

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING AN	)	RESOLUTION NO. 89-1170
INTERGOVERNMENTAL AGREEMENT WITH)	
THE CITY OF PORTLAND REGARDING	)	Introduced by the
CONSOLIDATION OF REGIONAL CONVENTION,	)	Council Convention, Zoo
TRADE, SPECTATOR AND PERFORMING ARTS	)	& Visitors Facilities
FACILITIES PRESENTLY OWNED AND	)	Committee
OPERATED BY THE CITY OF PORTLAND AND)	
THE METROPOLITAN SERVICE DISTRICT)	

WHEREAS, The Council of the Metropolitan Service District adopted Ordinance No. 89-1115 on August 8, 1989, and the Portland City Council adopted Resolution No. 34605 on August 16, 1989, both for the purpose of ratifying a joint memorandum of understanding to provide for consolidation of operation and management of the facilities presently owned and operated by the City of Portland through its Exposition-Recreation Commission and the facilities operated by the Metropolitan Service District by and through the Metropolitan Exposition-Recreation Commission; and,

WHEREAS, In fulfillment of the terms of the memorandum of understanding, a phase one consolidation agreement (Exhibit "A" hereto) has been negotiated and prepared to formalize the principles, terms and conditions set forth in the memorandum of understanding; and

WHEREAS, Exhibit "A" attached hereto is an appropriate agreement for consolidating the operations and management of the City of Portland facilities -- the Portland Memorial Coliseum Complex, the Civic Stadium and the Portland Center for the Performing Arts -- with Metro's Oregon Convention Center under the Metropolitan Exposition-Recreation Commission; now, therefore,

BE IT RESOLVED, That the Council of the Metropolitan Service District approves the execution of the Agreement attached as Exhibit "A" with the City of Portland and thereby agrees to all terms and conditions contained therein.

ADOPTED by the Council of the Metropolitan Service District
this 21st day of November, 1989.

Mike Ragsdale
Mike Ragsdale, Presiding Officer



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: November 14, 1989

To: Convention, Zoo & Visitors Facilities Committee

From: Jessica *gpm* Marlitt, Council Analyst

Regarding: REVIEW OF THE PROPOSED 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 (DRAFT #4)

On November 7, 1989, the Convention, Zoo & Visitors Facilities Committee received copies of and were briefed on the draft inter-governmental agreement between the City of Portland and Metro for "Phase I" consolidation of regional convention, trade, spectator and performing arts facilities (hereinafter referred to as the IGA). Negotiated and drafted by Portland's legal representative, Chris Thomas, and Metro General Counsel, Dan Cooper, the IGA fulfills the directive of the Memorandum of Understanding (MOU) for consolidation ratified by the Metro Council (Resolution No. 89-1115) and the Portland City Council (Resolution No. 34605) in August, 1989.

At the Committee's request, Council staff has reviewed the IGA for consistency with the MOU and outlined brief findings below. This review does not summarize the IGA but identifies points which the MOU did not address or which require clarification or discussion. Outline headings correspond to the IGA sections, 1 through 25.

AGREEMENT REVIEW

1. OPENING (p. 1)

- A. It is unclear why the IGA does not include the Metro ERC as a signatory. The MOU stated the IGA would be between the "governing bodies and ratified by the Metro Council and the City Council". According to Metro General Counsel, the City ERC must sign the agreement because they have legal standing under the City Charter as the sole authority for the Memorial Coliseum. (The City later transferred authority for performing arts and the Civic Stadium to the ERC.) The Metro Code Chapter 6.01.040 (k) identifies the following power of the Metro ERC:

... (k) To enter into intergovernmental agreements for the transfer of convention, trade, or spectator buildings and facilities to the District, or for the transfer of operating and administrative responsibilities for such buildings and facilities to the Commission, provided that the Council has approved such acquisition or transfer; (emphasis added)

2. RECITALS (pp. 1-2)
-- No issues identified
3. SECTION 1, DEFINITIONS (pp. 3-4)
-- No issues identified
4. SECTION 2, TRANSFER OF OPERATIONS AND MANAGEMENT OF ERC FACILITIES TO THE METRO ERC (pp. 5-6)
 - A. Under Subsection A, the effective date of January 1, 1990, is not specified in the MOU but is consistent with Council FY89-90 Budget Note re: the Metro ERC \$100,000 management fee to the City ERC. The Metro FY89-90 Adopted Budget for the Metro ERC includes \$100,000 to pay for City ERC management staff services which is "limited for expenditures for six months if an agreement with the City of Portland for consolidation ... has not been reached by January 1, 1990. If an agreement is not in place by January 1, 1990, at least \$50,000 will revert to Metro ER Commission contingency." (Budget, page A-5)
 - B. Metro delegation of "authority and responsibility for operation and management of the ERC Facilities" to the Metro ERC appears consistent with the Metro Code Chapter 6.01 description of Metro ERC duties and responsibilities.
 - C. Metro General Counsel noted language should be added specifying that all City ERC resolutions shall remain in effect under the IGA.
 - D. Under Subsection B, beginning in line 7, does "continued existence of Metro ERC ... under Metro Code Chapter 6.01 as amended" mean the formalized nomination process is intended to continue in perpetuity?
 - E. The proposed ordinance language amending Metro Code Chapter 6.01, Section 2.02.010 "Administration of the Rules", subsection (d) is unclear. The Metro ERC did adopt personnel rules under Metro ERC Resolution No. 8. Following the Executive Officer's Request for Review of Resolution No. 8 (pursuant to Ordinance No. 87-225), the Council adopted Resolution No. 88-975 modifying Resolution No. 8 with changes to the Commission's Personnel Policies. At that time, the former Convention Center Committee recommended and the Council concurred Metro and the Metro ERC would need to review the Personnel Policies upon consolidation and examine the Commission's support services needs.

- F. The MOU did not speak to the City having approval authority for Metro to amend Metro Code Chapter 6.01 but the IGA specifically limits the City's approval authority to the term of the agreement.

5. SECTION 3, REAL PROPERTY (p. 6-10)

- A. Under Subsection A, what protection does the language, "City and ERC shall not take any action ... that would 'interfere' with management and operation of the ERC Facilities", afford Metro?
- B. Under Subsection B, the nature of the agreements with the First Congregational Church and Al Kader Temple should be clarified to ensure Metro Council understanding of all obligations incurred.
- C. Under Subsection D, what are the potential obligations and liabilities for Metro and the Metro ERC under the second sentence? -- "As of January 1, 1990, Metro and Metro ERC hereby are designated, to the extent City and ERC have authority to designate, as successors in interest to City and ERC in any contract or legal proceeding for the acquisition of real property initiated prior thereto by City or ERC for the benefit of the ERC Facilities." (emphasis added)
- D. Under Subsection E, how will the audit cost be covered?

6. SECTION 4, PERSONNEL, SUBSECTIONS A - E (pp. 10-11)
-- No issues identified

7. SECTION 5, CONTRACTS (pp. 11-12)

- A. Under Subsection B, how do the contracts described in this subsection differ from those covered in subsection A above? What are examples of these contracts?

8. SECTION 6, BUDGET APPROVAL FOR METRO ERC (pp. 12-16)

- A. Under Subsection A, the City's budget approval authority is more narrowly defined than described in the MOU -- "The City's right to approve or disapprove the Metro ERC budget shall be applicable only to the sub-budgets for the ERC Facilities."
- B. Under Subsection B.1. (p. 13), to provide for flexibility in the Metro budget process, the February 1 deadline for Metro ERC to provide their proposed budget to the Executive Officer should be removed. Preferred language might be, "The Metro

ERC shall provide to the Metro Executive Officer a proposed budget for the next fiscal year, in conformance with the annual Metro Budget Manual formats, guidelines, and submission schedules."

- C. Under Subsections B.2. - B.4. (pp. 14-15), the initial 45-day City budget approval period with the 30-day subsequent approval periods may be unrealistic given the actual Metro budget timelines. For FY90-91, the Executive Officer has been directed by the Council to transmit her Proposed Budget to the Council by its first March meeting, March 8, 1990. The Council must submit its Approved Budget to the Tax Supervising and Conservation Commission (TSCC) by May 15. Allowing for 3 days for printing the Approved Budget, available approval and communication time for the City and Metro is 59 days. More realistic approval timeframes might be an initial 30-day period for the City and subsequent time periods of 15 days.

9. SECTION 7, MONEY TRANSFERS, ACCOUNTING, AUDITING AND INTERIM BUDGETS (pp. 17-21)

-- No issues identified; all subsections appear to be consistent with the MOU and fair and appropriate accounting practices.

10. SECTION 8, CENTRAL SERVICES AND OVERHEAD CHARGES (pp. 21-23)

- A. Under Subsection A, the statement that Metro shall not charge overhead for Council and Executive Officer services after FY90-91 is consistent with the MOU. However, under Section 9 following, the use of Metro excise tax revenues to pay for the ERC overhead costs cannot reasonably be denied. The very purpose of any excise tax revenues, as provided for in State statutes, is to pay for Metro's general government costs: "It is the intent of the Legislative Assembly that a substantial portion of the revenue derived by the . . . district from the imposition of excise taxes shall be used to reduce overhead charges assessed to and transferred from the operating funds of the district for its central executive, legislative and administrative functions." (ORS Chapter 332, Section 2; See 11 following)

11. SECTION 9, METRO EXCISE TAX (pp. 23-24)

- A. Unlike the MOU, the IGA does not prevent Metro from imposing an excise tax on Metro ERC facilities during this first phase of consolidation. However, Subsection C, page 24, requires Metro to "provide all revenues from excise taxes on persons using the ERC 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." This provision does not appear consistent with the legislative intent of the excise tax powers accorded Metro, as noted above. Section 3 of the State statutes provides that the revenue derived from an excise tax may be used as follows:

"(1) To carry out the executive, legislative and administrative powers, functions and duties of the district described in this chapter and to study the potential exercise of all powers and functions specified in ORS 268.312..."

Limiting excise tax revenues from Metro ERC facilities to Metro ERC expenditures appears to contradict the legislation. If Metro agrees not to charge overhead transfers to Metro ERC facilities, as specified in Section 8 above, then how will the facilities overhead costs be covered if not through excise tax revenues? Moreover, why should Metro give up this potential source of revenue for the above, statutorily described general government purposes?

12. SECTION 10, INDEMNIFICATION (pp. 24-26)
-- No issues identified
13. SECTION 11, INSURANCE (pp. 26-28)
 - A. Will City ERC funds be available to cover all described insurance costs, including the property insurance provisions on pages 27-28?
14. SECTION 12, PCPA ADVISORY COMMITTEE (p. 28)
-- No issues identified
15. SECTION 13, ERC FACILITIES-RELATED BOND AND OTHER CAPITAL PAYMENTS (pp. 28-29)
-- No issues identified
16. SECTION 14, RECORDS (pp. 29-30)
 - A. Under Subsection B, language should be added for consistency that "City or ERC shall not destroy or otherwise dispose of the original records without the prior written consent of the provider."
17. SECTION 15, DISPUTE RESOLUTION (pp. 30-31)
 - A. The Dispute Resolution Committee composition and size -- 3 members, the Metro Executive Officer, the City Commissioner

in Charge and a mutually determined third party -- do not seem adequate for achieving binding results; particularly if the decision is by majority vote. If the Committee is limited to the three members, it would seem appropriate for the decision to be unanimous. Additionally, if the results are to be binding, the nature of disputes resolved in this fashion should be specified. "Substantive disputes", such as fiscal questions, should have the benefit of City Council and Metro Council review and approval.

18. SECTION 16, REMEDIES (pp. 31-32)
 - A. The actual implications of this language are unclear. What actions and results are covered by this section?
19. SECTION 17, FURTHER CONSOLIDATION (pp. 32-33)
-- No issues identified
20. SECTION 18, TERMINATION (pp. 34-38)
 - A. Subsection 1.a.(page 35), need to correct the first sentence reference of "City County" to "City Council".
 - B. For Metro's protection, language should be added specifying the IGA sections for which City actions to "unreasonably withhold approval" shall serve as cause for termination by Metro: Section 6, Subsection D; Section 8, Subsection B; Section 9, Subsection B. (Section 17 is already identified.)
 - C. Why are the termination timelines for Metro "rescission" per Subsection 1.b. (30 days or the later date specified) and City "approval" per Subsection 2.b. (90 days of July 1 next following) different?
21. SECTION 19, AUTHORITY TO MAKE DECISIONS (pp. 39-40)
-- No issues identified
22. SECTION 20, ASSIGNMENT AND TRANSFER (pp. 40-41)
-- No issues identified
23. SECTION 21, ATTORNEYS' FEES (p. 41)
-- No issues identified
24. SECTION 22, NOTICE (pp. 41-42)
 - A. Why is notice deemed received three days after the mailing date if all notices are to be sent certified mail, return receipt requested? Should not the receipt date be the actual date on the return receipt?

25. SECTION 23, EXECUTION OF FURTHER DOCUMENTS (p. 42)
-- No issues identified
26. SECTION 24, WAIVERS (pp. 42-43)
-- No issues identified
27. SECTION 25, ENTIRE AGREEMENT (p. 43)
-- No issues identified

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FOR REFERENCE PURPOSES -

RESOLUTION NO. 89-1115 & Staff Reports

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF RATIFYING)	
A MEMORANDUM OF UNDERSTANDING	)	RESOLUTION NO. 89-1115
REGARDING CONSOLIDATION OF REGIONAL)	
CONVENTION, TRADE, SPECTATOR AND	)	INTRODUCED BY RENA CUSMA,
PERFORMING ARTS FACILITIES	)	EXECUTIVE OFFICER, AND
PRESENTLY OWNED AND OPERATED BY	)	MIKE RAGSDALE, PRESIDING
THE CITY OF PORTLAND AND THE	)	OFFICER
METROPOLITAN SERVICE DISTRICT)	

WHEREAS, the City of Portland and Metropolitan Service District were participants in the Committee on Regional Convention, Trade, and Spectator Facilities (CTS); and

WHEREAS, in May of 1986, the Metro Council adopted via Resolution No. 86-648 the Regional Convention, Trade, and Spectator Facilities Master Plan, which called for establishment of a regional commission at Metro, and regional management of the region's inventory of convention, trade, and spectator facilities by that Commission; and

WHEREAS, in May of 1986 the Portland City Council adopted Resolution No. 34110 which stated an intent to develop a plan to transfer the City's Exposition-Recreation Commission to Metro and accept other recommendations of the CTS; and

WHEREAS, the Metro Council has established the Metropolitan Exposition-Recreation Commission under authority of ORS 268.395 to fulfil the role of the regional commission for the operation of convention, trade, and spectator facilities called for in the CTS Master Plan; and

WHEREAS, appointments to the Metropolitan Exposition Recreation Commission were confirmed in December 1987, with nominees solicited from the City of Portland, Clackamas, Multnomah and Washington Counties; and

WHEREAS, in November of 1988, the Council adopted Resolution No. 88-1017 establishing a Metro Consolidation Task Force, which has served as a forum for developing the Memorandum of Understanding attached as Exhibit A; now therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District hereby ratifies the Memorandum of Understanding Regarding Consolidation of Regional Convention, Trade, and Performing Arts Facilities presently owned and operated by the City of Portland and the Metropolitan Service District, attached as Exhibit A to this resolution.

ADOPTED by the Council of the Metropolitan Service District this 8th day of August, 1989.



Mike Ragsdale, Presiding Officer

Exhibit A

Memorandum of Understanding Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Presently Owned and Operated by The City of Portland and the Metropolitan Service District.

The purpose of this Memorandum of Understanding is to provide for phase one of consolidation of operation and management of the facilities presently owned and operated by the City of Portland through its Exposition-Recreation Commission (the Portland Memorial Coliseum Complex, the Civic Stadium and the Portland Center for the Performing Arts), and the facilities operated by the Metropolitan Service District by and through the Metropolitan Exposition-Recreation Commission (the Oregon Convention Center). This phase one of consolidation is expected to be of limited duration pending full scale consolidation of all regional convention trade and spectator facilities as outlined in the Convention Trade and Spectator Facilities Committee Report and Recommendation dated May 1986.

This Memorandum of Understanding sets forth the principles on which a phase one consolidation agreement will be forwarded to the governing bodies of the City of Portland and the Metropolitan Service District. The intent of this Agreement is to express the understanding of the terms and conditions that will be formalized as soon as possible and presented to the Metro Council and City Council for ratification. By ratifying this Memorandum of Understanding the Metro Council and Executive Officer and the Portland City Council express their intent to approve a consolidation agreement.

TERMS AND CONDITIONS OF PROPOSED AGREEMENT.

1. OPERATIONS AND MANAGEMENT

Operations and management of the facilities will be consolidated under the supervision of the Metropolitan-Exposition Recreation Commission.

- A. Metro agrees to amend the Metro Code regarding the appointment process for Metropolitan E-R Commission commissioners to provide that five positions shall be subject to nomination by local government bodies. The County Commissions of Multnomah, Clackamas and Washington counties each will be entitled to nominate one candidate for a position and the City Council of the City of Portland will nominate one candidate for each of two positions. The present commissioners will retain their office, but the nomination procedures provided for herein will be utilized for filling vacancies for five of the positions. Two of the present seven members will continue to be appointed at the sole discretion of the Metro Executive Officer. For those positions on the Commission which are subject to nomination by a local governmental body the Executive Officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro Council for confirmation. If the Executive Officer disagrees with the qualifications of any candidate so nominated by a local government, the Executive Officer shall so notify the Jurisdiction which shall then nominate another candidate. This process shall continue until such time as the Executive Officer agrees to transmit the name of the individual nominated by

the local government. If an appointment submitted to the Council for confirmation as a result of this process is rejected by the Council, the Executive Officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the Executive Officer to the Council for confirmation and has been confirmed. All other terms and provisions relating to appointments and term of the Metropolitan Exposition-Recreation Commission as set forth in the Metro Code shall continue in effect.

- B. The City agrees to transfer to the Metropolitan E-R Commission responsibility for the operation and management of the City Memorial Coliseum, the City Civic Stadium and the City Portland Center for the Performing Arts.
- C. A Portland Center for the Performing Arts Advisory Committee shall be appointed by the City by and through its Commissioner-in-Charge. Metro agrees the MERC will recognize the PCPA Advisory Committee so appointed as the official Advisory Committee to MERC for PCPA.
- D. Ownership. No change in facility ownership shall occur during phase one of this Consolidation. The ownership of any new facility constructed or acquired during the term of phase one shall be determined by the specific financing arrangements for that facility.

2. EMPLOYEES AND PERSONNEL MATTERS

- A. All City employees presently employed by the City Exposition-Recreation Commission will be transferred to the Metropolitan E-R Commission and will become employees of the Metropolitan E-R Commission.
- B. All collective bargaining agreements with labor unions to which the City Exposition-Recreation Commission is a signatory thereto will be assigned to the Metropolitan E-R Commission and the Metropolitan E-R Commission shall give full recognition to such bargaining units and shall be bound by all terms and conditions contained in such collective bargaining agreements to which the City E-R Commission is a party thereto. Further, all City employees shall be entitled to the full protection provided by relevant provisions of Oregon law affecting transfer of employees from one governmental entity to another.

3. CONTRACTS AND PURCHASING

Decision-Making. The Metropolitan E-R Commission shall have full authority to contract and purchase in accordance with its own rules.

4. BUDGETS AND ACCOUNTS

- A. MERC shall utilize a unified accounting system which shall keep track of all expenses and revenues on a per facility basis. Central services provided by MERC for management oversight for all facilities shall be allocated among all facilities by formula. Previously, a study by Laventhol & Horwath used a formula to make such an allocation. Neither the City nor Metro have accepted the Laventhol & Horwath formula. The City ERC Reserve Account shall be

transferred to MERC. Neither any revenue surplus derived from City facilities nor the ERC Reserves may be used to subsidize or support the Oregon Convention Center. Presently, revenues from the Multnomah County Hotel/Motel Tax paid to Metro by Multnomah County are only available to subsidize or support deficits generated at the Oregon Convention Center.

- B. The Metropolitan E-R Commission annual budget shall be subject to City and Metro approval and shall be included in the overall Metro budget for submission to the Tax Supervision and Conservation Commission.

5. OVERHEAD

Metro may charge overhead for oversight and review as provided for herein for the first two years that this agreement is in effect. (Fiscal Year 1989-90 and 1990-91.) Thereafter, Metro will no longer charge overhead to any facilities operated by the Metro E-R Commission including the Oregon Convention Center. The amount charged by Metro for overhead shall not exceed the current level of general overhead charges set in the Metro Fiscal Year 1989-90 budget for payment of overhead charges by the Metro E-R Commission to Metro for operations of the Oregon Convention Center. Metro will not charge an overhead charge to the Metro E-R Commission based on City facilities in an amount in excess of the actual general fund overhead charge (adjusted to exclude portions of the actual general fund overhead charge that represent central services other than oversight and review services) imposed on the E-R Commission by the City of Portland as set forth in the City's proposed budget for Fiscal Year 1989-90. In any event, overhead charges shall not be made in any fiscal year subsequent to Fiscal Year 1990-91. During phase one of the consolidation process, Metro agrees not to impose an excise tax on MERC Facilities for the purpose of funding Metro overhead.

6. REVIEW OF METRO E-R COMMISSION ACTIONS

The Metro E-R Commission will have full autonomy based on the City ERC Model and consistent with Oregon Law. Metro E-R Commission actions shall be subject to review by the Metro Council as presently provided for in the Metro Code. All Requests for Review from aggrieved parties shall be heard by the Metro Council as provided by Oregon Law.

7. LIABILITY BY METRO

Metro accepts full liability for the actions of MERC. Metro agrees to hold harmless and indemnify the City against any claim whatsoever in nature arising out of the Metropolitan E-R Commission's operation of the facilities.

8. GOOD FAITH EFFORT TO RESOLVE ANY OTHER OUTSTANDING ISSUES

To the extent that other issues not previously identified during the negotiation process leading up to this Memorandum of Understanding are identified during the development of a final agreement for phase one of consolidation the parties hereto agree to in good faith resolve all such outstanding issues in as rapid a manner as possible and agree to use the good offices of Robert Ridgley to facilitate the resolution of such issues.

9. FINAL CONSOLIDATION

As soon as a phase one consolidation agreement is approved Metro and MERC will commence moving toward consolidation of other regional facilities and resolving other long term issues in order to bring about a complete consolidation. Final consolidation will require the resolution of issues related to the transfer and control of real property and actual physical structures through an asset transfer, long-term lease or other equivalent arrangement. It is also the intention of the Parties that Metro will assume long-term fiscal responsibility for all regional facilities and will obtain necessary public supported financial resources therefor.

This MEMORANDUM OF UNDERSTANDING is Executed this _____ day of _____, 1989 and is effective upon ratification by the Portland City Council and the Metro Council.

J.E. "Bud" Clark,
Mayor

Rena Cusma,
Executive Officer, Metro

Mike Lindberg,
Commissioner of Public Affairs

Mike Ragsdale,
Presiding Officer, Metro Council



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: July 25, 1989

To: Convention, Zoo & Visitors Facilities Committee

From: Donald E. Carlson, Council Administrator
Jessica Marlitt, Council Analyst

Regarding: RESOLUTION NO. 89-1115, RATIFYING A MEMORANDUM OF UNDERSTANDING REGARDING CONSOLIDATION OF REGIONAL CONVENTION, TRADE, SPECTATOR, AND PERFORMING ARTS FACILITIES PRESENTLY OWNED AND OPERATED BY THE CITY OF PORTLAND AND THE METROPOLITAN SERVICE DISTRICT

Resolution No. 89-1115, scheduled for formal action at the Committee meeting August 3, 1989, ratifies the attached Memorandum of Understanding (MOU) regarding facilities consolidation. Metro has been represented in the MOU development and negotiation by its Consolidation Task Force, appointed November 22, 1988, Resolution No. 88-1017. The Metro Consolidation Task Force had Presiding Officer Mike Ragsdale as Chair and included Metro Executive Officer Rena Cusma, Councilor David Knowles, Metro Exposition-Recreation Commission Chair Ted Runstein, and Tom Walsh, Chair of the Convention Center Advisory Committee on Design and Construction (ACDC). The purpose of the task force was to assist in preparing a consolidation plan and to guide consolidation negotiations with other jurisdictions. The MOU represents the first step towards developing a consolidation plan; it is a conceptual document to provide a framework for the actual detailed, legal implementing agreement.

