



PROPOSAL
to
Colorado Springs Urban Renewal Authority
Client

Construction Consulting Services

Robson Arena
Colorado Springs, Colorado

Presented By

Fulcrum

September 20, 2019

ATLANTA DALLAS DENVER HARTFORD IRVINE MIAMI NEW YORK OMAHA PHOENIX SAN DIEGO SEATTLE NATIONWIDE



PROPOSAL

1. **Purpose.** **Fulcrum** shall be hired as an independent consultant to undertake Construction Consulting Services of the following real property (the "Property"):

The proposed Robson Arena is part of an overall development commonly known as The Colorado Sports and Events Center. This Sports and Event Center includes two facilities; a proposed stadium (Switchback Stadium) and a proposed arena (Robson Arena). These facilities will be state of the art, multi-purpose venues designed to host professional, Olympic and amateur sporting events as well as entertainment and cultural events.

The proposed Robson Arena is located in Colorado Springs, Colorado. The estimated budget is \$45MM and is estimated to be complete in the fall of 2021. The arena will be approximately 270,000 SF which will include a 121,000 SF parking garage, a 130,000 SF ice arena, and 20,000 SF of campus support offices/services.

Please note that **Fulcrum** is currently under contract with a separate entity on the proposed stadium (Switchback Stadium).

2. **Scope of Services.** Refer to Exhibit A.

Fulcrum utilizes in-house staff with a variety of backgrounds including licensed professionals and staff with general construction knowledge. **Fulcrum** will not use a variety of staff members to review the project who have experience in individual fields, e.g. architectural, civil, mechanical backgrounds.

Fulcrum's report(s) if prepared as part of our scope of services, can be relied upon by the Client, its successors and assigns. No other person or entity other than the Client, its successors and assigns may rely on **Fulcrum's** report(s) without the prior written consent of **Fulcrum**. In the event these reports are to be provided at some future date to a separate client or entity, an additional fee may apply and such will be agreed upon with the Client and **Fulcrum**. Such reliance will be subject to the terms and conditions of this original contract.

Scope of work deliverables, as applicable, will be delivered to the Client in an electronic format unless **Fulcrum** is requested for hard copies to be issued. Any construction plans and specifications will not be retained by **Fulcrum** after the completion of the project. If the Client requires the plans and specifications returning to them at the completion of the project, the Client should notify **Fulcrum** of such.

3. **Timing.** Refer to Exhibit A.
4. **Payment.** Refer to Exhibit A.

In addition, our fees for services requested by you that are outside the scope of our engagement shall be based on the following hourly rates:

<u>Title</u>	<u>Rate</u>
CEO and Manager	\$260/hour
Chief Operating Officer	\$240/hour
Chief Financial Officer	\$230/hour
Director	\$225/hour
Associate Director	\$205/hour
Senior Project Manager	\$185/hour
Project Manager	\$170/hour
Assistant Project Manager	\$155/hour
Project Coordinator	\$130/hour
Administrative Assistant	\$110/hour

Please note, all travel expenses not included in our base scope of services with offsite visits will be subject to a 10% mark up to cover associated administration costs.

All **Fulcrum** invoices not paid within thirty days of the due date shall accrue a service charge at the rate of 10% per annum.

Subject to the provisions contained herein under which the Client agrees to pay **Fulcrum's** fee for the Services, Client requests **Fulcrum** to invoice the Services performed on this project to the parties indicated below:

Borrower/Developer

Send invoices to:

Client

- 5. No Warranties.** **Fulcrum** disclaims all warranties express or implied.
- 6. Limitation of Fulcrum's Liability.** In recognition of the relative risks and benefits of the Project to Client and **Fulcrum**, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the liability of **Fulcrum**, its principals, owners, agents, and consultants (if any), to Client, Borrower, Design Professionals and to General Contractor and its subcontractors and suppliers, or any other third party with regard to the Project for any and all liability, claims, demands, damages, expenses (including attorney, expert and administrative fees) (hereinafter

"Liability") from any cause or causes, such that the total aggregate liability of **Fulcrum**, and its consultants, to all those named above shall not exceed \$25,000 or **Fulcrum's** total fee for services rendered on this Project, whichever is greater. This limitation of liability includes, but is not limited to, allegations or findings of negligence, indemnity, breach of contract, strict liability, breach of warranty or any other claim or cause of action. It is further expressly understood that Client is retaining **Fulcrum** and that **Fulcrum** owes no duty of care to any third party.

