

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 00-2942
AMENDMENTS TO THE INTERGOVERNMENTAL)
AGREEMENT WITH THE CITY OF PORTLAND) Introduced by Presiding Officer
FOR THE CONSOLIDATION OF REGIONAL) David Bragdon
FACILITIES TO TRANSFER CIVIC STADIUM)

WHEREAS, the City of Portland and Metro are parties to an Amended Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District, which transferred City facilities managed by the Exposition-Recreation Commission and all employees to the management of the Metropolitan Exposition-Recreation Commission; and

WHEREAS, the City has now entered into an agreement with Portland Family Entertainment LP ("PFE"), which provides for a major renovation and transfers operational management of Civic Stadium to PFE; and

WHEREAS, Metro recognizes the City's investment of public funds and its right to provide for the management of City-owned facilities; and

WHEREAS, the City and Metro have negotiated in good faith for amendments to the Consolidation Agreement which will streamline the management of the remaining City facility upon the withdrawal of Civic Stadium from Metropolitan Exposition-Recreation Commission management; now, therefore;

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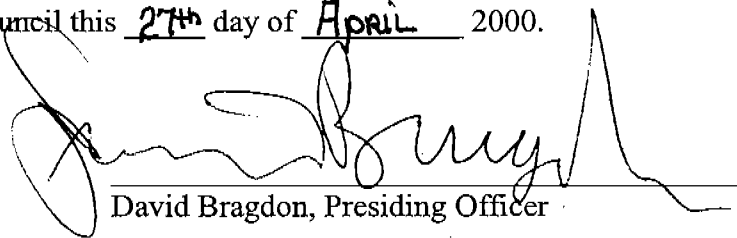
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BE IT RESOLVED:

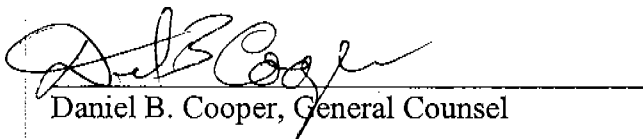
1. That the Executive Officer is authorized to execute the Amendment to the Agreement attached as Exhibit "A" to this Resolution.

ADOPTED by the Metro Council this 27th day of April 2000.



David Bragdon, Presiding Officer

APPROVED AS TO FORM:



Daniel B. Cooper, General Counsel

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**Exhibit A
to Resolution No. 00-2942**

**AMENDED
AGREEMENT REGARDING CONSOLIDATION OF
REGIONAL CONVENTION, TRADE, SPECTATOR AND
PERFORMING ARTS FACILITIES OWNED AND OPERATED BY
THE CITY OF PORTLAND AND METRO**

This Agreement dated as of December 19, 1989, amended as of December 9, 1992, January 1, 2000, and May 1, 2000, is between the City of Portland, Oregon (City) and Metro (Metro).

City and Metro agree that the December 19, 1989, Agreement is amended as follows:

RECITALS:

1. As of December 19, 1989, the City, Metro, and the City of Portland Exposition-Recreation Commission (ERC) entered into an "Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District." The December 19, 1989, Agreement provided generally for the consolidated operation, under Metro's Metropolitan Exposition-Recreation Commission (Metro ERC), of the City's Memorial Coliseum (Coliseum), Civic Stadium, and Portland Center for the Performing Arts, together with Metro's Oregon Convention Center. The December 19, 1989, Agreement provided in detail for the transfer of operational control of the City's facilities from the ERC to the Metro ERC.
2. The City and Metro removed the Coliseum from the mix of facilities operated by Metro and the Metro ERC by an Amendment to this Agreement dated December 9, 1992.
3. The relationship between the parties is governed by the December 19, 1989 Agreement, as amended, until the effective date of this Amendment.
4. The Exposition-Recreation Commission is no longer a party to this Agreement, and the City has authority under Portland City Code Section 3.106.050(a) to act on its behalf.
5. The City and Portland Family Entertainment Limited Partnership (PFE) anticipate entering into a cooperative agreement to improve Civic Stadium and bring new sports franchises to the facility, under which PFE will operate the facility.
6. Metro and the City recognize that they need to amend the Agreement to return Civic Stadium to the City.

SECTION 1

DEFINITIONS

In this Agreement, the following terms shall have the following meanings unless the context indicates otherwise:

"Agreement" means the Agreement regarding consolidation of regional convention, trade, spectator and performing arts facilities owned and operated by the City of Portland and the Metropolitan Service District entered into by the City of Portland and the Metropolitan Service District on December 19, 1989, as amended.

"City" means the City of Portland, Oregon.

"City Council" means the Council of the City of Portland or the lawful successor thereto.

"City Facilities" means two spectator facilities owned by the City, the PCPA and the Civic Stadium except that as of the Termination Date, City Facilities means only the PCPA.