The MOU will not go into effect until ratified by the respective City of Portland and Metro Councils. "Ratifying" the MOU, per General Counsel Dan Cooper, is a non-binding statement of policy intent which does not commit Metro legally to any action or obligation. In this memo, the term "implementing agreement" refers to the actual consolidation agreement which is intended to result from the ratified MOU and negotiations thereafter.

RECOMMENDATION

The attached Memorandum of Understanding is recommended for adoption by Resolution No. 89-1115.

* * *

This memo serves two purposes:

- 1) to outline potential policy changes for Metro which would result from a consolidation agreement based on the MOU; and
- 2) to identify policy issues raised by the MOU which may have to be negotiated in developing the "Phase One" implementing agreement.

Each section of the MOU is addressed below with staff's summary of "Potential Changes for Metro" and "Issues".

ANALYSIS OF THE MEMORANDUM OF UNDERSTANDING

1. INTRODUCTORY SECTION

The purpose of the Memorandum of Understanding, as stated in the document's opening section, is to provide for "phase one of consolidation of operation and management of the facilities", ... which is "expected to be of limited duration pending full scale consolidation of all regional convention, trade and spectator facilities as outlined in the Convention Trade and Spectator Facilities Committee Report and Recommendation dated May 1986." The introduction summarizes the MOU purpose and intent which is to lay out the principles, terms and conditions to be formalized in a 'Phase One' consolidation agreement.

POTENTIAL CHANGES FOR METRO

None. The introductory section presents policy directions consistent with the Convention Trade and Spectator Facilities Committee Report (CTS Master Plan) adopted by the Metro Council in 1986. The CTS Master Plan does not address performing arts facilities specifically, but they are major spectator facilities.

ISSUES

- o What is the estimated duration of Phase 1? What will trigger completion of Phase 1 -- a specific date or target action?

2. OPERATIONS AND MANAGEMENT

The opening statement regarding Metro E-R Commission supervision of consolidated facilities operations and management is consistent with the CTS Master Plan.

SECTION A: Describes amending the Metro Code to include/"codify" the current Metro E-R Commission appointment process followed by the Metro Executive Officer and formalized in Metro Executive Order No. 36 (October 26, 1987).

POTENTIAL CHANGES FOR METRO

The appointment process would be the same as current practice per Executive Order No. 36; the change would be to elevate the practice from an administrative policy to a District policy, via the Metro Code. Currently, the Metro Code provides for the Executive Officer to appoint Metro E-R Commission members after "consulting with the governing bodies of the City of Portland, Clackamas County, Multnomah County, Washington County and any other city within the District."

ISSUES

- o Would this governance process be for Phase I consolidation only or in perpetuity?

SECTION B: Specifies the City's transfer of operation and management responsibility over the City Memorial Coliseum, Civic Stadium and Portland Center for the Performing Arts to the Metro E-R Commission.

(OPERATIONS AND MANAGEMENT, Cont.)

POTENTIAL CHANGES FOR METRO

None. Policy direction is consistent with the CTS Master Plan.

ISSUES

- o None identified for Phase 1 consolidation.

SECTION C: Provides for Portland's designated Commissioner-in-Charge to appoint a Portland Center for the Performing Arts (PCPA) Advisory Committee which Metro and the Metro E-R Commission will recognize as the official advisory committee for PCPA.

POTENTIAL CHANGES FOR METRO

None. Because the committee would be advisory only, the Metro Council can agree to the City's appointment process through an Intergovernmental Agreement without abrogating any legal legislative responsibility.

ISSUES

- o Is the PCPA Advisory Committee appointment process proposed for Phase I consolidation or in perpetuity?
- o Should advisory committee appointments for regional facilities be delegated to local jurisdictions in which the facility is located?
- o Does a local appointment process conflict with facility's role as a regional attraction?

SECTION D: Establishes that during Phase 1 consolidation, no facilities will change ownership and newly acquired or constructed facilities' ownership will be determined by the facility's financing.

POTENTIAL CHANGES FOR METRO

None.

ISSUES

- o Are any additional regional facilities anticipated during the time of the Phase 1 implementing agreement or does this section address another issue?

3. EMPLOYEES AND PERSONNEL MATTERS

SECTION A: Provides for all current City E-R Commission employees to be transferred to and become employees of the Metro E-R Commission.

POTENTIAL CHANGES FOR METRO

None. No retirement system amendments are anticipated. During this year's session, the Oregon Legislature passed Senate Bill 211 which allows Metro to phase in membership in PERS, the Public Employee Retirement System, while maintaining its current retirement plan. Metro will be able to offer PERS to transferred employees without adversely affecting Metro employees already vested in the current system.

(OPERATIONS AND MANAGEMENT, Cont.)

ISSUES

- o Metro and the Metro E-R Commission's responsibilities for receiving the transferred employees need to be clarified in the implementing agreement.

SECTION B: Notes all City E-R Commission collective bargaining agreements will be assigned to Metro E-R Commission with all terms and conditions intact; highlights that transferred City employees entitled to full protection under State transfer provisions.

POTENTIAL CHANGES FOR METRO

None.

ISSUES

None.

4. CONTRACTS AND PURCHASING

States that the Metro E-R Commission will have full authority to contract and purchase in accordance with its own rules.

POTENTIAL CHANGES FOR METRO

None.

ISSUES

None.

5. BUDGETS AND ACCOUNTS

SECTION A: Provides for the Metro E-R Commission to track each facility's financial accounts separately and allocate management oversight costs by formula among the facilities; notes neither the City nor Metro have accepted the Laventhol & Horwath formula for an allocation; transfers the City E-R Commission Reserve Account to the Metro E-R Commission solely for use towards City facilities; notes Multnomah County Hotel/Motel Tax revenue is only applicable to the Oregon Convention Center.

POTENTIAL CHANGES FOR METRO

None. The Metro E-R Commission has the accounting capability to track each facility's expenses and revenues. The designation of the City E-R Commission reserve fund for City facilities only is consistent with Metro accounting practices for reserving certain funds for certain services or facilities.

ISSUES

- o The oversight management formula will have to be sensitive to Federal overhead grant formulas as transportation and related site improvements funds are received for facility improvements (e.g. the Oregon Convention Center site development).

SECTION B: Subjects the Metro E-R Commission annual budget to City and Metro approval; notes the budget will be included in Metro's budget submitted to the Tax Supervision and Conservation Commission (TSCC).

RESOLUTION NO. 89-1115

July 25, 1989

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(BUDGETS & ACCOUNTS, Cont.)

POTENTIAL CHANGES FOR METRO

Adds outside approval process for a portion of the Metro budget; would not require amending Metro Code -- per Metro General Counsel Intergovernmental Agreement could establish review process.

ISSUES

- o What happens if the City and Metro reach an impasse on the Commission budget? The implementing agreement needs to address the issue of how impasses in gaining budget approval would be resolved.
- o Will Metro E-R Commission budget amendments during the year be subject to City approval?

5. OVERHEAD

Limits Metro charging the Metro E-R Commission "overhead for oversight and review" to FY89-90 and FY90-91, with no charges beyond those two years, and the charge amount not to exceed the total FY89-90 budgeted level; limits Metro overhead charges based on City facilities to no more than the City's "actual" General Fund overhead charge amount (excluding the General Fund costs related to the City's provision of central support services); provides for Metro not to impose an excise tax on any Metro E-R Commission facilities during Phase 1.

POTENTIAL CHANGES FOR METRO

None.

ISSUES

- o How is "overhead" defined? Metro currently charges back to the various operating funds the full cost of the General Fund, which includes Executive Management, Council, central administrative services (Finance & Administration, Personnel, Accounting, General Counsel, Public Affairs). Based on Council policy and authority to impose an excise tax, it is projected that the General Fund will be separated into a General Government Fund and a Central Support Services Fund. The General Government Fund would consist of Executive Management and the Council costs; the Central Support Services Fund would include those service departments noted above. The excise tax would be used to pay direct costs of the General Government Fund and that fund's proportional share of the Central Support Services costs. Other Metro operating funds will pay their proportional share of the support services costs.
- o How does the M.O.U. overhead language relate to Metro's projected financial scenario for the General Government and Central Support Services Funds? Are limits envisioned on the amount of allocation of Central Support Service costs to the Metro E-R Commission?

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6. REVIEW OF METRO E-R COMMISSION ACTIONS

Calls for Metro E-R Commission "full autonomy based on the City ERC Model and consistent with Oregon Law." Notes Metro review of Commission actions and aggrieved party requests-for-review will be unchanged from current Metro Code policy and Oregon law.

POTENTIAL CHANGES FOR METRO

None.

ISSUES

None.

7. LIABILITY BY METRO

Calls for Metro to accept full liability for Metro E-R Commission actions and holds the City harmless against any claim arising from the Commission's operation of the facilities.

POTENTIAL CHANGES FOR METRO

No legal or policy changes; potential risk increased because of additional facilities.

ISSUES

- o Will the implementing agreement provide for a full risk assessment of the City facilities?

8. GOOD FAITH EFFORT TO RESOLVE ANY OTHER OUTSTANDING ISSUES

Provides for Metro and the City to negotiate in good faith and as quickly as possible any outstanding issues not covered in the MOU but raised in the course of developing the Phase 1 implementing agreement; notes Robert Ridgely will be the designated facilitator in resolving new issues.

POTENTIAL CHANGES FOR METRO

None.

ISSUES

None.

9. FINAL CONSOLIDATION

Notes that upon approval of the Phase 1 implementing agreement, Metro and the Metro E-R Commission will move toward consolidation of all other regional facilities; outlines final consolidation issues of real property transfer and control, asset transfers, lease or other arrangements; provides for Metro to assume long-term "fiscal responsibility" and obtain public financial support as necessary.

POTENTIAL CHANGES FOR METRO

None. Policy direction is consistent with the CTS Master Plan.

ISSUES

- o What are the potential revenue sources supporting the regional system and what authorities will Metro need to implement those sources?

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RESOLUTION NO. 89-1115

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Agenda Item No. _____

Meeting Date _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 89-1115 FOR THE PURPOSE OF RATIFYING A MEMORANDUM OF UNDERSTANDING REGARDING CONSOLIDATION OF REGIONAL CONVENTION, TRADE, SPECTATOR AND PERFORMING ARTS FACILITIES PRESENTLY OWNED AND OPERATED BY THE CITY OF PORTLAND AND THE METROPOLITAN SERVICE DISTRICT

DATE: July 12, 1989

PRESENTED BY: Dan Cooper

Background

In May of 1986, the Council adopted via Resolution No. 86-648 the Regional, Convention, Trade, and Spectator Facilities (CTS) Master Plan. This policy document called for the establishment of one regional commission at Metro to manage the region's inventory of convention, trade, and spectator facilities. Among the facilities included in this plan were the Oregon Convention Center, and the facilities managed by the City of Portland's Exposition-Recreation Commission (Memorial Coliseum and Civic Stadium). In May of 1986, the Portland City Council also adopted a resolution supporting this concept.

Steps to implement regional management have continued. The Metro Council established the Metropolitan Exposition-Recreation Commission in the fall of 1987. Appointments were made and confirmed, setting the stage for consolidation of facilities. Since adoption of the CTS Master Plan, the Portland City Council assigned the Portland Center for Performing Arts to the Exposition-Recreation Commission, adding to the mix the Civic Auditorium, Arlene Schnitzer Concert Hall, and the Intermediate Theater Building.

On November 22, 1988, the Council established the Metro Consolidation Task Force to guide discussions with the City of Portland regarding consolidation. The Task Force addressed the full range of issues concerning consolidation. The result of that process is the Memorandum of Understanding attached as Exhibit A to Resolution No. 89-1115.

Proposed Action

Resolution No. 89-1115 ratifies the Memorandum of Understanding (Exhibit A). The Memorandum of Understanding represents a general policy level agreement. Upon ratification, General

Counsel would negotiate a detailed intergovernmental agreement with the City of Portland for future consideration by each Council.

Executive Officer's Recommendation

The Executive Officer recommends that the Council approve Resolution No. 89-1115 ratifying the Memorandum of Understanding with the City of Portland regarding consolidation of regional convention, trade, spectator, and performing arts facilities.

		194,276	ALLOCATION
			<u>CON CENTER RELATED</u>
		CC PROJ	194,276
		MERC	23,577
			<u>217,653</u>
		<u>TOTAL</u>	
COUNCIL	450,923		
EX. MGMT	481,976		
	<u>\$ 932,899</u>		

		OVER HEAD COSTS	
		MERC	
COUNCIL	11,646		
EX MGMT	11,931		
	<u>23,577</u>		
		CCP	
COUNCIL	95,962		
EXER MGMT.	98,314		
	<u>\$ 194,276</u>		
			<u>TOTAL CCP</u>
			GEN FUND TRANSFER
			428,751
			128,259
			<u>\$ 557,010</u>

JAN 22 1990

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 dated as of December 19th, 1989, is between the City of Portland, Oregon (City); and the Metropolitan Service District (Metro); and the City of Portland Exposition-Recreation Commission (ERC).

RECITALS:

1. In January 1985 the City, Metro, and Clackamas, Multnomah, and Washington counties established the Committee on Regional Convention, Trade, and Spectator Facilities (CTS Committee) consisting of public and private representatives.
2. In May 1986 the CTS Committee adopted recommendations regarding regional convention, trade, and spectator facilities.
3. The CTS recommendations called for Metro to establish a regional commission under ORS Chapter 268 for the planning, development, promotion, operation, and management of the region's convention, trade, and spectator facilities, and for the City and Multnomah County to transfer responsibility for operating their regional convention, trade, and spectator facilities to the regional commission.
4. In May 1986 the City, by Resolution No. 34110, found that Metro should be responsible for the planning, development, promotion, operation, and management of the region's public convention, trade show, and spectator facilities and resolved that the City work with Metro to develop a plan for the transfer of the ERC's functions and responsibilities to a regional commission to be established by Metro, with the transfer to be completed by the date of opening of the Oregon Convention Center.
5. In November 1986 the voters of the Metropolitan Service District approved the sale of \$65,000,000 in General Obligation bonds to assist in financing construction of the Oregon Convention Center; the 1987 and 1989 sessions of the Oregon Legislature authorized \$15,000,000 from State Economic Development Funds to assist in financing construction; and the City of Portland through a Local Improvement District has secured an additional \$5,000,000 to assist in financing construction.

6. The Metro Council on October 22, 1987, adopted Metro Ordinance No. 87-225 which created the Metropolitan Exposition-Recreation Commission with powers and duties substantially similar to the City Exposition-Recreation Commission for the purpose of maintaining and operating metropolitan convention, trade, and spectator facilities.

7. The Oregon Convention Center is scheduled to open in the fall of 1990.

8. The City and Metro have been involved in extensive negotiations regarding consolidation of City and Metro convention, trade, spectator, and performing arts facilities.

9. The negotiating process produced a Memorandum of Understanding which stated proposed principles to govern an initial phase of consolidation; which expressed the intention of the City and Metro to approve a formal consolidation agreement consistent with those principles; and which anticipated that the formal consolidation agreement would be prepared and approved as soon as possible.

10. The Metro Council and the City Council approved the Memorandum of Understanding.

11. This Agreement has been prepared to implement the Memorandum of Understanding.

SECTION 1

DEFINITIONS

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

"City" means the City of Portland, Oregon.

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

"Coliseum" means the Portland Memorial Coliseum complex.

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

"Convention Center" means the Oregon Convention Center.

"ERC" means the City Exposition-Recreation Commission.

"ERC Facilities" means the Coliseum, PCPA, and the Stadium.

"Facilities" means the ERC Facilities, Convention Center and other regional convention, trade, or spectator facilities Metro ERC 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.

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

"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 ERC Facilities and Metro ERC.

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

"Stadium" means the Portland Civic Stadium.

SECTION 2

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

- A. Subject to the terms and conditions contained in this Agreement City hereby transfers to Metro and Metro hereby accepts responsibility for operation and management of the ERC Facilities effective as of January 4, 1990. Metro agrees that authority and responsibility for operation and management of the ERC Facilities is hereby 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 ERC Facilities until superseded or repealed by resolutions duly adopted by the Metro ERC.
- B. The power and authority of Metro ERC has been created by Metro pursuant to the provisions of ORS 268.395 and 268.400. Chapter 6.01 of the Metro Code sets forth the power, authority and duties of Metro ERC. Metro agrees to adopt the amendments to Metro Code Sections 6.01.030, 2.04.035, and 1.01.010 attached hereto as Exhibit "A." The parties

agree that the continued existence of Metro ERC with the power, authority, and duties it will possess under Metro Code Chapter 6.01 as amended are an essential element to the City's willingness to transfer operation and management control of the ERC Facilities to Metro. The parties also 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 obtaining City's prior approval pursuant to Section 19 of this Agreement.

- C. 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 hereby transfer, effective January 4, 1990, to Metro the right to beneficial use of all real property comprising the ERC Facilities. City and ERC shall retain title to and beneficial ownership of all real property comprising ERC Facilities. City and ERC shall not take any action with regard to the real property comprising the ERC Facilities that would interfere with management and operation of the ERC Facilities. Metro shall not take any action with regard to the real property comprising the ERC Facilities that would affect or encumber the title to the property without the prior written consent of City.
- B. City, either directly or through ERC, owns certain rights to use real property subject to restrictions and therefore City and ERC have 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.

- C. Personal Property. City or ERC if then in existence, otherwise City, shall be the owner of all ERC Facilities-related personal property owned by City or ERC as of January 3, 1990, and also of all capitalized personal property acquired thereafter by Metro ERC using ERC Facilities-related funds. Metro and Metro ERC shall have the right to beneficial use thereof. Metro ERC 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 ERC from disposing of ERC Facilities-related personal property in the ordinary course of business or from acquiring title to personal property using both ERC and Metro ERC Facilities-related funds that is of common benefit to ERC and Metro ERC Facilities. On disposition of ERC Facilities-related personal property, any compensation received for the property shall be treated as ERC Facilities-related revenues. Metro and Metro ERC shall not

dispose of ERC 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 ERC Facilities-related funds, Metro and Metro ERC shall identify resources and appropriations for the acquisition in the annual or supplemental or amended budget for Metro ERC subject to City approval as provided for in Section 6 of this Agreement. As of January 4, 1990, Metro and Metro ERC hereby are 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 ERC Facilities-related funds of real property initiated by City or ERC for the benefit of the ERC Facilities. Title to any and all real property and improvements thereto acquired by Metro or Metro ERC with ERC Facilities-related funds shall be taken in the name of City or ERC as appropriate. Any disposition of City- or ERC-owned real property shall be subject to the same requirements as apply to dispositions of other City property.
- E. Audit of Property Records. On or before January 4, 1990, or as soon as practicable thereafter, Metro and Metro ERC shall prepare an initial inventory of all personal and real property possessed by ERC and all records related thereto. The initial inventory shall be the basis for identifying all property for which Metro shall assume responsibility hereunder. Thereafter, Metro and Metro ERC, 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 and ERC as to which Metro has the right of beneficial use under this Agreement. The initial inventory prepared by Metro and Metro ERC under this Subsection shall be prepared in a manner acceptable to City and its outside auditors and shall be subject to City's approval, which approval shall not be unreasonably withheld. The subsequent 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.

SECTION 4

PERSONNEL

- A. The City and Metro agree that all employees presently employed by ERC will be transferred to Metro ERC and will become employees of Metro ERC as provided for herein. 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.

- B. Transfer of Represented Employees. On January 4, 1990, ERC shall transfer all of its employees represented by labor unions to Metro ERC. Thereafter, Metro ERC shall recognize 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 shall transfer all of its unrepresented employees to Metro ERC.
- D. Employees' Statutory Rights. On and after January 4, 1990, Metro ERC shall assure that all ERC employees as of January 3, 1990, are 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 hereby assigns to Metro ERC, and Metro on behalf of Metro ERC, hereby accepts assignment of all collective bargaining agreements to which ERC is a party, effective as of January 4, 1990. Metro ERC shall conduct such impact bargaining with affected unions as is appropriate and necessary under applicable law.

SECTION 5

CONTRACTS AND LICENSES

- A. Assignable ERC Contracts and Licenses. ERC hereby assigns to Metro ERC all contracts, permits, rental agreements, and licenses to which ERC is a party and which are assignable without the consent of other parties, effective as of July 1, 1990. From January 4, 1990, through June 30, 1990, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 4, 1990.
- B. Other ERC Contracts and Licenses. ERC hereby assigns to Metro ERC each contract, permit, rental agreement, and license to which ERC is a party, the assignment to be effective on July 1, 1990, or on obtaining the consent of the other parties thereto, whichever occurs later. From January 4, 1990, through the effective date of the assignment, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of Metro ERC to the same extent and subject to the same City

procedural requirements as applied to ERC immediately prior to January 4, 1990.

SECTION 6

BUDGET APPROVAL FOR METRO ERC

- A. For fiscal years commencing on or after July 1, 1990, Metro ERC's annual budget shall be subject to City and Metro approval and shall be included in the overall Metro budget for submission to the Tax Supervision and Conservation Commission. Metro ERC's annual budget shall include a separate budget for each of the ERC Facilities, in the standard format used by Metro for its budget units. City's right to approve or disapprove the Metro ERC budget shall be applicable only to the budgets for the ERC Facilities.
- B. Metro ERC Budget Process. All Metro ERC budgets and supplemental and amended budgets will be part of the Metro budget and will be subject by law to the budget procedures governing Metro. In addition, the Metro ERC budget and supplemental and amended budgets shall be subject to the approval of City to the extent described in Subsection A of this Section. In order to carry out successful budget procedures, with Metro and City both approving the same budget, it will be necessary that there be a high degree of cooperation among Metro, City, and Metro ERC in the budget process. Therefore Metro ERC and Metro shall make every reasonable effort to inform City of and provide the opportunity for City review of and participation in the Metro ERC budget development and review process. Concomitantly, City shall make every reasonable effort to participate in that process. These efforts shall be made with a view to identifying and resolving conflicts early in the budget process in order to avoid surprises or unresolved disputes at the end of the process. In order to achieve this objective, the process for City review of the Metro ERC budget shall be as follows:
1. On or before February 1 of each year, Metro ERC shall provide to the Metro Executive Officer the proposed Metro ERC budget for the next fiscal year. The Metro Executive Officer shall transmit the proposed Metro ERC budget to the Commissioner in Charge and to the City Auditor at the same time the proposed Metro budget is transmitted to the Metro Council.
 2. Within forty-five (45) days of receipt of the proposed Metro ERC budget, City shall review and approve or disapprove by resolution adopted by the City Council the proposed Metro ERC budget for the next fiscal year. In the event of disapproval, the City Council shall

state the reasons for disapproval, the portions of the proposed budget objected to, and proposed revisions that would meet City's approval. A failure by the City Council to act within forty-five (45) days of receipt shall be deemed an approval of the proposed Metro ERC budget.

3. In the event Metro revises a proposed Metro ERC budget following City approval, then the revised proposed budget shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposed budget. City review period shall be twenty (20) days from receipt of the revised proposed budget.
4. In the event Metro revises a proposed Metro ERC budget following City disapproval, but proposes revisions different than those proposed by City, then the revised proposed budget shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposed budget. City review period shall be twenty (20) days from receipt of the revised proposed budget.
5. Any supplemental budget adopted by Metro for Metro ERC shall be subject to the same procedure as governs City review of a proposed annual Metro ERC budget.
6. Any budget amendment adopted by Metro for Metro ERC, except as part of a supplemental budget, shall be subject to the same procedure as governs City review of a proposed annual Metro ERC budget except that (a) the amendment shall be deemed approved unless the Commissioner in Charge notifies Metro within fifteen (15) days of receipt of the proposed amendment that City intends to review the amendment, and (b) if the Commissioner in Charge does so notify Metro then the amendment shall be deemed approved unless the City Council acts on it within thirty (30) days of receipt.

C. Financial Reporting Requirements. Metro ERC shall provide to City monthly financial reports showing the current status of revenues and expenditures of Metro ERC for the then current fiscal year. These reports shall be in no less detail than reports Metro ERC regularly prepares for its own and Metro's review and shall provide details separately identifying the financial status of each ERC Facility.

D. Metro ERC Management Services. It is Metro ERC'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 initial 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 if Metro ERC adopts a different management structure or allocation formula, shall be established as part of the Metro ERC annual budget and shall be subject to City's review and approval, which approval shall not be unreasonably withheld. City review and approval or disapproval shall be part of the budget review process and shall follow the procedures for budget review and approval set forth in Subsection B of this Section.

