

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE) RESOLUTION NO. 92-1714
CONSOLIDATION AGREEMENT BETWEEN)
THE CITY OF PORTLAND AND METRO) Introduced by
AND TRANSFERRING MEMORIAL COLISEUM) Executive Officer Rena Cusma
FROM MERC TO CITY CONTROL AND) and Presiding Officer, Jim
AUTHORIZING AN ADMISSION TAX) Gardner
OFFSET AGREEMENT WITH OAC AND CITY)

WHEREAS, Metro and the City of Portland entered into a Consolidation Agreement which transferred City facilities managed by the Exposition-Recreation Commission and all employees to the control of the Metropolitan Exposition-Recreation Commission; and

WHEREAS, The City has now entered into an agreement with the Portland Trail Blazers and Oregon Arena Corporation (OAC) which transfers operational management of Memorial Coliseum to the OAC; and

WHEREAS, the City cannot meet its obligation to the OAC to transfer control of Memorial Coliseum without an amendment to the Consolidation Agreement which returns the Coliseum to the City; and

WHEREAS, Metro recognizes the City's investment of public funds and its right and responsibility to negotiate terms with the Trail Blazers and OAC that result in a new Arena and guarantees the continued presence of the Trail Blazers in the City and the region for at least thirty years; and

WHEREAS, The Metro Facilities Study concluded that two arenas operating competitively side-by-side could not both prosper, which conclusion provided the rationale for OAC management of both arenas, and

WHEREAS, City will finance over \$34.5 million in public improvements and will collect a 6% user fee on all tickets for the Arena and Coliseum from the Portland Trail Blazers (OAC); and

WHEREAS, City and Metro both approved resolutions that recognized the need to agree to offset the 6% user fee payment from OAC to the City against any future admission tax collected by Metro or the City; and

WHEREAS, authorizing an amendment to the Consolidation Agreement and entering into an Admission Tax Offset Agreement to support the City's negotiations and completion of the Arena project is in the best interests of the City and the region; now therefore

BE IT RESOLVED that the Executive Officer is authorized to execute the Amended Consolidation Agreement attached as Exhibit "A" and the Admission Tax Offset Agreement attached as Exhibit "B".

ADOPTED by the Council of the Metropolitan Service District this
24th day of November, 1992.


Jim Gardner, Presiding Officer



METRO

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

Memorandum

DATE: November 20, 1992

TO: Metro Councilors

FROM: Jim Gardner, ^{JG/es} Presiding Officer

RE: Proposed Amendments to MERC Consolidation Agreement

The Council will consider Resolution No. 92-1714 on Tuesday, November 24, which would amend the MERC Consolidation Agreement with the City of Portland. The principal purpose of the amendments is to fulfill the terms of the City's agreement with the Trail Blazers on construction of the new Oregon Arena.

Councilors expressed some dissatisfaction with proposed amendment language when we discussed this issue at our last Council meeting on November 12. I went back to the City on Wednesday to discuss modifications to the issues of further consolidation of facilities and City budget approval.

The result of that discussion was a clear expression from the City that they appreciate the difficulties inherent in administering MERC under the current structure, and they are very willing to significantly reduce the City's role in the budget process. To that end, we have agreed on language that commits Metro and the City to develop further amendments, by February 1, 1993, which "minimize formal City oversight and approval requirements" on the MERC budget. The City's principal interest is to have a voice in budget preparation discussions at the outset of the budget development process, rather than be an appellate body which can intervene at the end of the process.

The City also agreed that the two governments need to clarify the terms under which further consolidation of facilities under Metro will take place. We agreed to language that lays out a guideline for Phase 2 consolidation upon a demonstration by Metro that operational funding for PCPA and Civic Stadium is secure for a minimum of five years. We all recognized that details of Phase 2 consolidation could not be worked out in the short time we had, but that questions of title transfer and greater direct Metro authority over MERC operations could be resolved within the next few months.

It is my belief that Metro and the City share many common goals: construction of a new, state of the art arena funded primarily with private dollars should not be hindered or further delayed;

operation of publicly-owned regional facilities is a proper arena for Metro, and Metro's authority as the governing body for budgetary decisions needs to be clarified and strengthened; further consolidation of the remaining City facilities remains in the interest of both agencies, and establishment of a funding source for facility operations should trigger further consolidation; and establishment of a stable long-term source of operating revenues for the PCPA is in the best interests of the citizens of Portland and the region as a whole. In order to come to agreement on the specific terms of budget review and implementation of Phase 2 of the Consolidation Agreement, I will take the steps necessary to ensure the negotiations with the City take place directly among policy-makers, with information provided regularly to the Council.

I will recommend on Tuesday your support of the resolution that will be before us, in order to further the interests of the citizens of the region in seeing the new arena is built and regional government's role in managing the regional facilities is clarified and streamlined.

Language Accepted by City

The parties agree to negotiate further amendments to this agreement in which the City minimizes its authority to approve or disapprove Metro budgets for ERC Facilities, and sets forth the terms under which further consolidation of the ERC Facilities is to occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and ongoing revenues will be sufficient to continue operation of the ERC Facilities at current levels for a minimum of five years. The specific language implementing these further amendments will be presented to the City Council and Metro Council for their consideration no later than February 1, 1993.

Possible Alternative Language

The parties agree to negotiate further amendments to this agreement which shall minimize formal City oversight and approval requirements related to Metro budgets for ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than March 31, 1993.

Amendment language shall also be prepared which sets forth the terms under which Phase 2 consolidation of ERC facilities shall occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and revenues will be sufficiently stable to continue fiscally sound and ongoing operation of ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than June 30, 1993.

REGIONAL FACILITIES COMMITTEE REPORT

RESOLUTION NO. 92-1714, AMENDING THE CONSOLIDATION AGREEMENT BETWEEN THE CITY OF PORTLAND AND METRO AND TRANSFERRING MEMORIAL COLISEUM FROM MERC TO CITY CONTROL AND AUTHORIZING AND ADMISSION TAX OFFSET AGREEMENT WITH OAC AND CITY

Date: November 24, 1992

Presented by: Councilor McLain

COMMITTEE RECOMMENDATION: At its November 24, 1992 meeting the Regional Facilities Committee voted 3-2 to recommend Council adoption of Resolution No. 92-1714. Voting in favor were Councilors McLain, Collier, and Washington. Councilors Gronke and McFarland voted no.