"Civic Stadium Termination Date" or "Termination Date" means a date between June 21, 2000 and August 2, 2000, designated by City, on which Civic Stadium ceases to be a City Facility under this Agreement.

"Commissioner in Charge" means the City Commissioner to whom the Mayor of the City assigns responsibility for the City's relationship with Metro

"Convention Center" means the Oregon Convention Center.

"CPI" means the annual average percent change in the Portland-Salem OR-WA CPI-U, as issued by the U.S. Department of Labor, Bureau of Labor Statistics, for the most recent 12-month calendar year period, or a comparable measure of price change should this index not be available.

"ERC" means the City Exposition-Recreation Commission.

"Facilities" means the City Facilities, Metro Facilities, and Other Facilities.

"Metro" means the Metropolitan Service District.

"Metro Council" means the Council of the Metropolitan Service District provided for in ORS 268. 150 or the lawful successor thereto.

"Metro ERC" means the Metropolitan Exposition-Recreation Commission, a commission of Metro which manages Metro Facilities and City Facilities as provided in the Metro Code, or the lawful successor thereto.

"Metro Facilities" means the Oregon Convention Center and other convention, trade, or spectator Facilities owned by Metro.

"Metro Executive Officer" means the duly elected Executive Officer provided for in ORS 268.180 or the lawful successor thereto.

"Other Facilities" means present and future convention, trade, or spectator facilities within the Metro district other than the City Facilities and Metro Facilities.

"PCPA" means the Portland Center for the Performing Arts complex.

"PFE" means Portland Family Entertainment Limited Partnership or any successor in interest.

"Stadium" means the Portland Civic Stadium.

"Transfer Date" means the day after the Civic Stadium Termination Date.

SECTION 2

TRANSFER OF OPERATIONS AND MANAGEMENT OF CITY FACILITIES TO THE METRO ERC

- A. Subject to the terms and conditions contained in this Agreement, City transferred to Metro and Metro accepted responsibility for operation and management of the City Facilities effective as of January 4, 1990. Authority and responsibility for operation and management of the City Facilities is delegated to Metro ERC. All duly adopted resolutions of the ERC in force and effect on January 3, 1990, shall remain in force and effect with regard to the City Facilities until superseded or repealed by resolutions duly adopted by Metro or the Metro ERC.
- B. City has entered or will enter into agreements with PFE under which, effective on the Transfer Date, PFE becomes responsible for operations and management of the Civic Stadium in conjunction with PFE renovating Civic Stadium. As of the Civic Stadium Termination Date, a termination under the provisions of this Agreement shall be deemed to have occurred as to the Civic Stadium, which as of that date, shall no longer be considered a City Facility for the purpose of this Agreement, but the terms of this Agreement shall remain in full force and effect for the remaining City Facilities.

- C. City shall notify Metro in writing of the Civic Stadium Termination Date on or before the 20th day of the preceding month. Thereafter, City may change the Termination Date only upon written notice to Metro.
- D. In addition Metro will ensure that Metro ERC shall accomplish the following commencing immediately and continuing until the Termination Date.
1. Metro ERC shall submit to PFE for prior approval all booking agreements and other contracts affecting the Civic Stadium, including without limitation modifications of existing agreements, which extend beyond July 1, 2000. All such agreements shall contain a waiver of claims by promoters and other users of the Stadium arising out of construction at the Stadium.
 2. Metro and Metro ERC shall cooperate with City and PFE in the transition of Civic Stadium management, as follows:
 - a. Project managers
 - (i) Metro ERC will identify a Civic Stadium Manager for the transition period and will notify the City and PFE of any change in the Civic Stadium Manager.
 - (ii) The City will identify a Project Manager for the transition period and will notify Metro ERC of any change in the Project Manager.
 - b. On or before the Termination Date, the personal property, equipment and fixtures located at the Civic Stadium shall be distributed as provided in the inventory attached as Exhibit A to this Agreement.
 - c. Metro ERC will give prompt notice to the collective bargaining representative of Theatrical Employees Union Local B-20, International Alliance of Theatrical Stage Employees (IATSE) staff and the Stadium's food and beverage concessionaire that Civic Stadium will cease to be operated by Metro effective on the Termination Date.
 - d. Metro ERC shall cease to market and book the Civic Stadium.
- E. Metro and the City further agree that if the negotiations between the City and PFE do not result in a completed agreement, the City shall notify Metro and MERC by August 2, 2000 and the parties shall work together in good faith to determine the appropriate steps to take in order to enable Civic Stadium to be a useful public asset.

- F. Chapter 6.01 of the Metro Code sets forth the power, authority and duties of Metro ERC. The parties agree that during the term of this Agreement it may be necessary or desirable for Metro to amend the provisions of Metro Code Chapter 6.01 in order to reflect changes in law or to provide for a response to changed circumstances. Therefore City agrees Metro may amend Chapter 6.01 during the term of this Agreement, upon thirty (30) days advance notice to the Commissioner in Charge.
- G. Except as expressly provided otherwise, the provisions of this Agreement shall be effective as of January 4, 1990, and shall be effective only during the term of this Agreement.

