Cost Budget," shall mean the Construction Cost Budget established by Metro for the Project.

6.2 Design Phase.

6.2.1 Materials Research/Specifications Services. Consultant shall prepare together with the Architect for Metro's approval the proposed Special and/or Supplemental Conditions of the construction contract (the "Construction Contract").

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

6.2.3 Value Engineering Services. Consultant shall participate in a value engineering review team during the design phase of the Project. Consultant shall provide value engineering recommendations to Metro, but the final decision will, in every instance, be Metro's decision.

6.2.4 Commissioning Process Integration Services. Consultant shall provide Services to coordinate those activities directly related to the commissioning of the Project. These Services include working with the Metro Construction Project Management Office (cPMO) Project Manager to develop a clearly defined design intent for the Project building and its systems. Consultant shall review and respond to all cPMO Project Manager input provided throughout the Project. Consultant shall collaborate with the cPMO Project Manager and Metro's Consultants and provide specifications that list and describe the CM/GC's duties in the commissioning processes.

6.2.5 LEED Design Services. The Project Team is responsible for ensuring current LEED certification is not jeopardized through the course of this project. Consultant shall provide the Services required so that all documentation required to maintain LEED certification at the current certification level to Metro for the Project, and all other Services for the Project that are required under the USGBC's LEED certification program, are provided.

6.2.6 Land Use Planning and Building Permitting Services. Consultant shall review documents and site activities for compliance w/ applicable codes and permits and advise Metro and Project Team accordingly. Consultant shall assist with documentation and facilitation of Land Use Review and permitting process as required.

6.2.7 If Metro elects to proceed with value engineering, Consultant shall make such changes as Metro may direct. Substantial changes inconsistent with previous Metro approvals may be compensated as Additional Services.

6.2.8 Consultant shall provide analysis and oversee reconciliation of Construction Cost Estimates based on an itemization of major categories within each specification division and otherwise in accordance with the provisions of this Contract.

6.3 Construction Documents Phase.

6.3.1 Based on Metro's approval of the Design Documents, and on Metro's authorization of any adjustments in the Project requirements or the Construction Cost Budget, the Architect shall present Construction Documents at 85% and final stages for Metro's review and comment. The Consultant shall provide evaluation of budget, schedule, and response to program and design objectives at each stage.

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

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

6.3.4 The Consultant shall participate in preapplication conferences and other formal and informal meetings with the governing local jurisdiction's planning and development staff to solicit and receive their comments with respect to the Project and any applicable land use approval conditions.

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

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

6.3.7 Consultant shall assist Metro and the Architect in preparing a Project Procedures Manual outlining all procedures to be followed for the processing of 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 Metro's General Conditions.

6.3.8 Consultant shall not include in its Construction Documents Specifications, Special and/or Supplemental Conditions legal language establishing rights and/or duties inconsistent with Metro's standard form Construction Contract and General Conditions, without written acknowledgement and approval from Metro.

6.3.9 Consultant will conduct a constructability review of the completed Construction Documents. A report shall be provided to Project Team.

6.4 Procurement Phase.

6.4.1 The Consultant shall assist Metro with the solicitation process for the selection of the CM/GC. These duties shall include:

6.4.1.1 Assisting Metro's review and analysis of solicitation responses and participation in pre-award conferences with the successful offeror to discuss procedures and applicable regulations.

6.4.2 Consultant shall review requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare recommendations for the cPMO Project Manager based on analysis of substitution request.

6.5 Construction Phase.

6.5.1 Metro's cPMO Project Manager will be the lead construction administrator. Consultant will assist and support the cPMO Project Manager with all aspects of construction administration.

6.5.2 Consultant shall advise and consult with Metro during the Construction Phase as provided in this Contract and in Metro's CM/GC Contract and General Conditions as of the date of this Contract. Consultant shall have authority to act on behalf of Metro 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's responsibility to provide Construction Phase Services commences with the execution of the CM/GC Contract and ends on the date Metro issues the final certificate for payment.

6.5.3 Compliance with Construction Schedule. Consultant shall review and become knowledgeable with the CM/GC's construction schedule as accepted by Metro. 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 Metro.

