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# **MERC Commission Meeting**

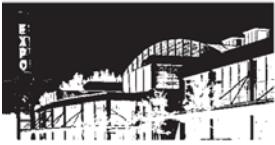
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January 3, 2018  
12:30 pm

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Portland's Centers for the Arts  
1111 SW Broadway  
Brunish Theater

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600 NE Grand Ave.  
Portland, OR 97232  
503-797-1780

[www.oregonmetro.gov](http://www.oregonmetro.gov)



# Metro | *Exposition Recreation Commission*

## Agenda

Meeting: Metro Exposition Recreation Commission Meeting  
Date: Wednesday, January 3, 2018  
Time: 12:30-2:30 p.m.  
Place: Portland's 5 Centers for the Arts, Brunish Theater

### CALL TO ORDER

- |              |            |   |   |
|--------------|------------|---|---|
| <b>12:30</b> | <b>1.</b>  | <b>QUORUM CONFIRMED</b>   |   |
| <b>12:35</b> | <b>2.</b>  | <b>OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS</b>   |   |
| <b>12:40</b> | <b>3.</b>  | <b>COMMISSION/COUNCIL LIAISON COMMUNICATIONS</b>  | <b>Karis Stoudamire-Phillips,<br/>Tom Hughes</b>              |
| <b>12:45</b> | <b>4.</b>  | <b>GM COMMUNICATIONS</b>  | <b>Scott Cruickshank</b>                                      |
| <b>12:50</b> | <b>5.</b>  | <b>FINANCIAL REPORT, pages 5-21</b>   | <b>Rachael Lembo</b>  |
| <b>12:55</b> | <b>6.</b>  | <b>VENUE BUSINESS REPORTS</b>   | <b>Robyn Williams, Matthew P.<br/>Rotchford, Craig Stroud</b> |
| <b>1:10</b>  | <b>7.</b>  | <b>EXPO AND PORTLAND'S PROJECTS UPDATE, pages 23-25</b>   | <b>Ben Rowe</b>   |
| <b>1:30</b>  | <b>8.</b>  | <b>HOTEL PROJECT UPDATE</b>   | <b>Hillary Wilton</b>   |
| <b>1:50</b>  | <b>9.</b>  | <b>CONSENT AGENDA</b>   |   |
|              |            | <ul style="list-style-type: none"> <li>• Record of MERC Actions, December 6, 2017, pages 27-29</li> </ul>   |   |
| <b>1:55</b>  | <b>10.</b> | <b>ACTION AGENDA</b>  | <b>Nancy Strening</b>   |
|              |            | <p><b>Resolution 18-01:</b> For the purpose of approving the scope and fee proposal from Architectural Resources Group for Architecture and Engineering Services for the Arlene Schnitzer Concert Hall Orchestra Shell Replacement and authorizing the General Manager of Visitor Venues to execute the contract, pages 31-71</p> |   |

**ADJOURN**

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# **MERC Commission Meeting**

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January 3, 2018  
12:30 pm

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5.0 Financial Report

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NOVEMBER 2017

FINANCIAL INFORMATION

*For Management Purposes only*



**OREGN**

Oregon  
Convention  
Center



# Memo



Date: January 3, 2018  
 To: Commissioner Karis Stoudamire-Phillips, Chair  
 Commissioner Deidra Krys-Rusoff, Secretary-Treasurer  
 Commissioner Judie Hammerstad  
 Commissioner Ray Leary  
 Commissioner Damien Hall  
 Commissioner Deanna Palm  
 Commissioner Dañel Malán

From: Rachael Lembo – MERC Finance Manager  
 Re: Financial Updates for November 2017

### November 2017 Executive Summary

November had the highest total event revenues per month so far this year, partially inflated by the recording of Cirque revenue from the show earlier this year. Due to Cirque the Portland Expo Center’s revenues were \$1.3 million, almost doubling total revenues at Expo for the year. Portland’s Centers for the Arts had a great month with \$2.3 million in revenue, due to almost \$500,000 in ticket service charges from Hamilton and the opening of the first Broadway show, The Bodyguard. The Convention Center generated \$2 million, less than recent months but above the budgeted amount for November. We still have busy months to come with the Auto Show in January at the Convention Center and Hamilton opening in March at Portland’s.

### Total MERC Venues – November Financial Statistics

#### MERC Venues Events & Attendance

Events and attendance were up at the Convention Center, primarily due to a new event, Tiny House Expo, and a November opening of Festival of Trees this year. Events and attendance were comparable to the prior year at Portland’s and Expo.

Total MERC Venues	2016		2017		Change from Prior Year	
	Events	Attendance	Events	Attendance	Events	Attendance
<b>Q1</b>	284	342,829	281	322,419	(3), (1%)	(20,410), (6%)
<b>October</b>	166	170,280	167	186,547	1, 1%	16,267, 10%
<b>November</b>	141	163,917	178	186,175	37, 26%	22,258, 14%
<b>YTD</b>	591	677,026	626	695,141	35, 6%	18,115, 3%

### MERC Venues Revenues & Expense

Total venue event revenues (charges for services and food & beverage) through November are \$19.3 million, 41% of annual budget. Overall operating expenses through October are \$26.7 million, 42% of annual budget. This includes Expo's annual principal debt payment. Total MERC net operations through November are \$1.6 million, an increase of \$1.3 million from October.

	FY2017-18 YTD	Budget	% of Budget
Event Revenues	19,288,845	47,307,634	41%
Other Revenues	8,967,794	19,993,193	45%
Operating Expenses	26,680,986	64,024,639	42%
Net Operations	1,575,653	3,276,188	48%

### Food & Beverage

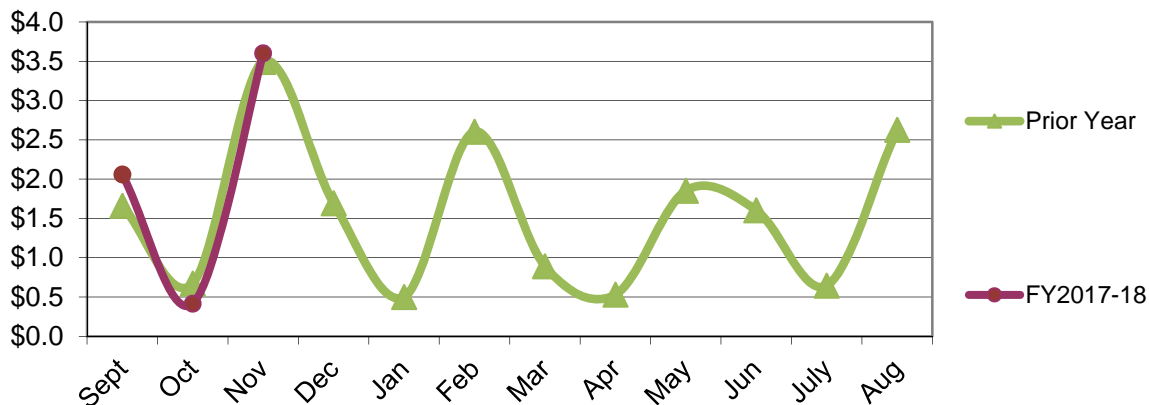
With the recording of Cirque revenue, and a strong food and beverage month at Portland'5, the total food and beverage margin is up to 17.3%. This is just under the annual budget of 17.7%.

	FY2017-18 YTD	Budget	Prior Year YTD
OCC	15.5%	16.9%	21.5%
P5	26.0%	21.2%	28.6%
Expo	17.5%	17.0%	11.8%

### Transient Lodging Tax (TLT)

The third TLT payment of the year was \$3.6 million, up 3% from prior year and bringing total collections up 4%. This payment represents collections by the City/County in November and includes the majority of receipts from July-Sept hotel stays, the busiest time of year. Collections for the first three months typically represent about 30% of total collections, the largest in any quarter.

Metro TLT receipts	FY2016-17	FY2017-18	\$ Var	% Var
September	1,661,817	2,059,874	398,057	24%
October	672,908	415,703	(257,205)	-38%
November	3,492,024	3,601,445	109,421	3%
YTD	5,826,749	6,077,022	250,273	4%



**Historical Actual Comparison FY 2014-15 to FY 2017-18**

	Fiscal Year:		FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	3-yr Hist.	% Var	% Var
Revenues			YTD	YTD	YTD	YTD	Average	Average	PY
Food and Beverage			6,822,912	9,144,972	7,431,093	7,608,949	7,799,659	-2.4%	2.4%
Charges for Services			9,189,970	11,023,194	11,040,552	11,679,896	10,417,905	12.1%	5.8%
<i>Subtotal Event Revenues</i>			<i>16,012,881</i>	<i>20,168,166</i>	<i>18,471,646</i>	<i>19,288,845</i>	<i>18,217,564</i>	<i>5.9%</i>	<i>4.4%</i>
Lodging Tax			5,182,583	5,267,881	5,826,749	6,077,022	5,425,738	12.0%	4.3%
Other			236,993	109,096	238,841	2,890,772	194,977	1382.6%	1110.3%
<b>Total Revenues</b>			<b>21,432,458</b>	<b>25,545,143</b>	<b>24,537,236</b>	<b>28,256,639</b>	<b>23,838,279</b>	<b>18.5%</b>	<b>15.2%</b>
<b>Expenses</b>									
Food and Beverage			5,258,690	6,521,406	5,797,960	6,295,310	5,859,352	7.4%	8.6%
Personnel Services			7,183,823	7,802,821	8,061,529	8,556,882	7,682,724	11.4%	6.1%
Materials and Services			4,816,649	5,665,012	6,291,885	6,989,365	5,591,182	25.0%	11.1%
Other Operating Expense			2,863,733	2,864,790	2,840,717	4,839,430	2,856,413	69.4%	70.4%
<b>Total Operating Expense</b>			<b>20,122,895</b>	<b>22,854,029</b>	<b>22,992,091</b>	<b>26,680,986</b>	<b>21,989,672</b>	<b>21.3%</b>	<b>16.0%</b>
<b>Net Operations</b>			<b>1,309,563</b>	<b>2,691,114</b>	<b>1,545,145</b>	<b>1,575,653</b>	<b>1,848,607</b>	<b>-14.8%</b>	<b>2.0%</b>
Food & Beverage Margin \$			1,564,222	2,623,566	1,633,133	1,313,639	1,940,307	-32.3%	-19.6%
Food & Beverage Margin %			22.9%	28.7%	22.0%	17.3%	24.5%		2.4%

## Oregon Convention Center

November tends to be a slower month at OCC, a brief break between a busy October and even busier January. This month event revenues were \$2 million and lodging tax was \$3.2 million. The \$2 million additional allocation from the VDF received in October was passed through to Travel Portland in November. Net operations YTD is nearly \$2.6 million, a significant increase due to the large TLT payment. Food and beverage margin for the year is 15.5%, compared to a budget of 16.9%.

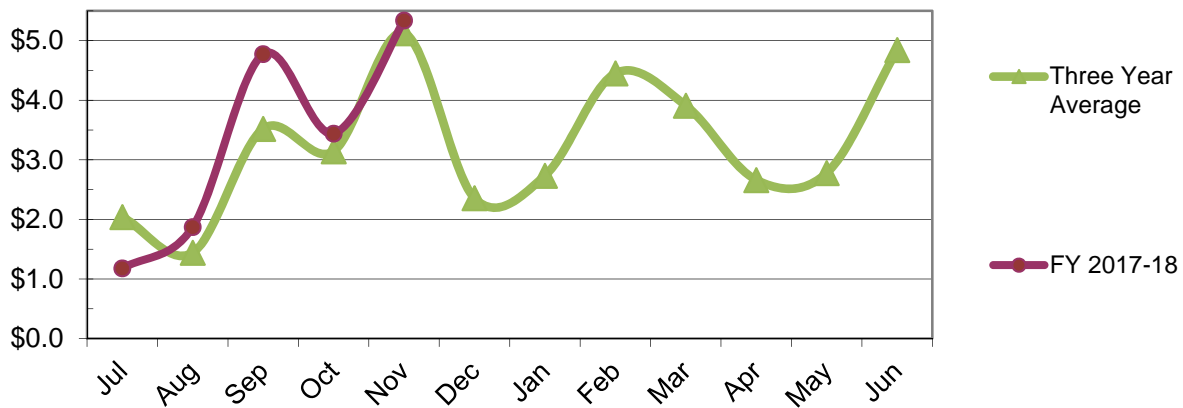
### Highest Grossing Events

Event*	Gross Event Revenue	% of Event Revenue
Festival of Trees 2017	\$201,370	11%
American Water Works Association	159,444	9%
Hoffman OM and Superintendent Meeting	137,742	7%
Abbey Foundation of Oregon	132,107	7%
All other Events	1,217,140	66%
<b>Total Event Revenues</b>	<b>\$1,847,803</b>	<b>100%</b>

\*Note: revenue reported in the table above reflects event receipts in the reporting month only and not total gross event revenue or total gross monthly revenue.