COMMITTEE DISCUSSION/ISSUES: General Counsel Dan Cooper presented the staff report. He highlighted the differences between the version of Consolidation Agreement amendments before the committee at this meeting and a version that had been discussed at committee and Council on November 10 and 12. Those differences included: specific listing of matters requested of MERC related to transition of Coliseum management, which had been presented to Council previously, in another form; modified terms of agreement as to the issues to be resolved in the coming months regarding further modifications to the Consolidation Agreement; and terms of an Admissions Tax Offset agreement.

Councilor Collier asked Presiding Officer Gardner and Don Rocks to clarify whether the City was committing to relinquish its right to approve or disapprove the budget for City-owned facilities under MERC management. Both said they believed it was the City's intent to reduce their role, but they did not think the City agreed to relinquish that approval authority at this time. Mr. Cooper discussed the language related to terms of further consolidation of the facilities.

Mr. Cooper then described the terms of the Admissions Tax Offset agreement. He noted changes from the previous draft, which has a clearer delineation of the length of the tax offset agreement.

FEB 23 1993

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

This Agreement dated as of December 19, 1989, amended as of DEC. 9, 1992, 1992, is between the City of Portland, Oregon (City); and the Metropolitan Service District (Metro); and the City of Portland Exposition-Recreation Commission (ERC).

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

RECITALS:

1. As of December 19, 1989, the City, Metro, and the ERC entered into an "Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District." The December 19, 1989, Agreement provided generally for the consolidated operation, under Metro's Metropolitan Exposition-Recreation Commission (Metro ERC), of the City's Memorial Coliseum (Coliseum), Civic Stadium, and Portland Center for the Performing Arts, together with Metro's Oregon Convention Center. The December 19, 1989, Agreement provided in detail for the transfer of operational control of the City's facilities from the ERC to the Metro ERC.

2. In 1991 and 1992 the City, Trail Blazers Inc. (TBI), and Oregon Arena Corporation (OAC) entered into a cooperative process for the development of a 19,000 seat Arena and related parking garage and other improvements generally located on the site of the Coliseum and for the consolidated operation of the Arena and Coliseum by OAC.

3. To facilitate implementation of agreements related to construction and operation of the Arena and related facilities, the City must remove the Coliseum from the mix of facilities operated by Metro and the Metro ERC.

4. Metro, the City, and the ERC recognize that they need to amend the Agreement to reflect the changed status of Coliseum operation.

SECTION 1

DEFINITIONS

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

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

"Arena" means an approximately 19,000 seat, multi-purpose facility to be constructed by OAC on the Coliseum property.

"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.

"Coliseum Fund" means the fund described in Section 7(J) hereof.

"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 except that as of July 1, 1993, ERC Facilities means only the PCPA and the Stadium.

"Facilities" means the ERC 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.

"OAC" means the Oregon Arena Corp. or any successor in interest.

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

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

"Project Facilities" means the sports Arena, Plaza, Memorial Coliseum, and associated Exhibit Hall, all located generally on the site of the Memorial Coliseum at 1401 North Wheeler, Portland, Oregon.

"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.

City has entered into agreements with OAC under which, effective on July 1, 1993, OAC becomes responsible for operations and management of the Coliseum in conjunction with OAC constructing an Arena and other public improvements on the Coliseum property. As of July 1, 1993, a termination under the provisions of this Agreement shall be deemed to have occurred as to the Coliseum, which as of July 1, 1993, shall no longer be considered an ERC Facility for the purpose of this Agreement, but the terms of this Agreement shall remain in full force and effect for the remaining ERC Facilities. As to the Coliseum, as of July 1, 1993, the provisions of Section 18(D) apply.

In addition Metro will ensure that Metro ERC shall accomplish the following commencing immediately and continuing until July 1, 1993:

1. All booking agreements entered into by Metro ERC covering the Coliseum will contain a waiver of claims by promoters and other users of the Coliseum arising out of construction on the Coliseum or on the Arena Project Site.
2. Metro ERC shall submit to OAC for prior approval all booking agreements and other contracts affecting the Coliseum, including without limitation modifications of existing agreements, which extend beyond June 31, 1993.
3. Metro ERC shall cooperate with OAC in the transition of Coliseum management, including without limitation designating specific personnel to carry out the transition and providing OAC with office space in the Coliseum.
4. Metro ERC shall continue to maintain and operate the Coliseum so that it remains in good condition and is fully functional, and so that necessary maintenance and repairs are not deferred.
5. Metro ERC shall supplement the list of existing contracts it provided OAC to include all booking agreements and other agreements entered into since the original list was provided.
6. Prior to December 31, 1992, Metro ERC shall conduct an inventory of personal property, equipment and fixtures located at the Coliseum.
7. Metro ERC shall work with the City, OAC, contractors and Coliseum users to schedule work and to minimize disruption and related financial impacts during construction on the Coliseum and on the Arena Project Site.
8. Metro ERC shall continue to aggressively market and book the Coliseum.

- 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.

Effective on July 1, 1993, Metro's right to beneficial use of all Coliseum real property is terminated.

- 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.

Effective on July 1, 1993, all Coliseum personal property shall be returned to City pursuant to Section 18(D).

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.

On or before July 1, 1993, Metro shall provide to the City an inventory of all Coliseum real property and capitalized personal property substantially similar in form to that required to be provided annually to the City. Thereafter, Metro's annual inventory shall not include Coliseum real and personal property.

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.