6.5.4 Evaluation of the Work. Consultant shall be present at the site at all times while construction work is being conducted to become observe and report 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. Consultant shall keep Metro and the Architect reasonably informed about the progress and quality of the construction work as it is completed, and report to Metro and the Architect (1) known deviations from the Construction Documents and from the most recent construction schedule submitted by the CM/GC, and (2) defects and deficiencies observed in the work.

6.5.5 Change Orders.

6.5.5.1 Consultant shall review CM/GC's change order requests as required by Metro to determine if those requests are valid and appropriate. Consultant shall provide a recommendation to Metro as to whether the change should be approved, partially approved, returned to the CM/GC for clarification, or rejected.

6.5.5.2 Consultant shall coordinate the submission of drawings for supplementing, clarifying, and/or correcting purposes and for change orders. Consultant shall request these drawings from Architect, and obtain cPMO Project Manager review.

6.5.6 Submittals.

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

6.5.6.2 Consultant shall review and approve or take other appropriate action upon CM/GC'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.

6.5.6.3 Consultant shall review CM/GC's schedule of submittals and advise Metro on whether that schedule is complete. Consultant shall provide Metro with proposed revisions to this schedule and advise Metro on whether Metro should approve this schedule.

6.5.6.4 Consultant shall establish and implement procedures for expediting the processing, review and acceptance of CM/GC's submittals. Consultant's action upon CM/GC'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.

6.5.7 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 Metro'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 6.5.7, Consultant shall be liable for any increase in construction cost as a result of the delay.

6.5.7.1 Consultant shall review and become knowledgeable with the CM/GC's construction schedule as accepted by Metro. 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 Metro.

6.5.8 Requests for Substitution. In consultation with the cPMO Project Manager and Architect, Consultant shall review the CM/GC'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 CM/GC. Consultant shall provide to Metro a written recommendation on the subject request, explaining the basis for the recommendation.

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

6.5.10 Project Completion. Consultant shall conduct inspections to establish or confirm the date of Substantial Completion and the date of Final Completion of the CM/GC's work. At Substantial Completion, Consultant shall review the CM/GC's punch list, conduct a visual inspection of the completed work, and prepare an updated punch list of conditions observed and recommending correction, completion, or replacement by the CM/GC. 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 Metro 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.

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

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

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

6.6.2 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.

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

6.6.4 Provide Services as directed by Metro that are not part of the Services of this Contract. Consultant shall notify Metro, 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.

6.6.5 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.

6.6.5.1 Metro may elect to negotiate a fixed fee for Additional Services.

6.6.5.2 Metro may elect to 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.

6.6.5.3 Metro may elect to 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.

6.6.6 Rates for the Consultant and Subconsultants 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 on a time and materials basis not to exceed a maximum price of FOUR HUNDRED THIRTY-EIGHT THOUSAND, EIGHT HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$438,825.00); including Reimbursable Expenses not to exceed FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00). The Contract Price includes all fees, costs, and expenses of whatever nature. Nothing in this Contract requires Metro 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 services performed at hourly rates set forth in Consultant's Fee Proposal. Consultant's Statement of Services will include an itemized statement of Services completed and Metro contract reference number. The Consultant will provide Statement of Services itemized in a manner specified by Metro to support Metro's allocation of services rendered and reimbursable expenses to specific project components.

7.2.2 Consultant's Statement of Services shall also provide Metro 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 If Owner's Representative engages any subcontractors to perform any of the Services, Owner's Representative shall not markup work performed by its subcontractors.

7.2.4 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.

7.2.5 Metro 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 Metro 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 Consultant's Statements of Service previously submitted and approved by Metro.

7.2.6 Statements of Services will be sent to Metro, Attention: Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736 or to metroaccountspayable@oregonmetro.gov.

7.3 Reimbursable Expenses. "Reimbursable Expenses" are the direct costs expended by Consultant, Consultant's employees, and Subconsultants 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 Metro. Reimbursable expenses must be evidenced by copies of third-party itemized invoices or receipts delivered to Metro, and are limited to the types of actual expenses listed below:

7.3.1 General Reimbursable Expenses. All reimbursement expenses shall be at the actual expense incurred by the Owner's Representative and its subcontractors without markup.

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 Owner – requested 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 Metro. Metro 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 Metro.