SECTION 3

REAL AND PERSONAL PROPERTY

- A. City and ERC transferred, effective January 4, 1990, to Metro the right to beneficial use of all real property comprising the City Facilities. City retains title to and beneficial ownership of all real property comprising City Facilities. City shall not take any action with regard to the real property comprising the City Facilities that would interfere with management and operation of the City Facilities, except as provided in this Agreement. Metro shall not take any action with regard to the real property comprising the City Facilities that would affect or encumber the title to the property without the prior written consent of City.

At the end of the Termination Date, Metro's right to beneficial use of all Civic Stadium real property is terminated.

- B. City owns certain rights to use real property subject to restrictions and therefore City has certain obligations related thereto. In addition to the provisions of Subsection (A) of this Section, the following provisions shall apply to specific real property.

- 1. First Congregational Church

- (a) City and the First Congregational Church are parties to a Ground Lease, Parking Rights Agreement and Agreement to Lease Space dated November 1, 1984, (Church Agreement) providing land for use of PCPA and creating related obligations. City hereby authorizes Metro, effective January 4, 1990, to exercise all of City's rights under the Church Agreement. Metro shall perform all obligations of City under the Church Agreement.
- (b) City shall notify the First Congregational Church that all notices to be given to City under the Church Agreement also shall be given to Metro at the address set out in Section 22 hereof.

2. Al Kader Temple

- (a) City and Al Kader Temple are parties to a Parking Rights Agreement dated August 1, 1984, (Al Kader Agreement) providing parking rights to City and creating related obligations. City hereby authorizes Metro, effective January 4, 1990, to exercise all of City's rights under the Al Kader Agreement. Metro shall perform all obligations of City under the Al Kader Agreement.
- (b) City shall notify Al Kader Temple that all notices to be given to City under the Al Kader Agreement also shall be given to Metro at the address set out in Section 22 hereof.

3. Multnomah Athletic Club

City is the grantee under a deed from the Multnomah Athletic Club as grantor dated December 28, 1966, (MAC Deed) conveying to City Portland Civic Stadium, the underlying land, and certain easements. City hereby authorizes Metro, effective January 4, 1990, to exercise all of City's rights under the MAC Deed except that Metro shall not cease the use of the granted premises or a substantial portion thereof without the prior written consent of City. Metro shall perform all obligations of City under the MAC Deed, until the Termination Date.

C. Personal Property. City shall be the owner of all City Facilities-related personal property owned by City as of January 3, 1990, and also of all capitalized personal property acquired thereafter by Metro or Metro ERC using City Facilities-related funds. Metro and Metro ERC shall have the right to beneficial use thereof. Metro shall maintain records of all capitalized personal property identifying the Facility at which the property will be used and the source of funding, as appropriate. Nothing in this Section, however, shall prevent Metro from disposing of City Facilities-related personal property in the ordinary course of business or from acquiring title to personal property using both ERC and Metro Facilities-related funds that is of common benefit to ERC and Metro Facilities. On disposition of City Facilities-related personal property, any compensation received for the property shall be treated as City Facilities-related revenues. Metro shall not dispose of City Facilities-related personal property, except in the ordinary course of business, without the prior written consent of City.

D. Acquisition of Real Property. Prior to acquiring any real property with City Facilities-related funds, Metro shall identify resources and appropriations for the acquisition in the annual or supplemental or amended budget for City Facilities subject to City approval as provided for in Section 6 of this Agreement. As of January 4, 1990, Metro hereby is designated, to the extent City and ERC have authority to so designate, to represent City and ERC in any contract or legal proceeding for the acquisition using City Facilities-related funds of real property initiated by City or ERC for the benefit of the City Facilities. Title to any and all real property and improvements thereto acquired by Metro or Metro ERC with City Facilities-related funds shall be taken in the name of

City. Any disposition of City-owned real property shall be subject to the same requirements as apply to dispositions of other City property.

- E. Audit of Property Records. Metro, as of July 1 each year beginning with July 1, 1990, shall prepare an annual inventory of real property and capitalized personal property owned by City as to which Metro has the right of beneficial use under this Agreement. An annual inventory shall be conducted in a fashion substantially similar to the manner in which City conducts its own annual inventory of personal property. Copies of all inventories shall be furnished to City.

After the Termination Date, Metro's annual inventory shall not include Civic Stadium real and personal property.