7. **Indemnification.** To the fullest extent permitted by law, Client hereby agrees to defend, indemnify and hold harmless **Fulcrum** and its owners, employees and agents (hereinafter "**Fulcrum PARTIES**") from and against any and all claims arising out or caused by the negligence or intentional acts of Client, Owner, Design Professionals, General Contractors, Subcontractors, Material Suppliers or any third party. Client has no obligation to defend, indemnify or hold harmless **Fulcrum** in the event that the claim was caused by the sole negligence or willful misconduct of **Fulcrum**.
8. **Statute of Limitations.** Neither party may bring any claim against the other for any reason that is based on this Agreement or the services provided hereunder unless the party making the claim notifies the other party of the specific nature and extent of the claim in writing within six months of the date the **Fulcrum** report is delivered to Client.
9. **Term of Agreement.** This Agreement commences on the date it is signed and shall continue until full performance by both parties, or until terminated by one party under the terms of this Agreement. Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of thirty days after written notice of such breach is sent to the other party.
10. **Mediation and Arbitration.** Any dispute arising under this Agreement shall be first attempted to be resolved through mediation. The parties agree to first try to resolve the dispute informally with the help of a mutually agreed-upon mediator. The mediation shall occur within sixty (60) days of first notice of the dispute. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties may thereafter agree to submit their dispute to binding arbitration in accordance with the Construction Arbitration Rules of the American Arbitration Association. The arbitrator shall be selected from a panel provided by the American Arbitration Association. Upon request of a party, the arbitrator shall have the authority to permit discovery to the extent the arbitrator deems appropriate. The arbitrator shall have no power to add or detract from the agreements of the parties and may not make any ruling or award that does not conform to the terms and conditions of this Agreement or follow the law in the jurisdiction where the dispute is arbitrated. The arbitrator shall have the authority to grant injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The arbitrator shall have no authority to award punitive damages or any other damages not measured by the prevailing

party's actual damages. The arbitrator shall specify the basis for any damage award and the type of damages awarded. The decision of the arbitrator shall be final and binding on the parties and may be entered and enforced in any court of competent jurisdiction by either party.

11. **Prevailing Party Clause.** The prevailing party in any legal proceeding shall be awarded its reasonable attorney fees and expert witness fees/costs and expenses and all other costs and expenses reasonably incurred in connection with the proceedings.
12. **Complete Agreement.** This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties relating to the subject matter hereof. This Agreement supersedes all prior understandings, oral or written agreements and any other documentation relating to this matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the main body of this Agreement shall take precedence.
13. **Modifications to Agreement.** Modifications and amendments to this Agreement shall be enforceable only if they are in writing and are signed by authorized representatives of both parties. However, if **Fulcrum** is requested verbally to proceed on a given task, **Fulcrum** has the right to rely on that verbal request and shall be compensated for efforts so undertaken so long as **Fulcrum** issues a written confirmation of the verbal instruction within two business days of receiving the verbal directive from Client.
14. **Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by an authorized representative of the party claimed to have waived or consented.
15. **Consequential Damage Waiver.** Both parties to the Agreement waive any and all claims to consequential damages against the other party. For purposes of defining the phrase "consequential damage", it shall be given the broadest interpretation possible and shall include, but not be limited to, loss of profits, loss of rents, increases in material and/or labor rates, damages that are purely economic loss, additional finance charges and any other type or category of damages that are anything other than a direct property damage.
16. **Fulcrum is an Independent Consultant.** Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties. The parties acknowledge that **Fulcrum** will perform its obligations hereunder as an independent consultant. The manner and method of performing such obligations will be under **Fulcrum's** sole control and discretion. It is also expressly understood that **Fulcrum's** employees and agents, if any, are not employees or agents of Client and have no authority to bind Client or any third parties by contract or otherwise.