J. Coliseum Fund. Effective as of July 1, 1992, Metro has established a new Coliseum Fund separate and distinct from other Metro ERC funds, to be used exclusively to receive all Coliseum revenues and pay all Coliseum disbursements on or after July 1, 1992. Metro shall pay the positive cash balance, if any, determined to have been accumulated in the Coliseum Fund as of July 1, 1993, as directed by City. City has entered into an agreement with OAC providing for a deposit by OAC into the Coliseum Fund of up to \$875,000 if needed to meet Coliseum cash flow requirements from July 1, 1992 until July 1, 1993. In determining whether there is a positive balance in the Coliseum Fund as of July 1, 1993, any payments made by OAC from the \$875,000 obligation shall be treated as liabilities of the fund prior to determining the cash balance of the fund. If there is an operating loss to the Coliseum Fund between July 1, 1992, and July 1, 1993, beyond the \$875,000 to be provided by OAC, then the additional operating loss shall be covered by transfers to the Coliseum Fund from the Metro ERC funds for ERC facilities. Prior to transferring the Coliseum Fund to the City, Metro may deduct all proper charges against the fund for services rendered and loans advanced to the Coliseum Fund except to the extent any operating deficit exceeds the \$875,000 to be provided by OAC. Except as authorized by this Agreement, monies shall not be transferred from the new Coliseum Fund to other ERC facilities. Actual determination of the balance of the Coliseum Fund as of July 1, 1993, and payment of the amount provided for herein to the City by Metro shall be accomplished in a like manner and subject to the equivalent procedures provided for in Section 7(B), (C), and (D) which governed payment of the ERC funds to Metro in 1990.

The transfer of the balance existing in the Coliseum Fund as of July 1993 to City by Metro is subject to the following additional provisions:

Metro may charge to the Coliseum Fund the costs of insuring or creating self-insurance reserves against unforeseen or known liabilities including, but not limited to, tort claims, Workers' Compensation claims, and reserve accounts for payment of accrued vacation leave for Coliseum employees, and unemployment benefits provided that Metro may only charge the Coliseum Fund for such costs in an amount not to exceed \$300,000 or the positive balance in the Coliseum Fund, whichever is less.

Any charges for such costs in excess of \$300,000 or the positive balance in the Coliseum Fund, whichever is less, shall be charged to the Spectator Facilities Fund provided in no event shall Metro's liability exceed the amounts available in the Spectator Facilities Fund.

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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 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, or that takes place after June 30, 1993, in connection with or as a result of operation of the Coliseum, the Arena, or any public improvement constructed on the Coliseum property.
 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 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 based on an act, occurrence, event, or transaction in connection with or as a result of operation of the PCPA or Stadium, and such claims based on any act, occurrence, event, or transaction in connection with or as a result of operation of the Coliseum so long as the claim has arisen prior to July 1, 1992. 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.

City and ERC, to the maximum extent permitted by law, shall indemnify Metro and Metro ERC against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorney's fees and expenses of trial and an appeal, related to or resulting from any claim for damages due under any contract, permit rental agreement or license or any claim based on any contract or 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, in connection with or as a result of operation of the Coliseum, Arena, and any public improvement constructed on the Coliseum property arising on or after July 1, 1992.

This provision is subject to the following:

The Portland Winter Hawks have filed a civil action in Multnomah County Circuit Court alleging claims arising out of ERC's imposition of a user fee on tickets as well as claims that the construction of the Arena will constitute a breach of the agreement for the Winter Hawks's use of the Coliseum. City and Metro agree to cooperate in the defense

of this lawsuit notwithstanding the judgment of any court. Metro shall be only obligated to pay, and in that event only out of the Spectator Facilities Fund, any amounts paid to the Winter Hawks, if any, for user fee payments received on or before June 30, 1992. City or the Coliseum Fund shall be the source of payment of any additional amounts found to be owned to the Winter Hawks. Attorney's fees, costs, and interest payments, if any, will be shared proportionately based on the amounts, if any, paid to the Winter Hawks.

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. After July 1, 1993, this Section shall only apply to risks associated with the operation of the PCPA and the Stadium.

- 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.

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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.

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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. To meet this goal, the parties agree to commence negotiations within two weeks of the effective date of the amendments to the December 19, 1989 Agreement.

The parties agree to negotiate further amendments to this Agreement which shall minimize formal City oversight and approval requirements related to Metro budgets for ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than March 31, 1993.

Amendment language shall also be prepared which sets forth the terms under which Phase 2 consolidation of ERC facilities shall occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and revenues will be sufficiently stable to continue fiscally sound and ongoing operation of ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than June 30, 1993.

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 (1) through (11) 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.

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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 statement or course

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

APPROVED AS TO FORM:

Jeffrey L. Rogers
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. Blazer
Metro General Counsel

METROPOLITAN SERVICE DISTRICT

By: Rena Cusma
Rena Cusma,
Executive Officer

APPROVED AS TO FORM:

EXPOSITION-RECREATION
COMMISSION

By: Mike Scott
_____, Chairperson

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1101

ORDINANCE No. 166062
As Amended

Authorize Mayor and Commissioner of Public Affairs to sign an amended consolidation agreement between the City of Portland and Metro.

The City of Portland ordains:

Section 1. The Council finds:

1. By an agreement dated December 19, 1989, the City of Portland (City) and the Metropolitan Service District (Metro) entered into an "Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District" (Consolidation Agreement).
2. The City and the Oregon Arena Corporation (OAC) are currently preparing and entering into agreements for the construction of a new arena and related developments on property owned by the City of Portland in the vicinity of the Memorial Coliseum.
3. In order to allow the arena development to proceed, it is necessary for the City and Metro to make amendments to the Consolidation Agreement.
4. Metro has voted to approve an amended Consolidation Agreement in the form attached hereto.

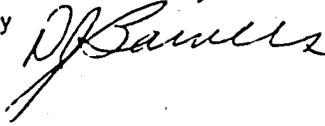
NOW, THEREFORE, the Council directs:

- a. The Mayor and the Commissioner of Public Affairs are authorized to sign the "Amended Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District" in a form substantially in compliance with the attachment to the original of this ordinance and by this reference made a part hereof.

Section 1. The Council declares that an emergency exists due to the need to maintain the Arena Project Schedule and OAC to conclude its financing arrangements for the private improvements; therefore this ordinance shall be in force and effect from and after its passage by City Council.