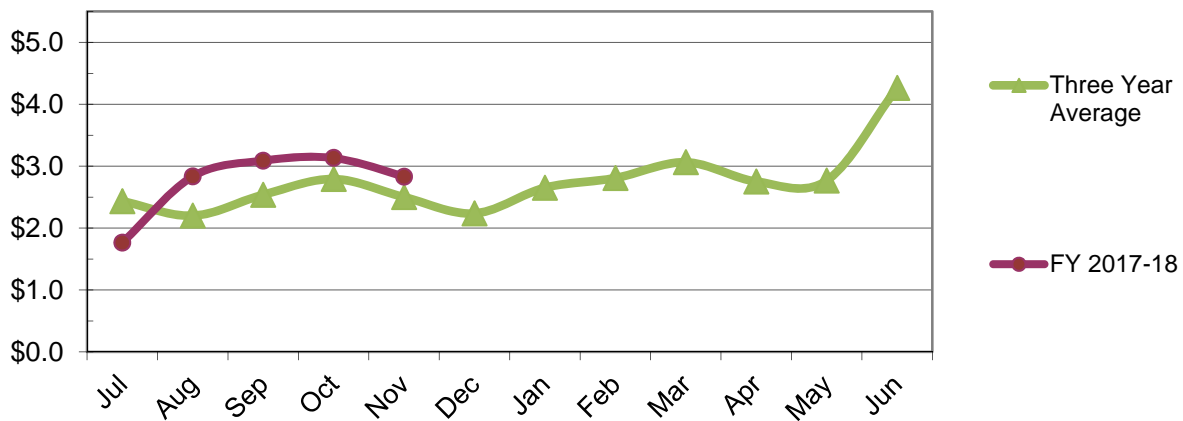
### OCC Program Revenues by Month

Shown in Millions



### OCC Program Expense by Month

Shown in Millions





## Portland's Centers for the Arts

The Broadway season officially began with The Bodyguard this month. November event revenues were \$2.3 million, including nearly \$500,000 in ticket service fees from the single tickets sale of Hamilton. Related to that were increases in ticket agency fee and credit card fee expenses of approximately \$200,000. Net operations YTD is negative \$683,000, a smaller deficit than the prior month due to the start of Broadway. Food and beverage margin for the year is 26%, compared to a budget of 21.2%.

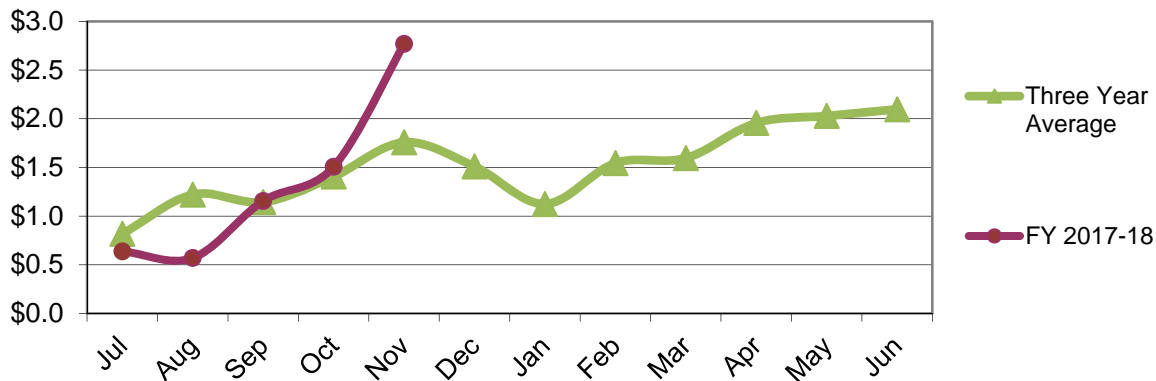
### Highest Grossing Events

Event*	Gross Event Revenue	% of Event Revenue
Hamilton	\$482,125	22%
The Bodyguard	266,985	12%
Portland's Singing Christmas Tree	135,545	6%
Beethoven's Second Symphony	71,579	3%
All other Events	1,224,520	56%
<b>Total Event Revenues</b>	<b>\$2,180,754</b>	<b>100%</b>

\*Note: revenue reported in the table above reflects event receipts in the reporting month only and not total gross event revenue or total gross monthly revenue.

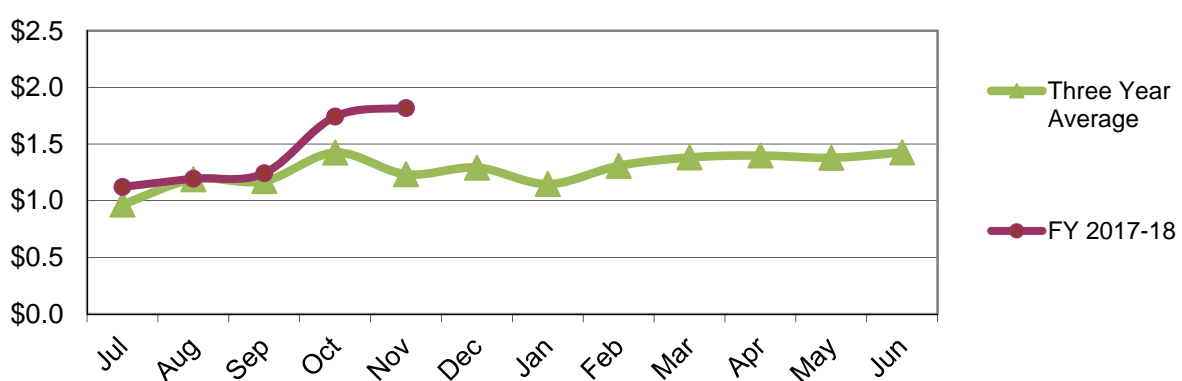
### P5CA Program Revenue by Month

Shown in Millions



### P5CA Program Expense by Month

Shown in Millions



## Portland Expo Center

The November financials include the revenue from Cirque du Soleil's KURIOS and two other large shows, which bring total revenues to \$2.9 million. Event related expenses in food and beverage and materials and services have also increased. Expo's annual principal debt payment was paid in November, and is shown as a Transfer-E (a transfer to Metro's debt service fund). Total debt costs will be just over \$1 million this year.

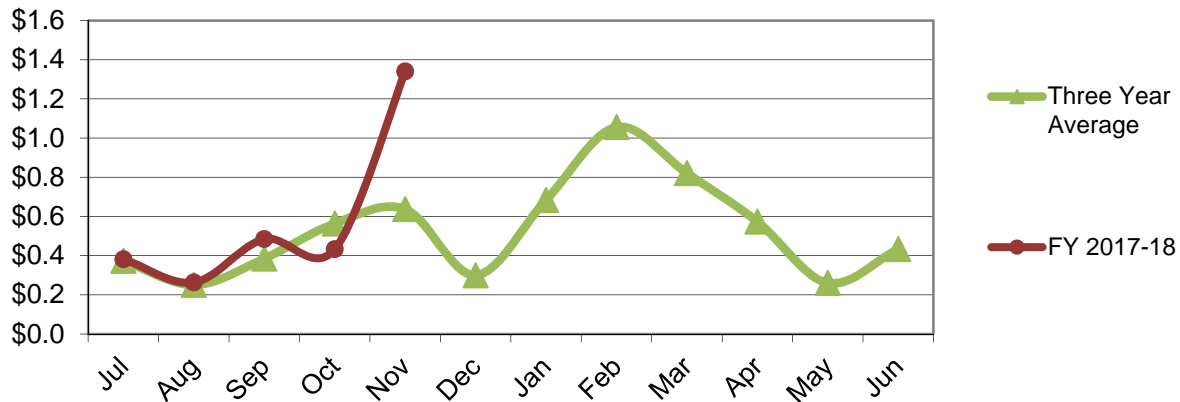
### Highest Grossing Events

Event*	Gross Event Revenue	% of Event Revenue
Cirque du Soleil Kurios	\$595,900	46%
America's Largest Christmas Bazaar	221,943	17%
Fall RV Show	163,519	13%
Portland Ski Fever and Snowboard Show	94,743	7%
All other Events	208,949	16%
<b>Total Event Revenues</b>	<b>\$1,285,053</b>	<b>100%</b>

\*Note: revenue reported in the table above reflects event receipts in the reporting month only and not total gross event revenue or total gross monthly revenue.