SECTION 7

MONEY TRANSFERS, ACCOUNTING, AND AUDITING

- A. Financial Transactions from January 4, 1990, to June 30, 1990. During the period from January 4, 1990, to June 30, 1990, ERC shall receive all ERC Facilities-related revenues, which shall be treated as ERC revenues for budget purposes; and ERC shall pay all ERC Facilities-related expenses, which shall be treated as ERC expenditures for budget purposes. During this period, all ERC Facilities-related financial transactions shall follow the procedures established therefor by this Subsection:
1. City shall process all duly authorized requests for payment received from Metro ERC related to ERC Facilities on forms to be provided by City including payroll and accounts payable, for payment from ERC funds in accord with current practice. Metro ERC shall transmit all funds received from operations of ERC Facilities to City for deposit into ERC funds in accord with current practice.
 2. City shall maintain records of all fiscal transactions related to the ERC Facilities and shall transmit periodic reports thereof to Metro and Metro ERC at the same time it transmits its regular periodic reports to responsible City officials.
 3. City shall make all required reports to and filings with federal and state agencies including the Internal Revenue Service related to the financial transactions carried out under this Subsection, on behalf of Metro, Metro ERC, City, and ERC. If City legally is unable to do this, it shall prepare sufficient information for Metro and Metro ERC to allow Metro to make the reports and filings in a timely manner.

- B. General. On July 1, 1990, except as otherwise provided in this Subsection, all moneys in the following ERC Funds shall be transferred to Metro for use by Metro ERC as provided herein:

Exposition-Recreation -- Civic Stadium Fund
Exposition-Recreation -- Memorial Coliseum Fund
Expo-Recreation -- Performing Arts Fund
Performing Arts Center Construction Fund

Between the dates of July 1, 1990, and completion of the audit described in Subsection D of this Section, City shall retain sufficient amounts in the ERC Funds, as agreed to by City and Metro, in order to provide for positive balances in all ERC Funds immediately prior to the adjustments under Subsection D of this Section. The amounts retained shall be set so as to avoid any adverse impact on Metro ERC operations. Any dispute between the parties regarding amounts to be retained shall be resolved pursuant to Section 15 of this Agreement.

- C. Payables and Receivables. ERC hereby assigns to Metro ERC as of July 1, 1990, all ERC accounts receivable and other receivables existing as of that date or thereafter accruing. Metro ERC 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 ERC shall pay, out of ERC Facilities-related funds, all tax and other governmental assessments against real property comprising the ERC Facilities and against any ERC Facilities-related personal property.
- D. Adjustments Following Audit. A portion of City's official independent audit for FY 1989-90 shall cover all ERC operations for the entire period from July 1, 1989, through June 30, 1990. On completion and acceptance by City of the portion of the official City independent audit covering ERC for FY 1989-90, adjustment shall be made in the amounts transferred under Subsection (A) of this Section as indicated by the audit so as to bring the amounts retained in ERC funds under Subsection B of this Section to zero. In the event of excess transfers to Metro on July 1, 1990, Metro shall refund the amount of the excess to City or ERC as appropriate. In the event of deficient transfers to Metro, City or ERC as appropriate shall transfer the amount of the deficiency to Metro for use by Metro ERC as provided herein. City shall encourage its auditors to complete the portion of the audit covering ERC as quickly as possible. Any dispute between the parties regarding funds to be

transferred shall be resolved pursuant to Section 15 of this Agreement. Metro ERC shall prepare appropriate responses to management findings related to ERC Facilities contained in the audit.

- E. Treatment of Monies from January 4, 1990, through June 30, 1990. Pursuant to Subsection 7(A) of this Section, from January 4, 1990 through June 30, 1990, the collection of ERC Facilities revenues to be deposited into ERC funds and the payment of ERC Facilities expenditures from ERC funds shall be subject to the direction and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 4, 1990. During this period, revenues from and expenditures for the ERC Facilities shall be accounted for in the same way as is in effect immediately prior to January 4, 1990.
- F. Audits and Accounting Beginning July 1, 1990. Beginning with FY 1990-91, Metro ERC, in its accounting, shall account separately for each of the ERC Facilities and shall comply with generally accepted governmental accounting principles and with the requirements of the Government Accounting Standards Board in accounting for ERC Facilities operations and maintenance. Metro ERC annually shall obtain an audit of its operations, with ERC 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 ERC 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 ERC Facilities operations in City's Consolidated Annual Financial Report, then Metro ERC shall provide its audit to City not later than September 30 of each year.
- G. 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 ERC Facilities. Nothing in this Agreement shall prevent the transfer of resources among the ERC Facilities as provided in any Metro ERC budget. In addition, any net surplus from operation of the ERC Facilities shall be used only for the benefit of the ERC Facilities. The beginning balance in the Performing Arts Center Construction Fund shall be deposited into a separate account maintained by Metro ERC and 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 ERC facilities shall be used only as determined by Metro.

- H. Event and Concession Bank Accounts. ERC maintains in its name bank accounts into which it deposits event- and concession-related revenues, from which it pays event- and concession-related expenses including amounts owing to ERC from the event sponsors and concessionaires, and from which it pays the balance after expenses to the event sponsors and concessionaires. On January 4, 1990, ownership of the accounts shall be transferred to Metro ERC or the accounts may be closed and the account balances transferred to new accounts opened by Metro ERC or some comparable change may be made, as determined by Metro ERC. ERC shall execute whatever documents are necessary to accomplish the change. Following the change, Metro ERC shall make all payments for which the accounts are obligated. On or before January 4, 1990, or as soon as practicable thereafter, Metro and Metro ERC shall conduct an audit of such accounts to determine the condition thereof as of the effective date of transfer.

- I. Unemployment Compensation Payments as to ERC. Notwithstanding any other provision of this Section, City shall pay any unemployment billings due to the State of Oregon that are applicable to ERC employees terminated prior to January 4, 1990. City shall bill ERC for the amount of any payments made by City applicable to the period prior to July 1, 1990, and shall bill Metro ERC for the amount of any payments made by City applicable to the period following June 30, 1990. ERC and Metro ERC shall pay the City billings following their receipt.

SECTION 8

CENTRAL SERVICES AND OTHER CHARGES

- A. Metro Charges To Metro ERC for Council and Executive Officer. Metro may charge Metro ERC for Council and Executive Officer services as provided for herein during the first two (2) fiscal years that this Agreement is in effect (Fiscal Year 1989-90 and 1990-91.) Thereafter, Metro shall no longer charge for Council and Executive Officer services to any Facilities operated by Metro ERC including the Oregon Convention Center. The amount charged by Metro to Metro ERC in FY 1990-1991 for Council and Executive Officer services shall not exceed the current level of charges for Council and Executive Officer services set in the Metro FY 1989-90 budget for payment of such charges by Metro ERC to Metro for

Metro ERC to Metro for operations of the Oregon Convention Center, which amount is \$23,577. Metro shall not charge Metro ERC for Council and Executive Officer services for ERC Facilities for FY 1989-90 and shall not charge for FY 1990-91 in an amount in excess of the actual general fund charge for City Council services imposed on ERC by City as set out in City's budget for FY 1989-90, which amount is \$14,641. Metro ERC shall not pass on to the ERC Facilities any Metro charge for Metro Council and Executive Officer services in excess of the amounts charged to Metro ERC by Metro for ERC Facilities.

- B. Central Services and Central Services Charges. Nothing contained herein shall preclude Metro from charging Metro ERC for central services provided to Metro ERC by Metro, subject to City review and approval during the annual budget process pursuant to the procedure set out in Section 6(B) of this Agreement. Such charges shall not be increased in any fiscal year over the amount originally budgeted without prior review and approval of City pursuant to the same procedure as the procedure for supplemental budgets pursuant to Section 6(B) of this Agreement. The budget reviews under Section 6(B) of this Agreement shall include review of both the allocation of central services functions between Metro and Metro ERC and the charges therefor.

SECTION 9

METRO EXCISE TAX

- A. General. 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 ERC Facilities.
- B. Limitation. Metro shall not directly or indirectly use revenues from excise taxes on persons using the ERC 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 ERC 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 10

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 ERC Facilities.
2. Metro, to the maximum extent permitted by law, shall indemnify City, 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 on or after July 1, 1990, in connection with or as a result of operation of the ERC or Metro ERC Facilities.
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, ERC, 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 and 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 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. However, this agreement to indemnify and hold harmless is limited to payment of funds generated by the ERC Facilities or transferred to Metro by City and dedicated to the ERC 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.

SECTION 11

INSURANCE

During the term of this Agreement, Metro shall obtain and maintain insurance providing coverage for risks associated with operation of the ERC 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, ERC, and their officers, employees, and agents as additional named insureds.

In addition, in order to fully fund the existing coverage maintained by City through its Risk Management program for all tort claims and Workers' Compensation claims arising prior to July 1, 1990, City may charge ERC an additional sum of \$123,000. Such sum shall be deducted from the balance of the ERC funds to be transferred to Metro pursuant to Section 7.

- B. Property Insurance. Effective July 1, 1990, 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 ERC Facilities. Such policies shall include boiler

and machinery coverage. City and ERC shall be named as additional named insureds for all policies providing coverage for ERC Facilities to the full extent of City's insurable interest.

SECTION 12

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 ERC for all PCPA matters. Metro ERC and Metro shall inform the Advisory Committee of and provide the opportunity for Advisory Committee review of and comment on all Metro ERC actions affecting the PCPA. Actions affecting the PCPA shall be deemed to include, without limitation, all Metro ERC 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 ERC shall provide reasonable staff assistance from staff assigned to PCPA to assist the Advisory Committee.

SECTION 13

ERC 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 14

RECORDS

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

SECTION 15

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 except for those disputes which are specified as grounds for termination of this Agreement pursuant to Section 18(C) of this Agreement.

SECTION 16

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 17

FURTHER CONSOLIDATION

- A. Term of Agreement. The term of this Agreement shall continue unless termination occurs as provided for in Section 18 of this Agreement, or until the parties hereto then in existence enter into an agreement for further consolidation of the ERC Facilities and functions under Metro ERC. The various provisions of this Agreement shall continue in effect only during the term of this Agreement, except that the provisions governing termination and remedies shall survive termination.
- B. Consolidation. It is the intention of City and Metro to pursue further consolidation of the region's convention, trade, and spectator Facilities following execution of this Agreement. The parties intend that this further consolidation will take two forms.

First, the parties to this Agreement intend to provide for a more complete consolidation of the ERC Facilities under Metro ERC. This further consolidation of the ERC Facilities under Metro ERC will require further agreement by the parties. The parties agree to make a good faith effort to resolve all outstanding issues with the express intent to provide for further consolidation as soon after January 4, 1992, as possible.

Second, the parties to this Agreement agree that further consolidation may involve the consolidation under Metro ERC of Facilities operated by other local governments within the region including, but not limited to, the Multnomah County Exposition Center. This further consolidation also may include the construction of additional convention, trade, spectator, and performing arts facilities by Metro through Metro ERC or through other means and their consolidation under Metro ERC's operation, or the construction of new facilities by other local governments in the region and their consolidation under Metro ERC's operation. Metro and Metro ERC shall have the lead role in such further consolidation efforts. City agrees to review and consider in good faith the approval of any Metro ERC budget item, Metro Code amendment, or amendment to this Agreement that is requested by Metro to assist Metro and Metro ERC in achieving such further consolidation, which approval shall not be unreasonably withheld.

SECTION 18

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 in existence for further consolidation of the ERC Facilities and functions under Metro ERC, then City or Metro on or after July 1, 1991, may by duly adopted resolution of its governing body initiate termination of this Agreement and thereafter give notice of termination. The termination shall be effective on the first July 1 that is at least six (6) months after the date of the notice. On the effective date of the termination, the events described in Subsection (a) through (j) of Subsection D of this Section shall occur.
- C. Termination for Cause.
 - 1. This Agreement shall terminate if Metro shall amend Chapter 6.01 of the Metro Code without City's prior approval; or if Metro shall adopt a Metro ERC annual or supplemental or amended budget or increase a central service charge to Metro ERC chargeable to ERC Facilities during a fiscal year above the amount budgeted without City's prior approval; or if Metro shall violate the provisions of Sections 4(B), 7(F) or

(G), or 8 of this Agreement without City's prior approval, all subject to the following procedures:

- a. City in its discretion shall elect to give Metro written notice, in a form approved by the City Council, specifying the action Metro has taken that triggers proceedings under this Subsection. The notice may specify a date on which termination shall occur, provided that the date specified must be no sooner than thirty (30) days from the date of receipt of the notice by Metro.
- b. Following receipt of the notice from City, Metro shall have thirty (30) days within which to rescind the action that City specified. In the absence of rescission, this Agreement shall terminate either thirty (30) days after receipt of the notice by Metro or on the later date specified in the notice, whichever is later.

2. This Agreement shall terminate if City shall unreasonably withhold its approval of any action requested by Metro under Section 17(B) of this Agreement to assist Metro and Metro ERC in achieving consolidation of facilities operated by other governments within the region under Metro ERC's management and control, subject to the following procedures:

- a. Metro in its discretion shall elect to give City written notice, in a form approved by the Metro Executive Officer and the Metro Council, specifying the action requested as to which City unreasonably has withheld its approval, triggering proceedings under this Subsection.
- b. Following receipt of the notice from Metro, City shall have thirty (30) days within which to approve the action as to which Metro has requested approval. In the absence of approval, this Agreement shall terminate either ninety (90) days after receipt of the notice by City or on the July 1 next following, whichever is later.

D. In the event of termination, subject to compliance with any statutory requirements, the following shall occur:

1. All revenues from and expenditures for ERC Facilities shall be treated as ERC revenues and expenditures;
2. All Metro ERC accounts receivable and other receivables related to ERC Facilities existing as of that date or

thereafter accruing shall be assigned to ERC, and ERC shall be responsible for payment of all Metro ERC accounts payable and other obligations existing as of that date or thereafter related to the ERC 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 ERC funds related to ERC Facilities shall become the property of ERC and shall be transferred to ERC;
4. All event and concession bank accounts related to the ERC Facilities shall be transferred to ERC following which ERC shall make all payments for which the accounts are obligated;
5. All records related to ERC Facilities shall become the property of ERC and shall be transferred to ERC;
6. All property authorizations under Section 3 of this Agreement shall be rescinded and all Metro ERC obligations thereunder shall terminate;
7. All personnel whose positions are included in the budgets for ERC Facilities shall become employees of ERC;
8. All personnel holding central management staff positions transferred by ERC to Metro ERC hereunder shall become employees of ERC;
9. All contracts, permits, rental agreements, and licenses or portions thereof related to the ERC Facilities shall be assigned to ERC;
10. All other charges, allocations, and transfers as are necessary or desirable to the proper operation of ERC Facilities and other Facilities operated by Metro ERC 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 (D)(1) through (D)(10) of this Section shall be resolved pursuant to Section 15 of this Agreement.

SECTION 19

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. Except as provided in Section 6(B) of this Agreement and in Subsection (B) of this Section, 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, the Metro Council, and ERC if then in existence.
- B. The process for City approval of Metro amendments to Metro Code Chapter 6.01 shall be as follows:
1. Metro shall provide to the Commissioner in Charge and to the City Auditor the proposed Code amendment.
 2. Within thirty (30) days from receipt of the proposed Code amendment the City Council shall review and approve or disapprove it by resolution. In the event of disapproval, the City Council shall state the reasons for disapproval and proposed revisions, if any. A failure by the City Council to act within the thirty (30) days period shall be deemed an approval.
 3. In the event Metro revises a proposed amendment, following City approval, then the proposed revision shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposal.
 4. In the event Metro revises a proposed amendment, following City disapproval, but proposes revisions different than those proposed by City, then the proposed revisions shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposal.

SECTION 20

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 21

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 22

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
 Metropolitan Service District
 2000 S. W. First Avenue
 Portland, OR 97201-5398

With a copy to:
Clerk of the Council
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398

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

With a copy to:
Commissioner in Charge of ERC
City of Portland
1220 S.W. Fifth Avenue
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 23

EXECUTION OF FURTHER DOCUMENTS

In order to complete implementation of the provisions of this Agreement, it may be necessary for Metro, Metro ERC, City, and ERC 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 24

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 25

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

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statement or course of conduct of any officer, employee, or agent of the party purporting to modify this Agreement.

APPROVED AS TO FORM

Alfred L. Rogers
by *R. S. Cooper, Jr., Deputy*
City Attorney
CITY ATTORNEY

CITY OF PORTLAND

By: *J. E. Bud Clark*
J. E. Bud Clark, Mayor

By: *Mike Lindberg*
Mike Lindberg, Commissioner
of Public Affairs

By: *Barbara Clark*
Barbara Clark, Auditor

APPROVED AS TO FORM:

D. O. Blagoev
Metro General Counsel

METROPOLITAN SERVICE DISTRICT

By: *Rena Cusma*
Rena Cusma,
Executive Officer

APPROVED AS TO FORM:
APPROVED AS TO FORM

Alfred L. Rogers
by *R. S. Cooper, Jr., Deputy*
CITY ATTORNEY

EXPOSITION-RECREATION
COMMISSION

By: *Mitzi Scott*
Mitzi Scott, Chairperson

EXHIBIT A
BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 89-325A
METRO CODE REGARDING THE)	
METROPOLITAN EXPOSITION-RECREATION	)	Introduced by Rena Cusma,
COMMISSION	)	Executive Officer

1. Metro Code Section 6.01.030 is amended to read as follows:

"6.01.030 Commission Created: There is hereby created a Metropolitan Exposition-Recreation Commission consisting of seven (7) members. All members shall be residents of the District. One of the members shall be appointed by the Executive Officer to be the initial chairperson of the Commission. The Commission members shall be appointed as follows:

"(a) Members of the Commission shall be appointed by the Executive Officer [~~after-consulting-with-the-governing-bodies-of the-city-of-Portland,-Clackamas-County,-Multnomah-County,-Washington-County-and-any-other-city-within-the-District---~~All appointments-shall-be] and confirmed by a majority of the members of the Council[~~---All-members-shall-reside-within-the-District-~~] in accordance with the following procedures:

"(1) Nomination Process. The Executive Officer will accept nominations to the Metropolitan Exposition-Recreation Commission as follows:

"(A) The County Commissions of Clackamas, Multnomah and Washington counties each shall nominate one (1) candidate. The candidates

must be residents of the District and the nominating county.

"(B) The City Council of the City of Portland shall nominate one (1) candidate for each of two (2) positions. The candidates must be residents of the District and the City of Portland.

"(C) Two (2) nominees shall be at the sole discretion of the Executive Officer. The candidates must be residents of the District.

"(2) Appointment Process. The Executive Officer shall, upon concurring in the nominations received from the County Commissions of Clackamas, Multnomah and Washington counties or the City Council of the City of Portland, transmit the names of the persons so nominated to the Council of the Metropolitan Service District as appointments for confirmation. In addition, the Executive Officer shall transmit two (2) additional names as appointments for confirmation.

"For those positions on the Commission which are subject to nomination by a local governmental body, the Executive Officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro Council for confirmation. If the Executive Officer fails to concur with any candidate so nominated by a local government,

the Executive Officer shall so notify the Jurisdiction which shall then nominate another candidate. This process shall continue until such time as the Executive Officer agrees to transmit the name of the individual nominated by the local government. If an appointment submitted to the Council for confirmation as a result of this process is rejected by the Council, the Executive Officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the Executive Officer to the Council for confirmation and has been confirmed.

"If the Council fails to confirm an appointment made at the sole discretion of the Executive Officer, the Executive Officer may submit the name of another person for confirmation by the Council.

"(b) Of the initial appointments, one (1) shall be for a one (1) year term; two (2) shall be for a two (2) year term: two (2) shall be for a three (3) year term; and two (2) including the chairperson shall be for a four (4) year term. Thereafter appointments shall be for a four (4) year term.

"(c) Provided further that the initial terms of members shall expire on the fifteenth (15th) day of January closest to the appropriate anniversary of the appointment.

"(d) Of the initial appointments, the Executive Officer shall designate one (1) member as the initial chairperson to hold that position for a four (4) year term. If a vacancy occurs before the end of the term, the Executive Officer shall appoint a new chairperson to complete the unexpired term in the same manner as in the case of the member whose term was not completed.

"(e) A vacancy shall occur from the death, resignation, failure to continue residency within the District and in the case of members nominated by a local government residency within the boundaries of the nominating government, or inability to serve of any member or from the removal of a member by the Executive for just cause, subject to approval of the removal by a majority of the members of the Council.

"(f) Vacancies shall be filled pursuant to the procedure governing the initial appointment of members. Vacancies in a position originally filled by a member nominated by a local government pursuant to this section or pursuant to Metro Executive Order No. 36 shall be filled by the nomination appointment and confirmation process provided for in this section so that five (5) members of the Commission shall be the nominees of the four local government bodies as specified herein.

"(g) No person who is elected to a public office, or appointed to fill a vacancy in a public office, shall be eligible to serve.

"(h) The Commission may adopt its own rules of organization and procedure and except as provided for the appointment of the

initial chairperson in subsection (c) above, may elect its own officers for such terms and with such duties and powers necessary for the performance of the functions of such offices as the Commission determines appropriate."

2. Metro Code Section 2.04.035 is amended to read as follows:

"2.04.035 Metropolitan Exposition-Recreation Commission: The Metropolitan Exposition-Recreation Commission shall have authority to enter into contracts pursuant to Metro Code Section 6.01.04(j); provided, however, that prior to the adoption of the contracting rules by the Commission such purchases shall be made pursuant to the procedures and policies set forth in this chapter; and provided further that the Metropolitan Service District Contract Review Board created pursuant to Section 2.04.020 of this code shall be the local Contract Review Board for the Commission for the purpose of granting exemptions from competitive bidding or other requirements of public contract law. Notwithstanding any provision of this chapter to the contrary the Metropolitan Exposition-Recreation Commission may without the prior approval of the Executive Officer enter into contracts in any amount in accordance with its own contracting rules adopted pursuant to the authority contained in Section 6.01.040(j). No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget. The Metropolitan Exposition-Recreation Commission shall file copies

of all contracts and amendments thereto with the Department of Finance & Administration."

3. Metro Code Section 2.02.010 is amended to read as follows:

"2.02.010 Administration of the Rules: Except as provided in subsection (d) below the Executive Officer shall be responsible for:

(a) administering or delegating the administration of all the provisions of this chapter; and (b) reviewing and recommending to the Council necessary changes to this chapter;

(c) publishing a Personnel Procedures Manual to implement the provisions of this chapter;

(d) Until such time as the Metropolitan Exposition-Recreation Commission adopts personnel rules pursuant to the authority granted by Section 6.01.040(h) the Commission shall be responsible for the administration of these Personnel Rules for employees of the Commission. After the adoption of such rules by the Commission, the Commission shall administer its personnel system in accordance with its duly adopted personnel rules notwithstanding any provision of this chapter to the contrary. For this purpose the authority and duties of the Executive Officer referred to in this chapter shall reside with the Commission."

4. The Metro Council authorizes the Executive Officer to execute 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 attached hereto as modified from the Agreement approved
by the Metro Council on November 21, 1989.

DBC/gl
89-325A.ord

- * Authorize execution of 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. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In January 1985, the City of Portland (City), Metropolitan Service District (Metro), and Clackamas, Multnomah, and Washington Counties, established the Committee on Regional Convention, Trade, and Spectator Facilities (CTS Committee) consisting of public and private representatives.
2. In May 1986, the CTS Committee adopted recommendations regarding regional convention, trade, and spectator facilities.
3. The CTS recommendations called for Metro to establish a regional commission under ORS Chapter 268 for the planning, development, promotion, operation, and management of the region's convention, trade, and spectator facilities and for the City and Multnomah County to transfer responsibility for operating their regional convention, trade, and spectator facilities to the regional commission.
4. In May 1986, the City, by Resolution No. 34110, found that Metro should be responsible for the planning, development, promotion, operation, and management of the region's public convention, trade show, and spectator facilities and resolved that the City work with Metro to develop a plan for the transfer of the City Exposition-Recreation Commission's (ERC) functions and responsibilities to a regional commission to be established by Metro, with the transfer to be completed by the date of opening of the Oregon Convention Center.
5. In November 1986, the voters of the Metropolitan Service District approved the sale of \$65,000,000 in General Obligation Bonds to assist in financing construction of the Oregon Convention Center; the 1987 and 1989 sessions of the Oregon Legislature authorized \$15,000,000 from State Economic Development Funds to assist in financing construction; and the City through a Local Improvement District has secured an additional \$5,000,000 to assist in financing construction.
6. The Metro Council on October 22, 1987, adopted Metro Ordinance No. 87-225 which created the Metropolitan Exposition-Recreation Commission (Metro ERC) with powers and duties substantially similar to the ERC for the purpose of maintaining and operating metropolitan convention, trade, and spectator facilities.