17. **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given when delivered personally, or five days after being deposited in the United States mail, postage prepaid and addressed as follows, or to such other address as each party may designate in writing:

Jariah Walker
Colorado Springs Urban Renewal Authority
30 South Nevada Avenue
Suite 600
Colorado Springs, Colorado 80903

Hugh C. Coyle, FRICS
Fulcrum
7373 E. Doubletree Ranch Road
Suite B-215
Scottsdale, Arizona 85258

18. **Applicable Law.** This Agreement will be governed by the laws of the State of Arizona for projects located anywhere except the State of California. The proper venue for any proceeding at law or in equity or under the provisions for arbitration shall be Maricopa County, Arizona. For projects located in California, the Agreement will be governed by California law and the proper venue for any legal proceeding shall be Orange County, California. The parties waive any right to object to the venue specified herein.
19. **Severability.** If any provision of this Agreement is held invalid, void or unenforceable under any applicable statute or rule of law, it shall to that extent be deemed omitted and the balance of this Agreement shall be enforceable in accordance with its terms.
20. **Force Majeure. Fulcrum** shall not be liable for any loss, damage, or delay caused by strikes, lockouts, fire, explosion, theft, floods, riot, civil commotion, war, malicious mischief, act of God, or by any cause beyond our reasonable control, and in any event we shall not be liable for consequential damages.

Darren A Seary, FRICS
Director
Fulcrum

Jariah Walker
Executive Director
Colorado Springs Urban Renewal Authority

September 20, 2019

Date

DAS:cc

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Exhibit A – Scope of Services

I. PLAN AND COST REVIEW SERVICES

The Plan and Cost Review shall include any or all of the following:

1. General review of the plans and specifications (as provided).
2. Contract review, which may include all or part of the following (as provided):
 - Joint Venture/Loan Agreement with associated budgets
 - Owner/Architect Agreement
 - Owner/Contractor Agreement or Owner/Construction Manager Agreement with all Exhibits
 - Owner/Engineer Agreements
 - Initial Bids/Proposals
3. General review of other documents, which may include all or part of the following (as provided):
 - Geotechnical Report
 - Environmental Reports
 - Will-Serve Letters from Utility Companies
 - Building Permits
 - Zoning Reports/Approvals
4. Overview of the proposed project schedule and comment on its reasonableness (as provided).
5. Provide a narrative description of the construction components, finishes and amenities.
6. Prepare a Project Design and Construction Checklist which summarizes the MAJOR building and site components. This is not to serve as a document to verify the project is being built in full conformance with the plans and specifications. This is the responsibility of the Architect of Record and not **Fulcrum**.
7. Prepare an Abbreviated ADA Checklist (ASTM Guidelines) based on the project plans provided. **Fulcrum** will also prepare an Abbreviated FFHAA Checklist (ASTM Guidelines) if applicable to the Project.
8. Provide a comparative cost analysis of the general contractor's Schedule of Values. Identify major variances within the values and recommend clarification as necessary.

Fulcrum will compare the schedule of values to the hard cost Development Budget/Loan Budget, as provided.

9. Obtain and review a copy of the Development Budget (as provided). Request a detailed breakdown (with supporting documentation) from the developer of each of the hard cost line items and comment on whether the figures tie to the supporting documentation.
 - a. For estimated figures by the developer, **Fulcrum** will comment on whether the figures appear generally reasonable for a project of this type.
 - b. **Fulcrum** will provide general commentary on whether it appears that all typical hard cost line items have been included based on similar projects.
 - c. Provide general commentary on FF&E scope/budget as applicable.
 - d. Provide general commentary on Tenant Improvement (TI) budget/scope as applicable.