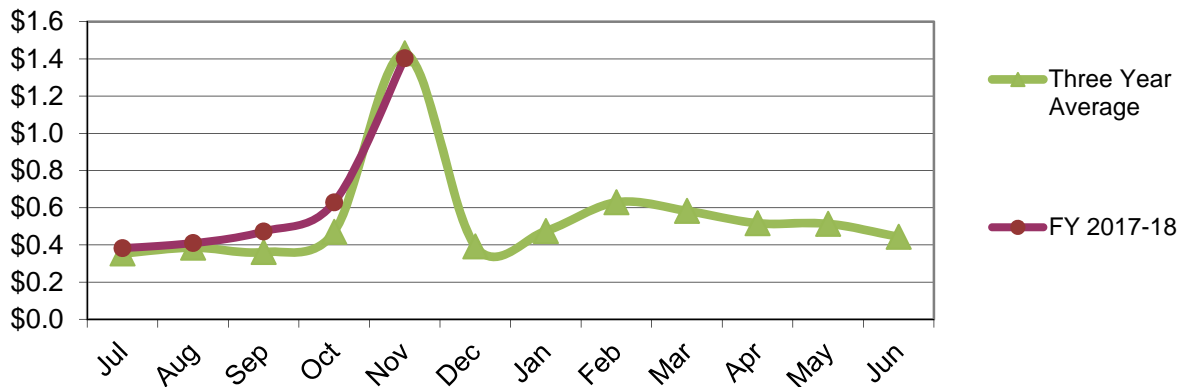
### Expo Program Revenue by Month

Shown in Millions



### Expo Program Expense by Month

Shown in Millions



# MERC Statement of Activity with Annual Budget

## Metropolitan Exposition-Recreation Commission

### All Departments

November 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actual	Prior Year to Date Actual	Current Year Budget	% of Prior Year	% of Annual Budget
<b>Operations</b>							
Charges for Services	3,719,765	2,717,703	11,679,896	11,040,552	28,783,091	105.79%	40.58%
Contributions from Governments	-	-	-	-	889,441	0.00%	0.00%
Contributions from Private Sources	-	-	300,000	-	75,000	0.00%	400.00%
Enhanced Marketing VDF	-	-	-	-	491,122	0.00%	0.00%
Food and Beverage Revenue	1,958,724	1,744,796	7,608,949	7,431,093	18,524,543	102.39%	41.07%
Grants	60,594	30	134,553	2,130	38,000	6317.05%	354.09%
Interest Earnings	69,646	53,525	239,307	61,718	445,000	387.74%	53.78%
Lodging Tax	3,601,445	3,492,024	6,077,022	5,826,749	13,052,470	104.30%	46.56%
Miscellaneous Revenue	22,223	17,831	50,248	58,328	113,765	86.15%	44.17%
Transfers-R	33,333	23,333	166,665	116,665	400,000	142.86%	41.67%
Visitor Development Fund Alloc	-	-	2,000,000	-	4,488,395	0.00%	44.56%
<b>Total Revenues</b>	<b>9,465,730</b>	<b>8,049,242</b>	<b>28,256,639</b>	<b>24,537,236</b>	<b>67,300,827</b>	<b>115.16%</b>	<b>41.99%</b>
Food & Beverage Services	1,308,598	1,347,653	6,295,310	5,797,960	15,252,656	108.58%	41.27%
Materials and Services	1,711,744	1,403,562	6,989,365	6,291,885	18,326,503	111.09%	38.14%
Personnel Services	1,835,596	1,686,980	8,556,882	8,061,529	22,106,786	106.14%	38.71%
Transfers-E	1,297,546	1,392,513	2,839,430	2,840,717	5,830,412	99.95%	48.70%
Visitor Development Marketing	2,000,000	-	2,000,000	-	2,508,282	0.00%	79.74%
<b>Total Expenditures</b>	<b>8,153,484</b>	<b>5,830,708</b>	<b>26,680,986</b>	<b>22,992,091</b>	<b>64,024,639</b>	<b>116.04%</b>	<b>41.67%</b>
<b>Net Operations</b>	<b>1,312,246</b>	<b>2,218,534</b>	<b>1,575,653</b>	<b>1,545,145</b>	<b>3,276,188</b>		
<b>Capital</b>							
Contributions from Private Sources	-	-	-	-	762,501	0.00%	0.00%
Grants	-	-	-	18,464	-	0.00%	0.00%
Lodging Tax	-	-	-	-	6,741,441	0.00%	0.00%
Miscellaneous Revenue	-	25	-	4,317	-	0.00%	0.00%
Transfers-R	-	26,667	-	133,335	-	0.00%	0.00%
<b>Total Revenues</b>	<b>-</b>	<b>26,692</b>	<b>-</b>	<b>156,116</b>	<b>7,503,942</b>	<b>0.00%</b>	<b>0.00%</b>
Capital Outlay	183,230	467,621	2,087,404	1,741,329	15,768,548	119.87%	13.24%
Materials and Services	360,088	5	1,283,947	222	1,141,867	577834.15%	112.44%
<b>Total Expenditures</b>	<b>543,318</b>	<b>467,626</b>	<b>3,371,352</b>	<b>1,741,551</b>	<b>16,910,415</b>	<b>193.58%</b>	<b>19.94%</b>
<b>Net Capital</b>	<b>(543,318)</b>	<b>(440,934)</b>	<b>(3,371,352)</b>	<b>(1,585,435)</b>	<b>(9,406,473)</b>		
<b>12 Month Fund Balance Increase</b>	<b>768,928</b>	<b>1,777,600</b>	<b>(1,795,699)</b>	<b>(40,290)</b>	<b>(6,130,285)</b>		

MERC Statement of Activity with Annual Budget  
 Metropolitan Exposition-Recreation Commission  
 Convention Center Operating Fund  
 November 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
<b>Operations</b>							
Charges for Services	901,321	895,819	5,033,856	4,357,543	11,789,193	115.5%	42.7%
Contributions from Private Sources	-	-	300,000	-	-	0.0%	0.0%
Enhanced Marketing VDF	-	-	-	-	491,122	0.0%	0.0%
Food and Beverage Revenue	1,136,667	1,211,405	5,657,573	5,326,238	13,050,157	106.2%	43.4%
Grants	60,594	30	84,553	2,130	-	3969.6%	0.0%
Interest Earnings	27,250	18,944	97,117	19,296	190,000	503.3%	51.1%
Lodging Tax	3,203,426	3,105,661	5,405,412	5,182,068	11,661,784	104.3%	46.4%
Miscellaneous Revenue	9,895	6,465	24,387	23,423	17,700	104.1%	137.8%
Transfers-R	(78,161)	(67,396)	(390,803)	(336,980)	(937,926)	116.0%	41.7%
Visitor Development Fund Alloc	-	-	2,000,000	-	3,784,454	0.0%	52.8%
Total Revenues	5,260,992	5,170,927	18,212,095	14,573,718	40,046,484	125.0%	45.5%
Food & Beverage Services	975,635	957,291	4,779,552	4,181,899	10,840,964	114.3%	44.1%
Materials and Services	737,545	591,832	3,287,792	3,096,547	9,848,744	106.2%	33.4%
Personnel Services	897,284	827,819	4,482,607	4,155,101	11,199,173	107.9%	40.0%
Transfers-E	219,750	199,731	1,098,750	1,040,639	2,830,488	105.6%	38.8%
Visitor Development Marketing	2,000,000	-	2,000,000	-	2,491,122	0.0%	80.3%
Total Expenditures	4,830,215	2,576,673	15,648,701	12,474,186	37,210,491	125.4%	42.1%
Net Operations	430,778	2,594,254	2,563,394	2,099,532	2,835,993		
<b>Capital</b>							
Contributions from Private Sources	-	-	-	-	476,563	0.0%	0.0%
Grants	-	-	-	7,500	-	0.0%	0.0%
Miscellaneous Revenue	-	25	-	4,317	-	0.0%	0.0%
Transfers-R	-	26,667	4,000,000	133,335	16,000,000	3000.0%	25.0%
Total Revenues	-	26,692	4,000,000	145,152	16,476,563	2755.7%	24.3%
Capital Outlay	166,669	167,806	715,074	608,082	9,200,500	117.6%	7.8%
Materials and Services	49,264	5	203,270	222	355,000	91480.5%	57.3%
Total Expenditures	215,933	167,811	918,343	608,304	9,555,500	151.0%	9.6%
Net Capital	(215,933)	(141,119)	3,081,657	(463,152)	6,921,063		
12 Month Fund Balance Increase	214,845	2,453,134	5,645,050	1,636,380	9,757,056		

# MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Portland's Centers for the Arts Fund

November 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
<b>Operations</b>							
Charges for Services	2,002,969	1,408,700	4,779,503	5,212,203	12,170,223	91.7%	39.3%
Contributions from Governments	-	-	-	-	889,441	0.0%	0.0%
Contributions from Private Sources	-	-	-	-	75,000	0.0%	0.0%
Food and Beverage Revenue	338,254	386,206	1,102,826	1,432,567	3,175,764	77.0%	34.7%
Grants	-	-	-	-	38,000	0.0%	0.0%
Interest Earnings	23,521	17,636	70,020	21,893	170,000	319.8%	41.2%
Lodging Tax	398,018	386,363	671,610	644,681	1,390,686	104.2%	48.3%
Miscellaneous Revenue	6,941	8,634	15,194	24,695	61,590	61.5%	24.7%
Transfers-R	(40,519)	(36,852)	(202,594)	(184,261)	(486,226)	109.9%	41.7%
Visitor Development Fund Alloc	-	-	-	-	703,941	0.0%	0.0%
<b>Total Revenues</b>	<b>2,729,184</b>	<b>2,170,686</b>	<b>6,436,558</b>	<b>7,151,778</b>	<b>18,188,419</b>	<b>90.0%</b>	<b>35.4%</b>
Food & Beverage Services	215,342	259,146	815,825	1,023,176	2,503,553	79.7%	32.6%
Materials and Services	801,389	609,570	2,867,250	2,517,158	6,323,561	113.9%	45.3%
Personnel Services	690,705	665,298	2,886,022	2,877,442	7,862,673	100.3%	36.7%
Transfers-E	110,177	96,587	550,885	507,155	1,322,109	108.6%	41.7%
<b>Total Expenditures</b>	<b>1,817,614</b>	<b>1,630,601</b>	<b>7,119,982</b>	<b>6,924,931</b>	<b>18,011,896</b>	<b>102.8%</b>	<b>39.5%</b>
<b>Net Operations</b>	<b>911,570</b>	<b>540,085</b>	<b>(683,424)</b>	<b>226,847</b>	<b>176,523</b>		
<b>Capital</b>							
Contributions from Private Sources	-	-	-	-	114,375	0.0%	0.0%
Grants	-	-	-	9,964	-	0.0%	0.0%
<b>Total Revenues</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>9,964</b>	<b>114,375</b>	<b>0.0%</b>	<b>0.0%</b>
Capital Outlay	4,444	129,074	1,167,785	892,658	3,450,733	130.8%	33.8%
Materials and Services	49,500	-	113,946	-	325,000	0.0%	35.1%
<b>Total Expenditures</b>	<b>53,944</b>	<b>129,074</b>	<b>1,281,730</b>	<b>892,658</b>	<b>3,775,733</b>	<b>143.6%</b>	<b>33.9%</b>
<b>Net Capital</b>	<b>(53,944)</b>	<b>(129,074)</b>	<b>(1,281,730)</b>	<b>(882,694)</b>	<b>(3,661,358)</b>		
<b>12 Month Fund Balance Increase</b>	<b>857,626</b>	<b>411,011</b>	<b>(1,965,154)</b>	<b>(655,848)</b>	<b>(3,484,835)</b>		

# MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

Expo Fund

November 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
<b>Operations</b>							
Charges for Services	815,476	413,184	1,866,537	1,470,806	4,823,675	126.9%	38.7%
Food and Beverage Revenue	483,803	147,185	848,551	672,289	2,298,622	126.2%	36.9%
Interest Earnings	2,308	3,356	10,254	2,076	35,000	493.8%	29.3%
Miscellaneous Revenue	5,388	2,733	10,667	10,211	34,475	104.5%	30.9%
Transfers-R	33,333	23,333	166,665	116,665	400,000	142.9%	41.7%
Total Revenues	1,340,308	589,791	2,902,674	2,272,047	7,591,772	127.8%	38.2%
Food & Beverage Services	117,620	131,216	699,932	592,885	1,908,139	118.1%	36.7%
Materials and Services	149,313	136,020	631,464	509,925	1,615,813	123.8%	39.1%
Personnel Services	169,653	153,262	782,237	724,020	1,939,455	108.0%	40.3%
Transfers-E	967,434	1,096,020	1,183,370	1,287,048	1,670,090	91.9%	70.9%
Visitor Development Marketing	-	-	-	-	17,160	0.0%	0.0%
Total Expenditures	1,404,020	1,516,518	3,297,004	3,113,878	7,150,657	105.9%	46.1%
<hr/>							
Net Operations	(63,713)	(926,727)	(394,329)	(841,831)	441,115		
<b>Capital</b>							
Contributions from Private Sources	-	-	-	-	171,563	0.0%	0.0%
Grants	-	-	-	1,000	-	0.0%	0.0%
Transfers-R	-	-	712,500	-	2,850,000	0.0%	25.0%
Total Revenues	-	-	712,500	1,000	3,021,563	71250.0%	23.6%
Capital Outlay	12,117	170,741	204,546	240,588	2,867,315	85.0%	7.1%
Materials and Services	261,323	-	966,732	-	461,867	0.0%	209.3%
Total Expenditures	273,441	170,741	1,171,278	240,588	3,329,182	486.8%	35.2%
<hr/>							
Net Capital	(273,441)	(170,741)	(458,778)	(239,588)	(307,619)		
<hr/>							
12 Month Fund Balance Increase	(337,153)	(1,097,469)	(853,108)	(1,081,419)	133,496		

# MERC Statement of Activity with Annual Budget

Metropolitan Exposition-Recreation Commission

MERC Admin Sub Fund

November 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date Actuals	Prior Year to Date Actual	Current Year Budget	% of Prior Year to Date	% of Annual Budget
<b>Operations</b>							
Grants	-	-	50,000	-	-	0.0%	0.0%
Interest Earnings	16,566	13,590	61,916	18,452	50,000	335.5%	123.8%
Transfers-R	118,679	104,248	593,397	521,240	1,424,152	113.8%	41.7%
Total Revenues	135,246	117,838	705,313	539,693	1,474,152	130.7%	47.8%
Materials and Services	23,498	66,140	202,859	168,254	538,385	120.6%	37.7%
Personnel Services	77,953	40,600	406,016	304,967	1,105,485	133.1%	36.7%
Transfers-E	185	175	6,425	5,875	7,725	109.4%	83.2%
Total Expenditures	101,636	106,916	615,300	479,096	1,651,595	128.4%	37.3%
<hr/>							
Net Operations	33,610	10,923	90,013	60,597	(177,443)		
<b>Capital</b>							
Lodging Tax	-	-	-	-	6,741,441	0.0%	0.0%
Transfers-R	-	-	(4,712,500)	-	(18,850,000)	0.0%	25.0%
Total Revenues	-	-	(4,712,500)	-	(12,108,559)	0.0%	38.9%
Capital Outlay	-	-	-	-	250,000	0.0%	0.0%
Total Expenditures	-	-	-	-	250,000	0.0%	0.0%
<hr/>							
Net Capital	-	-	(4,712,500)	-	(12,358,559)		
<hr/>							
12 Month Fund Balance Increase	33,610	10,923	(4,622,487)	60,597	(12,536,002)		