7. The Oregon Convention Center is scheduled to open in the Fall of 1990.
8. The City and Metro have been involved in extensive negotiations regarding consolidation of City and Metro convention, trade, spectator, and performing arts facilities.
9. The negotiating process produced a Memorandum of Understanding approved by the Metro Council and the City Council which stated proposed principles to govern an initial phase of consolidation; which expressed the intention of the City and Metro to approve a formal consolidation agreement consistent with those principles; and which anticipated that the formal consolidation agreement would be prepared and approved as soon as possible.
10. The negotiating process now has produced a formal consolidation agreement implementing the Memorandum of Understanding.

NOW, THEREFORE, the Council directs:

- a. The Mayor, Commissioner of Public Affairs, and Auditor are authorized to execute an Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by City of Portland and the Metropolitan Service District substantially similar in form to that attached hereto as Exhibit "A," provided that they shall not execute the Agreement until the Metropolitan Exposition-Recreation Commission has adopted a resolution making the following commitment:

"From January 4 through June 30, 1990, the unrepresented employees shall continue to participate in the City's benefits program. Thereafter, the Metropolitan Exposition-Recreation Commission shall provide to the unrepresented employees a total compensation package (combined wages and benefits) of not less value than the combined value to the employees of (1) the wages payable by the Metro ERC to the transferred employees as of the date of transfer plus any cost of living increases provided by the Metro ERC as of July 1, 1990 and (2) the benefits provided by the City to its employees as of July 1, 1990, all subject to the Metro ERC's authority to modify the compensation package as appropriate for periods beginning July 1, 1991 and thereafter."

ORDINANCE No.

-3-

Section 2. The Council declares that an emergency exists in that it is desirable that the first consolidation steps occur January 4, 1990; therefore, this ordinance shall be in full force and effect on its passage by the Council

Passed by the Council, DEC 14 1989

Commissioner Mike Lindberg
Kathleen Johnson-Kuhn:bj
December 3, 1989

BARBARA CLARK
Auditor of the City of Portland

By *Mary Hanaga* Deputy

CONVENTION, ZOO & VISITORS
FACILITIES COMMITTEE REPORT

RESOLUTION NO. 89-1170, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND TO CONSOLIDATE REGIONAL CONVENTION, TRADE, SPECTATOR AND PERFORMING ARTS FACILITIES PRESENTLY OWNED AND OPERATED BY THE CITY OF PORTLAND AND THE METROPOLITAN SERVICE DISTRICT

Date: November 16, 1989

Presented By: Councilor Knowles

COMMITTEE RECOMMENDATION: At the November 15, 1989, Convention, Zoo & Visitors Facilities Committee meeting, members voted 3 to 1 to recommend Council adoption of Resolution No. 89-1170. Councilors DeJardin, McFarland and myself voted in favor of the resolution; Councilor Van Bergen dissented. Councilor Buchanan was excused.

COMMITTEE DISCUSSION/ISSUES: Consideration of Resolution No. 89-1170, which approves execution of a Phase I Consolidation Agreement with the City of Portland, began with public testimony from Richard Ares, Metro Exposition-Recreation Commission (Metro ERC), and Mitzi Scott, Metro ERC and City of Portland ERC (ERC). Mr. Ares and Ms. Scott both noted their strong support for the consolidation agreement. Citing negative competition in Seattle where a single entity does not coordinate the visitor facilities, Ms. Scott said it was important to get Phase I consolidation underway and recognize the greater economic good for the region. No additional public testimony was presented, but the Committee invited representatives and staff from the Convention Center Project, Metro ERC and ERC to contribute to the ensuing discussion.

The Committee reviewed Draft #4 A of the Agreement section by section. General Counsel Dan Cooper highlighted technical changes from the Committee agenda packet draft and addressed Council staff questions in their November 14 memo. At the outset, Mr. Cooper emphasized all restrictions on Metro under the Agreement will only be in force for the term of this Phase I consolidation. Summarized below is the Committee's review of the Agreement, Draft #4 A:

1. OPENING (p. 1): General Counsel clarified the ERC has to sign the agreement due to its standing under the City Charter but it is not necessary for the Metro ERC to be a signatory. In response to a question from Council Knowles, Mr. Cooper agreed that possibly if the Metro ERC signed, any termination process could potentially be hindered.
2. RECITALS (pp. 1-2): No issues, no discussion.
3. DEFINITIONS (pp. 3-4): General Counsel noted Draft #4 A clarified the facilities definitions.
4. SECTION 2, TRANSFER OF OPERATIONS AND MANAGEMENT OF ERC FACILITIES TO THE METRO ERC (pp. 5-6): General Counsel said subsection A's last sentence was added to ensure all current ERC resolutions would remain in force under consolidation, unless otherwise duly repealed or superseded by any Metro ERC actions. Regarding the proposed ordinance and Metro ERC personnel policies, Mr. Cooper

clarified the ordinance language makes the Metro Code consistent with the City ERC provisions. The ordinance does not negate the Metro ERC's current personnel policies. Additionally, Mr. Cooper noted City approval authority for Metro to amend Metro Code Chapter 6.01 responds to the Memorandum of Understanding (MOU) provision addressing Metro ERC autonomy. No additional issues or questions were raised.

5. SECTION 3, REAL PROPERTY (pp. 6-10): At General Counsel's request, the Committee reconvened under Executive Session (per authority of ORS 192.660 (1)(h)) to discuss the references in the agreement to potential litigation. Regarding covering audit costs, Mr. Cooper said ERC facility funds could appropriately be used for this expense. No additional issues or questions were raised.
6. SECTION 4, PERSONNEL (pp. 10-11): At the Committee's request, Mr. Cooper reviewed this section but members did not raise any concerns or questions.
7. SECTION 5, CONTRACTS (pp. 11-12): Mr. Cooper explained the contract language, noting "non-assignable" contracts had not been identified but subsection B provided language to protect Metro in case assignment of a contract was disputed by a third party.
8. SECTION 6, BUDGET APPROVAL FOR METRO ERC (pp. 12-16): The Committee discussed the City's budget approval process. General Counsel verified the City's approval authority is limited to the ERC Facilities' sub-budgets. No changes were recommended on the approval timelines. The section's description of Metro ERC submitting a proposed budget to the Executive Officer by February 1 does not supersede the Commission's obligation to observe Metro's established budget timelines and procedures. No additional questions or issues were raised.
9. SECTION 7, MONEY TRANSFERS, ACCOUNTING, AUDITING AND INTERIM BUDGETS (pp. 17-21): No issues were identified; General Counsel said subsection D, sentences 2 and 3 were amended to show that any audit adjustment payments would be refunded to the appropriate body -- the City or the ERC.
10. SECTION 8, CENTRAL SERVICES AND OVERHEAD CHARGES (pp. 21-23): General Counsel stressed "overhead" in the agreement refers only to Metro's general government costs of the Council and the Executive. The agreement restricts Metro charging overhead costs to the Metro ERC (under the current cost allocation plan transfer system) to FY89-90 and FY90-91. After FY90-91, it is expected the overhead charge system will end because excise tax revenues will cover the general government costs. If no excise tax is established, Metro could not charge overhead costs to the Metro ERC without City approval. Central service support costs will continue to be paid based on actual use. Mr. Cooper agreed to discuss clearer language with the City's negotiator, Chris Thomas.

11. SECTION 9, METRO EXCISE TAX (pp. 23-24): Mr. Cooper clarified the agreement does not restrict Metro from imposing an excise tax on the ERC facilities but Metro would have to get City approval to use those revenues for Metro ERC overhead costs. The subsection C limitation provides for any ERC facilities' excise tax revenues to be budgeted for Metro ERC use. However, Metro could impose an excise tax on the Convention Center and use those revenues for any purpose without City approval. Based on Mr. Cooper's clarification, the Committee did not identify any problems or concerns with the provisions. It was agreed Mr. Cooper should discuss possible clearer language with Mr. Thomas.
12. SECTION 10, INDEMNIFICATION (pp. 24-26): No issues were identified; Mr. Cooper pointed out the section was amended to maintain full City responsibility until July 1, 1990, consistent with their fiscal obligation.
13. SECTION 11, INSURANCE (pp. 26-28): City ERC funds will be available to cover all described insurance costs, including the property insurance provisions.
14. SECTION 12, PCPA ADVISORY COMMITTEE (pp. 28): The Committee discussed some concern over the PCPA Advisory Committee becoming a more formally institutionalized organization requiring staff and other resources. However, it was noted the Committee does not have any decision-making authority; it's capacity is advisory.
15. SECTION 13, ERC FACILITIES-RELATED BOND AND OTHER CAPITAL PAYMENTS (pp. 28-29): No issues identified; no questions raised.
16. SECTION 14, RECORDS (pp. 29-30): General Counsel noted language regarding destruction of records is unnecessary because it is covered by State law.
17. SECTION 15, DISPUTE RESOLUTION (pp. 30-31): Mr. Cooper explained the Dispute Resolution Committee's only potential work would be to address the nature of consolidation following Phase I. Any substantive points of contention -- financing, City approvals, "good faith efforts" -- are covered under potential termination proceedings which require Metro Council and City Council approval. Given the limited scope of the Dispute Resolution Committee's purview, the Committee's size and composition were deemed appropriate.
18. SECTION 16, REMEDIES (pp. 31-32): This section means the City and Metro can sue each other to the extent of applicable laws.
19. SECTION 17, FURTHER CONSOLIDATION (pp. 32-33): General Counsel pointed out the language was intentionally left very general to allow Metro and the City to set parameters and develop options as Phase I consolidation evolved. It was agreed until a regional funding strategy emerged, Phase II consolidation would not be possible.

20. SECTION 18, TERMINATION (pp. 34-38): The technical correction of "City County" to "City Council" is done in Draft #4 A. General Counsel concurred with the staff report regarding specifying City actions and agreed to discuss this amendment with Chris Thomas. Mr. Cooper explained the different termination timelines reflected Portland's more difficult and time-consuming task in re-activating the City ERC should termination occur. The Committee concurred with this assessment and no additional issues were raised.
21. SECTION 19, AUTHORITY TO MAKE DECISIONS (pp. 32-40): No issues identified or discussed.
22. SECTION 20, ASSIGNMENT AND TRANSFER (pp. 40-41): No issues identified or discussed.
23. SECTION 21, ATTORNEYS' FEES (p. 41): No issues identified or discussed.
24. SECTION 22, NOTICE (pp. 41-42): To ensure complete communication, Mr. Cooper will check with Mr. Thomas about adding language to have notice copies sent to the Commissioner in Charge and the Metro Council.

NO QUESTIONS OR DISCUSSION OCCURRED ON THE REMAINING SECTIONS --
23 - EXECUTION OF FURTHER DOCUMENTS, 24 - WAIVERS, 25 - ENTIRE
AGREEMENT.

The Committee discussed consolidation further. Councilor Van Bergen explained, although the agreement was well written and carefully covers all concerns; he would not support it because he believes his Metro subdistrict would not support a regional consolidation funding strategy. Councilor McFarland noted she could understand Councilor Van Bergen's position and its application to East Multnomah County residents. While supporting the agreement at the Committee level, she explained her vote at the full Council may change pending further consideration.

Discussion referred back to the draft ordinance under Section 2, subsection B and the separate approval process which Council will follow to enact it. The issue was raised if the Council approves the agreement (by adopting Resolution No. 89-1170 at the November 21, 1989 meeting), the ordinance as currently drafted will be approved as Exhibit A. When taking up the ordinance separately to adopt it as part of the Metro Code, the Council will not be able to amend the ordinance in any fashion without City approval. It was noted Councilor Gardner asked Council staff about the possibility of including "sunset" language in the ordinance to ensure it would discontinue upon agreement termination. If the Council desires to amend the ordinance, revisions need to be made now as a part of the agreement.

General Counsel Cooper will meet with Chris Thomas to review Committee and City comments and they will prepare a final, marked-up copy for the Metro Council meeting November 21, 1989.

EXHIBIT A

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 89-325
METRO CODE REGARDING THE)	
METROPOLITAN EXPOSITION-RECREATION	)	Introduced by Rena Cusma,
COMMISSION	)	Executive Officer

1. Metro Code Section 6.01.030 is amended to read as follows:

"6.01.030 Commission Created: There is hereby created a Metropolitan Exposition-Recreation Commission consisting of seven (7) members. All members shall be residents of the District. One of the members shall be appointed by the Executive Officer to be the initial chairperson of the Commission. The Commission members shall be appointed as follows:

"(a) Members of the Commission shall be appointed by the Executive Officer [~~after consulting with the governing bodies of the City of Portland, Clackamas County, Multnomah County, Washington County and any other city within the District.~~ All appointments shall be] and confirmed by a majority of the members of the Council[~~---All members shall reside within the District.~~]
in accordance with the following procedures:

"(1) Nomination Process. The Executive Officer will accept nominations to the Metropolitan Exposition-Recreation Commission as follows:

"(A) The County Commissions of Clackamas, Multnomah and Washington counties each shall nominate one (1) candidate. The candidates

must be residents of the District and the nominating county.

"(B) The City Council of the City of Portland shall nominate one (1) candidate for each of two (2) positions. The candidates must be residents of the District and the City of Portland.

"(C) Two (2) nominees shall be at the sole discretion of the Executive Officer. The candidates must be residents of the District.

"(2) Appointment Process. The Executive Officer shall, upon concurring in the nominations received from the County Commissions of Clackamas, Multnomah and Washington counties or the City Council of the City of Portland, transmit the names of the persons so nominated to the Council of the Metropolitan Service District as appointments for confirmation. In addition, the Executive Officer shall transmit two (2) additional names as appointments for confirmation.

"For those positions on the Commission which are subject to nomination by a local governmental body, the Executive Officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro Council for confirmation. If the Executive Officer fails to concur with any candidate so nominated by a local government,

the Executive Officer shall so notify the Jurisdiction which shall then nominate another candidate. This process shall continue until such time as the Executive Officer agrees to transmit the name of the individual nominated by the local government. If an appointment submitted to the Council for confirmation as a result of this process is rejected by the Council, the Executive Officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the Executive Officer to the Council for confirmation and has been confirmed.

"If the Council fails to confirm an appointment made at the sole discretion of the Executive Officer, the Executive Officer may submit the name of another person for confirmation by the Council.

"(b) Of the initial appointments, one (1) shall be for a one (1) year term; two (2) shall be for a two (2) year term; two (2) shall be for a three (3) year term; and two (2) including the chairperson shall be for a four (4) year term. Thereafter appointments shall be for a four (4) year term.

"(c) Provided further that the initial terms of members shall expire on the fifteenth (15th) day of January closest to the appropriate anniversary of the appointment.

"(d) Of the initial appointments, the Executive Officer shall designate one (1) member as the initial chairperson to hold that position for a four (4) year term. If a vacancy occurs before the end of the term, the Executive Officer shall appoint a new chairperson to complete the unexpired term in the same manner as in the case of the member whose term was not completed.

"(e) A vacancy shall occur from the death, resignation, failure to continue residency within the District and in the case of members nominated by a local government residency within the boundaries of the nominating government, or inability to serve of any member or from the removal of a member by the Executive for just cause, subject to approval of the removal by a majority of the members of the Council.

"(f) Vacancies shall be filled pursuant to the procedure governing the initial appointment of members. Vacancies in a position originally filled by a member nominated by a local government pursuant to this section or pursuant to Metro Executive Order No. 36 shall be filled by the nomination appointment and confirmation process provided for in this section so that five (5) members of the Commission shall be the nominees of the four local government bodies as specified herein.

"(g) No person who is elected to a public office, or appointed to fill a vacancy in a public office, shall be eligible to serve.

"(h) The Commission may adopt its own rules of organization and procedure and except as provided for the appointment of the

initial chairperson in subsection (c) above, may elect its own officers for such terms and with such duties and powers necessary for the performance of the functions of such offices as the Commission determines appropriate."

2. Metro Code Section 2.04.035 is amended to read as follows:

"2.04.035 Metropolitan Exposition-Recreation Commission: The Metropolitan Exposition-Recreation Commission shall have authority to enter into contracts pursuant to Metro Code Section 6.01.04(j); provided, however, that prior to the adoption of the contracting rules by the Commission such purchases shall be made pursuant to the procedures and policies set forth in this chapter; and provided further that the Metropolitan Service District Contract Review Board created pursuant to Section 2.04.020 of this code shall be the local Contract Review Board for the Commission for the purpose of granting exemptions from competitive bidding or other requirements of public contract law. Notwithstanding any provision of this chapter to the contrary the Metropolitan Exposition-Recreation Commission may without the prior approval of the Executive Officer enter into contracts in any amount in accordance with its own contracting rules adopted pursuant to the authority contained in Section 6.01.040(j). No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget. The Metropolitan Exposition-Recreation Commission shall file copies

of all contracts and amendments thereto with the Department of Finance & Administration."

3. Metro Code Section 2.02.010 is amended to read as follows:

"2.02.010 Administration of the Rules: Except as provided in subsection (d) below the Executive Officer shall be responsible for:

(a) administering or delegating the administration of all the provisions of this chapter; and (b) reviewing and recommending to the Council necessary changes to this chapter;

(c) publishing a Personnel Procedures Manual to implement the provisions of this chapter;

(d) Until such time as the Metropolitan Exposition-Recreation Commission adopts personnel rules pursuant to the authority granted by Section 6.01.040(h) the Commission shall be responsible for the administration of these Personnel Rules for employees of the Commission. After the adoption of such rules by the Commission, the Commission shall administer its personnel system in accordance with its duly adopted personnel rules notwithstanding any provision of this chapter to the contrary. For this purpose the authority and duties of the Executive Officer referred to in this chapter shall reside with the Commission."

DBC/gl
601030.amd

DRAFT #4 A
November 15, 1989

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, dated as of December 1, 1989, is between the City of Portland, Oregon (City); and the Metropolitan Service District (Metro); and the City of Portland Exposition-Recreation Commission (ERC).

RECITALS:

1. In January 1985, the City, Metro, and Clackamas, Multnomah, and Washington counties established the Committee on Regional Convention, Trade, and Spectator Facilities (CTS Committee) consisting of public and private representatives.

2. In May 1986, the CTS Committee adopted recommendations regarding regional convention, trade, and spectator facilities.

3. The CTS recommendations called for Metro to establish a regional commission under ORS Chapter 268 for the planning, development, promotion, operation, and management of the region's convention, trade, and spectator facilities and for the City and Multnomah County to transfer responsibility for operating their regional convention, trade, and spectator facilities to the regional commission.

4. In May 1986, the City, by Resolution No. 34110, found that Metro should be responsible for the planning, development, promotion, operation, and management of the region's public convention, trade show, and spectator facilities and resolved that the City work with Metro to develop a plan for the transfer of the ERC's functions and responsibilities to a regional commission to be established by Metro, with the transfer to be completed by the date of opening of the Oregon Convention Center.

5. In November 1986 the voters of the Metropolitan Service District approved the sale of \$65,000,000 in General

Obligation bonds to assist in financing construction of the Oregon Convention Center; the 1987 and 1989 sessions of the Oregon Legislature authorized \$15,000,000 from State Economic Development Funds to assist in financing construction; and the City of Portland through a Local Improvement District has secured an additional \$5,000,000 to assist in financing construction.

6. The Metro Council on October 22, 1987, adopted Metro Ordinance No. 87-225 which created the Metropolitan Exposition-Recreation Commission with powers and duties substantially similar to the City Exposition-Recreation Commission for the purpose of maintaining and operating metropolitan convention, trade, and spectator facilities.

7. The Oregon Convention Center is scheduled to open in the fall of 1990.

8. The City and Metro have been involved in extensive negotiations regarding consolidation of City and Metro convention, trade, spectator, and performing arts facilities.

9. The negotiating process produced a Memorandum of Understanding which stated proposed principles to govern an initial phase of consolidation; which expressed the intention of the City and Metro to approve a formal consolidation agreement consistent with those principles; and which anticipated that the formal consolidation agreement would be prepared and approved as soon as possible.

10. The Metro Council and the City Council approved the Memorandum of Understanding.

11. This Agreement has been prepared to implement the Memorandum of Understanding.

SECTION 1

DEFINITIONS

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

"City" means the City of Portland, Oregon.

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

"Coliseum" means the Portland Memorial Coliseum complex.

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

"Convention Center" means the Oregon Convention Center.

"ERC" means the City Exposition-Recreation Commission.

"ERC Facilities" means the Coliseum, PCPA, and the Stadium.

Modified
"Facilities" means the ERC Facilities, the Oregon Convention Center and other regional convention, trade, or spectator facilities. *added*

"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.

"Metro ERC Facilities" means the Oregon Convention Center and other future Facilities owned by Metro and operated by Metro ERC.

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

added
"Other Facilities" means present and future regional convention, trade, or spectator facilities within the Metro district other than the ERC Facilities and Metro ERC. *included facilities not owned by PDt. added*

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

"Stadium" means the Portland Civic Stadium.

SECTION 2

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

- A. Subject to the terms and conditions contained in this Agreement City hereby transfers to Metro and Metro hereby accepts responsibility for operation and management of the ERC Facilities effective as of January 1, 1990. Metro agrees that authority and responsibility for operation and management of the ERC Facilities is hereby delegated to Metro ERC. All duly adopted resolutions of the ERC in force and effect on December 31, 1989, shall remain in force and effect until superseded or repealed by resolutions duly adopted by the Metro ERC. *mean*
- B. The power and authority of Metro ERC has been created by Metro pursuant to the provisions of ORS 268.395 and 268.400. Chapter 6.01 of the Metro Code sets forth the power, authority and duties of Metro ERC. Metro agrees to adopt the amendments to Metro Code Sections 6.01.030, 2.04.035, and 1.01.010 attached hereto as Exhibit "A." The parties agree that the continued existence of Metro ERC with the power, authority, and duties it will possess under Metro Code Chapter 6.01 as amended are an essential element to the City's willingness to transfer operation and management control of the ERC Facilities to Metro. The parties also 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 obtaining City's prior approval pursuant to Section 19 of this Agreement.

- C. Except as expressly provided otherwise, the provisions of this Agreement shall be effective as of January 1, 1990, and shall be effective only during the term of this Agreement.

SECTION 3

REAL PROPERTY

- A. City and ERC hereby transfer to Metro the right to beneficial use of all real property comprising the ERC Facilities. City and ERC shall retain beneficial ownership of all real property comprising ERC Facilities. City and ERC shall not take any action with regard to the real property comprising the ERC Facilities that would interfere with management and operation of the ERC Facilities. Metro shall not take any action with regard to the real property comprising the ERC Facilities that would affect or encumber the title to the property.
- B. City, either directly or through ERC, owns certain rights to use real property subject to restrictions and therefore City and ERC have 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 1, 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 1, 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 1, 1990, to exercise all of City's rights under the MAC Deed except that Metro shall not cease the use of, sell, or otherwise dispose 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.

- C. Personal Property. City or ERC if then in existence, otherwise City, shall be the owner of all ERC Facilities-related personal property owned by City or ERC as of December 31, 1989, and also of all capitalized personal property acquired thereafter by Metro ERC using ERC Facilities-related funds. Metro and Metro ERC shall have the right to beneficial use thereof. Metro ERC 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 ERC from disposing of property in the ordinary course of business or from

acquiring title to personal property using both ERC and Metro ERC Facilities-related funds that is of common benefit to ERC and Metro ERC Facilities.

D. Acquisition of Real Property. Prior to acquiring any real property with ERC Facilities-related funds, Metro and Metro ERC shall identify resources and appropriations for the acquisition in the annual or supplemental or amended budget for Metro ERC subject to City approval as provided for in Section 6 of this Agreement. As of January 1, 1990, Metro and Metro ERC hereby are designated, to the extent City and ERC have authority to so designate, as successors in interest to City and ERC in any contract or legal proceeding for the acquisition of real property initiated prior thereto by City or ERC for the benefit of the ERC Facilities. Title to any and all real property acquired by Metro or Metro ERC with ERC Facilities-related funds shall be taken in the name of City or ERC as appropriate. Any disposition of City - or ERC-owned real property shall be subject to the same requirements as apply to dispositions of other City property.

