

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 09-10

For the Purpose of Accepting ELS Architecture and Urban Design's Proposal for the Arlene Schnitzer Concert Hall Renovation and Main Street Project and Authorizing the Interim General Manager to Enter Into an Agreement for Personal Services.

WHEREAS, on December 2, 2009, MERC final proposals for the Arlene Schnitzer Concert Hall Renovation and Main Street Project were due; and

WHEREAS, staff received three (3) responsive, responsible proposals before the final RFP submittal deadline. The three proposers presented final proposals to MERC staff and stakeholders January 30, 2009; and

WHEREAS, an evaluation committee comprised of staff from PCPA, staff from MERC, Commission members and a third party consultant scored the proposals and ranked ELS Architecture and Urban Design highest; and

WHEREAS, no appeals or protests were received within the allotted appeal period; and

WHEREAS, it is expected that MERC will spend approximately \$240,000 for this service, that includes a M/W/ESB participation goal.

BE IT THEREFORE RESOLVED AS FOLLOWS:

- The Metropolitan Exposition-Recreation Commission hereby finds that it is in the public interest to accept the proposal that ELS Architecture and Urban Design ("ELS") submitted for the Arlene Schnitzer Concert Hall Renovation and Main Street Design Project;
- Approves the award of a Personal Service Agreement, substantially in the form as attached hereto; and
- Delegates to the Interim General Manager the authority to execute the contract with ELS to provide design services for the Portland Center for the Performing Arts on its behalf.

Passed by the Commission on September 2, 2009.


Chair

Approved as to form:
Daniel B Cooper, Metro Attorney


Secretary-Treasurer

By: 
Nathan A. Schwartz Sykes, Senior Attorney

MERC STAFF REPORT

Agenda Item/Issue: For the Purpose of Accepting ELS Architecture and Urban Design's Proposal for the Arlene Schnitzer Concert Hall Renovation and Main Street Project – and Authorizing the Chief Executive Officer to Enter Into an Agreement for Personal Services.

Resolution No.: 09-10

Date: June 24, 2009

Presented by: Heather Peck

Background: On August 6, 2009, MERC issued a formal Request for Qualifications for professional architectural services necessary to design both a significant renovation to the Arlene Schnitzer Concert Hall and creation of an iconic Main Street venue between the Arlene Schnitzer Concert Hall and Antoinette Hatfield Hall. 7 firms submitted professional qualifications and upon formal evaluation process 4 firms were found to be qualified to submit a proposal for professional design services based upon the evaluation criteria. Of the 4 firms selected to participate in the final design proposal process, 3 firms formally submitted final proposals. The 3 firms submitted written proposals and orally presented their proposals to the evaluation committee and stakeholders. The final evaluation criteria were: written proposal and presentation of proposal, main street design proposal and presentation, project team, and MWESB participation. The Evaluation Committee scored the final proposals and determined ELS Architecture and Urban Design with overall highest scores. Notice of Intent to Award the contract was sent out on March 18, 2009. No appeals were received.

MERC representatives entered into negotiations with ELS Architecture and Urban Design resulting with the final proposal dated June 9, 2009.

Fiscal Impact: It is estimated that the Personal Services Agreement will not exceed \$225,000. ELS Architecture and Urban Design may request modification to the contract price, however, requests must include justification for increase and increase must be approved. Appropriation for the Arlene Schnitzer Concert Hall Renovation and Main Street Project is included in the budget and funded from appropriation contribution from the City of Portland.

Other Considerations: None

Recommendation: Staff recommends that the Commission by Resolution 09-10 authorize awarding the contract to ELS Architecture and Urban Design and authorize the Chief Executive Officer to execute a contract.

MERC STAFF REPORT

Agenda Item/Issue: For the Purpose of Accepting ELS Architecture and Urban Design's Proposal for the Arlene Schnitzer Concert Hall Renovation and Main Street Project – and Authorizing the Interim General Manager to Enter Into an Agreement for Personal Services.

Resolution No.: 09-10

Date: September 2, 2009

Presented by: Robyn Williams

Background:

2006: Oregon Symphony (OSO) desires to make the Arlene Schnitzer Concert Hall a long term home and begins discussions with PCPA on possible improvements. PCPA invites acousticians in for an analysis of acoustics at Arlene Schnitzer Concert Hall.