7.3.2.1 Mileage. Mileage will be reimbursed at the IRS-approved rate applicable to Metro 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%), 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. Metro will not reimburse for cost of alcoholic beverages.

7.3.2.3 Lodging. Metro will reimburse Consultant for Consultant's actual cost of lodging up to the U.S. General Services Administration specified per-diem lodging rates for the locality. The standard per-diem rate for lodging in Portland is \$169.00 per day. 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 Metro prior to incurring any expense for which reimbursement will be sought. 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. Metro 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 Metro determines that Consultant's Statement of Services is not complete, Metro will send a written notice to Consultant requesting the necessary information to complete the Statement of Services. The time periods provided in this Section will run from the date Metro 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 Metro in accordance with this Contract.

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

7.8 Final payment shall not be due to Consultant until Consultant submits to Owner the following in such form as may be required by Owner: (a) a statement identifying all subcontractors who have performed all or a portion of the Work, whether the subcontractors have been paid for their services, and if not, what the unpaid amount owed or allegedly owed to each subcontractor; and (b) data or other documentation establishing payment or satisfaction of Consultant's obligations arising out of this Agreement, such as receipts or releases and waivers of liens, claims, security interests or encumbrances. Consultant warrants that upon submittal of an invoice, to the best of Consultant's knowledge, information and belief, all Consultant's subcontractors have been paid.

ARTICLE 8
Dispute Resolution

8.1 Good Faith. Both Parties shall endeavor to negotiate resolutions to all disputes arising out of this Contract in good faith. If negotiation fails to resolve a dispute within 30 days after receipt of written notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation.

8.2 Mediator. 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 8.5.

8.3 Mediation. 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 Metro and Consultant. The schedule and time allowed for mediation shall be mutually acceptable. The mediation process is nonbinding.

8.4 Consolidation. Consultant agrees to consolidation of any mediation between Metro and Consultant with any other mediation involving, arising from, or relating to this Contract or the Project.

8.5 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.

8.6 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 Metro pending resolution of the dispute pursuant to the procedures set forth in this Article. In the event that Consultant, in Metro's opinion, fails to fully perform the requirements of the Contract pending resolution of a dispute, Metro shall be entitled to exercise its rights to impose adjusted payments pursuant to Section 7.6, and/or terminate the Contract pursuant to Section 5.15.

Having read and fully understood all terms and conditions of this Contract, the parties have executed this Agreement, effective as of the last date of signature set forth below.

CONSULTANT

METRO

Name of Consultant Firm

Signature

Signature

Printed Name and Title

Printed Name and Title

Date

Date

APPROVED AS TO LEGAL FORM

Metro Senior Assistant Attorney

Exhibit A – Scope of Work



Metro Contract No. 307018

1. Purpose and Goal of Work

The purpose of the work is to provide project management and owner representation services under the direction of Metro's construction Project Management Office (cPMO) Project Manager. The cPMO is responsible for centrally managing projects directly under its supervision and monitoring projects to ensure required processes are followed.

The Consultant shall provide sufficient organization, personnel and management to carry out the requirements of the Contract in an expeditious and economical manner consistent with the interests of the Owner. Support and staffing levels may vary significantly throughout the project duration depending on project need.

2. Description of the Scope of Work

The Consultant's scope of work includes the services outlined in Article 6 of the Contract as well as, but is not necessarily limited to, the Project Task Responsibilities attached.

Should cPMO undertake additional Convention Center projects preceding, concurrent or consecutive to the Plaza, Entries and Interiors Project, additional owner's representative/project management services may be requested by the Owner.

3. Deliverables/Outcomes

See Article 6 of the Contract.

Project Task Responsibilities

OCC Plaza, Entries and Interior Project

Project Task Responsibilities - March 30, 2017

Project management under Metro's Construction Project Management Office (cPMO) Project Manager (PM) ensures consistent procedures are followed; establishes controls over scope, schedule and budget; and consistently monitors and directs work. The cPMO PM provides or acquires the required approvals for work to proceed. All activities by the Owner's Rep (OR), Architect/Engineer (A/E) and CMGC are under the direction of the cPMO PM. cPMO PM is the principal conduit for communications between Owner and consultants.

During the course of the work informal lines of communication between parties will develop and are encouraged, so long as they don't circumvent official procedures, to ensure teamwork and efficiency. These informal lines of communication are not accounted for below as they will naturally develop and evolve.