Passed by the Council, DEC '9 1992

November 27, 1992
Mayor Clark: Commissioner Lindberg
JRogers:ts blazers\amending.ord

BARBARA CLARK
Auditor of the City of Portland
By  Deputy

AMENDED

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

This Agreement dated as of December 19, 1989, amended as of [REDACTED] 1992, is between the City of Portland, Oregon (City); and the Metropolitan Service District (Metro); and the City of Portland Exposition-Recreation Commission (ERC).

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

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.

RECITALS:

1. As of December 19, 1989, the City, Metro, and the ERC entered into an Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District. The December 19, 1989, Agreement provided generally for the consolidated operation, under Metro's Metropolitan Exposition Recreation Commission (Metro ERC), of the City's Memorial Coliseum (Coliseum), Civic Stadium, and Portland Center for the Performing Arts, together with Metro's Oregon Convention Center. The December 19, 1989, Agreement provided in detail for the transfer of operational control of the City's facilities from the ERC to the Metro ERC.

2. In 1991 and 1992 the City, Trail Blazers Inc. (TBI), and Oregon Arena Corporation (OAC) entered into a cooperative process for the development of a 19,000 seat

Arena and related parking garage and other improvements generally located on the site of the Coliseum and for the consolidated operation of the Arena and Coliseum by OAC.

3. To facilitate implementation of agreements related to construction and operation of the Arena and related facilities, the City must remove the Coliseum from the mix of facilities operated by Metro and the Metro ERC.

4. Metro, the City, and the ERC recognize that they need to amend the Agreement to reflect the changed status of Coliseum operation.

SECTION 1

DEFINITIONS

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

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

"Arena" means an approximately 19,000 seat, multi-purpose facility to be constructed by OAC on the Coliseum property.

"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.

"Coliseum Fund" means the fund described in Section 7(J) hereof.

"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 ~~except that as of July 1, 1993, ERC Facilities means only the 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.

~~"OAC" means the Oregon Arena Corp. or any successor in interest.~~

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

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

~~"Project Facilities" means the sports Arena, Plaza, Memorial Coliseum, and associated Exhibit Hall, all located generally on the site of the Memorial Coliseum at 1401 North Wheeler, Portland, Oregon.~~

"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.

City has entered into agreements with OAC under which, effective on July 1, 1993, OAC becomes responsible for operations and management of the Coliseum in conjunction with OAC constructing an Arena and other public improvements on the Coliseum property. As of July 1, 1993, a termination under the provisions of this Agreement shall be deemed to have occurred as to the Coliseum, which as of July 1, 1993, shall no longer be considered an ERC Facility for the purpose of this Agreement, but the terms of this Agreement shall remain in full force and effect for the remaining ERC Facilities. As to the Coliseum, as of July 1, 1993, the provisions of Section 18(D) apply.

In addition Metro will ensure that Metro ERC shall accomplish the following commencing immediately and continuing until July 1, 1993:

1. All booking agreements entered into by Metro ERC covering the Coliseum will contain a waiver of claims by promoters and other users of the Coliseum arising out of construction on the Coliseum or on the Arena Project Site.
2. Metro ERC shall submit to OAC for prior approval all booking agreements and other contracts affecting the Coliseum, including without limitation modifications of existing agreements, which extend beyond June 31, 1993.
3. Metro ERC shall cooperate with OAC in the transition of Coliseum management, including without limitation designating specific personnel to carry out the transition and providing OAC with office space in the Coliseum.
4. Metro ERC shall continue to maintain and operate the Coliseum so that it remains in good condition and is fully functional, and so that necessary maintenance and repairs are not deferred.
5. Metro ERC shall supplement the list of existing contracts it provided OAC to include all booking agreements and other agreements entered into since the original list was provided.
6. Prior to December _____, 1992, Metro ERC shall conduct an inventory of personal property, equipment and fixtures located at the Coliseum.

7. Metro ERC shall work with the City, OAC, contractors and Coliseum users to schedule work and to minimize disruption and related financial impacts during construction on the Coliseum and on the Arena Project Site.

8. Metro ERC shall continue to aggressively market and book the Coliseum.

- 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.

Effective on July 1, 1993, Metro's right to beneficial use of all Coliseum real property is terminated.

- 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.

Effective on July 1, 1993, all Coliseum personal property shall be returned to City pursuant to Section 18(D).

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.

On or before July 1, 1993, Metro shall provide to the City an inventory of all Coliseum real property and capitalized personal property substantially similar in form to that required to be provided annually to the City. Thereafter, Metro's annual inventory shall not include Coliseum real and personal property.

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.

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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.

Coliseum Fund. Effective as of July 1, 1992, Metro has established a new Coliseum Fund separate and distinct from other Metro ERC funds, to be used exclusively to receive all Coliseum revenues and pay all Coliseum disbursements on or after July 1, 1992. Metro shall pay the positive cash balance, if any, determined to have been accumulated in the Coliseum Fund as of July 1, 1993, as directed by City. City has entered into an agreement with OAC providing for a deposit by OAC into the Coliseum Fund of up to \$875,000 if needed to meet Coliseum cash flow requirements from July 1, 1992 until July 1, 1993. In determining whether there is a positive balance in the Coliseum Fund as of July 1, 1993, any payments made by OAC from the \$875,000 obligation shall be treated as liabilities of the fund prior to determining the cash balance of the fund. If there is an operating loss to the Coliseum Fund between July 1, 1992, and July 1, 1993, beyond the \$875,000 to be provided by OAC, then the additional operating loss shall be covered by transfers to the Coliseum Fund from the Metro ERC funds for ERC facilities. Prior to transferring the

Coliseum Fund to the City, Metro may deduct all proper charges against the fund for services rendered and loans advanced to the Coliseum Fund except to the extent any operating deficit exceeds the \$875,000 to be provided by OAC. Except as authorized by this Agreement, monies shall not be transferred from the new Coliseum Fund to other ERC facilities. Actual determination of the balance of the Coliseum Fund as of July 1, 1993, and payment of the amount provided for herein to the City by Metro shall be accomplished in a like manner and subject to the equivalent procedures provided for in Section 7(B), (C), and (D) which governed payment of the ERC funds to Metro in 1990.