## MERC Food and Beverage Margins

November 2017

	Current Month Actual	Prior Year Month Actual	Current Year to Date	Prior Year to Date Actual	Annual Budget
<b>Convention Center Operating Fund</b>					
Food and Beverage Revenue	1,136,667	1,211,405	5,657,573	5,326,238	13,050,157
Food & Beverage Services	975,635	957,291	4,779,552	4,181,899	10,840,964
Food and Beverage Gross Margin	161,032	254,114	878,020	1,144,338	2,209,193
Food and Beverage Gross Margin %	14.17%	20.98%	15.52%	21.48%	16.93%
<b>Portland'5 Centers for the Arts Fund</b>					
Food and Beverage Revenue	338,254	386,206	1,102,826	1,432,567	3,175,764
Food & Beverage Services	215,342	259,146	815,825	1,023,176	2,503,553
Food and Beverage Gross Margin	122,911	127,060	287,001	409,391	672,211
Food and Beverage Gross Margin %	36.34%	32.90%	26.02%	28.58%	21.17%
<b>Expo Fund</b>					
Food and Beverage Revenue	483,803	147,185	848,551	672,289	2,298,622
Food & Beverage Services	117,620	131,216	699,932	592,885	1,908,139
Food and Beverage Gross Margin	366,183	15,969	148,618	79,404	390,483
Food and Beverage Gross Margin %	75.69%	10.85%	17.51%	11.81%	16.99%
<b>MERC Fund Total</b>					
Food and Beverage Revenue	1,958,724	1,744,796	7,608,949	7,431,093	18,524,543
Food & Beverage Services	1,308,598	1,347,653	6,295,310	5,797,960	15,252,656
Food and Beverage Gross Margin	650,126	397,143	1,313,639	1,633,133	3,271,887
Food and Beverage Gross Margin %	33.19%	22.76%	17.26%	21.98%	17.66%



# MERC Statement of Fund Balances and Reserves

November 2017

	Annual Basis			Monthly Basis	
	FY 2016-17 Actuals	FY 2017-18 Budget	FY 2017-18 YTD Actuals	FY 2016-17 November	FY 2017-18 November
<b><u>Oregon Convention Center</u></b>					
Beginning Fund Balance	21,770,042	24,966,039	25,024,238	20,953,287	30,454,444
Fund Balance Inc (Dec)	3,254,196	9,757,056	5,645,051	2,453,134	214,845
<b>Ending Fund Balance</b>	<b>25,024,238</b>	<b>34,723,095</b>	<b>30,669,289</b>	<b>23,406,421</b>	<b>30,669,289</b>
<i>Contingency - Operating</i>		1,500,000			
<i>Contingency - New Capital-Business Strategy</i>		2,092,301			
<i>Contingency - Renewal &amp; Replacement</i>		31,130,794			
<b>Ending Fund Balance</b>		<b>34,723,095</b>			
<b><u>Portland's Centers for the Arts</u></b>					
Beginning Fund Balance	13,178,660	13,293,035	12,883,997	12,111,801	10,061,216
Fund Balance Inc (Dec)	(294,663)	(2,038,222)	(1,965,155)	411,011	857,626
<b>Ending Fund Balance</b>	<b>12,883,997</b>	<b>11,254,813</b>	<b>10,918,842</b>	<b>12,522,812</b>	<b>10,918,842</b>
<i>Contingency - Operating</i>		600,000			
<i>Contingency - New Capital-Business Strategy</i>		2,263,311			
<i>Contingency - Renewal &amp; Replacement</i>		8,391,502			
<b>Ending Fund Balance</b>		<b>11,254,813</b>			
<b><u>Expo</u></b>					
Beginning Fund Balance	2,843,104	2,527,012	1,941,946	2,859,154	1,425,991
Fund Balance Inc (Dec)	(901,158)	395,988	(853,108)	(1,097,469)	(337,153)
<b>Ending Fund Balance</b>	<b>1,941,946</b>	<b>2,923,000</b>	<b>1,088,838</b>	<b>1,761,685</b>	<b>1,088,838</b>
<i>Contingency - Operating</i>		662,730			
<i>Contingency - New Capital-Business Strategy</i>		2,260,270			
<i>Contingency - Renewal &amp; Replacement</i>		-			
<b>Ending Fund Balance</b>		<b>2,923,000</b>			
<b><u>MERC Administration</u></b>					
Beginning Fund Balance	14,171,403	18,757,585	18,573,659	14,221,077	13,917,562
Fund Balance Inc (Dec)	4,402,256	(12,536,002)	(4,622,487)	10,923	33,610
<b>Ending Fund Balance</b>	<b>18,573,659</b>	<b>6,221,583</b>	<b>13,951,171</b>	<b>14,232,000</b>	<b>13,951,171</b>
<i>Contingency - Operating</i>		53,460			
<i>Contingency - Renewal &amp; Replacement</i>		1,056,059			
<i>Contingency - TLT Pooled Capital</i>		5,112,064			
<b>Ending Fund Balance</b>		<b>6,221,583</b>			
<b><u>MERC Fund</u></b>					
Beginning Fund Balance	51,963,209	59,543,671	58,423,839	50,145,319	55,859,212
Fund Balance Inc (Dec)	6,460,630	(4,421,180)	(1,795,699)	1,777,599	768,928
<b>Ending Fund Balance</b>	<b>58,423,839</b>	<b>55,122,491</b>	<b>56,628,140</b>	<b>51,922,918</b>	<b>56,628,140</b>

**MERC Visitor Venues**  
**Events-Performances-Attendance**  
**FY 2017-18**

	November 2014		November 2015		November 2016		November 2017		Net Change from Prior Year		November 2017	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
<b>OCC</b>												
Tradeshows/Conventions	8	18,716	5	6,302	7	10,935	5	7,300	(2)	(3,635)	305,135	17%
Consumer Public Shows	6	17,030	8	19,467	3	9,811	7	27,688	4	17,877	377,570	20%
Miscellaneous	-	-							-	-	-	0%
Miscellaneous -In-House	12	205	12	301	9	375	14	508	5	133	6,558	0%
Meetings	13	2,725	15	4,218	16	6,544	24	10,675	8	4,131	519,318	28%
Catering	9	4,082	7	2,997	8	5,177	13	6,835	5	1,658	639,222	35%
<b>Totals</b>	<b>48</b>	<b>42,758</b>	<b>47</b>	<b>33,285</b>	<b>43</b>	<b>32,842</b>	<b>63</b>	<b>53,006</b>	<b>20</b>	<b>20,164</b>	<b>\$ 1,847,803</b>	<b>100%</b>

	November 2014		November 2015		November 2016		November 2017		Net Change from Prior Year		November 2017	
	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Events	Attendance	Revenue	% of Rev.
<b>Expo Center</b>												
Consumer Public Shows	6	34,220	5	24,312	3	23,529	5	28,666	2	5,137	656,116	51%
<i>Cirque Du Soleil</i>	-	-	-	-	-	-	-	-	-	-	595,900	46%
Miscellaneous	1	20	3	2,422	2	488	2	350	-	(138)	9,635	1%
Meetings	-	-	3	157	1	40	-	-	(1)	(40)	-	0%
Catering	-	-	-	-	-	-	-	-	-	-	-	0%
Tradeshows/Conventions	1	2,500	2	10,246	1	3,069	1	1,000	-	(2,069)	23,402	2%
<b>Totals</b>	<b>8</b>	<b>36,740</b>	<b>13</b>	<b>37,137</b>	<b>7</b>	<b>27,126</b>	<b>8</b>	<b>30,016</b>	<b>1</b>	<b>2,890</b>	<b>\$ 689,153</b>	<b>54%</b>
<b>Totals w/Cirque du Soleil</b>	<b>8</b>	<b>36,740</b>	<b>13</b>	<b>37,137</b>	<b>7</b>	<b>27,126</b>	<b>8</b>	<b>30,016</b>	<b>1</b>	<b>2,890</b>	<b>\$ 1,285,053</b>	<b>100%</b>

	November 2014		November 2015		November 2016		November 2017		Net Change from Prior Year		November 2017	
	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Performances	Attendance	Revenue	% of Rev.
<b>Portland '5</b>												
Commercial (Non-Broadway)	6	9,407	6	10,318	20	35,288	11	15,761	(9)	(19,527)	446,327	20%
Broadway	8	13,522	7	14,544	8	18,976	8	17,090	-	(1,886)	769,613	35%
Resident Company	31	37,889	22	22,238	23	28,263	23	29,868	-	1,605	421,601	19%
Non-Profit	38	7,561	42	14,100	20	9,910	33	21,575	13	11,665	276,670	13%
Promoted/Co-Promoted	2	172	2	854	6	2,517	7	5,437	1	2,920	264,689	12%
Student	13	8,308	14	8,514	12	8,750	16	13,107	4	4,357	1,845	0%
Miscellaneous	1	122	1	101	2	245	9	315	7	70	-	0%
<b>Totals</b>	<b>99</b>	<b>76,981</b>	<b>94</b>	<b>70,669</b>	<b>91</b>	<b>103,949</b>	<b>107</b>	<b>103,153</b>	<b>16</b>	<b>(796)</b>	<b>\$ 2,180,745</b>	<b>100%</b>

## OCC Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering, **Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete** - substantially complete, **Ongoing** - capital maintenance

Category Project Title	Management	Phase	FY 2017-18 Budget		
			Amended	Actual	Est. Variance
<b>Food &amp; Beverage</b>					
Food & Beverage Point of Sale System (POS) Replacement	ARA / IS	Contracting	230,000	-	230,000
<b>Renewal &amp; Replacement</b>					
Plaza, Entries, & Major Interior Remodel	CPMO	Design	6,000,000	584,874	5,415,126
Building Envelop Assessment	CPMO	Contracting	150,000	-	150,000
Cooling System Design Consulting (Cooling Towers & Chillers)	CPMO	Design	80,000	9,798	70,202
Loading Dock Improvements (Dock Locks, Enclosures, Levelers)	CPMO	Contracting	360,000	14,436	345,564
Movable Partition Refurbishment	OCC	In Progress	180,000	18,491	161,509
Staff & Setup Supervisor Support Space Renovation	CPMO	In Progress	644,000	189,055	454,945
<b>Security &amp; Access</b>					
Security Camera Replacements	CPMO	Design	450,000	-	450,000
Alerton Global Controller & Software Upgrade	OCC	Ongoing	70,000	66,701	3,299
Integrated Door Access Controls	CPMO	Planning	300,000	-	300,000
<b>Life &amp; Safety</b>					
Telecom MDF Fire Suppression Upgrade	OCC	On hold	55,000	-	55,000
Emergency Notification Upgrade	OCC	Complete	41,000	23,135	17,865
Fire Sprinkler System Design Consulting	OCC	Planning	50,000	-	50,000
<b>Lighting &amp; Electrical</b>					
Exhibit Hall Lighting Control Replacement	CPMO	Design	275,000	-	275,000
<b>Technology</b>					
Telephone - Voice Over Internet Protocol (VOIP) Implementati	IS	Construction	352,500	29,962	322,538
<b>Equipment</b>					
AV Equipment	OCC	Ongoing	150,000	159,955	(9,955)
Tug Tow Tractor Purchase	OCC	In Progress	28,000	-	28,000
480V Show Equipment	OCC	In Progress	90,000	-	90,000
Holladay Suites Furniture Purchase	OCC	Planning	50,000	4,715	45,285
<b>Total</b>			<b>9,555,500</b>	<b>1,101,122</b>	<b>8,454,378</b>
<b>% of Budget</b>				<b>12%</b>	<b>88%</b>

## Portland'5 Center Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering, **Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete** - substantially complete, **Ongoing** - capital maintenance

