



CITY OF PORTLAND

OFFICE OF MANAGEMENT AND FINANCE

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City of Portland/Portland Development Commission Letter of Agreement

July 18, 2012

Letter of Agreement and Proposed Term Sheet for Operating Agreement between the Portland Development Commission (PDC) and the City of Portland (City) for Management of the Veterans Memorial Coliseum

The City of Portland ("City") and the Portland Development Commission ("PDC") have been involved in negotiations with Portland Arena Management ("PAM") and the Portland Winterhawks ("PWH") regarding the redevelopment and future operation of the Veterans Memorial Coliseum ("VMC").

In order to reach agreement with our partners on the various agreements for the VMC, PDC has proposed assuming operational responsibilities for the VMC in the event that PAM does not elect to continue as the operator for the VMC in 2023.

This letter of agreement is intended to document the intent of the City and PDC to move forward with negotiation of an Operating Agreement for the VMC between the City and PDC which will be approved along with other VMC-related agreements later this year.

City and PDC staff have developed and agreed to the terms and conditions described in the attached "Binding Term Sheet", as indicated by the initials on each page of the term sheet by the Chief Administrative Officer for the City of Portland and the Executive Director for the Portland Development Commission. This Binding Term Sheet is subject to approval by the PDC Board and by City Council and completion of the documents listed in the section titled "Concurrent Agreements and Documentation".

In order to keep the VMC negotiations moving forward in a timely fashion, PDC and City staff will seek informal agreement from PDC Commissioners and City Council members prior to beginning formal development of the City of Portland/Portland Development Commission Operating Agreement ("City/PDC OA").

The City/PDC OA will be based substantially on the City of Portland/Portland Arena Management Operating Agreement, as amended by the Second Amendment (collectively the "City/PAM OA") and modified as described in the attached.

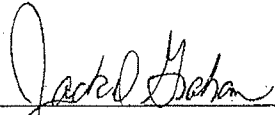
While working on developing the specific language of the City/PDC OA, the parties will concurrently seek formal approval of the Binding Term Sheet from the PDC Board and City Council in August.

An Equal Opportunity Employer

To help ensure equal access to programs, services and activities, the Office of Management & Finance will reasonably modify policies/procedures and provide auxiliary aids/services to persons with disabilities upon request.

It is the intent of the parties to seek formal approval of the City/PDC OA in September/October at the same time that the VMC Redevelopment Agreement and associated agreements are brought forward to the PDC Board and City Council for approval.

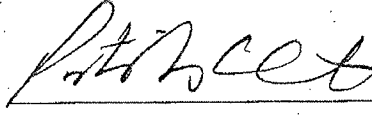
The undersigned agree to the terms and conditions presented herein and in the attached "Binding Term Sheet" as of the dates set forth below.



Jack D. Graham
Chief Administrative Officer
City of Portland

7/24/12

Date



7/28/12

Date

Patrick Quinton
Executive Director
Portland Development Commission

**Binding Term Sheet
Regarding**

**Operating Agreement for the Veterans Memorial Coliseum
City of Portland/Portland Development Commission**

In the event that Portland Arena Management (PAM) does not elect to continue as the operator for the Veterans Memorial Coliseum (VMC) in 2023, the Portland Development Commission is agreeing to assume operations of the VMC subject to an Operating Agreement negotiated between the two parties.

The City of Portland ("City") and the Portland Development Commission ("PDC") agree to the terms and conditions described below, subject to approval by the PDC Board and City Council and completion of the documents listed in the section titled "Concurrent Agreements and Documentation." The City and PDC will also develop a separate agreement for City Council and PDC Board consideration that formalizes PDC's lead role in the redevelopment of the Rose Quarter.

The City of Portland/Portland Development Commission Operating Agreement ("City/PDC OA") will be based substantially on the City of Portland/Portland Arena Management Operating Agreement, as amended by the Second Amendment (collectively the "City/PAM OA").