The tasks below are outlined to explicitly illustrate delineations of scope and respective responsibilities of parties.

TASK	cPMO PM	Owner's Rep (OR)	CMGC	A/E	Comments
Facilitate design team meetings				x	1. A/E team to facilitate design meetings
Design team coordination and communication	x	x		x	1. A/E team responsible for design team coordination and communication 2. OR helps coordination and communication as required 3. PM acts as principal coordination and communication conduit to Owner
Design team meeting minutes	x	x			1. OR incorporates A/E meeting notes and issues minutes upon review & approval of PM 2. PM reviews and approves meeting minutes before broader distribution by OR
Design schedule				x	1. A/E team responsible for design schedule & updates
Construction schedule			x		1. CMGC responsible for construction schedule & updates
Project master schedule	x	x			1. OR maintains master schedule; integrating design, construction and other project tasks, w/ review & approval of PM 2. PM generates prime master schedule--handed off to OR to manage--reviews and approves master schedule updates
Project Steering group communications	x				1. PM is responsible for Steering Group communications
cPMO reports	x				1. PM is responsible for cPMO reports
Reporting, other	x				1. PM is responsible for reporting 2. OR provides reporting back-up as required
Communications/outreach - plan & execution	x	x			1. PM works w/ Owner's communications staff to plan and execute communications and outreach 2. OR assists with communication plan execution as required
Contract management	x				1. PM manages all contracts (including scopes of work, change orders, amendments, etc.)
Budget management	x				1. PM is responsible for budget management
Approvals	x				1. PM is responsible for all approvals that impact scope, schedule and budget 2. OR may be authorized to provide direction in field so long as it does not impact established scope, schedule or budget
Special inspections and Testing		x	x		1. OR is responsible for securing special inspection and testing services as required,documentation and quality assurance. 2. CMGC is responsible for scheduling and coordinating all required Special Inspections
Schedule management	x	x	x	x	1. PM has accountability for project master schedule and direction that impacts it 2. OR is responsible for managing the master schedule 3. CMGC is responsible for construction schedule 4. A/E is responsible for design schedule
Owner Architect Contractor (OAC) meeting facilitation and minutes			x		1. CMGC is responsible for OAC meeting documentation and facilitation
SD Construction Cost Estimate			x	x	1. Separate SD estimates are required per contract by A/E and CMGC

TASK	cPMO PM	Owner's Rep (OR)	CMGC	A/E	Comments
SD Construction Cost Estimate reconciliation	x	x	x	x	1. OR to provide analysis of cost estimates and oversee reconciliation of project cost estimate 2. A/E and CMGC to work w/ OR to develop single phase construction cost estimate that reconciles both versions 3. PM reviews and approves the reconciled estimate as the official phase estimate
Schematic Design documents				x	1. A/E is responsible for SD documents
Value Engineering	x	x	x	x	1. CMGC owns the VE log 2. A/E and OR analyze and contribute to VE log 3. PM provides direction and final approval of VE
DD Construction Cost Estimate			x	x	1. Separate DD estimates are required per contract by A/E and CMGC
DD Construction Cost Estimate reconciliation	x	x	x	x	1. OR to provide analysis of cost estimates and oversee reconciliation of project cost estimate 2. A/E and CMGC to work w/ OR to develop single phase construction cost estimate that reconciles both versions 3. PM reviews and approves the reconciled estimate as the official phase estimate
Design Development documents				x	1. A/E is responsible for DD documents
Land Use approvals		x		x	1. A/E is contractually responsible for ensuring permits and land use reviews required for project are accomplished. 2. OR assists with documentation and facilitation of LUR and permitting process, as required
Permitting		x	x	x	1. A/E is contractually responsible for ensuring permits and land use reviews required for project are accomplished. 2. OR assists with documentation and facilitation of LUR and permitting process, as required 3. CMGC ensures all required building and trades permits are pulled for project and is responsible for maintaining permits on jobsite w/ required signatures
Construction documents				x	1. A/E is responsible for construction documents
CD Construction Cost Estimate			x	x	1. Separate CD estimates are reqd. per contract by A/E and CMGC
CD Construction Cost Estimate reconciliation	x	x	x	x	1. OR to provide analysis of cost estimates and oversee reconciliation of project cost estimate 2. A/E and CMGC to work w/ OR to develop single phase construction cost estimate that reconciles both versions 3. PM reviews and approves the reconciled estimate as the official phase estimate
Design phase document reviews (100% SD, 100% DD, CD)	x	x	x		1. PM is responsible for securing Owner review and approval of each phase deliverable 2. OR and CMGC provide review and analysis of each phase deliverable
Change orders	x	x	x	x	1. CMGC submits change order request for approval 2. A/E analyzes CO's as requested/ required 3. OR analyzes all CO's over designated amount, or as requested by PM 4. PM approves all CO's
Submittals	x	x	x	x	1. CMGC submits submittals for approval and manages submittal log 2. A/E reviews and approves all submittals w/ additional sign-off by PM and/or OR as required 3. OR analyzes all submittals and approves or forwards to PM with recommendations 4. PM reviews and approves any submittals with deviations from project documents
Requests for Information (RFI's)	x	x	x	x	1. CMGC owns project RFI's and manages RFI log 2. A/E reviews and responds to RFI's 3. OR analyzes all RFI's and responds or forwards to PM with recommendations 4. PM reviews and approves any RFI's with impacts to scope, schedule and budget