E. Audit of Property Records. On or before January 1, 1990, or as soon as practicable thereafter, Metro and Metro ERC shall undertake an audit of all personal and real property possessed by ERC and all records related thereto. The audit shall be the basis for identifying all property for which Metro shall assume responsibility hereunder.

SECTION 4

PERSONNEL

- A. The City and Metro agree that all employees presently employed by ERC will be transferred to Metro ERC and will become employees of Metro ERC as provided for herein.
- B. Transfer of Represented Employees. On January 1, 1990, ERC shall transfer all of its employees represented by labor unions to Metro ERC. Thereafter, Metro ERC shall recognize 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 1, 1990, ERC shall transfer all of its unrepresented employees to Metro ERC.
- D. Employees' Statutory Rights. On and after January 1, 1990, Metro ERC shall assure that all ERC employees as of December 31, 1989, are 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 hereby assigns to Metro ERC, and Metro on behalf of Metro ERC hereby accepts assignment of, all collective bargaining agreements to which ERC is a party, effective as of January 1, 1990. Metro ERC shall conduct such impact bargaining with affected unions as is appropriate and necessary under applicable law.

SECTION 5

CONTRACTS

- A. Assignable ERC Contracts. ERC hereby assigns to Metro ERC all contracts to which ERC is a party and which are assignable without the consent of other parties, effective as of July 1, 1990. From January 1, 1990 through June 30, 1990, these contracts shall be subject to the management and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 1, 1990.
- B. Other ERC Contracts. ERC hereby assigns to Metro ERC each contract to which ERC is a party, the assignment to be effective on July 1, 1990, or on obtaining the consent of the other parties to the contract, whichever occurs later. From January 1, 1990, through the effective date of the assignment, these contracts shall be subject to the management and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 1, 1990.

SECTION 6

BUDGET APPROVAL FOR METRO ERC

- A. For fiscal years commencing on or after July 1, 1990, Metro ERC's annual budget shall be subject to City and Metro approval and shall be included in the overall Metro budget for submission to the Tax Supervision and Conservation

Commission. City's right to approve or disapprove the Metro ERC budget shall be applicable only to the sub-budgets for the ERC Facilities.

B. Metro ERC Budget Process. All Metro ERC budgets and supplemental and amended budgets will be part of the Metro budget and will be subject by law to the budget procedures governing Metro. In addition, the Metro ERC budget and supplemental and amended budgets shall be subject to the approval of City to the extent described in Subsection A of this Section. In order to carry out successful budget procedures, with Metro and City both approving the same budget, it will be necessary that there be a high degree of cooperation among Metro, City, and Metro ERC in the budget process. Therefore Metro ERC and Metro shall make every reasonable effort to inform City of and provide the opportunity for City review of and participation in the Metro ERC budget development and review process. Concomitantly, City shall make every reasonable effort to participate in that process. These efforts shall be made with a view to identifying and resolving conflicts early in the budget process in order to avoid surprises or unresolved disputes at the end of the process. In order to achieve this objective, the process for City review of the Metro ERC budget shall be as follows:

1. On or before February 1 of each year, Metro ERC shall provide to the Metro Executive Officer the

proposed Metro ERC budget for the next fiscal year. The Metro Executive Officer shall transmit the proposed Metro ERC budget to the Commissioner in Charge and to the City Auditor at the same time the proposed Metro budget is transmitted to the Metro Council.

2. Within forty-five (45) days of receipt of the proposed Metro ERC budget, City shall review and approve or disapprove by resolution adopted by the City Council the proposed Metro ERC budget for the next fiscal year. In the event of disapproval, the City Council shall state the reasons for disapproval, the portions of the proposed budget objected to, and proposed revisions that would meet City's approval. A failure by the City Council to act within forty-five (45) days of receipt shall be deemed an approval of the proposed Metro ERC budget.
3. In the event Metro revises a proposed Metro ERC budget following City approval, then the revised proposed budget shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposed budget. City review period shall be thirty (30) days from receipt of the revised proposed budget.

4. In the event Metro revises a proposed Metro ERC budget following City disapproval, but proposes revisions different than those proposed by City, then the revised proposed budget shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposed budget. The City review period shall be thirty (30) days from receipt of the revised proposed budget.
5. Any supplemental budget adopted by Metro for Metro ERC shall be subject to the same procedure as governs City review of a proposed annual Metro ERC budget.
6. Any budget amendment adopted by Metro for Metro ERC, except as part of a supplemental budget, shall be subject to the same procedure as governs City review of a proposed annual Metro ERC budget except that (a) the amendment shall be deemed approved unless the Commissioner in Charge notifies Metro within fifteen (15) days of receipt of the proposed amendment that City intends to review the amendment, and (b) if the Commissioner in Charge does so notify Metro then the amendment shall be deemed approved unless the City Council acts on it within thirty (30) days of receipt.

- C. Financial Reporting Requirements. Metro ERC shall provide to City, no less frequently than quarterly, regular financial reports showing the current status of revenues and expenditures of Metro ERC for the then current fiscal year. These reports shall be in no less detail than reports Metro ERC regularly prepares for its own and Metro's review.
- D. Metro ERC Management Services. It is Metro ERC'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 initial 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 if Metro ERC adopts a different management structure or allocation formula, shall be established as part of the Metro ERC annual budget and shall be subject to City's review and approval, which approval shall not be unreasonably withheld. City review and approval or disapproval shall be part of the budget review process and shall follow the procedures for budget review and approval set forth in Subsection B of this Section.

SECTION 7

MONEY TRANSFERS, ACCOUNTING, AUDITING AND INTERIM BUDGETS

A. Financial Transactions from January 1, 1990, to June 30, 1990. During the period from January 1, 1990, to June 30, 1990, ERC shall receive all ERC Facilities-related revenues, which shall be treated as ERC revenues for budget purposes; and ERC shall pay all ERC Facilities-related expenses, which shall be treated as ERC expenditures for budget purposes. During this period, all ERC Facilities-related financial transactions shall follow the procedures established therefor by this Subsection:

1. City shall process all duly authorized requests for payment received from Metro ERC related to ERC Facilities on forms to be provided by City including payroll and accounts payable, for payment from ERC funds in accord with current practice. Metro ERC shall transmit all funds received from operations of ERC Facilities to City for deposit into ERC funds in accord with current practice.
2. City shall maintain records of all fiscal transactions related to the ERC Facilities and shall transmit periodic reports thereof to Metro and Metro ERC at the same time it transmits its regular periodic reports to responsible City officials.

3. City shall make all required reports to and filings with federal and state agencies including the Internal Revenue Service related to the financial transactions carried out under this Subsection, on behalf of Metro, Metro ERC, City, and ERC. If City legally is unable to do this, it shall prepare sufficient information for Metro and Metro ERC to allow Metro to make the reports and filings in a timely manner.

B. General. On July 1, 1990, all moneys in the following ERC Funds shall be transferred by City to Metro for use by Metro ERC as provided herein:

Exposition-Recreation - Civic Stadium Fund

Exposition-Recreation - Memorial Coliseum Fund

Expo-Recreation - Performing Arts Fund

Performing Arts Center Construction Fund

C. Payables and Receivables. ERC hereby assigns to Metro ERC as of July 1, 1990, all ERC accounts receivable and other receivables existing as of that date or thereafter accruing. Metro ERC 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.

D. Adjustments Following Audit. On completion and acceptance by City of the portion of the official City outside audit


covering ERC for FY 1989-90, adjustment shall be made in the amounts transferred under Subsection (A) of this Section as indicated by the audit. In the event of excess transfers to Metro, Metro shall refund the amount of the excess to City or ERC as appropriate. In the event of deficient transfers to Metro, City or ERC as appropriate shall transfer the amount of the deficiency to Metro for use by Metro ERC as provided herein. City shall encourage its auditors to complete the portion of the audit covering ERC as quickly as possible.

- E. Treatment of Monies from January 1, 1990 through June 30, 1990. Pursuant to Subsection 7(A) of this Section, from January 1, 1990 through June 30, 1990, the collection of ERC Facilities revenues to be deposited into ERC funds and the payment of ERC Facilities expenditures from ERC funds shall be subject to the direction and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 1, 1990. During this period, revenues from and expenditures for the ERC Facilities shall be accounted for in the same way as is in effect immediately prior to January 1, 1990.
- F. Accounting Beginning July 1, 1990. Beginning July 1, 1990, Metro ERC may use any lawful and generally accepted municipal government accounting system for the ERC Facilities that Metro ERC and Metro deem appropriate

provided that Metro ERC shall account for revenues from and expenditures for the ERC Facilities on a per facility basis.

- G. 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 ERC Facilities. In addition, any net surplus from operation of the ERC Facilities shall be used only for the benefit of the ERC Facilities. The beginning balance in the Performing Arts Center Construction Fund shall be deposited into a separate account maintained by Metro ERC and 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 facilities shall be used only as determined by Metro.
- H. Event and Concession Bank Accounts. ERC maintains in its name bank accounts into which it deposits event- and concession-related revenues, from which it pays event- and concession-related expenses including amounts owing to ERC from the event sponsors and concessionaires, and from which it pays the balance after expenses to the event sponsors and

concessionaires. On January 1, 1990, ownership of the accounts shall be transferred to Metro ERC or the accounts may be closed and the account balances transferred to new accounts opened by Metro ERC or some comparable change may be made, as determined by Metro ERC. ERC shall execute whatever documents are necessary to accomplish the change. Following the change, Metro ERC shall make all payments for which the accounts are obligated. On or before January 1, 1990, or as soon as practicable thereafter, Metro and Metro ERC shall undertake an audit shall be conducted of such accounts to determine the condition thereof as of the effective date of transfer.



SECTION 8

CENTRAL SERVICES AND OVERHEAD CHARGES

- A. Metro Overhead Charges To Metro for Council and Executive Officer. Metro may charge Metro ERC overhead for Council and Executive Officer services as provided for herein during the first two (2) fiscal years that this Agreement is in effect (Fiscal Year 1989-90 and 1990-91. Thereafter, Metro shall no longer charge overhead for Council and Executive Officer services to any Facilities operated by Metro ERC including the Oregon Convention Center. The amount charged by Metro to Metro ERC in FY 1990-1991 for overhead for Council and Executive Officer services shall not exceed the current level of overhead charges for Council and Executive

Officer services set in the Metro FY 1989-90 budget for payment of such overhead charges by Metro ERC to Metro for operations of the Oregon Convention Center, which amount is \$23,577. Metro shall not charge an overhead charge to Metro ERC for Council and Executive Officer services for ERC Facilities for FY 1989-90 and shall not charge for FY 1990-91 in an amount in excess of the actual general fund overhead charge for City Council services imposed on ERC by City as set out in City's budget for FY 1989-90, which amount is \$14,641. Metro ERC shall not pass on to the ERC Facilities any Metro overhead charge for Metro Council and Executive Officer services in excess of the amounts charged to Metro ERC by Metro for ERC Facilities.

- B. Central Services and Central Services Charges. Nothing contained herein shall preclude Metro from charging Metro ERC for central services provided to Metro ERC by Metro, subject to City review and approval during the annual budget process pursuant to the procedure set out in Section 6(B) of this Agreement. Such charges shall not be increased in any fiscal year over the amount originally budgeted without prior review and approval of City pursuant to the same procedure as the procedure for supplemental budgets pursuant to Section 6(B) of this Agreement. The budget reviews under Section 6(B) of this Agreement shall include review of both the allocation of central services functions between Metro and Metro ERC and the charges therefor.

SECTION 9

METRO EXCISE TAX

A. General. 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 ERC Facilities.

B. Limitation: Overhead. Metro shall not directly or indirectly use revenues from excise taxes on persons using the ERC Facilities for purposes of funding Metro overhead charges to Metro ERC related to the ERC Facilities, except with the prior written consent of City, which consent shall not be unreasonably withheld.

C. Limitation: Use. Metro shall provide all revenues from excise taxes on persons using the ERC 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.

*could be more
specific*

SECTION 10

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 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 ERC Facilities.
2. Metro, to the maximum extent permitted by law, shall indemnify City, ERC, and their officers, employees, and agents against 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 ERC or Metro ERC Facilities.

3. The foregoing indemnification 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, ERC, 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 and ERC against 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 or any claim based on any contract or quasi-contractual relationship not defined as a tort claim

under ORS 30.260(8) no matter when the claim may have arisen. However, this agreement to indemnify and hold harmless is limited to payment of funds generated by the ERC Facilities or transferred to Metro by City and dedicated to the ERC 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.

SECTION 11

INSURANCE

During the term of this Agreement, Metro shall obtain and maintain insurance providing coverage for risks associated with operation of the ERC 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, ERC, and their officers, employees, and agents as additional named insureds.

In addition, in order to fully fund the existing coverage maintained by City through its Risk Management program for all tort claims and Workers' Compensation claims arising prior to July 1, 1990, City may charge ERC an additional sum of \$123,000. Such sum shall be deducted from the balance of the ERC funds to be transferred to Metro pursuant to Section 7.

- B. Property Insurance. Effective July 1, 1990, 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 ERC Facilities. Such policies shall include boiler and machinery coverage. City and ERC shall be named as additional named insureds for all policies providing coverage for ERC Facilities to the full extent of City's insurable interest.

SECTION 12

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 ERC for all PCPA matters. Metro ERC and Metro shall inform the Advisory Committee of and provide the opportunity for Advisory Committee review of and comment on all Metro ERC actions affecting the PCPA. Actions affecting the PCPA shall be deemed to include, without limitation, all Metro ERC 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 ERC shall provide reasonable staff assistance from staff assigned to PCPA to assist the Advisory Committee.

SECTION 13

ERC 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 14

RECORDS

- A. City and ERC Records. If requested by Metro ERC or Metro, City or ERC shall provide either the originals or copies of any records in its possession regarding the ERC 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 ERC or City, Metro or Metro ERC shall provide copies of any records in its possession regarding Metro ERC Facilities. The requesting party shall reimburse the provider for the reasonable costs of providing copies of the records, if billed by the provider.

SECTION 15

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 except for those disputes which are specified as grounds for termination of this Agreement pursuant to Section 18(C) of this Agreement.

SECTION 16

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 17

FURTHER CONSOLIDATION

- A. Term of Agreement. The term of this Agreement shall continue unless termination occurs as provided for in Section 18 of this Agreement, or until the parties hereto then in existence enter into an agreement for further consolidation of the ERC Facilities and functions under Metro ERC. The various provisions of this Agreement shall continue in effect only during the term of this Agreement,

except that the provisions governing termination and remedies shall survive termination.

- B. Consolidation. It is the intention of City and Metro to pursue further consolidation of the region's convention, trade, and spectator Facilities following execution of this Agreement. The parties intend that this further consolidation will take two forms.

First, the parties to this Agreement intend to provide for a more complete consolidation of the ERC Facilities under Metro ERC. This further consolidation of the ERC Facilities under Metro ERC will require further agreement by the parties. The parties agree to make a good faith effort to resolve all outstanding issues with the express intent to provide for further consolidation as soon after January 1, 1992, as possible.

Second, the parties to this Agreement agree that further consolidation may involve the consolidation under Metro ERC of Facilities operated by other local governments within the region including, but not limited to, the Multnomah County Exposition Center. This further consolidation also may include the construction of additional convention, trade, spectator, and performing arts facilities by Metro through Metro ERC or through other means and their consolidation under Metro ERC's operation, or the construction of new

facilities by other local governments in the region and their consolidation under Metro ERC's operation. Metro and Metro ERC shall have the lead role in such further consolidation efforts. City agrees to review and consider in good faith the approval of any Metro ERC budget item, Metro Code amendment, or amendment to this Agreement that is requested by Metro to assist Metro and Metro ERC in achieving such further consolidation, which approval shall not be unreasonably withheld.

SECTION 18

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 an agreement among the parties hereto then in existence for further consolidation of the ERC Facilities and functions under Metro ERC, then City or Metro on or after July 1, 1991, may by duly adopted resolution of its governing body initiate termination of this Agreement and thereafter give notice of termination. The termination shall be effective on the first July 1 that is at least six (6) months after the date of the notice. On the effective date of the termination,

the events described in Subsection (a) through (j) of Subsection D of this Section shall occur.

C. Termination for Cause.

1. This Agreement shall terminate if Metro shall amend Chapter 6.01 of the Metro Code without City's prior approval; or if Metro shall adopt a Metro ERC annual or supplemental or amended budget or increase a central service charge to Metro ERC chargeable to ERC Facilities during a fiscal year above the amount budgeted without City's prior approval; or if Metro shall violate the provisions of Sections 4(B), 7(F) or (G), or 8 of this Agreement without City's prior approval, all subject to the following procedures:

- a. City in its discretion shall elect to give Metro written notice, in a form approved by the City Council, specifying the action Metro has taken that triggers proceedings under this Subsection. The notice may specify a date on which termination shall occur, provided that the date specified must be no sooner than thirty (30) days from the date of receipt of the notice by Metro.
- b. Following receipt of the notice from City, Metro shall have thirty (30) days within which to rescind the action that City specified. In the absence of rescission, this Agreement shall terminate either thirty (30) days after receipt of

the notice by Metro or on the later date specified in the notice, whichever is later.

2. This Agreement shall terminate if City shall unreasonably withhold its approval of any action requested by Metro under Section 17(B) of this Agreement to assist Metro and Metro ERC in achieving consolidation of facilities operated by other governments within the region under Metro ERC's management and control, subject to the following procedures:

- a. Metro in its discretion shall elect to give City written notice, in a form approved by the Metro Executive Officer and the Metro Council, specifying the action requested as to which City unreasonably has withheld its approval, triggering proceedings under this Subsection.
- b. Following receipt of the notice from Metro, City shall have thirty (30) days within which to approve the action as to which Metro has requested approval. In the absence of approval, this Agreement shall terminate either ninety (90) days after receipt of the notice by City or on the July 1 next following, whichever is later.

- D. In the event of termination, subject to compliance with any statutory requirements, the following shall occur:

1. All revenues from and expenditures for ERC Facilities shall be treated as ERC revenues and expenditures;
2. All Metro ERC accounts receivable and other receivables related to ERC Facilities existing as of that date or thereafter accruing shall be assigned to ERC, and ERC shall be responsible for payment of all Metro ERC accounts payable and other obligations existing as of that date or thereafter related to the ERC 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 ERC funds related to ERC Facilities shall become the property of ERC and shall be transferred to ERC;
4. All event and concession bank accounts related to the ERC Facilities shall be transferred to ERC following which ERC shall make all payments for which the accounts are obligated;
5. All records related to ERC Facilities shall become the property of ERC and shall be transferred to ERC;
6. All property authorizations under Section 3 of this Agreement shall be rescinded and all Metro ERC obligations thereunder shall terminate;

7. All personnel whose positions are included in the budgets for ERC Facilities shall become employees of ERC;
8. All personnel holding central management staff positions transferred by ERC to Metro ERC hereunder shall become employees of ERC;
9. All contracts or portions of contracts of Metro ERC related to the ERC Facilities shall be assigned to ERC;
10. All other charges, allocations, and transfers as are necessary or desirable to the proper operation of ERC Facilities and other Facilities operated by Metro ERC 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 (D)(1) through (D)(10) of this Section shall be resolved pursuant to Section 15 of this Agreement.

SECTION 19

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. Except as provided in Section 6(B) of this Agreement and in Subsection (B) of this

Section, 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, the Metro Council, and ERC if then in existence.

B. The process for City approval of Metro amendments to Metro Code Chapter 6.01 shall be as follows:

1. Metro shall provide to the Commissioner in Charge and to the City Auditor the proposed Code amendment.
2. Within thirty (30) days from receipt of the proposed Code amendment the City Council shall review and approve or disapprove it by resolution. In the event of disapproval, the City Council shall state the reasons for disapproval and proposed revisions, if any. A failure by the City Council to act within the thirty (30) days period shall be deemed an approval.
3. In the event Metro revises a proposed amendment, following City approval, then the proposed revision shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposal.

4. In the event Metro revises a proposed amendment, following City disapproval, but proposes revisions different than those proposed by City, then the proposed revisions shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposal.

SECTION 20

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 21

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 22

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: Metro Executive Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

City: City Auditor
City of Portland
1220 S. W. Fifth Avenue
Portland, OR 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 23

EXECUTION OF FURTHER DOCUMENTS

In order to complete implementation of the provisions of this Agreement, it may be necessary for Metro, Metro ERC, the City, and ERC 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 24

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 25

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

City Attorney

By: _____
J. E. Bud Clark, Mayor

By: _____
Mike Lindberg, Commissioner
of Public Affairs

By: _____
Barbara Clark, Auditor

APPROVED AS TO FORM:

METROPOLITAN SERVICE DISTRICT

Metro General Counsel

By: _____
Rena Cusma,
Executive Officer

By: _____
Mike Ragsdale,
Presiding Officer

APPROVED AS TO FORM:

EXPOSITION-RECREATION
COMMISSION

_____ ???

By: _____
Mitzi Scott, Chairperson

DBC/gl
ercontrac.ct

EXHIBIT A
BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 89-325A
METRO CODE REGARDING THE)	
METROPOLITAN EXPOSITION-RECREATION	)	Introduced by Rena Cusma,
COMMISSION	)	Executive Officer

1. Metro Code Section 6.01.030 is amended to read as follows:

"6.01.030 Commission Created: There is hereby created a Metropolitan Exposition-Recreation Commission consisting of seven (7) members. All members shall be residents of the District. One of the members shall be appointed by the Executive Officer to be the initial chairperson of the Commission. The Commission members shall be appointed as follows:

"(a) Members of the Commission shall be appointed by the Executive Officer [~~after-consulting-with-the-governing-bodies-of the-City-of-Portland,-Clackamas-County,-Multnomah-County,-Washington-County-and-any-other-city-within-the-District---~~All appointments-shall-be] and confirmed by a majority of the members of the Council[---All-members-shall-reside-within-the-District-] in accordance with the following procedures:

"(1) Nomination Process. The Executive Officer will accept nominations to the Metropolitan Exposition-Recreation Commission as follows:

"(A) The County Commissions of Clackamas, Multnomah and Washington counties each shall nominate one (1) candidate. The candidates

the Executive Officer shall so notify the Jurisdiction which shall then nominate another candidate. This process shall continue until such time as the Executive Officer agrees to transmit the name of the individual nominated by the local government. If an appointment submitted to the Council for confirmation as a result of this process is rejected by the Council, the Executive Officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the Executive Officer to the Council for confirmation and has been confirmed.

"If the Council fails to confirm an appointment made at the sole discretion of the Executive Officer, the Executive Officer may submit the name of another person for confirmation by the Council.

"(b) Of the initial appointments, one (1) shall be for a one (1) year term; two (2) shall be for a two (2) year term; two (2) shall be for a three (3) year term; and two (2) including the chairperson shall be for a four (4) year term. Thereafter appointments shall be for a four (4) year term.

"(c) Provided further that the initial terms of members shall expire on the fifteenth (15th) day of January closest to the appropriate anniversary of the appointment.

initial chairperson in subsection (c) above, may elect its own officers for such terms and with such duties and powers necessary for the performance of the functions of such offices as the Commission determines appropriate."

2. Metro Code Section 2.04.035 is amended to read as follows:

"2.04.035 Metropolitan Exposition-Recreation Commission: The Metropolitan Exposition-Recreation Commission shall have authority to enter into contracts pursuant to Metro Code Section 6.01.04(j); provided, however, that prior to the adoption of the contracting rules by the Commission such purchases shall be made pursuant to the procedures and policies set forth in this chapter; and provided further that the Metropolitan Service District Contract Review Board created pursuant to Section 2.04.020 of this code shall be the local Contract Review Board for the Commission for the purpose of granting exemptions from competitive bidding or other requirements of public contract law. Notwithstanding any provision of this chapter to the contrary the Metropolitan Exposition-Recreation Commission may without the prior approval of the Executive Officer enter into contracts in any amount in accordance with its own contracting rules adopted pursuant to the authority contained in Section 6.01.040(j). No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget. The Metropolitan Exposition-Recreation Commission shall file copies

and operated by the City of Portland and the Metropolitan Service
District attached hereto as modified from the Agreement approved
by the Metro Council on November 21, 1989.