Category	Project Title	Management	Phase	FY 2017-18 Budget		
				Amended	Actuals	Remaining
<b>Food &amp; Beverage</b>						
	85108 ArtBar Bar Replacement (Aramark)	CPMO	On hold	75,000	-	75,000
	85110 Aramark Point Of Sale System Replacement	ARA / IS	Contracting	130,000	-	130,000
<b>Venue Management</b>						
	8R089 Newmark Lighting Overhaul	P5	Complete	673,063	493,057	180,006
	8R090 Winningstad - House Lighting Control & Dimmers	P5	Construction	273,550	322,375	(48,825)
	8R143 Newmark LED Cyclorama Light Fixtures	P5	Complete	70,000	69,810	190
	8R176 AHH Brunish Theater Electrical Improvements	P5	Complete	50,000	53,994	(3,994)
	8R181 AHH, ASCH, Keller Assisted Listening System	P5	Complete	58,000	58,802	(802)
	8R182 AHH, ASCH, Keller ADA Signage	P5	Planning	50,000	-	50,000
	8R183 ASCH Soft Goods	P5	Design	100,000	-	100,000
	8R184 Keller Balcony Front Fill Speakers	P5	Planning	50,000	-	50,000
	8R185 Aerial Work Platform (Scissor lift)	P5	Complete	20,000	10,439	9,561
	8R186 Banquet Chairs Replacement	P5	Planning	20,000	-	20,000
	8R201 Keller light replacements	P5	Planning	12,000	-	12,000
<b>CpMO Management</b>						
	8R098 Keller - Roof & Drains Replacement	CPMO	Complete	90,000	1,922	88,078
	8R099 ASCH - Portland Sign Assessment & Refurb Scoping	CPMO	Complete	150,000	171,609	(21,609)
	8R092 Schnitzer Orchestra Shell Replacement	CPMO	Planning	1,355,000	41,055	1,313,945
	8R178 All Buildings Access Controls CCTV Replacement	CPMO	Planning	200,000	-	200,000
	8R179 AHH Roof, Green Roof	CPMO	Design	150,000	-	150,000
	8R120 ASCH - Cooling System Replacement	CPMO	Design	10,000	-	10,000
	8R177 ASCH Audience Chamber Lighting	CPMO	Contracting	25,000	7,571	17,429
<b>Information Technology</b>						
	65701B AHH/ASCH/Keller VOIP Implementation	IS	Design	72,600	-	72,600
	65701C AHH/ASCH/Keller VOIP Implementation	IS	Design	141,520	-	141,520
<b>Total</b>				<b>3,775,733</b>	<b>1,230,634</b>	<b>2,545,099</b>
<b>% of Budget</b>					<b>33%</b>	<b>67%</b>

## Expo Center Capital Project Status Report

**Project Phases:** **Planning** - Initiating/Planning, **Design** - Design & Engineering, **Contracting** - in process of vendor selection & signing contract with selected vendor, **Construction/In Progress** - in progress, **Complete** - substantially complete, **Ongoing** - capital maintenance

Category Project Title	Management	Phase	FY 2017-18 Budget		
			Amended	Actuals	Remaining
<b>Food &amp; Beverage</b>					
85106 Connector Glass Door (ARA)	CPMO	Design	120,000	8,764	111,236
85107 Concessions Upgrades (ARA)	EXPO	Planning	50,000	-	50,000
85110 Aramark Point of Sale System Replacement	IS	Contracting	160,000	-	160,000
<b>Renewal &amp; Replacement</b>					
8N020 Audio Visual Equipment	EXPO	Ongoing	11,867	-	11,867
8R040 Parking Lot Asphalt	CPMO	Ongoing	135,000	-	135,000
8R151 Expo Water Efficiency Upgrades	EXPO	Construction	80,000	-	80,000
8R169 Halls ABCDE Lighting Controls study and Replacement	CPMO	Planning	20,000	-	20,000
8R170 New Hall A Shore Power	CPMO	Complete	150,000	186,582	(36,582)
8R171 Interior & Exterior Lighting Replacements	EXPO	Planning	70,000	-	70,000
8R172 Hall C HVAC Study	CPMO	Planning	35,000	-	35,000
8R173 Halls ABCDE HVAC Controls Replacement	EXPO	Planning	60,000	-	60,000
8R202 PGE Upgrades	CPMO	Planning	100,000	-	100,000
<b>Roofing</b>					
8R135 ABC Roof Repairs (R&R)	EXPO	Ongoing	80,000	-	80,000
8R136 Halls D & E Roof Replacement (R&R)	CPMO	Construction	1,919,689	968,995	950,694
<b>Equipment</b>					
8N011 Electronic Signage	CPMO	In Progress	47,548	689	46,859
8R112 Security Camera Access Control System	CPMO	In Progress	82,138	-	82,138
8R150 Radio Replacements	EXPO	Ongoing	20,000	-	20,000
<b>Information Technology</b>					
65701B Voice Over IP (VoIP) Infrastructure	IS	In Progress	107,940	5,928	102,012
8R139 WiFi Upgrade	EXPO	Ongoing	80,000	-	80,000
<b>Total</b>			<b>3,329,182</b>	<b>1,170,958</b>	<b>2,158,224</b>
<b>% of Budget</b>				<b>35%</b>	<b>65%</b>

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# **MERC Commission Meeting**

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January 3, 2018  
12:30 pm

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7.0 Expo and Portland's  
Projects Update

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# Memo

Date: January 3, 2018  
To: MERC Commission  
From: Ben Rowe, Director of Strategic Initiatives  
Subject: Portland'5 Expo Projects Status Report

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## Expo Project

In 2013, phase I of the Expo project began. Annual expense growth consistently outpaced revenue growth, capital needs far outweighed available resources, and Expo's \$1.2 million annual debt service would not expire until 2025. The Expo Project Advisory Committee met over several months to review financial strategies, a market and financial feasibility study conducted by industry professionals, and potential investment scenarios. At the conclusion of phase I in 2015, the Advisory Committee issued a strategic statement for future Expo project work:

*Core assumptions of our strategic direction and policy recommendations are: 1) the consumer and trade show industry and demand in the Portland market will remain strong and 2) the Expo Center will manage consistent positive net operating cash flow, growing revenues at or above the Portland-Salem Consumer Price Index (CPI).*

*The scale of investment Metro considers should be contingent upon the performance of these two core assumptions...The Committee acknowledges that investment in any of the scenarios proposed by Hunden Strategic Partners will require significant financial resources beyond what can reasonably be expected from new event business generated from facility enhancements or new construction and therefore recommends an iterative process reassessing the financial feasibility of a small to large investment.*

*The Committee recommends a financial bridge strategy, intended to provide a path for the Expo Center to maintain a minimum fund balance, financial solvency, and take advantage of the other Committee recommendations through the conclusion of its current annual debt service of \$1.2M in 2025.*

Expo operations have unfortunately not achieved the financial assumptions issued by the Advisory Committee in 2015, however Expo posted record high revenues in 2016 & 2017. Several financial strategies have been implemented in response to the Advisory Committee's recommendations:

- Expo's MERC Administration Fees (\$130,000) were waived in 2016 and 2017.
- Expo's debt was re-financed in 2016, saving them \$160,000 each year.
- Expo's allocation of the Metro Opportunity Tourism and Opportunity Account (MTOCA) from the General Fund was increased \$120,000 to \$400,000 in 2017.
- Expo will be allocated 15% (\$1.2 million) of the Transient Lodging Tax (TLT) Pooled Capital earnings each year.

These financial strategies will most likely keep the Center financially solvent and maintain 2-5 months of operating expense in its fund balance until the conclusion of its debt service in 2025.

## Progress to date

The next phases of the project are multifaceted and are proceeding simultaneously:

- We have prioritized Expo’s capital plan for investments that will yield higher revenues and more event opportunities like investment into lower lot 1 for Cirque and other clients.
- We are in the process of engaging with a consultant to study the options and feasibility of specific capital investment into Hall C for climate control and esthetics to increase its utilization potential.
- We are exploring the development potential and alternative use of several areas of Expo campus, specifically securing a long-term tenant in Halls A and or B.
- Expo created the PDX Drive-in Movie Spectacular and continues to evaluate potential co-promoted and self-promoted events with existing and new partners.
- The Expo sales team continues to seek out and market to large, high margin event business.

The Commission will receive project status reports twice a year.

**Portland’5 Project**

In 2011 the City of Portland Auditor audited the arrangement between the City and Metro. In sum, the auditor reported:

*We found that the arrangement is good for the City because the buildings are well managed, and the City has transferred significant financial responsibility and risk. We also found that the agreements governing the outsourced management arrangement are outdated and some aspects are not followed. In addition, although the City is working to increase oversight of PCPA, there is confusion as to whom PCPA and MERC staff should contact with City related operational and policy questions. We make a number of recommendations to City Council members and the Office of Management and Finance to address these issues.*

In 2016, Metro conducted a study of the wall panels on the Keller Auditorium and subsequently repaired and mitigated priority issues identified in the study.

In 2016, the bonds for Portland’5, paid by the Visitor Facilities Trust Account, (Transient Lodging Tax) were paid in full and retired.

In 2016, the City completed an ADA Title II assessment and also a 20-year transition plan to address the findings of the assessment.

In 2016, the City completed a facility Conditions Assessment of each of the three facilities. A majority of the deficient items identified in the reports are included in the Center’s 5-year Capital Improvement Plan (CIP).

In 2016 & 2017, Metro replaced the roof on the Keller Auditorium (\$1,400,000).

In 2017, we completed a cost recovery study, quantifying the cost of daily operations and subsidies provided different types of clients.

In 2017, the City commissioned a level II seismic study of the Keller Auditorium. The results of the study have not been released.

**Progress to date**

I have convened a project Steering Committee including the General Manager of Visitor Venues, Executive Director of Portland’5, Director of Operations of Portland’5, Metro’s Director of Finance and Regulatory Services, MERC Venues Deputy Metro Attorney, MERC Venues Finance Manager, and Metro Government Relations Policy Advisor. The Steering Committee has met to discuss contextual understanding and immediate next steps.



Some of the outcomes of the initial project meeting include:

- Understanding that we need to better articulate the goals of this project.
- Understanding achievement of our project goals may require more time than expected.
- Collaboration with and support from community arts stakeholders may be required as we proceed with the project.

We are attempting to keep some documents confidential based upon attorney client privilege, attorney work product and/or as internal advisory communications. The project deliverables are largely dependant upon uncontrollable external factors and stakeholders, it is extremely difficult to quantify a project schedule or outcomes. We will keep the Commission informed as the project develops.

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# **MERC Commission Meeting**

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January 3, 2018  
12:30 pm

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9.0 Consent Agenda

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**Metropolitan Exposition Recreation Commission**  
**Record of MERC Commission Actions**  
December 6, 2017  
Oregon Convention Center, Room F151

<b>Present:</b>	Karis Stoudamire-Phillips, Deidra Krys-Rusoff, Judie Hammerstad, Deanna Palm, Damien Hall, Ray Leary, Dañel Malán
<b>Absent:</b>	
	A regular meeting of the Metropolitan Exposition Recreation Commission was called to order by Chair Karis Stoudamire-Phillips at 12:40 p.m.
<b>1.0</b>	<b>QUORUM CONFIRMED</b> A quorum of Commissioners was present.
<b>2.0</b>	<b>OPPORTUNITY FOR PUBLIC COMMENT ON NON-AGENDA ITEMS</b> None
<b>3.0</b>	<b>COMMISSION AND COUNCIL COMMUNICATIONS</b> <ul style="list-style-type: none"> <li>• Councilor Chase noted that he is involved in affordable housing work at Metro and is exploring putting an initiative on the ballot in 2018. Due to this work and since it is a priority for him, Chase is talking to Council President Hughes about the need for flexibility with his liaison duties.</li> <li>• Chair Stoudamire-Phillips provided a Committee On Racial Equity (CORE) update as she is a part of the group. Raahi Reddy, Metro’s director of Diversity, Equity and Inclusion, will meet with the Commission at an upcoming meeting to provide more detail.</li> </ul>
<b>4.0</b>	<b>GM COMMUNICATIONS</b> Cruickshank provided these updates: <ul style="list-style-type: none"> <li>• Cruickshank thanked Commissioner Hammerstad for her work with the venues and her support over the years.</li> <li>• At tomorrow’s Metro Council meeting, Commissioners Krys-Rusoff, Palm and Stoudamire-Phillips will be reappointed to four-year terms and John Erickson will be appointed as the representative from Clackamas County beginning in January to fill the spot being vacated by Judie Hammerstad upon her departure from the Commission at the end of the month.</li> <li>• David Fortney is scheduled to provide updates on the Construction Careers Pathway Project (C2P2) work, a report on the Workforce Market Study, and an update on Metro’s apprenticeship development program at an upcoming MERC meeting.</li> <li>• Next week, 7 candidates will participate in the first round of interviews for the position of Communications and Policy Development Manager for the venues.</li> <li>• The MERC Commission Retreat will be held from 9 a.m. to 3 p.m. on January 19<sup>th</sup> at Ball Janik’s Wallowa conference room.</li> </ul>
<b>5.0</b>	<b>FINANCIAL REPORT</b> Rachael Lembo, MERC Financial Manager, presented the report.
<b>6.0</b>	<b>ASSET MANAGEMENT CAPITAL PLANNING PROJECT STATUS REPORT</b> Ben Rowe updated the Commission on the project. <ul style="list-style-type: none"> <li>• Commissioner Leary questioned how it would be determined that a structure would require refurbishment – such as a roof, for instance. Rowe responded that such decisions are left to the experts.</li> <li>• Commissioner Leary, noting Metro’s depth and breadth of assets, questioned how much of the focus would be on the venues. Rowe responded that the focus was to inventory all of Metro’s actual physical structures. Out of the 7 Metro operations, 4 are the visitor venues but the project includes all Metro facilities including parks structures, Zoo buildings and solid waste buildings as well.</li> </ul>