PCPA and OSO review acoustical findings and raised funds for a closer look at improvements. Steering committee of users, stakeholders and MERC was formed to provide feedback. Priorities, opportunities and challenges were discussed over several months of meetings.

2007: PCPA, OSO and the Friends of the Performing Arts Center raised funds for feasibility study on development on Main Street and began analysis of project scope, funding opportunities and program possibilities. MERC assumes the lead on the project. The Friends of the Performing Arts Center's consultant made a presentation made to Commission.

2008: PCPA obtains \$225,000 from City of Portland to fund schematic design work for Arlene Schnitzer Concert Hall and Main Street project concept design work.

August 6, 2008: MERC issued a formal Request for Qualifications for professional architectural services to provide schematic design work for both a significant renovation to the Arlene Schnitzer Concert Hall and creation of an iconic Main Street venue between the Arlene Schnitzer Concert Hall and Antoinette Hatfield Hall. Seven firms submitted professional qualifications and through a formal evaluation process, four firms were found to be qualified to submit a proposal for professional design services based upon the evaluation criteria. Of the four firms selected to participate in the final design proposal process, three firms formally submitted final proposals.

The three qualified firms submitted written proposals and made formal presentations to the evaluation committee and stakeholders. The final evaluation criteria were: written proposal and presentation of proposal, main street design proposal and presentation, project team, and MWESB participation. The Evaluation Committee scored the final

proposals and determined ELS Architecture and Urban Design held the overall highest scores. Notice of Intent to Award the contract was sent out on March 18, 2009. No appeals were received.

MERC representatives entered into negotiations with ELS Architecture and Urban Design resulting with the final proposal dated June 9, 2009. Upon additional review, staff requested additional information on MWESB participation as well as expanded scope for Main Street and updated pricing. This final revised proposal was submitted and dated August 11, 2009.

Scope highlights include schematic design for renovations to the Arlene Schnitzer Concert Hall such as:

- Customer amenities such as expanded restrooms, increased seating comfort, better distribution of accessible seating, lobby improvements and enhanced finishes.
- Acoustic improvements for better audience enjoyment and a better performer environment.
- Development of capital budget for proposed improvements

Scope for Main Street is to consider an enclosed structure between the Hatfield and the Schnitzer that provides the following:

- Preliminary program and design concept that includes public amenities for patrons of the Schnitzer and event revenue producing spaces as well as an iconic element that can serve as a developmental catalyst in the cultural district.
- Funding strategy-both public and complementary co-investments.
- Development of capital budget for new Main Street building.

Time line:

- | | |
|--|-----------|
| 1. Develop refined concept for improvements to the Schnitzer | 6-8 weeks |
| 2. Develop concept for Main Street | 6-8 weeks |
| 3. Develop Phase one schematic design outline for Schnitzer | 8 weeks |

MWESB/FOTA participation will provide for a paid minority intern to work alongside the design team during the entire process. Additionally, a small group of minority students will be invited to shadow the entire process, attending all work sessions with MERC and PCPA staff.

ELS will also supplement their team with local MWESB/FOTA companies as the need for additional consultants are identified during this phase. This could include companies that would provide documentation assistance of existing technical conditions such as testing existing electrical loading for the Schnitzer or location of site utilities under Main Street. Note that this contract provides for preliminary design services associated with the project. If the project proceeds, MWESB/FOTA goals will be revisited as part of the award of a contract for full design services.

Fiscal Impact: It is estimated that the Personal Services Agreement will not exceed \$240,000. Appropriation for the Arlene Schnitzer Concert Hall Renovation and Main Street Project is included in the budget and funded from appropriation contribution from the City of Portland (\$225,000) and the Friends of the Performing Arts Center (\$35,000).

Other Considerations: Staff will present regular updates to the Commission as design work progresses.

Recommendation: Staff recommends that the Commission approve Resolution 09-10 for the Purpose of Accepting ELS Architecture and Urban Design's Proposal for the Arlene Schnitzer Concert Hall Renovation and Main Street Project – and Authorizing the Interim General Manager to Enter Into an Agreement for Personal Services.