SECTION 4

PERSONNEL

- A. The City and Metro agree that all employees employed by ERC at the time of the original Consolidation Agreement were transferred to Metro ERC and became employees of Metro ERC as provided for herein.
- B. Transfer of Represented Employees. On January 4, 1990, ERC transferred all of its employees represented by labor unions to Metro ERC. Thereafter, Metro ERC recognized the same unions as representative of the transferred employees and shall comply with the collective bargaining agreements in effect prior to transfer.
- C. Transfer of Non-Represented Employees. On January 4, 1990, ERC transferred all of its unrepresented employees to Metro ERC.
- D. Employees' Statutory Rights. On and after January 4, 1990, Metro ERC assured that all ERC employees as of January 3, 1990, were accorded all the rights to which they are entitled under Oregon laws affecting the transfer of duties from one unit of government to another.
- E. Assignment of Collective Bargaining Agreements. ERC assigned to Metro ERC, and Metro on behalf of Metro ERC, accepted assignment of all collective bargaining agreements to which ERC is a party, effective as of January 4, 1990. Metro ERC conducted such impact bargaining with affected unions as was appropriate and necessary under applicable law.
- F. The City and Metro agree that all employees employed by Metro ERC at the Civic Stadium on the Termination Date, who transferred from City ERC to Metro ERC, will be offered transfer to the City and may become employees of the City effective on the Transfer Date. On transfer, employees shall continue to have all accrued but unused vacation, sick leave and personal leave time that they have immediately prior to transfer,

and shall be accorded all the rights to which they are entitled under Oregon laws affecting the transfer of duties from one unit of government to another. All employees employed by Metro ERC at the Civic Stadium as of the Termination Date shall be accorded all the rights to which they are entitled under Oregon law.

SECTION 5

OPERATING SUPPORT FOR PCPA

The City shall provide \$600,000 per year to Metro, adjusted annually for CPI, to be used one-half for PCPA operations support and one-half for PCPA capital support, to be paid prior to July 1, 2000, and prior to the end of each fiscal year thereafter.

SECTION 6

REPORTING FOR CITY FACILITIES

- A. Annual Report. Metro shall provide to the City an annual report on the Portland Center for the Performing Arts, in a format to be determined by the Commissioner in Charge.
- B. Financial Reporting Requirements. Metro shall provide to City monthly financial reports showing the current status of revenues and expenditures for City Facilities for the then current fiscal year. These reports shall be in no less detail than reports Metro regularly prepares for its own use and shall provide details separately identifying the financial status of each ERC Facility.
- C. Management Services. It is Metro's present intention to maintain a central management staff for all the Facilities under its jurisdiction and to allocate the central management costs among the Facilities based on a formula. The allocation formula shall be based on an annual determination of the time spent on each Facility by each central management staff employee weighted by the salary of each employee. Any other method for allocating management costs shall be established as part of the Metro or Metro ERC annual budget.

SECTION 7

MONEY TRANSFERS, ACCOUNTING, AND AUDITING

- A. Payables and Receivables. ERC assigned to Metro ERC as of July 1, 1990, all ERC accounts receivable and other receivables existing as of that date or thereafter accruing. Metro shall be responsible for payment of all ERC accounts payable and other obligations existing as of that date or thereafter accruing, except that liabilities covered by insurance or self-insurance shall be treated as provided in Section 11 of this

Agreement and City shall be responsible for the payments identified in Section 13 of this Agreement. Metro shall pay, out of City Facilities-related funds, all tax and other governmental assessments against real property comprising the City Facilities and against any City Facilities-related personal property.

- B. Audits and Accounting Beginning July 1, 1990. Beginning with FY2000-01, Metro, in its accounting, shall account separately for each of the City Facilities and shall comply with generally accepted governmental accounting principles and with the requirements of the Government Accounting Standards Board in accounting for City Facilities operations and maintenance. Metro annually shall obtain an audit of its operations, with City Facilities separately accounted for. The audit may be conducted as a portion of Metro's audit. The audit of Metro ERC's operations, as to the portion covering City Facilities, shall be prepared in a manner acceptable to City and its auditors. In the event it is necessary under National Council on Government Accounting Statement 3 for City to include the City Facilities operations in City's Consolidated Annual Financial Report, then Metro shall provide its audit to City not later than September 30 of each year.
- C. Restrictions on Use. The beginning balance in the Funds transferred to Metro ERC on July 1, 1990, under Subsection (B) of this Section, as determined by the audit referred to in Subsection (C) of this Section, shall be used only for the benefit of the City Facilities. Nothing in this Agreement shall prevent the transfer of resources among the City Facilities as provided in any Metro budget. In addition, any net surplus from operation of the City Facilities shall be used only for the benefit of the City Facilities. The beginning balance in the Performing Arts Center Construction Fund, deposited into a separate account maintained by Metro, shall be used for capital appropriations to complete PCPA construction in a manner consistent with the original architecture and aesthetics of the PCPA and with the pledges giving rise to the Fund. Any revenues received by Metro from Multnomah County in support of the Oregon Convention Center shall be used only for the purposes authorized by the agreement between Metro and Multnomah County. Any net surplus from operation of Metro and City Facilities shall be used only as determined by Metro.
- D. If the Civic Stadium Termination occurs on or before June 30, 2000, of the balance existing in the Civic Stadium fund balance of the City Facilities Fund (Fund 553 of the Metro ERC Global Fund of the Metro Budget), on June 30, 2000, \$375,000 shall be transferred to the City of Portland. If the Civic Stadium Termination occurs on or after July 1, 2000, \$400,000 of the Civic Stadium fund balance shall be transferred to the City. The remaining Civic Stadium fund balance shall be subject to the following provisions:
1. Metro and Metro ERC may charge to the City Facilities Fund the costs of insuring or creating self-insurance reserves against unforeseen or known liabilities including, but not limited to, tort claims, Workers' Compensation claims, and reserve accounts for payment of accrued vacation leave, unemployment benefits, and severance or transition costs for Civic Stadium employees not transferred to City, provided that Metro and Metro ERC may