PDC and City staff will seek informal agreement from PDC Commissioners and City Council members prior to formal negotiations on the City/PDC OA.

Concurrent Agreements and Documentation

- The Spectator Facilities Fund (SFF) will remain obligated to pay off the \$4.4 million loan from PDC per the terms agreed to in the Amended and Restated IGA approved by the PDC board on May 23, 2012, to be approved by the City Council at the time the RDA and other agreements are approved.
- PDC has confirmed that no TIF resources will be used for operations and maintenance, but other financial resources can and have been used for operations of other facilities. PDC will provide a written description of the types of funds that will be used for the operation of the VMC and examples of PDC operation of other facilities.
- PDC will provide a written legal opinion from PDC Legal Counsel describing the legality of PDC assuming any and all of the contemplated responsibilities related to the VMC and the legality of using the identified PDC financial resources for purposes contemplated by the City/PDC OA.

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Jack D. Graham, OMF

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Patrick Quinton, PDC

- The City, PDC, PAM and PWH must do the following:
 - Agree that PDC has the right to review and approve all agreements between the City, Portland Arena Management (PAM), the WHL's Portland Winterhawks (PWH) and other third parties that may affect the operations and profitability of the Veterans Memorial Coliseum (VMC) (e.g. Lease (License) Agreement w/PWH, revenue sharing agreements, etc) during the effective term of the City/PDC OA.
 - Agree to terms of the Project Funding Agreement (pending agreement on sufficiency of asset pledge in lieu of full upfront funding or letter of credit or other collateral acceptable to the City and PAM).
- PAM must do the following:
 - Agree to a license agreement with PWH.
 - Agree to the terms negotiated in the RDA.
 - Agree to operate the VMC through 2023 as consideration for two five year options to extend the City/PAM OA from 2023 to 2033.
- PWH must do the following:
 - Agree to the terms of the Revenue Sharing Agreement.
 - Agree to a license agreement with PAM.
 - Agree to the terms negotiated in the RDA.
 - Agree to a sublicense agreement between PDC and PWH for use of the VMC during the term of the City/PDC OA.
 - Agree to play all games at VMC during term of City/PDC OA if requested/approved by PDC and the City.
 - Agree that PWH is not entitled to revenue sharing from the City during the term of the City/PDC OA.
- PDC must do the following:
 - Agree to a sublicense agreement between PDC and PWH for use of the VMC during the term of the City/PDC OA.

Key Unchanged Terms and Conditions in the OA

Under the City/PDC OA, PDC would assume operational responsibility for the VMC on substantially the same terms as the City/PAM OA, including the following items included here for clarification purposes:

- The City will carry a line item of \$250,000 applicable towards the costs of Repairs, Capital Improvements, or other increase Operating Expenses arising out of Deferred CI/SR annually beginning in FY2013-14, increasing by the CPI each year. Beginning in

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FY2023-24, the City will carry a line item of \$375,000 applicable towards the costs of Repairs, Capital Improvements, or other increase Operating Expenses arising out of Deferred CI/SR annually, increasing by the CPI over the term of the City/PDC OA. Any unspent amounts each year, beginning when PDC assumes operations, shall be rolled over to the following fiscal year budgeted amount for capital replacement.

- PDC will assume the \$250,000 Maintenance and Repair obligation from the City/PAM OA beginning in FY2023-24, increasing by the CPI over the term of the City/PDC OA..

Key Modifications and Additions to OA Terms and Conditions

In addition to the key terms identified above, the following key modifications and additions will need to be included in the City/PAM OA:

Operating Losses

- The City would be responsible for covering VMC operating losses up to an annual cap of \$375,000, and could not offset operating losses in one year with operating profits in future years. Any operating losses covered by the City would be considered Spectator Facilities Fund operations costs.
- PDC would cover operating losses in any given year beyond that \$375,000 cap from legally available funds and appropriations, and could not offset operating losses in one year with operating profits in future years.

Effective Date

- The City/PDC OA will become effective in the event PAM chooses not to exercise its option to renew the City/PAM OA for the period starting July 1, 2023, and will remain in effect until June 30, 2033.