The transfer of the balance existing in the Coliseum Fund as of July 1993 to City by Metro is subject to the following additional provisions:

Metro may charge to the Coliseum Fund the costs of insuring or creating self-insurance reserves against unforeseen or known liabilities including, but not limited to, tort claims, Workers' Compensation claims, and reserve accounts for payment of accrued vacation leave for Coliseum employees, and unemployment benefits provided that Metro may only charge the Coliseum Fund for such costs in an amount not to exceed \$300,000 or the positive balance in the Coliseum Fund, whichever is less.

Any charges for such costs in excess of \$300,000 or the positive balance in the Coliseum Fund, whichever is less, shall be charged to the Spectator Facilities Fund provided in no event shall Metro's liability exceed the amounts available in the Spectator Facilities Fund.

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 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.

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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, ~~or that takes place after June 30, 1993, in connection with or as a result of operation of the Coliseum, the Arena, or any public improvement constructed on the Coliseum property.~~
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 based on an act, occurrence, event, or transaction in connection with or as a result of operation of the PCPA or Stadium, and such claims based on any act, occurrence, event, or transaction in connection with or as a result of operation of the Coliseum so long as the claim has arisen prior to July 1, 1992. 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.

City and ERC, to the maximum extent permitted by law, shall indemnify Metro and Metro ERC against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorney's fees and expenses of trial and an appeal, related to or resulting from any claim for damages due under any contract, permit rental agreement or license or any claim based on any contract or 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, in connection with or as a result of operation of the Coliseum, Arena, and any public improvement constructed on the Coliseum property arising on or after July 1, 1992.

This provision is subject to the following:

The Portland Winter Hawks have filed a civil action in Multnomah County Circuit Court alleging claims arising out of ERC's imposition of a user fee on tickets as well as claims that the construction of the Arena will constitute a breach of the agreement for the Winter Hawks' use of the Coliseum. City and Metro agree to cooperate in the defense of this lawsuit notwithstanding the judgment of any court. Metro shall be only obligated to pay, and in that event only out of the Spectator Facilities Fund, any amounts paid to the Winter Hawks, if any, for user fee payments received on or before June 30, 1992. City or the Coliseum Fund shall be the source of payment of any additional amounts found to be owned to the Winter Hawks. Attorney's fees, costs, and interest payments, if any, will be shared proportionately based on the amounts, if any, paid to the Winter Hawks.

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. After July 1, 1993, this Section shall only apply to risks associated with the operation of the PCPA and the Stadium.

- 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.

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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. To meet this goal, the parties agree to commence negotiations within two weeks of the effective date of the amendments to the December 19, 1989 Agreement.

The parties agree to negotiate further amendments to this Agreement which shall minimize formal City oversight and approval requirements related to Metro budgets for ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than March 31, 1993.

Amendment language shall also be prepared which sets forth the terms under which Phase 2 consolidation of ERC facilities shall occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and revenues will be sufficiently stable to continue fiscally sound and ongoing.

operation of ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than June 30, 1993.

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 (1) through (11) 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:

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:

EXPOSITION-RECREATION
COMMISSION

By: _____
_____, Chairperson

1101

CITY/METRO/OAC AGREEMENT TO OFFSET ADMISSION TAX

This Agreement, dated _____, 1992, is between the City of Portland, Oregon (City), the Metropolitan Service District (Metro), and the Oregon Arena Corporation (OAC).

RECITALS

A. The City and OAC are entering into a project agreement for the development of a sports arena and plaza generally located on the site of the City's Memorial Coliseum and Exhibit Hall, and for operation of the Project Facilities by OAC.

B. Pursuant to those agreement, OAC will be collecting user fees on tickets for events at the Project Facilities and will make payments to the City from user fees collected.

C. The City and Metro have, or may subsequently have, authority to impose and collect admission taxes on tickets for spectator events, including events at the Project Facilities.

D. The parties to this Agreement believe it is in their best interest to ensure that the user fee on events at the Project Facilities (Coliseum, Arena, Plaza, and Exhibit Hall) is offset against any Admission Tax imposed by the City or Metro, or their successors, so as to avoid unreasonably high cumulative excise charges on tickets.

SECTION 1

DEFINITIONS

1. "Admission Tax" means any tax or imposition imposed by the City or Metro, or their successors, on the issuance, purchase, sale or use of tickets for events at the "Project Facilities" as defined below. Admission taxes include any tax or imposition measured by the

gross receipts from tickets sales or admissions, and also include impositions which (a) are specific to the Project Facilities, or (b) taxes on or measured by the gross receipts of sales of tickets and admissions to assembly type facilities such as theaters, stadiums, auditoriums, amphitheaters, plazas, exhibit halls and performance halls. Admission taxes to not include taxes which are of a general nature, and applicability, including business income, gross receipts or sales taxes.

2. "User Fee" means the additional charge not to exceed 6 percent imposed by OAC on tickets for events at the Project Facilities, which User Fee is subsequently paid by OAC to the City, pursuant to the agreements between OAC and the City, or an equivalent portion, not to exceed the amount of such 6 percent additional charge on tickets, of any payment made by OAC to City in lieu thereof.

3. "Project Facilities" means the sports Arena, Plaza, Memorial Coliseum, and associated Exhibit Hall, all located generally on the site of the Memorial Coliseum at 1401 North Wheeler, Portland, Oregon.

SECTION 2

ADMISSION TAX OFFSET

4. In the event that the City or Metro, or any successor governmental agency of either the City or Metro, imposes any Admission Tax, OAC may offset, dollar-for-dollar, the amount paid in User Fees to the City against the amount of Admission Tax payable to the City or Metro in the manner set forth in this Agreement.

5. OAC may reduce the Admission Tax it collects on each ticket, and thus reduce the amount of Admission Tax OAC pays to Metro or the City, or their successors, by an

amount equal to the amount of User Fees OAC must collect on each ticket and pay to the City pursuant to its agreements with the City. The intended result of this Agreement is as follows:

- a. If the User Fee is greater than the sum of all admission taxes imposed by the City and Metro, or their successors, then OAC need not collect or pay any Admission Tax.
- b. If the sum of the admission taxes is greater than the User Fee, then OAC may collect and pay as Admission Tax only the amount by which the sum of admission taxes exceeds the User Fee.
- c. If OAC must collect and pay a partial Admission Tax, as in (b) above, and both the City and Metro have imposed admission taxes, then the amount paid by OAC shall be apportioned between the City and Metro in the same ratio as the ratio between the full admission taxes imposed by the City and Metro.