	<ul style="list-style-type: none"> <li>Commissioner Hammerstad questioned how project sponsors will know that progress has been made toward the goal. Rowe responded that all departments are using the same capital project rubric to prioritize their capital projects. As the inventory list expands and when facilities assessments are completed and results show that Metro has taken care of the items identified in the prior study, success will have occurred.</li> <li>Commissioner Kryz-Rusoff applauded the project adding that it should help ensure that the MERC venues' capital projects will be completed.</li> </ul>
<b>7.0</b>	<p><b>VENUE BUSINESS REPORTS</b> Robyn Williams, Matthew P. Rotchford and Craig Stroud updated the Commission on venue business. <i>Council Liaison Chase departed the meeting at 1:33 p.m.</i></p>
<b>8.0</b>	<p><b>TRAVEL PORTLAND FIRST QUARTER FY18 REPORT</b> Tamara Kennedy-Hill and Steve Faulstick of Travel Portland presented the report.</p>
<b>9.0</b>	<p><b>EQUITY IN CONTRACTING ANNUAL REPORT, FY2016-17</b> Gabi Schuster, Manager of Metro's Procurement Department, presented the report.</p> <ul style="list-style-type: none"> <li>Commissioner Leary inquired whether the increase in construction projects in the Portland market affects the ability to hire COBID firms. Schuster responded that it is often difficult to find construction companies since, due to the city's booming construction market, they are too busy.</li> <li>Commissioner Leary asked if there is continued outreach to increase the pool of COBID businesses as well as training to help them get certified. Schuster responded that the state process is complicated and, although Metro is working with the state on that, the best approach is continued outreach to businesses to help them with the certification process and to address the complications more frequently. Feedback is also requested from businesses to help Metro understand how best to help them.</li> </ul> <p><i>Commissioner Kryz-Rusoff departed the meeting at 2:00 p.m.</i></p>
<b>10.0</b>	<p><b>CONSENT AGENDA</b></p> <ul style="list-style-type: none"> <li>Record of MERC Actions, November 1, 2017</li> </ul> <p>A motion was made by Commissioner Leary and seconded by Commissioner Palm to approve the Consent Agenda. VOTING: AYE: 6 (Hammerstad, Stoudamire-Phillips, Palm, Leary, Hall, Malán) NAY: 0 MOTION PASSED</p>
<b>11.0</b>	<p><b>ACTION AGENDA</b></p>
<b>11.1</b>	<p><b>Resolution 17-38:</b> For the purpose of recognizing Judie Hammerstad's Contributions to the Metropolitan Exposition Recreation Commission (MERC). Commissioners and staff members offered thanks to Commissioner Hammerstad and noted her many contributions to the Commission and the venues over the years. A motion was made by Commissioner Malán and seconded by Commissioner Hall to approve the Resolution. VOTING: AYE: 6 (Hammerstad, Stoudamire-Phillips, Leary, Hall, Malán, Palm) NAY: 0 MOTION PASSED <i>Commissioner Palm departed the meeting at 2:21 p.m.</i></p>
<b>11.2</b>	<p><b>Resolution 17-39:</b> For the purpose of approving the contract with Meyer Projection Systems, LLC, for the Oregon Convention Center's "Audio Visual Equipment Rental" and authorizing the General Manager of Visitor Venues to execute the contract. Craig Stroud of the Oregon Convention Center presented the resolution. A motion was made by Commissioner Hall and seconded by Commissioner Leary to approve the Resolution.</p>

<p><b>11.3</b></p>	<p>VOTING: AYE: 5 (Hammerstad, Stoudamire-Phillips, Leary, Hall, Malán)  NAY: 0  MOTION PASSED</p> <p><b>Resolution 17-40:</b> For the purpose of approving the contract with Quest Events for the Oregon Convention Center’s “Audio Visual Equipment Rental,” and authorizing the General Manager of Visitor Venues to execute the contract.  A motion was made by Commissioner Hammerstad and seconded by Commissioner Leary to approve the Resolution.</p> <p>VOTING: AYE: 5 (Hammerstad, Stoudamire-Phillips, Leary, Hall, Malán)  NAY: 0  MOTION PASSED</p>
<p><b>11.4</b></p>	<p><b>Resolution 17-41:</b> For the purpose of approving the contract with Outlaw Lighting for the Oregon Convention Center’s “Audio Visual Equipment Rentals” and authorizing the General Manager of Visitor Venues to execute the contract.  A motion was made by Commissioner Hall and seconded by Commissioner Malán to approve the Resolution.</p> <p>VOTING: AYE: 5 (Hammerstad, Stoudamire-Phillips, Leary, Hall, Malán)  NAY: 0  MOTION PASSED</p>
<p><b>11.5</b></p>	<p><b>Resolution 17-42:</b> For the purpose of approving the contract with Showcall Event Services for the Oregon Convention Center’s “Audio Visual Temporary Staffing Services” and authorizing the General Manager of Visitor Venues to execute the contract.  Commissioners discussed ways the venue could encourage minority firms to be included in the business of audio visual temporary equipment rentals and staffing services.  A motion was made by Commissioner Malán and seconded by Commissioner Leary to approve the Resolution.</p> <p>VOTING: AYE: 5 (Hammerstad, Stoudamire-Phillips, Leary, Hall, Malán)  NAY: 0  MOTION PASSED</p>
	<p>As there was no further business to come before the Commission, the meeting was adjourned at 2:27 p.m.</p>

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# **MERC Commission Meeting**

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January 3, 2018  
12:30 pm

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10.0 Action Agenda

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**METROPOLITAN EXPOSITION RECREATION COMMISSION**  
**Resolution No. 18-01**

Approving the contract with Architectural Resource Group for Design and Engineering services for the Orchestra Shell Replacement at the Arlene Schnitzer Concert Hall and authorizing the General Manager of Visitor Venues to execute the contract.

**WHEREAS**, the Orchestra Shell at the Arlene Schnitzer Concert Hall has reached the end of its useful life and is in need of replacement, and;

**WHEREAS**, the proposed solution is a digital system for acoustic applications would significantly enhance the sound quality/effects of various types of performances without altering the architecture and construction space. The digital acoustical system would create more opportunities to reach diverse audiences by providing flexibility that will allow for a larger variety of music/performances, and;

**WHEREAS**, a comprehensive design specific to the Schnitzer must be completed in order to develop an accurate cost estimate and secure project funding, and:

**WHEREAS**, staff has completed a thorough Request for Proposal process in accordance with Division 48 of Metro's Local Contract Review Board Administrative Rules, interviewed and selected the most qualified respondent, and negotiated an agreement for the requested services to the satisfaction of both parties, and;

**WHEREAS**, the Commission has the authority to enter into contracts for the Portland's Centers for the Arts, and;

**WHEREAS**, staff recommend approving a contract with Architectural Resources Group in an amount not to exceed Two Hundred Sixty Five Thousand Three Hundred Sixty-Nine and NO/Dollars (\$265,369.00), and;

**BE IT THEREFORE RESOLVED**, that the Metropolitan Exposition Recreation Commission:

1. Approves the contract with Architectural Resources Group in the form substantially similar to the attached Exhibit A
2. Authorizes the General manager of Visitor Venues to execute the contract on behalf of the Commission

Passed by the Commission on January 3, 2018.

Approved as to form:

Alison R. Kean, Metro Attorney

\_\_\_\_\_ Chair

By: \_\_\_\_\_

Nathan A. Schwartz. Sykes, Deputy Metro Attorney

\_\_\_\_\_ Secretary/Treasurer

## MERC Staff Report

Agenda Item/Issue: For the purpose of approving the contract with Architectural Resources Group for Architecture and Engineering Services for the Orchestra Shell Replacement at the Arlene Schnitzer Concert Hall and authorizing the General Manager of Visitor Venues to execute the contract.

**Resolution No.:** 18-01

**Presented By:** Nancy Strening

**Date:** January 3, 2018

Background and Analysis: Originally built in 1928, the Arlene Schnitzer Concert Hall is a historic theater building and performing arts center. The Arlene Schnitzer Concert hall plays host to a variety of presentations including classical, jazz, pop, rock, folk and gospel music, dance, theater, spoken word, lecture, and conferences.

The current orchestra shell is 33 years old and in need of replacement. The shell itself cannot be repaired because parts are not available due to the age of the shell. Design standards and codes have also changed and the way the shell is installed is no longer considered a best safety practice. Replacing the traditional shell eliminates the need for heavy shell components and complex rigging, promotes ease of show set up and increases safety for stage crew and operations staff.

P'5 management and staff recommend replacement of a concert/band shell with a digital system for acoustic applications, which would significantly enhance the sound quality/effects of various types of performances without altering the architecture and construction space. The digital acoustical system would create more opportunities to reach diverse audiences by providing flexibility that will allow for a larger variety of music/performances.

A comprehensive design specific to the Schnitzer must be completed in order to develop an accurate cost estimate and secure project funding. The scope of the design shall include the development of the integration with Meyer Sound Lab's Constellation product. Design scope will also include the directly related aspects of the preparation of the hall for the system, a visual orchestra shell, on stage concert lighting, coordination with the related projects for decorative curtains and a house lighting LED source retrofit (cumulatively "the systems"). Other building elements and infrastructure will be impacted by the system, and will require mechanical, structural, electrical design that is sensitive to the historic building interior while accommodating the system.

An RFP was issued in accordance with Metro's Purchasing and Contracting Rules and in compliance with Metro Policy and any and all state (ORS) requirements. The RFP was published on ORPIN, in The Portland Business Tribune, The Portland Observer and on the Metro website. On November 9, 2017, MERC received four proposals. Proposals were evaluated and scored by cPMO, P-5, and the City of Portland staff based on Project Work Plan & Approach and Project Staffing Experience. Three of the four proposals were strong and required further clarification from the review team, so interviews were conducted and scored on November 29, 2017. Procurement Staff evaluated and scored the proposals based on Diversity in Employment and Contracting and Sustainable Business Practices. Architectural Resource Group had the highest overall score. Architectural Resource Group is a woman owned firm and was the only COBID firm to submit a proposal.

Architectural Resource Group submitted a fee proposal to cPMO staff and after negotiations the parties clarified scope and agreed to a price not to exceed Two Hundred Sixty-Five Thousand Three Hundred Sixty-Nine and NO/Dollars (\$265,369.00)



**Fiscal Impact:** The contract amount presented for approval is not to exceed \$265,369.00. There is sufficient appropriation to cover the FY2017-18 costs. The cost estimate that will be provided at the end of the Schematic Design phase of this contract will inform the revised construction estimate to be included in the FY18-19 revised 5 year CIP

**Attachments to Resolution and/or Staff Report:** Exhibit A, draft of the Architecture and Engineering Contract with Architectural Resources Group

**Recommendation:** Staff recommends that the Metropolitan Exposition-Recreation Commission, by Resolution 18-01, approve the contract with Architectural Resources Group for Architecture and Engineering Services for the Arlene Schnitzer Concert Hall Orchestra Shell Replacement and delegate authority to the General Manager of Visitor Venues to execute the contract.