Performance Standards

- PDC will be held to a "commercially reasonable standard" for scheduling events, rather than the higher standard that PAM has agreed to in the City/PAM OA.
- Definition of Performance Standards to be negotiated and agreed upon by the parties.

Discontinuation of PWH Operations and/or PWH/PDC Sublicense

- If PWH discontinues operations at the VMC prior to or during the term of the City/PDC OA, PDC, as the operator, would have the right to terminate the City/PDC OA. Any agreements and obligations executed by PDC during the term of the City/PDC OA would be the responsibility of PDC and not the City of Portland. The City would not be obligated to continue to operate the building. In the event the VMC is shut down or the City/PDC OA is terminated, PDC will indemnify, defend and hold the City harmless from any expenses or penalties relating to contracts or agreements executed by PDC during the term of the City/PDC OA.

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Patrick Quinton, PDC

- If the PWH/PDC sublicense ceases to exist for any other reason and/or PDC ceases to operate the VMC for any reason, the City of Portland, including but not limited to the SFF and General Fund, would not be obligated to continue to operate the building or pay any penalties relating to contracts or agreements executed by PDC during the term of the City/PDC OA and/or to the PWH/PDC sublicense.

Revenue Sharing

- Under the City/PDC OA, PDC would also assume the terms of the Revenue Sharing Agreement between the City and PWH and would receive the PWH share of revenues above the Baseline (i.e. any user fees and parking revenues above the baseline and a share of the Operating Profits) at such time the City/PDC OA is in effect. Language will be incorporated into the City/PDC OA rather than as a separate Revenue Sharing Agreement.
- The revenue sharing due to PDC would not be included in the calculation of operating losses and profits for the VMC. The revenue sharing split of VMC profits would be calculated 40% to PDC as Operator; 20% to PDC per revenue sharing agreement terms; 20% to the City for general purposes; 20% to the City designated for capital improvements.

PDC Personnel and Overhead

- PDC's costs allocated to VMC operations, including all personnel, administrative or overhead costs, will reflect the actual direct and indirect costs of operating the facility. The City of Portland will have the right to review and approve. The City will not unreasonably withhold approval. PDC's financial records will be available for audit by the City.

OA Termination

- If PDC does not have legally available funds and appropriations to cover operating losses, the City would have cause to terminate the agreement for breach. Any contractual agreements between PDC and PWH or other third parties would be PDC's to resolve. The City of Portland, including but not limited to the SFF and General Fund, would not be obligated to continue to operate the building, pay any penalties, or otherwise be required to fulfill the obligations of PDC. PDC will indemnify, defend and hold the City harmless for shutting down the VMC or terminating the City/PDC OA due to a PDC breach.

Naming Rights and Building Sponsorships

- Under the City/PDC OA, conditions regarding naming rights and sponsorships of any aspects of the VMC (including the building, concourses, meeting rooms, etc.) will need to be included, indicating that any revenues from naming rights would be considered building revenue along with advertising, concessions and rental income.
- Language for approval of the name will be similar to the naming rights provisions that are included in the existing JELD-WEN Field agreement.

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- City Council will retain authority to approve the renaming of any aspect of the building or features within the building.

Non-PWH Events

- PDC will have the right to schedule only PWH games if both the City and PDC agree it is not financially feasible to continue with those other events, subject to the two following exceptions.

The City and PDC agree that the City/PDC OA will allow for uses of the VMC that provide community, social or economic benefit to Portland and the region. To the extent that the VMC is used for these purposes, PDC shall be permitted to seek recovery of any costs associated with operating the VMC for these events from the users.

City-Owned Parking Garages at the Rose Quarter

- Parking management responsibilities currently performed by PAM as described in the City/PAM OA will continue to be performed by PAM or by another operator chosen by the City.
- The City will maintain financial responsibility for repair and maintenance at the City-owned garages.