II. CONSTRUCTION DRAW REVIEW SERVICES

1. Review Construction Draw Package. **Fulcrum** shall review and opine on the reasonableness of the construction draw request ("Construction Draw Package") which may include all or part of the following (as checked):
 - Construction Draw Request/Budget
 - Soft Cost Invoices for the Architectural Firm Only
 - FF&E Invoices
 - Tenant Improvement Pay Requests
 - Other Hard Costs (outside construction agreement)
 - Fully Executed Owner Change Order/s
 - General Contractor's Fully Executed Pay Application
 - General Contractor's Vendor Payee Log
 - General Contractor's Lien Waiver Tracking Log
 - General Contractor's Lien Waivers/Releases
 - General Contractor's Change Order Log
 - General Contractor's Pending/Potential Change Order Log
 - General Contractor's Construction Schedule
 - General Contractor's Allowance Log
 - General Contractor's Buyout Log
 - General Contractor's RFI Log
 - General Contractor's Submittal Log
 - General Contractor's Offsite Materials Tracking Log
 - Insurance Certificates (Offsite Stored Materials)
 - Bill of Sale (Offsite Stored materials)
 - UCC-1 Filing Statements (Offsite Stored Materials)
 - Permit Status Log
 - Permits (As applicable – Submit Copies Once Available)
 - Architect Reports
 - Subcontractor Pay Applications (As Applicable)
 - Subcontractor Lien Waiver Tracking Log
 - Subcontractor Lien Waivers/Releases
 - Foundation Survey (As Applicable)
 - Foundation Endorsement (As Applicable)
 - Pad Certification (As Applicable)
 - Materials Testing Summary Letters (Nonconformance Status Letters/Logs)

2. Perform periodic onsite observations with the Architect of Record, Owner/Developer and General Contractor (as available), in conjunction with current Application for Payment, for purposes of pay application recommendation and construction progress. **Fulcrum** is not retained to certify the pay application and will be making recommendations for funding based upon percentage complete of line items.

Fulcrum will only be expressing its opinions in this regard as percentage of completion is a subjective analysis.

- a. **Fulcrum** does not verify and/or certify the Project is being built in accordance with the plans and specifications. This is the sole responsibility of the Architect of Record or such other individuals or entities that Borrower may choose to so designate but it is not the responsibility of **Fulcrum**.
 - b. **Fulcrum's** recommendation for approval of a Certificate for Payment shall not be a representation that **Fulcrum** has (1) made exhaustive or continuous onsite Observations to check the quality or quantity of the work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Borrower to substantiate the general contractor's right to payment; or (4) ascertained how or for what purpose the general contractor has used money previously paid on account of the contract sum.
3. General review of materials stored and stocked onsite. If a detailed inventory of stored and stocked materials is required, an inventory list is to be provided, and **Fulcrum** shall charge an hourly fee for this additional scope of work. If offsite material review is required, **Fulcrum** shall receive written acceptance from our Client and charge an hourly fee for this additional scope of work.
 4. Provide progress photographs which record a status of the work completed within the current reporting period.
 5. Perform monthly soft cost reviews on behalf of the Client for the architectural fees only. **Fulcrum** is not retained to certify the architectural soft cost pay applications and will be making recommendations for funding based upon the receipt and review of invoices and other support documentation as provided.
 - a. **Fulcrum** does not verify and/or certify the back-up documentation provided and is not completing an accounting audit. **Fulcrum** is relying on the documentation as provided by the borrower to be accurate and true.
 6. **Fulcrum** will comment on the appropriate remaining budgets of each line item and provide commentary on the general adequacy of remaining funds.
 7. **Construction Draw Submission.** As part of the construction draw submission process, **Fulcrum's** assigned representative and draws@Fulcrumcompany.com is to be included on the distribution list.

III. TIMING

Upon receipt of final information, **Fulcrum** will issue an electronic copy of the respective report(s) as noted below:

Plan and Cost Review Services	15 business days
Construction Draw Review Services	5 business days

IV. PAYMENT

Plan and Cost Review Services Fee	\$7,500
Construction Draw Review Services Fee	\$3,000

One pay application (both hard and soft costs) is assumed per draw request. If multiple pay applications are submitted, an additional fee may apply as agreed between the Client and **Fulcrum**.