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**PROFESSIONAL SERVICES CONTRACT**  
**(Architectural, Engineering, and Related Services)**  
**Contract Reference Number: 308010**

THIS CONTRACT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter (“Metro”), located at 600 NE Grand Avenue, Portland, OR 97232-2736, and Architectural Resources Group (“Consultant”), located at 720 SW Washington Street, Suite 300, Portland Oregon 97205 (Metro and Consultant are collectively the “Parties”).

ARTICLE 1

Initial Contract Information

1.1 Term. This Contract shall become effective on the date that the Contract is fully executed by the Parties. No work shall be performed under the Contract prior to the effective date. This Contract shall expire, unless otherwise terminated or extended, on June 30, 2019. Passage of the Contract expiration date shall not extinguish, prejudice, or limit either Party’s right to enforce this Contract with respect to any default or defect in the performance that has not been corrected.

1.2 Initial Project Information.

1.2.1 Project Name: Orchestra Shell Replacement for the Arlene Schnitzer Concert Hall

1.2.2 General Project Description: Provide design, consulting and contract management services including but not limited to all aspects of design, architecture, engineering, sustainable practices and cost estimating to complete the Replacement of the existing Orchestra Shell. The Scope of Work is set out in more detail in Exhibit A.

1.2.3 Construction Cost Budget: \$TBD

1.2.4 Design Schedule: See Exhibit E.

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

1.3 Metro’s Anticipated Design and Construction Schedule.

1.3.1 Design Phase Milestone Dates: See Exhibit E.

1.3.2 Start of Construction: See Exhibit E

1.3.3 Substantial Completion: See Exhibit E.

1.4 Contract Documents. The Contract consists of the following documents, in order of precedence:

1.4.1 This Contract.

1.4.2 Exhibit A. Detailed Scope of Work.

1.4.3 Exhibit B. Metro's Request for Proposals dated October 11, 2017 and the following addenda: Addendum 1, dated October 25, 2017 and Addendum 2, dated November 1, 2017.

1.4.4 Exhibit C. Consultant's Proposal dated December 15, 2017

1.4.5 Exhibit D. Consultant's Fee Proposal including Consultant and Subconsultant rates for additional services dated December 18, 2017.

1.4.6 Exhibit E. Consultant's project design schedule dated December 19, 2017.

1.5 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 1.4, except that any subsequent Contract amendments approved by both Parties shall take precedence over the documents listed in Section 1.4 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 carry out the Project and to provide the technical documents and supervision to achieve Metro's Project objectives.

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

2.3 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 has a reasonable objection.

2.4 Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and 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.

### ARTICLE 3

#### Consultant's Responsibilities; Representations and Warranties

##### 3.1 Consultant agrees that:

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

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

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

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

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

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

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

3.1.8 During the term of the Contract, Consultant shall obtain, hold, maintain, and fully pay for all licenses and permits required by law for Consultant to conduct its business and perform the Services. During the term of the Contract, 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.

### 3.2 Subconsultants.

3.2.1 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.

3.2.2 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.

3.2.3 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.

3.2.4 *The Consultant will hire a commissioning agent or agents as a Subconsultant.*

### 3.3 Consultant represents and warrants to Metro that:

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

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

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

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

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

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

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

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

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

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

#### ARTICLE 4

##### Metro’s Responsibilities and Authority

4.1 Authority and Relationship of Metro. Metro’s Chief Operating Officer shall appoint a Metro representative (“Project Manager”). Except as specifically provided in this Section, no individual other than the duly appointed Project Manager acting or purporting to act as an officer, agent, representative, consultant, or employee of 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 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.

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

#### ARTICLE 5

##### General Contract Provisions

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

## 5.2 Records.

5.2.1 Consultant and 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 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.

### 5.4 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:	\$1,000,000
5.4.1.3.2	General Aggregate:	\$2,000,000
5.4.1.3.3	Product/Completed Operations:	\$2,000,000
5.4.1.3.4	Personal & Advertising Injury:	\$1,000,000

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

5.4.1.4.1	Each Claim/Aggregate:	\$1,000,000
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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 Section 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 5.13.3 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). Consultants 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 other 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 Code Chapter 2.04 (Metro Contract Policies).

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 Ownership of Work Product.

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

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

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

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

5.12.2 Work Product. Except as provided in Sections 5.12.3 through 5.12.6, 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.

5.12.3 Consultant Intellectual Property. In the event that Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to 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 Contractor, 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.

5.12.4 Third-Party Intellectual Property. In the event that Third-Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on 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 5.12.3, for the purposes described in this Contract.

5.12.5 Consultant Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to 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 5.12.3, for the purposes described in this Contract.

5.12.6 Third-Party Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Third-Party Intellectual Property, or is a compilation that includes Third-Party Intellectual Property, Consultant shall secure on 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 5.12.3, for the purposes described in this Contract.

5.12.7 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.

### 5.13 Termination.

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

5.13.2 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.

5.13.3 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:

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

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

5.13.3.3 Consultant fails to provide Services within the times specified or allowed under this Contract; fails to perform any of the provisions of this Contract; or so fails to perform the Services as to

endanger performance of this Contract in accordance with its terms, and after receipt of written notice from 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).

5.13.4 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.

5.13.5 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 5.13.5 are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

5.13.6 Payment upon Termination.

5.13.6.1 In the event of termination pursuant to Sections 5.13.1, 5.13.2, or 5.13.3.1, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Metro, 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. 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 upon demand.

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

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



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

**Metro:**

Nancy Strening  
Project Manager  
Metro  
600 NE Grand Ave  
Portland, OR 97232

**Consultant:**

Maya Foty  
Principal  
Architectural Resources Group  
720 SW Washington Street, Suite 300  
Portland, OR 97205

*and*

Joel Morton  
Office of Metro Attorney  
Metro  
600 NE Grand Ave  
Portland, OR 97232

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

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

5.17 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, including without limitation concurrent employment on any project in direct competition with this Project.

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

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## 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 them with the proposed tasks and schedule and develop necessary modifications.

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

6.1.2 Programming Services. Consultant shall prepare for Metro's review and acceptance an architectural program, in narrative and diagrammatic form, that identifies and analyzes functional and operational parameters that will guide the Project's design. Consultant shall develop the program narrative in conjunction with Metro's staff and consultants and 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 *Intentionally Omitted*

6.1.4 Construction Cost Estimates. Consultant shall develop and maintain Construction Cost Estimates within the parameters of Metro's Construction Cost Budget (as hereinafter defined) through all phases of its Services. The term, "Construction Cost Budget," shall mean the Construction Cost Budget established by Metro for the Project. Consultant shall base all Construction Cost Estimates on the most current architectural program as approved by Metro and shall prepare updated Construction Cost Estimates at each

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phase of the Project, as provided below. The following conditions apply to each Construction Cost Estimate prepared by Consultant:

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

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

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

6.1.4.4 Include all information and estimates from Metro and Metro’s consultants that are intended to be part of the Construction Cost Budget.

6.1.4.5 Reconcile each Construction Cost Estimate with Metro’s Construction Cost Budget. Consultant shall present no estimate that exceeds the Construction Cost Budget. Consultant shall be responsible for the accuracy of each Construction Cost Estimate.

## 6.2 Schematic Design Phase.

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

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

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

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

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

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

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

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

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

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

### 6.3 Design Development Phase.

6.3.1 Based on Metro's approval of the Schematic Design Documents, and on Metro's authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Design Development Documents for Metro's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications identifying major materials, components, and systems and establishing general quality levels. Consultant shall not include in its 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. Consultant's Services during the Design Development Phase shall consist of the following:

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

6.3.1.1.1 Floor plans with final room locations including all openings and building fenestration.

6.3.1.1.2 Building sections showing coordination and relationship between components.

- 6.3.1.1.3 Wall sections showing final dimensional relationships, materials, and component relationships.
- 6.3.1.1.4 Identification of all fixed and loose equipment to be installed.
- 6.3.1.1.5 Finish schedule identifying all finishes.
- 6.3.1.1.6 *Intentionally Omitted*
- 6.3.1.1.7 *Intentionally Omitted*
- 6.3.1.1.8 Preliminary development of details and large scale blow-ups.
- 6.3.1.1.9 Legend showing all symbols used on the drawings.
- 6.3.1.1.10 Outline specifications, in accordance with the CSI standards.
- 6.3.1.1.11 Reflected ceiling development including ceiling grid and all devices that penetrate ceiling (i.e., light fixtures, sensors, sprinkler heads, ceiling register, or diffusers, etc.).
- 6.3.1.1.12 Equipment layouts.
- 6.3.1.1.13 Building cross-sections with floor-to-floor heights indicated.
- 6.3.1.1.14 *Intentionally Omitted*

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

- 6.3.1.2.1 Plan drawings with all structural members located and sized.
- 6.3.1.2.2 Footing, beam, column, and connection schedule.
- 6.3.1.2.3 Final building elevations.
- 6.3.1.2.4 Final structural design criteria.
- 6.3.1.2.5 Outline specifications.
- 6.3.1.2.6 Foundation drawings.
- 6.3.1.2.7 Soil retainage system.

6.3.1.2.8 Critical coordination clearances.

6.3.1.2.9 Drawings and Specifications and materials lists.

6.3.1.2.10 Typical sections.

6.3.1.3 Mechanical Design/Documentation Services. On an ongoing basis, Consultant shall develop and expand mechanical Schematic Design Documents and develop outline specifications or materials lists to establish approximate equipment sizes and capabilities, preliminary equipment layouts, required space for equipment, required chases and clearances, acoustical and vibration control, visual impacts, and energy conservation measures. These Services also include the following where applicable:

6.3.1.3.1 Heating and cooling load calculations for each space and major duct or pipe runs sized to interface with structural elements.

6.3.1.3.2 Major mechanical equipment scheduled indicating size and capacity.

6.3.1.3.3 Duct work and piping systems substantially located and sized.

6.3.1.3.4 Water systems including solar heating and bio-reacted waste water.

6.3.1.3.5 Plumbing and irrigation systems.

6.3.1.3.6 Devices in ceiling located.

6.3.1.3.7 Legend showing all symbols used on the drawings.

6.3.1.3.8 Outline specifications.

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

6.3.1.4.1 All power consuming equipment and load characteristics.

6.3.1.4.2 Total electrical load.

6.3.1.4.3 Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned, showing capacities, and drawn to scale into the space allocated.

6.3.1.4.4 Complete preliminary site lighting design.

- 6.3.1.4.5 Outline specifications.
- 6.3.1.4.6 Lighting, power, telecommunications, and office automation devices and receptacles shown on the plan.
- 6.3.1.4.7 Final light fixture schedule.
- 6.3.1.4.8 Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas.
- 6.3.1.4.9 Riser diagrams.
- 6.3.1.4.10 Fire alarm riser system.
- 6.3.1.4.11 Energy management riser system.
- 6.3.1.4.12 Photovoltaic alternative energy systems.
- 6.3.1.4.13 Service entry feeds and generator relocations.
- 6.3.1.4.14 Energy conservation measures related to lighting and other potentials.

6.3.1.5 *Intentionally Omitted*

6.3.1.6 *Intentionally Omitted*

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

6.3.1.8 Interior Design/Documentation Services. Consultant shall further develop and coordinate the approved schematic interior space plan based on functional relationships, Metro policy, code requirements, finishes, colors, systems, and equipment. Consultant shall develop conceptual design solutions that are coordinated with architectural, structural, mechanical, electrical, and equipment requirements and dimensions in order to establish an integrated design approach for a fully functional building. Interior design documentation services shall also consist of continued development and expansion of interior Schematic Design Documents and development of Drawings and Specifications and materials lists to establish final scope and preliminary details relative to:

6.3.1.8.1 Interior construction of the Project.

6.3.1.8.2 Special interior design features.

6.3.1.8.3 Furniture, fixtures, and equipment selections.

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

6.3.1.10 Statement of Probable Construction Cost Services. Consultant shall update and refine the Schematic Design Phase Statement of Probable Construction Cost of the Project as it is related to the Construction Cost Budget and taking into consideration availability of materials and labor, Project delivery procedures, construction sequencing and scheduling, changes in the scope of the Project, and adjustments in quality standards. Completion of these Services shall result in the “Design Development Phase Statement of Probable Construction Cost.” If the Statement of Probable Construction Costs exceeds the approved budget, the Consultant shall, at the Consultant’s expense, redraw, revise, and/or value engineer the Project, if so directed by Metro, so that said estimate does not exceed the approved budget as adjusted by Metro. If Metro concludes that Consultant’s budget is inaccurate, program adjustments and/or alternates shall be prepared.