June 09, 2009, Rev 6-16-09

Ms. Heather Peck
MERC
777 NE MLK Jr. Blvd.
Portland, OR 97232

SUBJECT: Fee Proposal for Renovations to the Arlene Schnitzer Concert Hall and Main Street Project

Dear Ms. Peck:

ELS Architecture and Urban Design is pleased to present this proposal for renovations to the Arlene Schnitzer Concert Hall and the Main Street Project.

We are very pleased to be selected for this project through the two stage process that recently concluded. We appreciated the opportunity to meet with you and Robin Williams to discuss the priorities for the scope of the project, our design team for the project, our initial thoughts on phasing, and the process we will use. Our proposal is organized based on these discussions and the information presented in our Stage I and Stage II submittals.

Project Team

In our Stage I submittal we submitted a preliminary recommendation for the design team. The Stage II process and further discussions have led to adjustments to our team.

ELS Architecture and Urban Design will be the Lead Design Architect and the Architect of Record. Kurt Schindler will be Principal-in-Charge and will lead the effort for the Schnitzer Concert Hall Improvements. Barry Elbasani will be the Resource Principal and will lead the effort for Main Street. As submitted in Stage I, the ELS Team will include Jeff Zieba, Designer; Carlos Alvarez, Project Architect; and Diana Hayton, Interiors. Jeff Zieba, in particular, contributed significantly to the design efforts as part of the Stage II submission.

Greg Baldwin with ZGF will be a consultant to ELS for the design of Main Street. Having successfully collaborated with Greg on past projects in Portland, we see his knowledge of Portland and his association with the Main Street project as invaluable for this part of the project.

Members of the design team submitted as part of the Stage I submittal that will contribute to the scope of design work included in this proposal include:

Acoustic Consultant	Arup Acoustics (San Francisco, California, as lead office)
Theatre Consultant	Theatre Projects Consultants (Norwalk, Connecticut)
Structural Engineer	KPFF Consulting Engineers (Portland, Oregon)
MEP Engineers	Interface Engineering (Portland, Oregon)
Civil Engineer	David Evans and Associates (Portland, Oregon)
Cost	Davis Langdon (San Francisco, California, as lead office)

At completion of the design work anticipated in this proposal, ELS will have a better understanding of the expertise necessary to complete the design work for final design (Design Development and Construction Documents), as well as our approach to managing the design team's efforts during the Bidding and Construction phases. We plan to then supplement our team with additional consultants from the Portland area.

Project Scope Criteria

In our meeting on May 8, 2009, we discussed the project scope relative to issues identified in the 2005 Feasibility Study. Several key criteria were identified:

- The cost of the project should be in the \$15-20 million range. We would therefore anticipate a construction cost not to exceed \$15 million with a project cost not to exceed \$20 million. This corresponds to Feasibility Study Scheme "D" in cost; a final concept will most likely include a different mix of project components and component costs.
- Emphasis needs to be placed on audience experience. Project scope will increase the number of and access to public restrooms, increase seating comfort and access to seating, provide better distribution of accessible seating, include lobby improvements, and provide some enhancement to interior finishes to provide more "sparkle."
- Acoustic improvement to the Schnitzer will be included. Each contributing element (such as improved orchestra shell, enlarged proscenium opening, addition of a forestage reflector, stage extension, stage reconstruction, electro-acoustic enhancement, etc.) must be tempered with the value it provides for audience appreciation and performer environment relative to anticipated cost and the construction period required to complete the improvement.
- The Schnitzer should be more adaptable to accommodating a wide range of contemporary entertainment. Quick change-over between event types, improved load-in, ease of suspending traveling sound and lighting rigs, flexibility of house equipment, and storage for house equipment (such as orchestra/chorus risers, shell, etc.) should all be considered while retaining the historic character of the venue.
- A reduced seating count to approximately 2,500 is an acceptable trade-off for the improvements being considered.
- Construction should occur within the Oregon Symphony off-season, a period of five (or at most six) months from May to September. Improvements that require building closure or major disruption for a greater period of time will have to be evaluated relative to the benefit of the improvement versus the displacement of the Symphony for a season to another location. The total loss of a Symphony season is considered unacceptable.
- During the Stage II design process our team identified significant opportunities resulting from an expansion into Main Street, which include alleviating some of the space issues at the Schnitzer, as well as enhancing the overall experience the PCPA can provide for the City of Portland. Therefore, the Main Street project should be addressed parallel with improvements to the Schnitzer Concert Hall.