only charge the Civic Stadium Fund for such costs in an amount not to exceed \$250,000.

2. From the remaining balance, any surplus up to \$750,000 shall be transferred to PCPA to be used for deferred capital improvement projects or deferred capital renewal and replacement projects which address the capital backlog at the facility.
3. After the above distributions have been made, fifty percent (50%) of any remaining Civic Stadium fund balance as of the Termination Date shall be transferred to the City and fifty percent (50%) shall be transferred to PCPA.

SECTION 8

METRO EXCISE TAX

A. Under Chapter 332, 1989 Oregon Laws, Metro has the authority to impose excise taxes on persons using facilities, equipment, systems, functions, services, or improvements owned, operated, franchised, or provided by Metro. As a result of this Agreement, Metro will have the authority to impose excise taxes on persons using the City Facilities.

B. Limitation. Metro shall not directly or indirectly use revenues from excise taxes on persons using the City Facilities for the purpose of funding Council or Executive Officer services or for any other purpose except as authorized in Subsection (C) below, without the prior written consent of City, which consent shall not be unreasonably withheld.

C. Use. Metro shall provide all revenues from excise taxes on persons using the City Facilities to Metro ERC except that Metro may pledge the revenues for the benefit of Facilities operated by Metro ERC. Metro ERC shall use all revenues so provided to it for the benefit and operation of the Facilities operated by Metro ERC.

SECTION 9

INDEMNIFICATION

A. Tort and Workers' Compensation Claims.

1. City, to the maximum extent permitted by law, shall indemnify Metro, Metro ERC, and their officers, employees, and agents against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim that has been made or is capable of being made as a tort claim as that term is defined by ORS 30.260(8), or a Workers' Compensation claim

pursuant to ORS Chapter 656 or similar federal legislation, including any claims brought in any federal court or other federal forum, based on any act or occurrence that takes place prior to July 1, 1990, in connection with or as a result of operation of the City Facilities, or that takes place after the Termination Date in connection with or as a result of operation of the Civic Stadium, by City or its operator.

2. Metro, to the maximum extent permitted by law, shall indemnify City, ERC, and its officers, employees, and agents against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim that has been made or is capable of being made as a tort claim as that term is defined by ORS 30.260(8), or a Workers' Compensation claim pursuant to ORS Chapter 656 or similar federal legislation, including any claims brought in any federal court or other federal forum, based on any act or occurrence that takes place on or after July 1, 1990, in connection with or as a result of operation of the City Facilities, including those which arose before the Termination Date in connection with or as a result of operation of the Civic Stadium, by Metro or Metro ERC.
- 3 The foregoing indemnification, defense, and hold harmless provisions are for the sole and exclusive benefit and protection of Metro, Metro ERC, City, ERC, and their respective officers, employees, and agents, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than Metro, Metro ERC, City, and their respective officers, employees, and agents.

- B. Contract and Quasi-Contract Claims. Metro and Metro ERC, to the maximum extent permitted by law, shall indemnify City against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim for damages due under any contract, permit, rental agreement, or license or any claim based on any contract or quasi-contractual relationship not defined as a tort claim under ORS 30.260(8), any statutory rights claim, and any claim of rights under a collective bargaining agreement, no matter when the claim may have arisen based on an act, occurrence, event, or transaction in connection with or as a result of operation of the PCPA, and such claims based on any act, occurrence, event, or transaction in connection with or as a result of operation of the Civic Stadium so long as the claim has arisen prior to the Termination Date. However, this agreement to indemnify and hold harmless is limited to payment of funds generated by the City Facilities or transferred to Metro by City and dedicated to the City Facilities. Metro shall have no obligation to expend funds on claims related to City Facilities from sources dedicated to Metro Facilities or other Metro functions.