TASK	cPMO PM	Owner's Rep (OR)	CMGC	A/E	Comments
Substitution requests	x	x	x	x	1. CMGC is responsible for issuing substitution requests (SR's) 2. A/E reviews and responds to SR's 3. OR analyzes all SR's and responds or forwards to PM with recommendations 4. PM reviews and approves any SR's with impacts to scope, schedule and budget
Site observations	x	x	x	x	1. PM, OR, CMGC and A/E are responsible for site observations 2. A/E to own site observation reports, with input from team
Notices of deficient work	x	x	x	x	1. A/E responsible for issuing notices of deficient work 2. OR and CMGC provides content and review of deficiency list 3. PM reviews and approves all notices
Certifies CMGC payment statements				x	1. A/E certifies CMGC payment statements prior to PM approving payment
As-built documentation			x		1. CMGC provides the as-built documentation.
As-built review and verification		x		x	1. A/E is responsible for as-built review and sign off. 2. OR provides addition review, verification and comment on as-built documentation.
Record drawings				x	1. A/E is responsible for final record drawings.
Percent for Art coordination	x		x	x	1. A/E and CMGC are responsible for coordinating and documenting percent-for-art projects as they relate to the project scope and impact their respective work. 2. PM manages RACC's contract for percent-for-art coordination and provides direction and approval for Owner.
Code and permit compliance		x	x	x	1. A/E and CMGC are responsible for applicable code and permit compliance across relevant jurisdictions 2. OR to review documents and site activities for compliance w/ applicable codes and permits and advise PM and design team accordingly
LEED certification	x	x	x	x	1. All parties responsible for ensuring OCC's existing LEED Platinum certification is not jeopardized through the course of this project and provides documentation as required