Work Plan

As part of our Stage II submission ELS provided a preliminary work plan in our approach to the Arlene Schnitzer Concert Hall renovation that identified a single, 12-week effort. Based on our conversations with you and Robin, we have modified the work plan to the following to reflect MERC and PCPA's desire to identify a scope of work that addresses the most pressing needs for the Schnitzer and develops that scope to a Schematic Design level.

Task 1: Develop a Refined Concept for Improvements to the Schnitzer

6-8 weeks

Since the 2005 Feasibility Study was not completed, this task will complete the study and define a preliminary scope to be taken to a Schematic Design level in Task 3.

- A. Understanding the varied approach of each of the five options in the Feasibility Study, the design team will meet and prepare a focused approach with a variety of potential alternatives based on the criteria noted above. The four main components of the building identified in each of the five options include:
 - Performance area
 - Performance support
 - Audience chamber
 - Audience support

- B. Meet with the Working Group established by MERC and PCPA to discuss alternatives. This meeting may take the form of a work session where ideas are presented and discussed and new ideas are developed. There could be two meetings in a single day; the first meeting would include the project leadership, and the second meeting would include a wider group of users and stakeholders. ELS, Arup Acoustics, and Theatre Projects would attend both meetings.
- C. Refine concept(s) discussed and alternatives suggested at the Working Group meeting. Study would involve the engineer team and address such issues as:
 - Which alternatives may trigger a seismic upgrade or major structural alterations?
 - Which alternatives require significant change to building systems (mechanical, electrical, plumbing, life safety, etc.)?
 - Which alternatives can be provided with an acceptable level of change to the historic integrity of the character-defining areas of the building?
 - Which alternatives will require a longer construction period to complete than a single Symphony off-season?
- D. Meet with Working Group to review the Refined Concept(s).
- E. Develop order-of-magnitude costs for the Refined Concept(s) and review with the Working Group. Establish a preferred concept for a first phase of improvements.

Task 2: Develop Concept for Main Street parallel to the Schnitzer Improvements 6-8 weeks

As noted above, development of a preliminary concept for Main Street should parallel the development of a refined concept for the Schnitzer addressing such issues as:

- Can audience improvements such as the addition of toilets occur in both the Schnitzer and a Main Street addition, and which is easier to achieve relative to limited construction periods for the Schnitzer's operation?
- Can a direct/enclosed connection between the Schnitzer and Antoinette Hatfield Hall buildings allow for any significant sharing of public and support facilities?
- Would the appeal of even a modest Main Street project greatly enhance the fundraising for both the Schnitzer and Main Street?
- What political, administrative, and technical steps are necessary to achieve realization of a Main Street project?
- Are there additional revenue generating facilities that can be included in the Main Street project?

We anticipate the alternatives for Main Street be discussed at the Working Group meetings noted above. Costs would be developed for Main Street options in Task I.E. Parallel to Main Street concepts we may develop and compare other alternatives for public space, briefly identified in our Stage II presentation, such as a Founder's Room over the Schnitzer lobby or the enclosure of the Park-side balcony.

Task 3: Develop Schematic Design for a First Phase of the Schnitzer Improvements 10-12 weeks

Discussions at our meeting indicated that MERC would like to establish a first phase of Schnitzer improvements that could be accomplished in a single Symphony off-season. We anticipate such a project would address the most pressing needs of audience amenities and comfort, and, possibly, part of the needs for acoustic improvements. Based on the scope identified in Task I, we will develop Schematic Design documents within the parameters of the fees we have established below. While a greater scope of work might reflect a lesser developed design, the goal will be to prepare documentation beyond the Refined Concept to allow final design (as represented by Design Development and Construction Documents) to proceed with greater confidence when funding is available. We assume there will be two Working Group meetings during this task.