City, to the maximum extent permitted by law, shall indemnify Metro and Metro ERC against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorney's fees and expenses of trial and an appeal, related to or resulting from any claim for damages due under any contract, permit rental agreement or license or any claim based on any contract or quasicontractual relationship not defined as a tort claim under ORS 30.260(8), any statutory rights claim, and any claim of rights under a collective bargaining agreement, in connection with or as a result of operation of the Civic Stadium after the Termination Date, or arising out of any change in the Termination Date noticed by the City.

SECTION 10

INSURANCE

During the term of this Agreement, Metro shall obtain and maintain insurance providing coverage for risks associated with operation of the City Facilities as provided for herein.

- A. Tort and Workers' Compensation Coverages. Metro shall maintain insurance policies or a self-insurance program consistent with Oregon Law to provide full coverage for any and all tort claims as that term is defined in ORS 30.260(8) and any Workers' Compensation claim pursuant to ORS Chapter 656 that may be brought by any person including any claims brought on any federal court or other federal forum based on any act or occurrence that takes place on or after July 1, 1990. If commercial insurance policies are obtained such policies shall name City and its officers, employees, and agents as additional named insureds.
- B. Property Insurance. Metro shall purchase and maintain in a company or companies licensed to do business in the state of Oregon, policies in an all risk policy form providing for full replacement value coverage for the City Facilities. Such policies shall include boiler and -machinery coverage. City shall be named as an additional named insured for all policies providing coverage for City Facilities to the full extent of City's insurable interest.

SECTION 11

PCPA ADVISORY COMMITTEE

The City Commissioner in Charge shall appoint a PCPA Advisory Committee consisting of that number of persons the Commissioner deems appropriate to serve as the official advisory committee to Metro for all PCPA matters. Metro shall inform the Advisory Committee of and provide the opportunity for Advisory Committee review of and comment on all Metro actions affecting the PCPA. Actions affecting the PCPA shall be deemed to include,

without limitation, all Metro budget matters affecting the PCPA, all decisions regarding rates and charges for use of PCPA facilities, all decisions regarding hiring of key PCPA personnel, and all decisions regarding use of monies from the Performing Arts Center Construction Fund and its successor fund under Metro. Metro shall provide reasonable staff assistance from staff assigned to PCPA to assist the Advisory Committee.

SECTION 12

CITY FACILITIES-RELATED BOND AND OTHER CAPITAL PAYMENTS

City presently is obligated to make certain bonded debt and other similar payments related to renovation of Civic Stadium and construction of PCPA. These payments are as follows:

1. Debt service on \$30,130,000 Performing Arts and Civic Stadium Refunding Series 1986 C General Obligation Bonds dated December 1, 1986; and
2. Certain credits allowed by City to Portland General Electric Company under the "Agreement Regarding Portland Hydroelectric Project (Bull Run River) Power Sales Agreement" dated December 26, 1985, related to the use of Hydroelectric Project surplus capital construction funds for payment of PCPA capital construction costs.

City shall continue to make the required bond payments and to allow the required credits until the underlying obligations are satisfied.

SECTION 13

RECORDS

- A. City Records. If requested by Metro ERC or Metro, and to the extent permitted by law, City shall provide either the originals or copies of any records in its possession regarding the City Facilities. The requesting party shall reimburse the provider for the reasonable costs of providing the records or copies thereof, if billed by the provider. All original records provided under this Subsection shall remain the property of the provider, even though in the possession of Metro ERC or Metro. Metro ERC and Metro shall not destroy or otherwise dispose of the original records without the prior written consent of the provider.
- B. Metro and Metro ERC Records. If requested by City, and to the extent permitted by law, Metro or Metro ERC shall provide copies of any records in its possession regarding Metro City Facilities. The requesting party shall reimburse the provider for the reasonable costs of providing copies of the records, if billed by the provider. City shall

not destroy or otherwise dispose of original records without the prior written consent of Metro.

- C. Metro shall transfer Civic Stadium records to City within ninety days following the Civic Stadium Termination Date.

SECTION 14

DISPUTE RESOLUTION

In the event of a dispute arising under this Agreement among any of the parties, any party may initiate the following dispute resolution process:

1. The initiating party shall give written notice of initiation to each other party then in existence, to the Metro Executive Officer, to the Commissioner in Charge, and to a person mutually agreed to by the Metro Executive Officer and the Commissioner in Charge. The three together shall constitute the Dispute Resolution Committee. The notice shall identify the dispute as to which the dispute resolution process is being initiated.
2. Not later than fifteen (15) days after receipt of the notice of initiation, each party to this Agreement may submit a written statement to the Dispute Resolution Committee stating the party's position on the dispute.
3. Not later than thirty (30) days after notice of initiation, the Dispute Resolution Committee shall decide on a resolution of the dispute and shall notify the parties to this Agreement of the resolution. Decisions of the Dispute Resolution Committee shall be by majority vote.
4. Decisions of the Dispute Resolution Committee shall be final and binding on the parties.