6. Nothing in this Agreement shall reduce or impair the obligations of OAC to pay User Fee revenue to the City pursuant to the agreements between OAC and the City.

7. In the event that the City or Metro, or their successors, in spite of this Agreement, collect Admission Tax from OAC without it being reduced by the amount of User Fee as provided in this Agreement, then the City or Metro, or its successor, shall reimburse OAC so that the net effect is the same as if the Admission Tax had been fully offset by the User Fee as contemplated by paragraph 4 of this Agreement.

8. The User Fee contemplated by this Agreement is the 6 percent fee on tickets sold in the new Arena and Coliseum ~~or the equivalent portion of any OAC payment in lieu thereof~~. Any increase in this fee subsequently agreed to by City and OAC or any other payments made by OAC to City pursuant to the agreements between OAC and City are excluded from the Admission Tax offset and OAC shall not be entitled to offset any such additional User Fee or payments against any Admission Tax subsequently imposed by Metro or City.

9. a. ~~As to City and OAC~~ this Agreement shall be in effect as long as OAC is contractually obligated to pay User Fees to the City pursuant to the agreements entered into between City and OAC on November 5, 1992.

b. ~~Metro's obligation to either offset User Fees against admission taxes or to make payments to OAC pursuant to paragraph 7 hereof, continues so long as, but only so long as, City has obligations to pay costs directly related to the Project Facilities which have been incurred or reasonably will be incurred including, but not limited to debt service, OAC advances, reserves for demolition, and repayment of prior general fund loans. If prior to termination of this Agreement as to City and OAC, City no longer has such obligations then Metro's obligations to both City and OAC terminate. If City continues to have such obligations after the termination of this Agreement as to OAC and City, then Metro's obligation to offset continues until such time as City no longer has such obligations.~~

10. ~~If Metro's obligation to offset terminates prior to the termination of this Agreement as to City and OAC, City shall allow OAC to offset against User Fee payments to be made to City the amount of any Metro imposed Admission Tax.~~

11. After termination of Metro's obligations to offset admission taxes under this Agreement, Metro agrees to discuss with City the effects any Metro Admission Tax might have on City's ability to finance replacement facilities.

DATED this _____ day of _____, 1992.

Oregon Arena Corporation

Metropolitan Service District

City of Portland

gl1128

STAFF REPORT

RESOLUTION 92-1714, FOR THE PURPOSE OF AMENDING THE CONSOLIDATION AGREEMENT BETWEEN THE CITY OF PORTLAND AND METRO AND TRANSFERRING MEMORIAL COLISEUM FROM MERC TO CITY CONTROL AND AUTHORIZING AN ADMISSION TAX OFFSET AGREEMENT WITH OAC AND CITY

November 18, 1992

By: Don Rocks

BACKGROUND

Negotiations between Metro staff and Portland staff established the positions of both governments with respect to the issues to be addressed in the amendment to the Consolidation Agreement. The agreement signed between the city and the Oregon Arena Corporation specified that the city would obtain an amendment returning the Memorial Coliseum to city control by December 1, 1992. Failure to obtain the amendment within that timeframe, under the terms and conditions of the agreement, would result in the collapse of the Arena Project.

The deadline for the conclusion of negotiations between the city and Metro imposed by the city/OAC agreement resulted in (1) direct talks between the Metro Executive Officer and Presiding Officer and the Mayor and liaison commissioner to ERC facilities, and (2) the agreement that the issue of city approval of MERC budgets and of the Metro Ordinance governing the MERC would be discussed and resolved immediately following finalization and approval of the amendment returning the Coliseum to the city.

Discussions between the elected officials produced city agreement that real costs of transferring the Coliseum--unemployment benefits for MERC employees, claims liabilities, vacation pay-out etc.--would be paid out of the Coliseum Fund and not the Spectator Facilities Fund as previously desired by the city. A cap on Coliseum Fund pay-outs was established at \$300,000. The worst case transfer cost scenario produced a figure of \$584,000 which assumes, among other things, that OAC hires no MERC employees whatsoever. A more realistic assessment of actual transfer costs tells us that the \$300,000 cap should be adequate and that MERC should not have to dip into the Spectator Facilities Fund.

With regard to the 6% offset, Metro officials agreed, in the spirit of the MOU earlier endorsed by the city and Metro, that amendment language shall grant that exemption with the proviso that it shall not be collected in perpetuity, but only so long as the proceeds are applied to purposes directly related to the city debt, costs incurred in negotiations, in unbonded transaction costs, in overseeing construction of Arena complex facilities and subsequent costs of Coliseum maintenance or replacement.

Since those understandings were reached, members of the Council have expressed strong interest in returning to negotiations and resolving issues that were deferred until after finalization and approval of the amendment. Accordingly, the elected officials have scheduled another meeting which--at time of writing--has not yet been held. The results of that meeting shall be reported upon its conclusion.

ITEMS TO BE INCLUDED IN CONSOLIDATION AGREEMENT
November 4, 1992

The following provisions are contained in Coliseum Operating or Development Agreements and OAC wants them reflected in the amended Consolidation Agreement. MERC staff are aware of many/most of them and are already implementing some of the provisions.

1. MERC must provide OAC a list of all outstanding contracts by December 1. OAC will agree to assume all contracts that are given to it by that date.
2. An inventory of all personal property, equipment, fixtures located at Coliseum and necessary for its operation must be completed by December 1.
3. MERC must maintain Coliseum at normal/budgeted levels and not defer necessary maintenance and repair.
4. New agreements entered into by MERC must be subject to City/OAC approval and must have language that deals with construction interruptions and necessary seismic improvements.
5. Consumables at Coliseum remain at Coliseum on OAC assumption.
6. MERC to work with OAC , contractors and customers to minimize disruption and related financial impacts.
7. MERC must cooperate with OAC during transition period, including providing space for OAC employees.
8. MERC to continue to aggressively market and book Coliseum during transition.
9. MERC cooperate with City to accommodate seismic improvements.