Deliverables

Tasks 1 and 2 will be developed in plan, section, sketch, and 3D format, similar to our Stage II submission. We will provide meeting minutes for each meeting. The completion of Tasks 1.E and 2 will include a cost estimate, summary memo(s) from contributing disciplines, and drawings formatted for 11x17" reproduction. Task 3 will include more detailed schematic level drawings and a refined cost estimate for a first phase project.

Professional Fees

We have developed the work plan to be a lean, efficient process to meet MERC's level of initial design for the fundraising period for the Schnitzer Concert Hall Improvements. We have identified a separate fee for Task 2. As noted, we have included two Working Group meetings for each phase. Additional meetings or more formal presentations to large public groups can be added to our scope of work.

	<u>Base Fee</u>	<u>Additional Fee</u>
Task 1: Refined Concept for the Schnitzer Concert Hall 6-8 weeks	\$135,000	
Task 2: Concept for Main Street (Parallel with Schnitzer)* 6-8 weeks		\$40,000
Task 3: Phase One Schematic Design, Schnitzer Concert Hall 10-12 weeks	<u>\$ 90,000</u> \$225,000	

**Note Barry Elbasani will be invoiced at cost.
Additional meetings – \$2,000 per person, per meeting.
Enhanced graphics – allowance to be determined.
Reimbursable expenses will be invoiced per the attached schedule.*

We are very happy to discuss this proposal in more detail with you and to answer any questions that you may have. We assume MERC will provide their contract for preliminary design services for our review. We look forward to working with the Metropolitan Exposition Recreation Commission and our continued association with the Portland Center for the Performing Arts for the Arlene Schnitzer Concert Hall and Main Street Project.

Sincerely,

ELS Architecture and Urban Design



Kurt Schindler, AIA
Principal



METROPOLITAN EXPOSITION
RECREATION COMMISSION



Personal Services Agreement

Contract # _____

THIS AGREEMENT is between Metropolitan Exposition-Recreation Commission ("MERC"), located at 777 N.E. Martin Luther King, Jr. Blvd., Portland, OR 97232-2742, and ELS Architecture and Urban Design, referred to herein as "Contractor," located at 2040 Addison Street Berkeley, CA. 94704.

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

1. **Duration.** This personal services agreement ("Agreement") shall be effective July 6, 2009 and shall remain in effect until and including June 30, 2010, unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified below and in the attached "Exhibit A – Proposal," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work herein and as referenced in Attachment "A", in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

Project Design Scope Criteria -

- Design emphasis needs to be placed on audience experience. Project scope will increase the number of and access to public restrooms, increase seating comfort and access to seating, provide better distribution of accessible seating, include lobby improvements, and provide some enhancement to interior finishes to provide more "sparkle."
- Acoustic improvement to the Schnitzer will be included. Each contributing element (such as improved orchestra shell, enlarged proscenium opening, addition of a forestage reflector, stage extension, stage re-construction, electro-acoustic enhancement, etc.) must be tempered with the value it provides for audience appreciation and performer environment relative to anticipated cost and the construction period required to complete the improvement.
- The Arlene Schnitzer Concert Hall should be more adaptable to accommodating a wide range of contemporary entertainment. Quick change-over between event types, improved load-in, ease of suspending traveling sound and lighting rigs, flexibility of house equipment, and storage for house equipment (such as orchestra/chorus risers, shell, etc.) should all be considered while retaining the historic character of the venue.
- Construction should occur within the Oregon Symphony off-season, a period of five (or at most six) months from May to September. Improvements that require building closure or major disruption for a greater period of time will have to be evaluated relative to the benefit of the improvement versus the displacement of the Symphony for a season to another location. The total loss of a Symphony season is considered unacceptable.
- During the Stage II design process our team identified significant opportunities resulting from an expansion into Main Street, which include alleviating some of the space issues at the Schnitzer, as well as enhancing the overall experience the PCPA can provide for the City of Portland. Therefore, the Main Street project should be addressed parallel with improvements to the Schnitzer Concert Hall.

Work Plan – Scope of Work :

Provide a preliminary work plan in our approach to the Arlene Schnitzer Concert Hall renovation that identifies a single, 12-week effort.