DBC/gl
89-325A.ord

7. The Oregon Convention Center is scheduled to open in the Fall of 1990.
8. The City and Metro have been involved in extensive negotiations regarding consolidation of City and Metro convention, trade, spectator, and performing arts facilities.
9. The negotiating process produced a Memorandum of Understanding approved by the Metro Council and the City Council which stated proposed principles to govern an initial phase of consolidation; which expressed the intention of the City and Metro to approve a formal consolidation agreement consistent with those principles; and which anticipated that the formal consolidation agreement would be prepared and approved as soon as possible.
10. The negotiating process now has produced a formal consolidation agreement implementing the Memorandum of Understanding.

NOW, THEREFORE, the Council directs:

- a. The Mayor, Commissioner of Public Affairs, and Auditor are authorized to execute an Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by City of Portland and the Metropolitan Service District substantially similar in form to that attached hereto as Exhibit "A," provided that they shall not execute the Agreement until the Metropolitan Exposition-Recreation Commission has adopted a resolution making the following commitment:

"From January 4 through June 30, 1990, the unrepresented employees shall continue to participate in the City's benefits program. Thereafter, the Metropolitan Exposition-Recreation Commission shall provide to the unrepresented employees a total compensation package (combined wages and benefits) of not less value than the combined value to the employees of (1) the wages payable by the Metro ERC to the transferred employees as of the date of transfer plus any cost of living increases provided by the Metro ERC as of July 1, 1990 and (2) the benefits provided by the City to its employees as of July 1, 1990, all subject to the Metro ERC's authority to modify the compensation package as appropriate for periods beginning July 1, 1991 and thereafter."



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: November 9, 1989

To: Convention, Zoo & Visitors Facilities Committee
Other Interested Parties

From: Councilor David Knowles *DK/jpm*

Regarding: RESOLUTION NO. 89-1170

The special Convention, Zoo & Visitors Facilities Committee meetings Wednesday, November 15, and Thursday, November 16, are to take action on Resolution No. 89-1170. This resolution approves an intergovernmental agreement with the City of Portland for "Phase I" consolidation of regional convention, trade, spectator and performing arts facilities. Staff will analyze the proposed consolidation agreement in light of the consolidation memorandum of understanding adopted by the Council (Resolution No. 89-1115) in August. That analysis will be hand delivered to you prior to Wednesday's meeting. It is my desire to complete our review and take action on Resolution No. 89-1170 on Wednesday, but if necessary we also have Thursday scheduled to meet.

DK/jpm
jpmtwo b:\czvfn15.mem

Memorandum of Understanding Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Presently Owned and Operated by The City of Portland and the Metropolitan Service District.

The purpose of this Memorandum of Understanding is to provide for phase one of consolidation of operation and management of the facilities presently owned and operated by the City of Portland through its Exposition-Recreation Commission (the Portland Memorial Coliseum Complex, the Civic Stadium and the Portland Center for the Performing Arts), and the facilities operated by the Metropolitan Service District by and through the Metropolitan Exposition-Recreation Commission (the Oregon Convention Center). This phase one of consolidation is expected to be of limited duration pending full scale consolidation of all regional convention trade and spectator facilities as outlined in the Convention Trade and Spectator Facilities Committee Report and Recommendation dated May 1986.

This Memorandum of Understanding sets forth the principles on which a phase one consolidation agreement will be forwarded to the governing bodies of the City of Portland and the Metropolitan Service District. The intent of this Agreement is to express the understanding of the terms and conditions that will be formalized as soon as possible and presented to the Metro Council and City Council for ratification. By ratifying this Memorandum of Understanding the Metro Council and Executive Officer and the Portland City Council express their intent to approve a consolidation agreement.

TERMS AND CONDITIONS OF PROPOSED AGREEMENT.

1. OPERATIONS AND MANAGEMENT

Operations and management of the facilities will be consolidated under the supervision of the Metropolitan-Exposition Recreation Commission.

- A. Metro agrees to amend the Metro Code regarding the appointment process for Metropolitan E-R Commission commissioners to provide that five positions shall be subject to nomination by local government bodies. The County Commissions of Multnomah, Clackamas and Washington counties each will be entitled to nominate one candidate for a position and the City Council of the City of Portland will nominate one candidate for each of two positions. The present commissioners will retain their office, but the nomination procedures provided for herein will be utilized for filling vacancies for five of the positions. Two of the present seven members will continue to be appointed at the sole discretion of the Metro Executive Officer. For those positions on the Commission which are subject to nomination by a local governmental body the Executive Officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro Council for confirmation. If the Executive Officer disagrees with the qualifications of any candidate so nominated by a local government, the Executive Officer shall so notify the Jurisdiction which shall then nominate another candidate. This process shall continue until such time as the Executive Officer agrees to transmit the name of the individual nominated by

the local government. If an appointment submitted to the Council for confirmation as a result of this process is rejected by the Council, the Executive Officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the Executive Officer to the Council for confirmation and has been confirmed. All other terms and provisions relating to appointments and term of the Metropolitan Exposition-Recreation Commission as set forth in the Metro Code shall continue in effect.

- B. The City agrees to transfer to the Metropolitan E-R Commission responsibility for the operation and management of the City Memorial Coliseum, the City Civic Stadium and the City Portland Center for the Performing Arts.
- C. A Portland Center for the Performing Arts Advisory Committee shall be appointed by the City by and through its Commissioner-in-Charge. Metro agrees the MERC will recognize the PCPA Advisory Committee so appointed as the official Advisory Committee to MERC for PCPA.
- D. Ownership. No change in facility ownership shall occur during phase one of this Consolidation. The ownership of any new facility constructed or acquired during the term of phase one shall be determined by the specific financing arrangements for that facility.

2. EMPLOYEES AND PERSONNEL MATTERS

- A. All City employees presently employed by the City Exposition-Recreation Commission will be transferred to the Metropolitan E-R Commission and will become employees of the Metropolitan E-R Commission.
- B. All collective bargaining agreements with labor unions to which the City Exposition-Recreation Commission is a signatory thereto will be assigned to the Metropolitan E-R Commission and the Metropolitan E-R Commission shall give full recognition to such bargaining units and shall be bound by all terms and conditions contained in such collective bargaining agreements to which the City E-R Commission is a party thereto. Further, all City employees shall be entitled to the full protection provided by relevant provisions of Oregon law affecting transfer of employees from one governmental entity to another.

3. CONTRACTS AND PURCHASING

Decision-Making. The Metropolitan E-R Commission shall have full authority to contract and purchase in accordance with its own rules.

4. BUDGETS AND ACCOUNTS

- A. MERC shall utilize a unified accounting system which shall keep track of all expenses and revenues on a per facility basis. Central services provided by MERC for management oversight for all facilities shall be allocated among all facilities by formula. Previously, a study by Laventhol & Horwath used a formula to make such an allocation. Neither the City nor Metro have accepted the Laventhol & Horwath formula. The City ERC Reserve Account shall be

transferred to MERC. Neither any revenue surplus derived from City facilities nor the ERC Reserves may be used to subsidize or support the Oregon Convention Center. Presently, revenues from the Multnomah County Hotel/Motel Tax paid to Metro by Multnomah County are only available to subsidize or support deficits generated at the Oregon Convention Center.

- B. The Metropolitan E-R Commission annual budget shall be subject to City and Metro approval and shall be included in the overall Metro budget for submission to the Tax Supervision and Conservation Commission.

5. OVERHEAD

Metro may charge overhead for oversight and review as provided for herein for the first two years that this agreement is in effect. (Fiscal Year 1989-90 and 1990-91.) Thereafter, Metro will no longer charge overhead to any facilities operated by the Metro E-R Commission including the Oregon Convention Center. The amount charged by Metro for overhead shall not exceed the current level of general overhead charges set in the Metro Fiscal Year 1989-90 budget for payment of overhead charges by the Metro E-R Commission to Metro for operations of the Oregon Convention Center. Metro will not charge an overhead charge to the Metro E-R Commission based on City facilities in an amount in excess of the actual general fund overhead charge (adjusted to exclude portions of the actual general fund overhead charge that represent central services other than oversight and review services) imposed on the E-R Commission by the City of Portland as set forth in the City's proposed budget for Fiscal Year 1989-90. In any event, overhead charges shall not be made in any fiscal year subsequent to Fiscal Year 1990-91. During phase one of the consolidation process, Metro agrees not to impose an excise tax on MERC Facilities for the purpose of funding Metro overhead.

6. REVIEW OF METRO E-R COMMISSION ACTIONS

The Metro E-R Commission will have full autonomy based on the City ERC Model and consistent with Oregon Law. Metro E-R Commission actions shall be subject to review by the Metro Council as presently provided for in the Metro Code. All Requests for Review from aggrieved parties shall be heard by the Metro Council as provided by Oregon Law.

7. LIABILITY BY METRO

Metro accepts full liability for the actions of MERC. Metro agrees to hold harmless and indemnify the City against any claim whatsoever in nature arising out of the Metropolitan E-R Commission's operation of the facilities.

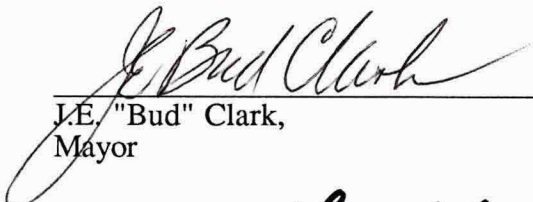
8. GOOD FAITH EFFORT TO RESOLVE ANY OTHER OUTSTANDING ISSUES

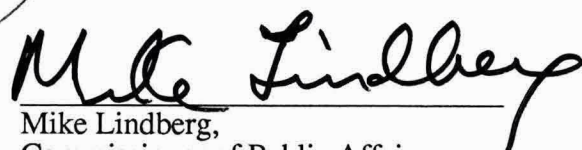
To the extent that other issues not previously identified during the negotiation process leading up to this Memorandum of Understanding are identified during the development of a final agreement for phase one of consolidation the parties hereto agree to in good faith resolve all such outstanding issues in as rapid a manner as possible and agree to use the good offices of Robert Ridgley to facilitate the resolution of such issues.

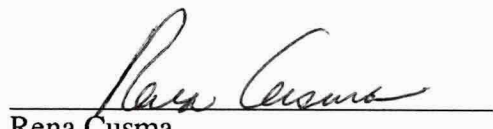
9. FINAL CONSOLIDATION

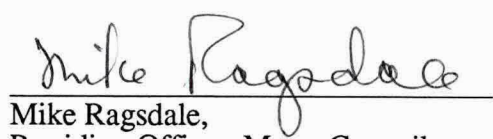
As soon as a phase one consolidation agreement is approved Metro and MERC will commence moving toward consolidation of other regional facilities and resolving other long term issues in order to bring about a complete consolidation. Final consolidation will require the resolution of issues related to the transfer and control of real property and actual physical structures through an asset transfer, long-term lease or other equivalent arrangement. It is also the intention of the Parties that Metro will assume long-term fiscal responsibility for all regional facilities and will obtain necessary public supported financial resources therefor.

This MEMORANDUM OF UNDERSTANDING is Executed this twelfth day of July, 1989 and is effective upon ratification by the Portland City Council and the Metro Council.


J.E. "Bud" Clark,
Mayor


Mike Lindberg,
Commissioner of Public Affairs


Rena Cusma,
Executive Officer, Metro


Mike Ragsdale,
Presiding Officer, Metro Council

JAN 22 1990

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 dated as of December 19th, 1989, is between the City of Portland, Oregon (City); and the Metropolitan Service District (Metro); and the City of Portland Exposition-Recreation Commission (ERC).

RECITALS:

1. In January 1985 the City, Metro, and Clackamas, Multnomah, and Washington counties established the Committee on Regional Convention, Trade, and Spectator Facilities (CTS Committee) consisting of public and private representatives.

2. In May 1986 the CTS Committee adopted recommendations regarding regional convention, trade, and spectator facilities.

3. The CTS recommendations called for Metro to establish a regional commission under ORS Chapter 268 for the planning, development, promotion, operation, and management of the region's convention, trade, and spectator facilities, and for the City and Multnomah County to transfer responsibility for operating their regional convention, trade, and spectator facilities to the regional commission.

4. In May 1986 the City, by Resolution No. 34110, found that Metro should be responsible for the planning, development, promotion, operation, and management of the region's public convention, trade show, and spectator facilities and resolved that the City work with Metro to develop a plan for the transfer of the ERC's functions and responsibilities to a regional commission to be established by Metro, with the transfer to be completed by the date of opening of the Oregon Convention Center.

5. In November 1986 the voters of the Metropolitan Service District approved the sale of \$65,000,000 in General Obligation bonds to assist in financing construction of the Oregon Convention Center; the 1987 and 1989 sessions of the Oregon Legislature authorized \$15,000,000 from State Economic Development Funds to assist in financing construction; and the City of Portland through a Local Improvement District has secured an additional \$5,000,000 to assist in financing construction.

6. The Metro Council on October 22, 1987, adopted Metro Ordinance No. 87-225 which created the Metropolitan Exposition-Recreation Commission with powers and duties substantially similar to the City Exposition-Recreation Commission for the purpose of maintaining and operating metropolitan convention, trade, and spectator facilities.

7. The Oregon Convention Center is scheduled to open in the fall of 1990.

8. The City and Metro have been involved in extensive negotiations regarding consolidation of City and Metro convention, trade, spectator, and performing arts facilities.

9. The negotiating process produced a Memorandum of Understanding which stated proposed principles to govern an initial phase of consolidation; which expressed the intention of the City and Metro to approve a formal consolidation agreement consistent with those principles; and which anticipated that the formal consolidation agreement would be prepared and approved as soon as possible.

10. The Metro Council and the City Council approved the Memorandum of Understanding.

11. This Agreement has been prepared to implement the Memorandum of Understanding.

SECTION 1

DEFINITIONS

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

"City" means the City of Portland, Oregon.

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

"Coliseum" means the Portland Memorial Coliseum complex.

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

"Convention Center" means the Oregon Convention Center.
"ERC" means the City Exposition-Recreation Commission.

"ERC Facilities" means the Coliseum, PCPA, and the Stadium.

"Facilities" means the ERC Facilities, Convention Center and other regional convention, trade, or spectator facilities Metro ERC 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.

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

"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 ERC Facilities and Metro ERC.

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

"Stadium" means the Portland Civic Stadium.

SECTION 2

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

- A. Subject to the terms and conditions contained in this Agreement City hereby transfers to Metro and Metro hereby accepts responsibility for operation and management of the ERC Facilities effective as of January 4, 1990. Metro agrees that authority and responsibility for operation and management of the ERC Facilities is hereby 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 ERC Facilities until superseded or repealed by resolutions duly adopted by the Metro ERC.
- B. The power and authority of Metro ERC has been created by Metro pursuant to the provisions of ORS 268.395 and 268.400. Chapter 6.01 of the Metro Code sets forth the power, authority and duties of Metro ERC. Metro agrees to adopt the amendments to Metro Code Sections 6.01.030, 2.04.035, and 1.01.010 attached hereto as Exhibit "A." The parties

agree that the continued existence of Metro ERC with the power, authority, and duties it will possess under Metro Code Chapter 6.01 as amended are an essential element to the City's willingness to transfer operation and management control of the ERC Facilities to Metro. The parties also 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 obtaining City's prior approval pursuant to Section 19 of this Agreement.

- C. 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 hereby transfer, effective January 4, 1990, to Metro the right to beneficial use of all real property comprising the ERC Facilities. City and ERC shall retain title to and beneficial ownership of all real property comprising ERC Facilities. City and ERC shall not take any action with regard to the real property comprising the ERC Facilities that would interfere with management and operation of the ERC Facilities. Metro shall not take any action with regard to the real property comprising the ERC Facilities that would affect or encumber the title to the property without the prior written consent of City.
- B. City, either directly or through ERC, owns certain rights to use real property subject to restrictions and therefore City and ERC have 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.

- C. Personal Property. City or ERC if then in existence, otherwise City, shall be the owner of all ERC Facilities-related personal property owned by City or ERC as of January 3, 1990, and also of all capitalized personal property acquired thereafter by Metro ERC using ERC Facilities-related funds. Metro and Metro ERC shall have the right to beneficial use thereof. Metro ERC 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 ERC from disposing of ERC Facilities-related personal property in the ordinary course of business or from acquiring title to personal property using both ERC and Metro ERC Facilities-related funds that is of common benefit to ERC and Metro ERC Facilities. On disposition of ERC Facilities-related personal property, any compensation received for the property shall be treated as ERC Facilities-related revenues. Metro and Metro ERC shall not

dispose of ERC 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 ERC Facilities-related funds, Metro and Metro ERC shall identify resources and appropriations for the acquisition in the annual or supplemental or amended budget for Metro ERC subject to City approval as provided for in Section 6 of this Agreement. As of January 4, 1990, Metro and Metro ERC hereby are 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 ERC Facilities-related funds of real property initiated by City or ERC for the benefit of the ERC Facilities. Title to any and all real property and improvements thereto acquired by Metro or Metro ERC with ERC Facilities-related funds shall be taken in the name of City or ERC as appropriate. Any disposition of City- or ERC-owned real property shall be subject to the same requirements as apply to dispositions of other City property.
- E. Audit of Property Records. On or before January 4, 1990, or as soon as practicable thereafter, Metro and Metro ERC shall prepare an initial inventory of all personal and real property possessed by ERC and all records related thereto. The initial inventory shall be the basis for identifying all property for which Metro shall assume responsibility hereunder. Thereafter, Metro and Metro ERC, 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 and ERC as to which Metro has the right of beneficial use under this Agreement. The initial inventory prepared by Metro and Metro ERC under this Subsection shall be prepared in a manner acceptable to City and its outside auditors and shall be subject to City's approval, which approval shall not be unreasonably withheld. The subsequent 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.

SECTION 4

PERSONNEL

- A. The City and Metro agree that all employees presently employed by ERC will be transferred to Metro ERC and will become employees of Metro ERC as provided for herein. 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.

- B. Transfer of Represented Employees. On January 4, 1990, ERC shall transfer all of its employees represented by labor unions to Metro ERC. Thereafter, Metro ERC shall recognize 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 shall transfer all of its unrepresented employees to Metro ERC.
- D. Employees' Statutory Rights. On and after January 4, 1990, Metro ERC shall assure that all ERC employees as of January 3, 1990, are 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 hereby assigns to Metro ERC, and Metro on behalf of Metro ERC, hereby accepts assignment of all collective bargaining agreements to which ERC is a party, effective as of January 4, 1990. Metro ERC shall conduct such impact bargaining with affected unions as is appropriate and necessary under applicable law.

SECTION 5

CONTRACTS AND LICENSES

- A. Assignable ERC Contracts and Licenses. ERC hereby assigns to Metro ERC all contracts, permits, rental agreements, and licenses to which ERC is a party and which are assignable without the consent of other parties, effective as of July 1, 1990. From January 4, 1990, through June 30, 1990, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 4, 1990.
- B. Other ERC Contracts and Licenses. ERC hereby assigns to Metro ERC each contract, permit, rental agreement, and license to which ERC is a party, the assignment to be effective on July 1, 1990, or on obtaining the consent of the other parties thereto, whichever occurs later. From January 4, 1990, through the effective date of the assignment, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of Metro ERC to the same extent and subject to the same City

procedural requirements as applied to ERC immediately prior to January 4, 1990.

SECTION 6

BUDGET APPROVAL FOR METRO ERC

- A. For fiscal years commencing on or after July 1, 1990, Metro ERC's annual budget shall be subject to City and Metro approval and shall be included in the overall Metro budget for submission to the Tax Supervision and Conservation Commission. Metro ERC's annual budget shall include a separate budget for each of the ERC Facilities, in the standard format used by Metro for its budget units. City's right to approve or disapprove the Metro ERC budget shall be applicable only to the budgets for the ERC Facilities.
- B. Metro ERC Budget Process. All Metro ERC budgets and supplemental and amended budgets will be part of the Metro budget and will be subject by law to the budget procedures governing Metro. In addition, the Metro ERC budget and supplemental and amended budgets shall be subject to the approval of City to the extent described in Subsection A of this Section. In order to carry out successful budget procedures, with Metro and City both approving the same budget, it will be necessary that there be a high degree of cooperation among Metro, City, and Metro ERC in the budget process. Therefore Metro ERC and Metro shall make every reasonable effort to inform City of and provide the opportunity for City review of and participation in the Metro ERC budget development and review process. Concomitantly, City shall make every reasonable effort to participate in that process. These efforts shall be made with a view to identifying and resolving conflicts early in the budget process in order to avoid surprises or unresolved disputes at the end of the process. In order to achieve this objective, the process for City review of the Metro ERC budget shall be as follows:
1. On or before February 1 of each year, Metro ERC shall provide to the Metro Executive Officer the proposed Metro ERC budget for the next fiscal year. The Metro Executive Officer shall transmit the proposed Metro ERC budget to the Commissioner in Charge and to the City Auditor at the same time the proposed Metro budget is transmitted to the Metro Council.
 2. Within forty-five (45) days of receipt of the proposed Metro ERC budget, City shall review and approve or disapprove by resolution adopted by the City Council the proposed Metro ERC budget for the next fiscal year. In the event of disapproval, the City Council shall

state the reasons for disapproval, the portions of the proposed budget objected to, and proposed revisions that would meet City's approval. A failure by the City Council to act within forty-five (45) days of receipt shall be deemed an approval of the proposed Metro ERC budget.

3. In the event Metro revises a proposed Metro ERC budget following City approval, then the revised proposed budget shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposed budget. City review period shall be twenty (20) days from receipt of the revised proposed budget.
 4. In the event Metro revises a proposed Metro ERC budget following City disapproval, but proposes revisions different than those proposed by City, then the revised proposed budget shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposed budget. City review period shall be twenty (20) days from receipt of the revised proposed budget.
 5. Any supplemental budget adopted by Metro for Metro ERC shall be subject to the same procedure as governs City review of a proposed annual Metro ERC budget.
 6. Any budget amendment adopted by Metro for Metro ERC, except as part of a supplemental budget, shall be subject to the same procedure as governs City review of a proposed annual Metro ERC budget except that (a) the amendment shall be deemed approved unless the Commissioner in Charge notifies Metro within fifteen (15) days of receipt of the proposed amendment that City intends to review the amendment, and (b) if the Commissioner in Charge does so notify Metro then the amendment shall be deemed approved unless the City Council acts on it within thirty (30) days of receipt.
- C. Financial Reporting Requirements. Metro ERC shall provide to City monthly financial reports showing the current status of revenues and expenditures of Metro ERC for the then current fiscal year. These reports shall be in no less detail than reports Metro ERC regularly prepares for its own and Metro's review and shall provide details separately identifying the financial status of each ERC Facility.
- D. Metro ERC Management Services. It is Metro ERC'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 initial 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 if Metro ERC adopts a different management structure or allocation formula, shall be established as part of the Metro ERC annual budget and shall be subject to City's review and approval, which approval shall not be unreasonably withheld. City review and approval or disapproval shall be part of the budget review process and shall follow the procedures for budget review and approval set forth in Subsection B of this Section.

SECTION 7

MONEY TRANSFERS, ACCOUNTING, AND AUDITING

- A. Financial Transactions from January 4, 1990, to June 30, 1990. During the period from January 4, 1990, to June 30, 1990, ERC shall receive all ERC Facilities-related revenues, which shall be treated as ERC revenues for budget purposes; and ERC shall pay all ERC Facilities-related expenses, which shall be treated as ERC expenditures for budget purposes. During this period, all ERC Facilities-related financial transactions shall follow the procedures established therefor by this Subsection:
1. City shall process all duly authorized requests for payment received from Metro ERC related to ERC Facilities on forms to be provided by City including payroll and accounts payable, for payment from ERC funds in accord with current practice. Metro ERC shall transmit all funds received from operations of ERC Facilities to City for deposit into ERC funds in accord with current practice.
 2. City shall maintain records of all fiscal transactions related to the ERC Facilities and shall transmit periodic reports thereof to Metro and Metro ERC at the same time it transmits its regular periodic reports to responsible City officials.
 3. City shall make all required reports to and filings with federal and state agencies including the Internal Revenue Service related to the financial transactions carried out under this Subsection, on behalf of Metro, Metro ERC, City, and ERC. If City legally is unable to do this, it shall prepare sufficient information for Metro and Metro ERC to allow Metro to make the reports and filings in a timely manner.