AMENDED

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

This Agreement dated as of December 19, 1989, amended as of 1992, is between the City of Portland, Oregon (City); and the Metropolitan Service District (Metro); and the City of Portland Exposition-Recreation Commission (ERC).

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

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.~~

RECITALS:

1. As of December 19, 1989, the City, Metro, and the ERC entered into an Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District." The December 19, 1989, Agreement provided generally for the consolidated operation, under Metro's Metropolitan Exposition-Recreation Commission (Metro ERC), of the City's Memorial Coliseum (Coliseum), Civic Stadium, and Portland Center for the Performing Arts, together with Metro's Oregon Convention Center. The December 19, 1989, Agreement provided in detail for the transfer of operational control of the City's facilities from the ERC to the Metro ERC.

2. In 1991 and 1992 the City, Trail Blazers Inc. (TBI), and Oregon Arena Corporation (OAC) entered into a cooperative process for the development of a 19,000 seat

Arena and related parking garage and other improvements generally located on the site of the Coliseum and for the consolidated operation of the Arena and Coliseum by OAC.

3. To facilitate implementation of agreements related to construction and operation of the Arena and related facilities, the City must remove the Coliseum from the mix of facilities operated by Metro and the Metro ERC.

4. Metro, the City, and the ERC recognize that they need to amend the Agreement to reflect the changed status of Coliseum operation.

SECTION 1

DEFINITIONS

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

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

"Arena" means an approximately 19,000 seat, multi-purpose facility to be constructed by OAC on the Coliseum property.

"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.

"Coliseum Fund" means the fund described in Section 7(J) hereof.

"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 ~~except that as of July 1, 1993, ERC Facilities means only the 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.

~~"OAC" means the Oregon Arena Corp. or any successor in interest.~~

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

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

~~"Project Facilities" means the sports Arena, Plaza, Memorial Coliseum, and associated Exhibit Hall, all located generally on the site of the Memorial Coliseum at 1401 North Wheeler, Portland, Oregon.~~

"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.

City has entered into agreements with OAC under which, effective on July 1, 1993, OAC becomes responsible for operations and management of the Coliseum in conjunction with OAC constructing an Arena and other public improvements on the Coliseum property. As of July 1, 1993, a termination under the provisions of this Agreement shall be deemed to have occurred as to the Coliseum, which as of July 1, 1993, shall no longer be considered an ERC Facility for the purpose of this Agreement, but the terms of this Agreement shall remain in full force and effect for the remaining ERC Facilities. As to the Coliseum, as of July 1, 1993, the provisions of Section 18(D) apply.

- 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.

Effective on July 1, 1993, Metro's right to beneficial use of all Coliseum real property is terminated.

- 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.

Effective on July 1, 1993, all Coliseum personal property shall be returned to City pursuant to Section 18(D).

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.

On or before July 1, 1993, Metro shall provide to the City an inventory of all Coliseum real property and capitalized personal property substantially similar in form to that required to be provided annually to the City. Thereafter, Metro's annual inventory shall not include Coliseum real and personal property.

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.

J. Coliseum Fund. Effective as of July 1, 1992, Metro has established a new Coliseum Fund separate and distinct from other Metro ERC funds, to be used exclusively to receive all Coliseum revenues and pay all Coliseum disbursements on or after July 1, 1992. Metro shall pay the positive cash balance, if any, determined to have been accumulated in the Coliseum Fund as of July 1, 1993, as directed by City. City has entered into an agreement with OAC providing for a deposit by OAC into the Coliseum Fund of up to \$875,000 if needed to meet Coliseum cash flow requirements from July 1, 1992 until July 1, 1993. In determining whether there is a positive balance in the Coliseum Fund as of July 1, 1993, any payments made by OAC from the \$875,000 obligation shall be treated as liabilities of the fund prior to determining

the cash balance of the fund. If there is an operating loss to the Coliseum Fund between July 1, 1992, and July 1, 1993, beyond the \$875,000 to be provided by OAC, then the additional operating loss shall be covered by transfers to the Coliseum Fund from the Metro ERC funds for ERC facilities. Prior to transferring the Coliseum Fund to the City, Metro may deduct all proper charges against the fund for services rendered and loans advanced to the Coliseum Fund except to the extent any operating deficit exceeds the \$875,000 to be provided by OAC. Except as authorized by this Agreement, monies shall not be transferred from the new Coliseum Fund to other ERC facilities. Actual determination of the balance of the Coliseum Fund as of July 1, 1993, and payment of the amount provided for herein to the City by Metro shall be accomplished in a like manner and subject to the equivalent procedures provided for in Section 7(B), (C), and (D) which governed payment of the ERC funds to Metro in 1990.

The transfer of the balance existing in the Coliseum Fund as of July 1993 to City by Metro is subject to the following additional provisions:

Metro may charge to the Coliseum Fund the costs of insuring or creating self-insurance reserves against unforeseen or known liabilities including, but not limited to, tort claims, Workers' Compensation claims, and reserve accounts for payment of accrued vacation leave for Coliseum employees, and unemployment benefits provided that Metro may only charge the Coliseum Fund for such costs in an amount not to exceed \$300,000 or the positive balance in the Coliseum Fund, whichever is less.

Any charges for such costs in excess of \$300,000 or the positive balance in the Coliseum Fund, whichever is less, shall be charged to the Spectator Facilities Fund provided in no event shall Metro's liability exceed the amounts available in the Spectator Facilities Fund.

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 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, or that

takes place after June 30, 1993, in connection with or as a result of operation of the Coliseum, the Arena, or any public improvement constructed on the Coliseum property.

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 based on an act, occurrence, event, or transaction in connection with or as a result of operation of the PCPA or Stadium, and such claims based on any act, occurrence, event, or transaction in connection with or as a result of operation of the Coliseum so long as the claim has arisen prior to July 1, 1992. 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.