SECTION 15

REMEDIES

In the event a party fails to comply with any provision of this Agreement, then any other party shall be entitled to any remedy available at law or in equity, including without limitation the right to specific performance. The termination of this Agreement shall not prevent a party from receiving any additional remedy not inconsistent with the events specified to occur on termination.

SECTION 16

TERMINATION

- A. Termination by Mutual Agreement. The parties hereto who remain in existence may terminate this Agreement at any time by mutual written agreement. The procedure on termination by mutual agreement shall be determined by the termination agreement.
- B. Unilateral Termination. In the absence of a signed written agreement among the parties hereto, then City or Metro may by duly adopted resolution of its governing body initiate termination of this Agreement and thereafter give notice of termination. If the notice is given by City, the termination shall be effective six (6) months after the date of the notice. If the notice is given by Metro, the termination shall be effective eighteen (18) months after the date of the notice. On the effective date of the termination, the events described in Subsection (1) through (11) of Subsection (C) of this Section shall occur.
- C. In the event of termination, subject to compliance with any statutory requirements, the following shall occur:
1. All revenues from and expenditures for City Facilities shall be treated as ERC revenues and expenditures;
 2. All Metro accounts receivable and other receivables related to City Facilities existing as of that date or thereafter accruing shall be assigned to ERC, and ERC shall be responsible for payment of all Metro accounts payable and other obligations existing as of that date or thereafter related to the City Facilities, except for liabilities covered by insurance or self-insurance based on actions or failures to act prior to termination;
 3. All monies in Metro funds related to City Facilities shall become the property of the City and shall be transferred to the City;
 4. All event and concession bank accounts related to the City Facilities shall be transferred to the City following which the City shall make all payments for which the accounts are obligated;
 5. All records related to City Facilities shall become the property of the City and shall be transferred to the City;
 6. All property authorizations under Section 3 of this Agreement shall be rescinded and all Metro obligations thereunder shall terminate;
 7. All personnel whose positions are included in the budgets for City Facilities shall become employees of the City;

8. All personnel holding central management staff positions transferred by ERC to Metro ERC shall become employees of the City;
9. All contracts, permits, rental agreements, and licenses or portions thereof related to the City Facilities shall be assigned to the City;
10. All other charges, allocations, and transfers as are necessary or desirable to the proper operation of City Facilities and other Facilities operated by Metro shall be carried out in good faith by the parties hereto; and
11. Any dispute between the parties regarding carrying out the requirements of Subsections (C)(1) through (C)(11) of this Section shall be resolved pursuant to Section 15 of this Agreement.

SECTION 17

AUTHORITY TO MAKE DECISIONS

- A. This Agreement provides for various approvals, waivers, executions of further documents implementing this Agreement, or other decisions or actions to be made or taken on behalf of City and Metro hereunder. Such approvals, waivers, executions, or other decisions or actions shall be deemed made or taken if in writing and executed by the Commissioner in Charge, if on behalf of City, and by the Metro Executive Officer, if on behalf of Metro. Any amendments to this Agreement and any further consolidation agreement must be approved by the City Council and the Metro Council.

SECTION 18

ASSIGNMENT AND TRANSFER

This Agreement shall not be assignable or transferable by either party or by operation of law except with the written consent of the other party. A consenting party may impose any conditions on the consent that are reasonable under the circumstances. The assignee or transferee shall be bound by all the provisions of this Agreement. The assignor or transferor shall not be relieved of any obligations under this Agreement unless the written consent of the other party expressly so provides.

SECTION 19

ATTORNEYS' FEES

In the event of a suit or action to interpret or enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may

adjudge reasonable as attorneys' fees at trial and on appeal of the suit or action, in addition to all others sums provided by law.

SECTION 20

NOTICE

Any notice provided for hereunder shall be deemed sufficient if deposited in the United States mail, certified mail, return receipt requested, postage prepaid, addressed either to the following address or to such other address or addresses as the recipient shall have notified the sender of by notice as provided herein:

Metro: Executive Officer
Metro
600 NE Grand Avenue
Portland, OR 97232

With a copy to:
Office of General Counsel Metro
600 NE Grand Avenue
Portland, OR 97232

City: City Auditor
City of Portland
1220 S.W. Fifth Avenue
Portland, OR 97204

With a copy to:
Mayor
City of Portland
1221 S.W. Fourth Avenue, Suite 340
Portland, Oregon 97204

Notice hereunder shall be deemed received three (3) days after mailing as provided in this Section or on actual delivery to the addressee, whichever occurs first.

SECTION 21

EXECUTION OF FURTHER DOCUMENTS

In order to complete implementation of the provisions of this Agreement, it may be necessary for Metro, Metro ERC, and City, to execute further documents enabling implementation. Each of them shall execute such further documents and take such other steps as are reasonably necessary or appropriate to implementing the provisions hereof.