- B. General. On July 1, 1990, except as otherwise provided in this Subsection, all moneys in the following ERC Funds shall be transferred to Metro for use by Metro ERC as provided herein:

Exposition-Recreation -- Civic Stadium Fund
Exposition-Recreation -- Memorial Coliseum Fund
Expo-Recreation -- Performing Arts Fund
Performing Arts Center Construction Fund

Between the dates of July 1, 1990, and completion of the audit described in Subsection D of this Section, City shall retain sufficient amounts in the ERC Funds, as agreed to by City and Metro, in order to provide for positive balances in all ERC Funds immediately prior to the adjustments under Subsection D of this Section. The amounts retained shall be set so as to avoid any adverse impact on Metro ERC operations. Any dispute between the parties regarding amounts to be retained shall be resolved pursuant to Section 15 of this Agreement.

- C. Payables and Receivables. ERC hereby assigns to Metro ERC as of July 1, 1990, all ERC accounts receivable and other receivables existing as of that date or thereafter accruing. Metro ERC 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 ERC shall pay, out of ERC Facilities-related funds, all tax and other governmental assessments against real property comprising the ERC Facilities and against any ERC Facilities-related personal property.
- D. Adjustments Following Audit. A portion of City's official independent audit for FY 1989-90 shall cover all ERC operations for the entire period from July 1, 1989, through June 30, 1990. On completion and acceptance by City of the portion of the official City independent audit covering ERC for FY 1989-90, adjustment shall be made in the amounts transferred under Subsection (A) of this Section as indicated by the audit so as to bring the amounts retained in ERC funds under Subsection B of this Section to zero. In the event of excess transfers to Metro on July 1, 1990, Metro shall refund the amount of the excess to City or ERC as appropriate. In the event of deficient transfers to Metro, City or ERC as appropriate shall transfer the amount of the deficiency to Metro for use by Metro ERC as provided herein. City shall encourage its auditors to complete the portion of the audit covering ERC as quickly as possible. Any dispute between the parties regarding funds to be

transferred shall be resolved pursuant to Section 15 of this Agreement. Metro ERC shall prepare appropriate responses to management findings related to ERC Facilities contained in the audit.

- E. Treatment of Monies from January 4, 1990, through June 30, 1990. Pursuant to Subsection 7(A) of this Section, from January 4, 1990 through June 30, 1990, the collection of ERC Facilities revenues to be deposited into ERC funds and the payment of ERC Facilities expenditures from ERC funds shall be subject to the direction and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 4, 1990. During this period, revenues from and expenditures for the ERC Facilities shall be accounted for in the same way as is in effect immediately prior to January 4, 1990.
- F. Audits and Accounting Beginning July 1, 1990. Beginning with FY 1990-91, Metro ERC, in its accounting, shall account separately for each of the ERC Facilities and shall comply with generally accepted governmental accounting principles and with the requirements of the Government Accounting Standards Board in accounting for ERC Facilities operations and maintenance. Metro ERC annually shall obtain an audit of its operations, with ERC 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 ERC 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 ERC Facilities operations in City's Consolidated Annual Financial Report, then Metro ERC shall provide its audit to City not later than September 30 of each year.
- G. 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 ERC Facilities. Nothing in this Agreement shall prevent the transfer of resources among the ERC Facilities as provided in any Metro ERC budget. In addition, any net surplus from operation of the ERC Facilities shall be used only for the benefit of the ERC Facilities. The beginning balance in the Performing Arts Center Construction Fund shall be deposited into a separate account maintained by Metro ERC and 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 ERC facilities shall be used only as determined by Metro.

- H. Event and Concession Bank Accounts. ERC maintains in its name bank accounts into which it deposits event- and concession-related revenues, from which it pays event- and concession-related expenses including amounts owing to ERC from the event sponsors and concessionaires, and from which it pays the balance after expenses to the event sponsors and concessionaires. On January 4, 1990, ownership of the accounts shall be transferred to Metro ERC or the accounts may be closed and the account balances transferred to new accounts opened by Metro ERC or some comparable change may be made, as determined by Metro ERC. ERC shall execute whatever documents are necessary to accomplish the change. Following the change, Metro ERC shall make all payments for which the accounts are obligated. On or before January 4, 1990, or as soon as practicable thereafter, Metro and Metro ERC shall conduct an audit of such accounts to determine the condition thereof as of the effective date of transfer.
- I. Unemployment Compensation Payments as to ERC. Notwithstanding any other provision of this Section, City shall pay any unemployment billings due to the State of Oregon that are applicable to ERC employees terminated prior to January 4, 1990. City shall bill ERC for the amount of any payments made by City applicable to the period prior to July 1, 1990, and shall bill Metro ERC for the amount of any payments made by City applicable to the period following June 30, 1990. ERC and Metro ERC shall pay the City billings following their receipt.

SECTION 8

CENTRAL SERVICES AND OTHER CHARGES

- A. Metro Charges To Metro ERC for Council and Executive Officer. Metro may charge Metro ERC for Council and Executive Officer services as provided for herein during the first two (2) fiscal years that this Agreement is in effect (Fiscal Year 1989-90 and 1990-91.) Thereafter, Metro shall no longer charge for Council and Executive Officer services to any Facilities operated by Metro ERC including the Oregon Convention Center. The amount charged by Metro to Metro ERC in FY 1990-1991 for Council and Executive Officer services shall not exceed the current level of charges for Council and Executive Officer services set in the Metro FY 1989-90 budget for payment of such charges by Metro ERC to Metro for

Metro ERC to Metro for operations of the Oregon Convention Center, which amount is \$23,577. Metro shall not charge Metro ERC for Council and Executive Officer services for ERC Facilities for FY 1989-90 and shall not charge for FY 1990-91 in an amount in excess of the actual general fund charge for City Council services imposed on ERC by City as set out in City's budget for FY 1989-90, which amount is \$14,641. Metro ERC shall not pass on to the ERC Facilities any Metro charge for Metro Council and Executive Officer services in excess of the amounts charged to Metro ERC by Metro for ERC Facilities.

- B. Central Services and Central Services Charges. Nothing contained herein shall preclude Metro from charging Metro ERC for central services provided to Metro ERC by Metro, subject to City review and approval during the annual budget process pursuant to the procedure set out in Section 6(B) of this Agreement. Such charges shall not be increased in any fiscal year over the amount originally budgeted without prior review and approval of City pursuant to the same procedure as the procedure for supplemental budgets pursuant to Section 6(B) of this Agreement. The budget reviews under Section 6(B) of this Agreement shall include review of both the allocation of central services functions between Metro and Metro ERC and the charges therefor.

SECTION 9

METRO EXCISE TAX

- A. General. 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 ERC Facilities.
- B. Limitation. Metro shall not directly or indirectly use revenues from excise taxes on persons using the ERC 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 ERC 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 10

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 ERC Facilities.
2. Metro, to the maximum extent permitted by law, shall indemnify City, 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 on or after July 1, 1990, in connection with or as a result of operation of the ERC or Metro ERC Facilities.
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, ERC, 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 and 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 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. However, this agreement to indemnify and hold harmless is limited to payment of funds generated by the ERC Facilities or transferred to Metro by City and dedicated to the ERC 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.

SECTION 11

INSURANCE

During the term of this Agreement, Metro shall obtain and maintain insurance providing coverage for risks associated with operation of the ERC 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, ERC, and their officers, employees, and agents as additional named insureds.

In addition, in order to fully fund the existing coverage maintained by City through its Risk Management program for all tort claims and Workers' Compensation claims arising prior to July 1, 1990, City may charge ERC an additional sum of \$123,000. Such sum shall be deducted from the balance of the ERC funds to be transferred to Metro pursuant to Section 7.

- B. Property Insurance. Effective July 1, 1990, 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 ERC Facilities. Such policies shall include boiler

and machinery coverage. City and ERC shall be named as additional named insureds for all policies providing coverage for ERC Facilities to the full extent of City's insurable interest.

SECTION 12

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 ERC for all PCPA matters. Metro ERC and Metro shall inform the Advisory Committee of and provide the opportunity for Advisory Committee review of and comment on all Metro ERC actions affecting the PCPA. Actions affecting the PCPA shall be deemed to include, without limitation, all Metro ERC 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 ERC shall provide reasonable staff assistance from staff assigned to PCPA to assist the Advisory Committee.

SECTION 13

ERC 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 14

RECORDS

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

SECTION 15

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 except for those disputes which are specified as grounds for termination of this Agreement pursuant to Section 18(C) of this Agreement.

SECTION 16

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 17

FURTHER CONSOLIDATION

- A. Term of Agreement. The term of this Agreement shall continue unless termination occurs as provided for in Section 18 of this Agreement, or until the parties hereto then in existence enter into an agreement for further consolidation of the ERC Facilities and functions under Metro ERC. The various provisions of this Agreement shall continue in effect only during the term of this Agreement, except that the provisions governing termination and remedies shall survive termination.
- B. Consolidation. It is the intention of City and Metro to pursue further consolidation of the region's convention, trade, and spectator Facilities following execution of this Agreement. The parties intend that this further consolidation will take two forms.

First, the parties to this Agreement intend to provide for a more complete consolidation of the ERC Facilities under Metro ERC. This further consolidation of the ERC Facilities under Metro ERC will require further agreement by the parties. The parties agree to make a good faith effort to resolve all outstanding issues with the express intent to provide for further consolidation as soon after January 4, 1992, as possible.

Second, the parties to this Agreement agree that further consolidation may involve the consolidation under Metro ERC of Facilities operated by other local governments within the region including, but not limited to, the Multnomah County Exposition Center. This further consolidation also may include the construction of additional convention, trade, spectator, and performing arts facilities by Metro through Metro ERC or through other means and their consolidation under Metro ERC's operation, or the construction of new facilities by other local governments in the region and their consolidation under Metro ERC's operation. Metro and Metro ERC shall have the lead role in such further consolidation efforts. City agrees to review and consider in good faith the approval of any Metro ERC budget item, Metro Code amendment, or amendment to this Agreement that is requested by Metro to assist Metro and Metro ERC in achieving such further consolidation, which approval shall not be unreasonably withheld.

SECTION 18

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 in existence for further consolidation of the ERC Facilities and functions under Metro ERC, then City or Metro on or after July 1, 1991, may by duly adopted resolution of its governing body initiate termination of this Agreement and thereafter give notice of termination. The termination shall be effective on the first July 1 that is at least six (6) months after the date of the notice. On the effective date of the termination, the events described in Subsection (a) through (j) of Subsection D of this Section shall occur.
- C. Termination for Cause.
 - 1. This Agreement shall terminate if Metro shall amend Chapter 6.01 of the Metro Code without City's prior approval; or if Metro shall adopt a Metro ERC annual or supplemental or amended budget or increase a central service charge to Metro ERC chargeable to ERC Facilities during a fiscal year above the amount budgeted without City's prior approval; or if Metro shall violate the provisions of Sections 4(B), 7(F) or

(G), or 8 of this Agreement without City's prior approval, all subject to the following procedures:

- a. City in its discretion shall elect to give Metro written notice, in a form approved by the City Council, specifying the action Metro has taken that triggers proceedings under this Subsection. The notice may specify a date on which termination shall occur, provided that the date specified must be no sooner than thirty (30) days from the date of receipt of the notice by Metro.
 - b. Following receipt of the notice from City, Metro shall have thirty (30) days within which to rescind the action that City specified. In the absence of rescission, this Agreement shall terminate either thirty (30) days after receipt of the notice by Metro or on the later date specified in the notice, whichever is later.
2. This Agreement shall terminate if City shall unreasonably withhold its approval of any action requested by Metro under Section 17(B) of this Agreement to assist Metro and Metro ERC in achieving consolidation of facilities operated by other governments within the region under Metro ERC's management and control, subject to the following procedures:
- a. Metro in its discretion shall elect to give City written notice, in a form approved by the Metro Executive Officer and the Metro Council, specifying the action requested as to which City unreasonably has withheld its approval, triggering proceedings under this Subsection.
 - b. Following receipt of the notice from Metro, City shall have thirty (30) days within which to approve the action as to which Metro has requested approval. In the absence of approval, this Agreement shall terminate either ninety (90) days after receipt of the notice by City or on the July 1 next following, whichever is later.
- D. In the event of termination, subject to compliance with any statutory requirements, the following shall occur:
1. All revenues from and expenditures for ERC Facilities shall be treated as ERC revenues and expenditures;
 2. All Metro ERC accounts receivable and other receivables related to ERC Facilities existing as of that date or

thereafter accruing shall be assigned to ERC, and ERC shall be responsible for payment of all Metro ERC accounts payable and other obligations existing as of that date or thereafter related to the ERC 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 ERC funds related to ERC Facilities shall become the property of ERC and shall be transferred to ERC;
4. All event and concession bank accounts related to the ERC Facilities shall be transferred to ERC following which ERC shall make all payments for which the accounts are obligated;
5. All records related to ERC Facilities shall become the property of ERC and shall be transferred to ERC;
6. All property authorizations under Section 3 of this Agreement shall be rescinded and all Metro ERC obligations thereunder shall terminate;
7. All personnel whose positions are included in the budgets for ERC Facilities shall become employees of ERC;
8. All personnel holding central management staff positions transferred by ERC to Metro ERC hereunder shall become employees of ERC;
9. All contracts, permits, rental agreements, and licenses or portions thereof related to the ERC Facilities shall be assigned to ERC;
10. All other charges, allocations, and transfers as are necessary or desirable to the proper operation of ERC Facilities and other Facilities operated by Metro ERC 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 (D)(1) through (D)(10) of this Section shall be resolved pursuant to Section 15 of this Agreement.

SECTION 19

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. Except as provided in Section 6(B) of this Agreement and in Subsection (B) of this Section, 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, the Metro Council, and ERC if then in existence.
- B. The process for City approval of Metro amendments to Metro Code Chapter 6.01 shall be as follows:
1. Metro shall provide to the Commissioner in Charge and to the City Auditor the proposed Code amendment.
 2. Within thirty (30) days from receipt of the proposed Code amendment the City Council shall review and approve or disapprove it by resolution. In the event of disapproval, the City Council shall state the reasons for disapproval and proposed revisions, if any. A failure by the City Council to act within the thirty (30) days period shall be deemed an approval.
 3. In the event Metro revises a proposed amendment, following City approval, then the proposed revision shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposal.
 4. In the event Metro revises a proposed amendment, following City disapproval, but proposes revisions different than those proposed by City, then the proposed revisions shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposal.

SECTION 20

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 21

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 22

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
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

With a copy to:
Clerk of the Council
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398

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

With a copy to:
Commissioner in Charge of ERC
City of Portland
1220 S.W. Fifth Avenue
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 23

EXECUTION OF FURTHER DOCUMENTS

In order to complete implementation of the provisions of this Agreement, it may be necessary for Metro, Metro ERC, City, and ERC 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 24

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 25

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

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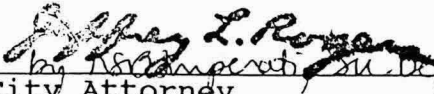
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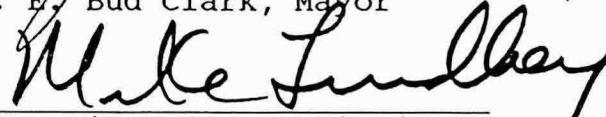
statement or course of conduct of any officer, employee, or agent of the party purporting to modify this Agreement.

APPROVED AS TO FORM
~~APPROVED AS TO FORM~~


by ~~Alfred L. Rogers~~ Deputy
City Attorney
CITY ATTORNEY

CITY OF PORTLAND

By: 
J. E. Bud Clark, Mayor

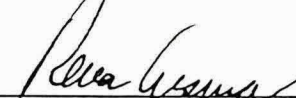
By: 
Mike Lindberg, Commissioner
of Public Affairs

By: 
Barbara Clark, Auditor

APPROVED AS TO FORM:


Metro General Counsel

METROPOLITAN SERVICE DISTRICT

By: 
Rena Cusma,
Executive Officer

APPROVED AS TO FORM:
~~APPROVED AS TO FORM~~


by ~~Alfred L. Rogers~~ Deputy
City Attorney
CITY ATTORNEY

EXPOSITION-RECREATION
COMMISSION


By: 
Mitzi Scott, Chairperson

EXHIBIT A
BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 89-325A
METRO CODE REGARDING THE)	
METROPOLITAN EXPOSITION-RECREATION	)	Introduced by Rena Cusma,
COMMISSION	)	Executive Officer

1. Metro Code Section 6.01.030 is amended to read as follows:

"6.01.030 Commission Created: There is hereby created a Metropolitan Exposition-Recreation Commission consisting of seven (7) members. All members shall be residents of the District. One of the members shall be appointed by the Executive Officer to be the initial chairperson of the Commission. The Commission members shall be appointed as follows:

"(a) Members of the Commission shall be appointed by the Executive Officer [~~after-consulting-with-the-governing-bodies-of the-city-of-Portland,-Clackamas-County,-Multnomah-County,- Washington-County-and-any-other-city-within-the-District---~~All appointments-shall-be] and confirmed by a majority of the members of the Council[~~---All-members-shall-reside-within-the-District-~~] in accordance with the following procedures:

"(1) Nomination Process. The Executive Officer will accept nominations to the Metropolitan Exposition-Recreation Commission as follows:

"(A) The County Commissions of Clackamas, Multnomah and Washington counties each shall nominate one (1) candidate. The candidates

must be residents of the District and the nominating county.

"(B) The City Council of the City of Portland shall nominate one (1) candidate for each of two (2) positions. The candidates must be residents of the District and the City of Portland.

"(C) Two (2) nominees shall be at the sole discretion of the Executive Officer. The candidates must be residents of the District.

"(2) Appointment Process. The Executive Officer shall, upon concurring in the nominations received from the County Commissions of Clackamas, Multnomah and Washington counties or the City Council of the City of Portland, transmit the names of the persons so nominated to the Council of the Metropolitan Service District as appointments for confirmation. In addition, the Executive Officer shall transmit two (2) additional names as appointments for confirmation.

"For those positions on the Commission which are subject to nomination by a local governmental body, the Executive Officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro Council for confirmation. If the Executive Officer fails to concur with any candidate so nominated by a local government,

the Executive Officer shall so notify the Jurisdiction which shall then nominate another candidate. This process shall continue until such time as the Executive Officer agrees to transmit the name of the individual nominated by the local government. If an appointment submitted to the Council for confirmation as a result of this process is rejected by the Council, the Executive Officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the Executive Officer to the Council for confirmation and has been confirmed.

"If the Council fails to confirm an appointment made at the sole discretion of the Executive Officer, the Executive Officer may submit the name of another person for confirmation by the Council.

"(b) Of the initial appointments, one (1) shall be for a one (1) year term; two (2) shall be for a two (2) year term: two (2) shall be for a three (3) year term; and two (2) including the chairperson shall be for a four (4) year term. Thereafter appointments shall be for a four (4) year term.

"(c) Provided further that the initial terms of members shall expire on the fifteenth (15th) day of January closest to the appropriate anniversary of the appointment.

"(d) Of the initial appointments, the Executive Officer shall designate one (1) member as the initial chairperson to hold that position for a four (4) year term. If a vacancy occurs before the end of the term, the Executive Officer shall appoint a new chairperson to complete the unexpired term in the same manner as in the case of the member whose term was not completed.

"(e) A vacancy shall occur from the death, resignation, failure to continue residency within the District and in the case of members nominated by a local government residency within the boundaries of the nominating government, or inability to serve of any member or from the removal of a member by the Executive for just cause, subject to approval of the removal by a majority of the members of the Council.

"(f) Vacancies shall be filled pursuant to the procedure governing the initial appointment of members. Vacancies in a position originally filled by a member nominated by a local government pursuant to this section or pursuant to Metro Executive Order No. 36 shall be filled by the nomination appointment and confirmation process provided for in this section so that five (5) members of the Commission shall be the nominees of the four local government bodies as specified herein.

"(g) No person who is elected to a public office, or appointed to fill a vacancy in a public office, shall be eligible to serve.

"(h) The Commission may adopt its own rules of organization and procedure and except as provided for the appointment of the

initial chairperson in subsection (c) above, may elect its own officers for such terms and with such duties and powers necessary for the performance of the functions of such offices as the Commission determines appropriate."

2. Metro Code Section 2.04.035 is amended to read as follows:

"2.04.035 Metropolitan Exposition-Recreation Commission: The Metropolitan Exposition-Recreation Commission shall have authority to enter into contracts pursuant to Metro Code Section 6.01.04(j); provided, however, that prior to the adoption of the contracting rules by the Commission such purchases shall be made pursuant to the procedures and policies set forth in this chapter; and provided further that the Metropolitan Service District Contract Review Board created pursuant to Section 2.04.020 of this code shall be the local Contract Review Board for the Commission for the purpose of granting exemptions from competitive bidding or other requirements of public contract law. Notwithstanding any provision of this chapter to the contrary the Metropolitan Exposition-Recreation Commission may without the prior approval of the Executive Officer enter into contracts in any amount in accordance with its own contracting rules adopted pursuant to the authority contained in Section 6.01.040(j). No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget. The Metropolitan Exposition-Recreation Commission shall file copies

of all contracts and amendments thereto with the Department of Finance & Administration."

3. Metro Code Section 2.02.010 is amended to read as follows:

"2.02.010 Administration of the Rules: Except as provided in subsection (d) below the Executive Officer shall be responsible for:

(a) administering or delegating the administration of all the provisions of this chapter; and (b) reviewing and recommending to the Council necessary changes to this chapter;

(c) publishing a Personnel Procedures Manual to implement the provisions of this chapter;

(d) Until such time as the Metropolitan Exposition-Recreation Commission adopts personnel rules pursuant to the authority granted by Section 6.01.040(h) the Commission shall be responsible for the administration of these Personnel Rules for employees of the Commission. After the adoption of such rules by the Commission, the Commission shall administer its personnel system in accordance with its duly adopted personnel rules notwithstanding any provision of this chapter to the contrary. For this purpose the authority and duties of the Executive Officer referred to in this chapter shall reside with the Commission."

4. The Metro Council authorizes the Executive Officer to execute 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 attached hereto as modified from the Agreement approved by the Metro Council on November 21, 1989.

DBC/gl
89-325A.ord

- * Authorize execution of 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. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. In January 1985, the City of Portland (City), Metropolitan Service District (Metro), and Clackamas, Multnomah, and Washington Counties, established the Committee on Regional Convention, Trade, and Spectator Facilities (CTS Committee) consisting of public and private representatives.
2. In May 1986, the CTS Committee adopted recommendations regarding regional convention, trade, and spectator facilities.
3. The CTS recommendations called for Metro to establish a regional commission under ORS Chapter 268 for the planning, development, promotion, operation, and management of the region's convention, trade, and spectator facilities and for the City and Multnomah County to transfer responsibility for operating their regional convention, trade, and spectator facilities to the regional commission.
4. In May 1986, the City, by Resolution No. 34110, found that Metro should be responsible for the planning, development, promotion, operation, and management of the region's public convention, trade show, and spectator facilities and resolved that the City work with Metro to develop a plan for the transfer of the City Exposition-Recreation Commission's (ERC) functions and responsibilities to a regional commission to be established by Metro, with the transfer to be completed by the date of opening of the Oregon Convention Center.
5. In November 1986, the voters of the Metropolitan Service District approved the sale of \$65,000,000 in General Obligation Bonds to assist in financing construction of the Oregon Convention Center; the 1987 and 1989 sessions of the Oregon Legislature authorized \$15,000,000 from State Economic Development Funds to assist in financing construction; and the City through a Local Improvement District has secured an additional \$5,000,000 to assist in financing construction.
6. The Metro Council on October 22, 1987, adopted Metro Ordinance No. 87-225 which created the Metropolitan Exposition-Recreation Commission (Metro ERC) with powers and duties substantially similar to the ERC for the purpose of maintaining and operating metropolitan convention, trade, and spectator facilities.

7. The Oregon Convention Center is scheduled to open in the Fall of 1990.
8. The City and Metro have been involved in extensive negotiations regarding consolidation of City and Metro convention, trade, spectator, and performing arts facilities.
9. The negotiating process produced a Memorandum of Understanding approved by the Metro Council and the City Council which stated proposed principles to govern an initial phase of consolidation; which expressed the intention of the City and Metro to approve a formal consolidation agreement consistent with those principles; and which anticipated that the formal consolidation agreement would be prepared and approved as soon as possible.
10. The negotiating process now has produced a formal consolidation agreement implementing the Memorandum of Understanding.