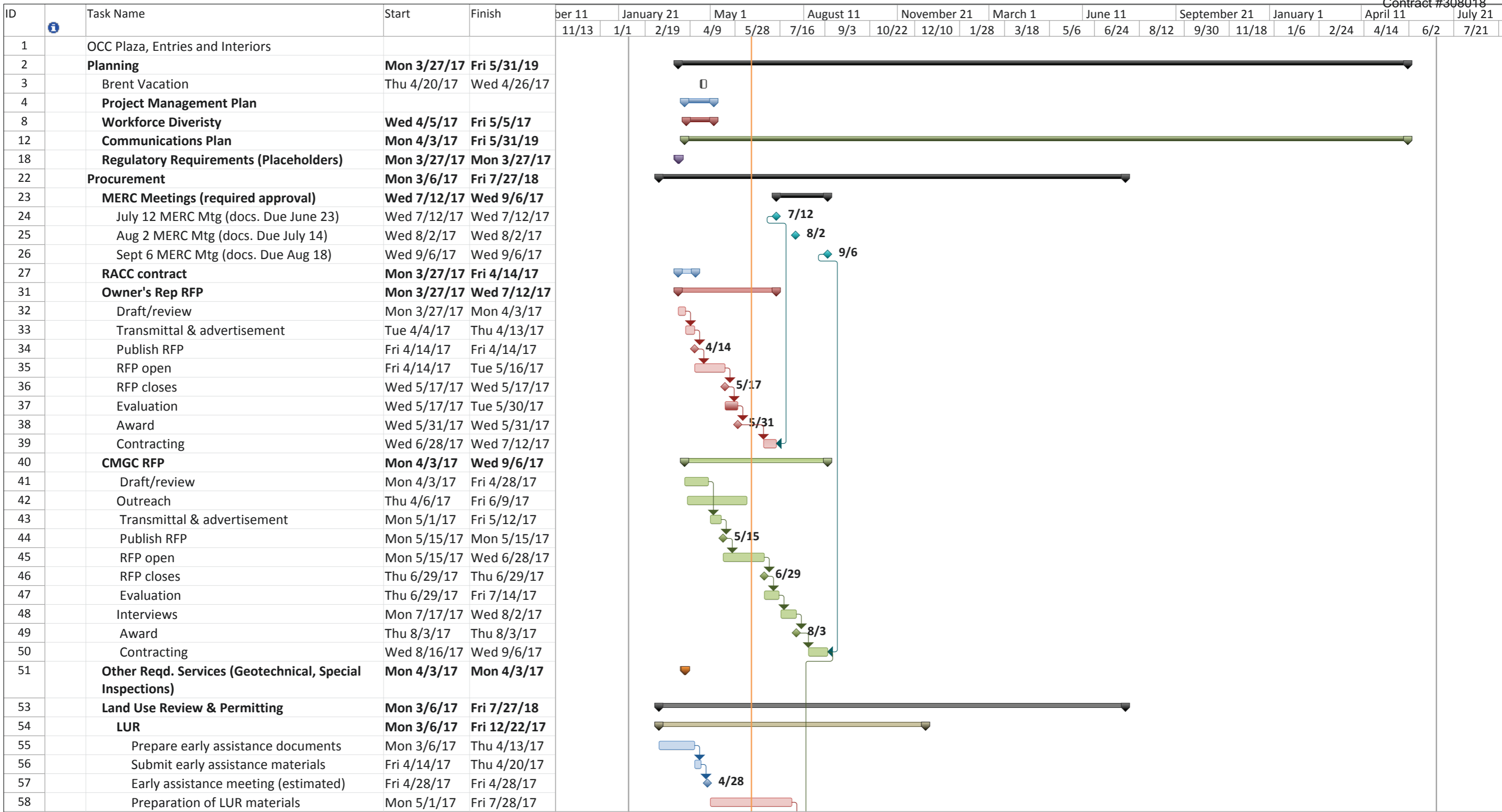
Contract 307018

EXHIBIT D

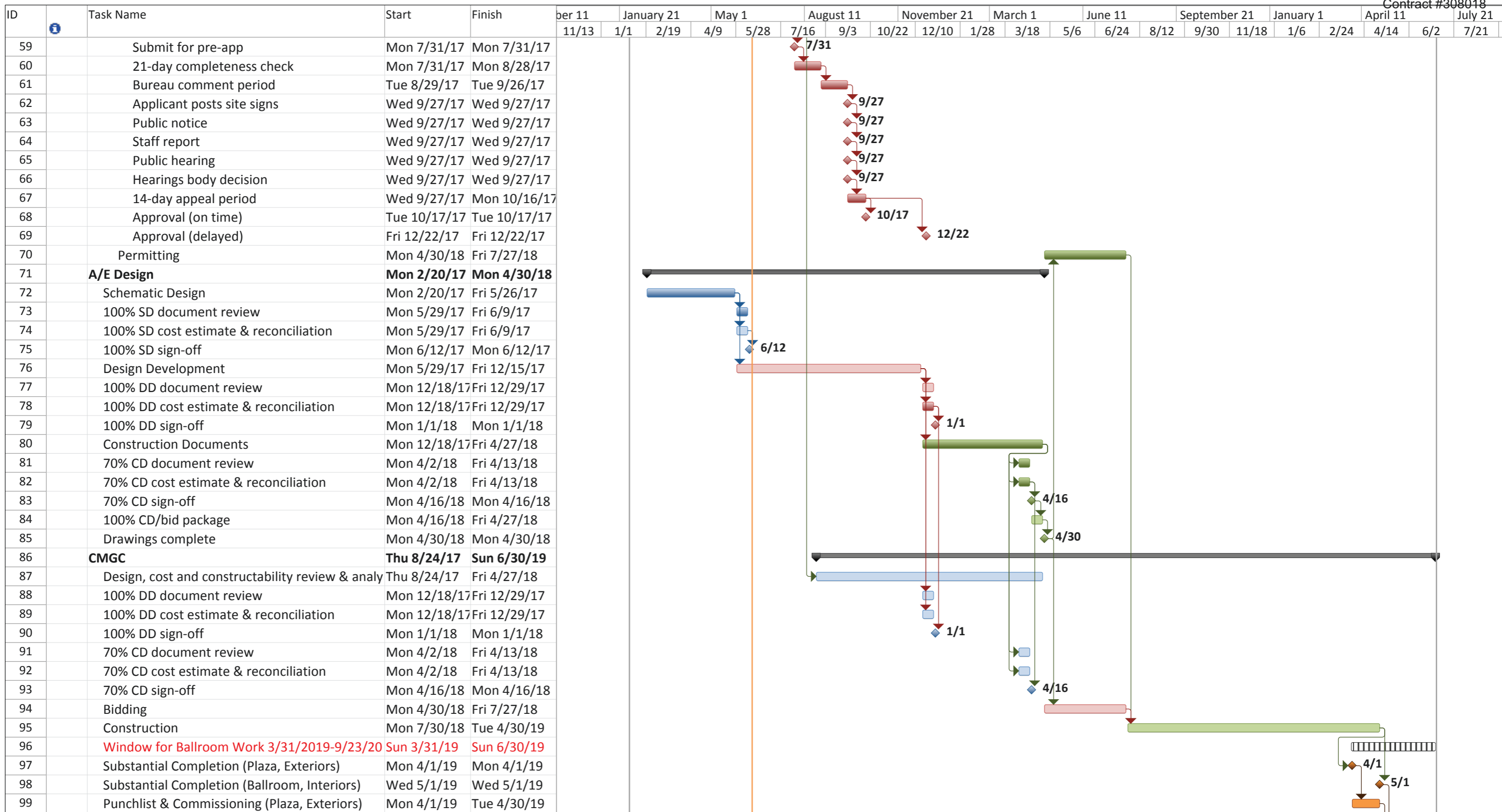
Consultant's Fee Proposal, including Consultant and Subconsultant rates for additional services

Excerpt from Consultant's Proposal, dated May 11, 2017

NAME/TITLE	HRLY RATE	NAME/TITLE	HRLY RATE
Karl Schulz, Principal	\$145.00	Jordan Messinger, PM	\$125.00
Patti Miles, Sr. PM	\$135.00	Cheryl Dorman, PC	\$90.00
Rhonda Jones, Finance	\$110.00	AshLee Williams, Intern	\$45.00
NAME/TITLE	HRLY RATE	NAME/TITLE	HRLY RATE
Dean Christensen, Sr. PM	\$135.00	Cathryn Heyn, PM	\$125.00
Proposed Budget			
Estimated Cost for Proposed inici Personnel:			\$382,485
Estimated Cost for Proposed Subcontractors/ Partners:			\$51,340
Flat Fee Reimbursable @\$200 per month:			\$5,000
Estimated Total Project Cost:			\$438,825

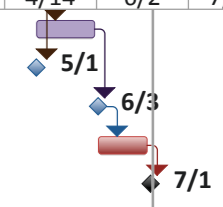


Project: OCC project master sched Date: Thu 6/15/17	Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
	Split		External Tasks		Inactive Summary		Manual Summary		Progress	
	Milestone		External Milestone		Manual Task		Start-only			
	Summary		Inactive Task		Duration-only		Finish-only			



Project: OCC project master sched Date: Thu 6/15/17	Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
	Split		External Tasks		Inactive Summary		Manual Summary		Progress	
	Milestone		External Milestone		Manual Task		Start-only			
	Summary		Inactive Task		Duration-only		Finish-only			