SECTION 22

WAIVERS

The waiver of any provision of this Agreement, whether a waiver as to a particular application of the provision or as to all applications of the provision, shall be binding on the party making the waiver only if in writing and executed by the party. Unless otherwise expressly provided in the written waiver, the waiver by a party of performance of a provision as to a particular application shall not be a waiver of nor prejudice the party's right to require performance of the provision as to other applications or of any other provision.

SECTION 23

ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties. This Agreement may not be modified except by a written amendment dated and approved and signed by all the parties hereto then in existence. No party shall be bound by any oral or written statement or course of conduct of any officer, employee, or agent of the party purporting to modify this Agreement.

Approved As To Form:

CITY OF PORTLAND

By: _____

By: _____

Title: _____

Date: _____

Approved As To Form:

METRO

By: _____

By: _____

Mike Burton

Title: Executive Officer

Date: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 00-2942, FOR THE PURPOSE OF AUTHORIZING AMENDMENTS TO THE INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR THE CONSOLIDATION OF REGIONAL FACILITIES TO TRANSFER CIVIC STADIUM.

Date: April 24, 2000

Prepared by: Michael Morrissey

Proposed Action: Resolution 00-2942 modifies an intergovernmental agreement between the City of Portland and Metro to transfer management of the Civic Stadium, currently managed by MERC under the policy direction of Metro, back to the City. Other aspects of this agreement also modify the City/Metro/MERC relationship with regard to the PCPA (Portland Center for the Performing Arts), also owned by the City and governed by the existing intergovernmental agreement.

Factual Background and Analysis:

Civic Stadium is one of four facilities managed by MERC, and one of two owned by the City of Portland, and managed by MERC. In December of 1989, the City of Portland, Metro and the then Portland Exposition Recreation Commission (ERC) entered into an "Agreement Regarding Consolidation of Regional Convention Trade Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District". This agreement transferred management of three city owned facilities (then including Memorial Coliseum) to the Metro ERC.

Now, after an extended negotiation period, the City has made arrangements with a private organization, Portland Family Entertainment (PFE) to take over renovation and management of the stadium. The revision to the City/ Metro Intergovernmental agreement is attached as Exhibit A to Resolution 00-2942, and the key points are summarized below.

Section 1: Definitions. The "Civic Stadium Termination Date," on which the facility transfers to PFE, is designated as being anywhere between June 21, 2000 and August 2, 2000, at the choice of the City. In a later section, it is clarified that the City shall notify Metro of the termination date on the 20th of the preceding month of actual transfer, termination.

Section 2: Transfer of Operations... Establishes that there is no contractual relationship between PFE and Metro/MERC. MERC will cease operating the stadium when PFE is ready to take over. There will be no overlap of administration, although a high degree of cooperation is called for. Some City owned property will transfer to PCPA. With regard to the current ability of the city to modify Metro's changes in code with regard to MERC, that is now changed, requiring only a 30 day notice to the city.

Section 3: Real and Personal Property. This is now the operative section that covers the relationship as it concerns the PCPA. Also see the inventory of property currently owned by the City at Civic stadium, which is an appendix to Exhibit A.

Section 5: Operating Support for PCPA. A new section, providing \$600,000 per year to Metro, to be split half for PCPA operations, and half for PCPA capital needs. This section recapitulates an arrangement agreed to elsewhere related to the distribution of Multnomah County transient lodging tax.

Section 6: Reporting for City Facilities. Details requirement for annual and monthly reporting by Metro to the City for PCPA. Reduces the role of the City in the preparation and adoption of the MERC budget.

Section 7: Money Transfers, Accounting and Auditing. Sub-section D details the distribution of the Civic Stadium Fund Balance.

- a) Depending on the transfer date, the City gets \$375,000 or \$400,000.
- b) MERC gets \$250,000 to apply to liability reserves and other transition costs.
- c) If money remains in the fund balance, after a) and b) then up to \$750,000 is appropriated to PCPA for capital improvements.
- d) If money still remains, half goes to the City and half goes to PCPA.

Section 8: Metro Excise Tax: Unchanged from current version that allows Metro to collect an excise tax at PCPA, and that such revenues must derive to the benefit of the PCPA.

Section 16: Termination: Simplifies a currently much more complicated section. Basically, the City can terminate the agreement with 6 months notice, and Metro can terminate with 18 months notice. The difference in times relates to the assumption that the City would be required to have sufficient time to take over and operate the PCPA, should Metro wish to turn it over.

Other: Metro's role in this amended intergovernmental agreement has been clarified and strengthened, as compared to the current version.

If the transfer does not take place by August 2 then negotiations may be renewed and MERC will continue to operate the Civic Stadium.

Existing Law: The 1989 City/Metro Consolidation Agreement

Budget Impact: See sections 5 and 7, as mentioned above.