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

6.3.1.12 *Intentionally Omitted*

6.3.1.13 *Intentionally Omitted*

6.3.1.14 Land Use Planning and Building Permitting Services. Consultant shall coordinate its work with the work of Metro’s separate Metro contracts. Consultant will consult with the City of Portland as required to obtain building permits. Consultant will conduct informal meetings with City Planning staff to solicit and receive their comments with respect to the projects and any land use approvals that may be required. Consultant shall prepare written and graphic explanatory materials and appear as may be required on Metro’s behalf at all permitting agency meetings.

6.3.1.15 *Intentionally Omitted*

6.3.1.16 *Intentionally Omitted*

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

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

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



6.3.5 Consultant shall provide two (2) sets of copies of all final drawings and written material.

6.4 Construction Documents Phase.

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

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

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

6.4.4 The Consultant shall provide an independent estimate based on the 50% Construction Document stage. If the Consultant's estimate exceeds the "Approved Design Budget," the Consultant, at its expense, shall redraw, revise, and/or value engineer the Project, if so directed by Metro, so that the estimate is within the "Approved Design Budget." If Metro concludes that Consultant's budget is inaccurate, program adjustments and/or alternates shall be prepared.

6.4.5 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.

6.4.6 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.

6.4.7 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.

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

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

6.4.10 Consultant shall assist Metro in preparing a Project Procedures Manual outlining all procedures to be followed for the processing, change orders, reporting, and control of all shop drawings, transmittals, submittals, substitutions, catalogs, Project reports, field orders, test reports, inspections,

maintenance manuals, and other construction documentation. The Consultant is responsible for all Requests for Information and shall answer them as previously described in this Contract and Metro's General Conditions.

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

6.4.12 The Consultant shall provide final selection and obtain approval, by Metro, of colors and materials.

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

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

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

6.4.16 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.

6.4.17 *Intentionally Omitted*

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

## 6.5 Procurement Phase.

6.5.1 The Consultant shall assist Metro with the solicitation process for the selection of the General Contractor. These duties shall include:

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

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

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

6.5.1.4 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.

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

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

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

## 6.6 Construction Phase.

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

6.6.2 Consultant shall advise and consult with Metro during the Construction Phase as provided in this Contract and in Metro’s General Contractor 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 shall be responsible for Consultant’s negligent acts or omissions, but shall not have control over or charge of, and will not be responsible for, acts or omissions of Contractor or of any other persons or entities performing portions of the construction work.

6.6.3 Consultant’s responsibility to provide Construction Phase Services commences with the execution of the General Contractor Contract and ends on the date Metro issues the final certificate for payment.

6.6.4 Compliance with Construction Schedule. Consultant shall review and become knowledgeable with the Contractor’s construction schedule as accepted by 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.

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

Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the work.

6.6.6 Interpretation of Contract Documents. Consultant shall be the interpreter of the requirements of the Contract Documents in regard to compliance and workmanship in accordance with the Design Documents. Consultant shall render interpretations necessary for the proper execution or progress of the work upon written request of Metro. Unless a longer period is agreed to by Metro, Consultant shall render written decisions within five (5) working days of receipt thereof on all claims disputes and other matters in question between Metro and the Contractor relating to the compliance with design of the work or the interpretation of the Contract Documents.

6.6.7 Change Orders.

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

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

6.6.8 Submittals.

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

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

6.6.8.3 Consultant shall review Contractor's schedule of submittals and advise 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.

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

6.6.9 Requests for Information. During the course of construction as part of the Services, all Requests for Information (“RFI”) must be responded to as expeditiously as possible so as not to impact and delay the construction progress. In no case shall the review period associated with an RFI exceed five (5) working days from its receipt by Consultant. Consultant’s response to each RFI shall be a substantive and acceptable response. This five-day time period shall not include time when a submittal is within 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 6.6.9, Consultant shall be liable for any increase in construction cost as a result of the delay.

6.6.10 Testing.

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

6.6.10.2 Consultant shall review and become knowledgeable with the Contractor’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.

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

6.6.12 Notices of Deficient Work. On the basis of on-site observations, Consultant shall keep 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 Contractor or Contractor’s Subcontractors that Consultant may observe. However, Consultant will not be a guarantor of the Contractor’s performance.

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

6.6.14 Record Drawings. Consultant shall incorporate all construction information from as-built drawings, sketches, details, and clarifications, and prepare two sets of final record drawings (“Record Drawings”) for Metro. In addition, Consultant shall provide to Metro as-built drawings on AutoCAD. The final record drawings, specifications, and CAD discs shall be delivered to Metro within sixty (60) calendar days after receipt of all necessary written information. Consultant may insert the following notice on the Record Drawings: “These drawings [or corrected specifications] have been prepared based on information submitted,

in part, by others. Consultant has provided a review of such information consistent with its legal Standard of Care.”

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

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

6.6.17 Project Completion. Consultant shall conduct inspections to establish or confirm the date of Substantial Completion and the date of Final Completion of the Contractor’s work. At Substantial Completion, Consultant shall review the Contractor’s punch list, conduct a visual inspection of the completed work, and prepare an updated punch list of conditions observed and recommending correction, completion, or replacement by the Contractor. Consultant shall review the Project again upon Final Completion to confirm compliance with the Construction Contract Documents, and shall issue a final certificate for payment representing to 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.

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

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

6.6.20 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.

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

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

6.7.1.1 Inconsistent with approvals or instructions previously given by Metro.

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

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

6.7.2 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.

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

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

6.7.5 Provide Services as directed by 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.

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

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

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

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

6.7.8.2 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.

6.7.8.3 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.

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

6.7.9 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. Subconsultants' hourly rates indicated in Exhibit D include Consultant's administration fee/mark-up fee.

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## ARTICLE 7

### Payment and Billing

7.1 Contract Price. Consultant shall perform the Services described in this Contract for a maximum price not to exceed TWO HUNDRED SIXTY-FIVE THOUSAND, THREE HUNDRED SIXTY-NINE AND NO/100 DOLLARS (\$265,369.00); including Reimbursable Expenses not to exceed SEVENTEEN THOUSAND, SEVEN HUNDRED SEVENTY AND NO/100 DOLLARS (\$17,770.00). 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 the percentage of the Services performed by Consultant during the billing period. Contractor's Statement of Services will include an itemized statement of Services completed 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 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.

7.2.4 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.

7.2.5 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.

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

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

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

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

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

7.3.2 Travel Expenses. All travel expenses must be approved in advance by 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 \$66.00 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 \$113.00 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. Metro will not pay any mark-up over actual allowable reimbursement costs. Any costs associated with recordkeeping or labor to create reproductions of receipts is considered indirect overhead and therefore part of Consultant’s Professional Hourly Rates.

7.4 Payment. 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.

## ARTICLE 8

### Dispute Resolution

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

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

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

8.1.3 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.

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

8.3 Work to Continue Notwithstanding Dispute. In no event shall submission of a dispute arising out of this Contract by either Party relieve Consultant of its obligation to fully perform the requirements of the Contract as directed by 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 6.7, and/or terminate the Contract pursuant to Section 5.13.

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

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
Metro Attorney

## **Arlene Schnitzer Concert Hall – Orchestra Shell Replacement**

### **Exhibit A Architectural Resources Group – Scope & Fee by Phase**

#### **Phase 1 – Schematic Design Phase \$53,121.00**

- Project kickoff with ARG project team, Metro & P-5 staff & management
- Review of relative project documents, including existing acoustical study of orchestra shell, Shalleck conceptual plans for Meyer Constellation system, and Sazan lighting upgrade project
- Development of project scoping document in coordination with owner. Document to identify relevant agencies having jurisdiction and will include proposed project schedule, communication, submittal, and approval plans.
- Site investigation, to include:
  - Measure concert hall to generate accurate as-built backgrounds
  - Establishment of project-specific room acoustics criteria (such as reverberation times) based on Meyer Constellation requirements and guidelines
  - MEP – field examinations of locations for new equipment to determine available space and construction and operation constraints. Existing electrical equipment will be checked to verify that capacities are adequate for loads being served
  - Structural survey
- Code research to identify specific requirements for existing systems that may require electrical modification to meet current codes and ordinances when new work is inspected
- Record documentation review to determine the loads supplied through the equipment to be replaced and modified
- Develop Sketch-up model of orchestra shell configuration options
- Develop as-builts and Schematic Design level documents and outline specification based on digital sound system design conceptual planning by the Shalleck Collaborative.
- Development of preliminary Statement of Probable Construction Cost based on area, volume, equipment, and other unit costs.
- Submittal of Schematic Design documents to Metro & P-5 staff & management
- Meet with Metro & P-5 to review and establish final scope
- Refine building drawings and send to cost estimator
- Provide updated cost estimate based on Schematic Design review meeting
- Submit final Schematic Design package to Metro & P-5
- Bi-monthly progress meetings with team.

## **Arlene Schnitzer Concert Hall – Orchestra Shell Replacement**

### **Phase 2 – Design Development**

**\$46,761.00**

- Development of preliminary and final digital sound system drawings for the systems determined in the Schematic Design Phase. Drawings will be developed in 2D AutoCAD
- Calculation of minimum requirements for acoustical finishes to achieve the room acoustics criteria established in the Schematic Design Phase
- Design Development level architectural, structural and MEP drawings in AutoCAD, DD level specifications, including reconfiguring HVAC at stage area
- Submit DD level document to cost estimator
- Provide DD level cost estimate, assume one round of review and corrections
- Bi-monthly progress meetings with team.

### **Phase 3 – Construction Documents**

**\$60,742.00**

- Finalization of project details based on approved design. Construction Documents will include all necessary
  - Site plans
  - Floor plans
  - Elevations
  - Sections
  - Details
  - Specifications
- Additive alternative bids, unit prices, and phasing will be accommodated at the request of Metro & P-5
- CD's to include phasing plans that support deactivating and removing existing equipment, installing an decommissioning new equipment, and connecting new equipment to existing systems. Phasing to limit the amount of downtime experienced by the Concert Hall
- Finalization of the design for room acoustic treatment, including type, amount, and location of sound absorptive and sound diffusive products.
- Verification of critical calculations and that all work is correct and properly coordinated between consultants.
- Final Statement of Probable Construction Cost. 10 percent bidding and design contingency will be included.
- Submittal of final CD set to Metro.
- Incorporation of any necessary final revisions.
- Bi-monthly progress meetings with team

### **Phase 4 – Permitting, Bidding & Contracting**

**\$13,430.00**

- Submit Construction Documents to building department.
- Ongoing communication with Metro & P-5 to address questions and feedback from project team, owner, manufacturers, and permitting agencies.

### **Arlene Schnitzer Concert Hall – Orchestra Shell Replacement**

- Construction Document revisions as needed.
- Provide written responses to Metro for construction contractor questions, substitution requests, and generate draft addenda as needed during the bid period
- Review bids and provide comments to Agencies Having Jurisdiction

#### **Phase 5 – Construction Administration**

**\$ 53,650.00**

- Perform at least weekly site visits and observe construction or work progress to the degree necessary as determined by Metro, and as required to ensure conformance with the Construction Documents
- Document progress and any conditions needing remediation in Site visit reports

**Arlene Schnitzer Concert Hall – Orchestra Shell Replacement**

**Exhibit E**  
**Architectural Resources Group – Design Schedule**

<b>Phase 1 – Schematic Design Phase</b>	<b>December 2017 – January 2018</b>
<b>Phase 2 – Design Development</b>	<b>February 2018 – March 2018</b>
<b>Phase 3 – Construction Documents</b>	<b>March 2018 – April 2018</b>
<b>Phase 4 – Permitting, Bidding &amp; Contracting</b>	<b>April 2018 – June 2018</b>
<b>Phase 5 – Construction Administration</b>	<b>July 2018 – September 2018</b>

*(Phase 5 includes close out activities – construction complete by September 1 2018)*