ID	Task Name	Start	Finish	October 11	January 21		May 1	August 11		November 21		March 1		June 11		September 21		January 1		April 11	July 21		
				11/13	1/1	2/19	4/9	5/28	7/16	9/3	10/22	12/10	1/28	3/18	5/6	6/24	8/12	9/30	11/18	1/6	2/24	4/14	6/2
100	Punchlist & Commissioning (Ballroom, Interiors)	Wed 5/1/19	Fri 5/31/19																				
101	Opening (Plaza, Exteriors)	Wed 5/1/19	Wed 5/1/19																				
102	Opening (Ballroom, Interiors)	Mon 6/3/19	Mon 6/3/19																				
103	Close-out documentation	Mon 6/3/19	Fri 6/28/19																				
104	Project Completion	Mon 7/1/19	Mon 7/1/19																				
105																							
106																							
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Project: OCC project master sched Date: Thu 6/15/17	Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
	Split		External Tasks		Inactive Summary		Manual Summary		Progress	
	Milestone		External Milestone		Manual Task		Start-only			
	Summary		Inactive Task		Duration-only		Finish-only			

MERC STAFF REPORT

Agenda Item/Issue: For the purpose of authorizing the General Manager of Visitor Venues to execute a contract with Inici Group, Inc. for owner's representative/project management services for the Oregon Convention Center plaza, entries and interior renovations project.

Resolution No: 17-24

Presented by: Brent Shelby

Date: July 12, 2017

BACKGROUND: In August 2015, LMN Architects was contracted to provide consulting and design services to create a cohesive Facility Master Plan for the execution of future design and upgrade projects at the Oregon Convention Center (OCC). This work has culminated in a comprehensive interior and exterior renovation and improvements scope of work. With a scope of work and allocated budget in hand, staff has undertaken steps to coincide completion of this project with opening of the Convention Center Hotel. These steps have included:

- In October 2016 LMN's contract was amended into a design services price agreement to provide "all phases of design development" for interior and exterior projects at OCC, wherein a series of design projects would be individually scoped and commissioned via Work Order.
- In February 2017 Metro Council authorized an exemption from competitive bidding via the procurement by competitive request for proposals (RFP) of a Construction Manager/General Contractor (CMGC) for construction of the project. This method allows for better cost control, increased public safety during construction, and more opportunity for Metro to influence woman- and minority-owned subcontractor participation when project construction proposals are evaluated. Responses to this RFP will be evaluated by mid-July.
- In April 2017 an RFP for owner's representative/project management services was publicly advertised. This consultant will work under the direction of Metro's construction Project Management Office (cPMO) project manager providing support services, construction administration and coordination.
- MERC received six proposals in response to the owner's representative/project management services RFP. A diverse team of evaluators, including staff from OCC and Metro Procurement Office ranked each proposal and scores were tallied to determine the highest-ranked proposer. Inici Group, Inc. had the highest cumulative score. Their ranking was reflective of a number of Inici Group's qualities, including:
 - successful experience working on large, complex public projects—including the OCC expansion in 2003
 - a diverse project team comprised of 62-percent women and 38-percent non-white individuals
 - the ability to self-perform the bulk of contract work, and
 - demonstrated ability to successfully communicate and coordinate with stakeholders.

Upon release of proposal rankings, the cPMO project manager worked with Inici Group's principal Karl Schulz to negotiate terms of the contract and a not-to-exceed total contract cost which represents the complete scope of work and best value to MERC. Upon execution of the contract Inici Group will become an integral member of the project team and a key component to its successful implementation.

FISCAL IMPACT: The project will span from FY 2016-17 to FY 2018-19 with expenditures throughout as work progresses. The Oregon Convention Center has \$35 million budgeted for project design and construction. Approximately \$7 million of that budget is for design, engineering and other “soft costs” (including owner’s representative/project management services.) Total not-to-exceed contract amount is within budget allocation for these services.

RECOMMENDATION: Staff recommends that the Metropolitan Exposition and Recreation Commission, by Resolution No. 17-24, authorize the General Manager of Visitor Venues to execute a contract with Inici Group. Inc. not to exceed a maximum price of FOUR HUNDRED THIRTY-EIGHT THOUSAND EIGHT HUNDRED TWENTY-FIVE AND NO/100 DOLLARS (\$438,825.00) for owner’s representative/project management services for the Oregon Convention Center plaza, entries and interior renovations project.