Task 1: Develop a Refined Concept for Improvements to the Arlene Schnitzer Concert Hall 6-8 weeks

- A. Understanding the varied approach of each of the five options in the Feasibility Study, the design team will meet and prepare a focused approach with a variety of potential alternatives based on the criteria noted above. The four main components of the building identified in each of the five options include:
- Performance area
 - Performance support
 - Audience chamber
 - Audience support
- B. Meet with the Working Group established by MERC and PCPA to discuss alternatives. This meeting may take the form of a work session where ideas are presented and discussed and new ideas are developed.
- C. Refine concept(s) discussed and alternatives suggested at the Working Group meeting. Study would involve the engineer team and address such issues as:
- Alternatives that may trigger a seismic upgrade or major structural alterations.
 - Alternatives that will require significant change to building systems (mechanical, electrical, plumbing, life safety, etc.)
 - Alternatives that can provide an acceptable level of change to the historic integrity of the character-defining areas of the building
 - Alternatives that will require a longer construction period to complete than a single Symphony off-season.
- D. Meet with Working Group to review the Refined Concepts.
- E. Develop order-of-magnitude costs for the Refined Concept(s) and review with the Working Group. Establish a preferred concept for a first phase of improvements.

Task 2: Develop Concept for Main Street parallel to the Arlene Schnitzer Concert Hall Improvements 6-8 weeks

- Can audience improvements such as the addition of toilets occur in both the Arlene Schnitzer Concert Hall and a Main Street addition, and which is easier to achieve relative to limited construction periods for the Arlene Schnitzer Concert Hall's operation.
- Can a direct/enclosed connection between the Arlene Schnitzer Concert Hall and Antoinette Hatfield Hall buildings allow for any significant sharing of public and support facilities.
- Would the appeal of even a modest Main Street project greatly enhance the fundraising for both the Arlene Schnitzer Concert Hall and Main Street.
- Plan political, administrative, and technical steps are necessary to achieve realization of a Main Street project.
- Additional revenue generating facilities that can be included in the Main Street project.

Task 3: Develop Schematic Design for a First Phase of the Schnitzer Improvements 10-12 weeks

See Attachment "A" - proposal for further details.

Deliverables

- Tasks 1 and 2 will be developed in plan, section, sketch, and 3D format.
- Meeting Minutes to be provided by the Contractor.
- Completion of Tasks 1.E and 2 will include a cost estimate, summary memo(s) from contributing disciplines, and drawings formatted for 11x17" reproduction. Task 3 will include more detailed schematic level drawings and a refined cost estimate for a first phase project.

3. Payment. MERC shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed Two hundred, twenty-five thousand and 00/100THS DOLLARS (\$225,000.00).

Professional Fees

Base Fee Additional Fee

Task 1: Refined Concept for the Schnitzer Concert Hall

6-8 weeks \$135,000

Task 2: Concept for Main Street (Parallel with Arlene Schnitzer Concert Hall Renovations)*

6-8 weeks \$40,000

Task 3: Phase One Schematic Design, Schnitzer Concert Hall

10-12 weeks \$90,000

Total: \$225,000

4. Insurance.

a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:

(1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability, shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage; and

(2) Automobile bodily injury and property damage liability insurance coverage shall be a minimum of 1,000,000 per occurrence.

b. MERC, its appointed officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to MERC 30 days prior to the change or cancellation.

c. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to MERC a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

d. Contractor shall provide MERC with a Certificate of Insurance complying with this article, and naming MERC as an additional insured within fifteen (15) days of execution of this contract, or twenty-four (24) hours before services under this contract commence, whichever date is earlier.

5. Indemnification. Contractor shall indemnify and hold MERC, its agents, employees and appointed officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by MERC and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow MERC the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for six years after MERC makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of MERC, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with MERC, informing MERC of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of MERC.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of MERC. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to MERC.

10. Right to Withhold Payments. MERC shall have the right to withhold from payments due to Contractor such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage, or claim which may result from

Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapters 279A, 279B and 279C and the recycling provisions of ORS 279B.025 to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

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

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, MERC may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by MERC of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

CONTRACTOR

**METROPOLITAN EXPOSITION-RECREATION
COMMISSION**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____