NOW, THEREFORE, the Council directs:

- a. The Mayor, Commissioner of Public Affairs, and Auditor are authorized to execute an Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by City of Portland and the Metropolitan Service District substantially similar in form to that attached hereto as Exhibit "A," provided that they shall not execute the Agreement until the Metropolitan Exposition-Recreation Commission has adopted a resolution making the following commitment:

"From January 4 through June 30, 1990, the unrepresented employees shall continue to participate in the City's benefits program. Thereafter, the Metropolitan Exposition-Recreation Commission shall provide to the unrepresented employees a total compensation package (combined wages and benefits) of not less value than the combined value to the employees of (1) the wages payable by the Metro ERC to the transferred employees as of the date of transfer plus any cost of living increases provided by the Metro ERC as of July 1, 1990 and (2) the benefits provided by the City to its employees as of July 1, 1990, all subject to the Metro ERC's authority to modify the compensation package as appropriate for periods beginning July 1, 1991 and thereafter."

ORDINANCE No.

-3-

Section 2. The Council declares that an emergency exists in that it is desirable that the first consolidation steps occur January 4, 1990; therefore, this ordinance shall be in full force and effect on its passage by the Council

Passed by the Council, DEC 14 1989

Commissioner Mike Lindberg
Kathleen Johnson-Kuhn:bj
December 8, 1989

BARBARA CLARK

Auditor of the City of Portland

By *Mary Flanagan* Deputy



CITY OF
PORTLAND, OREGON
OFFICE OF CITY AUDITOR

Barbara Clark, City Auditor
Council/Contracts Division
1220 S.W. 5th, Rm. 202
Portland, Oregon 97204
(503) 248-4082

January 23, 1990

Ms. Rena Cusma
Metropolitan Service District
2000 SW First Avenue
Portland, OR 97201-5398

Dear Ms. Cusma:

Enclosed is a fully executed copy of 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, as authorized by Ordinance No. 162604.

Yours truly,


Gail Thompson
Deputy Auditor

GT:wp
Encl.

Memorandum of Understanding Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Presently Owned and Operated by The City of Portland and the Metropolitan Service District.

The purpose of this Memorandum of Understanding is to provide for phase one of consolidation of operation and management of the facilities presently owned and operated by the City of Portland through its Exposition-Recreation Commission (the Portland Memorial Coliseum Complex, the Civic Stadium and the Portland Center for the Performing Arts), and the facilities operated by the Metropolitan Service District by and through the Metropolitan Exposition-Recreation Commission (the Oregon Convention Center). This phase one of consolidation is expected to be of limited duration pending full scale consolidation of all regional convention trade and spectator facilities as outlined in the Convention Trade and Spectator Facilities Committee Report and Recommendation dated May 1986.

This Memorandum of Understanding sets forth the principles on which a phase one consolidation agreement will be forwarded to the governing bodies of the City of Portland and the Metropolitan Service District. The intent of this Agreement is to express the understanding of the terms and conditions that will be formalized as soon as possible and presented to the Metro Council and City Council for ratification. By ratifying this Memorandum of Understanding the Metro Council and Executive Officer and the Portland City Council express their intent to approve a consolidation agreement.

TERMS AND CONDITIONS OF PROPOSED AGREEMENT.

1. OPERATIONS AND MANAGEMENT

Operations and management of the facilities will be consolidated under the supervision of the Metropolitan-Exposition Recreation Commission.

- A. Metro agrees to amend the Metro Code regarding the appointment process for Metropolitan E-R Commission commissioners to provide that five positions shall be subject to nomination by local government bodies. The County Commissions of Multnomah, Clackamas and Washington counties each will be entitled to nominate one candidate for a position and the City Council of the City of Portland will nominate one candidate for each of two positions. The present commissioners will retain their office, but the nomination procedures provided for herein will be utilized for filling vacancies for five of the positions. Two of the present seven members will continue to be appointed at the sole discretion of the Metro Executive Officer. For those positions on the Commission which are subject to nomination by a local governmental body the Executive Officer will receive the nominations from the relevant governing body and review the nomination prior to submitting the nomination to the Metro Council for confirmation. If the Executive Officer disagrees with the qualifications of any candidate so nominated by a local government, the Executive Officer shall so notify the Jurisdiction which shall then nominate another candidate. This process shall continue until such time as the Executive Officer agrees to transmit the name of the individual nominated by

the local government. If an appointment submitted to the Council for confirmation as a result of this process is rejected by the Council, the Executive Officer shall so notify the local government which shall nominate another candidate and the process shall continue until such time as a candidate nominated by a local government has been forwarded by the Executive Officer to the Council for confirmation and has been confirmed. All other terms and provisions relating to appointments and term of the Metropolitan Exposition-Recreation Commission as set forth in the Metro Code shall continue in effect.

- B. The City agrees to transfer to the Metropolitan E-R Commission responsibility for the operation and management of the City Memorial Coliseum, the City Civic Stadium and the City Portland Center for the Performing Arts.
- C. A Portland Center for the Performing Arts Advisory Committee shall be appointed by the City by and through its Commissioner-in-Charge. Metro agrees the MERC will recognize the PCPA Advisory Committee so appointed as the official Advisory Committee to MERC for PCPA.
- D. Ownership. No change in facility ownership shall occur during phase one of this Consolidation. The ownership of any new facility constructed or acquired during the term of phase one shall be determined by the specific financing arrangements for that facility.

2. EMPLOYEES AND PERSONNEL MATTERS

- A. All City employees presently employed by the City Exposition-Recreation Commission will be transferred to the Metropolitan E-R Commission and will become employees of the Metropolitan E-R Commission.
- B. All collective bargaining agreements with labor unions to which the City Exposition-Recreation Commission is a signatory thereto will be assigned to the Metropolitan E-R Commission and the Metropolitan E-R Commission shall give full recognition to such bargaining units and shall be bound by all terms and conditions contained in such collective bargaining agreements to which the City E-R Commission is a party thereto. Further, all City employees shall be entitled to the full protection provided by relevant provisions of Oregon law affecting transfer of employees from one governmental entity to another.

3. CONTRACTS AND PURCHASING

Decision-Making. The Metropolitan E-R Commission shall have full authority to contract and purchase in accordance with its own rules.

4. BUDGETS AND ACCOUNTS

- A. MERC shall utilize a unified accounting system which shall keep track of all expenses and revenues on a per facility basis. Central services provided by MERC for management oversight for all facilities shall be allocated among all facilities by formula. Previously, a study by Laventhol & Horwath used a formula to make such an allocation. Neither the City nor Metro have accepted the Laventhol & Horwath formula. The City ERC Reserve Account shall be

transferred to MERC. Neither any revenue surplus derived from City facilities nor the ERC Reserves may be used to subsidize or support the Oregon Convention Center. Presently, revenues from the Multnomah County Hotel/Motel Tax paid to Metro by Multnomah County are only available to subsidize or support deficits generated at the Oregon Convention Center.

- B. The Metropolitan E-R Commission annual budget shall be subject to City and Metro approval and shall be included in the overall Metro budget for submission to the Tax Supervision and Conservation Commission.

5. OVERHEAD

Metro may charge overhead for oversight and review as provided for herein for the first two years that this agreement is in effect. (Fiscal Year 1989-90 and 1990-91.) Thereafter, Metro will no longer charge overhead to any facilities operated by the Metro E-R Commission including the Oregon Convention Center. The amount charged by Metro for overhead shall not exceed the current level of general overhead charges set in the Metro Fiscal Year 1989-90 budget for payment of overhead charges by the Metro E-R Commission to Metro for operations of the Oregon Convention Center. Metro will not charge an overhead charge to the Metro E-R Commission based on City facilities in an amount in excess of the actual general fund overhead charge (adjusted to exclude portions of the actual general fund overhead charge that represent central services other than oversight and review services) imposed on the E-R Commission by the City of Portland as set forth in the City's proposed budget for Fiscal Year 1989-90. In any event, overhead charges shall not be made in any fiscal year subsequent to Fiscal Year 1990-91. During phase one of the consolidation process, Metro agrees not to impose an excise tax on MERC Facilities for the purpose of funding Metro overhead.

6. REVIEW OF METRO E-R COMMISSION ACTIONS

The Metro E-R Commission will have full autonomy based on the City ERC Model and consistent with Oregon Law. Metro E-R Commission actions shall be subject to review by the Metro Council as presently provided for in the Metro Code. All Requests for Review from aggrieved parties shall be heard by the Metro Council as provided by Oregon Law.

7. LIABILITY BY METRO

Metro accepts full liability for the actions of MERC. Metro agrees to hold harmless and indemnify the City against any claim whatsoever in nature arising out of the Metropolitan E-R Commission's operation of the facilities.

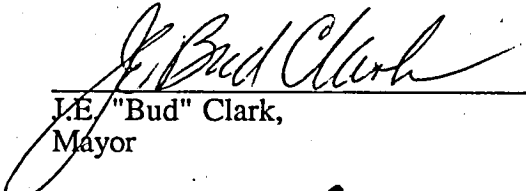
8. GOOD FAITH EFFORT TO RESOLVE ANY OTHER OUTSTANDING ISSUES

To the extent that other issues not previously identified during the negotiation process leading up to this Memorandum of Understanding are identified during the development of a final agreement for phase one of consolidation the parties hereto agree to in good faith resolve all such outstanding issues in as rapid a manner as possible and agree to use the good offices of Robert Ridgley to facilitate the resolution of such issues.

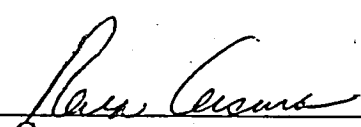
9. FINAL CONSOLIDATION

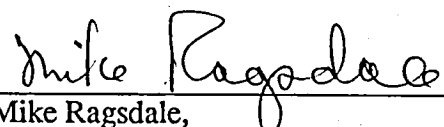
As soon as a phase one consolidation agreement is approved Metro and MERC will commence moving toward consolidation of other regional facilities and resolving other long term issues in order to bring about a complete consolidation. Final consolidation will require the resolution of issues related to the transfer and control of real property and actual physical structures through an asset transfer, long-term lease or other equivalent arrangement. It is also the intention of the Parties that Metro will assume long-term fiscal responsibility for all regional facilities and will obtain necessary public supported financial resources therefor.

This MEMORANDUM OF UNDERSTANDING is Executed this twelfth day of July, 1989 and is effective upon ratification by the Portland City Council and the Metro Council.


J.E. "Bud" Clark,
Mayor


Mike Lindberg,
Commissioner of Public Affairs


Rena Cusma,
Executive Officer, Metro


Mike Ragsdale,
Presiding Officer, Metro Council

MAY 1 1990

RESOLUTION NO. 690TIME: 3:30 pm
METRO SERVICE DISTRICT
OFFICE GENERAL COUNSEL

Recommend approval of FY 1990-91 Metropolitan Exposition/Recreation Commission (MERC) Proposed Budget pursuant to Intergovernmental Consolidation Agreement.

WHEREAS, in August, 1989, the City of Portland (City) and the Metropolitan Service District (Metro) entered into a Memorandum of Understanding Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Presently Owned and Operated by The City of Portland and the Metropolitan Service District (Resolution No. 34605) which expressed the intent of the City and Metro to enter into a Consolidation Agreement.

WHEREAS, on December 19, 1989, the City of Portland and the Metropolitan Service District entered into an Intergovernmental 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 (Consolidation Agreement), No. 25921.

WHEREAS, effective January 4, 1990, subject to the terms and conditions contained in the Consolidation Agreement, the City transferred to Metro and Metro accepted responsibility for operation and management of the ERC Facilities which were delegated to Metro ERC.

WHEREAS, the ERC Facilities, as defined by the Consolidation Agreement, include the Memorial Coliseum, the Civic Stadium, and the Portland Center for the Performing Arts (PCPA).

WHEREAS, for fiscal years commencing on or after July 1, 1990, the Metro ERC's annual budget is subject to City and Metro approval and will be included in the overall Metro budget for submission to the Tax Supervision and Conservation Commission.

WHEREAS, on or before February 1, 1990, the Metro ERC provided the proposed Metro ERC budget for FY 1990-91 to the Metro Executive Officer, and the Metro Executive Officer transmitted the proposed Metro ERC budget to the Office of the City Auditor on March 13, 1990 (see Exhibit A).

WHEREAS, under the terms of the Consolidation Agreement, the MERC FY 1990-91 Proposed Budget must be reviewed by the City as well as approved or disapproved by Resolution adopted by City Council within forty-five (45) days after receipt.

WHEREAS, under the terms of the Consolidation Agreement, a failure by the City Council to act within forty-five (45) days of receipt shall be deemed an approval of the proposed METRO ERC budget

WHEREAS, on March 28, 1990, the Metro Executive Officer transmitted a revision to the MERC FY 1990-91 Proposed budget, thereby reducing expenditures by \$271,702.

WHEREAS, representatives from the Office of the Commissioner of Public Affairs, the Office of Intergovernmental Affairs and the Office of Finance and Administration, Bureau of Financial Planning reviewed the Consolidation Agreement and identified potential issues which needed to be addressed.

WHEREAS, based on that review, the Office of Finance and Administration, Bureau of Financial Planning prepared a Budget Overview and Issues Analysis of the Proposed FY 1990-91 MERC Budget for Council review.

WHEREAS, as a result of the issues analysis, Council agrees that MERC should be afforded the same status of autonomy under Metro as that afforded the ERC under the City which was the expressed intent of the City and Metro as stated in the Memorandum of Understanding Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Presently Owned and Operated by the City of Portland and the Metropolitan Service District in August, 1989.

WHEREAS, as a result of the issues analysis, Council further agrees that since the intent of the Memorandum of Understanding was for MERC to retain its autonomy, it should be able to retain its discretion in the selection of legal counsel. In addition, MERC should be able to continue its practice of retaining outside legal services for specific matters such as labor issues and liquor licenses.

WHEREAS, as a result of the issues analysis, Council also agrees that since the METRO Council Budget hearings are continuing and it is likely that revisions to the MERC budget will be made until final adoption of the budget, City Council reserves the right to review the final MERC budget adopted by METRO and take appropriate action on any additional revisions.

WHEREAS, as a result of the change in timing of the MERC budget review, there should be an amendment to the Intergovernmental Consolidation Agreement between the City and Metro as soon as possible.

NOW, THEREFORE, BE IT RESOLVED, that the FY 1990-91 Metropolitan Exposition/Recreation Commission Proposed Budget as revised by the Metro Executive Officer on March 28, 1990, is approved subject to future Portland City Council review of revisions by the Metro Council in approving the budget, provided that certain personnel and purchasing positions, and appropriation for outside legal counsel be retained in the MERC budget.

BE IT FURTHER RESOLVED, that the Council of the City of Portland reaffirms its intent as stipulated within its August, 1989, Memorandum of Understanding with Metro that MERC maintain the same degree of autonomy under Metro as it was afforded as the City ERC. In support of this, City Council approval of the MERC budget is contingent upon MERC retaining the following positions and appropriation in its budget: the positions of Personnel Director, Assistant Personnel Director, Personnel Clerk, and Purchasing Contract Coordinator, in addition to \$30,000 for contracted legal services.

BE IT FURTHER RESOLVED, that the City Office of Finance and Administration, Bureau of Financial Planning will work with Metro and MERC in re-examining the budget review process.



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

May 3, 1990

The Honorable Tanya Collier
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Gary Hansen
Deputy Presiding
Officer
District 12

Mike Ragsdale
District 1

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

Dear Presiding Officer Collier:

Re: Portland City Council Resolution 690 and
Metropolitan Exposition-Recreation Commission
Budget

At the April 26, 1990, meeting of the Metro Council, the General Counsel was asked to advise the Council regarding the affect of the adoption of Resolution 690 by the Portland City Council, on the Metro Council's pending action to approve and eventually adopt the Metro Budget including a budget for Metro ERC.

A copy of City Resolution 690 is attached hereto. The Resolution raises three issues of concern to Metro. Those issues are: (1) has the City exercised its right to approve or disapprove of the Metro ERC budget, and what is the affect upon the Metro Council's ability to adopt a budget for Metro ERC; (2) what is the status of "autonomy" for Metro ERC; and (3) the possible need for revisions to the Consolidation Agreement with the City regarding the timing of the Metro ERC budget review process.

Budget Approval Issues

The Agreement between the City of Portland and the Metropolitan Exposition-Recreation Commission regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts facilities provides in Section 6 that:

"A. For fiscal years commencing on or after July 1, 1990, Metro ERC's annual budget shall be subject to City and Metro approval and shall be included in the overall budget for submission to the Tax Supervision and Conservation Commission. Metro ERC's annual budget shall include a separate budget for

each of the ERC facilities, and the standard format used by Metro for its budget units. City's right to approve or disapprove the Metro ERC budget shall be applicable only to the budgets for the ERC facilities."
(Emphasis supplied.)

This provision limits the City's right to approve or disapprove the Metro ERC budget to the separate subbudgets for the three ERC facilities which are the Memorial Coliseum, Civic Stadium, and Portland Center for the Performing Arts. Metro's budget document as submitted by the Executive Officer, and as recommended by the Council Budget Committee to the full Council for approval, contains a separate fund, the Spectator Facilities Operating Fund which contains, in accordance with Metro's standard format, separate budget units for these three facilities. In Resolution 690 the City Council conditions its approval of the Metro ERC budget to being an approval of the proposed budget as revised and submitted by the Executive Officer on March 28, 1990. It is my understanding that the only difference between the Executive Officer's March 28, 1990, Proposed Budget for the Metro ERC, and the Budget Committee's recommendation to the Metro Council, as regards to the three specific City ERC facilities budget units, is that the Budget Committee has recommended that a \$25,000 line item for legal services contained in the Materials & Services appropriation for the Coliseum budget unit be deleted and instead the contingency for the Spectator Facilities Operating Fund be increased by \$25,000.

Except as discussed below in regard to the affect of Section 8 of the Agreement, the City does not have the right to approve or disapprove the Metro ERC budget regarding the Metro ERC Management Fund or the Oregon Convention Center Operating Fund which are budgeted separately from the three ERC facilities. Section 6(D) of the Agreement provides Metro ERC Management Services:

"It is Metro ERC'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 initial 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 if Metro ERC adopts a different management structure or allocation formula, shall be established as part of the Metro ERC annual budget and shall be subject to City's review and approval, which approval shall not be unreasonably withheld. City review and approval or disapproval shall be part of the budget review process and shall follow the procedures for budget review and approval as set forth in Subsection B of this Section."

This paragraph of the Consolidation Agreement recognizes that there was intended to be, as there is proposed in the Metro ERC budget, a central management pool for providing management for all of the ERC facilities as well as the Oregon Convention Center. The allocation formula utilized in the budget is the formula set forth in the Agreement. Therefore, the City need not, and has no authority, to review the allocation formula. The reference to this Management Fund in the Agreement, together with the provisions quoted above in paragraph 6(A), limiting the City's budget review to the sub-budget for the three ERC facilities is an express recognition by the City that Metro retains the authority to approve or disapprove the budget for the central management pool as well as the Oregon Convention Center with the City not having the right to object to individual budget items contained in the budgets for central management or the Oregon Convention Center. To the extent that the City's Resolution conditioned its approval upon the retention of certain positions and funding for legal services that had originally been contained in the Executive Officer's Proposed Budget for the Oregon Convention Center Operating Fund and the Metro ERC Management Fund, that communication from the City Council should be considered to be advisory only and is not an exercise of any right granted to the City pursuant to Section 6 of the Consolidation Agreement.

Section 8 of the Consolidation Agreement limits Metro charges to Metro ERC for Council and Executive Officer, and central services. Paragraph 8(B) provides in part:

"Nothing contained herein shall preclude Metro from charging Metro ERC for central

services provided to Metro ERC by Metro, subject to City review and approval during the annual budget process pursuant to the procedure set out in Section 6(B) of this Agreement. Such charges shall not be increased in any fiscal year over the amount originally budgeted without prior review and approval of City pursuant to the same procedure as the procedure for supplemental budgets pursuant to Section 6(B) of this Agreement. The budget reviews under Section 6(B) of this Agreement shall include review of both the allocation of central services functions between Metro and Metro ERC and the charges therefor."

Resolution 690 adopted by the City Council makes City approval of the Metro ERC budget contingent upon Metro ERC retaining the following positions and appropriations in its budget:

"...the positions of Personnel Director, Assistant Personnel Director, Personnel Clerk, and Purchasing Contract Coordinator, in addition to \$30,000 for contracted legal services."

The provisions of Section 8(B) do not directly speak to the conditions imposed by the City on its approval of the Metro ERC budget. The provisions of Section 8(B) limit the City's right to review and approve to the allocation of central services functions between Metro and Metro ERC and the charges therefor. The City has not objected to charges contained in the Executive Officer's Proposed Budget, which are proposed as fund transfers to the Metro Support Services Fund. Further, the amount of such fund transfers proposed by the Metro Executive Officer has been decreased by the proposed revisions made by the Budget Committee. The Agreement prohibits the increase of central services charges without prior approval of the City during any budget year. It may be possible to construe the action taken by the City Council as relating to the proposed allocation of central service functions between Metro and Metro ERC pursuant to the provisions of this paragraph. However, it is unclear that that is the City's intention. For the reasons set forth below it is not necessary for Metro to guess what the City means since the Consolidation

Agreement provides that the City has a further opportunity to speak.

Paragraph 6(B) of the Consolidation Agreement sets forth the process for City review and approval of the Metro ERC budget as well as central service charges and allocations of functions. The affect of City Resolution 690 is to approve the proposed budget from the Executive Officer within the forty-five day time period provided for in subsection 6(B)(2). Subsection 6(B)(3) provides that in the event Metro revises a proposed Metro ERC budget following City approval, then the City will have a twenty-day period to review and approve or disapprove the revisions. Metro has yet to so revise the budget; the Budget Committee action is only in the form of a recommendation to the Council. If the Metro Council adopts the recommendations from the Metro Budget Committee, then the provisions of paragraph 6(B)(3) will be applicable and the proposed Metro ERC budget, as approved by the Metro Council will be subject to further review and approval by the City within the time period provided by Section 6(B)(3).

If the City does disapprove of the change to the proposed budget for the Memorial Coliseum or disapproves the allocation of central services or charges therefor set forth in the Budget, and subsequently the Metro Council adopts the budget ordinance containing provisions the City has disapproved of, the City would have the right to give notice of termination to Metro pursuant to Section 18 of the Agreement.

Autonomy Issues

Resolution 690 expressed the intent of the City that Metro ERC retain the same degree of autonomy under Metro as it was afforded as the City ERC, and contains a reference to the August 1989 Memorandum of Understanding. The Memorandum of Understanding expressed a non-legally binding intent to enter into a consolidation agreement and contains general parameters for the terms and conditions that were to be contained in that agreement. The Consolidation Agreement effective January 4, 1990, carried out that intention. On the issue of autonomy, the provisions of the Agreement contained in Section 2(B) expressly reflect the intentions of the party regarding the degree of autonomy to be possessed by Metro ERC. Metro and the City agreed that

the provisions of Metro Code Chapter 6.01, as to be amended by Ordinance No. 89-325 adopted by the Metro Council on December 14, 1989, set forth the full power and authority of Metro ERC. Metro agreed not to amend the provisions of Chapter 6.01 without the prior approval of the City. The intent of this section was to provide the autonomy for Metro ERC that Metro and City agreed was appropriate. The affect of this provision was a recognition by the City that the powers and authority possessed by Metro ERC was sufficiently similar to the powers and authority and autonomy possessed by the City ERC pursuant to the provisions of the Portland City Charter that as long as the Metro Code provisions were not amended without the City's approval, the autonomy issue was resolved.

On the question of the provision of central services it is appropriate to note that Section 6.01.040(m) provides:

"Services of the District including accounting, legal, personnel, risk management, public affairs, and other services, shall be provided by the District subject to compensation being provided by the Commission to the District as the District may require;[sic] The Commission may acquire such services by other means subject to budget approval by the Council, provided the employment of legal counsel shall be subject to the approval of the District's General Counsel."

The only limitation on this section in the Consolidation Agreement is Section 8 discussed above.

Budget Review Timing Questions

City Council Resolution 690 may be a request that Metro reexamine the budget review process with the possible need for amendments to the Agreement. The Agreement itself does not contain a formal process of the discussion of amendments except in the context of amendments needed for further consolidation of additional of additional facilities to be operated by Metro ERC. The Agreement does reflect an intention of the parties to resolve disputes and to act in reasonable fashion in order to implement the provisions of the Consolidation Agreement. It would

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certainly be appropriate to consider any City requests in
this regard.

Yours very truly,

Daniel B. Cooper,
General Counsel

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cc: Metro Councilors
Rena Cusma