City and ERC, to the maximum extent permitted by law, shall indemnify Metro and Metro ERC against and defend and hold them harmless from any and all liabilities,

actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorney's fees and expenses of trial and an appeal, related to or resulting from any claim for damages due under any contract, permit rental agreement or license or any claim based on any contract or 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, in connection with or as a result of operation of the Coliseum, Arena, and any public improvement constructed on the Coliseum property arising on or after July 1, 1992.

This provision is subject to the following:

The Portland Winter Hawks have filed a civil action in Multnomah County Circuit Court alleging claims arising out of ERC's imposition of a user fee on tickets as well as claims that the construction of the Arena will constitute a breach of the agreement for the Winter Hawks' use of the Coliseum. City and Metro agree to cooperate in the defense of this lawsuit notwithstanding the judgment of any court. Metro shall be only obligated to pay, and in that event only out of the Spectator Facilities Fund, any amounts paid to the Winter Hawks, if any, for user fee payments received on or before June 30, 1992. City or the Coliseum Fund shall be the source of payment of any additional amounts found to be owned to the Winter Hawks. Attorney's fees, costs, and interest payments, if any, will be shared proportionately based on the amounts, if any, paid to the Winter Hawks.

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. After July 1, 1993, this Section shall only apply to risks associated with the operation of the PCPA and the Stadium.

- 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. To meet this goal, the parties agree to commence negotiations within two weeks of the effective date of the amendments to the December 19, 1989 Agreement to establish the terms for transfer to Metro of full control of the PCPA and Stadium as soon as possible, and to successfully conclude these negotiations by July 1, 1993.

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 (1) through (11) 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 statement or course of conduct of any officer, employee, or agent of the party purporting to modify this Agreement.

APPROVED AS TO FORM:

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:

**EXPOSITION-RECREATION
COMMISSION**

By: _____
_____, Chairperson

1101

CITY/METRO/OAC AGREEMENT TO OFFSET ADMISSION TAX

This Agreement, dated _____, 1992, is between the City of Portland, Oregon (City), the Metropolitan Service District (Metro), the Oregon Arena Corporation (OAC), and the Trail Blazers Inc. (TBI).

RECITALS

A. The City, OAC, and TBI are entering into a project agreement for the development of a sports arena and plaza generally located on the site of the City's Memorial Coliseum and Exhibit Hall, and for operation of the Project Facilities by OAC.

B. Pursuant to those agreements, OAC will be collecting user fees on tickets for events at the Project Facilities and will make payments to the City from user fees collected.

C. The City and Metro have authority to impose and collect admission taxes on tickets for spectator events, including events at the Project Facilities.

D. The parties to this Agreement believe it is in their best interest to ensure that the user fee on events at the Project Facilities (Coliseum, Arena, Plaza, and Exhibit Hall) is offset against any Admission Tax imposed by the City or Metro so as to avoid unreasonably high cumulative excise charges on tickets.

SECTION 1

DEFINITIONS

1. "Admission Tax" means any tax or imposition imposed by the City or Metro directly on the issuance, purchase, sale or use of tickets for events at the "Project Facilities" as defined below. Admission taxes include any tax measured by the gross receipts from

ticket sales or admissions, and also include impositions which (a) are specific to the Project Facilities, or (b) taxes on or measured by the gross receipts of sales of tickets and admissions to assembly type facilities such as theaters, stadiums, auditoriums, amphitheaters, plazas, exhibit halls and performance halls. Admission taxes do not include taxes which are of a general nature, and applicability, including business income, gross receipts or sales taxes.

2. "User Fee" means the additional charge not to exceed 6 percent imposed by OAC on tickets for events at the Project Facilities, which User Fee is subsequently paid by OAC to the City, pursuant to the agreements between OAC and the City.

3. "Project Facilities" means the sports Arena, Plaza, Memorial Coliseum, and associated Exhibit Hall, all located generally on the site of the Memorial Coliseum at 1401 North Wheeler, Portland, Oregon.

SECTION 2

ADMISSION TAX OFFSET

4. In the event that the City or Metro imposes any Admission Tax, OAC may offset, dollar-for-dollar, the amount paid in User Fees to the City against the amount of Admission Tax payable to the City or Metro in the manner set forth in this Agreement.

5. OAC may reduce the Admission Tax it collects on each ticket, and thus reduce the amount of Admission Tax OAC pays to Metro or the City by an amount equal to the amount of User Fees OAC must collect on each ticket and pay to the City pursuant to its agreements with the City. The intended result of this Agreement is as follows:

- a. If the User Fee is greater than the sum of all admission taxes imposed by the City and Metro, then OAC need not collect or pay any Admission Tax.
- b. If the sum of the admission taxes is greater than the User Fee, then OAC may collect and pay as Admission Tax only the amount by which the sum of admission taxes exceeds the User Fee.
- c. If OAC must collect and pay a partial Admission Tax, as in (b) above, and both the City and Metro have imposed admission taxes, then the amount paid by OAC shall be apportioned between the City and Metro in the same ratio as the ratio between the full admission taxes imposed by the City and Metro.

6. Nothing in this Agreement shall reduce or impair the obligations of OAC to pay User Fee revenue to the City pursuant to the agreements between OAC and the City.

7. In the event that the City or Metro, in spite of this Agreement, collect Admission Tax from OAC without it being reduced by the amount of User Fee as provided in this Agreement, then the City or Metro shall reimburse OAC so that the net effect is the same as if the Admission Tax had been fully offset by the User Fee as contemplated by paragraph 4 of this Agreement.

8. The User Fee contemplated by this Agreement is the 6 percent fee on tickets sold in the new Arena and Coliseum. Any increase in this fee subsequently agreed to by City and OAC or any other payments made by OAC to City pursuant to the agreements between OAC and City are excluded from the Admission Tax offset and OAC shall not be

entitled to offset any such additional User Fee or payments against any Admission Tax subsequently imposed by Metro or City.

9. This Agreement shall be in effect as long as OAC is contractually obligated to pay User Fees to the City pursuant to the agreements entered into between City and OAC on November 5, 1992.

DATED this _____ day of _____, 1992.

Oregon Arena Corporation

Trail Blazers Inc.

City of Portland

Metropolitan Service District

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