Clean-ups, Clarifications, and Consolidations in the OA

Many sections of the City/PAM OA will need significant modifications to reflect the change from PAM to PDC as the VMC Operator, to clean up and clarify language, and/or to incorporate elements of agreement currently contained in other related documents. Amendments are intended to remain substantially similar in content to the current City/PAM OA provisions. The list below presents an indicative sample of clean-up items that will be required.

Section 1

Definitions included in other related agreements to be consolidated into the City/PDC OA.

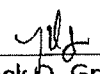
Section 2

Need to update term of agreement; termination provisions; and transition from PAM to PDC (rather than MERC to OAC).

Section 3

Need to update for PDC as operator replacing OAC/PAM; need to modify parking management provisions to reflect 2012 site conditions and agreements; update to reflect current role Coliseum plays in the region's convention/conference market; change to reflect updated event mix and pro forma; modify how activities at the VMC will be coordinated with the Rose Garden Arena (RGA); update for most recent City and PDC MWESB and

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Patrick Quinton, PDC

workforce requirements; update office location; and update dollar amount of payment guaranty.

Section 4

Update references to pro forma and event mix; amend references to coordination with Portland Oregon Visitors Association for marketing and promotion of the Coliseum; update to reflect changes from Second Amendment and RDA for capital improvements, deferred maintenance, structural repairs, and repair and maintenance responsibilities; update dollar amounts to 2012 with consistent escalator; change to reflect current PDC and City MWESB and workforce requirements; update assumption of agreements section to 2012; and define non-compete clause for PDC.

Note: This section will also require amendment based on decisions regarding community events, the Winterhawks' right to play at the RGA, and coordination of activities with the RGA.

Section 5

Update to delete references to 1993 OAC requirements and transition costs. Note: This section will also need modification to incorporate how the 6% User Fee is collected (currently in another agreement with PAM) and should incorporate the terms of the Revenue Sharing Agreement. This is also where agreements on operating losses, advertising revenues, and naming rights will be incorporated.

Section 6

Delete references and requirements of the Performance Review scheduled to occur in 2000.

Section 7

Delete references to items to be funded as follow up to the Performance Review. Incorporate reference to the Post-Completion Assessment of the Second Amendment to the Operating Agreement as the basis for the parties' respective obligations regarding repair, maintenance, structural repairs, and capital improvements.

Section 8

References to OAC Migration should be modified as these would not be the responsibility of PDC.

Section 9

Update for current City requirements and standards and 2012 dollar amounts.

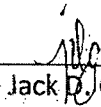
Section 10

References to Bonds should be amended as appropriate for 2012.

Section 13

Needs to be rewritten to reflect that PDC will likely be contracting for an operator. Standards for approval should continue to apply. OAC/PAM specific references should be

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deleted or replaced with comparable relevant language regarding PDC. Delete references to certificates of stock and granting security interest in the operator's management fees.

Section 14

Eliminate references to Baseline Vendor Payments. Amend Direct Labor and Allocated Labor references.

Section 15

Representations, warranties and covenants need to be updated for City and OAC's representations, warranties and covenants need to be replaced by PDC's. The non-discrimination language needs to be modified to reflect current City and PDC policies regarding protected categories.

Section 16

Need to update references to previous agreements; update Operator's remedies per Second Amendment.

Section 17

Need to review to ensure arbitration provisions are consistent with current PDC and City processes.

Section 18

Update to provide consistent escalator for all dollar amounts included in agreement using the CPI as described in the Second Amendment. Update integration statement and notices.

Exhibits

Updated versions of the following exhibits will need to be prepared and incorporated as part of the agreement:

- Definition of Managerial Employee
- VMC Collection Standards and Procedures
- Event Mix
- First Source Hiring Agreement
- Consolidated Coliseum Inventory Listing (to be produced at time of transfer)
- Existing Agreements (to be produced at time of transfer)
- Staffing Plan (to be produced at time of transfer)
- Qualifications Relating to City's Representations and Warranties
- Condition of Title to Coliseum

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